

<b>Title of Report</b>	<b>REVIEW OF THE COUNCIL'S CONSTITUTION 2023/24</b>	
<b>Presented by</b>	Elizabeth Warhurst, Head of Legal and Support Services and Monitoring Officer	
<b>Background Papers</b>	<a href="#">Current Constitution</a>	<b>Public Report:</b> Yes
<b>Financial Implications</b>	There are no direct financial implications arising.	
	<b>Signed off by the Section 151 Officer:</b> yes	
<b>Legal Implications</b>	The Monitoring Officer has reviewed the Constitution to ensure that members and officers can make robust effective decisions. The proposed new version is based on legal advice, best practice and is in compliance with the law.	
	<b>Signed off by the Monitoring Officer:</b> yes	
<b>Staffing and Corporate Implications</b>	There are no direct staffing or corporate implications arising.	
	<b>Signed off by the Head of Paid Service:</b> yes	
<b>Purpose of Report</b>	To ask the Committee to consider the work of the Constitution Member Working Group on reviewing the Constitution for the Council and to recommend its adoption to Council.	
<b>Recommendations</b>	<p><b>THAT AUDIT AND GOVERNANCE COMMITTEE:</b></p> <ol style="list-style-type: none"> <li><b>1. NOTES THE WORK OF THE CROSS-PARTY WORKING GROUP IN CONDUCTING THE ANNUAL REVIEW OF THE CONSTITUTION;</b></li> <li><b>2. CONSIDERS THE PROPOSED CHANGES TO THE CONSTITUTION, SUMMARISED IN THE REPORT AND AT APPENDIX A AND ILLUSTRATED AT APPENDIX B;</b></li> <li><b>3. RECOMMENDS THE CHANGES TO THE CONSTITUTION TO COUNCIL AT ITS MEETING ON 23 FEBRUARY 2024 FOR ADOPTION WITH EFFECT FROM 7 MAY 2024</b></li> </ol>	

## 1.0 BACKGROUND

- 1.1 The Local Government Act 2000 requires each local authority to prepare, keep up to date and publicise the document known as the Constitution.

- 1.2 The Constitution should be logical, integrated, and accessible to members, officers, the public and anyone else interested in the way a local authority makes its decisions. There is also a statutory requirement on the Council's Monitoring Officer to keep the Constitution up to date, and accordingly the update of the Constitution is an on-going process.
- 1.3 Full Council regularly considers items relating to updates to the Constitution. The updates are generally required due to legislative and organisational changes or to clarify and improve processes within the Council to reflect best practice. A detailed review of the Constitution was conducted during 2022/23, involving a cross party member working group. The latest constitution was adopted by Council on 23 February 2023 and came into effect on 9 May 2023.
- 1.4 Given the extensive work which was carried out on the last review of the Constitution, by both members and officers, a "lighter touch" review is appropriate for 2023/24.

## **2.0 METHOD OF REVIEW**

- 2.1 The review of the Constitution was led by legal services and involved consultation with officers on areas of the document which needed to be updated/amended for the purposes of clarity, to reflect any changes in the law and incorporating any feedback raised by members. The Monitoring Officer has also engaged with the Leader and Deputy Leader of the Alliance and Leader and Deputy Leader of the Opposition to ensure that they were kept up to date on the progress of the review.
- 2.2 As with the 2022/23 review and following interest expressed by members in this area of work, a cross party member working group was established to feed into the work on the Constitution. The Constitution Working Group comprised Councillors Everitt, Rogers, Simmons (Chair), Smith and Sutton and it met on the following dates:
  - 19 September 2023
  - 1 November 2023
  - 6 December 2023
- 2.3 At its first meeting, the working group agreed its terms of reference, timetable for the review and the way that it wished to see information presented to it. The appendices to this report reflect the approach agreed by the working group. Appendix A shows the proposed changes in a summary schedule of changes. Appendix B takes extracts from each relevant section of the Constitution and shows the proposed changes as tracked changes. This enables Members to see the proposed changes in one place and in the context of the Constitution document.
- 2.4 Any feedback from the group has been taken into account in updating the relevant sections. Members have provided invaluable insight and constructive challenge to the review process and are thanked for their time and work on this project.

## **3.0 SUMMARY OF THE MAIN CHANGES PROPOSED**

- 3.1 The summary schedule of changes to the Constitution is provided at Appendix A. The updated extract from the Constitution is provided at Appendix B. A hyperlink on the first page helps navigate to the relevant sections. The proposed changes cover the following:

### **1. Planning Call in**

New wording has been drafted on how conflicts of interest are dealt with. The proposed wording does not change the circumstances for when call-in is used or the procedure but clarifies how call-in will be dealt with when the Chair or Vice-Chair are unable to act to call-in an application where they have a conflict of interest. The new wording also introduces the Portfolio holder as decision maker where the Chair and Deputy Chair are both conflicted in making a decision on a call-in request.

Following feedback from Members, the call-in process has been separated out of the functions of the Planning Committee and given its own section and heading. This enables the provisions to be more easily found in the Constitution.

The proposed changes were considered by the Planning Cross Party Working Group at its meeting on 22 November 2023 along with an update to the operational process for call-in. The Group was agreeable to the new wording for the Constitution, and content that the process behind it was consistent with this new wording. The comments of the Planning Cross Party Working Group were fed back to the meeting of the Constitution Working Group on 9 December 2023.

## **2. Definition of Political Balance**

The definition of Political Balance within the glossary has been amended to cross reference to the annual appointments report which is considered by Council at its annual meeting. It is planned to update the annual appointments report to provide more detail on how proportionality is calculated and appointments to committees are made.

## **3. Right to Buy Delegation**

Where the value of a land disposal exceeds £30,000 the decision to make the disposal lies with Cabinet. Additional wording has been added to preclude property being sold under the right to buy scheme.

Applications made by Council tenants under the right to buy legislation are assessed against a set criterion. If the applicant is deemed eligible then the Council is obliged to sell the property, they have no discretion. Given this, it is reasonable, therefore, that this be dealt with at officer level and not seek approval of Cabinet every time a disposal is made.

## **4. Civic Council and awards element**

New wording has been added to the Responsibilities for Functions section of Full Council to enable Council to use its discretion to make civic awards. They may choose the number of awards, what for, when to give them out or choose not to make any awards at all.

## **5. Definition of Quorum**

The definition of Quorum within the glossary has been amended to clarify the position that members have to be physically present in a meeting and entitled to vote when calculating quorum.

## **6. Ability for Strategic Directors to act on each other's behalf**

Prior to 2022, the constitution contained wording which enabled Strategic Directors to step in and exercise the delegated powers of one another. These provisions have been carried forward in the new Constitution but limited only to emergency or urgent situations.

It has been requested that the previous provisions be reinstated for operational consistency, save for those matters which are delegated to the Section 151 Officer which will remain exercisable only by the S151 Officer or their Deputy.

## **7. Community bodies**

References to Community Bodies also include national and regional bodies including the airport, LGA and East Midlands Councils. It is more appropriate to call them Outside Bodies, and it is proposed that all references are changed.

## **8. Disposal Delegation and Annual Rental Delegation**

The Chief Executive suggested to reduce the limit on Delegated Disposals of land/property from £30,000 to £10,000. This is to enable Cabinet to manage the Council's property estate and, in the context of the Council's financial situation, allow transparency and Cabinet understanding the implications of disposing of assets corporately.

The second change in this section of the Constitution relates to the value of the delegations for dealing with leases of the Council's commercial property estate. As currently drafted, the granting of leases would be caught by the above delegation limit (currently £30,000 but proposed to be reduced to £10,000). The previous scheme of delegation had a specific delegation permitting the grant of a lease where the annual rental does not exceed £40,000.

The Council has a large portfolio of commercial properties for let and, for the majority of these, the total rent for the term of the lease will exceed £30,000.

It leaves the Council in a situation where Cabinet Approval is required for each individual lease. This impacts the Council's ability to efficiently operate commercial lettings.

The Head of Economic Regeneration, with the support of the Strategic Directors and the Chief Executive, has suggested to revert back to the previous position. A delegation permitting the grant of leases where the annual rental income does not exceed £40,000 but with the additional safeguards of Market Rent being achieved, a maximum lease of 15 years and only applying to the Council's Commercial Portfolio. Definitions of Market Rent and Council's Commercial Portfolio would be added to the glossary so that it is clear when this delegation can be used. This strikes the balance of member oversight whilst maintaining an efficient commercial letting operation.

## **9. Planning Code of Conduct**

It is proposed to change references to Disclosable Interest and Disclosable Pecuniary Interests in the planning code of conduct to Registerable and Other Registrable interests to provide consistency with the Councillors Code of Conduct.

## **10. Dispensations in the Councillors Code of Conduct**

It is proposed to reword the reference to dispensations in the Councillors Code of Conduct. The revised wording will clarify the intentions and true meaning behind the ability to give dispensations. As currently written, it reads as though the granting of a dispensation only allows a Member to stay in the room (and not vote) but this is not the intention of a dispensation. The granting of a dispensation allows a member to also participate and vote on a matter.

Additional wording is also suggested to the glossary in relation to the definition of dispensations, to include reference to the Monitoring Officer being able to grant them. This provides consistency and accuracy to the provisions of the constitution.

Amended wording is also suggested to the Access to Information Procedure Rules, amending reference from Chief Executive to Monitoring Officer or the Audit and Governance Committee as it is in fact these who have the power to grant dispensations and not the Chief Executive.

## **11. Independent Persons**

There are two types of Independent Persons referred to in the Constitution. The first are those whose role it is to sit on the Audit and Governance Committee. The second are those who are involved in Councillor Code of Conduct matters.

In relation to the former, it is proposed to add wording to the Audit and Governance Committee form and structure section to make it clear that Independent Persons for the Committee will be appointed by the Committee. In practice, the Committee may delegate this function to the Chair and/or a smaller number of members of the Committee.

This follows recent CIPFA guidance that "...recommends that each authority audit committee should include at least two co-opted independent members to provide appropriate technical expertise."

In relation to the latter, it is proposed that wording is included to specifically identify that the appointment of IP's to the pool, for the purpose of Councillor Code of Conduct matters, will be a function of Full Council. IP's terms of office in this context run for four years.

## **12. Ordinary Meetings of the Council**

A minor change is proposed which clarifies the current wording of what will happen at Ordinary Meetings of full council by adding "any" into all the functions. The consistent use of the word any throughout the paragraph means that each function is not mandatory at every ordinary meeting but should be considered where relevant.

## **13. Supplementary Estimates**

A supplementary estimate is an addition to the Council's agreed budget. Supplementary estimates can be one-offs, or recurring. It is proposed to include a new threshold £0-£9,999 so that the s151 officer can approve low value supplementary estimates to avoid these needing to go to Cabinet.

Cabinet approved this delegation at their meeting on 21 November 2023 and the intention here is to formalise this within the Constitution.

## **14. Access to Information Rules**

It is proposed that all references to the council offices/offices/designated office shall be updated to 'Council Offices' to maintain consistency.

A definition of the term "Council Offices" will also be included in the glossary that's covers Whitwick Business Centre, Stenson House and the Customer Contact Centre as appropriate.

In addition, new wording is proposed to ensure that the legislation is reflected in the Constitution. Where the legislation specifically states that a notice is to be published on both the Council's website, this shall be spelt out specifically and consistently throughout the access to information rules. Previously the language had been used intermittently which was not an accurate reflection of the requirements of the legislation.

- 3.2 In addition to the main changes, a cold read of the entire Constitution will be undertaken to correct any inconsistencies.

<b>Policies and other considerations, as appropriate</b>	
Council Priorities:	An up-to-date modern Constitution helps the Council to make robust and effective decisions and deliver corporate priorities.
Policy Considerations:	N/A
Safeguarding:	N/A
Equalities/Diversity:	N/A
Customer Impact:	The Constitution is made available to customers on the Council's website.
Economic and Social Impact:	N/A
Environment and Climate Change:	N/A
Consultation/Community/Tenant Engagement:	The Monitoring Officer consulted and engaged with the Chief Executive, Directors, Section 151 Officer, other officers, Leader and Deputy Leader of the Alliance, Leader and Deputy Leader of the Opposition, Planning Cross Party Working Group and the Constitution Cross Party Working Group.
Risks:	An up-to-date Constitution which is reviewed regularly ensures that robust and effective decisions can be made by members and officers.
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