

To: All Members of the Audit Committee
(Other Members for Information)

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Calls may be recorded for training or monitoring

Date: 2 November 2018

Dear Councillors

AUDIT COMMITTEE - 5 NOVEMBER 2018

I refer to the agenda for the Audit Committee, on Monday, 5 November 2018 and now enclose the following item which was marked To Follow in your agenda papers:

9. REVIEW OF VALUE FOR MONEY ASPECTS OF WAVERLEY BOROUGH COUNCIL'S DECISION TO ALLOCATE FUNDING TO DEFEND CPRE SURREY AND POW CAMPAIGN LTD'S HIGH COURT CHALLENGES
(Pages 3 - 12)

At its meeting on 25 September 2018, the Audit Committee considered undertaking a review of the way in which the decisions to approve funding to defend recent legal challenges from POW and CPRE had been presented to the Council. The Audit Committee was interested in the matter from the perspective of ensuring the Council was delivering value for money for residents.

Recommendation

It is recommended that the Audit Committee notes the attached scoping document, and agrees:

- 1. whether it wishes to proceed with the review; and, if so**
- 2. whether the attached scope is agreed as the Terms of Reference for the review.**

Yours sincerely

Amy McNulty
Democratic Services Officer

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WAVERLEY BOROUGH COUNCIL

AUDIT COMMITTEE

5 NOVEMBER 2018

Title:

**REVIEW OF VALUE FOR MONEY ASPECTS OF WAVERLEY BOROUGH COUNCIL'S
DECISION TO ALLOCATE FUNDING TO DEFEND CPRE SURREY AND POW
CAMPAIGN LTD.'S HIGH COURT CHALLENGES**

[Portfolio Holder: Cllr Julia Potts]

[Wards affected: N/A]

Summary and Purpose

At its meeting on 25 September 2018, the Audit Committee considered undertaking a review of the way in which the decisions to approve funding to defend recent legal challenges from POW and CPRE had been presented to the Council. The Audit Committee was interested in the matter from the perspective of ensuring the Council was delivering value for money for residents.

Cllrs Seaborne and Townsend agreed to begin work on scoping the review, and to provide an update to the Committee in November.

Introduction

Following the meeting of the Audit Committee on 25 September 2018, the Cllr Seaborne has developed the attached Scoping Document in consultation with the Head of Policy and Governance, setting out the proposed terms of reference of the review into the review of value for money aspects of Waverley Borough Council's decision to allocate funding to defend CPRE Surrey and POW Campaign Ltd.'s High Court challenges

Recommendation

It is recommended that the Audit Committee notes the attached scoping document, and agrees:

1. whether it wishes to proceed with the review; and, if so
 2. whether the attached scope is agreed as the Terms of Reference for the review.
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Background Papers

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

Contact Officer:

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Waverley Borough Council Audit Committee Review

Review of Value for Money Aspects of
Waverley Borough Council's Decision to
Allocate Funding to Defend CPRE Surrey and
POW Campaign Ltd.'s High Court Challenges

October 2018

SCOPING THE REVIEW

Background

The Audit Committee has a broad responsibility to provide confidence to Waverley residents in Waverley Borough Council's (the Council) governance and value for money processes.

What makes an effective Audit Committee review?

The Council has not set up any processes for conducting a member-led audit review. It has therefore been decided to adapt the Council's Scrutiny review framework in order to set out the scope of his review.

An effective and robust Audit Committee review must be properly project managed and clearly set the scope of the review and the contribution this will make to improvements in processes, policy development and service delivery.

The review must clearly state its aims and objectives, rationale and seek to provide an audit trail of evidence to support its observations.

To ensure the review goes well it is vital that the scope is robust and thorough and is treated as a project plan. The review should be SMART (Specific, Measurable, Achievable, Realistic & Time-bound) in its scope in order to ensure the quality of its output. This scoping document is based on the scrutiny review template and is designed to ensure that the review from the outset is focused on improvement of the area of focus outlined in the review. In this case, value for money.

The scoping document should be treated as the primary source of information that outlines the reasons for the review inquiry, who is involved and how the review will be undertaken. Once the scoping document is complete it should be circulated to relevant officers and key members of the Executive for comment before being agreed by the Audit Committee. The review will be supported by a Democratic Services officer.

What happens after the review is complete?

The scope of the review will be considered at the November 2018 meeting of the Audit Committee and, if approved by the Committee, review work will be carried out to allow findings to be presented to the March meeting of the Committee following which any recommendations will be submitted to Council. The review will not exceed the timescales set out in these terms of reference. If the review concludes that further work is required, this will be set out in a recommendation as part of the final report.

FOR COMPLETION BY MEMBERS PROPOSING THE REVIEW

Topic		
1.	Title of proposed review:	Review of Value for Money Aspects of Waverley Borough Council's decision to allocate funding to defend CPRE Surrey and POW Campaign Ltd.'s High Court Challenges to the Local Plan and Dunsfold Park Planning approval
2.	Proposed by:	Cllr John Gray, following receipt of letters from residents of Waverley requesting an audit review.

Who is involved?		
3.	Chair of the task and finish group:	Cllr Richard Seaborne
4.	Members on the task group:	Cllr Richard Seaborne Cllr Liz Townsend
5.	Democratic Services Officer:	Amy McNulty

Research programme	
6.	<p>Rationale / background to the review: Why do you want to undertake this review? What has prompted the review? E.g. legislation, public interest, local issue, performance information etc</p> <p>On 20th February 2018 Waverley Borough Council (the Council) voted in favour of adopting <i>Local Plan: Part I Strategic Policy and Sites</i>.</p> <p>On 29th March three legal challenges to the Council's adopted <i>Local Plan: Part I</i> were submitted to the High Court by the Surrey Branch of the Campaign to Protect Rural England Surrey (CPRES), Protect our Waverley Campaign Ltd (POWCL) and two private residents of Milford.</p> <p>The minutes of the April 2018 (Agenda item 5) meeting of the Council's Executive record: <i>on the recommendation of the Leader, and seconded by Cllr Hall, the Executive APPROVED a Supplementary Estimate of £100,000 and RECOMMENDS to the COUNCIL that a further Supplementary Estimate of £100,000 be approved, for external legal costs to defend the Council's position on the Judicial Review challenges to Waverley's adoption of Local Plan Part 1, to be met from the Revenue Reserve Fund. The second £100,000 was approved at the April 2018 meeting of the Council.</i></p> <p>On 2nd May 2018 POWCL lodged a legal "Section 288" challenge in the High Court against the Secretary of State of Housing, Communities and Local Government (SoS), with the Council, Dunsfold Airport Limited and Rutland Limited as interested parties. The appeal challenged the SoS's decision on 29th March 2018 to grant planning permission to build 1,800 houses on Dunsfold Aerodrome.</p> <p>At the May 2018 Council meeting The Leader moved a proposal that the Council agree a further supplementary estimate of £100,000, in addition to the previously approved £200,000, to cover any costs to</p>

the Council in relation to the JR claim submitted by POWCL on the SoS's decision to grant planning permission to the Dunsfold Park planning application. Minutes from this meeting record: Council RESOLVED to agree a further supplementary estimate of £100,000 to cover any costs to the Council in relation to the JR claim submitted by Protect Our Waverley Campaign Ltd on the Secretary of State's decision to grant planning permission to the Dunsfold Park planning application, in which Waverley Borough Council was named as an interested party.

On 12th July 2018 the majority of the claims against the Local Plan by CPRES and POWCL were dismissed at a High Court permission hearing, however the question of how the number of houses added to the Council's plan housing target to meet Woking's unmet need was authorised to go to full hearing in October, 2018. At the same hearing the judge also considered POWCL's three grounds of challenge to the Secretary of State's decision to uphold the Council's grant of planning permission at Dunsfold Park. Two of the three grounds were dismissed as unarguable, but the third ground was deemed arguable if one of the Local Plan grounds was successfully argued. This was considered at the October full hearing in the High Court.

Subsequent to the legal challenges various parties, including POWCL, have argued that the Council did not consider alternative options to defending the challenges, including do nothing, and that the allocation of £300,000 to cover defence fees does not represent good Value for Money. Representations have been made both to the Head of Paid Service (Tom Horwood) and the Chairman of the Audit Committee (Cllr John Gray).

Noting that the role description¹ for the Chairman of the Audit Committee includes *Reinforcing public confidence in the work of the Committee and the Council's commitment to Value For Money* the Committee decided, at its September 25th meeting, to constitute a small work group to review the consideration given to achieving value for money in allocating £300k to defend the Council against the legal proceedings brought against it.

The Audit Committee's terms of reference are divided into three parts:

1. Corporate Governance.
2. External Audit.
3. Internal Audit.

The Audit Committee accepts that the decision to allocate funds was within the authority of the Council, and notes that Article 14 of the Waverley Borough Council Constitution and paragraph 1.1 of the Schedule of Authorities within the Council's Scheme of Delegation authorises the Borough Solicitor to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council. This review will examine the consideration given to value for money prior to the funds being allocated. None of the Committee's current Terms of Reference, as set out in the Council's Constitution, squarely align with the aims of this review, but the following two represent the closest fit:

- 1.2 To review the Council's compliance with its own and other published regulations, standards and controls, covering both financial and general issues, and if appropriate, make recommendations to the Council
- 1.5 To monitor the effective development and operation of internal control in the Council with particular reference to all aspects of risk management, including Waverley's Corporate Risk Register.

7. **Terms of reference:**
 What are your desired outcomes?
 What are the objectives for this review? (Linked to the research questions but are used to describe the general aims and outcomes of the review).
 Which research questions do you want to answer? (Questions upon which the review will be focused and for which timely and informed answers can be developed in accordance to the evidence collected)

¹ The Audit Committee Chairman Role and Person Descriptions are quoted each year in the summary of Audit Committee Activities; however they are not formally linked to the Committee's Terms of Reference.

	<p style="text-align: center;"><u>Terms of reference</u></p> <p><u>Desired outcomes of the Review</u></p> <p>That the Audit Committee understands the processes by which the recommendations to allocate funds to defend the legal challenges were developed and put to Members.</p> <p>To provide assurance, or make recommendations as necessary, on the robustness of the Council's consideration of options, risks, and value for money for the cases in question, and noting their potential applicability when deciding to allocate funds in future situations like these.</p> <p><u>Objectives for the review</u></p> <ul style="list-style-type: none"> • To explore and understand how value for money considerations formed part of the Council's decision to allocate funds to meet the costs of its legal defence. • To explore and understand how any alternative options to allocating funding to direct legal defence of the challenges were considered. • To explore and understand to what extent the value for money implications of allocating funding to direct legal defence were evaluated. • To identify how value for money considerations were documented. <p><u>Research questions</u></p> <ol style="list-style-type: none"> 1. To what extent, and how, were alternatives, including doing nothing, considered and documented before the proposal to recommend allocating funding to support the legal defence was put forward? 2. How does the Council evaluate the value for money aspects of allocating funding to support legal defences of planning or other matters? 3. To what extent, and how, were the value for money aspects of recommending to allocate funding to support the legal defence considered. 4. How were any value for money considerations documented?
8.	<p>Policy Development and Service Improvement How will this review add value to policy development and/or service improvement?</p> <p><u>Policy Development</u></p> <p>Subject to the outcome of the review, recommendations to Council could include the development of additional policies or guidelines for the Executive to consider in order to support its decision-making process.</p> <p><u>Service Improvement</u></p>
9.	<p>Corporate priorities: How does the review link with the corporate priorities? http://www.waverley.gov.uk/info/200009/council_performance/524/waverley_corporate_plan_2016_-_2019#</p> <p>The Council's Corporate Strategy states:</p> <p><i>We will be open in our decision-making to create a culture of trust and confidence. We were one of the first councils to broadcast our decision-making meetings on the web, and we are still one of a few councils to do so. We will communicate respectfully and as openly as the law allows. We will uphold high standards of conduct and integrity, exercising good governance so that our decision-making is timely and informed.</i></p>

	This review is structured to demonstrate to the residents and residents' groups who have questioned the Council's choice to defend the legal challenges that we are open and accountable in our decision making.
10.	<p>Scope: What is and what isn't included in the scope? E.g. which services does the scope cover?</p> <p>The scope of this review is restricted to looking at whether options were considered and clearly covered in briefing papers prepared by officers and by members of the Executive Committee prior to proposing to Council that Waverley allocates funds to defend the legal challenges, and whether those options considered the value for money in pursuing them.</p> <p>This review does not cover the authority of the Executive and Council to approve the funding allocated for legal defence, nor the Borough solicitor to institute, defend or participate in legal proceedings.. The Audit Committee accepts that the allocation of the £300,000 falls within the remit of the bodies that approved the allocation.</p>
11.	<p>Methodology and methods: Your methodology underpins how you will undertake the review. For example, what evidence will need to be gathered in-house and from external stakeholders / partners?</p> <p>Your research methods are the techniques used to gather knowledge and information. These include but are not limited to desk-based research, interviews, site visits, engagement exercises, surveys, focus groups etc. How do these methods help you to answer your research questions in section 7?</p> <p>Methodology:</p> <p>Preliminary / core evidence that will need to be collected to inform this review is as follows:</p> <ol style="list-style-type: none"> Agenda, papers and minutes from the April 2018 meetings of the Executive and of Council and agenda, papers and minutes from the May 2018 meeting of Council. Any other contextual information or documentation relating to the value for money aspects of the Council's decision to allocate funds to defend itself against the legal proceedings to which this review relates. <p>Methods:</p> <ul style="list-style-type: none"> Democratic Services will coordinate the collation of the written and electronic evidence. A meeting will be held for the Review Group to review the evidence pack, and to ask questions of officers for clarification purposes. A further meeting will be scheduled in the event the need is identified to ask follow-up questions of members and/or officers of the Council. A concise report will written and presented to the March 2019 meeting of the Audit Committee.

Council services expected to contribute		
	Council Service	Reason / Intention for evidence
12.	Legal	To explore with the Borough Solicitor the options considered to enable the Council to defend the legal challenges.
13.	Planning Services	To explore with the Head of Planning how the consequences, in

		planning terms, of failing to adequately defend the legal challenges were considered.
14.	Appropriate Senior Officers	To explore the way in which the recommendations to fund the defence of the legal challenges were developed with the leadership and Executive.
15.	Finance	To understand any budgetary advice that was provided to assist in the development of options to allocate funding to defend the legal challenge.
16.	Other officers	As identified from written material obtained through Democratic Services.

External Witnesses to be invited / submit evidence	
Organisation	Reason / Intention for evidence
17.	

18.	<p>Project plan: What is the proposed start and finish date? How many task and finish group meetings are there likely to be? Are the task and finish group meetings going to be thematic in approach? If so, what themes / policy issues will the task group consider in each respective task and finish group?</p>
Timescale	
Proposed start date:	November 2018
Proposed finish date:	March 2019
Task and finish group plan	
How many task and finish group meetings are anticipated to support this review? Fill in and strike through as appropriate.	1 – 2 meetings as required.
<p>Task group theme (1):</p> <p>Aim: To understand, with particular focus on the extent to which value for money was considered, the process by which the recommendations to allocate funds to defend the legal challenges were developed and put to Members.</p> <p>Witnesses: As listed in sections 12 – 16 above.</p>	
<p>Task group theme (2):</p> <p>Aim:</p> <p>Witnesses:</p>	

