

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE MEETING OF THE EXECUTIVE – 19 MAY 2009

SUBMITTED TO THE SPECIAL COUNCIL MEETING – 26 MAY 2009

(To be read in conjunction with the Agenda for the Meeting)

- |                                 |                          |
|---------------------------------|--------------------------|
| * Cllr Richard Gates (Chairman) | * Cllr Stefan Reynolds   |
| Cllr Mike Band (Vice-Chairman)  | * Cllr John Sandy        |
| * Cllr Mrs Carole King          | * Cllr Roger Steel       |
| * Cllr Robert Knowles           | * Cllr Adam Taylor-Smith |
| * Cllr Ms Denise Le Gal         | * Cllr Keith Webster     |

\* Present

1. APPOINTMENT OF CHAIRMAN (Agenda Item 1)

RESOLVED that Cllr Richard Gates be confirmed as Chairman of the Executive for the Council year 2009/2010.

2. APPOINTMENT OF VICE-CHAIRMAN (Agenda Item 2)

RESOLVED that Cllr Mike Band be confirmed as Vice-Chairman of the Executive for the Council year 2009/2010.

3. MINUTES (Agenda Item 4)

The Minutes of the Meeting of the Executive held on 31 March 2009 were confirmed and signed.

4. APOLOGIES FOR ABSENCE

An apology for absence had been received from Cllr Mike Band.

5. DISCLOSURES OF INTEREST (Agenda Item 6)

Cllrs Ms D Le Gal and R Steel declared personal interests in Agenda Item 11 relating to the Thames Basin Heaths Special Protection Area Avoidance Strategy as members of Farnham Town Council.

**PART I - RECOMMENDATIONS TO THE COUNCIL**

6. HOUSING REVENUE ACCOUNT 2009/10 – RE-SETTING HOUSING RENTS (Agenda Item 9: Appendix B)

- 6.1 The Council finalised the budget for 2009-10 at its meeting on 24 February 2009 setting the average rent increase at 5.2% for council housing as part of this process. On Friday 6 March the Minister for Housing outlined proposals to change the national average guideline rent increase for 2009-10, reducing it from 6.2% to 3.1%.

- 6.2 The Department for Communities and Local Government (CLG) subsequently consulted local housing authorities on the detail of how the new guideline rent would be implemented and how it would be treated within the subsidy system.
- 6.3 The likely impact of these changes on Waverley has been assessed. It compares Waverley's estimated 2009-10 HRA as already approved by the Council with the estimated position at a reduced average rent increase in line with CLG's new proposals.

**Impact on HRA**

- 6.4 The Government is prepared to compensate, through the subsidy system, those authorities that reduce their average rent increase for 2009-10 in line with the Minister's proposal.
- 6.5 Based on the Draft Determination due to be confirmed mid May 2009, the attached Annexe 1 illustrates the reduction that would apply to Waverley if the average rent increase for 2009-10 were reduced in line with these proposals. This reduction compensates Waverley for reduced rent income and enables it to maintain the approved HRA budget for 2009-10 with a lower average rent increase.
- 6.6 At present CLG do not intend to re-imburse authorities for the cost of re-setting their rents, estimated at £10,000, although as part of the consultation response Waverley has asked them to reconsider this.
- 6.7 In addition to the rent re-setting costs of £10,000, the additional unbudgeted part of the ACAS agreed pay award is now known and for the HRA this will cost £30,000 in 2009/10. These additional costs totalling £40,000 have been included in the Revised Draft Budget, column 3, line 13.
- 6.8 The affect of the above changes achieves an increase in the estimated Housing Revenue Account balance of £5,520.

**Timescale**

- 6.9 Any variation in the average rent increase for 2009-10 approved by the Executive will need to be confirmed by full Council at a special meeting to be held on 26<sup>th</sup> May, subject to confirmation of the Rent Determination from CLG.
- 6.10 Tenants will subsequently need to be given 4 weeks notice of the change so it is unlikely that the reduced rents will be able to be introduced before Monday 6 July.
- 6.11 It is not possible to backdate the reductions to the beginning of the rent year without causing serious complications for the benefits system. It is therefore proposed that, in order to achieve the approved reduced average rent, an increase of something less than 2.9% is applied for the 9 months commencing 6 July. On the assumption that the reduced rents can be implemented from 6 July, the percentage to be applied will be 2.13%. Combined with the average 5.2% increase applied from 6<sup>th</sup> April this will result in an average of 2.9% for the full year.

**Risks**

- 6.12. Under the conditions of the draft guidance it is possible that at the end of the 2009-10 financial year all the benefit of the subsidy reduction may be lost if the actual average rent for the year varies significantly from the estimate and is outside of the 3.1% guideline when compared with the 2008-09 guideline rent. A safety margin is built into the revised average rent increase being proposed and, in addition, the response to the consultation asked for some tolerance around this issue to be built into the final regulations. Officers will monitor the position throughout the year.
- 6.13. The Executive welcomed the reduction in guideline rent increases for 2009-10 despite the poor timing of the announcement and the likely cost implications of introducing the changes.
- 6.14. The Executive

**RECOMMENDS that:**

1. **the revised HRA budget at column 3 of the attached annexe be approved; and**
2. **the average actual rent level of Council dwellings be increased by 2.9% from 6th April 2009 instead of the 5.2% previously approved, noting the effective increase from 6 July of 2.13%.**

Background Papers (DoR)

Draft Housing Revenue Account Subsidy Determination 2009-10:Amending Determination.

**(n.b. since the Executive meeting was held the final determination has been received and this has confirmed the calculations above.)**

7. 2 SHORHEATH ROAD, FARNHAM – PLANNING APPEAL DECISION AND COSTS APPLICATION (Agenda Item 13; Appendix F)
- 7.1 Planning Application WA/2008/0664 for the demolition of the existing house, retention of the coach house and the erection of a block of ten flats, was determined by the Area Planning Committee (Western) in August 2008. The Officer recommendation was that permission be granted subject to compliance with the SPA 106 Agreement and subject to conditions. The Committee, however, disagreed and resolved to refuse permission for the following reasons:-
1. The proposal by reason of its scale and extent of car parking would be out of keeping with and detrimental to the visual character and distinctiveness of the area in conflict with Policies SE4 of the Surrey Structure Plan 2004 and Policies D1 and D4 of the Waverley Borough Local plan 2002.
  2. The proposed development, by reason of increased activity and associated noise and light disturbance, would be detrimental to the amenity of surrounding residential properties in conflict with Policy D1 of the Waverley Borough Local Plan 2002.

3. The Local Planning Authority in the light of available information and the representations of Natural England, considers that the proposals (in combination with other projects) would have an adverse effect on the integrity of the Thames Basin Heaths Special Protection Area (SPA). It is likely that this proposal would have an adverse effect on the integrity of the SPA in that it is now widely recognised that increasing urbanisation of the area around the SPA has a continuing adverse effect on the interests features, namely nightjar, woodlark and Dartford warbler, the three internationally rare bird species for which it is classified. Accordingly, since the Local Planning Authority is not satisfied that Regulation 49 of the Conservation (Natural Habitats etc) Regulations 1994 applies in this case it must refuse permission in accordance with regulation 48(5) of the 1994 Regulations and Article 6 (3) of the Directive 92/43/EEC. For the same reasons, the proposal conflicts with policy SE7 of the Surrey Structure plan 2004 and PPS 9.

7.2 The applicants lodged an appeal against this decision that was heard at a local Inquiry on 6 and 7 January 2009. The Inspector in his decision letter dated 5 February 2009 allowed the appeal and granted planning permission.

7.3 At the Inquiry, two costs applications were made by the appellants. One was for a partial award of costs and one for a full award. The Inspector refused the application for a full award of costs but granted the application for a partial award.

#### Costs application

7.4 The application for a partial award was made on the basis of the withdrawal of Reason 2 at the start of the Inquiry.

7.5 The appellants submitted that an award of costs can be made where a witness has attended an Inquiry unnecessarily. The risk of costs can be minimised if the planning authority advises, immediately, that a reason for refusal is not being pursued. In this case, however, the reason was withdraw at the start of the Inquiry which could not be later. It is a requirement to produce evidence to support each reason for refusal but none was submitted with regard to reason 2. It was noted that the advice of officers does not have to be adopted but that a planning authority must have reasonable grounds for taking a decision contrary to such advice. The appellants submitted that no such grounds were available.

7.6 It was also submitted by the appellants that the imposition of planning conditions was not considered and it appeared consultation with the Environmental Health Officer was ignored. The Committee did not seek technical backup with regard to reason for refusal number 2 either before or after the meeting but had ample time to do so.

7.7 In consequence of this approach by the planning authority, it was submitted, that the appellant instructed 3 witnesses and submitted appropriate evidence. Costs were incurred in challenging reason number 2.

Planning authority response

- 7.8 It was pointed out on behalf of the planning authority that Councillors considered that they had strong grounds for refusing the application for reason 2. Evidence on those matters was provided in paragraphs 7.13 to 7.17 of the Council's proof of evidence so it was not a matter of no evidence being produced.

Inspector's decision

- 7.9 The Inspector found that the planning authority did not notify interested parties that it would not be pursuing reason 2 until the start of the inquiry, however, the appellant had employed 3 witnesses who each produced evidence with regard to this reason for refusal which as a consequence of the council's actions was not considered at the Inquiry. It was clear from the evidence that was submitted by the 3 witnesses, that they had undertaken a considerable amount of work in preparing for the Inquiry. In the Inspector's opinion unreasonable behaviour resulting in unnecessary expense had been demonstrated by the late withdrawal of reason 2 and therefore he considered a partial award of costs was justified.

- 7.10 The formal decision of the Inspector was:-

"In exercise of my powers under section 250(5) of the Local Government Act 1972 and the Schedule 6 of the Town and Country Planning act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Waverley Borough Council shall pay to Spiritform, the costs of the appeal proceedings, limited to those costs incurred in respect of challenging the Council's second reason for refusal, such costs to be assessed in the Supreme Court Costs Office if not agreed....."

The Amount of Costs

- 7.11 The appellants have submitted a claim for costs in the sum of £55,701.15. This figure is now being scrutinised with a view to achieving a negotiated settlement. It is expected that the outcome will be a figure in the region of £40,000 to £50,000.

- 7.12 Waverley does not budget for potential award of costs against the Council. It will therefore be necessary for a supplementary estimate to be approved to cover this expenditure. In the past the Council has regarded such expenditure as an appropriate use of balances, which are sufficient to cover the amount required. Waverley's overall Budget position will be reviewed during July 2009, with a report being presented to the Executive in September.

- 7.13 The Executive RECOMMENDS that:

3. **a Supplementary Estimate of up to £50,000 be approved to cover the partial award of costs against the Council arising from Planning Application WA/2008/0664; and**
4. **the Chief Executive be authorised to make final settlement of the amount due on behalf of the Council within the figure at paragraph 7.11 above.**

### Background Papers (CSP)

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

#### 8. MICROSOFT ENTERPRISE AGREEMENT - REQUEST TO BRING FORWARD CAPITAL EXPENDITURE (Agenda Item 14; Appendix G)

- 8.1 The Council through its IT service has traditionally had a policy of periodically upgrading its Microsoft software products (primarily Word, Excel and Powerpoint) as a significant one-off capital cost based on a Microsoft Select Agreement. The Council has then remained on the version of software purchased for a number of years until there is a need to update again when once more a major capital expenditure for a one-off upgrade is programmed. Waverley is currently on the Microsoft Office 2000 platform and has been on this software version since 2002. Over the last 7 years Microsoft have regularly introduced new versions of software and services and services are increasingly finding new business application software systems are using more up to date versions of Microsoft office products than Office 2000 – there is therefore a business need to upgrade. As an example of the type of low-level problem that is increasingly arising documents created in Word 2007 that are sent to Waverley officers could not be opened on their PCs using Office 2000.
- 8.2 Officers are proposing that in future rather than taking the approach previously adopted of purchasing Microsoft software under a Select Agreement i.e. a one-off significant capital upgrade to the existing version of Microsoft software available at the date of renewal, Waverley should instead enter into a three year Microsoft Enterprise Agreement under which any upgrade or new releases of Microsoft products introduced during the three year period would be automatically available (at no additional cost) to the Council. This arrangement with Microsoft is part of an Office of Government Commerce contract through which public sector bodies benefit from a 50% discount on desktop software. The Enterprise Agreement proposed would ensure Waverley has up to date software as well as a wider suite of Microsoft products, which would include the collaborative working software package Sharepoint. Local authorities generally have moved to the Enterprise Agreement solution.
- 8.3 Alternative open source office desktop products are available in the marketplace but officers do not consider at this stage that it would be appropriate to recommend a change away from Microsoft office products. These products are not at a mature enough state for general users and require a much higher level of end-user knowledge and training. The open source products will also require the IT support team to have a more detailed technical knowledge of the products used.

#### **Benefits of a Microsoft Enterprise Agreement as against a Select Agreement**

- 8.4 The main benefit of an Enterprise Agreement over a Select Agreement are cost savings as set out in the table below:

|                                | 2009/10 | 2010/11  | 2011/12         | 2012/13         | 2013/14         | 2014/15         |             |             |                |
|--------------------------------|---------|----------|-----------------|-----------------|-----------------|-----------------|-------------|-------------|----------------|
| Year                           | 1       | 2        | 3               | 4               | 5               | 6               | Years Cover | Grand Total | Cost Per Annum |
| Select Agreement               |         | £211,338 | Payment Holiday | Payment Holiday |                 | £211,338        | 6           | £422,676    | £70,446        |
| Enterprise Agreement           | £51,635 | £51,635  | £51,635         | Payment Holiday | Payment Holiday | Payment Holiday | 6           | £154,905    | £25,818        |
| Enterprise Agreement + Renewal | £51,635 | £51,635  | £51,635         | £44,095         | £44,095         | £44,095         | 6           | £287,190    | £47,865        |

8.5 The Enterprise Agreement includes, free of charge, any new releases of the Microsoft products launched during the three-year agreement period. At the conclusion of the agreement there is no requirement to enter a further agreement so a 'holiday' period can be taken when the authority would remain on the level of software being used at the conclusion of the agreement. It is officers' view that ideally the 'holiday' period should not exceed three years in order to avoid software becoming out of date. The Enterprise Agreement also includes as part of the package other software applications such as the collaboration tool Sharepoint.

8.6 The table above includes for information only a further option to renew the Enterprise Agreement after the third year at an annual cost of £44,095.

8.7 The Select Agreement route involves a one-off upgrade of desktop software at a significant capital outlay estimated at £211,000 at current prices. The Select Agreement is more complicated to administer in terms of software licensing and several authorities have fallen foul of licensing requirements and had to pay significant backdated sums for unlicensed software use. Entering into an Enterprise Agreement would negate this risk to Waverley.

#### **Reason for requesting that this scheme be advanced to 2009/10**

8.8 Officers have recently been advised that the OGC contract with Microsoft for its Enterprise Agreement, discounted by 50% for Local Authorities and other public sector bodies, will end in mid June 2009 and that the cost of future agreements will increase in cost significantly from that date.

8.9 Estimated provision of £150,000 has been included in the draft 2010/11 capital programme for Microsoft Software Upgrades. The actual cost of an Enterprise Agreement if approved in 2009/10 at current prices would be £51,635 per annum for 3 years starting in 2009/10 i.e. an overall total of £154,905. The cost of a Select Agreement would be £211,000. Therefore a saving of £56,000 can be achieved by entering into an Enterprise Agreement and bringing forward the initial expenditure to 2009/10

8.10 The cost of an Enterprise Agreement will increase with effect from 19<sup>th</sup> June 2009 to £65,576 per annum or £196,728 in total for the three years. This represents a 27% increase in cost that could be avoided if a decision is made

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to bring forward the purchase of an Enterprise Agreement to 2009/10 and enter into the agreement prior to 19<sup>th</sup> June.

8.11 The Executive was asked to consider bringing forward the scheme to upgrade the Council's core office desktop software systems to the current financial year. The circumstances behind this request are primarily to take advantage of the prevailing Microsoft Enterprise Agreement offer that is provided under the terms of an OGC contract. After mid June 2009 the cost of such an agreement will increase in cost by 27%.

8.12 The proposal at this stage is to bring forward the cost of £51,635 into the current year's Capital Programme without identifying at this time a specific equivalent slippage on an existing scheme. The Budget report to Council identified flexibility of £448,000 in terms of resources available to finance the 2009/10 Programme should the Executive be inclined to recommend this course of action.

8.13 The Executive RECOMMENDS that

**5. the proposal to bring forward the capital scheme to upgrade Waverley's Microsoft office software into the 2009/10 Capital Programme at a cost of £51,635 be approved;**

**6. the provision in the draft 2010/11 capital programme be reduced from £150,000 to £51,635 and expenditure of £51,635 be added to the draft 2011/12 Capital Programme; and**

**7. the Council approves the expenditure of £51,635 in 2009/10**

#### Background Papers (SD(E))

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

### **PARTS II AND III - MATTERS OF REPORT**

These will be submitted to the Ordinary Council meeting to be held on 21 July 2009.

**The meeting commenced at 6.45 p.m. and concluded at 7.43 p.m.**

Chairman