

Cabinet – 10th September 2008

Report of the Director of Law & Property

Review of the Constitution

Purpose of the Report

1. To review the Constitution

Background

2. The Council introduced its written Constitution in May 2002.
3. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up-to-date. This is reflected in Article 15 of the Constitution which requires the Director of Law and Property, as Monitoring Officer, to monitor and review the operation of the Constitution in order to ensure that the aims and principles of the Constitution are given full effect. Any changes to the Constitution must be approved by the full Council after consultation with the Cabinet. The only exception to this is that the Leader, with the support of the other Group Leaders, may approve amendments to the Scheme of Delegation.
4. The Constitution was last reviewed by the Council in February 2006 when a number of amendments were introduced. These have now been fully implemented.
5. This report provides a general overview of the Constitution and touches upon Declarations of Interest and the Planning Code of Practice.

General Overview

6. Some of the principal objectives in having a Constitution are to ensure that decisions taken by or on behalf of the Council are transparent and that decision makers are held to account for those decisions. The Constitution continues to fulfil this important role and ensures that decision making is robust.
7. The Scheme of Delegation is regularly updated to reflect changing circumstances and new legislation.
8. Since the last review the Council has restructured Select Committees with effect from May 2006. Each Select Committee continues to have a challenging work programme and, in respect of detailed work such as policy review and development, they continue to act through working parties in the main. Four of the Select Committees now have a specific Public Forum item on their agenda with varying degrees of take up by the public. Whilst the Select Committee on

Children's Services does not have a Public Forum slot the Chairman has indicated that he would consider questions from the public if they attend.

9. Whilst the public have made limited use of the Public Forum facility, this should be contrasted with the same item at Area Committees where the public regularly raise a number of local and topical issues of concern.
10. The Government has not yet introduced the so called "community call for action" giving the public the right to have an item placed on the agenda for a Select Committee but this will be readily assimilated into the current procedures when it becomes law.
11. The use of call-in by Select Committees tends to be limited but was used to good effect in 2007 by the Select Committee on the Environment when they examined a decision giving permission to a developer to construct a visibility splay on Council – owned land at Bromsgrove Street in Halesowen. After a thorough investigation of the proposal and the impact that it would have, the Select Committee recommended that the decision be reversed and in April 2008 this recommendation was accepted by the Cabinet Member.
12. Members may be aware that the Council has had a Code of Conduct for Employees (based on a national Code) for more than ten years. This Code, which is contained in the Constitution, needs updating but preferably it should be replaced by a new national Code. The latter has been promised by the Government on several occasions but no progress has yet been made. In the meantime the existing Code has been reviewed and will be considered by the Standards Committee in October 2008, with a recommendation directly to the full Council
13. Financial Regulations and Contract Standing Orders (including those relating to schools) are essential parts of our overall financial management arrangements and they are updated from time to time. Currently such updates need to be approved by full Council on the recommendation of the Audit Committee. In view of the fact that these documents readily fall within the jurisdiction of the Audit Committee it is proposed that that committee be authorised to approve any future amendments to all Financial Regulations and Contract Standing Orders.
14. The Human Rights Act 1998 has been in force for some eight years and its implications for government continue to be developed by the Courts. The Council is aware of the need to take the Act into account in developing policies and making decisions. The public and their legal advisers are becoming increasingly aware of their human rights and will challenge public authorities if they believe that their rights have been infringed.
15. Likewise the Freedom of Information (FOI) Act 2000 is in full flow. With effect from the 1st January 2005 there has been a general right of access to recorded information held by the Council subject to certain conditions, fees and exemptions. Year on year the number of FOI requests has been rising. For example, in the period 1st January 2008 to 8th May 2008 we received 218 requests as opposed to 178 in the same period last year. Our compliance with responding to requests within statutory deadlines is over 90% which compares favourably with other local authorities.

Members' Code of Conduct and Declarations of Interest

16. At its meeting in October 2008 Standards Committee will consider my report on the Annual Review of the Members' Code of Conduct and, in particular, the new arrangements for local assessments of complaints of alleged breaches of the Code. The Annual Review will then be reported to full Council.
17. All members have been trained on the revised Code approved by the Council in July 2007.
18. Advance notification of personal and prejudicial interests at meetings of the Council continues to be successful and limits the amount of time spent at the meeting on receiving verbal declarations. If members have any queries regarding the need to declare an interest, they are always encouraged to take advice from me or one of my colleagues before the meeting.

Code of Practice for Members and Officers dealing with Planning Matters

19. Development Control is a very important function of the Council and we need to be vigilant to ensure that the processes and procedures used by members and officers are transparent, accountable and consistent with good practice. The Code of Practice is a key ingredient in the corporate governance arrangements for development control.
20. The Code has been in place for a number of years and the Council updated it at its meeting in February 2008 on the recommendation of the Standards Committee and the Development Control Committee.

Finance

21. Any costs arising from compliance with the Constitution are met from existing budgets.

Law

22. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up-to-date.

Equality Impact

23. This report complies fully with the Council's policies on equality and diversity and there are no particular implications for children and young people.

Recommendation

24. It is recommended that:-

1. This report be noted and referred to the Council.
2. The Council be recommended to authorise the Audit Committee to determine any amendments to Financial Regulations and Contract Standing Orders, including those relating to Schools.

John Polychronakis

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List of Background Papers

1. Internal communications with other officers