

BABERGH DISTRICT COUNCIL

TO: COUNCIL	REPORT NUMBER: BC/21/37
FROM: Constitution Working Group	DATE OF MEETING: 22 March 2022
OFFICER: Emily Yule – Monitoring Officer	

REVIEW OF THE GOVERNANCE MODEL OPERATED BY BABERGH DISTRICT COUNCIL

1. PURPOSE OF REPORT

- 1.1 On 21 September 2021, Babergh District Council (BDC) unanimously made the following resolution:

After five years of the current leader/cabinet governance model, the Council believes it is time to review how effectively this is working and assess it against a committee governance model. Council will therefore instruct the Constitution Working Group and officers to define the details, including benefits and disadvantages, of an improved cabinet model and a suitable committee model.

The working group should report back to the first full Council meeting after 20th December 2021 with these two options to allow Council to decide which it prefers, with a view to implementing any changes at the annual Council meeting in May 2022.

- 1.2 The Constitution Working Group (CWG) has met on four occasions to consider the governance models available to the Council and to discuss the pros and cons, in particular, of the leader and cabinet model and the committee system model. This report sets out the findings of the CWG and asks the Council to confirm which model it wishes to operate.

2. OPTIONS CONSIDERED

- 2.1 The following options have been considered by the CWG:

2.1.1 Retain the existing leader and cabinet model of governance with no alterations to the way in which it currently operates – i.e. no change. This option is not recommended as both the Cabinet and the Full Council have identified that there are ways that the existing model could be improved.

2.1.2 Retain the leader and cabinet model of governance with additional measures to engage with all members of BDC. A disadvantage of the leader and cabinet model is that councillors who are not members of the cabinet can feel uninvolved and disengaged with key strategic decisions affecting the council. A way of retaining the efficiencies and accountabilities of a leader and cabinet model, whilst involving the wider council membership, would be to agree additional measures that would provide the opportunity to engage in cabinet decision-making. The main body of the report explores the possible measures that could be put in place.

- 2.1.3 Adopt a committee system model of governance. This would ensure that all decision-making bodies of the council were politically balanced and would be appointed by the Full Council. It is not recommended that all decision-making would be undertaken by the Full Council as this would overburden the workload of councillors, therefore the model would require a 'Strategy Committee' or similar to be created which would have delegated decision-making responsibilities from the Full Council. This report does not seek agreement of the actual structure of a committee system at this stage, as that would be for the Full Council to determine the committee structure and appoint Councillors to those committees at the Annual Council meeting.
- 2.1.4 Seek permission from the Secretary of State to adopt an alternative model of governance. The CWG recognised that there were many benefits to both the leader and cabinet and the committee systems and therefore did not feel an alternative model was necessary. Therefore, this option is not recommended.

3. RECOMMENDATIONS

- 3.1 That the Council considers the findings of the Constitution Working Group and resolves to either:
- a) Retain the leader and cabinet model of governance and implement additional measures to engage with all members of Babergh District Council, and agree that further review of governance arrangements be undertaken after the ordinary elections in 2023.

or

 - b) Adopt a committee system form of governance, the structure of which will be determined by the Full Council.

4. KEY INFORMATION

Background

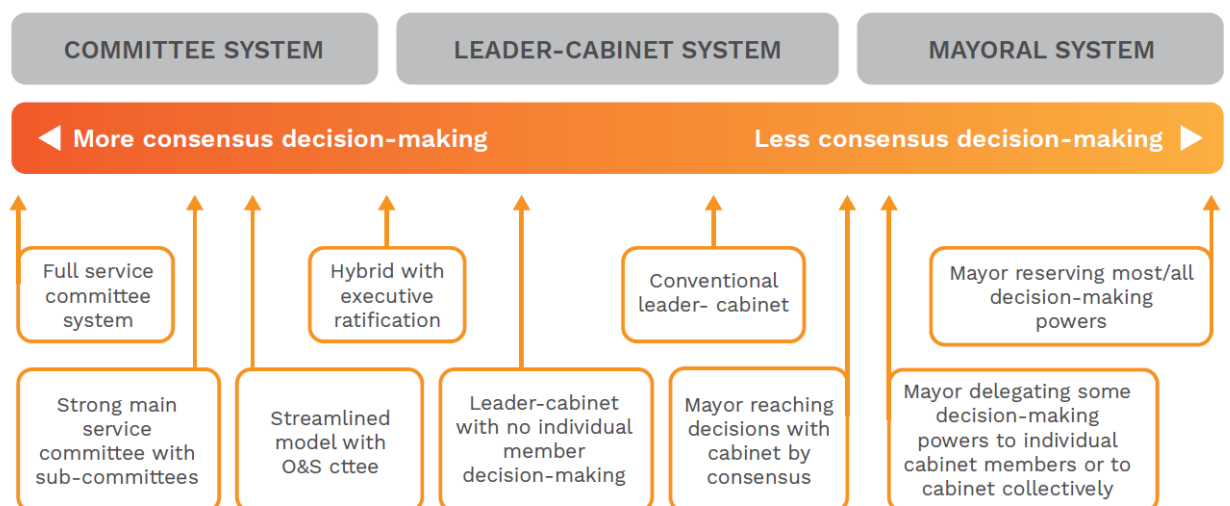
- 4.1 All councils operated a committee system of governance until the introduction of the Local Government Act 2000. This act required all councils to adopt an executive form of governance, except for district councils with a population of less than 85,000 which were permitted to retain the committee system. BDC chose to operate a committee style of governance until May 2017 when it moved to a leader and cabinet model following a decision by the Full Council in December 2016.
- 4.2 The Council was subsequently 'locked-in' to the leader and cabinet model of governance for a period of five years, expiring on 20 December 2021. The Council is now permitted, if it wishes, to amend its adopted model of governance with effect from 24 May 2022 (the annual council meeting) at the earliest. The Centre for Governance and Scrutiny (CfGS) recommends that any decision to alter an authority's governance model should be taken at least six months before the proposed implementation date to enable sufficient time for officers and councillors to design the new system and provide appropriate cultural change management¹. However, this is not a statutory requirement.

¹ "Rethinking Council Governance for the 20s", Centre for Governance & Scrutiny, pg.10
<https://www.cfgs.org.uk/wp-content/uploads/CfGS-Rethinking-council-governance-SINGLE-PAGES.pdf>

Governance Models

- 4.3 The Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007 and the Localism Act 2011, enables local authorities to adopt one of four models of governance:
- 1) Elected Mayor and Executive Cabinet
 - 2) Leader and Executive Cabinet
 - 3) Committee System
 - 4) Alternative option proposed by the Council (requires Secretary of State Agreement)
- 4.4 Where an authority adopts an executive or Cabinet model of governance, decision-making is separated into Council functions (those functions which must not be the sole responsibility of the Cabinet), local choice functions (which may be allocated to the Council or the Cabinet) and Executive functions (all other matters are determined by the Cabinet unless explicitly reserved to the Full Council by statute or resolution)². The Articles and Part 2 of the BDC constitution sets out the existing functions and responsibilities for Council and Cabinet.
- 4.5 The CfGS considers that these available options can more accurately be described as a 'spectrum' with a greater or lesser degree of consensus decision-making depending on the option chosen:

Figure 1 – Governance models on a spectrum³



It is apparent, therefore, that within all models there can be varying degrees of autonomous or consensus decision-making depending on the scheme of delegation agreed by the Full Council.

² The Local Authorities (Functions and Responsibilities) (England) Regulations 2000

³ "Rethinking Council Governance for the 20s", Centre for Governance & Scrutiny, pg.8

4.6 The CfGS is of the view that no one system of governance is intrinsically better than any other and that the authority's culture around governance is more important than the model it employs. Therefore, when choosing a governance model it is important that the culture of the organisation is taken into account and the aspirations for decision-making. Some of the factors of effective governance considered by the CWG were:

- The way that the Council involves the public in major decisions.
- How information about decisions is published and used.
- How we forward plan our programme of work.
- The relationship between officers and councillors.
- The relationship between decision makers and wider council membership.
- Accountability and scrutiny.

The Leader and Cabinet Model

4.7 BDC has operated the leader and cabinet model since May 2017. The Cabinet has chosen to operate consensus decision-making and delegations to individual cabinet members are limited (usually only employed for reasons of urgency or to finalise details of a decision taken in principle by the Cabinet). The key benefits of this model are as follows:

- Efficiency of decision-making – decisions can be taken swiftly and in streamlined way by the use of executive delegation.
- Increased accountability – executive arrangements can provide a higher degree of accountability as individual councillors have responsibility for a specialised portfolio area. It can be easier for the public and other councillors to hold a specific cabinet member to account rather than the whole council.
- Enhanced scrutiny arrangements – within a leader and cabinet system the Council must appoint a scrutiny committee or committees (this is not a statutory requirement in a committee system). This enables the wider council to challenge and examine the decisions of the Cabinet, including through the call-in process. It also provides a mechanism for public scrutiny.
- The role of the Leader – this model provides stability and consistency in the role of the Leader of the Council as their appointment is for four years and can only be terminated by resolution of the Full Council. The Leader has significant decision-making and representational authority vested in them, which enables them to participate fully in cross-authority or multi-agency boards. This strengthens the authority's 'voice at the table'.
- Transparency provisions – in an executive model the authority is required to give public notice of all upcoming key decisions⁴ for a minimum of 28 days before the decision is taken. Notice must also be given of any decisions which

⁴ A decision that incurs significant expenditure or generates significant savings (over £150,000) and / or has a significant impact on two or more wards.

the Cabinet is proposing to take in closed session so that the public may object. None of these provisions are required in a committee system. Furthermore, the Cabinet and Officers must publish a decision notice giving details of any executive decision undertaken.

- 4.8 Conversely, the model can result in non-cabinet members feeling disengaged and not included in executive decision-making. Furthermore, there can be a discomfort with vesting significant decision-making power in a limited number of people, particularly when the Cabinet is formed of a single political party. However, this should be countered by robust scrutiny arrangements.

The Committee System

- 4.9 The primary benefit of a committee system is that all of the authority's decision-making is undertaken by politically balanced committees. This can be seen as more representative of the whole council as smaller groups and opposition groups may be allocated seats on the committee (subject to the proportionality calculations).
- 4.10 A further desirable aspect is that the Full Council has total control over the delegation of decision-making powers to its committees. It is not constrained by the legislative framework of executive and non-executive functions and has total discretion over the allocation of committees and the responsibilities and functions given to each of them.
- 4.11 However, a committee system can be very bureaucratic and decision-making can be slow. This is particularly the case where the Full Council retains the majority of decision-making power and gives limited delegation. Decisions can be held up in a 'ping-pong' situation where the decision is referred to committee for consideration and a recommendation is made to Full Council but is then referred back to the committee for further work.
- 4.12 It is possible to operate a system where all decision-making, apart from regulatory functions, is undertaken by the Full Council. However, this would dramatically increase the workload of all councillors and would require much more frequent meetings of the Full Council. It is not a recommended sustainable method of decision-making. Therefore, it is likely that the Full Council would need to appoint a number of committees to undertake the bulk of decision-making which means that in practice most decisions will still be taken by a limited number of councillors.
- 4.13 In a committee system, the Council may still appoint a Leader. However, unlike in a leader and cabinet model the Full Council can determine the term of office and the remit of the Leader. It is good practice to create a terms of reference or role description for the Leader of the Council which clearly sets out their decision-making authority and the expectations of the postholder.

Findings and proposals of the CWG

- 4.14 The CWG reflected on the historical operation of both the committee system and the leader and cabinet models of governance at BDC. Both models had advantages and disadvantages and the CWG was keen to capture the best aspects of both systems in the Council's future governance arrangements. The CWG was particularly concerned about ensuring that all decision-making was undertaken by politically balanced and representative bodies. It was acknowledged that the current Leader of the Council had invited all political groups to take up places on the Cabinet, however

there were concerns that that was an informal agreement which might not be honoured by future Leaders.

- 4.15 Members of the CWG also reported that some ‘back-bench’ councillors felt that the Cabinet did not communicate adequately about its decisions, and crucially the reasoning behind them, and did not engage with the whole Council enough before taking important decisions. This had led to some councillors feeling unable to relay information back to their local communities and having a lack of opportunity to represent the interests of their wards.
- 4.16 The CWG was very keen to ensure that public engagement in the Council’s decision-making was preserved and enhanced and suggested reviewing the Council’s arrangements for public questions and petitions to ensure that they are accessible to all and their use promoted. The CWG identified many positive aspects of the transparency and openness rules for executive arrangements and confirmed that these should be replicated in a committee system, including the use of a forthcoming decisions list.
- 4.17 The CWG also considered the implications of changing the governance model at this stage in the electoral cycle and the re-set of the five-year period before any further changes could be made, effectively binding the next council which will be elected in 2023. However, a decision to retain the leader and cabinet model but include additional measures to engage more councillors would not constitute a governance change. Therefore, the Council could revisit its arrangements at any point in the future.
- 4.18 In conclusion, the CWG suggested that the following two options could provide robust, transparent and effective governance for BDC:

4.18.1 An Enhanced Leader and Cabinet model

- The Cabinet would operate as existing with more than one political group represented and using consensus decision-making.
- The major policy framework would be reviewed to ensure that all policies of strategic importance were reserved to the Full Council.
- The Cabinet would be required to consult the Full Council before taking decisions with a significant impact on the whole district – typically via a Full Council debate.
- The Cabinet could appoint ‘advisory panels’ or similar which would be made up of non-cabinet members and would be consulted on decisions being undertaken by the Cabinet as a focussed way of engaging more councillors in executive decision-making. One suggestion would be to structure the advisory panels based on the Council’s strategic priorities, or around the Councils’ performance framework.
- The Cabinet would continue to provide the ability for all Councillors to ask questions during Cabinet meetings.
- The quarterly Cabinet Member reports to Full Council would be formally reinstated as a means of providing updates on the work of the Cabinet and enabling the whole Council to hold cabinet members to account.

- The Council's scrutiny arrangements would be reviewed and the scrutiny workplan would have an enhanced focus on the key strategic priorities and issues of concern for the Council. A number of structural options could be considered for scrutiny, including the use of themed sub-committees or working groups to support the work of the main committee.

4.18.2 A Committee System with a Strategy Committee and delegations to the Leader of the Council

- The Council would revert to a committee system of decision-making similar to the arrangements operated before 2017.
- The Leader of the Council would be appointed by the Full Council at each annual council meeting for a term of one year. The Full Council would give sufficient delegations to the Leader to ensure that they were able to take decisions on behalf of the Council at cross-authority boards and committees.
- The Full Council would also appoint the Deputy Leader of the Council.
- A Strategy Committee (or similar) would be appointed by the Full Council and given delegated authority to undertake all of the operational and strategic decision-making on behalf of the Full Council. This would be limited by the budgetary and policy framework agreed by the Council. Members of the Strategy Committee would be chosen by the Full Council and could be assigned a portfolio by the Full Council.
- The Council would continue to publish a forthcoming decisions list detailing the decisions to be taken by the Full Council and Strategy Committee.

4.19 Following an all-councillor briefing on 13 January 2022, the CWG was asked to consider different types of committee structures that could be adopted and to provide an indication of the impact of these structures in terms of cost, officer resource and councillor workload. Information about possible committee structures has been included at Appendix A.

5. LINKS TO CORPORATE PLAN

5.1 Transparent and accountable governance and decision-making underpin all of the key strategic priorities of the Council.

6. FINANCIAL IMPLICATIONS

6.1 If the Council resolved to adopt a committee style of governance, additional staff resources may be required depending on the structure of the committee system adopted. For example, if there was more than one additional committee introduced, an additional governance officer would need to be recruited at a cost of approximately £31,200 per annum. This cost would be solely attributable to Babergh District Council.

6.2 The additional measures proposed under an enhanced Cabinet model could be absorbed within existing resources therefore there is no additional cost expected.

7. LEGAL IMPLICATIONS

- 7.1 The Council has powers to determine its own governance arrangements at any point in the electoral cycle under Part 1A, Chapter 4, s.9K of the Local Government Act 2000 as amended by the Localism Act 2011. Any changes must take effect on the date of the next annual council meeting.
- 7.2 The authority is 'locked in' to any revised governance arrangements for a period of five years from the date that the resolution to adopt those arrangements was made unless a further change is agreed by referendum. (Part 1A, Ch.4, s.9KC(4) Local Government Act 2000).
- 7.3 Following a resolution to amend governance arrangements, the Council must publicise the change by making available, for public inspection, documents explaining the new arrangements and advertising the change in one or more newspapers published in the area. The Council will also need to make the relevant amendments to its own constitution.

8. RISK MANAGEMENT

- 8.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
That the Council has insufficient or unlawful governance arrangements which lead to unsound or illegal decisions being made.	2 (unlikely)	4 (disaster)	Governance model adopted is in line with statutory provisions, constitution is updated accordingly, training and support provided for councillors to operate any new model.
That the Council's joint working relationship with Mid Suffolk District Council is impaired by operating different forms of governance.	2 (unlikely)	3 (bad)	If a committee system is adopted, sufficient delegations should be given to the Leader of the Council and relevant committees to ensure that rapid decision-making is possible where necessary and to enable joint decision-making with Mid Suffolk DC.

That the Leader of Council is unable to adequately represent Babergh District Council on multi-authority boards, such as the Suffolk Public Sector Leaders group, as they have insufficient autonomous decision-making powers.	3 (likely)	3 (bad)	If a committee system is adopted, sufficient delegations should be given to the leader of the Council.
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9. CONSULTATIONS

- 9.1 There is no requirement for the Council to undertake public consultation on a change to its governance model.

10. EQUALITY ANALYSIS

- 10.1 If the Council chooses to retain a leader and cabinet model of governance there will be no additional equality impacts and therefore an equality impact assessment is not required. If the Council chooses a committee system, an equality impact assessment will need to be carried out for any new committees created. It is not envisaged that there would be any negative equality impacts, however, as the rules of procedure for any new committee would follow existing arrangements.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 There are no environmental implications arising from this report.

12. APPENDICES

- 12.1 A – Possible Committee Structures (attached).

13. BACKGROUND DOCUMENTS

- 13.1 None

14. REPORT AUTHORS

- 14.1 Emily Yule – Assistant Director for Law & Governance and Monitoring Officer