

TONBRIDGE & MALLING BOROUGH COUNCIL

COUNCIL

11 December 2007

Report of the Monitoring Officer

Part 1- Public

Matters For Decision

2 UPDATES TO THE CONSTITUTION

2.1 Introduction

2.1.1 Article 15 in Part 2 of the Constitution sets out the procedure for review and revision of the constitution. Changes to the Constitution may only be approved by the full Council after consideration of a report on the proposal from the Council's Monitoring Officer. In preparing the report, the Monitoring Officer is required, amongst other things, to compare practices in this authority with those in other comparable authorities and national examples of best practice (where appropriate). He is also required to consult the Council's other statutory officers, the Head of Paid Service and the Chief Financial Officer, which I have done in respect of the proposals contained in this report.

2.2 Recommendations from the Standards Committee

2.2.1 At its meeting on 10 October 2007, Members discussed the implications of paragraph F8.4 in Protocol F to the Code of Conduct (Members' Planning Code of Good Practice), which requires that all planning applications from members should be determined by committee and not by officers under delegated powers.

2.2.2 Parallels were drawn with the statutory position relating to alcohol and entertainments licensing, where only applications where objections have been raised after public consultation are reported to committee and it recommended that the arrangements for planning applications could follow the same procedure without undermining the underlying principle that there should be no grounds for accusations of favouritism in the way applications are determined.

2.2.3 This change will require the insertion of a few additional words into paragraph F8.4 of the Protocol. The additional words are emboldened, as follows:

F8.4 All such proposals shall be **subject to public consultation. Where objections have been raised, the application shall be** decided by the relevant planning committee and not dealt with by officers under delegated powers. Members considering their decision in relation to an application **to be determined by** committee must, of course, consider whether the nature of any relationship with

the member submitting the planning application requires the declaration of a personal or a prejudicial interest.

- 2.2.4 Under paragraph F8.2 of the Protocol, councillors and officers who submit proposals are required to notify the monitoring officer of the proposal. This is very important because it serves two purposes:
- (a) it ensures that there is an independent record of the application and that it has been noted that the application has been made by a member or officer;
 - (b) if an application is to be reported to committee for determination, it may be necessary for members to make prior application to the Standards Committee for a dispensation because they are a "close associate" of the applicant. and early notification allows for arrangements to be put in place for this to happen.

2.3 Leader's announcements at Council meetings

- 2.3.1 Under the Council's constitution, Council and Committee Procedure Rule 2.1(iv) provides that a meeting of the council may receive announcements from the mayor, leader, members of the executive or the chief executive. Announcements from the mayor or chief executive are ordinarily non-political in nature. However, in the case of announcements by the leader and members of the executive, these may be of a political nature and at present there is no provision within the constitution for the leaders of opposition groups to comment upon what is said.
- 2.3.2 There have been discussions on this subject between the two Group Leaders and, as a consequence, it is proposed that provisions should be put in the place to allow this to happen.
- 2.3.3 I have prepared draft Council and Committee Procedure Rules 5.17A and 5.17B as set out in **Annex 1** to this report, which make provision for an opposition reply to announcements and for a response to be given to that reply. Whilst it is not envisaged that this should be followed by a general discussion, provision is made for the issue to be referred to another forum for further debate.

2.4 Conclusions

- 2.4.1 As Monitoring Officer, I am satisfied that all of the above changes to the Council's Constitution may lawfully be made.

2.5 Legal Implications

- 2.5.1 None.

2.6 Financial and Value for Money Considerations

2.6.1 Not applicable.

2.7 Risk Assessment

2.7.1 Not applicable.

2.8 Recommendations

2.8.1 It is **recommended** that:

- 1) the alterations to the Council's Constitution referred to in this report be adopted by the Council; and
- 2) the Monitoring Officer be authorised to make any necessary consequential amendments.

Background papers:

Constitution of the
Tonbridge and Malling Borough Council

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