

WELWYN HATFIELD BOROUGH COUNCIL
COUNCIL MEETING - 11 JULY 2016
REPORT OF THE DIRECTOR (GOVERNANCE)

REVIEW OF THE CONSTITUTION

1 Executive Summary

- 1.1 The Constitution is regularly reviewed to take account of changes agreed by the Council, where required by statute and other changes, together with general updating. The Council is asked to agree amendments as explained in this report. Amended pages of the Constitution will be issued.
- 1.2 These amendments relate to planning and estate management matters, new public health legislation and Officer delegated powers for revenues and benefits.

2 Financial Implication(s)

- 2.1 There are no financial implications arising directly from the recommendations in this report.

3 Recommendations

- 3.1 That the Council agrees amendments to the Constitution relating to planning and estate management matters, new public health legislation and Officer delegated powers for revenues and benefits.
- 3.2 That the Director (Governance) and Monitoring Officer be authorised to amend the Constitution to include these changes.

4 Background

- 4.1 The Constitution is regularly reviewed and its operation monitored to ensure that it is relevant, up to date and fit for purpose.

5 Policy Implication(s)

- 5.1 The proposals in this report make amendments to the Council's Constitution which will be updated.

6 Risk Assessment

- 6.1 If the Constitution is not regularly reviewed and its operation monitored to ensure that it does remain relevant, up to date taking account of legislation and fit for purpose there is a risk that the basic rules governing the Council's business will not be effective and give rise to legal challenge.

7 Explanation

The following amendments are proposed:-

7.1 Planning and Estate Management

- (1) To revise the executive functions of the Cabinet to reflect changes to the planning system in respect of development plan documents, local development orders, Article 4 Directions and neighbourhood planning.
- (2) To revise the executive functions of the Cabinet Housing and Planning Panel so that it is able to agree responses to planning documents prepared by other local authorities and other statutory and non-statutory bodies.
- (3) To make a series of technical amendments to planning delegated powers to reflect changes to the planning system and planning legislation in respect of listed building regulations, tree preservation regulations, enforcement notices, breach of condition notices, urgent works notices, planning contravention notices, Section 106 undertakings and neighbourhood planning issues.
- (4) To amend the planning application call-in procedures so that local town and parish councils must justify their objections by observing the same rules that apply to Members of the Council. Any differences of opinion that cannot be resolved between Officers and the local town or parish council should be decided by the Executive Member for Planning. This is to rectify the current situation that it is easier for local town and parish councils to call-in a planning application than it is for Members of the Council.
- (5) To amend the rules so that Members dealing with planning and estate management scheme matters can engage in pre-application, application and post-application debates. This reflects *Probity in Planning* guidance issued by the Local Government Association and Planning Advisory Service which advises on predisposition, predetermination and bias.
- (6) To amend the procedures for Development Consultation Forums, to allow time for interested parties and members of the public to speak.
- (7) To introduce a new procedure for a Panel of Officers to agree the determination of estate management applications by Members and Senior Officers.
- (8) To amend the timescale arrangements for Members to call-in planning applications to be considered by the Development Management Committee. This reflects the installation of a new planning application system which sends out email notifications and also produces a weekly list with slightly different dates.
- (9) To amend the planning application call-in procedures to allow Officers to contact Members where it is considered that the reasons for call-in are not sufficiently justified. Any differences of opinion that cannot be resolved between Officers and Members should be decided by the Executive Member for Planning.

- (10) To refer to the Development Management Committee applications to revoke or modify hazardous substances consents as defined under the Planning (Hazardous Substances) Act 1990 for referral to the appropriate Secretary of State.

7.2 Public Health

- (1) The Psychoactive Substances Act 2016 contains new enforcement powers in relation to new psychoactive substances (NPS) and also creates a number of offences relating to producing, supplying, possessing, importation and exportation of NPS.
- (2) NPS are sometimes referred to as “legal highs” but this term is a misnomer.
- (3) Over the past few months work has been underway to prepare for this new legislation which has now become law after some last minute adjustments. Both the Licensing Team Leader and the Head of Public Health and Protection have attended training on the new legislation. The potential use of the legislation has been also been discussed with the Borough Safety Advisory Team and the Licensing Team Leader has been attending meetings of the Hertfordshire Wide Multi-agency NPS group.
- (4) The police are the main enforcing authority in relation to offences, however the Act introduces enforcement powers which can also be used by district councils and the county council. These are especially relevant to licensed premises and events. Meetings at county level have underlined the importance of joint multi-agency working on NPS control and it recommended that one Officer within the authority acts as a “gatekeeper” for the new legislation. Following discussions it is recommended that this is the Head of Public Health and Protection with the ability to delegate to other Officers as required. This is the same process used for a number of other pieces of legislation enforced by the Council and enforcement would be carried out in accordance with the Council’s Corporate Enforcement Policy and any agreed Hertfordshire wide multi-agency protocols.
- (5) It is therefore necessary to provide delegated authority to the Head of Public Health and Protection to use the new enforcement powers in the Act and to enable the Head of Public Health and Protection to delegate the use of these powers further to any suitably qualified or experienced Officer as set out below:-
 - (a) To be an authorised person for the purposes of section 23 and 25 of the Psychoactive substances Act 2016.
 - (b) In connection with psychoactive substances to give a prohibition notice to a person where it is reasonably believed that the person is carrying on or is likely to carry on a prohibited activity and there is reasonable belief that it is necessary and proportionate to give a prohibition notice for the purpose of preventing the person from carrying on any prohibited activity.

- (c) In connection with psychoactive substances to give a premises notice to a person who owns, leases, occupies, controls or operates a premises where it is reasonably believed that a prohibited activity is being or likely to be carried on at that particular premises and that it is reasonably believed it is necessary and proportionate to give the premises notice for the purpose of preventing any prohibited activity from being carried on at any premises owned, leased, occupied, controlled or operated by that person.
- (d) In connection with psychoactive substances to apply to a Court for a prohibition order.
- (e) In connection with psychoactive substances to apply to a Court for a premises order.
- (f) In connection with psychoactive substances to apply to a Court for the reimbursement of costs incurred for the purposes of clearing, securing or maintaining a premises in respect of which a prohibition is in effect.

7.3 Council Tax and Benefits

To amend Officer delegated powers currently included in the constitution for all matters concerning rating, Council Tax and Benefits/Rebates to include the Revenue and Benefits Client Officers having authority to act in addition to the Director (Finance and Operations), Head of Resources and Client Support Services Manager. The reason for this is to build resilience into these Officer delegated arrangements.

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| Date | 30 June 2016 |