

Agenda Item No: 6
Report To: Selection & Constitutional Review Committee
Date: 8 December 2016
Report Title: Changes to the Responsibility for Functions
Report Author: Monitoring Officer



Summary:	The report recommends amendments and additions to the Responsibility for Functions in order to remove gaps in the delegations and to clarify provisions
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Key Decision: No

Affected Wards: N/a

Recommendation: **The Committee is asked to recommend to Full Council that the changes to the Constitution set out in paragraph 3 of this report be made**

Policy Overview: There is a duty to review the Constitution and keep it up to date

Financial Implications: None

Risk Assessment No

Equalities Impact Assessment No

Other Material Implications: None

Exemption Clauses: None

Background Papers: None

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Report Title: Changes to the Responsibility for Functions

Background

1. Amongst other things, the purpose of the Council's Constitution is to enable decisions to be taken efficiently and effectively and to ensure that those responsible for decision making are clearly identifiable to local people. The Constitution also sets the legal framework within which the Council operates.
2. As part of the Monitoring Officer's role in ensuring the Constitution serves its various purposes, a selective review of the Responsibility for Functions (part 3 of the Constitution) has been undertaken. The Monitoring Officer's conclusions are that there are some gaps in responsibilities and that some provisions can be simplified and clarified.

Recommended Changes

3. The following changes to the Responsibility for Functions are recommended:
 - 3.1. The wording in paragraph 4 of the terms of reference of the Planning Committee can be misinterpreted. It is therefore recommended to remove from that paragraph items (d), (e) and the wording "Revocation/ Modification and" from item (g) and insert the following new paragraph 9:

To exercise the Council's functions:

 - (a) under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015
 - (b) in relation to advertisement control (for example under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and section chapter III of part VIII of the Town and Country Planning Act 1990)
 - (c) of revocation and modification under sections 97 to 99 of the Town and Country Planning Act 1990
 - 3.2. In order to be consistent with the amended Planning Committee terms of reference, an additional item (l) should be added to paragraph 16.9 for the Head of Development, Strategic Sites and Design: "under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015". Item (b) in paragraph 6.16 of the delegation to the Corporate Director (Law and Governance) should be deleted as a consequence.
 - 3.3. Existing paragraph 5 of the terms of reference of the Planning Committee does not cover all eventualities and should therefore be replaced with: "To enter into and otherwise approve planning obligations under section 106 of the Town and Country Planning Act 1990 and to vary or relax or discharge planning obligations and agreements under section 52 of the Town and Country Planning Act 1971."
 - 3.4. In order to be consistent with the amended Planning Committee terms of reference, paragraph 16.16 for the Head of Development, Strategic Sites

and Design should be replaced with: “To enter into and otherwise approve planning obligations under section 106 of the Town and Country Planning Act 1990 and to vary or relax or discharge planning obligations and agreements under section 52 of the Town and Country Planning Act 1971. To exercise all powers in connection with and under any planning obligations.”

- 3.5. The delegation in paragraph 2.26 of the General Advice and Guidance is unduly restrictive and complicated. It is therefore recommended to be replaced with: “An Officer to whom a power, duty or function is delegated may authorise in writing another Officer to exercise that power, duty or function. The Officer authorised by the other should act in the name of the Officer who received the original delegation. No authorisation may be given if the statute or law prohibits it. There can be no additional sub-delegation.”
- 3.6. An additional delegation is recommended at the end of paragraph 3.10 of the General Advice and Guidance, which will give certainty: “In order to give effect to any planning obligation given to the Council, Heads of Service have power to acquire land and any other interest in land that is to be operated or managed by their Service.”
- 3.7. In order to clarify responsibilities, an additional delegation is recommended as a new paragraph 3.16 of the General Advice and Guidance: “The Chief Executive, Deputy Chief Executive, Directors and Heads of Service are authorised to enter into contracts and any other contractual obligations in connection with (a) in the case of the Chief Executive and Deputy Chief Executive, the Council’s functions, (b) in the case of the Directors, the functions carried out by that directorate and (c) in the case of Heads of Service, the functions carried out by that service.”
- 3.8. Paragraph 13.9 of the Head of Corporate Property and Projects’ delegation is unnecessarily limiting, so it is recommended to be replaced with: “To enter into any other land transaction in accordance with the Property Acquisition Investment and Disposal Strategy or where the principle of the transaction has been separately approved by the Council or the Cabinet.” It is recommended to replace 6.13 of the delegation or the Corporate Director (Law and Governance) as a consequence: “To execute and complete all necessary documentation to give effect to any land transaction that is in accordance with the Property Acquisition Investment and Disposal Strategy or where the principle of the transaction has been separately approved by the Council or the Cabinet.”
- 3.9. So as to provide the necessary flexibility to update the strategy, a new paragraph 4.3 for the Chief Executive is suggested: “In consultation with the Leader and the Corporate Director (Law and Governance), to amend the Property Acquisition Investment and Disposal Strategy”
- 3.10. The delegation in paragraph 13.10 for the Head of Corporate Property and Projects is ambiguous, so it is recommended to be changed to: “To negotiate the terms of new leases and to authorise completion of such new leases.”

- 3.11. An additional delegation is recommended at a new paragraph 14.21 for the Head of Housing to “vary and release (in whole or in part) covenants under section 609 of the Housing Act 1985”

Conclusions

4. I recommend that the Responsibility for Functions be amended as set out in this report. This will ensure that the Council’s arrangements continue to be efficient and understandable.

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