

Rother District Council

Report to: Audit and Standards Committee

Date: 5 December 2022

Title: Proposed Amendments to the Constitution

Report of: Malcolm Johnston, Chief Executive

Ward(s): -

Purpose of Report: To present several proposed amendments to the Constitution for approval and adoption.

Officer

Recommendation(s): **Recommendation to COUNCIL:** That:

- 1) the proposed amendments to Part 3, Responsibility for Functions at paragraphs 5.3 (c) and 9.3 (a) as detailed at paragraphs 5 to 9 of the report be approved;
 - 2) the proposed amendment to Council Procedure Rule 16, as detailed at paragraphs 10 and 11 of the report be approved; and
 - 3) the proposed amendment to public speaking rights at Planning Committee be approved as set out in the report.
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Introduction

1. As Members are aware, the responsibility for considering and recommending changes to the Constitution now sits with the Audit and Standards Committee (A&SC), as set out in Article 15 of the Constitution.
2. At the A&SC's meeting in July, consideration was given to the proposed amendments to Part 3, Responsibility for Functions which had been the last part of the Constitution to be looked at by the Constitution Review Steering Group. The A&SC recommended the proposed amendments as printed to full Council in September, which were approved and adopted without amendment.
3. Around the same time, several potential amendments were picked up in respect of the regulatory committees' functions and procedures. These amendments were not proposed at the full Council meeting in September but instead are brought forward in this report to enable detailed consideration and onward recommendation to Council.
4. The report also details proposed amendments to Council Procedure Rule 16 in respect of previous decisions and motions and the public speaking scheme at Planning Committee meetings.

Proposed Amendments

Referral to full Council

5. The first proposed amendment relates to the provision within both the Licensing and General Purposes and Planning Committee Functions and Delegations whereby any three Members of the respective Committee may refer an item of business to full Council for determination – in other words, to relinquish the decision-making powers granted to them by full Council to determine a regulatory matter, prior to a decision being taken.
6. In both cases this provision is only applicable to decisions that have yet been made – i.e. to refer the decision-making to full Council to determine the matter. In the case of Planning Committee referring the determination of a planning application, a recommendation either for or against the proposal must be made with the required reasons / conditions etc. at the time of the reference; this has happened in the past on very few occasions in relation to controversial planning applications.
7. There has been no known reference from the Licensing and General Purposes Committee to full Council since it has come into being in its current form in October 2003.
8. The wording currently in the Constitution is as follows:

Licensing and General Purposes Committee

Paragraph 5.3 (c) - Three Members of the Committee may, at a meeting of the Committee when a resolution is under consideration and before it is passed, veto any item being dealt with in such manner and require submission to the Council for confirmation.

Planning Committee

Paragraph 9.3 (a) - in relation to the determination of all applications for planning permission (including applications for development made by the Council) a reference to full Council may be made by any three Members of the Committee indicating that it is their wish that an application be referred to full Council.

A reference to full Council must include, at the time of reference, a proposed motion of either refusal or approval with, in the case of refusal, the reasons for refusal and in the case of approval, any condition to be attached thereto; the item printed in the Council agenda will contain the Committee recommendation with the counter motion which may be moved.

9. It is proposed that the above paragraphs are deleted from the Constitution at Part 3, Responsibility for Functions so removing the ability for Members of these regulatory committees to refer a matter to full Council for decision. These are historical provisions and given that any decision can be rescinded, as detailed in the following paragraphs, it is not considered necessary to retain this provision within the Constitution. Following a review of neighbouring authorities, it is confirmed that this provision does not exist in any other East Sussex authority.

Previous Decisions and Motions (Council Procedure Rule 16)

10. Members will also be aware that there is the ability within the Constitution to rescind a decision once made (Council Procedure Rule 16). Having had experience of this in recent times, and in light of legal advice received at that time, it is recommended that in order to prevent this procedure rule from being used by Members in an attempt to “derail” unpopular decisions, Council Procedure Rule 16 be amended as follows (amendments shown in **RED**):

16.1 Motion to Rescind a Previous Decision

A motion or amendment to rescind or reverse, or which has the effect of rescinding or reversing a decision of the Council made within the preceding six months cannot be moved **unless there has been a material change in circumstances and** the notice of motion is signed by at least one third of **all** Members or unless it is a recommendation of a Committee or the Cabinet which appears on the agenda.

Planning Committee - Public Speaking Rights at Planning Committee

11. This minor amendment relates to a new provision that was included at 9.6, Public Speaking Rights at Planning Committee, within Part 3, Responsibility for Functions. The provision was introduced so that planning applications that had already been subject to public speaking and then deferred, may not necessarily be subject to public speaking a second time around, unless any new material planning information has been presented.
12. The proposed minor amendment is as follows:

9.6

- (3) Planning Applications that have already been subject to the public speaking scheme and deferred and reconsidered by the Planning Committee will not usually be subject to public speaking at the subsequent meeting unless any new material planning information has been presented. Each case will be decided on its merits **by agreement between the** Development Manager ~~in consultation with~~ and the Chair of Planning Committee.

Environmental Implications

13. Rother District Council’s Environment Strategy sets out the Council’s vision for reducing our impact on the environment and our commitment to make Rother District carbon neutral by 2030.
14. By regularly reviewing the way the Council operates will ensure that the Council continues to change and adapt to help reduce its carbon footprint and the Constitution will continue to evolve to meet the challenge.

Risk Management

15. The Council is required to have an up-to-date Constitution available at all times. The risk of having a Constitution that is difficult to understand may lead to Members and officers not acting in accordance with the Constitution which could result in potential challenge, maladministration and reputational damage.

It is important to keep the provisions within the Constitution under review and make appropriate recommendations for change in light of experience.

Conclusions

16. Members are asked to consider the proposed recommendations within this report and make recommendations to Council as it sees fit.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	Yes	Access to Information	No
Risk Management	Yes	Exempt from publication	No

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Appendices:	None.
Relevant previous Minutes:	