

CABINET – 12TH MARCH 2020**Report of the Monitoring Officer
Lead Member: Councillor James Poland****Part A****ITEM 13 ANNUAL REVIEW OF THE COUNCIL'S 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 1st May 2020.

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 14th March 2019 (Minute 103 refers) and Council on 25th March 2019 (Minute 91.2 refers).

The Member Conduct Committee reviewed the hearing appeals process for dealing with member conduct complaints and other elements of the Constitution relating to the Planning Code of Good Practice at its meeting on 2nd December 2019 (Minute 18 refers).

The issues identified by the Committee in respect of the hearing appeals process for dealing with member conduct complaints and Planning Code of Good Practice are described in Part B of this report.

Implementation Timetable including Future Decisions and Scrutiny

The proposed changes to the Constitution require Council approval and will be submitted to Council on 27th April 2020. Changes will come into effect from 1st May 2020.

A small number of potential changes to the Executive delegations to officers have been identified during this year's review. These will be the subject of a

separate report to the Leader, who has the authority to make changes to them. Any changes made will be reported to Council.

Report Implications

The following implications have been identified for this report.

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.

Key Decision: No

Background Papers: Member Conduct Committee, 2nd December 2019
(Minute No's 18 and 20 refer)
<https://charnwood.moderngov.co.uk/ieListDocuments.aspx?CId=146&MId=360&Ver=4>

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Part B

Background

1. 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 and the Chair of the Plans Committee, and of 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

Planning Code of Good Practice

2. The Planning Code of Good Practice was reviewed by the Member Conduct Committee on 2nd December 2019 (Minute 18 refers). The Committee considered section 8.1, 8.2 and 8.3 relating to contact by applicants, developers or objectors.
3. After discussion members of the Committee considered that the wording in the Planning Code of Good Practice provided sufficient flexibility for councillors to use their discretion when in contact with applicants, developer objectors with regard to involving Planning Officers. It also distinguished between members who sat on the Plans Committee and all councillors.
4. Therefore, no change is recommended on this point.

Member Conduct - Hearing Appeals

5. The Hearing Appeals process was reviewed by the Member Conduct Committee on 2nd December 2019 (Minute 18 refers). The Committee considered the process for appeals against decisions of Member Conduct Panels when determining complaints that a councillor may have breached the Members' Code of Conduct of their authority.
6. The Committee resolved that the Hearing Appeals process be amended to allow appeals only if there has been a procedural breach or if new evidence has come to light. This change was considered necessary to ensure the best use of councillor/officer time and that the current arrangements could potentially allow for groundless or frivolous appeals to be made. It has been recommended that the decision maker be the Monitoring Officer or Deputy Monitoring Officer in consultation with the Independent Person.
7. Therefore, it is proposed that Chapter 18 of the Constitution relating to the right of appeal be strengthened and clarified as per the recommendations of the Member Conduct Committee.

Member Conduct Committee – Parish/Town Council representatives

8. The Committee comprises seven borough councillors and up to three members of parish/town councils in the Council's area who are also not borough councillors. The representatives are co-opted as non-voting members by the Council for a term of office of four years.
9. Parish/Town Clerks have asked that they be given the opportunity to be co-opted onto the Member Conduct Committee as they consider that they possess the necessary skills set and experience.
10. The intention of the Constitution is that elected or co-opted serving Parish councillors who are not Borough councillors sit on the Committee. Therefore, no change is recommended on this point.

Full Council – Standing to Speak

11. When a councillor speaks at full Council, councillors must stand (unless otherwise permitted by the Mayor) and address the Mayor. It has been observed that not all councillors are adhering to this requirement and a councillor has requested the Constitution be strengthened.
12. It is considered that the Constitution is sufficiently clear about this requirement and the Mayor who presides over Council meetings will draw this requirement to the attention of all councillors as part of the housekeeping address. Therefore, no change is recommended on this point.

Questions on Notice – Full Council

13. A councillor has requested that the time limit at full Council for supplementary questions and statements be extended. At present a councillor may not speak for longer than a total of two minutes in asking a supplementary question and/or making a statement relating to a question on notice.
14. Research has established various practices across other Council's with most having one or two minute time limits, and at some Council's there is an expectation to abide by the normal speaking rules. Several other Council's operate a fixed 30-minute allocation for all questions and do not permit supplementary statements at the meeting. Most other Council's also only permit supplementary questions, and do not allow statements.
15. Therefore, it is proposed that that Chapter 9 of the Constitution be amended to reduce the time limit from two minutes to one minute, and the provision for making a statement arising from a question on notice be removed.

Call-in Planning Applications

16. Chapter 12 of the Constitution sets out the procedures for ward councillors to Call-in planning applications where the application is in their ward, part of the application site is in their ward or the application site is immediately adjacent to or within 15 metres of the boundary of their ward. Those ward councillors can request that an application is Called-in to the Plans Committee which would otherwise have been determined by the Head of Planning and Regeneration under delegated authority.
17. Currently to be valid a Call-in request must be received in writing (which can include by email) giving a relevant planning reason or reasons no later than 5pm, **21 calendar days** from the date of the consultation being sent to the ward councillors or the expiration of the initial local consultation on an application, including site notification and/or newspaper publicity, whichever is later. 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.
18. A minor change to this section of the Constitution has been requested to make provision for ward councillors to Call-in an application in after the 21 calendar days in exceptional circumstances with the agreement of the Chair of the Plans Committee, and the Head of Planning Services.
19. Therefore, it is proposed that Chapter 12 be amended as set out in the appendix.

Loughborough Area Committee

20. The role and responsibilities of the Loughborough Area Committee need to be added in to Chapter 5 of the Constitution.
21. Therefore, it proposed to include these in accordance with the original role and purpose of the Committee as agreed by full Council in January 2018 (Minute No. 65.3 2017/18 refers) which was to have two scheduled meetings per year (June and December) with a consultative role relating to budgetary and financial issues and matters of policy and strategic direction affecting the town of Loughborough.
22. It is also felt that clarification is required about how the Committee should agree any consultation responses it wishes to make. These should take the form of a collective response formally approved by the Committee as a whole (i.e. in a similar way to which parish and town councils make their consultation submissions), rather than various opinions expressed by individual Committee Members.
23. Therefore, it is proposed that Chapter 3 be amended as set out in the appendix.

Scrutiny Committee Procedures - Call-in

24. Chapter 11 of the Constitution sets out the arrangements for Scrutiny Committee procedures and in section 11.7 sets out that the following 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.
25. This wording does not make it clear that recommendations from Cabinet to Council cannot be Called-in as they are not decisions of the Cabinet. Likewise, it is not explicit that Cabinet decisions arising from Scrutiny Review Panels cannot be Called-in either.
26. Therefore, it is proposed that Chapter 11 be amended as set out in the appendix.

Financial Regulations

27. The S151 Officer has reviewed Chapter 16 relating to specific financial responsibilities and recommends various increases to thresholds such as virement, use of reserves, write off bad debts, disposal of assets to reflect inflationary and other price increases.
28. Therefore, it is proposed that Chapter 16 be amended as set out in the appendix.

Scheme of Delegation to Officers - Council Functions

29. The following changes that fall under the Council functions have been identified:

(a) Changes to the Establishment

Currently the Head of Paid Service can agree changes to the establishment, within budget and without major service or policy implications, affecting no more than five posts (irrespective of their post number) in any single case.

This has been further sub-delegated to Heads of Service subject to such decisions:

- relating solely to staff within the Head of Service's responsibility
 - being within the existing budget for the service
 - not resulting in the creation or deletion of posts, or potential redundancy situations
 - only affecting officers graded PO4 and below, and
 - only being taken after consultation with the Councils Human Resources service.
30. In practice this means that minor re-organisations with no operational disruption or interruption of services can sometimes require approval of

the Cabinet, which adds a layer of complexity and time delay to the process.

31. Therefore, it is proposed that Chapter 8.2 of the Constitution be amended to make it clear that only re-organisations of services which are likely to give rise to operational disruption or interruption of services or involving a change from direct to indirect provision or vice-versa, or other policy implications need approval of the Cabinet.

(b) Post Entry Training

32. Currently the Chief Executive, Strategic Directors and Heads of Service can approve post entry training of up to £2,500 per individual employee per financial year. This amount has not been reviewed for several years and it has been suggested it be increased to reflect the increased cost of training courses.

33. Therefore, it is proposed that Chapter 8 be amended so that this amount is increased to £5,000.

(c) Fixed Penalty Notices - hazards in private sector properties

34. Currently the Head of Regulatory Services and Head of Strategic and Private Sector can serve notices and authorise officers to issue fixed penalty notices, in pursuance of various statutory provisions. The provision in relation to hazards in private sector properties has been omitted from the Head of Strategic and Private Sector delegation and therefore it is proposed this provision be inserted.

Minor word and spelling changes

35. As part of the annual review various minor wording changes and spelling changes have been identified and these are set out in the Appendix.

APPENDIX 1

PROPOSED CHANGES TO THE CONSTITUTION

KEY:

Deleted text shown as struck through

Added text shown in bold and underlined

Item 1 – Code of Conduct Hearing Appeals

Chapter 18

18.9 After the hearing and appeals

The Panel will announce its decision on the day. The Panel's decision and reasons will be recorded in the form of the minutes of its meeting having regard for any exempt information that it considered and communicated to the relevant parties by letter. The Panel will, wherever possible, issue its full written decision and reasons within 10 working days of the end of the hearing.

The written decision will be provided to the Member, the complainant, the Investigator and where the Member is a parish/town councillor, the Parish/Town Clerk. The written decision will, if a finding has been made that the Member had failed to comply with the Code of Conduct, provide information as to the Member's right to appeal against the finding

Where the Panel has determined that the Member failed to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings and the Member's right to appeal in a local newspaper and on the Borough Council's website.

Where the Panel has determined that the Member did not fail to comply with the Code of Conduct, the Monitoring Officer will arrange for the publication of a notice of the Panel's findings in a local newspaper and on the Borough Council's website unless the Member requests that no notice is published.

If the Panel finds against the Member, the Member may ask for that decision to be reviewed by the Borough Council's Appeals and Review Committee. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer/**Deputy Monitoring Officer** within 10 working days of the date of the written notification of the Panel's decision.

On receipt of the review the Monitoring Officer/Deputy Monitoring Officer in consultation with the Independent Person will consider the validity of the appeal in terms of whether there has been a procedural breach or if new evidence has come to light.

The appeal will normally be heard within 20 working days of the receipt of the written request stating the wish for the finding to be reviewed. The appeal will be conducted following the procedure set out in section 8 but will consider only material relevant to the reasons for the review request set out by the Member.

18.12 The Right of Appeal

If the Panel finds against the Member, the Member may ask for that decision to be reviewed. A request for a review must be made in writing, giving the reasons for the request, to the Monitoring Officer within 10 working days of the date of the written notification of the Panel's decision.

The appeal will be heard by the Appeals and Reviews Committee **only after the Monitoring Officer/Deputy Monitoring Officer in consultation with the Independent Person has considered the validity of the appeal in terms of whether there has been a procedural breach or if new evidence has come to light.** The appeal will normally be heard within four weeks of the receipt of the written request stating the wish for the finding to be reviewed.

The appeal will be conducted following the procedure set out in section 18.11, but will consider only material relevant to the reasons for the review request set out by the Member

Item 2 – Full Council - Questions and statements by Councillors

Chapter 9

9.9. Questions and statements by Councillors

(a) Questions on notice

A Councillor can ask a question on notice to the Leader or the Chair of a committee about something the Council is responsible for or something that directly affects people in the Borough.

The full wording of these questions must be given to the Head of Strategic Support by noon on the sixth working day before the full Council meeting for it to be included on the agenda for that meeting.

The questions and answers to questions will be included in the minutes of the meeting and copies published on the working day prior to the meeting. At the meeting the question and answer will be taken as read from the published copies. The Leader may ask the relevant Cabinet Lead Member to reply.

A Councillor may give notice of more than one question for a Council meeting. However, if the questions asked by a Councillor are linked they must be asked together and will be responded to together. Linked questions are those which deal with the same general subject, decision or event irrespective of whether the Councillor gave notice of them at different times.

(b) Questions and statements without notice

A Councillor can ask a question to the Leader or the Chair of a committee without notice about any matter so long as the question is asked when the matter is being considered by the Council and must relate directly to the agenda item. In the case of a question to the Leader, the Leader may ask the relevant Cabinet Lead Member to reply. A Councillor raising a question can speak for no longer than a total of three minutes, and a Councillor responding may not speak for longer than a total of three minutes.

(c) Supplementary questions and statements

A Councillor can ask one supplementary question ~~and/or make a statement~~ **arising from a question on notice that they have submitted** provided that they give notice to the Head of Strategic Support that they wish to do so between the publishing of the answer to the question and noon on the date of the Council meeting. The notice can be made in writing, including by email, telephone or in person and can be made via a member of the Committee Services and Mayoralty team. A supplementary question ~~or statement~~ must be addressed to the same Councillor as the first question and must be relevant to and arise directly from the first question or the answer.

A Councillor may not speak for longer than a total of ~~two~~ **one** minutes in asking a supplementary question ~~and/or making a statement~~ relating to a question on notice.

(d) Responding to questions and statements

The questions and answers to questions on notice will be included in the minutes of the meeting and copies published prior to the meeting. At the meeting the question and answer will be taken as read from the published copies.

The answer to a supplementary question ~~and the response to the statement~~ may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

A Councillor may not speak for longer than a total of ~~two~~ **one** minutes in replying to a supplementary question ~~and/or responding to a statement~~ in relation to a question on notice.

Item 3 - Call-in Planning Applications

Chapter 12

12.12 Plans committee procedures

(c) Calling-in planning applications

After a planning application has been registered and made valid officers will write to ward councillors where the application is in their ward, part of the application site is in their ward or the application site is immediately adjacent to or within 15 metres of the boundary of their ward.

The right to call-in the application applies only to those ward councillors where the application site is wholly or partly within the boundary of their ward. Those ward councillors can request that an application is called-in to the Plans Committee which would otherwise have been determined by the Head of Planning and Regeneration under delegated authority.

To be valid a call-in request must be received in writing (which can include by email) giving a relevant planning reason or reasons no later than 5pm, 21 calendar days from the date of the consultation being sent to the ward councillors or the expiration of the initial local consultation on an application, including site notification and/or newspaper publicity, whichever is later.

In exceptional circumstances, a ward councillor can call-in an application after the 21 calendar days with the agreement of the Chair of the Plans committee and the Head of Planning & Regeneration.

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.

After an application has been called-in, unless a written request to withdraw it is submitted by the ward councillor, the application will be referred to the Plans Committee for determination.

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 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.

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.

Ward councillors who call-in a planning application are expected 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, he/she is able to, and should, identify another councillor to speak on his/her behalf. The nominee can exercise the same ward councillor speaking rights as the councillor calling-in the planning application could have done if he/she was 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/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 where no demonstrable harm would be caused to an interest of acknowledged importance
- (vii) screening and scoping applications for Environmental Impact Assessments.

Item 4 – Loughborough Area Committee

Chapter 3

3.6 (c) Loughborough Area Committee

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

1. To carry out a consultative role in relation to budgetary and financial issues which either solely or predominantly affect the Loughborough town area.

2. 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 meetings per year, one to allow for consultation during the budget setting process for the Loughborough special expenses, and one 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 5 – Scrutiny Committee Procedures - Call-in

Chapter 11

11.7 Call-in

The following 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, or where a Cabinet decision relates to a recommendation by a Scrutiny Panel.

Item 6 – Financial Regulations

Chapter 16

(c) Virement

Virement is the switching of resources between approved budget headings and cost centres.

The Council's scheme of virement covers both revenue and capital expenditure and is administered by the Section 151 Officer in accordance with the Budget and Policy Framework Procedure Rules. The detailed virement rules are contained within the Financial Procedure Rules.

Budget Holders are responsible for agreeing in-year virements within delegated limits, in agreement with either the Head of Finance and Property Services, Section 151 Officer or Cabinet depending on the nature and value of the virement as set out in the Financial Procedure Rules.

Cabinet approval is required for:

- virement between the budgets of two or more Directorates where the amount is in excess of ~~£50,000~~ **£100,000**
- virement between individual projects within the capital programme where the amount is in excess of ~~£50,000~~. **£100,000**

Virements should only be made where such a virement leaves the originating budget with sufficient funds to meet its commitments.

(d) Use of Reserves

Except in the case of staffing decisions delegated to the Head of Paid Service which result in redundancy or salary protection costs, **or individual amounts below £50,000 which may be allocated at the discretion of the Head of Paid Service,** Cabinet approval is required for the use of the Reinvestment Reserve.

(e) Write Off of Bad Debts

All write-offs of individual debts over ~~£20,000~~ **£50,000** must be authorised by Cabinet. Authorisation levels for bad debts below ~~£20,000~~ **£50,000** are at officer level and are detailed in the Financial Procedure Rules.

(f) Disposal of Assets

Obsolete, non-repairable or unnecessary assets should be disposed of with a view to achieving the most economically advantageous outcome for the Council having regard to the transparency and cost effectiveness of the disposal method, the timeliness of disposal and the likely price achievable.

Where individual assets, (which are not land or buildings), valued over ~~£20,000~~ **£50,000** need to be disposed of and written off Cabinet approval must be sought in advance. Items which are valued at below ~~£20,000~~ **£50,000** can be approved at officer level. Details of officer approval levels are contained in the Financial Procedure Rules.

Where land and property (buildings) assets with a freehold value of over £100,000 or a leasehold value of over £50,000 need to be disposed of or written off (excluding Right to Buy applications) Cabinet approval to the terms of the disposal must be sought in advance. Items which are valued at below these amounts can be approved at officer level. Details of officer approval levels are contained in the Financial Procedure Rules.

Item 7 – Minor word and spelling changes

Chapter 1

1.1 Summary of citizens' rights

Citizens have the right to:

- look at the Forward ~~Plan~~ **Plan** which shows what important decisions will be taken and when (see 13) – this is available on the Council's website and at the main offices.
- request information under the **General Data Protection Regulations (GDPR)**, Freedom of Information Act, Environmental Information Regulations and Data Protection Act

1.2 Councillors

(a) Elections and terms of office

There are 52 Councillors, who represent 28 wards.

Full elections are held every fourth year, with elections due in ~~2015, 2019 and so on.~~

Councillors serve for four years. They become Councillors on the fourth day after being elected. Their terms of office end four years later, on the fourth day after the elections.

Chapter 3

3.7 Delegations to and from other local authorities

The Council is one of the authorities that has established and is represented on the Police and Crime Panel for the area of the Leicestershire ~~Constabulary.~~ **Police**

Item 8 – Delegation of Council functions

Chapter 8

Delegation to the Chief Executive, Strategic Directors and Heads of Service

- 2(vi) To approve post entry training of up to ~~£2,500~~ **£5,000** per individual employee per financial year;

Delegation to the Head of Paid Service

6. To agree changes to the establishment, within budget and without major **operational disruption or interruption of services or involving a change from direct to indirect provision or vice-versa or other policy implications.** ~~service or policy implications affecting no more than five posts (irrespective of their post number) in any single case.~~

Delegation to the Head of Strategic and Private Sector Housing

3. To serve notices and authorise officers to issue fixed penalty notices, in pursuance of any statutory provisions relating to:
- a. The maintenance repair and/or cleansing of defective, stopped up, leaking or overflowing drainage systems, water closets or soil pipes.
 - b. Filthy or verminous premises, articles or persons.
 - c. **Hazards in private rented properties**