

Title: Updates to the Constitution

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Portfolio Holder: Councillors Davison, King and Wightman

Wards of the District directly affected: None

Approvals required	Date	Name
Portfolio Holder	19/6/23	Davison, King & Wightman
Finance	12/6/23	Alex Elston
Legal Services	12/6/23	Sue Mullins Kathryn Tebby
Chief Executive	12/6/23	Chris Elliott
Director of Climate Change	12/6/23	Dave Barber
Head of Service(s)		Report Author
Section 151 Officer	12/6/23	Andrew Rollins
Monitoring Officer	12/6/23	Andrew Jones
Leadership Co-ordination Group	19/6/23	
Final decision by this Committee or rec to another Cttee / Council?	No - Recommendation to Council on 26 July	
Contrary to Policy / Budget framework?	No	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	Yes, Forward Plan item –1,380	
Accessibility Checked?	Yes/No	

Summary

The report brings forward several changes to the Constitution of the Council for consideration by the Cabinet.

Recommendation(s)

- (1) That Cabinet recommends to Council for approval the following amended parts of the Constitution:
 - a. Revised Summary of the Constitution and explanation, as set out at Appendix 1 to the report;
 - b. Updated Article 5, Chairing the Council, as set out at Appendix 2 to the report and the Constitution be amended so that Chairman is replaced with Chair, but allows for individuals to identify the title associated with this role;
 - c. Revisions to Article 14 (with regard to electronic signing and sealing) as set out at Appendix 3 to the report; and
 - d. Revisions to Part 4 Scheme of Delegation, as set out at Appendix 4 to the report.
- (2) The Cabinet delegates authority to the Head of Housing in consultation with the s151 Officer, legal services, and the Portfolio Holders for Housing and Finance, authority to make financial settlements and necessary legal agreements to and with leaseholders of properties in Christine Ledger Square.
- (3) The Cabinet notes that the Monitoring Officer will be reviewing the Constitution in partnership with Legal Services and Heads of Service and further reports will be brought to Cabinet on this.

1 Reasons for the Recommendation

- 1.1 The report brings forward revisions to the Constitution. For ease of reading, this section has been divided into sub-headings to explain the reason for the changes in each section.
- 1.2 Where changes are proposed in the Appendices additional text has been added in *italics* and text removed is ~~struckthrough~~.
- 1.3 **Summary and Explanation**
 - 1.3.1 This section needed a general update following a number of changes made within the Council over several years that had not previously been reflected in this section.
- 1.4 **Article 5 - Chairing the Council**
 - 1.4.1 Following a review by the Council, the role of the Chairman was changed in 2021. This resulted in a revised remit for the Chairman as defined in Article 5 and that the Chairman should only attend three types of functions: Royal Visits, Warwick District Council events and services of remembrance.
 - 1.4.2 On approval of this revised remit, Council asked for a report back in 12 months to consider the impact it has had on the role. The following successive Chairman and Chair were content with the remit and thought that the role was correct, although this was not formally reported back to the Council.

- 1.4.3 The Chair of the Council for 2021/22 was content with arrangements approved by Council because it removed pressures from attending a significant number and variety of events held within the District and allowed the role of Chair to be accomplished without significant impact on work/personal commitments. The previous Chair was of the view that broadening the scope of the role could have a negative effect and put individuals off Chairing the Council.
- 1.4.4 There has not been any significant adverse feedback to the Council on the current arrangements. That said, comments have been made that the Council no longer attends events, such as the Warwick University Graduation Ceremony, or some Mayor making ceremonies, both inside and outside the District, where other civic heads are attending. Members should be mindful that because other Councils are attending, it does not mean the Council has to attend, especially when it comes to events outside the District.
- 1.4.5 The current Chairman has reflected on these thoughts and is of the view that more discretion should be given to allow them attend events where there is no cost to the Council.
- 1.4.6 Councillors need to be mindful of the points raised and also the potential impact of attending one year attending a lot of events, and the next Chair using discretion not to attend other similar events. Any inconsistency could lead to a greater impact on the reputation of the Council than not attending.
- 1.4.7 Officers are mindful that the wording needed to be carefully chosen so that the individual post holder was not choosing to pay to attend events. Equally, the justification for attending events outside Warwick District needed to be far greater than the personal choice of the Chairman i.e. there needed to be material benefit to the Council and its community.
- 1.4.8 The proposal to amend the Constitution so that it moves from defining the Chairman to Chair is made to make the Constitution more gender neutral. Provision is still made for the individual who Chairs a meeting to define the terms they would like to be known as i.e. Chair, Chairman, Chairwoman, Chairperson. The Cabinet should be aware that the term Chairman is defined within legislation and case law but that the proposed change is not unreasonable and clearly identifies the role in line with legislation if required. Further reflection on defining the terms used can be made during the review of the Constitution.
- 1.4.9 Based on these considerations, revised wording has been included within Article 5 of the Constitution.
- 1.4.10 The Cabinet should be aware that the review of the role of the Chairman resulted in the removal of the post of Attendant to the Chairman. This was based on the significant reduction in events attended. Revised risk assessments were introduced and regularly reviewed with the previous Chair for attending any event and these will continue to be monitored with the current Chairman.

1.5 **Article 14 – Finance Contract and Legal Matters**

- 1.5.1 The revisions to Article 14 are at the request of Legal Services, to ensure electronic signatures and sealing are explicitly mentioned within the Constitution. While currently this is implied, and most organisations accept this, the Land Registry has said it will not accept the electronic signature or sealing of conveyancing (and related) documents from the Council without it being explicitly set out within the Constitution.

1.6 **Section 4 - Scheme of Delegation**

- 1.6.1 The proposed change to enable the Monitoring Officer to make minor changes to the Constitution is suggested for when minor wording/grammar errors are identified to remove the need for Council approval. These could be errors or changes as a result of external decisions, for example, those in the summary and explanation specifically where the size of the Council has changed from 46 to 44.
- 1.6.2 The proposed new delegation to the Head of Place, Arts and Economy removes any ambiguity on the right to represent and defend planning appeals against decisions this Council has taken.
- 1.6.3 It is proposed to remove the reference to former employees within delegation DS(70). This is based on legal advice following a recent successful judicial review against a Warwick District Council decision, as a result of which a planning decision had to be quashed. Therefore the legal advice is that it is very hard for planning officers to know who a former member of staff is, in that they may have been employed many years ago and may not declare this on the application. The reference to them being known former employees is vague and could lead to argument because some people might know they are a former employee and others might not.
- 1.6.4 The proposed amendment to DS(70a) is to enable officers to conclude negotiations on S106 and other necessary legal agreements when an application has been determined by the Planning Inspector or Minister. This is considered reasonable as it allows matters to be concluded without the need for reporting to Committee in effect for rubber stamping.
- 1.6.5 The change to delegation to A(2) is the inclusion of the Monitoring Officer specifically now the role is being split from the role of Deputy Chief Executive.

1.7 **Christine Ledger Square**

- 1.7.1 This temporary delegation is proposed to enable WDC to acquire leasehold interests by way of private treaty negotiations, enabling the agreement of valuations and compensation that would be payable to leaseholders that might exceed what would be payable in the event of a compulsory purchase. This is considered a practicable solution where the Council has agreed to demolish the building and now needs to complete the necessary agreements to enable this work to take place.
- 1.7.2 The agreements could involve making an offer to leaseholders to share an amount comparable to the value that the Council would pay in legal costs should it be required to acquire the leasehold interest compulsorily and would include an ex-gratia payment equal to the statutory home loss payment (currently 10% of the value of the interest being acquired subject to a minimum sum of £7,800 and a maximum sum of £78,000 – these sums are subject to change from time to time) that a leaseholder would receive on being displaced by the Courts.
- 1.7.3 Often the gap between the value of a property and the asking price of the leaseholder arises because individual owners find it difficult to use the capital receipt to fund a replacement property in the vicinity of the development.
- 1.7.4 Guidance published by the Secretary of State which sets out the policy for confirmation of compulsory purchase orders (CPO) requires that an authority should demonstrate that it has made reasonable endeavours to acquire the land by agreement. A structured and documented programme of discussions and negotiations with leaseholders will need to be commenced before a CPO could be made.

- 1.7.5 It is understood that it is often the case that acquiring authorities may decide to pay in excess of market value to secure strategic acquisitions in advance of a CPO where this may save costs in the long term.
- 1.7.6 A leaseholder offer will be adopted that ensures consistency between different individuals as there could otherwise be a risk in settling on generous terms with one leaseholder as other leaseholders will expect similar treatment. The offer is designed to mitigate hardship arising from compulsory purchase and the following will be considered as standard in each set of negotiations:
- Agreement to pay the market value of the dwelling plus an additional fixed percentage uplift;
 - Agreement to pay the home loss payment for those who would qualify under a CPO;
 - Agreement to pay a fixed amount of compensation for disturbance payments without the need for receipts, but with the ability for owners and occupiers to claim more if they can evidence the costs incurred;
 - Offer of equity loans for resident leaseholders to assist them relocate elsewhere to a suitable equivalent property;
 - Offer of a replacement home for every resident homeowner who wishes to return when the area is redeveloped; and
 - Offer to pay loss of rent for non-resident landlord leaseholders provided that the landlord leaseholders complete on the sale within a period of six months from the start of negotiations, such payment due on completion of the sale.

1.8 **Review of the Constitution**

- 1.8.1 Regularly reviewing of the Constitution and its operation is recognised good practice. It is considered that with new legal advisors to the Council having been in operation for a year, now is a good time to review the document overall. There will lead officers for specific parts of the Constitution, for example, the Code of Corporate Governance was produced by the Audit & Risk Manager.

2 **Alternative Options**

- 2.1 No alternative options are proposed for the recommendations, the reasons for which are discussed above.

3 **Legal Implications**

- 3.1 The majority of the recommendations have legal implications for the Council and these are set out within the reasons for them.

4 **Financial Services**

- 4.1 The recommendations have no direct financial implications for the Council, except of Christine Ledge Square where budgetary provision has already been made by the Council for this project.

5 **Business Strategy**

- 5.1 Warwick District Council has adopted a Business Strategy which sets out key areas for service delivery. Most of the recommendations have no direct relationship to the strands within the Business plan and are based on good governance. However, the recommendation in respect of Christine Ledger Square relates directly to the Health, Homes and Communities strand in enabling improved housing delivered by the Council.

6 **Environmental/Climate Change Implications**

6.1 There are no direct environmental implications of the proposal in relation to the Council's policies and Climate Emergency Action Plan.

7 Analysis of the effects on Equality

7.1 The only aspect of the report in respect of equalities is the definition of the role of Chair of the Council. Explanation of this definition is contained within the report and 1.3.10, the reasons for this and the allowance within the Constitution to move away from this.

8 Data Protection

8.1 There are no data protection implications of the proposal.

9 Health and Wellbeing

9.1 There are no health and wellbeing implications of the proposal.

10 Risk Assessment

10.1 The most significant risk within the report is that relating to the determination of planning applications where the applicant is a former employee of the Council. This risk has been recognised in the challenge and resultant quashing of a planning application and legal advice is that action is taken to avoid further challenges to the Council.

11 Consultation

11.1 The Chairman of the Council and Group Leaders have been consulted on the proposal in respect of the Chairing the Council.

Background papers: None

Supporting documents: None

Summary and Background

The Council's Constitution - Local Government Act 2000 - SECTION 37 LGA 2000 (Constitutions) (England) Direction 2000

Warwick District Council has agreed a Constitution which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Council to choose. The Constitution is divided into 16 articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document.

What is in the Constitution?

- Article 1 of the Constitution commits the Council to quality and equality in all the services it provides. Quality of life within the District will be the Council's key consideration.
- Articles 2 to 16 explain the rights of citizens and how the key parts of the Council operate. These are:
 - Members of the Council (Article 2)
 - Citizens and the Council (Article 3)
 - The Council meeting (Article 4)
 - Chairing the Council (Article 5)
 - Overview and Scrutiny of Committees (Article 6)
 - The Cabinet (Article 7)
 - Regulatory and other committees (Article 8)
 - The Standards Committee (Article 9)
 - Area Committees and Forums (Article 10)
 - Joint arrangements (Article 11)
 - Officers (Article 12)
 - Decision making (Article 13)
 - Finance, contracts and legal matters (Article 14)
 - Review and revision of the Constitution (Article 15)
 - Suspension, interpretation and publication of the Constitution (Article 16)

How the Council Operates

The Council is composed of 446 councillors elected every four years. Councillors are democratically accountable to residents of their Wards. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors are also referred to as members because once elected they are members of the Council. Councillors have to ~~agree to follow a~~ *the adopted* Code of Conduct to ensure high standards in the way they undertake their duties. The *Audit & Standards Committee* ~~trains and advises them on~~ *oversees the operation of the* Code of Conduct.

All Councillors meet together as the Council. Meetings of the Council are normally open to the public. Here Councillors decide the Council's overall policies and set the budget each year. The Council appoints the Leader *every four years, and all Committees annually. The Leader appoints the* Deputy Leader and Members of the Cabinet ~~and all Committees~~. The Council will receive the minutes of the Cabinet and of any Committees that make a recommendation to Council. On occasion it may

scrutinise Cabinet decisions but only on referral to it of that task by an Overview and Scrutiny Committee.

The Council will receive petitions and any one person presenting such a petition may address the Council on the subject for *a maximum of five* ~~three~~ minutes.

The Council will have an explicit commitment to openness in all of their dealings, subject only to the need to preserve confidentiality in those specific circumstances where it be proper and appropriate to do so, and by their actions and communications deliver an account against that commitment.

How Decisions are Made

The Cabinet is the part of the Council which is responsible for most day-to-day decisions. The Cabinet is made up of the Leader and up to nine other members (including the Deputy Leader). When major decisions are to be discussed or made, these are published in the Cabinet's Forward Plan in so far as they can be anticipated. If these major decisions are to be discussed with council officers at a meeting of the Cabinet, this will generally be open for the public to attend except where personal or confidential matters are being discussed. The Cabinet has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

Overview and Scrutiny

~~There are two~~ is an Overview and Scrutiny Committees who supports the work of the Cabinet and the Council as a whole. ~~They~~ It allows citizens to have a greater say in Council matters by holding public inquiries into matters of local concern. These lead to reports and recommendations which advise the Cabinet and the Council as a whole on its policies, budget and service delivery. ~~The~~ Overview and Scrutiny Ceommittees also monitors the decisions of the Cabinet. Councillors can 'call-in' a decision which has been made by the Cabinet but not yet implemented for consideration by an Overview and Scrutiny Committee (see ~~page E13~~ *Council Procedure Rule 21*). This enables them to consider whether the decision is appropriate. They may recommend that the Cabinet reconsiders the decision. They may also be consulted by the Cabinet or the Council on forthcoming decisions and the development of policy.

The Council's Staff

The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. The Member/Officer Protocol, contained in Part 5 of the Constitution) governs the relationships between officers and Councillors.

Citizen's Rights

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Where members of the public use specific council services, for example, as a council tenant, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections if they are registered;
- contact their local councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend meetings of the Council and its committees except for that part of the meeting where exempt or confidential information is disclosed;
- petition to request a referendum on a mayoral form of Cabinet;
- present a petition to the Council, or its Committees, or the Cabinet and any one person presenting a petition to the Council may address the Council on the subject for three minutes
- find out, from the Leader Forward Plan, what and when matters are to be considered by the Cabinet;
- attend meetings of the Cabinet where key decisions are being discussed or decided except for that part of the meeting when confidential or exempt information is to be disclosed;
- see reports and background papers (except where exempt or confidential information is disclosed) and any record of decisions made by the Council and its Committees and Cabinet;
- complain to the Council about the service delivered by the Council, the behaviour of an officer delivering a service or the correctness of a Council policy in accordance with the Council's complaints policy;
- complain to the *Local Government & Social Care Ombudsman or the Housing Ombudsman* if they think the Council has not followed its procedures properly. However, they can only do this after using the Council's own complaints process;
- complain to the Monitoring Officer of the Council if they have evidence which they think shows that a councillor has not followed the Council's Code of Conduct; and
- inspect the Council's accounts and make their views known to the external auditor.

ARTICLE 5 - CHAIRING THE COUNCIL

LOCAL GOVERNMENT ACT 1972 - SECTIONS 3-7 LOCAL GOVERNMENT ACT 2000 - SECTION 37 - CONSTITUTIONS DIRECTION PARAGRAPH 3(G)

5.01 Role and function of the Chair

The Chair of the Council and in their absence, the Vice-Chair will have both a ceremonial role and that of chairing Council meetings.

The Chair will be elected by the Council annually. The Chair will have the following responsibilities:

1. to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
2. to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of councillors and the interests of the community;
3. to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which members who are not on Cabinet are able to hold the Cabinet to account;
4. ~~to promote the District public involvement in the Council's at events activities and to celebrate the activities and achievements of the Council including its officers and councillors,~~ *to promote the District by attending appropriate events and functions, including achievements of the Council for both its officers and councillors. Attendance at any event outside the District to be approved by Group Leaders.*
5. The Chair may on occasions delegate attending functions to their Vice Chair, or in exceptional circumstances, another Councillor (normally the previous Chairman);
6. Cannot be a member of the Cabinet or Standards Committee;
7. Can decide to be called Chair, Chairwoman, Chairperson, or Chairman during their year in office;
8. Determine one or two charities, associated with the District, to advocate during their year in office, but not hold any specific events to fund raise for them.

Article 14 FINANCE, CONTRACTS AND LEGAL MATTERS

14.04 Authentication *and signing* of documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Monitoring Officer or Chief Executive or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

Any Contract entered into on behalf of the local authority in course of the discharge of an executive function shall be made in writing. Any contract with value exceeding sums specified in the Public Contracts Directive must be made under the common seal of the Council.

Any reference to the signing of documents in this Article, or the wider Constitution of the Council, includes the use of an electronic signature. Any person authorised to sign on behalf of the Council is therefore also authorised to do so by electronic means.

14.05 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the Monitoring Officer. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Monitoring Officer should be sealed. The affixing of the Common Seal will be attested by the Monitoring Officer (or in their absence the Chief Executive) or some other person authorised by them.

Any reference to the Common Seal in this Article, or the wider Constitution of the Council, includes an electronic seal incorporating the design of the Common Seal. Any person authorised to affix the Common Seal is therefore also authorised to do so by electronic means.

Section 4 Scheme of Delegation

Additional Delegations

Authority to the Monitoring Officer to make minor changes to the Constitution in consultation with the Chair of the Council and Chair of Audit & Standards Committee and informing all Warwick District Councillors of such a change that has been made.

Authority be delegated to the Head of Place, Arts and Economy to determine the type of planning appeal, to defend all types of planning appeal (including an application where the Local Planning Authority is notified under other legislation) and to amend the Council's case before or during the course of a planning appeal, the latter being subject to consultation with the relevant Ward Member and the Chair of the Planning Committee.

Revised Delegations

- DS (70) Determine all applications submitted to Warwick District Council as required by the Town and Country Planning Act 1990 (as amended), Town and Country Planning (Control of Advertisement) Regulations 1992, and Planning (Listed Buildings and Conservation Areas) Regulations 1990, with the exception of the following:
- (i) Applications where a written request is received from a member of Warwick District Council within the specified consultation period i.e. 21 days that Committee referral is required. Such requests should clearly state the reasons why a Committee referral is required.
 - (ii) Applications where 5 or more valid representations are received where these are contrary to the officers' recommendation unless the Head of Development is satisfied that the plans have been amended to address the concerns raised so that there are no more than four contrary representations.
 - (iii) Applications where the recommendation of the Head of Place, Arts and Economy i.e. Grant/Refuse is contrary to the representations made by a Parish/Town Council, i.e. Object/Support, except in the following circumstances:
 - a. the Head of Place, Arts and Economy is satisfied that the plans have been amended to address the concerns of the Parish/Town Council;
 - b. where the representations made by the Parish/Town Council do not raise any issues which are material to the planning assessment of the particular application; or
 - c. where the concerns of the Parish/Town Council have been previously considered as part of the assessment of an extant permission on the site and there has been no change in circumstances
 - (iv) Applications where the principle of development would represent a material departure from any policy within the Development Plan.
 - (v) Applications known to be submitted by or on behalf of a Warwick District Councillor, Warwick District Council employee ~~or former~~ employee of the Council, or the spouse/partner of any such person.

- (vi) Applications submitted by Warwick District Council, *Milverton Homes (either solely or as part of another Joint Venture), any Joint Venture (or similar) the Council is part of* or Warwickshire County Council (*including Warwickshire Property Development Company*), other than for approval of routine minor developments.
- (vii) Where applications are to be refused and enforcement action is being recommended, following consultation with the Chairman and Vice-Chairman of the Committee and the relevant ward member(s) except in the circumstances where the Head of Place, Arts and Economy considers it appropriate for that matter to be determined by Planning Committee.
- (viii) Applications where an Environmental Impact Assessment has been provided.
- (ix) Any application which raises significant issues such that in the opinion of the Head of Place, Arts and Economy, it would be prudent to refer the application to Planning Committee for decision.

DS (70a) In consultation with the Portfolio Holder for Place and relevant Ward Councillors, to

- (i) determine minor variations to S106 agreements
- (ii) to enter into section 106 agreements when the application has been determined by the Head of Place, Arts and Economy under delegated authority DS(70)
- (iii) *to enter into appropriate section 106 and other agreements when the application has been determined by the Planning Inspector or Minister*

A(2) Authority to affix the Common Seal where appropriate approval(s) have been given .

Chief Executive, Deputy Chief Executive, Monitoring Officer, and Programme Director for Climate Change (individually).