

TO: **COUNCIL**
26 APRIL 2017

REVIEW OF CONSTITUTION
Director of Corporate Services –Borough Solicitor

1 PURPOSE OF REPORT

1.1 The report recommends changes to the Constitution for approval by Council.

2 It is **RECOMMENDED that** Council:

2.1 Adopt the changes to the Delegations of Chief Officer: Property set out in **Appendices A and B** to this report.

2.2 Adopt the changes to the Protocol for Members in Dealing with Planning Matters set out in the **Appendix C** to this report.

2.3 Delegate to the Borough Solicitor the authority to make minor consequential changes to the Constitution from time to time to reflect legislative amendments, minor alterations in post titles and such amendments as may be required to clarify the meaning and/or effect of constitutional provisions. Such authority to be exercised following consultation with, and prior approval of, the Chair of Governance & Audit Committee in each instance.

3 REASONS FOR RECOMMENDATIONS

3.1 Part 7 of the Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. Any changes considered necessary are subject to approval by Council.

3.2 The amendments proposed should also be read in the light of the Council's transformation programme with particular regard to the need for simplification of processes to achieve efficiencies. The enhanced delegations to the Chief Officer: Property are intended to reflect the need for officers to act swiftly in the property market when dealing with acquisitions and disposals in order to secure the best outcomes for the Council. The Chief Officer: Planning delegations provide clarity to constitutional changes introduced in 2016 increasing the threshold for the number of objections to planning applications that would be required to trigger a Planning Committee determination. Finally, a delegation to the Borough Solicitor to make minor consequential changes of the type set out in the report will reduce the burden on the Council's formal decision making structures which currently require the drafting and presentation of reports through Corporate Management Team, Governance & Audit Committee and Council.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None. Section 37 of the Local Government Act requires the Council to keep its Constitution under review.

5 SUPPORTING INFORMATION

- 5.1 The report covers proposed changes to Chief Officer delegations.

A Chief Officer: Property Delegations

These are shown in **Appendices A and B** to this report.

- 5.2 The context of the proposed changes is essentially four fold.
- The existing delegations are no longer considered operationally fit for purpose. Property transactions are generally a consequence of strategic decisions previously taken by Members, which must then follow both policy and law.
 - The reasons why the delegations are considered no longer fit for purpose are that the rent and land value levels themselves have moved on considerably in the Borough since the existing levels were set in the Council's constitution.
 - Consequently, the ability for the Chief Officer: Property ("COP") and the Property Services team to manage the property estate is fettered in their every day duties. Some recent examples of this are listed below. The new delegation levels will make the operational performance and management of the investment and operational estate more efficient and serviceable for the Council and tenants alike. This will also link into the Commercial Property Investment Strategy as part of the overall transformation programme.
 - Commercial Property investment decisions have recently been vested in the Executive Committee and this change needs to be reflected in the COP delegations accordingly so they can work together in the management of that increasing portfolio.
- 5.3 Examples of where the existing delegations are not operationally functioning are below. They are not that frequent, but they can be material and time delaying for external bodies affected by the Council's decision making processes.

Example 1

- 5.3.1 The Housing Service required a short term property to accommodate homeless families to alleviate financial pressures on the use of B&B accommodation. This necessitated a short term lease being taken, but the rent is above the delegation levels of COP. Time was of the essence and so an emergency powers application to the Leader to delegate the authority had to be requested as there was not time to take the decision to the Executive in the next cycle of meetings. This is purely a financial and operational decision to save the Council revenue expenditure and should not require these additional decision making arrangements.

Example 2

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- 5.3.2 Within the current commercial portfolio there are 7 tenants currently paying rent at either more or close to the delegation levels which means even agreeing rent reviews would require an Executive decision to follow the legal obligations contained in existing contracts. Some of those tenants may seek lease renewals or new terms to improve the income or security of income to the authority and accordingly the delegations need to reflect the ability to manage the current and expanding property commercial portfolio.
- 5.4 The delegation levels proposed broadly reflect the Contract Standing Order thresholds for the approval of Contract awards. They will require the approval of a higher authority than the Chief Officer Property in isolation where sums in excess of £400,000 are involved. (£200k in the case of Freehold or Long Leasehold disposals)
- 5.5 Furthermore, all property transactions have to go via some legal due diligence providing an extra layer of assurance. Commercial Investment acquisitions are delegated exclusively to the Executive Committee
- 5.6 The statutory requirement to obtain best consideration for property disposals remains and all transactions will be subject to scrutiny and external audit as well as public law challenge if appropriate.

B Chief Officer: Planning Transport & Countryside

- 5.7 A marked version of the proposed delegations highlighting amendments for ease of reference is set out in **Appendix C** to this report.
- 5.8 Following changes to the Constitution made in response to the overview and scrutiny review of planning in 2016, it has become apparent that one area of the Chief Officer: Planning Transport and Countryside delegations needs to be updated. This is in relation to the 3-5 objection procedure where officers seek the Chairman and the ward members to agree to a decision either to be delegated or to be considered by the Planning Committee where between 3-5 objections have been received. As currently written this procedure is not explicit and is ambiguous. **Appendix C** sets out the existing and the suggested changes to the delegations of the Chief Officer: Planning Transport and Countryside.

C Monitoring Officer

- 5.9 The Constitution is a living document and as such to remain up to date, relatively minor amendments are frequently required to give effect to changes in the law, job titles as well as to clarify the meaning and/or effect of existing provisions. It is not always expedient for such minor consequential amendments to be referred to Council particularly in light of the forward planning process involving constitutional amendment reports having to be agreed in the first instance by CMT and Governance & Audit Committee prior to agreement by Council. A recommendation is therefore brought forward for the Borough Solicitor to be authorised to make any such amendments as necessary in further satisfaction of his existing duty to ensure that the aims and principles of the Constitution are given full effect.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

6.2 There are no financial implications arising from this report.

Equalities Impact Assessment

6.3 N/A

7 CONSULTATION

Principal Groups Consulted

7.1 Corporate Management Team,
Governance and Audit Committee

Background Papers

Executive response to the report of the Overview & Scrutiny Review of Procedures for Planning Applications and Enforcement (ECC O&S Panel : 5 July 2016)

Contact for further information

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Appendix AProposed delegation levels for Property Transactions

1	To authorise the acquisition of a freehold purchase in accordance with the Council approved release of funding, pursuant to that objective. (Except for all commercial investment based property acquisitions which are delegated to the Executive Committee)	<u>Up to £400,000</u> Chief Officer: Property		<u>£400,001-£1m</u> Director: Corporate Services and Executive Member with advice from Chief Officer: Property	<u>Over £1M</u> Executive Member with advice from Chief Officer: Property and Director: Corporate Services
2	To authorise the disposal of a freehold or long leasehold (a lease of more than 21 years at commencement) subject to: i) the property being declared surplus by the Directorate responsible for the asset and ii) Asset Management Group having no alternative use to recommend	<u>Up to £200,000</u> Chief Officer: Property	<u>£200,001-£400,000</u> Executive Member with advice from Chief Officer: Property and Director: Corporate Services	<u>£400,001- £1m</u> Reserved to Executive	<u>Over £1M</u> Reserved to Executive
3	To authorise the grant of leases, agreements for leases or tenancy agreements, or options for any term at a rent or a licence fee up to £100k per annum.	Chief Officer: Property following agreement with the Director of Corporate Services			
4	To authorise the grant of leases, agreements for leases or tenancy agreements, or options for any term at a rent or a licence fee above £100k per annum.	Chief Officer: Property following agreement with the Director of Corporate Services and Executive Member			
5	To negotiate and complete consents, rent reviews and lease renewals (whatever the	Chief Officer: Property Chief Officer: Property where terms are provided for in statute or within the provisions of the Lease. Otherwise following agreement with the Director of Corporate Services and Executive Member			

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	term) and give and receive statutory notices under all Landlord and Tenant legislation.	
6	To grant a wayleave or easement to statutory undertakers at the best terms reasonably available.	Chief Officer: Property following agreement with the Director of Corporate Services
7	To grant or take a grant of any Licence or Tenancy At Will: (a) up to £100,000 p.a. (b) over £100,000 p.a.	Chief Officer: Property Chief Officer: Property following agreement with the Director of Corporate Services

In addition the following delegations to the Chief Officer Property are proposed to replace existing delegations:

- Agree all payments in connection with the acquisition of land under Compulsory Purchase Powers, including home loss and disturbance payments.
- Authorise the service of Notices under Landlord and Tenant legislation and other Agreements in respect of land.
- To negotiate and enter into any necessary arrangements for the surrender of leasehold interests to or by the Council on the best terms available.
- To take any action under the terms of a transfer of land to or by the Council, lease or licence, relating to the use, ownership or the occupation of land.
- To maintain the Council's terrier land records and other related property information.

Appendix B

Existing Chief Officer: Property Delegations as set out in Council Constitution

1. Subject to the exceptions and limitations in Paragraph 2 below, the Chief Officer: Property is authorised to:

- 1.1 Grant disposal, create or acquire land or interest in land (including wayleaves and easements).
- 1.2 Grant land disposals which are contractually required of the Council.
- 1.3 Grant or secure licences relating to the occupation and use of land.
- 1.4 Determine rent reviews and grant consents and/or take any other action under the terms of a transfer of land to, or by the Council, lease or licence relating to the use, ownership, and/or occupation of land
- 1.5 Agree all payments in connection with the acquisition of land under Compulsory Purchase Powers, including home loss and disturbance payments.
- 1.6 Authorise the service of Notices under Landlord and Tenant legislation and other Agreements in respect of land.

2. Exceptions and Limitations

2.1 The authority to grant any lease, licence, wayleave or easement does not apply if:

- (a) the consideration includes a premium of £50,000 or more, or
- (b) the consideration includes a rental or other consideration of more than £50,000 per annum

Rent reviews providing for a rental of £50,000 or more shall be reported to the relevant Executive Member.

2.2 The authority to take any lease, tenancy, licence, wayleave or easement by the Council does not apply to those cases where:-

- (a) the consideration includes a premium of £50,000 or more, or
- (b) the consideration includes a rental or other consideration of more than £10,000 per annum, or
- (c) the duration of the interest will exceed five years.

2.3 The acquisition of any freehold interest in the land is subject to the acquisition having been previously agreed, in principle, by, or on behalf of, the Executive and the consideration not exceeding £100,000.

2.4 Authority to dispose of amenity land is limited to land not exceeding 0.1 hectares.

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- 2.5 Authority to dispose of the Council's interest in surplus land is limited to land not exceeding 0.2 hectares and to the disposal having been previously agreed, in principle, by, or on behalf of, the Executive.