



**AGENDA
for
MEETING OF
THE COUNCIL**

to be held on

Wednesday, 21st February, 2024

Enquiries to: Member Services
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Date: 13th February 2024

Our Ref: KB

To: All Members of the Borough Council

A MEETING OF THE COUNCIL will be held on **Wednesday, 21st February, 2024 arising at the closing of the Extraordinary Council meeting due to start at 6.00 p.m.**

All members of the Council are summoned to attend to determine the business as set out below.

Public and press can follow the decision making online at www.nuneatonandbedworth.gov.uk/virtual-meeting.

Please note that meetings will be recorded for future broadcast.

AGENDA

1. **EVACUATION PROCEDURE**

A fire drill is not expected, so if the alarm sounds, please evacuate the building quickly and calmly. Please use the stairs and do not use the lifts. Once out of the building, please gather outside the Lloyds Bank on the opposite side of the road.

Please exit by the door by which you entered the room or by the fire exits which are clearly indicated by the standard green fire exit signs.

If you need any assistance in evacuating the building, please make yourself known to a member of staff.

Please make sure all your mobile phones are turned off or set to silent.

2. APOLOGIES - to receive apologies for absence from the meeting.
3. MINUTES - to confirm the minutes of the meeting held on 13th December, 2023 **(to follow)** and to confirm the minutes of the Extraordinary Council – Gypsy and Traveller DPD held on 17th January 2024 **(to follow)** and the Extraordinary Council – Civic Honours Awards held on 29th January, 2024 **(to follow)**
4. DECLARATIONS OF INTEREST - To receive declarations of disclosable pecuniary interests and other interests in matters under consideration pursuant to Council procedure Rule 4A.2(iii).

Declaring interests at meetings

If there is any item of business to be discussed at the meeting in which you have a disclosable pecuniary interest or non-pecuniary interest (Other Interests), you must declare the interest appropriately at the start of the meeting or as soon as you become aware that you have an interest.

Arrangements have been made for interests that are declared regularly by members to be appended to the agenda (**Page 7**). Any interest noted in the Schedule at the back of the agenda papers will be deemed to have been declared and will be minuted as such by the Committee Services Officer. As a general rule, there will, therefore, be no need for those Members to declare those interests as set out in the schedule.

There are, however, TWO EXCEPTIONS to the general rule:

1. When the interest amounts to a Disclosable Pecuniary Interest that is engaged in connection with any item on the agenda and the member feels that the interest is such that they must leave the room. Prior to leaving the room, the member must inform the meeting that they are doing so, to ensure that it is recorded in the minutes.

2. Where a dispensation has been granted to vote and/or speak on an item where there is a Disclosable Pecuniary Interest, but it is not referred to in the Schedule (where for example, the dispensation was granted by the Monitoring Officer immediately prior to the meeting). The existence and nature of the dispensation needs to be recorded in the minutes and will, therefore, have to be disclosed at an appropriate time to the meeting.

Note: Following the adoption of the new Code of Conduct, Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the relevant item (or as soon as the interest becomes apparent). If that interest is a Disclosable Pecuniary or a Deemed Disclosable Pecuniary Interest, the Member must withdraw from the room.

Where a Member has a Disclosable Pecuniary Interest but has received a dispensation from Audit and Standards Committee, that Member may vote and/or speak on the matter (as the case may be) and must disclose the existence of the dispensation and any restrictions placed on it at the time the interest is declared.

Where a Member has a Deemed Disclosable Interest as defined in the Code of Conduct, the Member may address the meeting as a member of the public as set out in the Code.

Note: Council Procedure Rules require Members with Disclosable Pecuniary Interests to withdraw from the meeting unless a dispensation allows them to remain to vote and/or speak on the business giving rise to the interest.

Where a Member has a Deemed Disclosable Interest, the Council's Code of Conduct permits public speaking on the item, after which the Member is required by Council Procedure Rules to withdraw from the meeting.

5. ANNOUNCEMENTS - to receive announcements from the Mayor, Leader, Members of the Cabinet or the Chief Executive.
6. PUBLIC PARTICIPATION - (maximum 20 minutes).
to hear and answer questions by any resident of the Borough concerning the work of the Council where notice has been given (maximum 20 minutes). A copy of the Procedure Rule 9 is attached (**Page 14**) and this is not subject to debate. A question or statement can be submitted using the link below which will send your submission to the Chief Executive and Member Services: [Ask a question at meetings of Full Council | Public participation at meetings | Nuneaton & Bedworth \(nuneatonandbedworth.gov.uk\)](#)
7. QUESTIONS BY MEMBERS - (Council Procedure Rule 10). A copy of Procedure Rule 10 is attached. (**Page 16**) and this is not subject to debate.
8. SPECIAL URGENCY DECISIONS - (Access to Information Procedure Rule 4B.16)
 - Nuneaton Business Improvement District (BID) – 31st January 2024 (EXEMPT)
9. CABINET – report by Leader of the Council (**to follow**)
Members may ask questions on the report and receive answers from the Leader or other Cabinet members, and this is not subject to debate.
10. ELECTION OF MAYOR AND DEPUTY MAYOR – to give consideration to the selection of Mayor and Deputy Mayor for 2024/25.
11. RECOMMENDATIONS FROM CABINET OR OTHER COMMITTEE

Audit and Standards Committee – 9th January 2024

a) PUBLICITY PROTOCOL – CHANGE TO THE CONSTITUTION

At its meeting held on 9th January 2024 a report (**copy attached Page 18**) by the Chief Executive was considered and the following recommendation put forward for Council approval:

It be recommended to Council that the Constitution be amended accordingly.

Audit and Standards Committee – 9th January 2024

b) CONTRACT PROCEDURE RULES - UPDATE

At its meeting held on 9th January 2024 a report (**copy attached Page 25**) by the Assistant Director – Democracy and Governance was considered, and the following recommendation put forward for Council approval:

It be recommended to Council that the Constitution be amended accordingly.

Cabinet – 10th January 2024

c) ARTICLE 4 (1) DIRECTIONS

At its meeting held on 10th January 2024 a report (**copy attached Page 61**) by the Assistant Director – Planning was considered, and the following recommendations put forward for Council approval:

It be recommended to Council that:

- a) the outcome of the public consultation be noted;**
- b) the Article 4 Directions in Abbey and Bulkington Conservation Areas be confirmed and made permanent; and**
- c) Delegated Authority be given to the Assistant Director – Planning in consultation with the Portfolio Holder of Planning to make, if any, amendments prior to the Council meeting.**

Cabinet – 21st February 2023

d) GENERAL FUND REVENUE BUDGET 2024/25

The Council will be asked to consider recommendations agreed at Cabinet to be held prior to full council on Wednesday, 21st February on the General Fund Revenue Budget 2024/25. **Report to follow**

e) HOUSING REVENUE ACCOUNT BUDGET 2024/25

The Council will be asked to consider recommendations agreed at Cabinet to be held prior to full council on Wednesday, 21st February on the Housing Revenue Account Budget 2024/25. **Report to follow.**

f) CAPITAL BUDGET 2024/25

The Council will be asked to consider recommendations agreed at Cabinet to be held prior to full council on Wednesday, 21st February on the Capital Budget 2024/25. **Report to follow.**

g) COUNCIL TAX 2024/25 – following consideration of the above items the Council is required to determine the Council Tax for 2024/25. **Resolution to follow**

h) TREASURY STRATEGY 2024/25

The Council will be asked to consider recommendations agreed at Cabinet to be held prior to full council on Wednesday 21st February on the Treasury Management and Budgetary Framework 2024/25. **Report to follow**

NOTE: Points of Order and Personal Explanation can only be raised in accordance with Council Procedure Rules which are set out below:-

Point of order

A Member may raise a point of order at any time. The Mayor will hear them at the end of the speech of the Member speaking at the time the point is raised. A point of order may only relate to an alleged breach of these Council Rules of Procedure or the law. The Member must indicate the rule of law and the way in which he/she considers it has been broken. The Mayor shall consider the Point of Order and, if necessary, take advice on the matter from the Monitoring Officer and, shall then rule on the Point of Order raised. There shall be no discussion or challenge to the advice given or the Mayor's decision in the meeting. If a Member persistently seeks to raise a Point of Order but is unable to identify the procedure rule or legal principle infringed then, after having been warned by the Mayor, any further abuse of this procedure rule shall not be tolerated and the Mayor shall move that the Member not be heard further pursuant to Procedure Rule 4.19.13. The ruling of the Mayor on the matter will be final.

Personal explanation

A Member may make a point of personal explanation at any time. The Mayor will hear them at the end of the speech of the Member speaking at the time the point is raised. A personal explanation may only relate to some material part of an earlier speech by the Member which may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

Council - Schedule of Declarations of Interests – 2023/2024

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	General dispensations granted to all members under s.33 of the Localism Act 2011			Granted to all members of the Council in the areas of: <ul style="list-style-type: none"> - Housing matters - Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - An allowance, payment given to members - An indemnity given to members - Any ceremonial honour given to members - Setting council tax or a precept under the Local Government Finance Act 1992 - Planning and Licensing matters - Allotments - Local Enterprise Partnership
	R. Baxter-Payne	Employed by Vinci Construction Major Projects UK Ltd (VCMP UK Ltd); County Councillor - WCC	Spouse: Self-employed childminder Member of the following Outside Bodies: <ul style="list-style-type: none"> • West Midlands Combined Audit, Risk and Assurance Committee • Warwickshire Adult Social Care and Health Overview and Scrutiny Committee (substitute) 	
	B. Beetham	Senior PowerBi Lead at Wye Valley Hospital Trust; Warwickshire County Council – Camp Hill	Member of the following Outside Bodies: <ul style="list-style-type: none"> • Camp Hill Urban Village: Pride in Camp Hill Board • Committee of Management of Hartshill and Nuneaton Recreation Ground 	
	D. Brown	Employed by H.M Land Registry	Regional Coordinator, Ragdoll Rescue Charity. Representative on the following Outside Bodies: <ul style="list-style-type: none"> • Exhall Education Foundation (Council appointment). 	
	C. Cape	Director of Capability Coaching and Consultancy Ltd.	Member of the following Outside Bodies: <ul style="list-style-type: none"> • Armed Forces Covenant Meeting 	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	J. Clarke	Employed by Marcus Jones MP	County Councillor W.C.C. Nuneaton Conservative Association; Deputy Chairman Officer of the Abbey Preceptory No.541 - Nuneaton	
	T. Cooper	None	Member on the following Outside Bodies: <ul style="list-style-type: none"> • Camp Hill Urban Village: Pride in Camp Hill Board • Committee of Management of Hartshill and Nuneaton Recreation Ground 	
	J. Coventry-Moreton	School Receptionist – St Nicholas Chamberlain School, Bedworth	Share in rental dwelling at Sealand Drive, Bedworth and Tresilian Road, Bedworth.	
	S. Croft	Employed at Holland & Barrett Retail Ltd	Treasurer of the Conservative Association Member of the following Outside Bodies: <ul style="list-style-type: none"> • Champion for Safeguarding (Children and Adults) • Local Government Superannuation Scheme Consultative Board • West Midlands Employers 	
	L. Cvetkovic	Head of Geography (Teacher), Sidney Stringer Academy, Coventry	The Bulkington Volunteers (Founder); Bulkington Sports and Social Club (Trustee) Member on the following Outside Bodies: <ul style="list-style-type: none"> • Building Control Partnership Steering Group 	
	L. Downs	River Bars Limited; Coventry Plus Beyond the Plane Little Caesars Donuts Limited NBBC Council Contract for market pitch	Member on the following Outside Body: <ul style="list-style-type: none"> • Hammersley, Smith and Orton Charity 	
	K. Evans	Employed by the Local Government Association	Sponsorship: Election Expenses – North Warwickshire Conservative Association	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
			Membership of Other Bodies: <ul style="list-style-type: none"> • Substitute Member of the West Midlands Combined Audit, Risk and Assurance Committee 	
	C. Golby		Member of Warwickshire County Council. Membership of Other Bodies: <ul style="list-style-type: none"> • Nuneaton and Bedworth Safer and Stronger Communities Partnership • Nuneaton and Bedworth Community Enterprises Ltd. • Nuneaton and Bedworth Home Improvement Agency • Safer Warwickshire Partnership Board • Warwickshire Housing and Support Partnership • Warwickshire Police and Crime Panel • George Eliot Hospital NHS Trust – Public/User Board • George Eliot Hospital NHS Foundation Trust Governors • District Leaders (substitute) • Local Enterprise Partnership (substitute) • Coventry, Warwickshire and Hinckley and Bosworth Joint Committee (substitute) 	
	M. Green	Employed by Horiba Mira – Engineering Technician	Chair of Education Standards Committee – St Thomas More School. School Appeals Panel Member Our Lady of the Angels Church. President – St Vincent De Paul Society Nuneaton. Director – Holy Spirit Catholic Multi Academy Company. Member of the George Eliot Fellowship Member of Other Bodies: <ul style="list-style-type: none"> • Friendship Project for Children. 	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
			<ul style="list-style-type: none"> • Nuneaton Education Strategy Group • Trustee of Abbey Theatre 	
	J. Gutteridge		<p>Representative on the following Outside Bodies:</p> <ul style="list-style-type: none"> • Warwickshire Health and Wellbeing Board • Age UK (Warwickshire Branch) • Committee of Management of Hartshill and Nuneaton Recreation Ground • West Midlands Combined Authority Wellbeing Board <p>Member of NABCEL</p>	
	B. Hammersley	County Councillor – W.C.C.	<p>Member on the following Outside Bodies:</p> <ul style="list-style-type: none"> • Hammersley, Smith and Orton Charity 	
	S. Harbison	Self Employed	<p>Member of Conservative and Unionist Party.</p> <p>Member on the following Outside Bodies:</p> <ul style="list-style-type: none"> • Astley Charity 	
	J. Hartshorn	Employed by Asda Nuneaton	Member of Nuneaton Conservatives	
	J. Kennaugh	<p>County Councillor W.C.C.</p> <p>Employed by FedEx Express UK Ltd</p>	<p>Member of the W.C.C. Regulatory Committee</p> <p>Member of the Conservative Party</p> <p>Member of UNITE the Union</p> <p>Member on the following Outside Bodies:</p> <ul style="list-style-type: none"> • EQUiP 	
	K.A. Kondakor	Electronic and Embedded Software Design Engineer (self-employed)	<p>Unpaid Director of 100% Renewables UK Ltd</p> <p>Green Party (E&W)</p>	
	S. Markham	County Councillor – WCC (Portfolio Holder for Children’s Services)	<p>Governor at Ash Green School</p> <p>Member of the following Outside Bodies:</p> <ul style="list-style-type: none"> • Nuneaton and Bedworth Sports Forum • Warwickshire Direct Partnership • Warwickshire Waste Partnership • Sherbourne Asset Co Shareholder Committee • Hammersley, Smith and Orton Charities 	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
			<ul style="list-style-type: none"> Trustee of Abbey Theatre 	
	G. Moreton	Member of School Appeals Panels at Warwickshire County Council	Share in rental dwellings at Sealand Drive, Bedworth and Tresillian Road, Exhall. Member on the following Outside Bodies: <ul style="list-style-type: none"> Bedworth Neighbourhood Watch Committee 	
	B. Pandher		Member of Warwickshire County Council President & Trustee of Nanaksar Gurdwara Gursikh Temple Coventry; Coordinator of Council of Sikh Temples in Coventry; Secretary of Coventry Indian Community; Trustee of Sikh Monument Trust Vice Chair Exhall Multicultural Group Member of the following Outside Bodies: <ul style="list-style-type: none"> Foleshill Charity Trustee – Proffitt’s Charity Conservative Party 	
	N. Phillips	Employee of DWP	Member of: <ul style="list-style-type: none"> Nuneaton Labour CLP The Fabian Society The George Eliot Society The PCS Union Central Credit Union Stockingford Sports and Allotment Club Haunchwood Sports and Social Club 	
	J. Sheppard		Partnership member of the Hill Top and Caldwell Big Local. Director of Wembrook Community Centre. Member of Labour Party	Dispensation to speak and vote on any matters of Borough Plan that relate to the Directorship of Wembrook Community Centre
	T. Sheppard		Member of Unite Union Member of Labour Party	
	E. Shiers	Employed by and Director of Cannon Enterprise Ltd. Director of The Fresh	The Labour Party Coventry East Credit Union Member of the Pride in Camp	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
		Dessert Company	<p>Hill Board.</p> <p>Member of the governing board for Camp Hill Primary School.</p> <p>Member of the Board of Trustees of Camp Hill Community Association.</p> <p>Volunteer for the Coventry and Warwickshire district RSPCA</p> <p>Director Community Interest Company Chill (alternative education provision for young people)</p>	
	J. Singh	Owner of business named Gardening under Rural Services based at Sedgies, Bedworth.		
	R. Smith		<p>Chairman of Volunteer Friends, Bulkington;</p> <p>Trustee of Bulkington Sports and Social Club;</p> <p>Member of the following Outside Bodies:</p> <ul style="list-style-type: none"> • A5 Member Partnership; • PATROL (Parking and Traffic Regulation Outside of London) Joint Committee; • Building Control Partnership Steering Group • Bulkington Village Community and Conference Centre • West Midlands Combined Authority and Land Delivery Board 	
	M. Tromans	<p>Warwickshire County Councillor (Galley Common)</p> <p>Share in a rental property in Hydes Pastures, Nuneaton</p>	<p>Member of WI</p> <p>Member of the Conservative Party</p>	
	R. Tromans	<p>Compliance, GIM, Coventry</p> <p>Warwickshire County Councillor (Weddington)</p> <p>Share in a rental property in Hydes Pastures, Nuneaton</p>	<p>Member of the Conservative Party</p> <p>Member of the Chartered Institute of Credit Management</p> <p>Representative and the West Midlands Combined Transport Overview and Scrutiny Panel</p>	

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	M. Walsh	Employed by MacInnes Tooling Ltd. – UK Sales Manager		
	C.M. Watkins	Employee of Nutri Pack	Representative on the following outside bodies: <ul style="list-style-type: none"> • Nuneaton and Bedworth Community Enterprises Ltd. (NABCEL) 	
	K.D. Wilson	Delivery Manager, Nuneaton and Warwick County Courts, HMCTS, Warwickshire Justice Centre, Nuneaton	Deputy Chairman – Nuneaton Conservative Association	
Corporate Tenancies: properties are leased by NBBC to Nuneaton and Bedworth Community Enterprises Ltd, of which I am a Council appointed Director.				
Representative on the following Outside Bodies: <ul style="list-style-type: none"> • Director of Nuneaton and Bedworth Community Enterprises Ltd (NABCEL) • Coventry, Warwickshire and Hinckley & Bosworth Joint Committee • District Council Network • Local Government Association • LGA People & Places Board (Member) • West Midlands Combined Authority 				
	M. Wright			

4A.9 PUBLIC PARTICIPATION

4.9.1 General

At each Ordinary Meeting or Extra Ordinary Meeting of the Council, 20 minutes (which can be extended at the discretion of the Mayor) shall be set aside for questions or statements from the public gallery by any resident of the Borough in relation to matters in respect of which the Council has powers or duties, or which affect the Borough. In the case of an Extra Ordinary Meeting the question or statement must relate to the business of that meeting.

4.9.2 Notice of Questions and Statements

No such question shall be asked, or statement made, unless it shall have been delivered in writing to the Head of Paid Service no later than 12 noon on the day before the meeting of the Council.

4.9.3 Scope of Questions and Statements

The Head of Paid Service may reject a question or statement if it:

- a) is not about a matter for which the Council has a responsibility or which doesn't affect the Borough;
- b) is defamatory, frivolous or offensive;
- c) is substantially the same as a question or statement which has been put at a meeting of the Council in the past six months;
- d) requires or involves the disclosure of confidential or exempt information; or
- e) It is not a question nor a statement, as provided for in these Procedure Rules.

4.9.4 The Mayor will invite the relevant Cabinet Member or Committee Chair to give a reply. Such reply shall not exceed five minutes. In the case of a question, on the discretion of the Mayor, a supplementary question may be asked if arising directly from the reply, provided that the original allocation of five minutes is not exceeded. The Mayor may reject a supplementary question on any of the grounds detailed in paragraph 4.9.3 above

4.9.5 Time Limit and Number of Questions

No question or statement shall exceed three minutes. In the event of there being more than one question or statement, the Head of Paid Service will ensure that questions and statements are dealt with in the order received. At the expiry of the 20 minute period, or such period as may be agreed by the Mayor, or after the reply to the final question or statement, whichever shall first occur, the Council will proceed to the next business.

4.9.6 Record of Questions and Statements

The question or statement and the reply given shall be minuted.

4.9.7 Reference of Question to the Cabinet or a Committee

Unless the Mayor decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Cabinet or the appropriate Committee. Once seconded, such a motion will be voted on without discussion.

4.9.8 Any question or statement which cannot be dealt with during Public Participation because of lack of time will be dealt with in writing, and recorded in accordance with paragraph 4.9.6.

4A.10 QUESTIONS BY COUNCILLORS

4.10.1 A Member of the Council may ask the Leader of the Council or the Chair of a Committee any question without notice upon an item of the report of the Cabinet or a Committee (respectively) when that item is being received or under consideration by the Council.

4.10.2 Questions on Notice at Full Council

At each meeting a Member of the Council may ask no more than one question (but see 10.3(b) below) on any matter in relation to which the Council has powers or duties, or which affects the Borough. For questions from Members, Paragraph 4.9.4 shall apply. A Member may choose to ask their permitted question of either:

- a Member of the Cabinet; or
- the Chair of any Committee, Panel or Sub-Committee

4.10.3 No such question under paragraphs 10.2 or 10.3 shall be asked unless: (a) the question has been delivered in writing to the Head of Paid Service and Leader before 12 noon on the day before the meeting of the Council; or (b) where the question relates to urgent matters, they have the consent of the Mayor or the Leader of the Council or the Portfolio Holder to whom the question is to be put or in the case of a Committee, Panel or Sub-Committee, the Chair, and the content of the question is given to the Head of Paid Service at least three hours before the time that the meeting is due to start.

4.10.4 Response

An answer may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner.

4.10.5 Time Limit

The maximum time for Members' questions shall not normally exceed 24 minutes, and the Mayor shall have discretion to limit the questions as he or she shall see fit.

4.10.6 Reference of Question to the Cabinet or a Committee

Any Member may move that a matter raised by a question be referred to the Cabinet or the appropriate Committee. Once seconded, such a motion will be voted on without discussion.

4.10.7 Any question or statement which cannot be dealt with because of lack of time will be dealt with in writing in accordance with paragraph 10.5 (c).

4.10.8 Questions on Notice at Committees, Panels or Sub- Committees

A Member of a Committee, Panel or Sub-Committee may, upon giving notice, ask the Chair of it one question on any matter in relation to which the Council has powers or duties, or which affect the Borough and which falls within the Terms of Reference of that Committee, Panel or Sub-Committee

NUNEATON AND BEDWORTH BOROUGH COUNCIL

Report to: Audit and Standards Committee – 9 January 2024

From: Chief Executive

Subject: Publicity Protocol – change to the constitution

1. Purpose of the report

1.1 To consider and approve the recommendations from the officers to publicity protocol and recommend changes to the Constitution.

2. Recommendations

- 2.1 That the recommendations as set out in the report and appendix be approved; and;
- 2.2 IT BE RECOMMENDED TO COUNCIL that the Constitution be amended accordingly.

3. Background

- 3.1 The Audit and Standards Committee has previously asked for regular review of the Publicity Protocol that is set out in the Council's Constitution. The protocol has not been updated since 2021 and so it is felt timely to bring this in front of the Committee for consideration.
- 3.2 The Publicity Protocol sets out the rules that the Council must follow in producing publicity. In effect, the protocol replicates and produces a local version of the "Code of Recommended Practice on Local Government Publicity (the Code)" produced by the Local Government Association and the requirements set out in the Local Government Act 1986.
- 3.3 There are a number of small changes suggested to the protocol, which are marked as tracked changes in the attached Appendix. Some of the changes reflect the fact that, although this protocol has particular significance during the pre-election period, this protocol and Code are in effect year-round. There are however specific sections relating to the pre-election period.
- 3.4 Finally, a small number of suggested changes relate to specific regulations which are not all in force, or duplication of previous sections.

MARTYN HARRIS

a) 5G PUBLICITY PROTOCOL GUIDANCE

**In the Period Leading up to an Election/By-Election/Referendum/
Petitions**

5G.1 The Law

Publicity material produced by the Council is governed by the provisions of the Local Government Act 1986, and the revised Code of Recommended Practice on Local Government Publicity, which came into effect in April 2011. The Act defines publicity as “any communication in whatever form, addressed to the public at large or a section of the public”.

The Publicity Code provides guidance on the content, style, distribution and cost of Local Authority publicity. Local Authorities are required by S4(1) of the Act to have regard to the contents of this Code in coming to any decision on publicity.

5G.2 Principles

Publicity by local authorities should:

- a) be lawful;
- b) be cost effective;
- c) be objective;
- d) be even-handed;
- e) be appropriate;
- f) have regard to equality and diversity; and
- g) be issued with care during periods of heightened sensitivity.

5G.3 What is ‘Purdah’/the Pre-election period/Purdah?

~~The Pre-election period~~Election period (often known as “purdah”)~~The Pre-election Period (often known as Purdah)~~ runs from the date of publication of the Notice of Election through to and including the date of Election, until the close of poll. There are extra restrictions placed on the nature of publicity local councils may issue under the Publicity Code during this time, and all serving Members and Council Officers must be fully aware of the statutory requirements relating to publicity at this time.

5G.4 The Code ('the Code')

The general principle set out in the Code is that a Local Authority must not at any time publish any material that in whole or in part appears to be designed to affect support for a Political Party.

Publicity not only includes press releases issued to print, broadcast and social media, but also;

- a) most printed materials, which are sent to a wide audience
- b) newsletters
- c) information added to websites and/or social media during the period
- d) posters and leaflets
- e) badges, t-shirts and other 'giveaways'
- f) advertising
- g) exhibitions
- h) conferences
- i) consultation.

5G.5 Elections, Referendums and Petitions

~~The relevant sections in the Code state:~~

- ~~a) Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a Local Authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the Referendum is held.~~
- ~~b) Reg 5 of the Local Authorities (Conduct of Referendums) (England) Regs 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a Referendum which expresses support for, or opposition to a particular answer to a Referendum question relating to the constitutional arrangements of the Authority.~~
- ~~c) Reg 15 of the Local Authorities (Referendums, Petitions, Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the Authority, or to assist others to publish such material.~~
- d)a) The Code ~~goes on to~~ outlines some key principles which local authorities should adhere to during the period of heightened sensitivity before elections and referendums.

- i. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions;
- ii. During the period between the Notice of Election and the Election itself, the Council should not publish any publicity on controversial issues, or report views or proposals in such a way that identifies them with any individual Members or Groups of Members;
- iii. Publicity relating to individuals involved directly in the Election should not be published by local authorities during this period unless expressly authorised by or under statute;
- iv. It is permissible for local authorities to publish factual information which identifies the names, Wards and parties of candidates at Elections.
- v. In general, the local authorities should not issue any publicity which seeks to influence voters. However, this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support, or oppose a question put at a Referendum.
- vi. It is acceptable to publish material relating to the subject matter of a Referendum, for example, to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject to the vote.

5G.6 PUBLICITY PROTOCOL

- a) This Protocol takes effect from the ~~announcement date through to the day after the Polling Day~~ publication of the Notice of Election
- b) After the publication of the Notice of Election, restrictions on proactive publicity will apply in line with the Code and will remain until ~~0001-22:01 on the day after the~~ 0001-22:01 on the Polling Day.

5G.7 ADVICE FOR OFFICERS

- a) **Maintain Business as Usual** - but remember to exercise extra caution when planning any publicity or events that may usually involve Members or elected officials.
- b) **Supporting Political Parties** - Council staff must always be careful not to give the impression of supporting a Political Party, set of policies or a candidate.

- c) **Publicity** - Officers involved in publicising Council services need to take extra care not to influence the outcome of the Election in any way. Care needs to be taken to ensure that publicity could not be perceived as seeking to influence public opinion or to promote the public image of a particular candidate or group of candidates.
- d) **Activities where Political Candidates are Present** - Staff should exercise caution if involved in activities at which political candidates or agents are present: for example, appearing in photographs with candidates should be avoided.
- e) **Staff must not engage in political activity during working hours or by using Council facilities.** Some staff hold “politically restricted posts” which limit the political activity they can be involved in outside work.
- f) **This Protocol applies to Publicity about all Members’ who are “involved directly in the election”** whether as candidates or in some other capacity. Publicity relating to individuals involved directly in the election will not be published during this period unless expressly authorised.
- g) **Controversial Matters/Views on Policies** - Publicity should not be issued which deals with controversial matters or which reports views on policies, in a way that identifies them with individual Members or groups of Members.
- h) **If an Issue is a Matter that is Politically Sensitive** - the Communications Team will recommend that this should be held until after the Election protocol period, unless the activity is particularly time-sensitive.
- i) **Events Attracting Public/Media Interests** - Do not invite Members who are standing for Election to events or invite them to be involved in any publicity/scheduled events, attracting significant public and media interest at which Members may be present, where it could be construed that the event was being used for political purposes.
- j) **Press Releases** - issued to the media cannot include any quotations from Members’ involved in the Election, if quotes are necessary they can be attributed to an officer. It is common practice to avoid quoting any Members unless in an emergency/crisis situation when the relevant Portfolio Holder or Leader will be quoted ~~(unless they are up for Election).~~ To be on the safe side, avoid references to, and quotes from, all other Members.
- k) **Re-Election** - The Communications Team must avoid mentioning any Member who is seeking re-election. ~~If this cannot be avoided the advice is to balance this with reference to Members from opposing Parties.~~
- l) **If a Council Event cannot be Postponed until after the Election** - it is vital it is organised in such a way to minimise the likelihood of criticism arising that the real purpose of the event is to publicise one particular Party. For example, if a candidate or representative from one Party is to attend, then representatives of other Parties should also be invited, and all should be asked not to use the event for political purposes.

- m) **It is Permissible to Publicise Factual Information** - identifying names, Wards and Parties of candidates at Elections.

5G.8 ADVICE FOR MEMBERS

- a) **This Guidance applies to Publicity about all Members** -- whether they are involved directly in the Election ~~whether as candidates or in some other capacity or not~~
- b) **The Word “Publicity” has the Widest possible Meaning** - and the restrictions apply to events organised by the Council that attract significant numbers of the public, or media interest. Members who are standing as candidates, or acting as agents, should not be involved in such events at all. Other Members who are involved in the Election should not use such events to publicise themselves, their parties, or the policies or candidates they support.
- c) **Members can attend Events** - organised by the Authority or other organisations but they won't be quoted or featured in any Council publicity.
- d) **With the Exception of the Mayor/Deputy Mayor** - when acting in a Civic capacity, Members must not take part in any Council arranged events that will have publicity attached to them, eg. photo calls/launches during ~~purdah~~the Pre-election period/Purdah.- This is because many initiatives will have involved Elected Members at some point in their development and they are likely to want to be quoted or help to publicise such projects: doing so during the pre-Election period could be construed as using your launch to obtain a political advantage. If the launch needs to proceed for operational reasons and cannot be brought forward or delayed until after, then Members who are directly involved in the Election should not be involved in any activity. Other Members should not use such events to publicise themselves, their parties, or the policies or candidates they support
- e) **It may be Necessary to Suspend** - the hosting of material produced by third parties or to close public forums during this period to avoid breaching any legal restrictions.
- f) **Speaking with the Press** - Members can talk to the press and media during this period and generate their own publicity. The restrictions only apply to official Council-organised publicity, including press releases or events. The rules in the Member and Officer Protocols about use of Council facilities must be observed. Members should also be aware that ~~purdah~~Pre-election/Purdah guidelines do not apply to the media so they are under no obligation to adapt their coverage or avoid asking for comment from candidates, agents or others directly involved in the Election.
- g) **If you Want to Visit a Council Service during the Purdah-Pre-election Period/Purdah** requests will be judged on a case by case basis, looking at the potential disruption that may be caused by any visit and any security or confidentiality concerns that may exist. If it is feasible for a candidate to

visit the Service, they should be asked not to use the event for political purposes. For example, it would be appropriate to ask visitors to ensure that no photographs are taken of Council Officers or Service users, that no quotes are sought from staff and that nobody is encouraged to do anything which could be construed as 'political' or in support of a particular candidate's campaign.

- h) **No Political Posters or Leaflets** - must be displayed on Council premises (including street furniture and the like) or vehicles.

5G.9 REACTIVE PUBLICITY

- a) Under the Code it is acceptable for Members holding key political or civic positions to comment in an emergency or in response to a major news event outside the Council's control. In such an instance it would be acceptable for a relevant Member to be quoted reacting to this event, unless they were personally up for election in which case another Senior Member would be quoted.
- b) Members involved in the Election may not be quoted in a proactive news release issue.
- c) It is better to avoid proactively scheduling PR events and photo opportunities during this period if possible.

5G.10 PRESS RELEASES/MEDIA ENQUIRIES

- a) The Communications Team will be responsible for agreeing and issuing ALL press releases – no matter how seemingly insignificant, with the relevant Director before they are issued including press releases requested by individuals or other organisations, eg. schools and Members.
- b) All media enquiries must be referred to the Communications Team who will respond to the enquiries in line with the Council's Media Protocol, taking special care to avoid controversial issues or promoting individual Members.
- c) The normal practice of commissioning photographs of Members at major events and activities where they would be expected to play a lead role for PR/media purposes must also be avoided during this period. Where possible it should be arranged outside the Election protocol period. Where this is not possible, advice should be sought from the Senior Communications & Events Officer/or equivalent or the Monitoring Officer.
- d) Staff and Members must contact the Chief Executive for more information about what Council premises are permitted for use by candidates during the ~~purdah~~Pre-election period/Purdah.

COUNCIL AGENDA ITEM NO. 11b

NUNEATON AND BEDWORTH BOROUGH COUNCIL

Report to: Audit and Standards Committee – 9th January 2024

From: Assistant Director – Governance & Democracy

Subject: Contract Procedure Rules – Update

1. Purpose of Report

1.1. The purpose of this report is to note the proposed changes to the Contract Procedure Rules considering the senior management restructure and changes in procurement law, then to recommend to Full Council for formal approval in order to change and update the Constitution.

2. Recommendations

- 2.1. To note the proposed changes to the Contract Procedure Rules; and
- 2.2. IT BE RECOMMENDED TO COUNCIL that the Constitution be amended accordingly.

3. Background

3.1. Under section 135 of the Local Government Act 1972, a local authority may make standing orders (or as defined by this Council, Contract Procedure Rules) with respect to the making of contracts by them or on their behalf for the supply of goods or materials or for the execution of works. The current Contract Procedure Rules (CPR's) have been in place since May 2020 via delegated authority (28th May 2020) due to the COVID-19 pandemic which cancelled meetings within the initial response phase to the pandemic.

4. Body of the report

- 4.1. The Council has undertaken a senior management restructure this financial year which has resulted in a need to review the CPR's to ensure they align with the new structure noting key changes in personnel. Other changes include removing reference to EU and other updates to provide further clarification and/or reflection of best practice.
- 4.2. Appendix A include the revised CPR's with tracked changes for review and approval.
- 4.3. The current CPR's are contained within the Constitution at Part 4 – Rules of Procedure, 4G Contract Procedure Rules.

4.4. Central government issued a consultation in December 2020 to obtain feedback on proposals to implement a new UK Public Procurement legal framework. Due to this, no changes have been made to the Contract Procedure Rules as they've been fit for purpose since May 2020 until now. However, since the UK officially left the EU and noting the Council's senior management restructure, small changes are required to ensure the procedure is up to date.

5. Future Considerations

5.1. Further to 4.4, it should be noted that the Procurement Act 2023 received Royal Assent on 26 October 2023 and is expected to come into force in Autumn 2024 (with a six months' notice period ahead of the go live date). Following the UK's exit from the EU, the UK Government deposited its Instrument of Accession to join the World Trade Organisation's (WTO) Agreement on Government Procurement (GPA) becoming an independent member when the transition period ended on 31 December 2020. This guarantees access to £1.3 trillion in overseas public procurement markets providing major export opportunities for British businesses. Due to the UK's commitment to the GPA and following the UK's departure from the EU, the UK can create its own legislative framework working in accordance with the principles of the GPA:

- a) Fairness
- b) Impartiality
- c) Transparency
- d) Non-discrimination

5.2. The Procurement Act intends to comprehensively streamline and simplify the complex framework of regulations that currently govern public procurement by creating a new legislative framework for UK public procurement.

5.3. Once secondary legalisation is in place, the Council will finalise its Contract Procedure Rules and will report back to the Committee later in the year to implement a revised set of Contract Procedure Rules which will align with the new legalisation. For the avoidance of doubt, this report seeks to amend the current Contract Procedure Rules slightly by updating in line with the current Council structure but also due to the departure from the EU.

6. Appendices

Appendix A – Contract Procedure Rules (Tracked Changes)

7. Background Papers (if none, state none)

None.

MATTHEW WALLBANK

Nuneaton & Bedworth



CONTRACT PROCEDURE RULES

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PROCEDURE RULE 1: Introduction

The purpose of these Procedure Rules is to:-

- Ensure that the Council promotes the probity and integrity of the procurement process;
 - Provide employees involved in the procurement process a framework within which to work;
 - Ensure fairness in allocating contracts and protect employees from allegations of corruption and/or collusion ~~with~~ from suppliers and contractors;
 - Promote public accountability;
 - Ensure compliance with all legal requirements;
 - Achieve value for money on behalf of the Council; and
 - Support the Council's corporate aims and objectives in relation to procurement.
- 1.2 Procedure Rules must be complied with strictly. They are minimum requirements and any instances of non-compliance may result in disciplinary action being taken. A more thorough procedure may be appropriate for a particular contract such as where [The Public Contracts Regulations 2015](#) or the [Concession Contract Regulations 2016](#) apply (~~EU Regulations~~). Please contact the Procurement Team or see the Procurement Toolkit on HPRM/Dash for guidance.
- 1.3 Any consultant, agent or contractor acting on behalf of the Council must comply with these Contract Procedure Rules and this must be a condition of their employment.
- 1.4 Contracts let on behalf of a consortium, association or similar body of which the Council is a member should comply with the rules of the body or lead authority.
- 1.5 The amounts £A to £D in these Procedure Rules have the initial values given to them as follows:-
£A = £7,500
£B = £25,000
£C = £125,000
£D = £3,500,000
- 1.6 All monetary values included in these Procedure Rules relate to the total value of the contract or framework agreement including extension options and shall be deemed to exclude any Value Added Tax applicable.
- 1.7 The ~~Executive Strategic~~ Director – ~~Resources~~ Finance & Governance is designated as the responsible officer in accordance with [Section 151 of the Local Government Act 1972](#) (for the proper administration of the

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Council's financial affairs) and the designated officer in accordance with [Section 114 of the Local Government Finance Act 1988](#) (incurring of unlawful expenditure) and is referred to in these Procedure Rules as the Chief Financial Officer.

- 1.8 The Chief Financial Officer shall review all monetary limits annually and any amendments, if appropriate having regard to inflation and other relevant factors, shall be reported to the ~~Executive Director – Operations and~~ Management Team then the Audit and Standards Committee for consideration with a recommendation to Council for approval and adoption.
- 1.9 Questions of interpretation of these Contract Procedure Rules should be referred to the ~~Corporate Assistant Director – Governance & Democracy, the Head of Audit and Governance, the Monitoring Officer, Governance & Audit Manager, Strategic Creditors & the Procurement Manager Supervisor, the Procurement Team~~ and the Chief Financial Officer.
- 1.10 References to the Chief Financial Officer shall include other employees authorised to undertake duties on behalf of the Chief Financial Officer, generally the Deputy Chief Financial Officer (~~Head of Financial Services~~ Assistant Director - Finance).

PROCEDURE RULE 2: Scope

- 2.1 These Contract Procedure Rules relate to any arrangement made by, or on behalf of, the Council for the carrying out of work or for the procurement of goods, works or services. These include arrangements for:-
 - The supply or disposal of goods;
 - Hire, rental or lease of goods or equipment;
 - Execution of works; ~~and~~
 - The delivery of services including those relating to the recruitment of temporary staff, land and property transactions and financial and consultancy services; ~~and~~
 - Service Concessions and Work Concessions ([The Concession Contracts Regulations 2016](#))
- 2.2 These Procedure Rules do not apply to:-
 - The employment of permanent staff ;
 - Agreements regarding the acquisition, disposal or transfer of land, for which Financial Regulations shall apply;
 - Insurance policies;
 - Treasury Management transactions; ~~;~~
 - Engagement of Legal Counsel; ~~;~~
 - Grants from the Council (except where they are to buy services); ~~;~~

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- Public to Public cooperation and 'In House' contracts subject to fulfilling the test criteria in [Regulation 12](#) of the [EU Regulations](#);
- Engaging entertainment acts and performers where the value is lower than the [thresholdEU Regulation threshold \(EU threshold\)](#).

2.3 The use of e-procurement technology and Purchasing Cards does not negate the requirement to comply with all elements of these Contract Procedure Rules.

PROCEDURE RULE 3: Exemptions

3.1 Contract Procedure Rules are intended to protect the Council, and only under circumstances which are exceptional and unavoidable, shall authority be given to waive them. All exemptions must be requested using the Exemption Request Form in HPCM/Dash. Exemptions granted shall be recorded on the Contract Database – please contact the Procurement [Team](#) for further information.

3.2 Requests for all exemptions and the reasons for accepting or rejecting the request must be in writing (includes e-mail).

Generally, an exemption will only be approved if it is because of an unforeseeable emergency involving immediate risk to persons or property, disruption to council services or in the best interest of the service.

3.3 An exemption to these Contract Procedure Rules may only be made:-

- By the Chief Financial Officer in consultation with the [Assistant Director – Governance & Democracy, the Head of Audit and GovernanceCorporate Governance & Audit Manager and the Strategic Creditors & Procurement Manager](#) for contracts estimated to be valued up to £C (£125k) or up to the [threshold EU threshold](#) if on the Forward Plan. (If the Chief Financial Officer is applying for an exemption [\(or the Assistant Director – Governance & Democracy or the Head of Audit and Governance\)](#) then he/she must consult with the [Executive Director – OperationsChief Executive, Corporate Governance & Audit Manager and Strategic Creditors & Procurement Manager](#).)
- In consultation with the relevant Portfolio holder for contracts estimated to exceed £C (£125k) if no decision has been made by Cabinet/Forward Plan;

Exemptions cannot be requested if the value of the contract exceeds the [thresholdEU threshold](#). However, an exemption may be allowed [subject to the Regulations or](#) if the proposals

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are non-commercial and satisfy the 'Teckal' tests provided in [EU Regulation 12](#).

Advice on the 'Teckal' principle can be obtained from the Procurement Team.

- 3.4 Under the principles of Value for Money (VFM) the Council should discourage requests for the Council to obtain only one quotation or tender unless there is only one suitable supplier available. Where there is only one suitably qualified supplier such as for education services and embedded software licence renewals, then all reasonable efforts to secure VFM must be made.

Collaborative Procurement Framework Arrangements

- 3.5 In order to secure VFM, the Council may enter into collaborative procurement arrangements. The Procurement Team must be consulted where a purchase is to be made using collaborative purchasing arrangements with a Local Authority, government department, statutory undertaker or public service purchasing consortium. Where the Council is acting as the lead authority in a consortium for the procurement of goods, works or services, these Contract Procedure Rules will be applicable.
- 3.6 All purchases made via a Local Authority consortium, such as CSW, ESPO, CCS, PFH or CBC, are deemed to comply with these Contract Procedure Rules and an exemption is not required. However, purchases above ~~the EU threshold~~ threshold must be let under the EU Regulations, unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU Regulations on behalf of the council as a named customer and other consortium members.
- 3.7 Framework agreements, due to their nature, may be comprised of several suppliers, and a robust selection process should be undertaken to ensure that the most economically advantageous is selected. When the price is pre-determined and fixed, with a pre-released pricing tariff which can be referred to, a direct award may be made. In any instance where the cost (or specification) of the contract requirement is not fixed, then **all** suppliers capable of performing the contract need to be contacted with an opportunity to bid (Further Competition/Mini-Competition).
- 3.8 Access to Frameworks will be defined by the Framework owner. Some may require an access agreement authorised as per Procedure Rule 15.6 (copy to be forwarded to the Procurement Team ~~for recording on the Central Contract Database~~). Others may require that the framework contract number to be issued on purchase orders. ~~Where neither are offered, the Service Unit~~

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~~should obtain a copy of the original framework contract and attach the Council's Form of Undertaking document, authorised as per Procedure Rule 15.6 (copy to be forwarded to the Procurement Team for inclusion on the Central Contract Database).~~

Please contact the Procurement Team for advice on suitable Framework Agreements.

Manual Tender Request

- 3.9 All ~~Request for Quotes (RFQs) and~~ Tenders for £B (£25k) or higher will be required to run through the [Electronic Tender \(Portal Electronic process\)](#) and any resulting Contract must be recorded on the Central Contract Database. If a manual process is preferred, an exemption request in line with Procedure Rules 3.2 and 3.3 will be required. Reasons may include supplier capability or specialist categories.

PROCEDURE RULE 4: Steps Prior To Purchase

- 4.1 Before beginning a purchase the employee responsible for it must appraise the purchase, in a manner commensurate with its complexity and value, by:-
- Referring to the Procurement Toolkit on HPRM/Dash or contacting the Procurement Team;
 - For ~~Services requirements~~ above [threshold EU threshold](#) consider how the contract might improve the economic, social and environmental wellbeing of the Borough and consider if external consultation is required ([Public Services \(Social Value\) Act 2012](#));
 - Checking to ensure that the Procurement Team do not already have a preferred supplier agreement for the product/service or if a local agreement would be suitable;
 - Completing the Procurement Checklist located with the Procurement Toolkit on Dash/HPCM;
 - Appraising the need for the expenditure and its priority;
 - Defining the purpose and objectives of the purchase;
 - Assessing the risks associated with the purchase and determine how to adequately manage them;
 - Considering what procurement method is most likely to achieve the objectives, including internal or external sourcing, partnering, and collaborative procurement arrangements with another Local Authority, government department, statutory undertaker or public service purchasing consortium;
 - Consulting users as appropriate about the proposed procurement method, contract standards and methods of performance and user satisfaction monitoring;

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- Selecting the terms and conditions that are to apply to the proposed contract in consultation with the Procurement Team and Legal Services Team;
- Decide if the contract can be awarded in separate Lots and if so how many Lots an economic operator can tender for (contact the Procurement Team for advice);
- Confirming that approval has been given for the expenditure and that an appropriate budget exists;
- Ensuring that ~~EU~~ Regulations have been complied with, including the sending of a Prior Information Notice (PIN) (see Procedure Rule 6.3);
- Identifying the evaluation criteria (see Procedure Rule 10.2);
- Ensuring that the purchase has been reported in the Forward Plan if it is a key decision, i.e. incurring expenditure or creating savings of more than £125k. If it has not been reported as part of the Forward Plan it will be necessary to seek approval from Cabinet for the spend; and
- Ensuring that the Business Case has been approved where applicable.

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PROCEDURE RULE 5: Financial Limits

5.1 Minimum requirements for inviting competitive offers:-

Estimated Value of the Whole Contract*	Minimum Number of Suppliers to be Invited	Minimum Advertising Requirements	Procurement Method	Process Records Required	Form of Contract Required
Less than £A (£7.5k)	No minimum numbers, but must demonstrate VFM	Not Mandatory - Supplier selection based on Officer Knowledge	Verbal Quotation, or Written Quote where the contract value exceeds £1,000	Written record documenting the process (Including Written Quote submitted – if applicable)	Purchase Order (PO) and Invoice
£A to £B (£7.5k to £25k)	3 Written Quotations (4 if an internal Quotation is included)	Not Mandatory - Supplier selection based on Officer Knowledge	Written Quotation (E-Mail or Fax are also acceptable)	Quotations obtained	Purchase Order (PO) and Invoice
£B to £C or D if Works (£25k to £125k or £3.5M if Works)	3 Sealed Quotations (4 if an internal Quotation is included)	Advertisement on the authorised eTendering Portal (and Contracts Finder if Open Advert). <u>Option to keep closed but must be justified and several suppliers invited.</u>	Formal Sealed Written Quotations (Consult the Procurement Team)	Quotations obtained/ Clarification Register	<u>Quotation Schedule, Signed contract/agreement, PO and Invoice</u> (Record on Central Contracts Database)
More than £C (£125k) to <u>EU threshold</u> or more than D (£3.5M) if Works 	3 Tenders (4 if an internal Tender is included)	Advertisement on the authorised eTendering Portal and Contracts Finder.	Sealed Tenders (Consult the Procurement Team)	Tender Schedule, Tenders received and Clarification Register	Formal Sealed Contract (Record on Central Contract Database)
Above <u>threshold EU threshold</u> 	<u>Not less than 5 Open Process (advertised openly)</u>	Advertising <u>on Find a Tender EU and Contracts Finder</u>	Follow <u>EU Regulations</u> (Consult the Procurement Team)	Complete Log of entire Procedure	Formal Sealed Contract (Record on Central Contract Database)

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* Including extension options and shall be deemed to exclude any Value Added Tax applicable to the contract.

- Definition of 'Whole Contract' – all capital and revenue costs payable to the supplier over the life of the contract.
 - Procurement must be consulted if the contract is over £B (£25k) and the contract must be recorded on the Central Contract Database.
 - Definition of 'Works' - the outcome of any works such as is of itself sufficient to fulfil an economic or technical function – [Part 6 Schedule 2](#) of The Public Contract Regulations 2015 contact the Procurement Team for advice.
 - Concession contracts have the same ~~threshold thresholds~~ as 'Works'. In simple terms, a contract is a 'concession' when the economic operator is compensated by the ability to exploit a 'Work' or service on behalf of the authority (i.e. Leisure Centre Operator). However, concession contracts vary from standard service and 'Works' contracts in that, the operator must take a risk that no income is generated and a loss could be incurred. A full definition of what is meant by a 'concession contract' can be found in the [Glossary of Terms](#). If you believe your requirement could be a concession contract, please contact the Procurement Team for advice.
 - Identify if the Service can be reserved for certain qualifying organisations such as cooperatives ([EU Regulation 77](#)) contact the Procurement Team for advice.
- 5.2 Quotations must, as far as possible, be comparable by reference to a relevant British or equivalent internationally recognised Industry standard, or to an appropriately detailed specification.
- 5.3 Where it can be demonstrated that there are insufficient suitably qualified economic operators, suppliers or contractors to meet the competition requirement, all known suitably qualified suppliers or contractors must be invited.
- 5.4 For tenders which exceed £C (£125k) or £D (£3.5M) if Works, consideration should be given to re-tendering where two or fewer tenders are received, and where prices are high and VFM cannot be demonstrated.
- 5.5 An employee must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these Contract Procedure Rules or Public Procurement Regulations.
- 5.6 The splitting of contracts to avoid ~~EU~~ Regulations is prohibited. However, we may decide to award a contract as separate Lots

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as per [EU-Regulation 46](#) . Contact the Procurement Team for advice.

- 5.7 Wherever possible, consideration should be given to contract mergers and aggregation with existing preferred contracts to encourage VFM for the Council. It is essential that if a contract already exists for the supply of the same goods, services or works, the existing contract must be used in the first instance.

PROCEDURE RULE 6: ~~Eu~~Public Procurement Legislation And Advertising

- 6.1 ~~EU-p~~Procurement legislation is primarily based on directives. There are four directives, The Supplies Directive, The Services Directive, The Works Directive and The Concessions Directive. Each Directive provides for a ~~threshold~~ ~~threshold~~ sum above which all procurement contracts become subject to stringent ~~EU~~ rules and regulations. For detailed definitions of the activities covered by each directive and the current ~~thresholds~~ ~~thresholds~~ please consult the Procurement Toolkit or the Procurement Team.
- 6.2 Services and Works are categorised by the ~~EU~~-via Common Procurement Vocabulary (CPV) Codes. All Services and Works subject to ~~EU~~-Regulation ~~thresholds~~ ~~thresholds~~ must follow the ~~OE~~~~EU~~-[Find a Tender](#) process. However, [Regulations 74 – 77](#) of the ~~EU~~-Regulations provide for a light touch regime on certain Services defined by CPV codes in [Schedule 3](#). Public bodies must still observe general EC Treaty principles so it is advisable to follow the process defined for all contracts valued at more than £C (£125k) or D (£3.5M) if Works.
- 6.3 At the start of each financial year each Director may consider whether there is any likelihood of a particular contract exceeding the financial threshold relating to Prior Information Notices (PIN), as set out in the ~~EU~~-Regulations and if so, notify the Strategic Procurement and Creditors Manager. If a PIN is required it shall be published by the Procurement Team ~~in the Supplement to the Official Journal of the European Union~~ as quickly as possible after the beginning of the financial year to indicate what they plan to tender for in the forthcoming year.
- 6.4. If the ~~EU~~-Regulations apply the Council must comply with the following procedures:-
- Not less than 5 economic operators shall be invited to tender in an Open or Restricted procedure unless all attempts to maximise supplier engagement have been undertaken and the opportunity has not been restricted in any way (consult

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the Assistant Director – Governance & Democracy where applicable);

- The advertisement must be published in the Official Journal of the European Union on Find a Tender before it is advertised in any specialised journals, on the Councils eTendering portal or on any other national portal. Advertising must be proportionate to the total value of the contract or framework agreement and be sufficiently wide enough so as not to give grounds for ineffectiveness. EU Regulation 110 requires the Council to advertise opportunities on Contracts Finder within 24 hours if advertised elsewhere. If below £C (£125k) we may invite a minimum of 3 economic operators without advertising on Contracts Finder where access is by invite only on a Closed basis (i.e. not advertised elsewhere);-
- The timescale for inviting expressions of interest electronically shall be a minimum of 25 days (unless the urgency procedure is used in which case 15 days applies);
- The timescale for inviting tenders electronically shall be a minimum of 30 days (unless the urgency procedure is used). The Procurement Team shall be contacted for advice on Award letters and the standstill process in line with Part 3 of the EU Regulations - Remedies:-
- A Standstill period is compulsory on all tenders above £C (£125k) including Works sealed bids above £C (£125k) unless waived following approval with the Chief Financial Officer but, it must always apply to an above threshold tender as per the regulations and may be used if undertaken a mini-competition/further competition subject to advice from the framework agreement provider;
- Once the contract has been awarded, the Procurement Team shall place a Contract Award Notice on Find a Tender in the Official Journal of the European Union and Contracts Finder as per EU Regulation 108. By using eTendering, timeframes are shortened and advertising requirements satisfied, please refer to the Procurement Team for information.
- Where a project was not registered on Find a Tender with OJEU because it was estimated as being below the EU threshold, but then subsequently breaches the EU threshold, a voluntary Ex-Ante Transparency notice can be raised. Officers must seek advice of the Procurement Team as this is not recommended due to potential scrutiny by the Commission.

- 6.5 The penalties for non-compliance with EU Regulations are severe and failure to comply could expose the Council to legal action by contractors possibly resulting in setting aside the contract, fines, re-tendering costs and compensation. The Procurement Team should be notified of all EU tenders to

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ensure that the process is in line with The Public Contract Regulations 2015.

- 6.6. Following the UK's departure from the European Union, the EU Public Procurement Directives* and UK Public Procurement Regulations** (as amended) will continue to apply ~~during the transition period (31 January 2020 until 31 December 2020) until the implementation of the new Procurement Act~~. ~~Any Procurement let under the Procurement Regulations on the open market during the transition period must comply with the Procurement Regulations throughout the entire process, even if the Award is due to be completed after 31 December 2020.~~

*EU Public Procurement Directives (as amended)

- [The Public Contracts Directive 2014](#)
- [The Concessions Contracts Directive 2014](#)
- [The Utilities Directive 2014](#)

**UK Public Procurement Regulations (as amended)

- [The Public Contracts Regulations 2015](#)
- [The Concession Contracts Regulations 2016](#)
- [The Utilities Contracts Regulations 2016](#)

PROCEDURE RULE 7: Eligibility And Framework Agreements

- 7.1 Procurement Policy Note (PPN) 8/16 sets out the revised standard Selection Questionnaire (SQ). It replaces the current standard Pre-Qualification Questionnaire (PQQ). Use of a PQQ is now prohibited. It is mandatory for a potential supplier to complete Part 1 and Part 2 of the standard Selection Questionnaire, or the ESPD template, for all procurements above ~~EU-threshold~~~~thresholds~~.

The standard Selection Questionnaire has been developed to simplify the supplier selection process for businesses, in particular smaller firms, across the public sector. In developing the SQ the opportunity has been taken to make the questionnaire compliant with the European Single Procurement Document (ESPD), and amended the rules on the selection of suppliers.

Supplier selection is a key stage in public procurement where we gather information on and make assessments of the prospective bidders' credentials, before considering tenders. This includes gathering information about companies' track records, financial credentials, whether they have been involved in corruption, whether they meet various selection criteria, and so on.

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- 7.2 The standard Selection Questionnaire asks potential suppliers to initially just self-declare their status against the exclusion grounds and selection questions. Usually this will only be checked for the winning supplier.

The standard Selection Questionnaire is structured in 3 separate parts:

- Part 1 of the standard Selection Questionnaire covers the basic information about the supplier, such as the contact details, trade memberships, details of parent companies, group bidding and so on.
 - Part 2 covers a self-declaration regarding whether or not any of the exclusion grounds apply.
 - Part 3 covers a self-declaration regarding whether or not the company meets the selection criteria in respect of their financial standing and technical capacity.
- For below ~~EU T~~ threshold tenders the SQ questions can be used as a guide to assess suitability of suppliers in a one stage process (ITT/Sealed Quote). For works contracts valued between the supplies and services ~~threshold threshold~~ and the works ~~threshold threshold~~ we may use a two stage process and make use of the PAS91 PQQ.
 - European Single Procurement Document (ESPD) – ([Regulation 59](#)) - The Council shall accept an ESPD as a declaration of preliminary evidence normally required in a PQQ or SQ ([Regulation 65](#)). For more details contact the Procurement Team. Guidance on the use of Supplier Questionnaires/ESPD can be provided by the Procurement Team.

Framework Agreements (~~EU~~ [Regulation 33](#))

- 7.3 A Framework Agreement means an agreement between one or more contracting authorities or one or more economic operators. An agreement may be entered into with one or more providers and must be awarded in accordance with the ~~EU~~ Regulations.
- 7.4 Contracts based on Framework Agreements may be awarded by either:-
- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or

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- Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a further competition in accordance with the procedure defined in the Framework. This should include the following:
 - Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders;
 - Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - Awarding each contract to the tenderer who has submitted the best tender on the basis of the evaluation criteria set out in the specifications of the Framework Agreement.

PROCEDURE RULE 8: Records ([EU Regulations 83 and 84](#))

- 8.1 Where the total value is more than £B (£25k) but less than £C (£125k) the following documents must be kept (electronic records if using the electronic process):-
- Invitations to Quote;
 - Quotations received;
 - Log of Quotations opened to include date, time, and signatures of those present
 - A written record of any exemptions and the reasons for them;
 - If the most economically advantageous is not accepted the reasons why; and
 - Written records of communications with the successful contractor.
 - Award notice posted on Contracts Finder
 - All Contracts over £25k must be recorded on the Central Contract Database, please contact the Procurement Team for advice.
- 8.2 Where the total value exceeds £C (£125k), the following must be recorded:-
- The method for obtaining bids and method of advertising;
 - Details of any exemption and the reasons for them;
 - Any pre procurement discussions regarding compliance with the Public Services (Social Value) Act 2012 if above [EU](#) threshold;
 - The evaluation criteria in descending order of importance and any weightings used;
 - The evaluation results;
 - A copy of the SQ (if above [EU](#) threshold or Works), the invitation to tender and a list of the contractors invited;

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- Tender documents received;
- Details of any pre-tender market research;
- Any clarification or post-tender negotiation (includes any minutes of meetings);
- Name of successful tenderer and reasons for their selection
- Details of unsuccessful tenderers and reasons why they were unsuccessful
- Details of any Financial reports or accounts;
- The contract documents;
- Post contract evaluation and monitoring;
- Details of all approved variations;
- A full reconciliation of the contract sum and the amount(s) paid taking into account any variations to the original specification;
- Communications with contractors and with the successful contractor throughout the period of the contract; and
- Details of any site visits.

The Contract/Agreement -must be signed by an authorised officer of the Council's Legal Team as per the approved signatory and delegations list, and a copy of the contract must be forwarded to the Procurement Team to update the Central Contract Database. The Legal Team will require the relevant approval and authority in accordance with the Council Constitution in order to sign the Contract/agreement for the provision of goods, services and works.

NB In the event of a legal challenge all communications including e mails, may be requested by a Court as evidence. Therefore, it is essential that all documentation is stored securely and all communications/notes are undertaken in a professional manner.

- 8.3 All records must be kept for at least 3 years after the final settlement of the contract, 12 years if the contract is under seal. However, tender documents, which relate to unsuccessful contractors, need only to be kept for a period of 12 months from award of the contract, provided there is no dispute about the award. In some cases it may be desirable to retain documents for a longer period by scanning or using some other suitable method. Where the cost of the contract is to be met in part or in whole, by sources of external funding, the written records shall be retained in accordance with any directions of the external funder.

PROCEDURE RULE 9: Pre-Tender Market Research And Consultation (EU Regulation 40)

- 9.1 Employees may conduct market consultations prior to the issue of the Contract Notice/Advertisement in general terms about the

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nature, level and standard of the supply, contract packaging and other relevant matters, provided that this does not prejudice any potential contractor. Informing economic operators of our plans and requirements is acceptable providing it does not distort competition.

- 9.2 An employee must not seek or accept technical advice on the preparation of an Invitation to Tender (ITT) or quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential contractors or distort competition. If in doubt seek advice from the Director – Arts, Leisure & Democracy or the Strategic Creditors and Procurement Manager.
- 9.3 Where a Contracting Authority is having difficulty defining a specification or requires an innovative solution, it may decide to enter into a Competitive Dialogue or establish an Innovation Partnership with economic operators. The ~~EU~~ Regulations have established new processes to facilitate this (~~EU~~ Regulations 29 - 31) please contact the Procurement Team for further information.

PROCEDURE RULE 10: Standards And Award Criteria (~~EU~~ Regulation 67)

Standards

- 10.1 Employees must ascertain the relevant British or equivalent International Industry standard that applies to the contract and these must be used to properly describe the required quality. ~~The Director – Arts, Leisure & Democracy must be consulted if it is proposed to use a proprietary brand. Clarification can be sought from the Procurement Team where applicable.~~

Evaluation criteria (~~EU~~ Regulation 67) See also Procedure Rule 7.2

- 10.2 The evaluation criteria must be defined and documented before tenders or quotations exceeding £B (£25k) are sought. The criteria must be designed to secure Value For Money for the Council. Generally, this shall be the 'most economically advantageous' where considerations other than purchase price or cost apply. If above ~~EU~~ thresholds and a Restricted Procedure is to be used (SQ) then generally criteria used at the SQ stage cannot be repeated during the following Invitation to Tender (ITT) stage.
- 10.3 Considerations other than price should be included, and examples of criteria are listed below:-

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- Level of service;
- Quality of goods;
- Cost effectiveness;
- Delivery requirements;
- Environmental considerations;
- Functional characteristics, such as security, safety and control features;
- After sales service;
- ~~Technical assistance;~~
- ~~Social value;~~
- ~~Partnering;~~
- ~~Long term relationships;~~
- Cessation of contract clause to recognise the potential of withdrawal costs in the event of cancellation; and
- Where appropriate, contractors will adhere to the Council's Complaints Procedure.

PROCEDURE RULE 11: Invitations To Tender/Quotations Over £B (£25k)

- 11.1 The invitation to tender or quote shall state that no tender or quotation will be considered unless it is received by the date and time stipulated in the invitation. No tender or quotation delivered in contravention of this procedure rule shall be considered.
- 11.2 Every invitation to tender or quotation shall include the following:-
- A specification that describes the Council's requirements in sufficient detail to enable the submission of a competitive offer;
 - The goods, services or works required together with the terms and conditions of contract that apply. Under ~~EU~~ Regulations you cannot specify the manufacturer or model of goods required but you can give a detailed description of the specific features required;
 - A statement that says that the Council is not bound to accept a tender or quotation;
 - A full description of the evaluation criteria, including sub criteria.
 - No guarantee of spend where discretionary works apply;
 - Reference to the Council's Whistleblowing Policy (Confidential Reporting Code); and
 - A signed declaration of non-collusion.
 - A statement that the successful tenderer agrees to support our compliance with the [Local Government Transparency Code 2015](#) and the [Freedom of Information Act 2000](#)
 - A statement regarding payment of undisputed invoices within 30 days for Contractors and their Sub contractors

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- 11.3 If the contract is valued at over £C (£125k) the Invitation to Tender (or sealed quote for Works contracts) shall also include:-
- Provision for all tenders/quotes to be received electronically in accordance with e-tender procedures approved by the Chief Financial Officer. Faxed or e-mailed tenders shall not be considered;
 - Tender/Contract Timeframe;
 - The method by which any arithmetical errors discovered in the tender will be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa;
 - A requirement for tenderers to declare that the tender content, price or other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
 - A requirement for tenderers to complete fully and sign all tender documents including a Form of Undertaking and certificates relating to the Bribery Act 2010;
 - Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense; and
 - A description and definition of the evaluation criteria and, weighting;
 - Standard and, where appropriate, any Special Terms and Conditions; and
 - Any Collaborative partner Councils by name.
- 11.4 All contractors invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 11.5 ~~Contractors~~ ~~Tenderers~~ must be given an adequate period in which to prepare and submit a proper quotation or tender which is consistent with the urgency of the contract requirement. The ~~EU~~ Regulations lay down specific time periods in [Chapter 2, Section 3 - Procedures](#) (please contact the Procurement Team for advice). It is also best practice to comply with these time periods for all contracts that exceed £C (£125k).
- 11.6 Electronic tendering systems must be discussed and approved by the Chief Financial Officer and the ~~Corporate Governance & Audit Manager~~ ~~Head of Audit and Governance~~. Electronic systems need to comply with the spirit of these Procedure Rules. Faxed or e-mailed tenders will not be accepted. In addition to the Council's e-tendering portal all tenders over £C (£125k) will be advertised and have contract award notifications posted on Contracts Finder.

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- 11.7 Any shortlisting must have regard to the financial and technical standards relevant to the contract and the evaluation criteria.
For example:

This may include mandatory grounds for exclusion

- Members of the organisation's senior management team found guilty of fraud/ corruption
- Non-payment of taxes

Or discretionary grounds for exclusion

- Violation of social/environmental laws
- Grave misconduct
- Anti-competitive agreements
- Persistent deficient performance of Public Contracts

The minimum yearly turnover that operators are required to have shall not exceed twice the estimated contract value as per [EU Regulation 58 \(9\)](#)

For further information, please contact a member of the Procurement Team.

PROCEDURE RULE 12: Receipt And Opening Of Tenders/Quotations

- 12.1 If a Quotation/Tender is subject to a sealed bid process, Quotes/Tenders received by Fax or e-mail, must be rejected.
- 12.2 All tenders with an estimated value greater than £B (£25k) but less than £C (£125k) received via the e-tendering portal may be opened by a member of the Procurement Team due to the auditability of the system and ability to lock the opening of submissions until the deadline date and time. ~~or the employee managing the contract.~~
- 12.3 All Quotations or Tenders valued at £C (£125k) or more received through the Council's authorised e-tendering solution which maintains a secure and fully auditable process, will be opened by at least two members of the Procurement Team ~~and the employee responsible for managing the contract.~~

A summary of the tender opening information as detailed below shall be produced and retained with the contract documents:

- Title of the Contract
- Names of all tenderers
- The amount of each tender
- Date and time of opening
- Name of those present at opening

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- Verification that all documents are present

12.4 The Procurement Team will download the tender responses and make them available to relevant Members/Officers as required for record/audit/evaluation. This may also include anonymised tender opening record.

PROCEDURE RULE 13: Post Tender Negotiation* For Contracts Valued ~~in~~ In Excess Of £C (£125k)

*Where a preferred bidder has been determined, but the contract has not been formally awarded.

13.1 Providing clarification of an invitation to tender to potential contractors or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted but must be undertaken via the electronic tender portal or in a controlled environment with clear minutes of meetings/discussions. However, discussions with tenderers after submission of a tender and before the award of a contract with a view to obtaining an adjustment to price, delivery or content (i.e. post tender negotiations) must be the exception rather than the rule. It must not be conducted in procurements above the ~~EU threshold~~ threshold where it might distort competition, particularly with regard to price, unless permitted by the regulations.

13.2 If post tender negotiations are necessary after a single stage tender or after the second stage of a two stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender, but can also be undertaken with all tenderers who are in contention-and after the unsuccessful contractors have been informed. This may be required if tenders are higher than previously estimated or above the available budget. Tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in tender documents. A record of the minutes of negotiation meetings shall be kept on file and the changes agreed by both parties shall be in writing.

13.3 Where post tender negotiation results in a fundamental change to the specification or contract terms, or results in an increase in price of 10% or £50,000 (whichever is the least), the contract must not be awarded but re-tendered.

13.4 The Assistant Director – Governance Arts, Leisure & Democracy and/or the Monitoring Officer must be formally consulted wherever it is proposed to enter into post tender negotiation. Negotiations must be conducted by a team of at least two employees, one of whom must be from the Legal Service Unit.

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PROCEDURE RULE 14: Evaluation, Award Of Contract And Debriefing Contractors (~~EU~~ Regulations [67](#), [74 – 76](#), [87](#) and [108](#))

- 14.1 Apart from the debriefing required or permitted by these Procedure Rules, the confidentiality of quotations, tenders and the identity of contractors must be preserved at all times and the information about one contractors response must not be given to another contractor. Freedom of Information Act 2000 [Sections 43](#) and [44](#) refer to exemptions for confidential and commercially sensitive information.
- 14.2 Contracts must be evaluated and awarded in accordance with the evaluation criteria by a minimum of two employees who have the technical ability to evaluate the submission. The Procurement Team are able to advise on the process, but shall not undertake the evaluation unless there is a justifiable reason for their involvement in the evaluation process. During this process, employees shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. If any particularly low bids are received or if there are large discrepancies between the bids received, it is advised to undertake an abnormally low bid clarification process. the Procurement Team and the Corporate Governance & Audit Manager must be informed. Where a bid is considered to be abnormally low the process detailed in [EU Regulation 69](#) shall apply:
- Where tenders appear to be abnormally low in relation to the works, supplies or services sought, the Council ask tenderers to explain the price or costs proposed in the tender.
 - The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.
- 14.3 Any arithmetic within the tenders must be checked. If any errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the invitation to tender as being dominant, an amended tender price can be requested to accord with the rates given by the tenderer.
- 14.4 Where the total value of the contract exceeds ~~£GB~~ (£125k),- all ~~contractors-suppliers~~ must be informed in writing via the electronic portal simultaneously and as soon as possible of the intention to award the contract (or notification of award subject to the procurement procedure), please refer to the Procurement Team for letter templates. Unsuccessful ~~contractors-suppliers~~ must be given at least 10 calendar days (not ending weekend or

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bank holiday) in which to challenge the decision before the contract is awarded where a voluntary or mandatory standstill period is being observed. If the decision is challenged by an unsuccessful ~~contractor tenderer~~ then the contract will not be awarded and advice must be obtained from the Assistant Director – Arts Governance, Leisure & Democracy and the Monitoring Officer.

- 14.5 Unsuccessful ~~contractors tenderers~~ shall normally be informed in writing through the electronic tender e-tendering portal of the reason for non-selection. No information, other than the following, should be given without taking the advice of the Assistant Director – Governance Arts, Leisure & Democracy:-
- How the evaluation criteria was applied and comparison with the winning tender scores;
 - the reasons for the decision, including the characteristics and relative advantages of the successful tender,
 - ~~The range of prices submitted for Framework Agreements~~
 - The name of the winning supplier(s)contractor.
- 14.6 If a ~~contractor supplier~~ requests in writing the reasons for a ~~contracting~~ decision, they must be given the reasons in writing within 45 prior to completion of the standstill period or within 7 working days from receipt of the request if no standstill is being folloqeedays of the request. If requested, ~~contractors tenderers~~ who were deselected in a pre-tender short listing process (SQ) may be given the information in Procedure Rule 14.5 above.
- ~~14.7 The Principal Contract Officer may accept quotations or tenders provided that they have been fully evaluated and are the most economically advantageous to the Council. If the quotation or tender is not the most economically advantageous the approval of the relevant Portfolio Holder, or other Cabinet member, must be secured and the decision may be subsequently reported to the Cabinet.~~
- 14.87 Officers must ensure that all contracts tendered via the ~~eelectronic tender tendering~~ portal have a contract record created in the Central Contract Database and where applicable, a Contract Finder Award Notice published within 90 days following final award within 48 hours of the final award. Please contact the Procurement Team for support in doing this.

PROCEDURE RULE 15: Contract Documents

- 15.1 High level detail for all contracts valued at £C (£125k) or above (or £B £25k if open advert at the point of award), must be published on the Council's [Transparency Pages](#) and Contracts

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Finder in accordance with The Local Government Transparency Code 2015. Details include:

- Contract Reference Number
- Title of Agreement*
- Department
- Description*
- Start Date*
- End Date*
- Extension Options
- Review Date
- Last Extension Date
- Contract Value (Estimated Lifetime)*
- Supplier Name*
- Process Type
- Is the Supplier an SME?
- Is the Supplier a VCSE Organisation?
- VCSE Registration Number (If applicable)
- Unrecoverable VAT

*Only items marked with an asterisk are required for Contracts Finder

15.2 All contracts shall clearly specify:-

- The work to be done or the goods, materials or services to be supplied;
- That all goods supplies and services used or supplied are to comply with any relevant Standards Specification or Code of Practice in force at the date of the tender (British or International equivalent);
- The price to be paid with a statement of any discounts or deductions (amount and timing);
- Any insurance requirements;
- Any health and safety requirements;
- Safeguarding vulnerable people requirements (if appropriate)
- The terms of the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let;
- Compliance with the Equalities Act 2010;
- The time within which the contract is to be performed;
- The provisions for the Council to terminate the contract; and
- A mechanism for agreeing price escalation and or cost reduction requirements;
- That the supplier/contractor will comply with the provisions of the ~~EU~~ Regulation 2016/679 (GDPR) or any re-enactment of that Regulation insofar as any personal data supplied by the council or obtained on behalf of the council is kept secure and is not disclosed to any other party except in accordance with the contract. The contract shall define the data controller and processor responsibilities sufficient to comply with the Regulation.

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~~For contracts valued at less than £C (£125k) an official purchase order form, approved by the Chief Financial Officer must be used wherever possible.~~

- 15.3 In addition, contracts valued greater than £C (£125k) must also state:-
- That the contractor may not assign or sub-contract without prior written approval;
 - Any insurance requirements;
 - Health and Safety requirements;
 - Ombudsman requirements;
 - That charter standards are to be met if relevant;
 - Compliance with the Equalities Act 2010;
 - Sustainability requirements;
 - Confidentiality;
 - A right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant;
 - Key Performance Indicators; and
 - That the Freedom of Information Act 2000 and The Local Government Transparency Code 2015 may require the Council to release information provided by ~~contractors~~tenderers.
- 15.4 The formal advice of the Procurement Team must be sought for the following contracts:-
- Where the total value exceeds £B (£25k);
 - Those involving leasing arrangements;
 - Where it is proposed to use a supplier's own terms; and
 - Those which are complex or high risk in any other way.
- 15.5 All contracts over £C (£125k) must be concluded formally in writing and signed by an authorised signatory and formally sealed by the Legal Team before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written authority of the Assistant Director - Arts, Leisure Governance and Democracy or Monitoring Officer. An award letter is insufficient. All contracts should be given a unique number allocated by the Procurement Team who should also be supplied with a copy of the contract.
- 15.6 The employee responsible for obtaining the signatures on the contract must ensure that the person signing for the other contracting party has authority to bind it.
- 15.7 A contract must be sealed by the Council if:-
- The Council may wish to enforce the contract more than 6 years after its end;
 - The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;

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- There is any doubt about the authority of the person signing for the other contracting party; or
- The total value of the contract exceeds £C (£125k) .
- For electronic contracts such as those on G--Cloud or a digital marketplace please refer to the Procurement Team who will create a signed electronic copy on the Central Contract Database and forward this to Legal for an electronic seal.

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PROCEDURE RULE 16: Liquidated Damages, Bonds And Parent Company Guarantees

- 16.1 A risk assessment and financial check of every contract for the purposes of determining the level of security needed, if any, must be made by the appropriate Strategic Director or Assistant Director in consultation with the Procurement Team.
- 16.2 For every contract where it is considered that the Council would suffer loss if the contract works, supplies or services are not provided in the time specified, the contract shall provide for the payment of liquidated damages by the contractor to reflect the anticipated loss to the Council.
- 16.3 Employees must consult with the Chief Financial Officer to establish whether a Parent Company Guarantee is necessary when a contractor is a subsidiary company and:-
- The award is based on an evaluation of the parent company; or
 - There is some concern about the financial stability of the contractorsupplier.
- 16.4 Employees must consult with the Chief Financial Officer to establish whether a bond is needed where:-
- It is proposed to make stage payments during the life of the contract and there is some concern about the financial stability of the contractorsupplier; or
 - There will be a cost to maintain service delivery if the supplier or contractor goes into liquidation.

PROCEDURE RULE 17: Prevention Of Corruption

- 17.1 Employees must comply with the Employee Code of Conduct and the Council's policy on Gifts & Hospitality and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the employee to prove that anything received was not received corruptly. High

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standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the Bribery Act 2010.

17.2 All formal written contracts must include a provision the following:- that permits the Council to terminate a contract and to recover loses if the supplier (including its employees, agents or third parties) including anyone acting on behalf of the supplier,

- Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the contractor does not know what has been done); or
- Commit an offence under the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let; or
- Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

~~“The Council may terminate this contract and recover all its loss if the contractor, its employees or anyone acting on the contractors behalf do any of the following:-~~

- ~~• Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the contractor does not know what has been done); or~~
- ~~• Commit an offence under the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let~~
- ~~• Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.~~

~~Any clause limiting the contractor's liability shall not apply to this clause.”~~

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PROCEDURE RULE 18: Declaration Of Interests

- 18.1 If it comes to the attention of a member or employee of the Council that a contract, in which he or she has a financial or non-financial interest, has been or is proposed to be entered into by the Council, he or she must record it in the Interests Register which is maintained by the Monitoring Officer. Where necessary the Monitoring Officer will report such declarations to the relevant Officers and Members.
- 18.2 Such written notice is required irrespective of whether the interest is direct or indirect. An indirect interest is distinct from a direct interest in as much as it is not a contract to which the member or employee is directly a party.

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- 18.3 In the case of a member, a shareholder in a body not exceeding a total nominal value of £25,000 is not a financial interest for the purposes of this Procedure Rule.
- 18.4 The Monitoring Officer shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct and the local Member Code of Conduct and that all employees are aware of the Employee Code of Conduct.

PROCEDURE RULE 19: Contract Management ([Section 6 EU Regulations 70 -73](#))

- 19.1 A Principal Contract Officer must be nominated for all contracts over £B (£25k). The nominated person will be responsible for the planning, coordination, monitoring and controlling of the contract, and ensuring completion on time, within cost and to the required quality standards.
- 19.2 For all contracts with a value exceeding £C (£125k) the Principal Contract Officer must:-
- Maintain a risk register during the contract period;
 - Undertake appropriate risk assessments;
 - For each risk identified, ensure that contingency measures are in place; and
 - Confirm the financial stability and insurance cover of the contractor at least annually.
- 19.3 During the life of the contract the following issues must be monitored:-
- Performance;
 - Compliance with specification and contract;
 - Cost, quality and value for money;
 - User satisfaction and risk management; and
 - Customer complaints [Customer Feedback and Monitoring](#)
NB see [Procurement Toolkit Step 1 - Commissioning](#)
- 19.4 Where the total cost of any work carried out under a contract is expected to exceed the contract sum, this will be escalated in accordance with the virement limits procedure within the Financial Procedure Rules, in consultation with the Chief Financial Officer.

The limits are:

- £5,000 Budget Holders;
- £10,000 Section Heads/[Assistant Director](#)
- £50,000 [Strategic](#) Directors;
- Any increase in excess of £50,000 will require Portfolio Holder [approval/consultation and permission.](#)

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19.5 Contract modifications may be permitted by [EU Regulation 72](#) where:

- The modifications were provided for in the original procurement
- It is within the original scope, and significant disruption or cost would be incurred if not modified
- Within scope and unforeseen
- Any increase does not exceed 50% of the original value

Please refer to the Procurement Team or [Assistant Director - Governance and Democracy Recreation](#) for clarification ([EU Regulation 72](#))

PROCEDURE RULE 20: Extensions Of Existing Contracts

20.1 Subject to compliance with the [EU Regulations](#), contract extensions can be awarded when:

- Value for Money can be demonstrated for the Council;
- The option to extend was written into the original contract;
- The extension period is less than the original contract term; and
- For Contracts subject to [EU Regulations](#), the Notice and Award Notice included the option to extend

20.2 The extension must be approved in advance by the Chief Financial Officer in consultation with the Procurement Team and the [Audit and Governance Manager/Head of Audit and Governance](#). Before approval is given it must be satisfied that:-

- The total contract value including the extension is less than ~~the EU threshold~~ or it will be subject to [EU Regulations](#)
- The existing contract was let following full competition in accordance with the Procedure Rules and less than 5 years have elapsed since the initial contract was awarded;
- Less than 4 years have elapsed if the contract is a Framework Agreement;
- The new work is sufficiently similar in nature and extent;
- The majority of the rates for the new work are directly based on the existing contract;
- Rates for work which cannot be based directly on the existing contract can be negotiated equitably. A written report should be compiled detailing the circumstances and outcome of these negotiations;
- That the likely benefit of further competition would be outweighed by the administrative cost and/or delay involved; and
- That the interests of the Council will not be compromised by the negotiation.

PROCEDURE RULE 21: Long Term Relationships

- 21.1 Better value for money and improved quality of service delivery can be achieved by entering into long-term agreements with contractors, suppliers and service providers. Therefore, you must package contracts in such a way that they reduce the number of times that the Council needs to seek competitive tenders. This can be achieved by amalgamating similar types of supplies and services into single contracts and then seeking competitive tenders.

PROCEDURE RULE 22: Partnering

- 22.1 A partnership is an agreement between the Council and one or more independent legal bodies, organisations or individuals to work collectively to achieve a common purpose with specified aims and objectives.
- 22.2 Partnering arrangements which involve a joint venture or contractual arrangement with a private sector body are subject to the provisions of these Procedure Rules.
- 22.3 If the partnering agreement involves another Local Authority the Procedure Rules of the lead authority will apply.

PROCEDURE RULE 23: Open Book Accounting

- 23.1 Open book accounting provides transparent processes that support the development of collaborative working arrangements with a view to:
- Understanding expenditure;
 - Understanding the cost implications of decisions taken or being considered in delivering a project and forward investment;
 - Operating and managing a target contract to incentivise and drive improvements in cost efficiency
 - Encouraging clients, contractors and their supply chain to work together to develop and implement a proactive approach to project decision making.
- 23.2 Target contracts work on the basis that the contractor:
- Is reimbursed actual costs incurred in delivering a project. This includes the cost of labour, supervision, plant, equipment, materials, site preliminaries, site specific insurances etc.;
 - Is paid a reasonable allowance to contribute towards off site overheads and profit;

Appendix A

- Works to a predetermined commercial target;
- Is incentivised through shared savings to reduce cost without any loss in quality through the use of efficient designs and lean working practices.

PROCEDURE RULE 24: Transfer Of Undertakings (Protection Of Employment) Regulations 2006

- 24.1 All tenders must indicate how the Council intends to deal with [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#) (TUPE) where applicable
- 24.2 When the Council considers there to be a TUPE transfer from the Council, the advice of the [Herad of People and Culture, Assistant Director – Governance Arts, Leisure & Democracy and/or the Monitoring Officer](#) shall be sought upon the terms of any transfer of employees, including any indemnities sought from a successful tenderer.
- 24.3 All contracts shall require a successful tenderer to undertake to comply with its obligations under TUPE; in particular the contract shall apply the principles set out in Office of the Deputy Prime Minister Circular 03/2003 Annex D – Code of Practice on Workforce Matters in Local Authority Service Contracts.

For further information and guidance, please visit this link - <https://www.gov.uk/transfers-takeovers>

PROCEDURE RULE 25: Freedom Of Information Act 2000 Exemptions Section 43 – Commercial Interests

- 25.1 [Section 43](#) exempts information where disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets. It protects not only the commercial interests of the public authority that holds the information.
- 25.2 In using this exemption, you should bear in mind that the commercial sensitivity, particularly the market sensitivity, of information will usually decrease in time.
- 25.3 More information and advice can be obtained from the [Head of Audit and Corporate Governance and Audit Manager or the Strategic Creditors and Procurement Manager the Assistant Director – Governance & Democracy](#).

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Glossary Of Terms

- “the Commission” means the European Commission;
- “contracting authorities” **or “contracting authority”** means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;
- “CPV” means the Common Procurement Vocabulary as adopted by Regulation (EC) No. 2195/2002(b) as amended from time to time;
- “economic operator” **or “supplier”** means any ~~[natural or legal]~~ person or ~~[public entity]~~ or group of such persons ~~[and/or entities]~~, including any temporary association of undertakings, which offers the execution of ~~[works and/or a work]~~, the supply of products or the provision of services on the market;
- “~~Electronic Tender (e)Portal~~” means an electronic method of tendering using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received ~~by wire, [by] radio, [by] optical means or [by] any other electromagnetic via a e-tendering system~~ means;
- “EU Publications Office” means the Publications Office ~~of the EU~~;
- “European standard” means a standard adopted by a European standardisation organisation and made available to the general public;
- “framework agreement” has the meaning given by regulation 33(2); primarily a contract with one or more operators or clients;
- ~~“innovation” means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations [inter alia] with the purpose of helping to solve societal challenges or to support [the Europe 2012 strategy] for smart, sustainable and inclusive growth;~~
- “International standard” means a standard adopted by an international standardisation organisation and made available to the general public;
- ~~“invitation to confirm interest” means an invitation which a contracting authority sends in order to comply with regulation 54(2);~~
- **Selection Questionnaire(SQ)** means a method of selecting suitable operators to fulfil the Contract
- **Invitation To Tender (ITT)** is the documents/ process used to define our specification and evaluation criteria in a suitable way to facilitate operators to tender for the opportunity
- “life cycle” means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the

Appendix A

provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

- **“national standard”** means a standard adopted by a national standardisation organisation and made available to the general public;
- ~~OJEU “Official Journal” means the Official Journal of the EU;~~
- ~~“prior publication” means prior publication of a call for competition;~~
- ~~“procurement document” means any document produced or referred to by [the] contracting authority to describe or determine elements of the procurement or the procedure, including [the] contract notice, [the] prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;~~
- **“public contracts”** means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities [and having] as their object the execution of works, the supply of products or the provision of services;
- **“Public Contracts Directive”** means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014(c);
- ~~“public service contracts” means public contracts which have as their object the provision of services other than [those referred to in the definition of “public works contract”];~~
- ~~“public supply contracts” means public contracts which have as their object the purchase, lease, rental or hire purchase, with or without an option to buy, of products, whether or not the contract also includes, as an incidental matter, siting and installation operations;~~
- ~~“public works contracts” means public contracts which have as their object one of the following:—~~
 - ~~the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2;~~
 - ~~the execution, or both the design and execution, of a work;~~
- ~~the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;~~
- **“standard”** means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is an international standard, a European standard or a national standard;
- **“technical specifications”** means the matters referred to in regulation 42(2) to (7);
- **“tenderer”** means an economic operator that has submitted a tender;

Appendix A

- **“work”**, as a singular noun, means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- **“working day”** means a day other than a Saturday, Sunday, Christmas Day, Good Friday or bank holiday within the meaning of the Banking and Financial Dealings Act 1971(c); and within a certain period and the last day of that period is not a working day, the period shall be extended to include the next working day.]
- **“Restricted process”** is a two stage process using a Selection Questionnaire to select suitable economic operators
- **“Open Process”** is a single stage process where an Invitation To Tender is issued without a Selection Questionnaire
- **“Exemption”** is where a particular procurement is not covered by the Regulations or below **EU** threshold where authorised officers can waive these rules
- **“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises
- **“Open Advertisement”** – means if an opportunity that has been advertised on a National basis as opposed to where selected operators are invited
- **“ESPD”** means the European Single Procurement Document referred to in Regulation 59(1) conceived to reduce the need for multiple PQQ's for economic operators
- **“Concession Contract”** means a contract where the contracting authority provides the economic operator with the opportunity to either;
 - I. Deliver and then exploit a 'Work', or,
 - II. provide management of an existing asset or other services required by the authority,
 - III. where consideration for delivering the contract shall result from their right to exploit the work/service or that right together with payment.

To qualify as a concession, the contract must;

 - I. transfer the operating risk in exploiting the 'Work' or services to the economic operator, and
 - II. the operator must be exposed to loss due to market forces and supply and demand, and
 - III. there must be no guarantee that they can recoup the investment made, and the potential loss incurred shall not be merely nominal or negligible.

Cabinet

Report Summary Sheet

Date: 10th January 2024

Subject: Article 4 (1) Directions

Portfolio: Cabinet Member for Planning and Regulation (Councillor R. Smith)

From: Assistant Director Planning

Summary:

The purpose of the report is to provide details of the consultation responses and to seek Council's approval for the Article 4 Directions made on the 13th September 2023 be confirmed and made permanent.

Recommendations:

It be recommended to Council that

- The outcome of the public consultation be noted
- The Article 4 Directions in Abbey and Bulkington Conservation Areas be confirmed and made permanent.
- Delegated Authority be given to the Assistant Director – Planning in consultation with the Portfolio Holder of Planning to make, if any, amendments prior to the Council Meeting

Options:

To recommend the Article 4(1) Directions for Abbey and Bulkington Conservation Areas be confirmed. Confirmation will ensure that the Council can meet the obligations of the Planning (Listed Buildings and Conservation Areas) Act 1990. Confirmation of the Directions means they will remain in place unless cancelled or

amended by the Council in the future. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires any buildings or other land in a conservation area, special attention is paid to the desirability of preserving or enhancing the character or appearance of that area. It would also ensure compliance with the implementation procedures as set out Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The Council will be able to continue to ensure development in the Conservation Areas conforms with the Conservation Area Management Plans.

To not recommend Article 4(1) Directions for Abbey and Bulkington Conservation Areas be confirmed. If not approved the Directions will lapse and the Council will not be able to manage development in the Conservation Areas effectively. This would mean the Council would not meet the requirements of the Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Reasons: To comply with Town and Country Planning (General Permitted Development) Order 2015 (as amended), Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Consultation undertaken with Members/Officers/Stakeholders An internal Consultation has been undertaken between the Council Barrister, Solicitors, Planning Policy Officers and Portfolio Holder. A public consultation has been undertaken with residents affected by the Directions.

Subject to call-in: Yes

Ward relevance: Abbey and Bulkington

Forward plan: Yes

Building a Better Borough Aim: All

Building a Better Borough Priority: All

Relevant statutes or policy: Town and Country Planning (General Permitted Development) Order 2015 (as amended). Town and Country Planning Act 1990. Planning (Listed Buildings and Conservation Areas). The Town and Country Planning (Compensation) (England) Regulations 2015.

Equalities Implications: None

Human resources implications: The timetable accounts for existing known staffing and resource levels.

Financial implications: Section 108 of the Town and Country Planning Act 1990 makes provision for compensation to be payable where an application for planning permission (that would formally have been permitted development) is refused or is granted subject to conditions different from those in the GDPO.

This does not apply to the extent that the development referred to would, while permitted by a development order, have required conservation area consent under the Planning (Listed Buildings and Conservation Areas).

The grounds on which compensation can be claimed are limited to abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.

The Town and Country Planning (Compensation) (England) Regulations 2015 Regulation 2 sets out what is the prescribed development for the purposes of Section 108(2A)(a) and (3C)(a) of the 1990 Act.

Health Inequalities Implications: None

Section 17 Crime & Disorder Implications: None

Risk management implications: The implementation of targeted Article 4 Directions will ensure development in the Conservation Areas will be considered as part of the Planning process. Applications will be assessed against the requirements of the Council's adopted Conservation Area Management Plans and so reduce the risk of harm occurring to the Borough's heritage.

Environmental implications: None

Legal implications: The implementation of Article 4 Directions will ensure compliance with Town and Country Planning Act 1990. Planning (Listed Buildings and Conservation Areas). The confirmation of the Directions will require the Council to follow the legislation set out Town and Country Planning (General Permitted Development) Order 2015 (as amended).

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NUNEATON AND BEDWORTH BOROUGH COUNCIL

Report to: Cabinet - 10th January 2024

From: Assistant Director - Planning

Subject: Article 4 Directions – Abbey and Bulkington Conservation Areas

Portfolio: Planning and Regulation — Councillor R. Smith

Building a Better Borough Aim: All

Building a Better Borough Priority: All

1. Purpose of Report

1.1 The purpose of this report is to feedback the public consultation responses on the introduction of immediate Article 4(1) Directions, served in September 2023, withdrawing permitted development rights on selected properties within the Abbey and Bulkington Conservation Areas. To seek recommendation at the next full Council meeting to confirm and make permanent the Article 4(1) Directions in the Abbey and Bulkington Conservation Areas.

2. Recommendations

It be recommended to Council that

2.1 The outcome of the public consultation be noted

2.2 The Article 4 Directions in Abbey and Bulkington Conservation Areas be confirmed and made permanent.

2.3 Delegated Authority be given to the Assistant Director – Planning in consultation with the Portfolio Holder of Planning to make, if any, amendments prior to the Council Meeting

3. Background

3.3 At a Council meeting on the 13th September 2023, it was agreed to follow the Council's legal advice regarding Article 4 Directions and that Directions made in 2008 be rescinded, and 2023 Directions be implemented.

- 3.2 At the meeting on the 13th September 2023, the Council resolved to serve an immediate Article 4 (1) Direction which applied from the 20th September 2023 (see Appendix A). The Direction is due to lapse after six months unless confirmed by the Council.
- 3.3 In line with the requirements set out in in Schedule 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), the Council consulted on the Direction between 20th September 2023 and 9th November 2023.
4. Body of Report

Consultation

- 4.1 The views of residents living in all houses affected by the Direction have been sought. Letters dated the 14th September 2023, were sent to every property with a copy of the Direction and Statutory Notice. The period of the consultation initially ran for a period of 28 days. Notices were placed in the Abbey and Bulkington Conservation Areas on the 17th October and an advertisement was placed in the Nuneaton News Newspaper on the 18th October 2023. Following the newspaper advertisement, to offer further opportunity for potential responses, the consultation was extended for another 21 days. The total period for the consultation was from 14th September to 9th November 2023. In addition to the Directions sent to affected properties, a copy of the Direction and map defining the affected properties was available to be inspected at the Town Hall Monday to Friday 10am until 2pm and on the Council's website.

Findings

- 4.2 A total of 279 letters were sent to property owners, 5 responses were received. 1 response was in support of the Directions, 2 were against the Directions, and 2 requested further information with no further contact following the Council's response. A summary of the responses is presented in Appendix B.

Observations on Findings

- 4.3 Given the number of consultation letters sent, the local notifications and the newspaper advertisements, it appears that the Directions are acceptable to the vast majority of those affected.
- 4.4 The findings of the consultation need to be considered along with the requirements of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Act requires that any buildings or

other land in a conservation area, that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. The removal of certain permitted development rights is an important part of meeting the legislative requirements.

5. Conclusion

- 5.1 The majority of residents find the Directions acceptable. Confirmation of the Directions will ensure that the Council can meet the obligations of the Planning (Listed Buildings and Conservation Areas) Act 1990. Confirmation of the Directions means they will remain in place unless cancelled or amended by the Council in the future. If any amendments prior to the Council Meeting it is requested that these can be carried out under Delegated Powers of the Assistant Director in consultation with the Portfolio Holder of Planning.

6. Appendices

- 6.1 Appendix A – Article 4(1) Directions Abbey and Bulkington Conservation Areas.
- 6.2 Appendix B – Summary of consultation responses.

7. Background Papers

Council Minutes, 13th September 2023 [Agendas, reports and minutes | Nuneaton & Bedworth \(nuneatonandbedworth.gov.uk\)](#)

Cabinet 09.01.2024

Appendix A - Article 4 Directions

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Direction made under Article 4 (1) To which Paragraph 2 of Schedule 3 of the Order applies (direction with immediate effect).

Relating to the Abbey Conservation Area Notice B

WHEREAS Nuneaton and Bedworth Borough Council ('the Council) being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), is satisfied that it is expedient that development of the description(s) set out in the First Schedule below should not be carried out on the land/buildings shown coloured blue on the attached plans, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990, as amended.

NOW THEREFORE the Council in pursuance of the power conferred on it by Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) HEREBY DIRECT that the permission granted by Article 3 of the said Order in respect of development of the description set out in the First Schedule below shall not apply to development on the said land of the description(s) set out in the Second Schedule below.

THIS DIRECTION is made under Article 4 (1) of the said Order and in accordance with paragraph 2 Schedule 3 will come into force on the date on which the notice is served in accordance with paragraph 1(1)(c). The Direction comes into force on the 20th September 2023. This Direction shall remain in force until the 20th March 2024, being six months from the date of this direction) and will then expire unless it has been confirmed by the Nuneaton and Bedworth Borough Council before that date.

NOW THEREFORE the Council in pursuance of the power conferred on them by Article 4(1) and Schedule 3 (1) (13) of the Order hereby directs that the Direction made by Nuneaton and Bedworth Borough Council pursuant to Article 4 of the Town and Country Planning (General Permitted Development Order 1995 (as amended) applying to 21, 27, 29, 31, 33, 35, 37, 98, 100, 102 to 104, 106, 108, 110, 112, 114, 115, 116, 117, 118, 119, 120, 122, 123 and 124 to 126 Manor Court Road and 1 Manor Court Avenue, Nuneaton and dated 11th September 1996 is hereby cancelled from the date on which this Direction is confirmed.

NOW THEREFORE the Council in pursuance of the power conferred on them by Article 4(1) and Schedule 3 (1) (13) of the Order hereby directs that the Direction made by Nuneaton and Bedworth Borough Council pursuant to Article 4 of the Town and Country Planning (General Permitted Development Order 1995 (as amended) applying to Earls Road 1, 3, 5, 7, 9, 11, 13, 15, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 68, 70, 72, 74, 76 and 78. Manor Park Road 45. Manor Court Road 11, 13, 15, 17, 80, 82, 101, 103, 105, 107 and 109, Nuneaton and dated 2008 is hereby cancelled from the date on which this Direction is confirmed.

Schedule One

Descriptions of Development Restricted by this Direction.

1. Development within Class G Part I of Schedule 2 to the Order, consisting of the erection, alteration, or removal of a chimney on a dwelling house or on a building within the curtilage of a dwelling house.
2. Development within Class A of Part I of Schedule 2 to the Order consisting of the enlargement, improvement or other alteration of a dwelling house, where any part of the enlargement, improvement or alteration would front a highway or open space.
3. Development within Class C of Part I of Schedule 2 to the Order, consisting of the alteration to a roof slope of a dwelling house which fronts a highway or open space.
4. Development within Class E of Part I of Schedule 2 of the Order, consisting of the provision within the curtilage of a dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure where the building or enclosure, swimming or other pool to be provided would front a highway or open space, or where the part of the building or enclosure maintained, improved or altered would front a highway or open space.
5. Development within Class H of Part I of Schedule 2 to the Order, consisting of the installation, alteration or replacement of a satellite antenna on a dwelling house or within the curtilage of a dwelling house where the part of the building or other structure on which the satellite antenna is to be installed, altered or replaced fronts a highway or open space.

6. Development within Class A of Part 2 of Schedule 2 to the Order, where the development consists of the erection, construction, maintenance, improvement, demolition or alteration of a gate, fence, wall or other means of enclosure and would be within the curtilage of a dwelling house and would front a highway or open space.

7. Development within Class C of Part 2 of Schedule 2 of the Order, consisting of the painting of the exterior of any part, which fronts a highway or open space, of –

(i) a dwelling house; or

(ii) any building or enclosure within the curtilage of a dwelling house.

8. Development at Paragraph 2 shall not include the alteration or replacement of windows and doors provided openings are not altered in size, shape or form.

Schedule Two

(Excludes controls over alterations to doors and windows)

The following properties and shown on the attached plan.

Earls Road Odd No.s

1, 3, 5, 7, 9, 11, 13, 15, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45,
47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69 and 71.

Earls Road Even No.s

2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40,
42, 44, 46, 48, 50, 52, 54, 56, 58, 68, 70, 72, 74, 76 and 78.

Manor Park Road Odd No.s

No. 45.

Manor Court Road Even No.s

80 and 82

Manor Court Road Odd No.s

11, 13, 15, 17, 101, 103, 105, 107 and 109.

Made under the Common Seal of Nuneaton and Bedworth Borough Council this 13th day of September 2023.

The Common Seal of the Nuneaton and Bedworth Borough Council was hereunto affixed in the presence of:

Signature..... *AP*
Authorised Signatory *AMY PITTAM*
SOUCITOR

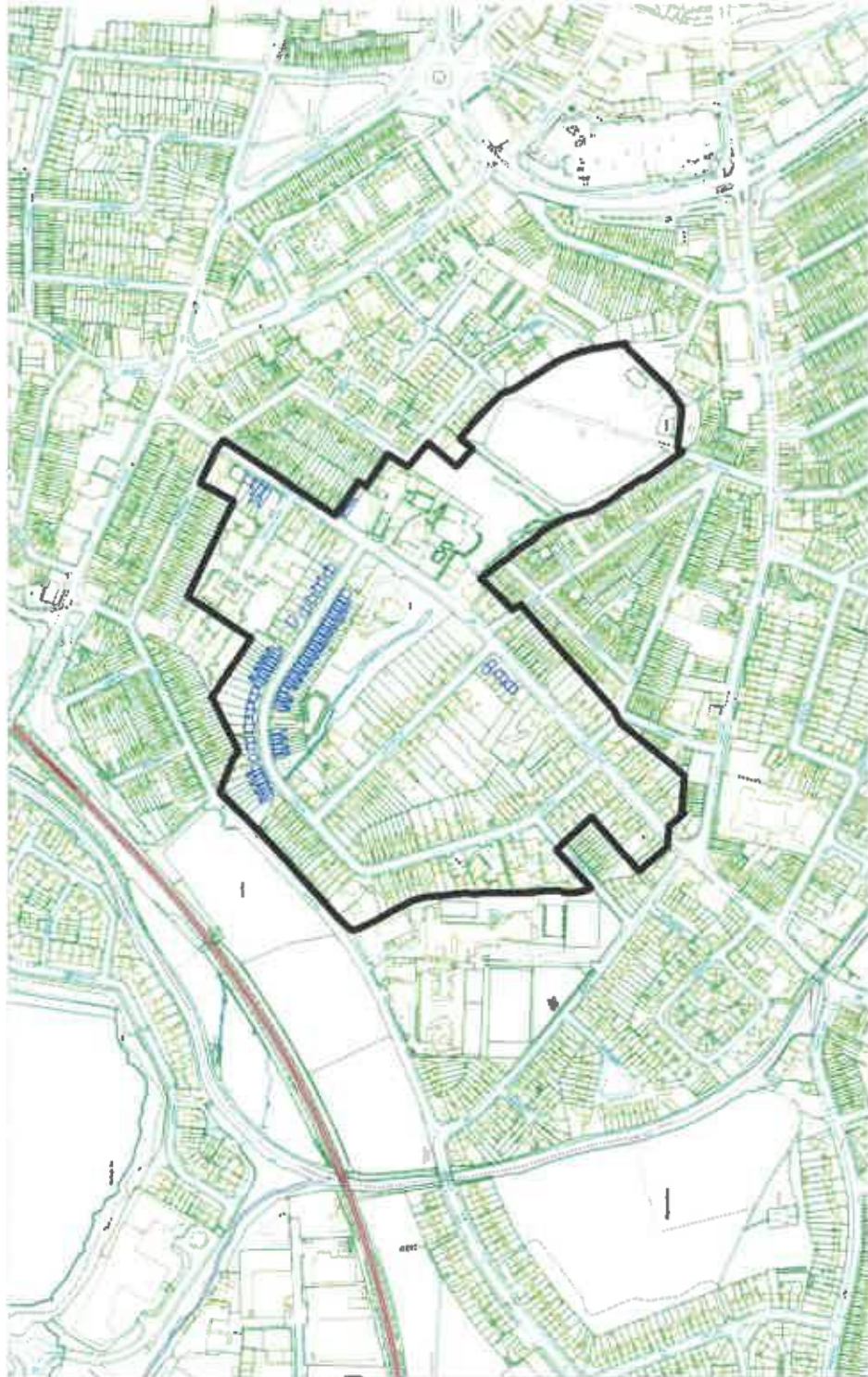


Confirmed under the Common Seal of Nuneaton and Bedworth Borough Council this day of

The Common Seal of Nuneaton and Bedworth Borough Council was hereunto affixed in the presence of:

Signature.....
Authorised Signatory

Abbey Article 4 Direction, Notice B



For reference purposes only. No further copies may be made.

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NOW THEREFORE the Council in pursuance of the power conferred on them by Article 4(1) and Schedule 3 (1) (13) of the Order hereby directs that the Direction made by Nuneaton and Bedworth Borough Council pursuant to Article 4 of the Town and Country Planning (General Permitted Development Order 1995 (as amended) applying to Earls Road 73, 75, 77, 79, 81, 83, 85, 87, 89, 90, 91, 92, 94, 96, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 117, 119, 121, 123, 124, 125, 126, 127, 128, 129, 130, 134, 136, 138, 139, 140, 142, 144, 157, 159, 161, 163, 165, 167, 169 and 171. Manor Park Road 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 19, 21, 23, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 43. Manor Court Road 21, 27, 29, 31, 33, 35, 37, 98, 100, 102-104, 106, 108, 110, 112, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126, 129, 131, 132, 133, 134, 135, 136, 137, 138, 140, 144, 146, 148, 150, 152, 154, 156, 158 and 160. Manor Court Avenue 1, Nuneaton and dated 2008 is hereby cancelled from the date on which this Direction is confirmed.

Schedule One

Descriptions of Development Restricted by this Direction.

1. Development within Class G Part I of Schedule 2 to the Order, consisting of the erection, alteration, or removal of a chimney on a dwelling house or on a building within the curtilage of a dwelling house.
2. Development within Class A of Part I of Schedule 2 to the Order consisting of the enlargement, improvement or other alteration of a dwelling house, where any part of the enlargement, improvement or alteration would front a highway or open space.
3. Development within Class C of Part I of Schedule 2 to the Order, consisting of the alteration to a roof slope of a dwelling house which fronts a highway or open space.
4. Development within Class E of Part I of Schedule 2 of the Order, consisting of the provision within the curtilage of a dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure where the building or enclosure, swimming or other pool to be provided would front a highway or open space, or where the part of the building or enclosure maintained, improved or altered would front a highway or open space.

5. Development within Class H of Part 1 of Schedule 2 to the Order, consisting of the installation, alteration or replacement of a satellite antenna on a dwelling house or within the curtilage of a dwelling house where the part of the building or other structure on which the satellite antenna is to be installed, altered or replaced fronts a highway or open space.

6. Development within Class A of Part 2 of Schedule 2 to the Order, where the development consists of the erection, construction, maintenance, improvement, demolition or alteration of a gate, fence, wall or other means of enclosure and would be within the curtilage of a dwelling house and would front a highway or open space.

7. Development within Class C of Part 2 of Schedule 2 of the Order, consisting of the painting of the exterior of any part, which fronts a highway or open space, of –

(i) a dwelling house; or

(ii) any building or enclosure within the curtilage of a dwelling house.

Schedule Two

The following properties and shown on the attached plan.

(Includes controls over alterations to doors and windows)

Earls Road Even No.s

90, 92, 94, 96, 98, 100, 102, 104, 106, 108, 110, 112, 114, 124, 126,

128, 130, 134, 136, 138, 140, 142, and 144.

Earls Road Odd No.s

73, 75, 77, 79, 81, 83, 85, 87, 89, 91, 101, 103, 105, 107, 109, 111, 113,

115, 117, 119, 121, 123, 125, 127, 129, 139, 157, 159, 161, 163,

165, 167, 169 and 171.

Manor Park Road Even No.s

2, 6, 8, 10, 12, 28, 30, 32, 34, and 36.

Manor Park Road Odd No.s

1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 29, 31, 33, 35, 37, 39, 41, 43.

Manor Court Road Even No.s

98, 100, 102-104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124-
126, 132, 134, 136, 138, 140, 144, 146, 148, 150, 152, 154, 156, 158
and 160.

Manor Court Road Odd No.s

21, 27, 29, 31, 33, 35, 37, 115, 117, 119, 123, 125, 129, 131, 133, 135
and 137.

Manor Court Avenue

1

Made under the Common Seal of Nuneaton and Bedworth Borough Council this 13th day of
September 2023.

The Common Seal of the Nuneaton and
Bedworth Borough Council was

hereunto affixed in the presence of:

Signature..... *A.Pittam*
Authorised Signatory *AMY PITTAM*
SOLICITOR



Confirmed under the Common Seal of Nuneaton and Bedworth Borough Council this day of
.....

The Common Seal of Nuneaton and
Bedworth Borough Council was

hereunto affixed in the presence of:

Signature.....
Authorised Signatory

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Direction made under Article 4 (1) To which Paragraph 2 of Schedule 3 of the Order applies (direction with immediate effect)

Relating to the Bulkington Conservation Area

WHEREAS Nuneaton and Bedworth Borough Council ('the Council) being the appropriate local planning authority within the meaning of Article 4(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) , is satisfied that it is expedient that development of the description(s) set out in the First Schedule below should not be carried out on the land/buildings shown coloured red on the attached plans, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990, as amended.

NOW THEREFORE the Council in pursuance of the power conferred on it by Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) HEREBY DIRECT that the permission granted by Article 3 of the said Order in respect of development of the description set out in the First Schedule below shall not apply to development on the said land of the description(s) set out in the Second Schedule below.

THIS DIRECTION is made under Article 4 (1) of the said Order and in accordance with paragraph 2 Schedule 3 will come into force in accordance with on the date on which the notice is served in accordance with paragraph 1(1) (c) . The Direction comes into force on the 20th September 2023. This Direction shall remain in force until the 20th March 2024, being six months from the date of this direction) and will then expire unless it has been confirmed by the Nuneaton and Bedworth Borough Council before that date.

NOW THEREFORE the Council in pursuance of the power conferred on them by Article 4(1) and Schedule 3 (1) (13) of the Order hereby directs that the Direction made by Nuneaton and Bedworth Borough Council pursuant to Article 4 of the Town and Country Planning (General Permitted Development Order 1995 (as amended) applying to 10&10a, 23, 24, 25, 26, 27, 28, 29, 30 and 31 Church Street and 1 School Road, Bulkington and dated is hereby cancelled from the date on which this Direction is confirmed.

Schedule One

Part 1 of Schedule 2, Class A – The enlargement, improvement or other alteration of a dwellinghouse where any part of the enlargement, improvement or alteration would front a highway.

Part 1 of Schedule 2 Class C – Part I of Schedule 2, Class C – any alterations to the roof of a dwellinghouse - which fronts a highway or open space.

Part 1 of Schedule 2, Class D – The erection or construction of a porch outside any external door of a dwellinghouse where the external door fronts a highway.

Part 1 of Schedule 2, Class E – consisting of the provision within the curtilage of a dwelling house of any building or enclosure, required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure where the building or enclosure, to be provided would front a highway or open space, or where the part of the building or enclosure maintained, improved or altered would front a highway or open space.

Part 1 of Schedule 2, Class H – The installation, alteration or replacement of a satellite antenna on a part of a dwellinghouse, or on a building within the curtilage of a dwellinghouse, which in either case fronts a highway.

Part 2 of Schedule 2, Class A gates, fences and walls etc , the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure within the curtilage of a dwelling house and fronting a highway.

Part 2 of Schedule 2, Class C – exterior painting - The painting of the exterior of any part of dwellinghouse or any building or enclosure within the curtilage of a dwellinghouse which fronts a highway.

Schedule Two

The following properties and shown on the attached plan:

10&10a, 23, 24, 25, 26, 27, 28, 29, 30 and 31 Church Street and 1 School Road, Bulkington

Made under the Common Seal of Nuneaton and Bedworth Borough Council this 13th day of September 2023.

The Common Seal of the Nuneaton and Bedworth Borough Council was hereunto affixed in the presence of:

Signature..... *[Signature]*
Authorised Signatory *AMY PITTAM SOLICITOR*



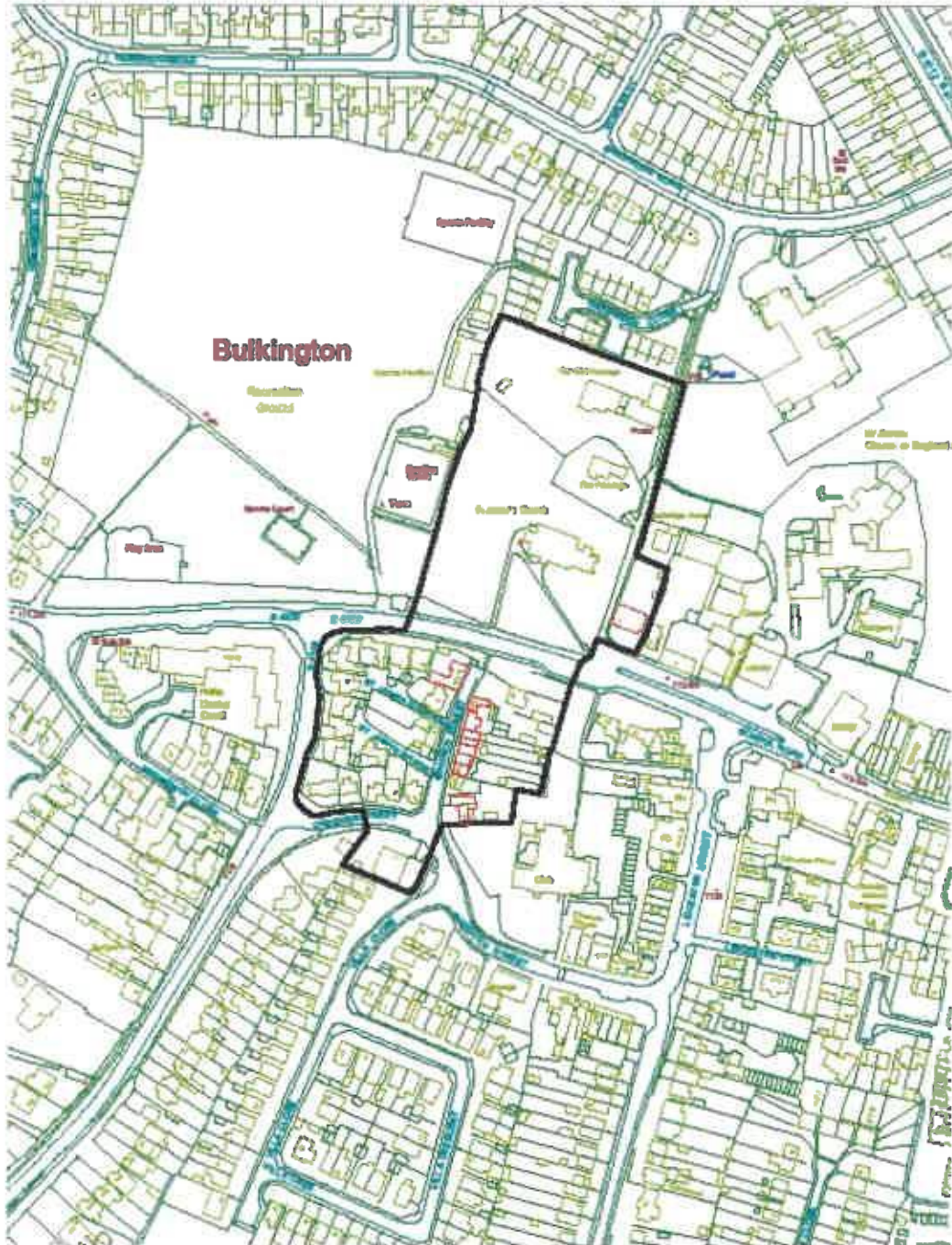
Confirmed under the Common Seal of Nuneaton and Bedworth Borough Council this day of

The Common Seal of Nuneaton and Bedworth Borough Council was hereunto affixed in the presence of:

Signature.....
Authorised Signatory

alt

Bulkington Article 4 Direction



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Cabinet 09.01.2024

Appendix B - Article 4 Directions Consultation Responses

Ref	Consultation Response	Officer Comment
1	Request further information concerning Article 4 Directions as currently selling property.	Call back arranged to explain the procedures concerning Article 4 Directions.
2	<p>Conservation area legislation limits the ability for homeowners to modernize and insulate their properties adequately. It is imperative that we enable homeowners to make energy-efficient improvements to their homes. The current legislation, with its stringent restrictions, makes it incredibly challenging for residents to upgrade their homes to meet modern energy standards. This not only puts additional financial strain on homeowners but also contributes to unnecessary energy consumption and carbon emissions.</p> <p>The lack of flexibility in the conservation area poses difficulties for residents who wish to adapt their homes to accommodate growing families or changing needs. Modernizing living spaces, adding energy-efficient features, or making homes more accessible to people with disabilities can be prohibitively challenging under the existing regulations.</p> <p>Based on my observation, my suggestion would be to let the Direction lapse as I'd like to see more families move onto my street but most are deterred by the strict conservation laws.</p>	<p>Article 4 Directions remove certain permitted development rights. The Article 4 Directions are used to protect features particular to an area from being lost without the need of permission. The removal of permitted development rights means that planning permission must be sought before development occurs. In determining a planning application, the decision maker would have to decide if the benefits of any proposal would outweigh any potential harm to the heritage value of the building.</p> <p>The permitted development removal on this Article 4 does not introduce any new restrictions from the 2008 Direction that has been in place up to the current time. In that time there does not appear to be evidence of a correlation between the Article 4 Direction and the residents attracted to the area.</p>

3	<p>Concern that the restrictions are only for six months. Would like to ensure the restrictions are continued with beyond the 6 months.</p>	<p>Following a review of the Conservation Areas in the Borough it was decided to update the Article 4 Directions to reflect a change in legislation which had occurred since the implementation of the existing Directions. In day-to-day terms there is no change to the restrictions which were already in place. To maintain the continuity of restrictions between the old and new Directions an 'Immediate Direction' was used. The legislation is such that an Immediate Direction can only last for six months unless confirmed by the Council and made permanent. As part of the process to make the Direction permanent the Council must have regard to the views of the those affected by the Direction. It should be noted that views expressed would have to be balanced by the legal duty of the Council to maintain the heritage assets in the borough.</p>
4	<p>Does the council intend to create funding to help owners effected to conserve the heritage of the area as I think this order will effect house prices unduly.</p> <p>My point would be as the area is a conservation area then there should be some responsibility from the Council to also maintain the area , the financial burden should not be placed on the owners.</p> <p>Within the order I can not see any restrictions on HMOs , for a true conservation area I think any HMO with 6 occupants should also be subject to planning as is the criteria for 7 occupants and more.</p> <p>There are streets in Birmingham that have rows of HMOs and this has become an issue, I am hopeful that we can learn and put in a restriction now so that any new HMOs can go through planning so that the merits can be considered.</p>	<p>The permitted development removal on this Article 4 does not introduce any new restrictions from the 2008 Direction that has been in place up to the current time. Legislation requires that Conservation Areas are reviewed from time to time and therefore the Article 4 Directions have been reviewed on that basis. We take note of the views regarding the value of the property, but this Direction has actually been in place since 2008. The Article 4 simply means that a planning application must be submitted for some types of work that would normally be permitted development. We do not currently have any Article 4 Directions for HMO's but this is something that we are regularly reviewing and is referred to in the Conservation Area Appraisal and Management Plan.</p>
5	<p>Request further explanation concerning notification letter.</p>	<p>Call back arranged to explain the procedures concerning Article 4 Directions.</p>