

# Public Document Pack



Chairman and Members of the Council

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Date: 3 December 2010

cc. All other recipients of the Council agenda

Dear Councillor

## **COUNCIL - 8 DECEMBER 2010**

Please find attached the following reports which were marked "to follow" on the agenda for the above meeting:

4. Petitions (Pages 3 - 4)
7. Executive Report

*To receive a report from the Leader of the Council, and where necessary, approve the recommendations of the Executive meetings held on:*

(C) 1 December 2010 (Pages 5 - 14)

8. Minutes of Committees

*To receive, and where necessary approve, the Minutes of the following Committees:*

(G) Environment Scrutiny Committee - 16 November 2010 (Pages 15 - 24)

*Chairman: Councillor Mrs D L E Hollebon*

(H) Development Control Committee - 17 November 2010 (Pages 25 - 64)

*Chairman: Councillor W Ashley*

(I) Audit Committee - 24 November 2010 (Pages 65 - 76)

*Chairman: Councillor J O Ranger*

(J) Corporate Business Scrutiny Committee - 30 November 2010 (Pages 77 - 88)

*Chairman: Councillor D Andrews*

13. Procurement Regulations (Pages 89 - 146)

*The Chairman has agreed to accept this item onto the agenda as an urgent matter in order to facilitate the efficient conduct of the Council's business.*

Please bring these papers with you to the meeting next Wednesday

Yours faithfully

Martin Ibrahim  
Senior Democratic Services Officer  
Democratic Services  
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**MEETING** : COUNCIL  
**VENUE** : COUNCIL CHAMBER, WALLFIELDS, HERTFORD  
**DATE** : WEDNESDAY 8 DECEMBER 2010  
**TIME** : 7.00 PM

## EAST HERTS COUNCIL

COUNCIL – 8 DECEMBER 2010

### PETITIONS

The following petition, comprising 84 signatures, has been submitted by Mr G Nickson, Sadlers Way, Hertford:

*“We, the undersigned, call on East Herts District Council to install appropriate traffic calming measures on The Ridgeway road way, Sele Farm, Hertford opposite the Ridgeway Local Park to safeguard local residents visiting the park.”*

The petition has been referred to the Highways Panel in accordance with the Council’s procedures. However, the petitioner has asked to address Council, in any case, on the basis of the wider community safety issues raised by the petition. The lead petitioner has stated in his covering letter that “traffic calming and consequent road safety should be a concern of the whole Council not simply the Highways Panel. As the planning authority for the park; EHDC should also have considered safe access to the park, particularly for children and young people. In this regard access means safe routes to/from the park to the rest of Sele Farm estate across the Ridgeway roadway.”

#### Note

*Members are reminded that the lead petitioner is permitted to address Council for up to three minutes. The relevant Executive Member will respond to the petition. There is no provision for any general debate by Members, however, local ward Members may comment if they wish.*

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MINUTES OF A MEETING OF THE  
EXECUTIVE HELD IN THE COUNCIL  
CHAMBER, WALLFIELDS, HERTFORD ON  
WEDNESDAY 1 DECEMBER 2010, AT 4.00  
PM

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PRESENT: Councillor A P Jackson (Chairman/Leader)  
Councillors M R Alexander, M G Carver,  
L O Haysey and R L Parker.

ALSO PRESENT:

Councillors D Andrews, K A Barnes,  
A D Dodd, R Gilbert, M Newman,  
P A Ruffles, V Shaw and M Wood.

OFFICERS IN ATTENDANCE:

Anne Freimanis	- Chief Executive
Cliff Cardoza	- Head of Environmental Services
Simon Drinkwater	- Director of Neighbourhood Services
Caroline Goss	- Communications Officer
Philip Hamberger	- Programme Director of Change
Martin Ibrahim	- Senior Democratic Services Officer
Alan Madin	- Director of Internal Services
George A Robertson	- Director of Customer and Community Services

422 APOLOGY

An apology for absence was submitted on behalf of Councillor M J Tindale.

423 LEADER'S ANNOUNCEMENTS

The Leader welcomed the press and public to the meeting. He also welcomed Councillor M Newman to his first meeting since being elected to the Council.

He reminded Members that, "purdah" rules applied until the Sawbridgeworth by-election was held on 23 December 2010. Purdah rules existed to ensure that there was no risk of public funds being used and/or actions undertaken to support one particular political party or individual.

The Leader advised that he had agreed to accept onto the agenda as a matter of urgency, an additional item relating to the Council's Treasury Management Strategy, in order to avoid delay in considering possible changes to the Strategy before setting the budget for 2011/12.

424 CASTLE WEIR MICRO HYDRO SCHEME (1)

**The Executive Member for Community Safety and Protection submitted a report on a capital investment proposal for the installation of a micro hydro generation scheme at Castle Weir, Hertford.**

**The Executive recalled that, this scheme had been raised as part of the refurbishment of Hertford Theatre, when a decision had been taken to request that a business case be developed and considered by Environment Scrutiny Committee. Such a business case was submitted to the Committee on 16 November 2010, who supported the scheme enthusiastically and commended the business case for the installation.**

**The Executive considered the business case as now submitted and noted the recent clarification that had been**

received in respect of “feed in tariff payments”. In addition to the energy saving and significant carbon reduction that would be achieved, it was noted that there would likely be a high level of public and media interest, as hydro power schemes were relatively rare in the UK. Also, it was believed that this would be one of the first examples of a community theatre in the UK to be powered directly and to a significant degree by hydro electricity.

Various Members expressed their support for the proposed scheme.

The Executive supported the proposals as now detailed.

**RECOMMENDED** – that the sum of up to £165,000 be included in the Capital Programme for 2011/12.

(see also Minute 431 below)

#### 425 **REFUSE AND RECYCLING CONTRACT OPTIONS (1)**

The Executive considered a report on the outcome of the tender evaluation process for the Refuse, Recycling and Street Cleansing contract. The Executive Member for Community Safety and Protection advised that the contract had been awarded to Veolia Environmental Services. The contract would commence in May 2011 and would result in revenue savings of £1.469m.

The Executive was advised that a number of options for a variety of activities were available for inclusion within the contract, if the Council was so minded. Details of these options were set out in the report now submitted and were considered by the Executive. It was noted that some of these options, if taken up, would result in additional costs, whilst others were already included within the tendered cost.

The Executive considered each option in turn and supported the inclusion of:

- **Collection of other plastics (types 1 – 6).**
- **Emptying on-street recycling bins.**
- **Market and Car Park Waste Collection/Cleansing.**
- **Public Convenience cleaning and opening.**
- **Street Washing.**
- **Graffiti removal.**

**It was noted that the inclusion of other plastics would increase revenue costs by up to £260k and up to £40k capital costs, thus reducing the overall saving.**

**In response to Members' questions, the Head of Environmental Services detailed the types of plastics that would be collected and commented that the public would be advised of examples of recyclable plastic. He stated that the new contract would have no impact on existing Council staff.**

**Members wished to place on record their gratitude for the efforts of all Officers involved in the contract preparations.**

**The Executive supported the proposals as now detailed.**

**RECOMMENDED – that the following options be included within the Refuse, Recycling and Street Cleansing contract:**

- (A) Collection of other plastics (types 1 – 6).**
- (B) Emptying on-street recycling bins.**
- (C) Market and Car Park Waste Collection/Cleansing.**
- (D) Public Convenience cleaning and opening.**
- (E) Street Washing.**
- (F) Graffiti removal.**

**(see also Minute 432 below)**



**426 WALLFIELDS REFURBISHMENT**

The Executive considered a report on the outcome of tenders for the refurbishment of Wallfields and the options for upgrading ITC cabling and other additional items.

The Executive noted the scope of the works included in the original specification and that a number of additional items had been included within the tendering process as options that might achieve savings if carried out as part of the overall refurbishment rather than at a later date. These items were detailed at paragraph 2.3 of the report now submitted.

The Corporate Business Scrutiny Committee, at its meeting held on 30 November 2010, had considered these items and the Director of Internal Services provided a verbal update on their comments. He advised that the Committee had supported the upgrading of cabling to Cat 6A on the basis that an additional £15k expenditure now would likely be more economic. The Committee expressed some concern over excluding the second lift and requested that Officers should bring forward a further business case sooner rather than later. The Committee had accepted the deferral of the stairwells/toilets items on the basis that these would be included in the general maintenance programme. However, these items should be looked at sooner rather than later. Finally, the Committee had noted the deferral of the cooling/ventilation items and the exclusion of the solar heating item.

The Leader commented that the items proposed for deferral should not be “lost” and that Officers should reconsider them at the earliest opportunity.

The Executive supported the proposals as now detailed.

**RECOMMENDED** - that (A) an amendment to the capital programme to provide additional funding

for the Wallfields Refurbishment scheme to meet the costs of replacement data switches and cabling, to minimum standard of Category 6a at a cost of up to £104,000, be approved;

(B) other works, as explained in paragraphs 2.15 to 2.19 of the report submitted, be deferred, subject to Officers giving further consideration to such items at the earliest opportunity;

(C) the progress of the tender negotiations be noted and Officers be instructed to obtain the most advantageous price for the works agreed above during post tender negotiation; and

(D) it be noted that post-tender negotiations might delay commencement of the works until January 2011, in which case completion might be deferred to August 2011.

427 **BISHOP'S STORTFORD 20 20 VISION AND MILL SITE BRIEF**

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The Leader of the Council submitted a report on the progress being made by the Bishop's Stortford 20 20 Group, which sought approval for the adoption a development brief for the area known as the Mill site in Bishop's Stortford.

The Leader referred to "A Vision for Bishop's Stortford", which had identified a number of sites which had the potential to contribute to the delivery of the Vision and desired outcomes. In order to provide a means of positively influencing any development proposals that might come forward for the sites, the 20 20 Group had undertaken to promote the development of a site specific brief for each of these sites, commencing with the area which includes the flour mill. The Leader emphasised that the purpose of a brief was to set out clear guidelines for potential developers on the local expectations for parts of the site to be retained or developed for the

benefits of the town.

The Leader referred to recent communications with site owners and reiterated that the brief was merely an outline, should any development be proposed in the future. He also referred to a letter from the Mill site owners which had been sent to all Executive Members and provided reassurance on recent speculation expressed in the local newspapers.

In response to a Member's question, the Director of Customer and Community Services referred to the opening paragraph of the brief, which clarified the area referred to. He clarified the legal position of the brief, which if adopted, would be a material consideration for development control purposes. The Executive Member for Planning Policy and Transport advised on the context of the brief in respect of the Local Development Framework process.

The Leader referred to further comments that had been received from the 20 20 Group which were of a minor nature and suggested that Officers be delegated authority to make further non-material changes.

The Executive supported the proposals as now detailed.

**RECOMMENDED** – that (A) the work of the Bishop's Stortford 20 20 group be endorsed;

(B) the Bishop's Stortford Mill Site Development Brief, as now submitted, be:

- (1) adopted as the Council's vision and objectives for the site;
- (2) used for development control purposes in determining planning applications relating to the site;
- (3) used to inform emerging Local Development

**Framework strategies and policies; and**

**(C) the Director of Customer and Community Services, in consultation with the Head of Planning and Building Control and the Leader of the Council, be authorised to make minor and stylistic changes to the Brief arising from further comments received.**

**428 AMENDMENT TO TREASURY MANAGEMENT STRATEGY**

**The Executive considered a report proposing an amendment to the Council's Treasury Management Strategy. The Leader had agreed to accept this item onto the agenda as a matter of urgency, in order to avoid delay in considering possible changes to the Strategy before setting the budget for 2011/12. Consideration of the matter now would also provide an opportunity to take advantage of options that had been the subject of recent discussions with Sector, the Council's investment advisers.**

**The Executive noted that investment income in 2010/11 was forecast to be some £850k below budget and this reduced return was reflected in the Medium Term Financial Plan. Discussions with Sector on options to improve returns had identified the use of structured medium fixed term deposits as a means to achieve improved returns. This option required the Council to reconsider the balance between risk and returns.**

**The Director of Internal Services provided a verbal update on the deliberations of the Corporate Business Scrutiny Committee, which had considered this matter at its meeting held on 30 November 2010. The Director advised that the Committee, whilst having some reservations, had supported the proposed amendment.**

**The Director advised that the preferred option would be to use medium fixed term deposits with major UK banks in tranches of up to £10m.**

**The Executive considered the balance between risk and probable returns and agreed to support the proposal as now detailed.**

**RECOMMENDED – that an amendment to the Treasury Management Strategy to permit in house investment in medium fixed term deposits, as detailed at paragraphs 2.4 – 2.6 of the report submitted, be approved.**

429 MINUTES

RESOLVED – that the Minutes of the Executive meeting held on 9 November 2010 be approved as a correct record and signed by the Leader.

430 ISSUES ARISING FROM SCRUTINY

The Executive received a report detailing those issues referred to it by the Scrutiny Committees. Issues relating to specific reports for the Executive were considered and detailed at the relevant report of the Executive Member.

RESOLVED – that the report be received.

431 CASTLE WEIR MICRO HYDRO SCHEME (2)

The Executive considered and supported the business case for the installation of a micro hydro power scheme at Castle Weir, Hertford.

RESOLVED – that (A) the comments from the meeting of the Environment Scrutiny Committee on 16 November 2010, be received;

(B) the business case for the design and build of a micro hydro scheme at Castle Weir, Hertford, set out within the report be agreed in principle; and

(C) the decision to proceed with the tender for the

design and build of a micro hydro power scheme at Castle Weir, Hertford, be delegated to the Director of Customer and Community Services, in consultation with the Executive Member for Community Safety and Protection.

(see also Minute 424 above)

432 REFUSE AND RECYCLING CONTRACT OPTIONS (2)

The Executive noted the outcome of the tender evaluation process for the Refuse, Recycling and Street Cleansing contract.

RESOLVED – that the award of the contract to Veolia Environmental Services be noted.

(see also Minute 425 above)

The meeting closed at 5.30 pm

Chairman .....
Date .....

MINUTES OF A MEETING OF THE  
ENVIRONMENT SCRUTINY COMMITTEE  
HELD IN THE WAYTEMORE ROOM,  
COUNCIL OFFICES, THE CAUSEWAY,  
BISHOP'S STORTFORD ON TUESDAY 16  
NOVEMBER 2010, AT 7.00 PM

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PRESENT: Councillor Mrs D L E Hollebon (Chairman)  
Councillors W Ashley, Mrs M H Goldspink,  
P Grethe, G McAndrew, D A A Peek,  
N C Poulton and R Beeching

ALSO PRESENT:

Councillor M R Alexander

OFFICERS IN ATTENDANCE:

Lorraine Blackburn	- Committee Secretary
Cliff Cardoza	- Head of Environmental Services
Dave Cooper	- Performance Officer
Marian Langley	- Scrutiny Officer
George A Robertson	- Director of Customer and Community Services
David Thorogood	- Environmental Co-Ordinator

370 APOLOGY

An apology for absence was submitted from Councillor B Wrangles. It was noted that Councillor R Beeching was substituting for Councillor B Wrangles.

371 MINUTES

RESOLVED – that the Minutes of the meeting held on 14 September be confirmed as a correct record and signed by the Chairman.

372 CHAIRMAN'S ANNOUNCEMENTS

The Chairman stated that earlier this year, this Committee had commissioned a Task and Finish Group to advise on the design of the Refuse, Recycling and Street Cleansing Contract. Members were reminded of the services which they wished the contract to deliver and a proposed number of options for consideration once tendered prices were known. These proposals were subsequently agreed by the Council and included within tender documents.

The Chairman advised that following an extensive procurement exercise, the contract has been awarded to Veolia Environmental Services Ltd. Veolia was a major UK waste management company and was successfully providing these services at a number of similar rural district councils, including at North Herts and Harlow.

The new contract would result in a saving to the Council of approximately £1.5m per annum. This was in no small part thanks to the residents of East Herts, who under the ARC scheme, had recycled substantially more and reduced the amount of waste they produced.

Due to the timing of the award, it was not possible to bring back a report to this meeting, however, the options available to the Council would be considered at an Executive meeting on 1 December, 2010. It was important that decisions on these options were reached as soon as possible to allow the new contractor to procure resources in time for the contract start up on 1 May 2011. The papers would be available at the end of this week and Members were encouraged to look at these and make their views known to the Executive.

The Chairman added that if any Member had any doubts



about the value of Task and Finish Groups then this result should dispel them.

The Chairman referred to her response to a letter from the member of the public regarding Vantorts Park which had been sent to every member on the Committee.

373 2010/11 SERVICE PLANS - SUMMARY OF PROGRESS AND EXCEPTIONS REPORT

The Leader of the Council submitted a summary of 2010/11 Service Plan actions relevant to Environment Scrutiny Committee which had been achieved and details of those which had had their completion dates revised.

The Performance Officer confirmed that good progress had been made so far with four actions being achieved, 22 were on target, one project had been cancelled and two actions had had their completion dates revised, the detail of which was set out in the report now submitted.

Councillor Mrs M H Goldspink referred to the Service Plan Actions and the need to improve the parks and open spaces to meet the needs of residents. Whilst she was delighted with the work done so far, she queried whether the Council could be more proactive in finding other spaces which could become play spaces. She referred to the Local Development Framework which also mentioned the shortage of open space play areas. The Head of Environmental Services acknowledged that there was a shortage of some play spaces. He referred to action taken by the Council in the past to comply with legislative Planning Policy requirements (PPG17) to identify leisure and amenity land provided by both public and private sector. It was found that there were some areas short of certain types of spaces and that other areas had enough provision. As a result of this work findings had been incorporated into Planning Policies. The Council's policy was that it would only provide additional play spaces where these were externally funded, e.g. through Section 106 Agreements ('planning gain') and the process for this was explained. The Head of Environmental Services said that he

would report back to Members detailing what progress was being made within the parks and open spaces development programme.

The Committee received the report and asked Officers to report back on the development programme on Parks and Opens Spaces including the use of Section 106 Planning Gain to secure open space development.

RESOLVED – that (A) the summary of progress against the 2010/11 Service Plan actions be noted including those actions which had had their completion dates revised; and

(B) Officers report back on the development of Parks and Open Spaces including use of Section 106 Planning Gain to secure open spaces.

#### 374 CASTLE WEIR MICRO HYDRO SCHEME

The Executive Member for Community Safety and submitted a report on a proposal to install a micro hydro generation scheme at Castle Weir, Hertford. A presentation outlining the benefits of the proposals was provided by the Environmental Coordinator.

The benefits of the two hydro systems: Kaplan propeller and Archimedes screw were considered. The Kaplan system was considered preferential because of its ability to take account of low and variable flows and the fact that it could increase the height of the water to make it run faster and thus generate more electricity. Total costs for the installation of the scheme were between £157,500 to £165,000, but these costs would be offset by the fact that the scheme would pay for itself within seven to seven and a half years. Further, once the capital had been repaid, the Council would achieve income of around £300,000 over the remaining 13 years of the life of the project. Officers explained the levels of electricity to be generated and that any excess could be fed into the National Grid.

In addition to providing power for Hertford Theatre, the system

would impact positively on reducing the levels of CO2 generated in that it would create a saving of 60 tons. This supported the Council's objectives as agreed in the Climate Change Strategy and Action Plan. The Council was also required to report its CO2 figures to the Government.

The Environmental Coordinator commented that this would be one of the first examples of a community theatre in the UK to be powered directly and substantially by hydro electricity.

Councillor Mrs M H Goldspink welcomed the proposal and the efforts made by Officers in moving this forward. She was reassured by Officers, that any fish caught within the mechanism would be safely returned to the river.

Councillor P Grethe referred to items such as shopping trolleys and hoovers which had in the past, been discarded in the Weir and of the damaging effects this could have on the "Trash Screen". The Environmental Coordinator explained that the Trash Screen was protected by a grid. He further stated that the system was largely enclosed and would be protected from vandalism.

Councillor N C Poulton queried whether any trash gathered within the screen, would generate any additional cost to the Council in terms of maintenance. The Environmental Coordinator explained that the Council already had a contract with a company whose function it was to clear various grills and screens in water courses and that this, if necessary, would be picked up within the Council's current arrangements.

Councillor R Beeching referred to levels of electricity to be generated and supported the Kaplan hydro system at this location.

Councillor G McAndrew queried the financial projections and what might happen should the river levels fall. The Environmental Coordinator explained that the figures presented had been based on low flows and agreed that flows might change.

Councillor D A A Peek supported the proposal. He stated that the income generated might even be better than anticipated which was to be welcomed in today's economic climate.

The Executive Member for Community Safety and Protection stated that the project was an "invest to save" one referring to the payback period of approximately 7 years. He praised Officers for their work in moving the initiative forward and hoped that it would be supported by the Executive.

Members supported the proposal.

RESOLVED – that (A) the business case for the design and build of a micro hydro scheme at Castle Weir, Hertford be received; and

(B) the proposal be supported and referred to the Executive on 1 December 2010.

### 375 REVIEW OF ENVIRONMENTAL QUALITY - PROGRESS WITH ACTION PLAN

The Executive Member for Community Safety and Protection submitted a report on the progress made to date, with the Action Plan in relation to local environmental quality. The Head of Environmental Services gave a short presentation to illustrate the impact of the works undertaken which had been achieved working in partnership with a number of outside bodies.

Councillor G McAndrew praised the work undertaken. He referred to Bishop's Park and land not yet adopted and of ongoing problems there. The Head of Environmental Services agreed to investigate the matter and write to the Member.

Councillor D A A Peek welcomed the report and specifically the work with Ware in Bloom given the minor cost involved. He referred to inappropriate planting in relation to new planning developments e.g. Field Maples and the costs this caused in terms of leaf clearance and cutting back once these

trees matured.

The Chairman, on behalf of Members, thanked Officers for their work and asked that further updates on Environmental Quality be including within the Annual Update provided by the Head of Environmental Services.

RESOLVED – that (A) the progress on the Environmental Quality Action Plan be noted; and

(B) further updates on the Action Plan be included within the Annual Update.

376 HERTFORDSHIRE WASTE PARTNERSHIP - ALTERNATIVE FINANCIAL MODEL

The Executive Member for Community Safety and Protection submitted a report on the workings of the Hertfordshire Waste Partnership's Alternative Financial Model (AFM), the detail of which was set out in the report now submitted. It was noted that the AFM scheme had been established via the Hertfordshire Waste Partnership (HWP) to provide financial incentives to reward Districts to achieve recycling targets and reduce black bin waste.

The Head of Environmental Services stated that the Council had benefitted significantly from the original recycling credits scheme. However, the need to recycle more to reduce the amount of waste going to landfill and address rising costs had resulted in the Partnership developing an 'Alternative Financial Model'. The aim was to help District councils to invest in recycling infrastructure by passing on cost savings made by the County Council from reducing waste to landfill. This had helped East Herts Council develop new recycling and composting services and contributed to the achievement of recycling rates of over 50%.

In 2009 it had become apparent that the model was producing some imbalances to some Authorities in the way that it rewarded comparative performance. As a result, the model had been reviewed by the Waste Partnership to provide a

fairer allocation from 2011 and this had been agreed by all partners earlier this year. It was noted that the Council would receive approximately £700,000 in 2010/11 and between £350,000 and £450,000 in 2011/12 and 2012/13, subject to continued good performance.

The Director of Customer and Community Services stated that the model was complicated. He explained that although income to East Herts would reduce, it was understood that this was necessary to incentivise other councils to improve their recycling rates. This would deliver benefits for Hertfordshire as a whole.

Councillor P Grethe asked what progress had been made regarding a waste incinerator. The Head of Environmental Services explained that progress was still ongoing by the County Council to procure an incinerator plant.

Members received the report.

RESOLVED – that the report be noted.

377 ENVIRONMENT SCRUTINY HEALTH CHECK - AUGUST 2010 TO SEPTEMBER 2010

The Director of Customer and Community Services submitted a report on the performance of key indicators relating to Environment Scrutiny during the period August to September 2010. The detail was set out in the report now submitted. The Director explained that the only issue of performance concern referred to parking enforcement and that this was attributable to an increase in tickets issued and staff absences.

Councillor Mrs M H Goldspink stated that the terminology used in relation to EHP17.0 and elsewhere within the appendices i.e. working days / months conflicted and caused confusion. She asked Officers to review the matter. The Director of Customer and Community Services agreed to review the descriptions and speak to Officers.

In response to a query from Councillor G McAndrew regarding parking attendants being made aware of double yellow lines, the Director of Customer and Community Services explained that parking officers were notified when Traffic Regulation Orders were made.

Members received the report.

RESOLVED – that (A) the report be received; and

(B) Officers clarify the terminology within the report.

378 ENVIRONMENT SCRUTINY COMMITTEE WORK PROGRAMME 2010/11

The Committee considered items to be included in the work programme for 2010/11. The Chairman drew Members' attention to the online budget consultation which would run from 1 - 26 November 2010. She encouraged Members to contribute to the process.

The Scrutiny Officer referred to the programme for the next meeting and the fact that Members would be receiving two substantial reports in relation to the East Herts Transport and Parking Strategy and Climate Change – Progress Against Action Plan. The Scrutiny Officer drew Members' attention to the fact that there would be two Joint Scrutiny Committees on 27 January and 3 February 2011 to consider service plans and the budget.

The Director of Customer and Community Services explained what progress had been made concerning discussions with the County Council in terms of enhancing the scrutiny process in relation to highways matters and the Borough/District Councils' input so that Members could have more influence on how the Discretionary Budget was spent. Following discussions with the County Council he had established that they were trialling a model whereby a larger proportion of the highway budget would be allocated to the County Member according to the population size in that area and managed by

the District Member.

Councillor N C Poulton referred to the geographic size of East Hertfordshire and that its' share of the budget was disproportionate in relation to the mileage of roads.

RESOLVED – that the work programme be noted and amended to include the additions raised earlier in the meeting.

The meeting closed at 8.40 pm

Chairman .....
Date .....



MINUTES OF A MEETING OF THE  
DEVELOPMENT CONTROL COMMITTEE  
HELD IN THE COUNCIL CHAMBER,  
WALLFIELDS, HERTFORD ON  
WEDNESDAY 17 NOVEMBER 2010, AT  
7.00 PM

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PRESENT: Councillor W Ashley (Chairman)  
Councillors M R Alexander, D Andrews,  
K A Barnes, S A Bull, A L Burlton,  
Mrs R F Cheswright, R N Copping,  
J Demonti, R Gilbert, Mrs M H Goldspink,  
G E Lawrence, S Rutland-Barsby, J J Taylor,  
R I Taylor and B M Wrangles.

ALSO PRESENT:

Councillors P R Ballam, A F Dearman,  
L O Haysey, P A Ruffles, V Shaw and  
M J Tindale.

OFFICERS IN ATTENDANCE:

Glyn Day	- Principal Planning Enforcement Officer
Simon Drinkwater	- Director of Neighbourhood Services
Peter Mannings	- Democratic Services Assistant
Kevin Steptoe	- Head of Planning and Building Control
Alison Young	- Development Control Manager

379 APOLOGY

An apology for absence was submitted on behalf of  
Councillor D A A Peek. It was noted that Councillor D

Andrews was substituting for Councillor D A A Peek.

380 CHAIRMAN'S ANNOUNCEMENTS

The Chairman welcomed the press and public to the meeting and those who were watching the live webcast.

The Chairman advised that the item relating to application 3/10/0386/FP – Redevelopment of 2.15 ha brownfield site to include new Asda foodstore (2601 sqm net); 13 dwellings (5 affordable) with 21 car parking spaces; retention and redesign of children's nursery; retention and refurbishment of Kiln and Maltings buildings together with associated access, 283 car parking spaces (including 10 spaces for nursery), servicing and landscaping, associated highways and pedestrian improvements (as amended) at Cintel site, Watton Road, Ware SG12 OAE for Asda Stores Ltd had been withdrawn from the agenda.

The Chairman advised that the item relating to application 3/10/1541/FP – Proposed Extension of Existing Nursery including Glasshouse, Growing Beds, Poly tunnel, Lagoon, New Vehicular Access and Internal Road at Land at The Old Coach Road, Birch Green for Joseph Rochford Gardens Limited had been withdrawn.

The Chairman invited the Head of Planning and Building Control to update Members in respect of the recent court judgement concerning the East of England Plan. The Head of Planning and Building Control advised that the policies set out in the Regional Spatial Strategy (RSS) had been reinstated as a High Court ruling had concluded that the Secretary of State had acted unlawfully in revoking the RSS.

Members were advised that as the planning application reports had been written before the decision of the court, they made no reference to RSS planning policies. The Head of Planning and Building Control further advised that Members must now have regard to the RSS policies as this document had been reinstated. Officers would

advise Members of relevant planning policies as appropriate for the applications detailed in the reports now submitted.

381 DECLARATIONS OF INTEREST

Councillor Mrs R F Cheswright declared a personal interest in application 3/10/1582/OP in that she was an acquaintance of the applicant's architect and that firm had completed work on her house.

Councillor S Rutland-Barsby declared a personal and prejudicial interest in E/10/0367/B in that the site was in close proximity to her house. She left the room during consideration of this matter.

Councillors W Ashley and Suzanne Rutland-Barsby declared personal interests in application 3/10/1526/FP in that they were acquainted with the applicant.

Councillor M R Alexander declared a personal interest in applications 3/10/1474/AD, 3/10/1555/LB and 3/10/1719/LB in that he was more closely acquainted with the applicant as both he and Councillor M J Tindale were Members of the Executive.

Councillor M J Tindale declared a personal and prejudicial interest in applications 3/10/1474/AD, 3/10/1555/LB and 3/10/1719/LB in that he was the applicant. He left the room prior to consideration of these matters.

Councillors V Shaw declared a personal interest in applications 3/10/1466/FP and 3/10/1467/LB in that her husband was a member of Ware Arts Centre.

382 MINUTES

RESOLVED – that the Minutes of the meeting held on 20 October 2010 be confirmed as a correct record and signed by the Chairman, subject to the following amendments:

Minute 327 - in 32<sup>nd</sup>, 33<sup>rd</sup> and 34<sup>th</sup> paragraphs, insert "J J" before Taylor.

Minute 328 - Delete in 5<sup>th</sup> paragraph - 'Councillor R Gilbert commented that the report highlighted that changes had been made since the previous application had been refused. He stated that the previous reasons for refusal still applied.

Insert in 5<sup>th</sup> paragraph - 'Councillor R Gilbert commented that the changes had not resulted in substantial changes to the overall mass and size of the development and therefore the previous reasons for refusal still applied'.

Minute 327 - Delete 24<sup>th</sup> paragraph - 'After being put to the meeting and a vote taken, this motion was declared LOST on the Chairman's casting vote in favour of the Cintel Site, Watton Road, Ware.

Replace with - After being put to the meeting and a vote taken, this motion was declared LOST on the Chairman's casting vote in support of the view of Ware Town Council that the Cintel Site was sequentially the best site'.

Minute 327 - Delete in 30<sup>th</sup> paragraph 'which could in turn result in the rapid decline of Ware as a medieval town.

Replace with – 'which could send Ware into a rapid decline'.

Minute 327 - Delete in 34<sup>th</sup> paragraph 'She stated that English Heritage had branded the designs as bland and repetitive.'

Replace with – 'She stated that English Heritage had branded the designs of the new houses as

bland and repetitive’.

383 3/10/1522/FP - ERECTION OF 58 RESIDENTIAL UNITS, ASSOCIATED PARKING, ACCESS, AMENITY SPACE AND LANDSCAPING, AT WALLACE LAND, BUNTINGFORD ROAD, PUCKERIDGE FOR FAIRVIEW NEW HOMES LTD

Mrs Johanneffen addressed the Committee in opposition to the application. Mr Gough spoke for the application.

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1522/FP, subject to the applicant entering into a legal obligation pursuant to section 106 of the Town and Country Planning Act 1990, planning permission be granted subject to the conditions now detailed.

The Director referred to the recent High Court judgement in relation to the revoked Regional Spatial Strategy (RSS). Members were advised that this was a significant site in terms of housing delivery.

The Director referred to the Chairman’s announcement in relation to the RSS, and also that policy HSG2 in that this was not a saved policy of the East Herts Local Plan Second Review April 2007.

In response to a query from Councillor D Andrews, the Director advised that Hertfordshire County Highways did not wish to object to the application. Councillor Andrews stressed that he was broadly in support of development on this site.

Councillor Andrews acknowledged that the proposed numbers of houses were higher than that indicated in the Local Plan and was also in breach of policy. He stated that this application would set the tone for this part of the village.

Councillor Andrews commented that he would have preferred a development with housing numbers in the

upper 40s rather than the 58 dwellings proposed. He expressed concerns in relation to the proposed parking provision.

Councillor Andrews stressed that policy TR7 should be pushed to the limit in terms of the amount of parking provision to avoid any potential overspill outside this proposed development.

Councillor Andrews expressed concerns in respect of the Hertfordshire Highways recommendation that there should be no pedestrian access onto Mentley Lane East. He suggested a solution in that there should be a formal footpath provided onto Mentley Lane East. He queried whether condition 20 was a valid and sound condition on this application. The Director advised that Highways had been concerned that such an access would encourage residents of the new development to park on Mentley Lane East to access their properties across the nearby green space.

Councillor Andrews stressed that the B1368 was a fast and very busy road that was derestricted and he invited Members to give careful consideration to the points that he had raised.

Councillor K A Barnes commented that an application that was acceptable to Officers might not be acceptable for the residents. He stated that the proposed density was out of keeping with most of the village and stressed that the Parish Council was against the application.

Councillor Barnes stated that, notwithstanding the issue of inadequate parking provision, the extra vehicles would result in additional traffic problems in this area. He commented that pedestrian safety would be further compromised and the junction of the B1368 would become a nightmare.

Councillor Barnes referred to the Parish Council comments that the area was prone to flooding. He

expressed concerns that the roads within the site would not be adopted, leaving the roads to be maintained by the developer's agents. He referred to the proposed acoustically treated ventilation as a poor solution to not having a noise barrier to the nearby A10.

Councillor Barnes also expressed concerns that the community planning team had not recommended a scout hut, as requested by the Parish Council and residents. He also expressed concerns about the potential lack of play equipment.

Councillor Mrs M H Goldspink expressed concerns in respect of noise and in relation to the proposed number of dwellings. She stressed that, in relation to PPG24, Noise, the site was in a category C zone where planning permission would not normally be granted.

Councillor Goldspink expressed concerns in relation to the inadequate levels of parking proposed by this application. She also expressed concern in respect of loss of amenity if cars were parked in close proximity to private gardens.

Councillor Goldspink acknowledged the proposed 40% affordable housing, however, this was being offered in the wrong mix so was against policy. She commented that the roads within the site were too narrow and stated that the Highways Officer was concerned about this.

Councillor Mrs R F Cheswright stressed that this site was allocated for housing in 2007. She expressed concerns that the number of proposed dwellings was too high and would cause significant transport problems. She also referred to the very busy nature of the nearby B1368.

Councillor R Gilbert expressed concerns in relation to the provision of school places in this area. He also stated his concern that there were no 3 bedroom dwellings proposed as part of this application.

The Director updated Members in relation to the mix of affordable housing in that this now comprised 4x 2 bed flats, 7x 2 bed houses and 12x 3 bed houses. He stressed that there were no 4 or 5 bed affordable housing units proposed by this application. He advised that although the mix of affordable housing was not in accordance with policy, the percentage did comply with policy aspirations.

The Director confirmed that the site was an allocated location for housing. He stressed that the site was available and accessible for development and there were technical solutions that could be implemented to mitigate noise, for example, the venting referred to. He stated that other dwellings were located in at a similar distance from the A10 road in the village.

The Director advised that the proposed density was not high compared to nearby developments. He commented that the site was not remote from the settlement centre. Members were reminded they must identify the specific harm that would result from this application if they felt that they could not support it.

The Committee was advised that the proposed parking provision was generous and public spaces, including access roads within a development, were often looked after by a management company.

The Director stressed that Members must identify what particular highways problems would occur as a result of this application if they were not supportive.

Councillor Mrs M H Goldspink proposed and Councillor K A Barnes seconded, a motion that application 3/10/0396/FP be refused on the grounds that the application would result in a cramped overdevelopment of the site, poor amenity space, substandard internal roads and inadequate parking.

After being put to the meeting and a vote taken, this



motion was declared LOST.

After being put to the meeting and a vote taken, the Committee accepted the recommendation of the Director of Neighbourhood Services that, subject to the applicant entering into a legal obligation pursuant to section 106 of the Town and Country Planning Act 1990, application 3/10/1522/FP be granted subject to the conditions now detailed.

RESOLVED – that, subject to the applicant or successor in title signing a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to cover the following matters:

1. To provide 23 units of affordable housing with 12 Social rented and 11 intermediate dwellings;
2. To provide 15% Lifetime Homes;
3. £94,625 towards improvements to bus stops and improvements to sustainable transport initiatives;
4. £126,092 towards Middle Tier Education;
5. £93,150 towards Upper Tier Education;
6. £22,803 towards Nursery Education;
7. £9,006 towards Childcare;
8. £2,762 towards Youth facilities;
9. £10,384 towards Libraries;
10. £8,210 towards children and young people open space provision to provide improvements to the existing play area within the vicinity of the site;

11. £14,837 towards improvements to the existing Standon and Puckeridge community centre;
12. To establish management arrangements for private roads and landscaped amenity areas within the development site;
13. £300 standard monitoring fee.

in respect of application 3/10/1522/FP, planning permission be granted subject to the following conditions:

1. Three Year Time Limit (1T121)
2. Programme of archaeological work (2E023)
3. Levels (2E051)
4. Samples of materials (2E123)
5. Prior to the commencement of the development, a scheme for the protection of dwellings against external noise shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for sound attenuation of dwellings in accordance with the Noise Assessment SKM Environs dated 17 August 2010. All works which form part of the scheme shall be completed prior to the occupation of the development.

Reason: To ensure that an adequate level of amenity for residents of the dwellings in accordance with policy ENV25 of the East Herts Local Plan Second Review April 2007.

6. Refuse disposal facilities (2E243)

7. Wheel washing facilities (3V251)
8. Construction hours of working – plant and machinery (6N072)
9. Construction parking and storage (3V234)
10. All existing trees, hedges and hedgerows shall be retained, unless shown on the approved drawings as being removed. All trees, hedges and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on the site, to the satisfaction of the Local Planning Authority in accordance with relevant British Standards, for the duration of the works on site and until at least five years following contractual practical completion of the approved development. In the event that trees, hedges or hedgerows become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree, hedge or hedgerow dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed with the Authority.

Reason: To ensure the continuity of amenity afforded by existing trees, in accordance with policies ENV2 and ENV11 of the East Herts Local Plan Second Review April 2007.

11. Tree/natural feature protection: fencing (4P075)

12. Notwithstanding the details shown on the approved drawings, no development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include a) means of enclosure; b) hard surfacing materials; c) planting plans; d) schedules of plants noting species, planting sizes and proposed numbers/densities and e) a timetable for implementation.

Reason: To ensure the provision of amenity afforded by appropriate landscape design, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

13. All hard and soft landscape works shall be carried out in accordance with the details approved pursuant to Condition 12. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. Any trees or plants that, within a period of 5 years after planting are removed, die or become damaged or defective shall be replaced with others of the same species, size and number as originally approved unless the local planning authority has given written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved designs, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

14. No development shall commence until a surface water drainage scheme for the site,

based on sustainable drainage principles, and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. This shall include surface water run-off management through soakaways and how surcharge water will be contained within the site boundary. The scheme shall be implemented in accordance with the approved details prior to occupation of the development.

Reason: To minimise the risk of flooding in accordance with policies ENV19 and ENV21 of the East Herts Local Plan Second Review April 2007 and PPS25 'Development and Flood Risk'.

15. Before first occupation of the approved development, all access and junction arrangements serving the development shall be completed in accordance with the approved plans and constructed to the specification of the Highway Authority.

Reason: To ensure that the access is constructed to an appropriate specification in the interests of highway safety and convenience.

16. The minimum width of internal estate roads shall be 4.1metres clear of any dedicated parking area.

Reason: To ensure the safe and free movement of vehicular traffic within the site.

17. Retention of parking spaces (3V204)
18. Vehicular use of garage (5U10)

19. Prior to first occupation of the development hereby approved, provision of facilities for cycle storage shall be submitted to and approved in writing by the Local Planning Authority. Such facilities shall be implemented thereafter in accordance with the approved details.

Reason: To promote alternative modes of transport in accordance with policy TR14 of the East Herts Local Plan Second Review April 2007.

20. There shall be no pedestrian access onto Mentley Lane East. Detailed plans showing means of enclosure to prohibit pedestrian access between the site and that road and a timetable for implementation of that enclosure shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The boundary treatment shall thereafter be implemented and maintained in accordance with the approved details.

Reason: To reduce the potential for additional vehicle usage or parking along Mentley Lane East in the interests of highway safety and convenience.

Directives:

1. Other Legislation (01OL)
2. Planning Obligation (08PO)
3. Street Naming and Numbering (19SN)
4. Highways Works (05FC2)
5. The presence of any significant unsuspected

contamination that becomes evident during the development of the site shall be brought to the attention of the Local Planning Authority.

### Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the 'saved' policies of the East Herts Local Plan Second Review April 2007), and in particular policies SD1, SD2, HSG3, HSG4, HSG6, TR1, TR2, TR7, TR8, TR14, ENV1, ENV2, ENV3, ENV9, ENV11, ENV16, ENV19, ENV21, ENV25, BH1, BH2, BH3, BH6, OSV1, OSV5 and IMP1. The balance of the considerations having regard to those policies is that permission should be granted.

- 384 (A) 3/10/1466/FP - CONVERSION OF EXISTING BUILDING TO FORM 9 NO. THREE BEDROOM AND 3 NO. TWO BEDROOM HOUSES AND CREATION OF ASSOCIATED OFF-STREET PARKING; AND (B) 3/10/1467/LB - CONVERSION OF EXISTING BUILDING TO FORM 9 NO. THREE BEDROOM AND 3 NO. TWO BEDROOM HOUSES AT CENTRAL MALTINGS, NEW ROAD, WARE HERTS SG12 7BS FOR MR M J WARNER
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Mr Cook addressed the Committee in opposition to the application.

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1466/FP, subject to the applicant or successor in title entering into a legal obligation pursuant to Section 106 of the Town and Country Planning Act 1990 by midday on the 30 November 2010, planning permission be granted subject to the conditions now detailed.

The Director of Neighbourhood Services also

recommended that, in respect of application 3/10/1467/LB, listed building consent be granted subject to the conditions now detailed.

The Director advised that item 4 of the section 106 planning obligations was no longer required. Condition 12 would be amended to ensure that no development would take place until details had been submitted to and approved by the local planning authority in relation to the improved vehicular and pedestrian access arrangements to the site.

Councillor P R Ballam stressed the importance of this condition in ensuring these works were carried out prior to the commencement of this development. She also referred to the concerns of Ware Town Council in relation to parking and access for emergency vehicles.

After being put to the meeting and a vote taken, the Committee supported the recommendation of the Director of Neighbourhood Services that, subject to the applicant or successor in title entering into a legal obligation pursuant to Section 106 of the Town and Country Planning Act 1990 by midday on 30 November 2010, application 3/10/1466/FP be granted planning permission subject to the conditions now detailed.

After being put to the meeting and a vote taken, the Committee supported the recommendation of the Director of Neighbourhood Services that where the legal agreement was not completed by midday on 30 November 2010, planning permission be refused for the reason now detailed.

After being put to the meeting and a vote taken, the Committee supported the recommendation of the Director of Neighbourhood Services that application 3/10/1467/LB be granted listed building consent subject to the conditions now detailed.

RESOLVED - that (A) subject to the applicant or



successor in title entering into a legal obligation pursuant to section 106 of the Town and Country Planning Act 1990 by midday on the 30 November 2010 to cover the following matters:

1. Financial contributions:
  - Secondary education of £45,628
  - Youth Services of £856
  - Libraries of £2,720
  - Amenity Green Space £1,626
  - Maintenance of Amenity Green Space £4,573
  - Amenity Space for children/young people £1,561
  - Maintenance of Children/young people amenity space £2,995
  - Recycling Faculties £864
  - Highways Contributions (First Strand) £12,735
  - Accessibility Contributions (Highways Second Strand) £7,500
2. A financial contribution to cover the cost of providing or provision of a fire hydrant at this site.
3. A financial contribution of £300 per clause of the obligation to cover the cost of monitoring.

in respect of application 3/10/1466/FP, planning permission be granted subject to the following conditions:

1. Three Year Time Limit (1T12)
2. Programme of archaeological work (2E02)
3. Complete Accordance (2E10)
4. Samples of materials (2E12)
5. Lighting details (2E27)

6. Communal TV facilities (2E32)
7. Retention of parking space (3V20)
8. Construction parking and storage (3V22)
9. Landscape works implementation (4P13)
10. Landscape maintenance (4P17)
11. Construction hours of working plant and machinery (6N07)
12. No development shall take place unless and until details have been submitted to and approved by the local planning authority of a) the improved vehicular and pedestrian access arrangements to the site (including treatment to the frontage wall) and b) a landscaping scheme for the improvement of the parcel of land to the front (west) of the site. The development shall thereafter be carried out in accordance with those approved details and the agreed scheme implemented prior to the first occupation of any of the residential units to be created and thereafter retained.

Reason: To address highway safety and the character and appearance of the conservation area in accordance with policies ENV1 and TR2 of the East Herts Local Plan Second Review April 2007.

Directives:

1. Other Legislation (01OL)
2. Relationship with Listed Building (26LB)  
(LPA ref: 3/08/1784/LB)
3. Highway Works (05FC)

4. Planning Obligation (08PO)
5. Street Numbering (19SN)

#### Summary of Reason for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and East Herts Local Plan Second Review April 2007) and in particular policies SD1, HSG3, HSG6, EDE2, TR7, TR14, ENV1, ENV2, BH6, and IMP1 of the East Herts Local Plan Second Review April 2007. The balance of the considerations having regard to those policies and other material considerations is that permission should be granted.

(B) if the legal agreement referred to in recommendation (A) is not completed by midday on 30 November 2010, the Director of Neighbourhood Services be authorised to refuse planning permission for the following reason:

1. The proposal fails to make adequate financial provision for infrastructure or access improvements necessary to support the proposed development. The development is thereby contrary to policy IMP1, ENV1 and TR2 of the East Herts Local Plan Second Review April 2007.

(C) in respect of application 3/10/1467/LB, listed building consent be granted subject to the following conditions:

1. Three year Time Limit (1T14)
2. Samples of materials (2E12)

3. Listed Building New windows (8L03)
4. Listed building New doors (8L04)
5. Listed Building New brickwork (8L06)
6. Listed Building New rainwater goods (8L09)
7. Listed Building making Good (8L10)

#### Summary of Reason for Decision

The proposal has been considered with regard to the policies of the Development Plan (Hertfordshire County Structure Plan) and in particular policies HE9 and HE10 of national planning guidance PPS5. The balance of the considerations having regard to those policies and other material considerations is that Listed Building Consent should be granted.

385 (A) 3/10/1582/OP - THE ERECTION OF A SINGLE DWELLING AND (B) 3/10/1583/OP - THE ERECTION OF A PUBLIC HOUSE AND TWO DWELLINGS AT THE FORMER COCK PUBLIC HOUSE, STOCKING PELHAM FOR MR D LYLE SMITH

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Mr Barker addressed the Committee in support of application 3/10/1583/OP. Mr Nicholls addressed the Committee in opposition to application 3/10/1582/OP.

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1582/OP, planning permission be granted subject to the conditions now detailed and that, in respect of application 3/10/1583/OP, planning permission be refused for the reasons now detailed.

At the request of Councillor M J Tindale, as the local ward Member, the Committee consented to consider issues

relating to application 3/10/1583/OP prior to application 3/10/1582/OP.

Councillor Tindale stressed that a pub in this location was viable, particularly in relation to the justification provided by the enabling development. He strongly stated that the village needed this pub and urged Members to consider deferring this application so that further information could be submitted to satisfy Officers' concerns.

Councillor R Gilbert stated this was a very important asset for the village but more information was required, particularly in relation to policies STC8, LRC11 and OSV8. Councillors K A Barnes and R N Copping both supported the possibility of deferring this application.

The Director advised that the key issue in relation to enabling development was how much was required. He stressed that pubs in rural locations historically struggled to survive. Members were advised that Officers ideally needed to see a business plan for a pub in this location or other information that would support an argument that it would remain viable in the longer term.

The Committee was advised that Officers had not been satisfied that two dwellings were necessary to enable the provision of a pub. The financial information currently provided was unclear and contained inappropriate information.

Councillor R Gilbert proposed and Councillor Mrs R F Cheswright seconded, a motion that application 3/10/1583/OP be deferred to enable Officers to seek further information in relation to the costs associated with the development of a new public house and for the submission of a business plan for the subsequent operation of a new public house and also to enable a legal agreement to be drafted which would seek to ensure the provision of a new public house.

After being put to the meeting and a vote taken, this

motion was declared CARRIED.

Councillor Tindale urged the Committee to refuse application 3/10/1582/OP, as it would be wrong to approve an application for a single dwelling when there was an avenue of opportunity to secure a new village pub.

Councillor Mrs M H Goldspink proposed and Councillor R I Taylor seconded, a motion that application 3/10/1582/OP be refused as the application was contrary to policy OSV3 and was inappropriate development for which there were no special circumstances.

After being put to the meeting and a vote taken, this motion was declared CARRIED.

The Committee rejected the recommendation of the Director of Neighbourhood Services that application 3/10/1583/OP be refused planning permission for the reasons now detailed.

The Committee rejected the recommendation of the Director of Neighbourhood Services that application 3/10/1582/OP be granted planning permission subject to the conditions now detailed.

RESOLVED – that (A) in respect of application 3/10/1583/OP, planning permission be deferred to enable Officers to seek further information in relation to the costs associated with the development of a new public house and for the submission of a business plan for the subsequent operation of a new public house and also to enable a legal agreement to be drafted which would seek to ensure the provision of a new public house; and

(B) in respect of application 3/10/1582/OP, planning permission be refused for the following reason:

1. R0322 – after “GBC3” add: ‘and OSV3’.

386 3/10/1526/FP - LOG CABIN MOBILE HOME FOR AGRICULTURAL WORKER AT EDWARDS GREEN FARM, BRICKENDON LANE, BRICKENDON SG13 8NT FOR MR R PETERS

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Mr Peters addressed the Committee in support of the application.

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1526/FP, planning permission be refused for the reasons now detailed.

Councillor R Gilbert stressed that livestock, in particular calving cattle, were present on this site. He stressed that this alone was sufficient justification for approving this application against the policies of the East Herts Local Plan Second Review April 2007.

The Director advised that Officers were aware of the livestock care requirements on the site. The Committee was advised that there were two dwellings already on the site, namely the original farmhouse and an additional dwelling approved in 1994 for agricultural workers.

The Director stressed that Members should not be swayed by the personal circumstances of the applicant. The Committee was strongly advised to give significant weight to policy PPS7 of the East Herts Local Plan Second Review April 2007 as well as national policy guidance.

Councillor R N Copping proposed and Councillor R Gilbert seconded a motion that application 3/10/1526/FP be granted a temporary permission for 3 years on the grounds that there was justification for an additional agricultural dwelling on the site.

After being put to the meeting and a vote taken, the motion was declared CARRIED.

The Committee rejected the recommendation of the Director of Neighbourhood Services that application 3/10/1526/FP be refused planning permission for the reasons now detailed.

RESOLVED – that in respect of application 3/10/1507/FP, planning permission be granted subject to the following conditions:

1. Temporary Permission Use “30 November 2013” (1T091)
2. Agricultural Occupancy (5P054)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and saved policies of the East Herts Local Plan Second Review April 2007), in particular policies GBC and GBC6 and national policy guidance in PPS7: Sustainable Development in Rural Areas. The balance of considerations taking into account the very special circumstances is that planning permission should be granted.

387 3/10/1200/FP - NEW FUNCTION BARN TO PROVIDE ENTERTAINMENT SPACE FOR WEDDINGS, CHARITY FUNDRAISING EVENTS IN ASSOCIATION WITH TEWIN BURY FARM HOTEL AT TEWIN BURY FARM HOTEL, HERTFORD ROAD TEWIN, AL6 0JB FOR MR V WILLIAMS

Mr Williams and Mr Saint-Pier addressed the Committee in support of the application.

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1200/FP, planning permission be refused for the reasons now detailed.



Councillor L O Haysey, as the local ward Member, addressed the Committee in support of the application. She referred to the lengthy planning history at Tewin Bury Farm and stated that this application offered an opportunity for the concerns of Planning and Enforcement Officers to be addressed.

Councillor Haysey commented that the reasons for refusal were not substantial and asked that this application be approved. In respect of policy GBC8, Councillor Haysey stressed that this policy made provision for new buildings in the Green Belt.

Councillor Haysey stated that although the proposed development seemed inappropriate under policy GBC1, this policy did allow for inappropriate development under special circumstances.

Councillor Haysey stressed that the special circumstances related to the applicant's stewardship of the nearby River Mimram.

Councillor Haysey stated that the existing marquees were an eyesore with a footprint considerably greater than the proposed barn. She commented that the proposed barn would not be overbearing and had been carefully designed to take into account the local features of the listed building.

Councillor Haysey stressed that any concerns in relation to the visual impact or light and noise pollution could be covered by conditions. Councillor Haysey urged the Committee to consider the strong local support for the application when reaching a decision.

Councillor B M Wrangles supported the proposed development and stressed that Tewin Parish Council had spoken very highly of the application. She stated that, subject to appropriate conditions, the application should be approved.

Councillor R Gilbert stated that without this application the valley of the River Mimram would suffer quite badly. He stated that the proposed development constituted diversification that would replace some unattractive marquees with an attractive barn development that sat well within the surrounding area.

Councillor Mrs R F Cheswright commented that the application should be approved as it complied with policies GBC3 and ENV1 of the East Herts Local Plan Second Review April 2007. Councillor J Demonti stated that the Committee should approve this application in support of a thriving local business.

Councillor D Andrews supported the application and commented on whether a condition should be attached to ensure the marquees were removed from the site.

Councillor S Rutland-Barsby stressed that if the Committee was minded to approve the application, this decision should be deferred pending the outcome of the enforcement appeal for the two marquees on the site.

The Director reminded the Committee that Members had authorised enforcement action against the one of the marquees and the car park about a year ago. An appeal had been lodged and the Committee was advised that a decision on this was expected towards the end of 2010 or early 2011.

Members were reminded that approving this application could undermine the case of the Authority at the aforementioned appeal and that the Council could be seen as unreasonable. The Director stressed that there was a risk of costs being awarded against the Authority should Members approve the application this evening.

The Director reminded the Committee that this application was inappropriate development in the greenbelt and Members must consider the visual impact of the

application. The Director also stated that Members should judge whether the application was inappropriate and whether there were any special circumstances that outweighed the visual impact of the proposed developed.

The Director stressed that linking the application to the conservation works to the Mimram Valley by way of a Section 106 planning obligation agreement would not meet the normal tests of such agreements.

In response to a query from Councillor R Gilbert, the Director stated that it would not benefit the applicant to withdraw the appeal, as the enforcement notice would remain in force and the land owner would be breaking the law if the marquee was not removed.

Councillor B M Wrangles proposed and Councillor M R Alexander seconded a motion that application 3/10/1200/FP be deferred to enable the outcome of the current appeal against enforcement action to be received.

After being put to the meeting and a vote taken, the motion was declared CARRIED.

The Committee rejected the recommendation of the Director of Neighbourhood Services that application 3/10/1200/FP be refused planning permission for the reasons now detailed.

RESOLVED – that, in respect of application 3/10/1200/FP, planning permission be deferred to enable the outcome of the current appeal against enforcement action to be received.

- 388 (A) 3/10/1664/FP - REPLACEMENT OF GLAZED MONO-PITCH ROOF WITH SLATE; INSTALLATION OF WIND CATCHERS AND SOLAR WATER HEATERS AT ROOF LEVEL; NEW ENTRANCE DOORS AND WINDOW TO EAST ELEVATION AND INSERTION OF VENT LOUVRES TO EXISTING WINDOWS; (B) 3/10/1665/LB - INTERNAL ALTERATIONS; REPLACEMENT OF GLAZED MONO-

PITCH ROOF WITH SLATE; INSTALLATION OF WIND CATCHERS AND SOLAR WATER HEATERS AT ROOF LEVEL; NEW ENTRANCE DOORS AND WINDOW TO EAST ELEVATION AND INSERTION OF VENT LOUVRES TO EXISTING WINDOWS AT WALLFIELDS, PEGS LANE, HERTFORD, SG13 8EQ FOR EAST HERTS COUNCIL

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The Director of Neighbourhood Services recommended that, in respect of applications 3/10/1664/FP and 3/10/1665/LB, planning permission and listed building consent be granted subject to the conditions now detailed.

The Committee supported the recommendations of the Director of Neighbourhood Services that applications 3/10/1664/FP and 3/10/1665/LB be granted subject to the conditions now detailed.

RESOLVED – that (A) in respect of application 3/10/1664/FP, planning permission be approved subject to the following conditions:

1. Three year time limit (1T12)

Directives:

1. Other legislation (01OL)
2. Relationship with Listed Building Consent (26LB – insert '3/10/1665/LB')

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the 'saved' policies of the East Herts Local Plan Second Review April 2007), and in particular policies SD2 and ENV1, and PPS5. The balance of the considerations having regard to

those policies is that permission should be granted.

(B) in respect of application 3/10/1543/LB, listed building consent be approved subject to the following conditions:

1. Listed Building three year time limit (1T14)
2. Prior to any building works being commenced samples of the external materials of construction for the building hereby permitted shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the historic and architectural character of the building is properly maintained in accordance with PPS5 – Planning for the Historic Environment and the accompanying Historic Environment Planning Practice Guide.

3. Prior to any building works being first commenced, detailed drawings including sections, showing the new internal door and architraves, and vision panel which it is proposed to install in the existing door, together with a detailed description or specification, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the historic and architectural character of the building is properly maintained in accordance with PPS5 – Planning for the Historic Environment and the accompanying Historic Environment Planning Practice Guide.

4. Listed building (making good) (8L10)

### Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the 'saved' policies of the East Herts Local Plan Second Review April 2007), and in particular policy PPS5. The balance of the considerations having regard to those policies is that permission should be granted.

389 3/10/1507/FP - EXISTING REAR GABLE INCREASED IN HEIGHT TO CREATE EXTRA FIRST FLOOR ACCOMMODATION, ONE AND HALF STOREY REAR EXTENSION, BASEMENT UNDER PROPOSED REAR EXTENSION, INTERNAL ALTERATIONS AND DEMOLITION OF EXISTING STABLE BLOCK TO NORTH LODGE, ROWNEY PRIORY, ROWNEY LANE, DANE END, WARE, HERTS, SG12 0JY FOR MR D LANG

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1507/FP, planning permission be granted subject to the conditions now detailed.

The Committee supported the recommendation of the Director of Neighbourhood Services that application 3/10/1507/FP be granted subject to the conditions now detailed.

RESOLVED – that in respect of application 3/10/1507/FP, planning permission be granted subject to the following conditions:

1. Time limit (1T121)
2. Matching materials (2E133)
3. The development to which this planning permission relates shall not be implemented if any part of the development for which

planning permission was granted on 14<sup>th</sup> May 2010 under reference 3/10/0323/FP is begun.

Reason: To ensure that the extent of the enlargement of the property is appropriate for this Rural Area location, in accordance with policies ENV1, ENV5, ENV6 and GBC3 of the East Herts Local Plan Second Review April 2007.

Directive:

1. Other legislation (01OL1)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies ENV1, ENV5, ENV6 and GBC3. The balance of the considerations having regard to those policies and national policy guidance in PPS1: Delivering Sustainable Development and PPS7: Sustainable Development in Rural Areas guidance is that planning permission should be granted.

- 390 (A) 3/10/1474/AD - ILLUMINATED FASCIA SIGN;  
 (B)3/10/1555/LB - ILLUMINATED FASCIA SIGN;  
 (C)3/10/1719/LB - DEMOLITION AND REINSTATEMENT OF INTERNAL LOBBY, CLAD INTERIOR OF SHOP, ERECT INTERNAL PARTITION, INSTALL NEW LIGHTING SYSTEM AND REFURBISHMENT AT 17 OLD CROSS, HERTFORD FOR MR MICHAEL TINDALE
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The Director of Neighbourhood Services recommended that, in respect of application 3/10/1474/AD, advertisement consent be granted subject to the

conditions now detailed. The Director of Neighbourhood Services also recommended that, in respect of applications 3/10/1555/LB and 3/10/1719/LB, Listed Building consent be granted subject to the conditions now detailed.

The Committee supported the recommendations of the Director of Neighbourhood Services that applications 3/10/1474/AD, 3/10/1555/LB and 3/10/1719/LB be granted subject to the conditions now detailed.

RESOLVED – that (A) in respect of application 3/10/1474/AD, advertisement consent be approved subject to the following conditions:

1. Standard advertisement (7A012)
2. The level of illumination shall not exceed 150 lumens/m<sup>2</sup>

Reason: In the interests of the visual amenities of the area, and in accordance with policies ENV1 and BH15 of the East Herts Local Plan Second Review April 2007.

Directive:

1. Other legislation (01OL1)

#### Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies ENV1 and BH15. The balance of the considerations having regard to those policies is that advertisement consent should be granted.

- (B) in respect of application 3/10/1555/LB, listed



building consent be approved subject to the following conditions:

1. Time limit (1T141)
2. Prior to the erection of the sign hereby approved, details of the proposed materials and means of illumination for the sign shall be submitted to, and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the development, and in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

Directive:

1. Other legislation (01OL1)

#### Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies ENV1 and BH15 and guidance in national Planning Policy Statement 5 – Planning and the Historic Environment. The balance of the considerations having regard to those policies is that Listed Building consent should be granted.

(C) in respect of application 3/10/1719/LB, listed building consent be approved subject to the following conditions:

1. Time limit (1T141)
2. New plasterwork (8L054)

### 3. Making good (8L104)

#### Directive:

#### 1. Other legislation (01OL1)

#### Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies ENV1 and ENV3 and guidance in national Planning Policy Statement 5 – Planning and the Historic Environment. The balance of the considerations having regard to those policies is that Listed Building consent should be granted.

#### 391 3/10/1686/FP - CHANGE OF USE OF GROUND FLOOR FROM BETTING SHOP (A2 USE) TO NAIL BAR (SUI GENERIS) AT 3A BULL PLAIN, HERTFORD, SG14 1DT FOR MR BINH THANH DUONG

Mr Jennings addressed the Committee in support of the application.

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1686/FP, planning permission be granted subject to the conditions now detailed.

After being put to the meeting and a vote taken, the Committee supported the recommendation of the Director of Neighbourhood Services that application 3/10/1686/FP be granted subject to the conditions now detailed.

RESOLVED – that in respect of application 3/10/1686/FP, planning permission be granted subject to the following conditions:

1. Three year time limit (1T12)

Directive:

1. Other legislation (01OL)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the 'saved' policies of the East Herts Local Plan Second Review April 2007), and in particular policies SD2, TR7, STC3 and ENV1. The balance of the considerations having regard to those policies is that permission should be granted.

392 3/10/1657/FP - EXTENSION AND CONVERSION OF EXISTING GARAGE TO FORM A ONE BEDROOM 'GRANNY ANNEXE' AT COLTSFOOT, CHERRY ORCHARD LANE, WYDDIAL, BUNTINGFORD, SG9 0EN FOR MISS A KENT

The Director of Neighbourhood Services recommended that, in respect of application 3/10/1657/FP, planning permission be granted subject to the conditions now detailed.

After being put to the meeting and a vote taken, the Committee supported the recommendation of the Director of Neighbourhood Services that application 3/10/1657/FP be granted subject to the conditions now detailed.

RESOLVED – that in respect of application 3/10/1657/FP, planning permission be granted subject to the following conditions:

1. Three Year Time Limit (1T121)

## 2. Matching materials (2E133)

### Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies GBC3, ENV1, ENV2, ENV5, ENV6, ENV8 and TR7. The balance of the considerations having regard to those policies is that permission should be granted.

393 E/09/0010/B – (A) UNAUTHORISED CHANGE OF USE FROM VACANT LAND TO USE FOR THE STORAGE OF TIMBER PRODUCTS; THE ERECTION OF FENCING; (B) AND UNAUTHORISED ENGINEERING WORKS AND ADJUSTMENT OF LAND LEVELS AT A414 TIMBER, BRIGGENS HOME FARM, BRIGGENS PARK ROAD, STANSTEAD ABBOTTS, SG12 8LB

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The Director of Neighbourhood Services recommended that, in respect of the site relating to E/10/0010/B, enforcement action be authorised on the basis now detailed.

The Committee supported the Director's recommendation for enforcement action to be authorised in respect of the sites relating to E/10/0010/B on the basis now detailed.

RESOLVED – that in respect of E/10/0010/B, the Director of Neighbourhood Services, in conjunction with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the removal of the unauthorised development and the cessation of the

unauthorised use of the land and the restoration of the land to its previous levels and condition.

Period for compliance: 3 months.

Reasons why it is expedient to issue an enforcement notice:

1. The site lies within the Metropolitan Green Belt as defined in the East Hertfordshire Local Plan wherein permission will not be given except in very special circumstances for development for purposes other than those required for mineral extraction, agriculture, small scale facilities for participatory sport and recreation or other uses appropriate to a rural area. No such very special circumstances are apparent in this case, and the development is therefore contrary to saved policy GBC1 of the East Herts Local Plan Second Review April 2007 and the requirements of national planning policy in PPS7 'Sustainable Development in Rural Areas'.
2. The fencing, by reason of its siting and design would appear unduly prominent in the area to the detriment of the character and appearance of the locality and the openness of the Green Belt, contrary to saved policies ENV1 and GBC1 of the East Herts Local Plan, Second Review, April 2007.

394 E/10/0367/B - UNAUTHORISED ENGINEERING OPERATION TO RAISE THE LEVELS OF THE LAND BY THE DEPOSIT OF SPOIL AT LAND OFF ST MARY'S LANE, HERTINGFORDBURY, HERTS

The Director of Neighbourhood Services recommended that, in respect of the site relating to E/10/0367/B, enforcement action be authorised on the basis now detailed.



(FORMERLY THE ORCHARD), WESTMILL, SG9 9LL

The Director of Neighbourhood Services recommended that, in respect of the site relating to E/10/0275/B, enforcement action be authorised on the basis now detailed.

The Committee supported the Director's recommendation for enforcement action to be authorised in respect of the sites relating to E/10/0275/B on the basis now detailed.

RESOLVED – that in respect of E/10/0275/B, the Director of Neighbourhood Services, in conjunction with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of the unauthorised use.

Period for compliance: 6 months.

Reasons why it is expedient to issue an enforcement notice:

1. The application site lies within a Category 3 Village and the Rural Area, both as defined in the East Hertfordshire Local Plan, where development will only be allowed for certain specific purposes. There is insufficient justification for the development and it is thereby contrary to policies OSV3 and GBC3 of the East Herts Local Plan Second Review April 2007.
2. Insufficiently detailed information is available to the local planning authority to determine whether or not the use is likely to result in detriment to the amenities of nearby residential properties by reason of noise and general disturbance, contrary to policy ENV1

of the East Herts Local Plan Second Review  
April 2007.

396 VALIDATION OF PLANNING APPLICATIONS - NATIONAL  
AND LOCAL LIST CONSULTATION

The Head of Planning and Building Control submitted a report inviting the Committee to approve, for consultation purposes, a revised 'local list' of validation requirements for planning applications.

The Committee received the report.

RESOLVED - that consultation with relevant stakeholders on the revised 'local list' of validation requirements for planning applications be approved.

397 ITEMS FOR REPORTING AND NOTING.

RESOLVED – that the following reports be noted:

- (A) Appeals against refusal of planning permission / non determination;
- (B) Planning Appeals lodged;
- (C) Planning Appeals: Inquiry and Informal Hearing dates; and
- (D) Planning Statistics.

The meeting closed at 9.20 pm

Chairman .....
Date .....



MINUTES OF A MEETING OF THE  
AUDIT COMMITTEE HELD IN THE  
COUNCIL CHAMBER, WALLFIELDS,  
HERTFORD ON WEDNESDAY 24  
NOVEMBER 2010, AT 7.00 PM

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PRESENT: Councillor J O Ranger (Chairman).  
Councillors K Darby, Mrs M H Goldspink,  
J Hedley, M Pope, R A K Radford and  
J P Warren.

OFFICERS IN ATTENDANCE:

Chris Gibson	- Internal Audit and Business Improvement Manager
Alan Madin	- Director of Internal Services
Peter Mannings	- Democratic Services Assistant
Ceri Pettit	- Head of Strategic Direction (shared) and Performance Manager

ALSO IN ATTENDANCE:

Nick Taylor	- Grant Thornton, External Auditor
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398 APOLOGY

An apology for absence was submitted on behalf of Councillor A M Graham. It was noted that Councillor Mrs M H Goldspink was substituting for Councillor A M Graham.

399 CHAIRMAN'S ANNOUNCEMENTS

The Chairman reminded Members that, in the period up

to the Sawbridgeworth by-election on 23 December 2010, “purdah” rules applied. These rules existed to ensure that there was no risk of public funds being used and/or actions undertaken to support one particular political party or individual.

The Chairman stated that he was happy for Councillors who were not Members of the Audit Committee to ask questions. He stressed that Members of the public were not permitted to ask questions.

#### 400 MINUTES

RESOLVED – that the Minutes of Audit Committee meeting held on 15 September 2010 be confirmed as a correct record and signed by the Chairman.

#### 401 DECLARATIONS OF INTEREST

Councillor K Darby declared a personal interest in the matter referred to at Minute 274 – Internal Audit Service Position Statement in that up to and including 12 November 2010, she had been employed by Vale House Stabilisation Services.

#### 402 UPDATE ON IMPLEMENTATION OF ANNUAL GOVERNANCE ACTION PLAN

The Internal Audit and Business Improvement Manager submitted a report inviting the Committee to consider the Annual Governance Statement Action Plan. The Annual Governance Statement had been signed off by the External Auditor on 3 November 2010. Members were invited to consider details of proposed actions that needed to take place prior to confirmation being given that adequate and effective controls were fully in place against each milestone.

The Committee was advised that the action plan comprised 19 milestones of which 11 were new. Officers were keeping the action plan updated in respect of any

progress made.

Councillor Mrs M H Goldspink stated that the milestones detailed in the action plan should really be designated as risks. The Director of Internal Services advised that the milestones detailed in the annual governance statement action plan were milestones to improve corporate governance.

The Director stressed that each milestone was an issue to address so the Authority can improve performance on the way to an enhanced governance position. Councillor R A K Radford stated that each milestone identified the associated risks should that particular milestone not be achieved.

Councillor Goldspink stressed that all the milestones were identified as being amber or red. She stated that milestones achieved could be included as the action plan currently gave the impression that there had been little achievement against the action plan.

Councillor J Hedley emphasised that actions that had been designated as green or completed were removed from the action plan. The Director confirmed that this was typically the case as regards completed milestones. The Chairman stressed that the action plan was reviewed regularly and the report submitted to the last meeting did contain some completed actions marked as green.

The Internal Audit and Business Improvement Manager advised that the status for milestones was not designated as green until all the facets of each milestone were completed. As such, each milestone was broken down so that all the facets were displayed in the action plan.

In response to a query from Councillor Hedley relating to the risk of significant variance from the financial plan, the Director advised this was a risk currently associated more generally with public sector funding.

Councillor Goldspink commented on whether it was possible to identify savings that could have been achieved without pathfinder collaboration. The Director stressed that any figure would be a speculative estimate. The Chairman stated that the savings resulting from pathfinder could be claimed as a success story.

Councillor K Darby sought and was given clarification in respect of the standstill period referred to in relation to the refuse contract.

The Committee received the report.

RESOLVED - that (A) the principles outlined that will enable Annual Governance Statement internal control milestones to be considered as fully achieved, be supported; and

(B) the progress made against implementing the action plan detailed in the 2009/10 Annual Governance Statement, be noted.

403 SCRUTINY AND AUDIT ACTION PLAN: SIX MONTHLY PROGRESS REPORT

The Head of Strategic Direction (shared) and Performance Manager submitted a report presenting the progress made against the External Auditors' (Grant Thornton) recommendations following their review of Scrutiny and Audit arrangements at East Herts.

The Committee was advised that 6 of the 11 recommendations had been achieved and the remaining 5 were in progress. Members were advised that this would be the final monitoring report against the action plan.

The Committee received the report.

RESOLVED – that (A) the achievement against the 11 recommendations detailed in Essential Reference Paper 'B', be noted; and

(B) it be noted that this would be the final monitoring report of progress against the action plan.

404 2009/10 IMPROVEMENT PLAN: SIX MONTHLY PROGRESS REPORT

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The Head of Strategic Direction (shared) and Performance Manager submitted a report presenting the progress made against the recommendations identified following the Council's 2008/09 Use of Resources and Managing Performance assessment. She stated that this report detailed the progress made since the June meeting of this Committee.

Members were advised that the timeframe of the plan related to when the recommendations were reported and covered the period November 2009 to October 2010. The Committee was advised of the progress made against all 15 actions detailed in the report now submitted.

Members were advised that the 5 outstanding actions were being monitored by the performance management framework. The Head of Strategic Direction (shared) and Performance Manager stressed that this would be the final specific monitoring report. She concluded by stating that the Comprehensive Area Assessment had been abolished so would no longer be used to assess progress. Members were advised that there were insufficient resources internally for the mapping of funding. The Committee was also advised that a bid was being made to Improvement East to procure external support on this task.

The Chairman stressed that LSP work should be carried out in a more co-operative manner to avoid duplication. The Head of Strategic Direction (shared) and Performance Manager advised the LSP Board had revised its activities down from 6 to 7 objectives to 2 or 3 with a greater emphasis on partnership working. The Committee received the report.

RESOLVED – that (A) the achievement against the 15 recommendations detailed in ‘Essential Reference Paper B’ be noted;

(B) the revised completion date for action 15 be approved; and

(C) the 5 outstanding actions be monitored through the Council’s performance management framework.

#### 405 INTERNAL AUDIT SERVICES - POSITION STATEMENT

The Internal Audit and Business Improvement Manager submitted a report detailing a position statement on internal audit activity undertaken within the Internal Audit Service since the previous Audit Committee.

Members were also provided with an update in respect of outstanding audit recommendations and a copy of the Internal Audit Report on the release of confidential information to the Hertfordshire Mercury.

The Internal Audit and Business Improvement Manager stated that additional resources had been provided by North Herts Council at Principal Auditor Level to support the current reduced staffing resources. He also stated that there had been some slippage in respect of taking forward shared internal audit initiatives through Pathfinder.

The Committee was advised that following Officer investigations into the release of confidential information to the Hertfordshire Mercury, there were two recommendations for Members to consider, as detailed at paragraphs 4.1 and 4.2 of the report now submitted. The Internal Audit and Business Improvement Manager advised that Officers would, in future, look to minimise the storage of confidential documents and improve the security of electronic documents.

Members were advised that good progress had been made against outstanding audit recommendations. The Committee was given an update in respect of the audit recommendations detailed in the report now submitted. 27 recommendations had been resolved since the previous meeting.

The Chairman stressed the importance of noting the progress that had been made against the audit recommendations. He stated that Members had been appalled that an employee had passed details of a confidential document to the press. He also emphasised that an apology was owed to the individual referred to in the document. The Committee was satisfied that a thorough investigation had been carried out.

The Committee received the report.

RESOLVED – that the report be received and noted.

406 RISK MANAGEMENT MONITORING REPORT 1 AUGUST - 30 SEPTEMBER 2010

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The Director of Internal Services submitted the risk monitoring report for the period 1 August - 30 September 2010. He stated that this report related to actions taken to mitigate and control strategic risks during this period.

The Committee was reminded that risk monitoring reports would not always have a consistent pattern of a report covering a 3 month period. The Internal Audit and Business Improvement Manager stated that risk monitoring was a key business process and was also a key system of internal control. He also stated that because of committee timings this report had already been considered by the Executive on 9 November 2010.

Members were referred to the strategic risk register as detailed at Essential Reference Paper 'B' to the report now submitted. All risk ratings had remained the same with the

exception being Carbon reduction targets that now fell below the reporting threshold. The Committee was reminded that the all Councillors had access to Covalent.

The Committee received the report.

RESOLVED - that the action taken to mitigate and control strategic risks during the period 1 August to 30 September 2010, be noted.

#### 407 VARIANCES FROM FINANCIAL PLANS

The Director of Internal Services submitted a report in response to a request from the Committee that a review be undertaken of the pattern of budget variances and the timing of the reporting of those variances.

The Director stressed that a common factor of budgets was the importance of income items in explaining the late reporting of favourable variances. He commented that the impact of less significant individual variances was not identified until the final accounts.

Members were advised that Managers had been urged to be more balanced in reporting as they may have been overly cautious in forecasting income budgets where there was limited control.

The Chairman stated that income reports in March generally covered cash receipts until the end of February. He stressed that as details of expenditure were now on the Council's website, a more accurate and timely picture of the finances was available.

The Chairman advised Members that the next meeting would include relevant training and urged the Committee to attend. He reminded Members that this training would take place as part of the next meeting.

The Committee received the report.



RESOLVED – that (A) the report be noted; and

(B) the reporting system will report on original budgets.

408 COUNCIL'S RESPONSE TO 2009/10 ANNUAL AUDIT LETTER

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The Director of Internal Services submitted a report detailing the Council's response to the issues raised in the Annual Audit Letter 2009/10. Members were advised that financial pressures, IFRS and Member training were the 3 key areas arising from the report.

The Committee was advised that a report had been submitted to the Executive in September 2010 in relation to the Medium Term Financial Plan (MTFP) following the release of the Comprehensive Spending Review (CSR). The Director stated that the Authority had not yet received details of its individual settlement from government. East Herts Council was in a good position financially when compared to other local authorities.

The Director stressed that he did not envisage any changes to the MTFP. He commented however, that there would still be some tough choices ahead for Members. The Committee was advised that the Authority would be getting advice from investment managers in relation to the challenging financial climate.

The Director stressed that Members would receive training in respect of IFRS. Councillor J Hedley referred to page 165 of the report now submitted. He stated that the External Auditor had stressed that the Authority had not acted improperly in relation to C3W and the property deal, although best practice had not always been followed.

The Committee thanked the External Auditor for the extra work that had been carried out. The Chairman stressed that the role of Councillors was to set policy and it was the

job of Officers to carry out the work of putting those policies into action. He believed that Members were not in a position to scrutinise every action in a micro level of detail. He also stated that the External Auditor had judged that the actions of the Authority had not been unlawful.

Councillor Mrs M H Goldspink concurred with the conclusions reached by the External Auditor. She emphasised the importance of noting the comments of the Auditor where there had been criticism of the Authority. She stressed that all decisions of the Authority must follow best practice.

Members were pleased that advice given by the External Auditor had already been taken on board by the Council and acknowledged that things could have been done better.

The Committee received the report.

RESOLVED – that the Council's response to the Annual Audit Letter be endorsed.

#### 409 EXTERNAL AUDIT REPORT - 2009/10 ANNUAL AUDIT LETTER

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Nick Taylor, Grant Thornton, submitted a report highlighting the key issues arising from the Annual Audit Letter 2009/10. He drew the Committee's attention to a number of key areas for action in 2010/11. He highlighted financial pressures as a particular area the Authority should focus on for 2010/11.

Members were reminded that the 2010/11 accounts would be in line with guidelines under International Financial Reporting Standards (IFRS). Nick Taylor stressed that Member training was a key area for development. He advised that an unqualified opinion had been issued on the Council's 2009/10 accounts on 3 November 2010.

Nick Taylor advised that a report would be submitted to the next meeting in respect of IFRS. The Committee acknowledged the importance of Member training.

The Committee received the report and Annual Audit Letter 2009/10.

RESOLVED – that the report be received and noted.

410 EXTERNAL AUDIT REPORT - FINAL EXTERNAL AUDIT PLAN 2010/11

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Nick Taylor, Grant Thornton, submitted a report highlighting the key issues arising from the Audit Plan 2010/11. He stressed the importance of having proper arrangements in place in respect of financial security. He referred to the importance of high level risk assessments in key areas.

Nick Taylor advised that future work would place a significant emphasis on IFRS and a more risk based approach to value for money analysis. He invited Members to receive the report.

The Committee received the report.

RESOLVED – that the report be received and noted.

411 EXTERNAL AUDITOR'S REPORT - VALUE FOR MONEY 2009/10

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Nick Taylor, Grant Thornton, submitted a report highlighting the key issues arising from the Value for Money Conclusion 2009/10. He advised that this report had arisen from the findings of work around use of resources. He stated that the Council had responded strongly to the economic downturn.

Nick Taylor invited Members to receive the report.

The Head of Strategic Direction (shared) and Performance Manager stressed that there was scope for generic training for Members, which could be organised by the Head of Democratic and Legal Support Services. Councillor J O Ranger referred to this being part of work around the Member Development Charter.

The Committee received the report.

RESOLVED – that the report be received and noted.

412 AUDIT COMMITTEE WORK PROGRAMME

The Internal Audit and Business Improvement Manager submitted the Audit Committee work programme for the 2010/11 civic year. The detail of the programme was set out in the report now submitted.

Members were advised of the need to revise the work programme for the 19 January 2011 meeting by the introduction of training in respect of fraud awareness and anti-fraud awareness as well as training on risk management. This was supported.

The Committee received the work programme, as revised.

RESOLVED - that the revised work programme for Audit Committee be approved.

The meeting closed at 8.48 pm

Chairman .....
Date .....

MINUTES OF A MEETING OF THE  
CORPORATE BUSINESS SCRUTINY  
COMMITTEE HELD IN THE COUNCIL  
CHAMBER, WALLFIELDS, HERTFORD ON  
TUESDAY 30 NOVEMBER 2010, AT 7.00  
PM

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PRESENT: Councillor D Andrews (Chairman)  
Councillors M Wood, R N Copping, R Gilbert,  
G E Lawrence, J Mayes, J O Ranger and  
N Wilson

OFFICERS IN ATTENDANCE:

Lorraine Blackburn	- Committee Secretary
Lorna Georgiou	- Performance and Improvement Co-ordinator
Marian Langley	- Scrutiny Officer
Alan Madin	- Director of Internal Services
George A Robertson	- Director of Customer and Community Services

413 APOLOGIES

Apologies for absence were submitted on behalf of Councillor R Beeching and J P Warren. It was noted that Councillor N Wilson was substituting for Councillor R Beeching.

414 CHAIRMAN'S ANNOUNCEMENTS

The Chairman reminded Members that as the Council was in an election period, "purdah" rules applied until the Sawbridgeworth by-election was held on 23 December 2010. Purdah rules ensured that there was no risk of public funds being used and/or actions undertaken to support one

particular political party or individual.

The Chairman stated that he had agreed to admit an urgent item of business onto the agenda which would avoid delay, in relation to the Treasury Management Strategy. This would be considered after the Corporate Healthcheck.

The Chairman suggested that there be a 10 minute adjournment of the meeting to enable Members to consider the contents of the report. The meeting reconvened at 7.15 pm.

#### 415 MINUTES

RESOLVED - that the Minutes of the meeting held on 24 August 2010 be confirmed as a correct record and signed by the Chairman.

#### 416 PARTNERSHIP PROTOCOL

The Director of Customer and Community Services submitted a report on a Partnership Protocol for the risk management of partnership working.

The protocol outlined the process to be followed when establishing or joining new partnerships and a process to enable the regular review of existing partnerships. The protocol had been considered previously by Members who had asked for a number of additional elements to be included. As such, the protocol had been amended to take account of Members' suggestions. The text had also been minimised to make the document more accessible and useable.

The Director of Customer and Community Services reported that the document had been trimmed down and was now a document that would be very useful. The rationale of the filter questions was explained and the need to mitigate risks in relation to those partnerships which were not contractual. The protocol did not affect agency or contractual agreements.

The majority of the relevant partnerships had been registered under the protocol. The register was due to be reviewed

shortly.

The Chairman sought clarification as to whether there was a need to report annually to all the Scrutiny Committees. Members supported a suggestion that the annual report be presented to Corporate Business Scrutiny only and that the timeframe for reporting be aligned to the same cycle as risk reporting.

Councillor J O Ranger stressed that partnership working with other councils was about shared objectives. The Director of Customer and Community Services agreed that shared objectives were important and also highlighted the value of wider partnerships which did not have shared objectives (such as LSPs) but were starting points from which the personalities in the relationship provided the energy to move issues along.

Councillor M Wood queried whether partners needed to give a required period of notice when they left the partnership. The Director of Customer and Community Services confirmed that it was about managing the partnership. Members supported the inclusion of wording which supported the provision of an exit strategy. The Director of Customer and Community Services confirmed that Appendix 'B' should be amended to reflect the purpose of the partnership. This was supported.

The Committee decided to endorse the Partnership Protocol as amended and as detailed below.

RESOLVED – that the Corporate Business Scrutiny Committee endorses the protocol as amended, as a helpful and appropriate management tool for identifying and managing the risks associated with partnership working.

#### 417 WALLFIELDS REFURBISHMENT

The Executive Member for Resources and Internal Support submitted a report on the Wallfields refurbishment. Members were asked to consider upgrading ITC cabling as part of the refurbishment of Wallfields. This would cost less than completing the work at a later date.

The Corporate Business Scrutiny Committee had considered the Wallfields refurbishment in August 2010 when it had asked for further investigations on work on the “greenhouse” roof, cooling system and lighting/energy system controls and an additional lift for disabled access. The process of drawing up the tender specification for the refurbishment had revealed that the standard of ITC cabling, amongst a number of other issues, needed to be addressed.

Following the completion of the tender exercise it was clear the budget would cover all the elements deemed essential but would not cover all the optional work. Details were given of certain items which would not be pursued but some of these could be included in ongoing maintenance.

The Director of Internal Services explained that Officers had tried to squeeze a lot into the budget when it had gone out to tender. The scope of the works and the options were set out in the report now submitted. The scope of works set out the minimum the Council expected within the contract plus those works which if affordable, would be included. The situation now was that only essential works were considered affordable within the existing budget.

The Director of Internal Services referred to the replacement cabling and the options to pursue either Cat 5e or Cat 6a. He explained that officers had assessed that Cat 5e would be suitable for all the Council’s foreseeable needs. Cat 6a was a specification applicable to very large corporations with thousands of employees and huge volumes of transactions. Officers were not able to justify Cat 6a other than it perhaps being an insurance against unknowable changes in technology.

Members felt that £15k was not an unreasonable sum to invest if it mitigated the risk of a later cost of over £300,000. They supported upgrading to Cat 6a cabling given the fast moving pace of technology and the unforeseeable and increasing future demands.

The Chairman referred to how technology had advanced over



the last 30 years and supported the opportunity to add the cabling whilst the refurbishment was ongoing as this opportunity would not be possible later.

Members considered other options which had been added to the scope of the work including. These were set out in the report now submitted. Of particular concern to Members was a suggestion that the installation of a disabled access lift within the rear stairwell be deferred. The Director of Internal Services stated that to include all the works around the stairwell including the lift to avoid later disruption in that part of the building could amount to approximately £70,000 subject to negotiation.

Councillor J O Ranger noted that the building was DDA compliant but that the existing lift must be made consistently reliable.

Councillor J Mayes expressed concern at the lack of facilities for the disabled. She referred to the fact that there was only one lift, which had been out of order for some time until she had complained. The logistics of where this was placed meant that access had to be via the Council Chamber and a second lift should be regarded as essential. Councillor J Mayes also supported refurbishment works to the toilets and the positive effects this would have on staff. Councillor M Wood suggested that the refurbishment to the toilets take place sooner given the transfer of staff to Wallfields in 2011.

The Director of Internal Services explained that a business case had not been made in relation to the solar collectors to heat water in the toilets, as this would only generate savings of about £1500 a year. A £70,000 investment would need to be justified other than on financial grounds.

The Director of Internal Services stressed that the budget for the planned refurbishment of Wallfields had been increased to allow for staff relocation. He suggested that Members might look to a commitment to have the toilet refurbishment set as a priority call on the maintenance programme and that there should be adequate funding to ensure the existing lift was refitted to improve its reliability.

The Committee decided to recommend to the Executive that the following proposals detailed below be supported;

- Works on cabling be upgraded to Cat 6A during the Wallfields refurbishment and the additional funding of £15,000 be met by further virements from IT budgets.
- There should be sufficient funds in the 2011/12 budgets to ensure that the existing lift be given major repairs as necessary to ensure consistent and reliable disabled access.
- The refurbishment of the toilets and stairwell be included in the annual maintenance programme at the earliest opportunity to be completed over the shortest possible time period.
- The installation of mechanical cooling and natural ventilation to the reception area be deferred.

RESOLVED that - the Executive be informed that the Corporate Business Scrutiny Committee considers that:

(A) virements should be approved to meet the cost of upgrading cabling to Cat 6a during the Wallfields refurbishment but with an additional £15,000 of funding if virement is not feasible;

(B) there should be sufficient funds in the 2011/12 budgets to ensure that the existing lift be given major repairs as necessary to ensure consistent, reliable disabled access;

(C) the refurbishment of the toilets be included in the annual maintenance programme at the earliest opportunity over the shortest possible time period;

(D) the installation of mechanical cooling and natural ventilation to reception area be deferred;

and

(E) other works as explained in paragraphs 2.15 to 2.19 of the report now submitted should be deferred.

418 2010/11 SERVICE PLANS - SUMMARY OF PROGRESS AND EXCEPTIONS REPORT

A report was submitted by the Leader of the Council on 2010/11 Service Plan Actions that had been achieved and those which required a revised completion date.

The Service Plans had been scrutinised by the joint meeting of Scrutiny committees in February 2010 and approved by the Executive in March. The report covered the period 1 April to 30 September.

The details of the Service Plan Actions relevant to the Corporate Business Scrutiny Committee were given. An overview of achievements by Corporate Priority was summarised in the report.

The Chief Executive reported that of the 57 actions relevant to Corporate Business Scrutiny Committee; 7% (4) had been achieved; 81% (46) were on target; and 12% (7) had had their completion dates revised.

Councillor M Wood referred to Action code 10-BSS04 specifically in relation to the Environmental Impact adding that staff travelling from Bishop's Stortford would not be reducing their travelling to work but increasing the carbon footprint.

The Committee decided to note progress made on Service Plan Actions.

RESOLVED - that the Committee note the progress on 2010/11 Service Plan Actions including those which had their completion dates revised.

419 CORPORATE HEALTHCHECK - QUARTER TO

SEPTEMBER 2010

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The Leader of the Council submitted an exception report on finance and key performance indicators relating to Corporate Business Scrutiny Committee up to September 2010. The report contained a breakdown of information where remedial action was needed on salary, capital and revenue variances.

It was noted that performance for EHPI 2.15(42) (Health and Safety Inspections) was “red” attributable to sickness and absence and one particularly complex case which had taken up significant staff time. The target would be reviewed as part of the estimate process. Members were informed that there had been a further £40,000 income investment adverse movement. Measures to address this would be considered in relation to the urgent item of business elsewhere on the agenda.

Councillor N Wilson sought clarification regarding the loss of parking fees. The Director of Internal Services explained that the Council was not increasing charges but that more would have to be paid to the government in VAT when it was increased in 2011.

The Director of Internal Services agreed to write to Councillor M Wood regarding an investigation in relation to properties in multiple occupation in his ward.

The Committee noted the budget variances and performances as detailed in the report now submitted.

RESOLVED – that the report be noted.

420 AMENDMENT TO THE TREASURY MANAGEMENT STRATEGY

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The Chairman agreed to accept an urgent item of business to be considered onto the agenda on the grounds that the Council might assess its investment strategy in order to increase its returns and to mitigate against any further adverse variances. The next meeting of Corporate Business

Scrutiny Committee was programmed for March 2011 and delay to that date would further exacerbate reductions in investment returns during 2011 if consideration of the report was taken at that meeting.

The report of Executive Member for Resources and Internal Support recommended permitting investments additional to those authorised by the current Treasury Management Strategy to enable enhanced returns to be made.

The Council's two fund managers had advised that there was little scope for optimism that returns on investments would improve in the near future.

Officers and Sector had therefore examined various options by which improved investment returns could be achieved.

Details of the preferred option "a structured deposit" proposal were given. It was explained that the Council would need to be prepared to take greater risk to receive higher returns. The pros and cons of this were outlined.

Councillor J O Ranger explained that the Council had approximately £70M in investments. Sector had provided the Council with a scheme whereby the Council could invest some of its funds over a period of four years to achieve higher returns of a minimum of 2.6% compared to the 0.6% it was achieving at the moment. To mitigate exposure to risk, it was recommended that funds would be released in tranches of approximately £10M over three month periods and placed with multiple counter parties none having more than £10M and up to a total of £30M. He stressed that only UK banks should be used such as Lloyds and Barclays.

The Director of Internal Services explained the features of the medium fixed term deposits and LIBOR. He advised Members that whilst this was a scheme suggested by Sector, they were not changing their advice, that having regard to the primary aim of preserving capital the duration of deposits with banks should be for no more than three months to one year, depending on the counter party. The Director stated that it was a significant step for Members to take to go beyond the

limits advised by Sector. The Director referred to the possible damage to the Council's reputation if anything went wrong as the Council would be exposed to criticism.

Councillor J O Ranger stated that he felt that Sector were "ultra prudent" but that they had been asked for investment schemes and had provided alternatives as detailed in the report now submitted.

The Director of Internal Services explained that to achieve a reasonable return, banks wanted security of funds for at least three years hence the higher rates. He suggested that only the largest top four or five UK banks would be used and those with Government support and that not more than £10M be placed with each.

In response to a query from Councillor J Mayes, the Director explained that interest would be paid quarterly.

The Chairman stated that by investing as proposed, the Council would get the benefit and certainty of income.

Members felt that the proposal was a balanced risk and decided to recommend to the Executive that there should be an amendment as detailed below to the Treasury Management Strategy to permit in house investment in medium term fixed deposits as set out in the report now submitted.

RESOLVED – that the Executive be informed that Corporate Business Scrutiny supports an amendment to the Treasury Management Strategy to permit in house investment in structured deposits as set out in the report now submitted.

#### 421 SCRUTINY WORK PROGRAMME 2010/11

The Chairman of the Corporate Business Scrutiny Committee submitted a report inviting the Committee to review its work programme.

The Scrutiny Officer asked the Committee to consider adding

a report on Freedom of Information requests to the meeting on 31 May 2011, which was agreed. She gave dates for scrutiny training, planning and evaluation.

The Committee decided to amend the work programme as now detailed.

RESOLVED – that the work programme now submitted be amended by the inclusion of Freedom of Information requests report.

The meeting closed at 9.07 pm

Chairman	.....
Date	.....

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## EAST HERTS COUNCIL

COUNCIL - 8 DECEMBER 2010

### REPORT BY THE LEADER OF THE COUNCIL

#### AMENDMENTS TO THE PROCUREMENT REGULATIONS

WARD(S) AFFECTED: All

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#### **Purpose/Summary of Report**

- The report sets out proposed amendments to the Contract Procurement Rules which are now entitled the Procurement Regulations

<b><u>RECOMMENDATIONS FOR DECISION:</u> that</b>	
<b>(A)</b>	<b>the Procurement Regulations be approved; and</b>
<b>(B)</b>	<b>the Chief Executive and the Director of Neighbourhood Services be authorised to make minor amendments to the Financial Regulations in consultation with the Member/officer Group.</b>

#### 1.0 Background

1.1 The report considers amendments to the Council's Procurement Regulations which form part of the Constitution to assist the Council to deal with financial matters. The Monitoring Officer monitors and reviews the Constitution on a regular basis. The amended Procurement Regulations are contained in the appendix **(Appendix 1)** to the report.

#### 2.0 Report

2.1 The current versions were approved in May 2008. They were significantly different from the previous documents. They took account of requests for changes to achieve greater flexibility to meet the needs of modern Councils whilst retaining effective

controls. Due to the significant changes that took place it was important to review their effectiveness to establish what improvements could be made.

2.2 A Member/Officer Group has reviewed the documents and proposes the changes described in the report.

### 3.0 Procurement Regulations

3.1 The Changes to the Contract Procurement Rules include the following changes.

The involvement of Members in the development of contract specification and the Council's requirements has been clarified.

Changes to the EU Procurement thresholds have been included.

A clearer explanation of the different types of procurement has been added.

References to approved lists of contractors have been removed.

A new section on managing contracts has been added.

New provisions on the EU Remedies Directive have been included.

### 4.0 Implications/Consultations

4.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

### Background Papers

None

Contact Member: Councillor A P Jackson, Leader of the Council

Contact Officer: Simon Drinkwater – Director of Neighbourhood Services, ext 1405

Report Author: Simon Drinkwater

## ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/Objectives (delete as appropriate):	<b>Fit for purpose, services fit for you</b> <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i>  <b>Leading the way, working together</b> <i>Deliver responsible community leadership that engages with our partners and the public.</i>
Consultation:	
Legal:	The legal implications have been taken into account in amending the Constitution.
Financial:	
Human Resource:	N/A
Risk Management:	A Constitution which reflects the Council's structure and delegation is important to the smooth running of the organisation.

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## Appendix 1

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# Procurement Regulations

Updated November 2010

	<b>Page</b>
1 Introduction	267
2 Scope	268
3 Contract Specification	269
4 Contract Values	269
5 Estimates or Offers	271
6 Quotations	271
7 Tendering	272
8 Tendering Options	272
9 Contractor Selection	275
10 Exceptions To Tendering Procedures	276
11 Nominated Sub-Contractors & Suppliers	277
12 Waivers	277
13 Receipt Of Tenders	278
14 Opening Of Tenders	279
15 Acceptance Of Tenders & Quotations	280
16 Arithmetic Errors & Post Tender Negotiation	281
17 Purchase Ordering	283

18	Order Approval	284
19	Engagement Of Consultants	284
20	Payment Procedures	285
21	Variations	287
22	Contract Documents	288
23	Post Contract Award	290

**Appendices**

<b>A</b>	Flowchart to Show Tendering Options	291
<b>B</b>	EU Directives & Regulations	292
<b><u>C</u></b>	Most Economically Advantageous Tender	302
<b><u>D</u></b>	Legal Provisions	304
<b><u>E</u></b>	Officers' Interests in Contracts	309
<b><u>F</u></b>	Guidance for the Engagement Of Consultants	311
<b><u>G</u></b>	Definition Of Terms	313
<b><u>H</u></b>	Contact Officers	315

## **1. INTRODUCTION**

- 1.1 These Procurement Regulations provide a framework for the Council's purchase of works, goods and services. It is a breach of Council's Code of Conduct for employees to fail to comply with Procurement Regulations. Employees have a duty to report suspected breaches of Procurement Regulations to their Director and the Internal Audit and Business Improvement Manager.
- 1.2 Before committing any expenditure employees (and others authorised to make purchase for the Council) must ensure they are familiar with and understand these Regulations. Contact details have been provided should you need to seek advice on or clarification of any point from the Procurement Officer, Legal Services Manager and the Internal Audit & Business Improvement Manager.
- 1.3 These Procurement Regulations have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972
- 1.4. The Council will maintain a Procurement Strategy Group to review and provide guidance on all procurement and contractual matters. The Group will report to the Director of Internal Services
- 1.5 The Director of Internal Services may delegate any of their functions and responsibilities contained in the Procurement Regulations to a suitably qualified and experienced officer.

## **2. SCOPE**

- 2.1 These Procurement Regulations apply to all contracts, including the engagement of nominated subcontractors, for works and the supply of goods and services to East Hertfordshire District Council. They also apply, in appropriate circumstances, to the sale of assets, goods or services by the Council. They do not apply to contracts of employment or to the renting in of land and buildings where there is no reasonable choice of location.



- 2.2 In these Procurement Regulations, unless otherwise stated, references to the Director are to the Director of the department responsible for the contract in question or such senior officer of that department to whom the Director has delegated in writing the powers in question.
- 2.3 The framework of rules for procurement are those determined by EU and UK law and those set out within these Procurement Regulations, in that order of precedence.
- 2.4 These Procurement Regulations will be reviewed annually. Responsibility for this lies with the Procurement Strategy Group in consultation with the Director of Internal Services.

### **3. CONTRACT SPECIFICATION**

- 3.1 Contracts must be consistent with the delivery of the Council's approved policies, service plans and budgets. If for any reason a proposed contract appears likely to require a change to any policy, service plan and/or budget approval of those changes must be obtained in accordance with the Constitution prior to procurement being initiated.
- 3.2 Whenever a contract is to be re let the opportunity should be taken to revise the specification to achieve better value, where necessary seeking approvals as above.
- 3.3 Specifications should have regard to all of the Council's priorities and policies. In the specification (and/or award criteria) consideration should be given to factors such as the method of working or production, sourcing of materials, packaging, or type of fuel employed which may impact on those wider policies and priorities. These factors should not be applied as a means to stifle competition and be commensurate with potential costs.
- 3.4 Where required the specification shall include pre-determined acceptance criteria. Where appropriate, there shall also be a requirement for a performance bond and liquidated damages. (See Appendix D)

### **4. CONTRACT VALUES**

- 4.1 The estimated annual and total aggregate values of a contract should be established prior to any invitation to quote or tender and be recorded in writing. It is this estimate, which determines which of the four procedures is applicable. However, if the preliminary estimate is within 10% of the higher category values, then the provisions for the higher category of contract should be applied.
- 4.2 The aggregate value of any contract is to be calculated as the total value of the consideration estimated to be payable over the entire contract period. If the contract period is indefinite, then the value shall be the total expenditure incurred over a four year period.

- 4.3 Where a value or estimated value is given in these Procurement Regulations, it means the aggregate value payable in Pounds Sterling exclusive of Value Added Tax.
- 4.4 Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid or vary the application of Procurement Regulations. Where it can be demonstrated that there are insufficient suitably qualified contractors or suppliers to meet the competition requirement, all suitably qualified candidates must be invited.
- 4.5 After determining the proposed aggregate contract value, one of the following procedures shall be used in all procurements or sales, unless an approved waiver has been obtained as detailed in section 12. In all cases the relevant Director may follow a procedure applicable to a higher value contract, if it is considered to be in the Council's best interests.

<b><u>Estimated Aggregate Value of Procurement</u></b>	<b><u>Requirement</u></b>
Up to £5,000	At least one <b>estimate or offer</b> shall be obtained. (see 5.1)
£5,001 to £50,000	A minimum of three formal <b>written quotations</b> shall be invited, unless the Director has complied in full with <u>paragraph. 8.1D.</u> (See 6. Quotations)
£50,001 to EU Procurement Threshold (see Appendix B)	A minimum of three formal <b>competitive tenders</b> shall be invited using one of the tendering options in this Code ( <u>paragraph.8.1</u> ), and a formal written contract prepared. Unless the Director has complied in

	full with <u>paragraph. 8.1D.</u>
Above the EU Threshold	The appropriate EU Procurement Directive shall be complied with.

- 4.6 To ensure adequate competition, there must be at least two satisfactory responses i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receives only one satisfactory response, the officer must obtain an additional quote or tender or obtain an exemption under 8.1D.

#### **EU Procurement Thresholds**

- 4.7 The EU procurement thresholds, effective from 1 January 2010, are shown in Appendix B. If the thresholds change during the currency of these Procurement Regulations, the Appendix will be updated.
- 4.8 The values of the thresholds specified in Pounds Sterling are fixed, subject to biennial review. Further details on the EU Directives and Regulations are contained in Appendix B.
- 4.9 Further guidance on which types of contract are covered under the different categories and advice on the specific procedures to be followed may be obtained from the Legal Services Manager and the Procurement Officer.

#### **5. ESTIMATES OR OFFERS (Goods and Services not exceeding £5,000)**

- 5.1 For goods and services estimated not to exceed £5,000, authorised officers will be expected to be able to demonstrate that value for money has been obtained and should maintain records accordingly. It is the responsibility of each Director to ensure that appropriate mechanisms are in place within their Directorate. Such records should contain, as a minimum:

- i) The number of estimates or offers invited;
- ii) The method of inviting estimates or offers
- iii) The basis of selecting suppliers/contractors; and
- iv) The staff authorised to accept estimates or offers.

Written Purchase Orders should be placed in accordance with Financial Regulations.

## **6. QUOTATIONS (Goods and Services exceeding £5,000 but not exceeding £50,000)**

6.1 A minimum of three formal written quotations shall be invited. In selecting contractors who are to be requested to provide a quotation, Directors shall ensure that the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor. The Director shall keep a record of:

- i) All those contractors or suppliers who were requested to provide a quotation;
- ii) the reasons why those particular contractors or suppliers were selected to provide a quotation; and if applicable,
- iii) in exceptional circumstances when less than three contractors or suppliers were selected to provide a quotation.

6.2 Any of the tendering methods listed under 8.1 can be used in a formal quotation process. If appropriate, advertising of contract opportunities can be carried on the Council's website, through Supply2Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) or through newspapers or trade journals.

6.3 For contracts under £50,000, the three quotes and supporting evidence or details of any waiver are required on Market Place. Where market place is not used a separate record will be kept with contract documentation. Refer to document retention policies.

## **7. TENDERING (Goods and Services exceeding £50,000)**

- 7.1 A tender must be advertised through Supply2Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) or through the Council's internet pages. If required an advert can be placed in a newspaper or trade journal. Directors shall ensure that the selection process being used is fair and equitable, and that no favouritism is shown to any one contractor. A flowchart to show the different tendering options is illustrated under Appendix A.
- 7.2 Any of the tendering methods listed under 8.1 can be used in a formal tendering process.

## 8. TENDERING OPTIONS

- 8.1 Directors shall select one of the following tendering methods unless they are going through an EU procedure when Appendix B applies. If any alternative tendering method is proposed, then approval of Executive is required before the proposed tendering option is followed. In selecting contractors who are to be requested to provide a quotation or tender, Directors shall ensure that the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor. These procedures are generally only for Contracts over £50,000 where value justifies more rigorous process.

<b><u>Tender Option</u></b>		<b>Requirement</b>
A	<b>Open tender</b>	This process should be used e.g. when there is evidence that only a small number of suppliers are able to compete for the business. .
B	<b>Restricted tender</b>	This process should be used if there is a large number of suppliers' competing for the business. It involves pre-qualifying suppliers as part of a short listing process prior to the tender.
C	<b>Serial Tenders Repeat contracts</b>	The proposed contract shall form part of a serial programme. The

		contract terms shall be negotiated with a contractor, using as a basis for negotiation the rates and prices contained in an initial contract that was awarded following a competitive tendering process not more than eighteen months previously. This option should only be used for tenders with an aggregate value under the current EU threshold limit and is subject to the prior written approval of the Director responsible, and the Director of Internal Services.
D	Single Tenders	<p>A single tender or quotation may be obtained when:</p> <ol style="list-style-type: none"> <li>1. Work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts or upgrading of existing proprietary machinery, equipment, software, hardware or plant and the repairs or the supply cannot be carried out practicably by alternative contractors.</li> <li>2. Specialist consultants, suppliers, agents or professional advisors are required and <ul style="list-style-type: none"> <li>- there is no satisfactory alternative; or</li> <li>- evidence indicates that there is likely to be no genuine competition; or</li> <li>- it is in the Council's best interest to engage a particular</li> </ul> </li> </ol>

		<p>consultant, supplier, agent or advisor.</p> <p>This option is subject to the prior written approval of the Director responsible and the Director of Internal Services.</p>
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8.2 Except to the extent that the Executive in a particular case or specified categories of contract otherwise decides, all quotations or tenders that are being sought shall include approved contract terms and conditions or variations near to the Council's standard terms found on official orders. Some contracts require the Council to agree to the supplier's standard contract. Acceptance of unduly onerous terms and conditions can have a negative impact on the Council so it is recommended that advice is sought through Legal Services and such advice cannot be sought for contracts over £50,000 or where the contract is for more than 12 months. Tenders and quotations shall be based on a definite written specification.

## 9. CONTRACTOR SELECTION

- 9.1 It is not a requirement to advertise for expressions of interest for any contract below £50,000, however it is recommended that in cases where open advertising is appropriate that Supply 2 Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) is used.
- 9.2 For contracts between £50,000 and the EU threshold, it is a requirement to advertise in Supply 2 Gov – [www.supply2.gov.uk](http://www.supply2.gov.uk) and also on the Council's website Newspapers and trade journals should also be used where this will enhance competition.
- 9.3 All contracts of EU value and above must be advertised in the OJEU (<http://simap.europa.eu>) and where appropriate through the Council's website and in newspapers and trade journals.
- 9.4 Any short listing of contractors must have regard to financial and technical standards relevant to the contract and may have regard to award criteria. It is important that the process for selecting and



short listing contractors is transparent and fair. Where references are sought at the pre-qualification stage they should not be sought again at the invitation to tender stage. If the tendering process being used is an open procedure, references should be sought following receipt of tenders.

- 9.5 Prior to being invited to tender (unless an open tender is selected), all tenderers must be technically and financially appraised. Health and Safety policies are generally required for contracts for works and services and Equalities. They are not generally required for contracts for services. The official order or contract terms should require compliance with Health and Safety and Equalities Legislation. Technical appraisal is not necessarily required e.g. if product supplied meets ISO standard. Evidence of adequate Health and Safety and Equalities policies and compliance with any other statutory obligations must also be obtained. All contractors must provide evidence of adequate insurance policies, as required by the Director of Internal Services. The usual method of obtaining the necessary information to carry out these checks is through the use of a Pre-Qualification Questionnaire (PQQ).
- 9.6 All contractors shall be required to protect the Council's data and personal data, to enable the Council to comply with freedom of information and provide accurate data and information when requested.

## **10. EXCEPTIONS TO TENDERING PROCEDURES**

### **Framework Contracts**

- 10.1 If the Director responsible, in consultation with the Director of Internal Services, determines it is appropriate to award contracts to suppliers through an approved purchasing consortium/framework agreement where fixed unit pricing has been pre-agreed under a consortium framework agreement, the tendering procedures in these Procurement Regulations will not apply.

10.2 Such consortia include Hertfordshire Business Services, the Central Buying Consortium, the Office of Government Commerce Buying Solutions (including S-CAT and G-CAT), and Eastern Shires Purchasing Organisation or through any consortia of local authorities of which East Hertfordshire District Council is a member. This is always provided that the procedures applied are no less stringent than this Council's own Procurement Regulations. Mini-tendering within framework agreements are required where there is an opportunity to get better value.

10.3 If a Director believes that by following one of the procurement options detailed in 4.5 above, the procurement process will not provide the most appropriate method of service delivery, the most competitive prices, allow for continuous improvements in service delivery, or stifle procurement innovation, then he/she may suggest alternative procurement strategies. Prior to proceeding with the procurement, the Director shall produce a written procurement report that shall be approved by the Chief Executive in consultation with the relevant Portfolio Holder for contracts under £50,000 or contracts over £50,000 the approval of the Executive must be sought.

## **11. NOMINATED SUB-CONTRACTORS AND SUPPLIERS**

11.1 Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated suppliers shall be dealt with in accordance with the provisions of these Procurement Regulations.

## **12. WAIVERS**

12.1 Provision in these regulations may be waived under exceptional circumstances but only where EU legislation permits such waiver. The waiver has to be agreed by:

- The Executive for contracts over £50,000; or

- The Chief Executive in consultation with the Leader of the Council if the matter is urgent and a meeting of the Executive cannot be called; or
- A Director, in consultation with the Director of Internal Services, if the contract value is £50,000 or less.
- The Chief Executive activating the Council's 'Emergency Plan' or the Business Continuity Plan.

12.2 Any waiver is subject in all cases, other than a major incident, to a written report being submitted by the authorised officer that the waiver is justified because either:

- a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Procurement Regulations is justifiable; or
- b) the contract is for supplies, works or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or UK law); or
- d) where it is in the Council's overall interest

12.3 A record of the decision and the reasons for it must be kept by the Head of Democratic & Legal Support Services. Waivers which have been submitted to extend contracts or for reasons of extreme urgency must have a timetable attached to highlight when the procurement process is going to be undertaken within the framework of the Procurement Regulations.

### **13. RECEIPT OF TENDERS**

- 13.1 Contractors must be informed that their tenders will only be considered if they are sent in a plain envelope or package which bears the official blue tender return address label or the word 'tender' followed by the subject of the contract. The envelope or package must be securely sealed and must not show the identity of the tenderer in any way.
- 13.2 Such envelopes shall be addressed impersonally to the Head of Democratic and Legal Support Services.
- 13.3 Tenders must be delivered to the place and by the time stated in the tender invitation and must be endorsed on receipt with the date and time of receipt.
- 13.4 Tenders which do not meet the requirements of this Standing Order may only be considered if:
- i) failure to comply is the Council's fault; or
  - ii) to the satisfaction of Director of Internal Services the failure was a result of force majeure which the tenderer could not reasonably have predicted
- 13.5 In all other cases late tenders shall not be considered, but shall be opened to ascertain the name of the sender.
- 13.6 All envelopes received shall be kept securely and shall not be opened or accessed until the time appointed for their opening.
- 13.7 Where the circumstances so warrant, a Director may postpone for a reasonable period the closing time and date for the receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method, given the same information and that no tenders have been opened.
- 13.8 The date and time of a tender opening shall be published in the OJEU contract notice for any EU Open Tendering Procedure.

## **14. OPENING OF TENDERS**

- 14.1 The portfolio-holder, or a Member nominated by them shall be given not less than two working days notice of the date, time and place appointed for the opening of all tenders estimated to exceed £50,000 in value, to give them the opportunity of attending.
- 14.2 Any Member of the Council has the right to be present if they wish at the opening of tenders to which paragraph 14.3 applies, but is only entitled to receive prior notification of the time and place if a specific request has previously been made to the Head of Legal and Democratic Services.
- 14.3 At least 3 officers must be present when tenders are opened.
- 14.4 On opening, the results of all tenders received must be recorded in writing on a tender opening record. This record must contain the name of the proposed contract, the estimated cost, and the names of all those invited to tender. The form of tender shall be marked with the date of opening and signed by the Director /Head of Service and at least one other officer. The tender opening record shall be signed by all officers present at the opening and retained in the custody of the Director of Internal Services.
- 14.5 Electronic tenders-** when an appropriate system is available which meets the satisfaction of the Director of Internal Services tenders may be submitted by electronic means provided that:
- i) Evidence that the transmission was successfully completed is obtained and recorded;
  - ii) Each tender submitted electronically is deposited in a secure mailbox approved by the Head of Democratic and Legal Support Services in the manner prescribed in the advertisement or the invitation to tender documents before the return date, and;
  - iii) Electronic tenders are kept in a separate secure folder under the control of the Head of Democratic and Legal

Support Services which is not opened until the deadline is passed for receipt of tenders.

**Receipt of Quotations (Goods and Services exceeding £5,000 but not exceeding £50,000)**

- 14.5 Directors may make such arrangements as they consider appropriate for the opening of quotations, provided that they are not opened until after the time appointed for the receipt of the quotations and that they are all opened at one time in the presence of at least three Council officers and the results are recorded on a quotation record sheet.

**15. ACCEPTANCE OF TENDERS AND QUOTATIONS**

- 15.1 The appropriate Director shall evaluate all the tenders or quotations received in accordance with the acceptance criteria set out in the bid documentation and shall accept, subject to 15.2 and 15.3 below, either:
- a) The LOWEST where payment is made by the Council; or
  - b) The HIGHEST where payment is received by the Council; or
  - c) The most economically advantageous tender (MEAT) in accordance with the guidance in Appendix C.
- 15.2 For contracts over £5000 the acceptance of a tender or quotation that is not the lowest priced tender or quotation or the highest scoring tender or quotation (in accordance with acceptance criteria set out in the tender or quotation documentation), if payment is to be made by the Council; or the highest tender or quotation, if payment is to be received by the Council, shall only be accepted if:
- i. The Executive has considered a written report from the appropriate Director; or
  - ii. In cases of urgency, the Chief Executive has consulted and obtained the approval of the Leader of the Council. The appropriate Director shall report tenders or quotations accepted in this way to the next meeting of the Executive.

15.4 Where post tender negotiations have been undertaken in accordance with Paragraph 16.2 below, the appropriate Director shall only accept the lowest priced tender received. A tender other than the lowest, shall not be accepted until the Executive has considered a written report from the appropriate Director, and recommended acceptance of a tender other than the lowest.

## **16. ARITHMETIC ERRORS AND POST TENDER NEGOTIATION**

### **Arithmetic Errors**

16.1 Contractors can alter their tenders or quotations after the date specified for their receipt, but before the acceptance of the tender or quotation, where examination by officers of the tender or quotation reveals arithmetic errors or discrepancies which affect the tender or quotation figure. The contractor shall be given details in writing of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

### **Post Tender Negotiation**

16.2 In evaluating tenders, the appropriate Director may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.

All post-tender negotiations shall:

- Only be undertaken where permitted by law and where the appropriate Director, together with the Director of Internal Services consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process; and
- Be conducted by a team of officers approved in writing by the appropriate Director, and the Director of Internal Services;

- Be conducted in accordance with guidance issued by the Director of Internal Services and in compliance with current EU legislation;
- Not disclose commercially sensitive information supplied by other bidders for the contract.

16.3 Post tender negotiations shall not be used to degrade the original specification unless all acceptable tenders exceed the available capital or revenue budget., or the appropriate Director considers that changed circumstances subsequent to the start of the tender process allow a lower specification to be accepted but these changes are not so as to require a retender . This process must not put other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.

16.4 The appropriate Director shall ensure that all post-tender negotiations are recorded in writing with all savings and benefits offered clearly costed. Following negotiations, but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor and shall be signed by him.

## **17. PURCHASE ORDERING**

17.1 Orders for Council related work, goods and services will be placed through the Council's E-Marketplace solution. Official orders and Council contracts must not be raised or used for any personal or third party purchases other than where the Council is acting as an authorised agent.

17.2 Each electronic order raised through the Council's marketplace system must have a commitment raised and a satisfactory audit trail. Orders will be completed in sufficient detail to identify accurately the materials, work or service required and will specify where applicable the contract agreement number and name, the price agreed and the approved budget expenditure code against which costs will be charged.

17.3 In cases where goods, works or services are required urgently and where delay would cause either loss to the Council or endanger public health or safety then the order may be placed orally by an



authorised officer. All such orders must be confirmed within two working days by the creation of an official E-Marketplace order.

- 17.4 An authorised officer shall enter the budget expenditure codes. The order will be approved by a different officer with the appropriate level of authority for the transaction amount.
- 17.5 Details of any new creditor should be set up by completing a new supplier form before an order is raised. The supplier will then be entered on the E-Marketplace and Powersolve by the Accountancy section.
- 17.6 The Corporate Management Team will ensure that ordering officers have due regard to the Council's Procurement Strategy, the need to obtain value for money (taking into account current Council functions and considering procurement options for future service delivery) and any current requirements to obtain goods/services by electronic means.
- 17.7 Every officer and Member of the Council has a responsibility to declare any links or personal interests they may have with suppliers or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council, in accordance with appropriate codes of conduct.

## **18. ORDER APPROVAL**

- 18.1 Orders will be approved electronically through the E-marketplace system by the appropriate Head of Service, nominated budget holder or other authorised senior officer. The Internal Audit and Business Improvement Manager will receive and retain an up to date list of specimen authorised signatures and will be immediately notified of any changes.

## **19. ENGAGEMENT OF CONSULTANTS**

- 19.1 For the purposes of these Regulations "consultant" means a person or organisation retained on a time limited basis to undertake a specific piece of advisory work for a fee. It excludes

the engagement of individuals to fill vacant posts, cover maternity, illness or other long term absences of staff which are subject to recruitment arrangements. It is important that value for money is obtained when employing consultants. Therefore, for all instances where the estimated value of a consultancy appointment is over £5,000, the commissioning officer must provide a report to the Head of Service responsible setting out as a minimum:

- i) The nature of the services for which the appointment of a consultant is required, identifying the project objectives;
- ii) The estimated total value of the services (which should be project based);
- iii) Details of the in-house costs to support the consultants;
- iv) Confirming that no employee of the Council has the capacity or is available to undertake the services.

19.2 Financial thresholds apply equally for the competitive process to be followed in the engagement of consultants. All consultants must provide evidence of adequate professional indemnity insurance as determined by the Director of Internal Services prior to their appointment. The requirement for insurance and the levels required should be advised in the specification of works.

19.3 It shall be a condition of the engagement of any consultant, agent or professional advisor who is to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:

- i) Comply with these Procurement Regulations as though they were an employee of the Council
- ii) At any time during the carrying out of the contract produce to the appropriate Director on request, all the records maintained by them in relation to the contract; and
- iii) On completion of the contract transmit all records that they have produced or received that relate to the contract to the appropriate Director.
- iv) On completion of the contract ensure that professional indemnity insurance is maintained for a period of up to six or twelve years, as appropriate.

19.4 Appendix F provides further guidance on the engagement of consultants.

## **20. PAYMENT PROCEDURES**

20.1 No tender or quotation shall be accepted or contract entered into unless the necessary approval, sanction and consent have been obtained.

20.2 The Director of Internal Services shall be informed of all contracts and contract extensions by relevant departments having a value in excess of £5000. The Director of Internal Services shall maintain a Contract Register showing all contracts **having a contract value of £5,000 or more**, entered into by the Council and a schedule of contractual payments made on an individual contract basis. The Director of the contracting department will be responsible for informing the Director of Internal Services of every contract payment for inclusion within the Contract Register.

20.3 Payment to contractors on account of construction, civil engineering and similar contracts for works to land and buildings should only be made on a certificate issued by the supervising engineer or architect. Subject to the provisions of the contract, any variations must be authorised in writing by the supervising engineer or architect.

20.4 The Council's normal payment terms will be within 30 days of receipt of goods, satisfactory completion of services, or stage payment certificate. Payment will be by BACS. Variation of payment terms including retentions may be approved by the Director of Internal Services.

### **Final Certificates**

20.5 Directors shall be responsible for ensuring adequate checks on contractor's final accounts – is this just for works contracts? The officer managing the contract and a representative of Internal Audit who has had no previous involvement should carry these out for contracts over £50,000.

20.6 The final payment certificate shall not be issued until after:

- a) the detailed final statement of account and supporting documents have been submitted to the Internal Audit and Business Improvement Manager; and
- b) the Internal Audit and Business Improvement Manager has, to the extent considered necessary, examined the contract final account and will be entitled to make all such enquiries and receive such information and explanations as required, in order to be satisfied as to the accuracy of the accounts; and
- c) the Internal Audit and Business Improvement Manager has confirmed in writing that the final payment certificate may be issued.

20.7 The appropriate Head of Service will be responsible for issuing a formal memorandum authorising final certificate payment.

### **Reporting of excess costs**

20.8 If during the course of any contract there are indications that costs are likely to exceed the approved annual contract sum by £5000 or more, the Director of Internal Services and Chief Executive will be informed immediately. The budget effect will be reported in accordance with Financial Regulations.

20.9 Where the Council has approved a contract sum all cases where final costs have exceeded the approved contract sum will be reported in accordance with Financial Regulations

## **21. VARIATIONS**

21.1 If the terms of a contract allow for an extension and there is adequate budgetary provision and the extension would be value for money, then a Director may, with the agreement of the Director of Internal Services and the relevant portfolio holder, agree to such an extension for a period of up to one year. In all other cases the approval of the Executive will be sought prior to any extension.

- 21.2 A Director may, with the agreement of the Director of Internal Services and the relevant portfolio holder, authorise variations to the scope or other terms of a contract as provided for in that contract and within existing budgets where variation provides value for money
- 21.3 Variations which increase costs are subject to the approval and reporting requirements set out in Financial Regulations
- 21.5 Variation orders issued verbally on site must be confirmed in writing within two working days.

## **22. CONTRACT DOCUMENTS**

- 22.1 All contracts must be in writing. Contracts under £50,000 must, as a minimum, be in the form of an official order, issued and signed by an authorised officer in accordance with the Council's Financial Regulations. The supplier's terms of business, warranties, specifications and any obligations placed on the Council must be retained. The Director of Internal Services shall be consulted on the need for a written contract procedure.
- 22.2 Contracts for the supply of goods, materials, or services, or the execution of works in excess of £50,000 in amount or value and in any other case where the responsible Director decides it is necessary, must be drawn up in a form approved by the Director of Internal Services.
- 22.3 Proof of adequate insurance cover must be provided and signed by both parties prior to any contract commencing. Any exceptions are to be reported to the Executive, together with the reasons for this omission.
- 22.4 Contracts exceeding £100,000 in amount or value should be sealed. Any exceptions to this should be agreed with the Director of Internal Services. Where the responsible Director or the Director of Internal Services requires, a contract of any value below £100,000 will be sealed.

22.5 Quotation or tender scoring criteria and methods shall be decided and included in contract documentation prior to quotations or tenders being issued. In cases of urgency and with the prior approval of the relevant Director and the Director of Internal Services criteria may be determined after quotations or tenders are sought but in all cases prior to receipt of quotations or tenders. Scoring sheets shall also be prepared before contract documentation is issued.

All contracts should have regard to data protection particularly where access to personal and/or other confidential information is a clearly identifiable part of delivering the contractual requirement. In these types of contract specific provision should be made to limit access, use and disclosure of such information to maintain confidentiality. Legal Services and the Information Manager's advice must be obtained on the form of contract required.

22.6 All contracts should have regard to promotion of equalities and as a minimum the statutory responsibilities imposed on the Council. Advice on equalities can be sought from the Council's Community Project Officer (Equalities).

22.7 The Council's Disclosure (Whistle blowing) Code will be included in the tender documents and applies equally to contractors, sub-contractors, suppliers and agency staff. The Code should therefore be disseminated to all those working on behalf of the Council, or who have a contractual relationship with it, to ensure that any concerns may be raised without the fear that it will affect their relationship with the Council, or that they could lose business with it.

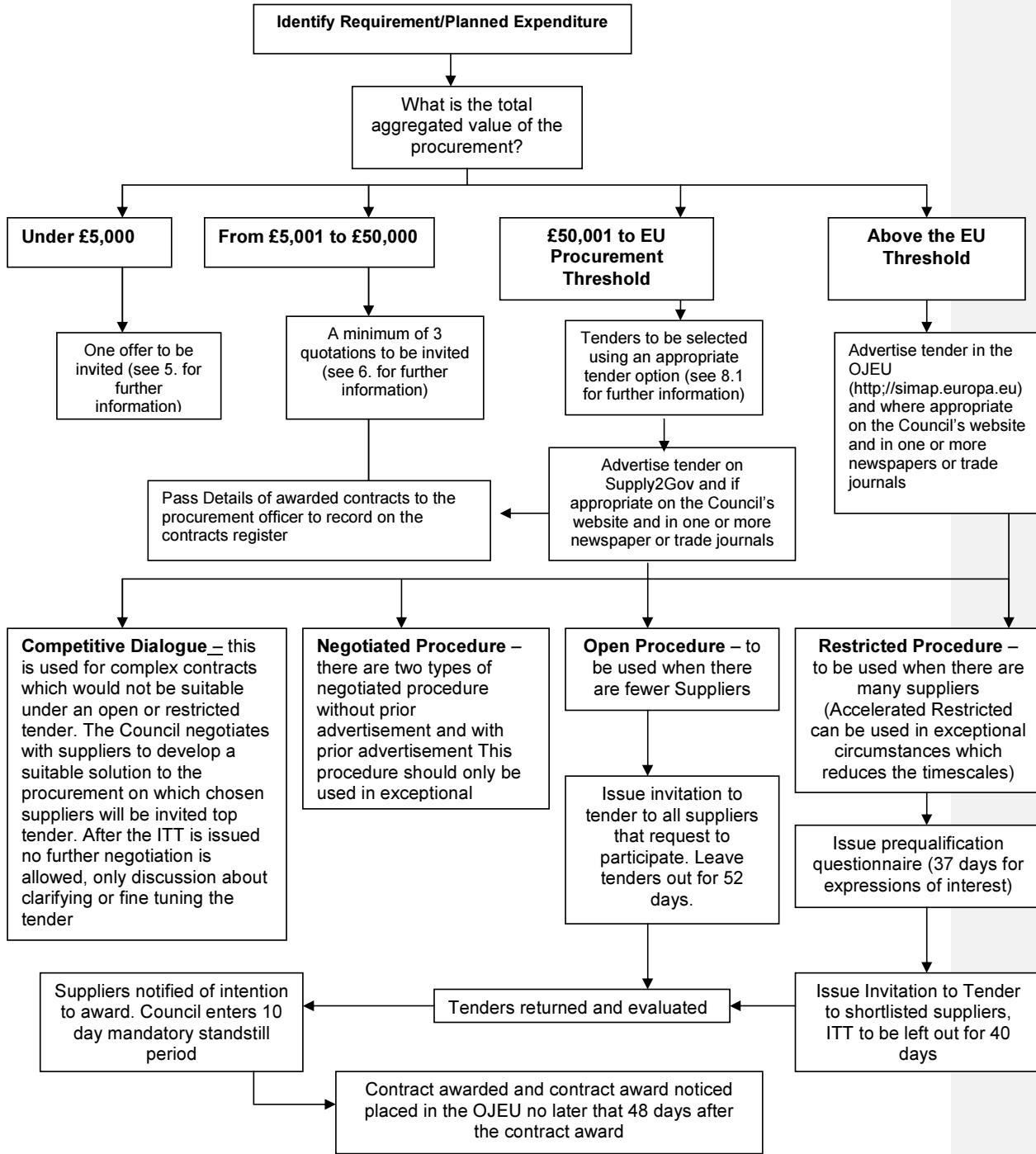
## **23. POST CONTRACT AWARD**

23.1 Directors shall ensure that arrangements are in place to monitor a contractor and that the Council meets its obligations under the contract and that procedures are in place to respond to breach or potential breach by either party. Once a contract has been awarded it must be monitored with regular review meetings to an agreed timetable to raise concerns and issues from both parties.

Written records of review meetings shall be kept for the benefit of East Herts and the contractor.

- 23.2 Financial checking and spot checks of contractors' risk assessments for all contracts over the EU threshold must be carried out biennially] and results reported to the Director of Internal Services.

**APPENDIX A – FLOWCHART TO SHOW TENDERING OPTIONS**



Pass details of awarded contracts to the procurement officer to record on contracts register

November 2010



## **APPENDIX B - EU DIRECTIVES AND REGULATIONS**

### **1) INTRODUCTION**

The European Union law requires that all firms in EU states can tender for contracts anywhere within the EU. In addition, EU member states require that public sector organisations adopt procurement methods that increase competition. These rules require transparency and fairness in the procurement process.

The EU Procurement Directives have been implemented into national law in the UK by Regulations. The latest regulations are:

#### **Public Contracts Regulations (SI 2006 No. 5)**

These regulations replace the previously separate Supply, Works and Services Regulations

#### **Public Contracts Amendment Regulations (SI 2009 No.2992)**

The Public Contract Regulations have been updated with the Remedies Directive from 20<sup>th</sup> December 2009 which includes updated rules applying to the standstill period.

#### **Utilities Contracts Regulations (SI 2006 No. 6)**

Utilities have been updated in line with the Public Contract Regulations. Whether the regulations apply depends upon the value of the proposed contract. The current threshold levels for contract value above which you are legally required to follow the regulations are as follows: -

Contracts for Works -	£3,927,260
Contracts for Services -	£ 156,442
Contracts for Supplies -	£ 156,442

(Correct at 1/01/2010 and subject to biennial review)

#### **Public Sector Directive**

The Public Sector Directive 2004 simplifies and consolidates the three existing Directives for public works, supplies and services into a single text. Many of the basic provisions remain the same as in the existing Directives. However new provisions have been added to take account of modern procurement methods and developments in best practice. These include explicit provisions on:

- Framework agreements
- Central purchasing bodies
- Electronic auctions
- Dynamic purchasing systems

## Framework Agreements

Article 1 (5) defines a framework as;

- ‘An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged’,
- i.e. the framework establishes the terms and conditions that will apply to subsequent contracts (call offs) but does not create rights and obligations
- *A ‘call off’ contract which creates rights and obligations (e.g. where work and response times are guaranteed) is not a ‘framework’ as defined in the Directive.*
- Frameworks can cover supplies, works and services and can be used in conjunction with the open, restricted, competitive dialogue and negotiated procedures.
- The maximum duration is four years unless, exceptionally, a longer period can be justified.
- Call offs may extend beyond the life of the framework
- Where a single appointment is not made then the minimum number of framework suppliers is three or the number passing the selection criteria if less.

## Central Purchasing Bodies

Article 1(10) defines a central purchasing body as a contracting authority which:

- acquires supplies and / or services intended for contracting authorities' or
- 'awards public contracts or concludes framework agreements for works, supplies or services intended for contracting authorities'
- Purchases may be managed through a central purchasing body (CPB) and organisations are deemed to have complied with the Directives in so far as the CPB has complied, i.e. OGC, CBC, ESPO

## Electronic Auctions

Article 1 (7) defines an electronic auction as:

- 'A repetitive process of involving an electronic device for the presentation of new prices, revised downwards, and / or new values concerning certain elements of tenders, which occurs after an initial evaluation of the tenders, enabling them to be ranked using automatic evaluation methods'.
- I.e. an electronic system enabling suppliers to adjust specified elements of their initial bid and which shows consequent changes in rank immediately
- Auctions may be based on price or a combination of quality and price award criteria.

## Dynamic Purchasing Systems

Article 1 (6) defines a dynamic purchasing system as:

- 'A completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification'.
- Dynamic purchasing systems are a kind of electronic framework agreement where **Indicative Bids** to enter the framework can be made at any time and each call off is subject to competitive tender
- The **open procedure must be used** to invite Indicative Bids to join the system
- The contract notice must state the intention to use a dynamic purchasing system and where to obtain bid documents

### Competitive Dialogue

Article 1 (11c) defines competitive dialogue:

- 'A procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender'.

Article 29 (1) describes its use:

- For particularly complex contracts where use of the open or restricted procedures will not allow the award of the contract.

Competitive Dialogue has been introduced to complement the existing open, restricted and negotiated procedures. It is intended to be used for large complex projects in circumstances where, currently, use of the negotiated procedure might be considered. The negotiated procedure may be used as a fall back in circumstances where other procedures are not workable, remains unchanged.

## **2) ASSESSING THE CONTRACT VALUE**

The general test for calculating the value of the contract is to estimate the total value of the consideration of the contract net of VAT at the time the contract goes out to tender. This value should include all aspects of consideration, whether it takes a monetary form or the contribution by the authority of other types of consideration such as goods or equipment.

There is a general rule, which prohibits the division or splitting of contracts with the intention of evading the application of the Procurement Regulations. In addition, there are specific aggregation rules, which apply where the contract is for an indefinite period or is a repetitive or regular contract.

### **Services Contracts**

In the case of services contracts which do not specify a total price, the basis of calculating the estimated contract value shall be:

- i) in the case of fixed term contracts with a term of 48 months or less, the total contract value; or
- ii) in the case of contracts of indefinite duration, or with a term of more than 48 months, the monthly instalment multiplied by 48.

Where the contract provides for an option to renew or extend, then the estimate should be based on the assumption that the option is exercised.

### **Supplies Contracts**

In the case of supply contracts, the contract value for regular or renewable contracts is:

- i) the aggregate consideration to be paid during the anticipated duration of the contract; or
- ii) over the first 12 months of the contract if the duration is indefinite; or
- iii) the consideration paid by the contracting authority under similar contracts for the provision of goods of the same type during the preceding 12 months.

Whichever is the most appropriate.

In the case of contracts for lease, rental, or hire purchase, the relevant figure is the aggregate of the consideration, which will be paid throughout the duration of the contract. Where the term exceeds 12 months, the estimate of residual value must also be included, where the duration is indefinite or uncertain, the relevant figure is the monthly contract value multiplied by 48.

### **Works Contracts**

When assessing the value of a works contract it is necessary to include not only the value of the works themselves but also all the related service, equipment and materials which the contractor will be expected to provide under the contract.

### **3) THE REQUIREMENTS OF THE REGULATIONS**

Where the regulations apply, they lay down strict guidelines on:

- i) the advertising of contracts and the disclosure of certain information relating to the procurement process;
- ii) the manner in which tenderers are selected and invited to tender;
- iii) the specification of requirements utilising the appropriate EU references and avoiding criteria which would have the effect of favouring or eliminating particular tenderers without good reason;
- iv) the evaluation of bids received from tenderers and the award of contract; and
- v) the timescales between the various stages of the procurement process

## The Advertising/Notification Requirements

The regulations recommend that authorities, at the beginning of every financial year, publish **Prior Information Notices**, (PIN), setting out their procurement plans for the coming year the value of which will exceed the relevant threshold.

(N.B All notices and adverts must be published in the Official Journal of the European Union. Publication is free and can be accessed by going to <http://simap.europa.eu>). In most cases it is a requirement that the authority publishes a **Contract Notice**, (OJ Notice), inviting expressions of interest in the forthcoming procurement project. There is a special coding system called CPV's (Common Procurement Vocabulary Codes) to describe the nature of the requirement services/supplies etc. which is intended to ensure that people from all EU countries will recognise the type of procurement whatever their native tongue.

After the award of a contract the authority is required, no later than 48 days, to publish a **Contract Award Notice** confirming details of the award.

## The Options for Procurement Procedures

The regulations provide for four distinct procedures for conducting the procurement process, these are;

### The **Open Procedure**

... under which all interested persons may tender for the contract

### The **Restricted Procedure**

... under which only selected persons are invited to tender for a contract following a pre-qualification process.

### The **Negotiated Procedure**

... under which a purchaser may negotiate the terms of the contract with one or more persons selected by it.

### The **Competitive Procedure**

... under which suppliers are selected in the same way as a restricted procedure but a dialogue is conducted about the supplier's proposed solution before tenders are sought.

The Open and Restricted Procedures may be used in any situation but the negotiated procedure and competitive procedure can only be utilised in certain circumstances.

All open tenders of EU value must detail the date and time of the tender opening on the OJEU notice.

### **Timetables**

Each of the 4 procedures lay down minimum timescales between certain stages of the procedure. These periods are designed to ensure that all potential tenderers have a reasonable opportunity to formulate and submit a tender should they wish to. E.g. if you are using the Open Procedure there should be a gap of not less than 52 days between the despatch of the Contract Notice and the deadline for responses, please see the table below. The timescales vary and will be shorter if a PIN had been published. In addition the new Directive introduces shorter timescales in circumstances where the contract notice has been sent to the OJEU through an approved electronic system; in this case 7 days can be removed from the minimum period for responding to the notice. If contract documents are made available for download from the internet a further 5 days can be removed from the minimum period to bid. Thus in open procedures the minimum period can be reduced from 52 days to 40 days if both conditions are met.

<b>Procedure</b>	<b>Date of dispatch of notice (restricted and negotiated)</b>	<b>Date of dispatch of notice (open)</b>	<b>Tendering period (restricted and negotiated)</b>	<b>Contract Award Notice</b>
Open	-	52 days	-	48
Restricted	37 (15)* days	-	40 (10)*	48
Competitive Dialogue	37 days	-	Not Specified	48



Negotiated	37 (15)* days	-	Not Specified	48
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\* The figures in brackets denote the time allowed under the accelerated procedure. The accelerated procedure may be used where compliance with the standard timescales is “rendered impracticable for reasons of urgency”. (Reasons justifying use of the accelerated procedure must be set out in the Contract Notice and a clear audit trail for the decision should be documented).

### **Standstill Period**

Before a contract can be awarded East Herts must allow a 10 day standstill period which allows a supplier to challenge the procurement decision. The standstill period must be built into the procurement timetable and immediately follows the notification to the suppliers of the intention to award listing the successful contractor.

### **Selection Criteria**

The Regulations stipulate which factors may justify excluding potential tenderers from those invited to tender. In addition the regulations provide for only two bases for the ultimate selection of the successful bidder, those of Lowest Price or Most Economically Advantageous Tender, (MEAT). Careful thought should be given to which selection criteria should be used and what, if any, system of weighting should be used. Selection matrices can often be used and these have the advantage of providing a clear record of the selection decision. Advice should be sought from the Council’s Procurement Officer as to how to choose appropriate selection criteria and methodology.

### **Records**

Due to the reporting requirements contained in the regulations and the possibility of legal challenge for non compliance it is essential that comprehensive records are kept documenting the key stages of the process and recording the reasons for any key decisions such as award.

#### **4) SOURCES OF FURTHER GUIDANCE**

Office of Government Commerce  
(Click on procurement policy and EC rules)

[www.ogc.gov.uk](http://www.ogc.gov.uk)

The European Commission Procurement Website <http://ec.europa.eu/>

## **APPENDIX C - MOST ECONOMICALLY ADVANTAGEOUS TENDER**

As stated in 15.1 tenders can be accepted on the following basis, either:

- a) The LOWEST where payment is made by the Council, or
- b) The HIGHEST where payment is received by the Council, or
- c) The most economically advantageous tender (MEAT).

This Appendix does not provide comprehensive or exhaustive procedures for the application and evaluation of tenders using the MEAT criteria. It aims to provide officers with practical advice on evaluation methods to ensure that the aims of the Council can be achieved and demonstrated taking into account value for money.

It is therefore vital to ensure that assessment criteria are agreed and documented both in the invitation to tender documents and on the contract notice prior to tenders being invited. An evaluation structure must be defined so that an objective evaluation can take place whatever method is applied. The Internal Audit and Business Improvement Manager should be consulted when considering the assessment criteria and weighting to be used.

However, this is not the only definition of the MEAT term; criteria for evaluating tenders can include quality and best value issues in addition to financial issues.

It is possible that the lowest priced tender may not satisfy the MEAT criteria.

Such criteria should usually include the following three elements:

- i) A point scoring system for individual quality/ best value considerations.
- ii) Weightings applied to quality/best value issues in accordance with their importance to the completion of the contract.

- iii) A 'quality threshold' which sets the minimum standards expected. Tenders which fall below this shall be excluded from consideration. Tenders which exceed the quality threshold can then be assessed on the tender price and:
- any additional quality features included within the bid
  - the additional cost of these features compared to the lowest bid.

A schedule of tenders can therefore be produced which ranks in order of price and in order of quality. Tenders can be eliminated where they do not satisfy the specified quality threshold even when they are the lowest based solely on price. All scoring and the score sheets will be prepared before any tender or quotation is issued in line with 22.6. The officers involved in the quotation/tender evaluation team should be appointed before the quotation/tenders are issued if possible.

#### Scoring of price and quality

The relative weighting of price and quality factors is a significant decision. The council expects the majority of its contract award criteria to fall within the following scoring parameters

	High	Low
Price	80	50
Quality	50	20

The approval of the Director of Internal Services should be sought where criteria fall outside these limits.

Points awarded for price will be as follows:

Lowest price		Maximum price points
Other prices	$\frac{\text{Lowest Price}}{\text{Other tender price}} \times$	Maximum price points

Points awarded for quality will be as follows:

Highest score		Maximum quality score
Other scores	$\frac{\text{Other tender score}}{\text{Highest score}}$	X Maximum quality score

The approval of the Director of Internal Services should be sought where an alternative scoring method is proposed.

## **APPENDIX D - LEGAL PROVISIONS**

This Appendix is not a comprehensive list of all provisions required for all contracts. It provides guidance for staff to highlight those areas, which should normally be incorporated into all contracts let by the Council.

Where contracts do not contain these provisions, contract documentation should clearly state the reasons for this and incorporate the advice given by the Head of Democratic and Legal Support Services. Additionally the contract shall specify that contractors should comply with all legislation including race relations, health and safety at work relevant to the contract.

In all cases departments must consult the Head of Democratic and Legal Support Services prior to issue of any documentation.

Contracts for the supply of goods, materials or services or the execution of works below £50,000 in amount or value shall be in the form of an official order issued (once the procurement process has been undertaken) and signed by an authorised officer in accordance with the Council's Financial Regulations.

Contracts for the supply of goods materials or services or the execution of works in excess of £50,000 in amount or value must be drawn up in a form approved by the Head of Democratic and Legal Support Services.

Every contract shall specify, so far as is appropriate:

- (i) The goods, materials, services or the work to be supplied provided or executed (including as appendices any necessary technical specifications, plans or drawings), including compliance with any British or European Standard current at the date of the tender;
- (ii) The payments to be made under the contract with a statement of any discounts or other deductions;
- (iii) The time or times within which the contract is to be performed;

- (iv) The scoring criteria of the contract
- (v) Such other conditions and stipulations as may in any particular case be necessary or desirable. These to include but not limited to: - provisions with regard to retention money; defects liability period; insurance by the contractor; subcontracting; licensing; liquidated damages and the circumstances in which the contract shall be determinable.
- (vi) That the Council's Internal Auditors shall have access to records in the possession of the contractor which are, or have been used in the performance of the contract.

Contracts which exceed £100,000 in amount or value should be under seal except with the agreement of the Head of Democratic and Legal Support Services and where the appropriate Director or the Head of Democratic and Legal Support Services shall so require, a contract of any value below £100,000 shall be under seal.

### **Indexation of contract prices**

Service or works contracts for periods of more than a single year will normally include a provision to re set prices annually by reference to changes in an index published by a government department or UK National Statistics

The choice of the index to be used can significantly impact on future prices. For some services there may be industry specific indices usually broken down to labour, plant and equipment, materials and consumables. The indexation applied to the contract price may form a weighted basket of labour, equipment, and consumable indices.

Where there is no suitable index the default should be to CPI the index of consumer prices which is the governments preferred measure of inflation.

Where contracts are to run for up to three years consideration should be given to requesting a fixed price to provide budget certainty. Where contracts are to run for more than 3 years the provider should be expected to share efficiency gains with the Council. Such contracts must

include a 1% per year reduction from the preferred index; for example “CPI- 1” so that a 3% increase in CPI triggers a 2% increase in contract price. This requirement may be varied with the approval of the relevant Director in consultation with the Director of Internal Services.

### **Liquidated Damages**

All contracts should, where appropriate, provide for liquidated and ascertained damages to be obtained from the contractor where the terms of the contract are not duly performed. Liquidated and ascertained damages should equate to a genuine pre-estimate of the losses that the Council would incur as a consequence of the delay or other non-compliance with contract conditions.

### **Performance Bonds**

Performance bonds and/ or parent company guarantees will be required at the discretion of the relevant Director in consultation with the Director of Internal Services and the Head of Democratic and Legal Support Services. Where contract payment is in arrears and a reasonable retention is applied, performance bonds may not be required.

### **Cancellation**

The contract shall contain a clause which entitles the Council to terminate the contract and to recover from the contractor the amount of any loss to the Council resulting from such termination, if the contractor shall have acted to induce any individual in relation to obtaining or executing a Council contract.

This applies equally to the Contractor and any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) under the Prevention of Corruption Acts, 1889 to 1916, and subsection (2) of section 117 of the Local Government Act 1972.

### **Making Good**

A clause shall be inserted to enable the Council to make good (a) such default or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered in the event that the



contractor has wholly or partially defaulted. The contractor will be liable for the additional costs to the Council for this.

### **Extension**

Clauses providing for extension of the contract at the option of the Council or by agreement may provide useful flexibility but should not be included only to defer a retender. Provision to extend by more than one year should be exceptional and included only with the approval of the Director of Internal Services and the relevant portfolio holder.

### **Data Protection Act/ Freedom of Information Act**

All contracts entered into should contain a clause requiring contractors to comply with the Data Protection Act 1998 and the Freedom of Information Act 2000 which indemnifies the Council against any failure to comply on the part of a contractor. Advice should be obtained from the Head of Democratic and Legal Support Services on the precise requirements of the Acts.

### **Assignment**

In every written contract for the execution of any work or for the supply of goods or materials, the following clauses, or a substantially similar one shall be inserted:

- i) The contractor shall be prohibited from sub-letting or assigning the contract or any part of the contract without the written consent of the Council. Such consent to be on those terms the Council considers to be reasonable in the circumstances. Such consent will not be unreasonably withheld to the prejudice of the contractor.
- ii) If the contractor has, without previous consent in writing, sub-let any portion of the works, notwithstanding that the contractor may have subsequently ceased to employ that sub-contractor, the Council may exercise its right to determine the contract.
- iii) It shall be a condition of any sub-letting of any part of the works that the employment of the sub-contractor shall

cease immediately upon the determination (for whatever reason) of the contractor's employment under this contract.

### **Environmental Issues**

Materials or processes which are known to be harmful to the environment and where there are other adequate alternatives should not be used. Wherever practical and cost-effective, only materials from sustainable sources will be used.

### **Equality and Diversity**

All contractors will be expected to have or commit to develop equality policies that ensure that East Hertfordshire District Council (through its contractors) can demonstrate the Council's promotion of equalities.

All contractors will be expected to evidence that they will meet all statutory equality standards that apply to the Council.

With specific reference to the Race Relations (Amendment) Act 2000, the Council will ask 6 approved questions specifically relating to race equality. Answers to these questions will be used to determine if a potential service provider satisfies the pre-contract requirements of the standard

Officers should also take steps to encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers.

When tendering for contracts, officers should be mindful of all religious festivals during the procurement process.

## **APPENDIX E – OFFICERS' INTERESTS IN CONTRACTS**

### **Relations with Contractors**

By virtue of their position, staff involved in the placing, supervision or overall control of contracts could be particularly vulnerable to criticism unless relationships and dealings with contractors are transparent. The following are minimum requirements and staff should declare to their

Director any circumstances which might be seen as casting any doubt on the integrity of the Council or a contractor.

### **Private Interests**

No contract may be let to an officer of the Council, or to any organisation (whether for profit or not) owned, managed, influenced or controlled by the officer or any member of their close family unless the Chief Executive has given permission for the letting of the contract to proceed. In such a case the officer must disclose the full measure of their interest in the contract to their Director who will notify the Chief Executive. "Close family" means a natural or by adoption parent or parent in law, sibling or sibling in law, child, spouse or unmarried partner, plus any person resident at the same address as any of such family members.

No officer may accept a directorship in any company (or equivalent management position in another organisation), without the written permission of the Chief Executive. Permission should be sought through their Director who will make a submission to the Chief Executive.

Any member of staff who comes into official contact with any matter concerning an organisation in which they or a member of their close family have an interest must disclose this interest to their Director prior to taking action or decision on the matter.

All officers are expected to be aware of and comply with the requirements of the Council's policy on Conflicts of Interest.

### **Prevention of Corruption**

The Standard Conditions of Contracts prohibit a contractor from offering or making a gift or other consideration of any kind as an inducement to some action pertaining to a contract and refer to the Prevention of Corruption Acts 1889 to 1916. Under these Acts it is an offence for an officer corruptly to solicit or accept any gift or consideration as an inducement or reward for:

- (i) Doing or refraining from doing anything in his official capacity, or
- (ii) Showing favour or disfavour to any person in his official capacity.

## **Use of Services supplied by Contractors**

No officer may purchase goods from or use the service of a contractor on preferential terms for private purposes if these terms are given either directly or indirectly because of the potential or actual contractual or other official business relationship between the contractor and the Council unless the contract with the provider makes express provision for all Council employees to participate as an employment benefit.

## **Contracts Staff**

Whilst the above rules apply to all staff whose duties bring them into contact with contractors, they are of particular importance to staff in contracts and purchasing sections that are in close contact with commercial firms seeking the opportunity to tender for the Council's services. It is important that the actions of such staff should be manifestly above suspicion of bias in favour of a particular firm and every care must be taken not to disclose 'in confidence' information e.g. tender prices.

The utmost discretion must therefore be exercised if offers of hospitality, gifts etc. are received from contractors with whom staff deal in the course of their official duties; dealings must be kept strictly on a business footing and the highest standard of watchfulness and integrity must be maintained at all times.

## **Record of Interests**

The Head of Democratic and Legal Support Services shall record in a book to be kept for the purpose, particulars of any notice given by an officer of the Council under Section 117 of the Local Government Act 1972, of a pecuniary interest in a contract. During office hours any Member of the Council may inspect the book.

## **APPENDIX F - GUIDANCE FOR THE ENGAGEMENT OF CONSULTANTS**

Procurement Regulations should be followed in the engagement of consultants.

This guidance sets out good practice in engaging and managing consultants; it complies with the Audit Commission report "Reaching the Peak".

### **1. IDENTIFICATION OF NEED**

Before consultants are invited to bid/tender, the Director shall:

- identify the project objectives
- document the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff
- document the residual in-house costs to support the consultant and ensure that sufficient budget is available to meet all identified costs.

### **2. PROJECT BRIEF**

The Director is responsible for ensuring that a project brief is prepared including background, objectives, timetable, costs, monitoring arrangements, documentation standards, contact names and numbers for enquiries.

### **3. CONTRACT MONITORING**

In relation to this area the term 'contract' refers equally to the employment of consultants in accordance with Procurement Regulations, even where no formal contract document exists.

Any letter of appointment or contract must set out the consultants legal obligations to the Council.

The Director shall be responsible for ensuring that the consultant's work is properly monitored on an ongoing basis. This includes:

- appointing a named project officer or group
- specifying key tasks and dates for consultants
- monitoring costs against budgets
- arranging regular progress meetings with consultants

The project officer shall maintain the following documentation:

- project brief/objectives
- minute authority, where required
- agreement with the consultant and any variations to that
- records to provide evidence of contractor compliance with the contract standard prior to payment being made
- a record of payments made to the consultant and for the project
- a project evaluation form

The project officer shall report immediately to the Director any material technical or financial deviation by the consultant from the specified agreement.

At the end of a project it is expected that a post-project appraisal exercise be carried out, to include an assessment of the consultant's performance.

## **APPENDIX G - DEFINITIONS OF TERMS**

**"The Council"** shall be deemed to include reference to, the Executive, a committee or sub-committee, approved working group, or person acting in accordance with delegated authority on behalf of the Council.

**"Portfolio Holder"** means the Elected Councillor who is a Member of the Executive and is responsible for an area of Council activity. In the event of a dispute or absence, the Chief Executive, in consultation with the Leader of the Council shall determine the portfolio holders who shall be consulted.

**"Director"** means the Director of the department responsible for the contract in question or such senior officer of that department to whom the Director may have delegated in writing the powers in question.

**"Contractor", "Sub-contractor" or "Consultant"** means any person, company or supplier who has:

- i) requested to be on an approved or ad-hoc approved list of tenderers;
- ii) been approached to provide a quotation or tender;
- iii) provided a quotation or tender; or
- iv) been awarded a contract in accordance with these Procurement Regulations.

**"Tender"** means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on set terms and conditions. For the purposes of these Procurement Regulations, the Council uses the term 'Tender' as opposed to 'Quote' for the more complex procurement procedure required for estimated contract values over £50,000.

**"Quotation"** means an offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on terms and conditions agreed with the supplier. For the purpose of Procurement Regulations, the Council uses the term 'Quote' rather than 'Tender' for the more simplistic procurement process to be followed for the estimated contract values up to £50,000.

**“Supplier”** any person or organisation who supplies the Council with goods, works or services. For the purpose of Procurement Regulations, the term supplier includes contractors, consultants and service providers.



## **APPENDIX H - CONTACT OFFICERS**

### **Procurement Officer**

Tracey Sargent Ext. 2112

### **Legal**

George Robertson Ext. 2193

### **Internal Audit**

Chris Gibson Ext. 2073

### **Committee Services**

Jeff Hughes Ext. 2170

### **Finance**

Simon Chancellor Ext. 2050

### **Risk & Insurance**

Graham Mully Ext. 2166

### **Health & Safety**

Peter Dickinson Ext. 1636

### **Equalities**

Marianne McWhinnie Ext. 1595

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