

BROMSGROVE DISTRICT COUNCIL

Annual Council

15th May 2024

**Constitution Review Including Review of Scheme of Delegations –
Report to Council**

Relevant Portfolio Holder	Councillor Charlie Hotham, Portfolio Holder for Finance and Enabling
Portfolio Holder Consulted	Yes
Relevant Head of Service	Claire Felton, Head of Legal, Democratic and Property Services
Report Author Claire Felton	Job Title: Head of Legal, Democratic and Property Services Contact email: c.felton@bromsgroveandredditch.gov.uk
Wards Affected	No specific ward relevance
Ward Councillor(s) consulted	N/A
Relevant Strategic Purpose(s)	An Effective and Sustainable Council
Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	

1. RECOMMENDATIONS

Council is asked to RESOLVE that

- 1) The current version of the Officer Scheme of Delegations is agreed as set out at Appendix A;**
- 2) The Joint Arrangements, at Part 7 of the constitution, be updated, as detailed in Appendix B;**
- 3) The Planning Procedure Rules, at Part 14 of the constitution, be updated, as detailed in Appendix C and the Planning Call in process be removed from the Officer Scheme of Delegations at Part 6 of the constitution;**
- 4) The Scrutiny Procedure Rules, at Part 12 of the constitution, be updated as detailed in Appendix D;**
- 5) The Audit, Standards and Governance Committee Procedure Rules, at Part 13 of the constitution, be updated as detailed in Appendix E;**
- 6) The amendments to the Member Officer Relations Protocol, at Part 22 of the constitution, whereby the Member Enquiries Guidance should be added as an appendix to that part of the constitution, be approved; and**

7) The Committee terms of reference for the Licensing (Miscellaneous) Sub-Committees A and B for the number of Councillors be amended as detailed in Appendix G.

2. BACKGROUND

- 2.1 The Council is required to review its scheme of delegations on an annual basis. This report presents the current scheme for noting.
- 2.2 This report also details the outcomes of the latest meeting of the Constitution Review Working Group (CRWG), held on 12th March 2024, at which various changes to the Council's constitution were discussed.
- 2.3 These proposed recommendations were considered at a meeting of the Overview and Scrutiny Board held on 22nd April 2024. The Board endorsed the recommendations made by the CRWG, subject to an amendment to the proposed changes to the Scrutiny Procedure Rules, as detailed below.
- 2.4 Members are invited to consider the background to the recommendations proposed by the CRWG and to determine whether to endorse the group's recommendations.

3. OPERATIONAL ISSUES

Scheme of Delegations

- 3.1 The Council's Constitution currently requires that the Officer Scheme of Delegations be approved by Members at the Annual Meeting of the Council.
- 3.2 The Officer Scheme of Delegations is the part of the Constitution that gives authority for certain decisions to be delegated from Council, the Executive (Cabinet) or other committees to certain specified officers. It sets out the decisions which are delegated by Council to officers and the decisions which are delegated by the Executive / Leader to officers. In relation to certain regulatory decisions, the delegation is from Council to the relevant Committee, namely Planning Committee or Licensing Committee.
- 3.3 The Scheme of Delegations is regularly altered and updated to reflect changes in the operation of the Council and changes to legislation. Changes have been made by the Monitoring Officer in accordance with the delegation that currently exists to amend the scheme to reflect changes in legislation, job titles and the reallocation of functions. They do not extend the delegations.

- 3.4 One proposed change has been highlighted in Appendix A, to remove reference to the Planning Call in process from the Scheme of Delegations. The Planning Call-in process will remain part of the constitution, but it is suggested that it would be more logical for this to be included in the Planning Procedural Rules, as detailed below at paragraphs 3.10 – 3.13.

Joint Arrangements

- 3.5 Part 7 of the Council's constitution details joint arrangements in place with which Bromsgrove District Council has some involvement, such as shared service arrangements.
- 3.6 The content of the Joint Arrangements section in the constitution has been reviewed by Officers and changes are being proposed to update the information that is provided, as detailed at Appendix B to the report.
- 3.7 This includes the proposal to remove reference to the former Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) from the Joint Arrangements document, as this LEP no longer exists.
- 3.8 A further change is proposed to remove reference to the Joint Worcestershire Regulatory Services (WRS) Board from the Joint Arrangements section. This proposal is being made in a context in which Officers are proposing to update the Committee Terms of Reference, at Part 5 of the constitution. It is suggested that in future the updated Committee Terms of Reference should be divided into two parts; Part A will focus on the terms of reference for "internal Committees", such as the Planning Committee, and Part B will focus on the terms of reference for joint bodies with which the Council has some involvement.
- 3.9 The review of the content of the Committee Terms of Reference is currently still taking place and will be reported for Members' consideration in due course.

Planning Procedure Rules

- 3.10 There is a process at Bromsgrove District Council that enables Members to call in particular Planning applications for the consideration of the Planning Committee.
- 3.11 Currently, the guidance in respect of the call in process for planning applications is listed at Paragraphs 7 – 8 in the Introduction to the Officer Scheme of Delegations, at Part 6 of the constitution.

- 3.12 The ongoing review of the Council's constitution has highlighted that this is not the most logical location for this information about the Planning call in process to be located.
- 3.13 In this context, to enhance the clarity and transparency of the process, it is proposed that the guidance in respect of the Planning Call in process should be incorporated into the Planning Procedure Rules at Part 14 of the constitution, as detailed in Appendix C to this report.
- 3.14 Further changes are proposed to the Planning Procedure Rules in relation to removing reference to the temporary process that was in place for planning site visits held during the Covid-19 pandemic. These temporary arrangements no longer need to be in place.
- 3.15 Members are asked to note that the Council's existing procedures for planning site visits continue to feature in the Planning Code of Practice, at Part 24 of the constitution. As no changes are proposed to the process for carrying out site visits, this has not been included as an appendix to this report, but this part can be viewed as a background paper to the report.

Scrutiny Procedure Rules

- 3.16 Part 12 of the Council's constitution is the Scrutiny Procedure Rules, which details the procedural rules for the Council's Overview and Scrutiny process.
- 3.17 The Scrutiny Procedure Rules include guidance with respect to the types of items that may be included on the Overview and Scrutiny Work Programme.
- 3.18 The CRWG considered two proposed changes to the rules that would help to clarify the types of items that would not be accepted for consideration by the Overview and Scrutiny Board:
- Anybody can add an item for consideration at a meeting of the Overview and Scrutiny Board. There is a risk that an individual could call for the same subject to be debated at consecutive meetings of the Board over a period of time, which would take up time at meetings of the Board at the expense of debating other issues that might be of particular concern to the local community. It is therefore proposed that the Overview and Scrutiny Procedure Rules should be amended so as to clarify that a subject may not be considered at a meeting if it has previously been debated at a meeting of the Board held in the preceding 6 months. Originally, a caveat was suggested that a subject could be debated more than once in a 6-month period if significant changes had occurred since

the issue was previously debated. However, at the request of the Overview and Scrutiny Board, this was redrafted in Appendix D to this report to provide greater clarity about when such circumstances could occur, which would be in cases where the Chairman of the Board determines, following receipt of advice from Officers, that changes in respect of a subject previously debated by the Board are significant.

- There is a legal restriction preventing Overview and Scrutiny of specific planning and licensing applications. It is proposed that, to ensure transparency in the process, this should be clarified in the Scrutiny Procedure Rules.

3.19 Presently, Procedure Rule 1.3 stipulates that a member of the Overview and Scrutiny Board may appoint a substitute to attend Board meetings on their behalf on only two occasions during a municipal year. The rationale for this proposal was that, due to the importance of the Overview and Scrutiny function and the need for continuity, Members of the Board should attend meetings wherever possible and limit their absences.

3.20 Concerns were raised at the CRWG meeting about the restrictions arising from this procedural rule in respect of substitutions at meetings of the Board. As an alternative, the CRWG is proposing that each member of the Board should have a designated named substitute who would be kept informed of the work of the Board and could step in to attend meetings on behalf of the Board member should they be unable to attend a meeting.

3.21 Reference was also made at the CRWG meeting to procedure rule 7.2, which relates to holding quarterly meetings between the Leader, Chairman of the Overview and Scrutiny Board and Chairman of the Audit, Standards and Governance Committee to co-ordinate work programmes. Members noted that these meetings had not been taking place and the group concluded that, as there are many other opportunities for Members to enter into dialogue, both formally and informally, these meetings were not considered to be necessary. Therefore, the CRWG proposed that this requirement should be removed from the Scrutiny Procedure Rules.

Audit, Standards and Governance Committee Procedure Rules

3.22 Part 13 of the Council's constitution contains the Audit, Standards and Governance Committee's Procedure Rules.

- 3.23 Included within these rules is a requirement for the Monitoring Officer's report to be considered as a regular item on the agenda for meetings of this Committee. The Monitoring Officer's report provides updates on key matters relating to the Council's standards regime as well as on Member training and the work of the CRWG.
- 3.24 In most years, the Audit, Standards and Governance Committee meets four times a year. However, since the Council was issued with a Section 24 Notice in 2022, the Committee has been meeting six times a year and this meeting regularity is due to continue until all of the points in the Section 24 recommendations have been addressed.
- 3.25 The CRWG was advised that Monitoring Officer reports have been prepared for consideration at all of the Audit, Standards and Governance Committee meetings held during the 2023/24 municipal year. However, there have not been significant changes from a standards perspective in the time that has elapsed between meetings during the year.
- 3.26 In this context, it is proposed that it would be more appropriate in future for the Monitoring Officer's reports to be presented for the consideration of the Audit, Standards and Governance Committee on a quarterly basis. There would remain the potential for additional copies of this report to be drafted during the year should circumstances require.

Member Officer Relations Protocol – Addition of Member Enquiries Guidance

- 3.27 In recent months, Group Leaders have discussed the process followed at the Council for consideration and resolution of enquiries raised by Members with staff.
- 3.28 The Council's Business improvement Team (BIT) reviewed the arrangements that were in place, in terms of staff responding to queries received from Members. This review identified that there were a range of approaches adopted by teams across the Council. Whilst many staff had positive working relationships with Councillors, approaches to responding to Members varied and there was a lack of consistency. In addition, timescales for responding to Members varied.
- 3.29 In this context, Officers have drafted guidance for staff in respect of responding to Member enquiries. The intention of this guidance is to enable greater consistency to emerge in respect of the processes that staff are expected to follow when responding to Members' queries. This guidance should also provide clarity about timescales and

expectations, to the benefit of elected Members and the residents that they serve.

- 3.30 Part 22 of the Council's constitution contains the Member Officer Relations Protocol. This protocol outlines the appropriate working relationships between Members and Officers at Bromsgrove District Council. It is suggested that the guidance would be appropriate to attach as an appendix to this protocol in the Council's constitution.
- 3.31 In considering this matter, Members are asked to note that the Corporate Management Team (CMT) will be monitoring data arising from the Member enquiries that are reported through this process so that any trends or areas of concern can be addressed as they emerge.

Committee Terms of Reference – Licensing Miscellaneous Sub-Committees A and B

- 3.32 In the past, there was a constitutional requirement for either the Chairman or the Vice Chairman of the Licensing Committee to act as the Chairman of any Licensing Sub-Committee meetings that were convened.
- 3.33 This requirement created challenges when attempting to arrange and secure membership for meetings of the Licensing Sub-Committees. There were also challenges that arose when both the Chairman and the Vice Chairman had conflicts of interest in relation to the application due to be considered. Council therefore agreed in an urgent decision made in November 2020 that there should no longer be a requirement for the Chairman or Vice Chairman of the Licensing Committee to chair meetings of the Sub-Committees.
- 3.34 Reference is still made in the terms of reference to the Chairman or Vice Chairman of the Committee Licensing Committee forming one of the number of members serving on a Licensing Sub-Committee. This creates challenges in terms of organising meetings of the Licensing Sub-Committee as the Chairman and Vice Chairman may not always be available in the day on the dates when meetings need to be held. They may also have potential conflicts of interest relating to the applications on the agenda.
- 3.35 This is not specified as a requirement in the special provisions as to membership for the Licensing Sub-Committee and an amendment to the information about the number of Councillors on Licensing Sub-Committees would help to provide useful clarity in respect of this rule.

- 3.36 It is therefore proposed that the information relating to the number of Councillors on a Licensing Sub-Committee in the terms of reference for the Licensing Sub-Committee should be updated to remove reference to the Chairman and Vice Chairman of the Licensing Committee, as detailed in Appendix G.

General Updates to the Constitution

- 3.37 It is important to note that these recommendations have been made in a context in which a comprehensive review continues to be undertaken on behalf of the Council. This review has taken on board the findings arising from the Governance Systems Task Group, whilst also aiming to simplify and reduce the current length of the constitution.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no specific financial implications arising from this report.

5. LEGAL IMPLICATIONS

- 5.1 Review and revision of the Constitution is governed by Article 15 of the Constitution.
- 5.2 Section 101 of the Local Government Act 1972 (as amended) gives a general power to local authorities to discharge functions through officers. Local Authorities are required by the same Act to maintain a list of these, which is referred to as the Scheme of Delegation. This sets out those powers of the Council which can be carried out by officers of the Council.
- 5.3 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) highlights functions which cannot by law be the responsibility of the Executive which cannot be subject to scrutiny. This category includes functions relating to town and country planning and development control and functions relating to licensing and regulation.
- 5.4 There is no legal requirement for the Chairman or the Vice Chairman of the Licensing Committee (parent) to also be a member serving on a Licensing Sub-Committee meeting.

6. OTHER - IMPLICATIONS

Relevant Strategic Purpose

- 6.1 The action proposed in this report supports the strategic purpose “an effective and sustainable Council”.

- 6.2 A report in respect of the current Officer Scheme of Delegations is considered at the Annual Council meeting, in line with requirements set out at Article 15 of the Council's constitution. This provides an opportunity for Members to review those delegations to ensure that they continue to meet the needs of the Council and communities it serves.

Climate Change Implications

- 6.2 There are no specific climate change implications.

Equalities and Diversity Implications

- 6.3 There are no specific equalities and diversity implications.

7. RISK MANAGEMENT

- 7.1 The main risks associated with the details included in this report are failure to comply with governance requirements which may expose the Council to the risk of challenge by way of judicial review or which may result in awards of damages and costs against the Council and loss of reputation.
- 7.2 There is a risk that if the proposed changes to the constitution are not approved the document will remain lengthy and in some places both out of date and lacking in clarity. This is because the changes proposed in this report are designed to enhance the transparency of this constitution and to make the layout and content more user friendly.

8. APPENDICES and BACKGROUND PAPERS

Appendices

Appendix A – Scheme of Delegations

Appendix B – Joint Arrangements – Updated in Track Changes

Appendix C – Planning Procedure Rules – Updated in Track Changes

Appendix D – Scrutiny Procedure Rules – Updated in Track Changes

Appendix E – Audit, Standards and Governance Committee Procedure Rules – Updated in Track Changes

Appendix F – Member Officer Relations Protocol, Including Member Enquiries Guidance at Appendix 1 – Updated in Track Changes

BROMSGROVE DISTRICT COUNCIL

Annual Council

15th May 2024

Appendix G – Extract from Committee Terms of Reference – Licensing (Miscellaneous) Sub-Committees A and B

Background Papers

Planning Code of Practice, at Part 24 of the Council's Constitution: [24 Planning Code of Practice 2018 \(bromsgrove.gov.uk\)](https://www.bromsgrove.gov.uk/planning-code-of-practice-2018)

9. REPORT SIGN OFF

Department	Name and Job Title	Date
Portfolio Holder	Councillor Charlie Hotham.	May 2024
Lead Director / Head of Service	Claire Felton, Head of Legal, Democratic and Property Services	April 2024
Financial Services	Pete Carpenter, Director of Finance and Resources	April 2024
Legal Services	Claire Felton, Head of Legal, Democratic and Property Services	April 2024