

**DEPUTY CHIEF EXECUTIVE'S OFFICE**

A. Faulder (Interim)

**TO ALL MEMBERS OF COUNCIL**

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17th July 2009

Dear Councillor,

**COUNCIL – FRIDAY 24 JULY 2009 – ADDITIONAL REPORTS**

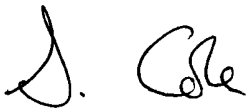
Please find attached the papers which were not available when the agenda was printed. Please bring these papers to the meeting on Friday 24 July 2009.

Agenda Item 9 – A new constitution for Herefordshire Council – Timetable and Process

Agenda Item 10 - Proposed changes to the delivery of Planning Services in Herefordshire.

**Please would those Members attending Monday's seminar on Shared Services and the new constitution bring these papers to the seminar. The seminar will start at 9.30 am in the Council Chamber.**

Yours sincerely,



**SALLY COLE  
COMMITTEE MANAGER EXECUTIVE  
ASSISTANT CHIEF EXECUTIVE'S OFFICE, LEGAL AND DEMOCRATIC**





<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>24 JULY 2009</b>
<b>TITLE OF REPORT:</b>	<b>A NEW CONSTITUTION FOR HEREFORDSHIRE COUNCIL – TIMETABLE AND PROCESS</b>
<b>REPORT BY:</b>	<b>ASSISTANT CHIEF EXECUTIVE – LEGAL AND DEMOCRATIC</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

The report seeks Council's approval to a process and timetable for the development and adoption of the Council's new Constitution.

### **Key Decision**

This is not a Key Decision

### **Recommendations**

**THAT Council:**

- (a) requests that the Monitoring Officer in consultation with the Constitutional Review Working Group develops a new Constitution for Herefordshire Council in accordance with the brief (Appendix 1), process and timetable (Appendix 2) outlined in this report;**
- (b) requests the Monitoring Officer and the Constitutional Review Working Group consider the constitutional areas set out in Appendix 3 and have regard to the impact of the work set out in Appendix 4 and any imminent or pending legislative or other changes;**
- (c) requests that the Monitoring Officer present a report and new Constitution for consideration and agreement by the Council at its next meeting**

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Further information on the subject of this report is available from  
Charlie Adan, Assistant Chief Executive – Legal and Democratic on (01432) 260200

## **Key Points Summary**

This report

- a. Explains the background and context for the development of a new Constitution
- b. Explains the purpose of the new Constitution and proposes that the Monitoring officer's brief for doing this work is aimed at achieving that purpose
- c. Explains some of the key constitutional provisions that require consideration
- d. Explains the process and the timetable for developing and agreeing the new Constitution

## **Alternative Options**

1. The alternative is that the Council does not agree the recommendation and decides to retain its existing Constitution. The Council could decide to review and amend its current Constitution. The Council could amend the brief, the process or the timetable for the development and agreement of its new Constitution.

## **Reasons for Recommendations**

2. The Council Leader, the Constitutional Working Group and other Councillors have indicated that the current Constitution is not fully effective and the Joint Management Team and other Council officers have indicated that the current arrangements are in need of review. The current Constitution is in a format that does not lend itself to ease of use or interpretation and it does not follow the model Constitution for the Leader and Cabinet style of local government. There are some areas that are unclear and some areas that need to be amended to ensure that the Constitution reflects best governance practice.

## **Introduction and Background**

3. Given that the Council agrees that its current Constitution needs to be replaced, it is important that the Council agrees a process and a timetable for the development and agreement of a replacement.
4. It was intended that the council would be asked to approve Parts 1-3 of its new Constitution and some initial changes to procedure at this meeting. Consultation with members and a discussion at the Constitutional Review Working Group resulted in a proposal to delay implementation of any changes and to follow a planned process leading to presentation of the new Constitution to the next Council meeting on 13<sup>th</sup> November 2009.
5. It is proposed that the Interim Assistant Chief Executive – Legal and Democratic should lead the development work and working closely and in consultation with the Constitutional Working Group should present a new Constitution to the Council at its next meeting.
6. The purpose and brief for this work is set out at Appendix 1.

7. The process and timetable for that work is set out at Appendix 2.
8. The list of key constitutional areas that have already been identified for consideration is at Appendix 3.
9. There are already a number of areas of activity underway within the Council that may result in developments that might impact on the Council's constitutional arrangements. Those activities are listed at Appendix 4.
10. There may be other relevant issues to consider. In particular, the Department of Communities and Local Government may issue further regulations and guidance and if so, regard should be had to those matters. Consideration should also be given to best practice guidance and advice from relevant agencies.
11. The Assistant Chief Executive – Legal and Democratic and the Constitutional Working Group should consider those activities and ensure that as far as is practicable they consider that impact during the development of the new Constitution.

## **Appendices**

Appendix 1. - The New Constitution for Herefordshire – Purpose and Brief

Appendix 2. - The New Constitution for Herefordshire – Process and Timetable

Appendix 3. - The New Constitution for Herefordshire – Areas for Potential Changes in New Constitution

Appendix 4. - The New Constitution for Herefordshire – Other Relevant Activities

## **Background Papers**

None



## A NEW CONSTITUTION FOR HEREFORDSHIRE COUNCIL

### PURPOSE AND BRIEF

The purpose of the new Constitution is:

- To ensure that Councillors, Council staff and partners know how the Council functions
- To ensure that the people of Herefordshire know how the Council functions
- To ensure that the Council adheres to the principles of good governance
- To ensure that the Council delivers on its promises in its Code of corporate governance
- To ensure that the Council has in place the necessary rules and protocols to ensure that it can conduct its affairs effectively and efficiently and with probity
- To ensure that it is compliant in all respects with the legislative framework and statutory guidance
- To ensure that it is accessible and easily understood

The brief for the Assistant Chief Executive – Legal and Democratic is

- To keep it simple and produce a constitution that is tidy concise and easy to follow
- To ensure that the development of the constitution takes into account governance best practice and reflects advice and guidance available
- To ensure that the Constitution reflects and balances all the different roles of Councillors
- To ensure that the Constitution provides a framework for partnership working, community participation and that it helps the Council focus on achieving outcomes
- That it reduces bureaucracy and streamlines the constitutional systems and processes
- That it provides flexibility for the Council to develop its governance arrangements to meet future changes and is a blueprint for new ways of working Herefordshire that are developing





THE NEW CONSITUTION FOR HEREFORDSHIRE COUNCIL

PROCESS AND TIMETABLE

The following is the process and timetable to be followed:

- 1 Preliminary consultation and feedback from Councillors and officers – July/Aug 2009
- 2 Preliminary work on drafting and re-formatting the Constitution – July/Aug 2009
- 3 Review and debate on key issues set out in Appendix 4 – a schedule of weekly meetings – Sept 2009
- 4 Consideration and feedback on detail and draft new Constitution - a schedule of weekly meetings – October 2009
- 5 All Councillor and senior staff seminar – end October 2009
- 6 Finalise the report to Council and draft Constitution – no later than 2nd November 2009
- 7 Report to Council and new Constitution published and distributed – 5<sup>th</sup> November 2009
- 8 Council meeting – 13<sup>th</sup> November 2009
- 9 Guidance and training for Councillors and relevant staff and partners etc – 16<sup>th</sup> -30<sup>th</sup> November 2009
- 10 Go live date for new Constitution – 1<sup>st</sup> December 2009

The Constitutional Review Working Group should be consulted on each of the above actions.



THE NEW CONSITUTION FOR HEREFORDSHIRE COUNCIL  
AREAS FOR POTENTIAL CHANGES IN NEW CONSTITUTION

The constitutional arrangements in the following areas should be considered for amendment and change as part of the development work:

- The arrangements for Cabinet meetings
- Scrutiny arrangements
- Planning Committee arrangements – taking into account decisions of Council of 24<sup>th</sup> July 2009
- The Full Council meeting
- The role and functions of Chairman and Vice Chairman of Committee
- Forward planning, agenda management and key decisions
- Delegations to officers
- The Policy framework and policy hierarchy
- Joint working and partnership arrangements – flexibility for the future
- Councillor call for action and petitions



THE NEW CONSITUTION FOR HEREFORDSHIRE COUNCIL

OTHER RELEVANT ACTIVITIES

Regard should be had to the following activities:

- 1 Scrutiny review – facilitated by Cllr Lamb (Trafford MBC)
- 2 Reaching the Hearts of Herefordshire - The role of Ward Councillors – pilot project – facilitated by the Leadership Centre for Local Government
- 3 Audit Commission report on the planning and development control arrangements
- 4 Partners and Communities Together – review working group
- 5 Scrutiny of Crime and Disorder activity – the impact of the new legislative arrangements
- 6 Councillors Call for Action and Petitions



<b>MEETING:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>24 JULY 2009</b>
<b>TITLE OF REPORT:</b>	<b>PROPOSED CHANGES TO THE DELIVERY OF PLANNING SERVICES IN HEREFORDSHIRE</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENT &amp; STRATEGIC HOUSING</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

To set out the options for change in relation to the Council's Constitution which would be an outcome to the key findings of the Audit Commission and the Environment Scrutiny Committee working group in relation to the operation of the Council's planning system.

### **Key Decision**

This is not a Key Decision.

### **Recommendations**

**THAT Council agrees in principle the following recommendations:**

- (a) The Council agrees Option 1 as set out in the report, namely to establish a single Planning Committee (19 Members)**
- (b) In the event that the Council does not agree to Option 1 (as outlined in recommendation (a)); the Council agrees to Option 2 as set out in the report, namely to establish a Strategic Planning Committee (11 Members) and 2 Area Planning Committees (11 Members on each)**
- (c) agrees the revisions to the scheme of delegation to officers;**
- (d) note the proposed changes to the role of members in the planning process;**
- (e) agree the revised arrangements for handling planning applications proposed to be determined contrary to officer recommendation; and**
- (f) authorises the Monitoring Officer and the Constitutional Review Working Group to reflect these changes in future revisions to the Constitution.**

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Further information on the subject of this report is available from  
Geoff Hughes, Director of Regeneration and Charlie Adan, Assistant Chief Executive  
on (01432) 260695 or (01432) 260200

## Key Points Summary

- The Audit Commission has suggested that the Council reviews its arrangements for delivering the committee structure that supports the Planning Service.
- The Audit Commission, Scrutiny function and many Members are clear in their view that the referral system brings the Council into disrepute and opens us up to legal challenge. It is recommended that the referral process be removed and it is proposed that a method of ‘cooling-off’ for the Committee(s) to review those decisions that have gone against officers’ recommendations.
- Option 1 is proposed as the preferred option to ensure a modern and effective revised Planning Committee structure.
- If Council was not minded to support Option 1, Option 2 would be able to satisfy the Audit Commission’s recommendation at this stage.
- Detailed proposals are submitted on other key areas including the scheme of delegation, the role of members in the planning process and the methods of handling applications that members propose to determine contrary to recommendation.
- A revised Planning Committee structure would provide both financial and reputational benefits to the Council.

## Alternative Options

- 1 The most important decision in relation to this matter is in respect of the committee structures themselves. Two options are set out in the report. A third option – that retains the three area sub-committees and discontinues the Planning Committee – has been rejected. This option would not provide the degree of consistency and overview that will be required in delivering strategic applications both in general, and in relation to New Growth Point sites in particular.  
  
A fourth option – the status quo – has also been rejected. The retention of the current system will not address the issues raised by the Audit Commission and creates operational inefficiencies.
- 2 The other proposals are based on best practice from elsewhere.

## Reasons for Recommendations

- 3 The recommendations will result in the delivery of a re-modelled planning service which reflects both best practice elsewhere and responds positively to the recommendations made by the Audit Commission, who stated:
  - (a) *‘Decision making arrangements at Committee are cumbersome (para 17). The way Councillors participate in planning decision making ... is having a negative impact on the effectiveness and efficiency of the service. Unless the concerns set out in the report are addressed, the reputation of the Council is at risk which will ultimately undermine its ability to deliver its corporate priorities, especially around regeneration and housing.’ (para 18).*
  - (b) *‘The perception is that they (decisions) are not consistent, fair or transparent.’ (para 30).*



- (c) *'The call-in and referral process lack transparency and add delay and uncertainty'. (para 30).*
- (d) *'Councillors take their local representational role very seriously. They (Councillors) have a deep seated belief that it is the purpose for which they had been elected'. (para 42).*
- (e) *'The impact of continued parochialism will be an inability to deliver fully the Council's countywide strategic planning ambitions, and the investment of officers' and members' energies and resources in heading off appeals and other challenges rather than improving outcomes for the wider community'. (para 21).*
- (f) *'Exploit the potential for councillors' and officers' learning from appeals and other significant challenges within a training and development setting. Ensure lessons are drawn from key challenges, and that action is taken to address identified weaknesses'. (R2).*
- (g) *'Review and amend the planning decision making processes to ensure these are more efficient, fair and transparent and increase accountability for decisions by: reviewing the operation of the delegation scheme and call-in system; abandoning of amending the area committee referral mechanism to increase committee accountability; and evaluating the costs and value added by the present two-tier committee arrangements that involve all councillors, compared to other alternative committee structures'. (R5).*
- (h) *'Ensure greater separation of roles between the local ward councillor and the planning decision maker through a review of current committee membership and application of codes of conduct and good practice'. (R9).*

## **Introduction and Background**

- 4 The Audit Commission published a report in March 2009 on the operation of the development control system. The report was produced as part of the 2008/09 programme that the Audit Commission agreed with the Council for the delivery of its audit and inspection remit.
- 5 The Planning Services Scrutiny Review Group (of the Environment Scrutiny Committee) report was presented to the Environment Scrutiny Committee on 20<sup>th</sup> April 2009. The remit of this report covers a far wider area than the Audit Commission report.
- 6 A detailed response to both reports will be considered at the Cabinet on 30<sup>th</sup> July 2009.

## **Key Considerations**

- 7 This report has been prepared for Council so that the Cabinet can have the widest amount of information and comment to inform its decision on 30<sup>th</sup> July, 2009.
- 8 In order to implement a revised planning system decisions will be required on the following key areas:
  - (a) the composition of the committee structure to determine planning applications and other related matters (currently Parts 9.1 and 9.2 of the Constitution).
  - (b) the delegation of decisions on planning applications and other related matters from the Planning Committee to officers (currently Appendix 18 of the Constitution).
  - (c) the role of members in the planning process (currently Appendix 13 of the Constitution).

- (d) the way in which applications determined contrary to officer recommendation are handled (currently Appendix 18 Annex 1 of the Constitution).

#### *Composition of the Committee Structure*

- 9 The Audit Commission report was clear in its recommendation that the Council should review its existing Committee structure in relation to the operation of the planning system.
- 10 Two options have been discussed in recent weeks with members via group meetings. The first is based on a single planning committee dealing with all non-delegated applications. The second is based on a strategic planning committee (dealing with major land allocation-type applications and other matters of a strategic/country-wide nature) and supported by the operation of two area based committees (dealing with all other applications on a geographic area basis). In this option the three committees would operate in an independent fashion – there would be no referral process from an area planning committee to the strategic planning committee.
- 11 The current Constitution specifies that all 58 members have a development control function. All members sit on their respective area sub-committee, and some members are also members of the Planning Committee.
- 12 In debating the options consideration has been given to the numbers of members that would be appropriate to form part of the revised committee structure. Based on evidence from other similar authorities the following numbers of members are suggested for each option.

#### **Option 1**

Single Planning Committee  
19 Members

#### **Option 2**

Strategic Planning Committee  
11 Members

Area Planning Committee (x2)  
11 Members (on each Committee)

- 13 A situation that does not involve every member having a direct development control function would require any planning committee (as set out in paragraph 10 above) to be constituted on a politically proportionate basis.

#### *Delegation of decision to officers*

- 14 The Audit Commission has indicated that the Council should simplify its scheme of delegation to officers. The current scheme of delegation (Appendix 18 of the Constitution) is a traditional model which seeks to identify a comprehensive list of functions that can be delegated to officers. It covers 25 sub-areas. The current scheme of delegation results in 89% of all applications being determined under delegated powers (in conjunction with detailed discussions with ward members).
- 15 A revised model is set out at Appendix 1. It sets out a by-exception approach that has been adopted by many other local authorities and which is anticipated to result in 95% of all applications being determined under delegated powers. The ongoing contact between ward

members and planning officers would be consolidated and extended both to improve the quality and integrity of delegated decisions and to generate member confidence in the proposed new arrangements.

#### *Role of Members*

- 16 The Audit Commission report has suggested that the Council should review the role of members in the development control process in general, and ensure that there is a clear distinction between members' regulatory, representative and political roles in particular.
- 17 Any revisions to the Planning Committee structures and the number of members with a direct development control function will assist in the process. Appendix 2 sets out proposed arrangements for maintaining and extending the role of the local member in revised arrangements. The appendix/note sets out proposals around:
  - (a) initial discussions once an application is received
  - (b) initial discussions on the proposed terms of Section 106 Agreements
  - (c) determination of application at committee and the role and engagement of the local member.
  - (d) information exchange post-decision.

#### *Decisions on planning applications at Committee contrary to recommendation*

- 18 The Audit Commission expressed its own views about the current referral process (Appendix 18/Annex 1 of the Constitution) from any one of the area-sub Committees to the Planning Committee. This practice is widely misunderstood by applicants/agents and objectors, and creates operational difficulties for officers.
- 19 In either of the two options proposed for the revised committee structure (see paragraph 10) it is proposed to replace the current referral system with a further Information Report System. Appendix 3 sets out this proposal in further detail. In essence where there is a resolution to determine an application contrary to recommendation further information would be submitted to the next meeting of that Committee setting out in particular the legal, procedural and likely financial implication of proceeding with the initial resolution.

### **Community Impact**

- 20 There will be improved working relations between the Council, public and Parish and Town Councils.

### **Financial Implications**

- 21 The various proposed changes will be largely cost neutral, and can be contained within existing service budgets.

### **Legal Implications**

22. Any revised arrangements would need to be reflected in amendments to the Council's Constitution.
- 23 The role that members play within the Planning Service must be designed to ensure compliance with the Ethical Standards Framework.

## **Risk Management**

- 24 The Planning Service continues to be high-profile, and this will continue as the County embarks on the New Growth Point initiative in general, and its LDF in particular.
- 25 The effective operation of the Planning system also has a significant impact on the wide reputation of the Council. Since the publication of the Audit Commission report and the findings of the Environment Scrutiny review group the Local Government Association has published an update of its report on Probity in Planning. This is timely and will allow you and officers to ensure that all documentation that supports the new arrangements will be entirely in accordance with national best practice.

## **Consultees**

- 26 As these matters are largely internal and procedural to the Council no consultation has taken place.

## **Appendices**

- 27 Appendix 1 – Proposed Revised Scheme of Delegation to Officers  
Appendix 2 – Proposed Role of Local Member  
Appendix 3 – Proposed Further Information Report System

## **Background Papers**

- Audit Commission – Planning Services Review - Herefordshire Council Audit 2008/09 – March 2009
- Local Government Association – Probity in Planning May 2009

**Planning Committee(s)  
Proposed Scheme of Delegation**

The response proposed to the Audit Commission accepts its recommendation to review the planning delegation scheme. Its report comments that the current delegation agreement includes a long list of what is delegated, whereas good practice guidance issued by Government and the LGA recommends that a 'by exception' approach is adopted.

On this basis the following approach is recommended.

**All planning applications (and other associated applications for development activity) are delegated to the Head of Planning and Transportation and/or nominated officers within the Service with the exception of the following applications/circumstances:**

1. **Applications called-in for Committee determination by Council Members (see Practice Note No 2).**
2. **Applications for development submitted by the Council or by others on Council land.**
3. **Applications submitted by Council Members.**
4. **Applications submitted by officers in politically-restricted posts and/or by officers employed in the Planning and Transportation Service.**
5. **Applications which in the view of the Head of Planning and Transportation raise issues around the consistency of the proposal, if approved, to the adopted development plan.**
6. **Applications which in the view of the Head of Planning and Transportation raise issues of a significant and/or strategic nature that a Committee determination would represent the most appropriate course of action.**

Underlying this proposed scheme of delegation contact and liaison between case officers and members would be improved significantly. This would ensure that Members had appropriate and timely information to make a judgement about whether or not to call-in the application for Committee determination. This contact should also improve member's confidence in the delivery of the revised delegation arrangements.



### **Initial Submission of Applications**

All members will be informed by e-mail on the submission of a new planning application. This continues the existing working arrangements. In the revised system (and based on the Proposed Scheme of Delegation) it will be assumed that all applications will proceed to be determined under delegated powers unless they fall within the category of applications automatically to be referred to Committee.

In addition to these arrangements the following measures are proposed:

- (a) the case officer will telephone the ward member (or where necessary arrange a meeting) to update the ward member on the processing of the application and any comments received.
- (b) as part of this initial conversation the case officer will also identify to the ward member whether an application triggers the need for a Section 106 Agreement in accordance with the Council's adopted Planning Obligations Supplementary Planning Document.
- (c) in the case of applications requiring a Section 106 agreement the case officer will have a subsequent conversation/meeting with the ward member to ensure that local mitigation measures are appropriately incorporated. As part of this process officers and members will be guided by Circular 5/05, the Council's adopted Supplementary Planning Guidance and the evolving schedule of local needs co-ordinated by the Planning Obligations Manager.

### **Determination of Application at Committee**

The majority of planning applications will be delegated to planning officers to determine. Members will however retain the right to refer applications to committee

At Committee the ward member will have an automatic right to start and close the member debate on the application concerned. In the case of the ward member not being a member of the appropriate Committee he or she would be invited to address the Committee for that item. In the case of the ward member being a member of the appropriate Committee he or she would have the opportunity either to continue as a member of that Committee and act in a regulatory way or to act as the local member as set out in the previous scenario. The ward member would initially address the Committee immediately after the public speaking (where appropriate).

### **Post Decision**

Ward members would be advised where appropriate by either the case officer the enforcement team, or the Planning Obligations Manager of the following events:-

- (a) any evolving inconsistencies between a planning permission and development taking place.
- (b) any appeal against the refusal of planning permission.
- (c) the receipt/apportionment of Section 106 Agreement monies.
- (d) any proposed variations to the Section 106 Agreement.





**Proposed Operation of Further Information Report**

On the basis of the Audit Commission's report there would be no referral of applications from an Area Committee to the Strategic Committee (i.e. in the event that Option 2 was adopted).

Similarly if Option 1 was adopted the single committee would be the only mechanism for considering non-delegated applications.

On this basis, and to build in the checks and balances suggested by the Audit Commission the following protocol is proposed:-

**In the circumstances where a committee resolves to determine an application contrary to the officer recommendation a further report will be submitted to the next meeting of that Committee:-**

- a) **Updating Members on any additional information received;**
- b) **Reporting on any discussions that have taken place with the applicants/objectors since the initial meeting; and**
- c) **Setting out the legal, procedure and likely financial implications of proceeding with the initial resolution.**

