

Report to the Cabinet

Report reference: C-052-2010/11

Date of meeting: 7 March 2011



**Epping Forest
District Council**

Portfolio: Operational Planning and Transport

Subject: On Street Decriminalised Parking Enforcement

Responsible Officer: John Gilbert (01992 564062).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) To consider whether to join the Northern Essex Parking Partnership with effect from 1 April 2011;
- (2) That subject to recommendation (1) the Cabinet Member with responsibility for parking matters be nominated as the Partnership Board Member for the District and that consideration be given to the appointment of a deputy;
- (3) That the off street parking operation be retained outside of the proposed Partnership and delivered through the existing contract with Vinci Park;
- (4) That negotiations be commenced with Vinci Park to enable the permitted two year extension of the contract from September 2012 to August 2014 with respect to off street operations only;
- (5) To note that from 1 April 2011 all surpluses generated through on street enforcement activity will pass to the new parking Partnership; and
- (6) To recommend to Council accordingly.

Executive Summary:

This report sets out proposals for the formation of a northern Essex Parking Partnership to take over the responsibility for on street parking enforcement once the present Agency Agreement with the County ceases on 31 March 2011. Colchester Borough Council will be the Lead Authority and will, in due course, be the employing authority for all parking officers for the north Essex Area, which encompasses Epping Forest, Harlow, Uttlesford, Braintree, Colchester and Tendring. Since Epping Forest District is the only authority in Essex which has an outsourced enforcement operation, it has been agreed that the contract with Vinci Park, which expires in September 2012, will remain in place and be managed by this Council. To do otherwise presents significant risk to the Council due to contractual issues with Vinci Park.

Reasons for Proposed Decision:

The balance between participating and not participating in the Partnership is a balanced one with advantages and disadvantages to both approaches. No firm recommendation is provided.

The contract with Vinci Park has worked well and provides a cost effective service. The contract allows for a two year extension, subject to both parties' agreement, and it is recommended that contract extension negotiations be commenced in respect of off street operations post September 2012.

Other Options for Action:

- (i) the available decisions are;
 - (a) enter the Partnership unconditionally;
 - (b) enter the Partnership subject to conditions;
 - (c) decline to enter the Partnership with contractual and financial consequences
- (ii) not to extend the off street component of the contract with Vinci Park. This would require the early commencement of a full EU procurement exercise to ensure that a replacement contract was in place by September 2012.

Report:

1. The agency agreement between the Essex Districts and the County Council in respect of decriminalised on street parking enforcement commenced in April 2002. This Council took the view that it should outsource the enforcement process, including that for its own off street car parks, and, following a tendering exercise, the contract was awarded to Vinci Park. The contract was retendered during 2006/07 following which the contract was re-awarded to Vinci Park until September 2012.

2. The agency agreements with the County differed slightly from district to district, particularly with regard to the way that operational deficits were dealt with. Deficits arose due to the income from parking fees and enforcement activity not covering the costs of enforcement activity. Some districts had 'no deficit' agreements, whereby deficits could not be passed back to the County, whereas others, including us, had agreements whereby deficits could be recharged to the County.

3. Our contract with Vinci has been very effective, and although there have been one or two years where a small deficit was generated, in general, on street enforcement activity has generated a surplus, which the Council has retained in a ring fenced budget in accordance with the requirements of the Road Traffic Regulation Act 1984 and the Agency Agreement.

4. Across the county, the overall deficit position for the County is approaching £1 million per annum. The County took the view that this was not sustainable, and as part of a fundamental review of the agency arrangements, in March 2009 it served notice upon the districts of its intention to bring the Agency to an end with effect from midnight, 31 March 2011. Since that time the County has been considering a range of alternative options and in 2010, under the auspices of the Essex Chief Executives Association, it established a multi-council officer working group(s) to draw up options for a partnership approach to the delivery of the on street enforcement regime, ensuring as far as was possible, the reduction and eventual removal of all operational deficits.

5. The outcome of the appraisal exercise, which has been supported by external consultants ("Blue Marble") is the creation of two parking partnerships, one for the north of the County and one for the south, the makeup being as follows:

North	South
Epping Forest	Brentwood
Harlow	Castle Point
Uttlesford	Chelmsford (as lead)
Braintree	Rochford
Colchester (as Lead)	Maldon
Tendring	Basildon

The Lead authorities will be the ones charged with managing the partnerships, will be the employing authorities and will hold the delegated authorities from the County to act on their behalf.

6. Epping Forest is the only Council in Essex which has chosen to outsource its enforcement activities, all others operating in house services. It became clear through the option development process that this created a tension, even though it could be clearly demonstrated that our contract was cost effective and efficient in its operation, issuing more penalty notices and generating a surplus on the basis of fewer enforcement officers and lower overall costs. However, there was no general appetite for outsourcing to be considered as part of the initial establishment of the partnerships, although it has been recognised that the outsourcing model should be considered by the north Partnership in the future once it has been established.

7. The issues around bringing the Council's contract with Vinci Park to an early end are set out in detail in the "Legal and Governance" section of this report below. The costs are prohibitive and could not be met by this Council or by the new parking Partnership. Furthermore, the possibility of assignment or novation from the Council to the Partnership has also to be discarded, because both require the consent of both parties, and Vinci has stated that it will not give consent.

8. At this stage, it is only intended for the new partnerships to deal with on street enforcement matters, leaving the off street enforcement with the districts, although in later years it may become possible for districts to contract with the Partnership to undertake this enforcement activity as well.

9. A decision has to be made on whether the Council should join the north parking Partnership, this decision being required before the end of March 2011. To achieve this, Cabinet's views will need to be referred to Council at its meeting on 29 March 2011. The table below sets out the issues to be considered:

	Joining the Partnership		Not joining the Partnership
1.	Being able to influence Partnership direction and policy, including the extended use of outsourcing in the future	1.	Losing all influence over on street parking issues within the District, including pricing, tariff and permit pricing structures
2.	Being able, subject to resources, to subsidise future local increases in fees and charges	2.	Not being able to subsidise Partnership set fees/charges
3.	Maintaining local management until the Vinci contract ends in September 2012, although with policy direction via the Partnership	3.	Contractual difficulties with Vinci Park and with Essex County Council

4.	Participating in a shared Partnership approach to a key local service in accordance with Government policy guidance	4.	Opting out of a shared Partnership approach to service delivery not in accordance with Government policy guidance
5.	Ability to demonstrate to the local community that the Council is working within the Partnership to generate the best possible outcome for all	5.	Will have to accept whatever policies the Partnership imposes with the inability to explain to the community why the Council cannot exert influence
6.	On street enforcement will continue uninterrupted through the new Partnership delegation between the County and Colchester. Colchester will in turn delegate powers to this Council	6.	All on street enforcement by this Council will have to cease with effect from the 1 st of April 2011 since there will be no legal basis for its continuance. Unless Colchester can provide enforcement officers for this area, this may generate local parking difficulties
7.	No contract dispute or associated risks due to Vinci contract remaining until its natural end	7.	Financial and reputational risks associated with potential contract dispute with Vinci Park and Essex County Council
8.	TUPE / redundancy issues deferred until September 2012, with costs being met by Essex County Council	8.	TUPE / redundancy complications arising from cessation of part of the Vinci contract on the 31 st of March 2011

10. A Partnership Board is to be created to oversee the operations and policies of the new Partnership. The Board will be made up of Members of the constituent district councils. It is suggested that this Council's nominee should be the Cabinet Member with responsibility for parking matters. The Partnership constitution allows for a deputy to attend but this should also be a member of the Executive. It is therefore suggested that consideration be given to the appointment of a deputy. The Shadow Board has met twice and has been attended by the Operational Planning and Transport Portfolio Holder.

11. It is fair to say that a number of concerns still exist around the completeness of the documentation and the business plan in particular. However, at the second meeting held on 28 February, more clarity was provided in respect of the application of increased fees and charges and references to this Council not being able to participate fully until the Vinci contract ceased have been deleted. This means that the Council, should the decision be made to join, will have full participatory rights at the Board.

12. Not all districts in the north and south have indicated their intention to participate, although reasons are different. The exact position will not become clear until all councils have taken membership through their Cabinet or Committee structures.

13. The Partnership documentation enables districts to include within it their off-street operations. This is for enforcement activity only, with decisions on the levels of fees and charges and opening hours etc remaining with the District. However, even if the decision is to join the Partnership, this option is not yet available. Therefore, given that:

(a) the contract with Vinci Park has a clause which permits the contract to be extended for two further years, subject to the agreement of both parties;

(b) the contract with Vinci has worked well; and

(c) it would in any event be prudent to see how the Partnership fares before extending its remit.

It is suggested that negotiations commence with Vinci in respect of a possible extension of the existing off-street enforcement operation.

14. Given the significance and nature of the decisions it will necessary for Cabinet to seek Council's approval of those decisions.

Resource Implications:

The contract with Vinci Park (2010/11) amounts to £744,530 split almost equally between on street and off street operations. Fee and penalty income on street was estimated at around £0.5 million and off street at around £1 million. The overall surplus on the off street account was estimated at £369,000 whilst on street is estimated to break even. However, as indicated elsewhere in the report, there is an accumulative surplus in the on street account of around £60,000 which Cabinet has already resolved to utilise to deal with increased enforcement arising from parking reviews and to provide some out of hours enforcement at critical locations within the District.

Whether the Council joins the Partnership or not, any on street surpluses will be transferred to the new Partnership. The Partnership business plan as currently presented, shows that an overall deficit will be generated for the first two years (£208,000 in 2011/12 and £61,000 in 2012/13). The County Council has stated that it will meet the costs of all outstanding deficits at the point of creating the partnerships and for those first two years. Thereafter, any deficits generated within the Partnership will have to be met by the constituent members of the Partnership. It is not clear yet as to how this will be managed between districts which are in surplus and those in deficit.

The current business plan appears to rely on increases in income being generated, particularly through on street tariffs and the costs of resident and visitor permits. The plan recognises that increased enforcement alone, whether through greater activity or through fully enforceable restrictions, is unlikely to generate an overall surplus. This was an area of concern for a number of councils who foresaw conflicts, for example, between their economic development policies and the need for increases in on-street parking charges. At the meeting of the shadow Board on 28 February, officers from Colchester presented a revised approach whereby it was stated that:

(a) a breakeven position could be achieved through more efficient operations and ensuring that all existing restrictions could be properly enforced;

(b) tariffs should only rise by the rate of inflation in general terms;

(c) residents' permits would only increase by £10.00 per annum, from their current base position, that increase to be staged over a four year period; and

(d) that only if the Partnership decided that it wished to generate a surplus would it become necessary to consider higher levels of tariffs or changes from free regulated on-street arrangements to say metered on-street arrangements.

There will be personnel implications for officers currently engaged in managing the Vinci contract. There are currently 4 FTE posts on the establishment with changes having been made in November 2010 in order to reduce costs overall (£3,000 per annum) and to manage the potential effects of the creation of the new parking partnerships. It is likely that some

posts will eventually have to transfer, via TUPE, to Colchester Borough Council, who as the Lead Authority for the northern Partnership will be the employing authority. There may also be TUPE implications for Vinci employees depending upon the stance of the Partnership once the on-street element of the contract between the Council and Vinci ends in September 2012. These costs will be met by the County Council for up to a maximum period of 6 months from the date of effective transfer of the staff. If the contract with Vinci is part terminated through the Partnership being declined, complex TUPE/redundancy issues will arise regarding the Council's staff and Vinci employees engaged on the on-street enforcement function.

Legal and Governance Implications:

The Council's contract with Vinci Park does not expire until September 2012. At discussions with officers, Vinci has made its position clear in that it has no intention of relinquishing that contract, other than by payment of penalty amounting to nearly £300,000 on the entire contract. In the event that only the on street component of the contract was relinquished, the penalty would be in the region of £90,000. Consideration has also been given to assigning the contract from this Council to the Partnership but this would require Vinci Park's consent, which they will not provide. It has therefore been agreed by Partnership members that should this Council enter into the Partnership, the Vinci contract will be managed from here and not from Colchester, although it will be subject to the operational requirements as set by the Partnership.

If the Council chooses to remain outside of the Partnership, then the on street component of the contract with Vinci park must end since the Council will have no legal basis on which to enforce on-street or issue penalty charge notices. The current agency agreement with the County states that the party which brings the agency agreement to an end should meet the costs directly attributable to that termination, meaning that the County would be liable. However, it must be recognised that the contract is between this Council and Vinci Park and therefore they would look to us for the compensation. We would then have to seek similar compensation from the County Council. The County has already indicated that it does not accept full liability on the basis that this Council's contract with Vinci does not have a termination clause based upon the County's ability to give a two year notice period on the parking agency agreement. The Director of Corporate Support Services does not agree with this interpretation and this demonstrates the risks associated with such litigation, alongside difficulties associated with two public authorities taking legal action against one another through the use of public funds at a time of financial constraint.

The commissioning document and current version of the Partnership agreement are appended to this report. Members are referred to clause 7 of the draft Partnership agreement which deals with dissolution of the agreement. It is proposed that any district wishing to cease being a Partnership member would be required to provide six months notice, with the decision taking effect on 31 March of a calendar year.

Safer, Cleaner and Greener Implications:

There are no longer term implications since on-street and off-street enforcement of parking will continue, albeit under different management arrangements. In the event however that the Council does not enter the Partnership, there may be an enforcement hiatus at the start of April when there may be much reduced or no local on-street enforcement, unless the County and/or Colchester are able to provide enforcement resources within the District through the other Partnership members.

Consultation Undertaken:

Vinci – outcome contained within the body of the report

Background Papers:

Letter from Vinci regarding contractual penalties etc

Impact Assessments:

Risk Management

There are potential risks to the Council of a decision to join or to remain outside of the new parking Partnership. These are set out in the table in paragraph 9 of the report. This is a balanced decision in terms of the risks involved. However, it would be entirely reasonable to join the Partnership from April 2011 and see how it develops. Whilst the Council would enter into the Partnership with the express intention of making a positive contribution, especially with regards to the consideration of further outsourcing, it remains the position that, like any other Partnership member, if the Council was not satisfied with the Partnership arrangement it could serve the Partnership with six months notice, with the intention of bringing its membership to an end with effect from 31 March of any calendar year.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

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

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