

Report to the Council

Committee: Constitution Working Group (Councillor S Jones)

Date: 12 March 2020

1. CONSTITUTION REVISIONS AND AMENDMENTS

Recommending:

- (1) That the revision to the Council's Scheme of Delegation as set out in this report, be agreed; and**
- (2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.**

- 1.1 Due to the departure of the previous Democratic Services Team manager who held the position of Data Protection officer, it is necessary to amend the scheme of delegation to appoint the Monitoring Officer as Data Protection Officer.
- 1.2 Following the successful appointment of Gary Woodhall as Democratic and Electoral Services Team Manager, it is necessary to make amendments to the scheme of delegation to appoint him as Deputy Monitoring Officer.

2. DISTRICT DEVELOPMENT MANAGEMENT COMMITTEE – TO ALLOW A DISTRICT MEMBER TO SPEAK

Recommending:

- (1) That existing arrangements for public speaking in respect of planning applications remain the same for District Development Management Committee.**

- 2.1 At the District Development Management Committee (DDMC) meeting of 22 January 2020, a planning application for land to the north of Dowding Way was to be determined but was instead deferred to a future meeting of the Committee.
- 2.2 A District Member had wanted to register to speak in his own right, as the planning application had generated much local opposition and numerous representations from the public had been submitted to the District Council.
- 2.3 Current provision under Article 10, Appendix 1 (1) and Council Procedure Rules P2 of the Constitution allows for up to four persons to register to speak per application – one objector, one representative of a relevant local parish/town council, one representative of any other authority consulted or as a statutory consultee, and the applicant or nominated agent / representative. (See Article 10 attached for information).
- 2.4 However, the Working Group considers that the provision for additional speakers is covered sufficiently by the Constitution under Article 10, Appendix 1 (4) where the Chairman may allow additional speakers in exceptional circumstances.
- 2.5 The Working Group is of the opinion that this ad-hoc arrangement at the discretion of the Chairman works well. Several committee members had on previous occasions spoken to the DDMC Chairman beforehand and addressed a meeting in this way. Additionally, if a District Member could register to speak in his own right at DDMC but the planning application

continues to Full Council, it is viewed that to avoid fettering his/her own discretion, that member will be unable to take part in any debate.

2.6 We recommend as set out at the commencement of this report.

3. DELIVERING INFRASTRUCTURE IN THE DISTRICT: DEVELOPER CONTRIBUTIONS STRATEGY

Recommending:

(1) That the Developer Contributions Strategy identifies infrastructure requirements for minor sites where applicable and the involvement of local councils.

3.1 The Planning Services Director informed Members that a S106 Strategy document was agreed by Cabinet in July 2019. It states that Parish Councils will be consulted as part of the statutory process and for larger sites at the pre-application stage, through the master plan/concept framework process or through the Development Management Forum to establish the most appropriate form of provision taking account of the location, scale and form of the proposed development in their area.

3.2 The Infrastructure Delivery Plan (IDP) is the document that identifies required infrastructure and apports this to development as allocated in the Local Plan. This is based on technical evidence, is a live document and will inform the District's infrastructure needs going forward.

3.3 The IDP and the S106 Strategy recognise contribution requirements for some minor type developments, for example between 6 and 10 residential units, as identified in the Local Plan Submission Version.

3.4 We recommend as set out at the commencement of this report.

4. OFFICER EMPLOYMENT PROCEDURE RULES

Recommending:

(1) That the incorporation of the revised Officer Employment Procedure Rules be approved; and

(2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.

4.1 Every Council is required to appoint a Head of Paid Service, a Monitoring Officer, and a Chief Finance Officer (Section 151 Officer). Each of these posts carries specific statutory responsibilities. As these postholders operate in a sensitive environment, Councils are required to follow special procedures to investigate disciplinary matters regarding officers holding these positions. Prior to the 2015 Regulations, procedures were governed by statutory Designated Independent Person (DIP) provisions. The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 replaced the statutory DIP provisions with an Independent Panel process.

4.2 The Council made the required amendments to the Constitution, in relation to the dismissal of the three statutory officers, to ensure that these officers could discharge their duties without any fear of being unduly influenced or dismissed by the authority without good reason. The Joint Negotiating Committee for Chief Officers of Local Authorities Conditions of Service Handbook has also been updated to reflect the regulations. A revised disciplinary model procedure was published in the 2017 edition as a reference guide for the dismissal process.

- 4.3 A standing Investigating and Disciplinary Committee (IDC) must be politically balanced with at least five members. The Senior Management Selection Panel established in December 2017 already fulfils the redundancy panel functions of the existing Officer Employment Procedure Rules and it is recommended that the Terms of Reference of the Panel should therefore be extended to encompass the new requirements of the 2015 Regulations in terms of the establishment of the IDC. Appointment to membership of the Committee can therefore continue to be made as part of the annual appointments process.
- 4.4 The new regulations require that a Council must appoint an Independent Panel made up of a minimum of two Independent Persons appointed under section 28 of the Localism Act 2011 (in relation to standards complaints against members), whose advice, views and recommendations shall be considered before any decision by the full Council to dismiss a relevant officer can be made. The Independent Persons can refuse to accept an invitation to sit on an Independent Panel and if either is unavailable when needed, it will be necessary for the Council to appoint additional Independent Persons from other local authorities, to ensure at least two Independent Persons are appointed. The Panel can only be appointed by the full Council. The Council currently has three Independent Persons appointed under S28 of the Localism Act 2011 in relation to standards complaints, two of whom were appointed in December 2018 on the basis that they may also be required to form part of a Panel that will consider disciplinary action against the most senior officers of the authority. In order to meet the appointment requirements of the Independent Panel, it is recommended that it is appropriate for the Council to formally appoint the three Independent Persons to membership of the Panel as part of the annual appointments process, so that the Panel remains available at all times.
- 4.5 The proposal on the establishment of a panel of Independent Persons and using the model disciplinary procedure will ensure the organisation is best placed to manage any matters relating to the potential dismissal of the Chief Executive Officer, Monitoring Officer and Section 151 Officer in the unlikely event that such circumstances should occur.
- 4.6 The revised Officer Employment Procedure Rules are set out at Appendix 1 to this report. No changes are required to other elements of the Officer Employment Procedure Rules (particularly Section C (Disciplinary Action) – Suspension) as the current provisions remain in line with the 2015 Regulations.
- 4.7 We recommend as set out at the commencement of this report.

5. AUDIT AND GOVERNANCE COMMITTEE – REVISED TERMS OF REFERENCE

- (1) Recommending: that the proposed changes to the Audit and Governance Committee's Terms of Reference be approved; and**
- (2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.**
- 5.1 The Audit and Governance Committee should ensure its Terms of Reference remain current and up to date with a review on an annual basis, which is in line with good practice, and make recommendations for any significant changes to the Council.
- 5.2 When the Committee last reviewed its Terms of Reference in November 2018, no changes at that time were proposed, as they remained fit for purpose. The Chief Internal Auditor has carried out a comparison of the Committee's current Terms of Reference with the 2018 CIPFA model terms of reference and has undertaken benchmarking with the terms of reference of the audit committees operated by Broxbourne Borough Council and Harlow Council.
- 5.3 The review of the Committee's Terms of Reference undertaken by the Chief Internal Auditor in the autumn of 2019 had highlighted two additions to reflect the Group Company structure

being set up by the Council and to encompass any future changes to the provision of internal audit services.

5.4 Two additions to the current Terms of Reference for the Committee are proposed (shown underlined in bold in Appendix 1) to reflect its remit as the Council works more collaboratively. These revisions were approved by the Audit and Governance Committee without further amendment at its meeting on 25 November 2019.

5.5 We recommend as set out at the commencement of this report.

6. RISK MANAGEMENT RESPONSIBILITIES

Recommending:

(1) That the transfer of the responsibility for the reviewing of, and recommending revisions to, the Corporate Risk Register from the Finance and Performance Management Cabinet Committee to the Audit and Governance Committee be approved; and

(2) That pursuant to Recommendation (1) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.

6.1 The transfer of responsibilities for reviewing of the Corporate Risk Register from the Finance and Performance Management Cabinet Committee to the Audit and Governance Committee, is recommended as best practice by the Chartered Institute of Public Finance and Accountancy (CIPFA) that, *'Audit Committees should 'consider the effectiveness of the authority's risk management arrangements and the control environment, reviewing the risk profile of the organisation and assurances that action is being taken on risk-related issues, including partnerships and collaborations with other organisations'*.

6.2 At committee level, formal responsibility for risk management lies with two committees as per their Terms of Reference:

(i) Finance and Performance Management Cabinet Committee – to advise and make recommendations to the Cabinet on risk management and insurance issues; and

(ii) Audit and Governance Committee - to monitor the effective development and operation of risk management in the Council

6.3 Currently the Finance and Performance Management Cabinet Committee reviews the Corporate Risk Register, agrees any updates recommended by the Risk Management Group, considers whether any new or emerging risks that are not on the corporate risk register and pass on recommendations to the Cabinet for their approval.

6.4 The Audit and Governance Committee receives a copy of the most up to date corporate risk register at each of its meetings in order to provide context for the meeting. On an annual basis (March) the Committee receives a report on the effectiveness of the arrangements for risk management from the Council's Section 151 Officer. Following the staff restructure responsibility for championing risk management now lies with the Service Director – Commercial and Regulatory, who chairs the officer Risk Management Group.

6.5 The Constitution Working Group recommends that the Audit and Governance Committee review and comment on the corporate risk register on a quarterly basis, supplemented with a more in-depth review of an individual risk on a rolling or risk basis. This will enhance the operation of the Council's risk management function.

- 6.6 The Council's Risk Management Strategy will be revised and updated to reflect the new monitoring and reporting arrangements, if approved by the Council.
- 6.7 We recommend as set out at the commencement of this report.

7. FINANCIAL REGULATIONS

Recommending:

- (1) That a change to the current delegations and standing financial instructions to require only one sign off signature (electronic or physical) by the designated budget holder (usually a team manager) for purchases and payments with a value of £24,999 or less that are within budget and only purchases and payments off £25,000 and / or in excess of budget requiring a second signature from a director, be approved.** (This is to retain control whilst significantly reducing transaction costs and paperwork pending a major system review and change timetabled for April 2021); **and**
 - (2) That the issues of real or virtual purchase cards to all budget holders and directors and expect all purchase below £1,000 to be made by this route and where applicable purchases of £1,000 to £4,999 to also be made by this route, be approved.** (This is to retain control whilst significantly reducing transaction costs and paperwork pending a major system review and change timetabled for April 2021).
 - (3) That pursuant to Recommendation (1) and (2) above, the Monitoring Officer be authorised to make necessary revisions to the Council's Constitution.**
 - (4) That the Audit and Governance Committee review the Financial Regulations in a year's time.**
- 7.1 This balance between financial control and risk reduction has always been a consideration when reviewing purchasing and invoicing instructions and procedures. Modern integrated business systems in widespread commercial and local government use allow both these objectives to be delivered together, e.g. by using a delegated but largely automatic enterprise resource management system (ERM) approach.
- 7.2 The Council's current position in the is that the business systems are only partly integrated and set up in such a way as to mimic the paper systems in use a decade or so ago that an immediate IT solution to the problem of delivering effective and efficient transactional processing is not possible. It should however be noted that the planned review of business systems is intended and will complete by the 30 September 2020).
- 7.3 Improvements to transaction management can be improved in the interim to ensure control and a return from investment in recent management changes regarding the Council's restructure to make procurement and payment transactional costs including procedures simpler and more efficient. This also allows the Council to improve and learn before the implementation of improved systems from April 2021 (at the latest).

Simplifying procurement and payment transactions

- 7.4 Currently the approach uses IT systems (supported by a significant amount of paper vouchers and controls), emails and double signatures on relatively small items and values well within budget. This is cumbersome, bureaucratic and adds to real transactional costs and opportunity costs with managers reviewing and signing paperwork already validated by others.
- 7.5 In line with the majority of accountability and responsibility for budgets being passed to team managers, it is proposed to use this approach and that the designated budget holder (usually a team manager) can make purchases and authorise payments with a value of £24,999 or less

that are within the designated budget. It is only for purchases and payments of £25,000 and/ or in excess of budget requiring a second signature from a director.

7.6 To ensure the process is controlled:

- A list of budget holders and the financial codes they can operate is already known and maintained securely.
- Monthly, finance business partners can update this list for any changes of budget overspend issues.
- Email and electronic signature and instruction can replace signed paper records as electronic sign off can be counted as a prime record and is as at least as safe and secure as a paper signature.

Simplified Procurement using Purchase Cards

7.7 Purchase cards are used widely in the commercial and government sector as a way of offering flexibility whilst reducing transaction costs. Modern IT systems will place orders usually with the latest best price and quality approach and / or by contract determination electronically and allow for the electronic invoicing and settlement of the transactions.

7.8 Increasingly managers are asking for a faster and more rapid way of securing goods and services, e.g. for housing or the Garden Town. Technology allows for a virtual rather than a real card to be broadly issued with spending controls at transaction, overall limit or nature of the goods and services purchased level. Details of the transactions are received electronically and can be reconciled and posted to the main finance system with ease.

7.9 Therefore, the proposal is to issue real or virtual purchase cards to all budget holders and directors and expect all purchase below £1,000 to be made by this route and where applicable purchases of £1,000 to £4,999 to also be made by this route.

7.10 The default approach to these cards is to set a credit limit of £5,000 a month and limit them to the subjective areas covered by the designated budget, i.e. remove the ability to access cash or buy an unexpected item or service.

7.11 Purchase will be reviewed monthly as part of the transaction posting process. Variation of the above limits and approach can be approved by the Section 151 Officer, e.g. for the emergency purchasing role of the Executive Director of Commercial and Regulatory Services. Again, this approach will be re-examined as part of the more major review of systems and process during 2020/21.

Project Plan

7.12 This change will be delivered by a small start and finish project and will complete no later than the 30 April 2020. The project group will consist of:

- Interim Strategic Director (resources soon to be Chief Operating Officer)
- Section 151 Officer
- Procurement Lead
- Payment Lead
- Representative of NatWest bank (for card issue)
- Internal audit representative

7.13 We recommend as set out at the commencement of this report.

8. AUDIT AND GOVERNANCE AND STANDARDS COMMITTEES – REVIEW OF MERGER PROPOSALS

Recommending:

- (1) That existing arrangements remain the same for the Audit and Governance Committee and the Standards Committee with no merger; and**
- (2) That any future merger will be reconsidered by the Constitution Working Group only at the request of either of the Audit and Governance Committee or the Standards Committee.**

- 8.1 The Council considered the results of a review on the desirability of combining the Audit and Governance Committee and the Standards Committee on 18 February 2016. At that meeting, the Council concluded the proposals for a merged committee not be adopted as part of the changes to the Constitution, but for a review of the position to take place after two years.
- 8.2 The Constitution Working Group revisited the merger proposal at its meeting on 16 April 2018. On the advice of the Assistant Director (Governance), the Constitution Working Group agreed to defer its review of a merger because the restructure of the Council was underway, as well as the review of the Overview and Scrutiny Select Committees to reflect this new structure.
- 8.3 Since then the Council has undertaken a restructure and replaced the previous four directorates with seven service areas, with Portfolio Holders aligned to each of these. In addition, the four directorate select committees have been reduced to three and aligned with the Council's three corporate objectives (Stronger Place, Stronger Communities, Stronger Council).
- 8.4 The next step options below were considered, whereby the views of both the Audit and Governance Committee and Standards Committee could be sought to establish if there is an appetite to merge the two committees by considering the following provisos to address concerns raised in 2018:
 - A higher number of members for the new Committee. Currently there are nine Members available to consider Standards issues, which would have been reduced to three under the initial proposals.
 - Ask Council to create a specific group to deal with Standards Investigation Hearings that would meet on an ad hoc basis, i.e. as the need arises.
 - With regards to a perceived lack of involvement of Parish Councils as currently there are three representatives from the Local Councils affiliated to the District Council's Standards Committee:
 - Ask that all agendas are notified to Parish and Town clerks that are aligned to the District's Standards Committee
 - Ask that existing Parish representatives be invited to attend meetings of the new committee as they consider necessary.
 - Change the Terms of Reference to include that any hearing into a Parish/Town Councillor includes an appropriate representative.
- 8.5 However, it was agreed that any future merger will be reconsidered by the Constitution Working Group only at the request of either of the Audit and Governance Committee or the Standards Committee.
- 8.6 We recommend as set out at the commencement of this report.

9. OVERVIEW & SCRUTINY COMMITTEES – CO-OPTION OF MEMBERS

Recommending:

- (1) That ‘another’ at paragraph 1.3 last sentence be included in this draft revised protocol, to read, *‘Co-opted members can also add value to the scrutiny process by considering service provision from a customer perspective and acting as another channel for questions from outside the authority’*;
- (2) That the draft revised protocol for the co-option of non-elected Members to the Council’s Overview and Scrutiny Committees pursuant to Recommendation (1) above, be recommended to the Council for approval; and
- (3) That pursuant to Recommendations (1) and (2) above, the Monitoring Officer be authorised to make necessary revisions to the Council’s Constitution’

- 9.1 The Overview and Scrutiny Committee considered a draft revised protocol for the co-option of independent members to the Council’s Overview and Scrutiny committees on 28 January 2020.
- 9.2 Article 6 (Overview and Scrutiny) of the Constitution, paragraph 6, states that *‘The Overview and Scrutiny Committee shall be entitled to recommend to the Council the appointment of appropriate persons as non-voting co-optees.’*
- 9.3 Previously, this process had been followed to appoint representatives of the Epping Forest Youth Council and the Chairman of the Tenants and Leaseholders Federation (TLF) to membership of the former Communities Select Committee.
- 9.4 With the introduction of the new Select Committee arrangements at the start of this municipal year, the Service Director (Housing & Property Services) had suggested that the Chairman of the (renamed) Tenants and Leaseholders Forum should be co-opted onto the Stronger Communities Select Committee, whilst the Epping Forest Youth Council was also keen to secure co-opted membership of the same Select Committee.
- 9.5 The Overview and Scrutiny Committee having considered proposals for appropriate selection procedures and criteria for the appointment of co-opted Members to the Council’s Overview and Scrutiny Committees, agreed to bring the co-option of independent members for the Select Committees in line with the existing arrangements for the Audit and Governance Committee, Standards Committee and the Remuneration Panel (which is entirely composed of independent Members).
- 9.6 The Members’ Allowances Scheme for the current municipal year provides for the application of an annual allowance of £500.00 for co-opted independent Members of an Overview and Scrutiny Committee. Any proposals for revision to this element of the Scheme would be required to be considered by the independent advisory Remuneration Panel, and whose views the Council would be required to take into consideration.
- 9.7 The Working Group agreed to include a minor revision to this draft protocol to clarify that it is not only co-opted members, but that councillors also bring views forward. Thus, the inclusion of ‘another’ in paragraph (1.3), last sentence, has been made, to read, *‘Co-opted members can also add value to the scrutiny process by considering service provision from a customer perspective and acting as another channel for questions from outside the authority’*.
- 9.8 This draft protocol with the minor amendment above is attached at Appendix 1 of this report.
- 9.9 We recommend as set out at the commencement of this report.