

# COUNCIL

24 JANUARY 2023

## JOINT REPORT OF THE MONITORING OFFICER AND THE CABINET

### A.3 PROPOSED AMENDMENTS TO THE COUNCIL'S CONSTITUTION (COUNCIL PROCEDURE RULES)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

In accordance with the provisions of Article 15.02 (a) and (c) of the Council's Constitution, to approve the recommended changes to the Constitution (Council Procedure Rules) put forward by the Monitoring Officer and the Cabinet following a review undertaken by the Corporate Finance and Governance Portfolio Holder through a Working Party constituted for this purpose.

##### EXECUTIVE SUMMARY

The Cabinet, at its meeting held on 16 December 2022 (Minute 83 refers) considered the outcome of the annual review of the Council's Constitution that had been undertaken by the Review of the Constitution Portfolio Holder Working Party.

At that meeting Cabinet had deferred consideration of the proposed changes to Council Procedure Rules (CPR) 12 and 14 pending their re-consideration by the Review of the Constitution Portfolio Holder Working Party (CRWP).

Accordingly, the CRWP met on 23 January 2023 to further discuss those proposed changes to CPRs 12 and 14. In addition, the CRWP had considered, at the request of Councillor Baker, a matter pertaining to CPR11.2 as well as the outcome of the recent consultation exercise with Members on the procedure for the Planning Committee's site visits.

Following that meeting, on 17 February 2023, Cabinet considered a report of the Corporate Finance and Governance Portfolio Holder, which requested it to approve the recommended changes to the Constitution for referral onto Full Council put forward by the CRWP.

A summary of the proposed changes compared to the existing CPRs 11, 12 and 14 is provided in the background section of this report and in each case, the content has been revised to provide greater clarity, ensure effectiveness and efficient up to date working practices for both Members and Officers.

##### RECOMMENDATION

**That subject to Members' consideration of the recommendations of the Cabinet arising from its meeting on 16 December 2022, Council resolves that:**

**(a) the Council's Constitution be amended to reflect the proposed changes as set out in the Appendix attached hereto this report;**

- (b) the implementation of the new Council Procedure Rule 12 be reviewed after six months' operation;
- (c) the proposal that the Planning Committee continues its current practice of undertaking a site visit in respect of all planning applications that are submitted to it for its consideration be supported;
- (d) the Monitoring Officer be requested to amend the Council's procedure for Planning Committee Site Visits, as set out in the Members' Planning Code and Protocol (in Part 6 of the Constitution) to appropriately reflect the matters raised by the Review of the Constitution Portfolio Holder Working Party; and
- (e) the Monitoring Officer be further requested to submit the Site Visit Procedure, as amended, to Full Council for its approval and adoption, following consultation, as appropriate and necessary, with the Planning Committee and the Standards Committee.

#### **REASON(S) FOR THE RECOMMENDATION(S)**

Having considered the outcome of the further review of the Constitution (Council Procedure Rules) and the Cabinet's recommendations arising therefrom, and in order to enable those recommendations to be approved and adopted.

#### **ALTERNATIVE OPTIONS CONSIDERED**

- (1) Not to approve some or all of the Cabinet's recommendations;
- (2) To amend or substitute some or all of the Cabinet's recommendations.

### **PART 2 – IMPLICATIONS OF THE DECISION**

#### **DELIVERING PRIORITIES**

Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities.

#### **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The outcome of the further review of the Constitution (Council Procedure Rules) by the Review of the Constitution Portfolio Holder Working Party is reported elsewhere in this report.

#### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance. Article 15 also provides authority to the Monitoring Officer to make minor changes to the Constitution arising from changes to the organisational structure of the Council.

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and best practice.

#### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

##### **Risk**

Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Council's overall governance arrangements.

**X** **The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

The Section 151 Officer has noted the proposed amendments through the review.

#### **USE OF RESOURCES AND VALUE FOR MONEY**

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	N/A
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	N/A
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	N/A

#### **MILESTONES AND DELIVERY**

Further review of the Constitution carried out by the Review of the Constitution Portfolio Holder Working Party – 23 January 2023

Submission of Corporate Finance & Governance Portfolio Holder's recommendations to formal Cabinet meeting – 17 February 2023.

Submission of Cabinet's recommendations to Full Council for approval and adoption – 2 March 2023.

Implementation of approved changes to the Constitution – 3 March 2023.

#### **ASSOCIATED RISKS AND MITIGATION**

Not implementing the amendments to the Constitution will negatively impact the Council's governance arrangements.

## EQUALITY IMPLICATIONS

The purpose of the Constitution is to:

- 1 Provide key elements of the Council's overall governance arrangements;
- 2 Enable decisions to be taken efficiently and effectively;
- 3 Create an effective means of holding decision-makers to public account;
- 4 Enable the Council to provide clear leadership to the community, working in partnership with the local community, businesses and other organisations for the long term well-being of the District;
- 5 Support the involvement of the local community in the process of local authority decision making;
- 6 Ensure that no one will review, or scrutinise, a decision in which they were directly involved;
- 7 Help Councillors represent their residents more effectively;
- 8 Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for their decisions; and
- 9 Provide the framework and structure in which cost effective quality services to the community are delivered.

## SOCIAL VALUE CONSIDERATIONS

None

## IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

The Council's previous decision in March 2022 to continue with the encouragement of Members to opt out of the default position of receiving printed copies of the summons of a meeting (with agendas and reports) before reverting to solely receiving summons via electronic notifications from May 2023 is consistent with the Council's policy of its operations becoming carbon neutral by 2030.

## OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	None
Health Inequalities	None
Area or Ward affected	None directly.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

At its further meeting held on 23 January 2023 the CRWP reviewed various Council Procedure Rules and the following changes are recommended (note that references to Part numbers relate to the Constitution prior to any amendments now submitted):

#### (a) **Council Procedure Rules – Section 1 (Full Council)(Part 4.1 to 4.24):**

Rule 11.2 – Scope of Questions on Notice at Full Council and Time Allocated in the Meeting

To establish a procedure whereby in the event that any question not disposed of at the end of the permitted time and therefore to be the subject of a written response shall, together with the relevant written response(s), also be published to the Council's website

and shall also be reported to the next meeting of the Council, as an “information only item”, by the Committee Services Manager. This provision of this paragraph will also apply in those instances when the full Council meeting has had to be cancelled.

#### Rule 12 (Motions on Notice) and other consequential changes

In accordance with the decision of Full Council taken at its meeting held on 29 March 2022 (Minute 150 referred), the CRWP discussed the outcome of the fundamental review by Officers of the way in which Motions on Notice submitted in accordance with Council Procedure Rule (CPR) 12 were dealt with procedurally at meetings of the Full Council.

The CRWP expressed their compliments to the drafting of a new procedure which was welcomed as being clearer and worked on the principle of a motion being debated at the Full Council meeting to which it was put, unless there were reasons not to, following Officers’ advice.

Current Rule 12 to be deleted and replaced in its entirety by the new proposed Rule 12. The CPWR also recommended that the implementation of the new CPR12 be reviewed after six months’ operation.

#### Rule 14 (Motions not Permitted)

To amend the list of circumstances in which Motions on Notice are not permitted in order to reflect the provisions of the new Rule 12.

*The proposed changes to the Council Procedure Rules (Section 1) are shown in **RED** in the **Appendix**.*

#### **(b) OTHER MATTER CONSIDERED:**

##### **Review of the Procedure for Planning Committee Site Visits**

Following a very difficult situation with members of the public at a site visit ahead of the meeting of the Planning Committee held on Thursday 22 September 2022 and at the request of the Monitoring Officer, the CRWP, at its meeting held on 14 November 2022, had an initial discussion on the procedure for committee site visits as set out in section 7 of the Members’ Planning Code and Protocol (February 2021).

At that particular site visit the local Parish Council had encouraged public attendance to lobby the Planning Committee members.

During that initial discussion by the CRWP the following matters had been raised:-

- (1) What was the purpose of a site visit?
- (2) Whether every planning application going before the Planning Committee did, in fact, merit a pre-meeting Member site visit;
- (3) What was the definition of “lobbying”?
- (4) Whether the attendance of parish councils and/or the public at Planning Committee site visits should be allowed to continue;

- (5) The role of the Chairman in leading the Planning Committee's site visits and whether such site visits should instead be led by a senior Planning Officer; and
- (6) Whether the Officer(s) in attendance should keep a record of the interaction between the Committee members and the public etc. at the site visits.

The CRWP subsequently, at its meeting held on 21 November 2022, was informed that a survey had been emailed to all Members of the Council to ascertain their views on this matter with a deadline for responses of 25 November 2022. In addition, Officers discussed the matter informally with members of the Planning Committee on 24 November 2022. The results of the survey were reported to the All Member Briefing in January 2023 and thence to the meeting of the CRWP held on 23 January 2023. At the invitation of the Chairman, Councillor White (Chairman of the Planning Committee) attended that meeting and participated in the discussions on this matter.

The CRWP **AGREED** that -

- (a) *"the CRWP supports that the Planning Committee continues its current practice of undertaking a site visit in respect of all planning applications that are submitted to it for its consideration;*
- (b) *the CRWP requests the Corporate Finance & Governance Portfolio Holder to recommend to Cabinet that the Monitoring Officer be requested to amend the Planning Committee's Site Visit Procedure to appropriately reflect the following points:-*
  - (1) *including a definition of "lobbying";*
  - (2) *strengthening the wording as to how the Chairman and Committee should proceed if faced at a site visit with (regardless of origin) persistent attempts at lobbying and/or persistent harassment and/or physical or verbal abuse;*
  - (3) *reflecting Members' expectations that a Drone will be regularly available for the Planning Committee's site visits and that such Drone will be employed, particularly in respect of the larger planning application sites;*
  - (4) *stating that the mandatory training for the members of the Planning Committee and its designated substitute members will include training in relation to undertaking site visits and acknowledging that this training will be offered to all members of the Council; and*
  - (5) *highlighting as a reminder to Members that Section 3.8 of the Members' Code of Conduct states that Members are required to comply with the Council's adopted rules and policies such as the Planning Code and Protocol for Member (which contains the Planning Committee's procedure for Site Visits);*
- (c) *that the CRWP further requests Cabinet (via the Portfolio Holder) to request the Monitoring Officer to submit the Site Visit Procedure, as amended, to Full Council for its approval and adoption, following consultation, as appropriate and necessary, with the Planning Committee and the Standards Committee."*

Cabinet, at its meeting held on 17 February 2023 decided, inter alia, that it:-

- (a) *supports the proposal that the Planning Committee continues its current practice of undertaking a site visit in respect of all planning applications that are submitted to it for its consideration and requests Full Council to do likewise;*
- (b) *requests the Monitoring Officer to amend the Council's procedure for Planning Committee Site Visits, as set out in the Members' Planning Code and Protocol (in Part 6 of the Constitution) to appropriately reflect the matters raised by the Review of the Constitution Portfolio Holder Working Party; and*
- (c) *further requests the Monitoring Officer to submit the Site Visit Procedure, as amended, to Full*

Council for its approval and adoption, following consultation, as appropriate and necessary, with the Planning Committee and the Standards Committee.

## PREVIOUS RELEVANT DECISIONS

Full Council, at its meeting held on 29 March 2022 (Minute 150 refers), decided, inter alia, that:

*“the Review of the Constitution Portfolio Holder Working Party be requested to carry out a fundamental review during 2022 of the way in which Motions to Council, submitted in accordance with Council Procedure Rule 12, are dealt with procedurally and that the results of that review be submitted to Full Council, via the Cabinet, in due course.”*

The Cabinet’s decision at its meeting held on 16 December 2022 (Minute 83 refers) was as follows:-

**“RESOLVED:-**

1. That Cabinet **RECOMMENDS TO COUNCIL** that:

- (a) *the Council’s Constitution be amended to reflect the proposed changes, as set out in Appendices A to D and F to N attached hereto this report, with the exception of the proposed changes to Council Procedure Rules 12 and 14... which are deferred at this time;*
- (b) *Council notes and endorses the Monitoring Officer’s firmly reiterated advice that Members using the “Approval of the previous Minutes” item on agendas as a way of raising matters from that previous meeting, whether loosely connected or not, is not acceptable as such actions did not comply with the need to give the requisite public notice of matters that would be discussed at a committee etc. meeting i.e. it breached local government law;*
- (c) *Council further notes and endorses the proposed change to Article 7.08 (Cabinet Procedure Rule 1.5); and*
- (d) *Council additionally notes that:-*
  - (i) *the Centre for Governance and Scrutiny, Lawyers in Local Government and the Association of Democratic Services Officers are proposing to issue guidance in the area of “call-ins” of Executive decisions and so it is likely that this Council will need to look further at this in 2023 (and particularly its implications for Overview and Scrutiny Procedure Rules 17 and 18) once that guidance is issued;*
  - (ii) *the practice guides prepared by the Head of Democratic Services & Elections to assist members of Overview and Scrutiny Committees and support officers to develop appropriate approaches to individual enquiries would be reviewed in Autumn 2023;*
  - (iii) *the Council’s Procurement Strategy and the Procurement Procedure Rules will need to be reviewed once the Procurement Bill (HL) currently at Report Stage in the House of Lords is enacted and come into effect; and*
  - (iv) *the review of the Council’s procedure for Planning Committee Site Visits as set out in the Members’ Planning Code and Protocol (in Part 6 of the Constitution) is still ongoing although at this current time no constitutional changes have been highlighted*

*as being necessary.”*

For Full Council’s information only the Cabinet further **RESOLVED** –

*(1) That Cabinet **resolves** that Cabinet Procedure Rule 1.5 be amended to reflect the proposed change...”*

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

Notes of the meeting of the Review of the Constitution Portfolio Holder Working Party held on 23 January 2023.

Report of the Corporate Finance and Governance Portfolio Holder (A.8), which was submitted to the meeting of the Cabinet held on 17 February 2023.

Minutes of the meeting of the Cabinet held on 17 February 2023.

#### **APPENDICES**

##### **A.3 APPENDIX – AMENDED COUNCIL PROCEDURE RULES – SECTION ONE**

#### **REPORT CONTACT OFFICER(S)**

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