

Title: Minor Amendments to the Scheme of Delegation
Lead Officer: Graham Leach, Democratic Services Manager & Deputy
Monitoring Officer (01926 456114)
Portfolio Holder: Councillors Bartlett, Cooke, Day, Falp, Matecki
Wards of the District directly affected: None

Summary

The report brings forward changes to the scheme of delegation for consideration by the Cabinet and also reports an urgent decision taken by the Chief Executive under delegated authority.

Recommendation(s)

- (1) That Cabinet notes the urgent decision of the Chief Executive under delegation CE(4) to confirm the appointment of Mark Lee as Independent Chair of the Leamington Transformation Board and the application for a Banning Order in respect of a landlord.
 - (2) That the amendments to the scheme of delegation as set out at Appendix 1 be recommended to Council for approval and the Constitution be updated accordingly.
 - (3) That the amendments to the Executive functions within the scheme of delegation as set out at Appendix 2 be approved and Cabinet asks the Council to update the Constitution to reflect this change.
 - (4) That the Protocol for the operation of the Warwick District Council Proposed Development Review Forum be amended to enable meetings to take place online in a meeting hosted by Warwick District Council.
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1 Background/Information

1.1 Leamington Transformation Board

- 1.1.1 When reviewing the decision of the Cabinet on 9 September 2021 to establish the Leamington Transformation Board it was identified that the decisions, below, were not sufficiently clear.
- 1.1.2 "(6) the Composition of Councillors who will serve on the Transformation Board, as set out in paragraph 3.15 in the report, in consultation with WCC and LTC, be determined by the Cabinet.
- 1.1.3 (7) the remit of the Transformation Board, as set out in paragraph 3.16 and 3.17 in the report (subject to discussions with WCC and LTC) and that authority be delegated to a designated Cabinet member to take decisions on this remit".
- 1.1.4 The Transformation Board remit was agreed by all parties in April 2022, however, it was not intended to be a decision-making body. The remit of the Transformation Board, while in spirit is the same as that set out in the report,

was more detailed and there were points that had not been considered by the Cabinet.

- 1.1.5 The appointment of its Independent Chair is a formal decision, especially as they will be receiving payment from Warwick District Council. Therefore, the final decision on this and the remit need to be formally taken within this Council. The proposed delegations at Appendix 2 in relationship to the Leamington Transformation Board formalise this approach.
- 1.1.6 When these were identified, the Chief Executive sought agreement of Group Leaders to use his emergency powers to confirm the appointment. The Cabinet should also be aware the Leamington Transformation Board will need to have its terms of reference amended to reflect that the final decision on the Independent Chair will need to be taken by WDC but based on the recommendation of the Board.
- 1.1.7 The proposed delegations are Executive functions which can only be delegated by Cabinet to Officers. However, only Council has the authority to update the Constitution to reflect the changes, hence the wording for recommendation (3).

1.2 **Planning Delegations**

- 1.2.1 Officers have been reflecting on experiences in working with other Councils and believe that there are some cases where s106 agreements do not need to come before Planning Committee. An example is variations to S106 agreements already approved by Committee or where the application would otherwise be determined by Officers.
- 1.2.2 In relation to variations to s106 agreements, there is currently no delegated authority for the Head of Service to vary s106 agreements. Sometimes these variations can be very minor in nature e.g. in October, a variation to amend a definition had to go to Planning Committee. It is proposed to delegate such changes to the Head of Place, Arts and Economy in consultation with Chairman of Planning Committee and relevant Ward Councillor(s).
- 1.2.3 Another issue has arisen in the case of s106 agreements required in connection with delegated planning decisions. The scheme of delegation does not currently cover this, which leads to the odd situation of the Head of Place, Arts and Economy having delegated power to determine planning applications but not enter into connected s106 agreements.
- 1.2.4 Following the Planning Committee of 9 November officers have also reflected on the current delegation in respect of Council Planning applications that reads "Applications submitted by Warwick District Council or Warwickshire County Council, other than for approval of routine minor developments". Officers are of the view that this should be amended to be more specific in relation to Warwick District Council to include reference to Milverton Homes (or any partnership it is in). While officers consider this would happen anyway, they feel it is appropriate to remove any ambiguity.
- 1.2.5 If Cabinet and Council are minded to support these delegations, as set out in Appendix 1, it would also bring changes to the responsibility of functions for Planning Committee. This would see the removal of delegation (vi) as it is covered by (i) due to the revisions to officer delegation DS(70).

1.3 **Licensing Panel Delegations**

- 1.3.1 In reviewing the delegations in respect of Planning Committee, officers also took time to consider those in respect of matters that come to Licensing Panels. Councillors involved in those Panels will be aware that the final wording of their

decision is often formulated after the meeting. Therefore, officers feel it is appropriate to have a delegation in place to confirm this arrangement.

- 1.3.2 Secondly, in this area, there is potential for decisions of a Panel to be challenged. At times, this can be over a minor point and mitigate the need for an appeal to be heard. This proposal allows for these changes to be made, after appropriate consultation and for transparency to be reported back to Committee.

1.4 **Statements of Common Ground**

- 1.4.1 Section 33A of the Planning and Compulsory Purchase Act requires Local Planning Authorities "to engage constructively, actively and on an ongoing basis" with other local authorities and with prescribed bodies in respect of their plan-making activities. This Duty to Co-operate requirement is expanded on in the National Planning Policy Framework (NPPF) and accompanying Planning Practice Guidance (PPG). The Duty to Co-operate is a legal test that needs to be satisfied as part of the local plan examination process for a local plan to be found sound and adopted.
- 1.4.2 Importantly, the Duty to Co-operate is not a duty to agree per se, but the LPA must demonstrate that they have engaged constructively in respect of progress to addressing strategic cross-boundary matters. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.
- 1.4.3 This constructive engagement is demonstrated through the publication of an audit trail showing early and ongoing discussions culminating in the publication of signed Statements of Common Ground (SoCG).
- 1.4.4 Responsibility for the day-to-day operation of Duty to Co-operate (e.g. content of SoCGs) is undertaken by the Council's planning policy service and falls within the Planning & Place Portfolio. However, formal processes need to be established to allow for the signing of any SoCGs on behalf of the Council given that the content could have a significant bearing on how WDC prepares its own local planning documents.
- 1.4.5 This matter is particularly relevant at the moment given that the Council is in the process of preparing a new Local Plan. The delegation of Executive functions set out in appendix 2 (section 1.4) allows for authority to be delegated to the Head of Place, Arts & Economy in consultation with the Leader and Portfolio Holder for Planning & Place, to sign Statements of Common Ground in respect of plan-making activities.
- 1.4.6 There is another dimension to this given that the Council is currently preparing a joint Local Plan with Stratford-on-Avon District Council. There will be issues where other authorities will need to engage with both WDC and SDC in respect of Duty to Cooperate issues and SoCGs will need to be agreed. Equally, there will be some issues where authorities will need to engage with one Council through Duty to Cooperate, however that Council will need to consult with the other because the issues relate to matters pertaining to the whole South Warwickshire Local Plan area covering both council areas. An example of this would be in relation to housing and employment land distribution in the Greater Birmingham and Black Country Housing Market Area (HMA). Warwick District Council is not within this HMA and so would not normally be included in any Duty to Cooperate discussions or need to agree any SoCGs. SDC is, however, in that HMA and the implications of any SoCGs could have an impact on the

whole South Warwickshire Local Plan area. It is appropriate and necessary therefore, for SDC to consult with WDC before agreeing any SoCG relating to this HMA.

- 1.4.7 The requested delegation therefore also proposes that this delegated authority is extended to situations where adjacent authorities consult with WDC on SoCGs that are of common interest. Furthermore, in an opposite situation where WDC only is asked to sign a SoCG, recommendation (3) proposes that before such a SoCG is signed, WDC would consult with that authority. In practice, this will only happen in respect of SDC and the South Warwickshire Local Plan. (Members are asked to note that SDC is currently putting reciprocal arrangements in place to ensure that WDC is consulted in respect of SoCGs that it is asked to agree and which impacts on joint planning work.)
- 1.4.8 Many SoCGs deal with procedural matter and set out ways of working to address common challenges. Others may be more significant, the most obvious example being the creation of new Memoranda of Understanding relating to strategic matters such as housing or employment land distribution. Such matters are likely to have strategic implications and should, properly, be agreed formally by the Council. The proposed delegation therefore provides that the delegated powers will not be exercised where, in the judgement of the Leader, Portfolio Holder for Planning & Place and the Head of Place Arts & Economy, the issues arising from the consultation are such that they have important strategic implications for Warwick District.
- 1.4.9 The proposed delegation is an Executive function which can only be delegated by Cabinet to Officers. However, only Council has the authority to update the Constitution to reflect the changes, hence the wording for recommendation (3).

1.5 **Banning Order**

- 1.5.1 Banning orders are made under Housing and Planning Act 2016 and came into force in 2018.
- 1.5.2 They are intended to be used on landlords and property agents for those who have been convicted of the most serious housing-related offences. They have the effect of preventing landlords from letting housing or managing property in England.
- 1.5.3 Local authorities have the power to apply for Banning Orders from the First Tier Tribunal. The Council must first serve on the landlord a notice of intention to apply for a Banning Order and offer an opportunity for representations to be made. If they are satisfied, they can then apply to the First Tier Tribunal.
- 1.5.4 Councils are expected to develop and document their own policy on when to pursue a Banning Order. This is likely to include:-
- Seriousness of the offence
 - Previous convictions/entry on rogue landlord database
 - Harm caused to the occupying tenants
 - Punishment of the offender
 - Deter the offender from repeating the offence
 - Deter others from committing similar offences
- 1.5.5 The individual, the Council will be seeking a Banning Order for, is well known to Private Sector Housing. They have been associated with sub-letting property over several years and their practices caused the Council concern.
- 1.5.6 The Private Sector Housing team successfully prosecuted them in September,

which resulted in a significant fine. They were operating an HMO in Leamington Spa and was convicted of:-

- Failing to provide information required under Section 16 of the Local Government Miscellaneous Provisions Act 1976.
- Failing to comply with an Improvement Notice under Section 30 of the Housing Act 2004.
- Failing to licence a House in Multiple Occupation under Section 72 of the Housing Act 2004.
- Failing to comply with The Houses in Multiple Occupation Regulations 2006 under Section 234 of the Housing Act 2004.

1.5.7 The Council served a notice of intention to apply for a Banning Order on 3rd October giving until 31 October for representations. No response has been received.

1.5.8 Therefore, following consultation with the Group Leaders the Chief Executive exercised his delegated authority CE(4) to proceed with an application to the First Tier Tribunal for a Banning Order.

1.5.9 Officers consider delegated authority for such cases in future would be an appropriate route as this will enable swifter action to be taken for the most serious of matters. In addition officers recognise the need to have a Policy in place for such matters and a draft is already being produced as a priority with a view to it being completed before Christmas 2022. The delegations to approve the Policy are considered reasonable to ensure it is robust and once complete it will be published on the Council website and Councillors notified of this.

1.6 Proposed Development Review Forums

1.6.1 The protocol for the for the operation of the Warwick District Council Proposed Development Review Forum currently prescribes that all meetings should be held in person at the Town Hall, Leamington Spa. Since the protocol was produced the Council has been able to make use of technology for holding meetings and briefing sessions. Therefore as the Proposed Development Review Forums will involve external development agents (potentially from across the UK) see all 44 District Councillors invited, along with relevant Parish/Town Council, CAF and other statutory consultees (as considered appropriate) hosting the meetings online would make them more easily accessible. This is not to say all meetings of the forum would be online but provides the option if it is considered reasonable.

2 Alternative Options available to Cabinet

2.1 The proposed recommendations are minor changes to provide more robust decision making within the Council. The Cabinet could reject the proposals if it so wished but this is advised against for the reasons set out in section 1 of the report.

3 Consultation and Member's comments

3.1 The Chairmen of Licensing & Regulatory and Planning Committees have no objections to the proposals in respect of the delegations in relation to their respective Committees.

4 Implications of the proposal

4.1 Legal/Human Rights Implications

4.1.1 The legal aspects are covered within section 1 of the report.

4.2 **Financial**

4.2.1 There are no direct budgetary implications from the proposals, there may be some minor savings realised from fewer items coming to Committee.

4.3 **Council Plan**

4.3.1 In respect of Warwick District Council Business Plan the proposals that come forward align with the aspiration with the People theme of effective staffing. This theme features on enabling both Councillors and Officers having appropriate authority and responsibility.

4.4 **Environmental/Climate Change Implications**

4.4.1 The recommendations in the report have no direct environmental implications, however the ability for the revision to the operation of the Warwick District Council Proposed Development Review Forum provides an opportunity for reducing journeys to the Town Hall in Leamington.

4.5 **Analysis of the effects on Equality**

4.5.1 An Equality Impact Assessment has not been considered necessary for the recommendations in report.

4.6 **Data Protection**

4.6.1 There is no change in the way the personal data will be handled from present. Therefore there is no need for a Data Protection Impact Assessment.

4.7 **Health and Wellbeing**

4.7.1 There are no health and wellbeing implications of the proposal.

5 Risk Assessment

5.1 The Main risks of the report relate to not adopting the proposals in relationship to the Leamington Transformation Board and Licensing decisions. This is because these are common working practices at present that do not have the necessary permissions in place. Therefore failure to amend this could lead to the decisions being challenged.

5.2 In respect of the other matters they are a matter of judgement for Cabinet and Council to consider. Officers are of the view that appropriate controls are offered to ensure that the decisions are taken appropriately in an open manner.

5.3 There is an associated risk in respect of the decision, under delegated authority, to pursue the banning order at first tier tribunal, because at present the Council does not have a Policy in place, which is normally expected and there will always be a risk associated with enforcement action. While it will clearly be helpful for the Council to have a policy to assist in decision making, in respect of the specific case, it is considered so long as the Council has had regard to the criteria in the guidance, which it has in the details above, then the Council are well placed to defend its position.

6 Conclusion

6.1 The report provides a number of recommendations which are considered reasonable to either conform current working practices or make efficient use of Council resources.

Background papers: None

Supporting documents:

Constitution for Warwick District Council
Leamington Transformation Board remit.

Report Information Sheet

Please complete and submit to Democratic Services with report

Committee / Date	Cabinet 2 December 2022	
Title of report	Minor Amendments to the Scheme of Delegation	
Officer / Councillor Approval *required	Date	Name
Ward Members(s)		
Portfolio Holder	21/11/22	Bartlett, Cooke, Day, Falp and Matecki
Financial Services *		Lorraine Henson
Legal Services	18/11/22	Ross Chambers & Sue Mullins
Other Services		
Chief Executive	17/11/22	Chris Elliott
Head of Services(s)*	17/11/22	Marianne Rolfe Phil Clarke Lisa Barker
Section 151 Officer	21/11/22	Andrew Rollins
Monitoring Officer	17/11/22	Andrew Jones
Leadership Co-ordination Group (WDC)	21/11/22	
Other organisations		
Final decision by this Committee or rec to another Ctee / Council?	No Recommendation to: Council	
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 – 1337	
Accessibility Checked?	Yes/No	

Section 1.2 Planning Delegations

Officer Scheme of Delegation amendments

Additions in italics

The Head of Place, Arts and Economy be authorised to:

- 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:
- (i) Applications where a written request is received from a member of Warwick District Council within the specified consultation period i.e. 21 days that Committee referral is required. Such requests should clearly state the reasons why a Committee referral is required.
 - (ii) Applications where 5 or more valid representations are received where these are contrary to the officers' recommendation unless the Head of Development is satisfied that the plans have been amended to address the concerns raised so that there are no more than four contrary representations.
 - (iii) Applications where the recommendation of the Head of Place, Arts and Economy 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. the Head of Place, Arts and Economy is satisfied that the plans have been amended to address the concerns of the Parish/Town Council;
 - b. where the representations made by the Parish/Town Council do not raise any issues which are 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.
 - (v) 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.
 - (vi) Applications submitted by Warwick District Council, *Milverton Homes (either solely or as part of another Joint Venture), any Joint Venture (or similar) the Council is part of or Warwickshire County Council*, other than for approval of routine minor developments.
 - (vii) Where applications are to be refused and enforcement action is being recommended, following consultation with the Chairman and Vice-Chairman of the Committee and the relevant ward member(s) except in the circumstances where the Head of Place, Arts and Economy considers it appropriate for that matter to be determined by Planning Committee.
 - (viii) Applications where an Environmental Impact Assessment has been provided.

- (ix) Any application which raises significant issues such that in the opinion of the Head of Place, Arts and Economy, it would be prudent to refer the application to Planning Committee for decision.
- DS (70a) In consultation with the Portfolio Holder for Place and relevant Ward Councillors, to
- (i) determine minor variations to S106 agreements
 - (ii) to enter into section 106 agreements when the application has been determined by the Head of Place, Arts and Economy under delegated authority DS(70)

**Planning Committee
Responsibility For functions**

i. To determine planning applications and applications for listed building consent, which are not delegated to the Head of Place, Arts and Economy ~~Development Services~~ as set out in the Scheme of Delegation.

V. To enter into Planning Agreements under S106 of the Town and Country Planning Act and to modify or discharge obligations contained in such agreements *which are not delegated to the Head of Place, Arts and Economy.*

~~vi. To determine applications for planning permission made on behalf of the District Council which are not delegated to the Head of Development Services.~~

Section 1.3 Licensing Panel Delegations

The Head of Safer Communities, Leisure & Environment:

Number to be confirmed Formulate and issue decision notices following consideration by the Licensing & Regulatory Committee or one of its Sub-Committees in accordance with the resolution of the Committee or Sub-Committee after consultation with the Chair of that meeting.

Number to be confirmed After consultation with the solicitor representing the Council and the Licensing Sub-Committee Members that took the decision (or in their absence, the Chair of the Licensing Committee), make minor changes to any proposed licence to mitigate the need for an appeal hearing following an appeal against a Licensing Sub-Committee decision.

NB: where such a change is made this will be reported back to the next meeting of the Licensing & Regulatory Committee

Delegation of Executive Functions

Section 1.1

That authority be delegated to the Chief Executive, in consultation with the Leader, to agree the terms of reference for the Leamington Transformation Board.

That authority be delegated to the Chief Executive, following recommendation from the Leamington Transformation Board, to appoint the Independent Chair of the Transformation Board and agree their fee (so long as it is within the agreed budget), and conditions of appointment.

Section 1.4

That authority be delegated to the Head of Place, Arts & Economy in consultation with the Leader and Portfolio Holder for Planning & Place, to sign Statements of Common Ground in respect of plan-making activities, or to respond to consultations from adjacent authorities in relation to Statements of Common Ground on which the Council are consulted, except where, in the judgement of the Leader, Portfolio Holder for Planning & Place and the Head of Place Arts & Economy, the issues arising from the consultation are such that they have important strategic implications for Warwick District. Where they relate to joint plan-making work that Stratford-on-Avon District Council will be consulted prior to signing such Statements.

Section 1.5

The Head of Housing be delegated authority to produce, adopt and revise a Banning Order Policy, after consultation with the Housing PAB, Legal services and Housing Portfolio Holder.

The Head of Housing be delegated authority, after consultation with the Portfolio Holder for Housing, to apply for a Banning Order under the Housing and Planning Act 2016, where the criteria of the Council Banning Order Policy has been met.