

THE CONSTITUTION – UPDATES

Executive Summary

This report follows the continued work to review the Constitution to ensure that it is accurate, up-to-date and fit-for-purpose. The Council is asked to agree changes to the Scheme of Delegations, the addition of a framework for Local Choice and the inclusion of further clarification on the requirements placed on Elected Members appointed to serve on the Licensing Committee.

Recommendations

The Council is requested to:

RESOLVE That

- (i) the Scheme of Delegations be amended as set out in paragraph 2.3 of this report;
- (ii) the section on Local Choice, as set out in Appendix 1 of this report, be added to Section 3 of the Constitution;
- (iii) the Constitution be updated to confirm that Councillors may not sit on the Licensing Committee, Licensing Sub-Committee A, Licensing Sub-Committee B or the Taxi Licensing Sub-Committee unless they have attended at least the annual mandatory licensing training prescribed by the Council;
- (iv) the paragraphs set out in the Planning Code of Practice for Councillors and Officers be repeated as paragraph 28.6 in Part 4, Section 1 (Standing Orders);
- (v) Para 6.67 (e) in the Scheme of Delegation of the Constitution be amended for clarification to read “any undetermined application can be requested by a Councillor for an application in their ward for determination by the Planning Committee provided a planning reason is supplied in writing to the Development Manager.”; and
- (vi) the Monitoring Officer be instructed to make the agreed changes to the Constitution.

The Council has authority to determine the recommendations above.

Background Papers: Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

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1.0 Introduction

- 1.1 Officers continue to keep the Council's Constitution under review to ensure it is up to date and fit for purpose. This report picks up on changes and additions to the existing Constitution which strengthen the provisions under the Scheme of Delegations and within the arrangements for the membership of the Licensing Committee and its Sub-Committees, as well as adopting a Local Choice Framework.

2.0 Proposals

Amendment to Scheme of Delegations

- 2.1 The Scheme of Delegations is set out in Part 3 Section 3 of the Constitution.
- 2.2 Amendment to a delegation under the Strategic Director – Place is sought in respect of the provisions covering planning applications submitted by, or on behalf of, a member of staff, by Woking Borough Council or any companies 50% or more owned by the Authority, or in respect of any land owned by the Council or in which the Authority has a legal interest.
- 2.3 It is proposed that under 6.67, Planning, the following changes be made:

“b. applications submitted by a member of staff;”

becomes

“b. applications submitted by or on behalf of a member of staff;”

and

“d. applications where the applicant is Woking Borough Council and any companies or entities 50% or more owned by Woking Borough Council, except for non-material amendments and minor material amendments (irrespective of whether they are major or non-major development);”

becomes

“d. applications submitted by or on behalf of Woking Borough Council and any companies or entities 50% or more owned by Woking Borough Council or on land owned by Woking Borough Council or in which Woking Borough Council has a legal interest except for non-material amendments and minor material amendments (irrespective of whether they are major or non-major development). For the avoidance of doubt this excludes applications submitted by Homelink or any other home independent service/agency for grant funded adaptations to a property;”

Addition of Local Choice Framework in Constitution

- 2.4 The law allows the Council to decide whether some functions (known as “local choice functions”) should be exercised by the full Council, the Executive or another Council body. Local Choice functions are set out in Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. For this purpose functions are classified as functions which:

- a) must not be the responsibility of the Executive;

- b) must be the responsibility of the Executive;
 - c) the local authority can decide whether they are to be the responsibility of the Executive; and
 - d) are shared between the Council and the Executive.
- 2.5 To aid in the process by which Council business and policy are handled through the Committee structure, it is proposed that a comprehensive Local Choice Framework is adopted in support of the existing Local Choice references in the Council's Constitution.
- 2.6 The framework, set out at Appendix 1 to this report, will be referenced within the Constitution and set out in full in an appendix.

Membership of the Licensing Committee

- 2.7 It is recommended that the Council formally adopts the requirement for Members of the Licensing Committee and its Sub-Committees to first attend licensing training prior to being able to sit on the Committee or its Sub-Committees. This will ensure that Councillors have the necessary knowledge to make informed Licensing-related decisions.
- 2.8 Similar provision for a training requirement for the members of the Planning Committee is already included in the Constitution, under Part 5, Section 11 (Planning Code of Practice for Councillors and Officers), which states that:
- “15.1 Councillors may not sit on the Planning Committee unless they have attended at least the annual mandatory planning training prescribed by the Council. Where the Full Council determines a major planning application, all sitting Councillors must have attended the prescribed planning training as determined by the Head of Planning.”*
- 2.9 It is proposed that the following wording is added to Part 4, Section 1 (Standing Orders) 28 (Committees – Composition) of the Constitution:
- “28.5 Councillors may not sit on the Licensing Committee, Licensing Sub-Committee A, Licensing Sub-Committee B or the Taxi Licensing Sub-Committee unless they have attended at least the annual mandatory licensing training prescribed by the Council.”*
- 2.10 For clarity, it is further proposed that the paragraphs set out in the Planning Code of Practice for Councillors and Officers are repeated as paragraph 28.6 in Part 4, Section 1 (Standing Orders).
- 2.11 The training for both the members of the Planning Committee and the Licensing Committee are scheduled annually at the beginning of the Municipal Year, before the first meetings of the Committees or Sub-Committees.

Determination of Planning Applications

- 2.12 The Constitution currently allows for any Elected Members to request that a planning application that would otherwise be dealt with under authority delegated to Officers must be presented and determined at a meeting of the Planning Committee. Para 6.67 (e) of the Constitution currently states that:

“any undetermined application can be requested by a Councillor for determination by the Planning Committee provided a planning reason is supplied in writing to the Development Manager.”

2.13 Councillors are expected to take responsibility for casework in their respective wards, including planning matters. For that reason, it has always been the convention that Councillors could call in planning applications within their ward, to be determined by the Planning Committee, rather than under delegated powers, subject to certain conditions being met. This proposal seeks to clarify the wording in the constitution, such that councillors should only call in such planning applications that fall within their ward.

2.14 To this end, it is proposed that Para 6.67 (e) of the Constitution is amended to read (changes highlighted in bold):

*“any undetermined application can be requested by a Councillor **for an application in their ward** for determination by the Planning Committee provided a planning reason is supplied in writing to the Development Manager.”*

3.0 Purpose and Outcome

3.1 The Council is required to prepare and keep up to date its Constitution as set out in Section 9P of the Local Government Act 2000 as amended. The Council has a legal duty to keep its constitution up to date. In accordance with Article 15 of the Constitution (Review and Revision of the Constitution), changes to the Constitution, other than minor changes, will only be made with the approval of the Full Council. In addition, however, the Monitoring Officer has delegated authority to generally update the constitution or make amendments consequential upon changes to operational arrangements to the Constitution. Approval by full Council of the recommendations in this report will enable the compliance with this duty.

3.2 The recommendations of this report form part of the Council’s commitment to keep the Constitution under constant review to ensure that it remains up to date, relevant and comprehensive. The proposals have been drawn up to provide additional clarity within the Constitution for Councillors, Officers and members of public.

3.3 The changes form part of the Council’s objective of ensuring that the Constitution is fit for purpose.

4.0 Implications

Legal

4.1 Except where delegated by Council as indicated at paragraph 3.1 variations to the Constitution may only be made by Full Council.

4.2 Under Section 9P of the Local Government Act 2000, the Council must prepare a constitution and keep it up to date. It must be available to the public and, under the Local Government Transparency Code 2015, be published on the Council’s website. The proposed changes in this report will bring parts of the Constitution up to date to comply with the legislation.

Resources (including finance)

4.3 There are no resource implications arising from this report.

Equalities

4.4 There are no equality implications arising from this report.

Risk (Corporate Governance)

4.5 There are no risk implications arising from this report.

5.0 Engagement and Consultation

5.1 The relevant Portfolio Holders, Chairs and Lead Officers have been consulted on the proposals.

Local Choice Framework

Allocation of Local Choice Functions

Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (the 2000 Regulations) makes provision for certain functions, known as “local choice functions” to be either executive or non-executive functions. This choice may be amended from time to time by the Council, in which case the table shown below will be amended accordingly. The Council has determined that the responsibilities shall be allocated as follows:

Function	Responsibility	Delegation
Any function under a local Act, other than a function specified or referred to in Regulation 2 or Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended.	Council	
The determination of appeals against any decision made by or on behalf of the authority:	Executive	
The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under Section 5 (best value review) of the Local Government Act 1999	Executive	Chief Executive to appoint working groups of officers to undertake best value reviews
Any function relating to contaminated land.	Executive	Strategic Director - Place
The discharge of any function relating to the control of pollution or the management of air quality	Executive	Strategic Director - Place
The service of an abatement notice in respect of a statutory nuisance	Executive	Strategic Director - Place
The passing of a resolution that Schedule 2 to the Noise and Nuisance Act 1993 should apply in the authority’s area	Executive	Strategic Director - Place
The inspection of the authority’s area to detect any statutory nuisance	Executive	Strategic Director - Place
The investigation of any complaint as to the existence of a statutory nuisance	Executive	Strategic Director – Place

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<p>The obtaining of information under Section 330 of the Town and Country Planning Act 1990</p>	<p>Executive</p>	<p>Strategic Director - Place</p>
<p>The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 (b) Provisions) Act 1976</p>	<p>Executive</p>	<p>Corporate Leadership Team</p>
<p>The appointment of any individual – (a) to any office other than an office in which he is employed by the authority (b) to any body other than (i) The Authority (ii) A joint committee of 2 or more Authorities or (c) to any committee or sub-committee of such a body, to outside bodies in connection with executive functions and the revocation of any such appointment.</p>	<p>It will be the responsibility of the Executive to make such appointments.</p>	<p>Chief Executive</p>
<p>The making of agreements with other local authorities for the placing of staff at the disposal of those authorities</p>	<p>Executive function</p>	<p>Chief Executive</p>