

Amendments to Planning and Building Control delegations under Part 3.5 of the Council's Constitution and adoption of Policy and Guidance to mitigate the impact of new residential development in respect of the Cannock Chase Special Area of Conservation.

Ward(s): All

Portfolios: All

1. Aim

- 1.1 To ensure that decision-making by officers is clear, transparent and lawful and to meet Walsall MBC's duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations) and that these decisions are executed efficiently and effectively.

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 Audit Committee received and noted a report on the proposed amendments to planning delegations and broader constitutional changes, relating to Planning matters, on 27th June, 2022. This report has been circulated to Group Leaders and independent members for information.
- 2.4 On 7th September, 2022 Cabinet agreed to join the Cannock Chase Special Area of Conservation Partnership, adopt the Habitats Regulation Assessment and enter into a Memorandum of Understanding with the partnership. To progress this, the Council is required to adopt a mitigation Policy and Guidance to enable the assessment and implementation of mitigation upon the Cannock Chase SAC including by means of collection of financial contributions in order to meet Walsall MBC's duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regs.) to ensure that planning application decisions which have an impact on Cannock Chase SAC comply with the Habitats Regulations.

3. Recommendations

That Council:

- 3.1 Approves the amendments to the Constitution as set out in Appendix 1;
- 3.2 Approves the Policy for inclusion within the Local Plan in respect of the Cannock Chase Special Area of Conservation, as set out in Appendix 2; and
- 3.3 Approves the guidance in respect of the Cannock Chase Special Area of Conservation as set out in Appendix 3.

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 a suite of recommendations made in the Peer Challenge Review report based on findings of the review carried out by the Planning Advisory Service (PAS) between 3rd and 5th 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 consulted with the Leader and Deputy Leader on the PAS findings and resulting proposed changes to the Constitution and the improvements to planning processes. Officers have also briefed Members on the Peer Challenge

Review findings and recommendations, 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 aims to improve the customer experience in terms of timeframes.
- 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 ensures that speaking and debate is focussed on the points at hand.
- 4.7 In response to the PAS review, a number of other Councils' constitutions were reviewed. 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, the constitution in relation to planning delegations has been amended and updated in regard to these matters 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 report to Scrutiny Overview Committee on 9 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 proposed 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. The proposed changes aim to provide a clearer delegation structure. 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 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 may be affected but this is not the case. The statutory consultation process in relation to planning applications will not be affected. 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 to customers and the Council's website will 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 In addition, Council is asked to note that Cabinet agreed to join the Cannock Chase SAC Partnership on 7th September, 2022 and a copy of this report is referred to in the background papers. Council now needs to adopt a Policy and guidance for the collection of financial contributions towards an established mitigation scheme. The proposed Policy and guidance is set out in Appendix 2 and 3 and will be read in conjunction with the following existing adopted policies and the National Planning Policy Framework:
- Black Country Core Strategy Policies CSP3 (Environmental Infrastructure), CSP4 (Place-Making) & ENV1 (Nature Conservation);
 - UDP Saved Policy ENV23 (Nature Conservation); and
 - SAD Policy EN1 (Natural Environment Protection, Management and Enhancement).
- 4.15 The Cannock Chase Special Area of Conservation Mitigation Policy (Appendix 2) and Guidance (Appendix 3) provides a mechanism for securing appropriate mitigation for Cannock Chase SAC. This will be incorporated within future development plans.
- 4.16 The proposed changes in Appendix 1 incorporate the necessary delegations for the collection of financial contributions in connection with the mitigation of Cannock Chase SAC.

5. Financial information

- 5.1 Payments towards Cannock Chase SAC mitigation will be collected from applicants and developers at the time of issuing a planning decision. The monies will then be transferred to the SAC Partnership who manage the expenditure of monies collected from development within the 15km zone of influence across all affected Local Authority administrative boundaries.

6. Legal implications

- 6.1 Walsall MBC has a duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2010 (Habitat Regs.) to ensure that planning application decisions comply with the Habitats Regulations.

7. Reducing Inequalities

- 7.1 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.

8. Decide

- 8.1 There is a requirement to undertake an annual review of the delegations in place.
- 8.2 There is a requirement to agree an approach to the collection of financial contributions towards the SAC.

9. Respond

- 9.1 Subject to approval of the recommendation, the LPA will apply the approach to securing appropriate mitigation for the Cannock Chase SAC set out in Appendix 2.

10. Review

- 10.1 There is an ongoing requirement to review officer delegations annually to ensure that the Council acts within the law.
- 10.2 A review of the Cannock Chase SAC mitigation Policy and Guidance will be carried out by the SAC Partnership and will be incorporated in future Development Plans.

Background papers

Reports to:-

Cabinet 7th September, 2022 – Cannock Chase Special Area of Conservation: Mitigation Strategy

Audit Committee 27th June, 2022 - Amendments to Planning and Building Control delegations under Part 3.5 of the Council's Constitution

Scrutiny Overview Committee 9 November 2021 - Section 106 Planning Obligations

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