

Constitutional Updates and Council Delegations

REPORT TO FULL COUNCIL



DATE	18/12/2019
PORTFOLIO	Leader
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PURPOSE

1. To note an additional delegation for the Head of Finance and Property relating to management activities within Part 3 (Exec Functions) of the constitution, as approved by the Leader.
2. To consider an amendment to Part 3 Council Functions relating to Development Control Committee and the Local Plan.
3. To consider an amendment to Part 5.1 Code of Conduct for Members and Part 4.1 regarding mandatory training for Members before consideration of development control items at Full Council and Development Control Committee .
4. To consider an amendment to Part 4.1 Council Procedure Rule (CPR) 10.1 regarding Questions and Observations by Members.
5. To consider a change to Part 4.1 Council Procedure Rules (CPR) to increase efficiency at meetings regarding CPR 13
6. To note that Call in was waived regarding an urgent decision made by the Chief Executive on 18th October 2019 on “Business Rates Retention 2020 to 2021 and Onwards:Lancashire Pool”.
7. To note Minor Amendments made by the Monitoring Officer to Part 5.8 of the constitution relating to the Local Code of Governance.

RECOMMENDATION

8. That an additional delegation for the Head of Finance and Property relating to management activities within Part 3 (Exec Functions) of the constitution be noted, as agreed by the Leader.
9. To consider an amendment to Part 3 Council Functions Para 3 Delegation to Development Control Committee regarding Decisions contrary to the Local Plan, as set out in Paragraph 19.

10. That an amendment be considered to Part 5.1 Code of Conduct for Members and Part 4.1 CPR 24 regarding training being mandatory for Members before they can consider development control items at Full Council and Development Control Committee, as set out in Paragraph 20.

11. That an amendment be considered to Part 4.1 of the Constitution on Council Procedure Rule 10.1 regarding Questions and Observations by Members, including any consequential changes, as set out in Paragraph 21.

12. That a change to Part 4.1 Council Procedure Rules to increase efficiency at meetings be considered regarding CPR 13, as set out in Paragraph 22.

13. That it be noted that Call in was waived regarding an urgent decision made by the Chief Executive on 18th October 2019 Executive on Business Rates Retention 2020 to 2021 and Onwards: Lancashire Pool.

14. That Minor Amendments made by the Monitoring Officer to Part 5.8 of the constitution relating to the Local Code of Governance be noted.

REASONS FOR RECOMMENDATION

15. To ensure that the constitution is updated, and that accountability and transparency is maintained.

16. To ensure that all Members have received relevant training before they are asked to make development control decisions at Development Control Committee and at Full Council.

17. To maintain efficiency when dealing with Council business.

SUMMARY OF KEY POINTS

18. Changes to the Part 3 of the constitution (Exec Functions) as agreed by the Leader.

(a) On 21st November 2019 the Leader agreed the following additional delegation for the Head of Finance and Property relating to management activities (Appendix 1 refers);

“To take all other decisions and carry out all other actions in relation to the day-to-day management of the Council’s property portfolio that are not expressly delegated to the Head of Finance and Property or any other officer”

19. Amendment to Part 3 Council Functions relating to DC and the Local Plan

As a result of the Red Lees Rd planning application which was referred to the 16th October 2019 Full Council from the Development Control Committee, recent research has found that at least one other East Lancashire Authority, in particular Pendle Council, has a process whereby a decision by Development Control Committee which is significantly contrary to policy has a pause in the process for a few days for the matter to be considered by Senior Officers, and if significantly

contrary to policy it would then be referred to the appropriate next stage of decision making i.e the Full Council in Burnley..

Therefore Officers propose that Members should consider the following additional step within Development Control's Part 3 Council Functions delegations (Paragraph 3) to provide a referral to Senior Officers as a safeguard in relation to Development Control Committee wishing to take certain decisions as set out..

“On a planning matter where the Head of Housing and Development Control/Legal Officer has advised before the vote is taken that the decision that the Development Control Committee is minded to take would represent:

- (a) decisions which would be substantially contrary to Burnley's Local Plan or any clearly stated Council policy ;or
- (b) decisions which would give rise to substantial claims for compensation

and the Head of Legal and Democratic Services (having also consulted the Chairman (or in his or her absence the Vice Chairman) of the Development Control Committee) has confirmed in writing that he/she agrees with that view no later than 5 working days after the day of the relevant Development Control Committee, whether it is a decision relating to enforcement action or the determination of a planning application, then the matter will be determined by the Full Council.”

This has been consulted on at MSSWG on 5th December 2019 and subsequently with Group Leaders, and recommended for consideration at Full Council.

20. Mandatory Training for Members on development control items - Part 5.1 Members Code of Conduct .

It is proposed by Member Structures Working Group that an amendment be considered to Part 5.1 Code of Conduct (Page 163 Paragraph 3 on Training) for Members regarding training being mandatory for Members before they can consider development control items at Full Council or Development Control Committee.

At the last Full Council on 25th September 2019 an amendment was made to the Part 5.1 Para 3 of the Code of Conduct (Page 163) to require training before a development control application could be considered at Full Council and Development Control Committee, as follows;

“All Members on Full Council determining a development control application and all Members appointed to the Development Control Committee must attend annual training on planning law and procedure. This training must take place before they can determine any development control application, and failure to do so may be a breach of the Code of Conduct.

However a Councillor could not be prevented from taking part in a development control decision if they hadn't attended training.”

At the time it was accepted that a Councillor could not be prevented from attending Full Council or a Committee meeting, but that failure to attend the required training before a meeting would be considered as a potential breach of the Code of Conduct and therefore Council Procedure (CPR) Rule 24 - Mandatory Training for Development Control Applications was also amended, as follows;

“All Members on Full Council determining a development control application (and all Members appointed to the Development Control Committee) must attend annual training on planning law and procedure. This training must take place before they can determine any development control application and failure to do so may be a breach of the Code of Conduct.

However a Councillor could not be prevented from taking part in a development control decision if they hadn't attended training”.

However a leading authority on Committee administration i.e. Knowles, does suggest that the position of Members attending Full Council without training (which cannot be prevented) is different from Development Control Committee (which could be prevented) due to the pro-active appointment of Members to Committees by Full Council.

Please note that the Code of Conduct prior to 25th September 2019 was silent on this matter of preventing attendance.

Therefore it is proposed that Members who have not attended the relevant training **are** prevented from attending Development Control Committee if they have not received the annual training.

However, due to planning application deadlines and the longer than usual break due to the May elections, the Development Control Committee is usually the first Committee to meet after the Annual and Appointments Council.

Therefore it is also proposed that it is only reasonable that there be a 1 month period after the Annual and Appointments Council meeting for Members to receive annual training, and that for any meetings within the 1 month period DC Members would not be prevented from attending DC..

Any consequent updates to Part 5.1 Paragraph 7.3 (Development Control section) also need to be made to match the amended Para 3.2 on page 163 .

It is therefore proposed that Part 5.1 Para 3.2 and consequent CPR 24 should be amended (in bold) as follows:

“All Members on Full Council determining a development control application and all Members appointed to the Development Control Committee must attend annual training on planning law and procedure. This training must take place **within 1 month of the Annual Appointments Council or being appointed to the Development Control Committee** before they can determine any development control application, and failure to do so may be a breach of the Code of Conduct.

However a Councillor could not be prevented from taking part in a development control decision **at Full Council** if they hadn't attended training, **but could be prevented at Development Control Committee.**”

This has been consulted on at MSSWG on 5th December 2019 and subsequently with Group Leaders, and recommended for consideration at Full Council.

21. Changes to Part 4.1 of the Constitution on Council Procedure Rule 10.1 regarding Questions and Observations by Members as proposed by a Member

Cllr Mark Townsend, in accordance with the constitution (Part 2, Article 15.03) proposed changes to Part 4.1 CPR 10.1. relating to Questions and Observations by Members.

Following a Review by Officers of the constitution relating to Questions and Observations by Members, discussions at MSSWG in September 2019, and with Cllr Townsend, the following principles were agreed as a way forward;

Principles;

- Reports for each Chair of a Committee produced (as now with Exec Member and Scrutiny) which will be basis for any Q/Obs to the Chairs in 10.1
- To delete reference to Proceedings of Committees (i.e. Minutes) in 10.1 (not used for many years and superseded by Exec Member and Scrutiny Chair reports)
- Keep 10.2 (and 10.3) as the “backstop” so that any Q can be asked with the relevant notice period

The following has therefore been proposed to amend CPR 10.1:

Red=deleted from original

Green=added to original

10. QUESTIONS AND OBSERVATIONS BY MEMBERS

10.1 On reports of the Executive Members a Member of the Council may ask the Leader or the relevant Member of the Executive a question and make an observation. **On reports of the Chairs of Committees a Member of the Council may ask the relevant Chair a question and make an observation. Once these have been considered a Member of the Council may ask a question or make an observation in relation to the proceedings of the Executive or the Committee since the last ordinary meeting of the Council.** In normal circumstances the relevant Executive Members will respond directly to any questions or observations on Executive Member reports **or Executive minutes**, with the Leader responding if the issue covered more than one portfolio area. **In normal circumstances the relevant Chair (or Vice chair if absent) will respond directly to any questions or observations on a Committee Chair’s report.** Wherever practicable the Member shall give prior notice to the Leader, **Executive Member Portfolio Holder** or Chair of their intention to refer to the matter.

This has been consulted on at MSSWG on 5th December and was recommended for approval.

22. Changes to the constitution to increase efficiency at Full Council meetings.

Following the 16th October 2019 Full Council meeting and the item on Red Lees Road, discussions between Cllr Howard Baker and the Monitoring Officer took place on how to improve the effectiveness of the Full Council meeting when dealing with a Development Control item.

The following change is proposed to allow for the active participation of Officers at Full Council when dealing with a non policy development control or licensing issue.

CPR 13 Motions without Notice.

Add “ (q) to allow Officers to actively participate in the meeting when dealing with non-policy Development control decisions or licensing determinations”.

This proposal was consulted on at MSSWG on 5th December 2019 and was recommended to Full Council for approval.

23. Waiving of Call-in by Chair of Scrutiny.

The Chair of Scrutiny waived call in regarding an urgent decision made by the Chief Executive on 18th October 2019 Executive (Appendix 2 refers) relating to Business Rates Retention 2020 to 2021 and Onwards:Lancashire Pool.

The reason for urgency was due to a deadline for a decision imposed by the Government of 25th October 2019, which did not allow for consideration by the next scheduled Executive on 31st October 2019 nor any potential call in by Scrutiny Committee.

Part 4.5 of the constitution requires the call in waiver to be reported to Full Council.

24. Minor Amendments to the Constitution by the Monitoring Officer -Part 5.8 Local Code of Governance

On 25th November 2019 the Monitoring Officer (following recommendations from the Internal Audit Manager) made Minor Amendments to Part 5.8 of the constitution relating to the Local Code of Governance to better reflect the way the Council operates. An additional paragraph was included under Structures and Processes relating to the Council’s Financial Regulations and Contract Procedure Rules.

The Council’s Code was compared with other Local Authority examples which did not highlight the need for any major changes.

FINANCIAL IMPLICATIONS AND BUDGET PROVISION

25. None.

POLICY IMPLICATIONS

26. None.

DETAILS OF CONSULTATION

27. Member Structures Officer and Working Groups.

BACKGROUND PAPERS

28. None.

FURTHER INFORMATION

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