

AUDIT AND GOVERNANCE COMMITTEE



Report subject	Report of the Constitution Review Working Group - Changes to the Council's Constitution
Meeting date	26 November 2020
Status	Public Report
Executive summary	<p>The report summarises the issues considered by the Constitution Review Working Group and sets out a series of recommendations arising from the Working Group for consideration by the Committee.</p> <p>Any recommendations arising from the Committee shall be referred to full Council for adoption.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none">(a) the views and recommendations of the Constitution Review Working Group, as set out in this report at paragraphs 14, 16, 18, 24, 27, 31, 33 and 36, be supported;(b) that necessary and consequential technical and formatting related updates and revisions to the Constitution be made by the Monitoring Officer in accordance with the powers delegated.
Reason for recommendations	To make appropriate updates and revisions to the constitution following consideration by the Working Group.

Portfolio Holder(s):	Councillor Drew Mellor (Leader of the Council)
Corporate Director	Graham Farrant (Chief Executive)
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Wards	Council-wide
Classification	For Recommendation

Background

1. The Terms of Reference of the Audit and Governance Committee include 'Maintaining an overview of the Council's Constitution and governance arrangements in all respects'.
2. In discharge of this responsibility the Committee established a Constitution Review Working Group of five of its Councillors. The Members of the Working Group consisted Councillor Williams (elected Chairman) and Councillors Beesley, Brooke, D Butt and Cox. Councillor Andrews attended one meeting as a substitute. The Chairman of the Planning Committee, Councillor Kelsey was invited to attend and contribute in relation to discussions about the Planning process. Meetings were attended by the Interim Monitoring Officer and the Monitoring Officer, once in post.
3. The Working Party met on three occasions during September and October 2020.
4. Prior to commencement of its work, the Chairman of the Audit and Governance Committee wrote to all members of Council asking them to submit items for discussion and consideration. Items submitted after the Working Group had begun its deliberations are included on a list of items for future discussion. The Chairman of the Audit and Governance Committee has indicated that it is his intention, in the New Year, to canvas all Councillors once again. The intention is that this will facilitate another tranche of activity for the Working Group.

Review of Procedure Rule 36 (Variation and revocation of Procedure Rules)

5. The Working Group was reminded that recommendations from the Working Group would be presented, in the first instance, to the Audit and Governance Committee who would, in turn, submit recommendations as necessary to the Council. Advice was received from the Interim Monitoring Officer about the implications and effect of Procedural Rule 36 in Part 4 of the Constitution which prescribed the decision-making process for the variation and amendment of Procedural Rules. It was explained that the essential implications of Rule 36 were that any recommendation from the Audit and Governance Committee to vary or revoke procedural rules would need to be deferred to the subsequent meeting of the Council. The Working Group noted the effect of this on their programme of work.

Member call-in of Planning applications

6. Although the provisions for Member call-in of planning applications had been changed during a recent review, there was acceptance that the current 30 day window for Member call-in was causing some concern and potentially imposing unnecessary constraints.
7. However, whatever provision emerged for call-in going forward, the importance of dialogue between Councillors and the applicable Planning Officer was emphasized and requests for call-in should always only be expressed within the terms of proper planning policy reasons. There was potential to provide enhanced guidance for members within the format of a protocol.
8. The Working Group Members underlined the importance of a clear and robust process and the format of the existing call-in request form was explained. Although the current process was working well, was clear and considered easy to use, there was an opportunity to consider with IT whether the request process could be further improved. In any call-in situation early dialogue with the relevant Planning Officer was emphasised as key.
9. The Working Group addressed the specific issue of call-in of Planning applications by ward Councillors who were also members of the Planning Committee and the implications of this on predetermination. The protocol would need to address this and provide clear guidance for Planning Committee members. It would also need to address and define those situations where a call-in by a member of the Planning Committee could be made, on an exceptional basis, when necessary in the public interest.
10. The Working Group considered that these were all matters that could potentially best be addressed within a protocol developed outside the Constitution.
11. Subsequent to the final meeting of the Working Group, additional advice was sought in the development of the draft protocol. The supplementary advice in paragraphs 12 and 13 below were not therefore available to the Working Group at the time of their final meeting when making their recommendations referred to in paragraph 14.
12. The Monitoring Officer has provided advice that such a protocol, albeit sitting alongside the Constitution, would require the approval of full Council. Further, after additional discussion with Legal Services in developing the draft protocol, it is now clear that there is significant concern whether legally or practically this delegation procedure could operate without some clear cut off date. In short, there has to be a point after which it is clear that an officer has the power to make a determination and issue a planning decision without the risk of a call-in being requested. Further, such a date should be sufficiently early to give organisational confidence that a call-in request has not been submitted but not identified prior to a determination being made.
13. Separate to any legal and practical concerns there are also managerial/corporate risks relating to any process that might effectively extend the consultation period. It is understood that the primary reason for concern relating to the existing 30 day cut-off date was to seek to ensure adequate opportunity for members to submit a call-in request. However, for many planning applications, there is a statutory time period of 8 weeks (56 days) within which a decision should normally be made. Depending on the stage of a committee cycle, even a call-in received within the current 30 day period has the potential to push such applications beyond this deadline creating the

scope for an appeal against non-determination. Nevertheless, if members wish to allow more time, a compromise might be to extend the call-in option to 35 days.

14. The Working Group recommend that, subject to consideration of paragraphs 12 and 13 above:-

- (a) the Constitution be amended in Part 3, Section 2, Paragraph 2.2 to remove the 30-day time limit for member call-in of planning applications although the requirement for there to be dialogue between the Councillor calling-in an application and the applicable Planning Officer be retained;**
- (b) the protocol set out at Appendix 1 to this report be adopted.**

Neighbourhood Forum call-in of Planning applications

15. In this context the Working Group considered the range of methods that were already in place to call-in an application. This included the trigger for call-in initiated by 20 letters of representation as well as the call-in powers, already addressed above, of local ward members. Members were not of the view that anything could be added to the process by extending the power of call-in to Neighbourhood Forums or indeed to any other consultative bodies.
- 16. The Working Group recommend that the power to call-in planning applications to Committee should not be extended to Neighbourhood Forums.**

Petition call-in of Planning applications

17. The Working Group were of the view that the current trigger for call-in initiated by 20 letters of representation provided sufficient facility for local residents.
- 18. The Working Group recommend that the call-in of planning applications upon receipt of a petition from local residents should not be added to the current process for call-in.**

Role of Parish Councils in relation to amended plans

19. The Working Group considered the situation which applied where submitted plans were amended by the applicant after a Parish Council had submitted its comments and whether such an amendment should trigger a further phase of consultation with the Parish Council.
20. There was awareness of the wide range of types of amendments to an application extending from very minor to those which were more significant. There was also always the possibility that, in some cases, an amendment could potentially decrease impact of an application.
21. To reflect this, the protocol should set out very clearly the way in which amended plans should be dealt with. Such a protocol would need to be mindful of the need to balance the benefits of further consultation against the timescales for determining applications and there was clear opportunity for use of Officer discretion within defined parameters.
22. It was noted that in most cases there was, in any event, a continuing dialogue around amendments involving the applicant, Planning Officers and, often, consultees. The Working Group emphasized the importance of maintaining a good flow of information between Councillor and Planning Officer and of keeping ward Councillors closely informed throughout. The critical importance of ward Councillors being able to effectively reflect the views of their residents was underlined.

23. The Monitoring Officer provided advice that such a protocol, albeit sitting alongside the Constitution, would require the approval of full Council.
- 24. The Working Group recommend that:-**
- (a) the current arrangements for consultation with Parish and Town Councils after a subsequent amendment be retained;**
 - (b) the protocol set out at Appendix 2 to this report be adopted.**

Process for considering Tree Preservation Orders

25. The Working Group reviewed the current process by reference to a flow chart of the stages involved. Once again, there was emphasis on the importance of there being absolute clarity for Councillors about the process, including the procedures for commencing action in an emergency or when time was short.
26. The current practice for working with local residents was explained. There was a view that returning to the situation where decisions on Tree Preservation Orders were made by the Planning Committee would impose unnecessary additional burden upon the overall process. An informative note would, however, be added to the process to ensure that the emergency process was clearly set out and accessible. A copy of the revised process is attached as Appendix 3 to this report.
- 27. The Working Group recommend that Tree Preservation Orders continue to be processed and determined at Officer level and not be referred to the Planning Committee for determination.**

New Planning Committee Structure

28. The Working Group carefully considered suggestions for changes to the current BCP Planning Committee structure and the comparative information presented about the organisation of the Planning function in other Councils. There were clearly a range of different options in use across the country. In the BCP Council area it appeared that issues arose around perceptions in some quarters of lack of local representation as between the three legacy council areas.
29. Although understanding the points made, the Working Group were of the view that local representation within the planning process was best provided through the special role allocated to local ward Councillors. Examples included the power to call-in and to address the Committee about applications within their ward.
30. The Working Group agreed that the current single committee system worked well in delivering these objectives. Particularly, it was able to provide a non-parochial and objective approach to the application of planning policy to every application submitted to it. This underlined the quasi-judicial role of the Planning Committee and its role in consistent delivery of planning policy.
- 31. The Working Group recommend that the current structure of the BCP Council Planning Committee system remain unchanged.**

Procedural – Form of Address for person presiding at meetings

32. The Working Group considered advice from the Council's Equality Officer. The Constitution was silent on the subject and there was confirmation that no formal regulations applied. There were clearly a number of options for taking this forward but the view of the Working Group was that this should be a matter of choice for individual Councillors as they were appointed to preside at meetings.

33. The Working Group recommend that:-

- (a) no change be made to current practice and leave this as a matter of choice for each individual person presiding;**
- (b) Democratic Services should ascertain, in each case, the preference of individual Councillors as they are appointed.**

Appointment of substitutes for one agenda item only

34. The Constitution prescribes that a substitution can be made only for the entirety of a meeting with notifications of substitution being made by the Political Group Leader to the Monitoring Officer (or their respective nominees).
35. There is no provision for a substitution to be made for one item only where a member of Committee has a declarable interest in only that one agenda item. This also appeared to be the normal provision at other Councils. An individual Councillor with an interest in a specific single item on the agenda, should declare accordingly and leave the meeting for that item. He or she would not, however, be precluded from participating in the rest of the meeting.
- 36. The Working Group recommend that no change be made to current practice of substitution.**

Summary of financial implications

37. There are no financial implications arising from the recommendations in this report.

Summary of legal implications

38. There are significant legal concerns with not having a clear cut off date by when requests for call-in have to be received (see paragraphs 11 to 13 above). The Constitution of the BCP Council complies with relevant legislation.

Summary of human resources implications

39. There are no human resource implications arising from this report.

Summary of sustainability impact

40. There are no sustainability implications arising from this report.

Summary of public health implications

41. There are no public health implications arising from this report.

Summary of equality implications

42. The Constitution of the BCP Council sets out the rights of public access to the democratic process. The Council's Equality Officer was engaged on appropriate issues.

Summary of risk assessment

43. Specific legal risks relating to the absence of time periods for calling in applications are identified above. The Constitution is a legally required document which prescribes the procedural and democratic arrangements for the proper governance of the Council.

Background papers

None

Appendices

Appendix 1 – Draft Protocol for Member Call in

Appendix 2 – Draft Protocol for Consulting on Amended Plans

Appendix 3 – Draft Protocol for Making of Tree Preservation Orders