

TEWKESBURY BOROUGH COUNCIL

Report to:	Council
Date of Meeting:	19 February 2019
Subject:	Council Constitution Review
Report of:	Head of Democratic Services
Corporate Lead:	Borough Solicitor
Lead Member:	Lead Member for Corporate Governance
Number of Appendices:	One

Executive Summary:

The last full review of the Council's Constitution took place in 2009. A revised Constitution is attached to this report which takes account of Council decisions, new/revised legislation, operational changes, current Council practice and the simplification of wording. The report draws attention to the main changes and asks the Council to consider some additions to the Scheme of Delegation.

Recommendation:

- 1. To ADOPT the Constitution attached at Appendix 1 including the changes suggested in Paragraphs 2.1-2.14.**
- 2. To delegate authority to the Borough Solicitor to undertake further necessary changes to the Contract Procedure Rules as a result of the Council's withdrawal from the EU.**
- 3. To consider the additions to the Scheme of Delegation as set out in Paragraph 2.17.4 and determine:**
 - i) whether to amend planning safeguard 5.ii to include applications submitted by Town and Parish Councils;**
 - ii) whether to include the following delegation to the Head of Finance and Asset Management:**

Approval of adverse possession claims where:

 - i. the area of land is less than 200sqm; and**
 - ii. there is no strong evidence rebutting the applicant's claim; and**
 - iii. the Head of Finance and Asset Management considers that the land is not of strategic importance to the Council.**
 - iii) whether to amend the current delegation to the Head of Finance and Asset Management to allow write-offs and virements to be approved up to a maximum of £20,000 rather than £10,000.**
- 4. To APPROVE the arrangement for ensuring that the Constitution is kept up-to-date as set out in Paragraph 3.**

Reasons for Recommendation:

To put in place an up-to-date version of the Council's Constitution.

Resource Implications:

None specifically as a result of this report.

Legal Implications:

Contained in the report.

Risk Management Implications:

An up-to-date Constitution reduces the risk of any challenge to Council process and procedure.

Performance Management Follow-up:

The report sets out arrangements for ensuring the Constitution is kept under review and updated.

Environmental Implications:

None.

1.0 INTRODUCTION/BACKGROUND

1.1 All Council Constitutions are based on statutory guidance issued by the government as a result of the Local Government Act 2000 and subordinate legislation. The guidance not only contains statutory provisions but also examples of good practice and suggestions for consideration.

1.2 The last major update of the Council's Constitution took place in 2009 and, whilst it remains 'fit for purpose', Members have been keen for an up-to-date version to be available.

2.0 THE CONSTITUTION

A revised version of the Constitution with track changes is attached at Appendix 1. The majority of the changes reflect Council decisions, new/revised legislation, operational changes, current Council practice and the simplification of wording. In considering the changes, particular attention is drawn to the following:-

2.1 Council

2.1.1 The Terms of Reference of the Council have been amended to reflect current practice and guidance. In particular, the Council has the authority to approve appointments with a salary package of £100,000 and above and severance packages for any member of staff where that package totals £100,000 or above.

2.2 Joint Staff Consultative Group

2.2.1 This Group was disbanded over four years ago. Its main purpose was to provide a channel of communication between the Unions and Members of the Council. The Unions often struggled to get representatives to attend the meeting and beneficial outcomes were minimal. In order to facilitate communication at management level, a quarterly meeting takes place with the Corporate Leadership Team, the Leader and Deputy Leader of the Council and representatives of the Trade Unions. These meetings focus on discussions relating to workforce plans, staff health and wellbeing, suggested changes to staff policy and examination successes. They have been particularly successful in promoting harmonious staff relations and it is proposed that the meetings should continue on this basis. Any matter requiring a Committee decision will be taken to the Executive Committee in accordance with its Terms of Reference. Accordingly, references to the Joint Staff Consultative Group have been deleted from the Constitution attached at Appendix 1.

2.3 Tewkesbury Swimming Bath Trust Management Committee and Joint Sports Centre Management Committees

2.3.1 As the Council no longer operates any Joint Sports Centres, reference to them has been deleted from the Constitution. The Tewkesbury Swimming Bath Trust Management Committee was disbanded when the new Tewkesbury Leisure Centre was opened. The operation of the Leisure Centre is now monitored by the Tewkesbury Leisure Centre Partnership Board which includes the Lead Members for Health and Wellbeing and Finance and Asset Management. All references to these Committees have been deleted from the Constitution.

2.4 Housing Allocation and Homelessness Review Committee

2.4.1 This was originally established prior to the introduction of the Housing Act 1996 when it was common to establish informal local review procedures when decisions were disputed. Since 1997 when the statutory review process became established, most local authorities have abandoned the informal review process which essentially allows for a second internal review.

2.4.2 The Housing Services Manager has requested that Tewkesbury Borough Council's Housing Allocation and Homelessness Review Committee be abolished for the following reasons:

- There is no statutory right to a second review within the legislation.
- The homeless legislation and associated case law outlines a clear well-established review process which the Housing Service is familiar with and operates during homeless review.
- Applicants dissatisfied with the outcome of a review can appeal to the County Court on a point of law.
- The second review process is extremely time consuming for both Officers and Members and does not take away the right of appeal to the County Court which would, in effect, be a third appeal.

2.4.3 On this basis, it is proposed to delete reference to the Housing Allocation and Homeless Review Committee from the Constitution.

2.5 Standards Committee

2.5.1 The Localism Act 2011 introduced a new conduct regime and the Council, at its meeting in June 2012, put in place new arrangements for dealing with complaints which have now been added to the Constitution. The current arrangements require two non-voting representatives from Parish Councils to be members of the Committee. This is not required as part of the legislation and they are unable to vote but are intended to bring the parish perspective to conduct matters dealt with by the Committee. For a number of years now, the Committee has operated with only one representative with efforts to recruit a second representative being unsuccessful. On this basis, it is proposed to amend the composition of the Committee to have one non-voting parish representative.

2.6 Tree Panel

2.6.1 The arrangements for dealing with objections to Tree Protection Orders (TPOs) via consideration by a Tree Panel were established many years ago when the Planning Committee was responsible for the making of TPOs. The current arrangements do not meet the test of open and accountable government and need to be revised.

2.6.2 The Head of Development Services is authorised to make and confirm TPOs which are not the subject of objections which cannot be resolved; to revoke or vary existing TPOs which are not the subject of objection which cannot be resolved; and to serve Tree Replacement Notices.

2.6.3 It is therefore proposed that the Terms of Reference of the Planning Committee be amended to deal with TPOs that are subject to objection. This will ensure that a democratic process takes place in public with parties being assured that all relevant information and views have been taken into account. This is the normal practice operated by many authorities.

2.6.4 It is suggested that the Tree Panel be abolished, with all relevant references in the Constitution being deleted and the Terms of Reference of the Planning Committee be amended to deal with the objection process previously undertaken by the Tree Panel.

2.7 Audit Committee

2.7.1 The Audit Committee has taken on a wide ranging and important role in providing assurance on the adequacy of the Council's governance, risk management and internal control environment as was demonstrated in the presentation given to Council at its meeting on 18 September 2018.

2.7.2 The current Audit Committee is very keen that both the name of the Committee and its Terms of Reference be revised to reflect its growing role.

2.7.3 It is proposed that the Committee be renamed the Audit and Governance Committee with an increase in membership from seven to nine Members with the revised Terms of Reference set out in Appendix 1.

2.8 Employee Appointments Committee

2.8.1 Regulations were introduced in 2015 in relation to taking disciplinary action and/or potentially dismissing a statutory officer. These regulations require the Council to have in place a process, should it need to be followed.

2.8.2 It is therefore proposed that the Employee Appointments Committee be renamed the Employee Appointments/Disciplinary Committee and its Terms of Reference be revised to meet the requirements of the regulations.

2.9 Petitions Scheme

2.9.1 The Local Democracy, Economic Development and Construction Act 2009 imposed a statutory duty on local authorities to respond to petitions and to establish, publicise and comply with a scheme for handling petitions. This requirement was repealed by the Localism Act 2011. Nevertheless, the Council's scheme has remained in place and is quite well-used, as well as being an important tool in promoting open, democratic and transparent governance. For these reasons, it would be the intention to retain the scheme in its current format with perhaps the exception of the number of signatures required to trigger a Council debate and the minimum number of signatures to trigger a senior officer giving evidence at a meeting of the Overview and Scrutiny Committee. The statutory guidance at that time suggested that the thresholds should be based on 1% of the population which would have been 800 and 400 signatures respectively. When the Council adopted its Petitions Scheme in 2009 it felt that 800 signatures was too high for a Council debate and reduced the number to 100. Should the Council wish to continue with a Petitions Scheme, it is proposed that the figures of 800 and 400 signatures be reinstated as 100 is a very low number to achieve compared to the resources involved in preparing and presenting a report to Council and the time allocated at the meeting by Members in considering a matter subject to a petition. Additionally, the Constitution makes reference to the previous facility of presenting petitions at Council which would be amalgamated within the formal Petitions Scheme.

2.10 Councillor Calls for Action

2.10.1 The Local Government and Public Involvement in Health Act 2007 introduced a requirement for the Council to deal with Councillor Calls for Action. The Council was required to introduce a process for a Councillor to act on behalf of residents to resolve a local issue of concern, acting as a last resort when all other means had been exhausted. This requirement was subsequently repealed by the Localism Act 2011. The process has never been used and is very cumbersome when, in reality, there are many other simpler and more effective ways of resolving matters. It is therefore suggested that the process be removed from the Constitution.

2.11 Scheme of Public Participation at Planning Committee

2.11.1 Following a detailed review by the Overview and Scrutiny Committee, in May 2016 the Council confirmed as a permanent arrangement the Scheme of Public Participation at Planning Committee. This has now been included in the Constitution as part of the Scheme of Public Participation Procedure Rules and amendments made as appropriate throughout the Constitution to accord with the Scheme.

2.12 Protocols: Recording at Meetings

2.12.1 The Openness of Local Government Bodies Regulations 2014 introduced requirements for meetings to be recorded by the public. A protocol was developed to facilitate this requirement with the aim of providing clarity and guidance to those who wish to record Committee proceedings. This has been added to the Constitution.

2.13 Working Group Rules of Procedure

2.13.1 These have been amended to take account of the additional groups established such as Boards, Reference Groups, Management Groups and Panels.

2.14 Contract Procedure Rules

2.14.1 These have been updated, mainly on points of detail rather than any substantial changes. A new circumstance in which a waiver of the rules may be sought has been included in respect of the purchase of properties which have existing services contracts. This replaces the circumstance relating to bulk purchasing as this is not currently being used. As UK procurement legislation is derived from EU Directives, minor changes to the rules have been made to take account of the UK's withdrawal from the European Union.

2.14.2 Whilst the Borough Solicitor has a delegation to make changes to the Constitution to ensure it is accurate and up-to-date, a specific delegation is sought to amend the Contract Procedure Rules to enable further necessary changes following withdrawal from the EU.

2.15 Financial Procedure Rules

2.15.1 These have not been updated as part of this review but the Head of Finance and Asset Management plans to bring a revised version to Council in April.

2.16 Local Code of Corporate Governance

2.16.1 The Corporate Governance Group is working on an update of this code which will be presented to Council later in the year.

2.17 Scheme of Delegation

2.17.1 This has been rewritten to reflect the Council's current structure. Proper Officer functions are shown separately as this is where legislation specifically requires the Council to designate an officer to undertake a duty.

2.17.2 There have been no additions to the Scheme but there have been wording changes to reflect changes in legislation and previous Council decisions. In relation to the latter, specific attention is drawn to the General Provisions which have been updated to include a delegation approved by the Council in 2013 as set out below:-

That any powers delegated to an officer under the Scheme of Delegation shall also include the delegation of that function to the Chief Executive, Deputy Chief Executive or Borough Solicitor, provided that they hold any statutory qualification necessary for undertaking that function.

Officers may further delegate, in writing, any function which has been delegated to them to another officer or officers. Neither the Chief Finance Officer's nor Monitoring Officer's statutory functions may, however, be delegated, although they may each appoint a member of their staff to carry out those functions in their absence.

2.17.3 It is intended to produce a template for sub-delegations that will be retained centrally in Democratic Services to ensure a robust delegation process is in place.

2.17.4 The following additions to the Scheme of Delegation have been proposed which Members are asked to consider:

i) Planning Safeguards

The current approved scheme includes the following provision:-

5. *Planning and related applications will not be dealt with under delegated powers and shall instead be referred to the Planning Committee for a decision in the following circumstances:*
- i. *Applications where a Town or Parish Council has submitted a written objection raising substantive planning issues, has been received within the normal consultation/publicity period and it has not been addressed by discussion, amendment, or by written response.*
 - ii. *Applications submitted by the Council, by, or on behalf of, a Tewkesbury Borough Councillor or by, or on behalf of, an employee of the Council.*
 - iii. *Full or outline applications for the erection of 10 or more residential units.*
 - iv. *Reserved matters applications involving more than 20 dwellings.*
 - v. *Applications for the use of land involving the stationing of five or more caravans for permanent residential use.*

A recent complaint drew attention to the fact that there is no safeguard in relation to applications submitted by Town and Parish Councils in that, unlike applications submitted by the Borough Council (5.ii above refers), there is no automatic requirement for such applications to be submitted to the Planning Committee for determination.

The Council is asked to consider whether it wishes to amend safeguard 5.ii to include applications submitted by Town and Parish Councils.

ii) Adverse Possession Claims

These claims have previously been considered by the Executive Committee and determinations are made based on the evidence of the applicant that the land has formed part of their property and any evidence that the Council may hold to rebut that claim. Previously the Executive Committee had suggested arrangements be put in place to deal with such claims and therefore the following additions to the delegations to the Head of Finance and Asset Management might be considered:

Approval of adverse possession claims where:

- i. the area of land is less than 200sqm; and
- ii. there is no strong evidence rebutting the applicant's claim; and
- iii. the Head of Finance and Asset Management considered that the land is not of strategic importance to the Council

iii) Write-Offs and Virements

The current delegation to the Head of Finance and Asset Management allows write-offs and virements to be approved up to a maximum of £10,000. This figure has remained unchanged for a significant number of years and therefore it is suggested that it be increased to £20,000 to reflect the current financial climate.

3.0 FURTHER AMENDMENTS TO THE CONSTITUTION

3.1 A delegation was previously granted to the Borough Solicitor to make minor changes/amendments to the Constitution such as spelling, grammar, typographical and formatting changes that do not affect the substantive content, and any decisions the Council makes that impact on the Constitution. Subject to the Council's continued support for such an arrangement, the Constitution will be kept under regular review with amendments notified to all Members using a version control system.

3.2 Additionally, with such a fundamental change to the format of the Scheme of Delegation, together with the legislative changes and previous Council decisions that have not previously been included in the Scheme, it is possible that further changes may be necessary. In these circumstances, it is proposed that the changes be implemented in consultation with the Lead Member for Corporate Governance. Clearly this would not include any additional delegations which would only be implemented following approval by the Executive Committee and/or Council.

4.0 OTHER OPTIONS CONSIDERED

4.1 Not applicable.

5.0 CONSULTATION

5.1 Not applicable.

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 The Council's Annual Governance Statement.

7.0 RELEVANT GOVERNMENT POLICIES

7.1 Local Government Act 2000 – Governance Structures.

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 None specifically related to this report.

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 None.

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 None.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 Council – 29 January 2008.

Council – 19 May 2009.

Council – 18 May 2010.

Council – 26 June 2012.

Council – 30 July 2013.

Council – 19 April 2016.

Background Papers: None.

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Appendices: Appendix 1 – Revised Council Constitution.