

Cherwell District Council

Overview and Scrutiny Committee

7 October 2020

Constitution Review

Report of Corporate Director – Commercial Development, Assets and Investment

This report is public.

Purpose of report

This report invites the Committee to consider and recommend to Full Council a set of 'areas for further consideration' in the Council's Constitution as part of a focused Constitution Review.

1.0 Recommendations

The meeting is recommended:

- 1.1 to consider and endorse, as areas for further consideration, the suggestions outlined in paragraph 3 and recommend Full Council agree these areas.
- 1.2 to recommend to Full Council to agree the establishment of a politically balanced, informal cross-party working group to review proposed changes.

2.0 Introduction

- 2.1 It is essential, from time to time, that the Council's Constitution is reviewed so that it remains fit for purpose. It's important that the Constitution gives clarity to the public, to members and to officers about who can make decisions and how business is conducted.
- 2.2 Understanding how members experience the Constitution is crucial. Achieving a fluidity of democratic debate and decision making is integral to promoting democratic engagement and representation. All councillors were asked to provide the top two or three changes they would wish to see made to the Constitution. All responses received are set out at Appendix 1.
- 2.3 Similarly, in reviewing our Constitution, it makes sense to do so in the context of examples from other councils. This opens the potential for learning from other approaches. A review of other practices has been undertaken whilst recognising that any outcome needs to reflect the individuality of this Council.

3.0 Report Details

3.1 Feedback from members, officers and the wider review of local authority constitutions, supported by Bevan Brittan, suggests the potential for positive change in several areas. These are set out in this paragraph. They are changes which would have a productive and equitable effect on Council business. It is not intended that the review would revisit provisions already determined by the Council within the last year. As such, it is suggested that the following areas are those that Full Council should be asked to endorse so that an informal cross-party working group could work through them in more detail.

- Constitution Section 1: Committee Terms of Reference and Scheme of Delegation
 - The Officer Scheme of Delegation will be reviewed and updated to reflect the current senior management scheme.
 - If there are any consequential changes to Committee terms of reference, these would be reviewed with the relevant Committee Chairman.
- Constitution Section 2: Meeting Procedure Rules (and 2a: Virtual Meeting Procedure Rules)
 - Rules of Debate
 - Clarity on order of speaking and seconder “reserving right to speak”
 - Speeches - reduce the time limits for all aspects on speaking on items (proposer, seconder, proposer/seconder of amendment, all other speakers) NB. With some exceptions for Planning Committee
 - Review the process for dealing with motions with budgetary implications
 - Review the deadline for submitting amendments and clarify that this applies to amendments to motions only but notification in advance of proposed amendments to agenda items is encouraged
 - Public Addresses
 - Review the deadline for members of the public to register to speak and provide more clarity about the public participation process
 - Review the current 5-minute time limit for public addresses and/or consider introducing a limit on speakers per item and/or add a maximum time for public addresses (NB. Separate Planning Committee public speaking arrangements to remain)
- Constitution Section 2.1 – Council Procedure Rules
 - Change the order of Council business:
 - Questions and motions occur as the last items on the agenda
 - Put a finish time for Full Council with any items not considered to roll forward to the next meeting
- Constitution Section 2.6: Planning Committee Procedure Rules
 - Site visits: add the use of remote tools to view sites
 - Public Participation at Planning Committee
 - Consider allowing county councillors to speak on planning applications in their division (with time limit)

- Consider introducing a time limit for ward councillors (non-Committee members) speaking on a planning application

3.2 A full set of responses from members is attached as an Appendix to this report.

3.3 The Constitution will also be reviewed generally to ensure that the format is easily accessible and can be navigated through easily.

3.4 The following sections of the Constitution will be reviewed administratively to ensure that they are up-to-date and reflect current legislation, best practice and arrangements:

- Introduction
- 2.2: Executive Procedure Rules
- 2.3: Overview and Scrutiny Procedure Rules
- 2.4 Appeals Panel Procedure Rules
- 2.5: Licensing Committee Procedure Rules
- 2.7: Roles and Appointments
- 3.3: Respective Roles of Members and Officers and Dealing with Conflicts of Interest
- 3.4: Conventions for the Management of Council Business and a Protocol on Member-Officer relations
- 3.5: Members' Planning Code of Conduct
- 3.6: Bias and Predetermination – A Guidance Note for Members

3.5 The following sections are out scope of this review for the reasons set out:

- 2.8: Officer Employment Procedure Rules – HR confirm no review required at this time
- 3.1: Members' Code of Conduct – CDC agreed the same code as other principal authorities in Oxfordshire and this has been adopted by the majority of parishes in Cherwell. Any change would remove this Oxfordshire consistency which is beneficial to the twin and triple hatters and the Monitoring Officer. Additionally, a national review of the Code of Conduct is being undertaken and any changes arising from this review will be addressed across the county at the appropriate time.
- 3.2: Officers' Code of Conduct – HR confirm no review required at this time
- 3.7: An Advice Note for Elected Councillors Serving on Outside Organisations – This is a county wide note applicable to all Oxfordshire authorities
- 3.9: Financial Procedure Rules – The Director of Finance confirms no review required at this time
- 3.10: Contract Procedure Rules – The Director of Finance confirms no review required at this time.

3.7 As part of this process, Bevan Brittan, a firm with specialist experience in the review of local authority constitutions nationally, has been asked to take a view of our Constitution and to place it with the context of national experience and best practice. This will give the benefit of both a local and a national perspective on the Constitution. Bevan Brittan's feedback supports the scope above and endorses the best practice approach of seeking clarity of responsibilities and terms of reference;

providing a more defined structure around speaking times and making the Constitution easier to navigate.

3.8 It is proposed that a cross-party working group be established to review the proposed changes prior to consideration by this Committee and subsequently Full Council. In line with the cross-party membership make-up of other working groups, it is proposed that the working group reflect a political balance (5 Conservative members, Labour 2 members and one member each from Progressive Oxfordshire and the Independent Groups, which would provide an equitable representation across the Council's political spectrum). As representatives of their Groups, it will be important that representatives should present the agreed views and comments of their Group, not just their own perspective.

3.9 The next steps in the process are:

- a) 19 October: Full Council agree the areas for consideration and establishment of a cross-party working group
- b) The working group to review drafts in more detail, bringing the perspective of each political group
- c) 1 December (or special meeting in November): Overview and Scrutiny Committee to consider the proposed changes and recommend their adoption by Full Council

4.0 Conclusion and Reasons for Recommendations

4.1 It is essential to review the Constitution to ensure it remains fit for purpose. Using feedback from Members and national best practice has identified areas for change which would potentially improve the business of council meetings and the experience of them for members and the public. They would give greater clarity of clarity of expectation for everyone on their rights of participation. It's suggested that, together, this relatively modest changes will have positive impact on the productivity of the meetings and the pre-meeting preparations.

5.0 Consultation

All Cherwell District Councillors
Senior managers – members of CEDR (Chief Executive's Direct Reports)
Democratic and Elections Team
Monitoring Officer
Bevan Brittan, experts in local government constitutions

6.0 Alternative Options and Reasons for Rejection

6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Do not make any changes – this is not recommended as, currently, there are impracticalities and confusions that cause a disproportionately negative effect on the productivity of the Council's decision making

Option 2: Align the Constitution to that of the Council's partner, Oxfordshire County Council – while it is appropriate to harmonise where possible (and several of the areas for further consideration above are already in place for Oxfordshire County Council) it is important that this Council's Constitution reflects the democratic decision-making culture of this Council

Option 3: Align the Constitution to the 'model constitution' circulated nationally – this is not recommended as the national model is several years' old now and it is important that this Council's Constitution reflects the democratic decision-making culture of this Council

7.0 Implications

There are no financial or resource implications consequent on these recommendations.

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Legal Implications

- 7.2 The Council is required to have and to publish a Constitution and to keep it under review.

Comments checked by:
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Risk Implications

- 7.3 The risk of not making changes is that the decision-making of the authority, and its reputation as a business-like and transparent organisation suffers through a lack of challenge and development.

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Implications for equality and diversity

- 7.4 The Constitution will be reviewed generally to ensure that the format is easily accessible. This is an important step in ensuring that access to the democratic process is equitable. However, the inclusivity of opportunity to engage with the authority – as members or members of the public – is enhanced by the clarity of expectation represented by the recommended areas for further consideration. As set out in paragraph 3.4, as possible, when considering the review and application of procedure rules, officers and committee chair persons will take into account the specific requirements of individuals and will make reasonable adjustments where necessary within the constitution to ensure that no councillor or member of the public is unfairly discriminated against. Sufficient flexibility will be retained after any

changes to ensure that this will remain the case. The report does not otherwise raise any implications for equality and diversity.

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8.0 Decision Information

Key Decision

Financial Threshold Met: N/A

Community Impact Threshold Met: N/A

Wards Affected

All

Links to Corporate Plan and Policy Framework

All aspects as the Constitution sets out how the Council operates

Document Information

Appendix number and title

- Responses from members of the Council

Background papers

None

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