

**Amendments to Planning and Building Control delegations under Part 3.5 of the Council's Constitution**

**Ward(s):** All

**Portfolios:** All

**1. Aim**

1.1 To ensure that decision-making by officers is clear, transparent and lawful.

**2. Summary**

2.1 The Council must ensure that it has a Scheme of Delegations which clearly sets out the delegated powers given to holders of various posts within the Council.

2.2 Prior to the start of each municipal year, a review of delegations is undertaken to ensure appropriateness for the forthcoming municipal year and, where appropriate, implement changes to the delegations to ensure that they comply with any internal audit recommendations, best practice requirements, or changes in legislation.

2.3 Whilst Audit considered a report on delegations at its meeting held on 28<sup>th</sup> April, 2022, this did not include changes to Planning and Building Control delegations. The Council recently welcomed a Peer Challenge Review of its planning function, carried out by the Planning Advisory Service. This made a number of improvement recommendations. It was therefore considered necessary to bring forward a separate report to Audit set out the proposed changes to the structure of the constitution and level of delegation. This includes the various changes in functions and responsibilities in recent years.

**3. Recommendations**

3.1 That the Committee review and note the revisions to officer delegations and Planning Committee delegations as set out in the Appendix to this report.

3.2 That the report be circulated to Group Leaders and independent Members for information.

**4. Report detail – know**

4.1 The proposed amendments and updates to Planning and Building Control delegations reflect new and updated legislation and operational changes across the Council during the last municipal year. This has resulted in all Building Control

and Strategic Planning Policy functions now sitting under the Head of Planning and Building Control in addition to High Hedge Complaints, which all formerly operated within various different service areas.

- 4.2 The proposed changes to the Constitution also take account of recommendations made in the Peer Challenge Review report based on findings of the review carried out by the Planning Advisory Service between 3<sup>rd</sup> and 5<sup>th</sup> November 2021. The amendments aim to ensure that decisions made by Members of the Planning Committee focus on proposals of strategic and corporate importance, to help speed up the decision-making process for other applications and to provide greater certainty to, and build confidence with, applicants / developers wishing to invest in the Borough. This includes strengthening officers' existing delegations to determine all Policy compliant schemes (including major proposals), to pursue any necessary Enforcement action and to determine applications where there is public interest (except where a petition is lodged).
- 4.3 Planning law prescribes that planning applications must be determined in accordance with the Council's 'Development Plan' which sets out the policy basis against which development proposals are assessed. This is also embodied within the government's National Planning Policy Framework. Given that Walsall Council's currently adopted Development Plan has been previously subject to public consultation, public examination and Member engagement and endorsement at full Council, it is considered appropriate that such decisions are delegated to the Head of Planning and Building Control and that, in turn, senior officers may be empowered to determine policy compliant applications. This does not override the ability for Members to call-in a planning application to be heard before Planning Committee. Furthermore, public engagement is not affected as members of the public will still have the right to make representations as part of the statutory planning consultation process on individual planning applications and to speak on an item presented at a Planning Committee meeting.
- 4.4 The service area has briefed Members on the Peer Challenge Review findings and recommendations in recent months, including the overarching aims of the delegation review which intends to increase officer delegation and to provide a greater focus on strategic proposals presented at Planning Committee.
- 4.5 Proposed changes to the Member call-in procedure also reflect the Peer Challenge findings and recommendations to provide a greater focus on strategic proposals presented at Planning Committee. The updated call-in form already requires material planning reason(s) for the call-in to be selected from a pre-defined list and the changes to the delegation reflect this, whilst also setting a clear 28 day period for receipt of the completed form from the start of public consultation. This is to help speed up decision-making and provide greater certainty to our customers.
- 4.6 Proposed changes to public speaking include clarification on the ability to speak on an item which has been deferred from a previous meeting. Where speakers have already addressed the committee at a previous meeting, they will only be entitled to address the committee again on any new material planning matters arising as part of any significant changes made to a proposal. This is because matters previously raised and discussed will have already been considered and addressed and should not be re-opened for further debate. This should reduce

time spent by committee and enable focused discussion and debate on the points at hand.

- 4.7 On benchmarking against other Councils' constitutions, a number of helpful and important points around code of conduct and Member engagement were identified within Birmingham City Council's constitution, specifically in relation to planning which are considered directly relevant and applicable to Walsall. Where appropriate, they have been amended and updated to take account of Walsall Council's corporate policies and guidance in this regard and included to offer increased probity, clarity and transparency to the process, to better safeguard the Council against potential future challenge, including Judicial Review.
- 4.8 The previous report to Scrutiny Committee in November 2021 set out the agreed process in relation to Ward Member engagement on the potential areas of spend of secured contributions within a Section 106 agreement. This process will remain, and is not affected by the proposed changes. Officers will aim to secure the policy compliant level of Planning Obligations in relation to development proposals, and where this cannot be achieved (due to the issues around viability of a scheme for example) the application would be presented to Members at a Planning Committee.
- 4.9 The changes have been made with input from the Council's Principal Planning Solicitor and the Head of Law & Democratic Services to ensure the legal aspects of the amended constitution are correct and acceptable. It is also hoped that it provides a clearer and easier to follow delegation structure which brings together appropriate functions beneath each respective area which now sit within the Planning and Building Control service. This will help officers, Members and our external customers to better understand, and interpret, this part of the Council's constitution.
- 4.10 It should be noted that whilst increased authority is sought to enable the discharge of functions directly under the delegation to the Head of Planning and Building Control, this does not prevent any matter being referred to Planning Committee where it may be deemed appropriate or of particular strategic importance. In addition, Members have the ability to call-in a planning application to be heard before Planning Committee if they consider there to be material planning considerations that render it appropriate to do so.
- 4.11 In terms of potential risks associated with the changes, there may be a public perception that public engagement in the overall planning process is being watered down. That is not the case. The statutory consultation process in relation to planning applications will not be affected, and interested parties will continue to be able to make representations which will be taken into account, and addressed in the officer's report when determining an application. An application may also still be presented at a Planning Committee meeting where it has been called-in by a Member and / or where a petition has been lodged where the Local Planning Authority's (LPA) recommendation would be contrary to the subject of the petition. Guidance contained within correspondence and the Council's website will both be updated to provide interested parties with clear signposting on how to engage in the process to help mitigate and manage any such perception.

- 4.12 The Council carries out continued monitoring of overall planning performance against national indicators along with monitoring the outcome of appeal decisions and costs against the Council to check the quality and robustness of decisions made. To assess the effectiveness of the proposed changes, officers will continue to carry out this monitoring and results will be included in the quarterly report to Planning Committee. Customer satisfaction will also be monitored by the number, and nature of received complaints / compliments and from feedback at future planning agent and developer forums, which forums have also been established following the recommendations of the Peer Challenge Review.
- 4.13 To assist with members deliberations, the proposed changes to delegations are set out in appendix 1.
- 4.14 It is suggested that, as in previous years, this report be circulated to Group Leaders and independent members for information.

## **5. Financial information**

- 5.1 There are no direct financial implications.

## **6. Reducing Inequalities**

- 6.1 It is imperative that the Council's decision making structures and processes are lawful, clear and transparent, accessible to all. This ensures that powers are used responsibly and reasonably to give confidence to the entire borough that decision making is fair and beyond reproach.

## **7. Decide**

- 7.1 There is a requirement to undertake an annual review of the delegations in place.

## **8. Respond**

- 8.1 The proposed amendments will be submitted to Council for consideration and approval at its meeting to be held on 18 July, 2022.

## **9. Review**

- 9.1 There will be an ongoing requirement to keep the officer delegations under review to ensure that the Council acts within the law.

## **Background papers**

None

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