

Report of the Monitoring Officer

Annual Constitution Review

1. **Purpose of Report**

To consider amendments to the Constitution as recommended by the Constitution Task Group at its meeting on 8 June 2026, in addition to a proposed change to Financial Regulations and an update on the legislative changes to the Planning Committee's responsibilities.

2. **Recommendation**

The Committee is asked to:

1. **CONSIDER** the amendments to the Constitution, as detailed in Appendix 2, and **RECOMMEND** to Council accordingly.
2. **CONSIDER** the proposed to amendment to the Financial Regulations and **RECOMMEND** to Council accordingly.
3. **NOTE** the legislative changes to the Planning Committee in Appendix 3, and the proposed amendments to the Constitution.

3. **Detail**

Under its terms of reference, the Governance, Audit and Standards Committee is tasked with an overview of the Council's Constitution, consideration of proposed amendments or revisions and to recommend to Council amendments to this Constitution. A Task Group (the Group) was formed to consider a review of the Constitution. A number of issues were raised which resulted in recommendations for consideration at its meeting on 8 June 2026, these were timings for the Advisory Shareholder Sub Committee, the method of voting for Changes to Council Procedure Rules, and consideration of the number of ex-officio members allowed through the Constitution.

Further detail is included in **Appendix 1** and a change table reflecting the proposed amendments is included at **Appendix 2**.

Amendment to Financial Procedure Rules

The following suggested amendment to Financial Procedure Rule 14.4 in the Constitution report has been requested by the Interim Deputy Chief Executive and Section 151 Officer.

Under Section 14 of the Council's Financial Procedure Rules, Council Assets and Properties, it is proposed to update 14.4 where "Lettings, negotiations and settlement of leases and rents for Council-owned land or property (except

Council houses) where the annual rental exceeds £10,000 shall be referred to Cabinet for approval. In respect of **industrial units and commercial** properties, **including** Beeston Square ~~only~~, lettings, negotiations and settlement of leases and rent for Council owned land or property where the annual rental exceeds £100,000 shall be referred to Cabinet for approval.”

This change, to expand the exception to include all industrial units and commercial properties, will more accurately reflect the Council’s updated premises portfolio and allow Officers more flexibility in negotiating with potential tenants and more efficiency in agreeing and awarding new and renewed leases.

The proposed amendments have been added to the change table at **Appendix 2**.

Planning Committee Reform

The government has published regulations (The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026) (“Regulations”), that will take effect 31 October 2026. In summary, there will be a National Scheme of Delegation that every Council in England will have to work to. From 31 October, the call-in procedure will no longer be permitted under the new Regulations. The government’s proposed Scheme of Delegation confirms which planning applications will always be determined by Planning Officers and not by Planning Committee. These are referred to as Schedule 1 applications. There is also a Schedule 2 set of application types that may be determined by the Planning Committee if they satisfy what is referred to as a ‘gateway test’. The Planning Committee scheduled for November 2026 will be the first where the new delegation arrangements will apply. There will be a need to amend the Planning Committee call in procedure in the Constitution of the Council although the legislative changes will need to be reflected, and it should be noted that The Monitoring Officer has the delegation to make legislative changes to the Constitution. Further information is included in **Appendix 3**.

4. Financial Implications

The comments from the Interim Deputy Chief Executive and Section 151 Officer were as follows:

There are no additional financial implications to consider as part of this report, with any costs being contained within existing budgets.

5. Legal Implications

The comments from the Head of Legal Services and Deputy Monitoring Officer were as follows:

Section 37 of the Local Government Act 2000 requires local authorities operating executive arrangements to prepare and keep up to date a document which contains: (a) such information as the Secretary of State may direct (b) the authority's standing orders (i.e. rules of procedure) (c) the code of conduct for members (d) such information as the authority considers appropriate. Broxtowe Borough Council's Constitution is available on the Council's website.

6. Human Resources Implications

There were no comments from the Human Resources Manager.

7. Union Comments

There were no comments necessary from the Unions.

8. Climate Change Implications

There are no climate change implications contained within the report

9. Data Protection Compliance Implications

This report does not contain any OFFICIAL(SENSITIVE) information and there are no Data Protection issues in relation to this report.

10. Equality Impact Assessment

This is not a change to policy, so an Equality Impact Assessment is not required.

11. Background Papers

Nil.

Appendix 1**Advisory Shareholder Sub Committee**

It was suggested that the Sub Committee meets one-hour prior to the Governance, Audit and Standards Committee to streamline the committee process and reduce the need for Councillors and Officers to attend on multiple evenings. There are currently a majority of Members which sit on both bodies, and groups could further amend membership to duplicate both committees. Caution was raised at the Task and Finish Group meeting around the possibility of Sub Committee meetings being shortened in order to accommodate the beginning of a scheduled Governance, Audit and Standards Committee meetings.

Voting for Changes Procedure Rules

Examples were given of councils which used a supermajority voting system when making Council amendments to the Procedure Rules in the Constitution. This part of the Constitution contains the rules that the Council is required to have in place by law, and those which contribute to the corporate governance of the Council which governs how the various meetings will be conducted. The current system at this Council is a simple majority vote. Although there was opposition at the Task and Finish Group meeting, which centred around changing rules that are already effective, it was agreed to recommend to the Governance, Audit and Standards Committee that a 66% majority vote be needed at full Council meetings only when making amendments to the Procedure Rules. This would ensure that changes to Procedure Rules are agreed by a greater number of Councillors.

Role of Ex-Officio Members

Currently, the Constitution states that 'either the Leader of the Council or another Councillor being their nominated representative, and either the Leader of the Opposition or another Councillor being their nominated representative, have the right to attend any of the Council's Committees, which are not scrutiny Committees, as ex-officio Members and to speak but not vote at it provided that such nominated representatives may not be in attendance at the same meeting as their respective Leaders, unless they have been appointed as a Member of that Committee or are acting as a substitute for a named Member.'

The Task and Finish Group considered the number of ex-officio members currently allowed in the Constitution, and it was stated that extending the ex-officio rights to the Leaders of all political groups would reinforce the behaviours of the Council by allowing group leaders formal representation at committees. A counter viewpoint stated that allowing five speakers in addition to the committee members could be disruptive.

Appendix 2

Change Table – proposed amendments are in Bold

Constitution Chapter and Number	Current Wording/Suggested Change	Reason for Change
Chapter 2 Part 8-17 Advisory Shareholder Sub Committee	<u>Advisory Shareholder Sub-Committee</u> 1. Number of Members: 7 (politically proportionate) 2. The Advisory Shareholder Sub-Committee may co-opt and / or otherwise engage the services of such external consultants and advisors as may be required from time to time, including but not limited to, auditors. 3. Meetings shall be held as necessary and not less than once each year. The quorum for meetings is 3 4. The Advisory Shareholder Sub-Committee acts in an advisory capacity and is not a decision-making body. 5. The Advisory Shareholder Sub-Committee shall assist, support and advise the Portfolio Holder for Resources and Personnel Policy and the Cabinet in its exercise of the Council's function as the shareholder of the Council's companies. 6. Without prejudice to the generality of clause 5 above, the Advisory Shareholder Sub- Committee shall consider the business plans and financial performance of the Council's companies in respect of which it may advise and make recommendations to the Portfolio Holder for Resources and Personnel Policy and the Cabinet in respect of its exercise of the shareholder function. 7. The Meeting be scheduled, where appropriate, one hour before an ordinary meeting of the Governance, Audit and Standards Committee.	To reduce the number of evenings required for Members and Officers to attend meetings.

Chapter 2 Part 2 14 Voting for Changes to Procedure Rules	14. Voting 14.1 <u>Majority</u> Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put. 14.2 <u>Mayor's casting vote</u> If there are equal numbers of votes for and against, the Mayor will have a second or casting vote. There will be no restriction on how the Mayor chooses to exercise a casting vote. 14.3 <u>Method of voting</u> Unless a recorded vote is demanded under Rule 15.4 the Mayor will take the vote by show of hands or, if there is no dissent, by the affirmation of the meeting. 14.4 <u>Recorded vote</u> If 5 Members present at the meeting at any time request the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. Unless in the case of Committees or Cabinet where a request by 2 Members present will be sufficient to require a recorded vote to be taken. 14.5 <u>Right to require individual vote to be recorded</u> Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting. 14.6 <u>Recorded votes at budget meetings</u> A recorded vote is required when Members take formal decisions about expenditure on local services and Council tax levels for the year ahead. 14.7 <u>Voting on appointments</u> If there are more than 2 people nominated for any position to be	To ensure that changes to Procedure Rules are agreed by a greater number of Councillors.
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	filled and there is not a clear majority of votes in favour of 1 person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. 14.8 <u>Voting to change Procedure Rules</u> Any vote at full Council to change Procedure Rules contained within Chapter Two of the Constitution will require a 66% majority of those Members voting and present in the room at the time the question was put.	
Chapter 2 Part 2 Role of Ex-Officio Members	Suggested wording The Annual Meeting will: 1.2.4 note that either the Leader of the Council or another Councillor being their nominated representative, and either the Leader of the Opposition or another Councillor being their nominated representative, and the Leader of any other recognised group, or their nominated representative, have the right to attend any of the Council's Committees, which are not scrutiny Committees, as ex-officio Members and to speak but not vote at it provided that such nominated representatives may not be in attendance at the same meeting as their respective Leaders, unless they have been appointed as a Member of that Committee or are acting as a substitute for a named Member.	To reinforce the behaviours of the Council by allowing group leaders formal representation at committees
Chapter 4 Part 1 Section 14	Lettings, negotiations and settlement of leases and rents for Council-owned land or property (except Council houses) where the annual rental exceeds £10,000 shall be referred to Cabinet for approval. In respect of industrial units and commercial properties, including Beeston Square only, lettings, negotiations and settlement of leases and rent for Council owned land or property where the annual rental exceeds	This change, to expand the exception to include all industrial units and commercial properties, will more accurately reflect the Council's updated premises

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Financial Procedure Rules 14.4 Council Assets and Properties	£100,000 shall be referred to Cabinet for approval.”	portfolio and allow Officers more flexibility in negotiating with potential tenants and more efficiency in agreeing and awarding new and renewed leases.
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Appendix 3

Planning Committee Reform

This report outlines the set of changes required to be made to the constitution before 31 October 2026 as a result of mandatory Planning Committee reform and the Regulations introduced to achieve this. These are set out in [the Town and Country Planning \(Discharge of Local Planning Authority Functions\) \(England\) Regulations 2026](#). (the **Regulations**).

1. Planning Committee reform

- 1.1. The government has introduced a national scheme of delegation in effect from 31 October 2026. This is to ensure that planning committees can work as effectively as possible and focus on those applications for complex or contentious development where local democratic oversight is required.
- 1.2. The changes introduced by the Regulations are:
 - 1.2.1. what matters will in future be determined by officers and which could be determined by Planning Committee, and
 - 1.2.2. the size of Planning Committee.

2. Two-tier approach to who determines applications

- 2.1. The Regulations adopt a two-tier approach with the aim of giving greater clarity and consistency about who in a local planning authority will make planning decisions.
- 2.2. Schedule 1 sets out the types of application which must in all circumstances be delegated to officers. These include applications for planning permission for householder, minor residential (up to 10 dwellings) and minor commercial development, as well as a number of supplementary and technical consents.
- 2.3. Schedule 2 comprises the remaining applications. The Regulations provide for a 'nominated member' and 'nominated officer' to agree to refer a proposal to determine a Schedule 2 application to a committee if in their view the proposal raises—
 - 2.3.1. one or more issues of economic, social or environmental significance to the local area, or
 - 2.3.2. one or more significant planning matters having regard to the development plan and any other material considerations.

These are known as the "Gateway Tests".

- 2.4. The Regulations stipulate that any Schedule 2 application that is not referred to a committee in accordance with the Gateway Tests must be determined by an officer of the authority. Guidance is given on what is considered to be significant when applying these tests.
- 2.5. The nominated member is proposed to be the Chair of Planning Committee (or in their absence the Vice-Chair), and the nominated officer is proposed to be the (Interim) Director of Planning and Economic Development (or in their absence the 'Planning Manager').
- 2.6. If there is not an arrangement to refer an application to Planning Committee, then the application must be determined under officer delegation.
- 2.7. The Annex to this report lists the Schedule 1 and Schedule 2 applications.
- 2.8. Where a planning function is not listed in either Schedule 1 or 2, it is for the local planning authority to decide whether it should be delegated to an officer or referred to a committee or sub-committee for a decision.
- 2.9. It is recommended that a record is kept of any decision to bring a Schedule 2 application to committee and the committee report could also say why the application is being brought to Committee.

3. Applications which will no longer be determined by Planning Committee

- 3.1. Schedule 1 applications will not be able to be determined by Planning Committee and there will no longer be a right for members to refer / call in, applications to be considered by Planning Committee as is currently the case.

4. Own interest applications

- 4.1. Regulation 6 makes provision for "linked person" applications. This means an application from the authority itself, or a member or officer of the authority.
- 4.2. These fall into the same category as other applications. That is, if the application is Schedule 1, it will be delegated to the Director of Planning and Economic Development. If it is Schedule 2 and meets the gateway tests set out in paragraph 3.3 above it may be referred to Planning Committee provided both the Chair of Planning Committee and the Director of Planning and Economic Development agree to this.

5. Changes

- 5.1. The report describes the changes to the constitution to comply with the Regulations, failure to adopt these will result in any applications determined not in accordance with the Regulations as susceptible to judicial review.

- 5.2. Chapter 2 Part 8-17 Section 10 (Delegations) is replaced with the following:

The Planning Committee shall exercise those development management functions assigned to it by Schedule 2 of The Discharge of Local Planning Authority Functions Regulations 2026 and such other planning functions as are expressly reserved to it by law or this Constitution.

Where there is any inconsistency between this Constitution and The Discharge of Local Planning Authority Functions Regulations 2026, the Regulations shall prevail.

- 5.3. Chapter 3 Part 1 (Officer Scheme of Delegation) Section 15.5 is replaced with the following:

determine all planning applications and related matters falling within Schedule 1 of The Discharge of Local Planning Authority Functions Regulations 2026 together with all other matters not expressly reserved to Planning Committee by Schedule 2 of those Regulations.

Any reference in this Constitution to categories of planning application requiring referral to Planning Committee shall be read subject to and modified by the Regulations.

- 5.4. Chapter 3 Part 1 (Officer Scheme of Delegation) Section 15.12 to be added

All powers and delegations relating to development management functions shall be exercised in accordance with The Discharge of Local Planning Authority Functions Regulations 2026. In the event of any conflict between the Constitution and those Regulations, the Regulations shall prevail and this Constitution shall be construed accordingly.

Annex

Schedule 1 and Schedule 2 applications

The Discharge of Local Planning Authority Functions Regulations 2026 stipulate that Schedule 1 applications must be determined by an officer and that Schedule 2 applications could be referred to Planning Committee providing they meet two tests.

Schedule 1 applications

1. An application made under section 17(1) of the Land Compensation Act 1961 (certificates of appropriate alternative development).
2. An application made under section 26H(1) of the Listed Buildings Act (certificate of lawfulness of proposed works).
3. A householder application.
4. A minor commercial application.
5. A minor residential application.
6. An application for permission in principle.
7. An application made under section 73(1) of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) in respect of which the original planning permission was a Schedule 1 planning permission.
8. An application made under section 96A(4) of the Town and Country Planning Act 1990 (non-material changes to planning permission or permission in principle).
9. In respect of a planning obligation that the authority concerned considers is connected with a Schedule 1 approval:
 - a. a request to agree to modify or discharge that obligation under section 106A(1)(a) of the Town and Country Planning Act 1990 (modification and discharge of planning obligations);
 - b. an application to modify or discharge that obligation under section 106A(3) of the Town and Country Planning Act 1990 (modification and discharge of planning obligations).
10. An application made under section 191(1) of the Town and Country Planning Act 1990 (certificate of lawfulness of existing use or development).
11. An application made under section 192(1) of the Town and Country Planning Act 1990 (certificate of lawfulness of proposed use or development).
12. The submission of a biodiversity gain plan under paragraph 13(2)(a) of Schedule 7A to the Town and Country Planning Act 1990(20).
13. A reserved matters approval application in respect of an outline planning permission other than a large outline permission.
14. An application made under article 27 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (applications made under a planning condition).
15. An application pursuant to provision in Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for:
 - a. prior approval, or
 - b. a determination as to whether prior approval is required.

Schedule 2 Applications

1. An application for listed building consent made under section 10(1) of the Listed Buildings Act (making of applications for listed building consent).
2. An application made under section 19(1) of the Listed Buildings Act (variation or discharge of conditions of listed building consent).
3. An application for planning permission that the authority concerned considers is connected with an application of a kind specified in paragraph 1 or 2.
4. An application for planning permission that is not—
 - a. a householder application,
 - b. a minor commercial application, or
 - c. a minor residential application.
5. An application made under section 73(1) of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) in respect of which the original planning permission was a Schedule 2 planning permission.
6. An application made under section 73A(1) of the Town and Country Planning Act 1990 (planning permission for development already carried out).
7. In respect of a planning obligation that the authority concerned considers is connected with a Schedule 2 approval:
 - a. a request to agree to modify or discharge that obligation under section 106A(1)(a) of the Town and Country Planning Act 1990 (modification and discharge of planning obligations);
 - b. an application to modify or discharge that obligation under section 106A(3) of the Town and Country Planning Act 1990 (modification and discharge of planning obligations).
8. A reserved matters approval application in respect of a large outline permission.
9. An application made under regulation 9(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (application for express consent to display advertisement).
10. An application made under regulation 16(1) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (application for consent under tree preservation order).