
**MINUTES OF THE MEETING OF THE CABINET,
HELD ON MONDAY, 21ST OCTOBER, 2024 AT 10.30 AM
IN THE COMMITTEE ROOM, AT THE TOWN HALL, STATION ROAD, CLACTON-
ON-SEA, CO15 1SE**

Present: Councillors Mark Stephenson (Leader of the Council & Corporate Finance and Governance Portfolio Holder)(Chairman), Ivan Henderson (Deputy Leader; Economic Growth, Regeneration and Tourism Portfolio Holder), Andy Baker (Housing and Planning Portfolio Holder), Mick Barry (Leisure and Public Realm Portfolio Holder), Peter Kotz (Assets Portfolio Holder), Gary Scott (Arts, Culture and Heritage Portfolio Holder) and Adrian Smith (Environment Portfolio Holder)

Group Leaders Present by Standing Invitation: Councillors Jeff Bray (Leader of the Reform UK Group) and Carlo Guglielmi (Deputy Leader of the Conservative Group)

In Attendance: Ian Davidson (Chief Executive), Lee Heley (Corporate Director (Place and Economy) & Deputy Chief Executive), Damian Williams (Corporate Director (Operations and Delivery)), Gary Guiver (Director (Planning & Community)), Lisa Hastings (Director (Governance) & Monitoring Officer), Richard Barrett (Director (Finance and IT) & Section 151 Officer), Ian Ford (Committee Services Manager), Bethany Jones (Committee Services Officer) and James Dwan (Communications Officer)

55. APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of the Portfolio Holder for Partnerships (Councillor Placey), the Leader of the Conservative Group (Councillor P B Honeywood), the Leader of the Independent Group (Councillor Chapman BEM) and the Deputy Leader of the Independent Group (Councillor Steady).

56. MINUTES OF THE LAST MEETING

It was moved by Councillor M E Stephenson, seconded by Councillor I J Henderson and:-

RESOLVED that the minutes of the meeting of the Cabinet, held on Friday 20 September 2024, be approved as a correct record and be signed by the Chairman.

57. DECLARATIONS OF INTEREST

Councillor Barry declared that he had a Disclosable Pecuniary Interest in relation to Agenda Items 8 and 9 insofar as he was a Trustee of the Brightlingsea Lido Trust and the Lido was referred to on three occasions within the Agenda on pages 46 & 96 as follows:-

Page 46 – Report A1 Highlight Priority Actions 24/25 towards the Corporate Plan themes:

Action Measures from the new Climate Change Action Plan: Explore funding opportunities for energy reduction plant at the Council's Sports Facilities.

Quarter 1 text - *Funding opportunities for energy reduction plant were explored and £150,000 was received from Government as part of the Swimming Pool Support Fund for an Air Handling Unit and Building Management System this was matched by £150,000 from Council funding. Officers have been working with Legal Team colleagues to finalise the grant agreements, both with Sport England as well as Brightlingsea Town Council and Brightlingsea Lido Trust. This is almost complete, and agreement will be shared with partners during the week commencing 5th August. Once signed, a procurement process will follow to expend the grant and Council budget. It should be noted that a separate report and executive decision are required for the latter.*

Page 96 - Report A2 Financial Performance Report 24/25 - Appendix 1D – Corporate Budget Monitoring – General Fund Capital Programme Position at the end of July 2024:

Brightlingsea LIDO (Capital Grant) - *All parties have signed the Grant Adherence Agreement, and Brightlingsea Lido is now carrying out the procurement process in accordance with the grant conditions.*

Councillor Barry further informed the meeting that he had been granted a Dispensation by the Monitoring Officer pursuant to Section 33(2)(e) of the Localism Act 2011, that enabled him to stay in the room and vote on those items as the reference to the Brightlingsea Lido, of which he was a Trustee regarded noting a factual position, rather than making any new decisions about the Lido.

58. ANNOUNCEMENTS BY THE LEADER OF THE COUNCIL

The Leader of the Council informed Cabinet that Commissioners from Historic England (HE) had visited the District on Friday 18 October 2024. He invited the Chief Executive to give more details of that visit.

The Chief Executive reported that the focus of his presentation to the HE Commissioners, chaired by Lord Mendoza, had been: '*The Future of Heritage in Tendring, The Future of Tendring in Heritage*', i.e. what role could HE play in the District's wider challenges and opportunities around skills, employment, school engagement and health and well-being (including suicide prevention). The visit had been supported by the Harwich Society. However, the places talked about were the myriad of places across Tendring from the Clacton Pier to the variety of buildings and traditions. It had been a great chance to encourage an eminent national body to be focused on Tendring and HE had been complimentary in its feedback stating that it had been an excellent visit.

The Chief Executive and the Portfolio Holder for Economic Growth, Regeneration and Tourism then responded to questions from the Deputy Leader of the Conservative Group and the Leader of the Reform UK Group in relation to the Martello Towers and the potential around historic maritime and other heritage trails.

59. ANNOUNCEMENTS BY CABINET MEMBERS

The Portfolio Holder for Leisure and Public Realm informed Cabinet that he had attended the Clacton Seafront 10K Run held on 20 October 2024. It had been an excellent event involving 420 runners. He commended Councillor Sarah Newton and her fellow organisers for their work in pulling together this event.

Councillors M E Stephenson, Baker and Bray echoed those sentiments.

60. ANNOUNCEMENT BY THE CHIEF EXECUTIVE

At the invitation of the Leader of the Council, the Chief Executive made the following announcement:-

“Following the announcement of Anastasia Simpson's upcoming departure from the organisation - and may I once again thank her for her service to Tendring District Council - I have taken the opportunity to reshape the senior management structure.

Rather than replace Anastasia directly I am making permanent the temporary reallocation of services that had previously reported into her, assigning them to other senior leaders.

As previously advised, Community Safety will now report into Damian Williams; Health and Partnerships into Lee Heley; Careline into Gary Guiver (who will now become Director of Planning and Community (previously just Planning)); while the People function (led by Katie Wilkins) will report directly into myself as Head of Paid Service.

To reflect the difference between those who sit on Management Team and those who do not, I am also changing some job titles. Therefore Richard Barrett and Lisa Hastings, who are existing members of Management Team, will now be called Directors (not Assistant Directors).

In addition, I am really pleased to announce that Lee Heley will take on the Deputy Chief Executive role, supporting myself and taking the lead in my absence.

I am delighted to have such an experienced and highly qualified team of senior managers to support myself and the organisation through all of our endeavours, and I know that as always you will give them your support for our huge and challenging work for communities.”

In addition to the Chief Executive, the Leader of the Council, the Deputy Leader of the Council, the Deputy Leader of the Conservative Group and the Leader of the Reform UK Group each took the opportunity to pay tribute to Anastasia's work and achievements at the Council.

61. MATTERS REFERRED TO THE CABINET BY THE COUNCIL

There were no matters referred to the Cabinet by the Council on this occasion.

62. MATTERS REFERRED TO THE CABINET BY A COMMITTEE

There were no matters referred to the Cabinet by a Committee on this occasion.

63. LEADER OF THE COUNCIL'S ITEMS - A.1 - HIGHLIGHT PRIORITY ACTIONS 2024/25 TOWARDS CORPORATE PLAN THEMES - MONITORING REPORT AT THE HALF YEAR POINT AND REFERENCE UNDER SECTION 5A OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989

Earlier on in the meeting, as detailed under Minute 57 above, Councillor Barry had declared a Disclosable Pecuniary Interest in the subject matter of this item insofar as he was a Trustee of the Brightlingsea Lido and the Lido Trust was referred to within the Appendix. Councillor Barry had been granted a Dispensation by the Monitoring Officer pursuant to Section 33(2)(e) of the Localism Act 2011, to enable him to stay in the room and vote on this item, as reference to the Brightlingsea Lido, of which he was a Trustee was mentioned but only in noting a factual position, rather than regarding making any new decisions about the Lido.

Cabinet considered a joint report of the Leader of the Council and the Monitoring Officer (A.1) which provided it with an update on the positive progress with Highlight Priority Actions adopted for 2024/25 towards the Council's Corporate Plan Themes 2024/28. The joint report also informed Members of a breach of the Council's Policy Framework and legal decision making requirements with regards to the Crime and Disorder Reduction Strategy (sections 5 and 6 of the Crime and Disorder Act 1998).

Members were well aware that the Council had approved a Corporate Plan for 2024/28 and that this had established its strategic direction for those four years. That strategic direction itself sought to reflect the issues that mattered most to the local people, the national requirements from Government and the challenges that faced the District over that time period. The Corporate Plan had been adopted unanimously at the Full Council meeting held on 28 November 2023 (Minute 76 referred).

The themes of the 2024/28 Corporate Plan were:-

- *Championing Our Local Environment*
- *Pride in Our Area and Services to Residents*
- *Working with Partners to Improve Quality of Life*
- *Raising Aspirations and Creating Opportunities*
- *Promoting Our Heritage Offer, Attracting Visitors and Encouraging Them to Stay Longer*
- *Financial Sustainability and Openness*

The Corporate Plan shaped and directed the Council's work and an extensive range of actions had been, were being and would be undertaken across the 2024-28 life of the Plan to deliver against its themes and priorities.

Members recalled that the Highlight Priority Actions adopted by Cabinet on 12 March 2024 sought to take forward the Corporate Plan. This meeting of Cabinet provided the opportunity to review progress with the Highlight Priority Actions adopted and realign the milestones for certain of those Highlight Priority Actions in view of the circumstances that now required this. This detail was set out at Appendix A to the joint report.

It was reported that, within Appendix A, the opportunity had been taken to update Cabinet as a whole on the delivery of five highlight priorities for which there were no specific milestone for Quarter 2(Q2). Those highlight priorities were:-

- A3(b) - *Progress the review of the Local Plan to support sustainable development of quality housing for a range of tenures.*
- B4 - *Take the opportunities afforded by Freeport East and the development of Bathside Bay.*

- D1 - *To support projects to reduce Health inequalities e.g. around Fuel Poverty and access to the jobs market.*
- D2 - *To expand the Pupil Encounters' Project, to provide all school children with additional encounters with businesses and employers throughout their Education.*
- D5 - *Establishing the feasibility for a new wellbeing hub in the District*
- F2 - *Review its communication strategy.*

In all of the above cases, the progress shown in Q2 demonstrated the delivery of the priorities was progressing as envisaged with the intended outputs/outcomes.

In respect of the position set out in Appendix A, all highlight priorities were at low risk of not being delivered. As such, the overall rating for each of the highlight priorities was 'Green'. The Appendix then set out the position for performance in Quarter 1 (Q1 – April to June) and Quarter 2 (Q2 – July to September) of 2024/25 against the approved milestones for each of those highlight priorities. The Q1 position had been discussed with Portfolio Holders and then published in the summer following the end of that Quarter.

Cabinet was informed that the Q2 position was now presented and represented performance to the half year point. Appendix A showed that against eight of the milestones scheduled for Q2, they had either been completed fully or substantially within the Quarter (and were therefore shown as 'Green'). A further four milestones had seen good progress within the Quarter and were shown as 'Amber' with one highlight priority Q2 milestones showing as 'Red' as progress had not been achieved as originally envisaged.

Members were advised that the one 'Red' milestone concerned the safer streets funded project to improve lighting and extend CCTV coverage in Clacton-on-Sea's Town Centre. The commentary in Appendix A against that highlight showed that the position that had been achieved with a view, and a commitment, to deliver the scheme (albeit it to a different timeline than had been originally envisaged).

In considering this joint report, Cabinet was also reminded that this first half year of 2024/25 had seen the following significant matters:-

- (1) *High Street Animated with Transformation and Fun Event (Easter 2024);*
- (2) *Advice and Information on Applying for Grant Opportunities Available at Tendring4Growth Event in April 2024;*
- (3) *Find a New Role of Career at Jobs and Skills Fair in Jaywick Sands (May 2024);*
- (4) *Essex Sunshine Coast picks up three prestigious Blue Flag Awards;*
- (5) *Mental Health Hub in Clacton gets £28k boost;*
- (6) *Essex Textiles Service Rolled Out In Tendring;*
- (7) *Princes Theatre Named Among Top Ten Percent Of Attractions Worldwide (Travellers Choice Award by Trip Advisor);*
- (8) *Four Parks And Garden In Tendring Recognised As Some Of The Best In The Country (Green Flag awarded by Keep Britain Tidy);*
- (9) *Beachgoer and Beach Patrol Praised After Women Rescued From The Sea In Clacton (July 2024);*
- (10) *Car parks across Tendring handed top safety awards (Safer Parking Award Scheme Park Mark from the British Parking Association);*
- (11) *Sea defence works begin at Walton's Naze;*

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- (12) *Leisure Centre Income Buoyant;*
 - (13) *Treasury Income more favourable than expected;*
 - (14) *Council Tax collection performance at the end of Q1 2024 was 29.37%, an increase compared with the 27.78% reported at the end of the same period last year;*
 - (15) *Increasing attendance at the Princes Theatre (at the end of Q2 2024 the number of attendees at the Theatre was 20,638, an increase of 760 compared to the figure of 19,878 at the end of the same period last year); and*
 - (16) *Successful Neighbourhood Plan Referendums held in the Parishes of Ardleigh and Elmstead (September 2024).*

Cabinet was informed that Section 6 of the Crime and Disorder Act 1998 - formulation and implementation of strategies stated -

- (1) The responsible authorities for a local government area shall, in accordance with [section 5](#) [with subsection (1A)] and with regulations (*) made under subsection (2), formulate and implement –
 - (a) a strategy for the reduction of crime and disorder in the area (including anti-social and other behaviour adversely affecting the local environment); and
 - (b) a strategy for combatting the misuse of drugs, alcohol and other substances in the area; and
 - (c) a strategy for the reduction of re-offending in the area; and
 - (d) a strategy for —
 - (i) preventing people from becoming involved in serious violence in the area, and
 - (ii) reducing instances of serious violence in the area.

(*) The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007, Regulation 3.— Functions in respect of the formulation and implementation of a strategy –

- (1) For each area there shall be a strategy group whose functions shall be to
 - (a) prepare strategic assessments; and
 - (b) prepare and implement a partnership plan, for that area on behalf of the responsible authorities.

Regulation 5.—

- (1) During each year the strategy group shall prepare a strategic assessment on behalf of the responsible authorities.
- (2) The purpose of the strategic assessment is to assist the strategy group in revising the partnership plan.

Members were advised that the approval of the Strategy/Partnership Plan was a function which must go to Full Council for approval, and whilst this was set out in the Council's Constitution, as part of the Council's Policy Framework, this was because it was a statutory requirement under Regulation 4(1) and Schedule 3 (Functions not to be the Sole Responsibility of an Authority's Executive) under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000). Schedule 3 specifically referred to the Crime and Disorder Reduction Strategy under Sections 5 and 6 of the Crime and Disorder Act 1988 and this remained current law and in force.

Cabinet had before it within the joint report the following written statement of the Monitoring Officer:-

"I have made enquiries with the relevant department in respect of the current position with regards to the Crime and Disorder Reduction Strategy required under the Crime and Disorder Act 1998 and to date have been informed the Council does not have an up to date approved Strategy or Partnership Plan approved. Reference has been made to the Crime and Safety Partnerships Strategic Assessment however, as the legislation as set out above confirms, the purpose of this assessment is to assist the strategy group in revising the partnership plan. Further information is required to determine how this omission will be resolved.

The Crime and Disorder Act 1998 imposed a duty on certain key public sector organisations to work together to make places safer. The Act created Crime and Disorder Reduction Partnerships (now known as Community Safety Partnerships or CSPs), which brought together the police, local authority, fire and rescue services, health, and probation to formulate strategies for the reduction of crime & disorder. Tendring has a CSP and may have produced a strategy or priorities setting out an overarching framework for the Tendring CSP to reduce crime & disorder in the coming years, however this must be approved and adopted by the Council, following a recommendation from Cabinet. Upon approval of the strategy, an annual Strategic Assessment would inform the Partnership action plan and overseen by the partnership to drive focussed action and resource deployment for the coming year.

This is a report issued under Section 5 of the Local Government and Housing Act 1989 to inform Members that Tendring District Council, has omitted to comply with the legal requirement to approve and adopt a Crime and Disorder Reduction Strategy. The Council is required by law to consider this report and decide what action (if any) to take in response.

The Chief Executive and the Assistant Director (Finance & IT) & Section 151 Officer have both been consulted on this report, as required by the legislation."

Through the joint report, the progress with the approved specific highlight priorities to deliver against the Corporate Plan 2024-28 Themes were set out for the public record. Accordingly, the report provided the opportunity to review progress with a number of initiatives and projects specifically identified for 2024/25 towards the ambitions in the 2024/28 Corporate Plan. Additionally, and in order to formally receive the Section 5A report from the Council's Monitoring Officer and to consider its contents and Cabinet's response thereto:-

It was moved by Councillor M E Stephenson, seconded by Councillor I J Henderson and:-

RESOLVED that Cabinet -

- (a) notes the contents of the report together with the highlighted realignment of particular milestones for particular highlight priority actions, as set out in the Appendix to the Portfolio Holder's report (A.1);
- (b) formally receives and notes the Monitoring Officer's report issued under Section 5A of the Local Government and Housing Act 1989 in respect of the position in relation to Council's omission regarding the formulation and implementation of a Crime and Disorder Strategy for the Council, as required under Sections 5 and 6 of the Crime and Disorder Act 1998; and

- (c) in response, requests an update from the Portfolio Holder for Partnerships on the proposed form of action to resolve the historical omission at the next meeting of Cabinet complete with timescales.

64. CABINET MEMBERS' ITEMS - REPORT OF THE CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER - A.2 - FINANCIAL PERFORMANCE REPORT 2024/25 - GENERAL UPDATE AS AT THE END OF JULY 2024

Earlier on in the meeting as detailed in Minute 57 above, Councillor Barry had declared a Discloseable Pecuniary Interest in respect of this item insofar as he was a Trustee of the Brightlingsea Lido which was referred to in Appendix 1D. Councillor Barry had been granted a Dispensation by the Monitoring Officer pursuant to Section 33(2)(e) of the Localism Act 2011, that enabled him to stay in the room and vote on this item as the reference to the Brightlingsea Lido, of which he was a Trustee regarded noting a factual position, rather than making any new decisions about the Lido.

Cabinet considered a detailed report of the Corporate Finance and Governance Portfolio Holder (A.4), which provided it with a general update and overview of the Council's financial position against the 2024/25 budget as at the end of July 2024 and looking ahead to 2025/26 and beyond.

SECTION 1 - In respect of the in-year financial position at the end of July 2024:

It was reported that the position to the end of July 2024, as set out in more detail within the appendices to the Portfolio Holder's report showed that, overall, the General Fund Revenue Account was overspent against the profiled budget by £0.480m. However, it was important to highlight that this was primarily due to the timing of when the Government reimbursed the Council for the cost of meeting housing benefit claims and the Parliamentary General Election expenses incurred earlier in the year.

No significant new issues had emerged to date in terms of the underlying budget, albeit a number of cost pressures had been identified as set out within Appendix 1H. Those cost pressures were largely unavoidable, and it was both timely and prudent to respond to such issues as early as possible in the year. It was acknowledged that other expenditure or income trends might still emerge / develop over the remainder of the year, which would be included in future financial performance reports as necessary.

In respect of other areas of the budget such as the Housing Revenue Account, capital programme, collection performance and treasury activity, apart from additional details set out within the Portfolio Holder's report, there were no other major issues that had been identified to date.

As highlighted in Appendix 1H, a total of £0.250m had been transferred to the Forecast Risk Fund. This was in effect the annual required contribution highlighted within the long-term forecast which was a 'banking for the future' adjustment and was therefore prudent to make at this time.

In addition to the above, it was also proposed to continue to be a member of the Essex Business Rates Pool if it remained advantageous to do so in 2025/26.

SECTION 2 - In respect of the updated long-term financial forecast:

Members were made aware that the forecast had been reviewed and updated at the end of July 2024 and was set out in Appendix 2A. It continued to reflect the very challenging financial position faced by Local Authorities, which included on-going inflationary pressures.

As committed to within earlier reports, the forecast had been extended out to 2033/34 to support the Council in managing its budget sustainability and financial resilience over a longer term period. Although further information was set out in Section 2 of the Portfolio Holder's report, there remained some potentially tough decisions that lay ahead. However, against this backdrop, it would be important that the development of the forecast was based on engagement with as many stakeholders as possible, including Members and residents to support the Council in balancing the provision of services with the need to deliver long-term financial sustainability.

The revised forecast also remained based on balancing optimism / pessimism bias that was inherent in any forecasting process and included the on-going use of one-off funding such as the New Homes Bonus.

Cabinet was advised that work remained ongoing within Departments and with Portfolio Holders to identify the longer-term impact of issues emerging to date along with remaining sighted on potential future cost pressures. With this in mind, it was important to highlight that the long-term forecast did not currently reflect the potential increase in costs expected from the retender of the Council's waste, recycling and street cleansing contract. This could place a significant level of additional financial burden on the financial forecast.

However, the long-term approach alongside the Forecast Risk fund remained a key element of providing additional flexibility and time to make better-informed decisions. However, significant on-going savings were still required, with the first iteration of the Council's savings plan set out in Appendix 2B.

It was felt that the potential savings identified to date of just under £2.500m broadly meet the 'target' set out in the forecast covering the years 2025/26 and 2026/27. The savings proposed represented a credible financial plan and work would remain on-going to deliver the various items over the coming months. It was important to highlight that the savings did not necessarily have to accrue from 1 April 2025, given the flexibility provided by the Forecast Risk Fund, but the earlier they could be delivered would be helpful in terms of supporting the later years of the plan.

As previously highlighted, a structural budget deficit was forecast to remain at the end of 2026/27 even after the delivery of the savings mentioned earlier. This presented further significant challenges as this had to be addressed via the identification of additional on-going savings. As set out in the forecast, this remained the case until such time as the Council delivered an underlying annual balanced budget. In terms of this latter point, the forecast showed that the level of inflation, especially pay inflation, outstripped the estimated level of forecast increases in income from council tax and business rates, which was clearly not sustainable without significant 'corrections' to the budget in future years.

The above remained subject to any intervention from the Government, who themselves had a very challenging financial question to resolve in the context of many Councils up and down the country potentially running out of money in the coming months and years.

It was pointed out that the challenges faced by the Housing Revenue Account (HRA) were also significant and included increased expectations and requirements that continued to emerge from the Social Housing Regulation Act and associated enhanced powers of the Housing Regulator. The HRA 30 Year Business plan would be developed over the coming weeks with the aim of responding to such challenges set against the wider context of continuing to provide a financially sustainable position in the long term.

In order to set out the latest financial position for the Council and to respond to emerging issues in 2024/25 and to develop the budget and long-term forecast from 2025/26:-

It was moved by Councillor M E Stephenson, seconded by Councillor Barry and:-

RESOLVED that Cabinet:-

- (a) notes the Council's in-year financial position at the end of July 2024;
- (b) approves the proposed adjustments to the 2024/25 budget, as set out in Appendix 1H to the Portfolio Holder's report (A.2), and requests Officers to review the potential on-going impact in 2025/26 and beyond where necessary as part of developing the forecast and detailed estimates for further consideration by Cabinet later in the year;
- (c) agrees that the Council continues to be a member of the Essex Business Rates Pool in 2025/26 if it remains financially advantageous to do so;
- (d) notes that £0.165m of unspent external funding previously received via the North Essex Health & Wellbeing Alliance, that has subsequently been carried forward into 2024/25, is being returned to them in accordance with the original agreement / MOU agreed by Cabinet on 17 September 2021;
- (e) notes the payment of £0.092m to East Suffolk District Council in-line with the previously agreed Freeport East Local Growth and Investment Strategy;
- (f) notes the updated financial forecast, as set out in this report, and requests Officers, in consultation with Portfolio Holders to further develop the financial forecast proposals alongside the development of the Council's priorities; and
- (g) invites the views of the Resources and Services Overview and Scrutiny Committee on the information set out in this report along with the Council's wider financial position as part of its work programme for the year.

65. CABINET MEMBERS' ITEMS - REPORT OF THE HOUSING AND PLANNING PORTFOLIO HOLDER - A.3 - TENDRING DISTRICT COUNCIL'S INTERIM POLICY ON BIODIVERSITY NET GAIN (BNG)

Cabinet considered a detailed report of the Housing and Planning Portfolio Holder (A.3), which sought its agreement to adopt a policy statement on 'Biodiversity Net Gain' (BNG) which would serve as the Council's interim corporate position on the subject, pending detailed consideration as part of the forthcoming Local Plan review. Having an interim policy would enable the Council to respond positively and constructively in its consideration of BNG as part of the planning process; and in the consideration of

proposals to set up 'Habitat Banks' by Tendring landowners and, potentially, on Council-owned land.

It was reported that Biodiversity Net Gain (BNG) was a legal requirement of the national planning system which had applied to most proposals for major development since February 2024 and most proposals for smaller developments since April 2024. It required developers to deliver a minimum 10% uplift in biodiversity (wildlife) value over and above what was present on site prior to development. In very simple terms, it was no longer just a requirement for development to minimise or mitigate its impact on wildlife; it must now, by law, bring about an improvement – a minimum 10% net increase in biodiversity habitat which was calculated, measured and monitored using a complex biodiversity metric set out in national guidance.

Members were informed that, to achieve 10% BNG, development proposals were required to deliver as much of it as possible on the site that was being developed. Where it was not possible to achieve all the necessary BNG on-site, developers could create the necessary habitat off-site either on other land they controlled (which would be tied through a legal agreement on the grant of planning permission) or by purchasing 'biodiversity units' from a 'Habitat Bank' – i.e. a wildlife habitat set up and maintained by third-party landowners for the purposes of BNG and where units could be sold to developers on the open market. In the rare cases where on-site or off-site BNG provision was not possible, developers must – as a last resort – buy statutory biodiversity credits from the Government.

Cabinet was made aware that in order to set up a Habitat Bank and lawfully enter the market for selling biodiversity units to developers, a landowner must register their site with Natural England – which first required them to either enter into a legal agreement with the local authority or a 'conservation covenant' with another responsible body recognised by Natural England. In doing so, the local authority (or other responsible body) took on a responsibility to monitor and enforce the obligations set out in any legal agreement.

Cabinet was advised that a number of landowners in Tendring had expressed a keen interest in setting up Habitat Banks and some had already carried out much of the preparatory work required for entering into a legal agreement with the Council, registering with Natural England and entering into the market for selling biodiversity units. However, like many local authorities, this Council had not been in a position to progress discussions with landowners about entering into the necessary legal agreements because Officers had needed time to research, consider and fully understand both the Council's legal duties and implications for resources – particularly in relation to its responsibilities around monitoring.

Now that there was a better understanding of the requirements around BNG and the process for setting up Habitat Banks, Officers had designed a planning policy on BNG (attached as Appendix 1 to the Portfolio Holder's report for Members' consideration) which, in summary, covered the following:

- the Council's legal obligations to secure 10% BNG – without unnecessarily duplicating the detail of legislation of national guidance;
- the ambition (which aligned with the ambition of Essex County Council) to increase the BNG requirement to 20% at an appropriate point in the future; and

- the criteria under which the Council could be willing to enter into a s106 legal agreement with a landowner for the purpose of setting up Habitat Banks for registration with Natural England and the selling of BNG units to developers on the open market which:
 - reflected the benefit of expanding and connecting up existing protected wildlife habitats;
 - promoted a scale of site that could better foster the creation of viable habitats than smaller more vulnerable sites;
 - supported the objectives of the emerging Essex Local Nature Recovery Strategy (LNRS) and the locations identified for their opportunity for habitat creation in that strategy;
 - supported Local Plan policy e.g. strategic green gaps and protected open spaces, and avoiding Habitat Banks in locations that could prejudice the proposals and policies in the Local Plan; and
 - allowed the Council to establish Habitat Banks on its own land, in due course, allowing time to carry out due internal processes in relation to assets and Member approvals – without holding up the opportunity for third-party private landowners to progress Habitat Banks on their sites, to the benefit of wildlife in the District and the diversification of the rural economy.

It was reported that the Portfolio Holder's intention was that the proposed policy was agreed by the Cabinet for referral to the Planning Policy and Local Plan Committee for its full consideration for inclusion in the Local Plan through the forthcoming review process; but that it be adopted, in the interim, as the Council's corporate position on BNG which, amongst other things, would enable Officers to progress discussions with landowners about setting up and registering Habitat Banks in Tendring and negotiating the necessary legal agreements. It was also recommended that the Planning Committee be invited to give consideration to how it exercised its decision-making powers in respect of relevant legal agreements; the extent to which such powers were to be delegated, if at all, to Officers; and whether any public consultation arrangements should be put in place for the consideration of Habitat Bank proposals.

Being cognisant that in the absence of a clear local policy or position on the subject of Biodiversity Net Gain (BNG) or any published expectations or criteria for the consideration of proposals for Habitat Banks, the Council could only refer to legislation and guidance produced by the Government when dealing with planning proposals that had BNG requirements and proposals for Habitat Banks from Tendring landowners and that it was therefore difficult for Officers to have constructive conversations with landowners looking to set up Habitat Banks on the necessary content of legal agreements and associated expectations around monitoring fees – which was holding up the opportunity for local landowners to contribute towards BNG and enter into the market for biodiversity units to the benefit of the rural economy:-

It was moved by Councillor Baker, seconded by Councillor Smith and:-

RESOLVED that Cabinet -

- 1) notes the contents of this report which, amongst other things, explains the Council's obligations around Biodiversity Net Gain (BNG), the role of Habitat Banks and the potential consideration of Council-owned land for BNG purposes;
- 2) agrees that proposed 'Policy on Biodiversity Net Gain (BNG)' (attached as Appendix 1 to the Portfolio Holder's report (A.1)) is adopted as the Council's interim corporate position pending the outcome of the Local Plan review, for the purposes of dealing with matters relating to BNG;
- 3) refers the aforementioned policy to the Planning Policy and Local Plan Committee for its consideration for inclusion in the Tendring District Local Plan as part of its current review;
- 4) invites the Planning Committee, at its earliest convenience, to consider and determine how it will exercise its power in respect of Council decisions on entering into legal agreements with landowners under Section 106 of the Town and Country Planning for the purposes of setting up Habitat Banks, guided by the aforementioned policy and the advice of Officers – including the extent to which the Committee deems it appropriate for such decision-making powers to be delegated to Officers; and any arrangements for public consultation on specific proposals; and
- 5) notes that the Portfolio Holder responsible for Housing and Planning in liaison with Officers will, in due course, consider and publish details of the fees to be charged to developers and landowners to cover the Council's costs in respect of monitoring BNG in line with its statutory obligations.

66. CABINET MEMBERS' ITEMS - REPORT OF THE HOUSING AND PLANNING PORTFOLIO HOLDER - A.4 - MAKING (ADOPTION) OF THE ARDLEIGH NEIGHBOURHOOD PLAN

Cabinet considered a report of the Housing and Planning Portfolio Holder (A.4), which sought its agreement to 'make' (adopt) the Ardleigh Neighbourhood Plan as part of the Council's statutory development plan and for it to therefore become a material consideration in planning decisions alongside the Tendring District Local Plan. This followed a local referendum in which a clear majority of residents that turned out had been in favour of the Plan.

It was reported that Ardleigh Parish Council had prepared a 'Neighbourhood Plan' for its area that had passed through all the necessary stages of the plan-making process set out in the Town and Country Planning Act 1990 ("the Act") and the Neighbourhood Planning (General) Regulations 2012 (as amended) including public consultation, independent examination and a referendum.

In an official referendum held on Thursday 12th September 2024 and administered by Tendring District Council, residents of the Parish of Ardleigh had been asked "Do you want Tendring District Council to use the Neighbourhood Plan for the Parish of Ardleigh to help it decide planning applications in the neighbourhood area?" With an overall turnout of 13%, 257 residents had voted 'YES' and 40 residents had voted 'NO' – a vote of 86.5% in favour of the plan.

Cabinet was informed that if the majority of those who voted in a referendum were in favour of the Neighbourhood Plan, it must be 'made' (adopted) by the Local Planning

Authority within 8 weeks of the referendum. An Order must be made by the local authority before it had effect. Decisions in relation to the making of Neighbourhood Plans were an executive function and it therefore fell to the Cabinet to confirm the making or adoption of the Neighbourhood Plan. It would then become part of the 'Development Plan' and would be a material consideration, alongside the District Council's Local Plan, in the determination of planning applications and in making other planning decisions.

In order to comply with the Neighbourhood Planning Regulations Town and Country Planning (Local Planning) (England) Regulations 2012 – ensuring that the Council, as Local Planning Authority, had made (adopted) the Neighbourhood Plan within 8 weeks of the successful referendum held on 12 September 2024:-

It was moved by Councillor Baker, seconded by Councillor Scott and:-

RESOLVED that Cabinet -

- (a) notes the result of the referendum held on Thursday 12th September 2024; and
- (b) duly agrees that the Ardleigh Neighbourhood Plan (attached as Appendix 1 to the Portfolio Holder's report (A.4)) be 'made' and that the necessary publicity and notifications are administered in accordance with Section 20 of the Neighbourhood Planning Regulations Town and Country Planning (Local Planning) (England) Regulations 2012.

67. CABINET MEMBERS' ITEMS - REPORT OF THE HOUSING AND PLANNING PORTFOLIO HOLDER - A.5 - MAKING (ADOPTION) OF THE ELMSTEAD NEIGHBOURHOOD PLAN

Cabinet considered a report of the Housing and Planning Portfolio Holder (A.5), which sought its agreement to 'make' (adopt) the Elmstead Neighbourhood Plan as part of the Council's statutory development plan and for it to therefore become a material consideration in planning decisions alongside the Tendring District Local Plan. This followed a local referendum in which a clear majority of residents that turned out had been in favour of the Plan.

It was reported that Elmstead Parish Council had prepared a 'Neighbourhood Plan' for its area that had passed through all the necessary stages of the plan-making process set out in the Town and Country Planning Act 1990 ("the Act") and the Neighbourhood Planning (General) Regulations 2012 (as amended) including public consultation, independent examination and a referendum.

In an official referendum held on Thursday 12th September 2024 and administered by Tendring District Council, residents of the Parish of Elmstead had been asked "Do you want Tendring District Council to use the Neighbourhood Plan for the Parish of Elmstead to help it decide planning applications in the neighbourhood area?" With an overall turnout of 21.4%, 389 residents had voted 'YES' and 31 residents had voted 'NO' – a vote of 92.6% in favour of the plan.

Cabinet was reminded that if the majority of those who voted in a referendum were in favour of the Neighbourhood Plan, it must be 'made' (adopted) by the Local Planning Authority within 8 weeks of the referendum. An Order must be made by the local

authority before it had effect. Decisions in relation to the making of Neighbourhood Plans were an executive function and it therefore fell to the Cabinet to confirm the making or adoption of the Neighbourhood Plan. It would then become part of the 'Development Plan' and would be a material consideration, alongside the District Council's Local Plan, in the determination of planning applications and in making other planning decisions.

In order to comply with the Neighbourhood Planning Regulations Town and Country Planning (Local Planning) (England) Regulations 2012 – ensuring that the Council, as Local Planning Authority, had made (adopted) the Neighbourhood Plan within 8 weeks of the successful referendum held on 12 September 2024:-

It was moved by Councillor Baker, seconded by Councillor Scott and:-

RESOLVED that Cabinet -

- (a) notes the result of the referendum held on Thursday 12th September 2024; and
- (b) duly agrees that the Elmstead Neighbourhood Plan (attached as Appendix 1 to the Portfolio Holder's report (A.5)) be 'made' and that the necessary publicity and notifications are administered in accordance with Section 20 of the Neighbourhood Planning Regulations Town and Country Planning (Local Planning) (England) Regulations 2012.

68. MANAGEMENT TEAM ITEMS

There were no matters referred to the Cabinet by the Council's Management Team on this occasion.

The Meeting was declared closed at 11.40 am

Chairman