
Recommendations from the Constitutional Review Working Party

Relevant Portfolio Holder	Councillor Karen Ashley
Portfolio Holder Consulted	
Relevant Head of Service	Claire Felton, Head of Legal, Democratic and Property Services
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Wards Affected	N/A
Ward Councillor(s) consulted	N/A
Relevant Strategic Purpose(s)	An Effective and Sustainable Council
Non-Key Decision	
If you have any questions about this report, please contact the report author in advance of the meeting.	

1. RECOMMENDATIONS

Council is asked to RESOLVE that:-

- 1) the Section 151 Officer be delegated authority to accept, administer and distribute ring fenced Government Grant Funding, or Funding from bodies acting on behalf of Government, and to make the necessary and corresponding adjustments to the Medium Term Financial Plan following consultation with the relevant Portfolio Holder and subject to meeting the conditions of grant funding;**
- 2) the Chief Executive be delegated authority, as Proper Officer, to declare the office of Councillor vacant immediately after a person has ceased to be a Councillor where s/he has not attended a Council or Committee meeting for six months or more; and**
- 3) the Policy Framework be updated to remove reference to policies that no longer exist or which are considered in an alternative forum and to add reference to the Contract Procedure Rules**

2. BACKGROUND

- 2.1 A meeting of the Constitutional Review Working Party took place on Monday 23rd January 2023.

2.2 During this meeting, a range of issues were discussed by Members of the group and a number of recommendations were proposed which have implications for the content of the Council's constitution.

2.3 The report provides further information about the background to each of these recommendations and Council is asked to consider whether to approve the changes proposed to the constitution.

3. OPERATIONAL ISSUES

Ring Fenced Grant Funding

3.1 From time to time the Council receives grant funding from the Government to use for specific purposes.

3.2 These grants are often given with short notice periods and a requirement to start spending immediately based on the specific conditions of the grant. This is made more challenging in cases where at the point in time the authority is made aware of them the Government announces them to the public which leads to a high level of contact from the public, pressuring Council officers whilst they are trying to set schemes up to spend the monies.

3.3 Currently, grant funding can only be utilised by the Council following approval through the decision-making process, via the Executive Committee and the Council (unless this is Covid grant funding, for which officers have received delegated authority).

3.4 Due to the nature of the Council approval cycle, it is often not possible to get reports through the reporting mechanisms in a timescale which allows compliance with grant conditions and this can delay the speed at which monies are paid out in line with the grant conditions. Delegated authority would allow the Council to respond in an agile and transparent manner for the benefit of Redditch.

3.5 Unfortunately, Government grant funding is often repayable if it is not defrayed within a timetable set by Government.

3.6 In this context, Members are asked to consider recommending that officers should receive delegated authority to accept, administer and distribute Government Grant Funding, or Funding from bodies acting on behalf of Government, which has been ring fenced for specific purposes, and to make the necessary and corresponding adjustments to the Medium Term Financial Plan (MTFP) following consultation with the Leader and subject to meeting the conditions of grant funding.

- 3.7 Members previously agreed, at a meeting of full Council held on 26th July 2021, to grant Officers delegated authority to accept, administer and distribute any grant funding provided by the Government in relation to the Covid-19 pandemic, which included authority to adjust the MTFP in response. This delegation enabled Officers to act promptly and efficiently as soon as Covid grant funding was allocated to the Council, without delay. The proposed delegation to officers in respect of other forms of ring fenced Government grant funding would similarly enable the Council to act promptly and efficiently.
- 3.8 Where the funding is area specific or for the benefit of area-based activity, Members are advised that officers will consult with the relevant ward Councillors.
- 3.9 Grant monitoring will be in place in line with the financial procedure rules, with information included in the quarterly finance and performance monitoring reports and will be accounted for appropriately.

Six Month Rule – Declaring a Vacancy

- 3.10 A Councillor ceases to be an elected Member should s/he fail to attend a meeting of the authority for six consecutive months since their previous attendance at a meeting. This could involve attendance at meetings of Council or Committees.
- 3.11 Currently, at Redditch Borough Council, should a Councillor fail to attend a Council or Committee meeting in this period, the vacancy can only be declared at a Council meeting. This could potentially cause delays between the person ceasing to be a Member and the vacancy occurring as it is dependent on the date of the next Council meeting.
- 3.12 The Association of Electoral Administrators (AEA) has provided guidance indicating that it is considered best practice for the Council's constitution to provide delegated authority to the proper officer of the Council to declare vacancies that occur in these instances.
- 3.13 Members are therefore asked to consider agreeing to grant the Chief Executive, as Proper Officer, delegated authority to declare vacancies that occur in the event of a Councillor failing to attend a Council or Committee meeting in a six-month period.

Policy Framework

- 3.14 Redditch Borough Council has a Leader and Cabinet model of decision making. Within this structure of decision making, there are some decisions that must be taken by full Council, some decisions that must be taken by the Executive Committee, some decisions where there are shared responsibilities and some “local choice” functions, whereby the authority determines whether the decision is taken by the Executive Committee or Council.
- 3.15 The Council is required to have a policy framework, comprising a list of important policies and strategies. Only Full Council can make decisions about policies and strategies included in the Policy Framework.
- 3.16 A list of items currently included in the Council’s Policy Framework can be found at Paragraph 4 in the Articles of the constitution (Appendix 1).
- 3.17 The content of the Policy Framework can be reviewed by the Council from time to time to ensure that it remains suitable for the authority. When reviewing the content of the Policy Framework, Members should take into account the legal requirements in respect of responsibilities for functions, as detailed in the Responsibilities for Functions at Part 3 of the Council’s constitution.
- 3.18 Items that form part of the Policy Framework can only be determined by Council, although will be debated at a prior meeting of the Executive Committee. This is a lengthier decision-making process than that in place for items that can be determined by the Executive Committee alone, or which have been delegated to other Committees, and so can cause delays to implementation. It is therefore important for Members to ensure that the most appropriate items, including those items where there is a legal requirement to do so, are included in the Policy Framework.
- 3.19 At Appendix 3 to the report, Members can view the items in the Policy Frameworks for other Councils in Worcestershire. Members will observe that the list of items in the Policy Framework for Redditch Borough Council is lengthier than for other local authorities in the county.
- 3.20 Where items are removed from the Policy Framework, they still form the basis of reports to the Executive Committee unless delegated authority is granted to officers to determine particular matters.

- 3.21 All the items that are debated at both Executive Committee and Council meetings are advertised in advance on the Executive Committee's Work Programme, which is published on the Council's website. The Overview and Scrutiny Committee can select items from the work programme to pre-scrutinise and this would continue, regardless of any changes to the Policy Framework.
- 3.22 The Constitutional Review Working Party reviewed the content of the Council's current Policy Framework at their meeting held on 23rd January 2023. In considering the content of the Policy Framework, Members were advised that a number of items no longer existed whilst other items in the framework were or could more appropriately be considered via alternative routes.
- 3.23 Members of the Constitutional Review Working Party agreed that explanatory notes should be provided in relation to items that it is proposed should be removed from the Policy Framework. These explanatory notes are as follow:
- Annual Performance Plan - There is no longer an Annual Performance Plan. Instead, the Council's performance is monitored in quarterly finance and performance monitoring reports. These reports are considered by the Executive Committee and the Budget Scrutiny Working Group (the latter in respect of the budget.) The Performance Scrutiny Working Group can also consider the content of this report in relation to the performance data provided.
 - Community Safety Partnership Plan - Overview and Scrutiny has a statutory duty to scrutinise the work of the local Crime and Disorder Reduction Partnership, which is the North Worcestershire Community Safety Partnership, on an annual basis. The Crime and Disorder Scrutiny Panel fulfils this role, with the latest such meeting taking place on 2nd November 2022. It is suggested that the Panel could scrutinise the content of the plan as part of this work.
 - Plans and strategies which together form part of the Local Development Framework / Development Plan – The Head of Planning, Regeneration and Leisure Services has reported that the Local Development Framework and Development Plan are essentially the same thing. It is therefore proposed that this should be reflected in the Policy Framework, with reference made to the Development Plan as a single item. Members are asked to note that planning policies require Council approval and cannot

be determined by the Executive Committee alone. Therefore, planning policies will continue to be reported to Council.

- Food Law Enforcement Service Plan – The Food Law Enforcement Plan is covered by the Worcestershire Regulatory Services (WRS) annual service plan and should have been delegated to the WRS Board, which makes decisions on behalf of the shared service, along with discharge of the Food Safety Act and associated provisions. The service plan will be signed off at the February 2023 meeting of the WRS Board and a specific recommendation covers the food element. Redditch Borough Council has Member representatives on the WRS Board who participate in the decision-making process.
- The Plan and Strategy which Comprise the Housing Investment Programme – Officers have advised that this referred to the Worcestershire Local Investment Plan and Affordable Homes Programme Framework which went to Committee in 2011. This was produced as part of the work for Homes England (the then Homes and Communities Agency) to give them strategic direction for funding of new affordable homes as part of the affordable homes programme. This is no longer needed due to the changes in how affordable homes are funded and the introduction of continuous market engagement as a way to deliver new affordable homes. Therefore, this item can be removed.
- The Local Transport Plan – The Local Transport Plan is included in Worcestershire County Council's Policy Framework. Local transport is a County Council function and it is suggested that it is more appropriate for the County Council, which has decision making powers in relation to transport services, to include this in their policy framework. In this context, it is suggested that the item should be removed from Redditch Borough Council's Policy Framework.
- Procurement Strategy – The Council does not have a specific Procurement Strategy but does have Contract Procedure Rules. Due to the importance of effective Contract Procedure Rules to good governance, it is proposed that references to the Procurement Strategy should be replaced with reference to the Contract Procedure Rules in the Council's Policy Framework. This should help to provide Members with assurance that the Council is complying with best practice.

- Single Equalities Scheme – The Council does not have a Single Equalities Scheme. Instead, the authority has equalities strategies which need to be produced and agreed in a timely manner. Delays in respect of equalities strategies could have negative implications for specific groups within the local community.

3.25 The Constitutional Review Working Party agreed to consider the content of the Policy Framework further at their next meeting, with a focus on the following areas, for which officers have been asked to supply additional information:

- Emergency Plan
- Enforcement Policy
- Sustainable Community Strategy

4. FINANCIAL IMPLICATIONS

- 4.1 The proposal that authority be delegated to the Section 151 Officer will be in line with good financial practice.
- 4.2 The delegation to accept administer and distribute any Government Funding or Funding from bodies acting on behalf of Government relating and to make the necessary and corresponding adjustments to the MTFP will be done following consultation with the relevant portfolio holder.
- 4.3 Any additional funding or expenditure will be spent in accordance with the conditions of grant and be reported retrospectively to the Executive Committee and Council either in a stand alone report should it be a particularly large, or complex grant scheme or in the quarterly finance monitoring report.

5. LEGAL IMPLICATIONS

- 5.1 Review and revision of the Constitution is governed by Article 15 of the Constitution.
- 5.2 Section 101 of the Local Government Act 1972 (as amended) gives a general power to local authorities to discharge functions through officers. Local Authorities are required by the same Act to maintain a list of these, which is referred to as the Scheme of Delegation. This sets out those powers of the Council which can be carried out by officers of the Council.

- 5.3 The Council is required to review its scheme of delegations on an annual basis. This generally occurs at the annual Council meeting, held in May. The Council can also review the Officer Scheme of Delegations during a municipal year, where requested.
- 5.4 Section 85 of the Local Government Act 1972 states that if a member of a local authority fails, throughout a period of six consecutive months from the date of their last attendance, to attend a meeting of the authority, they shall cease to be a member of the Council. An exception applies if their non-attendance has been approved by Council before the expiry of the six-month period.
- 5.5 Section 86 of the Local Government Act 1972 states that where a Councillor has ceased to be a Member under these circumstances, the Council will forthwith declare the office to be vacant.
- 5.6 The AEA advises that the requirement for the Council to forthwith declare the office to be vacant places an expectation that this will happen without delay. By delegating authority to the proper officer, any such vacancies can be declared in the timely manner anticipated by the legislation.
- 5.7 The Local Government Act 2000, in particular Section 13 (Functions which are the responsibility of an executive) details the matters which are the responsibility of the Executive.
- 5.8 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) gives effect to section 13 of the Local Government Act 2000 by specifying in Schedule 1 to the regulations which functions are not to be the responsibility of the Executive. In other words, the Executive Committee cannot by law make the decision on those matters.
- 5.9 The areas that the Executive cannot determine, so instead are the preserve of full Council, fall under the following headings:
- Functions relating to town and country planning and development control (planning policies)
 - Functions relation to Licensing and Registration (many of which are delegated in Redditch to the relevant regulatory Committees)
 - Functions relating to health and safety at work
 - Functions relating to elections (many of which are delegated to the Electoral Matters Committee)
 - Functions relating to the name and status of areas and individuals
 - Power to make, amend, re-enact or enforce byelaws

- Power to promote or oppose local or personal Bills
- Functions relating to pensions
- Miscellaneous functions

6. OTHER - IMPLICATIONS

Relevant Strategic Purpose

- 6.1 The Strategic purposes are included in the Council Plan and guide the Council's approach to expenditure ensuring the authority focuses on the issues and what are most important for the Borough and its communities. Grants will be paid out in line with grant conditions whilst ensuring that they align with the Council's strategic purposes as far as is possible.
- 6.2 Regular review of the Council's Scheme of Delegations helps Members to determine whether the delegations remain fit for purpose. This supports the strategic purpose to be an Effective and Sustainable Council.
- 6.3 It is important to review the Council's Policy Framework from time to time to ensure that the content enables the authority to continue to be 'An Effective and Sustainable Council'.

Climate Change Implications

- 6.4 The green thread is a priority in the Council Plan. Any grants which have implications for climate change will be addressed and reviewed when relevant by climate change officers to ensure the correct procedures have been followed and that any impacts on climate change are fully understood.
- 6.5 Any other changes to the Scheme of Delegations which could have climate change implications would be reviewed on a case by case basis.

Equalities and Diversity Implications

- 6.6 Removing the Single Equalities Strategy from the Policy Framework would enable the Council to act more promptly on updating relevant Equalities Strategies to meet the needs of different groups in the local community.

7. RISK MANAGEMENT

- 7.1 Grants are monitored in line with the financial procedure rules and grant conditions.
- 7.2 There is a risk that if authority is not delegated to officers in respect of Government grant funding the Council might need to return some of this grant funding due to not being able to process the grants in accordance with tight timescales.
- 7.3 Where the Council does not regularly review and update the Policy Framework the content becomes out of date. This can hold up the efficiency of the decision making process.

8. APPENDICES and BACKGROUND PAPERS

Appendices

Appendix 1 – Extract from the Articles – the Current Policy Framework

Appendix 2 - Extract from the Articles – Suggested Changes to the Policy Framework

Appendix 3 – Policy Frameworks at other Councils in Worcestershire

Background Papers:

AEA Guidance – ‘Casual Vacancy – Failure to Attend Meetings.’

Redditch Borough Council’s constitution

9. REPORT SIGN OFF

Department	Name and Job Title	Date
Portfolio Holder	Councillor Karen Ashley	
Lead Director / Head of Service	Pete Carpenter, Interim Section 151 Officer	
Financial Services	Pete Carpenter, Interim Section 151 Officer	

REDDITCH BOROUGH COUNCIL

Council
2023

27th February

Legal Services	Claire Felton, Head of Legal Democratic and Property Services	
Policy Team (if equalities implications apply)	Deb Poole, Head of Business Transformation, Organisational Development and Digital Strategy	