

 Executive – 14 September 2011		Agenda Item No. 11
Title	Use of delegated powers	
For further information about this report please contact	Bill Hunt Deputy Chief Executive 01926 456014 bill.hunt@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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	Regulatory Committee 15 August 2011	
Background Papers	Confidential urgent report to Regulatory Committee	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality & Sustainability Impact Assessment Undertaken	No
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Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive		Author
Head of Service		Roger Jewsbury
CMT	19/8/11	Chris Elliott, Andrew Jones, Bill Hunt
Section 151 Officer	18/8/11	Mike Snow
Monitoring Officer	19/8/11	Andy Jones
Finance	18/8/11	Mike Snow
Portfolio Holder(s)	30/8/11	Cllr. Doody
Consultation & Community Engagement		
n/a		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 The purpose of this report is to advise members of the exercise of delegated powers under CE(4) of the Scheme of Delegation

2. RECOMMENDATION

- 2.1 That Executive note the use of delegated power CE(4) to obtain Group Leader's (or their Deputy's) approval for the potential use of the contingency budget to cover any future costs associated with defence of the Council against Judicial Review proceedings.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The Scheme of Delegation, contained within the Council's Constitution provides for the Chief Executive (and in their absence the Deputies) to have authority to: 'deal with urgent items that occur between meetings, in consultation with the relevant Deputy Chief Executives, Heads of Service (if available) and Group Leaders (or in their absence Deputy Group Leaders) subject to the matter being reported to the Executive at its next meeting'. [CE(4)]
- 3.2 In the absence of the Chief Executive, the Deputy Chief Executive (BH) used this delegated power to seek approval for the potential use of the contingency budget, if required at a later date, in advance of consideration by the Regulatory Committee of a confidential urgent item which would require them to decide whether or not to contest an application for a Judicial Review.
- 3.3 Legal advice received by the Council was that, when making their decision as to which course of action to take, members of the Regulatory Committee should not take into consideration any potential financial impacts on the Council of the alternative options before them.
- 3.4 To ensure that the Committee's decision was not clouded by any such consideration, and therefore potentially open to challenge, Group Leader's (or in two cases due to their absence and in another that the Group Leader was a substitute member who would be attending Regulatory Committee, their Deputy's) were requested to approve the future use of the contingency budget in order to cover any potential costs associated with contesting the Judicial Review application, if required, depending on the decision made by Regulatory Committee.

4. POLICY FRAMEWORK

- 4.1 The use of delegated powers is as set out in the Council's Constitution, as is this retrospective reporting.

5. BUDGETARY FRAMEWORK

- 5.1 Subsequent to the Group Leader's (or Deputy's) authorising the use of contingency budget if required, Regulatory Committee determined that the Judicial Review application should be contested.
- 5.2 Assuming that the applicant proceeds with their application the total costs to the Council (including County Council legal fees and Counsel's fees to contest the action in the High Court) are likely to be in the region of £25,000-30,000.

- 5.3 However, it is extremely difficult to estimate costs in these types of matters and the final cost could either be less or considerably more if the matter becomes protracted. If WDC is successful then it can make a claim for its costs against the other side, although it is not certain that they would be awarded, or that the other side would be in a position to pay. Equally, the other side is entitled to make a claim for costs against the Council if its application succeeds.
- 5.4 It will be possible to contain some of the costs incurred within the existing approved budget for legal services. However, given the Regulatory Committee decision, there is likely to be a future call on the contingency budget for an unknown amount, but estimated at this stage to be in the order of £20-30,000. The 2011/12 contingency budget currently has an unallocated balance of £189,800.

6. ALTERNATIVE OPTION(S) CONSIDERED

- 6.1 The alternative option would have been not to seek authority under delegated powers but this was discounted on the basis that it was preferable to ensure that any temptation to consider the issue of financial consideration was entirely removed from the Regulatory Committee's decision making process.