

**DECISIONS SHOULD NOT BE IMPLEMENTED BEFORE
MONDAY 20 NOVEMBER 2023**

CABINET

Tuesday, 7 November 2023

PRESENT – Councillors Harker (Chair), Curry, McCollom, McEwan, Porter, Dr. Riley and Roche

INVITEES – Councillors Dulston, K Nicholson and Snedker

APOLOGIES – Councillors Wallis

ALSO IN ATTENDANCE – Councillors Baker, Mrs Culley, Dillon, Henderson and Mammolotti

C50 DECLARATIONS OF INTEREST.

There were no declarations of interest reported at the meeting.

**C51 TO HEAR RELEVANT REPRESENTATION (FROM MEMBERS AND THE GENERAL PUBLIC) ON
ITEMS ON THIS CABINET AGENDA.**

No representations were made by Members or members of the public in attendance at the meeting.

**C52 TO APPROVE THE MINUTES OF THE MEETING OF THIS CABINET HELD ON 5 SEPTEMBER
2023**

Submitted - The Minutes (previously circulated) of the meeting of this Cabinet held on 5 September 2023.

RESOLVED – That the Minutes be confirmed as a correct record.

REASON – They represent an accurate record of the meeting.

C53 MATTERS REFERRED TO CABINET

There were no matters referred back for re-consideration to this meeting.

C54 ISSUES ARISING FROM SCRUTINY COMMITTEE

There were no issues arising from Scrutiny considered at this meeting.

C55 AUDITOR'S ANNUAL AUDIT LETTER 2020/21

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Operations (previously circulated) presenting the Auditor's Annual Report and Certificate for 2020/21 (both also previously circulated).

The Auditors Annual Report provided a high level summary of the results from the 2020/21 audit work undertaken by Ernst and Young LLP (EY), the Council's external auditors; confirmed that the Council's accounts gave a true and fair view for the year ending 31 March 2021; and that the Council had put in place proper arrangements to secure value for money in its use of resources.

A representative from Ernst and Young LLP (EY), stated that there had been a sector wide delay in signing off accounts; presented the main findings from the Annual Report; and stated that no issues or exceptions were reported.

RESOLVED - That the Auditor's Annual Report and Auditor's Certificate, both as appended to the submitted report, be noted.

REASON - To enable Cabinet to receive the results of external audit work carried out.

C56 KEY DECISION - PROCUREMENT PLAN UPDATE

Pursuant to Minute C7/Apr/23, the Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Operations (previously circulated) requesting that consideration be given to the update to the Annual Procurement Plan (also previously circulated); the assessment of contracts that are considered to be strategic or non-strategic; updating Members on the outcomes of procurement(s) previously designated as strategic; and the decisions taken by the Procurement Board to waive the Contract Procedure Rules.

The submitted report stated that any contract award decision with a value below £100,000 was delegated to officers; the annual Procurement Plan detailed all the existing and new contracts that were over £100,000 which required a tender process; that for those contracts which were over £100,000 and considered strategic, the final contract award decision would be approved by the Procurement Board and reported to Cabinet; and that one further contract had been designated as strategic and included in the update to the annual plan.

RESOLVED – (a) That the assessment of strategic and non-strategic contracts as presented in Appendix 1 of the submitted report, be approved, and it be agreed that:

- (i) further reports/ updates on the procurement process for those contracts designated as strategic (including decisions made by the Procurement Board) be brought to Cabinet;
- (ii) the contract award decisions for the contracts designated as non-strategic be delegated to the appropriate Directorate as listed in the plan at Appendix 1 to the submitted report; and
- (iii) the contract award decisions for the contracts designated as strategic, as listed in the plan at Appendix 1 to the submitted report, be delegated to the Procurement Board to approve and be reported back to Cabinet.

(b) That the update of strategic procurements, Procurement Board waiver decisions, and Social Value, as detailed in the submitted report, be noted.

REASONS - (a) In respect of strategic / non-strategic contracts:-

- (i) the Contract Procedure Rules require Cabinet to approve the designation of contracts as strategic and non-strategic;
- (ii) contracts designated strategic are of high value and high significance in respect of the impact on residents, Health and Safety, and public safety; and
- (iii) the contracts designated non-strategic are of a lower value and lower significance in respect of the impact on residents and public safety.

(b) In respect of Procurement Board waiver decisions :-

- (i) in order to comply with the Contract Procedure Rules;
- (ii) to provide Cabinet with information about the decisions made by the Procurement Board; and
- (iii) to supplement the reports that are taken to Cabinet about proposed spend over £100,000, that are set out in the Annual Procurement Plan and the in-year update to that report.

C57 SPECIAL FREE SCHOOL AT WEST PARK, DARLINGTON

The Cabinet Member with the Economy Portfolio introduced the report of the Group Director of Operations and the Chief Executive (previously circulated) requesting that consideration be given to a strategy to enable this Council to secure ownership of, and make available to the Department for Education (DfE), 1.25 to 1.35 hectares of land at West Park for the new Special Education Needs and Disabilities (SEND) School, also referred to as a special free school.

It was reported that approval had been received from the government to establish a new, 48 place Autism Spectrum Disorder (ASD) special free school in the borough for children aged between 11 to 19 years of age; as part of planning permission granted for the West Park development, land had been set aside for the provision of education and sports under a separate legal contract known as a Section 106 (s106) agreement; this contract set out measures and financial contributions the developer must make in order to lessen the impact of the development on the community; and that the land had been identified as the preferred location for the SEND school, which was within the ownership of the developer.

The submitted report outlined the conditions of the s106 agreement; the options to provide greater certainty to both the DfE and the Council in terms of delivery of the land and the project, whilst mitigating risks for both parties; the collaboration agreement; the legal charge; the proposed timetable for the delivery of the school; the costs to the local authority; the current position; and the opportunities and risks of the proposal.

RESOLVED – (a) That negotiations begin with the owners of the sports and education land with a view to documenting the obligations in the Section 106 Agreement for the land to be transferred to this Council by way of an option agreement and that the final agreement of the heads of terms be subject to Cabinet approval.

(b) That the heads of terms for a lease of 1.25 to 1.35 hectares of land to the new school, be progressed, subject to:-

- (i) agreement of the option; and
- (ii) Cabinet Approval

(c) That the Section 106 obligation to transfer land required for the school, be exercised at the appropriate time.

(d) That the Section 106 financial contribution to fund the local authority costs arising from the construction of the school, be used, and it be noted that the DfE has provided a non-exhaustive list of costs to be funded by this Council, the costs of which will be capped at a figure to be agreed.

(e) That it be acknowledged that should the amount of Section 106 financial contributions received by the Council, at the point of payment of the local authority costs, be insufficient to fully cover the cost, the Council will forward fund the remainder until the remaining contributions are received, estimated to be 2030, with the full costs and commitment to be estimated and presented for final decision prior to signing of contracts.

REASONS – (a) The option would:

- (i) enable the Council to call for the transfer of the freehold of the land required for the school at an appropriate time;
- (ii) achieve flexibility on precise location of land required, as the option would enable this Council to specify the land it wished to acquire when exercising the option;
- (iii) achieve certainty and flexibility of timescale for the transfer of the land;
- (iv) enable site investigations to be carried out across the whole Section 106 area if required; and
- (v) final agreement of heads of terms to be subject to Cabinet Approval

(b) Progressing the Heads of Terms for the lease of land to the new school would provide comfort to DfE to allow progression to the next step, the feasibility study, and subsequent local authority costs analysis.

(c) Exercising the Section 106 agreement at the appropriate time would:

- (i) be dependent upon agreement of the option;

- (ii) be linked to the timing agreed in the option; and
 - (iii) follow the correct legal process for transferring the land.
- (d) Using the Section 106 financial contribution to fund the local authority costs arising from the construction of the school would be:
- (i) an appropriate use of the Section 106 financial contribution;
 - (ii) subject to agreement of the costs with the DfE; and
 - (iii) subject to a cap on costs as agreed with the DfE.
- (e) Acknowledging that forward funding that may be required will:
- (i) allow the parties to progress negotiations in the knowledge that funding is available at the relevant point in time, should it be required at all; and
 - (ii) be subject to final update and decision when costs and payment timetables are known.

C58 RENEWAL OF DOG PUBLIC SPACE PROTECTION ORDERS

Pursuant to Minute C20/Jul/23, the Cabinet Member with the Stronger Communities Portfolio introduced the report of the Group Director of Services (previously circulated) requesting that consideration be given to the outcome of the consultation exercise to enable Members to consider the renewal of the Dog Public Space Protection Orders (PSPO's).

The submitted report stated that PSPO's were introduced in the Anti-Social Behaviour, Crime and Policing Act 2014; a PSPO was designed to deal with a particular nuisance or problem in an area; the behaviour must be having a detrimental effect on the quality of life of those in the community; the current dog PSPO was introduced on 31 January 2021, and it was due to lapse in January 2024; when considering the possible extension or renewal of the order, the Council must undertake statutory consultation as part of the review process; and that the consultation had been undertaken for a period of eight weeks during the summer.

In making its decision, Cabinet considered the responses received from the consultation undertaken with the public, businesses and Scrutiny; the Kennel Club advice in respect of dogs in cemeteries; and the equality and legal implications.

RESOLVED – (a) That the consultation feedback and the contents of the submitted report, be noted.

(b) That the Public Spaces Protection Order, be approved and renewed, and be formally made as set out in Appendix 2 of the submitted report, namely for:

- (i) failure to remove dog faeces;
- (ii) not keeping a dog on a lead on specified land;

- (iii) not putting a dog on a lead and keeping on a lead when directed by an authorised officer; and
- (iv) permitting a dog to enter land from which dogs are excluded.

REASONS – (a) The current Dog PSPO will cease to exist by 31 January 2024.

(b) For dog control/responsible dog ownership in Darlington.

(c) To improve the quality of life of persons visiting and working in the areas covered by the PSPO.

C59 ENVIRONMENTAL CRIMES - FIXED PENALTY NOTICES

The Cabinet Member with the Stronger Communities Portfolio introduced the report of the Group Director of Services (previously circulated) providing an update to Members on new limits on Fixed Penalty Notices (FPN's) for environmental crimes, and requesting that consideration be given to setting new limits for waste related offences, in line with revised national limits.

The submitted report stated that the Clean Neighbourhoods and Environment Act 2005 introduced the use of FPN's as a way of council's dealing with certain environmental offences; FPN's were currently used by Council officers to deter environmental crime; in July 2023, the Government laid out a statutory instrument, the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 which increased the upper limits for various FPN's to provide the ability to further deter offenders; and that the new upper penalty limits were applicable to fly tipping offences, littering, graffiti and duty of care offences.

Particular reference was made at the meeting to the early payment discount being offered for some offences and whether this could be reduced. The Cabinet Member with the Stronger Communities Portfolio responded thereon.

RESOLVED - (a) That the level of penalty for Fixed Penalty Notices be set at the maximum level, as detailed in Appendix 1 of the submitted report.

(b) That an early payment discount be available for littering and graffiti offences, if paid within seven days.

(c) That no early payment discount be available for fly tipping and duty of care offences.

REASONS – (a) To allow the new levels of penalty within the Environmental Offences (Fixed Penalties) (Amendment) (England) Regulations 2023 to be implemented.

(b) To set the level of penalty and any discounted charges for FPN's.

C60 HOUSING SERVICES REPAIRS AND MAINTENANCE POLICY

The Cabinet Member with the Health and Housing Portfolio introduced the report of the Group Director of Operations (previously circulated) requesting that consideration be given to the Housing Services Repairs and Maintenance Policy (also previously circulated).

The submitted report stated that the Council provided over 5,300 high quality homes for local residents; it was committed to providing safe, energy efficient and comfortable homes to all Council tenants; and that this would be achieved by providing a robust, efficient and effective repairs and maintenance service.

It was reported that the Housing Services Repairs and Maintenance Policy 2023/28 set out the Council's responsibilities to all its tenants and leaseholders; how properties would be inspected and surveyed to ensure they were maintained to a good standard; arrangements in place for undertaking repairs, when issues arose; and the consultation undertaken.

RESOLVED – (a) That the report be noted.

(b) That the Housing Services Repairs and Maintenance Policy 2023/28, as set out in Appendix 1 to the submitted report, be approved.

REASONS – (a) The Social Housing Regulator's Consumer Standards places a duty on social housing landlords to provide their tenants with quality, cost-effective accommodation.

(b) The adoption of a formal Repairs and Maintenance Policy is one of the ways to demonstrate how the Council will achieve this.

C61 DELIVERY OF NEW HOMES AT NEASHAM ROAD - LAND DISPOSAL AND NUTRIENT NEUTRALITY CREDITS

The Cabinet Member with the Economy Portfolio introduced the report of the Chief Executive (previously circulated) requesting that consideration be given to funding the purchase of additional nutrient neutrality credits from Natural England in order to satisfy planning permission and to build out the whole of Site C, Neasham Road, of 144 new homes.

The submitted report stated that approval was obtained in July 2023 to dispose of Site C to the Council's Joint Venture (JV) partner, Hurworth Gardens JV Ltd for the development of 144 new homes (Minute C25/Jul/23 refers); contracts had been completed and work started on site; Natural England had previously advised that the nutrient neutrality credits obtained by the Hurworth Gardens JV Ltd were sufficient to build out the whole site of 144 new homes; the methodology for the assessment of credits had changed and Natural England had advised that credits obtained were only sufficient to build out 51 new homes and that additional credits for the remaining 93 new homes would be required; planning permission was granted on this basis; and that additional credits would need to be obtained to complete the development.

Particular reference was made at the meeting to the financial risks and whether those risks would be shared with the JV Company or whether they would sit with the Council. The Cabinet Member with the Economy Portfolio responded thereon.

RESOLVED - That the purchase of additional nutrient neutrality credits required to build out

the remainder of the houses at Site C, Neasham Road, as set out in Appendix 1 of the submitted report, be agreed.

REASON - To contribute to the delivery of new housing to satisfy the Borough's housing need.

C62 COUNCIL TAX CHANGES TO EMPTY PROPERTY PREMIUMS FROM 2024-25

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Resources (previously circulated) requesting that consideration be given to proposed changes to the Council Tax Empty Property Premiums for 2024/25.

The submitted report stated that a 50 per cent Council Tax premium (additional charge) was introduced in April 2013 for all unoccupied and unfurnished domestic properties which had been empty for two years or more; this was the maximum the Council was permitted to charge; and that a number of changes were made to the Council Tax Empty Property Premiums following the introduction of new legislation in 2018.

It was reported that that the Levelling Up and Regeneration Act 2023 contained a provision to amend the definition of long-term empty homes from 2024/25 onwards; unfurnished properties that had been empty for one year or more were liable to the Empty Property Premium; and that a 100 per cent Council Tax Premium be introduced for furnished properties periodically occupied (referred to as 'second homes') from 2025/26.

RESOLVED – (a) That the following changes to the Council Tax Empty Property Premiums be agreed, namely:

- (i) amend the definition of long-term empty homes, so that from 2024/25 onwards, unfurnished properties that have been empty for one year or more are liable to the Council Tax Empty Property Premium from 1 April 2024;
- (ii) apply a 100 per cent Council Tax Premium to second homes from 1 April 2025, this being the earliest that the new charge can apply as twelve months' notice is required to existing owners of second homes;
- (iii) implement exemptions for the second homes Council Tax Premium, as set out in paragraphs 15 and 16 of the submitted report.

(b) That it be recommended to Council that the report be approved.

REASON - To further encourage landlords and property owners to bring their empty homes back into use as soon as possible, and to penalise those owners who deliberately leave their properties empty for years.

C63 COUNCIL TAX SUPPORT - SCHEME APPROVAL 2024/25

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Operations requesting that consideration be given to the draft Council Tax Support (CTS) Scheme for 2024/25 (also previously circulated).

The submitted report stated the local CTS scheme for 2023/24 had been approved by Council (Minute 39/Nov/22 refers); the scheme became operational on 1 April 2023; and that Councils were required to set a CTS scheme each year and, as part of that exercise, consider whether any changes should be made to the existing scheme and where changes were made, consider what transitional protection, if any, should apply to anyone affected by those changes. It was reported that there were no significant changes proposed to the existing scheme,

RESOLVED - That it be recommended to Council that the draft Council Tax Support Scheme for 2024/25, attached at Appendix 1 to the submitted report, be approved.

REASONS – (a) The Council is required to publish a local CTS scheme for 2024/25 by 11 March 2024.

(b) The CTS schemes since 2013 have all been implemented successfully without any major challenges.

(c) The continued application of a reduced entitlement for working aged people is still appropriate, given the current financial position of the Council.

C64 REVENUE BUDGET MONITORING 2023/24 - QUARTER TWO

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Operations (previously circulated) providing a forecast of the 2023/24 revenue budget outturn as part of the Council's continuous financial management process.

The submitted report stated that it was the second revenue budget management report to Cabinet for 2023/24 and that the latest projections showed an overall decline of £1.119m on the 2023/27 Medium Term Financial Plan, which was due to £0.509m of additional balances following the 2022/23 outturn; £1.2m of resources returned to reserves; £2.602m of projected departmental overspends in 2023/24; and a decline in corporate reserves of £0.226m.

RESOLVED - (a) That the forecast revenue outturn for 2023/24, as detailed in the submitted report, be noted.

(b) That further regular reports be made to monitor progress and take prompt action if necessary.

REASONS - (a) To continue effective management of resources.

(b) To continue to deliver services to agreed levels.

C65 PROJECT POSITION STATEMENT AND CAPITAL PROGRAMME MONITORING - QUARTER TWO 2023/24

The Cabinet Member with the Resources Portfolio introduced the report of the Group Director of Services and the Group Director of Operations (previously circulated) providing a

summary of the latest Capital resource and commitment position, to inform monitoring of the affordability and funding of the Council's capital programme; an update on the current status of all construction projects currently being undertaken by the Council; and requesting that consideration be given to a number of changes to the programme.

The submitted report stated that the projected outturn of the current capital programme was £315.846m against an approved programme of £316.805m; the investment was delivering a wide range of improvements to the Council's assets and services; the programme, including commitments, remained affordable within the Medium Term Financial Plan (MTFP) for 2023/24 to 2026/27; the Council was managing 43 live projects, with an overall projected outturn value of £167.583m, the majority of which were running to time, cost and quality expectations, but were being monitored given the current pressures on resources in the construction sector nationally; and that the projects were managed either by the Council's in-house management team, a Framework Partner or by Consultants sourced via an open/OJEU tender process.

RESOLVED - (a) That the status position on construction projects, as detailed in the submitted report, be noted.

(b) That the projected capital expenditure and resources, as detailed in the submitted report, be noted.

(c) That the adjustments to resources, as detailed in paragraph 24 of the submitted report, be approved.

REASONS - (a) To inform Cabinet of the current status of construction projects.

(b) To make Cabinet aware of the latest financial position of the Council.

(c) To maintain effective management of resources.

C66 SCHEDULE OF TRANSACTIONS

The Cabinet Member with the Resources Portfolio introduced the report of the Chief Executive (previously circulated) requesting that consideration be given to the Schedule of Transactions (also previously circulated).

RESOLVED – That the Schedule of Transactions, as detailed in the appendix to the submitted report, be approved, and the transactions be completed on the terms and conditions detailed therein.

REASONS – The terms negotiated require approval by Cabinet before binding itself contractually to a transaction.

C67 MEMBERSHIP CHANGES - TO CONSIDER ANY MEMBERSHIP CHANGES TO OTHER BODIES TO WHICH CABINET APPOINTS.

There were no membership changes reported at the meeting.

**DECISIONS DATED –
FRIDAY 10 NOVEMBER 2023**