

 <b>Executive: 4 January 2018</b>		<b>Agenda Item No.</b> <b>3</b>
<b>Title</b>	Revisions to the Scheme of Delegation & Council Procedure Rules	
<b>For further information about this report please contact</b>	<p>Gary Fisher Development Manager 01926 456505 <a href="mailto:gary.fisher@warwickdc.gov.uk">gary.fisher@warwickdc.gov.uk</a></p> <p>Graham Leach Democratic Services Manager &amp; Deputy Monitoring Officer 01926 456114 <a href="mailto:graham.leach@warwickdc.gov.uk">graham.leach@warwickdc.gov.uk</a></p>	
<b>Wards of the District directly affected</b>	All Wards	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	Executive: 27 July 2016 - Minute 33	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes
<b>Equality Impact Assessment Undertaken</b>	N/A

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	11/12/2017	Chris Elliott/Bill Hunt
Head of Service	13/12/2017	Tracy Darke
CMT	11/12/2017	Bill Hunt
Section 151 Officer	11/12/2017	Mike Snow
Monitoring Officer	13/12/2017	Andy Jones
Finance	11/12/2017	Jenny Clayton
Portfolio Holder(s)	11/12/2017	Councillors Coker, Mobbs & Rhead
Consultation & Community Engagement		
WCC Legal Services		
Final Decision?		No
Suggested next steps (if not final decision please set out below)		
If supported the amendments will be considered		

## 1. **Summary**

- 1.1 The purpose of this report is to revise the scheme of delegation within the Constitution in relation to applications considered by Planning Committee, the adoption of public open space and the provision of rent holidays as well as a minor revision to the procedure for considering Notices of Motion at Council.
- 1.2 The report also notifies the Executive of the urgent decision taken by the Chief Executive under delegation CE(4) with regard to the transfer and adoption of land for Open Space on land west of Europa Way and seeks a further delegation to deal with such issues in the future.

## 2. **Recommendation**

- 2.1 That Executive recommends to Council the amendments to the Constitution as set out at Appendix 1 to this report.
- 2.2 The Executive notes the decision of the Chief Executive ,under scheme of delegation CE(4), after consultation with Group Leaders to accept the land for Open Space on land west of Europa Way Warwick.

## 3. **Reasons for the Recommendation**

- 3.1 This matter was last considered by Executive at their meeting of 27 July 2016 when Members identified a lack of clarity in the delegation agreement concerning the mechanism through which Councillors can request that a planning application be considered by Planning Committee.
- 3.2 At that meeting, the following proposals included in the report were also withdrawn in order that they could be reviewed further by officers:-
  - i. The proposal for Members to provide a valid planning reason when calling a planning application to Planning Committee, and
  - ii. The proposal for objections to planning applications received from Town and Parish Councils, and other interested parties to be considered as valid only where they are made on planning grounds.
- 3.3 In order to ensure the efficient, effective and transparent running of the planning application process, it is important that Members and other stakeholders and interested parties are fully aware of the procedure through which they are able to either call planning applications to Committee or make a valid objection to a proposal.
- 3.4 It would usually be the case that controversial and complex planning applications would be expected to be considered by Planning Committee. Therefore, the triggers for applications being so considered need to be set at an appropriate level. This is also to ensure that the system works in a fair and equitable manner not only for those parties who are included in the consultation process, but also for applicants who pay a fee to have their applications considered.
- 3.5 The delegation agreement currently sets out that the timescale for members to call an application to Planning Committee is 21 days but is unclear as to when that period begins.

- 3.6 In order to clarify the position, it is proposed that the delegation agreement be revised to set this period as beginning on the day the notification letters are distributed to both the appropriate Ward Councillors and Parish/Town Council's. This provides a clear reference date that is easy for all parties to recognise.
- 3.8 National planning guidance advises Local Planning Authorities of the importance of decision making in the planning application process being based on planning reasoning and the risks associated with that not being the case.
- 3.9 It would not be appropriate for Officers to recommend to Executive that planning applications ought to be capable of being called to Planning Committee on non-planning grounds and it is therefore proposed that the delegation agreement should require that Members provide a planning reason for doing so. This would also be in line with Code of Conduct for members which states the following:
- "ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands."
- 3.10 Members are aware of material planning reasons and to further enhance this all Councillors are invited to the regular planning training sessions
- 3.11 It is also proposed that comments on planning applications received from either Town or Parish Councils should be based on planning reasons.
- 3.12 Where that isn't the case, it is proposed that the delegation agreement set out that those comments cannot be taken into account for the purposes of determining whether a proposal should be considered by Planning Committee.
- 3.13 In addition it is considered appropriate that the Chairman of the Planning Committee is also consulted prior to the Head of Development Services taking a decision to discount the representation by a Parish/Town Council.
- 3.14 It is also proposed to make a number of other minor revisions to the delegation agreement to ensure that it is operating effectively particularly in respect of the following matters.
- 3.15 With respect to the making of Tree Preservation Orders, the removal of the reference to the Tree Sub Committee which is no longer in operation.
- 3.16 For the purposes of determining whether a planning application is to be considered under delegated powers or by Planning Committee, the clarification that no more than one objection or indication of support per address will count towards the trigger.
- 3.17 In the circumstances where the Head of Development Services is considering whether revised proposals overcome an objection received from a Town or Parish Council, this will be undertaken in consultation with the Chair of Planning Committee.

- 3.18 In practical terms, in view of the low likelihood of the consideration by Planning Committee of planning applications proposing a material departure from the Development Plan not being triggered by other elements of the delegation agreement, it is proposed that this standalone trigger be deleted.
- 3.19 In order to ensure that they are considered and determined in a transparent manner, it is proposed that the delegation agreement should be revised to ensure that planning applications which are submitted in respect of land owned by the District Council are determined by Planning Committee.
- 3.20 It has been identified that there is no delegation in place to enable rent holidays for non HRA properties where they are considered appropriate, to help support business and therefore the local economy. It is considered appropriate limit should be placed on this before Executive approval is required and this has been proposed at £20,000 or 12 months whichever is lowest. The details of any holiday provided would also be detailed within the quarterly budget reports so members are aware.
- 3.21 It has been noted by both Councillors and Officers that the procedure for the deliberation of Notices of Motion at Council could be improved upon to enable clarity for all. Therefore the amendment as set out in Appendix 1 is proposed to provide this clarity for all.
- 3.22 It has also been identified, during the work on the South Leamington development area and Tachbrook Country Park, that at present there is no formal delegation in place for officers to accept the transfer of Open Space or SUDS land to the Council as part of an approved S106 Agreement within a determined planning consent. While there would be a legal agreement in place to see the transfer of the land or building the Council would still need to formally accept this once it is completed. A summary of the S106 provisions for this are attached for both Open Space and Sustainable Urban Drainage System SUDS land (Appendix 2). The need for this was demonstrated by the proposed development to the west of Europa Way, Warwick, which involves the creation of a substantial new park. Notice of 30 days was served on the Council to seek a decision on whether the Council wishes to adopt the land once laid out to its satisfaction. In the absence of formal officer delegation to accept the land, the Chief Executive undertook consultation with Group Leaders, to which no objections were received prior to accepting the land to deal with the immediate issue at hand and a further delegation is proposed to cover any future proposals.

#### 4. **Policy Framework**

##### 4.1 **Fit for the Future**

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy."

<b>FFF Strands</b>		
<b>People</b>	<b>Services</b>	<b>Money</b>

<b>External</b>		
<b>Health, Homes, Communities</b>	<b>Green, Clean, Safe</b>	<b>Infrastructure, Enterprise, Employment</b>
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/ productivity of local economy Increased employment and income levels
<b>Impacts of Proposal</b>		
Clarity in the manner in which communities are able to engage with the planning process.  Ensuring that planning applications are considered in an effective and timely manner to facilitate sustainable development.	Ensuring the provision of public open space within developments through the adoption of land transferred to the Council.	To enable sustainable high quality development and infrastructure to come forward at the right time to contribute to the vision of making Warwick District a great place to live, work and visit.
<b>Internal</b>		
<b>Effective Staff</b>	<b>Maintain or Improve Services</b>	<b>Firm Financial Footing over the Longer Term</b>
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
<b>Impacts of Proposal</b>		
Ensuring that the delegation agreement is up to date and operating effectively to assist staff in considering planning applications in an effective manner.	Contributing to the consideration of planning applications in a manner which provides a speedy and high quality service for customers.	Ensuring that planning applications are determined in the most cost effective manner.

## 4.2 Supporting Strategies

Each strand of the FFF Strategy has several supporting strategies and the key one in respect of this proposal is the Local Plan.

The consideration of planning applications in an effective and timely manner contributes to the vision for the District set out in the Local Plan and is supported through the provision of an up to date and effective delegation agreement.

#### **4.3 Changes to Existing Policies**

This proposal is not intended to bring forward changes to any of the principle formal policies of the Council but rather is intended to update the delegation agreement in support of some of those policies.

- 4.4 **Impact Assessments** - It is anticipated that ensuring that planning applications are considered in the most timely and effective way will benefit all sections of the community.

#### **5. Budgetary Framework**

- 5.1 The above proposals will be brought forward within existing budgetary frameworks.

#### **6. Risks**

- 6.1 Any risks associated with this proposal are considered in section 7 below.

#### **7. Alternative Options Considered**

- 7.1 The option of not clarifying the delegation agreement to clearly set out the timescale for Members calling planning applications to Committee has been discounted.
- 7.2 Officers have also considered the option of not revising the delegation agreement to require that planning reasons are provided for both calling a planning application to Committee and/or objecting to an application. However, the risks associated with doing so, particularly in respect of ensuring that the planning process operates properly have resulted in that option being discounted.
- 7.3 Consideration has also been given to the option of making no changes to the delegation agreement in respect of Town and Parish Councils ability to trigger applications being considered by Planning Committee. However, in view of the nature of the impacts of not proposing any such revisions as set out above, that option has also been discounted.

#### **8. Background**

- 8.1 The Council's Development Management team determine in excess of 2000 planning applications per year. In accordance with national guidance and good practice, in order to ensure that decisions are made in a timely and cost effective manner, approximately 90% of those decisions are made by Officers under delegated powers.

- 8.2 Nevertheless, as is widely the case amongst Council's, it is appropriate that those more complex or controversial planning applications where there is, for example a significant level of public interest are considered in a public arena by the Council's Planning Committee.
- 8.3 The Council's delegation agreement sets out a number of triggers which identify the points at which that increased level of public interest is considered to have been achieved and therefore where an application would be considered by the Planning Committee which in the circumstances where the recommendation is that planning permission be granted, includes:-
- i. The receipt of 5 or more objections to a proposal;
  - ii. A request from a Councillor that the application be considered by Planning Committee; or
  - iii. The receipt of an objection to a proposal from the Town or Parish Council in whose area the proposal is located.
- 8.4 In order to ensure the effective running of the planning system; the most appropriate use of resources and therefore the provision of best value for customers, it is necessary to keep the operation of the Council's delegation agreement under review. This is particularly relevant in view of the level of national scrutiny of Councils' effectiveness in determining planning applications and in the emerging evidence that the cost of determining planning applications that are considered by Planning Committee is approximately 10x that of those considered under delegated powers.

## Proposed Revisions to the Delegation Agreement

- DS (45) Confirm Tree Preservation Orders to which there are objections, following the authorisation of that confirmation by ~~the Tree Preservation Order Sub Committee or the Planning Committee.~~
- DS (70) Determine all applications submitted to Warwick District Council as required by the Town and Country Planning Act 1990 (as amended), Town and Country Planning (Control of Advertisement) Regulations 1992, and Planning (Listed Buildings and Conservation Areas) Regulations 1990, ~~with the exception of the following~~ **except:-**
- (i) ~~Applications~~ when a **valid** written request is received from a member of Warwick District Council within the specified consultation period of 21 days **from the publication of the notification letter of the application to the relevant parties, setting out the planning grounds on which the referral of that application to Planning Committee is requested** ~~that Committee referral is required.~~
  - (ii) ~~Applications~~ when 5 or more written objections (or letters of support) **which have been received from different addresses** or a petition (including one of support) with 5 or more signatures has been received **identifying, in the case of an objection, the planning grounds on which that objection is made,** where the recommendation is contrary to the representations that have been made.
  - (iii) ~~Applications~~ when the recommendation of the Head of Development Services i.e. Grant/Refuse is contrary to the representations made by a Parish/Town Council, i.e. Object/Support except in the following circumstances:-
    - (a) after consultation with the Chairman of the Planning Committee if it is considered that the representation is not on planning grounds;**
    - ~~(b) the Head of Development Services~~ **after consultation with the Chair of Planning Committee** ~~is satisfied that that the plans have been amended to address the concerns of the Parish/Town Council;~~
    - ~~(c) where the representations made by the Parish/Town Council raise issues which are not material to the planning assessment of the particular application; or~~
    - ~~(c) where the concerns of the Parish/Town Council have been previously considered as part of the assessment of an extant permission on the site and there has been no change in circumstances~~
  - ~~(iv) Applications where the principle of development would represent a material departure from any policy within the Development Plan.~~
  - (iv) Applications known to be submitted by or on behalf of a Warwick District Councillor, Warwick District Council employee or former employee of the Council, or the spouse/partner of any such person;.
  - (v) Applications **relating to land or buildings in the ownership of Warwick District Council or which are** submitted by Warwick District Council or Warwickshire County Council, other than for approval of routine minor developments.
  - (vi) Where applications are to be refused and enforcement action is being recommended, following consultation with the Chair and Vice Chair of the Committee and the relevant ward member(s) except in the



circumstances where the Head of Development Services considers it appropriate for that matter to be determined by Planning Committee.

- (vi) Applications where an Environmental Impact Assessment has been provided.
- (vii) Any application which raises significant issues such that in the opinion of the Head of Development Services, it would be prudent to refer the application to Planning Committee for decision.

DCE(16) The Deputy Chief Executive (BH) be authorised to approve a rental holiday for any non HRA property subject to either a maximum of 12 months or £20,000 whichever is the lowest and the holiday being reported in the quarterly budget monitoring report to Executive.

A(12)	To accept the transfer of land or buildings to the Council which is required to be transferred to the Council under the provisions of a section 106 agreement."	Head of Culture, Development, Housing and Neighbourhood individually
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### **Amendments to Council Procedure Rule 6 – Notices of Motion**

Be amended to read as follows:

~~(6) If the subject matter of a motion submitted to the Council comes within the terms of reference of the Executive or any committee, it will, upon being moved, and seconded, stand referred without discussion to the Executive or that committee for consideration and report. However, the Council may, by a simple majority, allow the motion to be dealt with at the meeting at which it is brought forward.~~

**When a Motion comes to Council the procedure will be as follows:**

- (1) For matters that can be determined by Council a short introductory speech will be made by the proposer followed by the proposal of the motion. Once seconded the procedure for debating motions will be followed. After any debate the Motion will be put to a vote and will either be carried or lost.**
- (2) For matters that are the responsibility of the Executive or a Committee a short introductory speech will be made followed by the motion which will be closed with a request the matter is referred to the relevant meeting along with a report from officers. The procedure for debating motions will then be followed. After any debate the Motion will be put to a vote and will either be carried (referred to the relevant committee) or lost (no further action is taken)**

## Appendix 2

### Open Space and Play Area Obligations

S106 Trigger	The Open Space	The Play Area
Before development starts:	<ul style="list-style-type: none"> <li>Owner submits a detailed <b>Scheme</b> (the Amenity Open Space Scheme) for the <b>Land</b> (the Amenity Open Space Land), <b>and</b></li> <li>Council approves the <b>Scheme</b> in writing</li> </ul>	<ul style="list-style-type: none"> <li>Owner submits a detailed <b>Scheme</b> (the Play Area Scheme)</li> </ul>
Before the 1 <sup>st</sup> Dwelling is occupied:	<ul style="list-style-type: none"> <li>Owner shall offer to transfer the <b>Land</b> for £1, and</li> <li>Council will respond within 30 days</li> </ul>	<ul style="list-style-type: none"> <li>Owner shall offer to transfer the <b>Play Area</b> for £1, and</li> <li>Council will respond within 30 days</li> </ul>
Before 50% of the dwellings are occupied:	<ul style="list-style-type: none"> <li>Owner shall lay out and install the <b>Land</b> in accordance with the approved <b>Scheme</b>.</li> <li>Owner must notify the Council in writing when the <b>Scheme</b> has been implemented and is complete.</li> </ul>	<ul style="list-style-type: none"> <li>Owner shall lay out and install the <b>Play Area</b> in accordance with the approved <b>Scheme</b>.</li> <li>Owner must notify the Council in writing when the <b>Scheme</b> has been implemented and is complete.</li> </ul>
Within 40 days of the Owner notifying the Council that the scheme is complete:	<ul style="list-style-type: none"> <li>Council has to inspect the works and, if satisfied with the works, must issue a <b>Completion Certificate</b> within 15 days of the inspection, or;</li> <li>notify the Owner within 15 days of the inspection if remedial work is required.</li> <li>Work to be carried out to the reasonable satisfaction of the Council.</li> <li>Thereafter the <b>Land</b> is to be maintained in full accordance with the <b>Scheme</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Council has to inspect the works and, if satisfied with the works, must issue a <b>Completion Certificate</b> within 15 days of the inspection, or;</li> <li>notify the Owner within 15 days of the inspection if remedial work is required.</li> <li>Work to be carried out to the reasonable satisfaction of the Council.</li> <li>Thereafter the <b>Land</b> is to be maintained in full accordance with the <b>Scheme</b>.</li> </ul>
Once the <b>Completion Certificate</b> has been issued and before 50% of dwellings are occupied	<ul style="list-style-type: none"> <li>Owner will transfer the <b>Land</b> to the Council for £1.</li> </ul>	<ul style="list-style-type: none"> <li>Owner will transfer the <b>Land</b> to the Council for £1.</li> </ul>
On completion of the transfer of the <b>Land</b> :	<ul style="list-style-type: none"> <li>Owner shall pay the Council the <b>Amenity Open Space Maintenance Sum</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Owner shall pay the Council the <b>Play Area Commuted Sum</b>.</li> </ul>

### Summary of SUDS Obligations (W/15/0851)

<b>S106 Trigger</b>	<b>Provision of Sustainable Urban Drainage System (SUDS)</b>	<b>Transfer of SUDS Land</b>
Before development starts:	<ul style="list-style-type: none"> <li>Owner submits the <b>SUDS Specification, and</b></li> <li>Council approves <b>SUDS Specification</b> in writing.</li> </ul>	
Before 1 <sup>st</sup> dwelling occupied:	<ul style="list-style-type: none"> <li>Owner completes SUDS and invites Council to issue <b>SUDS Completion Certificate</b>.</li> <li>Council inspects SUDS and either notifies developer of any defects within 15 days or issues <b>SUDS Completion Certificate</b>.</li> <li>Where remedial works required, owner completes to satisfaction of Council.</li> <li>Owner invites Council to inspect remedial works and to issue <b>SUDS Completion Certificate</b>.</li> <li>Council inspects SUDS and issues <b>SUDS Completion Certificate</b>.</li> </ul>	
Upon Issue of <b>SUDS Completion Certificate</b> :	<ul style="list-style-type: none"> <li>12 month <b>SUDS Maintenance Period</b> starts.</li> <li>Owner maintains the SUDS.</li> </ul>	
No later than 30 days after the issue of the <b>SUDS Completion Certificate</b> :		<ul style="list-style-type: none"> <li>Owner serves notice on the Council offering the <b>SUDS Land</b> for adoption.</li> </ul>
On expiration of the <b>SUDS Maintenance Period</b> :	<ul style="list-style-type: none"> <li>Owner invites the Council to issue a <b>SUDS Final Certificate</b> confirming that the SUDS have been properly maintained during the <b>SUDS Maintenance Period</b>.</li> </ul>	
Within 30 days of being invited to issue the <b>SUDS Final Certificate</b> :	<ul style="list-style-type: none"> <li>Council inspect the SUDS and notify the developer of any remedial works required. Owner completes remedial works to the reasonable satisfaction of the Council.</li> </ul>	
On completion of any remedial works, or if none required:	<ul style="list-style-type: none"> <li>Council issues <b>SUDS Final Certificate</b>.</li> <li>Where Council fails to inspect SUDS within 30 days of receipt of notice of invitation or fails to issue the <b>SUDS Final Certificate</b> within 30 days of the inspection then <b>the SUDS Final Certificate</b> shall be deemed to have been issued.</li> </ul>	
Prior to the date of <b>SUDS Transfer</b> :		<ul style="list-style-type: none"> <li>Owner and Council agree the <b>SUDS Commuted Sum</b>.</li> </ul>
Following issue of <b>SUDS Final Certificate</b> and prior to 75% of dwellings being complete:	<ul style="list-style-type: none"> <li>Owner shall maintain the SUDS in accordance with the approved <b>SUDS Specification</b> until such time as the SUDS are transferred to the Council.</li> </ul>	<ul style="list-style-type: none"> <li>Owner shall execute and deliver to the Council the <b>SUDS Transfer</b> and pay the Council the relevant proportion of the <b>SUDS Commuted Sum</b>.</li> </ul>

**NOTE:** This summary does not include all of the provisions of the relevant Schedule in the S106 Agreement. Assumes WDC want to adopt.