

## CABINET - THURSDAY, 4 APRIL 2024

### Report of the Director Finance, Governance and Contracts Lead Member: Executive Member for Finance, Customer & Support Services, Revenues and Benefits Part A

#### REVIEW OF THE CONSTITUTION

##### Purpose of Report

To enable the Cabinet to consider and recommend to Council amendments to the Constitution following the annual review.

##### Recommendation

**That it be recommended to Council** that the changes to the Constitution set out in appendix 1 to this report be made, to be effective from the new Civic Year 2024/25.

##### Reason

To ensure the Constitution is kept up to date and fulfils its intended purposes.

##### Policy Justification and Previous Decisions

Section 2.4 of the Constitution requires the Monitoring Officer to monitor and review the Constitution. These reviews are undertaken annually with the last such review being considered by the Cabinet on 9<sup>th</sup> February 2023 (Minute 61 2023/24 refers) and at Council on 27<sup>th</sup> February 2023 (Minute 124 2023/24 refers).

Members of the Plans Committee and the Member Conduct Committee, and the Head of Planning & Growth were consulted by email on 13<sup>th</sup> October 2023 on the following matters:

- Arrangements for Dealing with complaints about Member Conduct (Chapter 18)
- Members' Code of Conduct (Chapter 20)
- Monitoring Officer Protocol (Chapter 23)
- Planning Code of Good Practice (Chapter 24). Noting that the Member Conduct Committee last reviewed this Code in December 2021 and the Planning Service Review in 2023 identified a number of changes which were considered at Council on 6<sup>th</sup> November 2023.

The Member Conduct Committee on 4<sup>th</sup> December 2023 considered a report of the then Deputy Monitoring Officer where it was noted that no amendments or suggestions had been received from any councillors or officers in respect of these parts of the Constitution that fall within the remit of the Member Conduct Committee.

No further amendments or suggestions were put forward at the meeting itself and therefore the committee noted the report and the consultations that had been undertaken.

## Implementation Timetable including Future Decisions and Scrutiny

The proposed changes to the Constitution require Council approval and will be submitted to Council on 22 April 2024. Changes will come into effect from the new Civic Year 2024/25.

Changes to the Executive delegations to officers have also been identified during this year's review. This will be the subject of a separate report to the Leader, who has the authority to make such changes. Any changes made will be reported to Council.

### Report Implications

#### ***Financial Implications***

There are no costs associated with making the recommended changes to the Constitution.

#### ***Risk Management***

No specific risks have been identified in connection with this report.

#### ***Equality and Diversity***

*None identified.*

#### **Climate Change and Carbon Impact**

*None identified.*

#### ***Crime and Disorder***

*None identified.*

#### **Wards Affected**

All Wards

#### **Publicity Arrangements**

*Not applicable.*

#### ***Consultations***

*As set out above.*

#### **Links to the Corporate Strategy**

|                            |     |
|----------------------------|-----|
| Caring for the Environment | No  |
| Healthy Communities        | No  |
| A Thriving Economy         | No  |
| Your Council               | Yes |

Key Decision:

No

Background Papers:

None

Officer to contact:

Karen Widdowson  
Head of Democracy and Monitoring Officer  
Tel: 01509 634785  
[karen.widdowson@charnwood.gov.uk](mailto:karen.widdowson@charnwood.gov.uk)

## **Part B**

### Background

In line with good practice, the Council reviews the Constitution annually. As part of the review consultations have taken place with officers and councillors both individually and through meetings with Group Leaders, the Chair of the Plans Committee and the Member Conduct Committee. The remainder of this report describes the recommended changes to the Constitution and the proposed amendments are set out in appendix 1 to the report.

### Proposed changes to the Constitution

#### **Scrutiny Call-in**

In Chapter 11 (11.7), the following executive decisions can be called-in:

- Decisions of the Cabinet and committees of the Cabinet
- Decisions taken by the single Cabinet members
- Key decisions taken by officers

The Call-in process does not apply to recommendations made by the Cabinet to the Council, or where a Cabinet decision relates to a recommendation by a Scrutiny Panel.

Charnwood operates an effective “pre-decision” scrutiny process. Selected Cabinet reports are submitted to the Scrutiny Commission before the Cabinet meeting where a decision is proposed to be made. Councillors are given the opportunity to influence the content of that Cabinet report, ask questions of the Cabinet Lead Member and officers and make additional recommendations before the decision is made.

Therefore, it is suggested that Chapter 11 be amended as set out in the appendix to make clear that the call-in process will also not apply where the Scrutiny Commission has already made recommendations to the Cabinet and those recommendations have been accepted by Cabinet either in whole or without significant addition or modification

#### **Loughborough Area Committee**

The Council established the Loughborough Area Committee in June 2018 with the following advisory functions:

- To carry out a consultative role in relation to budgetary and financial issues which either solely or predominantly affect the Loughborough town area.
- To carry out a consultative role in relation to matters of policy and strategic direction which relate to or affect the Loughborough town area

It is suggested that in future the committee meet online with the annual meeting moving from June to October. Changing the annual meeting date will fit better with the budget process and meeting that takes place in December as it will inform the Committee about activities and issues affecting the Loughborough town area.

Therefore, it is suggested that Chapter 3 (3.6) be amended as set out in the appendix.

## **Housing Management Advisory Board**

At its meeting on 20 March 2024 the Housing Management Advisory Board recommended changes to its terms of reference and to re-name it the 'Housing Management Assurance and Advisory Board'.

The Council last reviewed and amended the terms of reference for the Housing Management Advisory Board in 2022. Since this time, we have seen the passing of the Social Housing Regulation Act in July 2023, and will have a new set of regulatory consumer standards introduced from 1 April 2024.

The 2023 Act has strengthened the role and rights of tenants in regard to their influence over the services provided by their landlord. The Regulator of Social Housing (RSH) also has new powers that will enable it to inspect all landlords proactively on a four-yearly programme. The RSH will observe both how landlords make decisions and how they take account of the tenant perspective as part of the process. The RSH will also consider how landlord services provided by local authorities are monitored and how assurance is carried out in relation to core delivery and compliance.

Therefore, it is suggested that Chapter 3 (3.6) be amended as set out in the appendix.

## **Single Member Ward where a member has a disclosable pecuniary interest**

In November 2023, Council made a change to the constitution to enable councillors in single member wards who are serving as the Mayor, Deputy Mayor or who are ill to nominate another ward member to call in an application on their behalf.

Where a councillor in a single member ward has a disclosable interest – such as the applicant being related to the councillor, or the councillor has a pecuniary interest in the proposal but believes that the application should be called in to committee for material planning reasons there is currently no means for this to happen.

This leaves residents in the ward without the same level of access to Plans Committee than residents in other wards with two or more councillors and is potentially undemocratic.

It is therefore suggested that Chapter 12.12 (C) be amended as set out in the appendix to enable a member in a single member ward to nominate through the Monitoring Officer an alternative member to consider speaking on or calling in the application on valid planning grounds. It is also worth noting that there is also provision to contact the Head of Service and ask them to consider the application be taken to committee.

## **Requirement to remain in room during decision making**

In the Planning Code of Good Practice when applications are considered by the Plans Committee under item 4.2 it states:

“Only vote or take part in the meeting’s discussion on a proposal if you have been present to hear the entire debate, including the officers introduction to the matter”.

This is because planning has a quasi-judicial role and there might be matters brought up in the debates that directly pertain to the question of whether or not an application is granted.

It is suggested that a similar provision apply to Full Council meetings only and an additional section be added into Chapter 9 as set out in the appendix.

## **Audit Committee – Appointment of additional Independent Person**

Full Council formally appoints the Independent Chair of the Audit Committee and following the change to Audit Committee composition to include an additional Independent Member, a change needs to be made to Chapter 12 as set out in the appendix.

## **Officers Scheme of Delegation**

### **S106 Agreements – reciprocal arrangements with neighbouring Local Planning Authorities**

There is currently no authority under the constitution for officers to enter an agreement with another authority to enter S106 planning agreements pursuant to s101(1)(b) LGA 1972 to secure and enforce contribution payments. For example, there was a recent request received from Leicester City Council to assist whereby it was proposed Charnwood Borough Council act as the third party s106 signatory on a City Council application on City Council owned land to act as guarantor for our proposed s106 payment contributions and the Council were unable to act. It is anticipated authorities may seek to enter such agreements in the future.

The Head of Planning and Growth has therefore put forward a suggested addition to provide delegated authority to officers to enter into S101 agreements (and any other instruments) to assist other Local Planning Authorities. It is thought these may be required more often in the future and it would be reasonable to add the delegation wording as below into the Head of Planning and Growths delegation on the understanding that he consults with the Chair of the Plans Committee. Other neighbouring Local Authorities are also looking into changing their governance procedures to enable such reciprocal arrangements.

It is therefore suggested that Chapter 8 be amended as set out in the appendix.

## **Other minor changes**

### **Job Titles**

The Head of Governance post was deleted January 2024 and two new Heads of Service were created. Therefore the respective job titles of Head of Democracy and Head of Legal and Electoral Services need to be replaced throughout the constitution alongside the associated Statutory Officer roles of Monitoring Officer and Deputy Monitoring Officer. The appendix sets out specific changes to the Officers Scheme of Delegation relating to Council functions.

## PROPOSED CHANGES TO THE CONSTITUTION

**KEY:**

Deleted text shown as struck through  
Added text shown as underlined and in red

## Item 1

### Chapter 11 - 11.7 Call-in

The following executive decisions can be called-in:

- decisions of the Cabinet and committees of the Cabinet
- decisions taken by single Cabinet members
- key decisions taken by officers.

The Call-In process does not apply:

- To recommendations made by the Cabinet to the Council
- Where a Cabinet decision relates to a recommendation by a Scrutiny Panel
- Where the Scrutiny Commission has already made recommendations to the Cabinet and those recommendations have been accepted by Cabinet either in whole or without significant addition or modification

## Item 2

### Chapter 3 - 3.6 Advisory bodies and working parties

#### (b) Housing Management Advisory Board

~~The Council has established a Housing Management Advisory Board to promote tenant and leaseholder engagement in decisions relating to the Council's housing stock.~~

~~The Housing Management Advisory Board will be composed of:~~

~~six tenants/leaseholders, selected by a panel comprising the relevant director, lead officer for tenant participation, a representative of a recognised independent tenant participation organisation and other Borough Council officers if deemed appropriate by the relevant director, appointed for a period of three years providing the person continues to be a tenant/leaseholder;~~



~~three Councillors, who must not be Cabinet Members, appointed annually on the basis of political balance;~~  
~~one person who is independent of the Council, selected by a panel comprising the relevant director, lead officer for tenant participation, two representatives from the Charnwood Housing Residents Forum and other Borough Council officers if deemed appropriate by the relevant director, appointed for a period of three years and confirmed annually by the Board.~~

~~In respect of the Councillor appointments only, substitutes can be made. Substitutions must be for the whole meeting. A member cannot take over from their substitute or hand over to them part of the way through. Substitutes cannot appoint substitutes of their own. If a member wants to send a substitute, they must tell the Head of Governance & HR before the meeting.~~

~~Any member can resign from the Board by giving notice to the relevant director. Appointments to vacancies will be made in the same way as the original appointment and will be for the remainder of the resigning member's term of office.~~

~~The Chair of the Housing Management Advisory Board will be appointed annually by the Board from among the tenant/leaseholder members. The Board may appoint a Vice-chair from among its members.~~

~~The quorum for meetings of the Board will be five members, at least two of whom must be tenants/leaseholders.~~

~~The Board will receive reports on matters relating to the Council's landlord functions. These will include:~~

~~the HRA Budget, the Housing Investment Programme and the Housing Service Plan;~~  
~~other matters relating to the delivery of the housing landlord function;~~  
~~reviews of existing policies or the introduction of new policies relating to or affecting the Council's tenancies;~~  
~~matters enabling tenant scrutiny and challenge as part of delivering co-regulation of the housing landlord service;~~  
~~performance of the housing landlord function.~~

~~Where these reports relate to items which will be submitted to the Council's Cabinet, the comments and recommendations of the Board will be submitted to Cabinet with the officer report. The Chair or Vice-chair of the Board will have the right to address Cabinet to present the Board's comments and recommendations.~~

## **Housing Management Assurance and Advisory Board**

### **Introduction and purpose**

**The Council has established a Housing Management Assurance and Advisory Board to oversee the activities of the landlord service.**

**The Board's focus is to offer challenge and gain assurance that the council is listening to customers, delivering high quality services, and is compliant with its regulatory responsibilities as a social housing landlord.**

## **Membership and appointment**

The board will comprise the following members:

- six tenants/leaseholders, selected by a panel comprising the strategic director, lead officer for tenant participation, a representative of a recognised independent tenant participation organisation and other Borough council officers if deemed appropriate by the strategic director, appointed for a period of three years providing the person continues to be a tenant/leaseholder;
- three borough councillors, who must not be cabinet members or cabinet support members, appointed annually on the basis of political balance;
- one person who is independent of the Council, selected by a panel comprising the strategic director, lead officer for tenant participation, two representatives from the Charnwood Housing Residents Forum and other borough council officers if deemed appropriate by the strategic director, appointed for a period of three years and confirmed annually by the board.

Any member can resign from the board by giving notice to the strategic director. Appointments to vacancies will be made in the same way as the original appointment and will be for the remainder of the resigning member's term of office.

All members will make a declaration at each meeting if they have an interest in any item of business on the agenda which would affect them more than tenants or residents of the ward(s) affected generally.

## **Chair and vice-chair**

The chair of the Housing Management Assurance and Advisory Board will be appointed annually by the board from among the tenant/leaseholder members. The board may appoint a vice-chair from among its members.

Where appropriate the chair will act as spokesperson for the board.

## **Frequency and notice of meetings**

Meetings will take place every two months and notice of and an agenda for each meeting will be sent to every member of the board by the council at least five clear working days before the meeting.

The board will agree a programme of meetings for the forthcoming year annually. The programme of meetings can be varied by the council with the agreement of the Chair.

## **Quorum**

The quorum for meetings of the board will be five members, at least two of whom must be tenants/leaseholders.

## **Decisions of the board and minutes of meetings**

Any issues before the board will be decided on the basis of a majority of the members and co-opted members present and voting.

Minutes of board meetings will be taken by the Council and submitted to the next meeting of the board for approval as a correct record. Except where they would disclose exempt of confidential information, the council will publish the minutes of board meetings on its website.

### **Functions of the board**

The Board will have oversight of all relevant matters relating to regulatory assurance and the council's landlord functions.

This will include:

- Monitoring compliance with the consumer standards in the Regulatory Framework
- Monitoring compliance with statutory health and safety requirements
- Reviewing high-level performance including the Tenant Satisfaction Measures
- Monitoring that value for money is achieved in service delivery
- Scrutinising and providing challenge as part of delivering co-regulation of the housing landlord service
- Oversight of customer feedback, complaints management and tracking how learning from complaints is improving services
- Reviewing the HRA budget and the housing investment programme
- Reviewing the Landlord Service Annual Service Plan and key projects
- Reviewing risk and risk management arrangements
- Reviewing draft reports on key decisions to be taken by the Cabinet or Council
- Being consulted on and advising the Director/Heads of Service on key changes to strategy, key policies, significant service changes and development proposals
- Maintaining an overview of the development and effectiveness of customer engagement and assurance that the customer voice is heard

Where those reports relate to items which will be submitted to the council's cabinet, the comments and recommendations of the board will be submitted to cabinet with the officer report. The chair or vice-chair of the board will have the right to address cabinet to present the board's comments and recommendations.

## **Item 3**

### **Chapter 3 – 3.6 Advisory Bodies and Working Parties**

#### **(c) Loughborough Area Committee**

The Council has established the Area Committee with the following advisory functions:

- To carry out a consultative role in relation to budgetary and financial issues which either solely or predominantly affect the Loughborough town area.
- To carry out a consultative role in relation to matters of policy and strategic direction which relate to or affect the Loughborough town area.

The Committee will have two scheduled online meetings per year, one in December to allow for consultation during the budget setting process for the Loughborough

special expenses, and one in **October** to consider an annual report regarding activities and issues affecting the Loughborough town area.

Further meetings may be called under the relevant provisions within the Constitution, but any business to be considered by the Committee must be in accordance with its consultative roles as set out above.

Any consultation responses made by the Committee should be collective submissions, arrived at and agreed in accordance with the relevant meeting procedures within the Constitution.

The Committee cannot commission or request reports from officers, other than as may be required to assist it with business being undertaken in its consultative roles.

## **Item 4**

### **Chapter 12 – 12.12 Plans Committee procedures**

#### **(c) Calling-in planning applications**

Councillors can request that an application that is wholly or partly within the boundary of their ward which would otherwise have been determined by the Head of Planning and Growth under delegated authority is called-in to the Plans Committee.

To be valid a call-in request must:

- be received in writing (which can include by email) no later than 5pm, 28 calendar days from the date of the consultation being sent to the ward councillors or 7 calendar days after the expiration of the initial local consultation on an application, including site notification and/or newspaper publicity, whichever is later.
- include relevant material planning considerations; and
- clearly justify why the decision is controversial or of significant public interest and should be made in public session.

Applications that are the subject of a valid request will be added to the agenda of the next reasonably available meeting of the Plans Committee for determination, unless a written request to withdraw it is submitted by the ward councillor.

A ward councillor can withdraw a call-in request at any time prior to the publication of the agenda for the meeting at which a called-in application is due to be considered. Withdrawals of call-in requests must be in writing (which can include by e-mail).

In addition, if, following a call-in which has not been withdrawn, officers believe that the issues raised by the ward councillor in his/her call-in have been addressed, officers will submit the recommendation report, which is prepared for each application, to the ward councillor. The report, which will contain a summary of the main issues regarding the application, will enable ward councillors to consider whether they wish to maintain or withdraw their call-in of an application. Ultimately,

the Chair (or vice chair in their absence) will decide if the item will be added to the committee agenda.

A further call-in period will be given to ward councillors if significant revised or additional plans or information are received on a planning application which necessitates a further period of local consultation. The relevant councillors will be informed in writing of any significant revised or additional plans or information and any further call-in period. The length of the further call-in period will be the same period as the re-consultation period on the revised or additional details.

If the following councillors are unable to exercise this right they may nominate another Councillor to request a call in on their behalf by giving notice in writing to the Head of Planning and Growth:

- the Mayor
- the Deputy Mayor
- councillors who are ill.

In the case of Single Member wards, if the ward councillor has a Disclosable Pecuniary Interest the member must within the 28 day call-in period request the Monitoring Officer to nominate an alternative ward councillor to consider speaking on or calling-in the application on valid planning reasons on their behalf.

Ward councillors must follow the requirements of the Members' Code of Conduct and the Planning Code of Good Practice in determining whether or not they are able to exercise their right to request the call-in of a planning application, or nominate another councillor to do so, under the provisions in the paragraph above, noting that the nominated ward councillor will consider the planning issues free from the influence of the ward councillor with a Disclosable Pecuniary Interest and will determine for themselves whether it should be called in or not.

Ward councillors who call-in a planning application are required to attend the Plans Committee meeting at which it is considered. If a ward councillor who has called-in a planning application is unable to attend the meeting, they must identify another councillor to speak on their behalf or in exceptional circumstances to provide a written statement for the Chair to read out within the allowed time for ward councillor speaking. The nominee can exercise the same ward councillor speaking rights as the councillor calling-in the planning application could have done if they were present at the meeting.

The following planning applications are not subject to the Call-In Procedure:

- (i) applications for Certificates of Lawfulness
- (ii) applications which fall to be determined by Leicestershire County Council or a neighbouring authority
- (iii) discharge of Planning Condition(s)
- (iv) applications for works to protected trees and/or trees in a Conservation Area

- (v) prior approvals - applications for prior approval of works to be carried out under permitted development rights (including notification of householder extensions etc.)
- (vi) applications for non-material amendments and minor material amendments to planning permissions that were determined under delegated authority and where no demonstrable harm would be caused to an interest of acknowledged importance
- (vii) screening and scoping applications for Environmental Impact Assessments.

## Item 5

### Chapter 9 Full Council Procedures - Requirement to remain in room during decision-making

#### 9.16 - Requirement to remain in room during decision-making

Only vote or take part in the meeting's discussion on an item if you have been present to hear the entire debate

## Item 6

### Chapter 12 (12.3) - Audit Committee Composition

Two Independent Members (inc. Independent Chair)

Plus seven Councillor members. No members of the Cabinet can be members of the Committee.

The Vice-chair will be appointed by the Committee from among its members.

Appointment of the Independent Chair of the Audit Committee (**and the Independent Member**) to be made by Full Council on recommendation from the S151 officer.

## Item 7

### 8.2 Delegation of Council functions

#### ~~Delegation to the Head of Governance~~

#### Head of Legal and Electoral Services

Planning

1. To serve requisitions for information under Section 330 of the Town and Country Planning Act 1990.
2. Rights of entry:
  - (i) to initiate a proposal under Sections 196A and 324 of the Town and Country Planning Act 1990 (rights of entry);
  - (ii) to appoint officers to enter premises for the purpose of inspection in connection with (i) above;
  - (iii) to serve notice of intention to enter premises for the purpose of inspection in accordance with Sections 196A and 325 of the 1990 Act;
  - (iv) to apply for warrants authorising entry under Section 196B of the 1990 Act.
3. To issue and serve enforcement notices (including an enforcement notice in relation to the demolition of an unlisted building in a conservation area) in cases of urgency and after notifying the Chair of the Plans Committee.
4. To serve planning contravention notices under Section 171C of the Town and Country Planning Act 1990.
5. To serve breach of condition notices.
6. To determine applications for certificates of lawfulness for proposed or existing uses or development.
7. To enter into and vary an agreement under Section 106 of the Town and Country Planning Act 1990.
8. To take action, including legal proceedings where necessary, in order to remedy any breaches of the requirements of planning conditions, enforcement notices or any failure to comply with the obligations contained in an agreement under Section 106 of the Town and Country Planning Act 1990.
9. To issue and serve a stop notice or temporary stop notice after notifying the Chair of the Plans Committee.
10. To apply for an injunction restraining a breach of planning control.
11. To apply for an injunction in relation to a listed building.
12. To serve notices under section 215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land.

#### Other

13. To institute, defend or settle any legal proceedings, including bankruptcy action, on behalf of the Council.
14. To take immediate legal action to enforce rights or obligations when he or she considers it to be in the interests of the area or its inhabitants so to do.
15. To issue formal cautions.
16. To negotiate and settle claims without recourse to court proceedings including the use of alternative dispute resolution.
17. To prepare and execute documents, including the affixing of the common seal, to give effect to a decision made by the Council or one of its committees or sub-committees or an officer in the exercise of delegated powers.
18. To determine which administrative area properties, fall into where electoral boundaries cross through the curtilage of a property.

## Head of Democracy

1. To make minor changes to the constitution.
2. To appoint 'proper officers' for particular purposes.
3. To prepare and execute documents, including the affixing of the common seal, to give effect to a decision made by the Council or one of its committees or sub-committees or an officer in the exercise of delegated powers.
4. To make appointments to the Member Conduct Panel from members and reserve members of the Member Conduct Committee.
5. To consider and report on any report of the Local Government Ombudsman.
6. To co-ordinate and oversee the overview and scrutiny function.
7. To make appointments to the Licensing Sub-committee and Personnel Panels where necessary from among the members and reserve members of the parent committee.
8. To implement any adjustments in basic and special responsibility allowances once the relevant officers' pay awards are finalised, including updating the Scheme of Members' Allowances as required and back dating any such adjustments to the relevant effective dates.

## **Delegation to the Head of Planning and Growth**

To enable Head of Planning and Growth to enter agreements with other planning authorities pursuant to s101(1)(b) Local Government Act 1972 in consultation with the Chair of the Plans Committee.