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Subject to approval at the next Constitution Working Party meeting

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CONSTITUTION WORKING PARTY

30 November 2020 at 4.30 pm

Present: Councillors Mrs Yeates (Chairman), Mrs Gregory (Vice-Chairman), Bennett, Bower, Mrs Catterson, Cooper, Mrs Haywood and Roberts.

Councillor Coster was also in attendance for all or part of the meeting.

27. DECLARATIONS OF INTEREST

There were no Declarations of Interest made.

28. MINUTES

The minutes of the meeting of the Working Party held on 12 October 2020 were approved by the Working Party as a correct record with the Chairman confirming that these would be signed at the first opportunity available to her.

29. COMMITTEE RESPONSIBILITY FOR LAND PROPERTY AND ASSET MANAGEMENT

The Locum Lawyer presented this report on behalf of the Chief Executive and he reminded Members that at previous meetings of the Working Party when looking at the allocation of responsibilities for Committees there had been some confusion in terms of which Committee should be responsible for property, land and asset management. Officers had therefore been asked to review this again and report findings to the Working Party.

The report set out the current proposals in that Property and Asset Management formed the terms of reference of two Committees, being the Corporate Support Committee and the Economic Committee. In view of the confusion expressed by Councillors over the distinction or rationale for this division, the report provided additional background information including how terminology had been used and it set out options for the Working Party to consider.

It was confirmed that housing properties under the HRA did not form part of this report other than for noting purposes. HR Assets and Property were service areas that sat under the responsibility and functions of the Residential and Wellbeing Committee.

Following the research undertaken by Officers, involving consultation with the Section 151 Officer and Group Head of Corporate Support, the Director of Place and the Group Head of Technical Services, the conclusion reached was that all non HRA land, General Fund assets and property should be delegated to the Economic Committee for one simple reason and this was because the Council did not yet have a

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Commercial Strategy which would have responsibility for all Non HRA items. It was proposed that this Strategy, once developed, would provide the Council with a co-ordinated Council wide approach to commerciality including the approach to land and other assets.

In discussing the report, a concern was raised in that this area of Council property, before the Cabinet system had been introduced, had always reported to the Policy and Resources Committee because there was a need to deal with the actual maintenance of properties and these had been considered to be finance matters that had to be dealt with, so was it not sensible for the maintenance of these properties to fall under the Corporate Policy and Performance Committee rather than the Economic Committee?

The Locum Lawyer explained that the Council had an Asset Management Strategy which had been summarised in the report. This prioritised how the Council maintained its assets and this was currently developed by Cabinet, as part of budget making and it was proposed that this be allocated to the Corporate Services Committee. It would not make sense for the Economic Committee to have responsibility for this function. The Asset Management Strategy would still be approved by Full Council.

The Working Party

RECOMMEND TO FULL COUNCIL – That

- (1) To note that Residential and Wellbeing Service Committee is delegated all functions (acquisition, disposal, declaring as surplus to requirements, repair and maintenance) relating to HRA land assets and property both residential and commercial (this includes the small number of residential properties held for accounting purposes in the General Fund but let and managed by Residential Services);
- (2) The Economic Committee be delegated responsibility for all functions (acquisition, disposal, declare as surplus to requirements, repair and maintenance) relating to General Fund land assets and property both residential and commercial; responsibility for the General Fund Property Investment Strategy and the Development of a Commercial Strategy;
- (3) The threshold values for delegation to Officers remain as they are but Corporate Policy and Performance Committee be delegated responsibility for reviewing the thresholds in consultation with the Chief Executive and Section 151 Officer; and
- (4) The Monitoring Officer make consequential changes to the wording of the Committee's terms of reference to reflect the outcome of the above recommendations.

30. CONSOLIDATED REPORT ON OUTSTANDING PLANNING ISSUES

The Locum Lawyer presented this report on behalf of the Chief Executive, reminding Members that this had been discussed at the last meeting of the Working Party but deferred to this meeting.

The purpose of this report was to pull together many of the substantive issues that related to planning which currently were in different parts of the Constitution. The issues for the Working Party to consider were (1) to confirm the name of the Committee; (2) approve public speaking rules and the Planning Local Code which were currently set out in two different places so that in the future they be consolidated as one document; (3) that the proposed terms of reference for the Committee which had also previously been set out in the Constitution in a different place be approved to make it easier to see what the Committee was responsible for and what Officers were responsible for. The purpose of this exercise was to put the two together so that Members could see how they synchronised. There had also been some questions raised about some wording relating to Section 106 and so the fourth recommendation dealt with this final query.

The Chief Executive confirmed that this report had originally been delayed due to the forthcoming Planning Review and the recommendations which were imminently due. It was felt that there were two main issues that could arise from that review which could impact what the Working Party was being asked to consider today, being the size and the name of the Committee. Despite this, he was of the view that this Working Party should continue in considering these recommendations which would be agreed by Full Council in any case. He felt that it was likely that the suggested size of the Development Control Committee in the future, if the Working Party agreed that this should be 10 Members might conflict with recommendations from the Planning Review but this would be dealt with at Full Council.

Debate on this item commenced with what the name of the Development Control Committee should be in the future. There was a strong view that that it should be called the Planning Committee which was the approach taken by many other Councils and was a name that allowed the public to easily understand what the role and functions of the Committee were. In looking at the size of the Committee there were points made that it should be reduced from 15 to 10 Councillors and that this could assist in reducing the length of meetings.

Other Councillors spoke confirming that they could not agree with the name 'Planning Committee' as this would be confusing for the public as the Council would have, in the future, a Planning Policy Committee. It was also felt that the name Development Management Committee was also not appropriate as the Council were not developers and so was not involved in managing development. The name Development Committee was supported. Arguments were also put forward to keep the existing name of the Committee. Some Members confirmed that they were torn in terms of what the size of the Committee should be and that it was vital that the Committee had representation from all parts of the District in terms of its membership.

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Discussion then turned to the draft planning protocol as set out in Appendix 1 to the report in terms of the speaking rules. It was felt that public speakers should have the opportunity to speak again on an application when that application had been deferred to another meeting as it was argued that there could be new matters relating to it and so the public or a Ward Member should then have the right to speak again on any new elements of that application or if further updates were presented. It was felt that this should become permissible at the discretion of the Chairman where necessary.

The draft protocol for Members on dealing with Planning matters had been based on Sherwood and Newark District Council's Constitution which the Working Party was happy with, though it stated that all of the points being discussed were in the document 'Probity in Planning' from the Local Government Association which some Members saw as the model to abide by in terms of the functions of the Development Control Committee.

Another issue raised was the unresolved process for DC raised some time ago with the previous Monitoring Officer with regard to cut-off on deferred items. It was explained that when Members started the debate on a particular planning application, if they then wanted further information it was the view that the Committee should not then take the officer's recommendation at that point when asking for further information and this was the interpretation put in the Planning Code of Conduct in the existing Constitution. It was felt that to cut off debate by taking the officer recommendation before requesting further information was premature as that missing information was needed before a Councillor could consider the officer recommendation. A request was made to have this reviewed.

Following further discussion, Councillor Bennett proposed that the name of the Committee be the 'Planning Committee' and this was seconded by Councillor Mrs Gregory.

Debate then commenced on this proposal with one Councillor suggesting the name Planning Applications Committee. It was strongly felt that the name of the Committee needed to have the word Planning in it. Other suggestions made were Planning Development Committee; Planning Development Control; and Planning Regulation Committee.

Following further discussion, a named vote was undertaken on the amendment to call the Development Control Committee the Planning Committee and on this putting to the vote it was declared CARRIED.

The Working Party then moved on to consider other issues. The first point related to Section 11.8 which read "A speaker can only speak once in respect of an application; in the case of applications returning to the Committee where there has been public speaking previously, a speaker cannot speak at more than one meeting". Based on the debate that had taken place earlier in the meeting, a request was made that this be at the Chairman's discretion and that this be added to the Constitution so as to allow a speaker to speak again when there had been a material change to an application. The Working Party was in complete agreement with this suggestion made

by Councillor Bower and having discussed it further agreed that the words “at the Chairman’s discretion and in conjunction with the Group Head of Planning” be added to this Section of the Constitution.

A second point raised was that when the new Planning Local Code was eventually adopted, should it also contain the RTPI Code of Conduct as it was felt important for Councillors to see this document. It was explained by the Locum Lawyer that as not all Planning Officers were members of the RTPI, the code did not necessarily apply to all Planning Officers. The Locum Lawyer then examined the Member/Officer relations section of the Constitution and confirmed that Paragraph 3.3 of Appendix 1 did adequately cover this but that it could be beneficial to add a link to the RTPI code at this part of the Constitution.

Debate then returned to what the size of the Committee should be. There were arguments presented that this should be reduced to 10 based on research undertaken with other Councils. Other suggestions made were for 11 in line with the membership of the Service Committees. It was acknowledged that it was the responsibility of Group Leaders’ to ensure, when confirming their memberships, that these reflected the wards within the District. Another suggestion made was that the membership remain at 15 until the work of the Planning Review Working Party had been concluded, then the size of the Committee could be reviewed again at a more appropriate time. It was felt that a membership of 10 would not fit in with the political balance of the Council.

Following further discussion, the Working Party conducted a poll in terms of what it felt the membership number should be. The results were that 4 Members voted for a size 15 and 4 Members voted for a size of 11.

Following further debate, the Chairman confirmed that as this decision was split, she would use her casting vote and she confirmed her support for a size of 11. She also confirmed that this would form a new recommendation (5).

Having undertaken separate votes for Recommendations (1) and (2) to (4) and then (5),

The Working Party

RECOMMEND TO FULL COUNCIL – That

- (1) The Development Control Committee be renamed the Planning Committee;
- (2) The Planning Local Code and the Public Speaking Rules be consolidated as one document renamed ‘Planning Local Protocol’ as set out in Appendix 1 of the report and referred to the Standards Committee for consideration at the same time as the proposed new Model Member Code of Conduct, with the amendment being made at Paragraph 11.8 being taken forward;

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(3) The proposed terms of reference of the Planning Committee be approved and that accordingly Council agrees to amend Part 3, Responsibility for Functions, Paragraph 5.2 (Development control Committee) of the Constitution as set out in Appendix 2;

(4) Having regard to the Financial Procedure Rules to agree to amend Part 3, Paragraph 11 and 16 (Responsibility for Functions) the terms of reference of the Planning Policy Committee as set out in Appendix 3; and

(5) The size of the Planning Committee be a membership of 11 Councillors.

31. REFERRAL OF MOTION 4 FROM FULL COUNCIL ON 18 NOVEMBER 2020 TO THIS WORKING PARTY ON CALL-IN

The Working Party received an update from the Chief Executive in terms of the existing requirements in the Constitution covering call-in requests. He confirmed that this matter had been discussed with Group Leaders and that there was agreement with most that this issue needed to be addressed to overcome the issue of Individual Independent Members as when the Constitution had been written, no thought had been given to individual independent Members as there had not been this scenario within the Council at that time, the Constitution only referred to Groups and Parties which was causing confusion. Councillor Bower had then presented his Motion and following long debate at Full Council on 18 November 2020, it had been agreed to refer this matter to this meeting. To assist in the debate, the Locum Lawyer had drafted a report which had been circulated to Members on 27 November 2020 setting out proposals to achieve agreement on this matter.

The report set out four Options for the Working Party to consider which were explained fully at the meeting. It was highlighted that Option 3 [be supported by at least any five Members of the Council who do not have related pecuniary interests with regards to the subject of the call-in] presented the simplest solution to this problem and was based on what Chichester District Council had in its Constitution and was in accordance with the Model Code.

The Chief Executive confirmed that when this had been discussed with Group Leaders major support had been expressed for 5 Councillors. The Working Party was also reminded that whatever option was agreed, this would only be in place until May 2021.

In discussing the report and options available, points were made that this was an urgent matter that needed to be resolved now to allow Call-Ins to take place, the intention was never to reorganise the call-in procedure. Councillor Bower then referred to his Motion put to Council confirming that the Interim Monitoring Officer at the time had had considerable input into defining the wording of the Motion. Councillor Bower confirmed that the regulations did not define an individual Councillor as being a Group, which was wrong and currently precluded Councillors from being able to sign up to taking part in a Call-In request.

The Working Party agreed that it was very important that every Member of the Council had the ability to sign up to a Call-In and so based on this consensus agreement, Option 2 seemed to be the option that the Working Party could support, the Working Party had difficulty with Option 4 as this required more than just majority group members signing the call-in. It was felt that Option 3 was too.

The Working Party then discussed in detail Option 2 and some slight amendments were suggested – which are set out below:

Council agrees to amend the Council's Constitution at Part 6, Section 2, Scrutiny Rule 13.4 as follows with immediate effect

~~Adopt the option which recognises the existence of Individual Members and Independent Groups which are not political groups as well as Independent Political Groups as follows~~

“13.4. If a request for a call-in is received by the Group Head of Policy within the period between the publication of the decision and the effective date, he/she shall call-in the decision for scrutiny by the Committee. For it to be valid, the request must be:

- a) in writing and identify the lead Member of the call-in,*
- b) specify the relevant decision, which is to be the subject of the call-in,*
- c) satisfy at least one of the criteria set out in paragraph 13.8, and*
- d) be supported by any five Members of the Council who do not have related pecuniary interests with regards to the subject of the call-in*
- e) the group submitting the call-in request comprises EITHER Members from more than one political group as defined by Section 8 of The Local Government (Committees and Political Groups) Regulations 1990 OR individual members from one or more political Groups as defined, along with **individual independent** members who are not part of any political party or group.”*

This had been amended to allow Individual Independent Members to have the right to request a call-in.

Full discussion then took place around Groups and Parties and the need to ensure that whatever wording was eventually agreed should not exclude any Members of the Council. Although the Working Party had difficulty in agreeing the wording for the call-in what it did agree on was that it should adopt the option which recognised the existence of Individual Members and Independent Groups which were not political groups as well as Independent Political Groups as follows:

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Option 2 -

“13.4. If a request for a call-in is received by the Group Head of Policy within the period between the publication of the decision and the effective date, he/she shall call-in the decision for scrutiny by the Committee. For it to be valid, the request must be:

- a) in writing and identify the lead Member of the call-in,*
- b) specify the relevant decision, which is to be the subject of the call-in,*
- c) satisfy at least one of the criteria set out in paragraph 13.8, and*
- d) be supported by any five Members of the Council who do not have related pecuniary interests with regards to the subject of the call-in*
- e) the group submitting the call-in request comprises EITHER Members from more than one political group as defined by Section 8 of The Local Government (Committees and Political Groups) Regulations 1990 OR individual members from one or more political groups as defined along with independent members who are not part of any political party or group.”*

Following much debate and having looked at all Options and scenarios, Councillor Bower then proposed that the amended version of option 2 be approved and this was seconded by Councillor Bennett. This is set out below:

Option 2

Council agrees to amend the Council’s Constitution at Part 6, Section 2, Scrutiny Rule 13.4 as follows with immediate effect

~~Adopt the option which recognises the existence of Individual Members and Independent Groups which are not political groups as well as Independent Political Groups as follows~~

“13.4. If a request for a call-in is received by the Group Head of Policy within the period between the publication of the decision and the effective date, he/she shall call-in the decision for scrutiny by the Committee. For it to be valid, the request must be:

- a) in writing and identify the lead Member of the call-in,*
- b) specify the relevant decision, which is to be the subject of the call-in,*
- c) satisfy at least one of the criteria set out in paragraph 13.8, and*
- d) be supported by any five Members of the Council who do not have related pecuniary interests with regards to the subject of the call-in*
- e) the group submitting the call-in request comprises EITHER Members from more than one political group as defined by Section 8 of The Local Government (Committees and Political Groups) Regulations 1990 OR individual members from one or more ~~political~~ Groups as defined, along with **individual independent** members who are not part of any ~~political~~ party or group.”*

The Working Party therefore

RECOMMEND TO FULL COUNCIL

That the following amendment is made to Part 6, Section 2, of the Scrutiny Procedure Rule 13.4 to allow a broader range of Members to initiate call-in requests:

13.4. If a request for a call-in is received by the Group Head of Policy within the period between the publication of the decision and the effective date, he/she shall call-in the decision for scrutiny by the Committee. For it to be valid, the request must be:

- a) in writing and identify the lead Member of the call-in,*
- b) specify the relevant decision, which is to be the subject of the call-in,*
- c) satisfy at least one of the criteria set out in paragraph 13.8, and*
- d) be supported by any five Members of the Council who do not have related pecuniary interests with regards to the subject of the call-in*
- e) the group submitting the call-in request comprises EITHER Members from more than one political group as defined by Section 8 of The Local Government (Committees and Political Groups) Regulations 1990 OR individual members from one or more ~~political~~ Groups as defined, along with **individual independent** members who are not part of any ~~political party or group.~~*

Before concluding the meeting, the Working Party briefly discussed other items that it wished to review. These were:

- the length of Motions presented to Full Council
- agreeing on a Work Programme

(The meeting concluded at 18.47)

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