

**Agenda Item No:** 4

**Report To:** Selection & Constitutional Review Committee

**Date:** 12 July 2018

**Report Title:** Changes to the Constitution to Increase Efficiency in dealing with certain Planning Matters

**Report Author:** Jeremy Baker (Principal Solicitor – Strategic Development) on behalf of the Monitoring Officer



<b>Summary:</b>	This report recommends some additional responsibilities be delegated to officers, to improve efficiency. The report recommends that these changes be recommended for approval by the Full Council.
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**Key Decision:** No

**Affected Wards:** None specifically

**Recommendations:** **The Selection and Constitutional Review Committee is asked to recommend to the Council that the changes to the Constitution set out in paragraphs 10 and 15 of this report be approved.**

**Policy Overview:** The Monitoring Officer has a duty to review the Constitution and keep it up to date.

**Financial Implications:** There will be a small reduction in the number of reports made to the Planning Committee, thus saving time and printing costs.

**Risk Assessment** No

**Equalities Impact Assessment** No

**Legal Implications** Explained in report

**Other Material Implications:** None

**Exemption Clauses:** None

**Background Papers:** None

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# **Report Title: Changes to the Constitution to Increase Efficiency in dealing with certain Planning Matters**

## **Background**

1. The Council's Constitution sets out the legal framework within which the Council operates. Its purposes include enabling decisions to be taken efficiently and effectively, and ensuring that those responsible for decision-making are clearly identifiable to local people.
2. As part of the Monitoring Officer's role in ensuring the Constitution provides an efficient and legally-sound framework governing the conduct of Council business, he has become aware of the need for some improvements.

## **Ensuring that applications of an appropriate nature only are determined by the Planning Committee**

3. The Constitution sets out responsibilities for the determination of particular types of planning applications. Officers have delegated authority to determine all applications for planning permission unless those applications fall within the exceptions set out in the Constitution, in which case the application is referred to the Planning Committee.
4. Cllr Clarkson's Review of Planning Report in November 2011 raised concern at the Planning Committee being asked to consider again sites it had already approved. His Review Report was discussed by members of the Planning Committee, and reported to the Cabinet.
5. On 25 April 2012, the Planning Committee considered a report on amendments to delegations resulting from the Review. The report said:-

"... the Deputy Leader suggested that once Outline Planning Permission has been approved, applications for Reserved Matters should only be brought back to the Committee where these raise significant material considerations. The background to this (para. 4.12 of the report ...) states that where design, layout and other material factors such as parking, unit size and number of dwellings are already approved and not to be varied this could be dealt with under delegated authority.

"The scheme of delegation currently requires that proposals which consist of the provision of dwellinghouses where the number of dwelling houses to be provided is 10 or more; or the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development will be for 10 or more dwelling houses are determined by the Committee.

"In respect of giving effect to para. 4.12 of the Deputy Leader's report, it is difficult to conceive of a Reserved Matters application for such a number of dwellings that would not raise one or more of the issues identified. However, currently, where an applicant wishes to vary or remove one or more conditions of a Planning Permission it is often the case that none of these factors will change and the application (made under section 73) only needs to be referred because it de facto results in the issuing of a fresh planning

permission for more than 10 dwellings. Such cases are rarely debated and it is therefore proposed to vary the scheme of delegation by removing them from the exception to the delegation.”

6. The Planning Committee, this Committee (10 May 2012) and Full Council (17 May 2012) all agreed to amend paragraph 15.2 of appendix 5 to part 3 of the Council’s Constitution, so as to exclude housing applications under section 73 of the Town and Country Planning Act 1990 from automatic referral to the Planning Committee in every case.
7. Such an application could still be ‘called in’ to the Committee by the Ward Member or the Portfolio-Holder, if it (in his/her opinion) raises issues of significant local importance. Also, Officers may decline to exercise their delegated powers if they consider an application is sensitive and ought to be determined by the Planning Committee.
8. Unfortunately, this amendment was erroneously omitted from a revised set of delegations agreed by Full Council in October 2014 (when certain Reserved Matters applications were delegated, subject to safeguards). However, the rationale for this amendment has not changed in the meantime. In fact, the few housing applications which have had to be reported to the Planning Committee as a result of this error have generated very little Committee debate, demonstrating that the amendment was sound.
9. There may in fact be a good case to widen the exclusion of section 73 applications from automatic referral to the Planning Committee, beyond just housing applications. For example, section 73 applications for retail, hotel, commercial, employment etc. uses require referral to the Planning Committee, but will be considered for exclusion in the next review of delegations.
10. For now, the recommendation is to reinstate the amendment to paragraph 17.2(a) of Appendix 5 to Part 3 of the Constitution, so as to exclude housing applications under section 73 of the Town and Country Planning Act 1990 from automatic referral to the Planning Committee in every case. The words, “(other than applications made under Section 73 of the Town and Country Planning Act 1990 as amended)” would be reinserted.
11. This will aid the efficiency of the Council’s decision-making processes and enable the Planning Committee to focus its resources on those applications genuinely requiring its input.

### **Speeding up official procedures in relation to Tree Preservation**

12. The Constitution sets out responsibilities for the sealing of official documents on behalf of the Council.
13. Paragraph 7.25 of Appendix 5 to Part 3 states:-

“The following Officers be authorised to sign or where appropriate to seal in conjunction with the Mayor and Deputy Mayor of the Council (or in their absence the Leader of the Council or the Deputy Leader of the Council) any document required to implement or give effect to any decision taken by or in the name of the Council:-

Chief Executive  
Head of Legal and Democracy  
Corporate Director (Law and Governance) or another practising  
solicitor employed as such.

“In the event that both The Mayor and Deputy Mayor of the Council are not available then the Leader of the Council shall be authorised to sign or seal documents as appropriate in accordance with the above.” [underlining added]

14. The underlined section above requires the Mayor, Deputy Mayor, Leader or Deputy Leader to attend an Official Sealing in order for a document to be validly sealed. Although this procedure in practice works well, with weekly Official Sealing appointments supplemented when required by special ad hoc appointments, the need to arrange for the attendance of one of these Members may delay the making of a Tree Preservation Order. This might, in urgent cases, delay the Council’s ability to legally prevent felling or lopping of trees which the Tree Officer considers should be preserved.
15. Therefore, the recommendation is to amend the Constitution to remove the requirement for a Member to attest the sealing of Tree Preservation Orders, and instead, to allow two officers from the list above to legally seal such an Order. Also, the final sentence of paragraph 7.25 should be removed as it merely repeats wording that is already in the paragraph.
16. There may, indeed, be a good case for removing the need for a Member signatory from other types of legal documents. This could be considered in the next review of delegations.

## **Conclusion**

17. I recommend that the Constitution is amended as set out in paragraphs 10 and 15 of this report. This will ensure that the Council’s arrangements for determining section 73 applications, and protecting trees of benefit to amenity, are both efficient and transparent.

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