
NON-EXEMPT

HAVANT BOROUGH COUNCIL

Standards Committee

13 December 2021

Recommendations of Constitution Working Group

FOR RECOMMENDATION

Key Decision: No

Report Number: HBC/021/2021

1. Purpose

This paper summarises the consideration of possible changes to the Council's Constitution undertaken by the Constitution Working Group at its meeting on 16 September 2021. The recommendations of the Working Group across different topic areas are set out below.

2. Recommendations

2.1. Members are requested consider the recommendations of the Constitution Working Group and, if agreed, to recommend to full Council the following changes to the Constitution: -

- Addition of a 'presumption of access' for Councillors to confidential or exempt parts of meetings, with exclusion to operate by exception (Access to Information Standing Order 57.1 in Part 3 Section B of the Constitution)

- Restoration of practice permitting a ward Councillor to refer planning applications to Planning Committee for determination (new text amending paragraph 2.2.5 of Part 2 Section E1 of the Constitution)
- Confirmation that variation or removal of planning conditions, and other amendments to approved schemes, are only reserved to the Planning Committee where they have a significant impact or change the character of a planning permission (amendments to paragraphs 2.2.7 of Part 2 Section E1 of the Constitution)

2.2. The new wording that would give effect to these changes is set out in the report.

3. Executive Summary

3.1. The Council's Constitution, recently adopted in a modernised form, is intended to be kept under regular review and the Standards Committee is charged with considering any substantive amendments and recommending thereon to the Council. The Constitution Working Group's role is to consider selected Constitutional topics and to make appropriate proposals to the Committee.

4. Councillors' Rights of Access to Confidential or Exempt Business

4.1. The Working Group noted the significant rights already afforded to all Councillors to secure access to council information, or admission to meetings, enshrined in the Constitution. A non-exhaustive list of examples of the 'need to know' were set out in the Constitution and included information relevant to a Councillor's ward, anything connected to the Overview and Scrutiny workplan and any information relevant to the budgetary and strategic decisions that can be taken by Council.

4.2. Cllr Francis had responded to an invitation to address the Working Group, having proposed an amendment to the Constitution relevant to this issue at the Council meeting on 21 January 2021. Cllr Francis expressed a principal concern that required a Councillor wanting access or admission to make a case to the Monitoring Officer. However, it was explained that this was a mechanism for seeking to resolve exceptional cases where information was considered particularly sensitive. In any event, it remained a matter for the Cabinet (or any

Committee) to receive advice but reach its own decision on whether to resolve to exclude press and public (and other Councillors) from its proceedings. It was also noted that Cllr Francis's amendment to Council would, if carried, have removed Standing Order 57.3. This provision made it clear that a 'need to know' would not exist if a Councillor was acting in bad faith or promoting a personal interest. It was considered necessary to lawfulness and overall propriety to retain this provision.

- 4.3. The Working Group considered it would be helpful to reflect the combined effect of all Constitutional provisions and make it clear that, for most purposes and on most occasions, a Councillor would be able to secure access to documents and admission to meetings. All existing provisions would be kept intact but the Working Group approved the insertion of additional text in Standing Order 57.1 to emphasise the rights and interests of a Councillor in terms of democratic legitimacy. The agreed wording reads as follows: -

"The Council will operate a presumption of access to confidential or exempt parts of Council, Committee, Sub-Committee or Cabinet meetings, and related documents, for **all** Councillors. The examples given below of where a "a need to know" will apply are not exhaustive and there is an expectation that exclusion of a councillor from a meeting, or access to a document, will be exceptional."

5. Ward Councillor References to Planning Committee

- 5.1. The ability of a ward councillor to promote a planning application from the delegated list to the Planning Committee was never a Constitutional provision but it was an established working practice at Havant (the so-called 'Red Card' system). The alignment and adoption of the two Council Constitutions saw this informal practice replaced with an express referral process. However, this new process required a threshold of objections to be satisfied **and** the agreement of the Chairman of the Planning Committee, the Head of Planning and the Portfolio-Holder.
- 5.2. Cllr Elizabeth Lloyd, Chair of the Overview and Scrutiny Committee, and Cllr Gary Hughes attended the Working Group and spoke in support of the restoration of an unfettered referral process. Cllr Hughes had led the Task and Finish Panel which

had examined the issue and researched the use of the referral facility. The Task and Finish Panel had concluded that restoration of the process would not be overly burdensome and was an important element in ensuring democratic accountability for planning decisions. The process currently set out in the Constitution was cumbersome and did not address cases where officers acting under delegated powers proposed to refuse a planning application. The Overview and Scrutiny Committee at its meeting on 24 August 2021 had recommended the Standards Committee to devise a mechanism that would secure an unqualified right for a Ward Councillor to make Planning Committee referrals. Cllr Pam Crellin, Chair of the Planning Committee, was also in attendance and spoke in support of the proposal.

- 5.3. The Working Group agreed that the relevant provision (paragraph 2.2.5 of Part 2 Section E1) should be amended to provide as follows: -

“Where, within four weeks of its receipt by the Council, or within seven days of being notified of an intended officer decision to determine a Planning Application:

(a) The local ward Councillor (or in the absence of the local ward Councillor, the Chairman or Vice Chairman of the Planning Committee) requests in writing to the Head of Planning, giving good material planning reasons, that the application be determined by the Planning Committee, and/or

(b) Where five or more individual letters, each raising material planning objections, have been received by the Council, and the referral is supported by a ward Councillor and is agreed by the Chairman of the Planning Committee, the Head of Planning and the Cabinet member with portfolio responsibility for Planning, that the application be determined by the Planning Committee.”

6. Minor Amendments to Approved Schemes

- 6.1. The Constitution at present reserves to the Planning Committee the power to determine an application “to vary or remove a condition that was imposed by the Planning Committee” (paragraph 2.2.7).

- 6.2. An unintended consequence of this provision is that, strictly applied, it requires the bringing back to Committee of all minor changes to conditions, or other minor amendments to approved schemes, which in themselves are uncontroversial and raise no significant planning issues. Cllr Crellin, Chair of the Planning Committee, and the Working Group considered that changes that will alter the character or basis of a planning permission should be distinguished from those that have no significant impact. An alternative wording to the reserved power was agreed: -
- “Where the application is to vary or remove a condition that was imposed by the Planning Committee, on an application under section 73 of the Town and Country Planning Act 1990, or to make any other amendment to an approved scheme, which the Head of Planning in consultation with the Chair of Planning Committee is of the opinion will have a significant impact on the relevant planning permission to which the amendment or condition may attach so as to change the character and basis of that planning permission.”

7. Additional Budgetary Implications

- 7.1. None.

8. Background and relationship to Corporate Strategy and/or Business Plans

- 8.1. Not applicable.

9. Options considered

- 9.1. Not applicable.

10. Resource Implications

10.1. Financial Implications

There are no financial implications arising from this report.

10.2. Human Resources Implications

None.

10.3. Information Governance Implications

None.

10.4. Links to Shaping our Future Programme

10.5. Despite the recent alignment of Constitutions between the two councils, the programme recognises the distinct democratic identity of each. It follows that Constitutional adjustments, giving effect to particular cultural or democratic preferences, are appropriate.

10.6. Other resource implications

There are no other resource implications arising.

11. Legal Implications

11.1. These changes can be accommodated within the Constitution without adverse legal implications.

12. Risks

Monitoring Officer comments

Date: 2021

This report is made in accordance with the duty to monitor and review the Constitution (paragraph 10 of Part 1 to the Constitution). After consideration by the Standards Committee, any changes to the Constitution will be approved by Full Council.

12.1. There are no known risks arising from this report.

13. Consultation

13.1. Not applicable.

14. Communication

14.1. Not applicable.

15. Appendices

15.1. None.

16. Background papers

16.1. None other than published documents.

Agreed and signed off by:

Monitoring Officer: Daniel Toohey

Section 151 Officer: Lydia Morrison 8 October 2021

Contact Officer

Name: Alan Harrison

Job Title: Corporate Governance Solicitor and Deputy Monitoring Officer.

Telephone: 02392 446059

E-mail: Alan.Harrison@havant.gov.uk