

## **Extra-ordinary Council – 25 June, 2012**

### **Localism Act 2011 Changes to the Council's Constitution in Respect of Planning-Related Matters**

#### **1. Introduction**

This report sets out proposed amendments to the Constitution and is produced in accordance with the requirements of Article 14 of the Constitution and the Council's duty to monitor and review the Constitution.

#### **2. Recommendation**

That the amendments to the following parts of the Constitution as set out in Section 4 of the report be approved:

#### **3. Background information**

The Localism Act received Royal assent in November 2011 and various parts have recently come into effect or are intended to shortly, bringing new powers and responsibilities for local authorities.

Many of the new powers and responsibilities relate to planning and to property matters (which should be a separate function). The council already has constitutional arrangements in place, but to enable the authority to operate the legislation on a proper basis these need to be updated, amended and added to in various ways. These include in relation to:

- Article 4 of Part 2 of the constitution, the documents the council considers to be part of its policy framework.
- Part 3.2 of the constitution, Scheme of delegations to Planning Committee
- Part .3.5 of the constitution, Scheme of delegations to Officers
  - Paragraph 17 – Executive Director Regeneration
  - Paragraph 18 – Head of Planning and Building Control
  - Paragraph 14 - Executive Director Neighbourhoods

Under the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended) some functions, such as the adoption of documents that form part of the council's policy framework are the responsibility of full council. A second set of functions that are the responsibility of the council have been delegated to Planning Committee and to officers and these need to be updated. A third set of functions, including for example the preparatory stages for development plan documents, can be undertaken by the Executive (Cabinet). The regulations do not require that these functions be detailed in the constitution, but it is important to recognise that whilst day-

to-day operations can be carried out by officers, the 2011 Act will have implications for Cabinet in terms of the following powers and responsibilities.

1. Powers, under and in accordance with the Localism Act 2011 and any related secondary legislation, to maintain and operate a list of assets of community value.
2. Power to make decisions to co-operate with and respond to other planning authorities and other bodies or persons in respect of strategic and / or cross-boundary planning matters, including the making of development plans and consultations on planning applications and proposals, including infrastructure proposals. This is in accordance with the Duty to Co-operate under the Localism Act 2011, and with the Town and Country Planning Act 1990 as amended, the Planning and Compulsory Purchase Act 2004 as amended, and the Planning Act 2008 as amended, and in accordance with any related secondary legislation.
3. To comply with any requirements under the Planning and Compulsory Purchase Act 2004 as amended and any related secondary legislation to prepare, maintain and publish a Local Development Scheme.
4. To approve, for public consultation, draft documents for the Council's Community Infrastructure Levy regime, under the Planning Act 2008 as amended and in accordance with any related secondary legislation.
5. Power, under the Localism Act 2011 and in accordance with any related secondary legislation, to make decisions in respect of:
  - the designation of neighbourhood areas and forums;
  - the making of neighbourhood development plans, neighbourhood development orders and community right to build orders;
  - the holding of public examinations;
  - the holding of referendums;
  - the setting of charges or making of financial arrangements as may be introduced by secondary legislation pursuant to the 2011 Act; and
  - work towards the modification or revocation of neighbourhood planning measures.

Consideration of the changes required by the 2011 Act has shown there are benefits in editing and updating various parts of the constitution in relation to other recent legislation and to provide clarification. It is also notable that the 2011 Act and related regulations are new (indeed, so new that not all of the necessary regulations have been published, although the relevant provisions are due to come into effect), and it is understood the government is reviewing the 'Functions and Responsibilities' regulations. The implications for the constitution will have to be kept under review and further reports to council could be necessary.

#### 4. Amendments to the Council's Constitution

It is considered that the following changes to the constitution are necessary to reflect the powers and responsibilities introduced by the 2011 Act and to make related changes. New / amended text is shown underlined.

##### Part 2, Article 4 'The Council'

**Policy Framework – (a)(ii) 'Other plans and strategies the Council considers should be adopted as part of the policy framework'**

Add:

Development Orders, including Local Development Orders, Neighbourhood Development Orders and Community Right to Build Orders

##### Part 3 Responsibility for Functions

**Planning Committee:**

**Delegations - (a) Planning functions**

Insert the following amendments and additions;

<b>Functions relating to town and country planning and development control</b>	
1. Power to determine application for planning permission.	Sections <u>70</u> and 72 of the Town and Country Planning Act 1990 (c.8) <u>as amended</u> .
2. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990 <u>as amended</u> .
3. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990 <u>as amended</u> .
4. Power to decline to determine application for planning permission.	Sections <u>70A</u> , <u>70B</u> and <u>70C</u> of the Town and Country Planning Act 1990 <u>as amended</u> .
5. Duties relating to the making of determinations of planning applications.	Sections <u>69</u> and <u>92</u> of the Town and Country Planning Act 1990 <u>as amended</u> and <u>The Town and Country Planning (Development Management Procedure) (England) Order 2010</u> as amended and directions made thereunder.

....

<p>14. Power to serve a planning contravention notice, breach of condition notice or stop notice, or planning enforcement notice, <u>and to seek any necessary orders as required.</u></p>	<p>Sections 171, <u>171BA, 171BB, 187A and 183(1) of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>15.1 Power to give written assurance as regards prosecution for person served with a planning enforcement notice, and power to withdraw such assurance as appropriate.</u></p>	<p><u>Section 172A of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>16.1 Power to remove and dispose of any unauthorised display structure and to exercise any other powers (including the power to recover reasonable expenses).</u></p>	<p><u>Sections 225A and 225B of the Town and Country Planning Act 1990 as amended</u></p>
<p><u>16.2 Power to serve an action notice to resolve persistent problems with unauthorised advertisements and to exercise any other powers (including the power to recover reasonable expenses).</u></p>	<p><u>Sections 225C, 225D and 225E of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>16.3 Power to remedy defacement of premises and to exercise powers (including the power to recover reasonable expenses).</u></p>	<p><u>Sections 225F and 225I of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>16.4 Power to serve notices in respect of post boxes and to exercise any other powers.</u></p>	<p><u>Section 225G of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>16.5 Power to exercise powers in respect of bus shelters and other street furniture.</u></p>	<p><u>Sections 225F and 225H of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>16.6 Power to remedy defacement at owner or occupier's request and to exercise any other powers (including the power to recover reasonable expenses).</u></p>	<p><u>Section 225J of the Town and Country Planning Act 1990 as amended.</u></p>
<p><u>16.7 Power to remove display structures, prevent or reduce unauthorised advertisements and / or remove or obliterate signs, so far as they relate to the operational land and premises of statutory undertakers.</u></p>	<p><u>Sections 225A, 225C, 225F, 225K and 324 of the Town and Country Planning Act 1990 as amended.</u></p>

(2) In relation to the table above the following categories of application for planning permission will be determined by the Committee unless expressly delegated in respect of a particular application.

(a) All major applications i.e. those applications for permission to develop 10 or more dwellings or a building(s) with 1,000 sq metres or more floor space and over 0.5 ha, or new or extended mineral working or waste disposal, except that authority shall be delegated to the Head of Planning and Building Control to determine applications that:

- would not raise complex matters or require delicate judgement; and

- do not conflict with national, regional or local planning policy.

(b) Applications that would be a significant departure from the development plan (requiring publicity) where they do not comply with national or local planning policy.

(c) Applications where an objection is received from a statutory consultee (as defined in the The Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended).

....

(f) Applications that do not comply with the development plan and are recommended for approval.

....

(h) Applications attracting significant community interest (i.e. as evidenced by a high number of individual representations or a significant/large petition objecting to a development) which would be contrary to the officer recommendation.

(3) In consultation with the relevant Scrutiny and Performance Panel to make appropriate recommendations to the Executive on the formulation of the development plan and related local development documents for the Borough.

(4) To consider development plans prepared by neighbouring authorities, and other consultations on planning policies and proposals by outside bodies and persons, and to make appropriate recommendations thereon to the Executive.

### **Part 3 Responsibility for Functions**

(Scheme of Delegations to Officers)

#### **Executive Director for Regeneration:**

Insert amendments and additions to the delegations:

17.2 Power to act on behalf of the council to co-operate with and respond to other planning authorities and other bodies or persons in respect of strategic planning and / or cross-boundary matters, including the making of development plans and

consultations on planning applications and proposals, including infrastructure proposals. This is in accordance with the Duty to Co-operate under the Localism Act 2011, and with the Town and Country Planning Act 1990 as amended, the Planning and Compulsory Purchase Act 2004 as amended, and the Planning Act 2008 as amended, and in accordance with any related secondary legislation. The exercise of the delegation is subject to the proviso that the consultation and / or response on behalf of the council is in accordance with Walsall's adopted development plan, and that it does not require:

- costs (other than staff costs or other costs of under £500.00) being incurred by the council; and / or
- the council to participate in a planning inquiry or examination.

[This can replace 17.2 of 3.5 and 18.5(b) of 3.5, which can be deleted as note (a) on page 30 of 3.5 allows the Head of Planning and Building Control to exercise the powers of the Executive Director.]

17.24A To give effect to the requirements of the Planning and Compulsory Purchase Act 2004 as amended and any related secondary legislation to prepare and publish Monitoring Reports on the progress of development planning and the extent to which planning policies are being achieved.

17.24B To operate the Community Infrastructure Levy, under the Planning Act 2008 as amended and in accordance with any related secondary legislation, as approved by Council, including in respect of any contracting out of functions and receipts or expenditure relating to areas or infrastructure within or outside the borough.

17.27 Authority to take action under the following legislation (as may be amended), including ... institution of legal proceedings etc.

(1) Planning legislation (including The Town and Country Planning Act 1990, The Planning and Compulsory Purchase Act 2004 and the Planning Act 2008)

....

(8) The Localism Act 2011.

## **Head of Planning and Building Control**

Make amendments, additions and deletions to the delegations:

18.5 In respect of Development Management:

....

~~(b) To respond to consultations from neighbouring Local Planning Authorities on planning applications and development plans which do not raise strategic issues;~~

18.6 Enforcement of Planning Control:

(f) Power to issue a planning contravention notice in appropriate circumstances and to hold discussions as a result of the "Time and Place" procedure in Section 171C of the Town and Country Planning Act 1990 as amended.

(f)1 Power to serve a planning contravention notice, breach of condition notice or stop notice, or planning enforcement notice.  
In accordance with sections 171, 171BA, 171BB, 187A and 183(1) of the Town and Country Planning Act 1990 as amended.

(f)2 Power to give written assurance as regards prosecution for person served with a planning enforcement notice, and power to withdraw such assurance as appropriate  
In accordance with section 172A of the Town and Country Planning Act 1990 as amended

(f)3 Power to remove and dispose of any unauthorised display structure and to exercise any other powers (including the power to recover reasonable expenses).  
In accordance with sections 225A and 225B of the Town and Country Planning Act 1990 as amended

(f)4 Power to serve an action notice to resolve persistent problems with unauthorised advertisements and to exercise any other powers (including the power to recover reasonable expenses).  
In accordance with sections 225C, 225D and 225E of the Town and Country Planning Act 1990 as amended.

(f)5 Power to remedy defacement of premises and to exercise powers (including the power to recover reasonable expenses).  
In accordance with sections 225F and 225I of the Town and Country Planning Act 1990 as amended.

(f)6 Power to serve notices in respect of post boxes and to exercise any other powers.  
In accordance with section 225G of the Town and Country Planning Act 1990 as amended.

(f)7 Power to exercise powers in respect of bus shelters and other street furniture.  
In accordance with sections 225F and 225H of the Town and Country Planning Act 1990 as amended.

(f)8 Power to remedy defacement at owner or occupier's request and to exercise any other powers (including the power to recover reasonable expenses).  
In accordance with section 225J of the Town and Country Planning Act 1990 as amended.

(f)9 Power to remove display structures, prevent or reduce unauthorised advertisements and / or remove or obliterate signs, so far as they relate to the operational land and premises of statutory undertakers.  
In accordance with sections 225A, 225C, 225F, 225K and 324 of the Town and Country Planning Act 1990 as amended.

## Executive Director for Neighbourhoods

Insert amendments and additions to the delegations:

14.2 Without prejudice to paragraph 1, to exercise strategic, operational, and management powers and duties of the Council under the following enactments (including as they may be amended):

....

(s) The Localism Act 2011

14.13 Powers, under and in accordance with the Localism Act 2011 and any related secondary legislation, to maintain and operate a list of assets of community value.

**Background papers** – All published

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Signed:

Chief Executive

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