

Full Council

24 March 2022

Report of the Director of Governance & Monitoring Officer

Review of the Council's Constitution

Summary

1. In accordance with recommendations from the Audit & Governance Committee, Full Council is invited to approve and adopt the revisions to the Council's Constitution and agree the dates for implementation.
2. The Audit & Governance Committee has highlighted areas which as, part of this process, require Full Council to determine and these are detailed within the report but in summary are:
 - a) Nomination of Substitutes and whether or not substitutes should be appointed from the same political group
 - b) Whether Executive Members should sit on Planning Committee A and Planning Committee B; and
 - c) Procedural issues relating to the Overview and Scrutiny function

Recommendations

3. Full Council is invited to determine the wording of the following for inclusion within the approved Constitution:
 - a) Appointment of Substitutes to Committees (article 7 Decision Making, subsection 14 – substitutes)
 - i. Paragraph 14.1 (a) - the inclusion or not of the following sentence:

“Substitutes shall be appointed from within the same political group”

If included, the paragraph would read (the disputed sentence is highlighted in bold type for ease of reference):

“For the Planning Committee A and Planning Committee B up to four named substitutes shall be allowed for each of the political Groups. For other Member bodies up to three named substitutes shall be allowed for each political Group.

Substitutes shall be appointed from within the same political group. *Independent Councillors may also be appointed to act as named substitutes for other Independent Councillors within this rule”.*

b) Role of Executive Members on Planning Committee A and Planning Committee B

Full Council is invited to determine the position of Executive Members and their involvement or not in the Council’s Planning Committee functions. Therefore Full Council is asked to approve one of the following options for inclusion in the Constitution:

Appendix 30 – Option 1 – maintains the current position in that Executive Members can sit on the Executive and Planning Committee A and Planning Committee B but do need to be mindful of a potential conflict of interest.

Appendix 30 – Option 2 – the Leader of the Council, the Deputy Leader of the Council and all other Executive Members cannot sit on either Planning Committee A or Planning Committee B.

Appendix 30 – Option 3 – where necessary Executive Members must choose whether to sit on the Executive or take up their seat on Planning Committee A or Planning Committee B so as to avoid a conflict of interest

- c) Upon confirmation of the role of the Executive Members on the Planning Committee function, the Director of Governance and Monitoring Officer is requested to make the necessary changes to accurately reflect the position in Article 13 and Appendix 17.

d) The Council’s Scrutiny Function

- i. Article 8: Policy, Overview and Scrutiny
Paragraph 10.2 (b), Full Council is asked to determine if this paragraph should make reference to the Vice Chair or not (disputed wording is highlighted in bold type for ease of reference). The paragraph currently reads:

*“Allocating, in consultation with the relevant Chair **and Vice-Chair**, urgent issues to be considered by an appropriate*

committee (including ad-hoc scrutiny committee), as may be necessary”.

ii. Appendix 5: Scrutiny Procedure Rules

Paragraph 16.3 – Full Council is invited to determine if the time anticipated as a guide to aid the length of the meetings in this paragraph should be 20 minutes or 30 minutes:

The paragraph currently states:

“After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions. As a guide it is anticipated that this should not exceed 20 minutes in total”.

Paragraph 18.3 – Full council is invited to determine the procedure for voting where there are a number of alleged breaches detailed in a call in request. The disputed sentence is highlighted in bold type for ease of reference

The paragraph states:

*“The vote to be taken will be by a show of hands. **Where multiple breaches are alleged, a vote shall take place in respect of each potential breach”.***

4. Adopt the revised Constitution and approve its implementation as follows:

- a) Extracts for immediate adoption and implementation as follows:
 - Appendix 1 – Scheme of Delegation
 - Appendix 12 – Officer Employment Procedure Rules
 - Appendix 13 – Ethics Statement
 - Appendix 15 – Employee Code of Conduct
 - Appendix 16 – Protocol on Officer Member Relations
 - Appendix 29 – Joint Standards Committee Procedures
- b) All remaining elements of the Constitution will be adopted and implemented on 26th May 2022, to coincide with Annual Council.
- c) The Audit & Governance Committee is invited to undertake an annual fitness for purpose review of the Constitution as part of its work programme.

- d) Full Council notes that the review of the Constitution also contributes significantly towards the progress against the Action Plan prepared in response to the Report in the Public Interest accepted by Full Council on 4th May 2021.

Reasons for the recommendations

5. To ensure that the Council Constitution is accurate and is fit for purpose to effectively support the service delivery and decision making responsibilities of the Council in a lawful and financially compliant manner.

The staggered implementation of the constitution will allow for the remainder of the ethical governance framework to be implemented to support and complement the Member Code of Conduct which was approved and adopted by Full Council in October 2021.

6. The Council is required to work towards the delivery of the Action Plan in response to the Public Interest Report.

Options

7. Full Council may choose to adopt some or all of the proposed revisions or retain the existing constitution however this would be against the advice of the Monitoring Officer.

Background

Purpose of the Constitution

8. Since 2000, the Council has been required to make publicly available a constitution which sets out key requirements relating to service delivery, decision-making principles and protocols, i.e. this is a document that assists the public in describing the functions of the council and how it proposes to carry out those functions. To support Councils at that time, the Secretary of State produced a modular (or template) constitution which offered a degree of consistency as to what was required to be included. However, the decision as to format of the presentation of the constitution remains at the discretion of the Council so as to ensure the document is easy to read and can be updated efficiently and effectively..
9. The Council operates an executive or “strong leader” model (as opposed to a committee system) as its governance framework and therefore the constitution acts to advise the reader as to the division of decision making responsibilities, i.e. which decisions are made by the

Executive as opposed to those which remain the responsibility of Council.

Revisions to the Constitution previously approved by Audit & Governance Committee on 11th March 2020

10. The recommendations considered and approved by Audit & Governance Committee in March 2020 have been fully incorporated into the revised Constitution following their approval by Full council in October 2020. Details of these amendments can be found in the report and accompanying documents considered by the Committee as part of its agenda on 11th March 2020.

Audit & Governance Committee's Approach to the Review of the Constitution

11. Over a number of months, the Audit & Governance Committee has undertaken to review the draft refresh of the constitution proposed by the Monitoring Officer during 2021. The review has remained a standing item on the agenda for each meeting throughout the 2021/2022 municipal year. The Committee also sought the wider support of Members and established a Cross Party Working Group (which included Executive Members as part of its membership) who met weekly throughout October 2021.
12. The terms of reference for the various Committees have been reviewed and where necessary have been refreshed so that they remain up to date.
13. In respect of the Council's Scrutiny Function the Committee invited the views from the Scrutiny Chairs and Vice Chairs and feedback was provided which has been taken into account.
14. Members of the Corporate Management Team and key Senior Officers have all had the opportunity to contribute and provide technical and professional updates where required.
15. The draft revised constitution has also been shared with the Council's External Auditors and with the LGA who are working with the Council in respect of the response to the Public Interest Report.

The proposed layout of the Constitution

16. The layout of the revised Constitution has moved away from the modular example suggested in 2000, and in its place there are now two distinct sections, namely Articles and Appendices. Section One clearly outlines

the various Articles which clearly detail the roles and responsibilities of the Council and Section Two lists the various Appendices which provide detail as to how the Council intends to approach the delivery of its functions, plus providing guidance via various protocols and practices.

17. As the Constitution is a public document it is believed that this revised layout adds clarity and ease of reference for the reader.

Areas which remain in dispute and require a decision from Full Council

18. Whilst the vast majority of the draft Constitution is agreed in terms of layout and content there are a small number of issues which the Audit & Committee has been unable to resolve. There are three main areas of dispute which are:

- a) Nomination of Substitutes and whether or not substitutes should be appointed from the same political group
- b) Whether Executive Members should sit on the Planning Committee A and the Planning Committee B;
- c) Procedural issues relating to the Overview and Scrutiny function

	Reference in draft Constitution	Nature of dispute	Draft wording to be approved or not (disputed wording appears in bold type)
Appointment of Substitutes			
	Article 7: Decision Making Subsection 14 Para 14.1 (a)	Should substitutes be appointed from the same political group or not?	For Planning Committee A and Planning Committee B up to four named substitutes shall be allowed for each of the political Groups. For other Member bodies up to three named substitutes shall be allowed for each political Group. Substitutes shall be appointed from within the same political group. Independent Councillors may also be appointed to act as named substitutes for other Independent Councillors within this rule.
Role of Executive Members on Planning Committee A and Planning Committee B			
OPTION ONE	Appendix 30 – Major Conflicts Protocol Section 3 Role of Members	Maintains the current position that Executive Members can sit on the Executive and Planning Committees	Proposed wording: Where the Leader and the Deputy Leader are jointly responsible for promoting a major project they will not sit on the Planning Committee when it is determining an

	<p>Article 13: Planning Committee A and Planning Committee B will be amended accordingly</p> <p>Appendix 17: Code of Good Practice for Councillors involved in the Planning Process will be amended accordingly</p>		<p>application related to that major project.</p> <p>1.1. Where an Executive Member may have input or play a lead role into the master planning of a major project, for example, Culture Leisure and Communities, they will not sit on the Planning Committee when it is determining an application in respect of that major project.</p> <p>1.2. Other members of the Executive may sit on the Planning Committee when it is determining an application relating to a major project but should consider their participation in decision making on the scheme at meetings of the Executive. This is in line with the Council’s Planning Code of Good Practice Appendix 17 in this Constitution.</p>
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<p>OPTION TWO</p>	<p>Appendix 30 – Major Conflicts Protocol</p> <p>Section 3 Role of Members</p> <p>Article 13: Planning Committee A and Planning Committee B will be amended accordingly</p> <p>Appendix 17: Code of Good Practice for Councillors involved in the Planning Process will be amended accordingly</p>	<p>Executive Members will not be appointed to Planning Committee A and or Planning Committee B</p>	<p>Role of Executive Members</p> <p>The Leader of the Council, the Deputy Leader of the Council and all other Executive Members are not permitted to sit on the Council’s Planning Committees. Nor are they able to be appointed or named as substitutes for either of the two Planning Committees</p> <p>Role of Members (not appointed to the Executive)</p> <p>1.3. Major planning applications can be the subject of Pre Committee Presentations to the Planning Committee. Members promoting the development at such meetings are likely to have difficulty in demonstrating objectivity at Planning Committee, and should not take part in the Planning Committee determining the application.</p>
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<p>OPTION THREE</p>	<p>Appendix 30 – Major Conflicts Protocol</p> <p>Section 3 Role of Members</p> <p>Article 13: Planning Committee A and Planning Committee B will be amended accordingly</p> <p>Appendix 17: Code of Good Practice for Councillors involved in the Planning Process will be amended accordingly</p>	<p>Executive Members can be appointed to the Planning Committees but must choose whether to sit on the Executive or the Planning Committee when an application in respect of a major project is being determined. They do not have the option to sit on both.</p>	<p>1.4. Where an Executive Member may have input or play a lead role into the master planning of a major project, for example, Culture Leisure and Communities, they will not sit on the Planning Committee when it is determining an application in respect of that major project.</p> <p>1.5. Other members of the Executive may sit on the Planning Committee when it is determining an application relating to a major project but in order to do this they will not sit on or participate in decision making on the scheme at meetings of the Executive. Alternatively, members of the Executive also appointed to sit in the Planning Committee may choose to attend and participate in the decision making scheme at meetings of the Executive. Should this be the case, they will not then sit on the Planning Committee when it is determining</p>
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			the application in question. This is in line with the Council's Planning Code of Good Practice Appendix 17 in this Constitution.
Scrutiny Function			
	Article 8: Policy, Scrutiny and Overview Para10.2 (b)	Should there be reference to the Vice Chair	Allocating, in consultation with the relevant Chair and Vice-Chair , urgent issues to be considered by an appropriate committee (including ad-hoc scrutiny committee), as may be necessary
	Appendix 5: Scrutiny Procedure Rules Para 16.3 Paragraph 18.3	Para 16.3: Should the anticipated time estimate which is provided as a guide only, be listed as 20 minutes or 30 minutes? Should there be a single vote or multiple votes where there is more than one breach alleged in respect of a call-in?	After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions. As a guide it is anticipated that this should not exceed 20 minutes [30 minutes] in total. Para 18.3: The vote to be taken will be by a show of hands. Where multiple breaches are alleged, a vote shall take place in respect of each potential breach.

Action required following consideration by Full Council in March 2022

In the event that Full Council supports the recommendations contained in this report and approves the adoption of the revised Constitution, steps will be taken to, amongst other things:

- Raise awareness and accessibility of the constitution by ensuring it has a prominent position in the Council's website which is easy to locate and navigate;
- Training will be finalised and delivered with both Elected Members and Officers to ensure its key governance role, purpose and terms of the constitution as regards decision making are understood ; this will include a review of the induction training for Members and Officers;
- Ongoing training will be promoted to ensure the council's ethical governance is understood and becomes embedded across the Council.

Proposals to ensure the Constitution remains fit for purpose

19. The Audit & Governance Committee supports the Monitoring Officer in undertaking a six monthly review of the Constitution with Chief Officers and has committed to undertaking an annual review of the Constitution so as to ensure it remains up to date and fit for purpose to support the Council's delivery of services and decision making.

Implications

Financial

20. There are no financial costs associated with the Council's Constitution however it should be noted that both the Contract Procedure Rules and the Financial Procedure Rules are both key core documents incorporated into the Constitution. Both of these Rules are reviewed by the Council's s151 Officer and updates are provided to the Audit & Governance Committee

Human Resources (HR)

21. There are none directly associated with this report. However the Officer Code of Conduct and Officer/Member Relations Protocol are key core documents of the Council's Constitution and the revision of these has been undertaken in consultation with the Council's recognised Trade Unions. The Member Code of Conduct and

Member Allowances Scheme are also key core documents contained in the Constitution. Training will be provided to both Members and Officers in respect of the constitution.

Equalities

22. The Council's Constitution is a public document and steps must be taken to ensure that it is easily accessible on the Council's website. Wherever possible the revised constitution has been written in plain English to ensure that it is capable of being easily understood. An Equality Impact Assessment has been prepared to support the review of the Constitution and it is noted that the use of gender neutral pronouns has been used throughout and that steps will be required to ensure the constitution remains accessible when published both on the website and in printed form.

The final draft of the Constitution was published in mid-January 2022, as part of the agenda for the Audit & Governance Committee meeting on 2nd February 2022, so as to allow additional time for public consideration.

Legal

23. The Local Government Act 2000 requires the Council to have in place a constitution which set out key principles such as various codes of conduct, standing orders, contract standing orders and scheme of delegations. The Local Government Act 2000 (Constitutions) (England) Direction 2000 offered additional clarity as to the core requirements for the basis of a constitution and also provided a modular constitution which councils could adopt. The Council's current constitution followed the format of the modular constitution. The Council does have discretion in respect of the format of its constitution.
24. It is good practice to ensure that, once adopted, the constitution is reviewed by the Audit & Governance Committee on an annual basis so as to ensure that it remains fit for purpose to support effective delivery of council services and promote robust decision-making principles.
25. The Council's Constitution is a public document and steps must be taken to ensure is it is accessible on the Council's website.

Crime and Disorder, Information Technology and Property

26. There are no crime and disorder or property implications associated with this report. The Constitution will be provided to Members and Officer electronically and the will be available on the Council's

website to ensure it is publicly accessible, however printed copies can be provided on request.

Author & Chief Officer responsible for the report: Janie Berry, Director of Governance & Monitoring Officer

Report Approved **Date** 14 March 2022

Specialist Implications Officer(s):

Janie Berry, Director of Governance & Monitoring Officer

Debbie Mitchell, Chief Finance Officer, Patrick Looker, Head of Service Finance

Helen Whiting, Head of Human Resources

Frances Harrison, Head of Legal Services

Wards Affected: *List wards or tick box to indicate all* **All**

For further information please contact the author of the report:
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Background Papers:

- The Council's existing Constitution (as amended by Full Council in October 2020)
- 11 March 2020 – Audit & Governance Committee – Agenda, Report and Minutes in respect of the review of the Council's Constitution
- 29 October 2020 – Full Council - Agenda, Report and Minutes approving the revisions to the Council's Constitution
- Report in the Public Interest dated 19 April 2021, received by Full Council on 4 May 2021
- Agenda, reports and supporting minutes and documents prepared for the meeting of the Audit & Governance Committee on 8 September 2021 – *NOTE: This Agenda included the relevant links to the draft revised constitution published at that time*

- 21 October 2021 – Audit & Governance Committee – Agenda, Reports and Minutes
- 16 November 2021 – Audit & Governance Committee – Agenda, Reports and minutes
- 1 December 2021 - Audit & Governance Committee – Agenda, Reports and minutes
- 21 January 2022 - Audit & Governance Committee – Agenda, Reports and minutes
- 2 February 2022 – Audit & Governance Committee – Agenda, Reports and Minutes. The revised draft constitution was published in mid-January 2022, to allow for an extended period of public consideration prior to the meeting
- Equality Impact Assessment

Annexes

- Annex One – The revised Constitution (online only) and published with the agenda on the Council's website
- Annex Two – Appendix 30 – Option One
- Annex Three – Appendix 30 – Option Two
- Annex Four – Appendix 30 – Option Three
- Annex Five – Part B Minutes of the Audit & Governance Committee held on 2 February 2022