

Ordinary Council

25 January 2017

Review of the Council's Constitution 2016/17

Report of: Daniel Toohey, Head of Legal Services and Monitoring Officer

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 The Council is required by Section 37 of the Local Government Act 2000 to keep its Constitution up to date.
- 1.2 This report sets out a number of proposals for revising the following Parts of the Constitution: Articles of the Constitution (Chapter 2); Council Procedure Rules (Part 4.1); Financial Regulations (Part 4.5); Member's Planning Code of Good Practice (Part 5.2), and Delegations to Staff (Chapter 8 Appendix A).
- 1.3 The cross-party Constitution Working Group was consulted on the proposed changes and the attached documents reflect the significant and detailed contribution of the Working Group's Members.

2. Recommendations

- 2.1 **That Council approves the changes to its Constitution as detailed in the revised documents attached as [Appendix A](#) to this report.**

3. Introduction and Background

- 3.1 In order to inform the Working Group insofar as proposing a work plan for 2016/17, the Council's Monitoring Officer engaged Bevan Brittan solicitors in the first part of 2016 in order to review the Constitution and report on required or recommended changes.
- 3.2 In addition to the results of that report, the review of the Constitution by the Working Group was based on the general propositions that the Constitution should:
 - (a) set out how the Council works, how decisions are made and the procedures to be followed to ensure that decisions are efficient, transparent and accountable through members to local residents and local communities;

- (b) be clear about the rules, functions and responsibilities of both members and the council's staff;
- (c) be clear about the rights which residents have in their dealings with the Council; and
- (d) be accessible to everyone.

- 3.3 The Members of the Working Group met on three occasions between 17 November and 5 January and considered in detail the Articles of the Constitution (Chapter 2); Council Procedure Rules (Part 4.1); Financial Regulations (Part 4.5); Member's Planning Code of Good Practice (Part 5.2), and Delegations to Staff (re Planning).

4. Issues and Context

- 4.1 Section 37 of the Local Government Act 2000 requires that the Council has in place a document, known as its Constitution, which contains the Council's standing orders, Code of Conduct, and such other information as the Council considers appropriate or required by law.
- 4.2. The cross-party Constitution Working Group took as its starting point for the review the authority's existing Constitution, last revised on 18 May 2016. It also had regard to the review carried out by Bevan Brittan as referred to in paragraph 3.1 of this report.
- 4.3. The Working Group focused its efforts on reviewing the Parts of the Constitution in 3.2 above, as these were identified by Bevan Brittan as requiring immediate consideration. In addition, the Working Group also considered the revision in respect of Outside Bodies, as this was referred for consideration by the Audit and Scrutiny Committee.
- 4.4. However the Members Planning Code of Good Practice (Part 5.2) remain to be finalised together with further work on Delegations to Staff (Appendix A). Additionally consideration could be given in future to including in the Working Group's 2017 / 2018 programme the following: Licensing Committee Procedure Rules, and Planning Committee Procedure Rules. In regard to Licensing and Planning Procedure Rules, both these committees are regulatory in function and Licensing is quasi judicial – therefore there would be a public and legal expectation that they have clearly outlined and transparent procedure rules. The Working Group did consider alterations to the planning procedure around delegations, and these changes are discussed further below.
- 4.5 A further description of each of the proposed changes is set out below; the reworded pages appear in Appendix A as follows:

Schedule 1 – Planning Delegated Process

Schedule 2 - Appointment of Representatives on Outside Organisations

Schedule 3 - Finance Regulations

Schedule 4 - Deadlines for Notices

Planning Delegated Process

- 4.6 The Council's Constitution sets out the process for handling delegated Planning Decisions. At its meeting on the 24th March 2015 Ordinary Council agreed a new process for handling delegated Planning Decisions. The changes made in 2015 to the process for dealing with delegated decisions have not in practice worked well (not least for Members). As a result, a hybrid system had been adopted that is inefficient and bureaucratic. Following discussions with the Leader, Chair and Vice Chair of the Planning Committee and other Elected Members, an alternative process has been developed.
- 4.7 This much simplified process is set out in Appendix B and provides the following benefits:
- . Improved visibility to Planning recommendations for Members
 - . More efficiency and speedier decision making
 - . Reduced costs
- 4.8 In order to ensure that Members are better and more immediately informed of residents' and consultees' views on Planning Applications, all responses to notification/consultation should be uploaded onto Public Access within 24 hours of receipt. In addition, Members should be reminded of the need to contact and discuss with the case officer any concerns/issues/queries they have on any particular application (and enquire as to the likely decision) prior to looking to refer any application to Committee.
- 4.9 The new process as shown in Appendix B will be the production of a weekly list of recommendations that have been cleared by the Development Management Team Leader, which will be issued within 7 days unless a completed referral form has been submitted. That list could be simply produced using the Uniform system and dispatched by email at 12 noon on a Friday, with the referral period ending at 12 noon the following Friday. This will ensure a clear 'window' in which Members can refer a planning application therefore superseding the previous process including the 'holding' referral process.
- 4.10 The new process was considered and agreed by the CWG at its meeting on the 5th January 2017. Subject to approval by Council the new process will be implemented following appropriate training and communication for members.

Appointment of Representatives on Outside Organisations

- 4.11 At its meeting on the 13th June 2016 the Audit & Scrutiny Committee agreed that a cross party Member Working Group be formed to review the arrangements for members appointed to be representatives on outside organisations.
- 4.12 Under the Council's Constitution the Annual Council is required to appoint representatives to outside bodies and consultation groups unless the appointment has been delegated by the Council. Following appointment as representatives Members are required to attend meetings of the outside

bodies until possible appointment in the following year. (Unless appointed to an outside body for the duration of their elected period, i.e. 4 years).

- 4.13 Following discussions and considerations by the Members Working Group of the current process it was agreed that the proposed process as set out in Appendix C be recommended to the Audit & Scrutiny Committee. At the Audit & Scrutiny Committee on the 12th December 2016, it was agreed that the proposed proposal be agreed and that the Council's Constitution Working Group (CWG) consider the amendment of the Constitution so that the appointment of outside representatives be undertaken by Ordinary Council in June each year. This was subsequently agreed by the CWG on the 5th January 2017.

Finance Regulations

- 4.14 Financial Regulations provide the financial controls and procedures necessary to address demands on local government and are especially important at a time of fundamental change in funding mechanisms. To conduct business in an efficient and effective manner, the Council needs to ensure that it has sound financial management policies in place and mechanisms to ensure that they are properly applied. Financial Regulations form an important element of the Council's corporate governance arrangements and provide a control framework through which the Finance Director (as the Chief Financial Officer under Section 151 of the Local Government Act 1972) fulfils his statutory responsibilities on behalf of the Council. All Members and Officers have a common duty to abide by the highest standards of integrity and propriety when making decisions about the use of public money. Another key purpose of the Financial Regulations is to support and protect Members and Officers in the performance of their duties where financial issues are involved.
- 4.15 In light of this the Section 151 officer undertook a comprehensive review of the Finance Regulations in 2016, and the revised chapter was in turn reviewed by Constitution Working Group, with reference to the Section 151 Officer, between 1 December 2016 and 5 January 2017, during which time a range of questions were addressed by the Section 151 officer for members of the group. The final updated version of the regulations was subsequently agreed by the Working Group.
- 4.16 The key points to note are:
- (i) The Regulations have been grouped into 6 parts as follows:
 - (a) Status of Financial Regulations
 - (b) Financial Planning and Budgeting
 - (c) Financial Monitoring and Control
 - (d) Financial Procedures and Systems
 - (e) Risk Management and Audit.
 - (f) External Arrangements

This will make it easier for Members and Offices to refer to in the performance of their duties where financial issues are involved.

- (ii) Section 2 has been expanded to clearly identify responsibilities of Members, the Section 151 Officer, Chief Executive and Heads of Service with regards to financial issues. This is to ensure that the Council has a transparent framework of financial management responsibilities and decision making which is essential to the effective management of the Council's financial affairs.
- (iii) New inclusions which the Section 151 Officer deems necessary are:
 - (a) Reserves and Balances Policy (Section 5). It is important that the Council has a policy setting out its approach to reserves and balances and this section outlines the Council's approach in setting up and using the Council's earmarked reserves and balances.
 - (b) Money Laundering (Part of Section 11) – The Council must also comply with the statutory money laundering regulations and this section outlines the process for reporting concerns regarding money laundering.
 - (c) Trading Arrangements (Section 23) – The Council will at times look for potential trading opportunities and this section outlines the controls which should be in place to ensure that any risks associated with trading are appropriately managed

Clarification of Deadlines for Notices

- 4.17 Finally, there is a proposed amendment to Part 4.1 Council Procedure Rules, such that references to “working days” now refer to “clear working days” and a practical example is provided. This is quite simply to make it clear what the deadlines are for either members or the public in terms of submitting motions amendments or questions.
- 4.18 The operation of the Constitution will be kept under review by the Monitoring Officer in accordance with Article 12. Any proposed substantial changes put forward by members or staff will be considered by the Constitution Working Group or Audit and Scrutiny Committee before being submitted to Council for approval.

5. Reasons for Recommendation

- 5.1 As set out above a regular review of the Constitution is required; this report and the attachments set out the reasoning behind items proposed for change.

6. Consultation

- 6.1 Article 12 of the Constitution sets out that amendments to the Constitution will normally only be considered by the Council following consideration of the same by an appropriate Member Body, being either the Audit and Scrutiny Committee or Constitution Working Group, having received advice from the Monitoring Officer. This report sets out the consultation with and consideration of items by the Constitution Working Group and/or

Audit and Scrutiny Committee. In addition, broad discussions have been had with the Leader and representatives of Groups in so far as updating on the process of the Constitution review, as well as operational discussions with senior officers in Finance, Democratic Services and Planning.

7. Implications

Legal Implications

Name & Title: Daniel Toohey - Head of Legal Services and Monitoring Officer

Tel/Email: 01277312860/ daniel.toohey@brentwood.gov.uk

- 7.1 Regular review of the Constitution will contribute to good governance.

Financial Implications

Name & Title: John Chance - Finance Director and Section 151 Officer

Tel/Email: 01277 312542/ john.chance@brentwood.gov.uk

- 7.2 The Finance Director and Section 151 Officer has been consulted and states that there are no financial implications arising directly from this report, other than as set out relating to the proposed Finance Regulations.

Other Implications (*where significant*) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 7.3 There are no corporate health and safety or asset management implications. There are no equality/diversity or risk management implications.

8. Background Papers (include their location and identify whether any are exempt or protected by copyright)

Brentwood Borough Constitution, available on Council website

9. Appendices to this report

Appendix A – Constitution – Proposed Amendments

Appendix B – Planning Delegation – Indicative Process

Appendix C - Outside Bodies – Indicative Process

Report Author Contact Details:

Name: Daniel Toohey, Head of Legal Services and Monitoring
Officer
Telephone: 01277312860
E-mail: daniel.toohey@brentwood.gov.uk