

## COUNCIL – 21ST JUNE 2021

### Report of the Monitoring Officer

#### ITEM 6.2 REVIEW OF THE COUNCIL'S CONSTITUTION – DELEGATIONS TO THE HEAD OF PLANNING AND REGENERATION

##### Purpose of Report

To consider proposed amendments to the Constitution in relation to the delegations to the Head of Planning and Regeneration.

##### Recommendation

That the changes to the Constitution set out in Appendix 1, to be effective from 22<sup>nd</sup> June 2021 be approved.

##### 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 8<sup>th</sup> April 2021 (Item 7, Minute 108 refers) and Council on 26<sup>th</sup> April 2021 (Item 6.2, minute 132 refers).

An extract from the Council minutes from 26<sup>th</sup> April 2021 details consideration of the matter:

##### *“132, ANNUAL REVIEW OF THE CONSTITUTION*

*A report of the Cabinet to consider proposed amendments to the Constitution following the annual review (item 6.2 on the agenda filed with these minutes).*

*An amendment to the recommendation was requested by Councillor Smidowicz, such that the changes to the delegations to the Head of Planning and Regeneration set out in item 4 to the appendix of the report of the Monitoring Officer not be made but would be considered at a future meeting of the Council.*

*It was proposed by Councillor Smidowicz, seconded by Councillor Shepherd, and*

*RESOLVED that the changes to the Constitution set out in Appendix 1 to the report of the Monitoring Officer (attached as an Annex) be made, to be effective from 1st May 2021, subject to the amendment that the changes to the delegations to the Head of Planning and Regeneration, set out in item 4 to the appendix of the report of the Monitoring Officer, not be made but would be considered at a future meeting of the Council”*

## Reason

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

## Implementation Timetable including Future Decisions and Scrutiny

The approved changes to the Constitution will take effect on 22<sup>nd</sup> June 2021 as set out in the recommendation. The Monitoring Officer will publish an updated version of the Constitution incorporating the approved changes.

## 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: None

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## **Part B**

### Background

1. This report describes the recommended changes in relation to the delegations to the Head of Planning and Regeneration that fall under Council functions which were deferred at the Council meeting on 26<sup>th</sup> April 2021 for further clarification. The proposed amendments are set out in appendix 1 to the report.

### Proposed changes to the Constitution - Delegations to the Head of Planning and Regeneration.

#### **Development Management**

##### Planning applications that have expired

2. From time to time planning applications that have been submitted to the planning authority expire before they are determined or are otherwise abandoned. These applications would ordinarily remain on the planning register forever as undetermined applications creating uncertainty for the public about their progress and status unless there is a decision to dispose of them. Under Article 40 (13) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, provision is made for the local planning authority to decide that an application may be treated as 'disposed' and it is proposed to formalise this decision making process in the scheme of delegation.
3. Therefore, it is proposed that Chapter 8 of the Constitution be amended as set out in the appendix.

##### Appeals against non-determination

4. When planning applications are not determined within the statutory 8 or 13 week period (or any extension of time agreed) the applicant may appeal to the Planning Inspectorate that the application has not been determined within time. This process removes the application from the local decision-making environment and gives it to the Planning Inspectorate. Procedurally we are required to respond to the planning Inspectorate within five weeks of receiving their notification of the commencement of the appeal (the 'start letter') setting out how the local planning authority would have determined the application had they had the opportunity to do so. The response is in affect the outline of the local planning authority's statement of case for or against the proposal.
5. As the requirement is to respond within five weeks, there is rarely a circumstance where there is sufficient time to report into the next plans committee meeting, for those applications that would ordinarily be considered by committee, given the planned cycle of meetings. The urgency of the situation makes it difficult to arrange a special meeting of committee. If the local planning authority does not respond in five weeks, then the Inspector may refuse to accept the planning authority's statement of case at the appeal.
6. Therefore, it is recommended that delegated authority is given to the Head of Planning and Regeneration to make the report to the planning Inspectorate in these circumstances in consultation with the Chair and Vice Chair of Plans Committee.

7. Therefore, it is proposed that Chapter 8 of the Constitution be amended as set out in the appendix.

Applications contrary to the development plan

8. Item 1 of the scheme of delegation gives delegated authority to the Head of Planning & Regeneration to determine all planning applications subject to a number of exceptions. Under item 1 (i) it refers to those applications that are ‘...contrary to the provisions of a draft or submitted development plan policy or supplementary planning guidance and is recommended for permission’. However, the courts have shown that while draft and submitted development plan policies are material considerations, they have very little weight in decision making and therefore referring applications to Plans Committee that are not in accordance with a draft or submitted policy is likely to be inconsequential in terms of what this provision was originally intended to capture.
9. Similarly, the planning legislation no longer makes references to supplementary planning guidance and therefore it is not considered necessary to refer to them in the constitution.
10. In item 1(ii) there is reference to applications being ‘...potentially controversial...’. It is not considered necessary to include reference to applications being ‘potentially controversial’
11. With regards to item 1(vi) this provision refers to “non minor and non technical” rather than simply ‘minor’ and for the avoidance of doubt the wording of this provision should be amended.
12. Therefore, it is proposed that wording changes be made to item 1 (i), (ii) and (vi) Chapter 8 of the Constitution as set out in the appendix.