

Council report



Report of Head of Legal and Democratic and Monitoring Officer

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To: COUNCIL

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Changes to the council's constitution

Recommendations

That Council agrees to:

1. amend the constitution in the Summary and Explanation section and the Cabinet Arrangements and Procedure Rules to update the key decision definition by amending paragraph (a) to read: "to incur expenditure, make savings or to receive income (except government grant) of more than £75,000.";
2. amend paragraphs 40 and 41 of the constitution's Summary and Explanation section relating to the authentication of documents and common seal of the councils to allow the head of legal and democratic, the chief executive, the legal services manager or a senior lawyer to sign and attest the sealing of documents;
3. delete reference to the Five Councils' Partnership Scrutiny Committee in paragraph 83 of the Scrutiny Committees Procedure Rules;
4. amend paragraph 3 of the Planning Committee Procedure Rules to reflect the Vale Council's decision on 14 February 2018 to reduce its Planning Committee membership from 11 to nine;
5. delegate authority to the head of corporate services "to act as the council's data protection officer under the General Data Protection Regulations" and reflect this responsibility in the Proper Officer and Authorised Officer section of the constitution;
6. delegate authority to the head of development and regeneration: "To determine applications from registered housing providers to waive the 80 per cent equity share restriction on shared ownership dwellings, on a case-by case basis, where such a restriction has been included within a section 106 planning agreement, and where the application meets the established criteria for granting the waiver.";

7. delegate authority to the head of development and regeneration: “To determine continuous market engagement requests and confirm support to Homes England for both grant and nil-grant applications from registered housing providers, for the inclusion of affordable dwellings or developments within the national affordable homes programme.”
8. amend the delegation to the head of housing and environment in paragraph 4.3: “To authorise and serve any notices and take all necessary actions relating to ~~the collection of waste, the provision of dustbins and to secure the removal of rubbish. (S.34 PHA 1961)~~ **the council’s duties as a waste collection authority as set out in sections 45 and 46 of the Environmental Protection Act 1990 (as amended).** *[N.B. deleted text is crossed through, added text is in **bold type**];*
9. delegate authority to the head of housing and environment: “To authorise and serve any notices and take all necessary actions relating to the council’s duties as a principal litter authority in accordance with section 89 of the Environmental Protection Act 1990 (as amended).”;
10. amend the delegation to the head of housing and environment in paragraph 19.2: “To exercise the council’s powers and duties under The Dangerous Wild Animals Act 1976, The Pet Animals Act 1951, The Breeding of Dogs Acts 1973 and 1991, The Animal Boarding Establishments Acts 1963 and 1970, The Zoo Licensing Act 1981, The Riding Establishments Acts 1964 & 1970, **and the Breeding and Sale of Dogs (Welfare) Act 1999**, including licensing and registration functions, taking of enforcement action, inspections, powers of entry and the appointment of inspectors.”;
11. move the delegations in relation to local amenity/overgrown gardens from the head of housing and environment (section 21 refers) to the head of planning;
12. delegate authority to the head of planning: “To authorise the making of footpath and bridleway dedication agreements.”;
13. amend paragraph 11.1 of the head of planning’s scheme of delegation regarding the collection of Community Infrastructure Levy: “To collect Community Infrastructure Levy revenue and calculate the chargeable amount under Regulation 40 of the Community Infrastructure Levy Regulations 2010. Appropriate budgets must be created as follows in accordance with the financial procedure rules:
 - (a) for the administration of Community Infrastructure Levy (five per cent of the Community Infrastructure Levy revenue)
 - (b) for the **towns and parishes** ~~councils~~ (15 or 25 per cent of the Community Infrastructure Levy revenue)
 - (c) for the district council (remainder of the Community Infrastructure Levy revenue).”;
14. amend the delegations to the head of planning (paragraph 11.3) and the head of development and regeneration (paragraph 3.2): “To make payments to the **towns and parishes** in relation to the Community Infrastructure Levy Regulation 59 and 59D and approve payments (by 28 October and 28 April in any financial year) to the relevant receiving town ~~and or~~ parish council **or parish meeting**.”;
15. amend paragraph 11.9 of the head of planning’s scheme of delegation regarding Community Infrastructure Levy recovery: “To deal with the recovery of the Community

Infrastructure Levy including stop notices, liability orders and other enforcement mechanisms under Regulations 89 to 94 and 111 of the Community Infrastructure Levy Regulations 2010.”;

16. amend paragraphs 74 and 75 of the Financial Procedure Rules to allow the head of planning to request and the head of finance to approve the creation of Community Infrastructure Levy budgets as follows:
 - “74. For section 106 or Community Infrastructure Levy agreements that provide clear and unambiguous details on how the receipts raised must be used, where that agreement has been approved by the Planning Committee and over which further discretion cannot be applied, then the ~~strategic management team~~ **head of planning** can request **and the head of finance can approve** the creation of the relevant revenue or capital budget.
 75. For all other section 106 and Community Infrastructure Levy agreements where contributions are received by the council, a budget for the spending of the receipt must be created as follows:
 - (a) For agreements of up to £20,000, budgets can be **requested by the head of planning and** approved by the ~~senior management team~~ **head of finance**.
 - (b) For agreements greater than £20,000 up to £100,000, budgets can be approved by the relevant Cabinet member in consultation with the Cabinet member for finance.
 - (c) For agreements of greater than £100,000, budgets must be approved by Council.”;
17. amend Financial Procedure Rule 90 to make it explicit that no request for a supplementary estimate is necessary where it arises from a government grant for a specific purpose;
18. amend Financial Procedure Rule 91 as follows to reflect the normal process for authorisations used elsewhere in the constitution: “~~The leader of council in consultation with the chief executive and chief finance officer~~ **chief finance officer in consultation with the leader of council and chief executive** may increase the revenue or capital budget after considering a request from the relevant head of service where the council has:
 - (a) Received government grant outside of the usual budget setting cycle for which no budget exists.
 - (b) Received additional income for fees and charges that has led to additional costs that require a budget to give authority to spend.
 - (c) Received additional income from insurance claims.In all instances a budget no greater than the increase in income can be created.”
19. agree to amend the Contract Procedure Rules as set out in appendix 1 to this report;
20. authorise the head of legal and democratic to update the constitution to reflect the agreed amendments with effect from 1 June 2018; and
21. authorise the head of legal and democratic to make any minor or consequential amendments to the constitution for consistency and to reflect the council’s style guide.

Purpose of report

1. This report proposes revisions to the current constitution to ensure it is up-to-date and reflects the council's changing environment.

Strategic objectives

2. The constitution underpins the council's decision-making and therefore supports its strategic objectives.

Background

3. A full constitution review was undertaken and a revised constitution agreed by Council at its meeting in December 2016 in pursuance of the requirements of Section 37 of the Local Government Act 2000 to keep the constitution under review. Council has since approved further adjustments, the last being in December 2017. The Joint Constitution Review Group met on 15 March 2018 to consider matters that have arisen since 2017. Mostly, the changes are a tidying up of the document. This report sets out proposed changes supported by the review group, and recommends that these changes take effect from 1 June 2018.

Key decisions

4. A key decision is subject to the scrutiny call-in process and is defined in the constitution as a decision of the Cabinet, individual Cabinet member or an officer acting under delegated powers, which is likely to:
 - (a) incur expenditure, make savings or to receive income of more than £75,000;
 - (b) award a revenue or capital grant of over £25,000; or
 - (c) agree an action that, in the view of the chief executive or the relevant head of service, would be significant in terms of its effects on communities living or working in an area comprising more than one ward in the area of the council.
5. The review group has noted that the receipt of a government grant over £75,000 becomes a key decision in the above definition. The review group considers it is unnecessary to allow scrutiny call-in of a decision to accept a government grant and recommends that paragraph (a) in the above definition should be amended to read "to incur expenditure, make savings or to receive income (**except government grant**) of more than £75,000." Council should note that it will still be a key decision to spend grant money over £75,000, and it will still be necessary to meet the requirements of Financial Procedure Rules 90 and 91 to create the necessary budgets.

Authentication of documents and common seal of the council

6. Paragraphs 40 and 41 of the constitution's Summary and Explanation section refer to the authentication of documents and common seal of the council. This requires that the signing of documents and affixing of the common seal will be attested by the head of legal and democratic services or by the chief executive or a strategic director or a senior lawyer. Following the management restructure, there is a need to delete references to strategic director and to add reference to the legal services manager.

7. The review group considers that the head of legal and democratic, the chief executive, the legal services manager or a senior lawyer should be authorised to sign and attest the sealing of documents.

Scrutiny Committees Procedure Rules – Five Councils’ Partnership Scrutiny Committee

8. When the Five Councils’ Partnership was set up in 2016, it established a joint scrutiny committee. Although this committee met a few times, late in 2017 it was disbanded by the partnership. Instead, the partnership agreed that scrutiny of the partnership’s work should be conducted through each partner council’s own arrangements. Therefore, the review group considers that reference to the Five Councils’ Partnership Scrutiny Committee in paragraph 83 of the Scrutiny Committees Procedure Rules should be deleted.

Planning Committee Procedure Rules – committee membership

9. At its Council meeting in February 2018, the Vale Council reduced its Planning Committee membership from 11 to nine. This will need an amendment to paragraph 3 of the Planning Committee Procedure Rules. The review group considered whether a similar change should be recommended for South Oxfordshire’s Planning Committee.
10. The review group heard the views of two South Oxfordshire councillors on this subject, who both believed that South Oxfordshire’s Planning Committee should retain its 11 members due to the committee’s current high workload. The Review Group therefore did not support a reduction in the committee membership for South Oxfordshire’s Planning Committee at this time. However, the review group agreed that the committee’s membership could be revisited in six months’ time.
11. The review group also considered a suggestion that Cabinet members should be allowed to be full members of the Planning Committee. The review group did not support this suggestion as best practice suggested that Cabinet members could attend Planning Committee meetings and give advice but they should not be committee members. This maintained a separation of the policy-making and policy implementation roles.

Area Committee Procedure Rules (Vale only) – committee membership

12. The committee procedure rules for most committees provides that the chairman of a committee shall be a non-Cabinet member. However, there was no such reference in the Vale’s Area Committee Procedure Rules. The review group noted that whereas the awarding of grants was an executive function delegated to the area committees (which formed the majority of their workload), the Area Committee Procedure Rules also provided that matters that were not the responsibility of the Cabinet could also be discussed by the area committees. The review group debated a suggestion that an area committee’s chairman should be a non-Cabinet member.
13. The review group was minded to support this suggestion but considered that the practicality of restricting the chairmanship (and thereby the vice-chairmanship) to non-Cabinet members would cause problems for the Faringdon Area Committee as it only had a membership of seven, four of which were currently Cabinet members. Therefore, the review group agreed that, to allow flexibility, no such restriction should

be imposed and the Area Committees Procedure Rules should not be amended at this time.

14. Since the review group met, a further suggestion has come forward that no Cabinet member should act as chairman or vice-chairman of any committee, unless if an area committee has fewer than two non-Cabinet members then an exception can be made.

Scheme of delegation to the head of corporate services

15. The General Data Protection Regulations will come into force in May 2018. The scheme of delegation needs to allocate responsibility to an officer to ensure the council complies with these regulations. The review group considers that the following should be added to the scheme of delegation for the head of corporate services: "To act as the council's data protection officer under the General Data Protection Regulations."
16. This responsibility should also be reflected in the Proper Officer and Authorised Officer section of the constitution.

Scheme of delegation to the head of development and regeneration – staircasing restrictions

17. A significant number of shared ownership homes are developed in parts of the district which are classified as Designated Protected Areas by the Secretary of State. Part of the purpose of a designated protected area is to ensure the retention of shared ownership units in areas where they may be hard to replace. A restriction is therefore placed in section 106 agreements which limit the amount of equity a shared owner can purchase, to 80 per cent of the open market value.
18. In recent years, this restriction has proved problematic with lending institutions and has significantly reduced the range of mortgages available to prospective purchasers. Moreover, Registered Providers have indicated that, in almost all cases, they will not be prepared to acquire sites where this restriction (known as the 'staircasing' restriction) will not be lifted. Government guidance allows the council to lift these restrictions if it deems this appropriate. The council has a mechanism and criteria in place for the lifting of this 'staircasing' restriction upon application from a registered housing provider. In recent years, the Cabinet member for housing has approved lifting such staircasing restrictions. It should be noted that shared ownership units on rural exception sites are not included under the waiver request option.
19. The review group considers that authority should be delegated to the head of development and regeneration as follows: "To determine applications from registered housing providers to waive the 80 per cent equity share restriction on shared ownership dwellings, on a case-by case basis, where such a restriction has been included within a section 106 planning agreement, and where the application meets the established criteria for granting the waiver."

Scheme of delegation to the head of development and regeneration – continuous market engagement requests

20. Continuous market engagement is a data gathering mechanism within the National Affordable Homes Programme. It is used by Homes England (formerly Homes and Communities Agency) to help it determine requests from Registered Providers to include affordable homes within the affordable homes programme. These affordable homes are additional to those identified at the beginning of the programme period (currently 2016-2021). When Homes England receives a request, it consults the council. This request seeks specific information such as planning status, additionality, and contribution to local priorities.
21. Most of these requests are at nil grant (simply for inclusion within the national affordable housing programme). However, some bids seek a grant, and where grant funding is awarded, funds are transferred direct from Homes England to the registered housing provider, at nil cost to the council.
22. Officers sought a specific delegation to the head of development and regeneration to determine continuous market engagement requests and confirm support to Homes England for both grant and nil-grant applications from registered housing providers, for the inclusion of affordable dwellings or developments within the affordable homes programme. In each continuous market engagement case, the decision by the council is simply a confirmation of facts to Homes England; the decision whether to approve the application rests with Homes England.
23. The review group considers that authority should be delegated to the head of development and regeneration to determine continuous market engagement requests.

Scheme of delegation to the head of housing and environment – waste and litter

24. In a tidying exercise, the review group considers the scheme of delegation to the head of housing and environment should be updated in paragraph 4.3: “To authorise and serve any notices and take all necessary actions relating to ~~the collection of waste, the provision of dustbins and to secure the removal of rubbish.~~ (S.34 PHA 1964) **the council’s duties as a waste collection authority as set out in sections 45 and 46 of the EPA 1990 (as amended).** [N.B. EPA = Environmental Protection Act]
25. The review group considers the scheme of delegation to the head of housing and environment should be updated to include a new delegation to allow the serving of notices and taking necessary actions as the principal litter authority: “To authorise and serve any notices and take all necessary actions relating to the council’s duties as a principal litter authority in accordance with section 89 of the EPA 1990 (as amended).”
26. The review group also identified the need to include a reference to the Breeding and Sale of Dogs (Welfare) Act 1999 in the head of housing and environment’s scheme of delegation paragraph 19.2: “To exercise the council’s powers and duties under The Dangerous Wild Animals Act 1976, The Pet Animals Act 1951, The Breeding of Dogs Acts 1973 and 1991, The Animal Boarding Establishments Acts 1963 and 1970, The

Zoo Licensing Act 1981, The Riding Establishments Acts 1964 & 1970, **and the Breeding and Sale of Dogs (Welfare) Act 1999**, including licensing and registration functions, taking of enforcement action, inspections, powers of entry and the appointment of inspectors.”

Scheme of delegation to the head of housing and environment and the planning – local amenity and overgrown gardens

27. The scheme of delegation to the head of housing and environment includes delegations to deal with local amenity and overgrown gardens (section 21 refers). The review group considers that as this work is now carried out by the planning enforcement team, these delegations should be transferred to the head of planning. They allow the council to serve notices in respect of the condition of land and buildings, to undertake clean up works in default of a notice, and take legal proceedings for failure to comply with a notice.

Scheme of delegation to the head of planning – delegation of applications with short time limits

28. The head of planning presented a list of planning applications that had short time limits for the council’s determination, some as short as four weeks. The intention was to seek a delegation of these applications to the head of planning to allow the council to meet these time limits. The review group asked the head of planning to provide further information before it agreed to support the proposal. The review group asked that a briefing session was organised for all councillors before bringing the proposal back to the next review group meeting for consideration.

Scheme of delegation to the head of planning – footpath dedication agreements

29. The scheme of delegation to the head of planning includes authority to make and confirm footpath diversion orders. Currently there is no specific authorisation to make a dedication agreement where a landowner has offered to provide an additional or new path.
30. Although such agreements can be agreed under a general delegation ‘to enter into agreements’, the review group considers that a specific delegation should be added to the head of planning’s scheme of delegation: “To authorise the making of footpath and bridleway dedication agreements.”

Scheme of delegation to the head of planning – Community Infrastructure Levy

31. Officers suggested amending paragraph 11.1 of the head of planning’s scheme of delegation to allow Community Infrastructure Levy to be collected for parish meetings, in addition to town or parish councils. The review group agreed to recommend the following change to paragraph 11.1, encompassing the three types of local council into the phrase ‘towns and parishes’:
“To collect Community Infrastructure Levy revenue and calculate the chargeable amount under Regulation 40 of the Community Infrastructure Levy Regulations 2010. Appropriate budgets must be created as follows in accordance with the financial procedure rules:

- (a) for the administration of Community Infrastructure Levy (five per cent of the Community Infrastructure Levy revenue)
- (b) for the towns and parishes ~~councils~~ (15 or 25 per cent of the Community Infrastructure Levy revenue)
- (c) for the district council (remainder of the Community Infrastructure Levy revenue)."

32. The review group considers that a minor change is necessary to the head of planning's delegation paragraph 11.9 to reflect the Community Infrastructure Levy regulations correctly: "To deal with the recovery of the Community Infrastructure Levy including stop notices, liability orders and other enforcement mechanisms under Regulations 89 to ~~94~~ and 111 of the Community Infrastructure Levy Regulations 2010."

Scheme of delegation to the head of planning and the head of development and regeneration – Community Infrastructure levy spending

33. Officers suggested that the scheme of delegation was amended to allow Community Infrastructure Levy payments to parish meetings, in addition to the current delegation to make payments to town and parish councils. The authority appears in the scheme of delegation for both the head of planning and the head of development and regeneration. Although the new management structure had moved the responsibility for Community Infrastructure Levy spending to the head of development and regeneration, the structure changes have not yet been effected.
34. The review group considers that the delegation should enable officers to make community infrastructure levy payments to parish meetings. The review group considers the change should be made to both the scheme of delegation for both the head of planning and the head of development and regeneration during the transition of the Community Infrastructure Levy spending function to the head of development and regeneration.

Financial Procedure Rules

35. The review group considered some suggested adjustments to the Financial Procedure Rules. With regard to the Community Infrastructure Levy, the review group considers the Financial Procedure Rules should be amended to allow the head of planning to request and the head of finance to approve the creation of budgets following the receipt of Community Infrastructure Levy. Currently, the Financial Procedure Rules only allow the strategic management team to create such budgets. This change affects paragraphs 74 and 75 of the Financial Procedure Rules.
36. Financial Procedure Rule 90 requires that requests for revenue supplementary estimates in excess of £100,000 shall be made to the Cabinet, which shall seek the approval of full Council. Currently revenue supplementary estimates are required when the council receives a government grant; the review group considers this is unnecessary if the council receives a grant from the government for a specific purpose and the review group recommends that this is made explicit in rule 90.
37. Financial Procedure Rule 91 currently authorises the leader of the council in consultation with officers to increase a revenue or capital budget after considering a

request from a head of service. The review group considers that this should be amended to authorise the chief finance officer, rather than the leader of the council, thereby reflecting the normal process for authorisations used elsewhere in the constitution. The wording would be amended to:

~~“The leader of council in consultation with the chief executive and chief finance officer~~
chief finance officer in consultation with the leader of council and chief executive may increase the revenue or capital budget after considering a request from the relevant head of service where the council has:

- (a) Received government grant outside of the usual budget setting cycle for which no budget exists.
- (b) Received additional income for fees and charges that has led to additional costs that require a budget to give authority to spend.
- (c) Received additional income from insurance claims.

In all instances a budget no greater than the increase in income can be created.”

Contract Procedure Rules

- 38. Changes are needed to the Contract Procedure Rules to reflect the agreed management restructure, such as the removal of references to strategic director posts that no longer exist under the revised management structure. The responsibilities previously allocated to the strategic directors have been re-allocated to heads of service or the chief executive as appropriate, as shown in appendix 1 to this report. The review group considers these changes are an appropriate re-allocation of responsibilities.

Financial Implications

- 39. The democratic services budget for printing will meet the costs of producing copies of the amended constitutions.

Legal Implications

- 40. Section 37 of the Local Government Act 2000 requires the Council to keep its constitution under review.

Conclusion

- 41. This report sets out proposals to amend the constitution. Officers recommend Council approves the proposed changes for implementation on 1 June 2018, and authorises the head of legal and democratic to make these changes and any further minor or consequential amendments. The Joint Constitution Review Group supports the proposals set out in this report.

Background Papers

None