



Extraordinary Council

2 May 2023

Title	Constitution Review
Report of	Monitoring Officer
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	<p>Appendix A - Members Planning Code</p> <p>Appendix B - Terms of Reference for Council</p> <p>Appendix C - Code of Recommended Practice on Local Authority Publicity</p> <p>Appendix D - Members Rights to Access Information</p> <p>Appendix E - Code of Conduct for Officers</p> <p>Appendix F - Terms of reference of committees</p> <p>Appendix G - Terms of Reference of Portfolio holders</p> <p>Appendix H - Introduction and Summary</p> <p>Appendix I - HR Regulations</p> <p>Appendix J - Protocol for Recording of Decisions made by Officers</p> <p>Appendix K - Code of Conduct for Officer Member Relations</p> <p>Appendix L - Article 6 – The Executive</p> <p>Appendix M - Table A and B relating to thresholds for contracts and property transactions</p> <p>Appendix N - Executive Procedure Rules</p> <p>Appendix O – Committee Procedure Rules</p>
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Summary

The Council's Constitution is the framework for the Council's operations and decision-making and ensures the Council operates in a way which is efficient, transparent, ethical and accountable to local people. It is a reference point for Members, officers and the public.

The Secretary of State has given directions pursuant to S.9P of the Local Government Act 2000 via the Local Government Act 2000 (Constitutions) (England) Direction 2000. The information that is required in the Constitution includes the membership, terms of reference and functions of the authority's committees or sub-committees and any rules governing the conduct and proceedings of meetings of those committees or sub-committees.

In July 2022, the Council passed a resolution which requested that officers review the Council's governance arrangements to move to an Executive system. To give effect to the change the Council's Constitution requires re-writing. It needs to be made up-to-date and legally compliant, reflective of the Council's values and ambitions and consistent with the need for clear, efficient and timely decision-making.

The Constitution sets out a duty for the Monitoring Officer to review the Constitution and make recommendations and changes which need to be approved by full Council.

Due to the size of the Constitution, the time required to review it and the date for the new constitution to come into effect being May 2023, the Monitoring Officer considered that it was best dealt with in stages. Once the final report is approved, the new Constitution will come into effect at Annual Council in May 2023.

In order to review the Constitution, an informal Cross-Party Member Constitution Working Group was established and consultation with some other Members has also taken place.

Relevant sections have been considered by necessary stakeholders including Council Management Team and a Constitution Review Cross-Party Working Group working group, where appropriate.

The Members' Licensing Code has been considered by the Licensing Committee.

Council agreed the following sections in January 2023:

- Article 1 (The Constitution)
- Article 2 (Members and the Council)
- Article 3 (The Full Council)
- Article 4 (The Mayor)
- Article 5 (Decision-making)
- Article 6 (The Executive)
- Access to Information Rules
- Members Licensing Code

Council agreed the following sections in February:

- Financial Regulations
- Contract Procedure Rules
- Procedure for dealing with complaints against members
- Officer Code of Conduct
- Terms of Reference of Cabinet
- Terms of Reference of Council
- Terms of Reference of committees
- Article 7 Officers
- Delegations to Officers
- Budget and Policy Framework
- Council Procedure Rules
- Committee Procedure Rules
- Executive Procedure Rules

The Constitution review will also be supported by training for Members and officers to assist members in understanding the various parts of the Constitution and its implications.

Officers Recommendations

1. That Council consider and approve the third tranche of the Constitution as set out in the Appendices attached.
2. That Council agree that the Constitution in full will come into effect during Annual Council in May 2023.
3. That Council delegate authority to the Monitoring Officer to make 'housekeeping changes' to the Constitution such as terminology to ensure consistency, numbering and formatting changes.
4. That the Council requests that the Monitoring Officer to take the steps outlined in paragraph 5.3.3 of this report.
5. That Council resolves to cease to operate the committee system and starts to operate executive arrangements with effect from the start of the 2023/24 Municipal Year.
6. That Council agree that the constitutional review working group continues as a cross party working group to look at future constitutional changes before they go to council for approval.

1. Why this report is needed

1.1 Under Section 9P of the Local Government Act 2000:

(1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains:

- a) a copy of the authority's standing orders for the time being,
- b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
- c) such information as the Secretary of State may direct, and
- d) such other information (if any) as the authority considers appropriate.

Such other information as the Secretary of State directs – under the Local Government Act 2000 (Constitutions)(England) Direction 2000 this information includes the membership, terms of reference and functions of the Council's Committees and Sub-Committees, and any rules governing the conduct and proceedings of those Committees and Sub-Committees.

- 1.2 Subject to the provisions above, it is for the Council to decide what information its Constitution should contain.
- 1.3 The current version of the Constitution needs to be amended to enable the Council to move to an Executive system from Annual Council on 23 May 2023.
- 1.4 Detailed changes and the reason for them are set out below.

2. Reasons for recommendations

- 2.1 To enable the Council to move to an Executive system from Annual Council on 23 May 2023 the Council needs to re-write the Council's Constitution.
- 2.2 Article 6 has been updated so that no member of the Strategic Planning Committee can also be a member of the executive to avoid conflicts of interest.
- 2.3 Tables A and B of the current constitution has been updated so that they reflect Key Decision thresholds.
- 2.4 The terms of reference of Council and the employment sub-committee have been updated to cater for officer packages over £100 k going to council to comply with guidance on this point.
- 2.5 The Committee Procedure Rules have been amended to incorporate Members' Items.
- 2.6 The planning protocol has been updated to reflect current practice.
- 2.7 A Members' Rights to Access Information protocol has been developed to give members guidance on requesting information.
- 2.8 A Protocol for Recording Decisions made by Officers has been developed for officers' guidance.
- 2.9 The Code of Conduct for Officers has been updated regarding smoking outside the office and regarding safeguarding responsibilities to show that:

“ All staff share responsibility for safeguarding and promoting the welfare of children, young people and vulnerable adults. Staff are expected to report any incidents or

concerns that cause you to believe that a child, young person or vulnerable adult is, or is likely to be, at risk of harm. This includes responsibility to report if you suspect that a child or adult at risk may be under the influence of radicalisation, extremism, forced marriage or modern slavery.”

2.10 The Code of Conduct for Member Officer Relations has been updated

2.11 It is planned to continue with the cross-party constitutional review working group to look at constitutional changes before they go to council for approval. This is to enable cross party discussion of any constitutional changes.

2.12 **Consultation Findings Report**

2.12.1 The Consultation on Public Participation at Council Committee meetings launched on 14 December 2022 and ended on 24 February 2023. The findings were reported to Council in February.

3. Alternative options considered and not recommended

3.1 The Council could retain the current Constitution un-amended. This is not recommended as the Constitution needs to be re-written to enable the Council to move to an Executive system from Annual Council on 23 May 2023.

4. Post decision implementation

4.1 Subject to the Council’s approval, the re-written constitution will come into effect at Annual Council on 23 May 2023.

5. Implications of decision

5.1 Corporate Priorities and Performance

5.1.1 The Barnet Corporate Plan: Caring for people, our places and the planet: our plan for Barnet 2023 – 2026 was adopted by Council on 28 February 2023. It includes priorities of:

Being “an effective and engaged council” where we will ensure that “...decision-making is open, transparent and accountable”; and

“More efficient and transparent decision making” including “We want to engage local groups and residents through the council’s decision-making meetings. Our move from a Committee System to an Executive system (from May 2023) will support more efficient decision-making and improved accountability with Cabinet Members being responsible for specific portfolios.”

5.1.2 The new Constitution will support deliver of these priorities.

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The current Administration have indicated that the new governance system should be cost neutral in respect of Members' Allowances. There is a separate report on the Council agenda regarding Members' Allowances. However, there have been costs associated with delivering the change of governance arrangements and these are currently being collated but will include: officer time; facilitated workshops with Council Management Team and the Corporate Senior Management Team; additional staff capacity in the Governance Service to support the team during period of change; and legal costs associated with reviewing the Constitution. Costs will be met from existing Assurance budgets or the Transformation Reserve.

5.3 **Legal and Constitutional References**

5.3.1 Council's Constitution, Article 7 - the Constitution and General Purposes Committee terms of reference includes responsibility "To keep under review all aspects of the Council's Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to the Council" and "To have responsibility for overseeing the Council's governance arrangements." The Constitution and General Purposes Committee agreed at their meeting on 6 October 2022 that Constitution amendments related to the Governance Review Project could be reported from the Constitution Review Cross Party Working Group directly to Council rather than via the Committee. To ensure that there is on-going Member involvement in the emerging Constitution, the Committee have agreed to set up a Constitution Review Cross Party Working Group to look at the detailed parts of the constitution that will then be reported to Council.

5.3.2 The law allowing the move to an Executive system is the Local Government Act 2000 section 9K. Under this section, 'A local authority may cease to operate its existing form of governance and start to operate a different form of governance.'

5.3.3 A resolution of a local authority is required in order for the authority to make a change in governance arrangements. As soon as practicable after passing such a resolution a local authority must –

(a) secure that copies of a document setting out the provisions of the arrangements that are to have effect following the resolution are available at its principal office for inspection by members of the public, and

(b) publish in one or more newspapers circulating in its area a notice which:

- i. states that the authority has resolved to make a change in its governance arrangements,
- ii. states the date on which the change is to have effect,
- iii. describes the main features of the change,
- iv. states that copies of a document setting out the provisions of the arrangements that are to have effect following the resolution are available at the authority's principal office for inspection by members of the public and specifies the address of the authority's principal office. The change has to be implemented at Annual

Council.

5.4 **Insight**

5.4.1 N/A

5.5 **Social Value**

5.5.1 N/A

5.6 **Risk Management**

5.6.1 Risks are being managed via the Governance Review project. Any escalated risks will be reported to Members via this committee as required.

5.7 **Equalities and Diversity**

5.7.1 Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. Consideration of the duties should precede the decision. It is important that Council has regard to the statutory grounds in the light of all available material such as consultation responses.

5.7.2 The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

5.7.3 A public authority must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.7.4 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.7.5 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

- 5.7.6 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- a) Tackle prejudice, and b) Promote understanding.
- 5.7.7 Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- 5.7.8 The relevant protected characteristics are: Age, Disability, Gender reassignment, Pregnancy and maternity, Race, Religion or belief, Sex, Sexual orientation, Marriage and civil partnership
- 5.7.9 Officers consider that the proposals are an opportunity to look at how the public engage with the council and to advance engagement and to potentially remove any barriers to engagement.
- 5.7.10 The Equalities Impact Assessment was reported to February Council.

5.8 Corporate Parenting

- 5.8.1 The role of members in Corporate Parenting will be outlined in the constitution.

5.9 Consultation and Engagement

- 5.9.1 A Constitution Review Cross Party Member Working Group was set up to look at the detail of the constitution. Public consultation on the ways that the public can engage with the council has taken place and was reported to February Council.

5.10 Environmental Impact

- 5.10.1 There are no direct environmental implications arising from the recommendations.

6. Background papers

- 6.1 Council, 26 July 2022, Item 14.5, Administration Motion in the name of Councillor Barry Rawlings – Barnet’s Governance Arrangements: Agenda for Council on Tuesday 26th July, 2022, 7.00 pm [Agenda for Council on Tuesday 26th July, 2022, 7.00 pm \(moderngov.co.uk\)](#)
- 6.2 Constitution & General Purposes Committee, 6 October 2022, Item 12 – Governance Review Project Update: Agenda for Constitution and General Purposes Committee on Thursday 6th October, 2022, 7.00 pm [Agenda for Constitution and General Purposes Committee on Thursday 12th January, 2023, 7.00 pm \(moderngov.co.uk\)](#)
- 6.3 Constitution & General Purposes Committee, 13 January 2023, Item 11 – Governance Review Project Update: [Agenda for Constitution and General Purposes Committee on Thursday 12th January, 2023, 7.00 pm \(moderngov.co.uk\)](#)
- 6.4 Council, 24 January 2023, Constitution Review, Item 12.1: [Agenda for Council on Tuesday 24th January, 2023, 7.00 pm \(moderngov.co.uk\)](#)

- 6.5 Council of 28th February 2023,item 12.2 [Agenda for Council on Tuesday 28th February, 2023, 7.00 pm \(moderngov.co.uk\)](#).
- 6.6 Council of 28th February 2023, Item 11.2: [Agenda for Council on Tuesday 28th February, 2023, 7.00 pm \(moderngov.co.uk\)](#)