

Title: Adoption of Net Zero Carbon DPD and associated SPD
 Lead Officer: Andrew Cornfoot, Planning Policy & Major Sites Delivery Manager (andrew.cornfoot@warwickdc.gov.uk)
 Portfolio Holders: Councillor Kennedy (Climate Change) and Councillor King (Place)
 Wards of the District directly affected: All

Approvals required	Date	Name
Portfolio Holder	29/04/24	Cllr James Kennedy (Climate Change) and Cllr Chris King (Place)
Finance		Andrew Rollins
Legal Services	26/04/24	Ross Chambers
Chief Executive	25/04/24	Chris Elliott
Director of Climate Change	25/04/24	Dave Barber
Head of Service(s)	25/04/24	Philip Clarke
Section 151 Officer		Andrew Rollins
Monitoring Officer	25/04/24	Graham Leach
Leadership Co-ordination Group	29/04/24	
Final decision by this Committee or rec to another Cttee / Council?	No Recommendation to Council to adopt the DPD	
Contrary to Policy / Budget framework?	No	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	Yes, Forward Plan item Ref.1,378 – scheduled for 15 th May 2024	
Accessibility Checked?	Yes	

Summary

This report provides an update on the Main Modifications consultation and the subsequently published Inspector's Report, in which the Inspector concluded, through Examination that the Development Plan Document is 'sound' and has been prepared in accordance with legal and procedural requirements. The report therefore seeks agreement from Cabinet to recommend to Council to adopt the Net Zero Carbon Development Plan Document. If adopted, it will become part of the Development Plan for the area. The report also seeks Cabinet approval to adopt an associated Supplementary Planning Document that will provide advice and guidance to applicants and decision makers.

Recommendation(s)

- (1)** That Cabinet notes the Inspector's Report on the Examination of the DPD (Appendix 1), and specifically that he has concluded that the plan meets the tests of soundness and has been prepared in accordance with legal and procedural requirements and thus is 'capable of adoption'.
- (2)** That Cabinet recommends to Council to adopt the Net Zero Carbon Development Plan Document (Appendix 2), in accordance with Section 23 of the Planning and Compulsory Purchase Act 2004; and that Cabinet note that the adopted Net Zero Carbon Development Plan Document will be the Plan submitted on 17th October 2022 as amended by the schedule of Main Modifications and Additional Modifications (Appendices 3 and 4).
- (3)** That Cabinet notes that the adoption statement and final sustainability appraisal report is published on or before Monday 20th May 2024 in accordance with regulations 17 and 26 of the Town and Country Planning (Local Planning) Regulations 2012 (as amended).
- (4)** That Cabinet notes the statement of public consultation (Appendix 9) and Schedule of Proposed Modifications to the SPD (Appendix 10) and approves the adoption of the amended Net Zero Carbon Supplementary Planning Document (Appendix 8), to be formally adopted contemporaneously with the parent DPD, subject to Recommendation 2 and the subsequent decision of Council.

1 Reasons for the Recommendation

1.1 Background – what is the DPD?

- 1.2 Since its declaration of a Climate Emergency in 2019, this Council has developed a Climate Emergency Action Plan (CEAP), setting targets and actions to tackle climate change and mitigate its impacts. The production and adoption of the Net Zero Carbon Development Plan Document (DPD) is considered to be a critical part of the Climate Change Action Programme and a key tool in meeting the Council's climate change targets.
- 1.3 The DPD, once adopted will form part of the Development Plan for Warwick District and is one of the first to be produced by a local authority in England on this subject matter and therefore is pioneering in many respects.

- 1.4 The DPD specifically focuses on minimising carbon emissions from existing and new buildings (of all uses) within the District to support the achievement of national and local carbon reduction targets.
- 1.5 To work towards this aim, the DPD is designed to ensure that new development's contribution to the District's carbon deficit is minimized and that new homes do not add to the significant number of existing buildings in the District that will need costly and disruptive retrofit as part of the local and national transition to achieve net zero carbon. By bringing forward performance standards equivalent to the Future Homes Standard, in advance of its national introduction, the new homes should not need future retrofit, and by collecting carbon offset payments the DPD will raise funds to deliver other vital but currently underfunded actions necessary for the national and local transition to net zero – such as additional renewable energy, retrofit of other existing buildings, or creation of woodland.
- 1.6 **Background – progress since submission**
- 1.7 At its meeting on 10th August 2022, Cabinet agreed to the submission of the Net Zero Carbon Development Plan Document (DPD) to the Secretary of State for its Examination alongside a schedule of proposed revisions arising from the second of two public consultations on the emerging policy document.
- 1.8 Subsequently, Council endorsed the submission of the document on 7th September 2022.
- 1.9 On 17th October 2022, the DPD was submitted to the Secretary of State (through the Planning Inspectorate (PINS)). In order to submit the DPD, the Council were also required to appoint a Programme Officer to assist the Inspector in the administration of the examination.
- 1.10 On 7th November 2022, PINS appointed Mr. A McCormack as the Inspector to hold an independent examination of the DPD.
- 1.11 Mr. McCormack wrote to the Council on 8th December 2022, confirming that he had undertaken an initial review of the Plan, the supporting evidence and representations made on it prior to its submission and from this was satisfied that the examination of the Plan could progress.
- 1.12 Council officers and Mr. McComack engaged in further correspondence and three days of public Examination hearing sessions were arranged commencing on 7th March 2023.
- 1.13 The Council were represented at the hearing sessions by Council officers alongside specialist consultants that have supported the production of the DPD. Other interested parties also attended and contributed to the hearing sessions.
- 1.14 On 30th March 2023 Mr. McCormack wrote to the Council with a 'post hearing letter' outlining the next steps for the DPD Examination. He also praised the Council's management of the sessions stating *"...I would like to thank the Council's Team for the way in which the hearing sessions were approached, arranged, and conducted. This enabled the hearing sessions to take place as smoothly, effectively, and efficiently as possible and for that I am grateful"*.
- 1.15 In his letter, the Inspector requested further information to be submitted and indicated that Main Modifications to the DPD will be required for reasons of 'soundness' in accordance with Paragraph 35 of the National Planning Policy Framework (NPPF). As such, it would be necessary to undertake a period of public consultation on the modifications.

- 1.16 Mr. McCormack provided an indicative timetable for the next stages of the Examination that would see his final report being anticipated by the end of September 2023 (he subsequently revised this to 'end of October 2023').
- 1.17 The following sections provide more recent updates including on Main Modifications, a further public consultation and findings of the Inspector's Report.
- 1.18 **Main Modifications**
- 1.19 Following a response from the Council to Mr. McCormack's letter of 30th March in which he had requested additional information, he subsequently wrote to the Council again on 12th May 2023 confirming that he was satisfied with the content of additional documents that the Council had provided. A Schedule of Proposed Main Modifications (and minor changes, referred to as Additional Modifications) were produced by the Inspector and asked for further work to be completed by the Council by 22nd May 2023.
- 1.20 On 22nd May 2023 officers wrote to the Inspector with a final list of proposed Main Modifications, Final Schedule of Additional Modifications, a Sustainability Appraisal/Habitat Regulations Assessment update, and a composite version of the DPD showing all proposed modifications indicated in the schedules.
- 1.21 On 5th June 2023, the Council commenced a statutory 6-week Main Modifications consultation that ended on 17th July.
- 1.22 A Consultation Statement summarising the Main Modifications consultation responses was produced by officers and sent to the Inspector on 26th July (Appendix 5).
- 1.23 There were 13 responses to the public consultation, comprising of responses from statutory consultees (6), individual residents (5), land promoters and developers (2). At its Cabinet meeting on 5th July 2023, this Council also endorsed the Main Modifications and confirmed that they did not wish to make any representation to the consultation.
- 1.24 The Main Modifications consultation is to solely consider issues of soundness and legal compliance. Having considered the representations made in response to the consultation, the Council confirmed to the Inspector that it believed that the comments did not raise any issues of soundness or legal compliance.
- 1.25 **Further consultation – NPPF and 2023 Written Ministerial Statement**
- 1.26 Unfortunately, owing to illness at PINS, there were delays to the anticipated October release of the Inspector's Report. In the intervening period, a Written Ministerial Statement (WMS) relating to 'Local Energy Efficiency Standards' was made on 13th December 2023 and the National Planning Policy Framework (NPPF) was updated on 19th December 2023.
- 1.27 The Inspector wrote to the Council on 9th January 2024 with regards to these changes to the national policy context and requested that the Council undertook a further consultation specifically relating to these matters, whilst also requesting the Council's response. The consultation was open to all those that had made representations to the Regulation 19 consultation on the DPD and ran from 9th January 2024 until 24th January 2024. A total of 6 representations were made to the consultation including 1 from the Council, 2 from individuals

and 3 from housebuilders. The representations were sent to the Inspector for consideration ahead of publication of his final report.

1.28 **The Inspector's Report**

1.29 Local Plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Paragraph 35 of the NPPF sets out the tests of soundness as and Plans are 'sound' if they are:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

1.30 On 9th April 2024 the Council received the Inspector's Report on the Examination of the Warwick Net Zero Carbon DPD (Appendix 1). The Inspector has concluded that the DPD *"provides an appropriate basis for the planning of the district with regard to attaining net zero carbon development and minimising carbon emissions in new and existing development, provided that a number of main modifications [MMs] are made to it"*.

1.31 The Inspector's Report found that the Plan has complied with the legal duty to co-operate requirement and he concluded that *"I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis with its neighbouring authorities and appropriate relevant agencies in the preparation of the DPD"*.

1.32 The Inspector confirmed that the Plan has been prepared in accordance with all other legal and procedural requirements and concluded that: *"In conclusion, subject to the main modifications, the DPD provides an appropriate overarching strategy in response to Warwick's declared climate emergency that is positively prepared, justified, effective and consistent with national policy"*.

1.33 **Decision whether to adopt the Plan**

1.34 In light of the Inspector's report, the Council now has to decide whether it wishes to formally adopt the plan as local planning policy forming part of the Development Plan for the District. In doing so, the Council can only adopt the plan with the changes, the agreed Main Modifications, recommended by the Inspector along with the agreed Additional Modifications.

1.35 In the time between publication of the Inspector's Report and adoption of the DPD, consideration should be given to the weight that can be given to the policies of the Plan, prior to a formal decision whether to adopt the DPD is taken.

1.36 Paragraph 48 of the National Planning Policy Framework (NPPF) states that: *Local planning authorities may give weight to relevant policies in emerging plans according to:*

- a) *The stage of preparation of the emerging plan (the more advanced its preparation, the greater weight that may be given);*

b) *The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater weight that may be given); and*

c) *The degree of consistency of the relevant policies in the emerging plan to this Framework (the NPPF) (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)*

1.37 As the DPD has been through public consultation and examination and the Inspector's Report has been published and he has found the DPD to be sound and consistent with national policy, it is considered that it should be afforded significant weight in the determination of planning applications. Indeed, significant weight has already been given to the DPD in relation to a number of planning applications determined since receipt of the Inspectors report, including for major housing developments.

1.38 **Effective implementation of the DPD**

1.39 ***Associated NZC Supplementary Planning Document***

1.40 At its meeting on 5th July 2023, Cabinet noted that a Supplementary Planning Document (SPD) was to be produced, as set out in the Council's Local Development Scheme, to assist with the smooth implementation of the DPD and gave delegated authority to the Head of Place, Arts and Economy and the Portfolio Holders for Climate Change and Place to agree on a version of the Supplementary Planning Document that the Council will consult upon and agree the dates for that consultation; and that Cabinet notes that the SPD will ultimately come before them for their consideration as to whether to adopt it.

1.41 An SPD has subsequently been produced by officers and their consultants and a public consultation on the SPD commenced on 18th October 2023 and ran for 6 weeks until 29th November 2023.

1.42 A total of 26 responses were received from a range of stakeholders including local authorities, town and parish councils, housebuilders and other planning agents, individuals and statutory bodies. The responses were largely positive and various suggestions were made to improve the document.

1.43 In light of the representations received through the consultation, officers have made a number of changes to the SPD as set out in Appendix 10 – Schedule of Proposed Modifications to the Published Warwick Net Zero Carbon SPD. These amendments have been made to the SPD with a final version included as Appendix 8.

1.44 Recommendation 4 of this report, seeks Cabinet approval to adopt the SPD. As the parent policy document for the SPD is the DPD, the SPD can only be formally adopted after (or at the same time) as the DPD.

1.45 In the interim, although not benefitting from the weight of being an adopted policy document, the SPD can still be used as a guide for applicants and decision makers as to what will need to be produced and submitted to address the policy requirements.

1.46 ***Resourcing the implementation of the DPD***

1.47 A new permanent post of 'Sustainability and Energy Officer' has been factored into the Council's Medium-Term Financial Strategy (MTFS) and has been created to provide the technical expertise required to assess energy statements

and other technical information submitted as part of planning applications as a direct result of the DPD policies.

- 1.48 The Council has advertised this position in March-April 2024 and as there were no suitable candidates, the post will be re-advertised in the near future.
- 1.49 £30,000 has also been agreed from the Service Transformation Reserve for consultancy and training support in the current financial year until a suitable person is appointed.
- 1.50 Three successful tailored training events have been held separately with officers and members and a further session is being arranged for planning agents. The aim of the sessions is to inform and upskill Development Management and Policy officers but also to provide training for Councillors and planning agents/applicants to aid understanding of the requirements of the DPD and highlighting the support that the SPD offers.
- 1.51 Arrangements relating to the local Carbon Offsetting fund will be finalised with Warwickshire County Council over the coming weeks, although it is recognized that offsetting is a last resort option in the DPD.
- 1.52 For the avoidance of doubt and to manage expectations, the DPD will only be able to be applied to new planning applications – either full or outline applications (and subsequent reserved matters that benefit from an outline permission after the DPD is adopted/afforded significant weight). Any developments that already have the benefit of outline permission at the time of the publication of the Inspector’s report and subsequently have reserved matters approvals cannot be required to comply with the new policies.

2 Alternative Options

- 2.1 Cabinet could recommend to Council not to adopt the DPD. However, the Council’s choices are binary: to adopt the DPD or abandon it. The latter would mean that the Council will miss a clear opportunity to make a huge stride in meeting its ambitions set out in the Climate Change Action Programme and will result in greater carbon emissions and more buildings that will need costly and disruptive retrofit in future to achieve net zero carbon buildings. It would also mean that significant resources will have been wasted on the development of this net zero planning policy document.
- 2.2 Cabinet could choose not to adopt the SPD or adopt an amended version to that in Appendix 8. However, officers consider that it is important to adopt the SPD at the same time as the DPD to ensure that the detailed guidance can be relied upon and given full planning weight. Furthermore, it is considered that the modifications to the SPD following its consultation are proportionate and appropriate in light of the representations received.

3 Legal Implications

- 3.1 The DPD once adopted will form part of the Development Plan for the area and the Inspector’s report is binding on the local planning authority in that the Council cannot adopt the DPD except in accordance with the recommendations in the Inspector’s Report.
- 3.2 In relation to applications that already have a resolution to grant (e.g. have been considered by Planning Committee) but have not yet been determined, (e.g. because they are awaiting the completion of a s106 agreement), officers need to consider whether the DPD requirements are relevant and, if so,

consider whether the DPD requirements have already been taken into account. If the DPD is relevant and has not been taken into account, it will be necessary for those applications go back to Planning Committee to seek an amendment to the resolutions to ensure the DPD is addressed. This is because all material considerations need to be considered in making a decision on planning applications and (when adopted) planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. There is of course a possibility that some applicants may be aggrieved by this, but given then legal status of the DPD, there would be risks of a legal challenge if this was not done as the Council would have failed to have regard to a material consideration.

4 Financial Implications

- 4.1 Previous reports that have come to Cabinet have sought to set aside money to cover costs associated with the production of the DPD.
- 4.2 Past reports have also highlighted that additional technical expertise may be required to aid the implementation of the DPD and assess the plethora of technical information that will be submitted as part of planning applications as a result of the DPD policies. As highlighted in Paragraph 1.46, a new permanent post has been created for somebody to provide this technical expertise. This has been factored into the Medium-Term Financial Strategy (MTFS).
- 4.3 £30,000 has also been agreed from the Service Transformation Reserve for consultancy and training support in the current financial year until a suitable person is appointed.

5 Corporate Strategy

- 5.1 Warwick District Council has adopted a Corporate Strategy which sets three strategic aims for the organisation.
- 5.2 Delivering valued, sustainable services – The application of the DPD policies will result in fewer buildings that will require future expensive retrofit and thus will reduce costs to the council and residents in the long term.
- 5.3 Low cost, low carbon energy across the district - The adoption of the DPD and associated SPD will result in a demonstrable improvement in the energy efficiency and quality of homes and other buildings in the district. Homes built to these standards should also reduce fuel costs for occupants thus bringing benefits to livelihoods. The DPD policies will result in a reduction in emissions thus having a positive environmental impact by minimising any adverse impact that communities in Warwick District are having upon the local and global climate.
- 5.4 Creating vibrant, safe and healthy communities of the future – The DPD policies will require new buildings to be constructed to a higher standard and will reduce energy costs for residents and businesses thus helping both thrive.

6 Environmental/Climate Change Implications

- 6.1 The NZC DPD is a response to the climate emergency. The DPD is aligned with the strategic aim of the Corporate Strategy 'Low cost, low carbon energy across the district'. The Council's Climate Change Action Programme (November 2021), committed to progressing the DPD. Planning policy has a critical role in delivering the Council's aims on climate change and reducing carbon emissions.

7 Analysis of the effects on Equality

- 7.1 Consultations have been conducted in line with the Council's adopted Statement of Community Involvement.
- 7.2 The DPD policies will improve the fabric of new buildings and thus their energy efficiency, ultimately reducing bills associated with energy usage. This will be of benefit to all residents within the district that ultimately live in a property that is approved subject to the policies in the DPD.
- 7.3 There are no further equality impacts associated with the proposals in this report.

8 Data Protection

- 8.1 There are no Data Protection implications associated with the recommendations in this report.

9 Health and Wellbeing

- 9.1 The proposed DPD policies, if adopted, will improve energy efficiency of homes and businesses and it is expected that they will help to minimise energy usage. This will be of significant benefit to residents and businesses as it will reduce costs and reduce the number of people suffering from fuel poverty. This has the potential to have a significant positive impact upon health and wellbeing of residents. The DPD policies also ultimately mean Warwick District Council is making great strides in reducing its impact upon global climate change.

10 Risk Assessment

- 10.1 Failure to develop and implement policies requiring new developments to be net zero carbon in operation (for the purposes of this DPD this relates to regulated operational energy resulting from fixed building services and fittings) will undermine the council's climate emergency declaration and furthermore will mean the council's stated ambitions on climate change would be undeliverable, in the absence of national policy being implemented.
- 10.2 Alternative options (see Section 2) identify risks associated with taking an alternative approach to the recommendations as set out in this report.

11 Consultation

- 11.1 The DPD has been subject to Regulation 18 and 19 public consultations, an Examination in Public and further Main Modifications and NPPF/Written Ministerial Statement public consultations. The SPD has also been subject to a public consultation.
- 11.2 There has been regular engagement with the relevant Portfolio Holder during the preparation of the DPD and following submission of the document for Examination. A cross-party Working Group for the DPD also met on a number of occasions at earlier stages of the production of the DPD.

Appendices to this report:

- Appendix 1 – Inspector's Report on the Examination of the Warwick Net Zero Carbon Development Plan Document

- Appendix 2 – Net Zero Carbon Development Plan Document (updated to reflect Main and Additional Modifications)
- Appendix 3 – Main Modifications
- Appendix 4 – Additional Modifications
- Appendix 5 – Main Modifications Consultation Report, July 2023
- Appendix 6 – Draft DPD Adoption Statement
- Appendix 7 – Draft Sustainability Appraisal Adoption Statement
- Appendix 8 – Net Zero Carbon Supplementary Planning Document (updated following public consultation)
- Appendix 9 – Consultation Statement on Net Zero Carbon Supplementary Planning Document
- Appendix 10 - Schedule of Proposed Modifications to the Published Warwick Net Zero Carbon Supplementary Planning Document.

Supporting documents:

Report to Cabinet and Appendices, 5th July 2023

Report to Cabinet and Appendices, 10th August 2022

Report to Cabinet and Appendices, 10th February 2022

Report to Cabinet and Appendices, 8th July 2021

Local Development Scheme, March 2024

Link to Net Zero Carbon DPD Examination webpages:

https://www.warwickdc.gov.uk/info/20799/development_plan_documents/1713/net_zero_carbon_development_plan_document