



## AUDIT AND GOVERNANCE COMMITTEE

Monday 6 January 2020

### PROPOSED CHANGES TO THE EAST SUFFOLK COUNCIL CONSTITUTION

#### EXECUTIVE SUMMARY

1. All Councils must have a written Constitution which includes its standing orders, code of conduct, and such other documents as the Council considers to be appropriate. The East Suffolk Council's (ESC) Constitution was approved by the Shadow Council for East Suffolk on Monday 28 January 2019 – Report REP 29(SH).
2. The Constitution sets out the Council's governance arrangements. Any changes to the Constitution must be approved by this Committee and Full Council, as required by the Constitution.
3. This report proposes some changes to the Constitution and asks that they be recommended to Full Council for approval.

Is the report Open or Exempt?	Open
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Wards Affected:	All
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Cabinet Member:	Councillor Steve Gallant, Leader of the Council
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Supporting Officers:	<p>Hilary Slater Head of Legal and Democratic Services 01394 444336 <a href="mailto:Hilary.slater@eastsoffolk.gov.uk">Hilary.slater@eastsoffolk.gov.uk</a></p> <p>Philip Ridley Head of Planning and Coastal Management 01394 444432 <a href="mailto:Philip.Ridley@eastsoffolk.gov.uk">Philip.Ridley@eastsoffolk.gov.uk</a></p>
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## **1 INTRODUCTION**

- 1.1 The ESC must have a written Constitution which has to include its standing orders, code of conduct and such other documents as the ESC considers to be appropriate. (S37 of the Local Government Act 2000).
- 1.2 The Council drafted a new Constitution when the ESC was created, on 1 April 2018. The Constitution was approved by the Shadow Council for East Suffolk on Monday 28 January 2019 – report reference REP 29(SH) refers.
- 1.3 It was recognised by the Shadow Authority that the Constitution would need to be reviewed, to fit the working practices of the newly formed ESC. This report proposes some changes to the Constitution.
- 1.4 Part 2 of the ESC Constitution outlines the Council's functions and responsibilities. Paragraph 2.1 of Section B of this part of the Constitution details specific functions that are reserved for Council and states that one of these functions is changing the Constitution. In addition, Paragraph 10.3 of Part 1 of the Constitution states that the Audit and Governance Committee (AGC) has responsibility to advise the Council on substantive changes to the Constitution. Any substantive changes to the Council's decision-making arrangements and committee structure have to be considered by the AGC which will recommend changes to the Full Council. The Monitoring Officer has authority to make minor amendments and corrections to the Constitution. The Leader may change Cabinet Portfolios and delegations.
- 1.5 This report proposes changes to the Constitution which the Monitoring Officer does not consider to be "minor amendments" and which, therefore, need to be considered by the AGC, and if accepted, be recommended to Council for approval.

## **2 PROPOSED CHANGE 1 TO THE CONSTITUTION**

- 2.1 The ESC's Scrutiny Committee (SC) works to some Scrutiny Procedure Rules (SPRs) which are set out in section 4 of the Constitution. It says at paragraph 5.1 on page 158 of the Constitution, in the SPRs, that  
  
"the Chairman and the Vice-Chairman of the Scrutiny Committee shall be elected by the voting Members of the Committee at its first meeting after the Annual Meeting".
- 2.2 This is incorrect, as the Chairman and Vice Chairman of each of the Council's Committees is elected at the Annual Meeting of the ESC, in May of each year. This is a mistake which ought to be amended to avoid any confusion or lack of clarity. The proposed change is so that paragraph 5.1 of the SPRs reads; -  
  
"the Chairman and the Vice-Chairman of the Scrutiny Committee shall be elected by the Full Council at its Annual Meeting".

## **3 PROPOSED CHANGE 2 TO THE CONSTITUTION**

- 3.1 In the Monitoring Officer (MO) Protocol, which is found in Part 4 of the Constitution, it is clear that in the absence of the MO, the Deputy MO can act in his or her place. The Chief Finance Officer (CFO), like the MO, is a statutory post and each Council must appoint one of its Officers to fulfil this role. Some of the CFO's responsibilities, like the MO's responsibilities, are personal to the Officer who carries out that role.
- 3.2 In the absence of the CFO, it would be useful to include a provision in the Constitution that the Deputy CFO can act in the CFO's place, if he or she is absent.

- 3.3 The Finance Procedure Rules (FPRs) are set out in Part 3 of the Constitution. Paragraph 1.1 of the FPRs sets out what the role of the CFO is. It is proposed that the following be added to paragraph 1.1 of the FPRs, as a new, sub-paragraph 1.1.3; -

“1.1.3 The Chief Finance Officer will appoint a deputy and keep them briefed on emerging issues. The Deputy will act in place of the Chief Finance Officer if the Chief Finance Officer is absent or unable to act due to conflict or other relevant issues”.

#### **4 PROPOSED CHANGE 3 TO THE CONSTITUTION**

- 4.1 Part 2 of the Constitution sets out the functions and responsibilities of the Council, and explains, in Section B, paragraph 3, what is in the Council’s Budget and Policy Framework (BPF). The BPF comprises a number of documents that must be approved by the Council itself, including the budget and the Development Plan, for example. The list of BPF documents is at paragraph 3.5 of Section B. It sets out what the document is, and what the decision-making route is for each, before it is approved by the Council. Included in the list is the “Investment Strategy”, and it says that this document goes to “Scrutiny/Cabinet” before going to Council for approval.

- 4.2 Stating that the Investment Strategy goes to the SC appears to be a mistake in the Constitution. CIPFA guidance about the formulation of the Treasury Management and Investment Strategy states that the policy needs to go to the AGC and not the SC. Indeed, it has never been presented to the SC, previously. However, the Investment Strategy was always taken to the respective AGCs of both the former Suffolk Coastal District Council, and the Waveney District Council.

- 4.3 Therefore, the BPF needs to be updated to change the responsibility for approving the Investment Strategy from the SC to the AGC. It is proposed that in the fifth line of the table at paragraph 3.5 of Section B of Part 2 of the Constitution, in relation to the Investment Strategy;

“Scrutiny/Cabinet” be changed to “Audit and Governance Committee/Cabinet”

#### **5 PROPOSED CHANGE 4 TO THE CONSTITUTION**

- 5.1 “The Code of Good Practice/Guidance for Members-Planning and Rights of Way” (the Code) is found in Part 4 of the Constitution. It sets out a range of advice for Members who are considering planning applications, or applications to divert public rights of way. As the Code is part of the Constitution, any proposed changes to it need to be considered and commented upon by the AGC and be approved by Full Council. Some changes to the Code have been proposed by Officers. These changes relate to site visits which might be undertaken by the Members of the Planning Committee North, or the Planning Committee South. Appendix A to this report sets out what the Code says, at paragraph 7.13, about site visits. The proposed changes to paragraph 7.13 are set out at Appendix B to this report. Note that the proposed changes have also been considered by the Strategic Planning Committee (SPC) at its meeting on 9 December 2019. The SPC approved the proposed changes and recommended their approval to the AGC and Full Council.

- 5.2 The proposed amendments are minor in nature. They seek to ensure that site visits are purely factual meetings, provided to give Members a better understanding of a site, prior to the consideration by either of the Planning Committees of any application in relation to it. The original wording suggested that the site visits were conducted as full meetings of the Committee, where the public had rights to address the Committee whilst on site. What was in the Code did not reflect accurately with how site visits were, and are, conducted in reality.

## **6 HOW DOES THIS RELATE TO THE EAST SUFFOLK BUSINESS PLAN?**

- 6.1 The Council's Constitution is a key governance document which sets out how the Council operates, and how it carried out its functions and responsibilities. How the Council operates is fundamental to how it carries out and delivers its East Suffolk Business Plan. It is fundamental to how it achieves the prongs in the Business Plan about the economy, financial self-sufficiency and growth. The Council's Constitution needs to be up to date and accurate, to reflect its business practices and procedures.
- 6.2 An up to date Constitution ensures that the Council operates properly, in accordance with the law and good practice. The Constitution needs to be up-to-date and to reflect the Council's current practises, in order to safeguard the decision-making processes of the Council, overall, and to ensure that its business aims are met.

## **7 FINANCIAL AND GOVERNANCE IMPLICATIONS**

- 7.1 These suggested changes have been picked up since the Council began working to its new Constitution, by various Officers. It is considered that the additions or changes to the wording will make the constitution clearer for Officers, Members and the public, alike. Therefore, they will assist good governance, whilst having no direct financial implications or costs.

## **8 OTHER KEY ISSUES**

- 8.1 An equality impact assessment (EIA) has not been carried out, in relation to this report. The changes proposed relate to the internal workings of the Council and are not considered to impact on the services which the Council offers, directly, to the public. They are for clarification or correction, and therefore, an EIA was not considered to be necessary.

## **9 CONSULTATION**

- 9.1 None.

## **10 OTHER OPTIONS CONSIDERED**

- 10.1 Not to make the changes would not accurately reflect the working practices of the Council in its constitution.

## **11 REASON FOR RECOMMENDATION**

- 11.1 To ensure that the Council's Constitution is up to date, and accurately reflects the Council's working practices and procedures.

**RECOMMENDATIONS**

That the Committee approves the proposed changes to the Constitution, as set out in this report, and recommends them to Full Council for approval.

**APPENDICES**

<b>Appendix A</b>	Paragraph 7.13 of the Code as originally drafted
<b>Appendix B</b>	Paragraph 7.13 with proposed changes shown with red tracking

**BACKGROUND PAPERS – None**

Extracted from pages 192-193 of the East Suffolk Council Constitution

## **7 SITE VISITS**

- 7.1 All sites are investigated by Officers as part of the application process. However, there may be circumstances when Members will wish to visit specific sites, for example, to understand local conditions and the relationship of a proposed development or rights of way proposal and the surrounding area, where these features cannot be assessed from the submitted drawings, illustrative material or from outside the site.
- 7.2 Formal site visits will be held when there is a clearly identified material benefit for holding one and the Planning Referral Panel agrees with the relevant Planning Officer that there is a need to do so to provide a better understanding of the proposals or Planning Committee so requests that a visit be held.
- 7.3 All Members of the relevant area Planning Committee (including substitutes who may attend at a subsequent meeting) will be invited to attend the site visit, together with the ward Member or ward Members. Where a proposal would have a significant effect on an adjoining ward, the adjoining ward Members will also be invited.
- 7.4 All Members attending formal site visits by the Planning Committee shall be accompanied by an appropriate Officer of the Council.
- 7.5 The site visit is not part of the consideration of the merits of an application and therefore public rights to attend the meeting do not apply. However, a representative of the town or parish council will be invited to the site visit along with the applicant or his / her agent.
- 7.6 If access to private land is necessary, then Officers will secure the prior agreement of the landowner.
- 7.7 The purpose of the site visit is fact finding. Officers will be able to point out relevant features of the site and surroundings. Members will be able to see the physical features of the site and ask questions through the Chairman or the Officer to seek clarification. A written record will be kept of the site visit and placed on the planning file.
- 7.8 No discussion of the merits of the case will be permitted, and all questions from Members will be carried out through the Chairman or, at the Chairman's discretion, directed at the relevant Officer.
- 7.9 The Chairman may ask the applicant (or agent), the representative of the town or parish council, or the owner on whose property the site visit is being conducted if there are any parts of the site that have not been visited that they consider should be seen by the Members. The Chairman will then determine as to whether to accede to any requests for that part of the site or area to be visited.
- 7.10 The visiting party will stay together as a group. No lobbying by applicants, town or parish council representatives or objectors will be allowed. If an applicant or group persists in attempting to lobby, the Chairman may determine to curtail the site visit and return on another occasion.
- 7.11 The Members of the Planning Committee, when on site visits, should not make any comments that could create an impression to an outside party that they had already formed a firm position on the merits of the application. The decision on the application should not be made until the formal meeting of the Planning Committee and the Members will have before them all the necessary information to be able to make an informed decision. There may be occasions when questions raised by Members have not been able to be answered or require further investigation in which event Officers will pursue these matters and report back on them to the Planning Committee.
- 7.12 Exceptionally, a Member of the Planning Committee may not be able to attend a site visit or may wish to see a site that is the subject of a report to the Committee. When visiting sites on their own, Members should normally seek only to view the site from a public area and should deal with any lobbying that may occur at the visit in accordance with Section 5 of this Code of

Practice. Members may wish to seek advice before undertaking unaccompanied site visits that necessitate access to private property.

7.13 Any site meetings will follow these procedures:

- Relevant Officer will be invited to set out briefly
  - why it was resolved necessary to visit the site
  - the facts of the application
  - the views of consultees as relevant to the visit
- Any specialist advisers present (e.g. Highway Authority) will be invited to indicate their view of the proposals
- Chairman will invite the applicant/agent to explain any aspect of the application
- Town/Parish Council representative(s) as consultees will be invited to speak if they wish
- Ward Member will be invited to speak – to point out relevant features of the site or the surrounding area or to ask questions about the proposal
- Committee Members will be invited to ask questions
- Planning Officer will be given the opportunity to ask questions to seek clarification of any issues
- Any other person(s) present will be given the opportunity to speak
- Chairman will close discussion part of the proceedings and invite Members to inspect the site/the area in more detail
- The order of presentations will generally be adhered to but the Chairman will have the right to vary from these guidelines if circumstances warrant. The Chairman's decision will be final.

Extracted from pages 192-193 of the East Suffolk Council Constitution

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- 7.1 All sites are investigated by Officers as part of the application process. However, there may be circumstances when Members will wish to visit specific sites, for example, to understand local conditions and the relationship of a proposed development or rights of way proposal and the surrounding area, where these features cannot be assessed from the submitted drawings, illustrative material or from outside the site.
- 7.2 Formal site visits will be held when there is a clearly identified material benefit for holding one and the Planning Referral Panel agrees with the relevant Planning Officer that there is a need to do so to provide a better understanding of the proposals or Planning Committee so requests that a visit be held.
- 7.3 All Members of the relevant area Planning Committee (including substitutes who may attend at a subsequent meeting) will be invited to attend the site visit, together with the ward Member or ward Members, representatives of the town or parish council(s), and the applicant or their agent. Where a proposal would have a significant effect on an adjoining ward, the adjoining ward Members will also be invited. Any technical experts will be invited if required.
- 7.4 All Members attending formal site visits by the Planning Committee shall be accompanied by an appropriate Officer of the Council.
- 7.5 The site visit is not part of the consideration of the merits of an application and therefore public rights to attend the meeting do not apply. ~~However, a representative of the town or parish council will be invited to the site visit along with the applicant or his / her agent.~~
- 7.6 If access to private land is necessary, then Officers will secure the prior agreement of the landowner for both Members, Officers and any third parties.
- 7.7 The purpose of the site visit is fact finding. Officers will be able to point out relevant features of the site and surroundings. Members will be able to see the physical features of the site and ask questions through the Chairman or the Officer to seek clarification. A written record will be kept of the site visit and placed on the planning file.
- 7.8 No discussion of the merits of the case will be permitted, and all questions from Members will be carried out through the Chairman or, at the Chairman's discretion, directed at the relevant Officer.
- 7.9 The Chairman may ask the applicant (or agent), the representative of the town or parish council, or the owner on whose property the site visit is being conducted if there are any parts of the site that have not been visited that they consider should be seen by the Members. The Chairman will then determine as to whether to accede to any requests for that part of the site or area to be visited.
- 7.10 The visiting party will stay together as a group. No lobbying by applicants, town or parish council representatives or objectors will be allowed. If an applicant or group persists in attempting to lobby, the Chairman may determine to curtail the site visit and return on another occasion.
- 7.11 The Members of the Planning Committee, when on site visits, should not make any comments that could create an impression to an outside party that they had already formed a firm position on the merits of the application. The decision on the application should not be made until the formal meeting of the Planning Committee and the Members will have before them all the necessary information to be able to make an informed decision. There may be occasions when questions raised by Members have not been able to be answered or require further investigation in which event Officers will pursue these matters and report back on them to the Planning Committee.
- 7.12 Exceptionally, a Member of the Planning Committee may not be able to attend a site visit or may wish to see a site that is the subject of a report to the Committee. When visiting sites on their own, Members should normally seek only to view the site from a public area and should deal with any lobbying that may occur at the visit in accordance with Section 5 of this Code of



Practice. Members may wish to seek advice before undertaking unaccompanied site visits that necessitate access to private property.

7.13 Any site meetings will follow these procedures:

- The Planning Officer will make a verbal presentation of the application, the site and its context. Where appropriate Officers will have copies of relevant documentation to aid the visit to aid their presentation and the visit.
- Any questions that Members have regarding the site or the development will be made through the Chairman of the Committee only.
- There is no right for third parties to address the Committee unless at the specific request of the Chairman of the Committee.
- ~~Relevant Officer will be invited to set out briefly~~
  - ~~— why it was resolved necessary to visit the site~~
  - ~~— the facts of the application~~
  - ~~— the views of consultees as relevant to the visit~~
- ~~Any specialist advisers present (e.g. Highway Authority) will be invited to indicate their view of the proposals~~
- ~~Chairman will invite the applicant/agent to explain any aspect of the application~~
- ~~Town/Parish Council representative(s) as consultees will be invited to speak if they wish~~
- ~~Ward Member will be invited to speak — to point out relevant features of the site or the surrounding area or to ask questions about the proposal~~
- ~~Committee Members will be invited to ask questions~~
- ~~Planning Officer will be given the opportunity to ask questions to seek clarification of any issues~~
- ~~Any other person(s) present will be given the opportunity to speak~~
- ~~Chairman will close discussion part of the proceedings and invite Members to inspect the site/the area in more detail~~

~~The order of presentations will generally be adhered to but the Chairman will have the right to vary from these guidelines if circumstances warrant. The Chairman's decision will be final.~~