

Council



Listening Learning Leading

Report of Head of Legal and Democratic Services and Monitoring

Officer

Author: Steve Culliford

Telephone: 01235 422522

E-mail: steve.culliford@southandvale.gov.uk

To: COUNCIL

DATE: 13 December 2017 (Vale) and 14 December 2017 (South)

Changes to the council's constitution

Recommendations

That Council:

1. agrees to amend the constitution in the Summary and Explanation section and the Cabinet Arrangements and Procedure Rules to update the key decision definition by removing reference to strategic directors;
2. agrees to amend the Summary and Explanation section and the Joint Audit and Governance, Planning and Scrutiny Committees' procedure rules to make explicit that councillors have the right to attend committee meetings where they are not a member, including where confidential or exempt information is being discussed;
3. agrees to amend paragraph 15 of the Planning Committee Procedure Rules so that "no meeting shall exceed two and a half hours in duration unless the committee, prior to the expiry of the period, votes for the meeting to continue to complete the item under discussion";
4. authorises the Head of Legal and Democratic Services to update the scheme of delegation to officers in Schedule 1 to specifically reflect the Council's changes to officers' responsibilities under the revised management structure;
5. agrees to amend the scheme of delegation to the head of planning to:
 - (i) add the following text to paragraph 1.1(a)ii regarding ward councillors' right to call-in planning applications for consideration by Planning Committee: "This request must be in writing and deal with the planning

issues to ensure that the audit trail for making that decision is clear and unambiguous.”

(ii) change paragraph 11.9 to read “To deal with the recovery of the Community Infrastructure Levy including stop notices, liability orders and other enforcement mechanisms under Regulation 89 to 94 and 111 of the Community Infrastructure Levy Regulations 2010.”

(iii) add the following paragraph “To express the opinion of the council as local planning authority on whether a neighbourhood plan requires Strategic Environmental Assessment (Environmental Assessment of Plans and Programmes Regulations 2004) and/or an appropriate assessment (Conservation of Habitats and Species Regulations 2010 (as amended 2011)).”

6. agrees to amend paragraph 14.3 of the scheme of delegation to the interim head of waste, leisure and environmental health “To give authority to police community support officers to issue fixed penalty notices in respect of litter and dog fouling offences under the Clean Neighbourhoods and Environment Act 2005.”
7. agrees to amend the Joint Staff Committee Procedure Rules as set out in appendix 1 to this report;
8. agrees to amend the Officer Employment Procedure Rules as set out in appendix 2 to this report;
9. authorises the Head of Legal and Democratic Services to update the constitution to reflect the agreed amendments with effect from 1 January 2018; and
10. authorises the Head of Legal and Democratic Services to make any minor or consequential amendments to the constitutions for consistency and to reflect the council’s style guide.

Purpose of Report

1. This report proposes revisions to the current constitution to ensure it is up-to-date and reflects the council’s changing environment.

Strategic Objectives

2. The constitution underpins all the council’s decision-making and therefore supports all its strategic objectives.

Background

3. A full constitution review was undertaken and a revised constitution agreed by Council at its meeting in December 2016 in pursuance of the requirements of Section 37 of the Local Government Act 2000 to keep the constitution under review. Council has since approved further adjustments in February and May 2017. The Joint Constitution Review Group has met twice during this autumn, on 14 September and 9 November 2017, to consider matters that have arisen since then. This report sets out

proposed changes, supported by the review group, and recommends that these changes take effect from 1 January 2018.

Key decisions

4. A key decision is defined in the constitution as a decision of the Cabinet, individual Cabinet member or an officer acting under delegated powers which is likely to:
 - (a) incur expenditure, make savings or to receive income of more than £75,000;
 - (b) award a revenue or capital grant of over £25,000; or
 - (c) agree an action that, in the view of the chief executive, a strategic director or the relevant head of service, would be significant in terms of its effects on communities living or working in an area comprising more than one ward in the area of the council.
5. The review group has noted that the proposed management structure no longer contains strategic director posts, therefore officers recommend that reference to “a strategic director” is removed.

Councillors’ attendance at meetings of which they are not a member

6. The constitution allows councillors to attend meetings where they are not a committee member. For example, the Scrutiny Committee Procedure Rule 71 provides that any councillor may attend a meeting of the committee, and with the consent of the chairman, that councillor may speak, but not vote, on any item on the agenda for the meeting. However, the rule is silent on whether it applies to confidential or exempt items. In contrast, Cabinet Procedure Rule 26 explicitly provides that councillors who are not members of the Cabinet may attend Cabinet meetings, including where confidential or exempt information is being discussed.
7. The review group believes that all councillors should be entitled to attend Cabinet or committee meetings for public or confidential or exempt items. All councillors are under the duty to keep confidential or exempt information confidential before and after the meeting and any failure to do so would be likely to amount to a breach of the councillors’ code of conduct. Therefore, officers recommend that the constitution should be amended to explicitly allow councillors the right to attend Cabinet and committee meetings where they are not a member, including where confidential or exempt information is being discussed. This point should be included in the ‘Summary and explanation’ after paragraph 6, and in the Joint Audit and Governance, Planning and Scrutiny Committees’ procedure rules.

Planning Committee Procedure Rules – duration of meetings

8. Following changes to the Planning Committee Procedure Rules introduced in 2016, the review group has reviewed how the committee meetings have operated. In particular, the review group has considered whether to re-visit the Planning Committee time restriction guillotine rule on the duration of meetings.
9. The constitution currently states that no Planning Committee meeting shall exceed two and a half hours in duration unless the committee, prior to the expiry of the period, votes for the meeting to continue for a further period not exceeding 30 minutes. Any remaining business is deferred until the next meeting.

10. This rule has caused problems, putting pressure on committee members to complete items within the 30 minutes, risking the perception that items are not given due consideration. In addition, a recent Vale Planning Committee meeting had to close before being able to complete consideration of a planning application. The item was deferred to the next meeting.
11. The review group considers there is a justification to review this rule to ensure the completion of an item started before the two and a half hour cut off whilst maintaining the original aim of addressing lengthy meetings. The chairmen of the South and Vale Planning Committees were consulted on this point and attended the review group meeting.
12. Officers recommend that in relation to Planning Committee meetings the rule should be changed so that “no meeting shall exceed two and a half hours in duration unless the committee, prior to the expiry of the period, votes for the meeting to continue to complete the item under discussion.”

Schedule 1 – scheme of delegation to officers, changes resulting from management restructure

13. The Local Government Acts 1972 and 2000 provide that a local authority may arrange for the discharge of its functions by an executive/Cabinet, committees and sub-committees and by individual members and officers of the council, or by any other authority. Schedule 1 of the constitution contains a scheme of delegation to officers, which was approved by Council and the leaders. The scheme may be amended at any time.
14. The scheme of delegation sets out the general principles which shall be applied in exercising any delegated authority, general powers of the chief executive and heads of service, and then specific powers to each of those posts.
15. The scheme applies to the officers listed whether they are employed by this authority or, whether they are employed by another authority and have been placed at the disposal of this authority under an inter-authority agreement made under Section 113 of Local Government Act 1972.
16. In July 2017, the acting chief executive introduced a revised, interim management structure pending Council’s approval of a new structure in December 2017. Under existing delegated authority, the chief executive agreed an interim scheme of delegation to officers, re-aligning the existing delegations to reflect the heads of service posts under the interim structure. No further changes were made.
17. Council is asked to authorise the head of legal and democratic services to update the scheme of delegation to officers to reflect the Council’s decisions on a revised management structure.

Schedule 1 – scheme of delegation to officers: other changes suggested by the review group

18. In a separate exercise from the restructuring changes, the review group has considered some possible revisions to the officers’ scheme of delegation.

19. The head of planning's delegations include paragraph 1.1(a)ii. This states that for South Oxfordshire, the head of planning may not determine applications under delegated authority where a ward councillor (or adjacent ward councillor whose parish has been consulted) calls-in a planning application for consideration by the Planning Committee within 28 days of the date of registration of the application (unless an extension to the consultation period has been granted). The head of planning's scheme of delegation for the Vale of White Horse goes further by stating that this call-in request must be in writing and deal with the planning issues to ensure that the audit trail for making that decision is clear and unambiguous. The review group recommends that the rule should be the same for both South Oxfordshire and Vale, so that in relation to a ward councillor's right to call-in a planning application:

"This request must be in writing and deal with the planning issues to ensure that the audit trail for making that decision is clear and unambiguous".

Officers recommend that the head of planning's delegation is updated to reflect this.

20. Paragraph 11.9 of the head of planning's delegations reads "To deal with Community Infrastructure Levy stop notices under Regulation 89 to 94 of the Community Infrastructure Levy Regulation 2010." The review group recommends updating the wording to cover other enforcement mechanisms, such as liability orders, under the revised Community Infrastructure Levy regulations, changing the wording to read as follows (additions shown in **bold** text):

"11.9 To deal with the recovery of the Community Infrastructure Levy **including stop notices, liability orders and other enforcement mechanisms** under Regulation 89 to 94 and 111 of the Community Infrastructure Levy Regulations 2010."

21. The review group considered a suggestion to add a delegation to allow the head of planning to require a neighbourhood development plan to have a strategic environmental assessment. The review group supports the suggestion to add the following paragraph:

"To express the opinion of the council as local planning authority on whether a neighbourhood plan requires Strategic Environmental Assessment (Environmental Assessment of Plans and Programmes Regulations 2004) and/or an appropriate assessment (Conservation of Habitats and Species Regulations 2010 (as amended 2011))."

22. The scheme of delegation to the interim head of waste, leisure and environmental health includes paragraph 14.3 "To give authority to police community support officers to issue fixed penalty notices in respect of litter, dog fouling, graffiti and fly posting under the Clean Neighbourhoods and Environment Act 2005." Officers recommend Council to remove the reference to graffiti and fly posting as the Act does not allow police community support officers to issue fixed penalty notices in respect of graffiti and fly posting; which were included in error. The amended paragraph would read:

"14.3 To give authority to police community support officers to issue fixed penalty notices in respect of litter and dog fouling offences under the Clean Neighbourhoods and Environment Act 2005."

Joint Staff Committee Procedure Rules

23. On this Council agenda is a separate report on the management restructure. To facilitate the appointment process, officers have reviewed the Joint Staff Committee Procedure Rules, consulting external solicitors Bevan Brittan.
24. The following additional roles are proposed for Joint Staff Committee:
 - to appoint heads of service
 - to approve the sign-off of any probationary period for the chief executive
 - to undertake development and performance reviews (appraisals) for the chief executive
 - to suspend the chief executive and head of paid service pending an investigation
 - to take disciplinary action against the chief executive, head of paid service, monitoring officer and chief finance officer in accordance with the procedure set out in the Officer Employment Procedure Rules
 - to make recommendations to the employing council on matters relating to the dismissal of the chief executive, head of paid service, monitoring officer and chief finance officer
25. The proposed changes to the committee's procedure rules will also allow Cabinet members to chair the committee and to allow the committee to agree to continue to sit beyond the usual two-and-a-half-hour limit, plus a 30 minute extension, so that it can continue to complete all its business where necessary, for example when the committee is sitting to complete a full day of selection interviews.
26. Both the review group and the Joint Scrutiny Committee considered and supported the proposed changes. The revised Joint Staff Committee Procedure Rules are set out in appendix one - to follow.

Officer Employment Procedure Rules

27. Changes will also be needed to the Officer Employment Procedure Rules to reflect the agreed management restructure and to make clear that external advertisement is not required when the councils propose that appointments are made exclusively from among their existing officers.
28. Both the review group and the Joint Scrutiny Committee considered and supported the proposed changes. The revised Officer Employment Procedure Rules are set out in appendix two - to follow.

Financial Implications

29. The democratic services budget for printing will meet the costs of producing copies of the amended constitutions.

Legal Implications

30. Section 37 of the Local Government Act 2000 requires the Council to keep its constitution under review.

Conclusion

31. This report sets out proposals to amend the constitution. Officers recommend Council approves the proposed changes for implementation on 1 January 2018, and authorises the Head of Legal and Democratic Services to make these changes and any further minor or consequential amendments. The Constitution Review Group supports the proposals set out in this report.

Background Papers

None

This page is intentionally left blank