

Cherwell District Council

Overview and Scrutiny Committee

1 December 2020

Constitution Review

Report of Corporate Director – Commercial Development, Assets and Investment & (Interim) Monitoring Officer

This report is public.

Purpose of report

This report presents the recommendations of the Constitution Review Working Group on the 'areas for further consideration' for this Committee to determine what recommendations for constitutional change to make to Full Council to consider on 14 December.

1.0 Recommendations

The meeting is recommended to consider the recommendations of the Constitution Review Working Group on each of the 'areas for further consideration' (outlined more fully at Appendix 1) and make recommendations to Full Council accordingly:

Rules of debate:

- 1.1 to make no changes to the current process as regards the order of speakers in a debate but to clarify that the seconder can speak at any point if they have reserved their right and that this does not mean they must be the penultimate speaker;
- 1.2 to make no change to the existing rule that once the proposer of a motion or amendments begins summing up, no further speakers will be heard

Length of speeches (including all committees):

- 1.3 to reduce the length of speeches for proposers to and proposers of amendments to five minutes (from current 10 minute)
- 1.4 to reduce the length of speeches for seconder, and seconder of amendments and all other speakers to three minutes (from current 5 minutes);

Deadlines for submitting amendments to motions

- 1.5 to make no changes to the existing deadlines (5pm, two working days before the meeting)
- 1.6 to increase the word limit for amendment to motions to 350 (from current 250) words

Process for dealing with motions with budgetary implications

- 1.7 to encourage members to submit motions early and discuss with officers to enable a review in the light of budgetary implications, with the introduction of a threshold of

“£10,000 or more” to inform what “significant” means in terms of the current budget or capital expenditure

- 1.8 to allow amendments to motions deferred for budgetary reasons to be amended when resubmitted to Council

Motions without notice/procedural motions:

- 1.9 to make no changes to the current arrangement that a procedural motion, once proposed and seconded, requires only a simple majority to succeed

Recorded vote:

- 1.10 to make no changes to the current arrangement that a request for a recorded vote needs only a proposer and seconder to succeed

Public addresses (not Planning Committee)

- 1.11 to make no changes to current arrangements for
- i) public speakers to register by noon on the working day before the meeting
 - ii) five minutes per public speaker
 - iii) no time limit on the number of public speakers or the time allowed for the public address item

Order of business/finish time for Full Council

- 1.12 to make no changes to the existing order of business for Full Council
- 1.13 not to introduce a finish time/cut off time for Full Council

Planning Committee

- 1.14 to allow remote tools (drones) in facilitating site visits but to be clear that this should complement other evidence, not replace site visits and any such usage should ensure impartiality
- 1.15 to retain current arrangements whereby
- i) there is no separate slot for councillor questions of clarification to the officer after a presentation of a planning application
 - ii) County councillors are allowed to speak as members of the public (i.e. no separate right to speak)
- 1.16 to introduce a ten-minute time limit for non-committee ward members in addressing the Committee

Terminology and glossary

- 1.15 to introduce a glossary to the Constitution to bring clarity to members of the public, officers and councillors
- 1.16 to achieve consistency within the Constitution by using the following words:
- i) Executive (not Cabinet)
 - ii) Chairman of a meeting (with the proviso that a person chairing a committee may call themselves by whichever term e.g. Chair)
 - iii) Resident (rather than citizen)
- 1.17 to continue to use the following terms but provide contextual clarity (and explanation in the glossary) for the use of each:
- i) Councillor and member
 - ii) Chief Executive and Head of Paid Service
 - iii) Chief Finance Officer and S151 Officer

Annual Review of the Constitution

- 1.18 to introduce an annual review of the Constitution whereby

- i) At its October/December meeting, the Overview & Scrutiny Committee will consider and make recommendations to Full Council to agree in December
- ii) Such a review to include a notice of any changes made in year under officer delegations to reflect legislation and transfers of functions
- iii) Any significant changes would be submitted to Full Council as necessary for consideration

2.0 Introduction

- 2.1 At its last meeting, this Committee recommended to Council that a cross-party Working Group be established to undertake a focused review of the Constitution. Following the agreement of Council, the Working Group was constituted and has met to frame recommendations to this Committee.
- 2.2 It was agreed by Council that this Committee would consider the proposals of the Working Group and finalise recommendations for Council's consideration. The areas of focus for the review were set by Council on the recommendation of this Committee: these are listed in the first column of Appendix 1.
- 2.3 The previous reports to this Committee and Full Council are available at the following links:

[Overview and Scrutiny Committee 7 October 2020](#)
[Council 19 October 2020](#)
- 2.4 The review was carried out as Council recognised that the Constitution should be reviewed from time to time, so that it remains fit for purpose. This includes giving clarity to the public, to Members and to officers about who can make decisions and how business is conducted.
- 2.5 Prior to the Working Group being commissioned, a survey of councillor views had been undertaken. Bevan Brittan had also been asked to provide a view on the Council's current Constitution, in the context of other approaches across the country. Both of these sources were considered and informed the Working Group discussion. .
- 2.6 In addition to the matters addressed by the Working Group, officers are reviewing the Constitution administratively to bring greater clarity to its structure making it more user friendly and to ensure it reflects up to date legislation and officer structures. Appendix 2 gives an outline of the revised structure.
- 2.7 The Working Group comprised the following councillors who met twice on 4 and 12 November 2020:

Councillor Lucinda Wing (Chairman)
Councillor Mike Kerford-Byrnes (Vice-Chairman)
Councillor Phil Chapman
Councillor Conrad Copeland
Councillor David Hughes
Councillor Shaida Hussain
Councillor Barry Richards
Councillor Les Sibley

3.0 Report Details

- 3.1 At its first meeting the Working Group considered the 'areas for consideration' and agreed a number of aspects they would discuss with their political Groups. At its second meeting. Working Group members reported on the comments and feedback of their political groups and agreed the recommendations that have been submitted to this Committee for consideration.
- 3.2. The majority of the recommendations were reached by the Working Group through consensus, unanimously. The following were carried by a vote after the consideration of several options: Appendix 1 outlines the minority view in each case.
- a) Length of speeches to be reduced (1.3 and 1.4 above)
 - b) Retaining deadline for submission of amendments (1.5)
 - c) Increase word limit for amended motions (1.6)
 - d) Public addresses retaining 5 minutes per speaker (1.11(ii))
 - e) Retain existing order of business at Full Council (1.12)
 - f) Retain no set finishing time for Full Council (1.13)
 - g) Retain no questions of clarification at Planning Committee (1.15(i))
- 3.3 The following sections of the Constitution are being 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
- 3.4 The recommendations as framed by the Working Group are in line with the best practice recommendations of Bevan Brittan. As regards recommendation 1.7 (motions with budgetary implications), while not specifically recommended by Bevan Brittan, this is consistent with the practice of Oxfordshire County Council and will provide clarity for Members and officers when considering such motions.
- 3.5 The next steps in the process are:

- a) Overview and Scrutiny Committee considers the proposed changes and recommends their adoption by Full Council
- b) Full Council considers the recommendations on 14 December 2020

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. A cross-party Working Group has brought a further, detailed elected member perspective.
- 4.2 It is considered that these proposals would give greater clarity of expectation for everyone on their rights of participation, whether as a councillor or a member of the public. It's suggested that, together, these 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 and political groups
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.

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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 recommendations. Of course, officers and the councillors chairing committees will consider 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 – N/A as not an Executive report

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**

- 1. Recommendations of the Constitution Review Working Group on the areas of focus set by Council
- 2. Outline contents of proposed new Constitution

Background papers

None

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