

Report to the Cabinet

Report reference: C-043-2009/10
Date of meeting: 16 November 2009



**Epping Forest
District Council**

Portfolio: Legal and Estates

Subject: Continued Use of Counsel – Mark Beard

Responsible Officer: Ruth Rose (01992 564474)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

That in relation to the current financial year, Contract Standing Order C3 be waived in respect of Mark Beard of Counsel, enabling the Director of Corporate Support Services to continue to instruct him on behalf of this Council in relation to matters in which he has current or previous involvement for the reasons set out in this report.

Executive Summary:

Authority is being requested to waive Contract Standing Orders to enable the use of Mark Beard of Counsel to represent and advise the Council at a Public Inquiry into an appeal against the Council's decision to refuse permission for a proposed Gypsy Site at Ash View Hamlet Hill.

Reasons for Proposed Decision:

Authority is sought to waive Contract Standing Order C3 which requires two quotations to be obtained for services in the value range of £15,001 to £25,000 for the reasons set out above. The waiver of Council Standing Orders will facilitate the effective use of the Legal Service's Consultant's budget in 2009/10, with value for money having been demonstrated by the retention of an experienced Counsel. It will also allow continuity of advice and representation in this sensitive area of work.

Other Options for Action:

Consideration has been given to instructing alternative counsel of similar calling, but there is a risk that the use of Counsel not fully conversant with the District and its Development Plan policies and ongoing Gypsy and Traveller issues may be detrimental to the Council's case. It would require more officer time to ensure that the appointed Counsel is fully up to speed and able to properly represent the Council.

Report:

1. Mark Beard of Counsel, whose chambers are at 6 Pump Court Temple EC4, has been instructed by the Council on numerous occasions primarily in respect of Planning matters but mostly in respect of the planning issues surrounding Gypsies and Travellers.
2. Earlier this year he was instructed in relation to a Public Inquiry into a proposed

Gypsy and Traveller site at Hallmead Nursery. The planning issues related to inappropriate development in the Green Belt and the risk of Flooding, with evidence on the latter point given by the Environment Agency. The Public Inquiry lasted 5 days in total and required 3 rather than the usual 2 conferences due to a change in the Appellant's evidence. Fees for this matter amounted to £10,125.00

3. More recently Mark has been instructed to give advice in respect of the ongoing Gypsy and Traveller Development Plan Document and the Direction issued by the Secretary of State in September 2007; having previously advised the Council when the Direction was first threatened and then made by the Secretary of State. Fees for this piece of work including the conference are estimated to be £1500.00. The LDF Cabinet Committee on 7 September 2009 recommended to Cabinet that Standing Orders be waived to enable Mark to be instructed on this piece of work in view of the urgency of the advice required.

4. Mark Beard is therefore fully conversant with this Council's current Development Plan policies, its proposals under the Gypsy and Travellers Development Plan Document (G&T DPD) consultation document and the difficulties the Council is facing in managing the expectations of the Secretary of State, those of its residents and being able to bring forward a sound G&T DPD for approval in due course.

5. A new planning appeal relating to a proposed Gypsy site at Ash View Hamlet has been made and is to be dealt with by way of Public Inquiry. The date has not yet been fixed but is anticipated to be around February/March 2010 and within this financial year.

6. The likely fees for this Inquiry will be £3,500.00 brief fee, to include settling Statement of Case and a Conference with a daily refresher fee of £1,250.00. It is anticipated that it will be a 2 day hearing, so total fees will be approximately £4750.00.

7. The Senior Lawyer who has conducted this case would recommend instructing Mark Beard to act for the Council at the Public Inquiry in view of his previous knowledge of the District and his in depth knowledge of the Council's G&T issues. If an alternative Counsel were instructed it is highly unlikely that a lower fee would be obtained unless a Counsel of less experience were instructed. It is of significant benefit to work with Counsel who not only has previous experience of the District but of the case likely to be mounted by the Appellant and his advisors. There is opposition to this proposed development by local residents and it is anticipated that they and local ward Councillors will be expecting the Council to be appropriately represented at the Inquiry.

8. Accordingly, if Mark Beard is instructed in this matter his fees will be in the region of £17,000.00 for this financial year and it will therefore be necessary to obtain alternative quotes in order not to be in breach of Standing Orders.

9. Contract Standing order C1(10) states:

"Where the aggregate sum payable within a single service directorate to one supplier of goods, works or services in a financial year is likely to exceed the limits of authority referred to in these Contract Standing orders, the Chief Officer must report to the Cabinet and seek a waiver of the Standing Order. It is the responsibility of the Chief Officer to ensure that such a report is submitted prior to the limit of authority being breached. In exercising their responsibilities under this paragraph, Chief Officers should have regard to the overall cost (including any management costs) of any contracts which extend over longer than a single financial year."

Resource Implications:

From within the existing Legal Services budget for 2009/10.

Legal and Governance Implications:

Not applicable.

Safer, Cleaner and Greener Implications:

Not applicable.

Consultation Undertaken:

None.

Background Papers:

Financial Regulations and Contract Standing Orders.

Impact Assessments:

Risk Management

By instructing Mark Beard the Council will be able to put its best case forward at the Inquiry without any significant additional input from officers.

Equalities Assessment

No equalities impact issues have been identified.