

Executive

Excerpt of the minutes of the meeting held on Wednesday 5 April 2017 at the Town Hall, Royal Leamington Spa, at 6.00 pm.

Present: Councillor Mobbs (Leader); Councillors Butler, Cross, Phillips, Shilton and Whiting.

Also present: Councillors; Boad - Chair of Overview & Scrutiny Committee and Liberal Democrat Observer, Mrs Falp - Whitnash Residents Association (Independent) Observer, Councillor Naimo - Labour Group Observer and Councillor Quinney - Chair of Finance & Audit Scrutiny Committee.

Apologies for absence were received from Councillor Coker and Grainger.

115. **Declarations of Interest**

There were no declarations of interest made in relation to the items contained within this excerpt of the minutes.

116. **Minutes**

The minutes of the meeting held on 8 March 2017 had not been circulated for consideration.

Part 1

(Items on which a decision by Council is required)

117. **Housing Appeals and Review Panel**

The Executive considered a report from Housing & Property Services which sought a recommendation to Council to establish a streamlined process to complete reviews of decisions undertaken in Housing Services. This was proposed to be a combination of the end of formal review mechanisms for some decisions and others, where a statutory duty to undertake reviews exists, to move away from Member involvement in these review decisions.

The recommended changes brought forward better processes for the undertaking of reviews and appeals against decisions of Housing Services. It was expected that this would bring a level of consistency of approach and a better delineation of responsibilities between Councillors and officers.

Recent cases heard by the Housing Appeals and Review Panel (HARP) highlighted some issues with the operation and detail of the Council's procedures in this area. This led to a review of the procedures that were in place.

Legal advice from the County Council had made a number of suggestions to change the processes. This had led to a reflection on the

best way of proceeding as Officers were aware of a gradual move away from Member involvement in decision making on individual cases, to a more strategic management role.

Checks had been made with all the other authorities in the Warwickshire area and this had confirmed that none of these involved councillors in the review mechanisms. All had robust procedures that ensured that they meet the statutory obligations to undertake reviews.

If these changes were agreed, officers were confident that effective mechanisms would be put in place for undertaking reviews and appeals. This would ensure that officers undertaking any reviews or appeals would have the necessary independence; they would not have been involved in the management of the case prior to the review; they would be more senior and hence not encumbered from reversing decisions if this was deemed necessary.

The change in processes would allow reviews to proceed more quickly and efficiently. There was inevitably more work and potential delay in constituting the current arrangement of a Councillor panel, than would be necessary with an officer led review.

Over the past few years, there had been on average only two cases a year, where the matter was considered by a Housing Appeal Review Panel. There was associated time and cost of providing training and briefings for Councillors to ensure that they could undertake these reviews competently. While some training would be required for officers, those involved would have the technical knowledge and skills to undertake the role as part of their day to day work. There would also be a saving as there would not be a need to involve a Warwickshire County Council solicitor or a Committee Services Officer to support a Panel.

Officers were already undertaking reviews in other areas within Housing Services without Councillor involvement; most notably the review arrangements for homelessness decisions and decisions relating to housing allocations. These arrangements were working well. The majority of reviews undertaken by Housing Services fell into this category and the changes recommended bringing other areas in to line with this approach.

It was suggested that procedures currently in use for HARP, would be amended and put in place for Officer led reviews. It was envisaged that, in all cases, the review would involve an officer reviewing the case that would not have been involved with the management of the case and would be more senior than the officer who has agreed the original decision. These procedures would be in place following the approval of Council for this change.

As part of this change of processes, it was intended that the Council stop formal review mechanisms for certain decisions. These decisions were anyway subject to a complaint and review by a manager and so did not warrant a more formal procedure. Other decisions were more

serious and there was a statutory requirement to carry out a formal review of the decision. In these cases, a formal officer led review mechanism would be required. The following table summarised the current and proposed arrangements:

Current appeals that can be heard at HARP	Proposed future actions
Appeals against intention to request eviction warrants (rent arrears).	No formal review mechanism required
Appeals against service of Notice of Seeking Possession in respect to Nuisance or Conditions of Tenancy (excepting rent arrears).	No formal review mechanism required
Appeals against refusal of permissions under Conditions of Tenancy, e.g.:- <ul style="list-style-type: none"> • Running a business • Erecting structures etc. 	No formal review mechanism required
Appeals against refusals to carry out disabled adaptations to a Council property.	No formal review mechanism required
Appeals against the service of a Notice of Proceedings for Possession in respect of an Introductory Tenancy	Statutory right of appeal, HARP will be replaced with officer led appeal process
Appeals against the service of a Notice to extend an Introductory Tenancy.	Statutory right of appeal, HARP will be replaced with officer led appeal process
Appeals against the service of a Notice to Seek Possession of a Demoted Tenancy.	Statutory right of appeal, HARP will be replaced with officer led appeal process
Appeals against a decision not to award the Resettlement Service.	No formal review mechanism required
Appeals against the service of a Notice of Seeking Possession under the Anti-Social Behaviour, Crime and Policing Act 2014	Statutory right of appeal, HARP will be replaced with officer led appeal process

Council tenants that were subject to an appeal still had statutory rights to the courts; and to judicial review where the Council had either acted irrationally, unlawfully or not in accordance with the procedure provided by law or the Council's own policy and procedures. These were safeguards that were currently in place and would not be affected by the changes proposed.

Alternatively, the Executive could recommend that Council continue with the current function of the Housing Appeals and Review Panels. This was considered as not best practice and not the most effective use of resources.

The Overview & Scrutiny Committee noted the report and informed the Executive that they had added a report to their Work Programme, in 12 months, to understand the number and type of housing appeals being made and the outcomes of these.

The Executive thanked the Overview & Scrutiny Committee and in recognising the concerns that were raised, the Portfolio Holder for Housing & Property Services proposed the recommendations with a minor amendment to recommendation 2.2 of the report to include reference to ensure that Ward Councillors were consulted on officer led appeals.

Recommended that Council:

- (1) the following changes to the Constitution:
 - (i) cessation of the Housing Appeals and Review Panels, as set out in Appendix 1
 - (ii) revised delegation to the Head of Housing to "determine reviews or appeals made in relation to decisions of Housing Services where the Council either has a statutory duty to provide such a review or appeal or where we have set out a non statutory review or appeal process in our policies or procedures".
- (2) subject to approval of (1), the Deputy Chief Executive (BH), in consultation with the Housing Portfolio Holder, be authorised to approve the appropriate procedures for handling these cases; but the procedures for cases defined as "officer led appeals process" include consultation with Ward Councillors; and
- (3) subject to approval of (1), the Deputy Chief Executive (BH), in consultation with the Housing Portfolio Holder, be authorised to approve any minor amendments to other housing policies to remove reference to Housing Advice and Review Panels.

(The Portfolio Holder for this item was Councillor Phillips)
Forward Plan reference number 840

101. **Code of Procurement Practice Update**

The Executive considered a report from Finance that proposed amendments to the Code of Procurement Practice (CoPP) and the introduction of Equality in Procurement Policy, Small to Medium Enterprise (SME) Procurement Policy, Small Business Friendly

Procurement Charter – Declaration of Support, Corporate Responsible Procurement Policy and Contract Management Framework. The Equality in Procurement Policy, SME Procurement Policy, Small Business Friendly Procurement Charter – Declaration of Support, Corporate Responsible Procurement Policy and Contract Management Framework were fundamental elements of the Council’s policy framework. Its purpose was to support the ability of the Council to demonstrate that it was achieving value for money from its expenditure and that its contracts and services were being managed in an open and transparent manner, in line with the Council’s Core Values.

The Council was committed to procurement practices and procedures in line with the National Procurement Strategy for Local Government 2014, ensuring that goods and services were procured in an efficient, fair, equitable, safe and responsible manner and that contracts/tenders were managed effectively, efficiently and achieved value for money.

The Council’s Procurement Code of Practice had been redrafted to reflect current best practice and allowed for flexibility in order to enable officers to obtain best value whilst observing high standards and relevant legislation and protocols. The developments in best practice, legislation and government guidance, combined with the need to be responsive, made it important to accept that the Procurement Policy documents were living documents and would require review and amendment. It was intended that the Code of Procurement Practice was in a style and format which was comprehensive, straightforward and accessible to all users.

The changes were required because of the introduction of new legislation, in particular, the Public Contract Regulations 2015, the Small Business, Enterprise and Employment Act 2015 and the Local Government (Transparency Requirements) (England) 2015. Further information on the changes was provided and summarised below:

All tenders over £25,000 in value must be advertised on the UK Government’s Contracts Finder website. This website had been designed as a national single information resource where suppliers registered free of charge to receive details of any public sector business opportunity within their particular area of interest. Previously the Council could choose where to advertise its tenders, required only to ensure adequate competition. The rules for advertising higher value EU tenders remained unchanged.

Details of all tenders advertised and all contracts awarded by the Council with a value of £5,000 or more had to be published on the Council website. Previously, the Council was only obliged to formally publish details of all EU tender awards and maintain a basic Contracts Register.

The Code of Procurement Practice had been refreshed, in harmony with other Councils' methods in order to:

- a) Provide easy-to-read and to follow instructions on the procurement process. The Procurement Code was supported by the procurement toolkit which provided practical and more detailed advice about how to undertake a procurement exercise, including access to a suite of template documentation.
- b) Ensure that procurement tools and techniques were better directed to run procurement exercises faster with less red tape, and more focus on getting the right supplier and the best price.
- c) The new Procurement Code provided officers with more information and guidance on areas of best examples include:
 - Stakeholder and Early Market engagement – information about the steps which could be taken in consulting with services users and providers to better shape the service specification before going out to tender;
 - Use of Framework Agreements – information on the potential benefits of using framework agreements and some of the legal considerations; and
 - Contract management, Contract variations and extensions – information on managing contracts and contractors effectively to ensure maximum benefit was provided to the Council and/or service users; details of the formal processes which must be followed regarding contract variations and extensions.

Training and ad hoc surgeries would be provided to all Managers, Officers and Staff involved in the procurement process and launch, promote and embed the Code of Procurement Practice 2017 and Procurement Strategy 2017 - 2019. The programme would include monthly procurement surgeries and targeted training workshops.

The amended documents set out how the District Council's Procurement arrangements should operate so as to comply with best practice and current legislation. The updated Code should, therefore, be accepted in its entirety.

The Finance & Audit Scrutiny Committee supported the recommendation subject to the following amendments:

- A reference to Social Value should be made in the Stage Closure Questions on page 21;
- The second bullet point relating to paragraph 5.2 of the report should be amended to read "showing all procurement opportunities **each of which has** a total value above £25,000";
- Paragraph 14.5.1, page 24/25, be amended to include wording to allow the tenderer to be given the choice to confirm **or amend** the tender figure;
- The risks detailed in the report at section 6, should contain reference to the potential impact on residents should a contract not be fulfilled;

- Section 5.5 of the Code, Requests for Information, should contain a warning to officers of the consequences of not supplying information when asked.
- In addition, officers should consider using an Information Release schedule to manage that risk.

The Overview & Scrutiny Committee asked the Executive to:

1. investigate; if there were any potential issues that could come from officers asking the same three companies for three quotes for the same service each time; if there were how could this be mitigated in potentially small market environment; and how to improve the advertising of the opportunity of the smaller contracts where only three quotes were required; and
2. look at the process for voluntary sector commission work, the majority of which would fall within the requirement for formal tendering process defined in the revised code, to reduce the burden on volunteers who would be delivering an enhanced service for the Council at a reduced cost; and consider if an exemption could be approved in advance.

The Finance Portfolio Holder, took the opportunity to thank the Procurement Manager for the work on the revised policies which were robust and detailed. He thanked the Finance & Audit Scrutiny Committee for their consideration of this matter which had demonstrated their expertise and knowledge in this area and welcomed their suggested amendments.

The Executive noted the comments from the Overview & Scrutiny Committee and explained that while the Council was keen to support local business there was a need to operate within regulations. There was recognition of the voluntary sector concern but Members did not believe this was an area that could be taken forward. That said, they were confident officers would be mindful of these concerns.

Recommended that subject to the amendments from Finance & Audit Scrutiny, above, the Council adopts the updated Code of Procurement Practice and the documents, itemised below, as circulated with the Executive agenda of 5 April 2017;

- Equality in Procurement Policy
- SME Procurement Policy
- Small Business Friendly Procurement Charter – Declaration of Support
- Corporate Responsible Procurement Policy
- Contract Management Framework

(The Portfolio Holder for this item was Councillor Whiting)
Forward Plan reference 805

(The meeting ended at 6.43pm)