

Report to the Cabinet

Report reference: C/046/2006-07.

Date of meeting: 4 September 2006.



**Epping Forest
District Council**

Portfolio: Planning and Economic Development.

Subject: Planning Services – Conservation and Landscape Team.

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Recommendations:

- (1) That the staffing, budget and work programme issues in the Conservation and Landscape Team be noted;**
- (2) That, as set out in the report, the change in the way the Conservation Grants budget is prioritised be agreed in principle;**
- (3) That in respect of the Technical Officer (High Hedges) post:**
 - (a) the revised duties of this post be agreed;**
 - (b) this post be made permanent at the end of its current temporary period in June 2008; and**
 - (c) a CSB growth bid in the sum of £20,000 be made for 2008/09;**
- (4) That the need for a specific budget to deal with claims against the Council for subsidence to properties affected by preserved trees be noted, and that:**
 - (a) a supplementary CSB estimate in the sum of £5,000 for 2006/07 be recommended to the Council for approval; and**
 - (b) a CSB growth bid in the sum of £5,000 be made for 2007/08;**
- (5) That the need to undertake an urgent review of the wildlife sites in the District be noted;**
- (6) That, with the aim of completing the review in Spring 2008, the Essex Wildlife Trust be instructed to commence work on the review of wildlife sites in the District in 2006/07:**
 - (a) at a cost of £20,000 to be split equally between each financial year; and**
 - (b) to be met from salary underspend in 2006/07, and by Planning Delivery Grant in 2007/08, subject to further approval by the Cabinet; and**
- (7) That the Head of Planning Services and Economic Development be authorised to sign management agreements on behalf of Countrycare, including those with financial agreements, up to a maximum of £1,250 per agreement per annum, and all previous agreements be approved.**

Summary:

1. The purpose of this report is to inform Cabinet of several issues affecting the Conservation and Landscape Team of Planning Services, and to seek approval for changes to the way in which the Conservation Grants budget is spent and the role of the Technical Officer (High Hedges) post. In addition, the report considers the need for a specific budget to deal with claims against the Council for subsidence to properties affected by preserved trees; whether a review should be undertaken of Wildlife Sites in the District; and finally, seeks authority for the Head of Planning Services and Economic Development to sign management agreements on behalf of Countrycare.

Conservation Grants Budget

2. Within the Conservation Policy budget there has for many years been a specific sum to enable the Council to offer Historic Building Grants for repairs to listed buildings. The budget for 2006/07 is £8,450, although it should be noted that this amount also includes any minor enhancement projects in Conservation Areas.
3. The Historic Buildings Grants that have been given in the past have been based on the following conditions:
 - (a) they must be for the traditional repair of the fabric of a Listed building;
 - (b) the maximum grant offered is £1,000 (excluding VAT, where applicable) and calculated on a sliding scale;
 - (c) the application for grant must be accompanied by at least two estimates for the same work, and is always given subject to conditions and based on the lowest quotation; and
 - (d) the grant is not means tested.
4. The maximum grant offered has been the same for at least 15 years and consequently it must now be seen only as a "token gesture" towards the cost of repairs, which can often be considerable. Grants have always been targeted in the sense that repairs to non-residential buildings, such as churches, shops or community buildings were always favoured as opposed to private residential property owners (who have more options available to finance such projects). The grants have never been means tested (as the amount of grant offered does not justify lengthy officer investigation), so there has never been any way of knowing how much difference the Council's offer of grant has made to the project. In reality, it is suspected that most grants given for the repair of privately owned residential properties would still have gone ahead even if the grant had not been given.
5. Another important factor that needs to be considered is the new Best Value Performance Indicator (BVPI 219) that relates to Conservation Areas. The Council is now required to produce both "character appraisals" and "management plans" for each of its 25 Conservation Areas. The present targets have been set at 4% - that is one character appraisal and one management plan for each conservation area every year. With the recent appointment of a full time assistant conservation officer post it is intended that this target will be exceeded, otherwise it will take 25 years to complete the task.
6. An important aspect of the production of these documents is the link to the Council's statutory duty (under section 71 of the Planning (Listed Buildings & Conservation Areas) Act 1990), to formulate and publish proposals for the preservation and enhancement of their Conservation Areas. While many aspects of the "management plan" for a particular Conservation Area will relate to individual property owners,

businesses and statutory undertakers, clearly proposals for minor enhancement schemes within the “public realm” may have financial implications for the Council – for example, the installation of new or improved street furniture.

7. In view of the above, it is proposed that as of 30th September 2006 (and in future years), the Council’s Conservation Grants budget be directed towards the following priorities only:
 - (a) Conservation Area enhancement schemes identified in agreed Management Plans; and
 - (b) Historic Building Grants for the repair of listed buildings (including Locally Listed buildings), that are in non-residential use, with priority being given to any building on the “Buildings at Risk Register”.
8. It is also recommended that a further report be made to Cabinet at the end of the first full financial year in which the above priorities have been implemented (i.e. April 2008), with a view to providing a full assessment of the adequacy of the Conservation Grants budget based on the number of identified enhancement projects and the level of demand for Historic Buildings grant aid.

Technical Officer (High Hedges):

9. This post was agreed by Cabinet in March 2005, following the enactment of the Anti-Social Behaviour Act 2003. Part VIII of the Act concerns High Hedges and empowers Council’s to deal with the problem of neighbour disputes relating to high hedges through the making of an application to determine the following:
 - (a) that the hedge in question is a “high hedge” for the purposes of the Act;
 - (b) that the hedge is causing a nuisance to neighbours; and
 - (c) that the hedge should be reduced in height, and by what amount.
10. The post was agreed for an initial period of three years in order to cover the anticipated increased workload arising from Part VIII of the Act. It was also agreed that the post should be added to Planning Services and Economic Development (in the Landscape Team), and that a bid for growth of £25,000 from 2005/06 be approved. A subsequent decision by Cabinet agreed that the fee for making a High Hedges application to the Council should be set at £265.00. An officer was appointed to this new post on 4th July 2005, but he has since left the Council (in June 2006). The post is currently vacant.
11. In terms of increased workload for the Landscape Team, the following figures set out the position in respect of high hedge **enquiries** (requests in writing or by telephone to investigate a high hedge issue), and **complaints** (formal applications received with the accompanying fee), for the period June 2005 to June 2006.

	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Enquiries	23	15	11	9	9	3	0	1	0	4	8	7	5
Complaints	0	0	1	3	0	1	2	2	0	1	2	1	0

12. Further analysis of the figures shows that there have been a total of 107 enquiries in the period April 2005 to June 2006. In addition, of the 13 applications (complaints) received, 7 were upheld, 2 were turned down, 2 were withdrawn, 1 is still pending, and 1 reached a successful outcome before a decision was made.
13. The figures also show a peak, in terms of enquiries received, in June 2005 and a steady decrease in enquiries to the end of 2005. This was much to be expected as

the legislation took effect in June 2005 and was the subject of considerable press, radio and TV coverage. During 2006 enquiries have averaged 4 a month. The number of applications (complaints) received has averaged out to 1 a month. Officers see no reason to expect that this level of workload will not continue.

14. When it became clear, towards the end of 2005 and into 2006, that the high hedges workload in itself would not fully occupy the technical officer's time, he was given additional tasks to carry out relating to the work of the landscape team. Principally, this work involved the checking of tree and landscape conditions in respect of planning approvals for new development. This was recognised as an important area of work because these conditions are normally "pre-commencement" conditions (i.e. they require the developer to take action before the development commences), and if they are not complied with, trees and other landscape features shown as being retained may be lost. A good example is tree protection, which requires retained trees to be protected by strong fencing around their crown spread before any work begins on site. Other conditions relating to the implementation of landscaping schemes also require monitoring during construction. Experience shows that such schemes are only very rarely implemented properly.
15. The checking of tree and landscape conditions at the correct stage in any development is very important, but in the past has not been one that planning enforcement officers have been able to give any priority due to pressure of work in planning enforcement cases. In addition, it should be noted that this type of work is essentially checking before any damage is done – it is therefore a *proactive* approach. Planning enforcement work (including that of the Council's Compliance officer), is generally *reactive*, that is generated by a complaint or Member or officer request. It should of course also be remembered that there is considerable public benefit in ensuring that landscaping work connected with new developments is completed satisfactorily.
16. The Landscape Team have, in the past, been able to carry out some of this checking work but with increased pressure to deal with applications within eight weeks, the need to respond to consultation requests from the Development Control Team within 14 days, and the increasing amount of strategic landscape work (Green Arc, Harlow expansion, Regional and Local Planning work), it has not been possible to accord a high priority to this work.
17. In addition, it now seems certain that the Essex County Council review of the TPOs it administers and controls (as reported to District Development Committee in January this year), will result in an increased workload for the landscape team. This will be due to either ECC revoking their existing orders, which will mean that the District Council will then have to re-survey and place new TPOs on all those trees and woodlands, or ECC delegating administration of the ECC TPOs to the District. Either way there will clearly be a significant increase in workload to the landscape team. (ECC TPOs cover an estimated 196 individual trees, 300ha of parkland, 147 groups of trees, 185ha of "Area" orders and 940ha of "woodland" orders). The Head of Planning Services and Economic Development hopes to be in a position to present a full report on this issue to a future meeting of the District Development Control Committee.
18. It is therefore suggested that the duties of the Technical Officer (High Hedges) post be amended, (to include the checking of tree and landscape conditions related to planning approvals and assisting with ECC TPO's), and that this post be made permanent at the end of its current temporary period (June 2008). It is further recommended that a report be submitted to the Council recommending approval of a supplementary CSB estimate in the sum of £20,000 for 2008/09 and subsequent years. (It is unlikely that these additional duties will change the grade of this post, however, the amended job description can be assessed by the Council's job evaluation panel prior to being advertised).

Subsidence and Preserved Trees

19. Where an application is made to fell or reduce a tree covered by a Tree Preservation Order (TPO), because the tree is claimed to be causing subsidence problems, and that application is refused (or approved) and the applicant claims that losses have been sustained, then the Council may be liable to pay compensation if the losses can be shown to be directly attributed to that decision.
20. To give a common example, when an application to fell a preserved tree is refused, and the owner claims that as direct result of retaining the tree, underpinning of the house (or garage) is required, then the Council may be liable to pay compensation. In cases where underpinning is required, and the losses *are* attributed to the Council's decision, then this figure may exceed £100,000. (Members may recall the decision of the Lands Tribunal in a case involving a property in Epping where the costs and fees awarded against the Council exceeded £100,000).
21. The Council's Landscape officer has dealt with these issues in the past by ensuring that adequate professional advice is provided with such applications, and that this advice is properly assessed by an independent structural engineer to test the validity of the claim. Since the Council does not have access to such specialist advice in-house, the services of a consultant structural engineer are used to provide a detailed assessment and report. This advice is then incorporated into the officer's report and informs the recommendation and outcome of the application. The likelihood of claims against the Council being upheld is, in these circumstances, significantly reduced.
22. Over the past two years there have been 14 TPO applications where it has proved necessary to use the services of a consultant structural engineer. On average, the cost of using a consultant structural engineer to review the papers involved has been approximately £500 per case. Prior to 2004, all of these types of case were considered by the Landscape officer only, without any specialist input from external consultants. In view of the potential risk to the Council, and as a result of the outcome of the Lands Tribunal case, this was not considered to be a practice that should be continued.
23. There has never been a specific budget for this expenditure. In the past, these intermittent costs have been met from the Development Control consultants budget, but the number of cases has been increasing and officers also fear that 2006 may become an "event year" due to the long hot summer and previously dry winter.
24. It is estimated that there would normally be between 5 and 10 cases requiring the input of a consultant structural engineer in any one year, leaving aside any possible increase if 2006 becomes an event year, so a minimum budget of £5,000 is requested. This must, of course, be seen against the issue of compensation payments if the correct advice is not obtained.
25. Accordingly, it is recommended that a report be submitted to the Council recommending approval of a supplementary CSB estimate in the sum of £5,000 for 2006/07, and subsequent years.

Wildlife Sites Review:

26. The last review of sites within this District of local importance for nature conservation (wildlife sites) was completed in 1992, although the survey work on which the report was based, was carried out in the late 1980s. This means that the report, which is still used as a material consideration when determining planning applications, is based on information that is now nearly 20 years old.
27. There are several reasons for suggesting that there is a pressing need to undertake a

review of the District's wildlife sites:

- (a) wildlife sites have a significant role to play in meeting overall biodiversity targets;
 - (b) criteria based policies need to be established in Development Plan Documents within the Council's Local Development Framework (LDF) against which proposals for any development affecting such sites will be judged;
 - (c) plan policies and planning decisions must be based on up-to-date information about the environmental characteristics of the District (PPS1);
 - (d) East of England Plan (Regional Spatial Strategy) requires Councils to identify biodiversity conservation areas and biodiversity enhancement areas, to deliver large-scale habitat enhancement for the benefit of wildlife and people; and
 - (e) Some wildlife sites originally identified may no longer be of interest or value, and similarly there may now be other sites of value that were not previously identified.
28. The Essex Biodiversity Action Project (BAP), working in conjunction with the Essex Wildlife Trust, is promoting a full "phase one" habitat survey as part of a county wildlife site review, which would involve an audit of Biodiversity Action Plan habitats and protected species. A number of districts in Essex have already "signed up" and commissioned surveys, which will enable those Councils to meet their obligations in respect of the evidence base for their LDF, regional plan policies and new government guidance on locally designated sites.
29. The Essex Wildlife Trust carried out the last phase one habitat survey of wildlife sites in Epping Forest District. Preliminary discussions with the Trust have recently been held and they have indicated that their fees would be in the region of £20,000 to carry out a new phase one habitat survey of the District. This cost could be spread over two financial years by phasing the survey work, which needs to be carried out over several seasons in any event.
30. In the light of all the above, it is recommended that the Essex Wildlife Trust be instructed to commence work on a review of the wildlife sites in the District in 2006/07, with the aim of completing the review in Spring 2008 (cost to be split equally between each financial year).
31. The cost of this work can be met from salary underspend in 2006/07, and by Planning Delivery Grant in 2007/08 (subject to further Member approval once the level of PDG is known for that year).

Countryside Management Agreements:

32. Countryside, the District Council's countryside management service, has prepared management agreements for some time now, in order to ensure that sites are properly maintained and managed in the interests of nature conservation. It is not clear whether the Head of Planning Services and Economic Development has authority to sign such agreements, and a recent example involving the Millennium Garden at Epping Green has necessitated a formal management agreement with Epping Upland Parish Council.
33. In addition, such management agreements also often require financial commitment from Countryside for the provision of labour and other services (e.g. hedge-laying or tree planting). Again, it is not clear whether the Head of Service has delegated authority for such commitments and accordingly, approval is sought to enter into management agreements including those where the financial commitment does not exceed £1,250. (This commitment would be from an established budget for

Countrycare projects).

Statement in Support of Recommended Actions:

34. Conservation Grants budget – there is a clear need to review the way in which this budget is spent, given the recent change in emphasis on conservation area studies as a result of the new BVPI's. The requested change in budget priority would also lead to greater public benefit through the enhancement of conservation areas and repair of listed buildings in community and business use.
35. The minor revisions proposed to the duties of the Technical Officer (High Hedges) reflect both the actual reduction in workload relating to high hedges enquiries and complaints, as well as the need to provide wider support to the Landscape Team through the checking of tree and landscape conditions, and the additional workload that will result from the ECC review of their TPOs. This post would continue to carry out all work connected with the high hedges legislation, but could also make a valuable contribution to the increased workload of the Landscape Team.
36. Subsidence and preserved trees – the provision of specialist external professional advice on certain types of TPO application is considered to be essential to protect the Council from compensation claims. No budget currently exists for this expenditure.
37. Wildlife sites review – it is essential that the Council has an up-to-date evidence base in order to inform planning policy. The review of wildlife sites in the District would also meet statutory objectives as well as biodiversity targets. The information currently held on wildlife sites is out-of-date.
38. Management agreements – Cabinet approval is sought to allow the Head of Service to enter into management agreements for Countrycare, in order to formalise the existing situation, and approve existing agreements.

Other Options for Action:

39. Conservation Grants budget – these comprise; continuing the status quo in terms of historic buildings grant eligibility, or acknowledging the change in emphasis towards conservation area enhancement brought about by the new BVPI's and re-focusing budget priorities as set out in the report.
40. Technical officer (High Hedges) additions to job description – these comprise; leaving the existing job description in place and advertising this post acknowledging the fact that, when appointed, the officer will not be fully occupied; alternatively, the post could be advertised as a part-time position to reflect the likely position in terms of workload, although it must be accepted that from experience such posts are more difficult to fill; or to add the additional duties to the job description outlined in this report, which will support the effectiveness and future anticipated workload of the Landscape Team.
41. Subsidence and preserved trees – these comprise; not allocating a specific budget to deal with the issue, and using virements from other budgets to pay for the use of specialist consultants.
42. Wildlife sites review – these comprise; not undertaking a review of wildlife sites and relying on existing base information which is out of date.
43. Countrycare management agreements – Head of Service could continue to enter into such agreements, on behalf of Countrycare without specific authority.

Consultation undertaken:

44. No external consultation undertaken.

Resource implications:

Budget provision: *Conservation grants budget* – within existing resources (only a change in the way the budget is spent is proposed); *Technical Officer (High Hedges)* - it is recommended that a CSB growth bid be made in the sum of £20,000 for 2008/09 and subsequent years, for the reasons outlined in the report. *Subsidence and preserved trees* - it is recommended that a report be submitted to the Council recommending approval of a supplementary CSB estimate in the sum of £5,000 for 2006/07, and a CSN growth bid in the sum of £5,000 for subsequent years, for the reasons outlined in the report. *Wildlife sites review* - the cost of this work can be met from salary underspend in 2006/07, and by Planning Delivery Grant in 2007/08 (subject to further Cabinet approval once the level of PDG is known for that year). *Countrycare Management Agreements* – within existing resources (Countrycare projects budget).

Personnel: Within existing resources.

Land: Not applicable.

Community Plan/BVPP reference: *Policy Theme one* – maintain the special character and advantage of the District and address local environmental issues; encourage sustainable economic development.

Relevant statutory powers: Planning (Listed Buildings and Conservation Areas) Act 1990; Historic Buildings and Ancient Monuments Act 1953; Anti-Social Behaviour Act 2003; PPG15 – Planning and the Historic Environment; The Natural Environment and Rural Communities Act 2006; PPS1; PPS9; Planning and Compulsory Purchase Act 2004; and the Wildlife and Countryside Act 1981.

Background papers: Local Sites – Guidance on their identification, selection and management (DEFRA); Essex Biodiversity Action Plan; and a Letter from ECC dated 24/07/06 about future work arrangements in respect of County TPOs.

Environmental/Human Rights Act/Crime and Disorder Act Implications: No specific implications.

Key Decision reference (if required): N/A.