

 Full Council: 25 January 2017		Agenda Item No. <h1 style="text-align: center;">12</h1>
Title	Proposals to deal with HS2 submissions	
For further information about this report please contact	Debbie Prince HS2 Project Officer	
Wards of the District directly affected	All Wards	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	Executive Committee 2 nd June 2016 Minute 9	
Background Papers		

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

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	5/1/17	Chris Elliott and Bill Hunt
Head of Service	5/1/17	Tracy Darke
CMT	5/1/17	
Section 151 Officer	5/1/17	Mike Snow
Monitoring Officer	5/1/17	Andrew Jones
Finance	5/1/17	Mike Snow
Portfolio Holder(s)	5/1/17	Councillor Cross
Consultation & Community Engagement		
N/A		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		
Report to Full Council		

1. **Summary**

- 1.1 This report sets out the key challenges associated with the number and type of planning submissions that will be made under the High Speed Rail (London - West Midlands) Bill if and when it becomes an Act ("the Act"), and seeks the agreement of Council to a mechanism for dealing with those submissions which involves revisions to the Council's constitution.

2. **Recommendation**

- 2.1 That Council notes the contents of this report.

- 2.2 That Council:

- i. delegates to the Head of Development Services the authority to determine submissions made in accordance with the High Speed Rail Act, except for any submission where after consultation with the Chairman of Planning Committee (or in their absence the Vice-Chairman) they consider that it should be determined by Planning Committee;
- ii. delegates to Planning Committee the authority to determine submissions made under the High Speed Rail Act which are referred to the Committee by the Head of Development Services; and
- iii. delegates to the Chief Executive in consultation with the Leader of the Council the authority to enter into a Service Level Agreement with HS2 on behalf of the Council that will provide for it to be reimbursed for time spent dealing with the submissions made under the Act and related matters.

3. **Reasons for the Recommendations**

- 3.1 The High Speed Rail Act will grant planning permission for the construction of a high speed railway between London and Birmingham. That permission will be subject to conditions requiring the nominated undertaker (the party/parties who will construct the railway) to obtain the consent or approval of the Council as Local Planning Authority for some of the details of the design of that part of the railway which passes through the District and associated ancillary works.

- 3.2 At their meeting of 2 June 2016, Executive decided that the Council should operate as a "Qualifying Authority" within the terms of the High Speed Rail Act, which provides the District Council with the maximum available, albeit limited control over the details of the design of the railway.

- 3.3 As a Qualifying Authority, the grounds on which Building Works (e.g. Bridges, Viaducts etc.) may be permitted subject to conditions, or refused are:-

- i. **That the design or external appearance of the works ought to be modified:**
 - a) To preserve the local environment or local amenity,
 - b) To prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area,

- c) To preserve a site of archaeological or historic interest or nature, conservation value, in respect of which the relevant aspect of the scheme is reasonably capable of being so modified

ii. That the development ought to, and could reasonably, be carried out elsewhere on land within the Act limits.

Approvals for other matters not comprising building works, including for example fencing, artificial lighting etc. have their own specific grounds for refusal.

- 3.4 To obtain Qualifying Authority status, the District Council has committed to working within the terms of a "Planning Memorandum", which requires the Council to deal with submissions in an expeditious manner, i.e. within 8 weeks, and to be sufficiently resourced to be able to do so. Those submissions are likely to be for relatively minor matters but be substantial in number.
- 3.5 In view of the potential for significant numbers of such submissions to be submitted to the Council, as Local Planning Authority at any one time, there is a significant risk that under current arrangements, submissions may not be dealt with within the required timescale. This, in turn could result in the District Council losing its Qualifying Authority status and consequently losing the additional level of control that such status brings.
- 3.6 In particular, given the level of public interest in the HS2 project especially from Town and Parish Councils, under current delegation arrangements, there is a clear risk of a significantly increased number of submissions attracting a level of interest and objection requiring consideration by Planning Committee potentially to the extent that the approach required to be deployed as a Qualifying Authority would become unsustainable.
- 3.7 For that reason, and in order to ensure that HS2 submissions are fully considered in an expeditious manner, it is proposed that a new approach is taken to the consideration of the circumstances in which they should be referred to Planning Committee.
- 3.8 It is proposed that given their likely detailed nature and the absence of the consideration of the principle of the development, all such submissions will be determined by Officers under delegated powers unless the Head of Development Services in consultation with the Chairman of Planning Committee are of the view that the particular details or circumstances of the submission in question are such that it should be considered by Planning Committee.
- 3.9 It is acknowledged that this is a different approach to that used for determining whether planning applications are considered by Planning Committee, which focuses on the level of objection received including from Town and Parish Councils and/or Ward Councillors. However for the reasons explained above it is considered to be the most effective means of considering these new types of

submissions in an expeditious manner, whilst also allowing for the involvement of the Planning Committee where it is deemed appropriate.

- 3.10 Council Officers have been liaising with HS2 Ltd for some considerable time in respect of a number of matters both individually and as a member of a wider consortium including in respect of the preparation of an emerging Service Level Agreement, one of the key elements of which is to ensure that the Council will be fully reimbursed for the additional work generated by the submissions received in relation to HS2.
- 3.11 It is anticipated that this agreement will be finalised within the next few weeks and it is proposed that authority be delegated to the Chief Executive, in consultation with the Leader of the Council, to enter into and sign the Service Level Agreement as set out in recommendation 2.2 iii of this report.

4. **Policy Framework**

- 4.1 **Fit for the Future** – The mechanisms proposed in this report for ensuring that HS2 related submissions are determined in the most effective and timely way will in turn ensure that the District Council has the maximum, albeit limited opportunities to influence the design of the railway and in that way contribute to the vision of making Warwick District a great place to live, work and visit as set out in the Sustainable Community Strategy.

- 4.2 The proposal is consistent with the Fit for the Future Programme as follows:

Service: To Maintain and Improve Services – the proposal will allow the Council to maintain the maximum level of planning input to the HS2 proposal.

Money: Achieve and maintain a sustainable balanced budget – the proposal will enable the Council to recoup its costs in dealing with HS2 related submissions.

People: Engaged and Empowered Staff – the proposal will assist the Council in ensuring that it has the right level of staffing in place who are appropriately supported and engaged to respond to the HS2 proposal.

- 4.3 **Impact Assessments** – It is not anticipated that the proposals will impact upon the ability of all sections of the community to engage with the planning and consideration of the HS2 project in so far as is permitted by the Act.

5. **Budgetary Framework**

- 5.1 The proposals are intended to ensure that HS2 related submissions are dealt with as expeditiously as possible utilising an appropriate level of resourcing and that by way of the Service Level Agreement referred to above, that additional resourcing is cost neutral for the Council.

6. **Risks**

- 6.1 There is a risk that without the introduction of a bespoke mechanism to deal with HS2 related submissions, as proposed in this report, a significant and unmanageable proportion of those submissions would be required to be determined by Planning Committee. Were that to be the case, there is a risk that those submissions could not be dealt with in the timescales that the Council has committed to, and that the Council may therefore lose its

"Qualifying Authority" status and the associated additional control over the design of the railway.

- 6.2 There is a risk that should the Council not be in a position to sign the Service Level Agreement, once it is completed, the ability to reclaim the costs of resourcing HS2 related work through an Agreement may be lost.

7. Alternative Option(s) considered

- 7.1 The use of the existing protocol for identifying whether planning applications are determined by Planning Committee has been considered and discounted for the reasons set out above.
- 7.2 The option of not introducing a mechanism for signing the Service Level Agreement has also been considered and discounted as this may result in the Council not being able to recover all of its costs in the most effective manner. The Service Level Agreement is considered to provide the most certainty for the Council in respect of the recovery of its costs.

8. Background

- 8.1 It is currently anticipated that "the Act" will gain Royal Assent in February this year following which the Council is advised by HS2 Ltd that submissions will start to be made to Local Planning Authorities including this Council in respect of the design of the railway.
- 8.2 Officers have been in dialogue with HS2 Ltd for some time about a range of issues including the number of, and frequency with which submissions will be made. Notwithstanding that dialogue, the Council has not been able to ascertain any reliable information in that respect but is led to understand that there will be a very significant number of such submissions made over a period of several years.
- 8.3 As set out above, this Council has signed the HS2 Planning Memorandum which essentially requires the speedy determination of HS2 submissions in return for the maximum, albeit still limited control over the design of the railway. Officers are also in negotiation with HS2 Ltd in respect of a Service Level Agreement, a key element of which relates to the reimbursement of the Council's costs.
- 8.4 For the avoidance of doubt, it is important to stress that the submissions in question are not regular planning applications and are therefore not able to be determined in the same manner. Rather, they are similar to "discharge of condition" submissions and will relate to the approval of the specific details of the scheme. The principle of the development of a railway and ancillary development will be approved by the Act, and there is no scope to reopen that issue through the process of approving details of the scheme. The Council, even as a Qualifying Authority is only able to consider a relatively limited range of issues related to the design of the railway and to raise objections to the proposals in the prescribed circumstances set out above.
- 8.5 The Constitution and Scheme of Delegation currently prescribes the circumstances in which planning applications are determined either using delegated powers or by Planning Committee. The majority of applications are determined under delegated powers with the main triggers for Committee consideration being either the receipt of 5 or more objections; the receipt of an

objection from the relevant Town or Parish Council; or the application being called to Committee by a Councillor.

- 8.6 Submissions that are to be made under the Act are not covered by the Council's Constitution or Scheme of Delegation and it is therefore necessary to agree a mechanism to enable their consideration in a manner which is compliant with the requirements set out in the Planning Memorandum.
- 8.7 Officers are continuing to offer support to, and liaise with Town and Parish Councils and other community groups in relation to HS2. Most recently, in November last year, a briefing session was held to clarify, insofar as was possible at that stage, what was known about the manner and frequency with which HS2 related submissions are likely to come forward and the preparations that the District Council is making for dealing with those submissions.
- 8.8 At that briefing session, Officers clarified that, whilst it won't be required by the Act, Town and Parish Councils will be notified of HS2 related submissions in order to provide an opportunity for them to comment on those proposals and disseminate information about the proposals within their communities. Advice and suggestions were also offered in respect of the ways in which those Council's might wish to consider organising themselves in order to ensure that they are able to respond within appropriate timescales.
- 8.9 Without prejudice to the decision yet to be made by Council on the matters set out in this report, at that session those groups were also updated in outline on the proposed approach for dealing with HS2 submissions.
- 8.10 During the briefing session, the proposal to notify Town and Parish Councils was welcomed and the general tone of the feedback received in respect of those proposals was positive.
- 8.11 A follow up briefing session has also now been arranged for early February 2017 to provide a further update and support.