

Committee: Ordinary Council	Date: 2 December 2020
Subject: Constitution Working Group	Wards Affected: All
Report of: Amanda Julian – Director of Law and Governance and Monitoring Officer	Public
Report Authors: Name: Claire Mayhew – Corporate & Democratic Services and Deputy Monitoring Officer Telephone: 01277 312741 E-mail: claire.mayhew@brentwood.gov.uk	For Decision

SUMMARY

The purpose of this report is to update Members on the present review of the Constitution.

Under Section 9P of the Local Government Act 2000, the Council is under a statutory duty to keep its Constitution under constant review ensuring its content is kept up to date.

Monthly reviews of the Council's Constitution take place with the Council's Monitoring Officer and the Members of the Constitution working Group (CWG).

This report sets out several proposals for the revision of the following chapters/paragraphs within the Council's Constitution:

- Chapter 3, Part 3.1 – Powers and Delegations 2.10 Emergency Committee (Appendix C)
- Chapter 5, Part 5.2 – Planning Code of Good Practice/Planning Chapter (Appendix A & B)
- Delegation(s) to staff – Telecommunications Networks (Appendix F)
- Proposed addition of paragraph 12.2 (e) and Proposed change to Chapter 4 Rules of Procedure (Appendix D)

The cross-party Constitution Working Group (CWG) were consulted on the proposed changes required. The attached appendices reflect the significant and detailed contributions from the Working Group Members.

RECOMMENDATION/S

Members are asked to:

- R1. To agree the amendments made to the Planning Code of Good Practice and Planning Chapter and adopt them within the Council's Constitution set out in Appendices A and B.**

- R2. To agree the permanent inclusion of Chapter 3 at 2.10 the Emergency Committee (Section 40 Standing Orders) within Constitution as set out in Appendix C.**
- R3. To agree that Delegated Authority be given to the Director of Planning and Economy and appropriate officers to determine planning applications relating to Telecommunications Networks within the Borough.**
- R4. To adopt the proposed addition of paragraph 12.2 (e) and Proposed change to Chapter 4 Rules of Procedure within the Constitution as shown in Appendix D.**

INTRODUCTION AND BACKGROUND

1. The Council Constitution governs the way the Council operates and how decisions are made.
2. The Council is responsible for monitoring and reviewing the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect (Article 12.1(a) Duty to Monitor and Review the Constitution).
3. Subject to certain exceptions changes to the Constitution are only effective if approved by Full Council. Normally changes will only be considered by Full Council following a report and recommendation from the Constitution Working Group or the Audit & Scrutiny Committee ("Member body") and having received advice from the Monitoring Officer, (Article 12.1(c)). The Monitoring Officer may submit a report direct to Full Council in any case where his/her advice is not accepted by the Member body (Article 12.2(f)).
4. The Members of the Constitution Working Group have met on three occasions since April to consider a workplan (Appendix F) which consists of Planning Code of Good Practice/Chapter, Scheme of Delegations, Modern Code of Conduct, Council Procedures Rules Chapter and the Emergency Committee.

Planning Code of Good Practice/Planning Chapter

5. One of the areas identified for immediate review was the Council's planning procedures to make sure that they comply with the current law, best practice in relation to the declaration of interests by Members, predetermination and bias and other wider planning considerations.

6. Following earlier consideration of the draft Member's Planning Code of Good Practice/Chapter by the Constitution Working Group, it has been substantially revised in the light of comments received. It has been shortened, made much clearer and up to date, both in style and in relation to revisions which are necessary since the passing of the Localism Act 2011. In relation to changes made to declarations of interests and the Code of Conduct.
7. Planning is a complex area, Members have an essential role to play in the planning system, they need to act reasonably and fairly in a way that ensures public confidence in the planning system. The revised Members Planning Code of Good Practice provides updated guidelines to the standards of conduct expected of Members within a planning context, and to ensure that all planning decisions are made openly, impartially, with sound judgement and for justifiable planning reasons.
8. The draft revised Members Planning Code of Good Practice/Chapter (Appendix A & B) draws upon guidance issued by, amongst others, the Local Government Association and Royal Town Planning Institute.
9. The draft revised Members Planning Code of Good Practice/Chapter were presented to the members of the Constitution Working Group on 1st July 2020.
10. Members of the Constitution Working Group together with the Members of the Planning and Licensing Committee were asked to submit any comments on the draft Planning Code of Good Practice/Chapter by 10th September 2020 to the Monitoring Officer. Comments received were discussed by CWG and the Monitoring Officer and Director of Planning and Economy, please see Appendix A and B.

Emergency Committee

11. At an Extraordinary Council meeting held on 29 April 2020, it was approved that under - Section 40 Standing Orders, an Emergency Committee was established during the unprecedented times to ensure that the Council can continue to operate and make the decisions needed.

12. Cllr Dr Barret moved an amendment to the recommendation which was approved: -

“To agree to include the Emergency Committee within the Council Constitution at Chapter 3 at 2.10 and to agree the changes of the Council’s Rules of Procedure at Part 4 of the Constitution as set out in Appendix D and that these changes will be reviewed at the Ordinary Council (should it convene as planned) on 7th October 2020”.

13. A review of the Emergency Committee was undertaken by the CWG. The Emergency Committee has met twice since April 2020, however, they believe that the committee works appropriately during an emergency and therefore, has concluded that the Emergency Committee should be adopted within the Council Constitution in coincide within Section 40 Standing Orders.
14. The Emergency Committee Terms of Reference are attached at Appendix C to this report.

Delegated Authority – Telecommunications Networks

15. Members considered a report on telecommunications prior notice applications recommending delegated authority be given to determine these (Item 410, Planning and Licensing Committee, 11 March 2020, Appendix E). The committee resolved that delegated authority was acceptable in principle, but because a change was required to the constitution that this should be considered by the Constitutional Working Group in order that it could be correctly progressed.
16. The report referenced the details of how development proposals of this type are dealt with through the Planning decision-making process and the timeframes involved. Due to the length of time between validation of the application and presenting it to committee, there is greater risk that some of these applications will go out of time and be 'permitted' by default even where their siting and/or appearance are unacceptably harmful. Delegating powers to officers makes this less likely. This is the basis for other prior notifications being determined under delegated powers within the constitution, and it is proposed that this approach should be extended to telecommunications prior notifications.
17. As part of the roll out of 5G it is likely that there will be an increase in applications for new sites, replacement masts and equipment on existing sites. This is likely to mean that there will be more prior notification applications presented to the committee if they are not determined under delegated powers.

18. Article 12 Addition of paragraph 12.2 (e) and proposed change to chapter 4 rules of procedure in Appendix D. These proposed changes to Article 12 are being suggested so that any Member may request CWG to look at particular parts of the Constitution. Also, to clarify the wording in paragraph 3.10 of Part 4 of the Constitution to read as paragraph 8.3.4, regarding the duration of speeches.

ISSUE, OPTIONS AND ANALYSIS OF OPTIONS

19. A Council's constitution must by law contain a copy of the Council's current standing order, a copy of the Council's Member's Code of Conduct and such other information as the Secretary of State may direct and such other information that the Council considers appropriate.
20. The purpose of the Constitution is already set out in Article 1.3 of the current Constitution.
21. Any constitution should be designed to better facilitate actions, so the at the Council can deliver its expressed vision and its relative and often interrelated corporate priorities.

REASONS FOR RECOMMENDATIONS

22. Section 37 of the Local government Act 2000 required that the Council has in place a document, known as its Constitution, which should be regularly reviewed.
23. The delegation of powers for determining telecommunications development proposals will make it less likely that these applications will go out of time without a decision being made, thereby reducing risk.

CONSULTATION

24. The Constitution Working Group together with the members of the Planning and Licensing committee were consulted on the proposed changes to the revised Members Planning Code of General Practice/Chapter attached as Appendix A and B to this report.

IMPLICATIONS

FINANCIAL & RISK IMPLICATIONS

Name & Title: Jacqueline Van Mellaerts, Director of Corporate Resources (Section 151)

Tel & Email: 01277 312500/ jacqueline.vanmellaerts@brentwood.gov.uk

25. The are no direct financial implications from this report. Resources to fund the changes to the constitution have been managed within the Council's existing budget.

LEGAL IMPLICATIONS

Name & Title: Amanda Julian, Director of Law & Governance (Monitoring Officer)

Tel & Email: 01277 312500 /amanda.julian@brentwood.gov.uk

26. Local Government Act 2000 Section 37(1) requires a Local Authority to prepare and keep up to date a Constitution. Article 12 of the Constitution provides that a report of the Constitution Working Group should be bought to Ordinary Council with recommendations on the changes required.

ECONOMIC IMPLICATONS

Name & Title: Phil Drane, Director of Planning & Economy

Tel & Email: 01277 312500/ philip.drane@brentwood.gov.uk

27. The Council is committed to growing the local economy. A clear governance process for determining planning applications aids the role of the local planning authority when supporting economic growth. Enabling the installation of infrastructure that local businesses are reliant on, such as telecommunications equipment, is an important part of the business environment. Provided proposals are consistent with planning policies and other aspects of the planning process, the Council should look to expediate the decision-making process for the swift determination of telecommunication prior notification applications.

Equality and Diversity Implications

Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager

Tel/Email: 01277 312634/kim.anderson@brentwood.gov.uk

28. The local authority should have due regard to the Equality Act 2010 and in particular Section 149 The Public Sector Equality Duty in the exercise of its functions.

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

Background Papers

None

Appendices to this report

Appendix A – Revised Members of Code of Good Practice

Appendix B – Revised Planning Chapter

Appendix C – Emergency Committee – Terms of Reference

Appendix D – Amendments to the Constitution - Proposed addition of paragraph 12.2 (e) and Proposed change to Chapter 4 Rules of Procedure

Appendix E – Report & Minutes of 11th March – Planning & Licensing Committee (Telecommunications Masts)

Appendix F – Constitution Working Group Workplan 2020/2021