

## Scrutiny Standing Panel Agenda



### **Planning Services Scrutiny Standing Panel Tuesday, 14th June, 2011**

**Place:** Committee Room 1, Civic Offices, High Street, Epping

**Time:** 7.30 pm

**Democratic Services Officer:** Mark Jenkins - Office of the Chief Executive  
Email [mjenkins@eppingforestdc.gov.uk](mailto:mjenkins@eppingforestdc.gov.uk) Tel: 01992 564607

**Members:**

Councillors H Ulkun (Chairman), A Watts (Vice-Chairman), A Boyce, C Finn, P Keska, Ms Y Knight, A Lion, J Markham, B Sandler and Mrs J Sutcliffe

**1. APOLOGIES FOR ABSENCE**

**2. SUBSTITUTE MEMBERS**

(Assistant to the Chief Executive). To report the appointment of any substitute members for the meeting.

**3. DECLARATIONS OF INTEREST**

(Assistant to the Chief Executive). To declare interests in any items of the agenda.

In considering whether to declare a personal or a prejudicial interest under the Code of Conduct, Overview and Scrutiny members are asked to pay particular attention to paragraph 11 of the Code in addition to the more familiar requirements.

This requires the declaration of a personal and prejudicial interest in any matter before an Overview and Scrutiny Committee which relates to a decision of or action by another Committee or Sub-Committee of the Council, a Joint Committee or Joint Sub-Committee in which the Council is involved and of which the Councillor is also a member.

Paragraph 11 does not refer to Cabinet decisions or attendance at an Overview and Scrutiny meeting purely for the purpose of answering questions or providing information on such a matter.

**4. NOTES FROM THE LAST MEETING (Pages 3 - 14)**

To agree the notes of the last meeting held on 3 March 2011 (attached).

**5. TERMS OF REFERENCE (Pages 15 - 16)**

The Terms of Reference are attached.

**6. WORK PROGRAMME (Pages 17 - 22)**

The current Work Programme is attached, along with the Panel's 2010/2011 Work Programme, as Appendix 1.

**7. IMPROVEMENT PLAN (Pages 23 - 26)**

(Director of Planning and Economic Development). To note the attached Improvement Plan.

**8. PLANNING AND ECONOMIC DEVELOPMENT - ORGANISATIONAL CHARTS (Pages 27 - 34)**

(Director of Planning and Economic Development) To consider the attached organisation charts.

**9. CLG CONSULTATION - PLANNING FOR TRAVELLER SITES (Pages 35 - 52)**

(Director of Planning and Economic Development) To consider the attached report.

**10. SECTION 106S - AFFORDABLE HOUSING (Pages 53 - 58)**

(Director of Planning and Economic Development) To consider the attached.

**11. COMMUNITY INFRASTRUCTURE LEVY (Pages 59 - 64)**

(Director of Planning and Economic Development) To consider the attached.

**12. ANY OTHER BUSINESS**

**13. DATES OF FUTURE MEETINGS**

The next programmed meeting of the Panel is on Tuesday 13 September 2011 at 7.30p.m. in Committee Room 1 and thereafter on:

Tuesday 20 December at 7.30p.m.;  
Tuesday 7 February 2012 at 7.30p.m.; and  
Tuesday 24 April at 7.30p.m.

**EPPING FOREST DISTRICT COUNCIL  
NOTES OF A MEETING OF PLANNING SERVICES SCRUTINY STANDING PANEL  
HELD ON THURSDAY, 3 MARCH 2011  
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING  
AT 7.30 - 9.25 PM**

**Members Present:** J Philip (Chairman), H Ulkun (Vice-Chairman), C Finn, Mrs A Grigg (Chairman of Council), Mrs S Jones, Mrs M McEwen, J Markham and A Watts

**Other members present:**

**Apologies for Absence:** Mrs P Brooks and J M Whitehouse

**Officers Present** J Preston (Director of Planning and Economic Development), N Richardson (Assistant Director (Development Control)), P Millward (Business Manager), J Godden (Planning Officer) and M Jenkins (Democratic Services Assistant)

## **63. APOLOGIES FOR ABSENCE**

Apart from the apologies noted above, Councillor Ms S Stavrou requested that her apologies be noted at the meeting. Although she was not a Panel member, Planning was within her portfolio on the Cabinet.

## **64. SUBSTITUTE MEMBERS**

There were no substitute members present.

## **65. DECLARATIONS OF INTEREST**

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

## **66. NOTES FROM THE 2 DECEMBER 2010 MEETING**

### **RESOLVED:**

That the notes of the Panel meeting held on 2 December 2010 be agreed.

## **67. TERMS OF REFERENCE**

The Terms of Reference were agreed.

## **68. WORK PROGRAMME**

The following was noted:

(7) Review a selection of controversial planning decisions to see if lessons could be learnt from their consideration.

It was noted that the site meeting organised for Saturday 5 March 2011 was not going ahead. It was advised that suggestions were needed for possible site visits in the Area Plans West Sub-Committee area. It was suggested that a site close to the Gunpowder Mills in Waltham Abbey would be suitable for a visit. It was advised that photographs of the site taken at night would assist at the visit. Mr N Richardson, Assistant Director of Planning and Economic Development, said he would email Panel members with suitable dates on a Saturday, along with links to Iplan as well.

**69. IMPROVEMENT PLAN**

An updated version of the Improvement Plan would be submitted to the Panel in the new Council year.

**70. PLANNING AND ECONOMIC DEVELOPMENT DIRECTORATE DRAFT BUSINESS PLAN 2011/12**

The Panel received the updated Directorate of Planning and Economic Development Business Plan 2011-2012, presented by Mr P Millward, Business Manager, Planning and Economic Development.

Attention was drawn to the training of directorate staff. There was concern that the District Council should get value for money for external training undertaken. However it was possible that the private sector would attract trained planning staff in the future if the economy improved.

The Chairman thanked Mr P Millward for attending.

**RESOLVED:**

That the Planning and Economic Development Directorate Draft Business Plan 2011/12 be noted.

**71. PLANNING ENFORCEMENT PROTOCOL**

The Panel received a report from Mr J Godden, Principal Planning Officer, regarding the Planning Enforcement Protocol.

At the Panel meeting in September 2010, members had requested that a review was carried out of the Planning Protocol Code of Practice as it related to the Enforcement Section. This was due to concerns about apparent delays in subsequent action once enforcement action had been authorised.

Enforcement investigation frequently took a considerable amount of time because the planning system allowed for the submission and determination of retrospective applications and appeals made against unacceptable development. This allowed the time span of the investigation to become long. Whilst the determination of applications and subsequent appeals was taking place it could seem to third parties that nothing was taking place, when in fact it was a live case.

The Enforcement Section provided full contact details of the investigating officer to the complainants with an invitation for them to contact the officer for updates on the progression of the case.

There was concern about providing the members with information on current enforcement cases (there were 700 items raised for enforcement per annum). Members could use this information if they received enquiries from the public. It was suggested that a secure part of the District Council's website could have information on enforcement cases. However officers were unclear as to how this could be achieved at the moment.

**RESOLVED:**

That the report regarding Planning Enforcement Protocol be noted.

**72. PLANNING ENFORCEMENT ROUTE OF ENFORCEMENT ACTION**

The Panel received a report from Mr J Godden, Principal Planning Officer, regarding the routes for planning enforcement. A flow chart was submitted to the Panel and showed the time line from the receipt of an enforcement complaint to the carrying out of site visits.

**RESOLVED:**

That the Planning Enforcement Route of Enforcement Action be noted.

**73. ESSEX LOCAL TRANSPORT PLAN 3 CONSULTATION**

The Panel received a report from Mr J Preston, Director of Planning and Economic Development, regarding the Essex Local Transport Plan 3 Consultation.

Every local highway authority, in this case the County Council, must produce a Local Transport Plan (LTP) for its area. This plan covered a period of 15 years. The LTP was intended to identify what the highway authority wanted to achieve by investing in transport over the next 15 years, and explain how this would help to achieve sustainable economic growth in the county. The consultation document split the County into four areas, the district was part of the West Essex area.

The consultation document listed five outcomes that the plan must deliver:

- Provide reliable connectivity for international gateways to support sustainable economic growth, regeneration and wellbeing.
- Reduce carbon dioxide emissions and improve air quality through lifestyle changes, innovation and technology.
- Improving safety on the transport network and enhancing and promoting a safe travelling environment.
- Maintain all transport assets to an appropriate standard and maximise network availability and resilience.
- Provide sustainable access and travel choice for Essex residents helping create sustainable communities.

The consultation ran from December 2010 to 11 February 2011, but it had not been possible to report to an earlier Panel meeting. Officer level comments were therefore sent to meet the deadline, on the understanding that further Member comments would follow. The consultation took the form of a questionnaire, which was designed to encourage responses from members of the public, as well as local authorities and other relevant organisations. There were 22 questions, several of which were aimed

solely at individuals, and so were not appropriate for the Council to respond to. Officers opted to respond to 5 of these. They were as follows:

**Question 5**

What approach should be taken to achieve the five outcomes? Three options were given, but in each case there would be similar expenditure on safety and maintenance:

**Option 1** Investing in growth. Spending would be focused on improving transport connections within and between the main towns where investment was likely to have the greatest benefit to the economy.

**Option 2** A better place to live. Spending would be spread more evenly across the county and all the outcomes with the aim of making Essex a better place to live and work by improving access to work, education and leisure activities.

**Option 3** A low carbon future. Spending would be focused on providing travel choice and encouraging less car use to reduce CO2 emissions.

**Officer Response**

It was felt that Option 2 was preferred, but with reservations. As resources were going to be very restrictive for the foreseeable future, there was the likelihood that, spending would veer towards the promotion of economic growth and away from environmental objectives and projects or carbon reduction.

**Question 8**

What sections of the highway network maintained by the County Council should be the priority? There were 8 options given, and the top 3 were requested using numbers 1 to 3.

- Option 1** Main roads between towns
- Option 2** Minor roads between towns and villages
- Option 3** Local roads in residential areas
- Option 4** Pedestrian pavements (alongside roads)
- Option 5** Public footpaths
- Option 6** Cycleways
- Option 7** Street lighting
- Option 8** Street furniture

**Officer Response**

- Priority 1** Main roads between towns;
- Priority 2** Minor roads between towns and villages; and
- Priority 3** Pedestrian pavements (alongside roads)

**Question 9**

Are there any issues of concern about the rail or trunk road network?

**Officer Response**

Issues of concern:

- Capacity of J7 of the M11

- Need for new junction (7A) on M11 between Harlow and Sawbridgeworth
- Impact on local road network when either or both motorways were affected by accidents or other delays
- Linked issue of frequency of messaging signs on the local road network
- Timetable/feasibility of Network Rail's plans to remove all level crossing facilities on the Liverpool Street line, of particular concern was what this meant for Roydon. A bridge over the railway line was probably impossible, and the only alternative appeared to be a bypass with significant implications for impact on the Green Belt
- Implications of increased frequency of Stansted Express trains on frequency of local services which served local and easily accessible stations
- Capacity of rail network at rush hour
- Capacity of the Central Line and associated car parks
- Very final decision on the future of the Epping to Ongar section of the Central Line
- Distant possibility of extension of Central Line to Harlow

### **Question 12**

Priorities for West Essex, to select three from the following seven:

- (a) Improving the attractiveness of bus services to and within Harlow through packages of improvements to facilities for buses at the busiest sites.
- (b) Improving bus and all public transport links to and between the West Essex Centres.
- (c) Supporting regeneration initiatives within Harlow and local centres by improving the attractiveness of streets and public spaces.
- (d) Supporting housing and employment growth and regeneration initiatives in Harlow and the local centres by providing transport access to development sites which encouraged low carbon and low congestion travel choices.
- (e) Improving access to Harlow from the M11, particularly to improve journey time reliability.
- (f) Improving access to Stansted Airport by low carbon forms of transport.
- (g) Upgrading and improving cycling and walking networks in Harlow to encourage greater use.

### **Officer Response**

**Priority 1 (2)** above adding "and key public facilities such as hospitals" after "centres."

**Priority 2 (3)**

**Priority 3 (4)**

In general there was concern about the emphasis on Harlow's issues. The districts of Epping Forest and Uttlesford demanded more detailed analysis and understanding. No mention was made of other centres, such as Waltham Abbey, which had much poorer public transport services.

Other priorities (not in any specific order).

- Freight strategy for the county
- Car parking in the towns/villages served by the Central Line
- Congestion in the south of the district

- Traffic issues associated with two regeneration schemes – The Broadway, Loughton and St. John's Road, Epping
- NOx pollution of Epping Forest
- Lack of easily accessible information about community transport – particular problem for the elderly
- Future for business aviation at North Weald Airfield
- Lack of bridleway networks

**RESOLVED:**

That the responses made to the Essex Local Transport Plan 3 Consultation be noted.

**74. CONSTRUCTION DAMAGE TO HIGHWAYS INFRASTRUCTURE**

The Panel received a report from Mr N Richardson, Assistant Director of Planning and Economic Development, regarding Construction Damage to Highway Infrastructure.

At the meeting held on 2 December 2010, the Panel would recall that Emma Featherstone, Development Manager Engineer, from the County Council's Environment Sustainability and Highways Executive attended and advised that any damage to the highway include grass verges, which had been raised as a particular issue by a few members, should be reported to the Maintenance Team at the West Area Highway Office. It was further explained that the difficulty was gathering evidence and proving who or what had caused the damage and therefore how the perpetrator could be held responsible for paying for and rectifying the damage. Routine maintenance inspections were carried out by highway inspectors for the Highway Authority, who record damage/faults and start the process of rectifying and repair. It was also reported that this was not a planning enforcement function because the damage itself was not subject to planning control. However, it was agreed that further discussions would take place between the highway and the planning authorities to resolve the matter of footway damage during the construction period.

Following the meeting, the County Council have now produced simpler procedures for reporting highway problems, which would include the issue of highway damage during construction. The District Council's website currently advertises the ease of reporting highway problems online. It was a case of reporting the problem and then investigating. Damage to verges could be repaired if on highway land. Damage to a private verge would be down to the individual owner and therefore Planning Officers need to be made aware of this before deciding the appropriateness of including any planning conditions. The County Council Maintenance Team revealed that there were 3 cases over a 6 month period where they were able to prove damage caused, at a total case damage to footways sought from the owners of about £7,500.

Secondly, all planning decision notices, including certificate of lawful development notices, were now including an information note that read as follows:

"Applicants are advised not to store building materials on the highway nor to damage highway verges, to avoid parking construction vehicles and machinery on verges. If damage occurs, the Council will require verges to be restored at the applicant's expense."



**RESOLVED:**

That the report regarding Construction Damage to Highways Infrastructure be noted.

**75. STANDARD LETTERS - 1. NEIGHBOUR NOTIFICATIONS ON PLANNING APPLICATIONS 2. ACKNOWLEDGEMENT OF ENFORCEMENT COMPLAINT**

The Panel received a report from Mr N Richardson, Assistant Director of Planning and Economic Development, regarding Standard Letters – Neighbour Notifications on Planning Applications and Acknowledgement of Enforcement Complaint.

The Panel at the meeting held on 2 December 2010 requested that an item be added to the Work Programme in which they would scrutinise the standard letters the Development Control section send out to the public when they were consulted on planning applications and when the officers acknowledge an enforcement complaint for investigation.

The first letter presented, was dispatched at the beginning of the planning application process, it informed the recipient, who might be affected, of the proposed development submitted to the Council and gave them opportunity to comment.

Two leaflets were posted at the same time, and were also presented to the Panel. The first was called "Making Your Views Known," it informed how they could find out about an application, how to comment, grounds for making objections and the decision making process.

The second leaflet was a guide to viewing the planning application online through the Council's website.

The Panel also saw the enforcement acknowledgement letter. It explained who the complaint was allocated to, the steps the Council could take and cross references to the enforcement guide on the website. It also warned that the complaint may take some time to investigate, because time evidence needed to be built up and legal advice sought in particular cases.

**RESOLVED:**

That the report regarding Standard Letters be noted.

**76. OFFICER DELEGATION**

The Panel received a report from Mr N Richardson, Assistant Director of Planning and Economic Development, regarding Officer Delegation – Local Council stating No Objection but comment that application go to Area Plans Sub-Committee.

In October 2010 the Panel discussed the current delegated powers of the Director of Planning and Economic Development in respect of determining planning applications where the Local Council had raised no objections to a planning application but still requested that it be reported for determination by the relevant Area Plans Sub-Committee.

As this matter was being discussed at Local Council's Liaison Committee on 10 November 2010, the Panel requested that the relevant minutes of this committee be forwarded to them.

This issue had come about following a comment on a planning application made by Waltham Abbey Town Council, who despite making clear they had raised no objections, commented further that it should be reported to the Area Plans Sub-Committee.

Under the current delegation powers, there was no provision for such planning applications to be reported to planning committees. As reported to the Local Council's Liaison Committee it was made clear that there were two provisions, among others, where planning applications were reported to planning committees that involved Local Council comments. They were:

- (a) Applications recommended for approval contrary to an objection from a local council which were material to the planning merits of the proposal; and
- (b) Applications recommended for refusal but where there was support from the local council and no other overriding planning consideration necessitates refusal.

The committee was reminded that local councils had two further delegation options which triggered applications going to planning committees.

The first being that they could comment, as they occasionally did, in a more positive way where it was felt necessary. The second option, that a local District Councillor could request a planning application be reported to their relevant Area Plans Sub-Committee within the first four weeks of notification.

**RESOLVED:**

That the report regarding Officer Delegation be noted.

**77. GENERAL APPROACH TO ASSESSING IMPACT ON LIGHT**

The Panel received a report from Mr N Richardson, Assistant Director of Planning and Economic Development, regarding the General Approach to Assessing Impact on Light. Members had requested advice about how officers assess the impact of new development on daylight and sunlight to neighbouring dwellings. A particular concern was the impact of extensions to houses.

The purpose of assessing impact on light was to gauge whether the living conditions of the neighbouring dwellings would be excessively harmed by the development. While some harm was accepted as a reasonable balance between safeguarding the amenities enjoyed by neighbours and the right of residents to enlarge their house in order to improve their own living conditions, development that was assessed as likely to cause excessive harm to amenity was resisted.

In respect of extensions to dwellings, it was advised that there are quick methods for assessing the impact of extension on daylight and sunlight.

Impact on sunlight was assessed by considering the relationship of the proposal to the passage of the sun across the sky from dawn to dusk that was typical during the equinox. That allowed a general indication of where the development would cast a shadow throughout the day. Windows orientated in any direction within 90 degrees of due south would enjoy reasonable to good levels of sunlight. If it appeared that a shadow would be cast towards them by a new development then further consideration needed to be given to the matter of impact on daylight.

Most extensions built were to the front or rear of a house. They were normally orientated at right angles to any potentially affected window. For the purposes of gauging impact on living conditions potentially affected windows were taken as being those that served habitable rooms.

Members requested that the report be put into the Bulletin.

**RESOLVED:**

- (1) That the report regarding General Approach to Assessing Impact on Light be noted; and
- (2) That the report regarding the General Approach to Assessing Impact on Light be put in the Bulletin.

**78. DIRECTOR OF PLANNING AND ECONOMIC DEVELOPMENT'S FEEDBACK FROM DEVELOPMENT CONTROL MEETINGS**

The Panel received a report from Mr J Preston, Director of Planning and Economic Development, regarding Feedback from Development Control meetings.

The Director of Planning and Economic Development had attended several Area Plans Sub-Committees and reported his observations to the Meeting of Chairmen, Vice-Chairman of District Development, Area Plans Committees and Chairman of Planning Services Scrutiny Standing Panel on 10 February 2011.

The following points were raised:

**(1) Display of plans, elevation, aerial and other photographs**

- (a) PowerPoint slides with clear plans and photographs gave very high quality presentations; and
- (b) It was noted that when speakers were making points, the plan or photograph was displayed on the screen relating to the speaker's point.

**(2) Quality of presentations by officers**

- (a) All presentations were given professionally. There were only minor points of improvements, for example, the topography of some sites was more complex than stated.

**(3) Quality of Reports**

For the most part the quality of reports appeared to be pitched at the right level. Areas for improvement included:

- (a) Item had made an agenda for an area sub-committee that should have gone to the District Development Control Committee;
- (b) An item reporting a Certificate of Lawful Development application, should have required that a legal officer be present. In this case the application was deferred for this reason; and

(c) Not all necessary conditions had made it to the agenda.

**(4) Venues**

(a) Whilst there were benefits of having the largest Area Plans Sub-Committee within its local area, there were some logistical issues in getting all the necessary staff and equipment to the venue; and

(b) It was felt that Councillor name plates were not necessarily clear to the public in attendance. The Chairman could ask each member to introduce themselves at the onset of the meeting.

**(5) Consistency**

(a) It was acknowledged that there were different styles from different officers and Chairmen. This could lead to different approaches which may be considered inconsistent or, possibly unfair.

**(6) Summarising**

(a) A short summary of the decision made should be done by the Chairman.

**(7) "An Old Favourite"**

(a) Cases involving extensions to residential properties within the Metropolitan Green Belt had been a regular feature of Committee deliberation for many years. Such cases produced a regular stream of appeals.

**(8) Procedures**

(a) It was felt that the number of declarations of interest given at planning sub-committees was too cumbersome.

**RESOLVED:**

That the Director of Planning and Economic Development's Feedback from Development Control Meetings be noted.

**79. ANY OTHER BUSINESS**

The Chairman requested that an email group should be created for the Members of the Panel for exchanging information etc.

**80. DATES OF FUTURE MEETINGS**

It was noted that this was the last Panel meeting of the Council year. New dates had been agreed for the next year, these were as follows:

7 June 2011;  
30 August  
22 November; and  
28 February 2012

The Chairman thanked members and officers for their input and work into the Panel over the past year.



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## TERMS OF REFERENCE - STANDING PANEL

**Title: Planning Services**

**Status:** Standing Panel

**Terms of Reference:**

1. To consider in detail the provision of Value for Money within the following Planning Services in focusing specifically on:
  - Development Control (including Appeals)
  - Forward Planning
  - Building Control
  - Enforcement
  - Administration and Customer Support
  - Economic Development
  - Environment Team
2. To gather evidence and information in relation to these functions through the receipt of:
  - performance monitoring documents,
  - Best Value Review of Planning Services (updated version)
  - benchmarking exercises,
  - consultation with Planning Committee Members, customers and IT Suppliers.
3. To review the measures taken to improve performance within the directorate.
4. To keep an overview of work associated with securing a sound New Local Development Framework; in particular how the core strategy will cater for the adequate delivery of infrastructure of all types, the limited rolling back of the Metropolitan Green Belt, the provision of affordable housing, and the maintenance of the settlement pattern elsewhere in the District.
5. To consider what changes are practical and desirable to Council policies concerning the Metropolitan Green Belt; including those concerning the extension of existing dwellings, and the reuse of redundant and other buildings; in particular, are further restrictions necessary (changes in policy required) to ensure that such developments are truly sustainable.
6. To establish whether there are any resource implications arising out of the topics under review and advise Cabinet for inclusion in the Budget Process each year;
7. To report to the Overview and Scrutiny Committee at appropriate intervals on the above. To report to the Overview and Scrutiny Committee, the Council and the Cabinet with recommendations on matters allocated to the Panel as appropriate.

**Chairman: Councillor H Ulkan**

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## Planning Services Standing Panel (Chairman – Cllr H Ulkan)

Item	Report Deadline/Priority	Progress/Comments	Programme of Future Meetings
(1) Reports to each meeting on; (a) Regional Plan (b) Local Development Framework (c) Current Staffing (d) Improvement Plan (e) Any recent meeting of the Chairman and Vice Chairman of the Area and District Committees Invitation Panel.	Regular updating reports to each meeting		13 September; 20 December; 7 February 2012; and 24 April
(2) Value for Money Provision: (a) Administration & Customer Support (b) Building Control (c) Development Control (including Appeals) (d) Economic Development (e) Enforcement (f) Environment Team (g) Forward Planning (h) Performance	Provide a report after the end of Quarter 4 on 2(c)+ 2(e) and periodically on the other areas.		
(3) To review a selection of controversial planning decisions to see if lessons can be learnt from their consideration.		This item has been extracted from the Terms of Reference of the Provision for Value for Money within Planning Services Task and Finish Panel and the current Panel.	
(4) To consider whether the reporting arrangements for Terms of Reference sections and those from the Section 106s (including how they are negotiated agreed and implemented strategically to secure community benefit), and appeals are sufficient (including how new legislation impacts on these) and recommend accordingly		This item has been extracted from the Terms of Reference of the Provision for Value for Money within Planning Services Task and Finish Panel and the current Panel.	
(5) Contributions to affordable housing (S106 Agreements)	Item carried forward from last year's Panel Work Programme		

(6) Liaise with other planning authorities to learn from their work.	Item carried forward from last year's Panel Work Programme	Quarterly meeting with other Essex Authorities discuss and share working practices. Benchmarking underway as part of local fee setting and charging of planning application fees.	
(7) CLG Consultation – Planning for Traveller Sites	New Item – June 2011 Panel meeting		
(8) Community Infrastructure Levy	New Item – June 2011 Panel meeting		

Planning Services Standing Panel 2010/2011 (Appendix 1)			
Item	Report Deadline / Priority	Progress / Comments	Programme of Future Meetings
(1) Reports to each meeting on; (a) Regional Plan (b) Local Development Framework (c) Current Staffing (d) Improvement Plan (e) Any recent meeting of the Chairman and Vice Chairman of the Area and District Committees Invitation Panel.	Regular updating reports to each meeting		<del>3 June 2010</del> <del>2 September</del> <del>11 October – Extra Ordinary Meeting</del> <del>2 December;</del> <del>10 January 2011 – Extra Ordinary Meeting</del> <del>3 March 2011</del>
(2) Value for Money Provision: (a) Administration & Customer Support (b) Building Control (c) Development Control (including Appeals) (d) Economic Development (e) Enforcement (f) Environment Team (g) Forward Planning (h) Performance	Provide a report after the end of Quarter 4 on 2(c)+ 2(e) and periodically on the other areas.		
(4) Report from Legal on performance at Planning Appeals	June 2009	<b>COMPLETED</b>	
(5) Meet annually with planning agents and amenity groups required matching	Reports to reflect available meeting	<b>COMPLETED</b> – Meeting has taken place, minutes were circulated at the Panel meeting in January 2011 and have been sent to agents/ amenity group attendees.	
(6) That a report be produced for the Panel setting out the possible route any planning enforcement investigation could take.		<b>COMPLETED</b>	
(7) Review the Corporate Planning protocol with respect to dealing with applicants, agents, developers and the local business community to ensure that the highest standards of probity and governance are achieved.		<b>COMPLETED</b> - Referred to the Standards Committee	

(8) To review a selection of controversial planning decisions to see if lessons can be learnt from their consideration.	Site meetings organised for Saturday 5 <sup>th</sup> March	This item has been extracted from the Terms of Reference of the Provision for Value for Money within Planning Services Task and Finish Panel and the current Panel.	
(9) To consider whether the reporting arrangements for Terms of Reference sections and those from the Section 106s (including how they are negotiated agreed and implemented strategically to secure community benefit), and appeals are sufficient (including how new legislation impacts on these) and recommend accordingly		This item has been extracted from the Terms of Reference of the Provision for Value for Money within Planning Services Task and Finish Panel and the current Panel.	
(11) Planning conditions controlling damage to highways infrastructure	December 2010	<b>COMPLETED</b>	
(12) Contributions to affordable housing (S106 Agreements)	New Item	Carry forward to next year	
(13) Liaise with other planning authorities to learn from their work.	New Item	Quarterly meeting with other Essex Authorities discuss and share working practices. Benchmarking underway as part of local fee setting and charging of planning application fees.	
(14) Countrycare	Submitted to 2 September 2010 Panel meeting.	<b>COMPLETED</b> - Future structure following the departure of Paul Hewitt.	
(15) Consultations from Hertfordshire Councils regarding Core Strategies	October 11 2010	<b>COMPLETED</b> - Consultations to be considered at extra-ordinary panel meeting on October 11 2010.	
(16) Tree Preservation Order Consultation	December 2010	<b>COMPLETED</b> - Government Consultation	
(17) New Homes Bonus Consultation	December 2010	<b>COMPLETED</b> - Government Consultation	
(18) Essex County Council Minerals Development Document: Preferred Approach Paper	January 2011	<b>COMPLETED</b>	

(19) Planning Fees - Consultation	January 2011	<b>COMPLETED</b> – Government Consultation	
(20) Harlow Council – Core Strategy Issues and Options Consultation Document	January 2011	<b>COMPLETED</b>	
(21) Request for District Development Fund	January 2011	<b>COMPLETED</b>	
(22) Town Centre Officer Post/Future Management of Town Centre	January 2011	<b>COMPLETED</b>	
(23) Standard letters of justification on enforcement and planning applications	New Item	<b>COMPLETED</b>	
(24) General Approach to Assessing Impact on Light	New Item	<b>COMPLETED</b>	

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## EPPING FOREST DISTRICT COUNCIL

### DRAFT PLANNING & ECONOMIC DEVELOPMENT IMPROVEMENT PLAN 2011 - 2012 (UPDATED JUN 2011)

AREA OF IMPROVEMENT	ACTION(S)	LEAD RESPONSIBILITY	TARGET FOR COMPLETION	RESOURCES AVAILABLE/ REQUIRED	PROGRESS	
					<input checked="" type="checkbox"/> Fully Achieved <input type="checkbox"/> Partially Achieved <input checked="" type="checkbox"/> Limited Action	
<b>1. Continue to improve procedures For example; increasing the amount of information being held on i-Plan Both of new live information and historic data, so that more information is held electronically and is more accessible, otherwise bring forward initiatives to reduce the costs of dealing with queries, by providing more information on the website, rather than via individual letters, or individual meetings, and by doing things right first time.</b>	Confirm a programme of areas where information, primarily held in hard versions, can be scanned into i-Plan.	Directorate Business Manager	Dec 2011	Within existing resources	<input checked="" type="checkbox"/>	
	Make more information available by improving the content of the sections of the website concerning Planning.	Directorate Business Manager	Dec 2011	Within existing resources	<input checked="" type="checkbox"/>	
	Particular project is working with the local Council's to further improve i-Plan and once completed to gradually remove duplicate manual systems.	Directorate Business Manager	Dec 2011	Within existing resources	<input checked="" type="checkbox"/>	

# EPPING FOREST DISTRICT COUNCIL

## DRAFT PLANNING & ECONOMIC DEVELOPMENT IMPROVEMENT PLAN 2011 - 2012 (UPDATED JUN 2011)

AREA OF IMPROVEMENT	ACTION(S)	LEAD RESPONSIBILITY	TARGET FOR COMPLETION	RESOURCES AVAILABLE/ REQUIRED	PROGRESS	
					<input type="checkbox"/> <input type="radio"/> <input type="checkbox"/>	Fully Achieved Partially Achieved Limited Action

<p><b>2. Create a shorter and simpler Business Plan for 2012 -2013, which meets Corporate requirements yet clearly indicates the future direction for the Directorate, in particular recognising the revised local focus of the Government.</b></p>	<p>Refocus Business Plan 2012 - 2013</p>	<p>Directorate Business Manager</p>	<p>March 2012</p> <p>With report to this Panel with a draft plan in Dec 2011.</p>	<p>Within existing resources</p>	<input checked="" type="checkbox"/>	
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# EPPING FOREST DISTRICT COUNCIL

## DRAFT PLANNING & ECONOMIC DEVELOPMENT IMPROVEMENT PLAN 2011 - 2012 (UPDATED JUN 2011)

AREA OF IMPROVEMENT	ACTION(S)	LEAD RESPONSIBILITY	TARGET FOR COMPLETION	RESOURCES AVAILABLE/ REQUIRED	PROGRESS	
					<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Fully Achieved Partially Achieved Limited Action

<p><b>3. Green Issues.</b></p> <p><b>In parallel with work being undertaken by the Green Corporate Working Party to replace the Climate Change Strategy with a Carbon Management Strategy, make clearer what the different sections of the Directorate are doing to promote sustainable development.</b></p>	<p>Create a revised and improved section on the Council's website to give greater clarity and prominence to these matters.</p> <p>Run training sessions for Members and Officers.</p>	<p>Assistant Directors; Building, Development and Policy &amp; Conservation</p>	<p>Dec 2011</p>	<p>Within existing resources</p>	<p style="text-align: center;"><input type="checkbox"/></p>	
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## EPPING FOREST DISTRICT COUNCIL

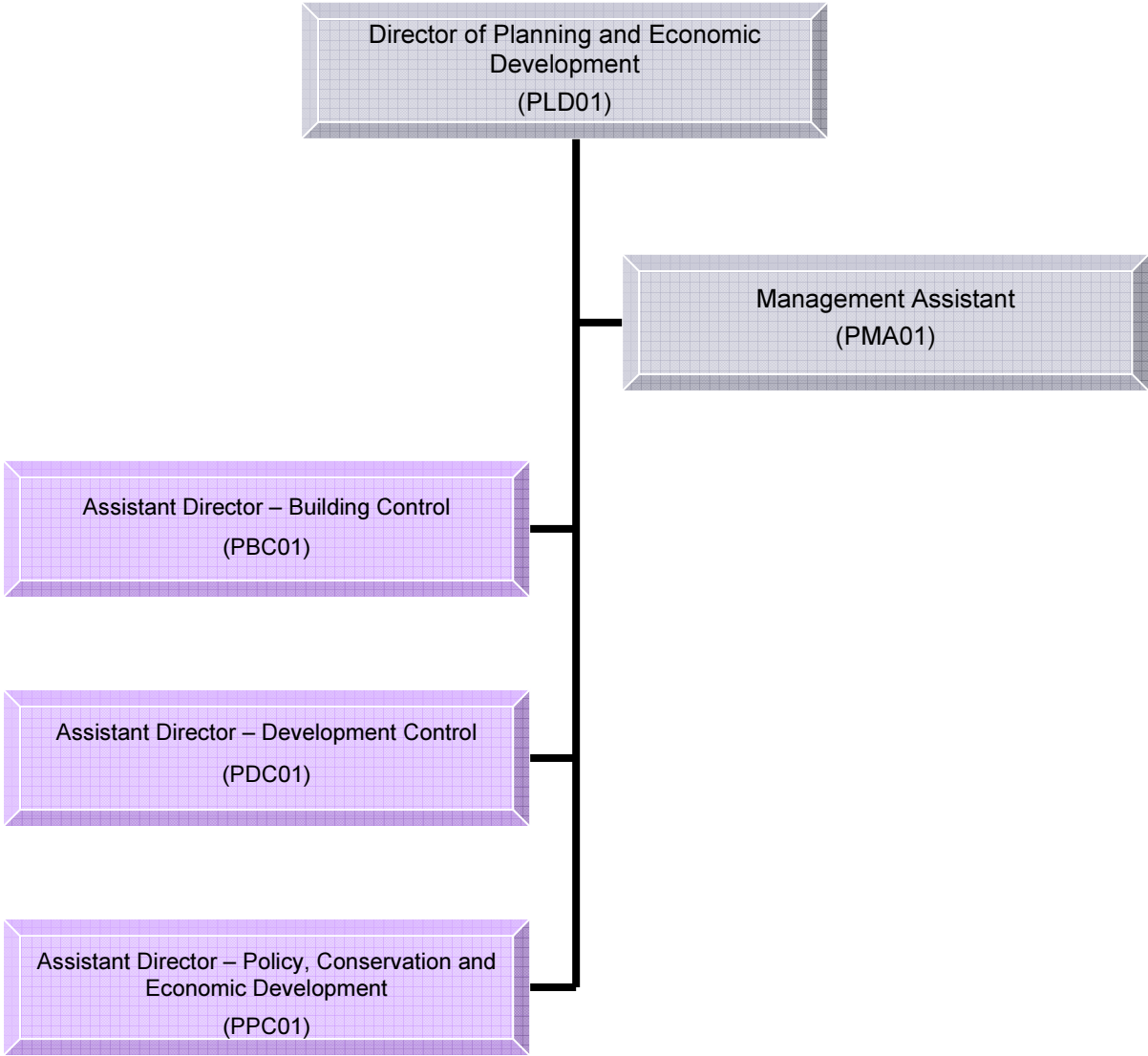
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AREA OF IMPROVEMENT	ACTION(S)	LEAD RESPONSIBILITY	TARGET FOR COMPLETION	RESOURCES AVAILABLE/ REQUIRED	PROGRESS	
					<input checked="" type="checkbox"/> Fully Achieved <input type="checkbox"/> Partially Achieved <input type="checkbox"/> Limited Action	
<b>4. On the assumption that the Government introduces legislation to allow Planning fees to be set locally, and which allow greater cost recovery, and ultimately full cost recovery, to bring forward the necessary schedules and local charging structure, carry out appropriate consultation and recommend the Council to adopt such a set of arrangements</b>	Complete benchmarking exercise.	Directorate Business Manager	Sept 2011	Within existing resources.	<input checked="" type="checkbox"/>	
	Compile fee schedule based on existing national schedule and with similar arrangements to adjoining Authorities.	Directorate Business Manager	Sept 2011	Within existing resources.	<input checked="" type="checkbox"/>	
	Compile a set of charges based on evidence of EFDC costs.	Directorate Business Manager	Sept 2011			






# Agenda Item 8

## DIRECTORATE OF PLANNING AND ECONOMIC DEVELOPMENT

**Management Team:**



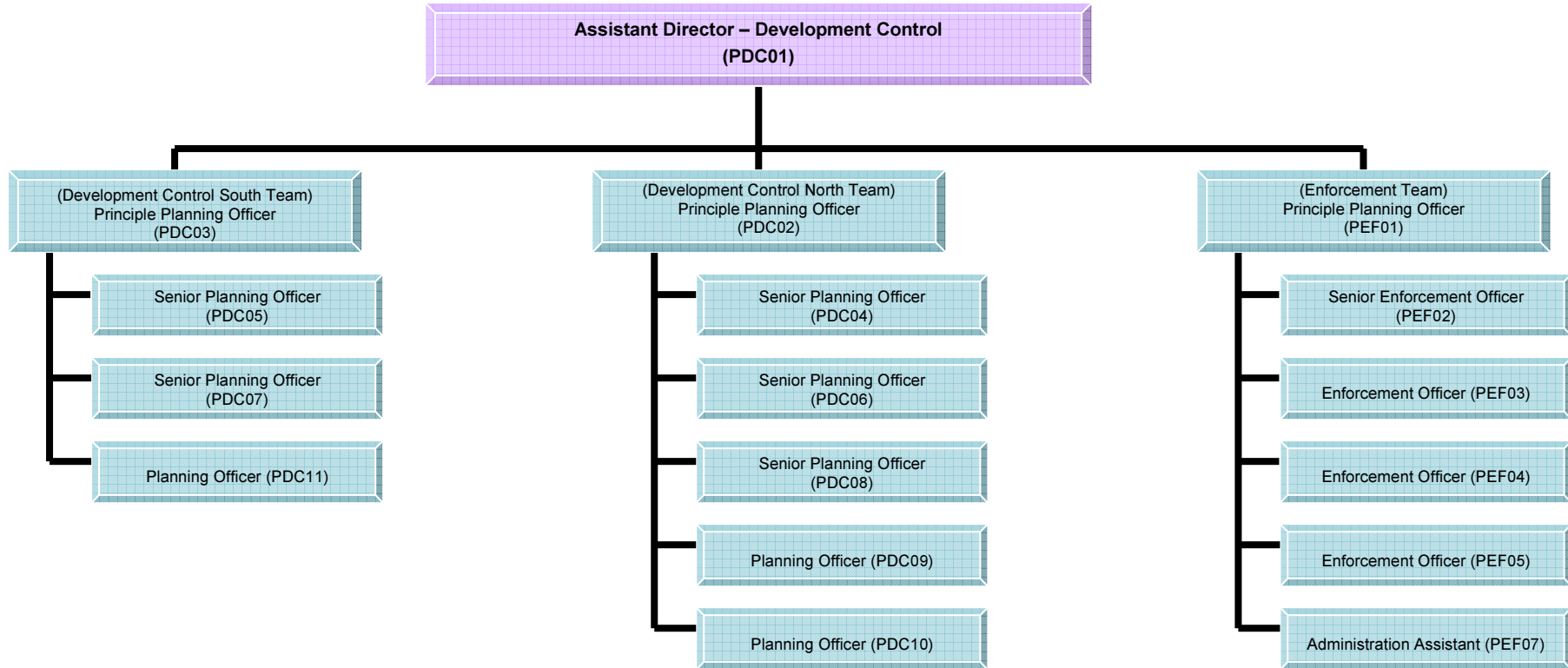
**Key:**

 – Currently Vacant	 - Seconded Post	 - Volunteer
 – Temporary Post	 - Consultant	

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# DIRECTORATE OF PLANNING AND ECONOMIC DEVELOPMENT

## Development Control and Enforcement Team:



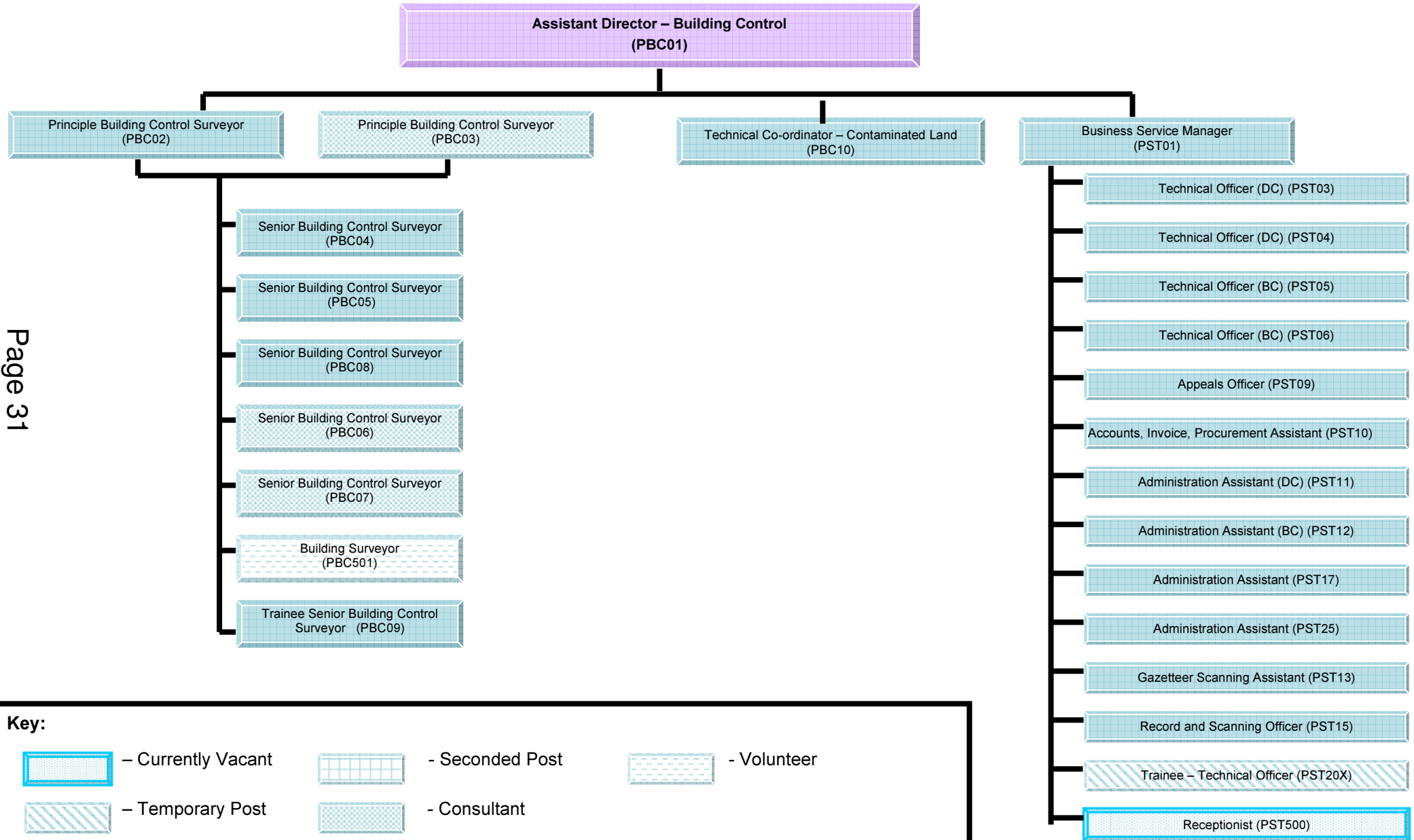
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|  – Currently Vacant |  – Seconded Post |  – Volunteer |
|  – Temporary Post   |  – Consultant    |  |






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# DIRECTORATE OF PLANNING AND ECONOMIC DEVELOPMENT

## Building Control and Administration Team:



**Key:**

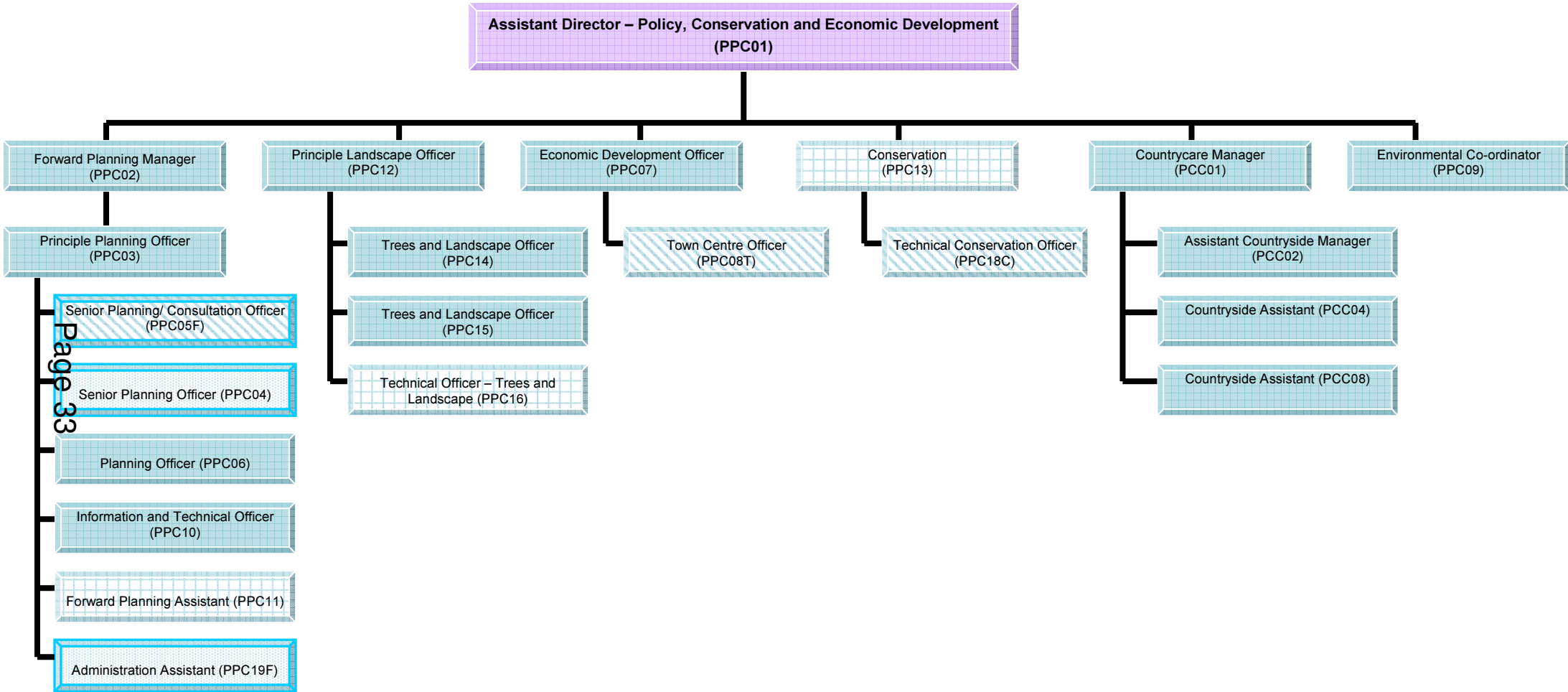
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 - Temporary Post	 - Consultant	

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# DIRECTORATE OF PLANNING AND ECONOMIC DEVELOPMENT

## Policy, Conservation and Economic Development Team:



Page 33

### Key:



– Currently Vacant



- Seconded Post



- Volunteer



– Temporary Post



- Consultant

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## Report to Planning Services Scrutiny Standing Panel

**Date of meeting: 14<sup>th</sup> June 2011**

**Portfolio: Planning**

**Subject: CLG consultation – Planning for Traveller Sites**

**Officer contact for further information: Ian White (01992 564066)**

**Committee Secretary: Mark Jenkins (01992 56 4607)**

# SCRUTINY



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### Recommendations/Decisions Required:

- (1) To agree responses to the consultation questions on the draft Planning Policy Statement and, where appropriate, to specific questions about the impact assessment;**
- (2) To request a meeting with the Minister to discuss the experience of the previous consultation in connection with the Direction, with the intention of modifying the content of the final version of the Planning Policy Statement.**

### Report:

#### Context

1. The consultation, which runs for 12 weeks from 13<sup>th</sup> April to 6<sup>th</sup> July, is essentially about a draft Planning Policy Statement (PPS) (Planning for traveller sites), which is intended to replace Circulars 01/2006 and 04/2007 (Planning for Gypsy and Traveller Caravan Sites, and Planning for Travelling Showpeople). There are 13 questions associated directly with the content of the PPS, and a further 15 specific questions related to the consultation stage impact assessment, mainly to do with the costs and benefits associated with 3 options. For ease of reference, the questions with draft responses are included as an appendix to this report. There are also 7 general questions about the impact assessment (page 26 of the consultation document), but officers have not chosen to respond to these directly, believing that responses to other questions tend to address the issues raised.
2. The draft PPS states that 'the Government's overarching objective is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.'
3. The Government has made plain its intention to abolish Regional Spatial Strategies (eg the East of England Plan) and all associated housing and Gypsy Roma Traveller (GRT) pitch targets. This will take place when the Localism Bill is enacted in early 2012. The Government is also intending to replace all existing planning guidance (Circulars and PPSs) with a National Planning Policy Framework in April 2012 and this draft PPS has been written with that in mind.
4. The PPS aims to:
  - enable local planning authorities to make their own assessment of need for the purposes of planning and to use this to set their own targets for pitch/plot provision. (A "pitch" is defined as an area for residential use on a GRT site. "Plot" refers to an area for mixed use (eg residential and equipment storage) on a travelling showpeople site);

- encourage local planning authorities to plan for sites over a reasonable timescale;
  - protect Green Belt from development;
  - ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites;
  - promote more private site provision while recognising that there will always be some travellers who cannot provide their own sites;
  - reduce the number of unauthorised developments (ie on land owned by travellers) and encampments (on land not owned by the travelling community), and make enforcement more effective – if local planning authorities have had regard to the PPS;
  - ensure that the development plan includes fair, realistic and inclusive policies;
  - increase the number of authorised traveller sites, in appropriate locations, to address under provision and maintain an appropriate level of supply;
  - reduce tensions between settled and traveller communities in plan making and planning decisions; and
  - enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure; and
  - have due regard to the protection of local amenity and local environment.
5. The proposed changes are intended to:
- Increase significantly the number of traveller sites in appropriate locations with planning permission in order to address under-provision over the next three to five years;
  - give local planning authorities the freedom and responsibility to determine the right level of traveller site provision in their area, and the powers to meet those needs, in consultation with local communities;
  - ensure greater fairness in the planning system, including greater consistency of decisions in the Green Belt;
  - encourage production of joint development plans that set targets on a cross-authority basis, to provide more flexibility in identifying sites, particularly if a local planning authority has special or strict planning constraints across its area;
  - align policy for traveller sites more closely with that for other forms of housing; and
  - contribute to a more effective and streamlined planning system with which local planning authorities and developers can more easily engage.

### **Consultation Questions**

#### **Definitions**

6. The PPS differentiates between “gypsies and travellers” and “Gypsies and Travellers”, the former being the non-ethnic planning description, and the latter denoting the recognised ethnic groups of Roma Gypsy and Irish Traveller heritage. Perhaps slightly confusingly the Government proposes to use the term “traveller” to combine the current planning definitions of “gypsies and travellers” and “travelling showpeople”. The first question concerns the retention of those definitions: Do you agree that the current definitions of ‘gypsies and travellers’ and ‘travelling showpeople’ should be retained in the new policy?
7. For the purposes of planning, “gypsies and travellers” means “persons of nomadic habit of life whatever their race or origin including such persons who, on grounds only of their own or their family’s or dependants’ educational or health needs or old age, have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.” In a similar fashion, “travelling showpeople” are defined as “members of a group organised for the purposes of holding fairs, circuses or shows (whether or not

travelling together as such). This includes such persons who, on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age, have ceased to travel temporarily or permanently, but excludes Gypsies and Travellers as defined above."

8. Officers believe it is sensible to retain both definitions because of the different land use requirements associated with the lifestyles of the two groups, but by only excluding the recognised ethnic groups from the definition of travelling showpeople, this seems to leave some uncertainty about others who may be included in the definition of "gypsies and travellers".

#### **Assessment of need**

9. Local planning authorities have a statutory duty to assess accommodation needs of travellers as part of their wider housing needs assessments, and to take these into account in housing strategies in respect of meeting such accommodation needs. The PPS does not specifically refer to the guidance that sets out how needs should be assessed for the purposes of the Housing Act 2004 (the 'Gypsy and Traveller Accommodation Needs Assessment' (GTAA) guidance). The Government proposes to give local planning authorities the power to set their own targets for pitch/plot provision "based on robust evidence of local need in the light of historical demand", but it does not consider it necessary to prescribe the type and volume of evidence required. This, and the conclusions and targets will be tested through the processes of consultation and Examination in Public (EiP) of the Local Development Framework (LDF).
10. The second and third questions of the consultation relate to assessment of need: Do you support the proposal to remove the specific reference to GTAAs in the new policy and instead refer to a "robust evidence base"?; Do you think that local planning authorities should plan for "local need in the context of historical demand"?  
While officers understand the current Government's concerns about reducing bureaucracy, the lack of reference to the GTAA could lead to the production of needs assessments of widely differing approach and quality. A more consistent nationwide approach should result in fewer successful challenges at EiP or other Planning Inquiries.
11. Officers support the principle of planning for "local need in the context of historical demand" (subject perhaps to developing acceptable definitions for these terms), but are concerned about the advice in the draft PPS (para 20(e)) in relation to determining planning applications for traveller sites – "they should determine applications for sites from any travellers and not just those with local connections". This seems to contradict the 'local need' approach and implies that permission could be granted for "non-local" travellers on some occasions. This is rather confusing and worrying, given the limited number of sites that may be available for future GRT use because of 94% Green Belt coverage of this district.

#### **Planning for sites over a reasonable timescale**

12. The consultation document presents evidence that local planning authorities have failed to address under-provision of authorised sites and will continue to fail to meet any targets over the next three to five years. An objective of the PPS is therefore to increase significantly the number of traveller sites in appropriate locations. The Government also wants local planning authorities to plan for a five-year supply of traveller pitches/plots, arguing that this "more reasonable" timescale will make delivery much more likely. The fourth and fifth questions of the consultation are: Do you agree that, where need has been identified, local planning authorities should set targets for the provision of sites in their local planning policies? Do you agree with the proposal to require local planning authorities to plan for a five-

year supply of traveller pitches/plots?

13. This Council has increased the number of authorised pitches by 36 (from 72 to 108) in the period from January 2008 to the present, exceeding both the (soon to be abolished) EEP target of 34 new pitches by April 2011 and the GTAA figure of 32.4 pitches by 2013. (A more detailed report on the current situation in the district is being considered by District Development Control Committee on 29<sup>th</sup> June.) Officers are satisfied that, unlike the majority of local planning authorities, this Council can confidently state that these externally calculated targets for provision of pitches have been met, and that there is therefore no immediate need to make further general provision in this district. The issue will need to be addressed in the LDF, as part of the wider housing agenda, but officers are not convinced at this time that the Council has the resources to identify land already owned by the travelling community which may be the subject of future applications, or other potentially deliverable land which would meet the local needs of travellers, in order to develop realistic targets for future provision.
14. The recent experience of the public consultation on the Development Plan Document for pitch provision leaves officers in no doubt that identifying a five-year supply of sites for pitches or plots will be virtually impossible in this district, unless some publicly owned land in suitable locations becomes available. The Government has to accept that, for whatever reasons, there is strongly held and powerful suspicion and resentment of the travelling community by the settled community, not helped by adverse and unpleasant coverage in the local and national media. These feelings are long established and deeply held and will not be easily challenged or overcome. It will certainly require a concerted effort by Government, and regional and national agencies, and is a task well beyond the capabilities or resources of this Council.
15. In this district, the travelling community exists in discrete, if extended, family units, and there appears to be little interaction between separate families. They also tend to avoid contact with the Council and other agencies unless there is a need for particular services. This should not be taken as any sort of criticism – it is simply a reflection of their chosen way of life which officers do their best to respect. But this means that gathering information to assess future needs for pitch provision is particularly difficult, unlike the situation regarding permanent housing where there are significant quantities of statistical records and other research. The Council was complimented by the Planning Officers Society for the procedures it had adopted to contact the travelling community to engage in the consultation required by the Direction. This involved the preparation of DVDs which were distributed by specialist consultants who had local family connections with the travellers, coupled with interviews with a range of family members. A separate exhibition, by invitation only, was held for the travellers. This was extremely resource intensive and officers now believe that the particular specialist consultants have disbanded. Gathering new information from the community to gauge the need for a five-year supply of suitable sites will be a difficult, costly and time-consuming process, and the Council simply does not have the resources to deal with this in the context of all the other work associated with the preparation of the Core Strategy. For these reasons, officers are strongly of the view that the identification of a five-year supply of appropriately located and deliverable sites is wholly unrealistic and completely unachievable.

#### **Protecting the Green Belt**

16. The consultation notes that “there is a perception ....that currently policy treats traveller sites more favourably than it does other forms of housing and that it is easier for one group of people to gain planning permission, particularly on sensitive Green Belt land.” Circular 01/2006 states that new sites for Gypsies and Travellers in the Green Belt are normally inappropriate development. The definition of “appropriate development” in PPG2: Green Belts (revised March 2001) generally excludes housing

except for limited infilling or limited affordable housing. In the interests of ensuring fairness in the planning system, the Government proposes to remove the word “normally” in relation to traveller sites in the Green Belt, so that the relevant policy (E) of the PPS will state “There is a general presumption against inappropriate development within Green Belts. Traveller sites in the Green Belt are inappropriate development, within the meaning of PPG2: Green Belts.” The sixth question of the consultation asks if the Council agrees with this proposed wording.

17. All the current traveller sites (authorised and unauthorised) in the district are within the Green Belt. Inspectors’ reports for appeals at Holmsfield and Hallmead Nurseries (2007 and 2009 respectively) concluded separately that the Council was likely to find suitable sites only in the Green Belt, mainly but not solely because of land value and residential amenity issues. It is also worth pointing out that 83 of the 108 authorised pitches are located in only 2 parishes (Roydon and Nazeing), and this does raise concerns about the provision of adequate support services, and in particular education. Officers agree with the proposed change of wording because this should “even things up” as regards permanent housing and traveller pitch applications in the Green Belt. (The point about “favourable treatment” was frequently raised during the recent public consultation for the identification of additional pitches in the district) They do not believe, however, that this will significantly affect the existing traveller sites. Successful applications have had to make a convincing case of very special circumstances and this approach will continue to be used for all future applications in the Green Belt. The change in wording, however, may make it more difficult to establish or justify completely new traveller sites in the Green Belt, which in turn will make it increasingly difficult for this Council to identify suitable and deliverable new sites. Officers are strongly of the view that “non-local” need, however that may be defined, should be directed to sites outwith the Green Belt. It will be interesting to see if the proposed change is considered at the resumed Inquiry (27<sup>th</sup> June) into The Meadows site at Bumbles Green.

**Reducing tensions between settled and travelling communities**

18. The Government proposes aligning planning policy on traveller sites more closely with that for other forms of housing – this includes the proposed change to Green Belt development outlined above, and the identification of five-year and up to fifteen-year supplies of land for pitches. This should achieve “fair play with everyone being treated equally and even-handedly”.
19. The consultation also suggests, in the interests of further reducing tensions, that local planning authorities need to pay particular attention to early and effective community engagement with both settled and travelling communities when formulating their plans and determining planning applications. The document states “The new focus on consultation with settled communities will increase meaningful public participation in planning, meaning people are more supportive of development. It will also enable local planning authorities to obtain a balance of views to enable them to make their decisions, and reduce opposition to development based on misunderstanding and lack of information.”
20. The 7<sup>th</sup> and 8<sup>th</sup> questions relate to these two proposals:  
Do you agree with the general principle of aligning planning policy on traveller sites more closely with that for other forms of housing?  
Do you think the new emphasis on local planning authorities consulting with both settled and traveller communities when formulating their plans and determining individual planning applications will reduce tensions between these communities?
21. Officers certainly believe there are some advantages in bringing pitch provision considerations within the wider housing framework. One of the many disadvantages of the recent public consultation exercise was that it was interpreted as favourable

treatment for the travelling community ahead of the growing need for affordable housing within the district. If pitch provision can be treated as, and accepted as, merely one element of the total housing agenda, this may help to reduce suspicion and mistrust. Officers remain convinced, however, that at least in this district it will be quite impossible to identify a five-year (or longer) supply of deliverable sites, so there will be limits to how closely pitch provision can be aligned with other forms of housing.

22. As regards the 8<sup>th</sup> question, officers feel it is particularly important that the Government and its civil servants are made fully aware and understand the experiences of, and outcomes from, this Council's recent public consultation exercise. There may be a distinction to be drawn between a Direction with imposed top-down targets and the processes that are outlined in the draft PPS, but it is unlikely that this will be recognised or accepted by the settled community in this district in the foreseeable future. The consultation created immense resentment amongst local residents and particular concern for potentially affected landowners and their neighbours. This in turn resulted in a relentless avalanche of requests/questions for Forward Planning staff and Members, coupled with the formation of several new residents' groups several of which quickly networked. This deep resentment and suspicion linger within the settled community, and officers have been made aware of concerns from some groups about the current CLG consultation. In this context the 8<sup>th</sup> question is preposterous – any consultation will simply inflame the bad feeling and mutual mistrust which regrettably persist in this district.

#### **Transitional arrangements**

23. The PPS asks planning authorities which do not have a five-year supply of pitches/plots to “treat favourably” applications for temporary permission. This again aligns pitch provision policy more closely with that for permanent housing. The consultation suggests that there will be a “reasonable period of time” to establish the five-year supply, before the consequences of not planning to meet need come into force. There are three questions associated with these transitional arrangements: Do you agree with the proposal that asks local planning authorities to “consider favourably” planning applications for the grant of temporary permission if they cannot demonstrate an up-to-date five-year supply of deliverable traveller sites to ensure consistency with PPG3: Housing? Under the transitional arrangements, do you think that six months is the right time local planning authorities should be given to put in place their five-year supply before the consequences of not doing so come into force? Do you have any other comments on the transitional arrangements policy?
24. For reasons outlined earlier, officers do not believe it will be possible to identify a five-year supply of deliverable sites in this district. They therefore believe that the answer to the first of these three questions should be “No”, because it is reliant on something which cannot be achieved.
25. The second of the three questions is astonishingly naïve. As is obvious from above, the allocation of sites for traveller pitches is very controversial in this district and the procedures would be complex, subject to much objection, and consequently be very lengthy, even if agreement could eventually be achieved (and officers remain very dubious about this last point). The suggestion that six months is a “reasonable” time period is quite nonsensical. It would also appear to repeat the risk of being seen to address provision for Gypsies and Travellers ahead of the housing needs of the settled community – another issue which caused resentment during the public consultation for the Direction.
26. Members should also appreciate that the Issues and Options consultation for the Core Strategy is programmed for this autumn, and this will fully use the resources of the Forward Planning team which is currently short of two members of staff. Trying to deal



with identifying a five-year land supply for gypsies would jeopardise the more important task of moving ahead with the Core Strategy – an unfortunate and unnecessary repeat of the problems caused by the Direction, which severely disrupted other Forward Planning work.

27. As regards other comments, officers believe the Government should be thinking again about five-year land supplies. This Council's recent record of increasing the number of authorised pitches probably cannot be matched anywhere else in the country, let alone the East of England. This indicates that a criteria based policy, reasonably applied, can meet the needs of the travelling community, even in areas of development restraint, if applications are professionally prepared and supported by adequate justification. There can be little doubt, however, that the increased protection to the Green Belt (which covers 94% of this district) will make it increasingly difficult, if not impossible, to identify new deliverable sites.

#### **Consolidating and streamlining policy**

28. The Government believes that the PPS will be a shorter and clearer statement of policy than the two Circulars it is proposed to replace, and hence will contribute to a more effective and streamlined planning system with which local planning authorities and developers can more easily engage. The last two consultation questions are: Are there any other ways in which the policy can be made clearer, shorter or more accessible?  
Do you think that the proposals in this draft statement will have a differential impact, either positive or negative, on people because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation? If so, how in your view should we respond? We are particularly interested in any impacts on (Romany) Gypsies and (Irish) Travellers.
29. In answer to the first question, officers feel that definitions of the terms "local need" and "historical demand" would help local authorities to have a consistent basis from which to calculate future pitch targets. This could also address the confusion that appears to exist between these terms and the guidance for determining planning applications (see para 11 of this report). The PPS also proposes the use of a "Rural Exception Site Policy" where there is a lack of affordable land to meet local traveller needs, but it is not clear whether the Government thinks that this would be an acceptable approach in the Green Belt, where the emphasis has been to add traveller sites fully to the definition of inappropriate development.
30. Officers believe that the GRT community will be adversely affected by the proposed changes, on the grounds that it is likely to be much harder to identify suitable new sites in the Green Belt.

#### **Impact Assessment Questions**

31. The Government considered 3 options: (1) do nothing; (2) withdraw the circulars; and (3) withdraw the circulars and replace with a new single PPS. Option 3 is obviously preferred, hence the consultation, but there are some impact assessment questions related to the options.
- #### **Option 1: Do nothing**
32. Additional costs would not be imposed, although ongoing costs of dealing with "cumbersome and confusing" policy would continue. There is a lack of democratic accountability with regional targets. The main benefit seen by the Government is the retention of a framework with which users are familiar. The question posed is: Do you think there are any other benefits to retaining the existing policy, and whether these can be quantified?
33. Officers accept that this is not a viable option, given the other changes to the planning

system that the Government is bringing forward – in particular the abolition of regionally imposed targets and the introduction of the National Planning Policy Framework. Nevertheless, the Council has also shown that the current system can work, even in areas of significant development restraint, as is evidenced by the recent significant increase in the number of authorised pitches in this district, meeting both the East of England Plan and the GTAA targets.

**Option 2: Withdraw Circulars and do not replace them**

34. This would remove all national planning policy specifically directed at the travelling community, and there is very little reference elsewhere. The question posed is: Can you identify – in quantitative terms if possible – whether you think there would be any benefits to this option? Officers recommend “No”.

**Option 3: Withdraw Circulars 01/2006 and 04/2007 and replace them with a new single policy.**

35. Costs and benefits of this option are assessed against five intended outcomes of the new policy and seven questions or requests for comments are posed. The five expected outcomes are:
1. enabling local planning authorities to make their own assessment of need and to use this evidence to set their own targets for pitch/plot provision;
  2. enabling local planning authorities to plan to meet this need over a reasonable timescale;
  3. enabling local planning authorities to protect Green Belt from development;
  4. reducing tensions between settled and traveller communities; and
  5. streamlining policy for traveller sites.
36. 1) The Government believes that the first outcome will not create additional costs for local planning authorities as they are already required by legislation to collect evidence of need. It is acknowledged that there is a potential cost to travellers through a risk that sites will not be provided where they are needed if most of the electorate are opposed. Comments are requested on (a) whether the Council envisages extra costs associated with the assessment of need, and (b) the scale of the time and money benefits which will accrue to local planning authorities as a result of being able to set traveller site targets locally.
37. (a) Officers believe there will be extra costs for the Council. While the Housing Strategy of 2009 included an aim to ‘consider the appropriate number of new pitches required for Gypsies and Travellers in the district in future, having regard to the County-wide GTAA’, the review of the Strategy in 2011 acknowledged that there had been limited progress, but also noted that ‘at least the number of pitches required by the EEP has been provided to date, through . . . normal planning processes.’ Steps are being taken to identify GRT families potentially living in bricks and mortar (mainly through consultation with Registered Social Landlords), and some cross-agency contacts have been established during discussions about the formation of a County-wide Gypsy and Traveller Unit, which may help to identify, and ease future consultation with, some GRT families. The techniques adopted for the Direction consultation in terms of engaging the traveller community (see para 15) were successful but costly and time-consuming, and it would be difficult and very expensive to repeat the exercise to gather up-to-date information. Officers can, and will, make use of records kept by the County Council’s Ethnic Minority and Traveller Achievement Service (EMTAS), but these are not especially detailed, and there will be issues of data protection.
- (b) The request assumes that there will be time and money benefits, partly based on collaborative working with neighbouring authorities. Officers believe that, given the experience of dealing with the Direction, any local targets that may be set are likely to be subject to rigorous challenge by representatives of the settled community, which may add to staff and other resource costs. There is an assumption throughout the

consultation document that the “duty to co-operate” included in the Localism Bill will translate easily into co-operative working between authorities. Policy B of the draft PPS (para 9(e)) requires that local planning authorities should “consider production of joint development plans that set targets on a cross-authority basis, to provide more flexibility in identifying sites, particularly if a local planning authority has special or strict planning constraints across its area.” Theoretically, this suggests that the Council is in a very strong negotiating position with its neighbours, ie 94% Green Belt and with the recent significant increase in authorised site provision, but in the real world, officers simply cannot see adjoining authorities positively co-operating to identify or provide sites for travellers seeking locations in this district. Travellers themselves may have no interest in being encouraged to move to sites in other districts. The assumption inherent to the request is therefore misleading.

38. 2) The second outcome relates to the five-year supply of pitches/plots and the related request for comment is on whether the transitional period will lead to any extra costs – and what these might be in monetised terms. A second request is to give the Council’s view on the extent to, and the rate at, which new sites will come forward as a result of the new approach. These issues have already been addressed earlier in this report – paras 14 and 15 describe the sheer impracticality if not impossibility of identifying a five-year supply, and paras 25 and 26 address the nonsense of the 6 month period, and the impact this would have on the timetable for preparing the Issues and Options consultation stage of the Core Strategy. This top-down approach of one size fits all, seemingly being imposed by the Government despite claims to be reducing bureaucracy, fundamentally misses the point that this Council has met and has exceeded pitch provision targets.
39. In answer to the second request relating to this outcome, officers do not believe that the extent and rate at which new sites come forward will be significantly affected by the new approach. If anything the rate will reduce with the definition of inappropriate development now fully including traveller sites.
40. 3) The request for comment relating to protecting Green Belt is: Please give your view on whether the draft policy is likely to have any significant monetary benefit in terms of protection of the Green Belt, and, if so, what this is likely to be. Oral evidence from the previous public consultation in association with the Direction suggested that house prices were significantly adversely affected in proximity to sites which had been identified with potential for use for pitches. Officers are unsure how much of this was hearsay, and how much was simply emotive. Officers are certainly unaware of any Government or other authoritative research that links long-term adverse effects on house prices with proximity to authorised traveller sites. They therefore believe that it is unlikely that the draft policy will have any measurable monetary benefits.
41. 4) While there are no requests for views associated with this option (reducing tensions), the impact assessment is still extraordinarily idealistic and makes some statements which totally fly in the face of this Council’s experience with the Direction consultation – eg “The emphasis on community engagement will make it more likely that members of the settled community will accept traveller development”; and “Not only will this help to reduce tension between the traveller and settled community (sic), but it will make it more likely that development will take place in sustainable locations.” Officers wish to express their frustration to Members that guidance of this fatuous nature is being issued, and request that meetings with Ministers should be sought to describe fully this Council’s recent experiences, so that any future guidance, including the final version of the PPS, will be much closer to reality.
42. 5) There are two questions posed in regards to streamlining policy, and the Government is particularly keen to have responses to the first one: Do the familiarisation costs estimated for local planning authorities appear

reasonable? Please give your view on the assumptions made in the calculation. Do the estimated administrative savings for local planning authorities, as a result of streamlining national planning policy, seem reasonable? Please give your view on the assumptions made in this calculation.

43. The Government has calculated that the familiarisation cost of the new policy will be a one-off in one year only of £0.01m, this being based on the average wage of a planning officer, and the assumption that one person per local planning authority will be required to familiarise themselves with the new guidance. Officers are frankly rather puzzled by the whole topic and the importance that is being placed on this. Changes to guidance or policy are part and parcel of work in the Planning Directorate, and officers deal with this as part of the normal routine of their day job. As far as the new guidance is concerned, there will be benefits from amalgamating and simplifying what were two broadly similar Circulars, but familiarisation costs are likely to be minuscule or otherwise unmeasurable, and would be shared between a number of officers, notably those in development control and enforcement, and to a smaller extent in policy. Regrettably therefore, officers feel unable to answer this question in the detail hoped for by the Government.
44. As regards the second question, the assessment quotes the findings of the Killian Pretty review and the savings that could be made if the national policy framework was overhauled and simplified. Using an approach broadly similar to that in para 43, the assessment concludes that annual savings of £0.01m, amounting to £0.1m in ten years, could be achieved. Officers again feel unable to contribute significantly to this analysis.

**Other specific questions**

45. The four additional questions are:
- (a) Are there any significant costs and benefits that we have omitted? If so please describe including the groups in society affected and your view on the extent of the impact.
  - (b) Do you think that the draft policy is likely to have any impact, positive or negative, on travelling showpeople as an economic group?
  - (c) Are there any significant risks or unintended consequences we have not identified? If so please describe.
  - (d) Do you think there are any groups disproportionately affected?  
Officers' draft responses are listed below.
46. (a) The inclusion of traveller sites as inappropriate development in the Green Belt is likely to trigger almost automatic refusals by this Council for applications for entirely new sites in the district, unless they are generally showing very special circumstances. This, in turn, could lead to more frequent appeals and Inquiries with associated increased costs.
47. (b) Related to para 46, travelling showpeople will experience increased difficulty in finding suitable and acceptable sites in the Green Belt which may have a negative effect on their way of life and their economic operations.
48. (c) These issues have been mentioned elsewhere in the report, but (i) the consultation and the impact assessment seriously underestimate the strength of bad feeling which exists between the settled and traveller populations, at least in this district. This will not be easily challenged or overcome, and the suggested approaches for reducing tension are almost laughably impractical, despite the serious nature of the problem. (ii) Too much reliance is being placed on positive outcomes from collaborative working between authorities. The reality of the situation is, and this is not in any sense trying to justify what happens, the travelling community is mistrusted by the settled community (the latter forming by far the largest part of the electorate) and this is

necessarily reflected by Members in dealing with traveller issues. Consequently, collaborative working is not going to mean that participating authorities are going to agree to take some of another authority's pitch numbers.

49. (d) This is not an exact answer to the question, as this is not about disproportionality, but life will be (even) tougher for the travelling community in districts such as this which are essentially all Green Belt.

**Reason for decision:**

It is essential for this Council to respond to the CLG consultation. The experience gained through the initial preparation of the DPD as a result of the previous Government's Direction indicates that some of the ideas being proposed in the PPS are at best naïve and idealistic, and at worst completely impractical and unachievable. Government ministers and civil servants must be made far more aware of just how controversial and complex this subject is in this part of the country, and must be encouraged to revisit and substantially amend some of their proposed changes.

**Options considered and rejected:**

Not to respond to the consultation.

**Consultation undertaken:**

Director of Planning and Economic Development  
Director of Housing

**Resource implications:**

Budget provision: From existing resources

Personnel: From existing resources

Land: Unknown at present

Corporate Plan reference: Key Objective (KO) 2; KO 8

Relevant statutory powers: Planning and Compulsory Purchase Act 2004; Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites; Circular 04/2007: Planning for Travelling Showpeople

Background papers: Planning for traveller sites (April 2011) – CLG consultation

Environmental/Human Rights Act/Crime and Disorder Act Implications: The draft circular emphasises (a) the protection of the Green Belt; (b) aligning G & T pitch provision more closely with other forms of housing; and (c) reducing tension between the settled and travelling communities.

Key Decision reference: (if required)

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## Appendix – Planning for Traveller Sites Consultation June 2011

### PPS Consultation Questions

**1. Do you agree that the current definitions of “gypsies and travellers” and “travelling showpeople” should be retained in the new policy?**

Draft response – It is sensible to retain both definitions because of the different land use requirements associated with the lifestyles of the two groups, but by only excluding the recognised ethnic groups from the definition of travelling showpeople, this seems to leave some uncertainty about others who may be included in the definition of “gypsies and travellers”.

**2. Do you support the proposal to remove specific reference to ‘Gypsy and Traveller Accommodation Needs Assessments’ in the new policy and instead refer to a ‘robust evidence base’?**

Draft response – The lack of reference to the GTAA could lead to the production of needs assessments of widely differing approach and quality. A more consistent nationwide approach should result in fewer successful challenges at EiP or other Planning Inquiries.

**3. Do you think that local planning authorities should plan for ‘local need in the context of historical demand’?**

Draft response – The Council supports the principle (subject to developing acceptable definitions for these terms), but is concerned about the advice in paragraph 20(e) of the draft PPS in relation to determining planning applications for traveller sites – “.....applications for sites from any travellers and not just those with local connections”. If permission is granted for “non-local” travellers, this would not be addressing “local need”.

**4. Do you agree that where need has been identified, local planning authorities should set targets for the provision of sites in their local planning policies?**

Draft response – The Council has increased the number of authorised pitches by 36 (from 72 to 108) in the period from January 2008 to the present, exceeding both the East of England Plan target of 34 new pitches by April 2011 and the GTAA figure of 32.4 pitches by 2013. There is therefore no immediate need to make further provision in this district. The issue will continue to be addressed through the LDF, as part of the wider housing agenda.

**5. Do you agree with the proposal to require local planning authorities to plan for a five-year supply of traveller pitches/plots?**

Draft response – The Council believes that this is wholly unrealistic and completely unachievable in this district, unless some publicly owned land in suitable locations becomes available.

**6. Do you agree that the proposed wording of Policy E (in the draft policy) should be included to ensure consistency with Planning Policy Guidance 2: Green Belts?**

Draft response – The Council agrees with the proposed change in wording, because this should “even things up” regarding the consideration of applications for

permanent housing and traveller pitches in the Green Belt. The change may, however, make it more difficult to establish or justify completely new traveller sites in the Green Belt, which in turn will make it increasingly difficult for this Council to identify suitable and deliverable new sites.

**7. Do you agree with the general principle of aligning planning policy on traveller sites more closely with that on other forms of housing?**

Draft response – The Council believes there are some advantages in bringing pitch provision considerations within the wider housing framework. If pitch provision can be treated as, and accepted as, merely one element of the total housing agenda, this may help to reduce suspicion and mistrust. The Council is convinced, however, that at least in this district it will be quite impossible to identify a five-year (or longer) supply of deliverable sites, so there will be limits to how closely pitch provision can be aligned with other forms of housing.

**8. Do you agree with the new emphasis on local planning authorities consulting with settled communities as well as traveller communities when formulating their plans and determining individual planning applications to help improve relations between the communities?**

Draft response – The Council strongly disagrees that consultation on this specific issue will help to improve relations. This is based on very recent practical experience of just such a consultation in the light of a Direction made by the previous Government. In this district at least it will simply inflame lingering resentment, suspicion and general bad feeling between the communities, and with the Council itself.

**9. Do you agree with the proposal in the transitional arrangements policy (paragraph 26 in the draft policy) for local planning authorities to ‘consider favourably’ planning applications for the grant of temporary permission if they cannot demonstrate an up-to-date five-year supply of deliverable traveller sites, to ensure consistency with Planning Policy Statement 3: Housing?**

Draft response – As already explained above, the Council does not believe it is possible to identify a five-year supply of deliverable sites, so the answer has to be “No”.

**10. Under the transitional arrangements, do you think six months is the right time local planning authorities should be given to put in place their five-year land supply before the consequences of not having done so come into force?**

Draft response – The Council believes this to be a nonsensical suggestion, with no basis in reality, and which shows no understanding whatsoever of the practical difficulties of dealing with this controversial and complex subject.

**11. Do you have any other comments on the transitional arrangements?**

Draft response – The Council’s recent record of increasing significantly the number of authorised pitches indicates that a criteria based policy, reasonably applied, can meet the needs of the travelling community, even in areas of development restraint, if applications are professionally prepared and supported by adequate justification. The Government should therefore be thinking again about the requirement to produce five-year land supplies.



**12 – Are there any other ways in which the policy can be made clearer, shorter of more accessible?**

Draft response – Definitions of the terms “local need” and “historical demand” would help local authorities to have a consistent basis from which to calculate future pitch targets. This could also address the confusion that appears to exist between these terms and the guidance for determining planning applications (and in particular paragraph 20(e) of the Draft PPS).

The PPS also proposes the use of a “Rural Exception Site Policy” where there is a lack of affordable land to meet local traveller needs, but it is not clear whether the Government thinks that this would be an acceptable approach in the Green Belt, given that traveller sites have been added to the definition of “inappropriate development”.

**13 – Do you think that the proposals in this draft statement will have a differential impact, either positive or negative, on people because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation? If so, how in your view should we respond? We are particularly interested in any impacts on (Romany) Gypsies and (Irish) Travellers and welcome the views of organisations and individuals with specific relevant expertise.**

Draft response – The Council believes that Gypsies and Travellers will be adversely affected by the proposed changes, on the grounds that it is likely to be much harder to identify suitable new sites in the Green Belt.

**Impact Assessment (Specific) Questions**

**Option 1: Do nothing**

**Do you think there are any other benefits to retaining the existing policy, and whether these can be quantified?**

Draft response – This is not a viable option, given the changes to the planning system being brought forward by the Government. Nevertheless, the Council has shown that the current system can work, even in areas of significant development restraint.

**Option 2: Withdraw Circulars and do not replace them**

**Can you identify – in quantitative terms if possible – whether you think there would be any benefits to this option?**

Draft response – No.

**Option 3: Withdraw Circulars and replace them with a new single policy  
(a) Enabling local planning authorities to make their own assessment of need and to use this evidence to set their own targets for pitch/plot provision.**

**Please comment on whether you envisage any extra costs to local planning authorities associated with the assessment of need for traveller sites in their areas, over and above those they experience at present.**

Draft response – There will be extra costs. Steps are being taken to identify GRT families potentially living in bricks and mortar, mainly through consultation with Registered Social Landlords. Some cross-agency contacts have been established

during discussions about the formation of a County-wide Gypsy and Traveller Unit, which may help to establish contact with other GRT families. Ideally a repeat of the consultation exercise aimed at travellers under the Direction would be best, but this was a time-consuming and costly exercise, and it is believed that the specialist consultant firm is no longer in existence.

**Please give your view on the scale of the time and money benefits which will accrue to local planning authorities as a result of being able to set traveller site targets locally.**

Draft response – Locally derived targets will be subject to rigorous challenge by the settled community, if the Council's recent experience with the Direction consultation is anything to go by. This will probably add to staff and other resource costs. There is also a broad assumption that co-operative working with other authorities to produce joint development plans, that set targets on a cross-authority basis, will ease the problem for districts such as this which are mainly Green Belt. Given the controversial nature of the particular land use, it seems unlikely that there will be much successful co-operation, and this is again likely to add to staff and other resource costs.

**(b) Enabling local planning authorities to meet this need over a reasonable timescale.**

**Please give your views on whether the transitional period envisaged will lead to any extra costs – and what those might be in monetised terms.**

Draft response – The transitional period of 6 months to identify and establish a five-year supply of suitable sites is totally unachievable in this district. The timing will interfere with the preparation of the Issues and Options consultation for the Core Strategy, effectively repeating the severe disruption to the LDF timetable caused by intensive work associated with the Direction. The settled community, already angered and upset by the previous consultation, will continue to object strongly and in significant numbers, to any more specific work associated with the travelling community at this time – with potentially huge implications for staff workloads.

**Please give your view on the extent to which, and rate at which, you consider the new sites will come forward as a result of the new approach.**

Draft response – The changes are unlikely to have a significant impact. If anything, the rate will reduce with traveller sites now being fully classed as inappropriate development in the Green Belt.

**(c) Enabling local planning authorities to protect Green Belt from development.**

**Please give your view on whether the draft policy is likely to have any significant monetary benefit in terms of protection of the Green Belt and, if so, what this is likely to be.**

Draft response – It is unlikely that there will be any measurable monetary benefits.

**(d) Reducing tensions between settled and traveller communities.**

No requests for comments made.

**(e) Streamlining planning policy for traveller sites.**

**Do the familiarisation costs estimated for local planning authorities appear reasonable? Please give your view on the assumptions made in this calculation.**

Draft response – There will be benefits from amalgamating and simplifying what are two broadly similar Circulars, but familiarisation costs are likely to be minuscule or otherwise unmeasurable. Unlike the assumption made in the calculation, several officers in the Planning Directorate would need to familiarise themselves with the changes.

**Do the estimated administrative savings for local planning authorities, as a result of streamlining national policy, seem reasonable? Please give your view on the assumptions made in this calculation.**

Draft response – The Council is not able to offer a meaningful response.

#### **Other specific questions**

**(i) Are there any significant costs and benefits that we have omitted? If so, please describe including the groups in society affected and your view of the extent of the impact.**

Draft response – The definition of traveller sites as inappropriate development in the Green Belt is likely to trigger almost automatic refusals by this Council for applications for entirely new sites in the district. This, in turn, could lead to more frequent appeals and Inquiries with associated increased costs.

**(ii) Do you think that the draft policy is likely to have any impact, positive or negative, on travelling showpeople as an economic group?**

Draft response – Travelling showpeople will experience increased difficulty in finding suitable and acceptable sites in the Green Belt. This may have a negative effect on their way of life and their economic operations.

**(iii) Are there any significant risks or unintended consequences we have not identified? If so please describe.**

Draft response – (i) The consultation and the impact assessment seriously underestimate the suspicion and mistrust between the settled and travelling communities in this district. The suggested approach for reducing tension, ie increased community engagement, will only inflame these feelings, and will not achieve the desired results; (ii) Too much reliance is being placed on positive outcomes from collaborative working between authorities. It seems very unlikely that participating authorities are going to agree to take another authority's pitch numbers, irrespective of whether this would suit individual families of the travelling community.

**(iv) Do you think there are any groups disproportionately affected?**

Draft response – Life will be (even) tougher for the travelling community in districts such as this where the major part of the area is Green Belt, and where land values and amenity considerations mean that sites cannot be found in the built-up areas excluded from the Green Belt.

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## **Report to Planning Services Scrutiny Standing Panel**

# SCRUTINY



Epping Forest District Council

**Date of meeting: 14 June 2011**

**Subject: Section 106 Agreements, including annual report for 2010-11 and affordable housing.**

**Officer contact for further information: Nigel Richardson - 01992 564110**

**Committee Secretary: Mark Jenkins - 019922 56 4607**

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

1. That the annual report of section 106 agreements be noted.
2. That how section 106 agreements are negotiated, particularly in respect of affordable housing contributions, be noted.

### **Report:**

#### **Background**

1. Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a land owner/developer over a related issue. The obligation is often termed simply as a 'Section 106 Agreement'.
2. Section 106 agreements can act as a main instrument for placing restrictions on developers, often requiring them to minimise the impact of their development on the local community and to carry out tasks providing community benefits.
3. Such agreements may be sought when planning conditions are inappropriate to ensure and enhance the quality of development and to enable proposals that might otherwise have been refused to go ahead in a sustainable manner. They are not to be used simply to take a share of the developers' profits into the public purse for that can result in the accusation that the Council is 'selling' planning permissions, nor are they to be used to gain a benefit that is unrelated to the development.
4. The Government Circular – Circular 05/05 – states that section 106 agreements need to meet the following tests:
  - (a) Be necessary to make it acceptable in planning terms;
  - (b) Be relevant to planning;
  - (c) Be directly related to the proposed development;
  - (d) Be fairly and reasonably related in scale and kind to the proposed development; and
  - (e) Be reasonable in all other respects.

The courts have, however, stated that to be lawful, agreements only have to show that they are relevant to planning and that in all respects are reasonable.

#### **What are Planning Obligations?**

5. Section 106 Agreements contain obligations relating to a person's land which bind the land and whoever owns it. They may:
  - restrict the development or use of the land in a specified way,
  - require specified operations or activities to be carried out,
  - require the land to be used in any specified way, or
  - require a sum or sums to be paid to the authority on a specified date or dates or periodically.
6. They provide a means for ensuring that developers offset directly any disadvantage from a development and contribute towards the infrastructure and services that this Council and Essex County Council believe to be necessary to accommodate the proposed development. Policy I1A of the Local Plan Alterations 2006 sets out the policy in relation to Planning Obligations.
7. They are used to deliver, for example, the following:
  - affordable housing,
  - requiring highway works to be carried out
  - requiring land to be dedicated and equipped as public open space
  - the restoring of a listed building
  - sums of money to be paid for the provision of off-site infrastructure or for the long-term maintenance of open space.
8. Section 106 Agreements are deeds drawn up by legal professionals and have traditionally taken some months to bring to a conclusion. There is no substitute for such a legal document when the benefit being sought is of a complex nature such as affordable housing, or when it is anticipated that the enforcing of the provisions need might be especially robust. However, since applications are not finally dealt with until the associated agreement is completed, this approach meant that many major applications were exceeding the Government's targets for determination.
9. Therefore, in common with other planning authorities, the Council is encouraging the submission of Unilateral Undertakings with the application. These are still obligations under section 106 but do not require the Council to sign and seal the document. The wording of these undertakings are still checked to ensure that they are enforceable if it proved necessary.
10. Alternatively, again in common with other authorities, if the benefit is straightforward, permissions are granted with conditions that require measures to be undertaken to meet various requirements. In this way, applications are determined in accordance with targets while at the same time achieving the objective of the community benefit.

### **Affordable Housing**

11. Affordable Housing is required where a certain threshold (15 dwellings or more or where the site is 0.5 of a hectare or above) is reached in a single development proposal where the population of the settlement is greater than 3,000 people. The requirement in this case would be 40% of all houses would be affordable and the only way to secure this is through a legal agreement. In smaller settlements outside the Green Belt, up to 50% would be sought. There are policies in the Council's Local Plan that state this (H5A - H8A) and therefore make it clear to developers what is the Council's requirement.
12. Where negotiation becomes more complex and delays the determination of planning applications, is where community or off-site affordable housing contribution is sought. The Council has no formulae or standard charges worked up and requests made at planning committee meetings are sometimes interpreted as a take of the developers profit and therefore not necessary or reasonable in

planning terms. However, there are circumstances where an affordable housing contribution is more appropriate. This comes down to whether the development is viable. For instance, affordable housing provision on site might make the development non-viable to the applicant who will after all, be looking to make a profit. This rarely happens in the case of the larger schemes over 15 units, but, particularly redevelopment of commercial sites to residential, external advice has been sought.

13. Basically, an affordable housing contribution should cover the difference between the value of a residential unit on the open market and the amount a housing association could pay for it to charge affordable rents. We therefore need a valuation for each unit and, in order to understand what a housing association would pay, a development appraisal based on a cash flow of a housing association managing the units over 30 years netted back to the present value.
14. Once received we will assess the information. If there is a need to verify any of the information, we would need to employ an expert to assess what has been submitted.

### **Performance for the Year 2010/11**

15. The appendix to this commentary is divided into four parts:
  - Part 1 lists all those agreements (or obligations) entered during the past year. There are 7 in total.
  - Part 2 lists those applications that have been granted permission subject to conditions that require community benefits in accordance with paragraph 10 above. There are 3 developments in this category.
  - Part 3 provides a list of benefits actually realised through the year, some relating to obligations concluded in previous years and some relating to recent obligations listed in Parts 1 and 2.
16. Benefits negotiated through the year (from Parts 1 & 2) will provide:
  - a total of £729,000 to be received into the public purse
  - a total in the region of 165 affordable housing units
  - various highway improvements at the developers' expense
  - parish council facilities.
17. Benefits actually realised through the year (from Part 3) have provided:
  - a total of £535,712 received into the public purse
  - 6 affordable housing units
  - improvements to public transport facilities at the developers' expense
  - various highway works at the developers' expense
  - town centre improvements.

### **The Future**

18. Essex County Council has been working on proposing a 'standard charge' for development within the County. This means, for example, that for every new dwelling granted permission, they may require a standard sum of money to be paid into the public purse to cater for increased use of libraries, roads, education facilities, etc. They have recently produced a "Developers' Guide to Infrastructure Contributions" and within this, there are formulae and standard charges/tariffs relevant to County Services. It may be sensible for this Council to adopt a similar approach – that on qualifying developments a standard sum be required to cover the increased use of leisure facilities, waste collection, affordable housing, town centre enhancement, public car parking, etc. Such a policy would need to be adopted within the emerging Local Development Framework.

19. However, the use of Section 106 agreements is being overshadowed by the emergence of the Community Infrastructure Levy, which is in effect a tax on developers' profit and this will replace much of the traditional section 106 benefits (though on-site requirements and provision of affordable housing might still be able to be negotiated). As part of the Local Development Plan process, much work will be required to gather evidence data to set the Levy and Members will need to take a decision on how this work is to be resourced and funded.
20. A separate report has been prepared on Community Infrastructure Levy, but briefly it requires an up-to-date development plan and adoption after consultation and examination, before such a levy can be adopted and payment received.

## **PART 1**

### **Section 106 Agreements concluded between April 2010 and March 2011**

1. **EPF/0149/10** agreement concluded 25/05/2010  
**208-212 High St, Epping**  
Benefit – £15,000 conservation area contribution
2. **EPF/1370/10** agreement concluded 21/10/2010  
**Brent House Farm, Harlow Common, North Weald**  
Benefit - £100,000 contribution to be passed to North Weald Parish Council for community use in the local area.
3. **EPF/0446/10** agreement concluded 01/10/2010  
**BPI Poly Site, Brook Rd, Buckhurst Hill**  
Benefit – £100,000 off-site affordable housing contribution and £96,000 education contribution.
4. **EPF/0320/10** agreement concluded 11/01/2011  
**113-115 Grange Crescent, Chigwell**  
Benefits - £24,000 education contribution and highway works.
5. **EPF/1209/10** agreement concluded 03/02/2011  
**Land at Weald Hall Care Home, Weald Hall Lane, Thornwood, Epping.**  
Benefit - £5,000 towards health-care provision.
6. **EPF/0457/10** agreement concluded 28/02/2011  
**Land at Ongar Station, High Rd, Ongar**  
Benefit – £450,000 Affordable Housing Contribution.
7. **EPF/1529/09** agreement concluded 25/10/2010  
**Land at School Lane, Abbess Roding**  
Benefit – 6 affordable housing units on site

## **PART 2**

### **Benefits Required by Conditions between April 2010 and March 2011**

1. **EPF/0504/10** permission dated 03/08/2010  
**Matthews Yard, Harlow Road, Moreton**  
Benefit - £2,400 highways contribution.
2. **EPF/0635/10** permission dated 16/06/2010



**1 Orchard Way, Chigwell**  
**Benefits** - £5,000 for street lighting.

3. **EPF/0015/10** permission dated 24/03/2010  
**Ongar Memorial Hospital, Fyfield Road, Ongar**  
**Benefits** - £6000 traffic regulation order to restrict on-street parking

### **PART 3**

#### **Benefits Secured between April 2010 and March 2011**

1. **EPF/0146/07**. Agreement dated 26/03/2007  
**1 Church Hill, Loughton - residential development**  
**Benefits secured** –£40,000 highway contribution and £10,000 town centre enhancement.
2. **EPF/2190/05**. Agreement dated 20/12/2006  
**Grange Farm, High Road, Chigwell - residential development**  
**Benefits secured** – £15,200 towards signage and public right of way status across the M11 footbridge; community project sum of £22,112.
3. **EPF/0468/07**. Agreement dated 22/10/2007  
**19-23 High Street, Epping – Sheltered Housing**  
**Benefits secured** - £435,000 off- site affordable housing contribution.
4. **EPF/0504/10** permission dated 03/08/2010  
**Matthews Yard, Harlow Road, Moreton – residential development**  
**Benefit** – receipt by Essex County Council of £2,400 - highways contribution.
5. **EPF/0635/10** permission dated 16/06/2010  
**1 Orchard Way, Chigwell**  
**Benefits** – receipt by Essex County Council of £5,000 for street lighting.
6. **EPF/0015/10** permission dated 24/03/2010  
**Ongar Memorial Hospital, Fyfield Road, Ongar**  
**Benefits** – receipt by Essex County Council of £6,000 traffic regulation order to restrict on-street parking
7. **EPF/1035/02**. Agreement dated 19/04/2004  
**Land rear of The Thatched House, Epping**  
**Benefits secured** – management of trees and new benches aside war memorial in Epping High Street.
8. **EPF/1810/04**. Agreement dated 14/04/2004  
**Former Lorry Park, Langston Road, Loughton – Office Development and Car Showroom/workshop**  
**Benefits secured** – Highway and footway improvements carried out to Chigwell Lane by Essex County Council.
9. **EPF/0333/03**. Agreement dated 26/03/2003  
**Former GEC site, Langston road, Loughton – new office development**  
**Benefits secured** – Upgraded bus stops, extend cycle path and improvements to station link carried out by Essex County Council.
10. **EPF/1090/05**. Agreement dated 17/07/2006  
**Land at Langston Road, Loughton – Car showroom/workshop and 9 x B1, B2 and B8 units.**  
**Benefits secured** – Improvements to transport infrastructure and passenger transport

services carried out by Essex County Council.

11. **EPF/0791/07.** Permission dated 10/01/2008  
**Land r/o The Forge, Lambourne Road, Chigwell.**  
**Benefits secured** - £10,000 highway contribution received and passed on to Essex County Council.
12. **EPF/1529/09** agreement dated 25/10/2010  
**Land at School Lane, Abbess Roding**  
**Benefit Secured** – 6 affordable housing units built on site.
- 13 **EPF/1244/05** agreement dated 20/11/2006  
**Former Epping Forest College Site (upper Site), Borders Lane**  
**Benefit Secured** – 56 affordable housing units built on site.
14. **EPF/2297/04** agreement dated 06/07/2006  
**St Margarets Hospital Site, The Plains, Epping**  
**Benefits Secured** – 40 affordable housing units built on site.
15. **EPF/0089/09** agreement dated 05/10/2009  
**Former Parade Ground , Merlin Way , North Weald**  
**Benefits Secured** – 50 affordable housing units built on site.
16. **EPF/1740/05** agreement dated 05/03/2007  
**Land at Station Approach, Ongar Station, High Street, Ongar**  
**Benefit Secured** – 13 affordable housing units built on site.

**Reason for decision:**

The Panel are requested to note this performance. The list of section 106 agreements are regularly monitored and updated.

**Options considered and rejected:**

Nil

**Consultation undertaken:**

Nil

**Resource implications:**

Budget provision: Nil, other than provide revenue for the Council and Essex County Council.

Personnel: Nil

Land: Nil

Community Plan/BVPP reference: Nil

Relevant statutory powers: Town and Country Planning Act 1990 (as amended)

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

Key Decision reference: (if required)



## SCRUTINY



### **Report to Planning Services Scrutiny Standing Panel**

**Date of meeting: 14 June 2011**

**Subject: Community Infrastructure Levy**

**Officer contact for further information: Nigel Richardson - 01992 564110**

**Committee Secretary: Mark Jenkins – 01992 56 4607**

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

That the report be noted

#### **Report:**

##### Community Infrastructure Levy - What is It?

It is anticipated to replace section 106 planning obligations as a means of providing payment for the provision of infrastructure in a local area. The Community Infrastructure Levy (CIL) is a new financial charge which will entitle local planning authorities to charge on development taking place in their area. The money raised would be spent on local infrastructure, including on-running cost of infrastructure and therefore can be used as a revenue generator.

After April 2014, if the Council wishes to collect infrastructure charges or monies, it will have had to formally adopt a CIL as this will be the only option available and therefore collection through section 106 legal agreements will no longer be possible (although for the purposes of securing Affordable Housing through individually negotiated development projects, the Government at present intends to continue with the use of S.106 agreements). The CIL will include a charging schedule document prepared by the charging authority (e.g. local planning authority) setting out rates and a formula.

Monies raised under CIL can only be spent on "infrastructure". It is not specifically defined in the 2008 Planning Act, only defined to include a number of items, namely:

- Roads and other transport facilities
- Flood defences
- Schools and other educational facilities
- Medical facilities
- Sporting and recreational facilities
- Open spaces

Regulations may alter items in this list, but it will fall to us to determine what is to be infrastructure in our area and therefore allows flexibility to include community and cultural facilities, for example.

##### Pre-requisite to making a CIL payment

The statutory basis of CIL is contained in Part 11 of the Planning Act 2008 (the Act), the Community Infrastructure Levy Regulations 2010 and the Community Infrastructure (Amendment) Regulations 2011. Whilst the Regulations are in place, the charging of CIL has not automatically occurred, because before an obligation to pay CIL can arise there are a number of sequential steps which need to be undertaken and conditions satisfied before any

landowner or developer will be required to make a CIL payment. Steps and conditions required are:

- The existence of an up to date development plan
- The carrying out of satisfactory infrastructure planning in line with the above
- The creation and approval of a charging schedule
- The grant of planning permission for specified development
- A commencement of development.

#### Up to date development plan

The Government have indicated that the charging schedule for CIL should be treated as part of the Local Development Framework but it is not legally part of the development plan and is not a local development document.

CIL is inextricably linked to the development plan system. The advice is that charging authorities should only implement CIL where there is an up to date development strategy. It is unlikely that the Council's current Local Development Plan, consisting of saved policies from 1998 and adopted amendments 2006, would be deemed as being "up to date" and therefore there is added incentive for the adoption of a core strategy, or at least a draft core strategy for the Council.

#### Requirements

In order to allow a charging schedule for infrastructure we will need to identify a target amount of funding to be raised for our district, including:

- Infrastructure needs of our area
- Calculate the cost of such infrastructure
- Identify the likely phasing of development
- Identify other sources of funding and establish any shortfall in funding
- An assessment of the potential effects of CIL on the economic viability of development on our district.

CIL is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure unless those deficiencies will be made more severe by new development. There will need to be work carried out to identify infrastructure project work required as part of the CIL rate setting process, although in order to allow flexibility, the CIL revenue from developments can be spent on differing projects.

#### What planning permissions are open to CIL?

Not every planning permission will be liable to pay CIL: only specific developments defined as:-

- The creation of new non-residential buildings where the gross internal floor area space (and enlargement to existing buildings) is 100 square metres or more.
- The creation of residential buildings, irrespective of its size.

Anything not a "building", such as plant or machinery, golf courses, wind turbines, changes of use etc. will not pay CIL.

#### When is it calculated and payable?

At the time planning permission is granted. But in cases where it is subject to a condition requiring further approval before development can commence, then on the date final

approval is given. Minor commencement work will be sufficient to trigger a CIL payment and the developer must give a commencement notice to the Council before work starts on site. Payment will be due within 60 days of commencement. The exceptions are retrospective planning permissions and secondly, where permission is granted following an enforcement notice appeal. In each instances, development is treated as commencing on the day permission is modified or granted.

The CIL charge is to be expressed as a cost per square metre of gross internal floorspace across all classes of development. Specifically CIL will apply to any new build, a new building or extension, if it has at least 100m<sup>2</sup> of gross internal floorspace or involves the creation of one dwelling even if it is below 100m<sup>2</sup>. There is a comprehensive regime for the enforcement of the payment of CIL monies. The Act and regulations provides opportunities for persons to review or appeal against CIL.

### Who can spend CIL?

The charging authority (local planning authority) can spend monies on infrastructure, but the charging authority can also pass receipts to other infrastructure providers, such as Essex County Council (for roads and education), Environment Agency, Highways Agency, health-care trusts etc. The local planning authority can also forward funding to other bodies and this will include local parish and town council's as well as neighbourhood groups, but they must be locally "elected" bodies.

To encourage neighbourhood funding of infrastructure, there will be an expectancy to work closely with other local partners and pass through a "meaningful proportion" of the CIL revenue to locally elected bodies. At present, there is no definition of "meaningful proportion", though advice will follow in due course from the Dept of Communities and Local Government (CLG). Presumably, this would require the 'meaningful proportion' to be in line and according to evidenced Neighbourhood plans or similar, that can clearly demonstrate a local need and consensus regarding community infrastructure priorities. This however has not been verified.

### **Reliefs from paying the levy**

The CIL regulations provide a limited number of types of relief from paying the levy, if they meet the conditions set out within the regulations:

1. A charity landowner must be granted exemption from paying the levy on their portion of the development to be used wholly or partially for charitable purposes.
2. A relief can be given by the charging authority in the case a charity exemption above if it would constitute a state aid.
3. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as a charitable investment, from which the profits are applied for charitable purposes.
4. 100% relief from paying the levy must be granted on those parts of a development which are intended to be used as social housing.

The regulations also allow authorities to offer relief from paying the levy in exceptional circumstances where a specific scheme cannot afford to pay it - but there are a number of strict conditions that must be met.

### Testing the Charging Schedule

The charging authority must first prepare a preliminary draft charging schedule and carry out public consultation with neighbouring authorities, residents and businesses, voluntary bodies and take into account representations made before issuing a draft of its charging schedule. There is then a charging schedule examination by a CIL examiner. Key considerations will be:-

- the charging authority has complied with the Act & CIL regulations;
- CIL rate is informed by appropriate available evidence;
- the charging authority has struck an appropriate balance between infrastructure costs, funding sources and potential impact on economic viability of development;
- *(In other words, the proposed CIL rate would not put at serious risk the overall development of the area.)*

The Examiner then has 3 responses:-

- **Approve**
- **Approve with modifications** – e.g. to ensure that CIL rate does not put development at serious risk;
- **Reject**, for example, if the charging authority has not complied with the Act or regulations or has not used appropriate available evidence.

Operation of the charging schedule can only be in the approved form recommended by the examiner. If the examiner modifies the approval and we do not like the changes, then we can elect to not approve the modified charging schedule and as a consequence, not charge CIL. The process then starts again and a revised charging schedule is published for examination. Once approved and agreed, it remains in force indefinitely.

#### Future of Planning Obligations (Section 106 Agreements)

Since April 2010, The CIL Regulations have provided that it is unlawful for a Planning Obligation to be taken into account when determining a planning application for a development, or any part of a development, whether or not there is a Local Levy in operation, if the Obligation does not meet all of the following tests:-

1. It is necessary to make the development acceptable in planning terms;
2. It directly relates to the development; and
3. It fairly and reasonably relates in scale and kind to the development.

There has been a marked trend for Planning Inspectors and the Secretary of State when determining appeals to not take account of s106 obligations that do not meet the above tests. This precludes Local Authorities of seeking “wider” planning benefits and limit future planning obligations to “direct impact mitigation”.

Once a CIL is in place and in any event, after April 2014, we will no longer be able to seek infrastructure revenue through planning obligations, the Governments caution here is to safeguard against possible “double charging”.

S.106 obligations will continue for non-infrastructure related situations and as stated earlier, affordable housing provision will continue to be dealt with by this existing process. Highway works necessitated by a planning application can still be provided under section 278 of the Highways Act as well as a CIL.

#### EFDC Timescales for Delivery

The Local Development Scheme key principles, which were agreed at the Local Development Framework (LDF) Committee on 28/3/2011, indicate the timescales for the completion of EFDC's Local Development Framework. It is anticipated that the Development of a CIL schedule will run in parallel with the formulation of the Core Planning Strategy, the

second stage of which is anticipated to commence in the Autumn of 2011 with the Issues & Options consultation.

The Assistant Director of Policy & Conservation will prepare a draft EFDC CIL strategy for the next Planning Scrutiny Committee meeting in September 2011 and for discussion with the Planning & Technology Portfolio Holder. This will contain the preferred approaches for our District based on emerging evidence, and new guidance, having also reviewed the approach followed by some of the DCLG's selected CIL frontrunner Councils, including neighbouring Redbridge.

It is important to add that ongoing changes to the Planning system, in particular the National Planning Framework, which is anticipated to replace existing Policy Guidance, may change the course of action taken both in the preparation of the Core Strategy and supporting documents and subsequently the preparation of a CIL charging schedule for this District.

**Reason for decision:**

The Panel are requested to note these documents. The letters are periodically reviewed and it should also be noted that they satisfy their function of advising the recipients of where relevant information is obtainable and how their views can be made.

**Options considered and rejected:**

Nil

**Consultation undertaken:**

Nil

**Resource implications:**

Budget provision: Nil

Personnel: Nil

Land: Nil

Community Plan/BVPP reference: Nil

Relevant statutory powers: Town and Country Planning Act 1990 (as amended), Part 11 of the Planning Act 2008, Community Infrastructure Levy Regulations 2010, Community Infrastructure (Amendment) Regulations 2011.

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

Key Decision reference: (if required)

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