

Brighton & Hove City Council

Strategy, Finance & City Regeneration Committee

Agenda Item 63

Subject: Review of the Council's Constitution

Date of meeting: 5th October 2023
19th October 2023

Report of: Executive Director, Governance, People & Resources

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Ward(s) affected: All

For general release

1 Purpose of the report and policy context

- 1.1 The Council is under a statutory duty to keep its Constitution under regular review. This Report proposes changes to the Council's Constitution for consideration by the Strategy, Finance & City Regeneration Committee and for formal approval by Full Council.
- 1.2 The proposals seek to update the arrangements for public and member engagement at Council and Committee meetings and to update a provision in the Council's Contract Standing Orders.

2 Recommendations

That Strategy, Finance & City Regeneration Committee:

- 2.1 Recommends to full Council that it approves the proposed changes set out in paragraphs 3 and 4 below and reflected in Appendices 1, 1A & 2 and authorises the Chief Executive and Monitoring Officer to take all steps necessary or incidental to implement the changes and re-publish the Council's updated constitutional documents.
- 2.2 Approves the setting up of a Task & Finish Sub-Committee to make decisions in relation to the charity known as the Penny Gobby House School as set out in paragraph 5 below.

That Council:

- 2.3 Approves the proposed changes set out in paragraphs 3 and 4 below and reflected in Appendices 1, 1A & 2 to come into effect immediately following their approval by Council, and

- 2.4 Authorises the Chief Executive and Monitoring Officer to take all steps necessary or incidental for the implementation of the changes and authorises the Monitoring Officer to amend and re-publish the Council's constitutional documents to incorporate the changes.

3 Proposed changes to the Council Procedure Rules (Part 3.2)

A series of amendments are proposed to refine the rules which regulate Council and Committee meetings, which are published at Part 3.2 of the Council's Constitution. Those amendments are reflected in Appendix 1 and 1A, indicated by tracked changes/shown in red for clarity.

Proposals relating to public questions

- 3.1 It is proposed that the time for public questions at meetings of the Council and its Committees and Sub Committees be extended to 30 minutes. As the current time allowed is 15 minutes, this will double the time allocated for this type of public engagement. Any questions not dealt with in the 30 mins will receive a written response.
- 3.2 The current rules prohibit members of the public from asking the same or substantially the same question within a 6 month period. To further widen participation at meetings of the Council and its Committees and Sub Committees, it is proposed that priority within the 30 minute period for public questions be given to members of the public wishing to ask a question of full Council who have not asked a question at a full Council meeting in the previous six months. The same rule would apply to questioners wishing to ask a question at a Committee ie: priority within the 30 minute period for public questions would be given to members of the public who have not posed a question at a meeting of that Committee in the previous six months. This proposal aims to encourage and support people who do not normally engage in this way to do so.
- 3.3 As well as the above, it is suggested that a minor rule change be made to provide that public questions will be read out by the questioner, without any additional comments or observations. This will ensure as many questions as possible within the timeframe can be responded to. It is also expected that the current rules regarding supplementary questions will be strictly enforced.

Member Oral Questions at Council

- 3.3A It is proposed that the wording of the rules referring to oral member questions at full Council which require that they 'relate to matters of general policy only' be strengthened by providing that questions not meeting the definition will normally be disallowed by the Mayor. It is proposed that a maximum of one minute is allowed for asking each oral question by a member. The response will be required to be limited to no more than 3 minutes.

Proposals relating to amendments

- 3.4 Currently the rules provide that amendments must be submitted by 4pm the day before a meeting. It is proposed that the deadline be brought forward to 10am on the day before the meeting to enable sufficient time for consideration of the proposed amendments.

Proposals relating to Notices of Motion

- 3.5 It is further proposed that the number of notices of motion that may be submitted by each Group to full Council and Committees be limited to one per Group plus a second one jointly with another Group. At the discretion of the Mayor, provided the overall number of Notices of Motion does not exceed 6, an Independent Member (with a seconder) may submit a Notice of Motion. It is proposed that the deadline for submission of Notices of Motion be brought forward by one day, to 10am on the tenth working day before the relevant meeting, to enable sufficient time for their consideration prior to the meeting.

Reports for Information

- 3.6 In order to permit full Council to focus on its decision making agenda, it is proposed that the Rules are amended to state that where Reports are referred to full Council by Committees for information, they are not subject to call over and are not moved for discussion but are included in the agenda for information only.

Proposal relating to the calling of Urgency Sub Committees at the Committee Chair's request

- 3.7 Currently Council Procedure Rule 22.2 provides that a meeting of a Committee's Urgency Sub Committee 'may be called if the Committee Chair takes the view that it is not reasonably practicable to convene a full Committee meeting, having had regard to the importance of the business to be considered, the urgency of the decision and the need to avoid disproportionate inconvenience. [..]'
- 3.8 To update the Rules in line with current practice and provide greater clarity, it is proposed that the Rules be revised to provide that an Urgency Sub Committee may be called by the Committee Chair 'if the Committee Chair takes the view that it would not be appropriate to convene a full Committee meeting, having had regard to the importance of the business to be considered, the urgency of the decision and the need to avoid disproportionate inconvenience. [..]'

4 Proposed changes to the Contract Standing Orders (Part 7.5)

- 4.1 The Council is required to comply with either the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016 if a contract is valued at more than the relevant financial threshold for that type of contract. The regulations require the Council to publish contract award notices setting out

details about the contract (including who the supplier is and the value of the contract) in relation to all above threshold contracts on a central UK site called Find a Tender Service ('FTS') within 30 days of the award date, and on Contracts Finder (another publication site) within 90 days of the award date.

- 4.2 In relation to below threshold contracts above £30,000, the contract award notice should be published on Contracts Finder within 90 days of the contract award date. The threshold was previously £25,000 but is now £30,000.
- 4.3 The Council's Contract Standing Orders at CSO 17.1 require the Procurement Strategy Manager to maintain a Contracts Register in addition to the above legal requirements: a provision which pre-dates the introduction of e-tendering, and duplicates the information which may be found on FTS and Contracts Finder. As a result, maintaining this Register is not considered to be a good use of Procurement's limited resources.
- 4.4 It is therefore proposed that the requirement to maintain a central register be removed. It is proposed that the responsibility for publishing the contract award notice in accordance with the legal obligations sit with the officers who have carried out the procurement. This will normally be the Contract Officer (unless a member of the Procurement Team is running the tendering process). This requirement will be made clear to all Contract Officers via training and Communications: a process which was started in March 2023, with all affected officers having received initial training.
- 4.5 In addition to the changes above, which are reflected in Appendix 2 CSO 17.1 and 17.2 , it is proposed that the definition of the UK Regulations be amended to include the Concession Contracts Regulations 2016.
- 4.6 It is expected that the Procurement Bill proceeding through Parliament will become law in 2024. This will necessitate a complete review of Contract Standing Orders that will be brought to Committee in due course.

5 Proposal to establish a Task & Finish Sub-Committee for Strategy, Finance & City Regeneration Committee to act as

- 5.1 On 13 September 1979 Ivan Makels and Minni Gobby, the then trustees of the charity known as the Penny Gobby House School (the Charity), transferred 31 Palmeira Avenue to East Sussex County Council (ESCC). The property formed part of the endowment of the charity and its transfer was authorised by an order of the Charity Commissioners. Following the local government reorganisation in 1997, the property was transferred from ESCC to Brighton & Hove City Council and the property now vests in the Council in its capacity as sole trustee.
- 5.2 On 18th September 2023 an Urgency Sub-Committee of this Committee agreed on behalf of the Charity the disposal of 31 Palmeira Avenue, Hove (currently occupied by the Penny Gobby House School) and the purchase of a property that is more suitable for the Charity. 31 Palmeira Avenue is a converted residential building over four floors with no lift. Over the years this has created challenges, with many children having to be carried around the

building by staff. It has proved difficult to create disabled access to all parts of the building.

- 5.3** Further decisions will be required on behalf of the Charity, to be taken by the Council as sole Trustee. In particular, as Trustee the Council will need to oversee the application of surplus funds which need to be protected and spent in accordance with the Charity's objectives.
- 5.4** It is important that the Council establishes a suitable process for dealing with and managing the potential conflict of interest between the Council in its capacity as trustee of the Charity, and its capacity as landowner of the property to be purchased by the Charity. All decision-making processes need to be fully documented to show that the Council acted in an appropriate and informed way to manage this conflict of interest. The proposal is therefore to establish a Task & Finish Sub-Committee of S,F&CR Committee that will act on behalf of the Council, in its capacity as sole trustee of the Charity, and shall only have regard to the interests of the Charity. Members of this Sub-Committee will not be involved in the decision of the Council as landowner. This will avoid a situation whereby the same members are involved in making decisions on both sides of the proposed transaction. The membership of the Sub-Committee is proposed to be Cllrs Grimshaw (Chair), Hill and Robinson.

6 Analysis and consideration of alternative options

- 6.1** While a decision could be made not to approve the proposals set out in this Report, these recommendations are designed to update the current arrangements and make the Council's processes more effective and/or compliant.

7. Community engagement and consultation

- 7.1** The proposals in this report do not involve substantial changes to the Council's decision-making structure or framework and do not require public consultation. The aim of the changes to the rules around public questions at Council and Committees is to increase the time allowed and to ensure as wide a representation as possible.

8 Conclusion

- 8.1** The proposals reflect the Council's ongoing efforts to review its Constitution to ensure that it is reflective of current practice and priorities and to achieve clarity, increased efficiency and an increased level of public engagement. As a result, it is recommended that they be approved.

9 Financial implications

- 9.1** There are no financial implications arising from the recommendations of this report.

Name of finance officer consulted: James Hengeveld Date consulted 250923

10 Legal implications

10.1 Full Council has the authority to make the changes to the Council's Constitution which are set out in the report. It is proposed that the proposals to be implemented with immediate effect once approved unless there is an express indication to the contrary.

Name of lawyer consulted: Victoria Simpson Date: 260923

11 Equalities implications

11.1 The Council has a public sector equality duty under s149 of the Equality Act 2010. In the exercise of its functions, the Council must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those that do not. The Council's public sector equality duty has been considered by officers and the proposals of this report have been assessed for their equalities impact. The majority of the proposals in the report relate to internal procedures which are not considered to have an impact on those with protected characteristics. The proposals to extend the time allowed for public questions and to prioritise those within that time period who have not previously asked a question in that forum aim to ensure wide public engagement in meetings. Questions that are not able to be answered within the time allowed will receive a written response.

12 Sustainability implications

12.1 None

13 Supporting Documentation

Appendices

Appendix 1 – Tracked changes excerpts from Part 3.2 of the Constitution: the Council Procedure Rules

Appendix 1A – Tracked changes excerpts from Part 8.9 of the Constitution: Protocol for Public Questions at Committees

Appendix 2 – Tracked changes excerpts from Part 7.5 of the Constitution: the Council's Contract Procedure Rules.