Webcast Meeting

Epping Forest District Council

CABINET
Monday, 1st February, 2010

Place:	Council Chamber, Civic Offices, High Street, Epping
Time:	7.00 pm
Democratic Services Officer:	Gary Woodhall (The Office of the Chief Executive) Email: gwoodhall@eppingforestdc.gov.uk Tel: 01992 564470

Members:

Councillors Mrs D Collins (Leader of the Council) (Chairman), C Whitbread (Finance & Economic Development Portfolio Holder) (Vice-Chairman), R Bassett, M Cohen, B Rolfe, Mrs M Sartin, D Stallan and Ms S Stavrou

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PLEASE NOTE THE START TIME OF THE MEETING
THE COUNCIL HAS AGREED REVISED PROCEDURES FOR THE OPERATION OF CABINET MEETINGS. BUSINESS NOT CONCLUDED BY 10.00 P.M. WILL, AT THE DISCRETION OF THE CHAIRMAN, STAND REFERRED TO THE NEXT MEETING OR WILL BE VOTED UPON WITHOUT DEBATE

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

3. DECLARATIONS OF INTEREST

(Assistant to the Chief Executive) To declare interests in any item on this agenda.

4. MINUTES

To confirm the minutes of the last meeting of the Cabinet held on 4 January 2010 (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 2008 (minute 102 refers) on any matter in relation to which the Cabinet has powers or duties or which affects the District.

7. OVERVIEW AND SCRUTINY

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

8. YOUTH COUNCIL

To raise any matters of concern from the Youth Council with the Cabinet.

9. 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.

10. NORTH WEALD AIRFIELD CABINET COMMITTEE - 7 DECEMBER 2009 (Pages 7 - 10)

(Finance & Economic Development Portfolio Holder) To consider the minutes from the recent meeting of the North Weald Airfield Strategy Cabinet Committee held on 7 December 2009 and the recommendations therein (C-071-2009/10).

11. LOUGHTON BROADWAY TOWN CENTRE ENHANCEMENT SCHEME - FINAL

ACCOUNT (Pages 11 - 16)

(Environment Portfolio Holder) To consider the attached report (C-072-2009/10).

12. REPLACEMENT OF LEASE VEHICLE - GROUNDS MAINTENANCE (Pages 17 - 22)

(Environment Portfolio Holder) To consider the attached report (C-073-2009/10).

13. REPORT OF THE AFFORDABLE HOUSING GROUP (Pages 23 - 54)

(Chairman of the Housing Scrutiny Panel) To consider the attached report (C-074-2009/10).

14. REPLACEMENT OF THE HOUSING REVENUE ACCOUNT SUBSIDY SYSTEM (Pages 55 - 60)

(Housing Portfolio Holder) To consider the attached report (C-075-2009/10).

15. FIXED PENALTY NOTICES - POLICY (Pages 61 - 72)

(Environment Portfolio Holder) To consider the attached report (C-076-2009/10).

16. FORWARD PLANNING STAFFING RESOURCES (Pages 73 - 76)

(Leader of the Council) To consider the attached report (C-077-2009/10).

17. O2 MAST - HONEY LANE, WALTHAM ABBEY (Pages 77 - 86)

(Finance & Economic Development Portfolio Holder) To consider the attached report (C-078-2009/10).

18. ONGAR PLAYING FIELDS/WALTHAM ABBEY TOWN MEAD DEVELOPMENT (Pages 87 - 92)

(Leisure & Wellbeing Portfolio Holder) To consider the attached report (C-079-2009/10).

19. DEBT AND MONEY ADVICE PROVISION (Pages 93 - 98)

(Finance & Economic Development Portfolio Holder) To consider the attached report (C-080-2009/10)

20. OUT OF HOURS LAND DRAINAGE STANDBY SERVICE (Pages 99 - 102)

(Environment Portfolio Holder) To consider the attached report (C-081-2009/10).

21. FORMATION OF LOCAL HOUSING COMPANY & ASSOCIATED ARRANGEMENTS (Pages 103 - 130)

(Housing Portfolio Holder) To consider the attached report (C-084-2009/10).

22. 148 BROOKER ROAD, WALTHAM ABBEY (Pages 131 - 136)

(Legal & Estates Portfolio Holder) To consider the attached report (C-085-2009/10).

23. CALENDAR OF COUNCIL MEETINGS 2010/11 (Pages 137 - 144)

(The Leader of the Council) To consider the attached report (C-086-2009/10).

24. CORPORATE PLAN, MEDIUM TERM AIMS 2010/11- 2013/14 AND KEY PRIORITIES 2010/11 (Pages 145 - 170)

(Performance Management Portfolio Holder) To consider the attached report (C-089-2009/10).

25. STAFF CAR PARK MANAGEMENT POLICY (Pages 171 - 174)

(Performance Management Portfolio Holder) To consider the attached report (C-090-2009/10).

26. FINANCE & PERFORMANCE MANAGEMENT CABINET COMMITTEE - 25 JANUARY 2010

(Finance & Economic Development Portfolio Holder) To consider the minutes from the recent meeting of the Finance & Performance Management Cabinet Committee held on 25 January 2010 and the recommendations therein (report to follow).

27. COUNCIL BUDGET 2010/11 (Pages 175 - 186)

(Finance & Economic Development Portfolio Holder) To consider the attached report (C-088-2009/10).

28. 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):

Agenda Item No	Subject	Exempt Information Paragraph Number
29	Potential Strategy Options for Council Property Assets	3
30	Sports Leisure Management – Contract Extension Negotiations	3

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.

29. POTENTIAL STRATEGY OPTIONS FOR COUNCIL PROPERTY ASSETS (Pages 187 - 218)

(Leader of the Council/Legal & Estates Portfolio Holder) To consider the restricted report (C-082-2009/10).

30. SPORTS & LEISURE MANAGEMENT LIMITED - CONTRACT EXTENSION NEGOTIATIONS (Pages 219 - 224)

(Leisure & Wellbeing Portfolio Holder) To consider the restricted report (C-083-2009/10).

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EPPING FOREST DISTRICT COUNCIL
COMMITTEE MINUTES

Committee:	North Weald Airfield Strategy Cabinet Committee	**Date:**	Monday, 7 December 2009
Place:	Committee Room 1, Civic Offices, High Street, Epping	**Time:**	7.30 - 8.25 pm

Members Present: C Whitbread (Chairman), M Cohen, Mrs D Collins, B Rolfe and D Stallan

Other Councillors: Mrs A Grigg, Ms S Stavrou, J M Whitehouse and R Frankel

Apologies: Mrs M Sartin

Officers Present: D Macnab (Deputy Chief Executive), G Lunnun (Assistant Director (Democratic Services)), J Gilbert (Director of Environment and Street Scene), C Pasterfield (Principal Valuer/Surveyor), L MacNeill (Assistant Director (Operations, Administration & Finance)) and R Perrin (Democratic Services Assistant)

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10. MINUTES

RESOLVED:

That the minutes of the meeting of the Committee held on 27 July 2009 be taken as read and signed by the Chairman as a correct record.

11. DECLARATIONS OF INTEREST

There were no declarations of interest pursuant to the Council's Code of Member Conduct.

12. ANY OTHER BUSINESS

(a) Use of land adjacent to Merlin Way, North Weald

The Chairman advised that following discussions with Members and Officers it had been decided to withdraw this report as it would be premature to set aside land in advance of the comprehensive review of users on the airfield.

13. AVIATION INTENSIFICATION STUDY UPDATE

The Committee noted Cabinet approval on the 12 October 2009, to appoint appropriate qualified and experienced consultant to undertake an Aviation Intensification Study for North Weald Airfield.

Officers had met with the Essex Procurement Hub to obtain their advice and support in the appointment process. In terms of developing a shortlist, a Pre-qualification Questionnaire had been developed to establish the level of qualification, experience and financial standing of potential consultants and would be sent to consultants expressing an interest. The notification to potential bidders would be placed within the Aviation Press, Flight International and sent to a number of companies registered on the British Association of Aviation Consultants website, which satisfied the Council's Financial Regulations and interest generated on an industry wide basis.

The Deputy Chief Executive reported that advertising and notification would take place in early January 2010, to develop a potential shortlist by the end of February 2010. Subsequently the shortlist of consultants would be required to submit a detailed brief and a fixed price bid with a method statement and after consideration firms would be invited to interviews that would include a presentation against the pre-set questions in front of a panel of elected Members and Officers. The decision of the interview panel would then be conveyed to all consultants and contract formalities would then be concluded.

The Committee were advised that they would oversee the study and the proposed final appointment should be in place by the end of May 2010 and a report from the consultants received by July/August 2010.

RECOMMENDED:

(1) That the progress on the Appointment of Consultants to undertake an Aviation Intensification Study for North Weald Airfield be noted.
(2) That the Officers take steps to reduce the timescale involved with the aim of the consultants report be received earlier than July/August 2010;
(3) That the pre-qualification Questionnaire be sent to the company which prepared an aviation study for North Weald Bassett Parish Council.

14. PROPOSAL FROM THE CARAVAN CLUB FOR A CARAVAN SITE DURING THE 2012 OLYMPICS AT NORTH WEALD AIRFIELD

The Committee considered a report on a proposal from The Caravan Club to use part of the Airfield for a caravanning and camping site in the lead up to and during the 2012 Olympics.

The Committee were advised that the club believed that they could occupy the area currently used for model flying and exist along side the current airfield uses including aviation and the Saturday Market, benefiting the market and bring in additional numbers into the locality. The club believed that 2,000 pitches could be made available; resulting in 34,000 overnight stays for the main Olympics and a further 15,000 for the Paralympics.

Members were advised that since the report had been prepared an additional two approaches had been made regarding the use of the Airfield. The Olympic Delivery Authority had suggested a Park and Ride system for the Broxbourne White Water Canoe Centre for a period of 4-5 days and First Buses, the official transportation for the Olympic athletes had enquired about stationing their buses at the airfield when they were not required.

The Committee were advised of concerns from the North Weald Airfield Users Group about the proposal from the Caravan Club, as it had been considered that the scale and location of the proposed sites would be incompatible with existing and other proposed activities on the airfield.

RECOMMENDED:

That Officers undertake further discussions with all interested parties and report back to the Committee on proposals achieving the best balance for all airfield users having regard to financial considerations and secondary benefits to local residents and the District.

15. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That the public and press be excluded from the meeting for the items of business set out below on the grounds that they would involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Local Government Act 1972 and the exemption is considered to outweigh the potential public interest in disclosing the information.

Agenda Item No.	Subject	Exempt Information Paragraph Number
8	North Weald Airfield Market	3

16. NORTH WEALD AIRFIELD MARKET

The Committee considered options for granting a new license to run the market from August 2010. They considered information regarding the existing operation and noted the responses to enquiries made into other operators within the South East with respect to references, financial viability and contract fulfilment.

RECOMMENDED:

That in accordance with Contract Standing Orders C9 (Negotiated Tendering), subject to the Cabinet receiving a report and being satisfied about the financial position of the current operator, a new license be granted to that operator from August 2010 to 2017, with an annual landlord only break clause and the terms approved by the Cabinet on 31 July 2007.

CHAIRMAN

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Report to the Cabinet

Report reference: C-072-2009/10
Date of meeting: 1 February 2010

Epping Forest District Council

Portfolio: **Environment**

Subject: **Loughton Broadway Final Account**

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

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

Recommendations/Decisions Required:

(1) To note that all works at the Town Centre Enhancement Scheme are complete and the 12 months maintenance period has commenced, following which the scheme will be adopted by Essex County Council as the Highways Authority;

(2) To note that there is a net saving of £514,000 in the project allocation consisting of £366,000 set as the project contingency and £208,000 as the gain share realised by the Council under the form of contract employed;

(3) That subject to full compliance with the Council's CCTV Strategy and Policy, to allocate a sum of £100,000 from the above saving in 2010/11 for the installation of new CCTV systems and the enhancement and improvement of existing systems in the Broadway area;

(4) To set aside and carry forward a sum of £25,000 for any final works at the end of the 12 month defects correction period, signing off legal agreements and internal staff costs; and

(5) That, in view of the County Council's reluctance to adopt or maintain any such feature, the earlier decision of Cabinet to construct an amenity feature at the Broadway be rescinded.

Executive Summary:

It is a requirement of Council's Constitution to present a final account for any scheme in excess of £1 million. The Loughton Broadway Town Centre Enhancement Scheme (TCE) was conceived back in the late 1990s following a wide scale public consultation exercise involving the three town centres of Buckhurst Hill, Loughton and the Broadway. Design guides were produced and adopted by the Council.

Phase 1 of the works were carried out in Burton Road and Vere Road in 2008 but Phase 2 of the project, consisting of improvements to the Broadway itself, was delayed due to the presence of a medium pressure gas main within the central reservation of the carriageway. A revised scheme design addressing the difficulties of construction around the gas main was approved by Cabinet in July 2008 along with the associated supplementary capital estimate and contingency for unforeseen construction risks.

However, a significant saving has been achieved on costs of the works because the construction risks associated with the presence of a medium pressure gas main and the reconstruction of the road surface did not materialise. This provides opportunity to further enhance and improve CCTV systems in the Broadway area.

This is a key decision.

Reasons for Proposed Decision:

For the period of 12 months from completion of the scheme in July 2009 all repair works were the responsibility of the contractor. However, there was a delay of 4 months from July 2009 to November 2009 between end of construction and issue of completion certificate by the Highways Authority. It could be argued, and there is therefore a risk, that the Council and not the contractor might be held responsible for any repairs between July 2010 and November 2010.

Although new CCTV systems have been installed as part of the Town Centre Enhancement Scheme there remain other separate CCTV systems which are not of an adequate quality. Recent crime figure analysis suggests that other areas surrounding the Broadway could benefit from a new CCTV system. The bringing of all systems up to date will comply with the Council's soon to be adopted CCTV Strategy & Policy

Other Options for Action:

Take the full savings of £514,000 back into the capital fund and not carry out CCTV improvement works. However, The Broadway and the surrounding area has been identified as a future growth area and improved CCTV systems would reduce the local fear of crime as well as assisting the Police in the detection and prevention of criminal activity.

To pursue further the feasibility of an amenity feature at the Broadway and report back with associated costs. Although this recommendation will be a disappointment to the Town centre Partnership and Focus Group, it is suggested that the risks to the Council associated with the presence of an unadopted feature on the highway ate too great.

Report:

1. The total approved budget for the Broadway town centre enhancement scheme (TCE) project is £3,630,000. The scheme was undertaken in two phases: Phase 1 consisting of works to Burton Road car park, Vere Road car park and additional CCTV was completed in 2008. Phase 2 was completed in July 2009 and consisted of substantive enhancement works to the Broadway itself, namely; new foot path paving, reconstruction of the road, a raised central section making the Broadway more pedestrian friendly, new street lighting, new street furniture and planting of new semi mature trees.

2. The Portfolio Holder has had regular meetings during the construction phase with the focus group consisting of members of the local town centre partnership and residents. The meetings provided update on progress of work and sought approval on forthcoming works e.g. the types and location of street furniture. It was on the advice of the focus group that there was a Christmas shutdown period for both the phases to avoid disruption to the local traders.

3. Although all works were completed by July 2009 it was not until 16 November 2009 that a completion certificate was issued by the Highways Authority.

4. The saving of £514,000 consists of two components;

(i) A saving of £366,000 in the contingency allocated to address any construction risks. Prior to commencement investigations were carried out to establish the location and condition of the gas main. However, the true depth and location of the main could not be determined until construction commenced. This created a risk that there could be sections of the gas main that would be too shallow and the National Grid Gas could require the Council to make special construction arrangements, at additional costs. To cover this risk additional provision was made in the budget to avoid payments to contractor for time related delay costs while approval for additional funds was being sought. These risks did not materialise.

(ii) A saving of £208,000 to the Council arising from the partnering form of contract. The scheme was delivered under a 'Target Price - Design and Build' form of partnering contract with pain/gain share. In this form of contract a Target Price is agreed between the client and the contractor. If the contractor delivers the scheme within the agreed Target Price then the saving is shared 50/50 between the client and the contractor, alternatively if the scheme costs are higher than what has been agreed the two share 50/50 up to 10% of the agreed costs and after that the contractor pays the rest. There has been a saving of £416,000 in the overall target cost of Phases 1 & 2 of which the Council's 50% share is £208,000. The contractor has achieved completion within the target price for a number of reasons; a dry summer meant less weather disruption, the higher purchasing power of the contractor and innovative construction and procurement arrangements e.g. early purchase of granite (at a higher risk to the contractor).

5. New CCTV systems have been installed at Burton Road, Vere Road and the Broadway as part of the scheme. The images recorded from these systems are currently stored in the Broadway Area Housing office and every time the images are required to be accessed and downloaded a site visit is required. It would be more effective if the images could be viewed via remote access, like the newer systems recently installed elsewhere in the District. There are other separate CCTV systems in the Broadway area that are old and do not provide evidence quality images which can be used for crime prevention and detection. One of these is off line since the Woolworths shop was closed. It is proposed that some of the savings be utilised to improve and enhance the older systems as well as provide additional coverage for known areas of criminality.

6. Since the scheme consisted of works to a public highway, the controlling authority was Essex County Council as the Highways Authority. The responsibility for any defects for the 12 month period after completion rests with the developer. In this instance the developer is the District Council and although any repairs and defects required would be passed onto the contractor employed by the Council, there was a delay of 4 months between the completion of the works by the contractor and the issue of completion certificate by the Highways Authority. It could be argued by the contractor that this delay was not caused by them and any repairs outside of the original 12 month period should be met by the Council. Therefore, it is suggested that a sum of £25,000 retained in the budget until the final adoption of the scheme by the Highway Authority in November 2010.

7. STACE Limited were employed to provide project management services for the delivery of the scheme. There is a sum of £15,000 outstanding to be paid and it is proposed that this be retained and released as and when their services are required during the 12 months of the maintenance period.

Resource Implications:

The Council is the principal land holder within the TCE area and owns all the shops and most of the residential accommodation

The TCE was constructed under a partnering contract with a fixed target price pain/gain share arrangement. Any savings arising in the final cost is shared 50/50 between the client and the contractor, any additional costs are shared 50/50 but only up to a maximum of 10% of the agreed costs and after that the contractor pays the rest. The Target Price for construction agreed with the contractor for the TCE is £2,639,000 (£899,000 for Phase 1 and £1,740,000 for Phase 2). Phases 1 & 2 has been delivered at £2,223,000 and this results in an estimated saving of £416,000 which will be shared 50/50 between the Council and Gabriel Civil Engineering contractors.

	Budget	**Anticipated Outturn**	**(Under)/ Over spend**
	£'000	**£'000**	**£'000**
Construction Costs (note 1)	2,639	2,431	(208)
External Fees (note 2)	415	400	(15)
Internal/ ECC Fees	185	160	(25)
Contingency Sum	391	25	(366)
Approved Project Total (note 3)	3,630	(3016)	(614)
CCTV improvement works	0	100	100
Proposed Project Total	3,630	3,116	(514)

Note 1:
The anticipated outturn figure includes a saving of £208,000 as the Council's 50% gain share and an allocation of £25,000 for defects at the end of 12 month defects period

Note 2:
Costs for project manager, supervisor, design, cost consultant and planning supervisor. Includes £15,000 fees for supervision during the 12 month defects period

Note 3:
This includes the £100,000 contribution by Essex County Council towards the scheme.

There will be a revenue impact of the new CCTV systems arising from the costs of maintenance and remote access.

Legal and Governance Implications:

Section 2 Local Government Act 2000 gives the Council wide powers to achieve the promotion or improvement of the economic, social or environmental well being of its area and includes power to incur expenditure.

Safer, Cleaner and Greener Implications:

The scheme has improved the street scene by providing CCTV in the Broadway, Burton road and Vere Road Car Parks, improved street furniture as well as new highways infrastructure improvements and additional trees.

By approving installation of further new CCTV systems and upgrading the existing systems to remote access the safety and security of residents will be enhanced as will be the capability to resolve street crime.

Consultation Undertaken:

The Broadway TCE Focus Group has been consulted at key stages of the project and they agree with the design proposals as set out in this report.

If installation of new CCTV systems is approved then consultations will be undertaken with professional partners as well as local representatives.

Background Papers:

Previous Cabinet reports,
Broadway Design Guide

Impact Assessments:

Risk Management
As part of risk management strategy for capital schemes a risk register is maintained for every capital scheme. Two major risks were identified for this scheme; the presence of a medium pressure gas main through the central reservation of the Broadway and the use of the grouting solution to stabilise the highway slabs. Both of these were classed as high risks and despite adopting risk mitigation measures there remained a residual risk in respect of both these tasks. A high level of financial contingency was applied so that any change in construction methodology or design could be implemented quickly and without incurring delay costs while a new decision was being sought. These risks however did not materialise and this is reflected in the high level of savings achieved on the project.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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Report to the Cabinet

Report reference: C-073-2009/10
Date of meeting: 1 February 2010

Epping Forest District Council

Portfolio: **Environment**

Subject: **Replacement of Vehicles – Grounds Maintenance.**

Responsible Officer: **John Gilbert (01992 564062)**

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

Recommendations/Decisions Required:

(1) That the Council's Grounds Maintenance Section purchase 1 Ford Transit LWB Double Chassis Cab 2.4 TDCI to replace the present leased vehicle; and

(2) That, in order to fund the purchase, a supplementary capital estimate in the sum of £26,000 for 2009/10 be recommended to the Council for approval.

Executive Summary:

The present 7-year lease on a Ford Tipper Truck used by the Grounds Maintenance section expires in February 2010 and therefore a new vehicle is required.

In accordance with Contract Standing Orders the proposed purchase has been subject to a competitive tendering process via the Essex Procurement Hub. A vehicle from Haynes Trucks Ltd was found to be the most cost effective purchase. The cost has then been subjected to a capital/lease comparison which has shown that on this occasion capital spend would be more cost effective than leasing. On previous occasions the operating lease option has proven to be the most cost effective therefore capital provision was not made within the 2009/10 capital programme. This therefore means that consent is required for the £26,000 to be added to the 2009/10 capital programme.

The CSB budget currently includes the necessary funding for lease/capital costs relating to the replacement of vehicles.

Reasons for Proposed Decision:

That the capital purchase option is proven at this time to be the most cost effective option.

Other Options for Action:

Not to renew vehicles and extend the present lease - the vehicle has provided 7 years of reliable service and fulfilled operational requirements. However, due to its age and heavy usage, the general wear and tear is starting to take its toll with one-off running repairs and associated ‘downtime’ becoming more frequent and, scheduled service costs on the increase. In the long-term this trend can be expected to continue and the adverse effect of this on both budget provision and operational needs of the Service is deemed to be unacceptable. In view of these findings, an extension of the existing lease is not considered a viable option.

To purchase by a Lease agreement – would increase the annual cost to the Council; by £1,048.

To await the next finance capital report as a request for funding - this would mean a delay of some months and the present vehicle lease would need to be extended. The present tender price will not be held by the company for this length of time and they have stated that this would increase thereby costing the Council more to purchase the vehicle.

Report:

1. In 2003, the Council’s Grounds Maintenance Service entered into a lease agreement for the purchase of 1 Ford Transit tipper-truck in order to meet the requirements of the Council’s grounds maintenance contracts. This is lease expires in February 2010. The age and heavy usage of the vehicle means that it is not practical to extend the existing lease due to the risks of breakdown and lack of availability.

2. It had originally been intended to replace the vehicle through leasing and the revenue funding for that was included in the 2009/10 budget. However, a re-evaluation has strongly indicated that better value for money will be obtained through outright purchase using capital monies. If this recommendation is accepted it will be necessary to seek approval for a supplementary capital budget to enable the purchase to take place in the current financial year. The financial details are included in the resource section of the report which follows.

3. The vehicle has been sourced using the Essex Procurement Hub in accordance with Contract Standing Orders.

Resource Implications:

The funding comparison between leasing and capital purchase is as follows:

	Total Costs	**NPV**	**Annual Costs**	**NPV Costs**
Funded from Capital	25,705	20,932	2,937.86	2,990.34
Operating Lease	28,610	24,991	4,087.10	3,570.10
Difference			**1,149.24**	**579.96**

By adopting the capital purchasing option there is an estimated annual saving over the leasing costs of £579.76 per year based on net present values (NPV) and an average interest rate of 3.5% over the expected seven year life span of the vehicle. The saving based on annual cost is £1,149.24 per annum.

In order to purchase the vehicles outright, a supplementary capital allocation of £26,000 will be required for the current financial year’s capital programme. The current annual budget provision within Ground Maintenance is £3,039 for the existing vehicle and this will be saved but replaced with an annual depreciation charge of £2,940. The original leased asset cost of the vehicle was £20,452 in February 2003.

Legal and Governance Implications:

None.

Safer, Cleaner and Greener Implications:

More up to date vehicles thus using latest cleaner, greener technology. The bodies are aluminium therefore increasing the life of the vehicle and, because they are also lighter, there is an improvement in fuel efficiency whilst increasing the payload carrying capacity.

Vehicles will be sign written with the new Safer Greener Cleaner livery and therefore will be recognisable as being part of the Safer Cleaner Greener initiative.

The Ground Maintenance Service plays a key role in maintaining local grassed and planted areas in a good condition.

Consultation Undertaken:

Fleet Operation Transport Manager
Haynes Trucks Ltd

Background Papers:

The Fleet Operations unit undertook the Tender process and they hold papers.

Impact Assessments:
Risk Management
If the vehicle is not replaced, due to its age and workload, service interruptions may arise due to breakdown and lack of vehicle availability.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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1 Ford Transit LWB Double Chassis Cab 2.4 TDCI 140ps

Comparison between Funding by Operating Lease and Outright purchase

Cost to the Council

Funding From Operational Lease

					Total
Life	*7.00*	*Year*	*Capital*		*Lease Cost*
	£		*£*	*£*	*£*
Lease cost	**4,087.10**	1.00	25,705.00	4,087.10	4,087.10
		2.00		4,087.10	4,087.10
159.00		3.00		4,087.10	4,087.10
per 1000		4.00		4,087.10	4,087.10
4,087.10		5.00		4,087.10	4,087.10
		6.00		4,087.10	4,087.10
		7.00		4,087.10	4,087.10
		Total		**28,609.67**	**28,609.67**
NET PRESENT VALUE		**Total**			**24,990.72**

Cost to the Council

Funding by Outright Purchase (CAPITAL)

					Total
Life	*7.00*	*Year*	*Capital*	*Interest Cost*	*Capital Cost*
			£	*£*	*£*
Interest	**0.03500**	1.00	25,705.00		25,705.00
		2.00			0.00
		3.00			0.00
		4.00			0.00
		5.00			0.00
		6.00			0.00
		7.00			0.00
	Less Residual Approx		(5,140)	This residual value reflects the figure used in the lease quotation- 20.% of cost	(5,140)
		Total	**20,565.00**		**20,565.00**
NET PRESENT VALUE		**Total**			**20,932.37**

Summary of Revenue Costs

		Cost for Period	7 Years		Annual Cost	NPV
		Total Costs	NPV		Actual Costs	Costs
		£	£			
A	**Funded from Capital**	**20,565**	**20,932**	**Best Option**	**2,937.86**	**2,990.34**
B	**Operating Lease**	**28,610**	**24,991**		**4,087.10**	**3,570.10**
C	**Finance Lease**	**0**	**0**		**0.00**	**0.00**
D	**Hire Purchase**	**0**	**0**		**0.00**	**0.00**
	Difference				**1,149.24**	**579.76**

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Report to the Cabinet

Report reference: C-074-2009/10
Date of meeting: 1 February 2010

Epping Forest District Council

Portfolio: **Housing**

Subject: **Report of the Affordable Housing Group on ways to increase the amount of affordable housing in the District and the possibility of the Council re-commencing a programme of social house-building.**

Responsible Officer: **Alan Hall** **(01992 - 564004).**

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

Recommendations/Decisions Required:

(1) That the recommendations of the Affordable Housing Sub-Group and the Housing Scrutiny Panel on ways to increase the amount of affordable housing within the District and the possibility of the Council re-commencing a social house-building programme (set out in Section 5 of the Sub-Group's report attached as Appendix 1) be agreed; and

(2) That the Leader of Council writes to the Minister for Local Government, copied to the Chief Executive of the Local Government Association, in the form attached as a draft at Appendix 2.

Reasons for Proposed Decision:

The Housing Scrutiny Panel set up an Affordable Housing Sub-Group to consider and recommend ways to increase the amount of affordable housing in the District, which also considered the possibility of the Council re-commencing a programme of social house-building. The subsequent report of the Affordable Housing Sub-Group has been considered by the Housing Scrutiny Panel, which endorsed its recommendations, which are now presented to the Cabinet for consideration and decision.

The Affordable Housing Sub-Group identified a financial problem that currently makes its proposal that the Council re-commences a social house-building programme unviable. The proposed letter to the Minister for Local Government may result in this problem being overcome, by a change in local government accounting regulations.

Other Options for Action:

(i) Not to agree any of the recommendations or to only agree some of the recommendations;
(ii) To make alternative/additional decisions; and/or
(iii) Not to write to the Minister for Local Government, or to write with different content to that proposed.

Report:

1. At its meeting in July 2009, the Housing Scrutiny Panel agreed to set up an Affordable Housing Sub-Group to consider ways of increasing the amount of affordable housing provided in the District.

2. The Sub-Group met on 26 November 2009 and considered two detailed reports from the Director of Housing on ways in which the Council could increase the amount of affordable housing within the District and on the possibility and implications of the Council re-commencing a social house-building programme.

3. Prior to the Sub-Group's meeting, the Tenants and Leaseholders Federation had considered these two reports and the Federation's comments and recommendations on the reports were tabled at the Sub-Group's meeting for consideration. A comprehensive report from the Sub-Group (attached as Appendix 1 to this report) was produced.

4. At its meeting held on 15 December 2009, the Housing Scrutiny Panel considered the Affordable Housing Sub-Group's report and concurred with all of its recommendations. The Scrutiny Panel agreed to recommend all of the Sub-Group's proposals to the Cabinet, and that the full report of the Sub-Group should be included within the Cabinet's Agenda.

5. The Sub-Group has identified a problem relating to the Council's Capital Financing Requirement (CFR), that it considers makes a programme of new Council house-building financially currently unviable, due to the detrimental effect it would have on the Council's General Fund. The Sub-Group, and subsequently the Housing Scrutiny Panel, have therefore recommended that the Council writes to the Minister for Local Government and the Chief Executive of the Local Government Association (LGA) asking them if, in view of the Government's previous commitment to remove any obstacles that stop councils from building new Council homes, they could assist the Council to overcome the identified problem.

6. A draft letter to the Minister on this issue has been drafted by the Director of Housing and the Assistant Director of Finance and ICT (Accountancy), which is attached as Appendix 2 to this report. It is suggested that the letter is sent in the name of the Leader of Council.

7. The Chairman of the Housing Scrutiny Panel, Cllr Stephen Murray, will be in attendance at the meeting to present the Affordable Housing Sub-Group's report on behalf of the Scrutiny Panel.

Resource Implications:

As set out throughout the Affordable Housing Sub-Group's report.

Legal and Governance Implications:

The Council has the legal power to:

- Operate an Open Market Shared Ownership Scheme (or similar)
- Provide Home Ownership Grants
- Provide social housing grant to a housing association to purchase properties from the open market
- Undertake a programme of Social House-building.

Safer, Cleaner and Greener Implications:

It is felt that the proposed development of difficult-to-let, Council-owned, garage sites would improve the local environment.

Consultation Undertaken:

The Housing Scrutiny Panel and the Tenants and Leaseholders Federation have been consulted on the proposals.

Background Papers:

Reports of the Director of Housing to the Affordable Housing Sub-Group on:

(a) Ways to increase the amount of affordable housing within the District; and

(b) The possibility of the Council re-commencing a social house-building programme.

Impact Assessments:

Risk Management

The key identified risks in relation to the recommendations are as follows:

(a) It may not be possible to source a Homebuy Agent that is prepared to operate an Open Market Shared Ownership Scheme (or similar) - However, the impact of such an eventuality is minimal.

(b) The risks relating to the operation of an Open Market Shared Ownership Scheme have previously been considered by the Cabinet at a previous meeting – The impact of these risks could be serious, but the Cabinet previously satisfied itself that the likelihood and impact of these risks were outweighed by the perceived benefits.

(c) There may be insufficient applicants for either the Open Market Shared Ownership Scheme or the Home Ownership Grants – However, the impact of such an eventuality is minimal.

(d) A tenant may obtain a shared ownership property or a home ownership grant through fraudulent means. However, the operation of the scheme would/do have safeguards to minimise the likelihood. The impact of such a risk on the Council would be minimal, although it would deny another tenant who could have benefitted from the scheme(s).

(e) Feasibility studies to consider the development potential of Council-owned garage sites could lead to abortive work and costs. However, this can be mitigated through proper consideration of the issues by the Cabinet when considering the report on the development potential of the sites.

(f) The risks relating to the Cabinet's proposal to establish a Local Housing Company will be identified in the report on this issue that will be considered by the Cabinet.

(g) There is a minimal risk that the Council, for some reason, does not actually secure nominations rights to any properties purchased on the open market by the selected housing association, with social housing grants from the Council.

(h) There is a minimal risk that the Council is challenged over the selection of the housing association to receive the social housing grant to purchase open market properties.

(i) The key risks relating to the undertaking of a programme of social house-building by the Council are set out in the report of the Affordable Housing Sub-Group.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A

Appendix 1

Epping Forest District Council
www.eppingforestdc.gov.uk

Report of the Affordable Housing Sub-Group to the Housing Scrutiny Panel

Ways to Increase the Amount of Affordable Housing within the District and the Possibility of the Council Re-commencing a Social House-Building Programme

Epping Forest District Council
www.eppingforestdc.gov.uk

December 2009

1. Introduction

1.1 At its meeting in July 2009, the Housing Scrutiny Panel agreed to set up an Affordable Housing Sub-Group to consider ways of increasing the amount of affordable housing provided in the District. This followed a suggestion by Cllr Mrs R. Brookes. She commented at our first meeting that, apart from ward constituency business, housing was the issue that had made the biggest impression on her since joining the Council. She was particularly struck by the information provided at the Housing Strategy Conference during the year and, in particular, the fact that average property prices in the District are around 11 times the average earnings for the District. She had also noted the high number of expressions of interest made by housing applicants for vacant properties, through the Home Options Choice Based Letting Scheme. She had wondered whether, at this time of low interest rates, more affordable housing - in the form of social rented housing and intermediate housing - could be provided by the Council.

1.2 The Housing Scrutiny Panel had appointed the members of the Sub Group, as follows:

Councillor Mrs R Brookes
Councillor Mrs A Grigg
Councillor Mrs J Lea
Councillor S Murray

1.3 We had our first (and only) meeting on the 26th November 2009. Unfortunately, Cllr K Chana was unable to attend. We appointed Cllr Mrs R. Brookes as our Chairman. The Director of Housing, Alan Hall, and the Assistant Director of Finance (Accountancy), Peter Maddock, were in attendance to advise the Sub Group. We were also pleased that Councillor D Stallan, the Housing Portfolio Holder, attended our meeting, and took part in the discussions.

1.4 We had the benefit of two detailed reports from the Director of Housing to consider. The first report set out the assessed need for affordable housing; the past, current and future provision; and identified some ways in which the Council could increase the amount of affordable housing within the District. The second report considered the possibility and implications of the Council re-commencing a modest Social House-Building Programme, following a relaxation of the financial regulations by the Government that previously inhibited such activity.

2. Increasing the Provision of Affordable Housing

Regional Spatial Strategy - The East of England Plan

2.1 The Regional Spatial Strategy for the East of England has currently planned for the provision of 48,600 additional dwellings in the Region by 2021, including 3,500 dwellings in Epping Forest (an annual rate of 175 per annum), plus a requirement for the Epping Forest District to contribute towards the expansion of Harlow by making provision for an additional, currently unspecified, number of homes close to Harlow.

2.2 Of the required 3,500 additional homes within the District, 1,784 additional homes were built between April 2001 and April 2009, which count towards this target. Furthermore, by April 2009, outline planning permissions had already been granted for 565 additional homes and detailed planning permission granted for a further 790 homes to be built. Therefore, the minimum amount still to be provided in the Epping Forest District (through new planning permissions) between 2009 and 2021 (excluding those homes required to contribute towards the expansion of Harlow) is just 361 – an annual rate of around just 30 homes per annum, comprising both market housing and affordable housing.

2.3 Assuming that all 361 additional homes are on large sites, of which 40% would be provided as affordable housing, the East of England Plan only requires the Council to identify land to provide just 145 affordable homes between April 2009 and 2021 (in addition to the number of affordable homes to be provided from the total homes to be provided in the Epping Forest District around Harlow, to meet the growth requirements of that town).

Need for Affordable Housing

2.4 For some years, Government guidance on housing and planning has emphasised the requirement for local authorities to assess local housing need and develop strategies to address that need. This assessment process has generally been achieved by conducting Housing Needs Surveys. The Council last undertook a District-wide Housing Needs Survey in 2003, covering the period from 2003 to 2008.

2.5 However, in 2006, a national framework was introduced under Planning Policy Statement 3 (PPS3) for carrying out Strategic Housing Market Assessments (SHMAs), with final guidance published in March 2007. These assessments continue to provide information on the level of need and demand for housing locally, but they also contribute to the sub-regional and regional levels of planning.

2.6 A Strategic Housing Market Assessment (SHMA) analyses the entire local housing market, which is normally wider than local authority boundaries. It forms a crucial part of the evidence base that informs planning policies. The Council is within the Eastern Region for planning purposes, and part of the London Commuter Belt (LCB) Sub Region for housing purposes. Since the LCB Sub Region comprises 15 local authorities, it was considered too large an area for the production of a detailed and meaningful study. Therefore, 6 districts of the Sub Region, including Epping Forest, joined to form the London Commuter Belt (East)/M11 SHMA Area and commissioned Opinion Research Services (ORS) and Savills to undertake a comprehensive and integrated SHMA. The other 5 districts in the SHMA area are Brentwood, Broxbourne, East Herts, Harlow and Uttlesford. The research used secondary data from sources such as the UK Census, the former Housing Corporation, HM Land Registry and the Office for National Statistics, along with a consultation programme with a wide range of stakeholders.

2.7 We were advised that the SHMA found that an estimated 7,100 households in Epping Forest are considered to be unsuitably housed. The term ‘unsuitably housed’ is used to encompass households:

- that are homeless or have insecure tenure;
- that are ‘mismatched’ to the dwelling they live in;
- living in dwellings that lack amenities or are in a poor condition; and
- with social needs that can only be resolved through a move.

2.8 Some unsuitably-housed households may choose to move elsewhere, but not all problems of unsuitable housing require a move from the householder’s current home. For example, a problem may be resolved by extending or repairing the home, or - where overcrowding exists - one or more member(s) of the household may be able to move out of the property. Where such solutions could not be applied, due to affordability or other reasons, a household is considered to be in ‘housing need’ (a much rarer event than being unsuitably housed).

2.9 According to Land Registry data, the average (mean) property price in Epping Forest in 2008 (Quarter 4) was around £340,000. The average property price rose by 133 % between 2000 and 2008 (Quarter 1) - the highest increase in the SHMA Area.

2.10 In 2002, the average property price in Epping Forest was 9 times the median full-time earnings of someone working in the District. This rose to 11 times the median earnings by 2007 (compared to 6.5 times earnings in Harlow) – which is, by far, the highest ratio in the SHMA Area, although the largest increase in ratio was in Brentwood.

2.11 In determining mortgage borrowing, the Government states that it should be assumed that a single earner will borrow up to 3.5 times his/her earnings, with two-income households borrowing no more than 2.9 times their joint income. On this basis, the SHMA report identified that virtually no owner-occupied housing is affordable to households earning less than £30,000 per annum, and only 12 % of properties sold in the area would be affordable to individual earners with incomes of less than £50,000, borrowing at the maximum 3.5 times ratio, assuming little or no equity. For households to be able to consider the cheapest 25% of properties on the market in the SHMA Area, individual earners would need to earn at least £55,000 - £60,000, with joint-borrowers needing incomes of £65,000 - £70,000 or more. This equates to a property price of nearly £200,000, which is well below the average property price in Epping Forest.

2.12 For households earning £20,000 or less (typically assumed to require social rented housing) in the SHMA Area, just 17 % of local housing would be affordable – almost entirely in the social housing sector (with or without benefit support).

2.13 Around 50% of the stock in the SHMA Area requires earnings of over £65,000, with around a third requiring annual incomes of more than £80,000 per annum. Since over 75% of the stock is owner-occupied, many households will have existing equity and will not depend exclusively on the household income. However, most newly-forming households (and households moving out of rented housing) do not benefit from this additional finance.

2.14 In conclusion, we were advised that the SHMA Report identified that, based on long-term trends, there is an overall housing requirement by 2026 of 50,100 properties in the SHMA area, of which 47% (23,400) should be affordable housing.

2.15 The SHMA Report also identified that there is a residual requirement for 6,600 homes to be delivered in Epping Forest between 2007 and 2026, including an assumed provision of an additional 3,000 new homes in the District for the growth of Harlow. Bearing in mind this shortfall, the SHMA breaks down the projected residual housing requirement from the East of England Plan into the "ideal" amounts required for different tenure types.

2.16 Because house prices in 2007-8 were 21.5% above the long-term house price trend, the projections for the housing mix are based on a reduction of 21.5% from the 2007/8 level, to take account of the long-term house price trends.

Housing Requirement	Based on Long-Term Trends	
	Epping Forest	Harlow & M11 Corridor
Market housing	2,000 (30 %)	27,200 (54 %)
Intermediate affordable housing	1,800 (26 %)	12,100 (24 %)
Social rented housing	2,900 (44 %)	10,800 (22 %)
Total Housing Requirement	6,600	50,100

2.17 We noted that Epping Forest has the highest predicted percentage requirement of the total allocation for affordable housing, compared to the other local authorities, in the SHMA Area. The lowest is Harlow (11.5%).

2.18 However, we noted that the Council's recently completed Housing Strategy 2009-2012 recognised that it is unrealistic to expect that only 30% of the required 6,600 new homes provided in the District will be in the form of market housing, since the provision of most new housing is brought forward by developers, for whom it would be uneconomic to provide such a low level of market housing. Since it is unlikely, both for commercial and economic viability reasons, that the amount of affordable housing required of developers on development sites will be increased from the current requirement of 40%, the following table – reproduced from the Council's Housing Strategy provides a more realistic breakdown:

Epping Forest ("Realistic")	Housing Requirement 2007-26
Market housing	3,960 (60 %)
Intermediate affordable housing	925 (14 %)
Social rented housing	1,715 (26 %)
Total Housing Requirement	6,600

2.19 Since this will provide just 2,640 new affordable homes - an annual rate of around 132 per annum - it will leave a projected shortfall of around 2,060 affordable homes in the Epping Forest District, compared to the need for 4,700 affordable homes assessed by the SHMA, based on long-term house price trends.

Ability to Provide Affordable Housing

2.20 We noted that the Council's ability to increase the amount of affordable housing in the District is constrained by three main issues:

Land

2.21 We were made aware that the Council has not yet produced either its Core Strategy or its Site Specific Allocations under the Local Development Framework. The latter document will set out the locations where additional housing in the District will be allowed to meet the requirements of the East of England Plan.

2.22 Moreover, prior to the adoption of the East of England Plan, we were advised that the Council exceeded the previous Essex and Southend-on-Sea Structure Plan targets for new house-building, 8 years ahead of schedule; so all allocated sites were developed a number of years ago. Therefore, for a number of years, all new developments (including associated affordable housing) have been on unplanned "windfall" sites. This will not change until the Council allocates additional land through its Site Specific Allocations.

2.23 We noted that the current position is that, following the issue of a "Call for Sites" inviting landowners to submit proposals for land to be included within the Site Specific Allocations, the submissions are currently being assessed by planning officers and will then be considered by the Local Development Framework Task and Finish Panel.

Grant

2.24 Although affordable housing can be provided without grant from the Homes and Communities Agency (HCA – one of the successors to the former Housing Corporation) or the Council, we were advised that the amount of affordable housing (compared to the percentage of market housing on Section 106 sites) is significantly reduced without grant. In any event, land is still needed.

Members’ Priorities

2.25 We acknowledged that the Council is responsible for delivering many different – often conflicting - policies and services, and must balance these priorities. We recognised that, although more affordable housing could be provided in the future, it could have to be at the expense of other Council priorities.

Housing Register

2.26 We were advised that there are currently around 4,740 housing applicants registered on the Council’s Housing Register in need of affordable housing. We were concerned to note that this number had increased by an incredible 20% over a four month period during 2009, and by over 30% over the past 18 months. This can be compared with just 1,480 households registered on the Housing Register in March 2002. We recognised that the main reasons for the significant increase are due to the recent collapse in the property market and the effects of the “credit crunch” and the recession on residents within the District.

Recent Affordable Housing Completions

2.27 Due to the dearth of housing sites in recent years, resulting from the early achievement of the previous Structure Plan target, we were advised that there have been very low numbers of affordable homes provided in past years. However, we noted that the number of expected completions this year is more significant, as shown below:

Tenure	2009/10 (Forecast)	2008/9	2007/8	2006/7
Rented (exc. special needs)	77	9	4	14
Shared Ownership	30	25	10	5
Totals	107	34	14	19

2.28 We were advised that the expected completions in 2009/10 are for the following developments (some of which have already been completed):

Development	No. of Affordable Homes
Epping Forest College, Loughton	56
St. Margarets Hospital, Epping	40
Spencer House re-provision	2
Pyrles Lane, Loughton	9
Totals	107

Affordable Housing Pipeline

2.29 We were advised that, in addition, a further 10 developments have either detailed or outline planning permission and are either on-site or have not yet started. It is expected, subject to the effect of the economic climate, that all these developments will be completed by March 2011 and will provide an additional 356 affordable homes, as follows:

Site	No. of Affordable Homes	Status (as at 1.11.09)
Epping Forest College (Phase 2), Loughton	39	On Site
White Lodge/The Limes, W/Abbey	96	Not yet started
Ongar Station, Ongar	19	Not yet started
Merlin Way, North Weald	80	Not yet started
Jennikings Nursery, Chigwell	54	Not yet started
St. Johns School, Epping	38	Not yet started
Church Hill, Loughton	4	To be tendered by EFDC
Acres Avenue, Ongar	12	Not yet started
Theatre Resource, Ongar	9	Not yet started
School Lane, Abbess Roding (Rural)	6	Not yet started
Off site provision from Warren Hill development, Loughton	5	Not yet acquired
Totals	362	

2.30 In addition, we noted that active consideration is currently being given by developers for the development of a further 7 sites in the District. Although unlikely, based on the developers' current proposals, we were advised that if all 7 developments receive planning permission, it would result – as at 1st November 2009 - in the provision of a further 172 affordable homes.

The Council's Capital Strategy

2.31 Each year the Council produces a Capital Strategy, which is a "high level" strategic document, linked to the Council's other key strategic documents. This follows the annual re-assessment of the Council's Key Capital Priorities, which set out the main areas in which the Council will invest its capital resources. These Key Capital Priorities are ranked, so that capital resources can be targeted at those ranked highest.

2.32 We noted that there are 8 Key Capital Priorities set out in the latest Capital Strategy, of which one is "Meeting Housing Need". Last year, this Key Capital Priority was ranked as the 2nd Highest Priority. However, at the Cabinet meeting on 16th November 2009, the Capital Strategy for 2009-2010 was approved, and it was agreed to raise the ranking of "Meeting Housing Need" to the *Highest* Priority, replacing the Key Capital Priority of "Improving the Council's Housing Stock", which is now the Council's 2nd Highest Key Capital Priority (having been the Highest one for last few years).

2.33 However, despite this ranking, we noted that, of the £53m being spent by the Council on capital projects over the five-year period 2009/10 - 2013/14, only £554,000 (1%) has been allocated to fund new affordable housing initiatives to help meet housing need.

Capital Funding Availability

2.34 Notwithstanding the low amount of capital resources currently allocated to fund affordable housing initiatives, we were advised that there is limited scope within the Capital Programme to divert funding from other projects. Therefore, if any additional funding is made available for new affordable housing initiatives to help meet housing need, it would be necessary to increase the Council's Capital Programme, funded from capital receipts.

2.35 We noted that it is currently predicted that the balance of usable capital receipts will fall from around £19.24m in April 2010 to around £11.03m in April 2014 (after taking into account capital projects needing capital funding over this period). We also noted that the Council is currently benefiting from the revenue income generated by the investment of these balances. The full year effect of funding, say, £1m of additional expenditure from capital receipts would be to reduce investment income by approximately £10,000 per annum at current interest rates. Any additional expenditure would therefore have an impact on either the level of the Council Tax or the level of other services being provided.

Ways of Increasing the Amount of Affordable Housing

2.36 Following consideration of the background outlined above, we then considered a detailed report from the Director of Housing on possible ways the Council could modestly increase the amount of affordable housing within the District.

Open Market Shared Ownership

2.37 We noted that the Cabinet has made provision of £350,000 within the Capital Programme for one of the Council's Preferred RSL Partners (Moat) to operate a bespoke low cost home ownership scheme for Epping Forest, called Open Market Shared Ownership. Under the proposed scheme, housing applicants would be able to purchase a one-bedroomed property on the open market on a shared ownership basis ("part rent – part buy").

2.38 The benefit of this approach would be that, firstly, it does not rely on new developments coming forward by developers on Section 106 sites and, secondly, it would provide much greater flexibility to applicants than "NewBuild" shared ownership, since instead of being restricted to new-build opportunities that may arise on a specific new development in a specific location, applicants could choose the home they wish to purchase within a prescribed maximum purchase price.

2.39 We were advised that, under the scheme already agreed by the Cabinet, applicants would purchase a 50% equity share in a one-bedroomed flat that they select on the open market, which would be funded by the applicant through a mortgage and any deposit. The Council and Moat would purchase two remaining shares, totalling the remaining 50%. Based on the purchase of a flat valued at £190,000, Moat's share would be 21% and the Council's would be 29 %. The applicant would pay Moat an annual rent, initially equivalent to 2.5% per annum of the value of the equity held by both Moat and the Council, which Moat would use to fund the cost of the loan required to purchase its share. The amount of equity that Moat could purchase would be directly dependent on the rental income received; the Council would then purchase the remaining equity. No rent would be payable to the Council for its equity share.

2.40 We noted that, under the proposed scheme, the shared-owner would be able to purchase additional tranches of equity from Moat and the Council, up to the full 100% equity (referred to as "staircasing"). The price for the tranches would be linked to the open market value of the property at the time of purchase. The proceeds from each tranche purchase would be split between Moat and the Council, according to the respective percentage equity holdings. Therefore, over time, the Council would recoup its initial investment, plus the increased value of its equity (provided property prices increase). It was proposed that the capital receipts received by the Council as a result of staircasing would be held by the Council and used to fund further purchases in the future, in the same way. Similarly, any net receipts received by Moat from staircasing (after repaying its loan to purchase the initial equity) would be kept by Moat in an interest-bearing account, ring-fenced, and used to supplement further equity purchases by the Council (or, at the discretion of the Council, to fund other affordable housing schemes).

2.41 However we noted that, soon after the Cabinet had agreed the bespoke scheme, the Government introduced a very similar new national scheme (through the Homes and Communities Agency - HCA), called "MyChoice Homebuy", which was more generous to applicants. Therefore, we noted that, in April 2008, the Housing Portfolio Holder decided that the Open Market Shared Ownership Scheme should be held in abeyance, and that no further work should be undertaken, until the demand and success of the new MyChoice HomeBuy Scheme could be assessed. However, we also noted that he had decided that the budget provision for the Scheme should be retained in the Capital Programme, and that a decision on whether or not to implement the scheme - and continue to make budget provision within the Capital Programme – should be made at a later date.

2.42 We were advised that, in Autumn 2009, the Government closed the MyChoice Homebuy Scheme. This was because the Government wanted to shift the resources allocated to MyChoice Homebuy, to new-build affordable housing, to assist with the credit crunch and the stalled house-building industry.

2.43 We were interested to note that MyChoice Homebuy had proved to be a very popular, flexible, scheme to assist first time buyers and that the Director of Housing had therefore made contact with Moat to ascertain whether or not they would be interested in either introducing the Open Market Home Ownership Scheme previously agreed in principle, or discussing an alternate scheme based on the MyChoice Homebuy model, but with the Council taking the place of the HCA.

2.44 However, we were advised by the Director of Housing that Moat Housing Group had said that it was no longer interested in working with the Council on such a scheme, because it was now targeting its efforts on providing shared ownership schemes through new-build. The Director of Housing explained that, in view of this, he had recently made contact with Orbit Housing Group, which is the Homebuy Agent for another part of the Country, to ask if, in principle, Orbit would be interested in working with the Council on either;

(a) The Open Market Shared Ownership Scheme already agreed by the Cabinet; or

(b) An alternate scheme, similar to Moat's successful MyChoice Homebuy Scheme, but with the Council undertaking the role of the Homes and Communities Agency

2.45 However, subsequently, at the meeting of the Housing Scrutiny Panel in December 2009, the Director of Housing advised that Orbit had also declined the offer to work in partnership with the Council on this initiative. Therefore, the Director of Housing has approached Aldwyk Housing Association, the Homebuy Agent for Hertfordshire, to enquire of their interest. A response is currently awaited.

2.46 Subject to the outcome of the discussions with Moat Housing, it is likely that the £350,000 budget could fund the purchase of around 6 properties under the Open Market Shared Ownership Scheme, or around 5 properties under an alternate MyChoiceHomebuy Scheme. It should be noted, however, that this investment would not just fund one purchase since, when the applicant purchases additional tranches of equity - or sells their property – the Council would receive a capital receipt, which could be used to assist further applicants. Ultimately, the Council would recover its investment – which would be either more or less than its original investment, depending on whether the value of the properties purchased with the grant has increased or decreased in value.

2.47 After discussion, we concluded that we should recommend that the budget provision of £350,000 should be retained within the Capital Programme, but that no increase in the budget should be sought at this stage, in view of the current uncertainty of a provider.

Home Ownership Grants

2.48 We recalled that, in October 2007, the Cabinet approved a pilot scheme for the provision of five Home Ownership Grants of £34,000 each, totalling £170,000, to be awarded to five Council tenants in 2008/9 (subject to them meeting an agreed criteria). The grants enabled secure tenants to purchase a property on the open market and give vacant possession of their Council property on the day of completion. Once their property was vacated, the Council then made this vacancy available through the HomeOptions Choice Based Lettings Scheme. The Scheme therefore assisted five tenants to enter home ownership, and a further five housing applicants to access Council housing. We noted that the Cabinet also agreed that the Housing Portfolio Holder should review the Pilot Scheme after six month's operation, including whether the funding allocation was sufficient.

2.49 We were advised that, due to the successful promotion of the Scheme, 38 applications were received and that the Housing Portfolio Holder had therefore subsequently agreed a selection criteria to allocate the five grants; all five applicants completed their house purchase.

2.50 We further noted that, in March 2009, the Cabinet had reviewed the success of the scheme and, in view of the economic climate and the difficulties for first-time buyers to secure mortgages to purchase properties on the open market, had agreed to make capital provision of a further £170,000 in 2009/10, to fund a further five Home Ownership Grants.

2.51 We noted that the Scheme continues to be popular and successful and that, following a marketing exercise earlier in the year, 31 tenants had applied for Home Ownership Grants. Five had been shortlisted, who are currently in the process of finding homes on the open market.

2.52 There is currently no budget provision within the Housing Capital Programme to fund any further grants. However, at the Cabinet meeting in March 2009, it was agreed that the Housing Portfolio Holder should review the success of the Scheme's continuation after nine month's operation and reports to the Cabinet on whether or not the Scheme and associated funding should be continued into 2010/11.

2.53 We therefore considered whether or not we should recommend the continuation of the Scheme in 2010/11. We concluded that the Scheme should continue, since it assisted both first time buyers and applicants on the Council's Housing Register. However, in view of the relatively high interest shown in the grants by tenants, we felt that there may be benefits in reducing the individual amount of grant from £34,000 to £28,000, which would enable 6 grants to be provided within the budget of £170,000, instead of 5 grants.

2.54 The Assistant Director of Finance and ICT (Accountancy) explained that the Cabinet undertakes a full review of the Capital Programme in the Autumn each year. However, he further explained that the Capital Programme could be updated at any time during the year, and we therefore agreed to recommend that budget provision of £170,000 be made for the provision of 6 Home Ownership Grants in 2010/11.

2.55 We also decided to recommend that, in the first instance, all those unsuccessful applicants for the Home Ownership Grant Scheme this year should be contacted, to see if they are still interested in grants and, if so, that they should be selected in accordance with the established criteria. We felt that, only if there are insufficient numbers interested, should another marketing exercise be undertaken.

Development of Under-used Difficult-to-let Council Garage Sites

2.56 We were reminded by the Director of Housing that Estuary Housing Association had recently completed the development of six small developments on land previously owned by the Council - mainly on difficult-to-let garage in Loughton, Buckhurst Hill and Waltham Abbey - to provide homes for local people on the Council's Housing Register.

2.57 The six sites have provided 29 new homes – 18 homes are for rent, at affordable rents with long term assured tenancies and 11 homes are for shared ownership for first time buyers, enabling the occupiers to buy equity in their home, and to increase the amount of equity in future years, up to full home ownership.

2.58 We were advised that the Council had enabled the developments to be built, by providing a capital grant to Estuary Housing Association of £1 million and by transferring the land for free. The remainder of the costs were funded by Estuary's private finance (a loan from a funding institution). All residents for the rented housing were nominated by the Council, through the Council's HomeOptions Choice Based Lettings Scheme.

2.59 We noted that a further development by Estuary Housing Association - of 12 shared ownership homes for first time buyers at Acres Avenue, Ongar – is due to commence shortly, once the legal agreements have been finalised. This scheme is being funded by the Homes and Communities Agency.

2.60 The Council continues to have a number of difficult-to-let garage sites with: more than 20% of the garages vacant; many of the garages used for storage; and no applicants on the waiting list.

2.61 We were advised that, some time ago, seven difficult-to-let garage sites had been identified by the Director of Housing as potentially having development potential. The Cabinet had agreed that Home Housing should undertake an initial feasibility study to assess the potential number of affordable homes that could be provided on these sites, with a view to undertaking the development. This had established that, potentially, 40 new affordable homes could be provided on these sites, subject to the receipt of planning permission.

2.62 We understand that, more recently, a simple desk-top exercise has identified a further 43 difficult-to-let garage sites, that may also have development potential, and that site visits are currently being undertaken to these sites to ascertain whether or not they could be developed.

2.63 We agreed to support the principle of undertaking more detailed feasibility studies of these sites to assess the development potential further, and agreed to recommend that a report on this exercise should be presented to a future meeting of the Cabinet. However, in so doing, the members of our Sub Group made it clear that we could neither support nor oppose proposals for any *individual* locations, since not only did we not know the sites, we recognised that such a declaration could fetter our individual members' discretion, if such sites were to result in a planning application.

<u>Local Housing Company</u>

2.64 It was reported to us that, at its meeting on 7th September 2009, the Cabinet had considered an initiative promoted by the Leader and Deputy Leader of the Council, and the Housing Portfolio Holder, that could potentially provide a better rate of return for the Council than its current investments (currently less than 1%). Under the proposal, the Council would set up a Local Housing Company to purchase a number of properties on the open market and then let them at market rents, with a loan from the Council. In addition to the Council receiving the loan interest (which would currently amount to around 4%), any surplus rental income (after the deduction of the loan interest and other costs such a legal, management and corporation tax) would also be returned to the Council through a legal agreement. The Directors of the Company would be Council members.

2.65 We noted that initial costings by the Asst. Director of Finance & ICT (Accountancy) suggested that, for every 10 properties purchased and let in this way, the Council could potentially receive additional investment income (currently) of around £57,000 per annum <u>more</u> than from that obtained from normal investments.

2.66 However, we were advised that such an arrangement would be fairly unique and that the Cabinet had therefore agreed to obtain specialist legal advice on, amongst other things:

- How the company would have to be set up
- How the company would operate
- The legal powers available
- The required consents
- Initial tax advice

2.67 In addition, we were advised that it would be necessary to undertake a more detailed financial appraisal of the potential costs and income, and whether the initiative would be financially viable.

2.68 We noted that, once the Cabinet has this information, it would be in a position to make a prudent decision on whether or not to proceed with such an arrangement and, if so, in what way. If the scheme was to go ahead, a decision would also need to be made on the level of loan that should be provided to the Local Housing Company.

2.69 We also noted that, although this initiative would not provide any additional affordable housing, the purchased properties would be let to homeless applicants and other housing applicants on the Council Housing Register, who would normally be unable to access the private rented market, due to the need to fund rent and deposits in advance. Since applicants on low incomes would be eligible to a full or partial local housing allowance (housing benefit), the proposal could assist the same client group as those assisted with the provision of affordable housing.

2.70 We therefore considered it appropriate to draw the Scrutiny Panel's attention to this initiative.

<u>Purchasing Properties off the Open Market</u>

2.71 We were advised by the Director of Housing that the Homes and Communities Agency (HCA) no longer funds housing associations to buy properties off the open market, to let at affordable rents. This is because the HCA's priority is to use its resources to help with new house-building, and the purchase of existing properties does not benefit the house-building industry. However, such an arrangement would increase the amount of affordable housing in the District.

2.72 We noted that the Council has, in the past, provided significant amounts of Local Authority Social Housing Grant to housing associations to provide affordable housing in the District (around £8.1m since 1993). The last scheme to receive LA SHG (£1m) was the development of six former Council-owned sites by Estuary Housing Association, referred to earlier in our report. Generally, the Council has only funded those developments that, for various reasons, cannot be funded by the HCA.

2.73 Therefore, if the Council was willing and able to provide more Local Authority Social Housing Grant in the future, it could provide grants to one of the Council's Preferred RSL Partners to purchase properties off the open market and to let them at affordable rents. We learnt that grant would only be required for part of the cost; the housing association would obtain private finance for the remaining amount.

2.74 We understand that the provision of 2 and/or 3 bedroom houses could assist more people than smaller properties, since existing Council tenants could transfer into larger 2/3 bedroom houses, leaving their smaller accommodation available for other housing applicants. The amount of grant required would vary, depending on the value of the properties, but we were advised that, on average, a grant of £75,000 could be used to purchase a 2 or 3 bedroomed house, especially if the property was previously a Council property, sold under the right to buy.

2.75 After some discussion, we therefore agreed to recommend that budget provision of £375,000 should be made within the Capital Programme, to fund the purchase of around 5 or 6 two or three bedroomed houses within the District. We also agreed to a suggestion by the Director of Housing that a tendering exercise should be undertaken amongst the Council's Preferred RSL Partners to select an RSL that could provide the best value for money.

Prioritisation of Funding Requests to the Council

2.76 Finally, we gave consideration to a suggestion from the Director of Housing that we should prioritise the funding requests that we were proposing. However, we concluded that, because each of the proposals are so different, and would assist either first time buyers and/or housing applicants, it was not possible for us to rank the proposals.

3. New Social House-Building by the Council

Introduction

3.1 We were advised at our meeting that the last new general-needs Council property was built in June 1985 (19 houses built for sale at Mountbatten Court, Buckhurst Hill). Since 1977, the Council has sold around 6,150 properties, predominantly through the Right to Buy. The Council currently owns and manages around 6,500 properties.

3.2 We noted that, since the 1980s, councils have been discouraged by successive governments from building new social housing themselves, and encouraged to act as “enablers”, by facilitating housing associations to build new social housing. To discourage councils from building, the Government has previously established financial rules that penalise many local authorities that build – a high proportion of rent received from Council properties has had to be passed on to the Government, in the form of negative housing subsidy (for this Council – around 44%), and 75% of any capital receipts received from the sale of properties under the right to buy has had to be passed to the Government under its pooling arrangements.

3.3 However, we learnt that the Government’s policy has now changed. Mainly as a result of the collapse of the property market and the credit crunch, the Government is now encouraging local authorities to build once again. Not only has it removed the main financial disincentives, it has also provided capital funding solely for local authorities to assist with the required capital costs.

3.4 A report from the Director of Housing, circulated with our agenda, provided us with information to consider whether or not the Council should start building new affordable homes again itself, to a modest degree. However, an Addendum Report tabled at our meeting provided us with some important financial information, that seriously affects the viability of the Council undertaking which we refer to later in our report.

New Financial Regulations

3.5 We were noted that Section 80B of the Local Government and Housing Act 1989 enables local authorities to exclude specified properties from the operation of the HRA Subsidy System by agreement with the Secretary of State. In August 2009, following a period of consultation, the Government introduced new regulations, which remove the two major disincentives. These change the revenue and capital rules and allow local authorities to:

- Retain all of the rental income received from new properties (built after August 2009); and
- Retain all of the capital receipts from the sale of properties that were built after the introduction of the changes.

3.6 These rules exclude specific *new* properties from both the HRA subsidy system and the capital rules. This must be done through specific agreements between individual local authorities and the Secretary of State. The types of properties that qualify for exclusions under the proposed scheme are:

- New-build properties
- Properties purchased or otherwise acquired
- Derelict or uninhabitable properties brought back into use as a result of significant council investment

3.7 Local authorities must apply for an exclusion for new developments (or acquisitions) to the Homes and Communities Agency (HCA), who will advise the Secretary of State on whether the exclusion should be allowed.

3.8 Applications must include details about the proposed development, including design and development standards, rents and allocation policies. If agreed, the Secretary of State will issue a short letter of agreement in a standard form.

3.9 Although decisions on how a local authority chooses to invest its own resources is essentially a local matter, in granting an exclusion, we were advised that the Secretary of State would expect to see evidence that "appropriate local decision-making processes have been applied, including a robust options appraisal, and that the chosen option offers value for money". The Government only expects to exclude properties that conform to all Government policies regarding council housing. The Government will also have to consider the overall impact on its fiscal policies when considering applications for exclusion.

Why Develop ?

3.10 Since the development of affordable housing by the Council itself will not increase the overall amount of affordable housing that could otherwise be provided in the District by other agencies (since Council-owned sites could be developed by housing associations), we considered the fundamental question of why develop new affordable housing itself and not simply continue to be, only, an enabler of affordable housing by housing associations - as has been the case since the 1980s ?

3.11 Firstly, we recognised that the Council will continue to be the main facilitator/enabler of affordable housing by housing associations in the District. Most new affordable housing will continue to be developed by housing associations, with the assistance of the Council.

3.12 However, we felt that there are a number of reasons why, in principle, the Council should undertake a modest programme of new social house-building, initially on land in its ownership, provided that the financial circumstances are not inhibitive. Some of our reasons for concluding this are as follows:

(a) Since the late 1970's, with the effects of the Right to Buy, voluntary sales and no new house-building, the Council's housing stock has declined dramatically. Indeed, our housing stock has reduced by around 50% (6,150 homes) since 1977. One of the effects of this decline has been an increase in unit costs. For example, generally, a number of the costs of undertaking a repair/improvement scheme on a housing estate are constant, irrespective of the number of properties involved. An increase in Council properties can therefore reduce unit costs. A similar benefit is obtained in terms of housing management.

(b) The Government's new regulations remove the two main financial barriers that deterred local authorities from building. We therefore have an ideal opportunity to increase the size of our housing stock, without incurring any financial penalties.

(c) The Government/HCA is providing significant funding for councils to build new affordable housing. Although this ring-fenced funding may not continue, it is likely that some form of funding will be available in the future. By accessing this funding, we can increase our asset base and the value of our assets at only a partial cost to the Council.

(d) In the past, the Council has provided significant capital funding and free land to housing associations to provide affordable housing in the District. In the future, the financial benefits of such capital funding and free land would benefit the Council and not housing associations.

(e) We were advised that, generally, financial appraisals expect developments to break even within 30 years. However, the life expectancy of a property is far longer. Therefore, in the long term, we believe that there will be financial benefits to the Council, since rent will still be received beyond 30 years, whilst one of the main costs (loan interest) will no longer be payable. The Council today is now benefitting financially from Council properties built in the late 1970s.

(f) We would have greater control over some of the affordable housing provided in the District (in terms of design and layout).

(g) Although there is no evidence at present, we consider that it is possible that the Audit Commission may, at some time in the future, be critical of the Council for not embracing this Government initiative and the perceived benefits.

Capital Funding Availability

3.13 we noted that, to date, the HCA has held two bidding rounds inviting local authorities (only) to bid for ring-fenced capital funding. Round 1 provided £127m to 47 local authorities to build around 2,000 new council homes – we understand that only 1 local authority is in the East of England (Cambridge), The closing date for Round 2 has passed (30 October 2009) and will provide an additional £180m for new local authority homes. The HCA expects local authorities to provide around 50% of the required capital funding, with the HCA grant funding the remaining 50%. The HCA also expects local authorities to provide the land free of charge.

3.14 Although the Government has not yet announced any further bidding rounds, it is expected that further capital funding will be made available to local authorities in the future, either ring-fenced to only local authorities or, more likely, by allowing local authorities to bid against housing associations for funding from the National Affordable Housing Programme.

3.15 Although the HCA expects to fund local authorities that build on their own land, we believe it is conceivable that, in the future, the HCA could also fund local authority developments on privately owned land, where the land is provided by a developer free, through a Section 106 Agreement (in a similar way to housing associations).

Requirements to Access Funding – The Pre-Qualification Questionnaire (PQQ)

3.16 We were advised that, in order to be able to bid for funding from the HCA, a local authority (or an RSL) must become an "investment partner" of the HCA. To become an investment partner, the applicant must pass a "pre-qualification" process. This involves an application being made to the HCA by the local authority, that must demonstrate that the local authority;

- is of "good standing" (principally through a signed statement of good standing);
- has sufficient technical capacity and experience (through examples of previous development projects); and
- has sufficient financial capacity to handle significant values of grant and has financial viability

Appointment of Development Agent and the Development Process

3.17 When the Council last built Council properties in the 1980s, we had an in-house team with the required skills and experience to undertake the design and to project manage the construction. However, following the effective moratorium on new Council building, these skills and experience have mostly been lost to the Authority. We now only have one Senior Architectural Assistant, who we understand has other commitments and does not have the capacity to undertake even a modest new house-building programme. Moreover, it is unlikely that the Council would pass the PQQ process on its own, since we could not demonstrate that we have either sufficient technical capacity or experience.

3.18 We propose, therefore, that if the Council embarks on a new house-building programme, that we should take a similar approach to smaller housing associations who want to build new social housing – by appointing an existing housing association that is already an investment partner of the HCA to act as Development Agent.

3.19 We understand from the Director of Housing that, in return for a fee (expected to be between 1% - 3% of the works cost), the Development Agent would provide a full development service on behalf of the Council. Initially, we would ask the Development Agent to complete and submit the HCA's Pre-Qualification Questionnaire on behalf of the Council, for us to achieve investment partner status with the HCA. It would then use its existing arrangements and contracts with architects, employers agents and contractors to assist with the development process. We believe that, one of the benefits of this approach, is that we understand most large housing associations already have arrangements with architects, whereby feasibility studies are undertaken by them "at risk". If the development is not viable, or aborted, no fees are payable.

3.20 We would advise that the Council enters into a Development Agreement with the selected Development Agent. We propose that the Development Agent would then, effectively, sub-contract with the required contractors and consultants. The Council would pay the Development Agent for the contractor's and consultants' services under the Development Agreement, which would be in addition to the Development Agency Fee, who would then pass on this payment to the consultants and contractors under their contracts.

3.21 Once a site (or sites) has been identified, we would expect the Development Agent to undertake a Development Appraisal, which would assess whether or not an identified site has development potential, and enable the Council to consider the financial implications, decide whether or not it wishes to proceed, and determine how the development should be funded.

3.22 Following the feasibility stage, we would ask the Development Agent to submit applications to the HCA, on behalf of the Council, to exclude the proposed new Council homes from the operation of the Housing Revenue Account Subsidy System, as explained above.

3.23 Once the application is approved, the Development Agent would then seek planning permission from the Council and capital funding from the HCA on our behalf. Once planning permission and funding approval has been obtained, we would propose that the Development Agent (or its Employers Agent) then selects a contractor and oversee the construction. At practical completion, the newly-constructed homes would be handed over to the Council for letting to applicants on our Housing Register. The properties would be owned by the Council and we would receive the rental income, and manage and maintain the properties.

3.24 We propose that, if the Council agrees to re-commencing a house-building programme, the Development Agent should be appointed following a competitive process. We were advised that, since the total value of the Development Agreement (which would have to include the costs of consultants and contractors) would be in excess of the current EU Procurement Threshold for Services of £139,893, it would be necessary to follow the European OJEU procurement process to appoint the Development Agent. We would strongly suggest that the selected RSL should have to be an existing investment partner of the HCA and we also suggest that they must also have a development base in either Essex or Hertfordshire at the start of the contract. Although we would suggest that the Council's five current Preferred RSL Partners should be allowed to apply, we believe that other RSLs should also be invited to apply.

3.25 In view of the potential number of applicants, we would suggest that interested RSLs should be asked to complete a PQQ, from which a shortlist of four RSLs should be selected using a pre-determined criteria and invited to provide tender submissions. We propose that tenderers should be invited to give presentations to a Selection Panel, and that an appointment should be made on the basis of price and quality, having regard to the RSLs' Tender Submissions and presentations. We would suggest that the Selection Panel comprises the Housing Portfolio Holder, Director of Housing, Asst. Director of Housing (Property) and Asst. Director of Finance and ICT (Accountancy).

3.26 We also suggest that the Development Agreement should be for a three-year period, with an option to extend the Agreement for three further individual years. We would recommend that a review is then undertaken, towards the end of the development period, to enable the Council to decide on the approach we would like to take in respect of future developments, in the light of experience.

3.27 We noted that the Council's own legal service may not have either the expertise or the capacity to draft the required Development Agreement with the Development Agent. If this is the case, we would suggest that we appoint a firm of solicitors specialising in this area to undertake the legal work, although we understand that there is currently no budget. However, since it is expected that this would cost no more than £2,000, we concluded that it could be easily funded by a virement from an under-spent budget, under the delegated authority of officers.

Potential Development Sites

3.28 We understand that the HCA's guidance for the recent bidding rounds makes it clear that the land for any developments must be provided free of charge, and must be for rent (and not for first time buyers – e.g. shared ownership). This suggests to us that only existing Council land can be developed by local authorities. Members of the Housing Scrutiny Panel may be aware that we have been working in partnership with Estuary Housing Association to develop seven former Council-owned sites across the district to provide 41 affordable homes for rent and shared ownership. These have predominantly been former garage sites that were difficult-to-let. We noted that six of these sites have now been completed and that the last site has planning permission and is due to commence shortly.

3.29 We were reminded that the Council has a "Difficult-to-let Garage Policy", which states that any garage sites that have more than 20% of the garages vacant, with no waiting list, should be considered for redevelopment. The Council has many such sites and we were advised that the Director of Housing is currently in the process of filtering out those sites that have no development potential. We understand that, already, it is clear that a number of these are suitable for redevelopment, and could be put through the development process by the Council's Development Agent. Indeed, we were reminded that 7 difficult-to-let Council garage sites have previously been identified as potentially having development potential, following initial feasibility studies undertaken by Home Housing (at the Council's request), and we were advised that these could provide, potentially, 40 new affordable homes, subject to the receipt of planning permission.

3.30 We noted that, more recently, a simple desk-top exercise has identified a further 43 difficult-to-let garage sites, that may also have development potential. We understand that site visits are currently being undertaken to these sites to ascertain whether or not they could be developed.

3.31 Moreover, we understand that the Council has a number of land-holdings held within the General Fund that may become surplus to requirements at some time in the future. We believe that if we have a Development Agent appointed at the appropriate time, any affordable housing required on these sites could be provided by the Council, instead of by a housing association.

3.32 Although not specifically covered by the current bidding guidance, we believe it is possible that some of the affordable housing on large private developments required by Section 106 Agreements could be provided by the Council in future, if the land is provided free. However, we would need to ensure that the Council is not given any advantage over the Council's Preferred RSL Partners, who currently provide most of the affordable housing on such sites, since this could be deemed anti-competitive by both developers and RSLs. In any event, we do not suggest that such developments on

Section 106 sites are considered as part of any Development Agreement, but we may want to consider that as part of our suggested review of the Development Agency approach towards the end of the development period.

Issues and Implications

Proposed HRA Reforms

3.33 Members of the Scrutiny Panel may be aware that the Government has recently consulted on proposed radical changes to the administration of the Housing Revenue Account (to which the Council submitted a response), and is currently considering the responses received from the consultation. One of the Government's proposals is that the national housing debt (amounting to around £15 Billion) is shared amongst all local authorities, including those that (like the Council) are currently debt-free.

3.34 The Asst. Director of Finance and ICT advised us that he has considered whether or not any decision made by the Council to re-commence the building of Council homes would have any effect on the Council's position in the future, as a result of these HRA reforms, and he had concluded that it would have no effect. We were asked to note, however, that if there are any material implications of the Council no longer having its debt-free status as a result of prudentially borrowing (which we refer to later in our report) these implications would arise, in any event, if the Council received a share of the national housing debt as a result of the HRA Reforms.

Use of Capital Receipts

3.35 We considered that another way to fund the Council's contribution would be to utilise capital receipts – either in full or in part. This would have the benefit of avoiding or reducing the amount of prudential borrowing required. However, we acknowledged that such use would have an adverse effect on the Council's General Fund, since the Council would lose the investment interest from those capital receipts, which is currently used to keep council tax to a minimum.

3.36 Therefore, we do not suggest - at this stage - that capital receipts should be used to fund Council-house building. If the Council does decide, at a later stage, to use some capital receipts, this decision would need to form part of the consideration of individual development appraisals (see below).

Development Appraisals

3.37 Once a site has been identified as having development potential, we would expect the Development Agent to undertake a formal Development Appraisal, which would include a financial appraisal. We would propose that all Development Appraisals, at least in the early stages, shoud be reported to the Cabinet for approval. We believe that this is important, since it will be necessary for the Cabinet to not only approve the development, but to also allocate sufficient funding within the Housing Capital Programme and ensure that the proposed development can be adequately resourced through prudential borrowing and/or capital receipts.

Staff Resources

3.38 We acknowledged that the introduction of this initiative would involve staff time being allocated. However, on the advice of the Director of Housing, we believe that this could be undertaken within existing staff resources and would not have any impact on the Council's key housing priorities. We believe that the initiative should be led by the Director of Housing, assisted (particularly in relation to technical issues) by the Asst Director of Housing (Property). We were also advised that the Senior Architectural Assistant, who transferred to the Housing Directorate following the Top Management Restructure, should have some capacity in the near future to also provide support and assistance

Timescales

3.39 In his report to us, the Director of Housing provided us with an indicative timescale of the key milestones. However since, for reasons we explain towards the end of our report, we are not recommending that the Council embarks on a new house-building yet, it is not possible for us to provide a list of key dates. However, we have set out below the estimated timescales for each of key milestones, from the date the Cabinet is in a position to approve our proposed approach, assuming that the OJEU Restricted Procedure is followed:

Approval to proposed approach by Cabinet	Month 0
Updating of Prudential Indicators and Treasury Management Strategy by Cabinet	Month 1
Issue of OJEU Notice	Month 2
Out to Tender to shortlisted RSLs from PQQ process	Month 4
Contract Signed	Month 7
Completion/approval of first feasibilities / development appraisals	Month 10
Receipt of planning permission	Month 14
Start on site	Month 18

Key Risks

3.40 Before making a decision in principle to re-commence a programme of new Council building, we believe that it is very important to consider the key risks, since the costs involved will be large. The main risks that we have identified, based on the Director of Housing's advice, are as follows:

Actual Costs are Higher than Estimated

3.41 We know that the Development Appraisal will assess the construction costs and fees, as well as the estimated rental income, loan interest and ongoing management and maintenance costs. However, although some of these will be relatively accurate, a number of costs/income will be based on assumptions. We believe that the effect of actual costs being different from estimated will vary. Some differences will be negligible, whilst some (for example interest rates) could be significant. We consider that it would be important, therefore, that the Development Appraisals include a "sensitivity analysis", which would explain the effects of differing assumptions, so that the Cabinet can make informed decisions based on different scenarios.

3.42 As always, unexpected site conditions can significantly affect costs – we believe that it will therefore be important to ensure that all developments have financial contingencies.

Abortive Costs

3.43 We know it is possible that some developments, that incur costs up to a particular point, do not proceed. An obvious example is if a development does not obtain planning permission. We believe that these costs can be mitigated to some degree by having arrangements with consultants, whereby the consultants work "at risk" up to the feasibility stage. However, we also know it is possible that some proposed developments do not receive planning permission or that, in the event, the Council decides not to proceed with a development. In these cases, the Council would have to accept that it must bear the abortive costs (in the same way as it is accepted by all developing housing associations), on the basis that such a detriment is outweighed overall by the advantages.

Changes in Government Policy

3.44 We know that Governments often change their position on policies, especially in relation to local government and public housing, and especially when there is a change in Government. However, we believe it is likely that the main effect of a change in approach by Government would simply be that the Council would no longer be able to continue developing itself. The only financial effect would be the set-up costs, which will be minimal – mainly officer time.

3.45 We feel some comfort can be taken from the fact that we were advised that the Conservative Shadow Housing Minister has recently been reported as saying that a Conservative Government would introduce incentives for those local authorities that built homes – they would be able to keep the council tax generated by those homes. We were also advised that the Liberal Democrat Shadow Housing Minister was reported as saying, at the same event, that the priority of a Liberal Democrat Government would be to make sure local authorities are able to borrow and build (new homes) quickly.

3.46 We believe that the main risk is if policy changes by the Government or the Tenant Services Authority (TSA – the body that has taken over the regulatory functions for social housing from the former Housing Corporation) have an effect on properties already developed. For example, we understand that the TSA has policies relating to levels of rent increases by housing associations, linked to the Retail Prices Index – which is currently very low. We were advised that this has resulted in some housing associations experiencing financial difficulties, since their rental income is lower than provided within their business plans. We identified that such a situation could have an effect on the Council in the future, if we developed our own housing again. However, we concluded that it is unlikely that any Government, or the TSA, will implement policy changes that have a catastrophic effect on the majority of social housing providers. In any event, we took comfort from the fact that the Council would have a number of options available to deal with such circumstances, including the sale of vacant properties.

Poor Performance by, or Disputes with, the Development Agent

3.47 We believe that the performance of the Development Agent will be key in this process. It will also be important that the Council has a good working relationship with the Development Agent. Poor performance could cause problems for the Council in future years. Inaccurate development appraisals could result in financial implications for the Council.

3.48 We concluded that the most appropriate way to mitigate such situations is two-fold. Firstly, we feel it is important to ensure a robust selection process. We would suggest that this should involve a filtering of housing association applicants, to ensure that only housing associations that have a good track record in development and a demonstrable capacity of skilled staff are shortlisted for detailed consideration. We would recommend that shortlisted applicants should be required to provide a detailed tender submission setting out their experience, track record and proposed approach - and to give a presentation to the proposed Selection Panel and answer questions. We would recommend that the capabilities of the shortlisted applicants should also be discussed with the HCA and TSA, both of whom we understand regularly monitor - and publicly report on - the effectiveness of housing associations' development functions.

3.49 Secondly, we know that development appraisals submitted by the Development Agent will be scrutinised by Housing and Finance staff, as well as the Corporate Executive Forum (CEF – comprising the Chief Executive and Deputy Chief Executive) prior to their submission to the Cabinet for approval.

3.50 In anticipation of the potential for a dispute arising between the Council and the Development Agent, we feel it important to ensure that the Development Agreement between the two parties sets out clear arrangements for dealing with disputes, including mediation and/or arbitration. Moreover, we would recommend that the Development Agreement should have an appropriate mechanism to ensure that the Council can terminate the contract with the Development Agent in the event of poor performance.

Poor Performance by, or Disputes with, the Consultants or Contractor

3.51 We anticipate that the building contractor and consultants would be appointed by the

Development Agent, who would either enter into - or already have - formal contracts with them. Any poor performance by, or disputes with, the consultants or contractor would therefore be matters for the Development Agent to resolve. However, we recognised that such poor performance or disputes could have an effect on the Council, since it would be us that would have to meet any additional building costs or fees, and who would own the properties once built. There could potentially be a problem for the Council, due to the Council having no contractual right to resolve concerns with the consultants or contractor direct, after the properties have been handed-over to the Council; they would have to be taken up by the Development Agent on the Council's behalf. However, we noted that this risk could be mitigated - by requiring the consultants and contractor to provide collateral warranties to the Council, which would give us the legal power to directly require the consultants or contractor to resolve any problems, in accordance with their contracts with the Development Agent.

Contractor Insolvency

3.52 One of the Development Agent's responsibilities will be to appoint the contractor to undertake the construction. In the event of the contractor becoming insolvent, we recognised that the Council would have to deal with the resultant fall-out, including the likely incurring of additional costs. However, we consider that this is no different to the existing risk that the Council experiences when it appoints contractors to undertake any Council development or service. Indeed, arguably – apart from the financial effects – we feel that the implications could be less severe than for major improvement projects on, say, tenanted properties, since the inevitable delays that result from an insolvency can have a major detrimental effect on local residents.

3.53 We concluded that the best way to mitigate such effects would be to ensure that the Development Agent has robust arrangements in place for appointing contractors, including the effective assessment of the contractor's finances and financial capacity.

Prudential Borrowing – A Financial Problem

3.54 We were advised that, under the current funding available from the HCA, there is an expectation that 50% of the required funding will be provided by the HCA in the form of capital social housing grant. The remaining 50% is expected to be provided through a loan taken out by the local authority. We noted that a number of years ago, local authorities could only borrow up to a specified amount approved by the Government. However, local authorities can now adopt an approach called "prudential borrowing".

3.55 We learnt that, under current prudential borrowing rules, the Council is allowed to borrow for capital purposes on the basis that it is able to make the interest payments from its ongoing revenue budget. The Asst. Director of Finance advised us that, in the case of building council homes, it would need to be demonstrated that in the 'long term' (usually assumed be to 30 years for illustrative purposes) the interest and principal repayments on the loan could be financed from the surplus of rental income over expenditure, including major repairs. Clearly, this depends heavily on the interest rate and the level of rent that could be charged, given that the rent would need to be at an affordable level.

3.56 However, we studied an important Addendum Report tabled at our meeting from the Asst. Director of Finance, which reported on the outcome of his investigations into the financial implications of the Council re-commencing new house-building, following advice he had received from the Council's financial advisers, Butlers. The financial issues are very complex, so were grateful that the Assistant Director of Finance was in attendance at our meeting to explain in more detail and answer our questions.

3.57 His Addendum Report explained that it needs to be borne in mind that only the Council as a legal entity can borrow money, and that the Housing Revenue Account (HRA) cannot in itself 'borrow'. Therefore, if the Council makes such a decision, then the cost of borrowing initially falls on the General

Fund and is then recharged to the HRA on a prescribed basis.

3.58 We learnt that the prescribed basis for recharging the cost of borrowing refers to what is called the Capital Financing Requirement (CFR). The CFR is defined as a measure of the Council's need to borrow to finance capital expenditure. The CFR is split between a General Fund (GF) CFR and a Housing Revenue Account (HRA) CFR. We were advised that the overall CFR is currently negative £784,000 - which means that, overall, the Council has no need to borrow to fund our existing Capital Programme. However we can still choose to borrow, as long it is 'affordable' in the long term.

3.59 For our Council, the split of the CFR is that the HRA CFR is negative £22,803,000, and the GF CFR is positive £22,019,000. We were advised that the HRA CFR is negative because, prior to the requirement to pool HRA receipts from Right to Buy sales, the Council had - by law - to "set aside" 75% of these receipts to repay debt. This was because, at that time, the Council was not debt free. This means that, effectively, the GF has used HRA capital resources to finance capital expenditure and 'borrowed' from the HRA, without cost.

3.60 We were advised by the Asst. Director of Finance that, if the Council borrows £2m and uses this to build houses, the effect would be to increase the overall CFR by £2m - to £1,216,000 (i.e. £2m minus £0.784 m). This would be made up of the HRA CFR being negative £20,803,000 and the GF CFR being positive £22,019,000. Therefore, the HRA would still have no need to borrow; all that would have happened is that the GF would have replaced a loan from the HRA with a loan from an external source.

3.61 The cost of the loan would therefore be a charge, initially, to the GF - but there would be an assumption that this would then be recharged to the HRA, based on its CFR. However, the HRA would be negative. Therefore, there would be no basis to recharge the HRA, since it would have no underlying need to borrow. Consequently, the total cost (i.e. the interest and principal) would fall on the GF. This would mean that both the interest (currently estimated at 4.3%) and the Minimum Revenue Provision (MRP - a sum that would have to be set aside from revenue budgets to pay off the loan principal), estimated at 2%, would fall on the GF.

3.62 We noted that interest is charged to the GF at the Consolidated Rate of Interest (CRI), which is the average rate of interest payable on the money borrowed. Since there would only be one loan of (say) £2m - this CRI would also be (currently) 4.3%. If other loans were subsequently taken out, the CRI would move up or down, depending on the rates and terms of those loans. Crucially, the HRA would only contribute to the borrowing costs, once its own CFR becomes positive. i.e. if over £22.803m is borrowed.

3.63 On a slightly separate issue, we noted that the Council receives investment interest from our unused capital receipts and other unused cash, although the rate is currently very low (under 1%), and that the allocation of income between the GF and HRA has to be based on the CFR. This applies regardless of whether the Council has debt or not.

3.64 We were advised, therefore, that if we borrowed, say, £2m to finance new house-building, the HRA would lose some of the interest income from the Council's investments and that the GF would gain investment income. This is because the allocation of investment income would be based on an HRA CFR of £20.803m, multiplied by the CRI - rather than an HRA CFR of £22.803m.

3.65 However, we were advised that, overall, any proposal to build Council houses at present would be detrimental to the GF. If the Council borrowed £2m to fund, say 40 properties, it would cost the GF an amount estimated at £106,000 per annum (£2m X 6.3% = £126,000) – (£2m X 1% = £20,000 lost investment interest). If £4m was borrowed for the construction of, say, 40 properties, it would cost the GF around £212,000 per annum.

3.66 However, if at some point in the future, investment interest rates exceed the Consolidated Rate of Interest plus the MRP, then the GF would gain. We noted, though, that the likelihood of this is somewhat slim and, again, would only be temporary until interest rates again.

3.67 In simple terms, although the Housing Revenue Account would receive the rental income from any properties that the Council builds, the cost of the loan would have to be borne by the General Fund, which we feel at the current time makes any proposal to recommence a programme of Council house-building financially unviable for the General Fund.

3.68 In passing, we noted that if the Council does adopt the use of prudential borrowing at some time in the future, it would be necessary for the Council to review its Prudential Indicators and Treasury Management Strategy before any development appraisals could be considered.

Views of the Tenants and Leaseholders Federation

3.69 We were advised that, at its meeting held on 24th November 2009, the Tenants and Federation considered the same report from the Director of Housing on New Social House-building by the Council as us. They also had the benefit of the financial information provided by the Assistant Director of Finance. The Addendum Report to our meeting set out the Federation's recommendations to us.

4. Conclusions

4.1 After detailed discussion of all the issues involved, we reached the same conclusions as the Federation (which it had asked the Sub Group to take into account). We therefore agreed that the Federation's recommendations should form the basis of our recommendations to the Housing Scrutiny Panel.

5. The Sub-Groups Recommendations to the Housing Scrutiny Panel

5.1 Having considered all of the issues, we would recommend to the Housing Scrutiny Panel that it reports on to the Cabinet with the following recommendations:

On increasing the amount of affordable housing:

(1) That the £350,000 budget provision already agreed by the Cabinet to invest in an Open Market Shared Ownership Scheme be retained within the Capital Programme;

(2) That the Director of Housing contacts other Homebuy agents to discuss the possibility of an existing Homebuy Agent working with the Council to operate either:-

 (a) the scheme previously proposed in partnership with Moat Housing, already agreed by the Cabinet; or

 (b) an alternate scheme, similar to the Government's MyChoice Homebuy Scheme, but with the Council undertaking the role of the Homes and Communities Agency; and

 (c) that a further report be provided to the Cabinet setting out the outcome of discussions with the Homebuy Agents;

(3) That the Home Ownership Grant Scheme be continued into 2010/11, to fund a further six Home Ownership Grants of £28,000 each (instead of the current amount of £34,000 each) and;

 (a) That budget provision of £170,000 be made within the Capital Programme for 2010/11;

 (b) That the existing Selection Criteria for applicants previously agreed by the Housing Portfolio Holder continues to be used; and

(c) That, in the first instance, all those unsuccessful applicants for the Home Ownership Grant Scheme in 2009/10 be contacted, to see if they are still interested in receiving a grant;

(4) That, once the desk-top exercise has been completed to assess the development potential of difficult-to-let garage sites with vacancies in excess of 20% (and no waiting list), more detailed development appraisals be undertaken to assess their development potential further – and the number of homes that could be provided;

(5) That a report on the outcome of these development appraisals be presented to a future meeting of the Cabinet, with a view to authorising that planning permission be sought for each of the sites so that those sites obtaining planning permission could be developed to provide additional affordable housing;

(6) That the current position with the proposal of the Cabinet that the Council sets up a Local Housing Company - to which it would provide loans for the Company to purchase properties on the open market to let at market rents, (subject to the properties being let to nominees of the Council on the Housing Register) - be noted;

(7) That budget provision of £375,000 be made within the Capital Programme for 2010/11 to fund the provision of Local Authority Social Housing Grant to one of the Council's Preferred RSL Partners to fund the purchase of 5/7 two and/or three bedroomed houses off the open market to let at affordable rents;

(8) That the Preferred RSL Partner to purchase these open market properties be selected through a competitive tendering exercise; and

(9) That the proposals above requiring capital budget provision be not prioritised in a ranked order.

On undertaking a programme of new social house-building:

(10) That, subject to (11) below, in principle, the Council should recommence a programme of new social house-building;

(11) However, in view of the financial difficulties such a programme would currently have on the Council's General Fund, such a programme should not be undertaken until the detrimental financial effect on the Council's General Fund either no longer exists or is only minimal; and

(12) That the Council should explain this financial difficulty to both the Government's Minister of State for Housing and the Local Government Association (LGA) to ask them if, in view of the Government's previous commitment to remove any obstacles that stop councils from building new Council homes, the Government and the LGA could assist to overcome the problem relating to the Council's Capital Financing Requirement.

Date: 2nd February 2010

Appendix 2

Our Ref: AMH/AMH

Your Ref:

The Rt. Hon John Healey MP
Minister for Local Government
Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU

DRAFT

Cllr Mrs Diana Collins (01992) 564051
e-mail: dcollins@eppingforestdc.gov.uk

Dear Mr Healey

Council House-Building – Financial Obstacle

My Council has retained its housing stock (currently comprising around 6,500 properties) following a detailed options appraisal that established: that our tenants wished to retain the Council as their landlord (mainly due to our continual high levels of tenant satisfaction); that we can meet the Decent Homes Standard by the end of 2010; and that our HRA is forecast to remain in surplus for the foreseeable future.

We have been considering in some detail the possibility and implications of re-commencing a programme of Council house-building, on Council-owned land, following your Government's relaxation of the financial regulations in relation to the retention of rental income and capital receipts from future sales, in respect of newly-built Council properties.

As a result, at the meeting of my Council's Cabinet last night, it was agreed in principle that, subject to such a programme not having any detrimental financial effect on the Council's General Fund, the Council should recommence a programme of new social house-building. However, our detailed consideration has identified a major financial obstacle for us, which results in my Council being unable – at the present time – to move forward on this initiative.

My Cabinet therefore agreed that I should explain this financial difficulty to both yourself and the Local Government Association (LGA) to ask you if, in view of your Government's previous commitment to remove any obstacles that stop councils from building new Council homes, you could assist in overcoming this problem – which relates to the Council's Capital Financing Requirement.

I have explained the problem in detail below but, in simple terms, I am advised by our officers that - due to our Capital Financing Requirement - if my Council borrowed money through a loan (under the prudential borrowing arrangements) in order to supplement any social housing grant from the Homes and Communities Agency (HCA) to meet the capital costs of building new homes, although those new homes would be held in the Housing Revenue Account (HRA) - with the rental income being received by the HRA - the cost of the loan would have to be borne by the General Fund.

If, for example, the Council borrowed £2m to fund, say 40 properties, the cost to our General Fund would be around £106,000 per annum over the period of the loan (assuming there was no change in interest rates). Similarly, if £4m was borrowed for the construction of, say 40 properties, it would cost our General Fund around £212,000 per annum. However, all the rental income from these properties would be received by our HRA which, conversely (and unlike housing associations) would not have to service the loan. Therefore, our HRA would financially benefit to a significant extent, and our General Fund would be detrimentally affected to a significant extent.

I am sure you will appreciate that, in the current economic environment and the anticipated reduction in public sector spending, such a cost to our General Fund would not be sustainable. It is for this reason that we have had to take the reluctant decision that we cannot re-commence a programme of Council house-building under the current local government accounting requirements.

Although the extent of this problem will vary between authorities – with some not being affected at all – I would be surprised if a number of other councils did not have a similar concern.

Therefore, in the light of this problem, I would be grateful if you could consider amending the accounting requirements, as appropriate, to remove this obstacle. In simple terms, any change would need to result in the HRA being required to meet the cost of borrowing, from the rental income it receives.

The more detailed explanation of this problem is quite complex. I have therefore attempted to simplify the position for you as follows:

You will appreciate that only the Council, as a legal entity, can borrow money, and the HRA cannot in itself ‘borrow’ money. Therefore, if the Council makes such a decision, the cost of borrowing would initially fall on the General Fund and would then be “recharged” to the HRA on a prescribed basis.

The prescribed basis for recharging the cost of borrowing refers to what is called the Capital Financing Requirement (CFR). The CFR can be defined as a measure of the Council’s need to borrow in order to finance capital expenditure. The CFR is split between a General Fund (GF) CFR and a Housing Revenue Account (HRA) CFR.

For my Council, our overall CFR is currently negative £784,000. This means that, under the accounting regulations, the Council is considered to have no need to borrow any money in order to fund our existing Capital Programme. However, my Council can still choose to borrow, provided that such a loan is ‘affordable’ in the long term – i.e. meets the requirements of prudential borrowing.

For my Council, the split of the overall CFR is that the HRA CFR is negative £22,803,000, and the GF CFR is positive £22,019,000.

Therefore, if we borrow £2m to fund the construction of new homes, the effect would be to increase the overall CFR by £2m, to £1,216,000 (i.e. £2m minus £0.784 m). This would be made up of the HRA CFR being negative £20,803,000 and the GF CFR being positive £22,019,000. Therefore, the HRA would still have “no need” to borrow; all that would have happened is that the GF would have replaced a “loan” from the HRA with a loan from an external source.

The cost of the loan would therefore be a charge, initially, to the GF - but there would be an assumption that this would then be recharged to the HRA, based on the HRA CFR. However, the HRA CFR would still be negative. Therefore, there would actually be no basis to recharge the HRA, since – according to the accounting rules – the HRA would have no underlying need to borrow. Consequently, the total cost of the loan (i.e. the interest and principal) would fall on the GF.

This would mean that both the interest (currently estimated at around 4.3%) and the Minimum Revenue Provision (MRP - a sum that would have to be set aside from revenue budgets to pay off the loan principal), estimated at 2%, would fall on the GF.

Interest would have to be charged to the GF at the Consolidated Rate of Interest (CRI), which you may be aware is the average rate of interest payable on the money borrowed. Since there would only be one loan of (say) £2m - this CRI would also be (currently) around 4.3%. If other loans were subsequently taken out, the CRI would move up or down, depending on the rates and terms of those loans. Crucially, the HRA would only contribute to the borrowing costs, once the HRA CFR becomes positive. i.e. in our case, if over £22.803m is borrowed.

On a slightly separate issue, you will be aware that the Council receives investment interest from our "unused" capital receipts and other "unused cash", although the rate is currently very low (under 1%); the allocation of income between the GF and HRA has to be based on the CFR. This applies regardless of whether the Council has debt or not.

Therefore, if we borrowed say £2m to finance new house-building, the HRA would lose some of the interest income from the Council's investments and the GF would gain investment income. This is because the allocation of investment income would be based on an HRA CFR of £20.803m, multiplied by the CRI - rather than an HRA CFR of £22.803m.

However, as I have explained earlier, any proposal to build Council houses at present would, overall, be detrimental to the GF. If the Council borrowed £2m to fund, say 40 properties, it would cost the GF an amount estimated at £106,000 per annum (£2m X 6.3% = £126,000) – (£2m X 1% = £20,000 lost investment interest). If £4m was borrowed for the construction of, say, 40 properties, it would cost the GF around £212,000 per annum.

If at some point in the future, investment interest rates exceed the CRI plus the MRP, then the GF would gain. You will appreciate, though, that the likelihood of this is somewhat slim and, again, would only be temporary until interest rates rise again.

No doubt you will seek the advice of your finance staff on the detailed explanation above. However, if they concur with the advice provided to me by my officers, I would be grateful if you could take the necessary steps to amend the accounting regulations to enable my Council, and no doubt other councils in a similar position, to build Council homes once again - which is not only an aspiration of my Council, but also a stated intention of your Government.

In accordance with the decision of my Cabinet, I have sent a copy of this letter to the Chief Executive of the Local Government Association, with a request that he assists with the removal of this obstacle in any way that he can.

I look forward to receiving your reply.

Yours sincerely,

Cllr Mrs Diana Collins
Leader of the Council

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Report to the Cabinet

Report reference: ***C-075-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Housing**

Subject: **Response to an expected CLG offer on a proposed debt re-allocation or settlement to replace the Housing Revenue Account (HRA) subsidy system.**

Responsible Officer: **Alan Hall** **(01992 564004).**

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

Recommendations/Decisions Required:

(1) That the apparent intention of the Department of Communities and Local Government (CLG) to make a voluntary offer to stock-holding local authorities "in February 2010" on a proposed debt re-allocation, or settlement, with effect from April 2011 to replace the Housing Revenue Account (HRA) subsidy system be noted;

(2) That if/when an offer is received from the CLG, the Finance and Performance Management Cabinet Committee be asked to consider the issues and to recommend to the Cabinet a proposed response from the Council, holding one or more special meetings of the Cabinet Committee, if necessary, in order to meet the deadline for the Council's response;

(3) That the Cabinet recommends to the full Council the Council's response to the CLG offer;

(4) That the Tenants and Leaseholders Federation be asked to consider this issue and to provide its views to the Cabinet Committee, and that the Chairman of the Federation be invited to attend the meeting(s) of the Cabinet Committee and to take part in the discussions but not to be given any voting rights; and

(5) That the proposed appointment of the Council's HRA Business Planning Consultant to advise officers and the Cabinet Committee on this issue be noted.

Executive Summary:

Notification has been received that the Government is now preparing the ground for a "voluntary offer" to local authorities in February 2010 to replace the existing HRA subsidy system. It is expected to include a proposed debt reallocation or settlement to take place from April 2011, along with details of how self-financing for the HRA would work.

The Council needs to be prepared to respond to the offer. The report sets out the key issues and suggests that the Finance and Performance Management Cabinet Committee considers the detailed issues relating to the offer, when received, and recommends a response to the Cabinet and full Council.

Reasons for Proposed Decision:

The Council needs to prepare itself to receive, consider and respond to the expected CLG's offer.

Other Options for Action:

(i) To not respond to the offer; or

(ii) To respond to the offer through a different process than that proposed.

Report:

Introduction

1. Previous budget reports relating to the Council's Housing Revenue Account (HRA) have referred to the Government's intention to reform the HRA subsidy system. In July 2009, the Department for Communities and Local Government (CLG) published a Consultation Paper "*Reform of Council Housing Finance*". At its meeting on October 2009, the Overview and Scrutiny Committee approved the Council's response on the Consultation Paper to the CLG.

HRA Reform: the Background

2. The Consultation Paper concluded the CLG's review of council housing finance, which began in March 2008. The review took in many thousands of contributions from stakeholders, as well as detailed research on spending needs and options for the reform.

3. The problems with the current HRA subsidy system, addressed in the review, are many and varied. They include:

- Lack of transparency and accountability between landlords and tenants;
- Growing complexity in the way resources are distributed;
- Increasing volatility in funding allocations making planning very difficult; and
- Since 2007, the system being in overall surplus - so that an element of tenants' rents supports other Government spending, not just (as was previously the case) spending by other housing authorities.

4. In summary, the proposals from the Consultation Paper were to:

- Dismantle the current HRA subsidy system and replace it with self-financing;
- Make a one-off adjustment of housing debt between all authorities in the system;
- Make a debt 'settlement' to be calculated by Government utilising a future forecast of subsidy, rents and allowances (effectively a commutation of 30 years' worth of future HRA subsidy into one go);
- Uplift the assumed level of allowances within the debt settlement calculation (5% for management and maintenance, 24% for Major Repairs Allowance);
- Retain all future rent income locally (albeit with continued rent restructuring and convergence to target rents on a trajectory to be determined by the Government);
- Retain locally the 75% of right to buy receipts that are currently pooled by the Government, for use on affordable housing and regeneration;
- Strengthen the guidance on the operation of the HRA ring fence, perhaps with a more explicit landlord account covering revenue and capital; and
- Require an 'original' 30 year business plan for each authority, with an assumed level

of expenditure based on allowances and an assumed need for borrowing.

5. Nationally, it is understood that the assumptions within the proposed settlement will be based on forecast levels of subsidy; the settlement would be *neutral* between central and local government.

6. Following the conclusion of the consultation on HRA reform at the end of October, advice has been received from the Chartered Institute of Housing (CIH) that the Government is now "preparing the ground for a voluntary offer to local authorities in February 2010". The CIH further advises that the precise format of the offer is being worked up by a project team established by the CLG, but it is expected to include a proposed debt re-allocation or settlement to take place from April 2011, along with details of how self-financing for the HRA would work.

7. The CIH suggests that local authorities will need to be in a position to respond to the Government's offer, and has produced a very useful briefing on this issue, to assist authorities in developing the main criteria upon which they might make their decision.

Developments since Publication of the Consultation Paper

8. The consultation on *Reform of Council Housing Finance* closed on 27 October and it is understood that there were well over 200 responses overall, with an overwhelming majority in support of the proposals for a radical overhaul, by dismantling the centrally-controlled HRA system and replacing it with one that is locally-controlled and 'self-financing'.

9. Very early during the consultation period, the issue of the potential need for legislation to implement the reforms raised concerns about timescales and caused uncertainties about how soon changes could take place. In response, the CIH advises that the Government has now promised to make an 'offer' to local authorities on which they can decide whether or not to seek a ***voluntary*** release from the subsidy system. To develop the offer, the CLG has established a multi-disciplinary project team, with representation from CIH, Local Government Association (LGA) and the Chartered Institute of Public Finance Accountants (CIPFA), to work out the details.

10. The CIH states that local authorities will receive an offer to leave the subsidy system, scheduled for February 2010, and - although the precise terms and details of what will be included are apparently yet to be finalised - local authorities will need to be in a position to respond. At the time of writing, the offer has not been received. Both the CIH and the LGA are leading on the development of materials and guidance to help prepare local authorities for a "new world" of self-financing, and it is understood that these will follow in the New Year.

Summary – The Key Issues (according to the CIH)

11. The CIH has identified seven key issues that it believes each local authority will need to consider, in order to develop a long term sustainable business plan for self financing. It points out that not all of the building blocks will be in place by Spring 2010, but that it should be possible to develop the main financial factors locally in order to inform the decision. These seven keys issues for a self financing business plan are as follows:

Key Issue	Covering
1. What services does the HRA need to finance?	*What needs to be spent on the stock, estates, neighbourhoods and services over the next 30 years?*
2. What will be the debt settlement?	*The amount of debt to be calculated and allocated by government*

3. What capital grants will be available in future?	*The extent to which capital grants can be assumed to meet backlogs and other outstanding work in the early years of a new business plan.*
4. How will the debt be allocated?	*The proposed mechanism for how debt levels will be reduced or increased locally needs to be known to understand the interplay with existing debt.*
5. What flexibilities will there be for borrowing?	*Whether there will be any limits on borrowing over and above the affordability criteria within the Prudential Code.*
6. Whether use of receipts will be directed by government?	*Whether the Government intends to direct the use of RTB receipts locally.*
7. What will be the actual form of the self-financing agreement, what will be included and excluded?	

12. Clearly, the level of debt matters *locally* for each HRA:

- The lower the opening debt, the easier it is to fund the revenue services and capital works that are needed and to cover the debt, with increasing rents giving rise to growing headroom over 30 years.

- The higher the opening debt, the more authorities would need to borrow to meet the needs of services and the stock, and - beyond a certain level – the debt may not be covered by future rental streams.

13. The CIH suggests that each authority will have a '30 year point', defined as the level of debt and expenditure that leads to a repayment term of 30 years. It is suggested that local authorities will need to understand what this position is, prior to responding to the offer.

14. There has been much debate about the overall amount of debt nationally that might be allocated as part of the proposed settlement. The level of debt matters at the national level in terms of what happens to any differential between existing debt and new levels of debt. The current level of supported debt in the system is £20billion (technically, the Subsidy Capital Financing Requirement plus ALMO Rounds 1 and 2 allowances converted into borrowing). The consultation talked of the potential for the settlement to be '*more or less*' than this figure.

Importance of the Issue

15. Local authorities and their members will be asked to take a significant decision in Spring 2010. In some cases, to reduce large amounts of debt in place of positive subsidy, and in other cases (like this Council's), to take on large amounts of debt in place of negative subsidy.

16. The decision could be very much for the long term and will need to be taken in the context of the offer 'on the table'. The CIH suggests that efforts to ensure members and other stakeholders are adequately prepared and briefed in advance will be essential, together with an appropriate engagement with tenants. In particular, key members will require briefing on:

- the offer;
- its impacts; and

- whether the offer could be viable for the HRA.

17. Policy and financial judgements will also need to be made against the alternative financial futures for the HRA. These could either be a legislation-backed, self-financing settlement in 3-4 years time, or even an abandonment of the proposals for self financing and the existing subsidy system continuing.

Conclusion on the Issues

18. The CIH says that self-financing could represent a fundamentally new way of doing business. In many ways, this could lead to ***real*** business planning, with decisions genuinely being taken with the long-term in mind. Amongst other advantages, the CIH feels it allows:

- a proper conversation with tenants about how local authorities use rent increases, in the context of government-set overall rent policy (as for housing associations);

- long-term investment planning with all the efficiency and value for money that this can deliver (estimates at up to 10% of long-term capital costs were made in the 2008 self-financing pilot project); and

- long-term 'asset management', with decisions taken about regeneration, redevelopment and new supply in the full knowledge that resources would stay within the HRA for reinvestment.

Suggested way forward for the Council

19. In view of the complexity and detail that will need to be considered in order to form a view on the Council's response to the expected offer, it is suggested that if/when an offer is received from the CLG, the Finance and Performance Management Cabinet Committee be asked to consider the issues in detail and to recommend to the Cabinet a proposed response to the offer from the Council. In view of the potential level of debt involved, it is felt that the Council's response would need to be approved by the full Council before it is sent. In order to meet any deadlines imposed by the CLG, it may be necessary for one or more special meetings of the Cabinet Committee to be held.

20. In view of the impact and effect on tenants, the Tenants and Leaseholders Federation will also be considering this issue. It is therefore suggested that the Federation be invited to provide its views to the Cabinet Committee, and that the Chairman of the Federation be invited to attend the meeting(s) of the Cabinet Committee and to take part in the discussions. However, it is not considered appropriate that she be given any voting rights.

21. In past years, the Council has appointed a financial consultant, Simon Smith, to advise on the Council's 30-Year Financial Plan for the HRA, as part of the annual HRA Business Plan. In view of his specialised financial experience and in-depth knowledge of the Council's HRA and HRA Business Plan, Simon Smith has already been appointed to advise the Council on all the issues relating to the proposed offer from the CLG, and it is suggested that he attends the meeting(s) of the Finance & Performance Management Cabinet Committee to present his advice and answer questions.

Resource Implications:

The resource implications of the Council's response to the anticipated offer will be substantial. However, at this early stage there is none.

Legal and Governance Implications:

The Finance and Performance Management Cabinet Committee's Terms of Reference allows it to consider financial issues such as this issue. The Cabinet has the powers to authorise the Cabinet Committee to agree the Council's response to the offer, subject to its decision being eligible for call-in.

Safer, Cleaner and Greener Implications:

If the CLG's offer provides the Council with a better financial arrangement than under the current HRA subsidy system, potentially, the Council could have additional HRA resources to make its homes and housing estates safer, cleaner and greener.

Consultation Undertaken:

No consultation has been undertaken as this stage. However, the report recommends that the Tenants and Leaseholders Federation be invited to provide its view on the issue and the expected offer to the Cabinet Committee and that the Chairman of the Federation be invited to the Cabinet Committee meeting(s).

Background Papers:

CIH Briefing dated December 2009 on *"Next steps in HRA Reform: Preparing for an offer".*

Impact Assessments:

Risk Management

There are significant risks in the Council either accepting or refusing the anticipated offer, which will need to be considered in detail by the Cabinet Committee and mitigated where possible. It is considered that the risks will be minimised by the issues being considered in detail by a Cabinet Committee than can otherwise be considered by the Cabinet as part of a likely heavy agenda of other items. However, there are no risks at this stage, since the proposals only relate to the establishment of a process to consider the issue.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

Report to the Cabinet

Report reference: C-076-2009/10
Date of meeting: 1February 2010

Epping Forest District Council

Portfolio: **Environment**

Subject: **Fixed Penalty Notices - Policy**

Responsible Officer: **Jim Nolan** **(01992 564083).**

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

Recommendations/Decisions Required:

(1) That the level of fixed penalties be set at the statutory default level;

(2) To determine whether a discount for early payment for a fixed penalty should be offered and if so to set the level of discounted penalties at the statutory minimum allowable for that offence;

(3) That the maximum period of payment permitted to attract a discounted penalty (should one be available) be 10 days;

(4) That the policy for the issue of Fixed Penalty Notices (FPNs) attached at appendix A be agreed and incorporated within the adopted Environment & Street Scene Enforcement Policy; and

(5) That subject to recommendations (1), (2) and (3) above, authority be given to advertise the Council's intent to introduce the use of fixed penalty notices and the adopted penalties and discounts .

Executive Summary:

Fixed Penalty Notices (FPN) are a means by which an authorised officer of the Council can give a person who they have reason to believe has committed an offence the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty. The Council is able to retain the receipts from fixed penalties.

Where a FPN is given then no proceedings will be instituted for that offence before the expiration of 14 days following the date of the notice being issued and if the Fixed Penalty is paid the recipient cannot be convicted of the offence. If the fixed penalty is not paid, the recipient will be prosecuted for the original offence, not the non-payment of the fixed penalty.

Reasons for Proposed Decision:

Cabinet in 2008, as part of its consideration of the Safer, Cleaner, Greener initiative, endorsed the use of FPNs as an enforcement tool. In order to be able to use FPNs, the Council needs to formulate a policy for their use, fix the penalties and discounts which apply to the relevant offences and advertise its intention to use FPNs within the District

Other Options for Action:

To reverse the decision of Cabinet and not to authorise the use of FPNs at this time, or to delay their implementation until a later date.

Report:

Background

1. FPNs can be issued by local authority officers for certain offences where the legislation permits and where the officer is authorised to do so. These notices provide a quick, visible and effective way of dealing with low level environmental crimes, and provide an alternative to formal prosecution in the Courts.

2. A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a record of criminal conviction.

3. There are fixed penalty levels set for abandoned and nuisance vehicles, waste collection and transfer offences and noise from licensed premises. All other penalty charges can be varied by local authorities within a range. Where a fixed penalty is given then no proceedings will be instituted for that offence before the expiration of 14 days following the date of the notice being issued and if the fixed penalty is paid the recipient cannot be convicted of the offence. If the fixed penalty is not paid, the recipient will be prosecuted for the offence, not the non-payment of the fixed penalty. The Council will pursue through the Courts all alleged offenders that have chosen not to discharge their liability to conviction for an offence by paying a fixed penalty charge.

Core offences

4. The Council has the power to take enforcement action against persons that commit a variety of environmental crimes. The following are considered to be the Core Offences for which we may issue a FPN in lieu of prosecution:

(a) Dropping litter

5. The Environmental Protection Act 1990 (EPA) created the offence of leaving litter:

> *"….if any person throws down, drops or otherwise deposits in, into or from any place to which this Section applies and leaves anything whatsoever in such circumstances as to cause or contribute to or tend to lead to the defacement by litter of any place … he shall be guilty of an offence"*.

6. This relates to places in the open air to which the public are entitled or permitted to have access without payment, including any covered place open to the air on at least one side and to which the public has access.

7. The Clean Neighbourhood and Environment Act 2005 (CNEA) extended the scope of that offence so that it became an offence to drop litter anywhere in the open air (including rivers and lakes) regardless of ownership, except in locations where the public does not have access or the owner of the land has given permission for the dropping of litter or a legal authorisation exists to do so.

8. The CNEA also makes it clear that litter includes smoking-related litter and discarded chewing gum; increases the fixed penalty charge and allows receipts from the charges to be

retained by the Council. If found guilty of a litter offence, the offender can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both.

(b) Abandoning a vehicle

9. Under the Refuse Disposal (Amenity) Act 1978, a person commits an offence if he, without lawful authority, abandons on any land in the open air, or on any land forming part of a highway, a motor vehicle or anything that has formed part of a motor vehicle. The CNEA allows local authorities to issue Fixed Penalty Notices to persons alleged to have committed such an offence.

10. There is no legal definition of an abandoned vehicle. Authorised officers must use their discretion when forming decisions on abandonment using guidance issued by DEFRA. Authorised officers will normally only be able to arrange for the removal of a vehicle from a highway or public land. Abandoned vehicles on private land can be removed at the request of the occupier, but the cost of doing so will be recharged to the occupier.

11. If found guilty of abandoning a vehicle on a highway or on land in the open air, a person can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both.

(c) Nuisance vehicles

12. The CNEA made it an offence to leave two or more motor vehicles parked within 500 meters of each other on a road or roads where they are exposed or advertised for sale, or to cause two or more motor vehicles to be so left. This only applies to persons who are carrying out a business of selling motor vehicles. The CNEA also made it an offence to carry out restricted works (repair, maintenance, servicing, improvement or dismantling) on a motor vehicle on a road. This only applies to persons who are in the course of a business of carrying out restricted works or for gain or reward.

13. Authorised officers will only be able to take enforcement action, including the removal of a vehicle, for nuisance vehicles on a road. A person found guilty of a nuisance vehicle offence can be fined up to £2,500, or a term of not exceeding three months imprisonment, or both.

(d) Dogs

14. The CNEA enabled a dog control order to be made in respect of any land (subject to the following two exemptions) which is open to the air and to which the public are entitled or permitted to have access (with or without payment). There exemptions are:

(a) land placed at the disposal of the Forestry Commissioners under section 39(1) of the Forestry Act 1967; and

(b) land over which a road passes. The definition of road includes public rights of way (including footpaths) and roads and footpaths through private estates, provided the public have access to them.

15. The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006 provide for five offences which may be prescribed in a dog control order:

(i) failing to remove dog faeces;

(ii) not keeping a dog on a lead;

(iii) not putting and keeping a dog on a lead when directed to do so by unauthorised officer;

(iv) permitting a dog to enter land from which dogs are excluded; and

(v) taking more than a specified number of dogs onto land.

16. There is a strict procedure to be followed in order to make a dog control order and no such orders are in place within the District.

(e) Fly Posting and Graffiti

17. Local authorities are required to make reasonable attempts to enter into partnership arrangements with property owners to deal with fly posting and graffiti. All parties should work in partnership to remove fly posters and graffiti within agreed times and minimise the need for removal notices. Such a partnership currently exists between the Council and Virgin Media.

18. Under the Town and Country Planning Act 1990 (TCPA 1990), it is an offence to display an advertisement in contravention of the regulations made under the act. These regulations relate to the permission for the display of the material, and the nature and size of the material to be displayed. Under the TCPA 1990 the Council can take action against those responsible for fly posting and remove illegal posters and placards and recover the cost incurred in doing so from those who have displayed them, or caused them to be displayed. It is appropriate for a distinction to be drawn between, for example, a poster advertising a local community or charitable event and a poster advertising a commercial activity.

19. The CNEA amended the defence for a landowner charged with a fly posting offence so it is now necessary for the landowner to prove that the advertisement was displayed without his knowledge or that he took all reasonable steps to prevent the display or to secure its removal. The Anti-social Behaviour Act 2003 (ASBA 2003) allows the Council to serve FPNs on persons who commit ‘minor’ graffiti or fly posting offences.

20. The Anti Social Behaviour Act 2003, as amended by the CNEA, allows the Council to serve a Defacement Removal Notice on owners, occupiers and operators of street surfaces of buildings and street furniture whose property is defaced with detrimental fly posting or offensive or detrimental graffiti.

(f) Littering from premises

21. The EPA empowers the Council to tackle street litter generated through the activities on adjacent premises, by serving Street Litter Control Notices on businesses. These notices are specifically designed to help deal with food and drink packaging and other litter from ‘fast food’ outlets or litter from cash machines. The CNEA extended the use of these notices to include mobile operations, such as burger vans, and introduced the use of fixed penalties for failure to comply with a notice. The Council is able to serve a notice on a business, which requires them to clear up the litter and implement measures to prevent the land from becoming defaced again. A person found guilty of failing to comply with a Street Litter Control Notice can be fined up to £2,500.

(g) Litter on land

22. Litter Clearing Notices can be used by the Council where land has become defaced by litter and refuse and this is seen as detrimental to the amenity of the area. These notices have been introduced by the CNEA and replace the Litter Control Areas created by the EPA.

23. Litter Clearing Notices are used where local authorities do not have a duty to clear litter and refuse, most commonly private land. The Council is able to specify the areas and the

standard to which the land must be cleared. If the land is not cleared satisfactorily, the Council can enter the land, clear it itself and recover the costs of doing so. A person found guilty of failing to comply with a Litter Clearing Notice can be fined up to £2,500.

(h) Failure to produce waste transportation documents

24. Section 34 of the EPA sets out the waste duty of care, which applies to anyone who is the holder of controlled waste. Waste must be passed on to an authorised person and the producer must retain a waste transfer note that sets out certain details of the waste. These waste transfer notes must be kept for two years. Section 53 of the CNEA extends the powers to investigate illegal waste disposal or duty of care offences to authorised council officers.

25. There is no need for householders to have waste transfer documentation for waste that is collected by the Council. If, however, householders employ a contractor to remove waste from their property (such as garden or building waste) they have a duty to take reasonable measures to ensure that their waste is passed on to an authorised person. The duty emphasises the responsibility that residents must not support illegal waste transfer and fly tipping, whether knowingly or unknowingly. It is an offence where a person has failed to carry out their duty to provide the necessary authority for transporting waste. A householder, business or waste carrier found guilty of failing to provide the necessary authority for transporting waste can be fined up to £5,000.

26. If a person is not able to furnish the relevant waste transportation documents, the Council will allow that person 14 days within which to produce the documentation.

(i) Noise

27. Powers under the Noise Act 1996 have recently been extended to licensed premises, and these powers make it an offence to exceed permitted level between the hours of 11.00pm and 07.00 am and allow the council to serve a FPN.

Penalties, discounts etc

28. As stated above, FPNs carry with them different levels of fixed penalty depending upon the offence committed. There is a government set default for each plus in many instances the penalty can also be set locally if authorities so wish. The following table sets out the available ranges:

FPN offence	**Default penalty**	**Local range available**	**Lowest discounted level**
Abandoned vehicle	£200	None	£120
Nuisance parking	£100	None	£60
Litter	£75	£50 to £80	£50
Street litter control	£100	£75 to £110	£60
Unauthorised leaflet distribution	£75	£50 to £80	£50
Graffiti & flyposting	£75	£50 to £80	£50
Failure to produce waste transfer notice	£300	None	£180
Failure to produce waste carriers papers	£300	None	£180
Waste receptacles	£100	£75 to £110	£60
Dog control	£75	£50 to £80	£50
Noise	£100	£75 to £110	£60
Failure to nominate keyholder (in designated	£75	£50 to £80	£50

alarm areas)			
Noise (licensed premises)	£500	None	None

29. The Council has the option of adopting the default fixed penalty (column 2 above) or, where permitted, adopting one which falls within the limits of the amounts set in column 3 above. If Cabinet conclude that a local penalty is appropriate, it is suggested, for the purposes of consistency, that the local penalty for a particular penalty band should be the same, i.e. the same local penalty for each of the default penalties. It should also be noted that, if a discount for early payment is to be offered, then the local penalty should in all cases exceed the lowest discounted penalty set out in column 4 above. Since the maximum period allowed for payment of a FPN is 14 days, the period for the payment of a discounted penalty must be less. Defra guidance suggests a maximum of 10 days.

30. It is suggested at this stage that the local penalty should mirror the statutory default penalty and that if a discount is to be offered it should mirror the minimum discounted penalty suggested by Government. The table below sets out the effects of that suggestion.

FPN offence	**Statutory default penalty**	**Minimum statutory discounted penalty**	**Suggested local penalty**	**Suggested local discounted penalty**
Abandoned vehicle	£200	£120	N/A	£120
Nuisance parking	£100	£60	N/A	£60
Litter	£75	£50	£75	£50
Street litter control	£100	£60	£100	£60
Unauthorised leaflet distribution	£75	£50	£75	£50
Graffiti & flyposting	£75	£50	£75	£50
Failure to produce waste transfer notice	£300	£180	N/A	£180
Failure to produce waste carriers papers	£300	None	N/A	N/A
Waste receptacles	£100	£60	£100	£60
Dog control	£75	£50	£75	£50
Noise	£100	£60	£100	£60
Failure to nominate keyholder (in designated alarm areas)	£75	£50	£75	£50
Noise (licensed premises)	£500	None	N/A	N/A

FPN policy

31. Cabinet at its meeting on 7 September 2009 approved and adopted the Environment & Street Scene Enforcement Policy. The section on the range of enforcement options available makes reference to the use of FPNs. Some general guidance is provided in respect of their use but it is appropriate, if Cabinet decide to go forward with their use, to amend the enforcement policy to provide greater detail on their applicability and use. That supplementary section of the enforcement policy is appended to this report and Cabinet is requested to agree to incorporate it within the Directorate's general enforcement policy.

Resource Implications:

There are no cost implications for the introduction of the use of FPNs. The officers are in place and have been trained to use FPNs and the costs of administering the system can be contained within existing operational budgets.

The proceeds from FPNs are retained by the Council. However, it is important to note that the issue of FPNs should not be predicated on the generation of income; they should be issued only where it is an appropriate action in accordance with the Directorate's Enforcement Policy. On that basis it is not possible to estimate the scale of any income which might be generated.

Legal and Governance Implications:

A range of legislation applies to these offences and the associated FPNs, including
Environmental Protection Act 1990
Clean Neighbourhood and Environment Act 2005
Control of Dogs (Non-application to Designated Land) Order 2006
The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006
The Anti Social Behaviour Act 2003
The Noise Act 1996

Defra has also published guidance on the use of FPNs which has been considered and incorporated within this report and in the FPN policy document particularly.

The use of FPNs should be undertaken in full compliance with the Environment & Street Scene Enforcement Policy as amended by the FPN policy attached as appendix xx to this agenda.

Safer, Cleaner and Greener Implications:

This scheme introduces the use of FPN's as outlined in the Safer, Cleaner, Greener Strategy adopted by Cabinet on 7 September 2009. The appropriate usage of FPNs should enable the Council's authorised officer to achieve higher standards of compliance for a range of environmental and associated legislation.

Consultation Undertaken:

Whilst in strict terms no public consultation will take place the council are strongly recommended through Defra guidance to advertise their intention to introduce the scheme for three months prior to the first FPNs being issued.

Background Papers:

Guidance on fixed penalty notice provisions issued by DEFRA .

Impact Assessments:

Risk Management
In any enforcement activity a risk to the officer exists, and is this particularly so with the issue of FPNs. A specific risk assessment has been prepared for this activity which has identified the training and provision of protective clothing required to undertake this duty safely. All the officers empowered to issue FPNs have successfully undertaken Essex Police training and are accredited under the Essex Police Community Training Scheme. This provides them with some additional powers, including the right to demand a name and address and also enables them to call for Police assistance should that become necessary in the course of their enforcement duties.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	Yes

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? Yes

What equality implications were identified through the Equality Impact Assessment process?
It was identified that people with certain disabilities, learning difficulties or where English was not their first language would sometimes inadvertently commit an offence (dropping litter for example) or be unable to understand the process.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
Yes the proposed policy deals with this by indicating that where a suspect appears to be unable to understand what is being offered to them, there is any doubt about their ability to understand English or where physical impairment has resulted in an offence being committed, then a FPN shall not be issued (See FPN policy statements G4 and G6)

Policy on the issuing of Fixed Penalty Notices

General

G1. This policy shall be read in conjunction with the Environment & Street Scene Directorate Enforcement Policy.

G2. The use of FPNs will be in accordance with the guidance issued by Defra:

"Guidance on the Fixed Penalty Notice Provisions of the Environmental Protection Act 1990, the Clean Neighbourhoods and Environment Act 2005 and other legislation"

G3. A FPN will only be issued where an Authorised Officer has reason to believe a person has committed a relevant offence and that sufficient evidence exists to warrant and support a successful prosecution such that if a fixed penalty was not available the matter would be proceeded with in the Courts.

G4 A FPN will not be issued where the alleged offender appears unable to understand the process. Senior officers will then consider whether it is appropriate to proceed with the matter in the Courts.

G5. A FPN must be issued to and received by the offender. If an offender refuses to give their name and address, and their identity can be established through other means, i.e. by the police, the offender may still be provided with the opportunity to avoid prosecution by payment of the fixed penalty through the issuing of a FPN.

G6. A FPN will not be appropriate where:

- despite the best efforts of the Authorised Officer to inform the offender, the offender appears unable to understand the action being proposed.
- the suspect is a non resident foreign national, as the penalty will not be enforceable
- no satisfactory address exists for enforcement purposes, for example where the officer has reason to believe that the suspect is homeless or sleeping rough.
- where it is known that the offender has previous convictions or a caution for the offence, or has been previously issued with a number of FPNs , particularly if they have not been paid, where taking action through the Courts will be the appropriate action.

FPN issue process

FP1. The Authorised Officer will approach the offender and identify him/herself. The offender will be informed of the offence committed and the intention of the Council to pursue formal action to prosecute the offender for the offence. The offender will then be requested to provide their name, address and date of birth. The offender will be notified that they may be issued with a FPN for that offence with the opportunity for the offender to avoid prosecution by payment of a fixed penalty. A notice of intention to prosecute will be completed and issued to the offender (if possible). On return to the office the offender's details will be verified as far as practicable. A FPN will then be issued if the

FPN criteria are fulfilled and there is sufficient evidence to pursue prosecution proceedings.

FP2. Failure to identify a suspect prior to issue could invalidate enforcement. Police assistance will be requested where necessary since failure by a person to provide an officer proposing to issue a FPN with their name and address, or the giving of false details is a specific offence.

FP3. Any interview and questioning must be consistent with the practice and procedures established by the Police and Criminal Evidence Act 1984, Code C.

FP4. Where there is reliable witness testimony and an Authorised Officer has not directly witnessed the offence, an Authorised Officer may still issue a notice of intention to prosecute and consideration given to issuing a FPN for the offence committed.

FP5. If the offender either refuses to accept a FPN for the offence committed, or, having accepted such a notice, does not pay before the end of suspended enforcement period, the offence will in all cases be dealt with through the Courts. If payment of a FPN notice is received after prosecution proceedings have been implemented, in the interim period before the case is due to be heard, a senior officer will consider the merits of accepting the full FPN payment or continuing with proceedings in the Court.

FP6. The above process shall also apply to offences committed from moving vehicles (e.g. littering) provided that it can be evidenced who in the vehicle committed the offence and vehicle registration details can be established

FP7. Payment of a fixed penalty by instalments will not be accepted. In cases of exceptional and demonstrable hardship, and although there being no legal basis for this consideration, a senior officer may extend the suspended enforcement period and delay the issue of summons.

FP8. The fixed penalties and discounts for early payment shall be as set out in the table below:

FPN offence	**Statutory default penalty**	**Minimum statutory discounted penalty**	**Suggested local penalty**	**Suggested local discounted penalty**
Abandoned vehicle	£200	£120	N/A	£120
Nuisance parking	£100	£60	N/A	£60
Litter	£75	£50	£75	£50
Street litter control	£100	£60	£100	£60
Unauthorised leaflet distribution	£75	£50	£75	£50
Graffiti & flyposting	£75	£50	£75	£50
Failure to produce waste transfer notice	£300	£180	N/A	£180
Failure to produce waste carriers papers	£300	None	N/A	N/A
Waste receptacles	£100	£60	£100	£60
Dog control	£75	£50	£75	£50
Noise	£100	£60	£100	£60
Failure to nominate keyholder (in designated alarm areas)	£75	£50	£75	£50

Noise (licensed premises)	£500	None	N/A	N/A

Disputes/appeals

DA1. Subject to policy DA2 below, an offender contesting a FPN will be advised that there is no obligation to pay a fixed penalty issued by the local authority but if they fail to pay the penalty, the matter will be pursued through the Courts, where they will be able to argue their case against the action of the Authorised Officer.

DA2. In exceptional cases it will be appropriate to withdraw a FPN or not proceed to summons on non payment. Such circumstances may arise where:

(a) information that was not available at the time the FPN was issued becomes available and it is determined that the offence to which the notice relates was not committed; or

(b) where evidence is provided to demonstrate that the notice ought not to have been issued to the person named

The issue of FPNs to Juveniles

J1. The issue of FPNs to Juveniles will take into account Defra guidance:

"Issuing Fixed Penalty Notices To Juveniles - Guidance on issuing fixed penalty notices contained within the Clean Neighbourhoods and Environment Act 2005"

J2. The issue of FPNs for differing age groups will be as set out below:

Juveniles under the age of 10 years

J2.1 A FPN cannot and will not be issued to a juvenile under the age of 10 years

J2.2 Where an offence has been committed, the young offender's name, address and age shall be ascertained, together with that of their parents or legal guardian. The young offender will be informed that the offence will be shared with the local Youth Offending Team in accordance with the Data Protection Act 1998

(b) Juveniles aged between 10 and 15 years

J2.3 Other than in the circumstances set out below in J2.6, a young offender will not be issued with a FPN. The young offender's name, address and age shall be ascertained, together with that of their parents or guardian. If an Authorised Officer's view is that a FPN is appropriate for the offence committed, then a FPN shall only be issued in the presence of a parent or legal guardian.

J2.4 Before the issue of a FPN the following factors shall be considered:
(i) has a FPN been issued previously;
(ii) is a reprimand, warning or other sanction more appropriate; and
(iii) are there family circumstances or other vulnerabilities

J2.5 In all cases, the Youth Offending Team and children's services should be consulted/informed

J2.6 A FPN can be issued for the offence of littering by school pupils where it has been agreed with the school to issue them for littering during the lunch period. In all such cases the parents, legal guardian or school must be notified of the FPN issue as soon as possible.

(c) Juveniles aged between 15 and 17 years

J2.7 A FPN can be issued to a young offender in accordance with the procedures for adults, subject to the same considerations plus:
(i) mental handicap; and
(ii) any signs of substance abuse

J2.8 If the Authorised Officer is in any doubt regarding the age of a young offender, then the procedures set out for young persons between the ages of 10 and 15 ((J2.3 to J2.6) shall be applied.

Report to the Cabinet

Report Reference: ***C-077-2009/10***
Date of Meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Leader**

Subject: **Forward Planning Staffing Resources.**

Responsible Officer: **Kassandra Polyzoides** **(01992 564119).**

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

Recommendations/Decisions Required:

(1) To create a two year fixed term Planning Administrative Technical Officer post, in place of the existing recently vacated temporary contract administrative post, at an estimated cost in the sum of £21,250 per annum;

(2) To create a two year fixed term Senior Planning/Consultation Officer post to assist in the expedient delivery of the EFDC core strategy and Local Development Framework, at an estimated cost in the sum of £38,930 per annum;

(3) To fund the creation of these posts via:

(a) the deletion of the Rural Tourism Officer post and a bid for District Development Funding in the sum of £30,180 for 2010/11; and

(b) a bid for District Development Funding in the sum of £60,180 in 2011/12; and

(4) To note that the funding bids in recommendation (3) above can be covered by the Communities and Local Government (CLG) Housing Planning Delivery Grant (10/11 and 11/12)

Executive Summary:

The proposals seek to utilise existing underspend and additional DDF contributions for the creation of two posts within the forward planning team. The aim is to ensure the efficient delivery of the Local Development Framework and of the internal and external stakeholder consultation process. Securing additional planning and administrative expertise and support is necessary for the delivery of the LDF and continuing to provide robust customer service.

Reasons for Proposed Decision:

Lack of appropriate resources could lead to significant delays in the delivery of the Local Development Framework. The majority of evidence reports are expected early in the new year and further evidence base reports are being prepared, which require increasing and ongoing technical/planning knowledge. The LDF consultation stages are going to require consultation expertise to ensure the timely and efficient engagement and provision of feedback and information to all stakeholders. Lack of structure to the consultation process could lead to delays in programme delivery and wider public disappointment.

Other Options for Action:

Not to make any changes to the establishment.

Report:

1. Forward planning have begun preparing the Core Strategy of the Local Development Framework. The key function of the Core Strategy will be to set the development strategy for the district up to 2031 and is a major corporate task. A review of the Council's Local Plan policies as part of the development of the Core Strategy will also require further and ongoing planning officer support.

2. Experience from the delivery of the Gypsy & Traveller DPD has highlighted that the team requires ongoing planning technical support and public consultation/participation and engagement expertise. It is therefore important that recruitment to these posts is addressed early to ensure the timely delivery of all key pieces of work associated with the LDF.

3. In discussions Cabinet members have already acknowledged that additional support may be required for the forward planning team for the delivery of the LDF. It was agreed that if an assessment was made that indicated that additional support was justified, that officers would bring the matter to the attention of senior managers, the Chief Executive and Members.

4. An assessment of tasks and existing skill base within the forward planning team have indicated the need for the following two posts.

<u>Planning Administrative Technical Officer post</u>

5. Until recently this post was funded via the LDF budget as a temporary post carrying charges for agency fees. There have been two individuals sequentially covering this post within the last 12 months. The latest post holder has recently acquired a permanent position elsewhere within the Council.

6. This post is one of two providing administrative and technical support within the team. Both posts were integral in responding to public requests in relation to the Gypsy and Traveller consultation. It is foreseen that the delivery of the LDF will also lead to substantial public requests for feedback and information. The administrative technical officer role will continue to provide the needed administrative/technical functions within forward planning and for the preparation of the Local Strategic Partnership's (LSP) Sustainable Community Strategy. The position has also provided ad hoc assistance to the Forward Planning Manager in relation to other Gypsy and Traveller related items and to the Economic Development Officer. It is foreseen that technical support at this level, will be required within the team for at least an additional two year period.

7. A fixed term post would provide the team with more security, given the short notice period associated with temporary posts. This would help ensure that the Council is not left vulnerable and lacking appropriate staff cover, especially during periods of high workload, as anticipated over the next two years.

<u>Senior Planning/Consultation Officer</u>

8. There are a number of key consultation tasks that EFDC will be required to deliver as part of the LDF process. The officer would be in charge of the Statement for Community Involvement (SCI) and the emerging LDF consultation strategy/plan. The SCI is a statutory document identifying how and when the public are engaged and is key to the successful

delivery of this piece of work. The officer will also work closely with EFDC's PR/consultation team for the duration of the delivery of the LDF, engaging both internal and external stakeholders in the process. Key tasks and associated timescales are currently anticipated as follows:

(i) Issues and Options consultation June 2010;

(ii) Preferred options consultation March/April 2011; and

(iii) Pre-submission consultation Jan 2012.

9. The delivery of the Gypsy & Traveller DPD has revealed the need for community consultation expertise in organising and managing intensive consultation periods. This post will also provide additional technical planning skills to ensure the timely delivery of the Core Strategy and other Development Plan Documents as needed.

10. In order to accommodate any new members of staff within forward planning, office space layout will need to be reviewed and alterations made. Capital from the aforementioned Communities and Local Government (CLG) Housing Planning Deliver Grant could be a potential source of funding for this work.

Resource Implications:

The current costs associated with the temporary planning administrative officer post are approximately £14k per annum. This cost is currently being paid for via the LDF budget; the fixed term post will be at a cost of £21,250 per annum.

There are £30k worth of savings from the Rural Tourism officer post, should Members agree to item (3) under 'Recommendations', an additional £30,180 contribution is requested to fund both posts, for year one (10/11) as indicated in the table below. The Rural Tourism post was created for the purpose of delivering the 'beyond suburbia' project, which has not taken place.

There is an indication that a Housing Planning Delivery Grant in the region of £82K will become of available to EFDC Planning for 2010/11, with an additional amount in the same region, becoming available for 2011/12. Although one third of that will need to be put to capital, the remainder could cover staffing costs requested in this report for both years 10/11 and 11/12.

Savings	**10/11**	**11/12**	**Additions**	**10/11**	**11/12**
Deleted Rural Tourism officer post	£30,000	0	Senior Planning Officer	£38,930	£38,930
			Administration assistant post	£21, 250	£21, 250
Total	**£30,000**	**0**		**£60,180**	**£60,180**
Net request				**£30,180**	**£60,180**

Legal and Governance Implications:

N/A.

Safer, Cleaner and Greener Implications:

Both these posts will work toward achieving key strategic objectives of the Council, specifically in the creation of policies that will aim to create a safer, cleaner and greener District.

Consultation Undertaken:

None.

Background Papers:

N/A

Impact Assessments:

<u>Risk Management</u>

The Council has a statutory duty to ensure the delivery of the District's Local Development Framework.

<u>Equality and Diversity:</u>

It is not considered that there are any specific equalities issues arising from having these posts. Recruitment to these posts will take place in accordance to EFDC HR procedures and in line with the Council's Equal Opportunities in Employment policies.

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	No

What equality implications were identified through the Equality Impact Assessment process?

None.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

Report to the Cabinet

Report reference: C-078-2009/10
Date of meeting: 1 February 2010

Epping Forest District Council

Portfolio: **Finance & Economic Development**

Subject: **O2 Mast - Honey Lane, Waltham Abbey**

Responsible Officer: **John Preston** **(01992 564111).**

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

Recommendations/Decisions Required:

That, provided they have not moved home, those residents who originally objected to the application for a determination as to whether prior approval was required for the erection of a mobile phone mast be paid a further sum of £250 as compensation in respect of the Council's failure to make a timely decision on the application with the consequence that the mast was lawfully erected.

Executive Summary:

In 2006 the Council failed to decide an application for a determination as to whether prior approval is required for the erection of a mobile phone mast. The consequence of the decision is that the mast gained deemed planning permission and was subsequently erected despite the Council raising objection to its siting and design. The lawfulness of the mast and options for using planning enforcement powers to seek its removal have been explored and following consideration of a report on 4 August 2009 the District Development Control Committee agreed there was no reasonable prospect of securing a better solution on the ground.

Residents who originally objected to the mast were paid £250 each as a goodwill gesture by the Council prior to the District Development Control Committees decision. Members are now requested to consider whether any compensation should be paid to residents for the Councils' failure to issue a timely decision on the original prior approval application and the consequences arising from that failure. In the event that Members decide to compensate, Members are requested to decide on what basis to compensate. Options for compensation are discussed and Officers preferred option recommended.

Reasons for Proposed Decision:

Although it is highly likely a mobile phone mast would have been erected within the vicinity of the existing mast, the visual amenities of residents are nevertheless harmed by the existing mast. That mast was lawfully erected as a consequence of the Council's failure to make a timely decision on the application for a determination as to whether prior approval was required for the erection of the mast and it is not expedient to take action to secure its removal.

Options for Action:

(i) Give no compensation.

(ii) Compensate the residents who originally objected to the application for a prior approval determination by a fixed sum.

(iii) Compensate the residents who originally objected to the application for a prior approval determination on the basis of a possible loss of property value.

(iv) Compensate all those who have either signed a petition or submitted individual letters complaining about the Council's failure to meet the 56 day deadline and/or calling for the removal of the mast by a fixed sum.

(v) Compensate the owner/occupier of all properties that are seen within the context of the mast as identified on the map that forms an appendix to this report by a fixed sum.

(vi) Compensate on an alternative basis decided by Members.

Report:

Background:

1. On 20 June 2006 O2 submitted an application for a determination as to whether prior approval of the Council is required for the erection of a 12m high imitation telegraph pole antenna and equipment cabinet at ground level at the junction of Honey Lane and Stonyshotts in Waltham Abbey, Ref EPF/1242/06. The Council was obliged to issue a decision on the application within 56 days.

2. Such applications are unique in that failure to ensure the applicant receives the Council's decision within the 56 day timescale results in a deemed planning permission for the development being granted.

3. In this particular case, although the Council decided prior approval was required and refused to grant such approval (on the basis the mast would cause harm to the amenities of the locality), the decision letter was received by O2 1 day outside the 56 day limit for the Council to notify the applicant of its decision. Consequently, under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [the GPDO] O2 gained deemed planning permission to erect the antenna and equipment cabinet.

4. In order to remedy the harm caused by the telecommunications mast the Council has sought to challenge the existence of a deemed planning permission in the light of Counsels' advice. The advice was that it appeared O2 had not complied with all the relevant criteria in the GPDO because requirements to get the prior written consent of owners or occupiers of the land set out in the Electronic Communications Code had not been complied with. On the basis of that advice, Cabinet resolved on 4 February 2008 that urgent measures be taken by the Director of Planning and Economic Development to commence enforcement action to secure the removal of the telecommunication mast and defend any appeal.

5. Prior to proceeding to issue an enforcement notice, the Council made further enquiries of Essex County Council and O2. New information was given and then provided to Counsel in order to seek confirmation that the advice previously given still held.

6. Following consideration of that information, Counsels' advice regarding the lawfulness

of the mobile phone mast changed. The advice in respect of that question is now that the mast has been erected lawfully and that the Council cannot serve an enforcement notice under S172 of the Town and Country Planning Act requiring its removal.

7. Counsel states *"O2 have now shown that they did come within the provisions of the (Electronic Communications) Code and hence, having served a developers notice on Essex County Council on the 19th of June 2006, within Part 24 of Schedule 2 to General Permitted Development order do not require express planning consent to erect and maintain the mast and equipment. This means it is not open to Epping Forest District Council to issue an enforcement notice requiring the mast and equipment to be removed"*

8. Counsel further advises *"There is no doubt the council have acted carefully in considering all options and seeking to pursue the prospect of enforcement action for as long as it was possible to do so. The Council has also dealt with matters transparently as advised by the Ombudsman's Special Report of June 2007. However the choice is now between taking discontinuance action and paying compensation to O2 or responding to complaints to the local ombudsman which local residents have indicated they will make based on the council's failure to notify O2 that they objected to the proposal to erect the mast within the required 56 day period."*

Discontinuance Action:

9. Under s102 of the Town and Country Planning Act 1990 a Local Planning Authority may, if having had regard to the Development Plan and any other material considerations concluded that it is expedient in the interests of the proper planning of their area (including the interests of amenity), issue an Order requiring the removal of any building or works. This power can be used against both lawful and unlawful development. Where an Order is made, any person who has suffered damage in consequence of the Order or who carries out works in compliance with the order would be entitled to seek to recover compensation for the loss from the Local Planning Authority.

10. This course of action was considered by the District Development Control Committee on 4 August 2009 when it resolved that the Council should not proceed with the discontinuation action based upon the low likelihood of a beneficial outcome even if such action were successful. It also resolved that the Cabinet should be asked to consider the levels of further compensation to be paid to residents.

Compensation for local Residents:

11. In accordance with the resolution of the District Development Control Committee, Cabinet is now requested to give consideration to compensating local residents for the harm caused as a consequence of the Councils failure and the basis on which any such compensation is paid. To inform this report the Councils' Complaints Officer and surveyors, Strutt & Parker have given advice.

12. As a general proposition, there is justification for compensating the owners of neighbouring properties who objected to the mast when the original application was before the Council. It is not clear whether such justification could properly be extended to any other persons.

13. Strutt & Parker were employed by the Council to advise on matters relating to the mast including the basis on which residents could claim compensation. Strutt & Parker advise that any claim by residents to the Ombudsman for compensation would be on the basis of:

(a) loss of value to property caused by the mast, and

(b) harm to the amenities of the occupants of the property.

14. Strutt & Parker also advise that any loss in value is unlikely to be in excess of 5% of property value and there are good grounds for resisting such a claim for compensation on the basis of loss of property value. This is because even if the Council had issued its decision in time, it is most likely that planning permission for the mast would have been granted on appeal so the mast would have been erected anyway. In any event, the affected owners/residents may have a redress available directly against O2 under the Electronic Communications Code, however, they would need to take their own legal advice on that point.

15. Members are advised that the occupants of 10 neighbouring houses objected to the mast when consulted on the application by the Council. Land Registry searches show one of the properties was sold in March 2008, about a year after the mast was erected, and the price stated to have been paid was £247,000. Another property changed hands in September 2006, approximately 6 months prior to the erection of the mast, but the register of title does not include details of how much was paid. No other properties changed hands shortly before the mobile phone mast was erected or between the date it was erected and when property prices generally started to fall due to market conditions.

16. The results of the searches do not provide sufficient information on which to base any assessment of the likely value of any claim that any residents might make. Nevertheless, having regard to the Strutt & Parker report, the total lost value that might be claimed by all the residents who had objected to the application as part of a claim to the Ombudsman against the Council for maladministration (up to 5% of property value) could be as much as £120,000. However, as also pointed out by Strutt & Parker, the likely success of such a claim is open to question.

17. Further research reveals the Local Government Ombudsman has considered this type of complaint by local residents across the country on a number of occasions. In those cases the Ombudsman's recommendation has been the Council concerned should pay compensation to those who objected to the application at the time it was being considered in recognition of their disappointment that the mast in question had to remain. The sum recommended by the Ombudsman has varied from £250-£300 and, as far as officers are aware, there have been no recommendations for any consideration to be given by the Council concerned to property devaluation.

18. These residents have already been paid £250 each as a goodwill gesture by the Council. However, it was emphasised to them that this offer was solely in recognition of the disappointment and frustration caused by the Council's failure to meet the 56 day deadline and would not prejudice any other claim they might wish to make for compensation for property devaluation should the mast have to remain. A further payment of £250 to £300 amounts to a cost to the Council of £2500 to £3000.

19. After the mast was erected around 100 additional residents have either signed a petition or submitted individual letters complaining about the Council's failure to meet the 56 day deadline and/or calling for the removal of the mast. However, none of these people raised any objection to O2s' proposal to erect the mast during the public consultation process on the application. Those who did not raise any comments at the time the proposal to erect the mast was advertised by the Council would not be entitled to any compensation in the event of them making a claim to the Ombudsman. Nevertheless, it is open to Cabinet to consider compensation for a wider group of residents. If the Council were to pay £250 to £300 compensation to the additional residents as well as those who originally objected to the

original application, it would incur a cost of approximately £27,500 to £33,000.

20. A further basis on which residents could be compensated is to make a payment of either £250 to £300 to the owner of all the properties that are seen within the context of the mast. The location of the mast and the properties identified as falling within that category are identified by a blue cross and a blue dot respectively on the map that forms an appendix to this report. The total number of properties identified is 71. The cost of identifying the owners by way of carrying out a Land Registry search would be up to £1,136 and the cost of compensation would be either £17,750 or £21,300 depending on the level of compensation paid. This would result in a total cost of either £18,886 or £22,436.

Conclusion

21. The opinion of Officers is that the Council should make a final reasonable offer of compensation on the basis that the Ombudsman would be likely to if the matter came before him. That would exclude those persons who did not raise any objection when consulted on the application for prior approval for the erection of the mast.

22. Officers do not consider a reasonable case can be made for compensating, on the basis of a loss of 5% of property value, any of those objectors who was the owner of a neighbouring property at the time the mast was erected. That is because there is no substantive evidence demonstrating an actual loss of value of any property near the mast and, even if there was, it is very likely that planning permission would have been granted for it on appeal. Consequently, the mast would have erected in any event and any impact on property value would still have taken place.

23. Rather, the appropriate course of action is to offer those residents previously paid £250 as a goodwill gesture who have not moved house a further sum (£250 would be appropriate) and to advise those residents they would have to pursue any further claim privately against O2. Members may, however, wish to offer the same payment to any of the residents who have moved house in the meantime.

24. This view is reached on the basis that the mistake by the Council is one that has been made by many other local authorities in recent years. The Local Government Ombudsman has therefore already considered this type of complaint by local residents across the country on a number of occasions. The Ombudsman's recommendation has been that the Council concerned should pay compensation to those who objected to the application at the time in recognition of their disappointment that the mast in question had to remain. The sum recommended by the Ombudsman has varied from £250-£300 but, as far as officers are aware, there have been no recommendations for any consideration to be given by the Council concerned to property devaluation. Given that the Council has already paid £250 to each of the 10 affected property owners/residents, any additional payment of a further nominal sum to the remaining residents would therefore be very likely to be regarded by the Ombudsman as a more than reasonable settlement.

25. Accordingly, Officers opinion is the Council should compensate residents for the Council's failure to make a timely decision on an application for a determination as to whether prior approval for the mobile phone mast was required, on the basis described in the conclusion of this report. That is, a payment of £250 be made to each of the 10 residents who raised objection to the erection of the mast when consulted on the application for a determination as to whether prior approval was required to erect it, Ref EPF/1242/06, subject to them still either being an owner or an occupier of the same affected property.

26. Notwithstanding Officers views, it is open to Members to decide not to give any compensation on the grounds that it is very likely that a mast of the same height and scale

would have been erected in the vicinity of the site even if the Council had issued its decision on time. Similarly it is open to Members to decide to compensate on an alternative basis to that suggested by Officers in the conclusion of this report. In suggesting amounts of compensation regard has been given to what the Ombudsman has suggested in other cases, but regard must also be given to the general duties concerning expenditure. If the Council was to suggest a higher level of compensation to appease some residents, or a greater number of other local residents, then local taxpayers elsewhere in the District may ask the External Auditor to query the legality of that higher expenditure. Alternatives discussed in the report include compensating as follows:

(i) on the basis of a possible loss in property value;

(ii) on the basis of a the payment of a fixed sum to all those who have either signed a petition or submitted individual letters complaining about the Council's failure to meet the 56 day deadline and/or calling for the removal of the mast; or

(iii) on the basis of a the payment of a fixed sum to the owners of properties that are seen within the context of the mast as identified on the map that forms an appendix to this report.

Resource Implications:

A DDF item for £93,000 was originally included in the budget as a contingency for appeals. The sum currently available is £85,200.

Options, dependent upon the Cabinet's decision, are:
(i) 5% of property value - compensation maximum £120,000;

(ii) (Recommended by officers) Further £250 to £300 compensation to original 10 objectors £2,500 - £3,000;

(iii) 100 petitioners - compensation £27,500 - £33,000; or

(iv) 71 identified properties - compensation £18,886 - £22,436.

Legal and Governance Implications:

Members' decision would be given consideration in the event of a possible claim of maladministration heard by the Ombudsman.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Council Complaints Officer
Director of Corporate Support Services.

Background Papers:

Report to District Development Control Committee on 4 August 2009 and minutes
Report to cabinet on 4 February 2008 and minutes
Report of Strutt & Parker dated August 2008
Planning Enforcement Investigation ENF/0088/07
Prior approval application EPF/1242/06

Impact Assessments:

<u>Risk Management</u>
Careful consideration to the matter of compensation will be given weight in the event of a claim of maladministration to the Ombudsman.

<u>Equality and Diversity:</u>

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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Epping Forest District Council
Planning Services
Civic Offices
High Street
Epping CM16 4BZ

APPENDIX 1
O2 Mast, Honey Lane, Waltham Abbey
Properties within extent of main visual impact.

Centre X:	539307.553
Centre Y:	200424.209
Width :	450.000
Angle :	.000
Scale :	1:2500
Date :	14 Jan 2010
Time :	08:29:11 AM

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Report to the Cabinet

Report reference: C-079-2009/10
Date of meeting: 1 February 2010

Epping Forest District Council

Portfolio: **Leisure & Well Being**

Subject: **Ongar Playing Fields Development/ Waltham Abbey Town Mead**

Responsible Officer: **Julie Chandler (01992 564214).**

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

Recommendations/Decisions Required:

(1) That Cabinet agrees that as the anticipated external funding is not available and as new playing pitch facilities have recently been installed in neighbouring authority areas, the proposed development of the Ongar Leisure Centre pitches, is no longer viable.

(2) That Cabinet agrees 'in principle', subject to further negotiations with Waltham Abbey Town Council with respect to management arrangements and income share, to re-allocate the £527,000 Capital Provision for the Ongar Scheme to provide a new full sized third generation floodlit all-weather pitch at Town Mead Recreation Ground, Waltham Abbey.

(3) That a further report on the full revenue consequences, as a result of negotiations with Waltham Abbey Town Council, be brought to Cabinet before final approval is given to proceed to tender.

(4) That, if required, approval is given for a planning application to be submitted at the appropriate time for the new floodlit pitch at Town Mead Recreation Ground.

Executive Summary:

The Council undertook a comprehensive Playing Pitch Strategy for the District in 2007/08. The Study highlighted a shortage of football pitches in key locations across the district and in particular junior and youth facilities in the Ongar area. These findings concurred with Essex Football Associations' assessment of football pitch provision in terms of the county as a whole.

To address this identified lack of provision, officers proceeded to investigate the feasibility of external funding opportunities. As a result, a report was formally approved by Cabinet on 6 October 2008, to actively pursue the development of the Playing Fields at Ongar Leisure Centre. As part of this report, Cabinet also agreed to commit in principle, a sum up to a maximum of £527,000 Capital Provision from the Council's Capital Programme, dependent on the level of external funding being obtained.

Following a series of meetings with key funders, a bid for £727,000 was submitted to the Football Foundation and a £200,000 bid was made to Essex Football Association. Officers were in contact with the Football Foundation throughout the 12 month assessment of the bid

and were surprised and disappointed to be notified, that following a sudden change in funding criteria and unexpected shortages in availability of funding, the Council's submission had been rejected. A subsequent submission was then made to Sport England's Rural Fund, which appeared to meet all of the set requirements, but this bid was also unsuccessful. The Council was however successful in its bid to Essex Football Association for £200,000 as part of the Essex County Council 2012 Legacy Funding, but due to the delays in receiving notification from the other funders, could not meet the installation timescales required.

As stated above, £527,000 has already been included within the Capital Programme 2010/11 earmarked for the Ongar Playing Fields project. Members' views are being sought as to whether the scheme should go ahead, as the original in principle decision was predicted on the expectation that external capital funding would be available. In addition, demand for all weather facilities has reduced in Ongar, with the provision of new additional facilities in the adjoining area of Brentwood.

In light of the Council's medium term financial forecast, officers have investigated other opportunities to meet with the Council's desire to only provide Capital funding towards revenue generating schemes. As such, there is potential for the installation of a new Astroturf facility in Waltham Abbey that is expected to meet this criteria.

Reasons for Proposed Decision:

- The anticipated external funding for the development of playing pitches at Ongar Leisure Centre is not available.

- The strategic need for an all-weather pitch in Ongar has been greatly reduced by additional provision in Brentwood.

- Football facilities at Townmead Sports Ground in Waltham Abbey are currently utilised for training but in significant need of improvement; the installation of a 3rd Generation Astroturf Pitch would enable increased use by local groups.

- A new Astroturf facility in Waltham Abbey would encourage and enable people to be more physically active, therefore helping to reduce health inequalities.

- The new facility would be used by the Council to encourage positive activity by young people to address local issues of anti-social behaviour.

Other Options for Action:

A decision is taken not to use the funding allocated to Ongar Playing Fields within the Capital Programme, or allocate to another non Leisure capital priority.

Report:

1. A report was formally approved by the Cabinet on 6 October 2008 to actively pursue the development of the Playing Fields at Ongar Leisure Centre, to enable the provision of a range of outdoor sports facilities. Officers were authorised to formally bid for external funding in the form of £727,000 from the Football Foundation and £200,000 from Essex Football Association.

2. The Cabinet additionally agreed, in principle, to provide Capital Provision from the Council's Capital Programme for the balance of the works up to a maximum of £527,000, but with a clear expectation that external funding would meet the majority of the costs of the

development.

3. Following detailed discussions with the Football Foundation; Essex Football Association and Sport England regarding the best use of the site, an external funding application was developed and a feasibility study (including full soil tests) was undertaken by STRI (Sports Turf Services Ltd). However due to the current economic conditions; a restructure, and budget cuts at the Football Foundation, the Council's application was unexpectedly rejected. As such, the funders are no longer in a position to provide any grant aid towards the project.

4. In an attempt to secure external support, a further application was submitted to Sport England's Rural Communities Fund, however, this was heavily over-subscribed (fifteen times over the amount of funding available) and the Council's application did not progress to stage 2. As an unfortunate consequence of this and the Council's inability to meet key start on site deadlines, the Essex FA has also now withdrawn their offer of £200,000 funding.

5. During this period of negotiation with funders, a new full size floodlit synthetic football pitch was installed in Brentwood district, through a Charitable Trust. In addition, there are also currently plans to construct a further pitch in another location in Brentwood in 2010. This completely changes the strategic facility need requirements in the Ongar area and, therefore, opportunities for attracting any other funding are highly unlikely.

6. However, as the Council had adopted a policy that capital investment should generate a revenue return, officers have considered opportunities elsewhere in the District where a new sports facility could provide revenue for the Council. One such project considered to be a viable option is a new synthetic pitch in Waltham Abbey recreation ground at Town Mead.

7. Meetings have been held with Waltham Abbey Town Council and a site visit was made to Town Mead, where there is currently a floodlit all weather pitch that is badly in need of replacement. This facility is currently used as a training facility, but matches are unable to be played on it due to the quality of the pitch surface. If a new 3rd Generation pitch, as originally envisaged for Ongar, was installed, maximum use could be made of the facility. Such 3rd Generation pitches have the advantage that they are able to accommodate official matches and league games for all ages.

8. The Town Council would be interested in continuing with management of the facility, but the Council would secure a regular amount of pitch time to develop daytime usage including; coach education and skills training, schools and college use, delivery of partnership work such as Obesity reduction for children and adults and general fitness programmes. The pitch would also be used in the early evening for afterschool coaching and training. The existing infrastructure at Townmead would support and complement the development and delivery of such programmes.

9. Further and more detailed meetings would need to be held with Waltham Abbey Town Council (WATC) to determine the basis for a profit share agreement in respect of the proposed facility. These negotiations would need to take account of ongoing costs of maintaining the facility and administration of bookings which would be undertaken by WATC, along with the need to retain a Sinking Fund for replacement of the pitch surface after 10 years and the perimeter fencing after 15 years (it is anticipated that the sinking fund would be retained by the Council at £20,700 per annum). Any agreement would also need to consider the level of income currently generated by WATC for the existing pitches in use, balanced against the Council's investment in the new facility.

Resource Implications:

Based on potential development at Townmead, Waltham Abbey:

Indicative Costs of Development (Prices do not include VAT)	
Contract Preliminaries (inc. CDM)	6,000
Site set-up, access, compound, protective fencing etc.	4,000
Construction of 3rd Generation synthetic turf pitch	460,000
Purchase of AWP surface maintenance machine	10,000
Goals/equipment	5,000
Contingency – (recommended by STRI)	36,500
Total	**527,000**
***Indicative Revenue Implications:**	
Annual Maintenance for AWP	10,000
Floodlighting	6,000
Floodlighting maintenance and repairs	4,000
Bookings Admin	3,500
Total	**23,500**

***Potential Income - based at £70 per hour**	
Weekday usage 6pm – 10pm x 5 days (20 hrs x 40 wks)	56,000
Estimated weekend usage 4 hrs x 2 days (8hrs x 40 wks)	22,400
Total Income	**78,400**

*The above figures are estimates and include consideration for variation in prices for floodlighting etc. Income is based on 70% of pitch hire rates currently charged at the nearest 3rd Generation facility.

Sinking Fund per annum – replacement of pitch surface (after 10 years)	17,500
- replacement of fencing (after 15 years)	3,200

Potential profit £34,200

EFDC potential profit share income	**17,100**
Plus Sinking Fund per annum	**20,700**
Total to EFDC	**37,800**

Legal and Governance Implications:

Waltham Abbey Town Council currently manages the Townmead facility and they would be responsible for managing the new facility. A lease or service level agreement would need to be developed by Epping Forest District Council and Waltham Abbey Town Council detailing specific responsibilities and financial implications.

Safer, Cleaner and Greener Implications:

It is planned to particularly target children, young people and families from Waltham Abbey to use the new facilities, This will be addressed through working in conjunction with partners including West Essex Primary Care Trust and ECC to identify key families in need of support to improve their health and well being.

It is also anticipated that new synthetic turf pitch will attract use by young people from the

Waltham Abbey area and therefore, specific time slots will be allocated to development work by Tottenham Hotspur Foundation, to encourage positive activity and diversion from anti-social behaviour. In addition, a low cost option for hiring the pitch is proposed for groups of young people not wishing to participate in ‘organised’ sessions.

Consultation Undertaken:

- Extensive consultation with local clubs and stakeholders through the Playing Pitch Strategy Development.

- STRI Sports Turf Services were commissioned to undertake an initial feasibility study on the proposed improvements. The feasibility study involved a visit to the playing fields in order to assess the current condition of the existing pitch areas, in terms of surface levels; nature of the soil profile; vegetation cover and drainage characteristics. Following the site appraisal, a report was produced summarising the findings and recommendations on improving the pitches as considered appropriate, together with the likely costs involved.

- Detailed discussions with Essex FA and the Football Foundation over both proposed areas. No financial assistance will be giving to either site.

- Current and potential users of the site have been consulted on the proposals for the development at Ongar and Townmead, Waltham Abbey.

- Site visit and meeting with Waltham Abbey Town Council, who are supportive and keen to progress the project at Townmead, Waltham Abbey.

- Tottenham Hotspur Foundation (who have been working extensively with the Council on social inclusion programmes over the last year) have indicated a strong interest in supporting multi-sport development on the site, to include specific inclusion projects for young people living in the area.

Background Papers:

Epping Forest Playing Pitch Strategy, STRI Feasibility Study and Report.

Impact Assessments:

<u>Risk Management</u>
A risk management exercise has been carried out as part of this report and it has been identified that if the proposals at Ongar were developed there would be greater risk to the Council as to whether the development would become sustainable as compared to the proposed developments at Townmead, Waltham Abbey.

<u>Equality and Diversity:</u>

Did the initial assessment of the proposals contained in this report for relevance to the Council’s general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?

N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

Report to the Cabinet

Report reference: ***C-080-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Finance and Economic Development**

Subject: **Debt and Money Advice Provision**

Responsible Officer: **Chris Overend** **(01992 564247).**

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

Recommendations/Decisions Required:

(1) That the significant impact of the recession on the number of cases dealt with by Epping Forest CAB and the CAB's excellent response to the increased workload be recognised and, in giving its support, the District Council continues to work alongside the CAB as it seeks additional resources, be they finance, staff, volunteers or premises, to ease the effects of that additional workload;

(2) That the District Council foster an interest in volunteering and voluntary work by encouraging employees to become volunteers in their spare time (e.g. as part of the induction programme), through publicity in The Forester magazine and encouraging other major employers in the District to promote the benefits of voluntary work;

(3) That voluntary work also be promoted through the use of information available at suitable locations, including Council Offices and Job Centre Plus;

(4) That the need for more spacious facilities, also providing greater confidentiality, for interviewing benefits claimants be addressed as a matter of urgency through the Customer Transformation Programme or another Civic Offices work programme;

(5) That the District Council recognises and supports the vital role being carried out by Credit Unions in general during the economic recession;

(6) That the District Council also supports the work being carried out by Essex Savers in the District and, in giving encouragement to the extension of its operation to the more outlying rural areas, assists in publicising the role of Essex Savers generally, internally and through other major employers in the District; and

(7) That the LSP be supported in its bid through the Future Job Fund for the creation of jobs in the District.

Executive Summary:

Following the adoption of a motion at Council on 16 December 2008, and subsequent discussion at Overview and Scrutiny on 29 January 2009, a Scrutiny Sub-Committee was set up to review current debt and money advice provision; to review the support the

District Council offers the Citizens' Advice Bureau and whether this support should be extended; and to incorporate the outcome of the review into the budget process. Having carried out its review, the Sub-Committee submitted its report to Overview and Scrutiny Committee which supported the recommendations contained in that report, at its meeting on 12 November 2009.

Reasons for Proposed Decision:

The recommendations put forward have both policy and resource implications and, for those reasons, have been referred to the Cabinet by the Overview and Scrutiny Committee for approval. The recommendations focus on a number of areas, including level of support to be provided by the District Council to the CAB as it seeks additional resources to ease the burden of a greatly expanded caseload, the significant roles being played by the voluntary sector and credit unions during the current recession, and the creation of jobs in the District.

Other Options for Action:

The other options are wholescale rejection or support of only some of the recommendations put forward. However, the review carried out by the Sub-Committee provided a clear indication of the vital work being carried out by many of the agencies in the public and voluntary sectors both generally and in response to the economic situation, to mitigate against its worst effects. Not supporting the recommendations put forward would be a lost opportunity in terms of building on the work carried out by the District Council to date, and in supporting the work undertaken by others, and could compound the severity of problems in the future.

Report:

1. The Sub-Committee met on four occasions. Membership comprised Councillors Jon Whitehouse as Chairman, and Councillors Ken Angold-Stephens, Mrs Antoinette Cooper, and Mrs Janet Whitehouse. Councillor John Markham substituted for Councillor Angold-Stephens at the meeting on 14 April 2009. Support was provided by Chris Overend, the District Council's Policy and Research Officer. Other District Council officers and representatives from a number of external partner organisations attended meetings as required. These were Janet Twinn, Janis Hicks and Ian Willis from the District Council's Benefits Service, Roger Wilson, Assistant Director of Housing, Jacquie Foile, Chief Officer of Voluntary Action Epping Forest, and Julia Milovanovic and Tony Jennings of Epping Forest CAB.

2. The work programme consisted of a review of existing provision and options for extending that provision, obtaining the views of individuals working in areas, whether internal or external to the District Council, which had been affected by the economic situation, hearing about the experiences of those in receipt of money and debt advice, an assessment of the role played by credit unions and the work of the LSP Task and Finish Team on the "Credit Crunch".

3. The Sub-Committee noted or agreed the following actions prior to the finalisation of its report and putting forward the recommendations to Cabinet set out at the commencement of this report:

(a) The District Council became a signatory to the Small Business Engagement Accord on 3 November 2009;

(b) Local Banks/Building Societies were written to ascertain their current arrangements when, as a consequence of financial circumstances, customers had their property repossessed or there was a threat of repossession (Disappointingly no responses were received from any of the banks or building societies); and

(c) The need for a Direct Link on the District Council website to Benefits Information was identified and subsequently set up.

4. The Sub-Committee also put forward other recommendations for future action, subsequently agreed by the Overview and Scrutiny Committee, and as set out at the commencement of this report. Further information in respect of those recommendations is set out below.

5. It is clear from the research carried out by the Sub-Committee, and the various presentations received at its meetings, that many of the agencies in the public and voluntary sectors are very much aware of the impact locally and have taken action to mitigate against its worst effects. Indeed, the agencies concerned have effective services and procedures in place as part of their regular ongoing provision whatever the prevailing economic situation. The wide range of initiatives and effective procedures that the District Council's Benefits and Housing Services have in place is a good illustration of this point.

6. One agency which the recession has impacted on significantly is the CAB. There has been a quadrupling in the number of enquiries it has dealt with in the past year with the vast majority of these enquiries being in the categories of debt, benefits, employment or housing, or involving a mixture of these issues. A gradual change in the type of client is being witnessed with an increasing number of bankruptcies and debt advice cases involving individuals from the professional classes such as company directors. The current demand has increased the number of cases and waiting times in general.

7. The impact of the recession on the Epping Forest CAB has been compounded by the lack of suitable additional and alternative accommodation. Even in instances when additional debt advisers might be available, the potential for reducing the backlog is limited because of the lack of further suitable interviewing rooms. Thus the Epping Forest CAB have a need for both additional funding, especially in the area of debt advice, and improved additional or alternative premises. (The District Council has recently allocated accommodation to the CAB at the Leisure Centre Offices at Hemnall Street and it is hoped this will go some way towards easing the problem).

8. Contrariwise, but not unusually, the economic situation has led to an increase in the number of individuals, currently unemployed, entering voluntary work. This should be seen in a positive light in the sense that many of the individuals concerned have particular skills to offer which might not usually be readily available to the voluntary sector. They are being introduced to the world of volunteering and might continue to carry out voluntary work even when the economic situation improves and they are re-employed. Volunteering amongst the unemployed is known to be beneficial, not only to their self-esteem but also because it can develop new skills that can help employability.

9. However, voluntary work comes neither free nor cheap. The recession has led to greater demands on VAEF and the voluntary sector in general, with greater training costs and volunteer bureaux facing the administrative burden in terms of the placement of volunteers, all of which adds to the costs. There is a need to support VAEF and the voluntary sector in whatever ways possible, including promotion of the volunteering ethos but backed up with the

provision of the extra resources required consequent upon the additional volunteers coming forward. (It is recognised that in encouraging staff to volunteer for organisations such as the CAB, there is a potential conflict of interest should they encounter a customer with issues against the Council. There is also a need for staff to comply with the Staff Code of Conduct).

10. The number of Housing Benefits and Council Tax Rebate cases has also increased significantly and needs to be monitored in terms of workload and timeliness of responding to clients, particularly given that clients are often in need of urgent help and assistance at an early stage which could prevent them from resorting to obtaining loans from undesirable sources. There is insufficient privacy for Benefits staff when talking to clients at the Civic Offices with the shortage of suitable space leading to long waiting times and adversely affecting customer relations. Thus there is an urgent need for improved accommodation where benefits staff could talk to clients confidentially.

11. One major problem is that not everybody entitled to benefits makes a claim. There are a number of reasons for this, amongst them a lack of awareness, the complexity of the system, personal pride in not being dependent on the state, and the information being difficult to understand. Government statistics suggest that couples with children, 'under-claim' by between 25-40%, with an even greater number missing out on Council Tax Benefit. Welfare rights organisations need to be supported in getting the information out, with the District Council exploring what it could do to publicise the information. Whilst Council staff already help with the filling out of forms, further ways of identifying people who might need help, should be considered. Other agencies and organisations might be encouraged to help in this process, for instance, schools through their experiences of children from families in difficulty.

12. In general there is plenty of support available to vulnerable people but getting the information and required support to them is not always effective given the complexity of the benefits available. Communication within and between the different Council service areas is generally good, although being passed from one area to another can cause confusion for claimants and make the process testing. Publicity in The Forester and in local newspapers should continue, with easy to read leaflets available at all suitable information points.

13. Credit Unions are non-profit organisations set up by people with something in common such as living or working in the same area. They work by encouraging individuals to save what they can and borrow only what they can afford to repay.

14. Before individuals can borrow or save, they need to become members. Across Essex, Credit Union membership grew by over 25% in 2008. Membership continues to grow among those who have been refused credit elsewhere and, more recently, with those seeking and wanting to support a more ethical form of finance.

15. All profits are used to make interest rates as cheap as possible for borrowers and rates of return attractive for savers. Credit Unions often lend smaller amounts of money over periods of time that a bank would not consider. Savings tend to be ultra flexible, allowing the possibility of saving amounts, large or small, on a weekly, monthly or other basis.

16. There are presently a number of Credit Unions in the county including Essex Savers, Basildon, Colchester, Harlow Save and Holdfast C.U.

17. On 28 September 2009, the Epping branch of Essex Savers was launched at St John's Church in Epping. The branch opens on Monday each week between 10 a.m. and 12 noon.

18. The Future Jobs Fund offers the potential to get young long-term unemployed people back into employment. The scheme allows for grants of £6,500 for six month placements of

a minimum of 25 hours per week and could be used in respect of socially useful initiatives. Offering apprenticeships to locally unemployed people, especially the young unemployed, is to be encouraged, both internally at the District Council and through local businesses.

19 Through the Future Jobs Fund, West Essex Partnership (which consist of Member and officer representatives from Epping Forest, Harlow and Uttlesford LSPs) has been awarded £1.1 million for jobs across the three Districts. The money is being released in two tranches and, in the Epping Forest District, will be released in two tranches leading to 28 job placements (14 per tranche). The first job placements are now being taken up. The Department of Works and Pensions (DWP) has recently approached the local LSPs with an offer to significantly expand the scheme and increase the funding available. Discussions with the DWP are ongoing.

Resource Implications:

The implementation of the recommendations put forward can be dealt with through existing resources. However, any decision to increase the level of financial support to the CAB might potentially impact on the Grant Aid Budget (unless met through other sources) and limit the opportunity for funding the applications from other voluntary and community groups which might be deemed equally worthy.

Legal and Governance Implications:

There are governance implications for staff volunteering, details of which are set out in Paragraph 9 above.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

Epping Forest CAB, Voluntary Action Epping Forest and staff from the District Council's Benefits and Housing Services were consulted as part of the review process and gave presentations to the Sub-Committee.

Background Papers:

Reports on existing provision by Epping Forest CAB and VAEF and various credit unions. Various documents on good practice in dealing with the recession and the final report of the Overview and Scrutiny Sub-Committee on Debt Advice.

Impact Assessments:

Risk Management

The proposals put forward have limited risks in terms of the use of resources. Using the resources as suggested is far more likely to have a positive effect than a negative one in terms of dealing with the impact of the current economic situation. There are also potential conflicts of interest for staff seeking to volunteer details of which are set out in Paragraph 9 above.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

The District Council, VAEF and Epping Forest CAB have their own equality and diversity policies and procedures in place.

Report to the Cabinet

Report reference: ***C-081-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Environment**

Subject: **Out of Hours Land Drainage Standby Service**

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

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

Recommendations/Decisions Required:

(1) To agree that as recommended by the Overview and Scrutiny Committee the Council continues its out of hours land drainage standby service; and

(2) Subject to recommendation (1) to approve the reallocation of £10,100 from the existing Quality Assurance budget within the Environment and Street Scene Directorate to the out of hours standby service from April 2010 onwards.

Executive Summary:

The Council has provided an out of hours standby service since the large scale flooding in 2000. This service ensures the availability of trained land drainage personnel outside of normal working hours. These officers receive additional payments under the Council's out of hours working policy, the costs of which were met by the Environment Agency as part of the Council's arrangement with them for the delivery of land drainage and flood control services. When that arrangement ceased so did the associated funding and since then the Council has met the revenue costs through the district development fund. This funding therefore ceases in March 2010

The Overview and Scrutiny Committee has requested Cabinet to consider ensuring the future of the standby service by the provision of a continuing service allocation.

There is currently a CSB allocation of £10,100 within the Directorate for the provision of Quality Assurance for the land drainage section.. However it is recognised that due to overall pressures on the public sector financing it is appropriate to provide a more direct service benefit through the reassignment £10,100 to enable the continuing provision of the out of hours standby service.

Reasons for Proposed Decision:

To ensure continued provision of a front line service which delivers real benefits to residents at time of flooding. Failure to respond to emergencies at Council owned flood alleviation schemes and assets outside of normal working hours could increase the risk of flooding and make the Council liable.

Discontinuation of the service could potentially have a detrimental impact on the Council's reputation.

Other Options for Action:

It is possible to discontinue the service at the end of the current financial year and not all Council's provide this service. This will result in a lower quality of service for the residents.

The Council's Emergency Planning Team will become involved with large scale flooding incidents when the normal land drainage resources can not cope with the incident. They can only deal with out of hours flooding emergencies on a limited basis, but they lack the land drainage knowledge and expertise to deal with the electronic alarms and do not have access to specialist contractors or equipment.

This is a key decision as the properties at risk of flooding are located throughout the District.

Report:

1. Two major rivers systems flow through the District; the River Lee and the River Roding with their associated tributaries. There are over 1,000km of Ordinary Watercourses, for which the Council is a statutory enforcement authority.

2. The Council has, over the years, made significant financial commitments towards construction of flood alleviation schemes, either on its own or in partnership with others, notably the Environment Agency. These include Loughton Brook Flood Storage Reservoir in Loughton, Thornwood Flood Alleviation Scheme in Thornwood (both constructed in partnership with the Environment Agency), Church Land and Thornhill Flood Alleviation Schemes in North Weald constructed by the Council on its own.

3. In addition, smaller flood alleviation works have also been carried out and these are located throughout the District. The Council has recently completed a project of upgrade and improvement works to these smaller flood alleviation schemes and these works will reduce the risk of flooding to residents.

4. Three of the Council's four flood alleviation schemes have remote sensing electronic equipment which requires specialist knowledge to respond (e.g. if a flood water level alarm is raised by the system a trained officer has to access the system and plan an appropriate response).

5. The out of hours standby service was established following the wide spread flooding of October 2000. This service guarantees the availability of a qualified land drainage engineer to deal with alarms raised by the telemetry systems on the Council's flood alleviation schemes, requests by residents for assistance with flooding emergencies, requests for assistance from professional partners and the mobilisation of land drainage contractors to deal with emergency clearance works or deployment of sand bags.

6. The Environment Agency paid for this service between April 2006 and October 2008 although it strict terms they need not have done so. However, since the ending of the Council's formal arrangement with the Agency, they have not met the costs and indeed have hardened their views in respect of the Council's responsibilities as a riparian owner and they expect the Council to manage flood risk and the response to local flooding emergencies arising from it's own flood defence assets

7. The residents of the District have come to expect this level of service from the Council. The Council's emergency plan in relation flooding incidents relies in significant part on the expertise of the Land Drainage Team who, are best placed to advise on whether a flooding incident is likely to escalate. In the event that the Council is unable to provide

assistance in dealing with flooding emergencies it may find itself liable if it is proven that flooding occurred from a Council owned, built or managed asset.

8. The Council has a duty under the Civic Contingencies Act 2004 to assess risks within the District and include those risks within a Local Risk Register which it then has to publish. The Local Risk Register is compiled by the Emergency Planning Officer and it is reviewed and updated annually by the Emergency Planning and Response Team.

9. The Local Risk Register for the District identifies flooding as the most significant risk likely to affect the area. In accordance with its statutory duty the Council having identified that a risk exists has a duty to mitigate that risk from occurring. The existence of the out of hours Land Drainage Service is an essential part of the contingency planning arrangements associated with managing the risk.

10. The Pitt Review Task and Finish Panel looked at the implications of the Pitt Review and the anticipated new 'Flood and Water Management Bill'. The Panel has reported its findings to the Overview and Scrutiny Committee and among other things reported that the out of hours land drainage standby service provided a valuable front line service which should be maintained on an on-going basis.

Resource Implications:

There is DDF provision for the out of hours land drainage standby service for 2009/10 of £8,400. This is based on the estimated salary and overtime payments to the officers taking part in the service. This amount can vary depending on the number of flood warnings or requests for assistance by residents.

In order to provide CSB provision for the service, as recommended by the Overview & Scrutiny Committee, and to avoid CSB growth, it is proposed to reassign resources from those currently allocated for the provision of a quality management system for the land drainage team. The merger of the land drainage team with other parts of the former Environmental Services as part of the corporate reorganisation has resulted in the £10,100 previously allocated for this purpose being insufficient. Whilst the eventual gaining of quality accreditation remains a goal, at this time it is considered that the provision of the out of hours service is more important and of greater importance to residents. It is suggested that the entire £10,100 be allocated since this will provide the flexibility to ensure staffing availability as well as update any safety equipment required to maintain the service.

Legal and Governance Implications:

The Council remains riparian landowner for three of the four flood alleviation schemes as they are built on land owned by the Council. The fourth site is within the Epping Forest and for which the Council has entered into a legally binding agreement with the Corporation of London ensuring its ongoing maintenance and bio diversity.

As a land owner and the authority which constructed these assets the Council has a duty to ensure that these do not cause flooding and the ability to deal with alarms raised during out of hours is a key element in managing these assets.

Although flooding is a natural occurrence if the Council is seen to fail in managing its assets or responding to emergencies it may find itself liable to a third party.

Safer, Cleaner and Greener Implications:

The Council is committed, through its Safer, Cleaner, Greener initiative to protect the public, as far as is practical, from the effects of flooding. With no out of hours service this may put this commitment in jeopardy.

Consultation Undertaken:

Emergency Planning team on ability to absorb land drainage standby. The Team would be unable to react with the appropriate technical expertise without access to the land drainage team

Background Papers:

Pitt Review Task and Finish Panel and Overview and Scrutiny Committee

Impact Assessments:

<u>Risk Management</u>
The Civil Contingencies Act 2004 requires Local Authorities to undertake assessments of the risks that appear within their area and to publish these in a Community Risk Register. The two most significant risks likely to affect the District as identified in the local risk register are flooding, fluvial (river) and pluvial (surface water) and pandemic flu. Flooding carries a medium to high risk. The provision of an out of hours response to incidents of flooding is seen as crucial in managing these risks. An example of this need was the flooding incident in early 2009 when, without the intervention of the out of hours team, Loughton Brook may well have overtopped causing widespread flooding in the Loughton area.

<u>Equality and Diversity:</u>

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A

Report to the Cabinet

Report reference: C-084-2009/10

Date of meeting: 1 February 2010

Portfolio:	**Housing.**
Subject:	**Formation of Local Housing Company and Associated Arrangements.**
Responsible Officer:	**Alan Hall (01992 564004).**
Democratic Services:	**Gary Woodhall (01992 564470).**

Recommendations/Decisions Required:

(1) That a report be submitted to the Council recommending as follows:

(a) To agree in principle to the establishment of a Local Housing Company (LHC) to which the Authority would provide mortgages to enable the company to purchase properties on the open market and to let them with assured tenancies at market rents to Council Housing Register nominees through "HomeOptions" (the Council's Choice-Based Lettings Scheme);

(b) To agree the recommendation of the Cabinet that a LHC Cabinet Committee appointed by the Leader of the Council is the preferred forum for considering the establishment and operation of the LHC and for bringing forward proposals for consideration by the Cabinet and the Council;

(c) To approve the Terms of Reference and Work Plan for the LHC Cabinet Committee as set out in Appendix 2; and

(d) To note that the final decision on the following matters will be reserved for decision by the Council:

(i) The proposed Articles of Association for the LHC;

(ii) The total and/or maximum amount of mortgages to be made available to the LHC and how these should be funded by the Authority;

(iii) How the Council will monitor and scrutinise the performance and finances of the LHC, in consultation with the Overview & Scrutiny Committee; and

(iv) The initial appointment of the LHC's Directors at the appropriate time;

(2) That the appointment of Trowers and Hamlin (Solicitors) be extended to include the provision of legal advice on matters relating to the proposed formation and operation of the LHC, including the drafting of the company's Articles of Association; and

(3) That, pursuant to Recommendation (2) above, and to meet the cost of registering the LHC, DDF funding for this purpose be increased by £5,000 to £11,000 for 2010/11.

Reasons for Proposed Decision:

The expected interest payments that would be received by the Council from proposed mortgages to the Local Housing Company are likely to be greater than the interest received from the Council's normal investments. The Council is unable to provide assured shorthold tenancies at market rents to housing applicants itself, hence the need to form a Local Housing Company.

Legal advice has been received on the proposed formation of the Local Housing Company (LHC). Recommendations on agreeing to the principle of the proposal and the mechanism to establish the company and to agree how the LHC would operate need to be agreed by the Council, on the recommendations of the Cabinet. It is felt that the formation of a Local Housing Company Cabinet Committee to consider the numerous issues relating to the LHC's formation and operation would be the most effective and expeditious approach. The Cabinet Committee would make recommendations to the Cabinet as appropriate. Some decisions would need to be made by the full Council on the recommendation of the Cabinet.

Other Options for Action:

- Not to form a Local Housing Company;
- Not to set up a Cabinet Committee, and agree that a different body should consider the issues and make recommendations to the Cabinet – e.g. an existing Cabinet Committee, a Portfolio Holder, a Portfolio Holder Advisory Group, an ad-hoc committee or the Overview and Scrutiny Committee;
- Not to set up a Cabinet Committee and have all issues considered by the Cabinet itself;
- To agree different Terms of Reference and/or Work Plan for the proposed Cabinet Committee or alternate body;
- To allow the proposed Cabinet Committee (or alternate body) to make some decisions without reference to the Cabinet; or
- To reserve a different list of decisions to be made by the full Council, or to not reserve any decisions.

Report:

<u>Introduction</u>

1. At its meeting in September 2009, the Cabinet considered a proposal from the Leader, Deputy Leader and Housing Portfolio Holder to investigate the formation of a Local Housing Company (LHC) to which the Council could provide mortgages, to enable the LHC to purchase properties from the open market and to then let them with assured shorthold tenancies at market rents to Council nominees. It was explained to the Cabinet that, in the current economic climate of low interest rates, it is possible that interest payments received from such mortgages to the Local Housing Company could be greater than the interest received from the Council's normal investments. Any surplus rental income (after the deduction of the loan interest and other costs such as legal, management and corporation tax) could also be returned to the Council through a legal agreement.

2. The report to the Cabinet in September 2009 suggested that a loan/mortgage to the LHC by the Council could, for every 10 properties purchased by the LHC, receive income from the loan (currently) of around £57,000 per annum more than the income received from the Council's normal investments. This would be in addition to any additional income the Council would receive from the LHC in relation to any surpluses it makes. The Council would also receive capital receipts when the LHC's properties are subsequently sold, amounting to any increases in the property's value (less the LHC's sale costs).

3. The other benefit would be a social one, since the LHC would let the properties to Council nominees from the Housing Register, which would include applicants in receipt of the local housing allowance (housing benefit), who would otherwise experience difficulty in accessing the private rented sector. The LHC could also agree to receive rent in arrears, instead of the usual rent advance.

4. It was also noted that the Council is unable to provide assured shorthold tenancies at market rents to housing applicants itself, hence the need to form a Local Housing Company. However, it was agreed that, since such an arrangement would be fairly unique, specialist legal advice should be obtained on a range of issues, to assist the Cabinet and the full Council to determine whether or not to proceed. It was also acknowledged that it would be necessary to undertake a more detailed financial appraisal of the potential costs and income, and whether the initiative would be financially viable.

5. A legal firm that specialises in this area, Trowers and Hamlin, were therefore appointed to investigate and report on the relevant issues, for a fee of £1,500 plus disbursements. A budget of £6,000 was also agreed to cover all professional fees of the required advice. It was agreed that a further report be considered by the Cabinet in due course, setting out the legal, financial and other issues and whether the initiative should be considered further.

Legal Advice from Trowers and Hamlin

6. Draft legal advice was received from Trowers and Hamlin in December 2009. Following discussions between the Director of Housing, Asst. Director of Corporate Support Services (Legal) and the Asst. Director of Finance and ICT (Accountancy), a list of queries in relation to the advice were raised, on which Trowers & Hamlin were asked to expand and clarify. The final version of the legal advice received from Trowers and Hamlin is attached as Appendix 1, which all members are encouraged to read and understand.

7. The following summarises the key points of the legal advice:

(a) The Council is legally able to form a company (referred to in this instance as a "Local Housing Company (LHC)"), which is relatively easy. The most appropriate form would be a company limited by shares, with the Council being the sole shareholder.

(b) The consent of the Department of Communities and Local Government (CLG) would be required.

(c) The directors of the LHC, who would all be Members of the Council, would have a number of important legal duties, responsibilities and liabilities, although they would not have personal responsibility for debts of the LHC, provided that they comply with the law. Directors' Liability Insurance can be obtained. The directors would also have to act in the best interests of the LHC.

(d) The directors of the LHC can be appointed and removed by the Council

(e) Directors of LHCs are not normally remunerated or paid for their work. Indeed, if Council members who are directors of the LHC are paid, it would probably disqualify them for continuing to be a Member of the Council, because they would effectively be employed, indirectly, by the Council.

(f) There could be a conflict of interests for members. This is discussed later in this report.

(g) The LHC would need to have Articles of Association, setting out how the LHC will operate. Annual returns would have to be filed with Companies House and the LHC's accounts would have to be grouped with the Council's own accounts.

(h) The LHC would not be able to recover VAT for repairs that it undertakes. It would also be liable for Corporation Tax on any surpluses it makes each year and capital gains tax on any surpluses from any future sale of properties.

(i) The mortgages provided to the LHC would need to be carefully drafted, to ensure that they do not fall foul of any state aid rules, and would be secured on the properties purchased by the LHC.

(j) There would be various agreements between the LHC and the Council, including the Loan Agreement and Charges, a Nomination Agreement and a Services Agreement.

(k) The Services Agreement would set out the services that the Council would provide to the LHC, for an agreed price.

(l) The Council, as sole shareholder, would be entitled to any surpluses made by the LHC;

(m) The key risks identified by Trowers and Hamlin are:

(i) The purchased properties could reduce in value;

(ii) The purchased properties may not be able to be let, incurring void costs, or the tenants could accrue rent arrears;

(iii) The Local Housing Allowance (similar to housing benefit) is payable to tenants direct, which could lead to increased rent arrears;

(iv) There could be expensive structural problems with the purchased properties;

(v) The Council may not have adequate security for its mortgages, if the properties' values reduce;

(vi) If the LHC becomes insolvent, the Council could be one of a number of creditors and may not be able to recover its loans – although the Council should be the first in the line of creditors; and

(vii) The Council could be considered as a "shadow director" and an aggrieved creditor could try to assert that that LHC's directors had been doing "what the Council had told them to do" – however, there should be no liability for the Council, provided that the directors never trade whilst knowingly insolvent.

(n) Although Trowers and Hamlin are aware of two London Boroughs that are also considering the establishment of LHCs, to receive and let void Council properties, they appear to differ from the Council's proposal in two ways. Firstly, it appears that neither intend to let properties at market rents (one certainly intends to let the properties at "intermediate" rents – around 80% of market rents). Secondly, neither council intends its LHC to purchase properties off the open market. For these two reasons alone, this Council's proposal appears to be unique in local government.

Overall Financial Appraisal of Proposal

8. The initial report to the Cabinet on this proposal set out some general financial information from the Asst. Director of Finance & ICT (Accountancy), which suggested that the proposal to set up an LHC should be viable. However, before the Council proceeds with such a proposal, the Cabinet needs to consider a more detailed financial appraisal to satisfy itself that the financial returns to the Council would be much greater than if it simply obtained its usual investment interest from its deposits. The Cabinet also needs to satisfy itself that it is worth the time and cost to establish and run the LHC.

9. As members will appreciate, the Finance and ICT Directorate are currently focussing their efforts on the budget process. It has therefore not been possible to attach the financial analyses with this report. However, the Asst. Director of Finance & ICT (Accountancy) will either circulate in advance of the Cabinet meeting, or table at the meeting, financial analyses to show:

(a) A summary of the options for providing capital funding to the LHC (which previously showed that the provision of an interest-only loan would be the most appropriate);

(b) An indicative business plan for the LHC (showing expenditure Vs income), to demonstrate that the LHC would be viable – with a sensitivity analysis showing the effect of variables, particularly interest rates; and

(c) A detailed financial appraisal on the financial benefits for the Council of providing interest-only mortgages secured on the properties, compared to the income that could be received form its usual investment sources - again, with sensitivity analysis showing the effect of variables, particularly interest rates.

Proposed Way Forward

10. In view of the legal advice from Trowers and Hamlin, and assuming that the financial appraisals confirm the viability of the proposed approach, it is suggested that recommendations be made to the full Council that:

(a) A policy decision be taken to agree, in principle, to undertake the initiative and to set up an LHC, subject to further detailed consideration and the actual decision to form a company (and to agree its Articles of Association) being made at a later date by the full Council; and

(b) The mechanism to establish the company and how the LHC would operate be agreed.

Establishing the Local Housing Company

11. If agreement in principle is approved by the full Council, there will be numerous detailed issues to be considered and a number of important decisions to be made in relation to the LHC and the Council. There are a number of options available to consider and decide the issues. However, whichever option is chosen, it is recommended that all documents produced by the member body that considers the detailed issues are approved by the Cabinet and, where appropriate, the full Council.

12. The options for considering the detailed issues are as follows:

Option:	**Comment:**
(a) Allocate the role to an existing Cabinet Committee	The three Cabinet Committees in existence at present are for Finance and Performance Management, North Weald Strategy and the LDF. There is currently a proposal to extend the terms of reference of the North Weald Strategy Cabinet Committee to cover a review of the Council's property portfolio. Further extension of the work of that Committee is not thought a practical proposition in the circumstances. The other Cabinet Committee also have continuing and substantial work programmes.
(b) All the issues are considered by either the Leader, Housing Portfolio Holder, Finance Portfolio Holder or another Portfolio Holder	It is felt that, in view of the number of detailed issues involved and their importance – and that the issues cut across the three portfolios referred to – it would be inappropriate for one portfolio holder to be given responsibility to consider and recommend on all of the issues.
(c) Establish a Portfolio Advisory Group	Portfolio Holder Advisory Groups may be established to assist individual portfolio holders with the carrying out of Cabinet functions. They are appointed and chaired by the Cabinet member concerned. Any political group on the Council may appoint one member to such a group. Decision making, or agreeing recommendations to the Cabinet, remain limited to the Portfolio Holder. However, the Cabinet member has discretion on whether councillors who are not part of a political group should be members. A portfolio holder advisory group was tried in the initial stages of the LDF/G&T DPD process, but was eventually replaced by the Cabinet Committee mentioned above.
(d) Establish an ad-hoc Council Committee	As the major decisions on the LHC will be made by the Council (albeit on the recommendation of the Cabinet), there is an option for the Council to establish an ad-hoc

committee. This would have to be appointed by the Council (including the Chairman and Vice Chairman) and would be subject to pro-rata rules.

As it would be an advisory committee, it may not be necessary to apply the 2nd aggregate pro-rata calculation. Membership of such a Committee could include Cabinet members, and the majority group would be entitled to a majority of committee seats. There is a link with the responsibilities of the Cabinet in regard to housing, which would need to be addressed in the members appointed.

(e) Establish a new Local Housing Company Cabinet Committee	Cabinet Committees have formal agenda and minutes and are open to any member to attend. They are by law only to comprise Cabinet members. Their terms of reference are agreed, and appointments made, by the Leader of Council.

13. It is felt that the most efficient and expeditious way to consider and recommend most of the issues for the LHC and Council would be for the Leader of Council to establish a Local Housing Company (LHC) Cabinet Committee, under the powers given to her by the Local Government and Public Involvement in Health Act 2007. The Cabinet Committee would make recommendations to the Cabinet as appropriate, although some of the more important decisions would need to be made by the full Council on the recommendation of the Cabinet. The Leader would decide the membership and whether or not any other members should be co-opted, although it should be noted that, under local government legislation, it would not be possible for them to have a vote.

Terms of Reference of the Proposed LHC Cabinet Committee

14. The proposed Terms of Reference for the LHC Cabinet Committee are set out at Appendix 2. Appended to the Terms of Reference is a proposed Work Plan for the Cabinet Committee.

Constitutional issues around the formation of the LHC Cabinet Committee

15. The Assistant to the Chief Executive has advised that, if the Council subsequently appoints members of the LHC Cabinet Committee to become directors of the LHC, from the point that they become directors, those members would have to declare an interest and not take part in any Council discussions about the LHC. However, he has further advised that they can take part in all discussions and decisions up to that point. It is for this reason that it is suggested that the actual legal incorporation of the LHC, and the appointment of the first directors, should take place after all decisions in principle on this issue have been made.

16. The Council has adopted a protocol to advise members who also serve on independent bodies, whether as appointed representatives or separately from their role as Councillor. The LHC will fall under the protocol. The protocol cautions councillors that conflicts of interest between the role of Director of the LHC and the role of Councillor may well be significant and that they should determine how they are to deal with that conflict at the outset. Prejudicial interests might be created in this situation and would be reinforced if the Directorships held by Councillors were remunerated positions. A Directorship would also have to be registered on

Councillors' public declaration of interests. Further advice to appointed members would be available to avoid any difficulties.

17. Also, on the question of remuneration, if the role of Director of the LHC is to be remunerated by means of Special Responsibility Allowance (SRA), the Council is required to seek a report from the Remuneration Panel before such payments can be made. Further legal advice would also be needed on whether such an SRA is a legal option.

Further Legal Advice

18. Trowers & Hamlin have advised that, subject to certain assumptions, their fees for establishing an LHC would be between £5,000 - £7,000. It is therefore suggested that Trowers & Hamlin's appointment is extended to include the provision of further legal advice to the Cabinet Committee on matters relating to the proposed formation and operation of the LHC, including the drafting of the LHC's Articles of Association.

19. In order to fund additional professional advice and the registration of the LHC, it is suggested that the existing £6,000 budget provision for professional advice on the LHC be increased by £5,000 to £11,000 through the District Development Fund (DDF) in 2010/11.

Appointment of Directors to the Company

20. The full Council would need, at the appropriate time, to appoint the first directors of the Local Housing Company, in the same way as Council appointments to other external bodies.

The Next Steps

21. Subject to the Cabinet agreeing this report's recommendations, the next stage will be for the full Council to consider and agree the main recommendations at its meeting on 16 February 2010. If these are agreed, the Leader would then form the proposed Cabinet Committee and decide on the number of members and the membership. Officers will then draft reports on the issues set out in the proposed Work Plan for consideration by the Cabinet Committee (taking advice from Trowers and Hamlin where necessary). Trowers and Hamlin would also be asked to attend meetings of the Cabinet Committee as appropriate, and to draft the LHC's proposed Articles of Association for consideration by the full Council.

Resource Implications:

At this stage, the recommendations would only commit the Council to a maximum of £11,000 expenditure in professional fees. However, if the proposal goes ahead as planned, the Council's commitment, in terms of loan provision to the LHC, would be significant. This would be subject to a further report to the Cabinet.

Legal and Governance Implications:

These are set out in the advice from Trowers and Hamlin, attached at Appendix 1.

Safer, Cleaner and Greener Implications:

There is none.

Consultation Undertaken:

The Local Government Association (LGA) has been consulted on the principles and has expressed an interest in being kept informed.

Background Papers:

None.

Impact Assessments:

Risk Management
The risks identified by Trowers and Hamlin are set out in Appendix 1, and are summarised in the report above.

However, there are a number of other risks, which the proposed LHC Cabinet Committee will be asked to identify, monitor and mitigate.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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CREATING A LOCAL HOUSING COMPANY

A REPORT FOR EPPING FOREST DISTRICT COUNCIL

1 Introduction

1.1 You have asked for some initial advice on the possibility of setting up a company that would purchase properties in the open market and let them to people nominated from the Council's housing register. The money for the purchase would come from the Council and the Council would see this as an investment opportunity, on the basis that at some point in the future the properties could be sold and in the meantime the income from them would exceed what it is getting by leaving the money on deposit with a bank.

1.2 In considering a project of this kind, the Council will have to consider its powers and duties and these issues are explored further below. Furthermore, the Council should consider whether there are other ways of achieving the same objectives. In order to demonstrate that the proposal is reasonable and beneficial to Council Tax payers and the community and that the Council is achieving best value, there should at least be some consideration given as to whether the Council could do this in a different way with an existing organisation rather than setting up its own company.

1.3 However on the basis that the Council sees this as primarily an investment activity and want to be able to regain the capital value of the homes when it wishes, it seems likely that setting up a vehicle for the Council itself will be the most appropriate route and the rest of this paper proceeds on that basis.

1.4 There are a number of transactions involved here. First of all setting up the Company, secondly lending the money to the Company, and thirdly the legal arrangements. The legal documentation would set out any services to be provided by the Council to the Company and ensure that the Council gets the nomination rights it wants and is able to dictate the sale of the properties at the appropriate moment. The legal agreements would also cover how the proceeds of any such sale would be paid to the Council, net of the Company's sale costs and the repayment of any outstanding loan attributable to that property, and how any other surpluses would be dealt with.

2 Setting up a Company

2.1 Setting up a private limited company (either limited by shares or by guarantee) is a simple process. It can be done in a matter of days and indeed within the day with Companies House. All that would need to be done is that the Council would need to agree a name for the company, a set of articles (since the Companies Act 2006 was finally fully implemented in October 2009 companies now have articles only rather than memorandum and articles), and decide who are to be the first directors/shareholders (or directors/members in the case of a company limited by guarantee) and apply to Companies House. We can assist with the forms as necessary.

2.2 What sort of a company do you want? Companies limited by guarantee are governed by much of the same legislation as companies limited by shares but they have members rather than shareholders and the members undertake to pay a nominal figure (usually £1) in the event of insolvency. Companies limited by guarantee tend to be not-for-profit organisations and are therefore often used to provide affordable housing where the purpose of the company is not to benefit its members. Such companies may also decide to operate as charities.

2.3 However on the basis of what we know of your plans and given the investment emphasis of this project, we suggest that while there will be tax disadvantages from choosing to be a for-profit company, if the Council wishes to be able to access the increase in capital values of these properties without problem in the future, it is important that the Company is not a charity and that the Company is in essence going to operate for profit. We therefore suggest on what we know at the moment, the Company should be set up as a company limited by shares. The Council will want to keep this issue under review as the project progresses. There are unquestionable tax costs to being non charitable: a non-charitable company will pay corporation tax on its profits and stamp duty land tax on the purchase of properties. The Council will need to continue to consider whether the price of the freedom to access the capital in future is worth the additional tax.

2.4 You could use a limited liability partnership (LLP). The principal advantage of using an LLP over a limited company is the way in which it is treated from a tax perspective. The LLP is treated for tax purposes as a traditional partnership, and members are treated as traditional partners. Therefore, unlike a limited company, it is tax transparent and any trade, profession or business carried on by an LLP with a view to profit will be treated as if the LLP were a traditional partnership. Since the tax status of the partners determines how much tax is paid, the Council's share of any profits should be corporation tax free.

An LLP requires a minimum of 2 partners so the Council could not have a 100% interest. One option (in theory at least) could be for the Council to have, say, a 99% interest and the other 1% interest could be vested in a management company set up and wholly owned by the Council.

However, it should be noted that the use of an LLP for this type of vehicle would raise a vires (powers) issue. The Council cannot set up the Company as an LLP solely for the reason of tax efficiency; there must also be a commercial reason for using an LLP. There would therefore need to be a reason why a partner is required. For this reason we prefer the company limited by shares model which does not require what could be regarded as the legal device of a partner with a nominal share.

3 Your specific questions

Taking the specific questions outlined in your brief one by one:

Statutory powers

3.1 There is regrettably still confusion about the statutory powers that councils can use to set up companies. However, despite recent case law casting doubt on the wellbeing powers, the wellbeing powers in the Local Government Act 2000 can still be used where it is clear that the purpose of the company being set up is to benefit the local community. However there is concern from the LAML case (concerning the power being used to set up a mutual insurer) that simply raising money which the Council can then use for beneficial purposes is not sufficient to use the wellbeing power. We would therefore recommend that, based on our understanding of your current plans, if the Company is not being set up directly to contribute to the wellbeing of the local community through its activities (having regard to the aims set out in the Council's community strategy) and the money which the Company raises is not being ring-fenced for a specific beneficial purpose, the Council should not rely on the wellbeing power here.

3.2 For this project, as the houses when let would count as privately let housing for the purposes of Sections 24 and 25 of the Local Government Act 1988, we would suggest that you could use the Local Government Act 1988 powers which give you wide power to provide assistance for privately let housing and assistance can include purchasing shares. The disadvantage of the Section 24/25 powers is that exercising them requires the Secretary of State's consent and while there are a number of general consents, there is no general consent for acquiring the shares in a company.

3.3 Under these initial proposals we anticipate that the Section 24/25 powers would be appropriate but this needs to be kept under review as the proposal develops. If neither wellbeing nor the Local Government Act 1988 powers turn out to be appropriate we could also review the extent to which the council's investment powers can be used. In short, we are sure that it will be possible to identify adequate powers to set up the Company. Local authorities have been setting up companies for various purposes for many years, long before the wellbeing power was invented and it is usually possible to find an appropriate power.

Consents

3.4 As said above if the 1988 Act powers are used then consent is required for the taking of the shares in the Company. The consents would come from CLG. The creation of the Homes and Communities Agency and the movement of some staff who used to deal with consents from CLG to the HCA has caused some confusion over consents. If on further reflection the structure of the Company does require consents we would suggest an early discussion with CLG to ensure that this is not an overly complex route for this size of project.

The role of the Directors and the Secretary

3.5 Directors have important legal duties in relation to any company. The fact that the Company would be a wholly owned subsidiary of the Council makes no difference to the directors' duties. The Companies Act 2006 sets out in some detail what these duties are and we can provide a full note as and when necessary. In essence the directors have to act in the best interests of the company when exercising their powers as directors and that is true even if they are appointed by the council. For a profit making company the best interests of the company means the best interests of the shareholder, which here would be the Council.

3.6 We understand that the directors of the Company may include the current holders of a particular office in the Council and, when the officeholder changes, it would be expected that the new officeholder would become a director of the Company. In deciding to appoint as directors members who also hold key Council posts, you would need to consider conflicts of interest (see paragraph 3.13). Similarly, it may be that if a director of the Company ceases to be a Councillor the expectation would also be that they are removed from the board of the Company. Although it is technically possible to insert provisions in the Company's articles dealing with these points, we would suggest that the Council this should not be enshrined contractually or constitutionally as the Council may in some circumstances want the flexibility for a particular director who ceases to be a Councillor or officeholder to remain on the board for a while longer (for example if the Company is in the middle of a transaction). However, the Company's articles could state that the Council will remove and appoint directors from time to time and the Council could have a statement of intention that the Company's board would comprise specific officeholders and a number of other Councillors. In this way the Council's intentions would be set out but it would have the flexibility to make case-by-case assessments.

3.7 As mentioned above, the Company's articles could specify that the Council may appoint and remove directors at any time. The appointment or removal would be stated to take effect upon the Council giving written notice to the Company. This constitutional power would allow the Council to appoint new directors when there is a vacancy and to remove a director for any reason. The articles could also provide for other circumstances where a director would automatically cease to hold office – for example, bankruptcy or disqualification as a person who is able to be a director at law. There would be no cost implications associated with the appointment and removal of board members as we envisage that they would be voluntary board members (see below) with no employment rights.

3.8 The issue of remuneration of directors raises a number of issues as this would involve paying elected members of the Council. Section 80 of the Local Government Act 1972 disqualifies a person from local authority election and membership if that person "holds any paid office or employment (.….) appointments or elections to which are or may be made or confirmed by the local authority". This would need to be considered in detail and it would be a matter for the individual councillors on the board to decide what to do. Given that if Section 80 were deemed to apply then he/she would be automatically disqualified from being a member, we would encourage such individuals to obtain their own advice, presumably from the Council Solicitor. It would of course be possible for board members to be reimbursed in respect of properly incurred expenses.

3.9 Having discussed the issues regarding remuneration, in our experience LHCs of this size have unpaid boards. The exception may be where an LHC appoints a specialist for the purpose of running the company. To take another comparator, even boards of substantially larger wholly Council-owned companies such as ALMOs are mostly unpaid.

3.10 In respect of the term of office for directors of the Company, it is technically possible to set limits in the Company's articles for the minimum and maximum terms of office (subject to the Council's right to remove a director at an earlier point and the automatic cessation provisions) but, again to maintain the Council's flexibility, we would suggest that this should not be enshrined in the articles. However, at the very least the articles could provide that directors would be appointed for an initial set term of, say, three years in order that the Council will consider the board composition from time to time.

3.11 It is important that any member or officer agreeing to be a director of the company fully understands that they will have real liabilities and responsibilities. The point of limited liability companies is to limit the responsibilities of directors, and so long as they act within their powers they have no personal liability for the debts of the company. Directors can however have personal liability if they trade while knowingly insolvent and in relation to certain health and safety risks.

3.12 There is now no legal requirement to have a company secretary. However most of our clients find some kind of company secretarial function is useful to ensure the good governance of a company. It is for the directors to set and agree the duties of the company secretary but they generally relate to ensuring annual returns are properly filed, board meetings are properly called and that the articles are complied with. The company secretary can be someone who is not an employee of the Council or the Company or they could be a Council employee.

Conflicts of interest for councillors

3.13 There is clearly a potential for conflicts of interest and councillors will have to have regard to your own code of conduct. Any councillor who is also a director is likely to have to declare their interest and not participate in any meetings which concern the company. We would therefore strongly suggest that in selecting members to be directors the Council avoids members who are likely to need to want to make key decisions about the Company.

Indemnities

3.14 It would be open to the Company to purchase its own insurance for director's liabilities. Equally the Council may be able to offer suitable indemnities under the Local Authorities (Indemnities for members and officers) Order 2004, subject to the restrictions in that Order. These restrictions prohibit the provision of an indemnity in relation to any act or omission by a member or officer which constitutes a criminal offence or is the result of fraud, other deliberate wrongdoing or recklessness. An indemnity may be provided in relation to the defence of any criminal proceedings brought against the member or officer but if they are convicted and that conviction is not overturned following any appeal, the member or officer in question must reimburse the Council (or insurer) for sums expended in relation to those proceedings. Further, an indemnity is not permitted in relation to the making by the indemnified member or officer of any claim relating to the alleged defamation of that member or officer, although an indemnity may be provided in respect of the defence by a member or officer of any defamation allegation made against him.

Documentation

3.15 As said above, what is needed by way of Company documentation is a set of articles. Normal practice nowadays is to have very general articles giving wide powers and if this is a for-profit company the objects would also be general. Clearly if you wanted the Company to be a not-for-profit or indeed a charity then the articles would need to be restricted to demonstrate charitable objects or not-for-profit objects and to restrict the distribution of profit to the shareholder or member which in this case would be the Council. As mentioned in paragraph 1.4 above, the transactions involved in this project would also require an agreement to be put in place between the Council and the Company setting out the rights and obligations of each party.

Requirements to hold board meetings and AGMs

3.16 There is no longer any legal requirement to have annual general meetings and so long as the articles do not require annual general meetings there do not need to be any. For a very small company of this kind, I would suggest you do not need to have an AGM. You do need to have board meetings. How often they are and how they are held is a decision for the directors and normally the articles would prescribe a minimum number.

Filing requirements

3.17 The Company would have to file annual returns with Companies House and failure to file annual returns gives rise to fines and ultimately to the Company being struck off the register at which point its property vests in the Treasury Solicitor. It is vitally important if a company is set up that everyone understands this and proper arrangements are made for the filing of annual returns. This raises a question not in your list which is where should the registered office of the Company be. It is very important that the registered office is an office where people will understand that formal letters delivered for the Company there need to be dealt with promptly. This will relate not just to Companies House letters but also to HMRC and potentially to notices received from tenants. The Council's offices could be the registered office of the Company and that is true for many companies set up by Councils. If it is going to be run out of the Council's offices then it is important that proper arrangements are put in place for the delivery of post to the appropriate person.

Audit of accounts

3.18 The extent to which audited accounts are required will depend upon how many homes and the level of income of the Company as there are less complex audit requirements for smaller companies. PKF are better placed to advise on this than we are. As a wholly owned subsidiary of the Council, the Company's accounts would need to be grouped for certain purposes with the Council's accounts. It is no longer true that any borrowing by the Company is counted as Council borrowing but as a subsidiary it is still true that the accounts of the Company and the Council have to be grouped together.

Statutory requirements in respect of managing the Company and finances

3.19 As outlined above the directors have legal duties to act in the best interests of the shareholder which here would be the Council, as well as a range of other legal duties and clearly it would be vitally important that directors manage the finances of the Company so as to achieve profit for the shareholders. Equally the directors can delegate all these duties to appropriate managing agents – but please note that delegation does not remove the legal responsibility.

The costs of setting up a Company and its running expenses

3.20 The actual set up itself, if it is easy to agree a set of articles, need not cost more than £2,000 or £3,000. The actual fee for registering the new Company with Companies House is £50. In terms of running expenses and assuming the directors are not being paid for being directors, then as the Company would be a landlord it will need proper insurances as a company and not just directors liability insurance, you will need to look at personal liability, public liability and so forth. Whoever deals with insurance at the Council should be able to give a view of likely costs for this. With a company this small we assume it will not employ anyone at all but someone is going to have to supply company secretarial services, organise meetings etc. This may well be done from within the Council but you would expect the Council to make a charge for these services. The directors will need to meet from time to time and there are costs to having the meeting room, papers for the meeting and so forth. It is extremely difficult to give an estimate but it would be possible to build up a budget of likely costs over a year and simply putting a finger in the air one would expect it to be difficult to ensure that the issues above were covered for less than say £5,000 a year but that is a very rough estimate.

Tax advice

3.21 In terms of VAT liability, the Company will not be able to recover VAT for repairs in the way that the Council does. The Council's ability to recover VAT depends on special rules that apply to councils. Normal landlords pay VAT on repairs that are carried out to their houses. They cannot recover the VAT because renting out properties is an exempt activity for VAT purposes and therefore there is no output VAT to set the input VAT against. You may be aware of various schemes that exist within the local authority sector that enable landlords working with councils to access the Council's ability to recover VAT for repairs. However these schemes all assume that the Council owns the houses in the first place and is transferring them over to a company. If as you are intending to do the homes are being purchased on the open market it is not likely to be possible to recover the VAT and the VAT on repairs is a real cost. Clearly the extent to which this is an issue depends on the kinds of property you are intending to buy. If the Company buys good quality property then day to day running repairs would not normally be huge.

3.22 We have been asked to confirm whether Council Tax would be payable by the Council whilst any of the purchased properties are empty. Our understanding of the current proposal is that the Company, rather than the Council, would purchase the properties and it would therefore be the Company, rather than the Council, as the owner of the property who may be liable to pay Council Tax. There are some potential exemptions for unoccupied properties but these would need to be looked at carefully as their applicability will depend upon factors such as the state of the property and whether it is furnished. Furthermore some of the exemptions only apply for a limited time, after which, if the property still remains unoccupied Council Tax would be payable by the Company.

3.23 In terms of other taxes the key issue here is the nature of the Company. Assuming a for-profit company limited by shares then the Company will be liable for corporation tax on any surpluses it makes on each year in the way that any private landlord would be and liable for capital gains tax when it disposes of properties in say 5 years' time. The interest that the company pays the Council for the money lent to it should be capable of being offset against the surpluses. However, with the Council as sole shareholder the transfer pricing rules will need to be borne in mind. On the assumption that there is a straightforward loan agreement between the Council and the Company (with the Council's right to dictate the sale of the properties etc provided for elsewhere) and the loan is used exclusively for the purpose of the Company's business, there is a risk that the transfer pricing rules would apply to limit the interest deduction offset against the Company's surpluses for corporation tax purposes to the amount of interest which the Company would have paid to an independent lender.

3.24 This means that the amount of interest bearing debt which the Company can claim as deductible is limited to the amount which a third party would lend (e.g. possibly only 60% loan to value) and, in addition, the rate of interest must not be higher than would have been paid on arms' length terms. As an example, if a bank would lend £50 at 4% per annum then if the Council lent £60 at 4% then the interest payable on the extra £10 would not be deductible. Similarly if the interest charged was 5% then the interest deduction allowed would only be 4% on £50. The terms of the debt (e.g. repayment terms and security) should also be arms length to prevent a restriction on interest deductibility. If a third party would not lend at all, then the transfer pricing rules would stop any deduction from being available. The Company would need to consider its position and have evidence to justify its tax deductions. There are some exceptions to the transfer pricing rules, so it is possible that they would not apply and we could advise further if necessary, but the starting point is to assume that they are applicable.

3.25 The Company would pay Stamp Duty Land Tax on the purchase of the properties assuming they are not below the Stamp Duty Land Tax threshold which is currently £125,000 for residential property and £150,000 for non-residential property (where six or more properties are being bought from the same vendor or persons connected with that vendor at the same time this is classified as non-residential).

3.26 The activities of the Company would not affect the Council's own VAT position.

4 Key terms of the loans

4.1 A key issue on the loans would be to ensure that you are not caught by any state aid rules. State aid occurs when any public body gives subsidy to another body. Whether there is subsidy or not depends on the rate at which the loans are made. There is a set of reference rates published by the European Commission from time to time and so long as you charge more than the reference rates, and we suspect the Council would want to, there is no issue of state aid. The latest reference rates can be found on the European Commission's website at http://ec.europa.eu/competition/state_aid/legislation/reference.html. As at the date of this paper the current UK reference rate is 1.16% but this is subject to weightings based on the credit rating of the company and collateral offered, as described in the Commission Notice 2008/C 14/02 which is also available at the above website address.

4.2 If for some reason you are charging less than the relevant reference rate then there is an exemption for support for social housing and assuming that you are letting to people off the waiting list it may be that this would be social housing. However from the general nature of the scheme we would suggest that you will come outside state aid by charging a market rate of interest which is at or higher than European Commission reference rates and therefore no issue of state aid would arise. There is no upper limit in respect of the interest rate which the Council may charge the Company but obviously the directors of the Company would need to be satisfied that it can meet its repayment obligations, including repayment of interest, and there may be corporation tax implications due to the application of the transfer pricing rules (described above), which will need to be borne in mind.

4.3 In terms of the nature of the loan generally, in order for the Company to be able to function properly, it will need to be a term loan i.e. not the type of overdraft facility which the Council can withdraw at any time or demand repayment at any time. You would effectively lend the money out on a mortgage secured on the properties with terms very similar to those that a high street lender would expect to have. You would expect the security to restrict the use of the properties, to ensure they cannot be sold without you knowing about it and to restrict lettings to ones which the Council approves of. Normal terms of loans also require the borrower i.e. the Company to insure the properties and to keep them in a good state of repair. We can assist with the preparation of the loan documentation in due course.

4.4 In terms of interest payments and interest setting you need to consider whether the interest would be fixed or variable and if variable by reference to what rates. You also need to consider whether you would let the Company repay the Council loan and refinance with someone else. It seems unlikely they would want to and indeed for so long as the Council completely controls the Company, it is not very likely anyone would want to lend to it but it is something you would want to be clear about.

5 **Initial start up costs**

5.1 Councils often set up companies like this with small loans and in effect sponsor the set up to get it up and running. The company would not trade until it had the properties and up until that point all liabilities would stay with the Council. If the Council wants to give the Company a grant for the company to meet its own set up costs the power is again Section 24 of the Local Government Act 1988 and it would need consent.

6 **Key risks**

6.1 One of the major risks is that the properties that are bought do not increase in value in the way that members hope they will. If that happens the capital gains that the Council is hoping for would not be there. Other risks are that the Company is unable to let properties, there are long void periods or it suffers from a limited rental flow.

6.2 One point which is important to note is that because the Company will be letting these properties it would let them on assured shortholds (we would assume). As tenants of a private landlord, tenants who cannot afford to pay the rent themselves will be on local housing allowance not on housing benefit. The impact of this under current rules is that the local housing allowance is paid direct to the tenants and there are only very limited circumstances where it can be paid direct to the landlord. This is leading in some places to higher levels of rent arrears. The business model for the Company needs to make prudent risk assessments in terms of voids and bad debts to ensure that the assumptions being made about what income the Council might be able to obtain in return for its loan is realistic.

6.3 Clearly all properties purchased would need to be surveyed in the normal way to ensure there are no unlikely costs that have not been included in the business model.

6.4 If the value of the properties goes down then the Council may no longer have adequate security for their money. However even if the value of the properties go down the Council might still be receiving significant income from the properties if they are properly rented out

7 **The Council's responsibilities to creditors of the Company**

7.1 No parent of a company, as the Council would be here, is automatically liable for the debts of its subsidiary. In principle if the Company became insolvent it could be wound up as an insolvent company and the Council would not be liable to its creditors. Clearly in those circumstances the Council might also not recover its loan, though assuming that you take security over the properties for your loans you would be first in line for any money that is there. However there are significant issues of reputational risk if the Council just let the Company go down particularly if it owed money, perhaps to small local contractors.

7.2 Secondly to the extent that the Council tells the Company what to do, it is possible for the Council to be considered to be a shadow director and an aggrieved creditor might try to assert that the directors of the Company had simply been doing what the Council told them to do and therefore the Council should be liable as a director. We cannot advise on the likelihood of success if a claim of this type was made as it will depend on factors such as how much the Council becomes involved in the day-to-day management of the

Company and the extent to which the directors are permitted to perform their duties without interference. However, the more the subsidiary appears to be a shell, the greater the likelihood of the Council being found to be a shadow director. Of course, the Council is bound to want to exercise a certain level of control over the activities of the Company. Overall, the Council should try to restrict its interference so far as possible but should not feel that it is unable to carry out the standard functions of a parent. It will not become a shadow director simply through passing legitimate resolutions of its own which have implications for the Company, or by including in group accounts or other publications statements of policy applicable to the Company.

7.3 The Council can help to minimise the risk of being considered a shadow director by ensuring that it appoints people with appropriate experience to the Company's board and by putting in place appropriate reporting mechanisms back to the Council. This should help enable the Council to be comfortable with the Company's directors managing the day-to-day affairs of the company and to limit its involvement in the running of the Company to dealing with problems identified through the reporting mechanisms. In terms of personal liability of directors and hence liability of a shadow director there should still be no liability so long as the directors are careful never to trade while knowingly insolvent, to take proper advice and to act within the scope of their articles and not otherwise.

8 **Administration or receivership**

8.1 If the Company goes into administration or receivership again so long as the Council has taken security for its loans, the Council would be in the driving seat in terms of what happens.

9 **The agreements between the Council and the Company**

9.1 The first and most important agreement would be the Loan Agreement and Charge over the properties and these have been outlined above. Secondly there would be a Nomination Agreement to ensure that the properties are let to people that you choose. Thirdly there may be agreements for services.

9.2 You have asked about restrictions on municipal trading which might restrict the Council's ability to provide services to the Company. This Company would not fall within any of the organisations listed under the Local Authority (Goods and Services) Act 1970 and therefore this power could not be used. The ability of all councils to trade and to charge for services under the Local Government Act 2003 has been widened, and it is likely we will be able to pick our way through the statutory provisions to enable charging for services. Further if you decide to use wellbeing powers to establish the company there are further powers to provide services linked to the wellbeing power.

9.3 We have dealt with state aid above. In terms of EU procurement, we suspect the contracts that the Company would be letting are likely to be below the EU threshold for service contracts. If the Company were ever to let a contract above the EU threshold, which is about £135,000 for the total value of the contract (not per year), then if the Company is entirely funded through a loan from a local authority it is likely to fall within the definition of a contracting authority and would have to follow EU procurement processes to let the contract. It should be noted that under the EU procurement rules there is no exemption from the requirement to follow EU procurement processes in the case of the Company receiving services from the Council. Although an exemption, known as the "Teckal exemption", may apply in respect of any services provided by a subsidiary to its parent (depending on the level of control exercised by the parent over the subsidiary), the Teckal exemption does not apply in reverse (i.e. it does not apply to services provided by the parent to the subsidiary).

10 **How does the Council get the profits from the business**

10.1 If this Company is set up as a company limited shares then as the sole shareholder the Council would be entitled to all the profits from the business as the Company declares dividends from time to time and if the Company were to be wound up solvently at some point in the future then the Council would be entitled to the entire benefit of the assets and profits of the Company (subject of course to any creditors and tax having been paid). The process for solvent winding up involves various resolutions being passed by directors. The key issue is always ensuring that all liabilities have properly been accounted for and indeed paid before any assets are distributed and PKF would always be able to assist with that. If you were to go down a not-for-profit route, if the Company was not-for-profit but also not charitable it would be possible to enter into an agreement with the Company whereby the Council could require houses to be sold and the profits made given to the Council or shared with the Council.

10.2 If the Company were a charity this would be much more difficult to achieve. Any profits made by the charity would need to be used for charitable purposes and it would be much more difficult to enable them simply to be returned to the Council. The Council might be able for example to structure its loans so that rather than simply taking interest they had an equity interest loan which would give the Council a share in increased value of the properties as properties are sold. But if the Council decided that it wanted the Company to be a charity it would need to be aware first that the Company would need significant operational independence from the Council in order to achieve charitable status and that apart from making arrangements for equity loans or such like, any profits generated within the charity would have to be retained for proper charitable purposes and not simply paid to the Council. We do often see public bodies wanting to set up charities because they are unhappy about the tax liability of the Company if it is not a charity but then wanting to retain all of the profits in a way that it is exceptionally difficult to achieve with the charity.

11 **General information**

11.1 We have been asked to clarify whether the Council could impose conditions on the Company as to the rent levels it may charge tenants to restrict them to Local Housing Allowance rates. Such a condition could be imposed on the Company through a contractual provision in the agreement between the Council and the Company.

11.2 You have also asked whether we know of any other local authorities that may be undertaking a similar project. As you will know from the housing press, London Borough of Camden have considered a wholly-owned subsidiary model which would receive void properties from the Council for letting by the subsidiary and we are currently working with another London borough on the setting up of a wholly-owned subsidiary to receive properties from the Council to be let by the subsidiary at intermediate rent levels. We have also assisted a number of ALMOs on the setting up of subsidiaries to carry out new build, including Your Homes Newcastle and Rochdale Borough Wide Housing. Although these projects are in some respects different in size and purpose from the Council's proposals, they do raise some of the same issues regarding consents and company set-up.

11.3 With regard to problems faced by other authorities, we would advise that it is very important to ensure that the proposals work financially and to keep retesting this as the proposals develop.

11.4 You have also asked whether we have any information which would suggest that there is any effect of the Council distorting the local renting market, contrary to state aid rules. So far as the Council lending money to the company at commercial rates is concerned then, as discussed above, there is no issue of state aid. As the proposal develops we should be happy to review state aid considerations further.

12 Conclusion

We would welcome the opportunity to explore the issues outlined above in a meeting. We suggest that following such a meeting we could focus the advice on the approach that the Council wants to take. We can then assist with any or all of the documents needed as required. The key issue will always be to ensure that the Council is clear about its aims for the project and that everyone bears those key aims in mind as the project progresses.

Trowers & Hamlins LLP

January 2010

Local Housing Company Cabinet Committee

PROPOSED TERMS OF REFERENCE

1. To consider all issues relating to the formation and operation of a Local Housing Company (LHC), that would receive mortgages from the Council to purchase properties from the open market, to let on assured tenancies at market rents to nominees from the Council's Housing Register ("the Initiative"), including:

   (a) The proposed Articles of Association for the LHC;
   (b) The options available for the key terms of loan (mortgage) agreements between the LHC and the Council, including proposals on the maximum amount of mortgages to be provided and how these should be funded by the Council;
   (c) The detailed arrangements and key terms for a Services Agreement between the LHC and the Council, and the services to be procured from external providers, for the Initiative;
   (d) The key terms for a Nominations Agreement between the LHC and the Council for the Initiative
   (e) The proposed policy on the purchasing and letting of properties for the Initiative;
   (f) Any tax implications for the LHC and/or Council in respect of the Initiative;
   (g) The identification, recording, monitoring and mitigation of the key risks of the Initiative for both the Council and the LHC; and
   (h) The detailed issues set out in the attached Work Plan.

2. To make recommendations to the Cabinet on all required decisions, including (with (d)-(f) being reserved to the full Council):

   (a) The provision and key terms of the proposed mortgages to the LHC;
   (b) The terms of the proposed Services Agreement with the LHC;
   (c) The terms of the proposed Nominations Agreement with the LHC;
   (d) The proposed Articles of Association of the LHC;
   (e) The total and/or maximum amount of mortgages that should be granted to the LHC and how these should be funded by the Council; and
   (f) How the Council should monitor and scrutinise the performance and finances of the LHC, following consultation with the Overview and Scrutiny Committee.

January 2010

Work Plan for the Local Housing Company (LHC) Cabinet Committee

(1) Setting up of the Local Housing Company

(a) Consideration of:

- The Council's statutory powers to establish a Local Housing Company (LHC)
- The consents required by the Council
- The type of company to be formed (i.e. Company limited by shares – based on T&H's advice)
- The role/duties of directors – Trowers and Hamlin's note of duties to be attached
- Directors' liabilities, including whether the Council should obtain liability insurance/indemnities for directors and the type
- EFDC's powers/ability to appoint/remove directors
- The legal requirements for the LHC to file documents and associated fines
- The legal requirement to group the LHC's accounts with EFDC's accounts
- EFDC's responsibilities to creditors (if any)
- The budget provision for set up, including:
    - Estimate of set-up costs
    - Estimate of initial running costs
    - Consideration of whether EFDC should provide either a small loan or a grant

(b) Recommendations to be made to the Cabinet on:

- How EFDC should monitor and scrutinise the performance and the finances of the LHC, following consideration by the Overview and Scrutiny Committee
- Whether the LHC should actually be formed

(2) Articles of Association

(a) Consideration of:

- The name of the LHC – Epping Forest Homes ?
- Issues relating to the appointment of Directors, including:
    - No. of directors
    - Potential conflicts of interests for directors
    - Whether or not a Company Secretary should be appointed
    - Whether or not there should be any remuneration (or EFDC special responsibility allowance) for directors
    - How the Chairman of the LHC should be appointed/elected
- Whether or not the LHC should pay dividends
- Where the Registered Address should be
- Whether or not the LHC should hold AGMs and the minimum number of board meetings per year
- Who should be invited to act as auditors to the LHC

(b) Recommendation to be made to the Cabinet:

- That the Council should actually set up the LHC
- On the final version of the Articles of Association

(3) Loan (Mortgage) Agreement

(a) Consideration of:

- The options available and the preferred option for the mortgage agreement(s), based on advice/appraisal from the Director of Finance & ICT
- When/how cash should be (flexibly) drawn down
- Whether the mortgage should be on a repayment or interest-only basis
- The key terms of the mortgage, including :
  - Whether to have a term loan – mortgage secured on properties
  - How interest should be charged, including consideration of:
    - Whether the rate should be fixed or variable
    - How the interest rate should be set
    - State Aid Rules
  - What restrictions (if any) should be made on the use of properties
  - Insurance requirements

(b) Recommendations to be made to the Cabinet:

- That the Council provides mortgage(s) to the LHC
- On the key terms of the Mortgage(s)
- On what should be the total/maximum amount of mortgages and how these should be funded by EFDC ?

(4) Services Agreement(s) with the Council

(a) Consideration of what services should be provided to the LHC by EFDC, including:

- Housing management / repairs / asset management – Housing Directorate ?
- Company secretariat – Democratic services ?
- Accountancy/financial management – Finance & ICT ?
- IT – Finance & ICT ?
- Audit – Internal Audit (if not external) ?
- Meeting rooms – Corporate Support Services ?
- Legal advice – Corporate Support Services, Trowers & Hamlin or another firm?
- Conveyancing – Corporate Support Services or a local solicitors ?
- Insurance – Finance & ICT ?
- Fee structure for services

(b) Recommendations to be made to the Cabinet:

- That the Council enters into a Services Agreement with the LHC
- On the key terms of the Services Agreement with the LHC

(5) Services from other organisations:

Consideration of:

- Whether or not services for the LHC should be sought from external agencies for the following, if not EFDC:
  - Accounts
  - Estate agents
  - Audit
  - Insurance

(6) Nominations Agreement

(a) Consideration of:

- The level of nominations to EFDC
- The existing District-wide agreement with Preferred RSL Partners to be used as a basis
- Whether properties should be advertised through choice based lettings ?

(b) Recommendations to be made to the Cabinet:

- That the Council enters into a Nominations Agreement with the LHC
- On the key terms of the Nominations Agreement

(7) Purchase/Renting of Properties

Consideration of:

- Any preference of property age– New/relatively new or existing
- The type of property surveys required
- Any preference of property type - Houses or flats (note need for service charges for flats)
- Any preferred location of purchased properties
- Any maximum purchase price
- Who should negotiate and agree the purchase price
- Whether properties should be furnished or unfurnished
- Rent levels, including:
  - Whether rent should be charged monthly in arrears to assist tenants in receipt of Local Housing Allowance
  - Whether rents should be set no higher than Local Housing Allowance
  - Whether damage deposits should be charged – If so, which national insurance scheme should be used
- Whether references should be obtained for potential tenants
- The process for eventual sale of properties, including:
  - Whether that should be a policy
  - Whether there is any role for /agreement from EFDC
  - What should happen to the capital receipt

(8) Financial & Tax implications

Consideration of:

- The tax implications for both EFDC and the LHC, including corporation tax:
- Whether there should be any dividends paid
- Issues relating to capital gains tax
- How the the LHC's accounts should be approved – especially bearing in mind that they must form a part of EFDC's accounts

(9) Key risks (and mitigations)

Consideration of the key risks, including the following:

- Liabilities of directors
- What if there is a lack of interest amongst members to be a director
- Implications of directors being negligent or irresponsible
- What if the mortgage interest becomes less than EFDC's usual investment interest
- What if property values decrease

- What if the LHC's expenditure is greater than income, including cash flow and insolvency issues
- What if the LHC's rental income is less than the mortgage repayments
- EFDC's liability for losses
- Estimation of loss of rental income – for voids and bad debts
- What is the effect of tenants in receipt of the Local Housing Allowance – can this be mitigated ?

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Report to the Cabinet

Report reference: ***C-085-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Legal and Estates**

Subject: **Proposed Purchase of long leasehold interest in 148 Brooker Road, Waltham Abbey**

Responsible Officer: **Chris Pasterfield (01992 564124).**

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

Recommendations/Decisions Required:

(1) To purchase the long leasehold interest in 148 Brooker Road for a sum not exceeding £220,000 from capital as an investment and an addition the Council's property portfolio; and

(2) To let the property to the Council's Museum Service for storage the Museum Collection and ancillary services which would include office accommodation for Country Care and storage for Community and Culture Services.

Executive Summary:

This report asks for funds to purchase from the receivers, KPMG LLP, the long leasehold interest of 148 Brooker Road which will be added to the Council's existing freehold interest. The property will then be available to let on the open market at a full rack rent estimated at £34,000 per annum providing a rate of return estimated to be in the region of 8-10%.

It also provides the opportunity to let the property to existing Council services such as the Museum which will provide efficient accommodation, additional services such as a research area and more display area in the museum and would achieve strategic property aims in vacating space in the Langston Road and Town Mead depots which are potential redevelopment sites.

Reasons for Proposed Decision:

To achieve a high rate of return for Council capital funds, to acquire an interest in property that is complimentary to the Council's existing portfolio and to provide accommodation for Council services that are currently located elsewhere and are paying rent to third parties or are sites that when vacated will have redevelopment potential.

Other Options for Action:

Not to purchase the property and for the relocation of existing Council services to be delayed until other suitable sites can be identified.

Report:

1. The Council are the freehold owners of 148 Brooker Road, Waltham Abbey and there is currently a lease for 80 years from 1 January 1974 at a passing rent of £6,600 per annum to

PNG Enfield Ltd who are currently in receivership as notified to the Council by KPMG LLP in a letter dated 20 July 2009. The lease provides for 7 year rent reviews with the current review on 1 January 2010 outstanding.

2. The receivers have been marketing the long leasehold interest and an offer by the Council subject to contract and Cabinet approval of £210,000 was rejected in favour of another bid in October 2009. It seems that this proposed purchaser has not proceeded quickly enough and the receiver has offered the property to the Council for £210,000 plus waiving the arrears of rent which total £6,600 to 31 December 2009(£8,250 to 31 March 2010). This is subject to contract, subject to Cabinet approval and subject to a satisfactory structural report which is being provided through the Council's Facilities Management Section.

3. The property has a floor area of 4,577 sq ft and it is estimated would have a current rental value in the region of £34,000 per annum (£7.50 per sq ft). Adjoining rents have been in the region of £9.03 per sq ft but it is thought that this would not be attainable in the current market. A recent letting of Unit 5 at 90 Brooker Road which is modern space had a stepped rent over the first five years equating to an average of £6.70 per sq ft as an incentive to a new letting. The rent in years 4 and 5 equated to £7.74 per sq ft.

4. It is felt that the existing building could be split in two which would provide a wider market more suitable to small businesses for letting. A freehold building(s) in this area would also be a lot more attractive to investors or owner occupiers than the existing long leasehold interest.

5. It is estimated that the current value of the long leasehold interest is £225,000 at a yield of 10% over 44 years assuming a rent of £7.50 per sq ft.

6. The Museum Service have indicated that 148 Brooker Road would provide efficient accommodation for consolidation of the storage of the Museum Collection which is currently stored at Langston Road Depot, Gun Powder Mills and at the Museum itself. This would provide additional temporary exhibition display space at the Museum and the potential for an on site education room. The accommodation at 148 Brooker Road, would also provide a research space where interested members of the public would be able to book an appointment to inspect/research items that are held in the Collection, but are not currently accessible.

7. In addition 148 Brooker Road would realise the opportunity to relocate the Council's Country Care Team and respective equipment/storage from Town Mead Depot along with Community Services equipment currently stored at Town Mead.

8. The Museum currently has the following storage areas with real and notional rents:

- Langston Road – 3 separate units totalling £26,250 per annum; and
- Gunpowder Mills – storage and workshop space totalling £6,000 per annum.

9. Countrycare currently rent office and storage space at Town Mead Depot totalling £8,100 per annum.

10. At the present time units 141-144 Brooker Road are vacant having had their leases surrendered by the receiver. The units are not currently being marketed as they are viewed as a potential relocation building for the Museum and other services currently occupying space elsewhere but mainly at Langston Road. The units could be split into two single and a double unit but currently total 4,098 sq ft which it is estimated could be let for £30-32,000 per annum.

Resource Implications:

The estimated cost of acquiring the long leasehold interest in 148 Brooker Road is £220,000.

The property would be managed by in house resources for estates, financial and maintenance purposes.

If the property is used for Museum and associated purposes then this would be managed by existing in house resources as part of Community and Customer Relations.

Legal and Governance Implications:

Section 123 Local Government Act 1972 – best consideration for the land and property assets.

Safer, Cleaner and Greener Implications:

The current Museum store at Langston Road depot is far from ideal for a number of Health and Safety reasons, including unsafe access to the store due to parking of waste vehicles on the site, lone worker issues for the Collections Manager and general large vehicle movements on the site.

Consultation Undertaken:

Museum Services and Finance and ICT Directorate.

Background Papers:

Please see attached plan.

Impact Assessments:

Risk Management
Under Risk 9 on the Corporate Risk Register the Council are obliged to provide adequate depot accommodation for all contracted users and this property would satisfy this aim in respect of the Museum Services as existing accommodation is under pressure as mentioned in Safer, Cleaner Greener Implications above.

Equalities & Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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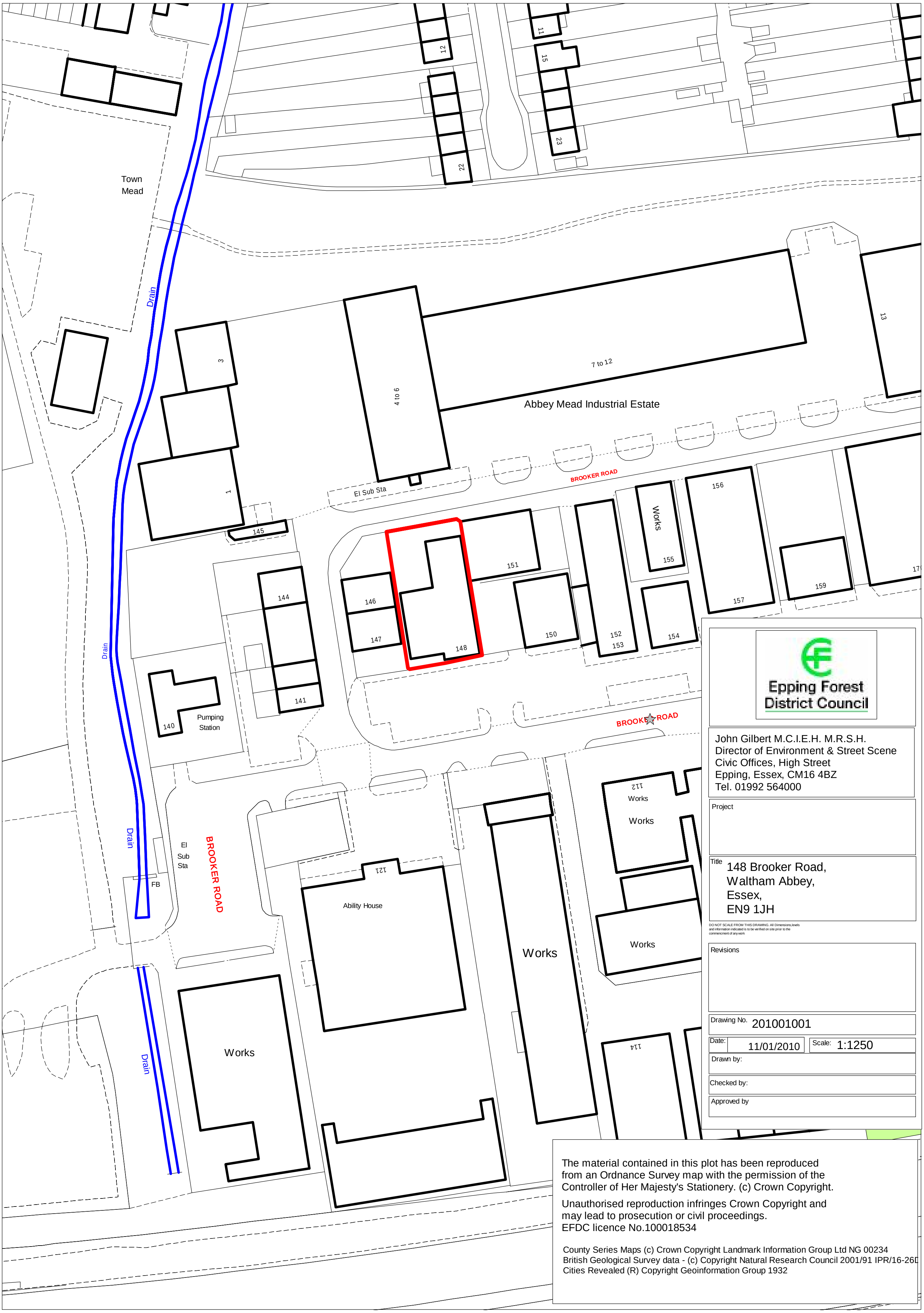

Epping Forest District Council

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Project

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Essex,
EN9 1JH

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Report to the Cabinet

Report reference: ***C-086-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Leader of the Council**

Subject: **Calendar of Council Meetings 2010/11**

Responsible Officer: **Simon Hill** **(01992 564249).**

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

Decisions Required:

(1) That, subject to (2) below, the draft Calendar of Council Meetings for the period May 2010 to May 2011 attached at Appendix 1 be recommended to the Council for adoption; and

(2) That consideration be given to the feasibility of holding the meetings of the Finance & Performance Management Cabinet Committee & Scrutiny Panel in January 2011 on the same evening when considering the prospective budget for 2011/12.

Executive Summary:

The Cabinet considers the calendar of meetings each year prior to final approval by the Council. The calendar has developed over time to meet the changing needs of the authority and, where possible, meetings of a committee have been standardised on a particular night of the week.

At the request of the Cabinet, Democratic Services have considered ways to reduce the number of member meetings being held by the Council. The proposed calendar shows a reduction of 5.4% in the number of member meetings for 2010/11, which would generate a total projected saving of £8,910.00.

The draft calendar keeps the current format of three area based Planning Sub-Committees. The number of Council meetings remains the same but the number of Cabinet meetings is reduced by one with meetings held every six weeks. For Overview and Scrutiny, there is a reduction of seven meetings in total, one for the main Committee and six for the Scrutiny Panels. The timing of the main Committee is changed so that it is held approximately one week before the Cabinet.

Licensing Sub-Committee meetings are moved from Thursday mornings to Tuesday mornings to allow for greater availability of Democratic Services Officers. There are no changes currently planned for the Standards Committee, Local Councils' Liaison Committee, the Housing Appeals and Review Panel, the Audit & Governance Committee and the Joint Consultative Committee, although there is the potential to reduce the number of meetings for the latter two Committees.

Reasons for Proposed Decision:

Item for action within the Democratic Services Business Plan for 2009/10 & 2010/11.

Review of Member meetings as requested by the Joint Member & Officer 2010/11 Budget Working Group, to generate savings for the 2010/11 budget.

Other Options for Action:

Individual frequencies of meetings could be varied. In practice additional meetings are added as and when issues dictate. Similarly meetings can be cancelled if there is a lack of business.

Report:

Background

1. Within the current Democratic Services Business Plan, item 16 of the Action Plan for 2009/10 is to review the Calendar of Council Meetings, and in particular their frequency. At the first meeting of the Joint Officer & Member 2010/11 Budget Working Party, concern was also expressed at the number of member meetings that were taking place. Democratic Services was requested to review the Calendar of Council Meetings for 2010/11 and in particular to investigate ways of reducing the number of member meetings.

2. Figures are not available for the cost of each individual meeting per se. Accountancy hold figures for the costs of maintaining the Council Chamber and Committee Rooms, which would have to be borne by the Council, regardless of whether the rooms were used or not. The convention is used that 12% of the total costs of each room is energy usage during meetings and this has been factored into the projected savings. Further projected savings have been calculated in respect of Officer Committee Allowances, Refreshments, Agenda Printing Costs and Member Expenses.

3. Each section below outlines the changes in more detail for each particular category of meeting. Some of the changes are for operational reasons and are cost neutral.

Executive Meetings

4. It is currently not proposed to reduce the number of times that the full Council meets. A number of these meetings are required to agree the Budget, or the Accounts, or the composition of Committees at the Annual Council. However, the timing of some the meetings would change, mainly as a consequence of the proposed changes to the Cabinet schedule. The new schedule allows for a gap of least a week between any meeting of the Cabinet and Council. The budget meeting would be held in mid-February, with a further meeting in late March.

5. For the Cabinet, the proposal is to move from a five week schedule for meetings to a six week schedule. This would reduce the number of meetings per year by one, which would effectively be the November meeting, and the December meeting would be earlier in the month. The budget Cabinet meeting would be held 15 days prior to the budget Council; meeting. Allowing for an average Officer attendance of 12 at Cabinet meetings, this proposal could potentially save £703.56 in Committee Allowances.

6. All meetings of Cabinet Committees have been scheduled at least a fortnight before a Cabinet meeting. This is to allow time for the minutes to be produced and approved in time to be placed on the Cabinet agenda, with the aim of reducing the number of Supplementary Agendas issued. Meetings of the Finance & Performance Management, and Local

Development Framework Cabinet Committees have both been reduced by one. This will necessitate a change to the budget setting process, but it is expected that the advent of the Joint Member & Officer Budget Working Group would streamline the process. The need to have more than five meetings of the Local Development Framework Cabinet Committee per year has not yet been necessary, and the aim would be to reduce this Cabinet Committee to four meetings next year if possible. These measures would give rise to a further potential Committee Allowance savings of £703.56, based upon an average attendance of six officers per meeting.

Overview and Scrutiny

7. The number of meetings of the main Overview and Scrutiny Committee has been reduced by one due to the reduction in Cabinet meetings. This would again potentially save £703.56 in Committee Allowances. These have now been scheduled for approximately one week before the Cabinet rather than the current three or four days, to allow urgent reports from Overview & Scrutiny to be issued via a supplementary agenda to the next Cabinet meeting rather than be tabled.

8. The meetings of the Scrutiny Panels have been reduced to quarterly, with the exception of the Finance and Performance Management Scrutiny Panel, which has an extra meeting to review the Budget. This gives a total reduction of 6 Scrutiny Panel meetings, which gives rise to projected savings of £2,110.68, allowing for an average officer attendance of six per Scrutiny Panel meeting.

Licensing

9. There is no planned reduction in the number of meetings of either the full Licensing Committee or Licensing Sub-Committees. However, the Licensing Sub-Committees have been rescheduled from Thursday mornings to Tuesday mornings. This is for operational reasons as agenda publishing takes place on Thursday mornings and the change will allow for greater availability from Democratic Services Officers.

Area Plans Sub-Committees

10. The Area Plans Sub-Committee meetings have been scheduled to continue to meet on a three-weekly cycle. This enables all members of the Council to participate in these meetings.

11. In December 2009, an initial draft of this report was circulated to Members and Officers via the Council Bulletin. That report included a suggestion for the replacement of the three area-based Planning Sub-Committees with two Planning Sub-Committees, one meeting every fortnight, both of which would consider any planning application from across the District. The response from members to that consultation was that they were not in favour of changes to the Planning Sub-Committees and that suggestion has not been pursued in this report.

Miscellaneous

12. There is no planned reduction in meetings of the Audit & Governance Committee for 2010/11, although further consideration could be given to reducing the number of meetings from five to four.

13. Although some of the scheduled meetings of the Housing Appeals and Review Panel have been cancelled this year due to a lack of business it is considered that it is better to schedule meetings each month and to cancel a meeting if necessary rather than reduce the

number of meetings. This enables members to reserve dates in their diaries. As these meetings are held in the afternoon, Committee Allowance is not an issue.

14. The Joint Consultative Committee remains at quarterly meetings, although it could be requested to consider whether it could function with only three meetings per year from 2011/12 onwards. The Local Councils' Liaison Committee remains at three meetings per year on a Wednesday. These meetings are arranged for weeks when there is no Area Plans Sub-Committee scheduled to be held at the Civic Offices, i.e., the same evenings as Area Plans-Committee South meetings which are held at a remote location. The Standards Committee will also continue to meet quarterly as at present.

15. The proposed calendar shows a reduction in Member meetings in comparison with 2009/10 which has been estimated to generate a total saving to the Council of £8,910.00.

<u>A Joint Finance & Performance Management Cabinet Committee & Scrutiny Panel Meeting</u>

16. Overview and Scrutiny have suggested that the meetings of the Finance & Performance Management Cabinet Committee & Scrutiny Panel should be held on the same evening when considering the prospective budget for 2011/12 in January 2011.

17. The proposed calendar shows the Committee and Panel meeting on separate evenings, albeit four days apart. The Cabinet is requested to consider whether the meeting of the Scrutiny Panel should be moved to the same evening as the Cabinet Committee (currently 17 January 2011), starting at 6.00pm with the meeting of the Cabinet Committee following at approximately 8.00pm.

Resource Implications:

The proposed Calendar for 2010/11 attached as an Appendix shows a 5.4% total reduction in Member meetings. This equates to a total reduction of 9 meetings, of which there would be 2 less meetings in the Chamber and 7 less meetings in the Committee Rooms.

(£ rounded)

Total Committee Allowance Savings (as set out above) £ 4,220.00
Committee Allowance on-costs at 17% £ 720.00

Energy Savings for Meetings* £ 680.00

- Total Costs for Council Chamber & Committee Rooms = £104,480
- Total Energy cost @ 12% of total cost = £12,537.60
- Net reduction of 5.4% for meetings @ Civic Offices
- Therefore, projected energy saving = 5.4% x £12,537.60 = £ 677.03

Refreshments Savings £ 130.00

- Water @ 5.4% of £960 = £50.00
- Coffee, 7 less meetings in Committee Rooms @ £12 per time = £84

Agenda Printing & Distribution Costs Savings £ 2,850.00

- 5.4% of total Agenda Print/Distribution cost of £52,780pa = £ 2,850.12* see note in financial implications

Members Travelling Expenses Savings £ 310.00

- Total Travelling costs = £7,218.66
- Assume 80% for Member meetings = £5,774.92

- 5.4%% reduction of £5,774.92 = £311.85

Therefore, total ***projected*** *Savings per annum:* *£ 8,910.00*

*Figures used to calculate Energy Cost supplied by Accountancy are on the basis of an estimated energy allocation.

**Figures for printing savings are reliant on Reprographics Section recovering their budgeted overheads either by other work or savings or increases in the non-distributable costs in compensation. Savings elements of these costs relating to variable costs will be achieved in any event.

Legal and Governance Implications:

None foreseen.

Safer, Cleaner and Greener Implications:

Reduced energy usage and less Member journeys being undertaken from the reduction in Member meetings, would help the Council to meet its commitments under the Nottingham Declaration and 10:10 scheme.

Consultation Undertaken:

The Leader of the Council and Senior Officers at Management Board.
Members and Officers via the Council Bulletin.

Background Papers:

Reports of the Joint Member & Officer 2010/11 Budget Working Group.
Medium Term Financial Strategy 2010-14.

Impact Assessments:

Risk Management
That insufficient member meetings would be scheduled for a particular Committee to complete its business for the year; however, if this became apparent then additional meetings could be arranged as necessary.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
None.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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Epping Forest District Council Calendar of Meetings 2010/11

	2010								2011				
Meeting	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**
Executive													
Council	25th	29th	27th		28th		2nd	14th		15th(17th)	29th		24th
Cabinet		7th	19th		13th	25th		6th	31st		7th	18th	
FPM Cabinet Comm		14th			27th		22nd		17th		21st		
NWA Cabinet Committee			26th				8th					19th	
LDF Cabinet Committee		28th				4th		20th		7th	28th		
Scrutiny													
OS Committee		1st	12th		6th	18th	29th		24th	28th		11th	
Finance & Perf Mgmt		10th			9th			9th	13th		10th		
Housing			29th			28th			27th			28th	
Planning Services		3rd			2nd			2nd			3rd		
Safer, Cleaner, Greener			1st			7th			6th			7th	
Constitution & Mbr Serv's		24th			23rd			16th			17th		
Planning													
District Development		8th		3rd		5th		7th		1st		5th	
Plans South	26th	16th	7th-28th	18th	8th-29th	20th	10th	1st	5th-26th	16th	9th-30th	20th	18th
Plans East	12th	2nd-23rd	14th	4th-25th	15th	6th-27th	17th	8th	12th	2nd-23rd	16th	6th-27th	25th
Plans West	19th	9th-30th	21st	11th	1st-22nd	13th	3rd-24th	15th	19th	9th	2nd-23rd	13th	11th
Licensing													
Licensing Committee						13th						13th	
Licensing Sub-Comm		1st	6th	3rd	7th	5th	2nd	7th	4th	1st	1st	5th	
Miscellaneous													
Audit & Governance		21st			20th		15th			14th		4th	
Housing Appeals Panel		17th	22nd	19th	16th	21st	18th	16th	20th	17th	17th	21st	
Joint Consultative Comm			15th			14th			20th			14th	
Local Councils Liaision			28th				10th				9th		
Standards Committee			13th			12th			18th			19th	
	Easter 2011		**Fri 22-Apr-11 to Mon 25-Apr-11**				**Elections**		**Thu 5-May-11**				

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Report to the Cabinet

Report reference: ***C-089-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Performance Management.**

Subject: **Corporate Plan, Medium-Term Aims 2010/11 - 2013/14, and Key Objectives 2010/11.**

Responsible Officer: **Steve Tautz** **(01992 564180).**

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

Recommendations/Decisions Required:

(1) That the proposed structure and format of the Council's new Corporate Plan for the period from 2010/11 to 2013/14, be agreed;

(2) That the Council's proposed Medium-Term Aims for 2010/11 to 2013/14, and the draft specific Key Objectives for 2010/11, be agreed;

(3) That arrangements be made for an informal joint Cabinet/Management Board meeting to be held as soon as possible, to further inform the content of the new Corporate Plan; and

(4) That the proposed structure and format of the new Corporate Plan, the proposed Medium-Term Aims for 2010/11 to 2013/14, and the draft specific Key Objectives for 2010/11, be considered by the Finance and Performance Management Scrutiny Panel and the Overview and Scrutiny Committee.

Executive Summary:

The Council Plan for 2006/07 to 2009/10 is the authority's current key strategic planning document, which set out service delivery priorities over the four-year period, with strategic themes matching those of the Local Strategic Partnership's Community Strategy for the Epping Forest District.

As the current Council Plan has now entered its final year, initial work has commenced on the development of a new corporate plan to take the authority forward over the period from 2010/11 to 2013/14. This report highlights a number of issues in respect of the development of the new Council Plan, to be known henceforth as the Corporate Plan.

The structure of the current Council Plan is largely based around the Council's existing Medium-Term Priorities, which were first adopted in 2002. As part of the development of the new Corporate Plan, the Cabinet has identified a range of new Medium-Term Aims for 2010/11 to 2013/14. As a result of the alignment of the Council's business, budget, and workforce planning and development processes into a clear framework to enable the authority to focus on key priorities and improve performance, it is also necessary to now adopt the Council's Key Objectives for 2010/11.

Reasons for Proposed Decision:

The identification of its Medium-Term Aims and Key Objectives provides an opportunity for the Council to focus specific attention on how existing areas for improvement will be addressed, opportunities exploited and better outcomes delivered for local people.

It is important that relevant performance management processes are in place to review and monitor performance against the Council's aims and key objectives, to ensure their continued achievability and relevance, and to identify proposals for appropriate corrective action in areas of under performance.

Other Options for Action:

The Council could decide not to set any Medium-Term Aims for 2010/11 to 2013/14 or specific Key Objectives for 2010/11, although this might mean that opportunities for improvement were lost. The publication of a new four-year Corporate Plan provides an opportunity for the Council to articulate its Medium-Term Aims and to develop relevant Key Objectives for each of the next four years.

Failure to monitor and review performance against aims and key objectives, and to take corrective action where necessary, could have negative implications for the Council's reputation and for judgements made about the authority in the Comprehensive Area Assessment and similar corporate assessment processes.

Report:

<u>Corporate Plan and Medium-Term Priorities - 2010/11 to 2013/14</u>

1. The Council's Corporate Plan needs to give regard to the vision for the district set out by the Local Strategic Partnership's Sustainable Community Strategy. It also informs all other plans and helps prioritise resources to provide quality services and value for money. The Corporate Plan does not cover everything that the authority does, focusing instead on those issues that matter most to local people, national priorities set by the government and local challenges arising from the social, economic and environmental context of the district. As a strategic document, the Corporate Plan does not contain specific information on the wide range of services that the authority provides, or how it delivers statutory duties or enforces legislation. Details of the provision of services can be found in the individual directorate business plans produced each year.

2. The Corporate Plan is an important element in the Council's Performance Management Framework and corporate business planning processes, in that it informs the content of annual directorate business plans to illustrate the work that directorates and services perform are directly contributing towards the achievement of the Council's corporate objectives. The Corporate Plan also provides the policy foundation for the authority's Medium-Term Financial Strategy. The hierarchy of the Council's strategic framework is illustrated at Appendix 1 to this report

3. As the current Council Plan has now reached its final year, it is necessary to commence work on the initial development of a new Corporate Plan to take the authority forward from 2010/11 to 2013/14. The development of the new Corporate Plan needs to be undertaken in conjunction with the similar development of the new Sustainable Community Strategy for the district by the Local Strategic Partnership, and will need to clearly set out how the Council will deliver its aims and key objectives over the next four years, to ensure improved outcomes for local people. The development of the new Sustainable Community Strategy is currently at a preparatory stage, and is being informed by on-going consultation

and engagement activity, and through a community conference held in December 2009. The new Sustainable Community Strategy will be adopted by the Local Strategic Partnership Board and the Council in June 2010. The new Corporate Plan also needs to reflect the work of the Council in the development of a Local Development Framework for the district, to replace the current Local Plan.

4. The structure of the Council's Corporate Plan has traditionally been based around the authority's Medium-Term Priorities, which were first adopted in 2002. As part of the development of the new Corporate Plan, these priorities were reviewed to ensure their continuing suitability, and a draft set of new Key Priority Objectives for 2010/11 was agreed by the Cabinet at its last meeting, Since their adoption in draft form in early January 2010, these new objectives have been subject to some further review as a result of scrutiny, in order that they can represent the strategic direction of the Council for the next four years and that specific actions can be generated to secure their achievement. The final version of these new Corporate Plan Medium-Term Aims is attached as Appendix 2 to this agenda, for adoption by the Cabinet.

5. The new Corporate Plan will need to evidence that the Council is aware of local issues, with a focus on vulnerable people, and that improved outcomes for local people are being, and will continue to be, delivered. The Plan will need to include specific actions to address national, local and service improvement priorities, that are financed, resourced and have a timescale for completion. The new Corporate Plan will therefore be closely linked to the Medium-Term Financial Strategy, outlining the financial resources available to fulfil specific priorities and objectives.

6. The development of the new Corporate Plan is being progressed by the Council's Management Board, and the proposed structure and format of the new Plan is attached as Appendix 3 to this report. It is intended that the new Corporate Plan should be a more focused strategic document than the previous Council Plan, complementing the emerging Sustainable Community Strategy and reflecting those issues and priorities where the Council can have maximum impact. Key Objectives to be included within the Corporate Plan will reflect the Council's Medium-Term Aims for 2010/11 to 2013/14, and identify appropriate actions designed to achieve the aims. It is proposed that an informal joint meeting be held between the Cabinet and Management Board in the near future to discuss and inform the content of the new Corporate Plan.

7. The new Corporate Plan will be submitted to the Council for formal adoption in June 2010. As with previous versions of the former Council Plan, the new Corporate Plan will need to be developed in consultation with customers and service users, voluntary organisations and other public sector organisations, members and staff. Appropriate public and other stakeholder consultation will need to be undertaken during its preparation, and the new Corporate Plan will be considered by the Cabinet and Overview and Scrutiny on a regular basis during its development. It is intended that the published version of the new Corporate Plan will be somewhat more modern in its appearance than the former Council Plan. A range of relevant photographs, images and graphics will be used to 'illustrate' the new Corporate Plan, the design and production costs of which can be met from within existing budget provision.

8. The Cabinet is requested to agree the proposed structure and format of the Council's new Corporate Plan for the period from 2010/11 to 2013/14, and the proposed Medium-Term Aims for 2010/11 to 2013/14.

9. Whilst the Corporate Plan covers the medium-term (four years), it is also necessary for the Council to identify its immediate priorities for each year, and for these to be factored into the Council's corporate planning arrangements. The identification of Key Objectives for

2010/11 is addressed in the next section of this report.

Key Objectives 2010/11

10. During the last year the Council has implemented arrangements for the alignment of it's business, budget, and workforce planning and development processes into a clear framework to enable the authority to focus on priorities, improve performance and the way that performance is managed, and to improve communication and consultation on key priorities. These arrangements have recently been highlighted as an area of best practice by the Improvement and Development Agency.

11. As a consequence of these new arrangements, the Council's key objectives for 2009/10 were agreed by the Cabinet in March 2009, much earlier in the planning cycle than in previous years. However, in order to improve the authority's planning processes further, it was accepted at that time that the identification of key objectives for 2010/11 and future years would need to be brought forward, in order to ensure alignment with the preparation of the budget and directorate business plans for next year. It is therefore necessary to now identify the Council's Key Objectives for 2010/11. Details of the proposed Key Objectives for 2010/11 are attached as Appendix 4 to this report.

12. The Key Objectives adopted by the Cabinet for 2010/11 will be incorporated within a Strategic Action Plan to the new Corporate Plan, and will also be reflected within respective directorate business plans for 2010/11. Formal performance reports against the Key Objectives will be made to the Cabinet and the Finance and Performance Management Scrutiny Panel after six months and at year-end. The Strategic Action Plan of the new Corporate Plan will be fully reviewed at the end of each year, and will updated annually to reflect new priorities emerging from such sources as the bi-annual Place Survey, the interim Tracker Survey and the annual Local Strategic Partnership Stakeholder Conference.

13. The Cabinet is requested to agree the Council's proposed draft Key Objectives for 2010/11. This report will be considered by the Finance and Performance Management Scrutiny Panel and the Overview and Scrutiny Committee during February and March 2010.

Resource Implications:

The design and production costs of the new Corporate Plan can be met from within the existing budget of the Performance Improvement Unit. Resource requirements for any specific key priority objective set out in this report will need to be identified by the relevant service director and reflected in the Council's Budget process.

Legal and Governance Implications:

There are no legal implications or Human Rights Act issues arising from the recommendations in this report, which ensure that the Council sets appropriate corporate priorities, and monitors progress and reports against the achievement of these priorities.

Safer, Cleaner and Greener Implications:

There are no implications arising from the recommendations in this report for the Council's commitment to the Nottingham Declaration for climate change, the corporate Safer, Cleaner and Greener initiative, or any Crime and Disorder issues within the District.

Consultation Undertaken:

The new Corporate Plan will be developed in consultation with customers and service users, voluntary organisations and other public sector organisations, members and staff, and will be considered by the Cabinet and Overview and Scrutiny on a regular basis during its development. The specific key objectives for 2010/11 will be considered by the Scrutiny Panel and the Overview and Scrutiny Committee during February and March 2010.

Background Papers:

None.

Impact Assessments:

Risk Management
The respective service director will have identified any risk management issues arising from proposals for the Council's key priority objectives for 2009/10, as set out in this report, therefore no assessment undertaken.

Equality and Diversity:
The content of this report has no specific equality implications. However, the respective service director will have identified any equality issues arising from proposals for the Council's key priority objectives for 2010/11.

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

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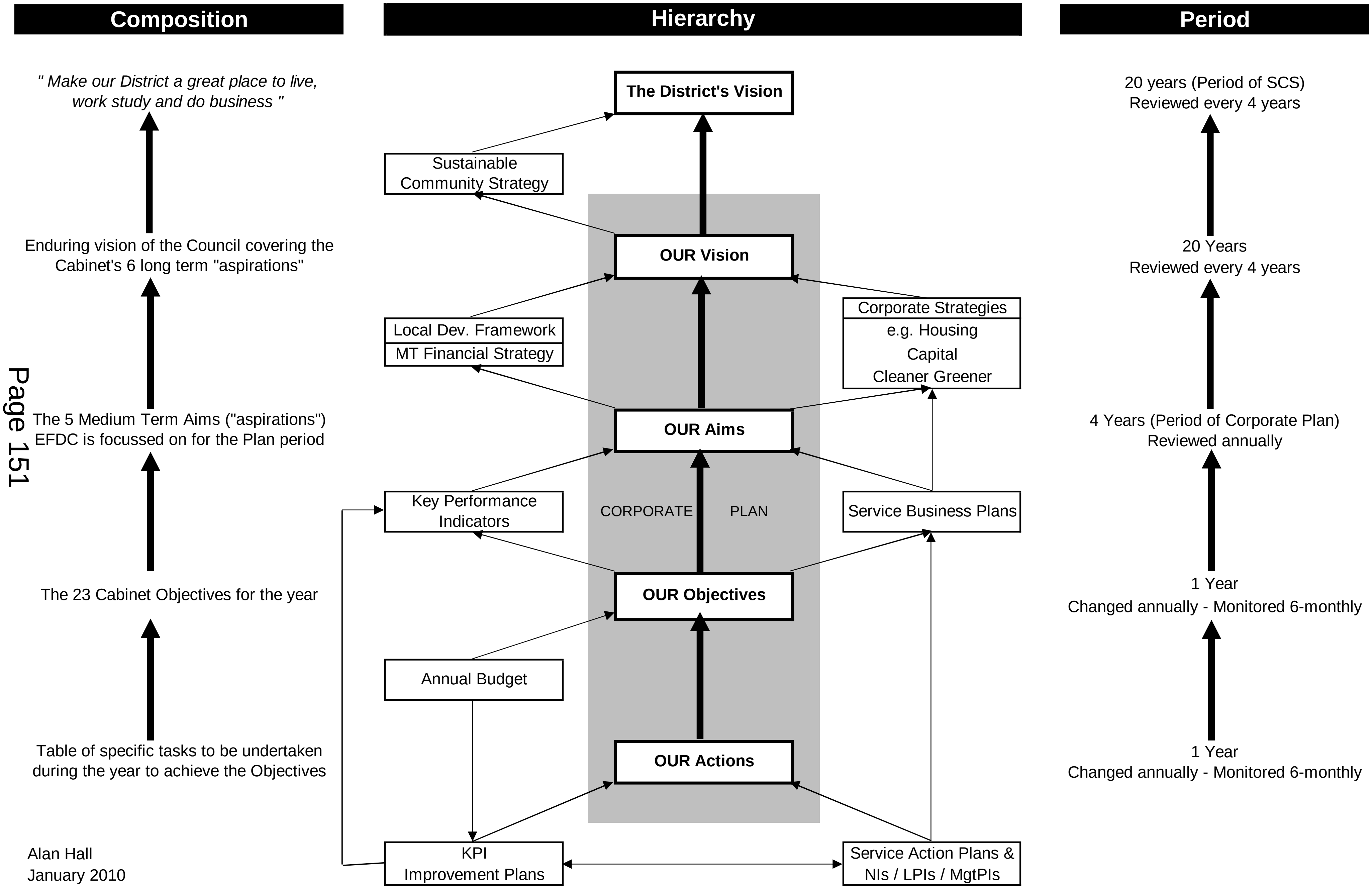
Epping Forest Council Plan - Strategic Framework



Alan Hall
January 2010

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CORPORATE PLAN MEDIUM TERM AIMS

2010/11 TO 2013/14

Over the period of the Corporate Plan we aim to:

1. Safeguard frontline services that our local residents tell us are important;

2. Have the lowest District Council Tax in Essex and maintain that position;

3. Be recognised as an innovative and top performing Council in Essex;

4. Continuously improve efficiency by adopting new ways of working with our partners and maximising revenue from our assets; and

5. Provide clear community leadership and be a strong advocate, championing the interests of the people of Epping Forest and protecting the special character of the District.

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EPPING FOREST DISTRICT COUNCIL

CORPORATE PLAN

2010/11 – 2013/14

CONTENTS

1. INTRODUCTION/FOREWORD BY LEADER OF THE COUNCIL AND/OR CHIEF EXECUTIVE

This section of the Corporate Plan will set out the background to the development of the Plan, and the purpose of the document in presenting a four-year vision to make the Epping Forest District 'a great place to live, work, study and do business'.

2. OUR DISTRICT TODAY

This section of the Corporate Plan will reflect the current 'profile' of the Epping Forest District, setting out key facts, figures and issues about the district and its geography and demography. Relevant data will be sourced from the new Community Strategy, the existing 'Story Of Place' document, the district profile produced by the Local Strategic Partnership, and other relevant data sources.

3. THE COMMUNITY STRATEGY

This section of the Corporate Plan will illustrate the background to the establishment of the Local Strategic Partnership, and the development of the new Sustainable Community Strategy for the district.

This section of the Plan will also reflect the key issues and priorities for the district identified through the development of the new Community Strategy. The Corporate Plan will complement the Community Strategy and reflect those issues and priorities in the Community Strategy where the Council can have maximum impact. These issues will be carried forward into the 'Our Aims' and 'Our Key Objectives' sections of the Corporate Plan.

4. OUR DISTRICT TOMORROW – A VISION FOR THE EPPING FOREST DISTRICT IN ????

The previous sections of the Corporate Plan set out a view of the Epping Forest District today.

This section of the Plan will seek to identify what the Council and its partners would like the district to look like in ?? years' time, building on the development of the new Community Strategy and Local Development Framework, and will also set out the Council's commitment to equality and diversity and the reduction of its environmental footprint.

5. OUR COUNCIL

This section of the Corporate Plan will set out the roles and responsibilities of the Council, illustrating how it is structured to deliver its aims and priorities, also reflecting the its community leadership role. This section of the Plan will seek to identify key portfolio/service issues.

This section of the Plan will also be supported by details of the Council's strategic framework (through a flow-chart or graphic), and reflect the Council's existing 'vision and values' and Customer Charter.

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6. OUR SHARED SERVICES APPROACH

This section of the Corporate Plan will set out the Council's approach to becoming more efficient in the provision of services, and how it will deliver value to council tax payers, through the pooling of resources and achieving economies of scale.

7. OUR ACHIEVEMENTS 2006/07 – 2009/10

This section of the Corporate Plan will summarise the Council's progress in achieving its aims and priorities from the previous Council Plan, and will set out progress on the basis of the individual key themes of the previous Community Strategy, against which aims and priorities were referenced.

Only a brief summary of progress against each theme will be included (reflecting the 'key' issues) in this section of the Plan, as the full progress report in respect of the final year of the current Council Plan will be considered by the Cabinet and the Finance and Performance Management Scrutiny Panel, as has been the case for the first three years of the Plan.

(a) Ensuring the protection of the unique, green and sustainable environment of the district

We have………

(b) Ensuring that the district has decent housing and clean and attractive neighborhoods

We have………Text

(c) Ensuring that residents of the district can enjoy local amenities with little fear of being a victim of crime

We have………

(d) Ensuring that residents of the district lead a healthy lifestyle by having access to effective, high quality leisure and cultural services

We have………

(e) Ensuring that the district has a thriving and sustainable economy

We have………

(f) Ensuring that we offer high quality, customer focussed services, provided by skilled and committed staff

We have………

8. NATIONAL PRESSURES AND PRIORITIES

This section of the Corporate Plan will reflect the range of national pressures which are likely to have a local impact on the Epping Forest District over the next four years, including:

(a) Affordable Housing

(b) Economic Development/Responding to the Recession

(c) Local Development Framework

(d) Planning Growth

There may be other 'national issues' that could/should be reflected in this section. Where appropriate, these issues will be carried forward into the 'Our Aims' and 'Our Key Objectives' sections of the Corporate Plan.

9. LOCAL PRESSURES AND PRIORITIES

This section of the Corporate Plan will reflect the range of local pressures which are likely to have an impact on the Epping Forest District over the next four years.

Issues reflected in this section of the Plan will be drawn from the results of the Place Survey for 2008/09, and from the significant level of survey and consultation work undertaken by the Local Strategic partnership to inform the new Sustainable Community Strategy. Where appropriate, issues will be carried forward into the 'Our Aims' and 'Our Key Objectives' sections of the Corporate Plan.

10. OUR RESOURCES AND PERFORMANCE

This section of the Corporate Plan will set out the Council's financial position, and how financial planning is aligned to priorities and annual budgets are set in the context of the Medium-Term Financial Strategy.

This section of the Plan will also set out details of the Comprehensive Area Assessment (CAA) process, and the results of the Council's CAA Organisational Assessment for 2008/09 and future years, and the Council's approach to Use of Resources, Value For Money, performance management, and business and workforce planning.

11. OUR AIMS 2010/11 – 2013/14

This section of the Corporate Plan will reflect the Council's new Medium-Term Aims,, outlining how they help to achieve the objectives of the new Sustainable Community Strategy and any relevant national/local priorities, and identifying appropriate actions (in general terms) designed to achieve the aims.

Only a brief summary of the key issues covered by each of the Medium-Term Aims will be included in this section of the Plan , as detailed actions will be included in the 'Our Key Objectives' sections.

Over the period of the Corporate Plan we aim to:

(a) ***Safeguard frontline services that our local residents tell us are important***

We will………

(b) Have the lowest District Council Tax in Essex and maintain that position

We will………

(c) *Be recognised as an innovative and top performing council in Essex*

We will………

(d) *Continuously improve efficiency by adopting new ways of working with our partners and maximising revenue from our assets*

We will………

(e) *Provide clear community leadership and be a strong advocate, championing the interests of the people of Epping Forest and protecting the special character of the district.*

We will………

12. OUR KEY OBJECTIVES 2010/11

This section of the Corporate Plan will identify appropriate actions (in specific terms) designed to achieve the Council's new Medium-Term Aims. The proposed format of the action plan is designed to make actions more 'reader friendly' and to demonstrate the outcomes that are intended to flow from specific actions. A smaller number of 'high-level' actions should be included than in the previous Council Plan. The action plan will be reviewed on an annual basis, and updated to reflect the results of the bi-annual Place Survey or the interim Tracker Survey.

REFERENCE	WHAT WE ARE GOING TO DO	WHEN WE ARE GOING TO DO IT	WHO IS RESPONSIBLE FOR DOING IT	HOW WE WILL KNOW WE'VE ACHIEVED IT	WHAT DIFFERENCE IT WILL MAKE TO THE COMMUNITY	MEDIUM-TERM AIM
Reference number	Details of the specific action	A specific timescale for the completion of the action	The title of the Portfolio Holder(s) and Director(s) responsible for the achievement of the action	A specific performance measure for the achievement of the action	The specific outcomes of the achievement of the action in terms of improved service, performance or quality of life	The relevant Medium-Term Priority

Report to the Cabinet

Report reference: ***C-090-2009/10***
Date of meeting: ***1 February 2010***

Epping Forest District Council

Portfolio: **Performance Management**

Subject: **Staff Car Park Management Policy**

Responsible Officer: **Mike Tipping** **(01992 564280)**

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

Recommendations/Decisions Required:

(1) That, as requested by the Joint Consultative Committee, the Council adopts the principles for a revised Staff Car Park Management Policy for the Civic Offices;

(2) That, as requested by the Joint Consultative Committee, the Council agrees to the provision and installation of a cycle rack in the underground car park the cost to be funded from the Airwave income budget ring fenced for the benefit of staff welfare and match funding from Essex County Council; and

(3) That, as requested by the Joint Consultative Committee, the Council notes that it has asked officers to suggest ways to improve the staff shower facilities and will consider these at its next meeting on 8 April 2010.

Executive Summary:

As part of the wider travel plan already agreed in principle by the Council there is a need to update and amend the management policy for the staff car parks at the Civic Offices to pave the way for initiatives such as increasing car sharing and creating better provision for cyclists and motor cyclists and other initiatives that may arise as part of the future development of the Travel Plan.

Reasons for Proposed Decision:

Cycle Rack – to be consistent with the Cycle to Work Scheme and the Car and Cycle Allowance Policy by making adequate provision for staff who choose to cycle to work.

Staff Car Park Management Policy - to ensure:
- that the available space is put to the best and most appropriate use;
- that the policy supports the aspirations of the Council as expressed through the Safer, Greener, Cleaner initiatives and the Travel Plan in so far as those policies relate to vehicle usage;
- that it is consistent with the Car and Cycle Allowance Policy; and
- is clear and transparent to all staff so that there is confidence that it is applied fairly.

Other Options for Action:

The Cabinet could decide not to agree the Policy or substitute it with another approach.

Report:

1. The Joint Consultative Committee (JCC) on 14 January considered a draft detailed Travel Plan the principle of which has previously been agreed by Cabinet

2. Cabinet at their meeting on 8 March 2010 will receive a comprehensive progress report on the Travel Plan. There were however three issues arising from consideration of the Travel Plan which the JCC recommended should be considered at this Cabinet meeting.

<u>Cycle Rack</u>

3. With the introduction of the Cycle to Work Scheme and the Car and Cycle Allowance Policy and increasing interest being shown by staff in cycling to work there is a pressing need to provide a cycle rack and a dedicated area for cycle parking.

4. This can be achieved inexpensively by re-allocating two car parking bays in the underground car park which will provide enough space for a cycle rack to accommodate up to 10 bicycles. The cost will be between £800 and £1,000 which can be funded from an existing budget set aside for expenditure on staff welfare. Match funding is also available from Essex County Council up to a maximum of £500.

<u>Staff Car Park Management Policy</u>

5. The current policy is in urgent need of updating and the JCC have received and considered principles of a revised policy following a wide ranging review of best practice and the policies of neighbouring authorities.

6. The current policy is aimed at trying to accommodate as many staff as possible whether they are essential users or not and makes no allowance for encouraging car sharing and other “green” issues that are likely to be developed as part of the Travel Plan.

7. The purpose of the revised principles for a management policy is to reflect that it is impossible to accommodate all staff, give priority to those staff who need to use a vehicle as part of their job including those staff currently based at Hemnall Street who will transfer to the Civic Offices, pave the way to provide dedicated spaces for car sharers and in the longer term free up space for other initiatives that may be agreed as part of the Travel Plan.

8. The principal points of the suggested policy for the management of the staff car parks at the Civic Offices are as follows:

(a) on-site parking will be allocated to staff in designated essential user posts including temporary or agency staff covering a vacant designated essential user post;

(b) staff will retain the right to park in the staff car parks for as long as the post retains essential user status but will lose that right if the post loses essential user status;

(c) on-site parking will be allocated to staff who regularly car share irrespective of whether they are essential users or not in specially marked bays for the purpose;

(d) on-site parking will be allocated to motor cyclists irrespective of whether they are essential users or not but only in specially marked bays for the purpose;

(e) on-site parking will be provided for cyclists irrespective of whether they are essential users or not but only in a bicycle rack provided for the purpose;

(f) arrangements to allow staff who are not essential users who may occasionally need to use their vehicle for business purposes or transport equipment or files during the working day to have temporary access to the staff car parks for a specified period;

(g) all staff of whatever rank in essential user posts who live in Epping and within walking distance of the Civic Offices not to drive to work unless they know they need to use their vehicle on that day for business purposes (walking distance is defined as within 20 minutes of the Civic Offices which broadly equates to a distance of one mile);

(h) no reserved spaces for officers or members;

(i) provision for blue badge holders irrespective of whether they are essential users or not;

(j) provision for short term medical requirements supported by a doctors letter or advice from the Council's Occupational Health Advisor;

(k) existing staff based at the Civic Offices who are not in essential user posts will retain their parking rights until they leave the Council's employ;

(l) existing staff who are not in essential user posts transferring from Hemnall Street will retain their parking rights at Hemnall Street until they either leave the Council's employ or can be transferred to the Civic Offices;

(m) the practice of maintaining a waiting list of staff in non essential user posts be discontinued and the new policy be applied to those staff on the current waiting list with effect from the implementation date; and

(n) the provision of sanctions for minor breeches of the management policy to be included within the policy. More serious breeches including dishonesty and malpractice will invoke action under the Council's Disciplinary Procedure.

Staff Shower Facilities

9. The initiatives the Council is taking to encourage more staff to cycle to work and through its lifestyle programmes to take lunchtime exercise has highlighted the inadequacy of the current staff shower facilities. JCC has therefore asked the officers to develop and submit proposals to the next meeting on 8 April 2010 for improving the shower facilities.

Resource Implications:

£1,000 cost of provision and installation of cycle racks to be funded from within existing budget resources and match funded up to £500 by Essex County Council.

Legal and Governance Implications:

N/A.

Safer, Cleaner and Greener Implications:

Introduction and development of a Travel Plan is part of the wider Council initiatives to reduce its carbon footprint by encouraging less dependence on vehicles and promotion of alternative forms of travel to and from work.

Consultation Undertaken:

Internal consultation has been undertaken with the Trade Unions and members of the Car Park Working Party.

Background Papers:

Cabinet Report of 7 September 2009
Corporate Executive Forum Report of 6 January 2010
Joint Consultative Committee 14 January 2010

Impact Assessments:

Risk Management

Giving priority to staff that need to use a vehicle as part of their job to ensure they work in the most efficient way.

Not providing parking for staff in non essential user posts may have an impact on recruitment although currently there is no evidence to support this.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.

Report to the Cabinet

Report reference: C-088-2009/10
Date of meeting: 25 January 2010

Epping Forest District Council

Portfolio: **Finance and Economic Development.**

Subject: **Council Budgets 2010/11**

Responsible Officer: **Bob Palmer (01992 564279).**

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

Recommendations/Decisions Required:

(1) To consider the Council's 2010/11 General Fund budgets and make recommendations to the Council on adopting the following:

(a) the revised revenue estimates for 2009/10, which are anticipated to reduce the General Fund balance by £837,000;

(b) an increase in the target for the 2010/11 CSB budget from £18m to £18.1m (including growth items);

(c) an increase in the target for the 2010/11 DDF net spend from £1.3m to £1.4m;

(d) an increase of 2.5% in the District Council Tax for a Band 'D' property to raise the charge from £146.61 to £150.30;

(e) the estimated reduction in General Fund balances in 2010/11 of £497,000;

(f) the four year capital programme 2010/11 – 13/14;

(g) the Medium Term Financial Strategy 2010/11 – 13/14; and

(h) the Council's policy on General Fund Revenue Balances to remain that they are allowed to fall no lower than 25% of the Net Budget Requirement;

(2) To recommend to the Council that the 2010/11 HRA budget including the revised revenue estimates for 2009/10 be agreed;

(3) That the Cabinet be requested to note that rent increases and decreases proposed for 2010/11 are to be applied in accordance with the Government's rent reforms and the Council's approved rent strategy with the addition of an extra element to give an average overall increase of 2.4%;

(4) To recommend to the Council that the established policy of capitalising deficiency payments to the pension fund is maintained, in accordance with the Capitalisation Direction request made to the Department for Communities and Local Government;

(5) To consider the Council's Prudential Indicators and Treasury Management Strategy for 2010/11 and makes recommendations to the Council; and

(6) That the Chief Financial Officer's report to the Council on the robustness of the estimates for the purposes of the Council's 2010/11 budgets and the adequacy.

The annexes referred to in this report were attached to the agenda for the meeting of the Finance and Performance Management Cabinet Committee on 25 January 2010, which members are requested to bring with them to the meeting. Further copies of the annexes can be obtained from Research and Democratic Services.

Executive Summary:

This report sets out the detailed recommendations for the Council's budget for 2010/11. The budget uses £0.5m of reserves but this is affordable and the Council's policy on the level of reserves can be maintained throughout the period of the Medium Term Financial Strategy. Over the course of the Medium Term Financial Strategy the budget will be brought back into balance.

The budget is based on the assumption that Council Tax will increase by 2.5% and that average Housing Revenue Account rents will increase by 2.4%.

Reasons for Proposed Decision:

The decisions are necessary to assist Cabinet in determining the budget that will be placed before Council on 16 February 2010.

Other Options for Action:

Members could decide not to approve the recommended figures and instead specify which growth items they would like removed from the lists, or Members could ask for further items to be added.

Report:

1. This meeting will receive the minutes and recommendations contained therein of the of the Finance and Performance Management Cabinet Committee and will then make recommendations to Council for the setting of the Council Tax and budget on 16 February 2010.

2. The annual budget process commenced with the Financial Issues Paper being presented to this committee on 5 October 2009. The paper was prepared against the background of ongoing difficulties within the economy and highlighted the uncertainties associated with:

(a) likely reductions in grant as part of the next Comprehensive Spending Review (CSR);

(b) effects of the "Credit Crunch" and reduced activity in the housing market;

(c) using up of capital reserves on non-revenue generating assets;

(d) pay awards;

(e) next triennial pension valuation;

(f) capitalisation of pension deficit payments;

(g) changes to the statutory concessionary fares scheme; and

(h) Customer Services Transformation Programme.

3. There is now greater clarity on some of these issues, but several of them will not be resolved for some time. The key areas are revisited in subsequent paragraphs.

4. In setting the budget for the current year Members had anticipated using £704,000 from the general fund reserves. It was felt that, given the strength of the Council's overall financial position, it was able to sustain a deficit budget to support the local economy and that net spending could be managed down over the medium term.

5. The revised four year forecast presented with the Financial Issues Paper took into account all the additional costs known at that point and highlighted the likely reduction in grant support of 10% over the next CSR period. This projection showed a need to achieve savings of £300,000 on the 2010/11 estimates, £600,000 in 2011/12, £400,000 in 2012/13 and £200,000 in 2013/14 to keep revenue balances above the target level at the end of 2013/14.

6. Members adopted this measured approach to reduce expenditure in a progressive and controlled manner. It was felt that a reduction was needed in the budget figures for 2010/11 as the first step in this process, followed by increased savings in 2011/12.

7. The budget guidelines for 2010/11 were therefore established as:

(a) The ceiling for CSB net expenditure be no more than £18.3m including net growth/savings;

(b) The ceiling for DDF net expenditure be no more than £0.8m; and

(c) The District Council Tax be increased by no more than 2.5%.

8. In view of the stabilising of some of the income streams, the clearer cost and recycling credit increases on waste management and the slippage in the DDF programme, these guidelines were revised by the 14 December meeting of this committee. The target for the Council Tax increase was unchanged but the other guidelines were amended to:

(a) The ceiling for CSB net expenditure be no more than £18m including net growth/savings; and

(b) The ceiling for DDF net expenditure be no more than £1.3m.

<u>The Current Position</u>

9. The draft General Fund budget summaries are attached as annexes 1 to 8. The main year on year resource movements are highlighted in the CSB Growth and DDF lists, which are attached as Annexes 9 and 10. In terms of the guidelines, the position is set out below.

<u>The ceiling for CSB net expenditure be no more than £18m including net growth</u>

10. Annex 9 lists all the CSB changes for next year. Some of the growth items listed are for sums agreed as part of previous year's budgets but most are new for next year. The

largest growth item for next year is £92,000 for the increase in employer's contributions for the pension fund, being the last of the annual 1% increases determined by the March 2007 triennial valuation.

(i) Likely Reduction in Grant as part of the next CSR

11. This is one of the key areas which are still to be clarified and the extent of the reduction is unlikely to be confirmed until several months after the general election. Whoever is in power after the general election will have to significantly reduce public spending to achieve the necessary improvement in the state of the overall public finances. It has been well documented that the bail out of the financial sector and effective nationalising of some of the countries largest banks has put an unprecedented strain on the public finances. Every month as the Government borrowing figures are announced they establish new records and it is clear that the current position is not sustainable.

12. Whilst the banking sector has now stabilised it is likely to still be several years before a full return to private ownership is possible. This means solutions must be found in other areas and there are already suggestions that an incoming Government will need to cut big programmes such as identity cards and the replacement of Trident. However, the size of the problem makes it inevitable that local government will have to share some of the pain. Best estimates are that grant will fall 10% over the next CSR with the reduction in the first year likely to be 5%. This means in 2011/12 grant is likely to reduce by £471,000 and over the three year CSR grant support could fall by £1m.

(ii) The "Credit Crunch" and Reduced Housing Market Activity

13. The Council's CSB contains a number of income streams that have been adversely affected, to varying degrees, by the current state of the housing market. Recent surveys have been more positive, although while banks remain cautious with mortgage funding and developers wait for better rates of return any recovery in the housing market is likely to remain fragile.

14. The main areas of income related to the housing market are land charges, building control and development control. For 2009/10 land charges income had been estimated at £150,000, consistent with the actual of £146,000 for 2008/09 but a long way from the 2006/07 figure of £394,000. At the end of December the income achieved was ahead of the estimate and a full year figure of £170,000 may be achieved. Building Control fees are still well short of the estimate but officers are confident that fees from major schemes will arrive before the year end to leave a shortfall of no more than £40,000. Development Control income will also fall short of the original estimate with the outturn likely to be closer to £550,000 than the £605,000 originally estimated.

15. It is worth noting that some of the Council's other income streams are doing well. The MOT income from Fleet Operations may exceed the estimate of £225,000 by £75,000. Total licensing income is also ahead of expectations and should exceed the estimate of £252,000 by £40,000.

16. Adjustments have been made to CSB income levels where the changes are thought to be ongoing and where it is more likely that a change will not be sustained the adjustment has been made to the DDF.

17. One beneficial effect of the "Credit Crunch" had been the higher interest rates in 2008/09 that banks have been prepared to pay to borrow from the Council. It was evident that this would not continue for long and so £334,000 of investment income was credited to the

DDF in 2008/09 instead of the CSB. Investment income this year is behind the estimate as interest rates have fallen lower than anticipated and seem set to remain at 0.5% for months to come. The outturn is likely to be £400,000 short of the original estimate of £2.1m, although a large portion of this is credited to the HRA. The Medium Term Financial Strategy (MTFS) has taken a prudent view on future interest rate movements, based on advice from the Council's treasury management consultants.

(iii) Using up of Capital Reserves on Non-Revenue Generating Assets

18. In recent years the Capital Strategy has stressed the need for capital projects to be used to improve the Council's revenue position, either by saving costs or increasing revenues. This issue has also been recognised on the Council's Corporate Risk Register. Capital receipts generate investment income and so if they are used up on non-revenue generating assets there is a "double whammy" whereby the Council looses out on income and takes on additional costs.

19. The updated Capital Programme was approved by Council on 22 December and includes spending of £54.3m over five years. Of this spending, £40m is funded from revenue or grants but the remainder will reduce the balance of capital receipts from £24.3m to £9.9m. In view of this Members should carefully consider whether existing schemes are essential and any additional schemes should only be approved where there is a positive revenue contribution, after allowing for any loss of investment income.

(iv) Pay Awards

20. Negotiations for 2009/10 have again been protracted and have resulted in a settlement of 1.25% for the lowest paid staff (scale points 4 to 10) and 1% for most other staff (scale point 11 up to and including Assistant Directors). Directors and Chief Executives received no increase in 2009/10.

21. Against the backdrop of the negotiations it is worth considering this Council's pay bill and the effect that different levels of pay awards might have. The total salary estimate for 2009/10 is £20m; therefore for every 1% the pay award increases the Council's pay bill by £200,000. The annual pay bill is one of the key parts of the Council's overall estimates and so the assumptions made about pay awards are particularly significant. In the current economic climate with the overall public finances in a poor state it is difficult to envisage pay awards exceeding 1.5% for the foreseeable future, although if inflation starts to increase this assumption may not prove correct.

(v) Next Triennial Valuation of the Pension Scheme

22. Similarly to the ongoing level of grant support, this is an item which will not be clarified for some time. The last triennial valuation was undertaken as at 31 March 2007 and showed a significant improvement on the 2004 valuation. As at 31 March 2004 the scheme was only 71% funded (the value of the scheme's assets only covered 71.4% of the liabilities), by 2007 the funding level had improved to 81.2%. This meant that it was possible to reduce the amount of the deficit contributions but due to other factors, such as increasing life expectancy, it was necessary to increase the ongoing contribution rate from 10.1% for 2007/08 to 13.1% for 2010/11.

23. The rally in share prices mentioned in the Financial Issues Paper has continued, with the FT100 share index having gone back above the 5,500 level. This is encouraging but is still 7% below where the index was at the last scheme valuation date. As approximately 70% of the schemes assets are invested in shares, any reduction in the index before 31 March 2010 is likely to increase the overall deficit.

24. A number of changes have been made to the LGPS, with increased contribution rates for employees and a rising of the normal retirement age. Further options for reform are being examined and it is possible that in the long term the defined benefit scheme could be closed to new entrants or pensions could be based on average earnings instead of final salary.

(vi) Capitalisation of Pension Deficit Payments

25. Capitalisation applications for 2009/10 for both the general fund (£1,205,000) and the housing revenue account (£565,000) have been submitted to the DCLG. The DCLG are maintaining their policy of not confirming the amount of capitalisation directions until the end of January, so this too remains an area of uncertainty.

(vii) National Concessionary Fares Scheme

26. Members will be aware from the report to Cabinet on 4 January that it is likely that the Council will lose £137,000 of the £247,000 special grant for concessionary fares that had been anticipated. A greater potential threat lies beyond 2010/11 with the removal of this function from districts and the associated re-working of the grant formula which could adversely impact on the Council's overall financial position. It is also worth reminding Members that not all of the appeals raised by the bus operators have been settled and further costs may still arise from these.

(viii) Customer Services Transformation Programme

27. It is still to be determined exactly what works will take place as part of this programme. No CSB or DDF amounts have been included for this initiative but some £1.3m of expenditure is still included in the capital programme. This has been re-scheduled with £837,000 moving to 2010/11 and £450,000 to 2011/12.

28. The General Fund summary at Annex 1 shows the CSB total is £79,000 above the CSB target of £18m. If Members require a total closer to the £18m target it will be necessary to reduce or remove some of the items listed on Annex 9. However, Members may feel that the amount by which the target has been exceeded is not significant and, in view of the position outlined in the Medium Term Financial Strategy, is acceptable.

The ceiling for DDF net expenditure be no more than £1.3m

29. The DDF net movement for 2010/11 is £1.358m, Annex 10 lists all the DDF items in detail. The largest cost item is £508,000 for the reduction in investment income followed by £400,000 for work on the Local Development Framework (LDF). The LDF is a substantial and unavoidable project and in 2009/10 and the subsequent two years DDF funding of £1.176m is allocated to it. The Director of Planning and Economic Development has been asked to provide regular updates to Cabinet to monitor this project and the expenditure incurred on it.

30. Other significant items of expenditure include £147,000 for the planned building maintenance programme. Allowance has also been made in the DDF for the reduction of £137,000 in special grant for concessionary fares mentioned above.

31. Officers are currently working with an international firm of accountants to examine the possibility of recovering VAT. This is using a model that the firm has developed through working with a number of authorities which has led to some substantial repayments. It is too early yet to predict what, if any, income may arise from this so no allowance has been made in the estimates. The work is being conducted on a "no win no fee basis" so any costs will be funded from any VAT refund arising.

32. At £1.358m the DDF programme is £58,000 above the target for 2010/11. The DDF is predicted to come under financial pressure in 2011/12 and may need support from the General Fund Reserve in that year. However, given that the DDF often sees items being re-phased this may not ultimately be necessary and both 2012/13 and 2013/14 currently show net income for the DDF.

The District Council Tax be increased by no more than 2.5%

33. At the meeting of this committee on 8 December 2008, Members established a policy of not increasing the Council Tax by more than 2.5%. This is reflected in the estimates for 2010/11 and throughout the Medium Term Financial Strategy.

That longer term guidelines covering the period to March 2014 provide for:

The level of General Fund revenue balances to be maintained within a range of approximately £4.0m to £4.5m but at no lower level than 25% of net budget requirement whichever is the higher;

34. Current projections show this rule will not be breached by 2013/14, by which time reserves will have reduced to £6.659m and 25% of net budget requirement will be £4.319m.

Future levels of CSB net expenditure being financed predominately from External Funding from Government and Council Tax and that support from revenue balances be gradually phased out.

35. The outturn for 2008/09 added £973,000 to reserves, whilst the revised estimates for 2009/10 anticipate a reduction of £837,000. This would leave the opening revenue reserve for 2010/11 at £7.4 million and although the estimates for 2010/11 show a reduction of £497,000, reserves would still be above £6.8m. The Medium Term Financial Strategy at Annex 11 shows deficit budgets for the three years 2010/11 to 2012/13. The level of deficit peaks at £837,000 in 2009/10 and returns to break even in 2013/14, although this is achieved through CSB savings of £600,000 in 2011/12, £400,000 in 2012/13 and £200,000 in 2013/14.

The Local Government Finance Settlement

36. The Government have confirmed that the draft figures previously advised will not be amended. To remind Members of the three-year settlement and the background to it the information below has been repeated from the 2009/10 Council Tax setting report.

37. After one two-year settlement under the new four block system, the Department for Communities and Local Government (DCLG) announced a consultation to “update and fine tune” the model to produce a three-year settlement. Unfortunately the fine-tuning has resulted in some substantial movements in the Council’s relative position. The table below sets out the Council’s amounts in each of the four blocks for the five years of data now available. The Relative Needs Amount (what the Government believes the Council needs to spend) has increased by only £7,000 for 2010/11 whilst the Relative Resource Amount (a negative amount to reflect the ability to raise income from Council Tax) has reduced by £140,000. This improvement of £147,000 is strengthened by an increase in the Central Allocation of £37,000 although most of this is then eliminated by a change in the net Floor Damping position of £137,000.

38. The figures shown below represent a poor CSR for the Council with grant increases of only 1% (against the adjusted 07/08 figure) for 2008/09 and only 0.5% for 2009/10 and 2010/11. This seems odd given the sizeable grant increase seen under this system for

2006/07 and 2007/08.

	2006/07 £m	2007/08 £m	2008/09 £m	2009/10 £m	2010/11 £m
Relative Needs Amount	5.728	5.742	5.455	5.457	5.464
Relative Resource Amount	-4.465	-4.724	-5.228	-5.096	-4.956
Central Allocation	7.854	8.332	8.793	8.834	8.871
Floor Damping	-0.490	-0.189	0.302	0.173	0.036
Formula Grant	**8.627**	**9.161**	**9.322**	**9.368**	**9.415**

	2006/07 £m	2007/08 £m	2008/09 £m	2009/10 £m	2010/11 £m
Formula Grant (adjusted)	8.627	9.161 (9.229)	9.322	9.368	9.415
Increase £	0.711	0.534	0.093	0.046	0.047
Increase %	9.0%	6.2%	1.0%	0.5%	0.5%

39. The introduction of the four block system saw the Council change from receiving floor support of £412,000 to loosing £490,000 to support the floor for others. It had been hoped that the move away from the floor would last longer than two years. However, the benefit of the previous large increase has not been lost, as this has provided the base that the floor increases have been added to.

The 2010/11 General Fund Budget

40. Whilst the position on some issues is clearer now than it was when the Financial Issues Paper was written there are still significant risks and uncertainties for 2010/11. Signs of improvement in the economy are evident but weak and the gains seen so far may yet be reversed when Quantitative Easing finishes or if public spending is cut too soon or too far. The effects of the recession are clear and as well as impacting on many of the Council's revenue streams it is has placed additional demands on services such as benefits and homelessness. It is still possible that the country may fall back into a severe recession that may last some years. If this is the case then the adjustments made to property related income and investment income will need to be revised.

41. Another major area of uncertainty is how a new government will tackle the deficit in the public finances and how much of any spending reductions will fall on district councils. The Medium Term Financial Strategy is based on a 10% reduction over the next CSR, this sees grant fall from £9.4m in 2010/11 to £8.5m in 2013/14. This represents a best guess and it is prudent to allow for such a reduction. The actual reduction will depend on the outcome of the election and the state of the economic recovery when the next government is working through their CSR.

42. A final area worth touching on is the accounting treatment for impairments on investments. The Government previously mandated the deferral of impairments to 2010/11, apparently to allow for a clearer picture to emerge on the level of recoveries. Even though a clear picture has not emerged and the ultimate levels of impairments are far from certain, the Government has stated that no extension of the deferral will be allowed. The Government has also stated that authorities should not charge the impairment to the HRA, although capitalisation directions can be applied for in 2009/10.

43. The likely impairment that this Council will have to account for is £700,000. As the investment balances were generated partly from the sale of HRA assets and the HRA receives approximately two thirds of interest earned it would be logical for the HRA to share

the impairment charge. Therefore, the DCLG have been asked to reconsider their decision and it is hoped that a reply will be received before the end of January. Given the ongoing uncertainty around the ultimate level of the impairment, the year in which it will have to be accounted for and the funds it can be charged to no allowance for the impairment has been made in these figures.

44. The starting point for the budget is the attached Medium Term Financial Strategy, Annex 11. Annexes 11a and 11b are based on the current draft budget, a Council Tax increase of 2.5% (£150.30 Band D) for 2010/11 and subsequent increases of 2.5% per annum for each of the following three years in accordance with the strategy of not increasing Council Tax by more than this amount.

45. Members are reminded that this strategy is based on a number of important assumptions, including the following:

- Future Government funding over the next CSR will reduce by 10%;
- CSB growth has been restricted but still exceeds the CSB target for 2010/11 of £18 million. Known growth beyond 2010/11 has been included but will be subject to a further review to help identify savings;
- All known DDF items are budgeted for, and because of the size of the LDF programme the closing balance at the end of 2013/14 is anticipated to reduce to £286,000; and
- Maintaining revenue balances of at least 25% of NBR. The forecast shows that the deficit budgets for three years of the period will reduce the closing balances at the end of 2013/14 to £6.577m or 38% of NBR for 2013/14, although this can only be done with further substantial savings throughout the life of the strategy.

The Housing Revenue Account

46. The balance on the HRA at 31 March 2011 is expected to be £6.09 million, as shown in Annex 12a, after deficits of £25,000 in 2009/10 and £7,000 in 2010/11. There are no significant variances worth highlighting at this time.

47. The rent increase is set with reference to an individual property's formula rent but subject to various constraints. This process of Rent Restructuring to bring Council rents and Housing Association rents more in line with each other still needs to be addressed. The rent increase for 2010/11 is likely to see a narrowing of this gap between Council and Housing Association rents, with an average rent increase of 2.4% for Council dwellings.

48. An update to the current five-year forecast is being prepared and will be presented to a subsequent Cabinet. The HRA has had substantial balances for some time and this position is not expected to change in the short term.

49. Annex 12b shows the estimated balances for the Housing Repairs Fund and Annex 12c the same for the Major Repairs Reserve. Members are recommended to agree the budgets for 2010/11 and 2009/10 revised and to note that although a deficit budget is proposed for 2010/11 the HRA has substantial ongoing balances.

The Capital Programme

50. The Capital Programme at Annex 13 shows the expenditure previously agreed by Cabinet and approved as part of the Capital Strategy by Council on 22 December 2009. Members have stated that in future priority will be given to capital schemes that will generate revenue in subsequent periods. This position has been stated in previous Capital Strategies

and has been reinforced by the increasing awareness that capital spending reduces investment balances and thus impacts on the general fund revenue balance through lower interest earnings.

51. Annex 13d sets out the estimated position on capital receipts for the next four years. Members will note that even with a substantial capital programme, which exceeds £54m over five years, it is anticipated that the Authority will still have nearly £10m of usable capital receipt balances at the end of the period. It is not anticipated that further disposals of surplus land will take place during 2010/11, or in the medium term until market conditions have improved. However, it should be noted that officers are currently reviewing the development potential of a number of sites.

Risk Assessment and the Level of Balances

52. The Local Government Act 2003 (s 25) introduced a specific personal duty on the "Chief Financial Officer" (CFO) to report to the Authority on the robustness of the estimates for the purposes of the budget and the adequacy of reserves. The Act requires Members to have regard to the report when determining the Council's budget requirement for 2010/11. ***Where this advice is not accepted, this should be formally recorded within the minutes of the Council meeting.*** The Council at its meeting on the 16 February will consider the recommendations of the Cabinet on the budget for 2010/11 and will determine the planned level of the Council's balances. Members will consider the report of the CFO as set out at Annex 14 at that meeting.

The Prudential Indicators and Treasury Management Strategy 2010/11

53. Since 2004/05 it has been necessary to set affordable borrowing limits, limits for the prudential indicators and a Treasury Management Strategy. These elements of the budget requirements are set out in a separate report as Annex 15.

54. Members approved a Treasury Management Strategy on 19 February 2004, which has been updated and amended on annual basis. Investment balances had increased substantially and, as part of the 2007/08 budget, the limit on funds invested for over 364 days was raised from £15m to £30m and the maximum amount to be invested with higher rated counter parties was increased from £8m to £12m.

55. Given the instability in money markets a more prudent approach was being taken to counter parties and some institutions are no longer being dealt with even though they satisfy the credit rating requirements. As part of this approach the maximum amount to be invested was reduced to £10m and building societies without credit ratings were removed from the counter party list. As the first priority is to safeguard the Council's investment funds, it is not proposed to reduce the existing counter party requirements.

Resource Implications:

The report details proposed growth items and potential savings, the implications are set out above and will vary depending on the course of action decided by Members.

Legal and Governance Implications:

None.

Safer, Cleaner and Greener Implications:

Items related to the Safer, Cleaner, Greener initiative are included in the report.

Consultation Undertaken:

None.

Background Papers:

Financial Issues Paper – see agenda of 5 October 2009
Draft Growth List – see agenda of 23 November 2009
Draft General Fund Budget Summary – see agenda of 14 December 2009

Impact Assessments:

Risk Management
The report sets out some of the key areas of financial risk to the authority. At this time the Council is well placed to meet such challenges, although if the necessary savings highlighted are not actively pursued problems will arise in the medium term.

Equality and Diversity:

The Directorate proposing the growth will have considered the equalities impacts for each growth proposal, therefore no assessment undertaken.

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?

What equality implications were identified through the Equality Impact Assessment process?

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

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Agenda Item 30

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