

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE MEETING OF THE EXECUTIVE – 13 APRIL 2010

SUBMITTED TO THE COUNCIL MEETING – 20 APRIL 2010

(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

Cllr Brian Ellis attended the meeting and spoke on Agenda Item 9 (Minute No. 234 refers)

220. MINUTES (Agenda Item 2)

The Minutes of the Meeting of the Executive held on 2 March 2010 were confirmed and signed.

221. APOLOGIES FOR ABSENCE (Agenda Item 3)

Apologies for absence were received from Cllr Roger Steel.

222. DISCLOSURE OF INTERESTS (Agenda Item 4)

There were no interests raised under this heading.

223. QUESTIONS (Agenda Item 5)

In accordance with Procedure Rule 10, Mr Hyman of Farnham submitted the following question:-

“In paragraph 12[4] of his March 2007 paper David Elvin QC summed up the *Barker* judgment by saying,

“Where a reserved matters EIA is required, then the ECJ held [in *Barker*, para 48] that what was required was “This assessment must be of a comprehensive nature, so as to relate to all the aspects of the project which have not yet been assessed or which require a fresh assessment.”

To quote from the DCLG Guidance,

“(6) ... Where the detail at reserved matters has revealed new or additional likely significant effects on the environment not identified and/or assessed at the OPP stage, the approval of reserved matters without obtaining the necessary environmental information is likely to be in breach of the Directive and thus unlawful.”

and (8), "If a developer disagrees with a request for an EIA to be carried out at the approval of reserved matters stage then having regard to the obligations on LPAs to give effect to the EIA Directive and the ECJ's decisions it must either:

- a. refuse the approval of reserved matters outright; or
- b. defer determination of approval until such time as an EIA is provided."

In 2007 you (i.e., this Council) quite rightly announced your adherence to the *Barker* principle, and in particular its relevance to Habitats-related applications, when you required mitigation at the reserved matters stage of the Hospital development - albeit that you did not provide an Appropriate Assessment until required to by the EC Compliance Unit in 2009, thus confirming at the highest level the oft-ignored requirement for AAs.

**My question is, will this Council please clearly state your full acceptance of the above (and the *Barker* principle) and will you now please commit to demonstrating such in your decision-making?"**

The Leader of the Council responded as follows:-

"Thank you for your letter. In your final paragraph you make an entirely incorrect assertion. The Farnham hospital development made a contribution to SANG and therefore an Appropriate Assessment (AA) was not required. However, at that time the policy approach was in its infancy and officers were doing an informal Appropriate Assessment as a precautionary measure, which was placed on the file. At no time has the EU Compliance Unit required Waverley to do anything and it is plain wrong to state otherwise.

Waverley undertakes all its activities in accordance with accepted interpretations of all existing laws and precedents. If it did not do so, no doubt the relevant authorities would already have brought this to our attention."

### **PART I - RECOMMENDATIONS TO THE COUNCIL**

#### 224. GODALMING LEISURE CENTRE (Agenda Item 8; Appendix C)

*[This item contains exempt information by virtue of which the public is likely to be excluded. The information is as specified in paragraph 3 of the revised Part I of Schedule 12A to the Local Government Act 1972, namely:-*

*Information relating to the financial or business affairs of any particular person (including the authority holding that information)].*

224.1 In December 2009, the Council agreed the following in relation to the tendering of the contract to build a new leisure centre at Godalming:

- both the current leisure centre site and the adjacent tennis court site be short-listed as the preferred options for the new leisure centre location;
- the site selection criteria, which would need to take careful account of the capital construction costs, revenue implications, social impact, planning considerations and constraints, and public opinion, be agreed by the Executive at its meeting in February 2010, in advance of construction tenders being invited;
- the Deputy Chief Executive, in conjunction with the Finance and Leisure Portfolio Holders, hold discussions with the Godalming Lawn Tennis Club to enable potential development of the tennis court site, subject to these negotiations being concluded by 31<sup>st</sup> January 2010 and the outcome being reported to the Executive in February 2010.

224.2 The tender documents for the design and build contract for the new Godalming leisure centre will be dispatched in July 2010. The completed tenders are then due back in Sept 2010. They must be evaluated according to criteria that are agreed in advance, including a consistent scoring methodology. Whereas CPRs permit the award of a contract to the tender offering the best value solution, they do not lend themselves to consideration of tenders where there is an element of variability and discretion based on alternative design proposals. A waiver is therefore sought.

224.3 The alternative site option to the existing leisure centre site that the Council approved is the current hard-court area occupied by the Godalming Lawn Tennis Club under a lease from the Council. This site is also subject to restrictions enforced by the Fields In Trust organisation who oversee the requirements of the King George 5<sup>th</sup> covenant. Officers have been working with the relevant parties to seek to clarify the procedure to enable this alternative option to be pursued.

224.4 The primary focus has been to negotiate and reach agreement with the two key stakeholders, Godalming Lawn Tennis Club and Fields In Trust, to allow the option of building the new leisure centre on the adjacent tennis courts to be considered. General agreement, subject to Council, was achieved within the approved timescale of 31<sup>st</sup> January 2010 although the necessary legal issues have taken slightly longer but are now agreed.

224.5 Several meetings have taken place between Officers and the Board of Trustees for Godalming Lawn Tennis Club and the proposal for relocating the new leisure centre to the tennis court site was presented at the Club's AGM. The members unanimously agreed to accept the proposal to allow the hard courts to be considered as a site for the new leisure centre, as long as the Club could continue to operate while the new leisure centre was being built and certain conditions were adhered to. The Club's conditions, which it stated as being necessary to allow the Council to break its lease agreement and allow building to commence on the hard court Tennis Club Site, are set out in Annexe 1. It must be noted that meeting these conditions would likely to impact on the project timetable and could delay the commencement of the leisure centre construction by a few months.

224.6 With regard to officer negotiations with the Fields in Trust, the Board of Trustees only meet four times a year and officers are awaiting the decision from the Board meeting of the 10<sup>th</sup> March 2010. However, we have been negotiating with their appointed consultant who has prepared the report for the Trustees to consider. In summary to allow the new leisure centre to be built on King George 5<sup>th</sup> land, Fields in Trust would require:

- a. an amount of compensatory land approximately 3 – 4 times as large. (This can be accommodated on Broadwater Park and we have agreed a suitable site).
- b. that the covenant should be extended to cover the existing site of the leisure centre. (Officers feel this is not acceptable as the compensatory land agreement should be sufficient to fulfil the obligations placed on the council by the King George 5<sup>th</sup> covenant).

224.7 Officers await the Board's decision but need to make the Council aware that further discussions, subsequent to the Fields In Trust Board Meeting, will need to take place before agreement can be reached. If agreement cannot be reached on terms that officers, in conjunction with the leisure and finance portfolio holders, are satisfied with, officers will report back to Members to consider the options.

224.8 The project management team comprises of Waverley BC, Capita Symonds, DC Leisure Management, Press & Starkey, Mechanical and Electrical experts, Construction Engineers and Architects. At its first meeting, another potential Tennis Court site for the new leisure centre was suggested by DC Leisure. The proposal put forward for consideration was the grass courts, owned by Waverley, next to the Godalming Lawn Tennis Club's hard courts. Annexe 2 is an aerial view of the site showing an indicative building plan for a new leisure centre. This site had originally been discounted as a site because the revenue costs initially indicated by DC Leisure Management had made it less economic than the hard court option. DC Leisure Management have now had time to reconsider this option and have confirmed that the ongoing management fee would be equal to that proposed for the hard court site option.

224.9 Balancing the advantages and disadvantages identified below, officers consider that the grass court site is preferable to the hard court site as the tennis court option. A decision has to be made between these two options, as an alternative to the current site, as it would not be viable to ask contractors to look at three potential site options for the new centre.

*Advantages of building on the Grass Courts as opposed to the Hard Courts:*

- Commencement of construction on the new leisure centre will be quicker as there is no requirement to provide facilities for the tennis club first
- No disruption to Godalming Lawn Tennis Club
- Lower capital costs as there is no requirement to build new courts and pavilion for the tennis club (The Max Associates report considered by Members in December 2009 indicated this cost to be approximately £350,000)

- Nearer Summers Road so there will be a greater visual impact and therefore a higher profile
- Floodlit tennis courts will not be moved nearer to residents of Summers Road
- Equal management fee.
- More accessible by foot and bicycle
- Service connections could be easier

*Disadvantages of building on the Grass Courts as opposed to the Hard Courts:*

- Nearer to Summers Road so may generate greater number of complaints
- Noise during the construction phase for residents
- Proximity to junction will require work to access route from Summers Road
- Will impact upon Farncombe Wanderers Cricket Club; their Clubhouse will need to be relocated and Waverley will need to seek their agreement as they have a lease (There is likely to be a capital cost but it is not considered to be significant)
- Godalming Lawn Tennis Club may feel aggrieved, as they have worked hard to reach agreement to allow for the new leisure centre to be built on their site, the hard courts. However, the agreement is subject to a number of conditions.

224.10 Both of these options, the hard courts and the grass courts, will still require approval from Fields in Trust who oversee the requirements of the King George 5<sup>th</sup> covenant.

224.11 In response to an advertisement placed in the Official Journal of the European Union (OJEU), 38 expressions of interest were received from companies regarding this design and build contract. Of these, 11 completed and returned the preliminary qualifying questionnaire (PQQ). This PQQ was then scored by a team composed of Waverley officers, our managing agents, Press and Starkey and our advisors, Capita Symonds. The scoring was undertaken against a pre-agreed set of parameters using a weighted matrix, prepared in accordance with Waverley's Contract Procedure Rules. The assessment was supplemented by a financial evaluation of the companies. The pre-agreed scoring framework was weighted to advantage companies with a background and experience of bringing contracts in on time and within budget, of working with leisure management companies, and of working on leisure centre construction or refurbishment.

224.12 Advice from Press and Starkey and from Capita Symonds was to invite no more than five companies to tender. Changes to OJEU rules for projects of this nature and scale require the Council to invite a minimum of five providing that at least five meet the qualifying criteria. The 5 companies scoring the highest number of points in the weighted PQQ matrix evaluation are set out in (Exempt) Annexe 3 to this report. Officers propose that these five companies be invited to tender for the new Godalming Leisure Centre design and build contract. After officers have held clarification meetings with these contractors, if one or more of these five withdraw their interest prior to being invited to tender, it is proposed that officers invite the next highest ranked contractor on

the list. Officers will continue this approach up to the date when tenders are invited.

224.13 The two site options makes the evaluation of the proposals more complicated than a standard tender evaluation. The site evaluation is considered in the next section of this report. It is proposed to undertake the evaluation in three stages, or gateways, and a flowchart setting out the process is included at Annexe 4. In summary the key stages and estimated dates are as follows:

**Gateway 1 - Pre-qualification**

Stage 1 - Pre-qualification questionnaires received following OJEU notice (March 2010)

Stage 2 - Shortlist of tenders prepared based on financial strength, relevant experience and technical ability (March 2010)

Stage 3 - Shortlist of up to five approved by Council (April 2010)

Stage 4 - Officers hold clarification meetings with shortlisted contractors

Stage 5 - Invite to tender (May 2010)

**Gateway 2 - Tender evaluation**

Stage 1 - Receive tenders from up to 5 contractor teams, each submitting 2 design proposals and tendered sums, one for the current site and one for the preferred tennis court site (August 2010)

Stage 2 - Evaluate tenders based on approved matrix to identify the best tender for each site (Oct 2010)

**Gateway 3 - Site evaluation and contract award**

Stage 1 - Determine best overall solution by evaluating best tender for each site against pre-agreed financial and non-financial factors (Oct 2010)

Stage 2 - Report to Members on best contractor, best site choice and overall affordability (Nov 2010)

Stage 3 - Contract award (Dec 2010)

224.14 Members are asked to consider and approve the tender evaluation matrix which is attached at Annexe 5. This stage of the evaluation will determine the most advantageous contractor proposals for each site. The tenders for each site, current and tennis court, will be evaluated separately as they are likely to have a different cost base and design characteristics. The matrix balances the financial and non-financial considerations that are important to Waverley in this important project. The process will also involve interviews with the tenderers and only after the interviews are held can the scoring be finalised.

224.15 The evaluation between the current site and the tennis court site, whether hard court or grass court site, is a critical stage and a range of factors will need to be taken into account. One of the most significant issues is the potential cost differential that was identified in the report to Members in December 2009. The site evaluation process must enable the Council to balance this against non-financial factors such as service continuity and potential planning considerations.

224.16 As the flowchart at Annexe 4 shows, it is proposed that the top ranked tender submissions for each of the sites are evaluated against a further pre-approved matrix to secure the most advantageous outcome for the Council, the leisure users and for Godalming residents. Members are asked to consider and approve the site evaluation matrix which is attached at Annexe 6.

224.17 The evaluation team, it is proposed, is divided into two sections as follows:

**Strategic team**

Portfolio Holder (finance)  
Portfolio Holder (leisure)  
Chief Executive (Mary Orton)  
Deputy Chief Executive (Paul Wenham)  
Strategic Director (Steve Thwaites)

**Technical team**

Strategic Director (Steve Thwaites)  
Head of Leisure (Kelvin Mills)  
Head of Finance and Performance (Graeme Clark)  
Head of Internal Audit (Mark Hill)  
Senior Accountant (Malcolm Bookham)  
Assistant Sports Manager (Tamsin McLeod)  
Capita Symonds (Matt Fyffe)  
Press and Starkey (Rob Baker)  
DC Leisure (Peter Kirkham)  
Green consultant

224.18 In addition to the formal members of the team, the advice of other specialist officers and advisors will be sought as appropriate.

224.19 The tender is on a design and build basis. This will allow the tenderers to develop their own solutions to the works, and this element of flexibility means that there is no fixed point of reference against which the price can be assessed.

224.20 Contract Procedure Rules (CPRs) are written in such a way that, with the best value solution (which is to be applied in this instance), there is a two-stage process. The first stage is to assess the quality or non-financial aspects and determine which tenders meet with the Council's pre-determined quality standard and eliminate those that do not reach that standard. The second stage is to award the contract on a lowest-price basis.

224.21 The traditional approach is based around a situation where the design of the building has been agreed in advance and consequently there is a defined schedule of works or Bill of Quantities. In this instance there is no such schedule or Bill as tenderers are being asked to provide proposals that involve both an element of design and the costs of construction, and as the assessment will involve comparison against the Council's stated objectives for the project.

224.22 Therefore a waiver of CPRs under CPR 3.1 to allow price evaluation to be considered alongside quality and time criteria to identify the overall best value solution is considered necessary because the proposed method of tendering and tender assessment cannot conform to the model indicated in CPRs. The proposed methodology would not compromise the ability to achieve value for money, but would allow the overall qualities of tenders to be assessed, taking account of the overall evaluation rather than evaluating quality separately to price. The recommendation at the end of this report therefore recommends a waiver of CPRs to allow such an approach to be taken.

224.23 Quality and price evaluations will take equal status i.e. 50/50. The financial status of each tenderer was undertaken at the application stage and will be checked again during the evaluation of tenders.

224.24 Clearly the new Godalming Leisure Centre has to be affordable. The Council has approved funding based on the estimated total costs of delivering a new centre on the current site. Normal practice is that, if tenders received are significantly above the budgeted figures, officers present options to Members to decide how to move forward. Specifically for the Godalming leisure centre project, if the total cost of the preferred tennis court site proposal is significantly above the cost of the current site tenders, regardless of the outcome of the evaluation process described above, Members will need to consider its affordability. This is important as, with finite resources, the decision to proceed could impact on other key projects and services.

224.25 The site evaluation matrix at Annexe 6 takes account of financial and non-financial factors and agreeing this now will help Members make the decision when the tenders have been received. Officers will work with the Finance Portfolio Holder to develop an outline financing proposal for this project, in the context of Waverley's overall financial position.

224.26 Any major procurement, particularly one which involves a large building project, has risks associated with it. Officers have identified and analysed these risks throughout the project. When officers report to Members to seek approval to award the contract later in the year, a full risk analysis will be presented.

224.27 The Executive

**RECOMMENDS that**

- 80. the negotiated position with the Tennis Club and Fields in Trust be noted and that the Council reaffirm its requirement to tender on the basis of the current site and a tennis court site;**
- 81. the Council change the location of its tennis court site option from the current hard court site to the adjacent grass court site as indicated in Annexe 2;**
- 82. the Council endorse the proposed 5 contractors to be invited to tender for the design and build contract for the new Godalming Leisure Centre, as listed in (Exempt) Annexe 3;**

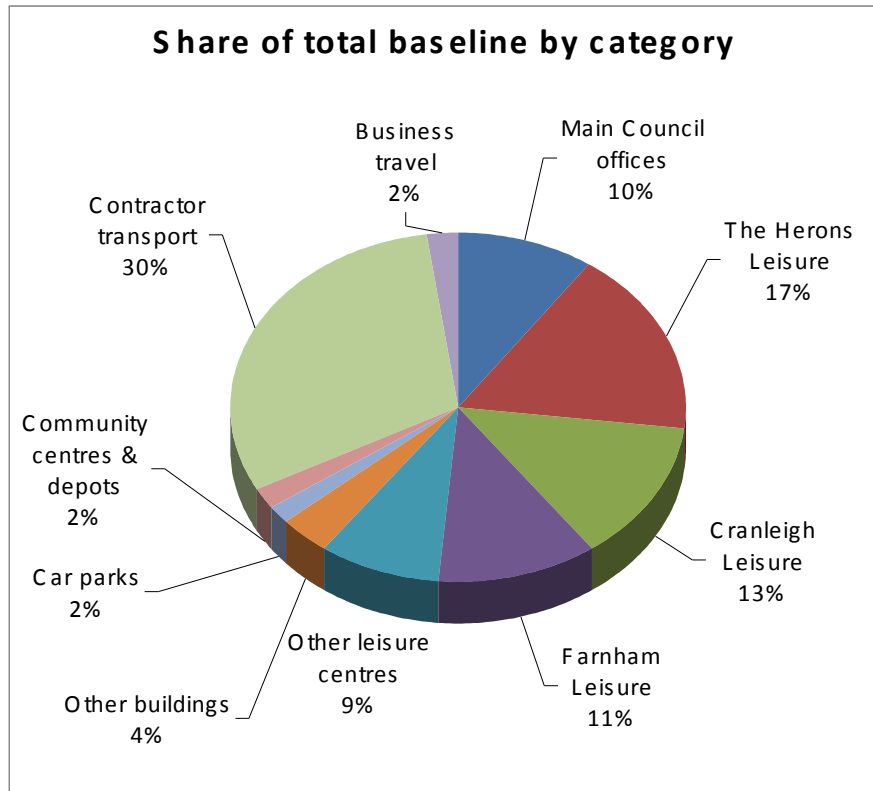


83. **in the event that one or more of the 5 contractors referred to in recommendation 3 above withdraw prior to being invited to tender, then the Deputy Chief Executive in conjunction with the Finance and Leisure Portfolio Holders be given delegated authority to invite the next highest ranked contractor(s) to tender;**
84. **the approach and matrix for evaluation of the tenders as set out in this report be approved;**
85. **the approach and matrix for the evaluation of the site as set out in this report be approved;**
86. **the Deputy Chief Executive and Finance Portfolio Holder develop an outline financing proposal for this capital project;**
87. **the officers report to a future meeting on the final site and contractor selection to enable the Council to decide on awarding the contract following the evaluation of tenders, site location and affordability in accordance with the process agreed in 5 and 6 above; and**
88. **CPR L105 be amended for this tender evaluation so that quality can be considered alongside price to enable an overall best value solution to be identified.**

#### Background Papers

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

225. CARBON MANAGEMENT PLAN (Agenda Item 10; Appendix E)
  - 225.1 Waverley is in need of recognising its impact to climate change and develop a robust process to tackle its effects. The importance of getting our house in order is in line with the Governments pressure to set the example and lead our community. The reasons behind acting now are local, regional and national.
  - 225.2 The 10-month intensive Carbon Management programme started in May 2009 and during the process successful project management structure has been created. A Carbon Management Team (CMTeam) was formed to identify projects and drive the reductions and they regularly reported to the Carbon Board, which consists of Cllr Sandy, Cllr Band, Steve Thwaites and Paul Wenham.
  - 225.3 Waverley's emissions were first captured for 2008/09 for the purposes of National Indicator 185 (CO<sub>2</sub> emissions for Local Authority's operations). The pie chart below shows a breakdown of the total carbon footprint by category.



225.4 The target set by the CMTeam and the Carbon Board is 25% reduction by April 2015 from the 2008/09 figures. This will be achieved by implementing a number of projects as set in Annexe 7. This is therefore Waverley's target of reductions under NI185.

225.5 Taking into account the assumption that fossil fuel prices will increase in the years to come it has been estimated that the cost of inaction is likely to be significant. If fossil fuel prices increase, as forecast, achieving the 25% reduction could avoid additional costs of up to £1.05m cumulatively in the period between 2009 to April 2015.

Year	Potential cost avoidance	Cumulative
2009/10	£ 46,750	£ 46,750
2010/11	£ 96,529	£ 143,279
2011/12	£ 149,554	£ 292,833
2012/13	£ 206,058	£ 498,891
2013/14	£ 266,291	£ 765,182
2014/15	£ 288,626	<b>£ 1,053,808</b>

225.6 Waverley is in need of a structured process for reducing CO<sub>2</sub> emissions from its own operations. Getting our house in order is important as a community leader. The Programme has equipped Waverley with the necessary tools to make the essential changes and achieve the carbon reduction targets as well as cost reductions from reduced energy bills.

225.7 The CMP, attached to this report, provides the basis for an ongoing programme. However, in order to make it work it will require ongoing commitment and leadership. This plan will replace the Corporate Energy Use Plan (2008)

225.8 The Executive

**RECOMMENDS that**

**89. the Carbon Management Plan be endorsed; and**

**90. the reduction target be agreed as set out in Annexe 7.**

Background Papers

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

226. JOINT COMMITTEE FOR THE OVERSIGHT OF DELIVERY OF SURREY PUBLIC AUTHORITY SERVICES (Agenda Item 11; Appendix F)

226.1 For many years Waverley has been committed to working jointly with other Councils in the interest of securing improved services and better outcomes for residents. Following the Surrey County Council elections in May 2009 the new Leader of the County Council invited other public bodies across Surrey to come together to secure improved value for money and better outcomes for citizens through improved collaborative working.

226.2. The Surrey Local Government Association (SLGA) has taken a lead role in exploring ways of improving collaborative working and has now reached a point where it considers a more formal and empowered structure is needed to take the work forward. At its meeting on 20 January 2010 the SLGA approved a Memorandum of Understanding (MOU) which set a path for the establishment of a Joint Committee of public bodies, all Local Authorities in Surrey plus Surrey Police, to oversee collaborative working arrangements and to develop the concept of a Joint Venture Company to undertake those collaborative arrangements which necessitate a formal company structure, recognising that in many case informal arrangements already worked well and could continue outside of any formal company structure.

226.3 This report asks the Council to enter into the Joint Committee for the Oversight of Delivery of Surrey Public Authority Services. An initial project budget of £165,000 has been provided to develop improved collaborative arrangements; this is being financed by £100,000 from the Surrey Improvement Partnership and £5,000 from each of the public authorities in Surrey, including Waverley.

226.4 The Terms of Reference for the Joint Committee shall be as follows, to:-

- oversee joint working arrangements of the Parties;
- promote good joint working practice amongst the Parties;

- appoint such Task Groups or Sub Committees as it considers necessary;
- identify the range of services for inclusion in a Joint Venture Company (JVC);
- approve the draft the Articles and Memorandum of Association of the JVC;
- approve the draft revised Terms of Reference for the Joint Committee to provide for governance and oversight of the JVC; and
- manage the Project Budget.

226.5 It is proposed that each authority taking part in the Joint Committee should appoint one representative. Each representative will have one vote and there will be no provision for a casting vote by the Chairman. Decisions of the Joint Committee will be determined by a simple majority of those present and voting.

226.6 No decision of the Joint Committee which may give rise to an adverse financial implication in excess of £10,000 for a party to the Joint Committee may be implemented unless the adversely affected party has confirmed acceptance of the adverse financial implication.

226.7 It is important to note that whilst it is proposed that the Joint Committee has authority to approve draft Articles and Memorandum of Association of the Joint Venture Company (JVC) and authority to approve the draft revised Terms of Reference for the Joint Committee to provide for governance and oversight of the JVC, it does not have authority to implement either.

226.8 To establish the JVC and adopt the Terms of Reference of the Joint Committee Waverley, and each other party, through their respective normal decision-making arrangements, has to resolve to participate, or not, when the terms and benefits of participation are established. Establishing the Joint Committee and participating in its deliberations does not bind the Council to join any Joint Venture Company (JVC), if established.

226.9 Waverley has been able to meet its initial contribution of £5,000 from existing current year budgets. The proposed Joint Committee will give a robust framework to progress joint working across Surrey.

226.10 The Executive

**RECOMMENDS that**

- 91. approval be given to the establishment of the Joint Committee for the Oversight of Delivery of Surrey Public Authority Services under Sections 101 and 102 of the Local Government Act 1972;**
- 92. the terms of reference and governance arrangements of the Joint Committee shall be as set out in the report;**
- 93. Woking Borough Council shall act as the Accountable Body for the management of the Joint Committee's affairs;**

94. **Surrey Local Government Association Officers shall provide secretarial support for the Joint Committee;**
95. **Surrey Chief Executives' Group shall be the principal advisors to the Joint Committee; and**
96. **the Leader of the Council be appointed as Waverley's representative and Deputy Leader as substitute, ex officio, to the Joint Committee for the period until the end of the 2010/11 Council year.**

#### Background Papers

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

227. WAVERLEY INITIATIVES LTD (Agenda Item 14; Appendix I)
  - 227.1 The original purpose of forming a company within and fully controlled by Waverley Borough Council was to enable new housing to be provided which did not fall within the government constraints that control the Housing Revenue Account. In summary these are
    - 1) A significant proportion of the rental income goes to the government as negative subsidy
    - 2) 75% or any capital receipt from Right to Buy sales goes to the government.
  - 227.2 It was seen that the formation of a company would enable the local authority to control and provide new housing which would not be subject to the Right to Buy, and enable all the rental income to be retained for reinvestment. Also, being independent and having a selected Board would enable it to make its own decisions and control its own future and business plan.
  - 227.3 However as part of the government's policy to encourage new house building in the public and social sectors these rules governing the HRA were abolished for all new build housing. At the same time, the newly creating Homes and Community Agency was widening its scope, and including local authorities as being eligible for housing grant (providing the local authority was registered and proved its case in the same way as all other bidders). This meant effectively that the advantages provided by the local authority housing company were neutralised. However, it was also made clear that any new build carried out by the local authority through the new rules HRA would be subject to ministerial approval and would require effectively a business plan to be submitted to prove its long term plan.
  - 227.4 An exercise has been carried out comparing the long-term returns available through either a Local Housing company or through the new rules Housing Revenue Account. The result suggests that the long-term outcome provides no significant difference between the two.

227.5 However further comparison work has indicated that there are other options open to the company

- 1) Transfer of major repair void properties from the HRA
- 2) Land Purchase
- 3) Purchase of open market properties.

227.6 Of these three, void transfer produces a positive result for the company. The annual cost to the HRA of refurbishing and bringing back into use major repair voids, which require over £15000 of work, is approximately £350,000. Currently, because some void refurbishment expenditure is so high, constraints on expenditure have forced them to be sold to the open market, consequently losing them from the affordable housing sector.

227.7 Transferring these properties to the company would keep them in social housing and the resultant HRA available finance can then be made available to upgrade proportionately more retained HRA properties to the Decent Homes standard.

227.8 The work carried out to date has indicated that Waverley Initiatives, if incorporated, could be a viable concern and would provide a flexible vehicle within which, in time other initiatives besides housing could be considered and tested.

227.9 The Council has previously agreed to set up a wholly-owned, not for profit company, for the purposes of providing affordable housing, and any surpluses generated would then be reinvested in additional affordable housing.

227.10 The company exists at present in name only as 'Waverley Initiatives'. Consultant solicitors Trowers and Hamlin have advised that once the Council have agreed to the incorporation of the company, the existing company would be dissolved and a new one set up afresh with the same name, with an updated set of Articles of Association.

227.11 Trowers and Hamlin advise that the incorporation of Waverley initiatives would be as a Company limited by Shares. As a wholly owned company by the Local authority there will be one shareholder, which will be Waverley Borough Council. The minimum requirement for numbers of directors is one. However it is proposed that five unremunerated directors be appointed:

- The Finance Portfolio Holder
- The Leader of the Council
- The Housing Portfolio holder
- The Chief Executive
- The Head of Housing

227.12 Subsequent to Council approval, Trowers and Hamlin will prepare the incorporation paperwork for signature on behalf of the Council (as sole shareholder) and by the chosen directors (board members), and then submit the paperwork to Companies house.

227.13 The advantage of a Company Limited By Shares (CLS) is that it can be grouped with the council for Stamp Duty Land Tax (SDLT) and therefore transfers between the two organisations would not be taxable. Waverley Initiatives would be subject to VAT and corporation tax on its profits/surpluses.

227.14 As a wholly owned subsidiary of the Council, the Council have the maximum possible degree of control over the future activities of Waverley Initiatives and the Council (as sole shareholder) would have the ultimate sanction of either removing the Board Members and appointing replacements or, ultimately resolving to wind up the company. The company will be 'on balance sheet' and, accordingly, the Council will wish to control the company's ability to borrow.

227.15 If Waverley Initiatives were to be wound up, land it owns (including any that was transferred from the Council) would not automatically revert to the Council. Therefore it would be necessary for the land to be transferred to the Council prior to winding up. It would be possible for the Council to impose a covenant on and/or a charge over any initial transfer of land to the company to ensure that the land would be transferred back to the Council at nil value in particular circumstances (such as if the land were not used for affordable housing or other specified purposes). This would protect the Council's interest in the land if the company were to be wound up involuntarily. If the land were transferred back to the Council, the transfer itself would need to be registered with the land registry, so that the Council becomes the registered freeholder again.

227.16 Waverley Initiatives (upon incorporation) would be a non-charitable company, and as such would be subject to corporation tax. However any revenue surpluses generated, if reinvested back in the company for the provision of affordable would not be liable for tax. Similarly, in the event of a winding up of the company if the land were transferred back to the Council (at nil value) there would be no gain and therefore no tax liability

227.17 The Executive

**RECOMMENDS that**

- 97. approval be given for the incorporation of Waverley initiatives Limited as a wholly owned local authority company limited by shares at Companies House; and**
- 98. the board, as described in paragraph 227.11 above, be established.**

Background Papers

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

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13.04.10

228. COUNCILLORS IT ACCEPTABLE USE POLICY (Agenda Item 21; Appendix P)

228.1 Officers have been working on preparing an IT Acceptable Use Policy and following consideration by a Councillors IT Focus Group have produced a document which is closely aligned to the Staff IT Acceptable Use Policy which was approved in September 2009. The proposed policy is attached as Annexe 8 to this report.

228.2 The views of the Standards Committee and the Audit Committee have been sought and their suggestions included in the text. It was recommended that a summary sheet of key matters that should be brought to the attention of councillors would be helpful – and this will be produced once the document has been approved by the Council.

228.3 The Executive

**RECOMMENDS that**

**99. the Councillors IT Acceptable Use Policy be approved and adopted.**

Background Papers

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

229. REDUNDANCY PAYMENTS - FARNHAM MUSEUM (Agenda Item 29; (Exempt) Appendix T)

The Executive has considered a report on this matter. The report is attached as (Exempt) Annexe 9. The Executive accordingly

**RECOMMENDS that**

**100. the recommendation set out in (Exempt) Annexe 9 be approved.**

230. DIRECT PERFORMANCE OF REQUIREMENTS OF AN ENFORCEMENT NOTICE (Agenda Item 30; (Exempt) Appendix U)

The Executive has considered a report on this matter. The report is attached as (Exempt) Annexe 10. The Executive has agreed the decision set out in the Exempt Annexe and now

**RECOMMENDS that**

**101. a supplementary estimate of £25,000 be approved, to be met from the General Fund Working Balance, pending recovery of the costs.**



231. REQUEST FOR FLEXIBLE RETIREMENTS (Agenda Item 31; (Exempt) Appendix V)

The Executive has considered a report on this matter. The report is attached as (Exempt) Annexe 11. The Executive accordingly

**RECOMMENDS that**

- 102. the recommendation set out in (Exempt) Annexe 11 be approved.**

**Part II – Matters Reported in Detail for the Information of the Council**

There were no matters falling within this category.

**Part III – Brief Summaries of Other Matters Dealt With**

232. EXECUTIVE FORWARD PROGRAMME (Agenda Item 6; Appendix A)

RESOLVED that the forward programme of key decisions for Waverley Borough Council be adopted, subject to the addition of the following items to the Environment Portfolio, all ongoing:-

- i. Food Waste
- ii. Future Waste Management
- iii. Air Quality
- iv. Carbon Management.

233. BUDGET MONITORING – FEBRUARY 2010 (Agenda Item 7; Appendix B)

RESOLVED that the position as at 28 February 2010 be noted.

234. NHS SURREY REQUEST FOR USE OF SPACE AT CRANLEIGH LEISURE CENTRE (Agenda Item 9; Appendix D)

RESOLVED that authority be delegated to the Chief Executive and the Head of Leisure Services, in consultation with Councillors Band, Knowles and Steel, to enter into detailed negotiations with the NHS Surrey Board for the location of limited complementary NHS services within the treatment rooms in Cranleigh Leisure Centre, within the constraints of the current planning status of the centre, and to report back to a future meeting of the Executive.

235. PERFORMANCE MANAGEMENT REPORT - QUARTER 3 (OCTOBER - DECEMBER) AND REVIEW OF PERFORMANCE INDICATORS AND TARGETS (Agenda Item 12; Appendix G)

RESOLVED that

1. the performance figures for Quarter 3, as set out in Annexe 1, be noted;

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2. the Overview & Scrutiny Committees be thanked for their observations regarding the Quarter 3 performance, as set out in Annexe 1;
3. the Corporate Overview and Scrutiny Committee set up a Sub-Committee to meet on one occasion only to consider the indicators and targets in greater detail; and
4. the targets in Annexe 1 be agreed, incorporating the amendments proposed in paragraph 5.

236. REVIEW OF PROVISION AND MAINTENANCE OF PUBLIC CONVENIENCES (Agenda Item 13; Appendix H)

In balancing the competing pressures of the need to make budgetary savings with the concerns of the local Ward Councillors raised at the Environment and Leisure Overview and Scrutiny Committee, the Executive

RESOLVED that the following course of action be undertaken:

1. Put in place seasonal opening (April - September) at Tilford Public Conveniences; and
2. Carry out further research into the condition and usage of all three public conveniences in the Farncombe area and Windrush House public conveniences in Bramley, and ask officers to return with further recommendations including what alternative facilities might be made available on a formal basis.

237. DEVELOPMENT OF LAND AT CATTESHALL LANE, GODALMING (Agenda Item 15; Appendix J)

RESOLVED that

1. the land identified in the plan at Annexe 1 to the report be transferred to Mount Green Housing Association for the capital sum as described in (Exempt) Annexe 2;
2. Waverley Borough Council receives nomination rights as part of a nomination agreement to be put in place, which appropriately recognises each party's specialism in housing of autistic people; and
3. the capital receipt from the sale of this land be applied to contribute towards achieving the Decent Homes Standard in the Councils retained housing stock.

238. INITIAL DRAFT OF THE 2010 AIR QUALITY PROGRESS REPORT (Agenda Item 16; Appendix K)

RESOLVED that the content of the Draft Air Quality Progress Report be agreed.

239. WORKFORCE STRATEGY 2010/2015 (Agenda Item 17; Appendix L)
- RESOLVED that the Workforce Plan for 2010/2015 be agreed.
240. LONG SERVICE AWARDS (Agenda Item 18; Appendix M)
- RESOLVED that
1. the revised long service award scheme be adopted; and
  2. retrospective payments be made to staff with 20+ and 30+ service funded from the over-achievement of the vacancy factor in 2009/10.
241. CHANGE TO TERMS AND CONDITIONS - WORKING WEEK (Agenda Item 19; Appendix N)
- RESOLVED that the changes to terms and conditions of service be agreed, as detailed in the report.
242. APPRENTICESHIP SCHEME (Agenda Item 20; Appendix O)
- RESOLVED that an apprenticeship scheme be established and that the £30,000 "start-up" costs be funded from the 2009/10 overall budget underspend, with the balance being funded from the vacancy factor in 2010/11, with future years' funding being agreed in next year's Star Chamber.
243. RISK MANAGEMENT FRAMEWORK (Agenda Item 22; Appendix Q)
- RESOLVED to agree the changes proposed by the Audit Committee and approve the updated Risk Management Policy and Process Document, set out in Annexe 1 to the report.
244. REVIEW OF IMPACTS OF SNOW IN JANUARY 2010 AND DRAFT WAVERLEY ADVERSE WEATHER POLICY (Agenda Item 23; Appendix R)
- RESOLVED that
1. the Special Overview and Scrutiny Committee be thanked for their valuable comments and suggestions on dealing with the impact of adverse weather on the Council's services and community recovery activities;
  2. a report containing a detailed action plan to improve winter preparedness, including the issue of assisting Surrey County Council in highway clearance and incorporating the comments made by the Overview and Scrutiny Committee, be presented to the September cycle of meetings;

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3. the Executive should not accept the suggestion that a SIG be established to advise and guide the officer work on the action plan but instead agree that the appropriate Portfolio Holders consult all members when necessary; and
4. officers press the Local Government Association to lead a lobby on the liability issue.

245. PROPOSED PURCHASE OF ADDITIONAL BEDROOM FOR 1 GREEN LANE COTTAGES, CHURT, FARNHAM (Agenda Item 24; Appendix S)

*[This item contains exempt information by virtue of which the public is likely to be excluded. The information is as specified in paragraph 3 of the revised Part I of Schedule 12A to the Local Government Act 1972, namely:-*

*Information relating to the financial or business affairs of any particular person (including the authority holding that information)].*

RESOLVED that

1. the fourth bedroom be purchased from No 2 Green Lane Cottages and alterations carried out to incorporate this into to No 1 Green Lane Cottages; and
2. the cost of this work, as detailed in (Exempt) Annexe 3 to the report, be met from the Housing Revenue Account Capital Fund.

246. INTERNATIONAL FINANCIAL REPORTING STANDARDS (Agenda Item 25)

RESOLVED that the unspent International Financial Reporting Standards project budget be carried forward to 2010-2011.

247. CALL-IN REPORT BACK - LOCALITY OFFICES (Agenda Item 26)

The Executive noted the observations from the Corporate Overview and Scrutiny Committee and noted that their decisions of 2 March 2010, which had been called-in by the Committee, stood and were being implemented as soon as possible.

248. ACTION TAKEN SINCE LAST MEETING (Agenda Item 27)

The action taken by the Chief Executive after consultation with the Chairman and Vice-Chairman since the last meeting was noted.

The meeting commenced at 6.45 p.m. and concluded at 8.15 p.m.

Chairman