



***CABINET***  
***Thursday, 5th November, 2015***

You are invited to attend the next meeting of **Cabinet**, which will be held at:

**Council Chamber, Civic Offices, High Street, Epping**  
**on Thursday, 5th November, 2015**  
**at 7.00 pm .**

**Glen Chipp**  
**Chief Executive**

**Democratic Services**  
**Officer**

Gary Woodhall  
The Directorate of Governance  
Tel: 01992 564470  
Email: [democraticservices@eppingforestdc.gov.uk](mailto:democraticservices@eppingforestdc.gov.uk)

Members:

Councillors C Whitbread (Leader of the Council) (Chairman), S Stavrou (Deputy Leader and Finance Portfolio Holder) (Vice-Chairman), R Bassett, W Breare-Hall, A Grigg, D Stallan, G Waller, H Kane, A Lion and J Philip

**PLEASE NOTE THE START TIME OF THE MEETING**

**1. WEBCASTING INTRODUCTION**

- (a) This meeting is to be webcast;
- (b) Members are reminded of the need to activate their microphones before speaking; and
- (c) the Chairman will read the following announcement:

"I would like to remind everyone present that this meeting will be broadcast live to the Internet and will be capable of subsequent repeated viewing, with copies of the recording being made available for those that request it.

By being present at this meeting, it is likely that the recording cameras will capture your image and this will result in your image becoming part of the broadcast.

You should be aware that this may infringe your human and data protection rights. If you have any concerns then please speak to the Webcasting Officer.

Please could I also remind Members to activate their microphones before speaking.”

**2. APOLOGIES FOR ABSENCE**

(Director of Governance) To be announced at the meeting.

**3. DECLARATIONS OF INTEREST**

(Director of Governance) To declare interests in any item on this agenda.

**4. MINUTES**

To confirm the minutes of the last meeting of the Cabinet held on 8 October 2015 (previously circulated).

**5. REPORTS OF PORTFOLIO HOLDERS**

To receive oral reports from Portfolio Holders on current issues concerning their Portfolios, which are not covered elsewhere on the agenda.

**6. PUBLIC QUESTIONS**

To answer questions asked by members of the public after notice in accordance with the motion passed by the Council at its meeting on 19 February 2013 (minute 105(iii) refers) on any matter in relation to which the Cabinet has powers or duties or which affects the District.

**7. OVERVIEW AND SCRUTINY**

(a) To consider any matters of concern to the Cabinet arising from the Council's Overview and Scrutiny function.

(b) To consider any matters that the Cabinet would like the Council's Overview and Scrutiny function to examine as part of their work programme.

**8. REPAIRS AND MAINTENANCE HUB - BLENHEIM WAY, NORTH WEALD (Pages 5 - 16)**

(Housing Portfolio Holder) To consider the attached report (C-040-2015/16).

**9. ACCEPTANCE OF TENDERS - ANNUAL GAS SERVICING AND MAINTENANCE CONTRACT (Pages 17 - 22)**

(Housing Portfolio Holder) To consider the attached report (C-041-2015/16).

**10. CONTRACT STANDING ORDERS C2(9) AND C2(10) - BREACHES DUE TO CUMULATIVE SPEND (Pages 23 - 42)**

(Leader of the Council) To consider the attached report (C-042-2015/16).

**11. COUNCIL TAX AND HOUSING BENEFIT CIVIL PENALTY POLICY (Pages 43 - 52)**

(Finance Portfolio Holder) To consider the attached report (C-043-2015/16).

**12. AWARD OF CONTRACT FOR ADVERTISING ON AND MAINTENANCE OF BUS SHELTERS ACROSS THE DISTRICT (Pages 53 - 56)**

(Safer, Greener & Transport Portfolio Holder) To consider the attached report (C-044-2015/16).

**13. REVIEW OF EPPING CASH OFFICE (Pages 57 - 64)**

(Finance Portfolio Holder) To consider the attached report (C-039-2015/16).

**14. RELEASE OF RESTRICTIVE COVENANTS - EPPING FOREST COLLEGE (Pages 65 - 72)**

(Asset Management & Economic Development) To consider the attached report (C-018-2015/16).

**15. ANY OTHER BUSINESS**

Section 100B(4)(b) of the Local Government Act 1972, together with paragraphs (6) and (24) of the Council Procedure Rules contained in the Constitution require that the permission of the Chairman be obtained, after prior notice to the Chief Executive, before urgent business not specified in the agenda (including a supplementary agenda of which the statutory period of notice has been given) may be transacted.

In accordance with Operational Standing Order 6 (non-executive bodies), any item raised by a non-member shall require the support of a member of the Committee concerned and the Chairman of that Committee. Two weeks' notice of non-urgent items is required.

**16. EXCLUSION OF PUBLIC AND PRESS**Exclusion

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

<b>Agenda Item No</b>	<b>Subject</b>	<b>Exempt Information Paragraph Number</b>
Nil	Nil	Nil

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers

Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

## **Report to the Cabinet**

**Report reference:** C-040-2015/16  
**Date of meeting:** 5 November 2015



**Portfolio:** Housing

**Subject:** Repairs and Maintenance Hub – Blenheim Way, North Weald

**Responsible Officer:** P Pledger (01992 564248)

**Democratic Services:** Gary Woodhall (01992 564470)

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### **Recommendations/Decisions Required:**

(1) That, subject to planning permission, the Council constructs a new Repairs and Maintenance Hub along with up to 40 additional desk spaces for other Council services or Partner Organisations on Council-owned land at Blenheim Way, North Weald to enable the Housing Repairs and Maintenance Services to be co-located, thus freeing up land at the existing Epping Depot site for the planned redevelopment at St Johns Road and free up office accommodation at the Civic Offices, Epping;

(2) That Contract Standing Orders C6 (Contracts in Excess of £50,000) be waived and Pellings LLP be appointed to undertake the architectural and all other multi-disciplinary building consultancy services for a fee of £170,000;

(3) That Mears be appointed to act as Project Managers to deliver the relocation/co-location project, as a “Key Deliverable” under the terms of their existing Repairs Management Contract, at their tendered rate;

(4) That the capital costs estimated to be around £2.6m, including construction costs and fees, associated with the new Repairs and Maintenance Hub be funded from the Housing Revenue Account (HRA);

(5) That a recommendation be made to Council for a Supplementary Capital Estimate of £300,000 to cover fees and works in 2015/16, with the balance of £2.9m being included in the Capital Programme for 2016/17;

(6) That the required HRA funding be provided through either revenue contributions to capital outlay (RCCO) and/or further borrowing from the Public Works Loan Board (PWLB);

(7) That the Director of Resources be authorised to determine:

(a) The most appropriate form of capital funding; and

(b) If further borrowing is required, the most appropriate PWLB loan to secure and to then obtain the loan;

(8) That a recommendation be made to Council to transfer the land from the General Fund to the Housing Revenue Account, with an appropriate adjustment being made in the balances due between the funds; and

(9) That a Planning Application be submitted for the new Repairs and Maintenance

## **Hub.**

### **Executive Summary:**

The Council needs to re-locate its Housing Repairs Service from the Epping Depot, to enable the proposed re-development for the St Johns Road area of Epping to proceed. Having searched for alternative vacant buildings around the district and other potential development sites to relocate to, with none found to be suitable, this report seeks agreement to the construction of a new Repairs and Maintenance Hub on a Council-owned vacant brownfield site in Blenheim Way, North Weald. This would also create the opportunity for the Housing Repairs team to be co-located with the Housing Assets Team, currently based at the Civic Offices, which would not only result in operational benefits but, more importantly, free-up accommodation at the Civic Offices – on the ground floor, close to Reception – to assist with the Council's Accommodation Strategy. The report also seeks agreement to fund the new Hub at an estimated cost of around £3.2m from the HRA through revenue contributions to capital outlay (RCCO), further borrowing from the PLWB or both.

With sufficient space to create additional office accommodation, the design also allows for other Council services or Partner Organisations working on behalf of the Council to occupy the building.

In order to meet the very tight deadlines necessary to build a new facility and thereby vacate the existing Depot before the date that the Council is required to give the developer vacant possession, a waiver to Contract Standing Orders is required in order to quickly appoint the architects and building consultants as well as project managers, for which this report discusses and makes recommendations to appoint Pellings LLP and Mears respectively. A planning application will also be required and this report seeks authority to make an application.

### **Reasons for Proposed Decision:**

In July 2014 the Cabinet agreed the Heads of Terms for a development agreement for the development of a site in St John's Road, Epping, which includes the current Council's Housing Repairs Depot, for the purpose of redeveloping the site to create a food store, car park, small cinema, restaurants, ancillary commercial uses and residential development. This requires the existing Housing Repairs Depot to be vacated at relatively short notice.

### **Other Options for Action:**

- (a) Not to use Council-owned land, which could be used for another purpose, and to buy land elsewhere in the district to construct a new building – but the capital costs would be far higher and, in any event, officers are not aware of any other suitable sites.
- (b) Not to use the brownfield site in North Weald, and use an alternative Council-owned site elsewhere in the district – although no suitable site has been identified, and construction needs to commence quickly.
- (c) Not to construct a new Repairs and Maintenance Hub and instead use an existing building, either in the Council's ownership or rented from a private landlord. However, in the last 3-years very few buildings have been identified and those that have been were not found to be suitable.
- (d) To fund the construction from the General Fund, as is the case for all other Council assets, and for the HRA to pay a contribution to the General Fund by way of rent. However, there are insufficient General Fund capital resources available in the short and medium term after taking account of all other commitments the Council has in place.

- (e) Not to waive Contract Standing Orders and appoint Pellings LLP and appoint the company or an alternative architect and other necessary Building Consultants through a competitive tender exercise instead. However, that would add a considerable delay to the project, which requires a fast track approach. There will also be an additional cost to undertaking a procurement exercise. Moreover, Pellings LLP's fees are in line with what would be expected through a competitive exercise anyway.

**Report:**

1. In July 2014 the Cabinet agreed the Heads of Terms for a development agreement for the development of a site in St John's Road, Epping, which includes the current Council's Housing Repairs Depot, for the purpose of redeveloping the site to deliver a Food store, 3 screen cinema, a mix of shops and restaurants, new Town Council Offices and Meeting Rooms, plus some residential. This requires the existing Housing Repairs Depot to be vacated at relatively short notice.

2. For some time prior to this, the Council's Estates and Valuation Team have been looking for alternative sites for the Housing Repairs Service to relocate to, be it vacant offices or industrial buildings to rent or suitable land to build a new facility. Existing Council facilities such as the Town Mead Depot in Waltham Abbey have also been considered, but rejected on planning grounds due to its location in a flood zone and in a high density residential area. Additionally, all 65 of the sites earmarked for Council house-building have been considered, but none have been found to be suitable due to either insufficient size or inadequate access.

3. However, an existing brownfield site has been identified in Blenheim Way, North Weald, which is about  $\frac{3}{4}$  of an acre in size, and is owned by the Council (See appendix A). The site, formally part of the Parade Ground of RAF North Weald, was originally earmarked for a Health Centre as part of the recent housing development but, in the event, the proposal did not come to fruition and was not provided. Therefore the land remains vacant. Within the Local Plan, the site is listed as being suitable for Employment, Business, Industry and Warehousing. Anything else would require a formal change of use through the normal planning processes.

4. The requirement for a replacement site for the Housing Repairs Service is already established. However, it is proposed to co-locate the Service with the Housing Assets Team (currently based at the Civic Offices), which would have the added advantage of providing a co-ordinated Housing Repairs and Maintenance Service (or "Hub"), and would also free up office accommodation on the ground floor of the Civic Offices as part of the Council's Accommodation Strategy. The site at Blenheim Way is in a suitable location for the provision of the proposed new Hub.

5. In total there are 22 posts on the establishment in the Housing Assets Team . In addition, there are 22 Repairs Officers operating in the customer and technical teams, a further 3 staff from Mears who provide the Repairs Management Service, 35 Council-employed tradesmen posts and 2 Apprentices. This equates to a total of 84 staff that would operate out of the proposed new Repairs and Maintenance Hub.

6. The Council has commissioned Pellings LLP, who is the architect, employers agent and multi-disciplinary building consultant working with East Thames (the Council's Development Agent) to deliver the Council's house-building programme, to undertake a feasibility study to provide a new Repairs and Maintenance Hub at the Blenheim Way site, where the existing Repairs Service and Housing Assets Service could be co-located.

7. Their appointment to undertake the feasibility study did not require them to tender in accordance with Contract Standing Orders as the fee was below £10,000. However, due to the urgent nature of relocating the Repairs Service in order to provide vacant possession of

the Epping Depot site, it is recommended that Contract Standing Order C6 (Contracts in excess of £50,000) be waived and that Pellings LLP be appointed to provide architectural and all other multi-disciplinary building consultancy services across all of the relevant RIBA work stages to deliver this project at an agreed fee of £170,000. Officers have benchmarked this fee with other consultancy projects and it is in line with what would be expected if a competitive exercise was undertaken.

8. Utility searches and a Topographical Survey of the proposed site have already been carried out and an initial design prepared and costed by Pellings LLP, taking account of the findings of the preliminary surveys. The proposed site plan can be found at Appendix 2 of this report.

9. Based on the feasibility study undertaken by Pellings LLP, the design incorporates an opportunity to form additional office accommodation for up to 40 additional desk spaces, which could be used for other Council Services or Partner Organisations working on behalf of the Council, thus making full use of the site, and maximising its potential.

10. With as many as 82 desk spaces in total, it is clear there will not be enough on-site parking for all staff. Therefore, alternative parking will need to be identified, perhaps making use of the nearby North Weald Airfield.

11. The Ward Councillors understand the urgency of the need to relocate from the Epping Depot site and have not objected to the proposal. However, as part of the consultation process to date, they have explained that the Parish Council have been seeking to provide a play area in the vicinity of the recently completed residential development adjacent to this site. Therefore, they have asked that provision be made on the site to provide space for such a facility, should the Parish Council wish to take up this option and provide the facility at its own expense.

12. The estimated cost of constructing the new Repairs and Maintenance Hub is around £2.664M plus fees (around £170,000) and fit-out costs. By comparison, members will be aware that the new Depot facility already approved at Oakwood Hill is also costing around £2.4M to construct.

13. Whilst Pellings LLP would act as the lead Building Consultant on the project, it will be necessary to appoint a Project Manager to act on behalf of the Council to co-ordinate the day to day aspects of the project including the client liaison, managing the relocation and the associated staffing issues, identifying the infrastructure, ICT, communications, furniture and finishings etc. Since Mears are appointed as the Council's Repairs Management Contractor, and have vast experience of dealing with decommissioning and setting up new depot locations across the country, it is recommended that Mears operate as Project Managers as a new "Key Deliverable" under the terms of their existing contract, at the previously tendered rate of £381 per day. Having regard to the time required to undertake this role, the estimated cost is around £27,000.

14. With a budget requirement of around £3.2m, it is recommended that this be met from the Housing Revenue Account (HRA), which already has headroom to borrow following self-financing that was introduced in 2013. Since the House-building programme is already moving at a pace to keep up with the need to spend 1-4-1 receipts and in view of the commitment to improve our existing housing stock to a "Modern Homes Standard", although some of the costs may be able to be funded from revenue contributions to capital outlay (RCCO), it is likely that the HRA will need to borrow all or most of the funding to provide the new Hub from the Public Works Loans Board (PWLB).

15. Whilst the Council's Offices, shops and Depots are held as General Fund Assets, the General Fund has already committed the majority of its capital reserves to other major projects in the short to medium term, it is therefore recommended that the new Repairs and



Maintenance HUB be funded from the HRA and that the Director of Resources be authorised to determine the most appropriate form of capital funding and, if further borrowing is required, the most appropriate PWLB loan to secure and to then arrange a loan with the PWLB if necessary.

16. Whilst the design is still at its feasibility stage, subject to the Cabinet agreeing to Recommendations 1-6 above, a detailed design will need to be developed and planning permission sought. Preliminary meetings have been held with the Assistant Director (Development Management), who has no objections at this stage and supports the development proposals for the site. Therefore, it is recommended that a Planning Application be submitted for a Repairs and Maintenance Hub on the Council-owned brownfield site in Blenheim Way, North Weald.

### **Resource Implications:**

Total estimated costs of around £3.2M to be funded by the HRA, for which borrowing from the PWLB may be necessary. The costs are broken down as follows.

- The estimated cost of construction - around £2.664M
- Estimated cost for fees - £170,000
- Estimated cost for Project Management by Mears as a “Key Deliverable” – £27,000
- Estimated allowance for fit out costs of £340,000
- 5% Contingency is included

These costs can be offset against the capital receipt to be received from the sale of the existing Epping Depot site as part of the major redevelopment at St John’s Road.

As the Repairs and Maintenance Hub will be providing services predominantly to the HRA and is being financed by the HRA, it is appropriate that the land involved should be transferred from the General Fund to the HRA. Following the transfer of commercial properties from the HRA to the General Fund there is a balance between the funds on which the General Fund pays interest to the HRA. A valuation for the land will be obtained and the transfer will reduce the balance outstanding between the funds, thus reducing the interest paid by the General Fund.

### **Legal and Governance Implications:**

The Housing Act 1985

### **Safer, Cleaner and Greener Implications:**

This development site would constitute as “brownfield” due to its previous development use linked to the airfield. Any new building will make use of modern and efficient materials and will achieve a high EPC score for energy efficiency. Mobile and flexible working practices will be incorporated into the building design and operating procedures.

### **Consultation Undertaken:**

The Ward councillors have been consulted and, in view of the need to relocate from the Epping Depot, do not object to the proposal, subject to the inclusion of an opportunity for the Parish Council to provide a small play area on the site if they wish.

### **Background Papers:**

None

**Risk Management:**

The main risks associated with this relate to the speed by which the new Hub can be constructed, as it needs to be completed in time to provide vacant possession at the existing Epping Depot. To mitigate this, the architects have been briefed that any methods of construction available to minimise the construction period should be considered.

Other risks include the HRA being unable to meet the costs of the works as well as other financial commitments. However, the recent report to the Finance and Performance Management Cabinet Committee by the Council's HRA Business Planning Consultants established that, subject to the (unknown) costs and implications of the Government's proposal to require councils to sell "high value" void properties, the HRA could fund, on average, around £1million of housing improvements each year. Although borrowing would be required, the loans could be repaid over the 30-year period of the HRA Financial Plan. Therefore, some of this financial capacity could be utilised to fund the provision of the Hub.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

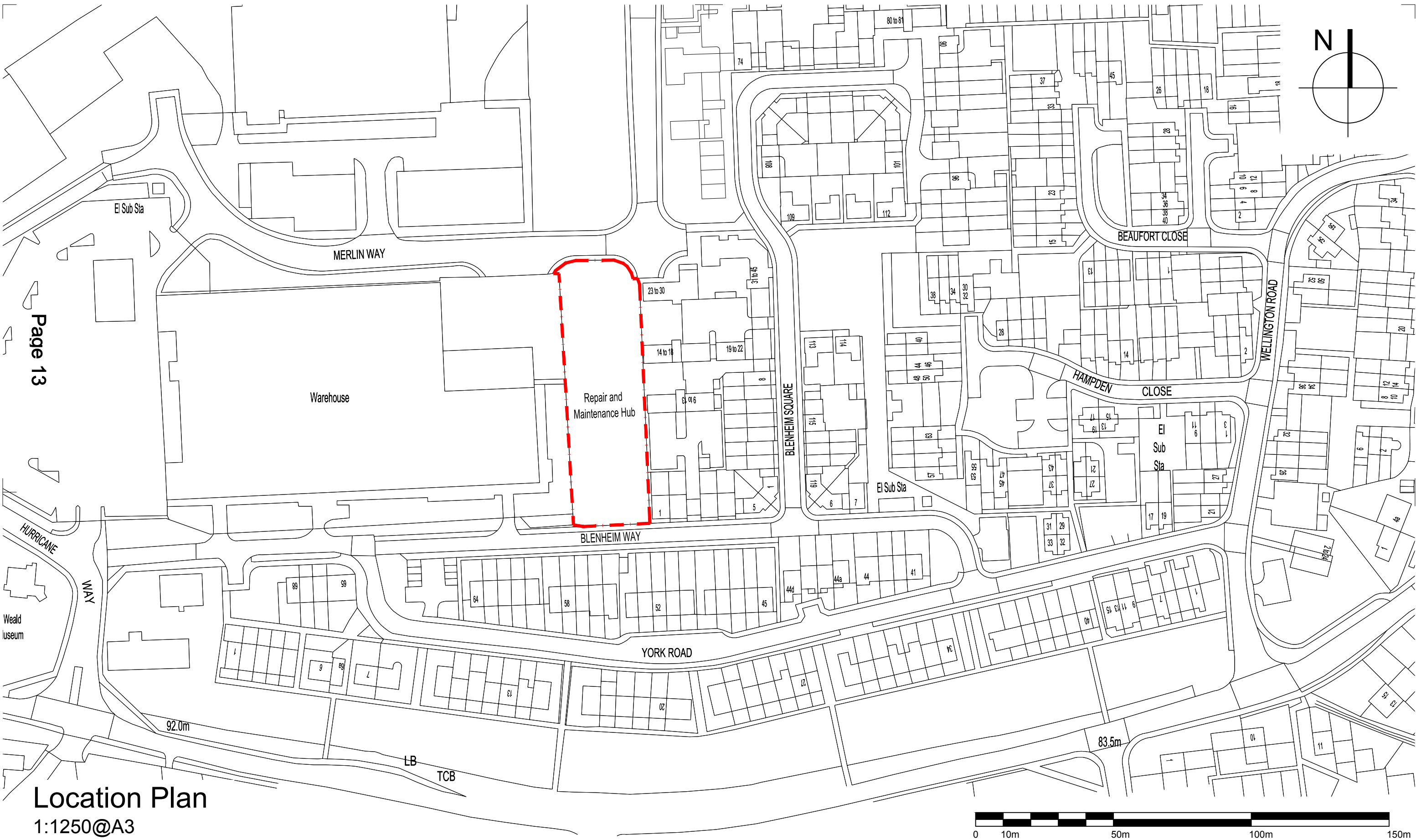
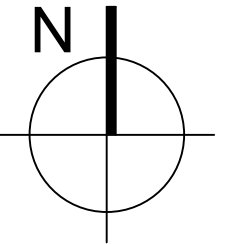
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This report is considering the merits of constructing a new building to accommodate the combined Housing Repairs and Maintenance Service on a site in North Weald. Any new buildings must meet Part M (Access To and Use of Buildings) of the Building Regulations, which addresses access to and the use of buildings by all groups.

As this will be a Council facility for Council employed staff, all of the Council's existing equality Policies will apply.

Disabled parking is also incorporated.

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**Location Plan**  
1:1250@A3

NOTES:

Report all discrepancies, errors and omissions  
Do not scale from this drawing.  
Verify all dimensions on site before commencing any work or preparing shop drawings.  
All materials, components and workmanship are to comply with all the relevant British Standards, Codes of Practice, and appropriate manufacturers recommendations that from time to time shall apply.  
For all specialist work, see relevant drawings.

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**PRELIMINARY**

Rev	Date	Description	Name

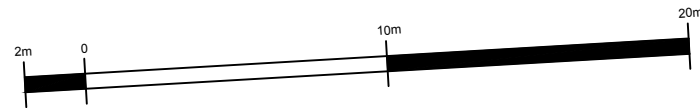
**Pellings**

Pellings LLP  
24 Widmore Road Bromley Kent BR1 1RY  
t 020 8460 9114 f 020 8313 0019 e bromley@pellings.co.uk  
www.pellings.co.uk

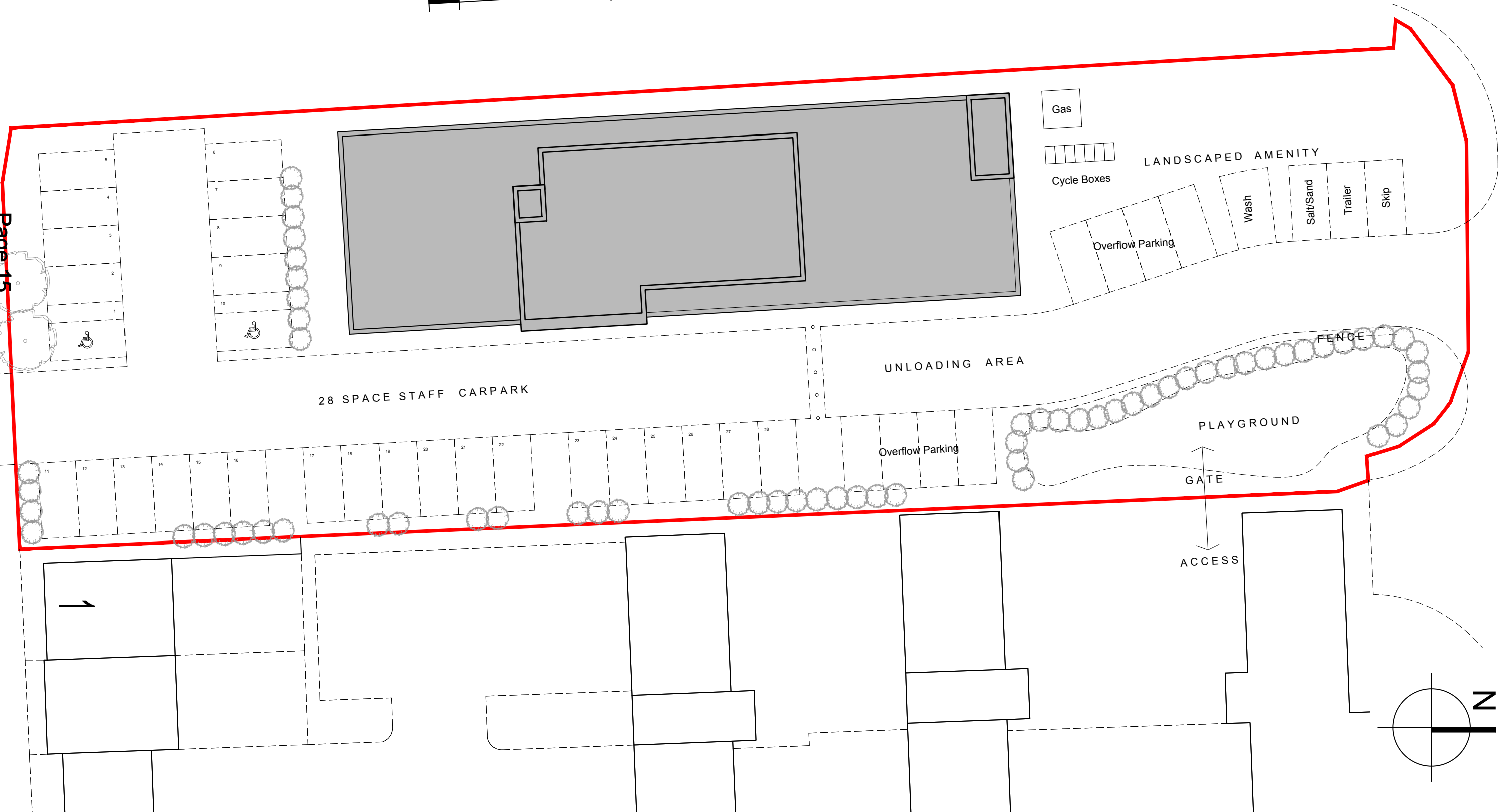
Architecture & Planning ■ Building Surveying ■ Project Management ■  
Cost Consultancy ■ CDM Co-ordination

CLIENT	Epping Forest District Council	PROJECT	North Weald, Repair and Maintenance Hub.		
TITLE	Site Location Plan	DATE	SEP 15	SCALE	1:1250 @A3
		DRAWN	NP	CHK	
		DRAWING No	774 002 E-01 A		

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Page 15



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Report all discrepancies, errors and omissions  
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 Verify all dimensions on site before commencing any work or preparing shop drawings.  
 All materials, components and workmanship are to comply with all the relevant British Standards, Codes of Practice, and appropriate manufacturers recommendations that from time to time shall apply.  
 For all specialist work, see relevant drawings.

**PRELIMINARY**

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Rev	Date	Description	Name
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Pellings LLP 24 Widmore Road Bromley Kent BR1 1RY t 020 8460 9114 f 020 8313 0019 e bromley@pellings.co.uk www.pellings.co.uk		Architecture & Planning ■ Building Surveying ■ Project Management ■ Cost Consultancy ■ CDM Co-ordination			
CLIENT	Epping Forest District Council	PROJECT	North Weald, Repair and Maintenance Hub.		
TITLE	Proposed Site Layout	DATE	SEP 15	SCALE	1:250 @A3
		DRAWN	NP	CHK	
		DRAWING No	774 002 E-02	CHK	C

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## **Report to the Cabinet**

**Report reference: C-041-2015/16**  
**Date of meeting: 5 November 2015**



**Epping Forest  
District Council**

**Portfolio: Housing**

**Subject: Acceptance of Tenders – Annual Gas Servicing and Maintenance Contract**

**Responsible Officer: P Pledger (01992 564248)**

**Democratic Services: Gary Woodhall (01992 564470)**

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### **Recommendations/Decisions Required:**

- (1) That Gracelands CMS Ltd be awarded the contract for the programmed servicing of Council owned gas appliances and the provision of breakdown and emergency repairs service to Council owned gas appliances to properties in both the north and south of the district based on a 5-year contract with the option to extend by a further 5-years, at the Most Economically Advantageous Tender (MEAT) based on an assessment of price and quality with a score of 74.98% for Lot 1 North and a score of 76.20% for Lot 2 South;**
- (2) That it be noted the projected annual expenditure for gas servicing and breakdowns, based on a comparison between the expenditure incurred during the financial year 2014/15 and the tendered rates submitted by Gracelands CMS Ltd for both Lot 1 North and Lot 2 South, the Council will benefit from a saving of around 4.9%;**
- (3) That the overall value of the works be limited to the sum included in the Capital Programme on an annual basis; and**
- (4) That this contract be designated as a serial contract under Contract Standing Order C11 to facilitate the annual increase in the schedule of rate items in accordance with The Department of Business, Innovation & Skills Building Cost Indices.**

### **Executive Summary:**

Tenders were sought for the programmed servicing and provision of breakdown and emergency repairs service to Council owned gas appliances in such a way that allowed the Council to appoint either a single Contractor to operate across the whole of the district or two contractors, one for each of the North and South of the district. The EU compliant tender exercise was undertaken on the Council's behalf by Procurement Consultants Cameron Consulting, and was based on an assessment of both quality and price with a 60% weighting on quality and a 40% weighting on price (Most Economically Advantageous Tender or MEAT). The most economically advantageous tender received was submitted by Gracelands CMS Ltd for both the north and south areas.

### **Reasons for Proposed Decision:**

The existing contracts for the programmed servicing and the provision of breakdown and emergency repairs service to Council owned gas appliances expired in July 2015; therefore it was necessary to re-tender the contract to satisfy the Council's legal requirement to maintain an annual Landlords Gas Safety Record for all Council owned gas appliances.

## **Other Options for Action:**

- (a) Not to appoint Gracelands CMS Ltd as the most economically advantageous tender for one or both of the contracts and appoint any of the other tenderers. However, this would create an opportunity for a legal challenge from any of the other Contractor, as the Notice in the OJEU and the instructions set out in the Invitation to Tender (ITT) clearly stated the Council's intention to assess and appoint based the most economically advantageous tender.
- (b) Whilst it is an option not to appoint any of the contractors, it would mean the Council would not be able to meet its legal obligation of completing Annual Landlord Gas Safety Records (LGSR) for all of its gas appliances.

## **Report:**

1. The existing contracts with Gracelands CMS Ltd for the programmed servicing and the provision of breakdown and emergency repairs service to Council owned gas appliances in both the north and south of the district expired in July 2015. Since July, they have provided a caretaking service until such time as the EU procurement exercise could be concluded and a replacement contract let. They are operating under two separate contracts, one for the North, which was let in 2005 and a second contract for the South, which was let in 2012 after the previous contractor went into liquidation.

2. Prior to the tender exercise commencing, a post-contract evaluation took place to try and identify any lessons learnt from the previous contracts that could be incorporated in the future. This identified the need to retain some flexibility to be able to appoint either two contractors, one for the north of the district and one for the south, but would also allow one contractor to cover both areas of the District.

3. To ensure there was no advantage given to the existing contractor, Cameron Consulting were appointed as independent Procurement Consultants to undertake an EU compliant tender exercise on behalf of the Council. An OJEU notice was posted and PQQ issued. The notice incorporated two lots, Lot 1 for the North of the district and Lot 2 for the South. The tender was based on quality and price, with quality making up 60% and price making up 40% of the tender score.

4. 22 completed PQQs were received and evaluated by Cameron Consulting with Council Officers involved in the moderation process. The criteria used were around the Contractors demonstrating they were capable and technically competent to meet the service requirements of the contract, were of sufficient economic and financial standing, had an appropriate level of experience with a track record for projects of a similar nature. A shortlist of 6 contractors was invited to submit a tender.

5. A waiver of Contract Standing Orders was agreed by the Housing Portfolio Holder to allow the Council to pilot electronic tendering, therefore tenders were issued electronically and then returned electronically on 7 August 2015 by 12 noon using the secure Delta eSourcing tender portal, which provides a full audit trail to identify who uploaded documents to the tender box and when they were uploaded as well as who downloaded the documents and opened them. The system on trial satisfies the Government's eProcurement guidelines.

6. The tender costs that were set out in the tender were for the purpose of calculating a "Target Price" as it will not be possible to record a fixed contract sum. This was broken down into a number of parts. These included a combination of fixed costs for servicing, schedule of rates for breakdowns including labour and parts, fixed hourly rates for labour, fixed percentages for central office and site overheads, percentages for profit as well as an enhanced profit percentage for achieving performance targets associated with LGSR.

7. The tenders were downloaded from the Delta eSourcing tender box by Cameron Consulting and sent by email to the Council. Each tender submission was opened by the Housing Portfolio Holder and recorded in the Council's tender register as follows:

Tenderer	Tender sum Lot 1 - North	Tender sum Lot 2 - South
British Gas Social Housing Ltd trading as PH Jones	£359,243.64	£357,746.08
BSW Heating Ltd	£547,968.06	£495,189.43
Gracelands Complete Maintenance Services Ltd	£198,388.68	£185,321.08
K & T Heating Services Ltd	£371,014.19	£331,939.96
Keepmoat Regeneration Ltd	Withdrew	Withdrew
Purdy Contracts Ltd	Did not submit	Did not submit

8. The tender sum that was captured was a simple summation of the financial values in the tender and do not represent a contract sum. The tendered rates, when evaluated represent a maximum score of 40% in a Quality/Price assessment.

9. Keepmoat Regeneration Ltd withdrew part way through the tender process. However, Purdy Contracts Ltd failed to submit their tender to the Delta-eSourcing tender box by the return deadline.

#### Evaluation of Price

10. The tender documents made it clear that *"...during the tender evaluation, the Council will analyse the submitted costs for consistency across the rest of the submission. Where costs or rates are considered to be inconsistent the Authorities Consultants will clarify any inconsistencies and to investigate potentially abnormally low tenderers. In this regard, the tenderers attention is drawn to the Authorities powers under regulation 30(6) of the Public Contract Regulations 2006 (as amended) to disregard/reject any Tender that is abnormally low. Where any of the tendered cells were left blank either by mistake or deliberately to give an advantage would be asked to complete these cells during the post tender evaluation process."* Other reasons include avoiding any ambiguous claims for payments that were left unpriced after the contract is let, which is a non-confrontational principle of Partnering Contacts.

11. The summary tables for Lot 1 North and Lot 2 South set out in paragraph 14 below captures the scores, with each price expressed as a percentage in accordance with the MEAT evaluation criteria, with price making up 40% of the evaluation score.

#### Evaluation of Quality

12. Since gas servicing is a high risk part of the Council's function as a landlord, and it is the only contract where the Contractor will enter all of the Council's stock each year, it is important that the Council selects the right contractor that can not only meet the Council's legal obligations to compete a LGSR but will also work to maintain its stock in a good condition and be respectful towards tenants. As a result, the Council set a 60% weighting on the quality submission of the tender.

13. The quality submissions centred around how each tenderer would deliver the contract; the resources they would allocate along with qualifications and experience; how they would provide a quality service in terms of managing breakdowns; gaining access for the purpose of competing the LGSR; customer care; risk management; improving performance; reducing "wasted" visits, and how any savings over time will be shared as efficiencies in gaining access are realised.

14. The summary table with the weighted percentage scores for both quality and price, which have been evaluated by Cameron Consulting strictly in accordance with the MEAT criteria, are set out in the two tables below for Lot 1 North and Lot 2 South:

Overall Summary Lot 1: North	Quality Summary (Max 60%)	Cost Summary (Max 40%)	Total (Max 100%)	Ranking
<b>Gracelands CMS</b>	39.50%	35.48%	<b>74.98%</b>	<b>1</b>
<b>K &amp; T Heating Services</b>	34.50%	33.25%	<b>67.75%</b>	<b>2</b>
<b>BSW Heating</b>	42.00%	25.13%	<b>67.13%</b>	<b>3</b>
<b>British Gas/ PH Jones</b>	35.00%	31.90%	<b>66.90%</b>	<b>4</b>

Overall Summary Lot 2: South	Quality Summary (Max 60%)	Cost Summary (Max 40%)	Total (100%)	Ranking
<b>Gracelands CMS</b>	39.50%	36.70%	<b>76.20%</b>	<b>1</b>
<b>K &amp; T Heating Services</b>	34.50%	34.95%	<b>69.45%</b>	<b>2</b>
<b>BSW Heating</b>	42.00%	26.27%	<b>68.27%</b>	<b>3</b>
<b>British Gas/ PH Jones</b>	35.00%	30.51%	<b>65.51%</b>	<b>4</b>

15. Based on the table above, the most economically advantageous tenders received for both Lot 1 North and Lot 2 South was from Gracelands CMS Ltd, who is the current contractor for both the North and the South of the district. It is therefore recommended that Gracelands CMS Ltd be awarded the contract for both Lot 1 North and Lot 2 South with a combined quality and price score of 74.98% and 76.20% respectively.

16. Since the tender sum is not based on a lump sum, rather a set of schedule of rates, fixed prices, percentages and labour rates, it is estimated that based on the rates submitted by Gracelands CMS Ltd the Council will realise a saving of around 4.9% against the annual expenditure for Gas Servicing in 2014/15.

17. Whilst it is not a requirement, a full financial credit check has been carried out on Gracelands CMS Ltd by the Chief Internal Auditor. The outcome of that check has recorded Gracelands CMS Ltd as having a 4-star Credit Rating and overall is a "Very Low Risk" for a contract of this value.

18. Gracelands CMS Ltd have a long track record of undertaking a variety of Maintenance related contracts on behalf of the Council, which includes the current gas servicing contracts for both the North and South of the district. They are a local company employing local labour. They consistently achieve very high levels of tenant satisfaction across all of their contracts and the Council receives more compliments for Gracelands CMS than any other of its contractors. These are all audited through the suite of Management PI's and Corporate KPI's.

19. Since tenants are already aware that Gracelands (CMS) Ltd provide their servicing and breakdown cover for gas heating systems, by awarding this contract to Gracelands (CMS) Ltd will make the contract lead-in and transition process seamless from a tenants' perspective, which will therefore reduce the risk of any emergency calls being missed during a hand-over.

**Resource Implications:**

There is a budget allocation of £1.2m per annum in the HRA for gas servicing and maintenance, which is sufficient to meet the costs as submitted in the tender received from Gracelands CMS Ltd. All prices are subject to an annual adjustment in line with The Department of Business, Innovation & Skills Building Cost Indices

**Legal and Governance Implications:**

The Housing Act 1985  
Gas Safety (Installation and Use) Regulations 1998  
Corporate Manslaughter and Corporate Homicide Act 2007

**Safer, Cleaner and Greener Implications:**

Maintaining gas appliances not only ensures they are safe, but it also ensures they are operating at their most efficient, thus keeping CO2 emissions at their lowest possible levels, and gas usage is as efficient as possible to tenant gas bills are as low as they can be.

**Consultation Undertaken:**

None

**Background Papers:**

Evaluation score matrix

**Risk Management:**

Risks can be measured in terms of both health and safety and in terms of financial viability. Gas Safety is measured and controlled by the Gas Safety (Installation and Use) Regulations 1998, for which this contract is set up to work within its rules and regulations. All Engineers must be qualified and registered as Gas Safe.

The Council has a legal requirement to ensure each gas appliance owned by the Council is safe and is inspected annually. The contract requires the contractor to meet this legal requirement on behalf of the Council, with procedures tested as part of the tender process.

Financial viability of the contractor is equally important. Should the Contractor cease trading, it will expose the Council to risks if there is no contractor in place to ensure each gas appliance is safe. Financial credit checks have been carried out on Gracelands CMS Ltd which report them as a "Very Low Risk"

# Due Regard Record

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A Housing Repairs Service and Asset Management Customer Impact Assessment has been carried out for all responsive repairs and planned maintenance works, which includes gas servicing and maintenance. This includes monitoring customer satisfaction. Priority for works is based on the condition of the appliances in the home and the legal requirement to complete LGSR annually rather than consider the individual characteristics of the occupants.

However, each breakdown call that is attended is first assessed based on the vulnerability of the occupant. Priority is given to older tenants, those with disabilities and where there are young children.

All contractors registered with Constructionline are required to produce an Equality and Diversity Policy, which is assessed independently as part of the vetting process for registration on Constructionline. The Equality Impact Assessment produced by Gracelands Complete Maintenance Service Ltd has been reviewed by the Council and has been found to be acceptable.

## **Report to the Cabinet**

**Report reference:** C-042-2015/16  
**Date of meeting:** 5 November 2015



**Portfolio:** Leader

**Subject:** Contract Standing Orders C2(9) and C2(10) – Breaches due to Cumulative Spend

**Responsible Officer:** Glen Chipp (01992 564080).

**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations:**

- (1) To note, in accordance with Contract Standing Order CSO C2(11), the 55 breaches of Contract Standing Orders listed in the Appendix to this report involving cumulative spends with individual contractors in excess of £50,000 over a 4-year period and reasons they have occurred;
- (2) To note that a further 205 breaches of Contract Standing Orders involving cumulative spends with individual contractors of less than £50,000 over a 4-year period have occurred; and
- (3) To note that Assistant Directors have been asked to take the required action that they have identified within the Appendix (and for the other breaches with values of less than £50,000) in respect of individual contractors, to seek to ensure that no future breaches of Contract Standing Orders occur regarding contracts with those contractors.

### **Executive Summary:**

Current Contract Standing Orders require a report to the Cabinet where, within a single service directorate, the aggregate sums payable to one supplier is likely to exceed the limits of authority referred to in the Contract Standing Orders. Furthermore, where Contract Standing Orders are breached and the value exceeds £50,000 (in this case over a period of four years), a report must also be made to Cabinet on the matter.

This report is in accordance with the latter case and details the results of a recent audit of supplier payments, actions already taken by the Management Board and proposed actions in individual cases where the cumulative spend is greater than £50,000.

### **Reasons for Proposed Decision:**

The Councils Contract Standing Orders (CSOs) require a report to be made to the Cabinet; CSOs C2(9), C2(10) and C2(11) apply.

### **Other Options for Action:**

None – it is a requirement of Contract Standing Orders to report to Cabinet breaches in

excess of £50,000.

**Report:**

1. At its meeting in June 2015, the (officer) Corporate Governance Group (CGG) considered a list provided by the Procurement Manager of all orders placed with contractors/suppliers through Marketplace over the past 4 years. This list showed that, from a strict interpretation of the current CSOs, there were a number of occurrences where the cumulative spend limit (£10,000 over a period of four years) currently set in Contract Standing Orders, above which more than one quote has to be sought, had been exceeded – thereby resulting in a breach of CSOs.

2. The relevant CSOs are C2(9) & C2(10), which state:

*“ (9) The value of orders which can be combined in one contract, must be added together over a period of four years when deciding which tendering or quotation method is to apply. Contracts must not be artificially under or over-estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders and/or EU Regulations.*

*(10) Where the aggregate sum payable within a single service directorate to one supplier of goods, works or services over a period of four years is likely to exceed the limits of authority referred to in these Contract Standing orders, the Chief Officer must report to the Portfolio Holder (in respect of contracts up to £250,000) and the Cabinet (in respect of contracts if over £250,000 in value) and seek a waiver of the Standing Order. It is the responsibility of the Chief Officer to ensure that such a report is submitted prior to the limit of authority being breached. In exercising their responsibilities under this paragraph, Chief Officers are required to have regard to the overall cost (including any management costs and those which extend over longer than a single financial year). “*

3. Additionally, CSO C11(2)(iii) states:

*“ (2) Subject to Standing Order C7 (4), invitations to tender (other than those in accordance with the EU Regulations) shall:...*

*(iii) be subject to a report to the appropriate Council body if a contractor succeeds in winning more than two successive contracts in the same financial year as lowest tenderer. “*

These Standing Orders seek to avoid larger contracts being split and to ensure that best value is received under contracts for goods and services.

4. Assistant Directors were therefore asked to complete a schedule listing all the contractors/suppliers used by their Directorate where they had identified a breach of CSOs has, or may have, occurred.

5. This exercise has revealed that there have been a total of 260 instances where the cumulative spend by individual directorates to one supplier over a 4-year period has exceeded the limit currently contained in Contract Standing Orders, as follows:

Resources	-	91
Neighbourhoods	-	89
Communities	-	67
Governance	-	13



6. In terms of those instances where the cumulative spend is above £10,000 but below £50,000 (205 of the 260 cases above), CGG has received reports from Assistant Directors on any proposed future orders with these contractors and, where necessary, the need to either seek competitive quotes to comply with CSOs or to seek any necessary waivers to the current rules in advance. It is clear by the number of instances where non-compliances have occurred for cumulative contracts with values over £10,000 over four years, that many of the instances relate to ongoing advice or are of the nature of repetitive small level order amounts from valued suppliers.

7. For the cases that exceed £50,000 over four years, CSO C2(11) requires a report to be submitted to Cabinet on the breaches for information. Accordingly, attached as an Appendix to this report are the details of the companies involved, the amounts and reasons for the breaches and the proposed action to be taken to avoid any further breach in the future. It must be stressed that no instance of inappropriate payments has been found, all expenditure is within budget and the suppliers, in many instances, continue to provide the Council with quality services.

8. Furthermore, there is a review being undertaken of the provisions of Contract Standing Orders and an Officer Working Party, chaired by the Director of Communities, has been established to look at the totality of the rules. They have been asked to formulate proposed new "Procurement Rules" to replace the current Contract Standing Orders, that:

- (i) adopt a more modern and flexible approach;
- (ii) are simpler to understand and comply with;
- (iii) are more responsive to the current and future procurement needs of the Council; and
- (iv) meet current EU Procurement Regulations;

whilst ensuring appropriate controls and probity to safeguard the use of public money.

9. One of the proposals that the Working Party has already considered, and is likely to put forward to members to consider, is that (with the exception of works, supplies and services with values in excess of the EU thresholds over a 4 year period, which is a legal requirement) the "cumulative expenditure review period" within the current CSOs is reduced to just one year within the new Procurement Rules. This is because it is the Working Party's view that the current CSO requirement has proved to be unworkable, inefficient and ineffective – and that it would be better to have a more realistic requirement that can then be better policed, with breaches identified more easily and quickly and appropriate action taken. In addition, it is clear that the threshold levels for contracts need further examination and the Officer Working Group is currently looking at options as part of their work.

10. In summary, the review of these breaches has been timely in that it informs the ongoing review of CSOs. No fraudulent activity has been found, the expenditure was all within budget and is as a result of cumulative orders that individually would not have breached CSOs. Moreover, the placement of orders with these individual contractors has generally been in the Council's best interests, through obtaining low-value goods, supplies, services and some works quickly, effectively and efficiently. Steps are being put in place to rectify the breaches concerned going forward.

11. Members are scheduled to receive a report of officers to the Constitution Working Group in the new year on the complete revisions to the CSOs, for onward adoption along with the rest of the new Constitution before the end of the municipal year.

**Resource Implications:**

All of the contracts with suppliers were within budget at the prevailing time. There is no reason to believe that the breaches have resulted in increased costs to the Council; in fact, in view of the high number of low-value orders involved, it is quite possible that the overall costs have been less than if Contract Standing Orders had been complied with.

**Legal and Governance Implications:**

Section 135 of the Local Government Act 1972 requires local authorities to have a set of agreed Contract Standing Orders.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

The Council's Corporate Governance Group has been consulted on the remedies proposed by Assistant Directors.

**Background Papers:**

None.

**Risk Management:**

In view of the relatively low-value of the individual orders (all under £10,000) the risks involved are minimal.

The main risks are that, by issuing separate orders to contractors:

- (a) Better value for money may have been able to have been obtained through combining individual orders into one or more contract for which competitive quotes could have been obtained; and
- (b) It could have been done by an officer to wilfully avoid compliance with Contract Standing Orders for potentially fraudulent reasons.

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There are no issues relating to the groups of people with protected characteristics covered by the Equality Act 2010.

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**Schedule of orders placed by directorates to individual suppliers over the past 4 years  
that, cumulatively, breach Contract Standing Orders in excess of £50,000 in value**

**October 2015**

Supplier / Contractor	No. of orders over past 4 years	Total cum. amount (exc. VAT)	Reason(s) for Breach reported by the responsible Assistant Director	Proposed action(s) by the responsible Assistant Director to rectify the breach
<b>Resources Directorate</b>				
Acclaim Contracts Ltd  Page 29	13	£50,512.01	(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders (b) It was just not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future (d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service (e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
Allied Mechanical Services Ltd	126	£164,374.60	(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders (b) It was just not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future (d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service

				(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
BSS Group Colchester Ltd.	38	£50,824.56	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future (d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service (e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
Cardell Services	63	£54,830.00	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future (d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service (e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
Edmundson Electrical Ltd	336	£154,738.60	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs

				<p>(c) An existing Framework Agreement will be used in future</p> <p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>
Emery Electrical Ltd	370	£145,674.00	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	<p>(a) An appropriate number of quotes will be obtained for all future orders</p> <p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) An existing Framework Agreement will be used in future</p> <p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>
GA & D Perry	88	£86,863.98	<p>(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders</p> <p>(b) It was just not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p>	<p>(a) An appropriate number of quotes will be obtained for all future orders</p> <p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) An existing Framework Agreement will be used in future</p> <p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>

Gillard & Sons Ltd	77	£97,142.75	(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders (b) It was just not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future (d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service (e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
J McIntock & Sons Ltd	444	£69,347.89	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	No further action is required, since no further orders are expected to be placed with this contractor/supplier that would breach CSOs
Multi Alarm Systems (B) Ltd	189	£195,032.30	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future (d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service (e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
PTC Systems Ltd	57	£110,189.90	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) An existing Framework Agreement will be used in future



				<p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>
R & SA Corpe Roofing	70	£90,609.48	<p>(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders</p> <p>(b) It was just not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p>	<p>(a) An appropriate number of quotes will be obtained for all future orders</p> <p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) An existing Framework Agreement will be used in future</p> <p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>
Specialist Coatings	44	£150,202.40	<p>(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders</p> <p>(b) It was just not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p>	<p>(a) An appropriate number of quotes will be obtained for all future orders</p> <p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) An existing Framework Agreement will be used in future</p> <p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>
WF Electrical	89	£57,630.26	It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required	(a) An appropriate number of quotes will be obtained for all future orders

				<p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) An existing Framework Agreement will be used in future</p> <p>(d) Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service</p> <p>(e) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p>
365i Technology	51	£138,005.30	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	An appropriate number of quotes will be obtained for all future orders
Advanced Business Solutions	10	£65,832.76	<p>The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)</p> <p><i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i></p>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Capita	28	£433,219.49	<p>The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)</p> <p><i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i></p>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Hewlett Packard	7	£75,377.02	<p>The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)</p> <p><i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant</i></p>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned

			<i>Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i>	
IHS Global Ltd	3	£51,910	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Northgate Public Services	48	£313,900.53	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Phoenix Software	36	£136,055.86	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders <i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i>	An appropriate number of quotes will be obtained for all future orders
Probrand Ltd	123	£90,672.43	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	An appropriate number of quotes will be obtained for all future orders
Public-i Group Ltd	3	£60,981	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned

QA Ltd	6	£55,967.45	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	An appropriate number of quotes will be obtained for all future orders
SoftCat Ltd	26	£77,597.41	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Vcentral Ltd	15	£106,291.97	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: This charge relates to licence and maintenance of a core system, paid for by ICT on behalf of the relevant Directorate. These services can only be acquired through the supplier and the cost of changing, or even tendering for alternative systems is prohibitive and in most cases not required as the system is fit for purpose.</i>	Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Eden Brown	163	£161,836	(a) The cumulative value of orders was not originally expected to be above the CSO £10,000 threshold (above which more than one quote is required), that has subsequently been breached, when orders were first placed (b) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s)	An appropriate number of quotes will be obtained for all future orders

**Neighbourhoods**

BPI Recycled Products	16	53,391	The work required could reasonably only be undertaken by one specialist contractor/supplier and (at least) one waiver of CSO <b>was</b> obtained in the past, but it did not cover all the subsequent (or past) orders placed.	No further action is required since the cause of the breach has now been resolved
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CQ Surfacing	69	134,080	The cumulative value of orders was not originally expected to be above the CSO £10,000 threshold (above which more than one quote is required), that has subsequently been breached, when orders were first placed	An appropriate number of quotes will be obtained for all future orders
Design & Print Ltd	49	82,722	Contracts let for specialist printing – It seems that even though tenders went out over the years they were not legally completed	Tender are about to be sought shortly
Ernest Doe & Sons (Maldon)	61	387,789	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs
Fortismere Associates	1	72,000	The work required could reasonably only be undertaken by one specialist contractor/supplier and (at least) one waiver of CSO <b>was</b> obtained in the past, but it did not cover all the subsequent (or past) orders placed.	A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs
Hillside Kennels	5	97,751	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)	A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs
Index Group of Companies	4	145,000	The work required could reasonably only be undertaken by one specialist contractor/supplier and (at least) one waiver of CSO <b>was</b> obtained in the past, but it did not cover all the subsequent (or past) orders placed.	No further action is required since the cause of the breach has now been resolved
Luckwell	118	127,001	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs
Principal Trees	142	104,931	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs
Sector Staffing	6	127,450	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs
Shell UK Oil	16	147,924	Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders	This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party
Troy Hayes Planning Limited	4	£70,222.40	The value of the work was not known at the time the order was raised. <i>Note from AD: The consultant was employed on a temporary basis to provide maternity cover. The original order was for</i>	No further action is required, since no further orders are expected to be placed with this contractor/supplier that would breach CSOs

			<i>£28,500, in order to cover the period she would be off work. This was approved by PFH report waiving CSOs in July 2013. However the maternity cover was slightly longer than anticipated and further work was allocated to the consultant, who was employed on a longer basis.</i>	
AECOM Infrastructure & Env (London))	4	£71,345.17	The value of the work was not known at the time the order was raised. <i>Note from AD: AECOM has worked on several studies for the Local Plan. The cost of the some studies (£64,100 total) was agreed in January 2013 by PFH report waiving CSOs. However, the total cost has exceeded this as other costs for attending meetings, providing workshops for Members etc. have been incurred.</i>	(a) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service
Allies and Morrison Urban Practitioners	3	£126,166.25	The value of the work was not known at the time the order was raised. <i>Note from AD: The Council commissioned masterplanning work at Cabinet in July 2013. The company was then appointed by tender in October 2013, using a Homes and Community Agency Framework, through which 3 bids were received. The company tendered a total cost of £49,993.75 for the project. However this brief was significantly expanded, incorporating extra costs for more detailed work, public exhibitions, workshops etc.</i>	No further action is required, since no further orders are expected to be placed with this contractor/supplier that would breach CSOs

**Communities Directorate**

VAEF	110	£243,351	(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders (b) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s) (c) The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)	An appropriate number of quotes will be obtained for all future orders
Northgate	10	£57,421	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)	This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of

				the Procurement Working Party
JARS (James Andrews Recruitment Solutions)	84	£243,351	Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s)	No further action is required, since no further orders are expected to be placed with this contractor/supplier that would breach CSOs
Housemark	5	£82,849	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s)	A waiver of CSOs will be sought for the future
Blue Pig	53	£57,421	(a) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required (b) The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: The supplier holds the Council's templates for the Tenants Handbook, Tenancy Agreement etc and it would not be cost effective to place this work elsewhere.</i>	Tenders will be sought in future for a new Framework Agreement to be used for this work/supplies/service
Brewer Incorporating Enfield Timber	263	£77,014.48	(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders (b) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required (c) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s) <i>Note from AD: Used to supply timber, fencing, paint and decorating material prior to Buildbase contract. Orders raised after obtaining quotes. Continue to be used as dispute exists with Buildbase.</i>	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
Premier Kitchens	231	£78,801.05	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: A waiver of CSOs was sought as part of the capital installations programme. However, this expenditure relates to the supply of replacement units, parts and spares used</i>	Unless it can be argued that the existing waiver for supply of kitchens as part of the planned installations programme is valid for the supply of replacement parts for responsive repairs, an annual waiver will be required.

			<i>in the day to day repairs.</i>	
Plumb Centre	97	£52,258.61	<p>(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders</p> <p>(b) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p> <p>(c) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s)</p> <p><i>Note from AD: Used to supply plumbing material prior to Buildbase contract. Orders raised after obtaining quotes. Continue to be used as dispute exists with Buildbase.</i></p>	<p>(a) An appropriate number of quotes will be obtained for all future orders</p> <p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned</p>
Mobile Stationery & Printing Centre Ltd	47	£51,819.89	<p>(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders</p> <p>(b) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p> <p>(c) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s)</p>	No further action is required, since no further orders are expected to be placed with this contractor/supplier that would breach CSOs
GBN Services	14	£90,704.30	<p>(a) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p> <p>(b) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s)</p>	<p>(a) This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party</p> <p>(b) Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned</p>
Fayers Plumbing & Building Supplies London	200	£117,013.73	<p>(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders</p> <p>(b) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required</p>	<p>(a) An appropriate number of quotes will be obtained for all future orders</p> <p>(b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs</p> <p>(c) Arrangements have been / will be made to</p>



			(c) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s) <i>Note from AD: Used to supply plumbing and sanitaryware prior to Buildbase contract. Orders raised after obtaining quotes. Continue to be used as dispute exists with Buildbase.</i>	provide training on compliance with CSO to the officers concerned
Essex Garage Doors Ltd	102	£52,276.92	The work required could reasonably only be undertaken by one specialist contractor/supplier, but the required waiver of CSO was not obtained before placing the order(s) <i>Note from AD: Specialist local supplier of bespoke garage doors and parts. Most garage doors are old opening size and requires a specialist service.</i>	(a) An appropriate number of quotes will be obtained for all future orders (b) A competitive tender exercise will be undertaken in future, to let a contract in accordance with CSOs (c) Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned
BEW Electrical Distributors Ltd.	202	£58,366.72	(a) Competitive quotes have been obtained when required, but an insufficient number of quotes have been obtained, based on the cumulative value of orders (b) It was not identified that the cumulative value of orders had exceeded the threshold(s), above which more than one quote was required (c) Orders were placed by a variety of officers/teams within the Directorate and the officers/teams involved were not aware of the cumulative value of the other orders placed, which is above the relevant threshold(s)	(a) Arrangements have been / will be made to provide training on compliance with CSO to the officers concerned (b) No further action is required, since no further orders are expected to be placed with this contractor/supplier that would breach CSOs
<b>Governance Directorate</b>				
Newsquest	4	£83,634.81	The work required could reasonably only be undertaken by one specialist contractor/supplier and (at least) one waiver of CSO was obtained in the past, but it did not cover all the subsequent (or past) orders placed <i>Note from AD: A waiver was obtained annually previously - but not for 2014-15 or 2015-16.</i>	This work/supplies/orders would benefit from a corporate contract or Framework Agreement and this proposal will be raised at the next meeting of the Procurement Working Party

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## **Report to the Cabinet**

**Report reference:** C-043-2015/16  
**Date of meeting:** 5 November 2015



**Epping Forest  
District Council**

**Portfolio:** Finance  
**Subject:** Council Tax and Housing Benefit Civil Penalty Policy  
**Responsible Officers:** Janet Twinn (01992 564215).  
**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

(1) To approve the Policy for the introduction of Council Tax and Housing Benefit civil penalties.

### **Executive Summary:**

Legislation exists to enable the Authority to impose a civil penalty for instances where a person has either falsely given information, or failed to report a change in their circumstances, which has resulted in either a Council Tax discount or exemption being granted, or Housing Benefit being paid, when there was no entitlement. The Authority can impose a civil penalty of £70 for Council Tax discounts and exemptions, and a £50 civil penalty for Housing Benefit. The Authority has not previously imposed such penalties but there are benefits to be gained from introducing them.

### **Reasons for Proposed Decision:**

The introduction of the Civil Penalties will act as a deterrent to people who may be incorrectly claiming a Council Tax discount or exemption, or an increased payment of Housing Benefit. It will help to ensure that the Taxbase is accurate as well as provide an additional income stream to the Authority.

### **Other Options for Action:**

Cabinet could decide not to impose Council Tax and Housing Benefit civil penalties.

### **Report:**

1. The Local Government Finance Act 1992 allows for civil penalties to be imposed for failing to give accurate information or for failing to advise of a change in circumstances in relation to any Council Tax discount or exemption. The Social Security Administration Act 1992 allows for similar civil penalties to be imposed in relation to Housing Benefit.

2. Council Tax fraud is an area of concern nationally. Whilst the Council regularly reviews discounts awarded there is currently no disincentive for people not to notify a change in circumstances or provide false information. A civil penalty will address this. It is hoped that with suitable publicity, people will realise the importance of giving accurate information to the Authority in a prompt manner. In addition, dependant on the circumstances the individual

could be subject to fraud proceedings as outlined in the policy

3. The civil penalty for Council Tax purposes is £70 and will be applied to the Council Tax account for collection via the normal billing process. Where a £70 penalty has been imposed and a person still fails to provide information, a further £280 penalty can be imposed for each subsequent failure. The civil penalty for Housing Benefit purposes is £50 for each offence and will be collected either by deducting the penalty from ongoing Housing Benefit entitlement, or by sundry debtor. Before imposing a civil penalty, consideration will be given as to whether a person is considered to be vulnerable and therefore whether a civil penalty is appropriate. There is the right of appeal against the imposition of a civil penalty.

4. The introduction of the civil penalties should hopefully encourage people to ensure that they pay the correct amount of Council Tax, but it will also bring an additional income stream to the Authority. The amount of additional income will depend upon how many civil penalties are imposed and how many of them are collected. However, the main driver behind the policy is to provide an incentive for people to provide accurate and timely information.

5. The proposed policy document is shown in Appendix A which gives more detail about the application of the civil penalties and the appeal rights. Once adopted, appropriate publicity will be issued to advise the public of the policy and the penalties that can be imposed.

**Resource Implications:**

There are no resource implications other than potential future income.

**Legal and Governance Implications:**

The imposition of civil penalties is already provided for within legislation.

**Safer, Cleaner and Greener Implications:**

There are no Safer, Cleaner and Greener implications.

**Consultation Undertaken:**

No consultation has been undertaken.

**Background Papers:**

Policy attached as Appendix A.

**Risk Management:**

There is a risk that the civil penalty would not be collected.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

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## **Council Tax and Housing Benefit Civil Penalty Policy**

### Background:

Legislation already exists to allow Local Authorities to impose civil penalties where a person either delays in providing information, or gives false information in order to decrease their liability for Council Tax or to increase their entitlement to Housing Benefit.

### Report:

The majority of Council Tax payers do provide accurate information in a timely manner, but there are a minority who will seek to gain financially by providing inaccurate or late information. There are no specific groups of people who will be affected and a civil penalty could be applied to anyone who is a Council Tax payer and/or a tenant in receipt of Housing Benefit. However, a civil penalty will only be imposed in cases where a person has deliberately sought to deceive the Council for their own financial gain.

The decision to impose a civil penalty is discretionary and the circumstances of each case where a civil penalty is being considered will be evaluated first. A civil penalty will not be imposed when a person is deemed to be vulnerable or there are other circumstances which leads the Council to believe that a civil penalty is not appropriate.

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# **Council Tax & Benefits**

Application of Civil Penalties

(Failure to Notify or Supply Information)

# CONTENTS

Part	1	Introduction
Part	2	Council Tax penalties
Part	3	Housing Benefit penalties
Part	4	Appeals
Part	5	Exceptions
Part	6	Application of the penalty



## **Part 1 Introduction**

- 1.1 Failure to notify a change of circumstances or provide information for Council Tax billing or Housing Benefit purposes is an offence. The offence is committed if the customer fails to provide information within 21 days of its request, fails to notify us of a change affecting their liability to pay Council Tax within 21 days of the change occurring or if they fail to notify us of a change affecting their entitlement to Housing Benefit within one calendar month.
- 1.2 For practical purposes the Council will not impose a penalty if the customer notifies us, or provides the requested information, within one calendar month for both Housing Benefit and Council Tax. Please note there is currently no penalty scheme for Business Rates.
- 1.3 Where a penalty has already been imposed on their Council Tax account and a further request to supply the same information is made, a further penalty of £280 may be imposed for each subsequent failure, provided:
  - the information is in the debtor's possession.
  - the authority requests him to supply it.
  - it falls within a prescribed description of information.
- 1.4 An example of when a further penalty may apply would be a large landlord or Estate Agent who continually fails to tell us about a new tenant moving in to their property.
- 1.5 During the first year of operation the additional penalty should only be imposed after discussion and approval from the Assistant Director (Revenues) or Assistant Director (Benefits).

## **Part 2 Council Tax penalties**

- 2.1 Schedule 3 of the Local Government Finance Act 1992 allows Councils to impose a £70 penalty to any person who;
  - a) fails to notify the council that an exemption on a dwelling should have ended
  - b) fails to notify the council that a discount (including single person discount and Local Council Tax Support) should have ended
  - c) fails to notify the council of a change of address or fails to notify the council of a change in the liable party
  - d) fails to provide information requested to identify liability
  - e) deliberately provides false information . In addition to the power to impose a penalty, the provisions of the Theft Act apply to Council Tax as they do in other situations. Where any person presents information which they know to be false with a view to obtaining a financial benefit they may be subject to a prosecution for obtaining a pecuniary advantage by deception.

## Part 3 Housing Benefit penalties

- 3.1 A Housing Benefit civil penalty can be imposed in accordance with the Social Security Administration Act 1992. A civil penalty of £50 can be added to the amount of an overpayment of benefit if the overpayment (after underlying entitlement) is more than £100 and where the claimant is viewed as being at fault.
- 3.2 A civil penalty cannot be applied where the claimant has, in respect of the overpayment, been charged with an offence, been cautioned or been subject to a penalty as an alternative to prosecution under section 115A of the Social Security Administration Act 1992.
- 3.3 A penalty applies where there has been an overpayment of Housing benefit of more than £100 after underlying entitlement. A £50 civil penalty can be added in the following circumstances:

1. **Where a person has been overpaid as a result of negligently making an incorrect statement or representation, or negligently giving incorrect information or evidence.**

For example bank statements show that there is another bank account or job that has not been disclosed on the claim form and no action has been taken to tell the Authority about it. In this situation the penalty will only be applied if the person also fails to take reasonable steps to correct the error. The DWP's definition of 'negligently' means 'acting carelessly, not paying sufficient attention to the task in hand, or disregarding the importance of what is required to be done in relation to the claim or an award.

2. **Where a person has been overpaid as a result of failing, without reasonable excuse, to provide information or evidence required in connection with a claim for, or award of benefit. The DWP defines 'reasonable excuse' as a 'credible reason or justification' and might include being in a situation of significant stress or suffering ill health;**

For example, the claimant starts work or moves and, as a result of their failure to supply new evidence of earnings or rent, a negative inference has to be taken (eg a zero rent or £999 income is assumed).

3. **Where a person has been overpaid as a result of failing, without reasonable excuse (see above), to notify a relevant change of circumstances.**

In cases where the Authority becomes aware of a change of circumstances which the claimant has not notified to the Authority (including changes identified via Automated Transfer to Local Authority Systems (ATLAS)).

## **Part 4 Appeals**

- 4.1 If a customer disagrees with the imposition of a Council Tax penalty they may discuss it with the Council. They do however have the right to appeal directly to the Valuation Tribunal. They have two months in which to appeal after a penalty is imposed. If a penalty is imposed, we must advise the customer why we have imposed a penalty and provide them with information about how to appeal and the date by which any appeal should be made. If the taxpayer appeals, recovery of the penalty should be suspended until the appeal is decided.
- 4.2 Penalties applied to a Council Tax account are recovered as part of the normal recovery process.
- 4.3 Housing Benefit penalties may be appealed as part of an appeal against the overpayment decision. The decision can be reconsidered by the Authority, and if unsuccessful, the appeal can be considered by The Tribunals Service.

## **Part 5 Exceptions**

- 5.1 Exclusion from a penalty should be considered in cases where:

The customer or their partner:-

- has a significant degree of physical or mental infirmity, such as a terminal illness, severe clinical depression, hearing/sight/speech problems, learning difficulties or frailty due to old age.
  - has made a voluntary disclosure of the alleged offence before the Council had any suspicions regarding the validity of their entitlement to a Council Tax discount or exemption, Local Council Tax Support Reduction Scheme or their Housing Benefit entitlement
  - was driven to commit the offence by a difficult domestic situation (for example domestic violence or fire)
  - could be dealt with more effectively without redress to a penalty, for example due to age or immaturity, although youth in itself is not a good enough reason not to instigate proceedings.
- 5.2 Where a taxpayer is in receipt of Council Tax Support (LCTS) care must be taken not to impose a penalty twice for the same offence, where neither Council Tax, nor Benefits, was notified of the change.

- 5.3 Where a civil penalty would otherwise be imposed, exceptions will be agreed after discussion and approval from the Assistant Director (Revenues) or Assistant Director (Benefits).

## **Part 6 Application of the penalty.**

- 6.1 The Council Tax bill clearly shows the award of discounts, exemptions and/or Local Council Tax Support. It makes clear that the taxpayer must tell the Authority straight away about any change in their circumstances that could affect their bill or a penalty could be imposed.
- 6.2 The Benefit decision letter also clearly states that failure to advise the Authority of changes in circumstance that may affect their entitlement to Housing Benefit may result in an overpayment and the imposition of a penalty.
- 6.3 A Council Tax penalty will be collected by applying the penalty to the Council Tax account for collection via the normal billing process.
- 6.4 A Housing Benefit penalty will be recovered either from ongoing Housing Benefit entitlement or by sundry debtor.
- 6.5 A letter will be sent in all cases advising of the application of the penalty and the reason.
- 6.6 Where the penalty relates to an overpayment of Housing Benefit, no penalty will be applied until one month after the notification of the overpayment has been issued. This allows for a period where further information can be provided and an underlying entitlement award considered.

## **Report to the Cabinet**

**Report reference:** C-044-2015/16  
**Date of meeting:** 5 November 2015



**Portfolio:** Safer, Greener and Transport

**Subject:** Award of Contract for Advertising on and Maintenance of Bus Shelters across the District

**Responsible Officer:** Qasim (Kim) Durrani (01992 564055).

**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) To note that the 15 year contract for advertisement on and maintenance of the 60 bus shelters in the District has worked well and is coming to an end on 31 December 2015;**
- (2) To agree to award the contract to Clear Channel for a further 4 year period from 1 January 2016 to 31 December 2019; and**
- (3) To waive contract standing orders C5 (contracts exceeding £50,000) and C6 (Restricted Tendering for Contracts Exceeding £50,000 in value) and the requirement to carry out a procurement exercise.**

### **Executive Summary:**

The Council entered into a 15 year contract with Adshell (predecessor of Clear Channel Limited) in 2000. Under the terms of the contract Clear Channel installed 60 new bus shelters across the District. The Council does not pay the contractor and all costs associated with the maintenance and upkeep of these shelters, estimated at £45,000 per year, are incurred by Clear Channel. The shelters have been kept in good condition.

The contract comes to an end on 31 December 2015. Under the terms of the contract, and subject to mutual agreement, the contract can be extended for a further period of 4 years. Market research has indicated lack of sufficient interest and conducting a procurement exercise could increase the financial exposure of the Council.

### **Reasons for Proposed Decision:**

To ensure the maintenance and repair of the 60 bus shelters across the District.

### **Other Options for Action:**

To not renew the contract and allow Clear Channel to remove the 60 bus shelters from the District, as stipulated in the contract. This is not a viable option and would result in significant inconvenience to the users of the bus services across the District.

A procurement exercise is not being considered due to the absence of viable competitors

in the market place. Only one other supplier J Decaux has been identified which could provide a similar service. They have declined to take part in a procurement exercise at the present time.

It is possible for the Council to rent advertising space on the bus shelters and use the income generated to cover the cost of installation and maintenance of all the bus shelters. However it is uncertain if the Council can generate enough income to cover all the costs.

### **Report:**

1. In 2000 the Council entered into a 15 year contract with AdShell Limited, the predecessor company to Clear Channel Limited. Under the terms of the contract Clear Channel installed 60 new bus shelters across the entire District, at no cost to the Council. Clear Channel receive all the advertising income from the 46 bus shelters and in return maintains all 60 bus shelters to a good and safe standard. There are an additional 17 bus shelters that have been installed directly by the Council and the maintenance for these is carried out by the Council.

2. The contract with Clear Channel, and AdShell before them, has worked very well. All the shelters are maintained to a good and safe condition, repairs and remedial works are carried out promptly and the contractor has performed within the performance standards set in the contract. The terms of the contract, subject to mutual agreement, allow for a 4 year extension. Clear Channel have indicated a willingness to an extension and would agree to some enhancements:

- More frequent cleansing of all bus shelters
- Structural and electrical testing once a year
- Refurbishment programme for all bus shelters
- Ability for the Council to advertise in bus shelters when void space is available
- Explore opportunities for new advertising including digital advertisements

3. Market research and discussions with neighbouring local authorities identified only one other provider, J C Decaux. They were contacted and have informed the Council that at the present time they would not tender for the contract if the Council went to market.

4. If the Council were minded to terminate the contract then under the terms Clear Channel will remove and take away all 60 bus shelters. This will create serious issues for the users of public transport.

5. There is an option for the Council to manage the process in house. It may be possible to rent advertising space on the bus shelters, similar to what Clear Channel is currently doing, and use that income to pay for the repair and maintenance of all the bus shelters. However any advertising income will have to offset the estimated annual maintenance cost of £45,000 as well as the capital cost of installation of 60 new bus shelters estimated at £600,000.

6. The contract does not cost the Council and the yearly maintenance cost of £45,000 is incurred by Clear Channel. The Council's Contract Standing Orders require that before making a decision on the award of a contract an assessment should be made of the most appropriate method of procurement. In this instance and although there is no cost to the Council the yearly maintenance cost of £45,000 will result in a total contract cost of £180,000. This is above the threshold set in Contract Standing Orders C5 and C6.

It is necessary to seek waiver of these two clauses of the Standing Orders to enable the four year extension of the contract to Clear Channel Limited.

**Resource Implications:**

The Council does not pay Clear Channel under this contract however it is understood that on average Clear Channel spend circa £45,000 a year in maintaining all the bus shelters under the contract. If the contract was not renewed for another 4 years then Clear Channel will remove all the bus shelters and the Council will have to install new shelters at an estimate cost of £600,000.

**Legal and Governance Implications:**

The majority of the bus shelters are located on the Essex County Council Strategic Transport Routes or are in heavily used urban centres and consequently high profile. Clear Channel uses advertising revenue to pay for the maintenance of these and other less busy but equally important bus shelters in rural locations.

**Safer, Cleaner and Greener Implications:**

Provision of adequately designed and appropriate bus shelters on the main transport routes or less frequently used rural locations across the District assists with passenger safety by encouraging boarding at appropriate locations, designated bus stops allows passengers to group themselves prior to boarding which reduces time spent at boarding, some bus shelters are lit at night and the provision of bus shelters reduces the fear of crime among users.

**Consultation Undertaken:**

The Council entered into the contract in 2000 when it was the agent for the Highways Authority. Essex Highways have been consulted and they have expressed no interest in taking over the bus shelters or the contract and have advised that it would be for the Council to decide if it wanted to terminate or extend the contract. The Council could be criticised if it terminated the contract which would result in significant inconvenience to the users.

Neighbouring authorities have been consulted for identifying suitable alternative providers.

Legal Services have been consulted while considering the options available.

**Background Papers:**

None.

**Risk Management:**

Extending the contract for another 4 years with some service enhancements offers the lowest risk option, the Council can test the market before the end of the 4 year extension.

If the Council undertook a procurement exercise knowing that there is no interest in the market place then there is a risk that the cost of the service could increase and the Council will need to fund significant capital expenditure for the installation of new bus shelters.

# Due Regard Record

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The bus shelters offer a safe, sometimes lit and with seats, dry place for users to rest and wait before boarding a bus. This is especially helpful to elderly and disabled users.



## **Report to the Cabinet**

**Report reference:** C-039-2015/16  
**Date of meeting:** 5 November 2015



**Epping Forest  
District Council**

**Portfolio:** Finance  
**Subject:** Review of Epping Cash Office  
**Responsible Officer:** Rob Pavey (01992 564211).  
**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) That the manned front-line cash office at Epping Civic Offices be closed from 1 July 2016 and an alternative solution using payment kiosks be implemented;
- (2) That the 'Invest to Save' Fund be utilised for the purchase of two payment kiosks in the sum of £20,000 and for an additional allocation in the sum of £10,000 to cover any necessary building works;
- (3) That Contract Standing Order C4(2) be waived for the purchase of the payment kiosks due to the successful operation of the same kiosk at Waltham Abbey Library, which itself was subject to a tender process;
- (4) That one FTE Grade 4 Cashier post be deleted from the establishment;
- (5) That the post holders be treated within the provisions of the Council's Redundancy and Redeployment Procedure; and
- (6) That revenue savings in the sum of £15,170 for 2016/17 (equivalent full-year savings £20,230) through the implementation of the payment kiosks be noted.

### **Executive Summary:**

The focus of the Cashiers service has increasingly changed away from front-line cash-receipting to developing and supporting the varied payment channels now available for residents, businesses and services to use.

The proven concept of the payment kiosk has led officers to recommend that a similar provision can be applied to the Epping cash office. This will lead revenue savings of £20,000 per annum principally through the deletion of one full-time equivalent post from the establishment.

It is requested that Contract Standing Order C4(2) be waived and the Invest to Save fund be used for the purchase of two payment kiosks for £20,000. A further £10,000 is requested from the fund as some alterations to the building will be necessary to accommodate the kiosks.

### **Reasons for Proposed Decision:**

The work of the Epping cash desk has changed drastically over recent years with an increasing focus away from the face to face transactions and towards new emerging payment channels offering flexibility for users and services alike. The front-facing income collection can be delivered using payment kiosks, as seen at Waltham Abbey library, and achieve full year revenue savings of £20,000 without affecting service delivery.

### **Other Options for Action:**

To retain the current cash desk provision at the Epping Civic Centre.

Should Members decide to use the Payment Kiosk option then to undertake a full tendering exercise for the two new payment kiosks.

To not utilise the Invest to Save fund for the purchase of the kiosks.

### **Report:**

1. Over the last decade the ways that people pay their bills have changed significantly, particularly with the advent of new technology. Similarly, in meeting these new expectations, the Council's own payment channels for its residents have evolved. It is therefore right that the investment in these new channels and their rising popularity should mean that other existing methods of payment should be reviewed to ensure that the Council's income collection remains cost-effective. This report will look at the existing cash office provision at the Epping Civic Offices and how the work of the Cashiers Service has changed over recent years.

2. The Cashiers Service currently supports two front-line cash desks at the Epping Cash Office and Debden Broadway Housing Office. The service consists of 5.5 full-time equivalent staff with 4 based at Epping and 1.5 at Debden. It also provides a payment kiosk at Waltham Abbey library, supported in partnership with Essex County Council. The service has also introduced a number of other payment channels over the last decade, through the internet and telephone using speech recognition, and various payment portals which has enabled the taking of payments to be devolved to a number of services, such as bulky waste, improving the customer experience by ensuring their contact with the Council is resolved in a single contact. In the last year alone, card payments have been enabled at Norway House and the cash-receipting system at Hemnall Street has been incorporated into the corporate solution, thereby saving system costs. The support, training and maintenance involved with these payment channels is handled by the cashiers staff at the Epping cash office. Consequently, here has been a shift in the focus of their work from the front-line transaction to back-office duties and support. Whilst some of this back-office work has changed such as the reduction in the numbers of postal cheques to be processed, this has been supplemented by this support required for the new channels offered. An important aspect of the Cashiers Service is ensuring that all channels and staff comply with the Payment Card Industry Data Security Standards. The change in transactions within and supported by the Epping Cash Desk can be seen Appendix 1. Over the four years of data provided the percentage of transactions dealt with by the front office has reduced from 25.8% in 2011/12 to 20.7% in 2014/15.

3. In 2013 the Council closed its cash desk at Waltham Abbey Town Hall and an alternative provision was provided with a payment kiosk at Waltham Abbey library, taking cash and card payments. The Council has a Service Level Agreement in place with Essex County Council staff to provide users with support in using the machine. The maintenance and control of the machine remains with the Cashiers service. This arrangement provides good value costing the Council £1,850 per annum and Essex County Council has the benefit

of increased footfall in the library.

4. The kiosk is well used and took over 14,000 transactions in 2014/15. Cash and card transactions in Quarter 1 in 2015 are 90% of the level compared with the former cash desk. The reduction can be explained by a general migration to other payment methods, particularly Direct Debit and internet payments. Given the success of the payment kiosk at Waltham Abbey library it can be considered that this alternative provision to a front-line manned cash desk can be proved as a concept and officers recommend a similar set-up at the Epping cash desk.

5. Front-line transaction numbers are higher at the Civic Offices than at Waltham Abbey and in order to ensure a successful set-up at Epping, particularly at peak times, it is recommended that two kiosks be purchased. This would also provide added resilience. To purchase the kiosks as provided at Waltham Abbey it is recommended that these be made from the original supplier, Banking Automation, and this would cost around £20,000 for the two units. The kiosks would then seamlessly integrate into the existing income management system. It is requested that these units be purchased from the Invest to Save fund and that an additional amount of £10,000 be allocated to pay for any necessary building works. It is also requested that Contract Standing Order C4(2) is be waived in this instance which requires three quotes. The original purchase of the kiosk had been subject to a tender process involving three suppliers.

6. The installation of the kiosks at the Civic Offices would generate full-year revenue savings of £20,230 by the removal of the manned front-line provision equivalent to one full-time equivalent post. This is calculated by salary savings of £22,830 less maintenance costs of £2,600 for the two kiosks. The potential maximum redundancy costs are £16,132, although attempts will be made to redeploy staff in accordance with the Redundancy and Redeployment Procedure.

7. It is recommended that the go-live date for the payment kiosks is 1 July 2016. This would allow for the peak transaction volumes which occur in quarter one of any year to be overcome and the introduction of the kiosks can occur at a quieter time and will minimise the impact of any teething problems. Officers would provide floor walking support for users of the kiosks for the initial period after go-live, as was provided at Waltham Abbey library.

8. The Council retains one other cash desk at the Housing office at Debden Broadway. The number of transactions at this office remains higher at this location particularly in terms of cash transactions. It is proposed at this stage not to change the provision at Debden in order that the limited resources available can be focussed on a successful transition at the Civic Offices. It is noted that there is a review of customer contact currently on-going which may inform any recommendations relating to overall service provision at Debden and other locations. Likewise the kiosks at the Civic Offices could be physically transferred should an alternative corporate reception solution be developed as a result of the Customer Contact project.

#### **Resource Implications:**

A bid for £20,000 for the purchase of two payment kiosks and £10,000 for building works from the Invest to Save fund. Revenue savings of £15,170 for 2016/17 and £20,230 per annum thereafter. Potential redundancy costs of £16,132.

#### **Legal and Governance Implications:**

Waiver of Contract Standing Order C4(2).

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

Initial consultation has taken place with relevant staff and Unison.

**Background Papers:**

None.

**Risk Management:**

The go-live date is recommended for 1 July 2016. This would allow sufficient time for the acquisition and implementation of the kiosks and would enable the peak income collection period in the first quarter of 2016/17 to pass thereby minimising any potential issues.

# Due Regard Record

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The replacement of the cash desk with the kiosk option is principally a like for like replacement. Staff will be on-hand to assist any users who have difficulty in using the machines. One of the kiosks will be positioned at a lower level to assist wheelchair users.

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Appendix 1 Epping Cash Office Transaction Types and Volumes 2011-12 to 2014-15

Year	Volumes	Front Office					Back Office							E-payments		
		Cash	Cheque	Debit Card	Credit Card	Total	Bank Credit	Post Office Credit	Unpaid Cheque	Postal Cheque	Postal Order	Mediated Telephone	Total	Internet	24 Hour Telephone	Total
2011-12	Number Value (£)	14,886 2,058,338	13,688 3,793,323	4,564 958,483	78 11,885	33,216 6,822,028	31,575 226,642,208	240 21,546	441 -166,585	19,371 9,122,034	105 3,240	862 85,585	52,594 235,708,028	23,778 4,623,492	18,986 3,738,395	42,764 8,361,887
2012-13	Number Value (£)	13,776 1,921,545	11,675 3,710,918	4,560 973,821	306 49,243	30,317 6,655,527	31,759 236,001,427	161 16,060	301 -122,905	16,506 8,398,275	116 4,944	1,030 197,146	49,873 244,494,947	27,343 5,261,515	19,267 3,857,250	46,610 9,118,765
2013-14	Number Value (£)	16,712 2,136,359	11,187 3,821,113	5,159 1,074,714	386 46,604	33,444 7,078,789	35,527 232,506,004	164 20,152	258 -95,399	16,230 7,857,411	115 6,631	3,075 605,453	55,369 240,900,252	35,362 6,341,554	21,836 3,861,752	57,198 10,203,306
2014-15	Number Value (£)	15,148 2,059,349	10,512 3,345,753	5,101 1,081,731	286 34,928	31,047 6,521,761	38,863 228,513,549	134 18,997	180 -97,342	14,621 6,696,257	84 3,495	3,900 845,314	57,782 235,980,270	39,475 7,194,961	21,746 3,906,594	61,221 11,101,555

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## **Report to the Cabinet**



**Report reference:** C-018-2015/16  
**Date of meeting:** 23 July 2015

**Epping Forest  
District Council**

**Portfolio:** Governance and Development Management  
**Subject:** Release of Restrictive Covenants – Epping Forest College  
**Responsible Officer:** Derek Macnab (01992 564050).  
**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) That the Council issues a Deed of Release of the 1952 and 1955 Covenants, consistent with the previous Deeds of Release, on the land at Epping Forest College, on the basis as outlined in paragraph 11 of the report; and
- (2) That the Council does not exercise its pre-emption rights on the land.

### **Executive Summary:**

The Council has received a submission from the Solicitors to Epping Forest College, seeking the release and/or modification of two restrictive Covenants and a right of pre-emption in favour of the Council, which currently binds the Colleges Estate. In summary, the release of the Covenants is requested to enable the College to fulfil the aspirations of their accommodation strategy, namely, to invest in new educational and public/community well-being facilities. The College suggest that by allowing surplus land to be sold for residential development (which would include affordable housing), this would generate capital to be utilised in the provision of further enhanced educational facilities and a new sports centre, for use by both college students and the local community. This would serve to compensate for the loss of the Debden Community Association Sports Centre and meet a deficiency in indoor dry sports provision identified in the Council's adopted Leisure and Cultural Strategy.

### **Reasons for Proposed Decision:**

The Council has previously released restrictive Covenants at the Epping Forest College site, to facilitate residential development, a residential care home, and the provision of student accommodation. On these occasions, it was to generate funds to facilitate further educational provision and stabilise the College's financial position. This report seeks Members' consideration of such a further request.

### **Other Options for Action:**

To not consider the release of the Covenants and allow the matter to be referred by the College to the Land Tribunal. In this circumstance, based on previous advice obtained by the Council from Chartered Surveyors, Montague Evans in 1998, it would be likely that the tribunal would agree to the release. Alternatively, the Council could exercise its pre-emption rights on any piece of land and seek to develop the site/s for its own Council Housebuilding

programme.

This would require the Council to purchase at market value. However, any residential scheme, promoted by the College, would in all likelihood involve an element of affordable housing in accordance with current Council Policy.

**Report:**

1. In late 2014, the Council received a detailed submission from the Solicitors to Epping Forest College, seeking the Council's agreement to the release and/or modification of certain Covenants, which directly restrict or prevent the sale and development of the College's land for purposes other than public education or public health. The request is to enable the final phase of the College's Campus rationalisation programme to be implemented.

2. The wording of the existing Covenants is set out in full in the College's submission, however, the overall effect is that the whole of the original estate of the former Loughton Technical College, is constrained by:

(a) a restrictive covenant prohibiting uses "other than for the purposes of the Education Act 1944 and/or the National Health Services Act 1946" in the case of the land coloured pink, blue and mauve on Plan A and the land edged red on Plan B or in the case of the land coloured yellow on Plan A "the Education Act 1944 or other approved County service" (Plan Attached);

(b) a restrictive covenant prohibiting the erection of any buildings on the land "except in accordance with the layout and site plans first submitted to and approved by the Council"; and

(c) a right of the first refusal which prohibits the sale of the land "without first offering it for sale to the Council", which offer the Council may accept within 3 months for a price based upon CPO compensation formulae.

3. Historically, in 1952 and 1955, all of these Covenants were expressed to be in favour of the former London County Council, before transferring to the Greater London Council upon the LLC being subsumed into the GLC in 1963; then, upon the GLC's abolition in 1986, the benefit of the Covenants transferred to the Council.

4. Since 2005, the College has adopted a strategy of rationalisation of its estate, from the original 35 acres. As such, it has disposed of a number of assets, namely:

(i) in 2007, the College sold its Upper Site (10 acres) in two phases to Redrow Homes for housing development;

(ii) in 2008, the College sold Loughton Hall for redevelopment as secure accommodation for older people, on terms which obliged Redrow (as part of the price of purchase of the Upper Site) to refurbish the exterior of this listed building to a high standard. That development is now complete;

(iii) in 2010, the College sold surplus car park land to University of Essex for redevelopment as student accommodation; and

(iv) in 2011, the College sold Loughton Sports Hall to a specialist care home developer/manager, Loughton Care Centre Limited.

5. It can be seen from the College's latest submission, that the estate rationalisation

programme was designed to deliver two key objectives, firstly to bring about the improvement and modernisation of the College's facilities to modern educational and vocational training purposes, and secondly, to stabilise the College's financial position. This culminated in the provision of the new Campus on the Lower Site, completed in August 2008 at a cost of nearly £40million.

6. The College, having now achieved their strategic objectives, are now operating out of a Campus which is space-efficient, economical, environmentally sustainable and attractive to students. The substantial capital receipts generated by the disposals have funded the new investments in buildings and facilities and reinforced the College's medium to long term financial condition.

7. The Council has been supportive of the College's previous requests for Deeds of release of the Covenants in order to allow the disposal of the Upper Site, Loughton Hall the former Loughton Debden Sports Hall and Car Park land.

8. The College now seeks the Council's further support with regard to the Middle Site and the Playing Fields, i.e. those remaining parcels of College land which are unused and, for the most part, surplus to requirements. This is in order to fund the College's procurement or a new high quality sports and well-being facility for the benefit of the community, as well as a release of area around the footpath between Borders Lane and Rectory Lane up to the area that borders land owned by Rubyrose, specialist care home developer to enhance the amenity of that area of land.

9. In support of their request to release the Covenants, the College argue that by allowing surplus land to be sold for new housing to include an affordable element, (subject to planning permission), would outweigh the benefits of retention. In addition, they suggest that substantial additional community benefit will also be delivered by further enhanced educational and leisure facilities, available to both students and the local community. The Council's Leisure and Cultural Strategy adopted in December 2014, identified a need for additional indoor sports provision in the South of the District, and supported in principle, potential new-dual use facilities at the College. This would help compensate for the loss of the Debden Community Association Sports Centre, which was closed as part of an earlier redevelopment. At this time, the College gave an undertaking in writing, that when funds became available, they would seek to make replacement indoor sports provision available. In addition, the College have also suggested that subject to further consultation, other recreational facilities could be provided and made accessible to local residents, namely, an all weather playing pitch, outdoor basketball courts and a children's play area. The release of the Covenants could also facilitate the rationalisation of the boundaries between the College land and the adjacent residential care facilities, with the land upgraded and its amenity value approved.

10. With respect to the right of first refusal for the Council to purchase the land, there has been no operational need identified for the land with respect to Council Services. In addition, the Council is already exploring the facility of construction of a new Leisure facility to replace the Swimming Pool in Waltham Abbey, and has no stated intention of funding a second. Finally, any residential development which achieved a planning permission, would contain an element of affordable housing, helping to address housing need. For these reasons, it is recommended that the Council does not exercise its pre-emption rights.

11. As with previous requests to release Covenants on the College site, the applicants acknowledge that in the case of the disposal of the Middle Site for residential purposes and the development of the playing fields for sports and education use, the Council would not be minded to issue a Deed of Release until evidence is obtained that the purchasers would complete. To this end, the College's Solicitors are proposing the following recommendation:

*“A Deed of Release of the 1952 and 1955 Covenants consistent with the previous deeds of release is executed by the Council and is held in escrow pending written confirmation from the College’s Solicitors to the Council that (i) the College’s application for [outline] planning permission for the development of its new Sports, Health and Well-Being facility for the benefit of the College’s students and the wider community has been submitted to the Council’ and (ii) Contracts for the College’s sale of the Middle Site and part of the Playing Fields for residential development, conditional upon execution of such Deed of Release of the 1952 and 1955 Covenants, have been signed and are held in escrow pending execution and delivery of the said Deed of Release.”*

12. Members are asked to consider the release of the Covenants to facilitate wider community and educational benefits.

### **Resource Implications**

The Council has previously released the Covenants on the 10.3 acres of land on the Upper Site at no cost, on the basis that the Covenant was largely obsolete and, as such, of little value given the prospect of the Land Tribunal deeming it such. The same considerations apply with respect to this further release.

### **Legal and Governance Implications:**

The Covenants are outlined in paragraph 2 of the report.

### **Safer, Cleaner and Greener Implications:**

Any new buildings constructed would be to the requirements of modern Building Regulations with respect to energy efficiency. New community sports facilities would be a positive opportunity for local young people with a potential reduction in anti-social behaviour.

### **Consultation Undertaken:**

Nil.

### **Background Papers:**

Previous decision of Council to release Covenants on the site.

### **Risk Management:**

No specific risks identified.

## Due Regard Record

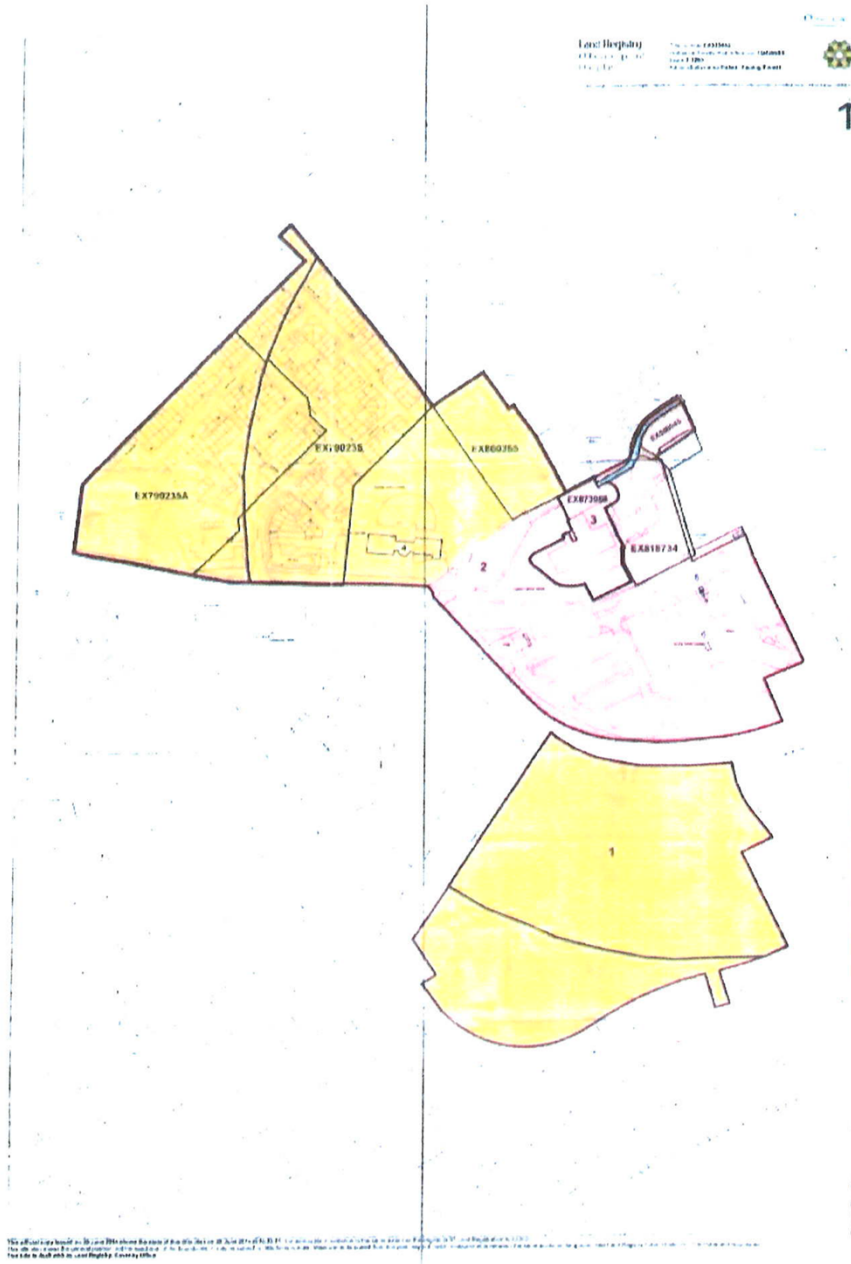
This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

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There are no specific equalities implications in terms of the release of the Covenants. Any replacement community sports and educational facilities provided as part of the next stage of delivery of the College's Accreditation Strategy would be accessible to all members of the public.

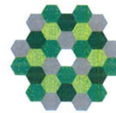
PLAN A



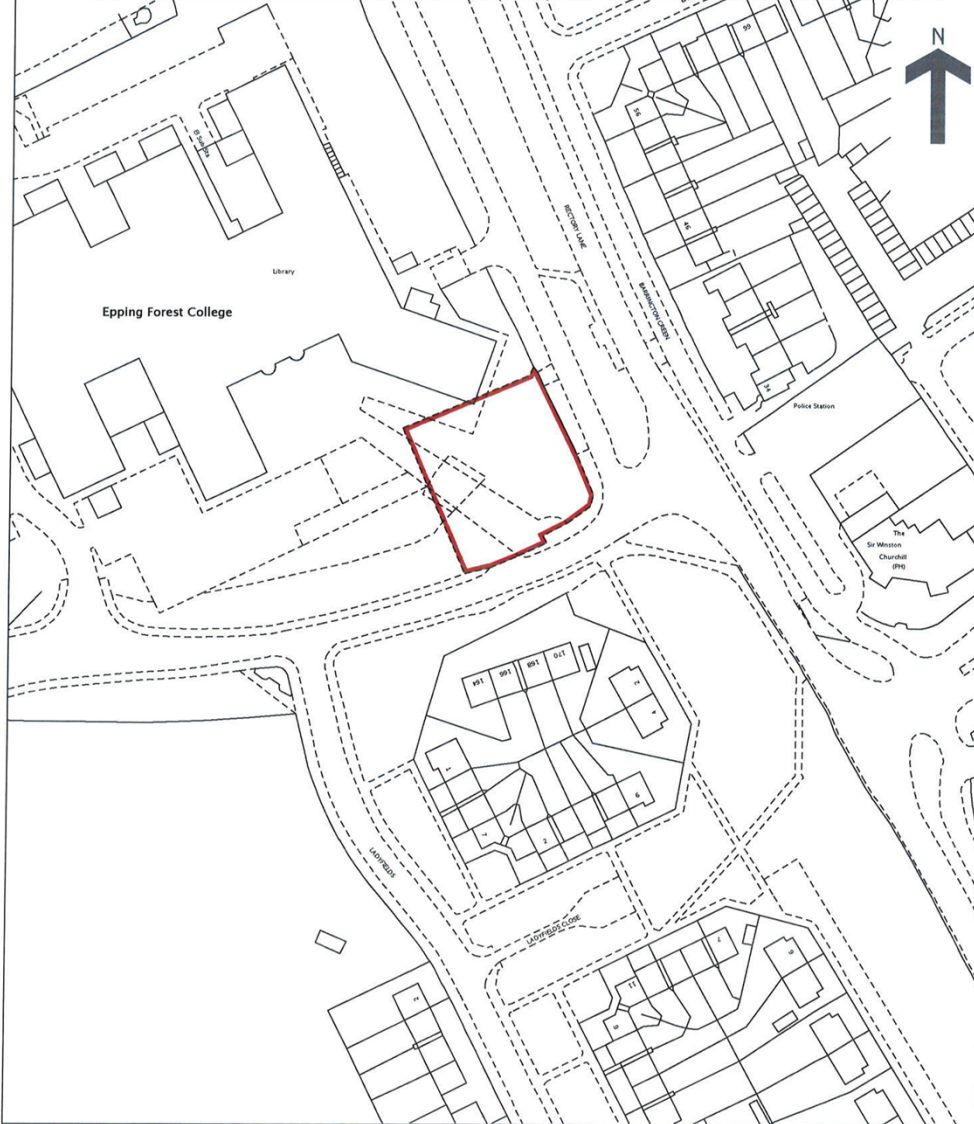
PLAN B

Land Registry  
Official copy of  
title plan

Title number **EX850602**  
Ordnance Survey map reference **TQ4396SE**  
Scale **1:1250**  
Administrative area **Essex : Epping Forest**



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