

Title: Notices of Motion from July Council

Lead Officer: Philip Clarke (01926 456518), Lisa Barker (01926 456043)

Portfolio Holders: Councillor John Cooke, Cllr Jan Matecki

Wards of the District directly affected: All

Summary

This report provides an officer response to three Notices of Motion presented to Council on 27th July. These related to viability testing and viability assessments of planning applications, application of policy H6 in the Local Plan and adoption of Nationally Described Space Standards.

Recommendation(s)

- (1) That Cabinet notes the officer responses to the three Notices of Motion as agreed by Council on 27th July.**
- (2) That Cabinet supports the proposed responses to the Notices as set out in paragraphs 1.4 to 1.6 below.**
- (3) That Cabinet notes the intention to bring forward a revised Local Development Scheme before Cabinet at the earliest opportunity.**

1 Background/Information

- 1.1 At the Council meeting on 27 July 2022, three Notices of Motion were presented. Following a debate, amended wording to these Notices was agreed and passed on to Cabinet to consider. The three Notices of Motion related to:-
 - a) Notice of Motion 1: Viability testing and viability assessments of planning applications
 - b) Notice of Motion 2: Application of policy H6 in the Local Plan (Houses in Multiple Occupation and Student Accommodation)
 - c) Notice of Motion 3: Adoption of Nationally Described Space Standards (NDSS)
- 1.2 In all cases it should be noted that officers were asked to bring a report to this Cabinet meeting that considers the potential for adopting the proposals in the Motions, along with an appropriate timescale recognising available officer resources.
- 1.3 The full text of the agreed Notices, together with an officer response, is included in **Appendix 1** to this report. Drawing these individual comments together, a few summary points can be made.

- 1.4 With respect to **Notice of Motion 1** (viability testing and viability assessments of planning application) it is considered that the approach contained within the Notice is already embedded within the policy and practice of the Council and that no further measures need to be put into place.
- 1.5 With respect to **Notice of Motion 2** (Application of policy H6 in the Local Plan) it is considered that further assessment of the proposals could be undertaken by officers and, if appropriate, incorporated into the current guidance on the application of policy H6. It is proposed that officers work with the Planning & Place portfolio holder to agree any revisions to the informal guidance in consultation with group leaders. It is furthermore proposed that the Planning & Place portfolio holder works with officers to ensure that the priority given to this work does not impact on other policy priorities such as the delivery of the Net Zero Carbon DPD and South Warwickshire Local Plan.
- 1.6 With respect to **Notice of Motion 3** (Adoption of Nationally Described Space Standards) it is considered that:-
- the principle of incorporating NDSS within the South Warwickshire Local Plan should be considered as part of the work on that Plan.
 - The principle of incorporating NDSS standards by all partners delivering affordable housing to be explored.
 - Officers should explore the desirability, practicality and legality of an early amendment to the Residential Design SPD to incorporate the NDSS as good practice. The timetable proposed in the Notice is not recommended in view of current resource issues and other work priorities.
- 1.7 Members are asked to note that the current Local Development Scheme which sets out the Council's priorities for the preparation of planning policy documents, was last updated in May 2021 and would benefit from a further update. It is proposed to bring this to Cabinet to approve as soon as possible, and certainly before the end of 2022. The Local Development Scheme will be the most appropriate place to review the relative workload priorities and consider how quickly consideration could be given to providing early informal guidance on NDSS through a review of the Residential Design SPD.

2 Alternative Options available to Cabinet

- 2.1 The alternative options in the case of all three Notices of Motion would be to not agree with what is being proposed in the Notices. Where this is the case, the reasons for this are set out in the report. It should be noted that in the case of Motion 1, no actions are proposed because it is considered that what is requested by the Motion is already in place.

3 Consultation and Member's comments

- 3.1 Not applicable. This report is in direct response to Notices of Motion tabled by councillors.

4 Implications of the proposal

- 4.1 **Legal/Human Rights Implications**

4.1.1 There are not considered to be any legal or human rights issues raised directly by this report. If there are any issues identified as further work is undertaken on the matters raised by this report, these will be considered at that time.

4.2 **Financial**

4.2.1 There are no financial implications arising directly from this report. Any costs which arise as a result of further work on matters raised by this report will be considered as these are taken forward. This would most likely be reported in any update to the Local Development Scheme.

4.3 **Council Plan**

4.3.1 In respect of Warwick District Council Business Plan the following comments can be made:-

4.3.2 **5.4.3 External impacts of proposal**

4.3.3 People - Health, Homes, Communities – These various Notices of Motion relate in various ways to the operation of the planning function. A robust and effective planning service is important for supporting health, homes and communities.

4.3.4 Services - Green, Clean, Safe – Similarly, these various Notices of Motion relate in various ways to the operation of the planning function. A robust and effective planning service is important for supporting clean, green and safe services.

4.3.5 Money - Infrastructure, Enterprise, Employment – See comments above. Ensuring that, wherever possible, developments meet the range of obligations set by planning policy is important for delivering and supporting the infrastructure of the district.

4.3.6 5.4.4 Internal impacts of the proposal(s)

4.3.7 People - Effective Staff – N/A.

4.3.8 Services - Maintain or Improve Services – Responding effectively and appropriately to these notices is important to maintain service delivery.

4.3.9 Money – See above comments in 4.3.5. Whether or not developments deliver necessary infrastructure may have an impact on public finances, either immediately or in the future.

4.4 **Environmental/Climate Change Implications**

4.4.1 These will be considered as part of any more detailed assessment of the issues raised by these Motions.

4.5 **Analysis of the effects on Equality**

4.5.1 These will be considered as part of any more detailed assessment of the issues raised by these Motions.

4.6 **Data Protection**

4.6.1 There are not considered to be any data protection issues arising from this report.

4.7 **Health and Wellbeing**

4.7.1 These will be considered as part of any more detailed assessment of the issues raised by these Motions.

5 Risk Assessment

- 5.1 These will be considered as part of any more detailed assessment of the issues raised by these Motions.

6 Conclusion/Reasons for the Recommendation

- 6.1 This report presents an initial assessment of three Notices of Motion agreed by Council on 27th July 2022. These relate to viability testing and viability assessments of planning applications, application of policy H6 in the Local Plan and adoption of Nationally Described Space Standards.
- 6.2 In respect of Motion 1 (viability testing and viability assessments of planning application) it is considered that the approach contained within the Notice is already embedded within the policy and practice of the Council and that no further measures need to be put into place.
- 6.3 In respect of Motion 2 (Application of policy H6 in the Local Plan) it is considered that further assessment of the proposals could be undertaken by officers and, if appropriate, incorporated into the current guidance on the application of policy H6. It is proposed that officers work with the Planning & Place portfolio holder to agree any revisions to the informal guidance in consultation with group leaders. It is furthermore proposed that the Planning & Place portfolio holder works with officers to ensure that the priority given to this work does not impact on other policy priorities such as the delivery of the Net Zero Carbon DPD and South Warwickshire Local Plan.
- 6.4 In respect of Motion 3 (Adoption of Nationally Described Space Standards) it is considered that:-
- the principle of incorporating NDSS within the South Warwickshire Local Plan should be considered.
 - The principle of incorporating NDSS standards by all partners delivering affordable housing to be explored.
 - Officers should explore the desirability and practicality of an early amendment to the Residential Design SPD to incorporate the NDSS as good practice. The timetable proposed in the Notice is not recommended in view of resource issues and other work priorities.
- 6.5 Members are also asked to note that the Council's Local Development Scheme needs to be updated, and this will provide an opportunity to review the relative workload priorities and consider how quickly a positive response to some of the above issues can be addressed.

Background papers:

Agenda for Council meeting, 27th July 2022.

Supporting documents:

None.

Report Information Sheet

Please complete and submit to Democratic Services with draft report

Committee/Date	Cabinet 21 September 2022	
Title of report	Notices of Motion	
Consultations undertaken		
Consultee *required	Date	Details of consultation /comments received
Ward Member(s)	N/A	
Portfolio Holder WDC	30/8/22	
Financial Services *	22/8/22	
Legal Services *	22/8/22	
Other Services	22/8/22	
Chief Executive(s)	22/8/22	
Head of Service(s)	22/8/22	
Section 151 Officer	22/8/22	
Monitoring Officer	22/8/22	
CMT (WDC)	30/8/22	
Leadership Co-ordination Group (WDC)	5/9/22	
Other organisations	N/A	
Final decision by this Committee or rec to another Ctte/Council?		Recommendation to Cabinet
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 nos. 1,303, 1,304 & 1,305 – scheduled for 21 September 2022
Accessibility Checked?		File/Info/Inspect Document/Check Accessibility

Appendix 1: Full wording of agreed Notices of Motion from 27th July Council meeting together with officer response

In each case, the officer response is shown in a box beneath the part of the Notice to which it relates.

Notice of Motion 1

Following recent uncertainties over the handling of viability reports, this Council recognises the need to set out what is required by applicants, in line with government NPPF guidance and WDC's local plan, which other authorities already do for example [Ashford Borough Council](#) and [Guildford Borough Council](#) Borough.

Therefore Council resolves to pass the motion to Cabinet in September, including the points below, and asks for a report accompanying that considers the potential for adopting the proposals in the Motion, along with an appropriate timescale recognising available officer resources:

1. Applicants must be informed at the pre-application stage that planning applications that comply with the local plan are assumed to be viable, as it has been fully viability tested.

Officer response

There is already a policy in the current Local Plan (policy DM2) which requires that "Developments will be expected to comply with the policies set out elsewhere in this Plan (including those policies that refer to the provision and funding of infrastructure), unless it can be demonstrated that the policies will result in the development being unviable", and "Applicants should discuss viability concerns with the Council at the earliest possible stage in the development process."

It is therefore assumed that all schemes are viable unless applicants indicate otherwise and provide evidence to support this. Such matters would be picked up as part of any pre-application discussions.

However, please note that whilst prospective applicants are encouraged to engage in pre-application discussions in particular for major applications, this is not a mandatory requirement and therefore some applications are submitted without the benefit of having been through an initial pre-application process.

2. In the rare cases where an applicant is unable to meet the full planning obligations required in the local Plan), they should submit a viability report at the pre-application stage; or at the latest with the planning application in time to be considered by the Planning Committee.
 - a. They will need to give clear reasons how the assumptions in the local plan have changed.
 - b. As stated in the NPPF, 'realisation of risk' (i.e. developer's costs) is not a valid reason.

Officer response

It is not mandatory for an applicant to first engage in pre-application discussions with the local planning authority. The council therefore cannot require viability assessments to be submitted at the pre-application stage. In any event, the pre-application process may be a means by which applicants can understand whether there are likely to be any viability issues.

The Council already does require viability assessments to be submitted where proposals are unable to comply with the Plan's policies on viability grounds as set out in policy DM2. These assessments would usually be submitted at the application stage, although in some instances changes to development proposals that occur during the application process may impact upon viability and thus require viability to be considered through a viability assessment to be submitted after the initial submission.

The NPPF and Government Planning Practice Guidance provides national guidance on the approach to how viability assessments should be undertaken and considered by the local planning authority. WDC would follow this approach. (NB: On a point of clarity, the reference to 'realisation of risk' is in the Planning Practice Guidance and not the NPPF.)

All viability assessments must be considered by the Council's Planning Committee and therefore on all schemes where viability appears likely to be an issue, officers will encourage the timely submission of a viability assessment to enable officers to fully appraise the assessment and suitably cover this within the Committee Report.

3. No viability report will be considered after outline or full planning permission has been granted, except in the most exceptional circumstances, such as discovery of previously unknown land contamination or subsidence. If officers consider these exceptional circumstances have been met, the matter would need to be considered by the Planning Committee.

Officer response

The approach suggested here is not appropriate or reasonable because it would fetter the Council's discretion. If any applicant were to approach the Council and ask us, for whatever reason, to consider something after an initial planning permission has been granted, and accompanies this with a viability report, the Council is duty bound to consider it. This would be referred to the Planning Committee to determine as it involves a revision to a s106 agreement.

4. If a viability assessment is correctly undertaken in accordance with the above constraints, the Planning Committee is to decide what weight (if any) to give it.

Officer response

As noted above, the NPPF and Planning Practice Guidance sets out the approach which the planning committee should take in terms of the weight which it should give to viability assessments. The NPPF states: "The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force."

Planning Committee will be advised on the weight it should attach to any viability assessments having regard to the above advice.

Notice of Motion 2

To consider a notice of motion proposed by Councillor Quinney and seconded by Councillor Davison in respect of Supplementary guidance on the 'Main thoroughfares' exception in Plan Policy H6

One of the two exceptions in HMO policy H6 states

*"Exceptions a) **may be made** where the application site is located.... on a main thorough fare in a mixed use area where the proposal would not lead to an increase in activity along nearby residential streets (for example, by way of pedestrian movements between the application site and the town centre or car parking)"*

and

"main thoroughfares will normally be defined as A and B roads and mixed use areas are defined as those with a predominance of non-residential uses"

Over the years there has been confusion and inconsistency in the interpretation of this exception. A lengthy supplementary guidance document was issued in 2019, to address this problem but with only partial success: see https://www.warwickdc.gov.uk/info/20794/supplementary_planning_documents_and_other_guidance.

After examination of the approach taken by other authorities with similar HMO policies, discussions with a group of senior officers and Councillors, and informal consultation with residents, a list of Leamington streets to which this exception applies was carefully developed and shared with officers:

The Parade

Bath Street

High Street (= Lower Avenue to George St)

Clemens Street

Spencer Street

Warwick Old Road (= Lower Avenue to Roundabout)

Newbold Terrace E from Parade to Newbold St only
Regent Grove
Regent St from Regent Grove to Dale St
Regent St South side only, from Dale St to Somers Place.
Warwick St from Willes road to Portland St only
Warwick Place from Dale St to Warwick Terrace only
Clarendon Ave from Hall Rd to Chandos St only

It is proposed that:

1. the data above is transferred to a map by officers, the approach taken in other authorities, for ease of use by all parties
2. the current supplementary guidance is replaced by:

The map below indicates the only main thoroughfares within the designated area to which the second policy exception may apply, having a predominance of non-residential uses.

Therefore Council resolves to pass the motion to Cabinet in September and asks for a report accompanying that considers the potential for adopting the proposals in the Motion, along with an appropriate timescale recognising available officer resources.

Officer response

The guidance produced to support policy H6 is informal and, theoretically, can be updated quickly. It does not require a formal approval process.

The list of streets proposed in the Notice appears both logical and reasonable. Officers would need, however, to devote time to checking this against our policy criteria and to producing the map to illustrate this. As part of this, officers would need to consider any proposed approach in the light of past experience in determining relevant planning applications under this policy, and any relevant appeal decisions.

As regards whether the text of the guidance note should be deleted and replaced by the map, officers would not support this as the text applies district-wide and not just to Leamington town centre. The map could be included alongside the text, and not in place of it.

Undertaking this work urgently would require officers to prioritise this over other planning policy work. Given the level of current resources within the planning policy team, prioritising this work may impact on other work such as that related to the Net Zero Carbon DPD and important monitoring work that underpins work such as the South Warwickshire Local Plan.

Notice of Motion 3

To consider a notice of motion proposed by Councillor Roberts and Seconded by Councillor King in respect of the Adoption of Nationally Described Space Standards (NDSS)

Following the government's 2015 publication of the [NDSS](#) re-establishing minimum internal space standards for residential housing, authorities were invited to adopt them where they feel they are justified. Many have done so, including such different authorities as [Cotswolds](#), [Oxford](#) and [Nottingham](#), three to four years ago.

WDC Housing and Milverton Homes have both recently adopted this government standard for all their newbuilds. However, there is significant evidence that many local private developments do not meet these standards; for example, from the fact that a high proportion of S106 affordable homes currently being completed and offered to social housing providers do not meet WDC's minimum space standards.

Research in late 2016 by two building industry professionals covering a sample of 116 locally completed dwellings indicated that perhaps three quarters of new houses in the District were being built below these standards, a quarter well below.

No of dwellings Comparison with NDSS standards.....

No. meeting NDSS.... No falling short by.....

1-9% 10-20% 20% +

116 25 64 24 3

100% 22% 55% 21% 2%

This tallies with the national picture outlined in the 'Case For Space' report by the Royal Institute of British Architects [RIBA](#). This stated "new homes in the UK not only appear to be shrinking, but are also the smallest in Western Europe". In the Netherlands, new homes are 53% bigger than the UK average. RIBA stated that "people believe that newly built homes fail to provide adequate space inside... the home".

Therefore Council resolves to pass the motion to Cabinet in September, including the points below, and asks for a report accompanying that considers the potential for adopting the proposals in the Motion, along with an appropriate timescale recognising available officer resources.

1. to adopt NDSS in Warwick at the earliest possible date, whether through a DPD or as part of the emerging Local Plan.
2. that all housing planned by the Council and its partners (for example Housing Associations) adopt and publicise these standards with immediate effect, and
3. that the residential design guide be reissued by January 2023, incorporating this emerging policy, giving it some weight in the planning process and encouraging early adoption by all developers.

Officer response

With regard to (1), the most appropriate place to initially consider adopting NDSS would be through the South Warwickshire Local Plan (SWLP). This matter can be considered at the Issues & Options stage of the SWLP, a report of which is due to be considered by the Joint Committee in the autumn. If it is considered that NDSS is not appropriately addressed within the SWLP which is primarily going to include strategic policies, then it would require a separate DPD. This is not an initially preferred approach as it would require significant time and financial resources to produce a stand-alone DPD. This would inevitably impact on other areas of work.

With regard to the (2), the Council will discuss with all partners to explore the possibility of the adoption of the NDSS standards in development policies which can be used when negotiating with developers.

As regards (3), there may be concerns of the desirability and practicality of what is proposed, and further assessment and legal advice would be needed to understand this in more detail. As the adoption of NDSS must be done through a DPD, it is not possible to require this through an SPD (as the Notice recognises). Officers would need to take a view and advise members on the weight that could be given to the NDSS in an SPD and therefore the merits (and legality) of including it – even just as good practice.

Notwithstanding the above, if members did want officers to prepare some supplementary guidance on this issue, then the place to do this would be the Residential Design SPD. This would require the redrafting of this document and then seeking formal approval for it to be subject to a six-week public consultation. The current Residential Design SPD was approved by the council in May 2018. It may be the case that if the document is amended there may be other changes that the council would wish to consider. This would possibly be a more significant piece of work.

The Notice proposes that this work be completed by January 2023. In view of current resources within the team and other workload pressures as outlined above, this target date will prove challenging and is most likely unrealistic.

Elsewhere in this report, it is noted that the Council's Local Development Scheme (LDS) needs to be updated and officers will undertake to do this as soon as possible. A review of the LDS would be the place to consider the desirability and practicality of amending any SPD to refer to NDSS.