

Crawley Borough Council

Overview and Scrutiny Commission

Agenda for the **Overview and Scrutiny Commission** which will be held in **Committee Room A & B - Town Hall**, on **Monday, 25 June 2018** at **7.00 pm**

Nightline Telephone No. 07881 500 227



Head of Legal and Democratic Services

Membership:
Councillors

C A Cheshire (Chair), T G Belben (Vice-Chair), M L Ayling,
R G Burgess, D Crow, F Guidera, I T Irvine, R A Lanzer, S Malik,
A Pendlington, M W Pickett, K Sudan and L Willcock

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Published 15 June 2018

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The order of business may change at the Chair's discretion

Part A Business (Open to the Public)

	Pages
1. Apologies for Absence	
2. Disclosures of Interest and Whipping Declarations	
In accordance with the Council's Code of Conduct, Councillors of the Council are reminded that it is a requirement to declare interests where appropriate.	
Councillors must also declare if they are subject to their party group whip in relation to any items under consideration.	
3. Minutes	5 - 16
1. To approve as a correct record the minutes of the Overview and Scrutiny Commission held on 4 June 2018.	
2. To note the Cabinet Member for Environmental Services and Sustainability's response to the Commission's Comments (OSC/269) from its meeting held on 4 June 2018 (attached).	
4. Public Question Time	
To answer any questions or hear brief statements from the public which are relevant to the items on this agenda. The period will end after 15 minutes or later at the Chair's discretion.	
5. Treasury Management Outturn for 2017/18	17 - 28
To consider report FIN/442 of the Head of Finance, Revenues and Benefits.	
6. Licensing Houses in Multiple Occupation (HMOs)	29 - 40
To consider report SHAP/75 of the Head of Strategic Housing and Planning Services.	
7. Crawley Growth Programme - Update	41 - 46
To consider report PES/298 of the Head of Economic and Environmental Services.	
8. Review of Outside Bodies and Organisations Scrutiny Panel Final Report	47 - 64
To consider report OSC/268 of the Chair of the Review of Outside Bodies and Organisations Scrutiny Panel.	

9. Health and Social Care Select Committee (HASC)

To receive an update on the Health and Adult Social Care Select Committee (HASC).

10. Forward Plan - and Provisional List of Reports for the Commission's following Meetings

To consider any requests for [future items](#) to be referred to the Commission.

11. Supplemental Agenda

Any urgent item(s) complying with Section 100(B) of the Local Government Act 1972.

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Crawley Borough Council

Minutes of Overview and Scrutiny Commission

Monday, 4 June 2018 at 7.00 pm

Councillors Present:

T G Belben (Acting Chair)

M L Ayling, R G Burgess, D Crow, F Guidera, I T Irvine, R A Lanzer, S Malik,
A Pendlington, M W Pickett, K Sudan and L Willcock

Also in Attendance:

Councillors T Lunnon and G Thomas

Officers Present:

Natalie Brahma-Pearl	Chief Executive
Carrie Burton	Transformation Manager
Heather Girling	Democratic Services Officer
Chris Harris	Head of Community Services

Apologies for Absence:

Councillor C A Cheshire

1. Disclosures of Interest and Whipping Declarations

The following disclosures were made:

Councillor	Item and Minute	Type and Nature of Disclosure
Councillor D Crow	Broadfield Residents Parking Petition – To have more grass verges for parking at Halley Close, Eddington Hill, Broadfield (Minute 4)	Personal Interest – Member of WSCC
Councillor R A Lanzer	Broadfield Residents Parking Petition – To have more grass verges for parking at Halley Close, Eddington Hill, Broadfield (Minute 4)	Personal Interest – Member of WSCC

2. Minutes

The Acting Chair welcomed new and returning Members to the Commission's first meeting of the new Municipal year. Members of the public were also welcomed.

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Overview and Scrutiny Commission (38)

4 June 2018

The minutes of the meeting of the Commission held on 19 March 2018 were approved and signed as a correct record by the Acting Chair.

3. Public Question Time

No questions from the public were asked as it was agreed that:

Susan Redfearn would be invited to address the Commission in response to report HCS/06 in relation to the petition.

4. Broadfield Residents Parking Petition - To have more grass verges for parking at Halley Close, Eddington Hill, Broadfield

The Commission considered report HCS/06 of the Head of Community Services.

The report responded to the petition about residents' parking concerns in Broadfield, which requested grass verges be removed and more car spaces be allocated at Halley Close, Eddington Hill, Broadfield. The petition documented the concerns and issues with the current parking situation in the area.

The report outlined the research that had been undertaken following receipt of the petition and documented whether the Council could consider the request. The report outlined the key areas for consideration. Members considered this and the additional information.

Susan Redfearn and Pamela Bostock were in attendance. Susan Redfearn (principal petitioner) was invited to address the Commission and raised the following concerns:

- An increase in the number of HMOs in the local area had increased the demand of parking spaces.
- The damage to vehicles that was being experienced needed to be addressed as it was felt this should not just be solely a police matter.
- The increase in parking obstructed access for emergency vehicles.
- The children's play area has been vandalised and was infrequently used.
- Alternative, cheaper parking solutions could be provided.

The Commission thanked both Susan Redfearn and Pamela Bostock for attending and for their contribution.

Members were informed that the key areas for consideration and recommendation within report HCS/06 were:

- To enable creation of additional parking spaces in Halley Close, green amenity open space would be permanently removed from the area, including a significant number of mature trees being felled, and potentially the children's playground removed.
- The options proposed within the petition are costly, approximately in the region of £700,000-£800,000.
- WSCC are currently undertaking a Road Space Audit for Crawley and this Council is currently updating its sustainable transport plan.
- The Council will have further powers as a result of legislation coming into force on 1st October 2018 to extend the mandatory licensing of houses in multiple occupation (HMOs) under the Housing Act 2004 to include two storey HMOs with five or more occupants forming two or more households. However, parking is not a consideration for this licensing.

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Overview and Scrutiny Commission (39)

4 June 2018

During the discussion, Members made the following comments:

- It was noted that the WSCC Road Space Audit was progressing and hotspots were being identified. Contact could be made to the WSCC Parking Manager to request the area as a hotspot. A Road Space Audit seeks to provide essential technical data that identifies and assesses the current demands upon the road network and parking stock, whether these demands are actually being met as well as residents and users views.
- It was recognised that the outcome of the Road Space Audit was to inform the design for a particular place that defines how parking, various alternative travel solutions, infrastructure improvements, safety considerations and future development can be integrated so that the road network is used and managed in the most efficient way possible.
- Concerns were expressed that there were parking issues throughout the town and it would be necessary to seek to acknowledge these rather than merely an isolated case.
- Concerns expressed that the costings appeared excessive and perhaps alternative options could be sought.
- A multi-agency approach was discussed as an effective method in order to assist in exploring possible options.
- Acknowledgment that although many residents may be happy to replace grass verges with parking spaces, many residents were equally likely to want to retain their green open spaces and trees.
- Concerns were raised regarding the removal of the children's play area and the impact of children's obesity together the felling of mature trees.
- It was felt further consultation would be beneficial between officers, the Cabinet Member and residents to establish creative options and a potential way forward to address issues.
- It was recognised that the residential environmental improvement scheme was no longer available.

Having considered all the matters in detail, and as a result of the comprehensive discussion and subsequent voting, the following recommendations were to be referred to the Cabinet Member for Environmental Services and Sustainability:

1. That the Commission requests that the Cabinet Member, the Cabinet and the Budget Advisory Group give consideration to reintroducing the Residential Environmental Improvement Scheme for the 2019/20 budget.
2. That the Commission urge the Cabinet Member to work with officers to engage with the Principal Petitioner and the local residents to ascertain the issues in detail and work to identify potential solutions.
3. That the Head of Community Services liaise with Miles Davey (Parking Manager, Transport and Countryside Services, WSCC) – via the Broadfield County Councillor if required – to request the area as a hotspot within the Crawley Road Space Audit.

RESOLVED

That the Cabinet Member for Environmental Services and Sustainability consider the Commission's comments and recommendations (appendix to the minutes) and provide the Principal Petitioner with a response.

5. Proposed War Memorial - Current Status

The Commission received a verbal update from Head of Community Services as to the current status on the Proposed War Memorial.

The Council is working with the Crawley Civil Military Partnership (CCMP) to establish a new memorial of reflection in the town. Consultation previously took place on various designs and 75 responses were received. Funding options are being considered and the project is progressing. The Commission would receive a further briefing in the future.

RESOLVED

That the Head of Community Services was thanked for the update and the Commission would look forward to future progress.

6. Chief Executive Discussion

The Commission received an update from the Chief Executive on her current role and responsibilities.

The following topics were discussed:

- Throughout the 'discovery phase' of joining the council, the Chief Executive undertook internal and external meetings (this included meeting with nearly all staff, numerous service teams and Ward meetings with Councillors) together with partners, businesses and voluntary sector representatives.
- Key findings included: committed engaged staff, a common endeavour to make a difference, whilst providing good customer service.
- It was recognised that systems thinking reviews had been successful, with the greatest benefit being realised in services with high transactional processes. Additional work was required to shift the organisation forward, drive efficiency and improve the customer experience through a digital offer and this was to be covered in the draft Transformation Plan.
- Priority objectives included delivering the budget strategy, efficient decision making, delivering the Crawley growth programme, staff engagement together with innovation and creativity in the workplace.
- The prime challenge of the future was the new town hall delivery and cultural shift.

RESOLVED

That the Overview and Scrutiny Commission thanked the Chief Executive for attending and for the informative discussion that had ensued.

7. Transformation Plan and Future Operations

Members received an update from the Chief Executive and Transformation Manager. The Commission has within its function to review the council's transformation plan, measures, and performance information (including budgetary information) together with service reviews.

The Council's Purpose was to deliver what matters to customers, which encompassed:

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Overview and Scrutiny Commission (41)

4 June 2018

- New Administration Priorities 2018
- Transformation Plan 2018/2020 7 Pillars
- Transformation Dashboard of Measures

The Transformation Plan was currently being developed and it was envisaged that this would provide a more holistic corporate approach focusing on 7 pillars:

1. Delivering a **New Town Hall**
2. Delivering **Digital Transformation** of services to meet customer demand, making it easy to do business and creating efficiency
3. Developing **New Ways of Working** to meet the needs of the business whilst delivering what matters to customers
4. Developing the organisation and staff, defining the culture and being clear about expectations – **Values and Behaviours**
5. Redesigning services from the customers perspective using **Systems Thinking** methodology to deliver efficiency savings whilst protecting frontline services
6. Developing a more **Commercial Approach** to how the council operates and ensuring that Income Generation opportunities are maximised
7. **Blitz on Bureaucracy** in order to streamline the decision making process

Progress had been made in several areas including recruitment to key management posts, commencement of a corporate management restructure, initiating the drive for paperless working and continued systems thinking work. Draft plans for each of the seven pillars had been developed.

It was highlighted that it would be important to recognise the involvement of staff in taking the organisation forward and capitalising on their creativity and innovation going forward.

Members' main comments included:

- Systems thinking principles had been embedded within the organisation and had resulted in efficiencies and savings.
- Support for new ways of working and flexible ways in supporting customers' needs going forward. Digital solutions were welcomed together with creating capacity for 'face to face' communication.
- Recognition that measures, behaviours and values were important drivers for change and success in the workplace, with the understanding that measures should not consume the workload, but used as an internal tool.

There was enthusiasm for a Members' seminar on the Transformation Plan once approved in its final format.

RESOLVED

That the Commission welcomed the presentation and looked forward to a further update.

8. Establishment of and Appointments to the Scrutiny Panels for 2018-2019

In relation to the membership it was noted that there was a change from the nominations published within the AGM paper on 18 May 2018. In respect of the membership of the Social Mobility Scrutiny Panel Councillor Ayling should replace Councillor Pickett.

RESOLVED

Review of Outside Bodies and Organisations Scrutiny Panel

That the Review of Outside Bodies and Organisations Scrutiny Panel, be re-constituted, with a membership of Councillors M L Ayling, R G Burgess, C A Cheshire, R Fiveash, A Pendlington and that Councillor C A Cheshire be appointed as Chair for 2018/2019.

Social Mobility Scrutiny Panel

That the Social Mobility Scrutiny Panel, be re-constituted, with a membership of Councillors M L Ayling, T G Belben, R Fiveash, I T Irvine, K L Jaggard, K Sudan, L Vitler and that Councillor K Sudan be appointed as Chair for 2018/2019.

9. Appointments

RESOLVED

That the Commission endorsed the following appointments:

West Sussex Health and Adult Social Care Select Committee (HASC)
Councillor T G Belben

West Sussex Joint Scrutiny Steering Group (JSSG)
Councillor C A Cheshire

10. Scrutiny Review Workshop

The OSC Review Workshop originally planned for Tuesday 12 June 2018 has been rescheduled for Monday 3 September 2018 at 6.00pm, when OSC Members plan to consider the scrutiny suggestions that have been submitted. The meeting of the Overview and Scrutiny Commission on Monday 3 September 2018 will commence at 7.30pm.

11. Forward Plan - and Provisional List of Reports for the Commission's following Meetings

The Commission confirmed the following reports for the OSC:

25 June

- Treasury Management Outturn 2017-2018
- Licensing Two Storey Houses in Multiple Occupation (HMOs)
- Crawley Growth Programme Update

3 September

- District Heat Network

24 September

- Budget Strategy 2019/20 – 2023/24.

19 November

- Treasury Management Mid-Year Review 2018 - 2019.
- Three Bridges Improvement Scheme Final Design.

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4 June 2018

Closure of Meeting

With the business of the Overview and Scrutiny Commission concluded, the Acting Chair declared the meeting closed at 9.45 pm

T G Belben
Acting Chair

Appendix

Cabinet Member for Environmental Services and Sustainability

Comments from the Overview and Scrutiny Commission at its meeting on Monday 4 June 2018

OSC/269

Broadfield Residents Parking Petition – To have more grass verges for parking at Halley Close, Eddington Hill, Broadfield

A petition submitted to the Council in March 2018 documented concerns and issues with the current parking situation in the above area.

The Commission considered report HCS/06 of the Head of Community Services, which provided evidence in response. The key areas for consideration and recommendation within report HCS/06 were:

- To enable creation of additional parking spaces in Halley Close, green amenity open space would be permanently removed from the area, including a significant number of mature trees being felled, and potentially the children's playground removed.
- The options proposed within the petition are costly, approximately in the region of £700,000-£800,000.
- WSCC are currently undertaking a Road Space Audit for Crawley and this Council is currently updating its sustainable transport plan.
- The Council will have further powers as a result of legislation coming into force on 1st October 2018 to extend the mandatory licensing of houses in multiple occupation (HMOs) under the Housing Act 2004 to include two storey HMOs with five or more occupants forming two or more households. However, parking is not a consideration for this licensing.

Comments and Recommendations

During the discussion, Members made the following comments:

- It was noted that the WSCC Road Space Audit was progressing and hotspots were being identified. Contact could be made to the WSCC Parking Manager to request the area as a hotspot. A Road Space Audit seeks to provide essential technical data that identifies and assesses the current demands upon the road network and parking stock, whether these demands are actually being met as well as residents and users views.
- It was recognised that the outcome of the Road Space Audit was to inform the design for a particular place that defines how parking, various alternative travel solutions, infrastructure improvements, safety considerations and future development can be integrated so that the road network is used and managed in the most efficient way possible.
- Concerns were expressed that there were parking issues throughout the town and it would be necessary to seek to acknowledge these rather than merely an isolated case.
- A multi-agency approach was discussed as an effective method in order to assist in exploring possible options.

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4 June 2018

- Acknowledgment that although many residents may be happy to replace grass verges with parking spaces, many residents were equally likely to want to retain their green open spaces and trees.
- Concerns were raised regarding the removal of the children's play area and the impact of children's obesity together the felling of mature trees.
- It was felt further consultation would be beneficial between officers, the Cabinet Member and residents to establish creative options and a potential way forward to address issues.
- It was recognised that the residential environmental improvement scheme was no longer available.

Having considered all the matters in detail, and as a result of the comprehensive discussion and subsequent voting, the following recommendations were to be referred to the Cabinet Member for Environmental Services and Sustainability:

1. That the Commission requests that the Cabinet Member, the Cabinet and the Budget Advisory Group give consideration to reintroducing the Residential Environmental Improvement Scheme for the 2019/20 budget.
2. That the Commission urge the Cabinet Member to work with officers to engage with the Principal Petitioner and the local residents to ascertain the issues in detail and work to identify potential solutions.
3. That the Head of Community Services liaise with Miles Davey (Parking Manager, Transport and Countryside Services, WSCC) – via the Broadfield County Councillor if required – to request the area as a hotspot within the Crawley Road Space Audit.

RESOLVED

That the Cabinet Member for Environmental Services and Sustainability consider the Commission's comments and recommendations and provides the Principal Petitioner with a response.

Councillor Tina Belben
Acting Chair, Overview and Scrutiny Commission
4 June 2018

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Appendix a

Cabinet Member for Environmental Services and Sustainability

Response to Overview and Scrutiny Commission Comments at its meeting on Monday 4 June 2018

OSC/269

Broadfield Residents Parking Petition – To have more grass verges for parking at Halley Close, Eddington Hill, Broadfield

1.

As Cabinet Member for Environmental Services and Sustainability, I have given thought to the OSC discussion and vote suggesting consideration of the reintroduction of the Residential Improvement Schemes for 2019/20. This would inevitably involve a Capital Bid. In recent years, the criteria for capital bids have been one or more of 'spend to save', 'spend to earn', 'environmental obligations' and 'maintaining council assets'. Unfortunately such Improvement Schemes, including the Halley Close proposal, do not, in my judgment satisfy any of those criteria so I will have to set aside the recommendation. Putting aside the financial cost, I am concerned that the Halley Close proposal will potentially involve the loss of trees and amenity space, including a play area on CBC land, in an otherwise densely housed area. In addition, I would remind the OSC that since 2012 there have been over 50 suggestions made for such Improvement Schemes from residents elsewhere in the town which have not been implemented for similar reasons.

2.

I am happy to engage with the petitioner and local residents - with the help of Community Development officers - to consider the issues in detail in the hope that individual concerns can be addressed or ameliorated such as Parking Bays for use by – and only by- Emergency Vehicles.

3.

West Sussex County Council Highways is the body whose responsibility it is to address parking issues. This is clearly documented in Part 3 of WSCC Constitution 'Responsibility for Functions' notably Sections 55 and 58. Currently WSCC Highways are conducting a Road Space Audit for Crawley and a number of 'hotspots' have been identified. Miles Davy, the Parking Manager, will be approached to ask that Halley Close be added to the hotspot list.

I have been in touch with the principal petitioner along these lines and will also ask that this matter be separately considered by Cabinet and BAG.

Cllr Geraint Thomas

Cabinet Member for Environmental Services and Sustainability

11.6.18.

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Crawley Borough Council

Report to Overview and Scrutiny Commission 25 June 2018

Report to Cabinet 27 June 2018

Treasury Management Outturn for 2017/18

Report of the Head of Finance, Revenues and Benefits – FIN/442

1. Purpose

- 1.1 This Council is required by regulations issued under the Local Government Act 2003 to produce an annual treasury management review of activities and the actual prudential and treasury indicators for 2016/17. This report meets the requirements of both the CIPFA Code of Practice on Treasury Management (the Code) and the CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code).
- 1.2 During 2016/17 the minimum reporting requirements were that the full Council should receive the following reports:
 - an Annual Treasury Strategy in advance of the year (Council 22/02/2017)
 - a mid-year treasury update report (Council 13/12/2017)
 - an annual review following the end of the year describing the activity compared to the Strategy (this report)
- 1.3 The regulatory environment places responsibility on members for the review and scrutiny of treasury management policy and activities. This report is, therefore, important in that respect, as it provides details of the outturn position for treasury activities and highlights compliance with the Council's policies previously approved by members.
- 1.4 This Council confirms that it has complied with the requirement under the Code to give prior scrutiny to all of the above treasury management reports by the Overview and Scrutiny Commission before they were reported to the full Council.

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

- 2.2 To the Cabinet

The Cabinet is recommended to:

- a) To approve the actual 2017/18 Prudential and Treasury Indicators as set out in the report;
- b) To note the Annual Treasury Management Report for 2017/18.

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3. Reasons for the Recommendations

- 3.1 The Council's financial regulations, in accordance with the CIPFA Code of Practice for Treasury Management, requires an annual review following the end of the year describing the activity compared to the Strategy. This report complies with these requirements.

4. The Economy and Interest Rates

- 4.1 During the calendar year of 2017, there was a major shift in expectations in financial markets in terms of how soon Bank Rate would start on a rising trend. After the UK economy surprised on the upside with strong growth in the second half of 2016, growth in 2017 was disappointingly weak in the first half of the year which meant that growth was the slowest for the first half of any year since 2012. The main reason for this was the sharp increase in inflation caused by the devaluation of sterling after the EU referendum, feeding increases into the cost of imports into the economy. This caused a reduction in consumer disposable income and spending power as inflation exceeded average wage increases. Consequently, the services sector of the economy, accounting for around 75% of GDP, saw weak growth as consumers responded by cutting back on their expenditure. However, growth did pick up modestly in the second half of 2017. Consequently, market expectations during the autumn, rose significantly that the MPC would be heading in the direction of imminently raising Bank Rate. The minutes of the MPC meeting of 14 September indicated that the MPC was likely to raise Bank Rate very soon. The 2 November MPC quarterly Inflation Report meeting duly delivered by raising Bank Rate from 0.25% to 0.50%.
- 4.2 The 8 February MPC meeting minutes then revealed another sharp hardening in MPC warnings on a more imminent and faster pace of increases in Bank Rate than had previously been expected. Market expectations for increases in Bank Rate, therefore, shifted considerably during the second half of 2017-18 and resulted in investment rates from 3 – 12 months increasing sharply during the spring quarter.

5. Overall Treasury Position as at 31 March 2018

- 5.1 At the beginning and the end of 2017/18 the Council's treasury position was as follows:

	31 March 2017 Principal £'000	Rate/ Return	Average Life yrs	31 March 2018 Principal £'000	Rate/ Return	Average Life yrs
Total debt	260,325	3.2%	14.03	260,325	3.2%	13.03
CFR	260,325			260,325		
Over / (under) borrowing	0			0		
Total investments	118,183	0.68%	0.48	118,606	0.75%	0.69
Net debt	142,142			141,719		

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6. The Borrowing Requirement and Debt

6.1 The Council's underlying need to borrow to finance capital expenditure is termed the Capital Financing Requirement (CFR).

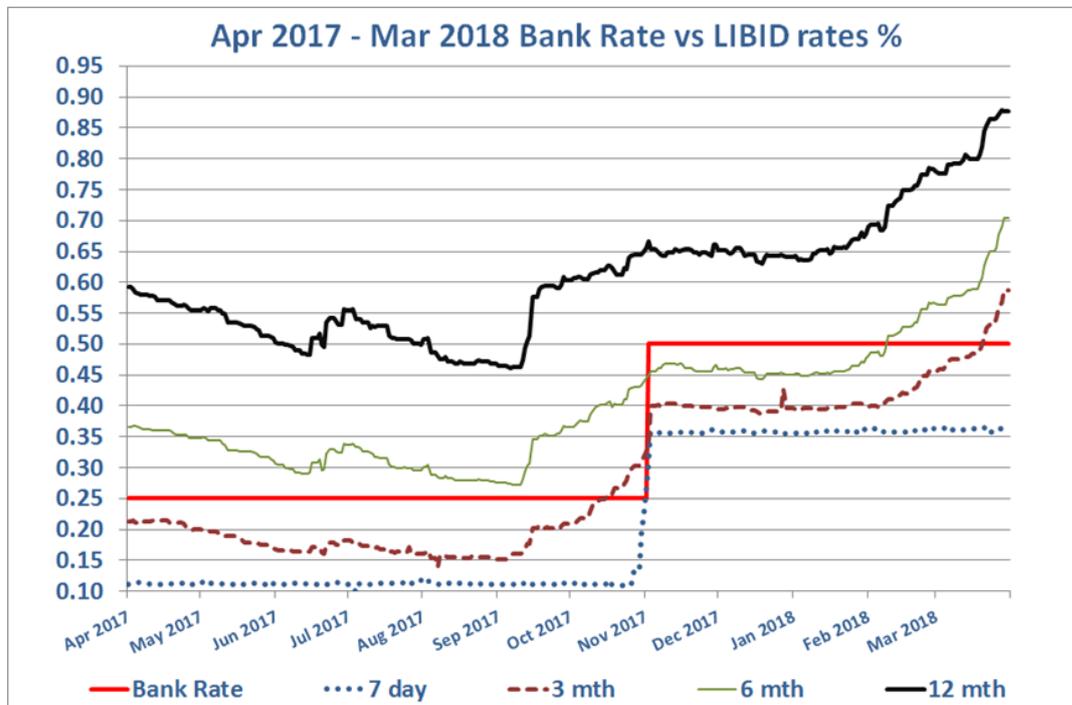
	31 March 2017 Actual £'000	31 March 2018 Budget £'000	31 March 2018 Actual £'000
CFR General Fund (£000)	0	0	0
CFR HRA (£000)	260,325	260,325	260,325
Total CFR	260,325	260,325	260,325

7. Borrowing Outturn for 2017/18

7.1 No borrowing was undertaken during the year.

8. Investment Rates in 2017/18

8.1 Investments rates for 3 months and longer have been on a rising trend during the second half of the year in the expectation of Bank Rate increasing from its floor of 0.25%, and reached a peak at the end of March. Bank Rate was duly raised from 0.25% to 0.50% on 2 November 2017 and remained at that level for the rest of the year. However, further increases are expected over the next few years. Deposit rates continued into the start of 2017/18 at previous depressed levels due, in part, to a large tranche of cheap financing being made available under the Term Funding Scheme to the banking sector by the Bank of England; this facility ended on 28 February 2018.



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9. Investment Outturn for 2017/18

- 9.1 **Investment Policy** – the Council’s investment policy is governed by Government guidance, which was been implemented in the annual investment strategy approved by the Council on 22/02/2017. This policy sets out the approach for choosing investment counterparties, and is based on credit ratings provided by the three main credit rating agencies supplemented by additional market data such as rating outlooks and credit default swaps.
- 9.2 The investment activity during the year conformed to the approved strategy, and the Council had no liquidity difficulties.
- 9.3 **Investments held by the Council** - the Council maintained an average balance of £135,874,564 of internally managed funds. The internally managed funds earned an average rate of return of 0.63%. The comparable performance indicator is the average 7-day LIBID rate, which was 0.21%. This compares with a budget assumption of £113,125,000 investment balances earning an average rate of 0.50%. See appendix 2 for a list of investments held at 31 March 2018.
- 9.4 Investments balances are higher than forecast in the strategy due to slippage in the capital programme. The rate of return was higher due to the increase in the base rate in November 2017 and the anticipated further rise in May 2018 (though market changes meant that this never materialised).

10. Implications

- 10.1 The financial and legal implications are addressed throughout this report. The Council’s investments were managed in compliance with the Code and the Prudential Code through the year.

11. Background Papers

[Treasury Management Strategy for 2017/2018 – Cabinet, 8 February 2017; OSC, 6 February 2017 \[FIN/404 refers\]](#)

[Treasury Management Mid-Year Review 2016/2017 – Cabinet, 29 November 2017; OSC, 27 November 2017 \[FIN/426 refers\]](#)

Report author and contact officer: Paul Windust, Chief Accountant (01293 438693)

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Appendix 1: Prudential and Treasury Indicators

During 2017/18, the Council complied with its legislative and regulatory requirements. The key actual prudential and treasury indicators detailing the impact of capital expenditure activities during the year, with comparators, are as follows:

Actual prudential and treasury indicators	2016/17 Actual £000	2017/18 Original £000	2017/18 Actual £000
Capital expenditure			
• General Fund	14,823	13,901	6,079
• HRA	16,294	37,468	23,375
• Total	31,117	51,369	29,454
Capital Financing Requirement:			
• General Fund	0	0	0
• HRA	260,325	260,325	260,325
• Total	260,325	260,325	260,325
Gross borrowing	260,325	260,325	260,325
External debt	260,325	260,325	260,325
Investments			
• Longer than 1 year	5,000		20,000
• Under 1 year	113,183		98,606
• Total	118,183	83,110	118,606
Net borrowing	142,142	177,215	141,719

Gross borrowing and the CFR - in order to ensure that borrowing levels are prudent over the medium term and only for a capital purpose, the Council should ensure that its gross external borrowing does not, except in the short term, exceed the total of the capital financing requirement in the preceding year (2016/17) plus the estimates of any additional capital financing requirement for the current (2017/18) and next two financial years. This essentially means that the Council is not borrowing to support revenue expenditure. This indicator allows the Council some flexibility to borrow in advance of its immediate capital needs in 2017/18.

The authorised limit - the authorised limit is the “affordable borrowing limit” required by s3 of the Local Government Act 2003. Once this has been set, the Council does not have the power to borrow above this level. The table below demonstrates that during 2017/18 the Council has maintained gross borrowing within its authorised limit.

The operational boundary – the operational boundary is the expected borrowing position of the Council during the year. Periods where the actual position is either below or over the boundary is acceptable subject to the authorised limit not being breached.

Actual financing costs as a proportion of net revenue stream - this indicator identifies the trend in the cost of capital (borrowing and other long term obligation costs net of investment income) against the net revenue stream.

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	2017/18 £000
Authorised limit	270,325
Maximum gross borrowing position	260,325
Operational boundary	260,325
Average gross borrowing position	260,325

Ratio of financing costs to net revenue stream	31 March 2017 actual	2017/18 original	31 March 2018 actual
Non - HRA	-8.03%	-4.51%	-8.99%
HRA	17.18%	17.59%	18.23%

	31 March 2017 Principal £000	Rate/ Return	Average Life yrs	31 March 2018 Principal £000	Rate/ Return	Average Life yrs
Fixed rate funding:						
-PWLB	260,325	3.2%	14.03	260,325	3.2%	13.03
-Market	0	0%		0	0%	
Variable rate funding:						
-PWLB	0	0%		0	0%	
-Market	0	0%		0	0%	
Total debt	260,325	3.2%	14.03	260,325	3.2%	13.03
CFR	260,325			260,325		
Over/ (under) borrowing	0			0		
Total investments	118,183	0.68%	0.48	118,606	0.75%	0.69
Net debt	142,362			141,719		

The maturity structure of the debt portfolio was as follows:

	Lower limit	Upper limit	31 March 2018 actual
Under 12 months	0%	10%	£0.00m (0%)
12 months and within 24 months	0%	10%	£0.00m (0%)
24 months and within 5 years	0%	10%	£11.00m (4%)
5 years and within 10 years	0%	20%	£69.00m (27%)
10 years to 20 years	0%	80%	£180.33m (69%)
20 years to 30 years	0%	25%	£0.00m (0%)
30 years to 40 years	0%	10%	£0.00m (0%)
40 years to 50 years	0%	10%	£0.00m (0%)

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The exposure to fixed and variable rates was as follows:

Debt portfolio £000	31 March 2017 actual	2017/18 original limits	31 March 2018 actual
Fixed rate	260,325	270,325	260,325
Variable rate	0	10,000	0

Investment portfolio £000	31 March 2017 Actual	2017/18 original limits	31 March 2018 Actual
Fixed rate	111,996	140,000	111,267
Variable rate	7,187	40,000	7,339

Detailed holdings at 31 March 2018

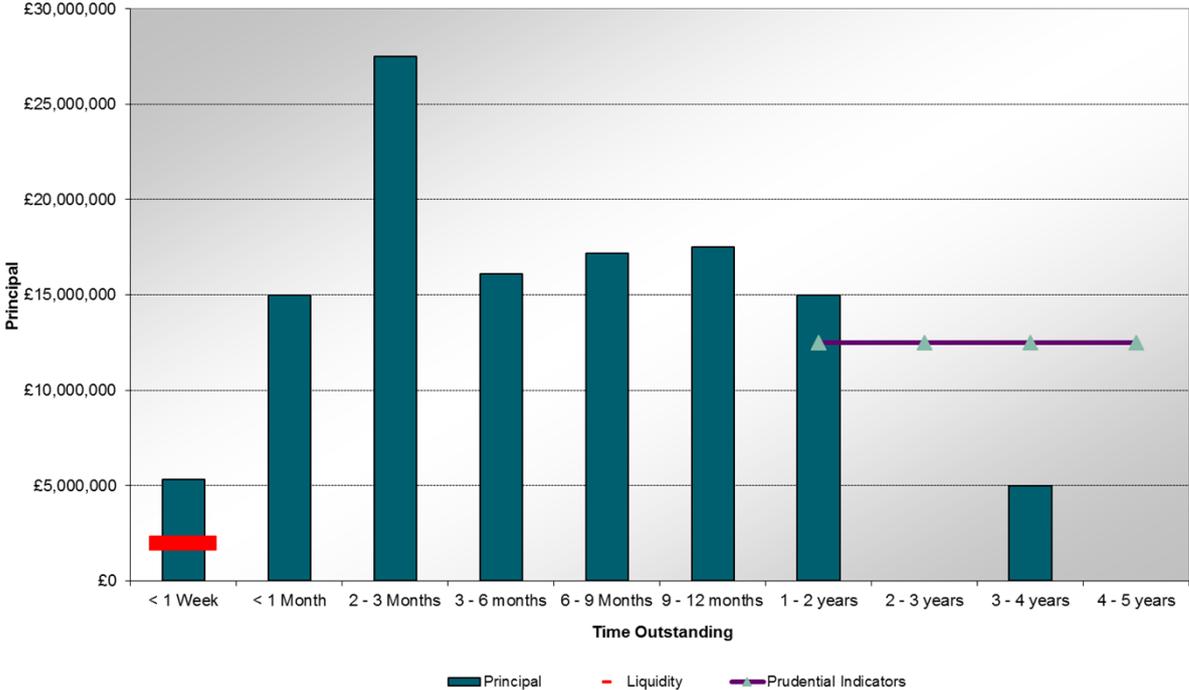
APPENDIX 2

Counter Party	Deal Ref	Issue	Maturity	Days to Mature	Interest Rate	Nominal (£m)	Total (£m)	Limit (£m)	Rating
AUSTRALIA BANKS									
Australia and New Zealand Banking Group	2436	17/08/2017	03/08/2018	125	0.400%	0.996	0.996	10.000	AA-
Commonwealth Bank of Australia	2422	24/05/2017	23/05/2018	53	0.520%	5.000			
	2439	01/09/2017	31/08/2018	153	0.500%	2.000	7.000	10.000	AA-
UK BANKS									
Goldman Sachs International Bank	2391		01/04/2018	1	0.755%	2.000	2.000	10.000	A
Lloyds Bank plc	20		01/04/2018	1	0.400%	0.139	0.139	10.000	A
The Royal Bank of Scotland plc	2427	28/06/2017	27/06/2018	88	0.660%	2.000			
	2428	04/07/2017	29/06/2018	90	0.613%	3.002	5.002	15.000	BBB-
Standard Chartered Bank	2469	29/03/2018	09/05/2018	39	0.720%	0.501	0.501	10.000	A
UK BUILDING SOCIETIES									
Coventry BS	2460	08/02/2018	08/08/2018	130	0.600%	1.500	1.500	10.000	A
CANADA BANKS									
Toronto Dominion Bank	2444	18/09/2017	17/09/2018	170	0.510%	2.000	2.000	10.000	AA-
CORPORATE BONDS									
Daimler AG	2453	15/11/2017	16/07/2018	107	0.750%	1.597	1.597	2.000	A-
GERMANY BANKS									
Landesbank Hessen-Thueringen Giroze	2426	27/06/2017	26/06/2018	87	0.480%	1.500			
	2450	03/11/2017	02/11/2018	216	0.700%	2.000	3.500	10.000	A
LOCAL AUTHORITIES									
Blackburn with Darwen BC	2467	29/03/2018	30/04/2018	30	0.850%	5.000	5.000	15.000	AA
Blackpool BC	2451	24/11/2017	23/11/2018	237	0.600%	4.000	4.000	15.000	AA
Central Bedfordshire Council	2472	29/03/2018	30/04/2018	30	0.670%	3.000	3.000	15.000	AA
Conwy County Borough Council	2455	01/12/2017	01/06/2018	62	0.520%	5.000	5.000	15.000	AA
Dumfries & Galloway Council	59	01/12/2017	02/12/2019	611	0.900%	5.000	5.000	15.000	AA
Eastleigh Borough Council	2468	28/03/2018	28/06/2018	89	0.900%	1.500	1.500	15.000	AA
Kingston-Upon-Hull City Council	36	02/12/2013	02/12/2021	1342	2.750%	5.000	5.000	15.000	AA
Mid Suffolk District Council	2461	28/03/2018	28/09/2018	181	0.750%	3.000	3.000	15.000	AA
Newcastle City Council	58	01/02/2018	03/02/2020	674	1.000%	5.000	5.000	15.000	AA
Northamptonshire County Council	2456	01/03/2018	28/02/2019	334	0.700%	5.000	5.000	15.000	AA
North Tyneside MDC	2447	02/10/2017	01/10/2018	184	0.560%	3.170			
	2457	21/12/2017	20/12/2018	264	0.750%	3.000	6.170	15.000	AA

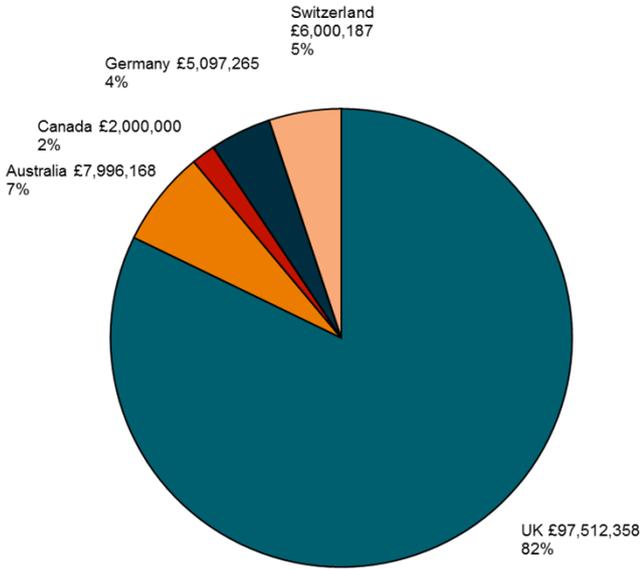
Counter Party	Deal Ref	Issue	Maturity	Days to Mature	Interest Rate	Nominal (£m)	Total (£m)	Limit (£m)	Rating
Peterborough City Council	57	27/11/2017	27/11/2019	606	0.900%	5.000	5.000	15.000	AA
City of Salford MDC	2445	30/10/2017	30/04/2018	30	0.450%	5.000			
	2448	16/11/2017	16/05/2018	46	0.450%	3.000	8.000	15.000	AA
Southampton City Council	2446	02/10/2017	01/10/2018	184	0.550%	5.000	5.000	15.000	AA
Stockport MBC	2462	29/03/2018	28/03/2019	362	0.850%	6.000	6.000	15.000	AA
Thurrock Borough Council	2454	08/12/2017	08/06/2018	69	0.520%	3.000			
	2458	05/01/2018	04/01/2019	279	0.700%	4.000	7.000	15.000	AA
Walsall Council	2459	31/01/2018	30/01/2019	305	0.700%	2.500	2.500	15.000	AA
MONEY MARKET FUNDS									
Standard Life Investments LF	4		01/04/2018	1	0.462%	3.450	3.450	6.000	AAA
Federated Prime Rate Cash Man	1		01/04/2018	1	0.455%	1.740	1.740	6.000	AAA
NETHERLANDS BANKS									
Rabobank Group	2449	01/11/2017	01/05/2018	31	0.520%	2.000	2.000	10.000	A+
SWEDEN BANKS									
Svenska Handelsbanken	17		01/04/2018	1	0.107%	0.010	0.010	10.000	AA-
SWITZERLAND BANKS									
UBS AG	2420	15/05/2017	11/04/2018	11	0.573%	2.000			
	2434	02/08/2017	21/06/2018	82	0.492%	1.001			
	2443	12/09/2017	11/09/2018	164	0.480%	3.000	6.000	10.000	A+
INVESTMENT PROPERTIES							118.606		
							21.322		
						252	139.928		

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Compliance with Liquidity and Prudential Indicator Limits

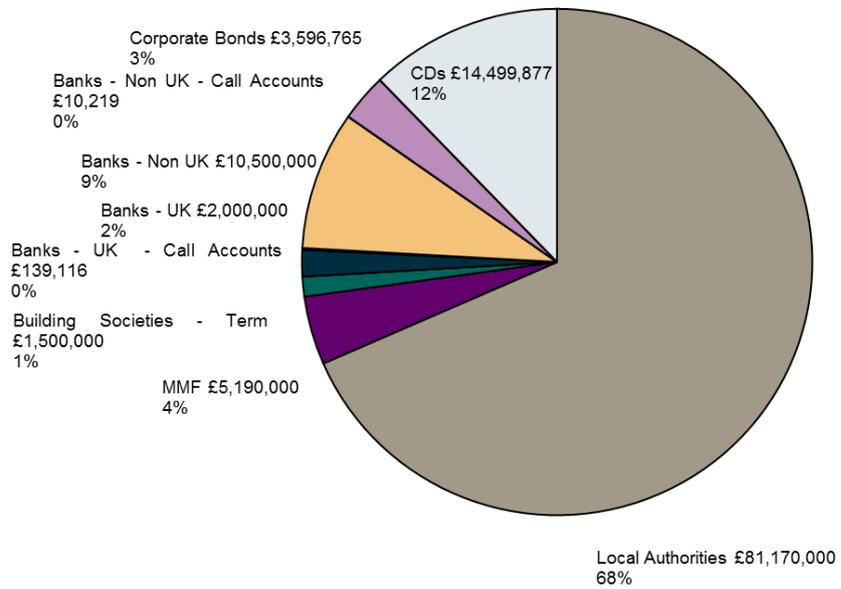


Country Limits



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Sector Diversification



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Crawley Borough Council

Report to Overview and Scrutiny Commission 25th June 2018

Report to Cabinet 27th June 2018

Licensing Houses in Multiple Occupation (HMOs)

Report of the Head of Strategic Housing and Planning Services – **SHAP/75**

1. Purpose

- 1.1 Legislation comes into force on 1st October 2018 that extends the mandatory licensing of houses in multiple occupation (HMOs) under the Housing Act 2004 to include all HMOs (regardless of the number of storeys) with five or more occupants forming two or more households. The purpose of this paper is to recommend that Cabinet note the use of the new mandatory duties, agree the proposed fee structure for issuing and renewing such licenses and note the change in working practices required to meet the new demands.

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the Cabinet.

- 2.2 Cabinet is recommended to:

- 2.2.1 Note the use of the new mandatory duties to license all licensable HMOs, as summarised in sections 4.1 to 4.3 of this report.
- 2.2.2 Approve the proposed fee structure, as summarised in section 5 of this report.
- 2.2.3 Note the proposed changes to working practices to meet the new demands placed on the service as a result of this new legislative burden as set out in Appendix One and agree the appointment of one additional full-time member of staff, to be funded from the additional fee income.

3. Reasons for the Recommendations

- 3.1 The legislation extends the mandatory licensing of HMOs and the Council's Private Sector Housing Team are legally required to implement it.
- 3.2 The current fee structure is fair, proportionate and continues to reflect the cost of providing the service.
- 3.3 Additional resources will be required to meet the increased work generated by the legislation change.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

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4. Background

- 4.1 Historically, mandatory licensing only covered HMO properties of three storeys or more with five or more occupants forming two or more households. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 extends mandatory licensing to include all HMOs with five or more occupants forming two or more households.
- 4.2 Landlords of HMOs with five or more occupants forming two or more households need to apply for a licence before the legislation comes into force on 1st October 2018. Failure to do so by this date will be a criminal offence.
- 4.3 The 2015 BRE Dwelling Level Housing Stock Modelling report estimated that Crawley has 513 HMOs in total, of which 55 are currently licensed under the existing Mandatory Licensing scheme. Based on the BRE report, there could be at least a further 460 HMOs in the borough, the majority of which are likely to be two storey properties due to the housing stock. Not all HMOs will require a licence, as those with four or fewer occupants are excluded from licensing requirements.

5. Proposed Licence Fees

- 5.1 The proposed licensing fees (as shown below) are the same as existing HMO licence fees:

Fees for shared accommodation:

Number of Occupants	Initial fee	Renewal fee
For a property accommodating 5 persons	£1099	£780
For a property accommodating 6 persons	£1118	£793
For a property accommodating 7 persons	£1135	£808
For a property accommodating 8 persons	£1151	£822
For a property accommodating 9 persons	£1171	£835
For a property accommodating 10 or more persons	£1187	£850

Fees for bedsit accommodation:

Number of Occupants	Initial fee	Renewal fee
For a property accommodating 5 persons	£1453	£1067
For a property accommodating 6 persons	£1524	£1125
For a property accommodating 7 persons	£1595	£1180
For a property accommodating 8 persons	£1667	£1239
For a property accommodating 9 persons	£1736	£1295
For a property accommodating 10 or more persons	£1809	£1354

Fees for hostel accommodation:

Number of Occupants	Initial fee	Renewal fee
For a property accommodating up to 10 persons	£1099	£780
For a property accommodating 11 - 20 persons	£1453	£1067
For a property accommodating 21 - 30 persons	£1809	£1354

- 5.2 The following table shows the initial licence fees charged by other West Sussex LHAs for a shared house occupied by 5 persons for comparison purposes.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

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Local Authority	Initial fee
Arun DC	£1261.00
Chichester DC	£854.90
Mid Sussex DC	£950.00
Horsham DC	£836.00

- 5.3 Local housing authorities are required to set licence fees to reflect the costs of providing the HMO licensing service. The fees can take into account the costs of developing the service, processing applications and monitoring accommodation.¹
- 5.4 The income generated from these fees must be ring-fenced to cover the cost of providing the HMO Licensing Service, including all overheads and oncosts.²
- 5.5 The Council Executive adopted the original HMO Licence fees in 2006 when Mandatory HMO Licensing was first introduced and those original fees have formed the basis of HMO licence fees ever since. These have been increased in line with the budget strategy.
- 5.6 There is no proposed reduction or increase in licence fees as a desktop exercise carried out as part of this implementation confirms the current charges are still appropriate and therefore applicable to the extended HMO licensing scheme.
- 5.7 No other West Sussex LHA are proposing to alter their HMO licence fees at this time although the Sussex Housing Group will be reviewing licence fees across the county as part of its annual work plan.

6. Description of Issue to be Resolved

- 6.1 This report recommends Cabinet note the use of the new mandatory duties, agree the proposed fee structure for issuing and renewing such licenses, note the change in working practice required and approve the additional staffing resource required to meet the new demands.

7. Information & Analysis Supporting Recommendation

- 7.1 Government are planning to release guidance regarding use of these powers **after** the legislation comes into force in October 2018.

8. Implications

- 8.1 Financial – It is estimated that the extension of mandatory licensing could generate in the order of £500,000 in the first year (based on 460 additional HMO licences x £1,099.00 per licence). As this is a five year license, £100,000 will be accounted for in each of five years.
- 8.2 Approximately £350,000 will be received in year 6 (as licenses must be renewed every five years) which equates to £70,000 per annum for years 6 to 10 (based on a renewal fee of £780.00).
- 8.3 The cost of an additional permanent member of staff will be £41,200 plus overheads. In the first year additional temporary resourcing will required to meet the demands of the service, these costs can be accounted for over the five years of the license. The net effect would result in a break even position over the period.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

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- 8.4 The additional resources required to fulfil the burden placed on the authority by this legislation will be funded through the additional income generated. Further information is detailed in Appendix One.
- 8.5 Legal – The extension of the mandatory HMO licensing scheme is likely to generate additional enforcement work, as this part of the private rented sector has not been subject to this level of regulation and scrutiny before. Legal advice and/or guidance is likely to be required if cases proceed beyond the service of notices.
- 8.6 The extent of Legal input needed is difficult to quantify at this time, but will be spread over the course of five years as programmed inspections identify issues with the properties concerned.
- 8.7 Equalities Impact – The Equalities Impact Assessment has identified that the implementation of this legislation will not have an adverse equalities impact. A copy of the assessment is at Appendix Two.
- 8.8 Environmental – There are no environmental implications resulting from use of this legislation.

9. Background Papers

- 9.1 There are no background papers associated with this report.

Contact Officer: *Chris Modder (Private Sector Housing Manager)*
chris.modder@crawley.gov.uk 01293 438418.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

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APPENDIX ONE – Resourcing Details

Demand:

The Private Sector Housing Team (PSHT) have identified 355 properties being let as HMOs during the course of their work. The 2015 BRE Dwelling Level Housing Stock Modelling report estimated that Crawley has 513 HMOs in total. Experience suggests that for every HMO that is known to the PSHT, there will be another HMO that is unknown. However, not all HMOs will require licensing as some HMOs will contain fewer than five occupants. Excluding the 55 [three storey] HMOs already licensed from the number predicted in the BRE report equates to 458. This is the best figure on which to base likely demand and has been rounded to 460.

Potential Income (based on 460 HMOs):

- Income from licence applications (in year 1) = £505,540 (for years 1 to 5)
- Income from renewing licenses (on 5 year cyclical basis) = £358,800 (for years 6 to 10)

Resourcing:

The law states that HMO licenses should be determined within a “reasonable period”³. The turnaround time for a licence at present is 3 months. If this paper is agreed at Cabinet this allows three months during which we would expect to receive licence applications (before the October deadline), allow a further three months for licenses to be determined and we have a six month window in which the Council should determine licence applications.

The process of licensing HMOs is also likely to generate enforcement work (as outlined in 8.5 of the main report). However it is not possible to estimate the volume of work with any degree of accuracy as the number of licensable HMOs and their condition are unknown.

Current Way of Working - Issuing Licences after Inspection of Property

HMO licence fees are currently set on the basis that each application requires 16.5 hours of officer and manager time to determine the application (including an inspection of the property before the licence is issued).

Time to license HMOs if inspections are carried out before issuing the licence:

16.5 hrs x 460 HMOs = 7590 hours of work (1012 7.5 hour working days¹ / 203 weeks / 51 months / 4.25 years)

To resource this 8.5 additional staff will be required over the 6 month period (if we adhere to a 3 month turnaround time). **This would not cover the enforcement work that would be generated and further additional resources would be required to meet this demand.**

In five years' time HMO landlords would need to apply to renew their licences. HMO renewal fees are currently set on the basis that each application requires 13.5 hours of officer and manager time to determine the application (including an inspection of the property before the licence is renewed).

Time to renew licences if inspections are carried out before renewing the licence:

13.5 hrs x 460 HMOs = 6210 hours of work (828 days² / 168 weeks / 42 months work/ 3.5 years)

To resource this 7 additional staff would be required over the 6 month period (if we adhere to a 3 month turnaround time).

1 Section 63(7) of the Housing Act 2004

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Note: Agency Private Sector Housing Officers currently attract a market rate of £30 - £40 per hour (figure obtained from Oyster Partnership agency) and agencies will usually charge approximately 20% for their involvement in the placement. An hourly rate of £30 equates to an overall cost of £57,720 per annum (excluding agency fee). A private sector housing officer did work with the team (via an agency) in 2015 at a cost of £30 per hour.

Proposed Change to Working - Inspection of Property after Issuing Licences

If HMOs were inspected on a programmed basis after the licence was issued (but within the 5 year period as required by law) this would reduce the initial time to issue the licence to 11.5 hours. This would allow the workload to be spread over a greater time period.

Time to licence HMOs if inspections are carried out after issuing the licence:

11.5 hrs x 460 HMOs = 5290 hours of work (approx. 705 days' / 143 weeks / 36 months / 3 years work)

To resource this you would need 6 staff over the 6 month period (if we adhere to a 3 month turnaround time). The remaining 2300 hours of deferred inspection and follow-up work could be carried out by one full-time officer in 62 weeks. It is proposed that 5 agency staff are utilised over a 6 month period with the recruitment of 1 full time member of staff which would also then be able to carry out the additional enforcement work.

In five years' time HMO landlords would need to apply to renew their licences. HMO renewal fees are currently set on the basis that each application requires 13.5 hours of officer and manager time to determine the application. If HMOs were inspected on a programmed basis after the licence was renewed (but within the 5 year period) this would reduce the initial time to issue the licence to 11.5 hours.

Time to renew licences if inspections are carried out after renewing the licence:

11.5 hrs x 460 HMOs = 5290 hours of work (approx. 705 days' / 143 weeks / 36 months / 3 years work)

To resource this you would need 6 staff over the 6 month period (if we adhere to a 3 month turnaround time). The remaining 920 hours of work deferred inspection and follow-up work could be carried out by the one full-time officer in 25 weeks.

Considerations:

- Resourcing the additional licences should be covered by the additional income generated along with the associated Court/Tribunal costs of enforcement.
- With the current way of working, the narrow timescale for inspections (over 6 months) would result in all enforcement work being identified and actioned over a very short period of time and require additional staffing resources to enable the service to cope with the demand. It would also place considerable demand on existing staffing resources (the Private Sector Housing Manager, Legal Services and Fraud Team most notably).
- The exact number of HMOs requiring licensing is currently unknown and the risk of not being flexible to respond to actual demand could result in additional costs to those detailed above if under estimated.
- Whilst we will be advertising the need to apply for a licence from July onwards, landlords may defer applying until September. To be able to process applications in a reasonable time (in 3 months as we currently do) a more steady flow of applications is required.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

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Our initial promotion [of the legislation] will attempt to address this by advising that delays in applying may lead to longer waits [to receive the licence].

- Resilience – Existing Private Sector Housing Officers are both trainees and have minimal levels of formal enforcement and prosecution experience. The team lost one PSHO in May and recruitment for an experienced replacement has been problematic.
- Recruiting a number of experienced agency staff at one time who are available to work the months required could be problematic but will offer the flexibility to meet demand when needed. If the demand is not as predicted, the level of additional staff will not be required and multiple agencies can be approached.
- If staffing resources are not in place to enable the Council to meet demand, we could be open to scrutiny and maladministration if a complaint were to be made and upheld to the Local Government Ombudsman
- The Council risk losing existing staff as they would be unable to meet the demands of the service.
- The issue of where additional staff would be seated and the cost of additional desks and IT have not been factored in at this stage.
- IT options and potential internal resources within other teams such as Environmental Health will be explored going forwards to assist with the work, reduce the burden in five years' time and carry out a comprehensive review of HMO licence fees based on the actual demand for and costs of the HMO service.

Recommendations:

- Authorities do not have to inspect every licensable HMO before issuing a licence but all licensable HMOs have to be inspected within five years. Therefore the recommendation is to inspect properties on a programmed basis after issuing licenses which is cost neutral to the council.
- To employ one additional member of staff on a FTE permanent basis (Scale G/H, £26,486 - £32,529) to meet initial demand (for issuing licenses) and ongoing demand (inspections and enforcement work on a 5 year cyclical basis). The person appointed should be experienced in HMO licencing, inspections and enforcement (i.e. not a trainee). The cost (for budgeting purposes) is £41,200 per annum. Employ agency staff as required on a flexible basis as dictated by demand.
- This allows for programmed inspections over a 5 year period and therefore the FTE post could manage these inspections and any associated enforcement work within their case load.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

APPENDIX TWO - EQUALITY IMPACT ASSESSMENT

Name of activity:	Extending mandatory of HMO licensing for HMOs with five or more occupants forming two or more households	Date Completed:	9th April 2018
Division responsible for activity:	Strategic Housing & Planning Services	Lead Officer:	Hannah Martin
Existing Activity	<input type="checkbox"/>	New / Proposed Activity	<input checked="" type="checkbox"/>
		Changing / Updated Activity	<input type="checkbox"/>

What are the aims / main purposes of the activity?

Legislation is to come into force on 1st October 2018 that extends the scope of mandatory licensing of houses in multiple occupation (HMOs) under the Housing Act 2004 to include all HMOs with five or more occupants forming two or more households.

What are the main actions and processes involved?

For the Private Sector Housing Team, this will mean a significant increase in workload, with a significant number of properties to be licenced. Compliant landlords will not be unduly affected by this legislation, other than the introduction of fees to be paid on a five yearly cycle. Non-compliant landlords will be required to bring their properties up to the required standard and comply with the HMO Management Regulations

Who is intended to benefit and who are the main stakeholders?

These powers were introduced by Government to improve standards in the private rented sector and make landlords more accountable for conditions within their properties.

Have you already consulted on / researched the activity?

Government carried out a consultation in 2016 regarding the extension of mandatory licensing powers and therefore further [local] consultation is not required.

Impact on people with a protected characteristic

Protected characteristics / groups	Is there an impact (Yes / No)	If Yes, what is it and identify whether it is positive or negative
------------------------------------	-------------------------------	--

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

Age (older / younger people, children)	No	This legislation was designed to target unscrupulous landlords and improve conditions within HMOs. A person's age has no bearing on the use of this legislation or its impact.
Disability (people with physical / sensory impairment or mental disability)	No	Whether or not a person identifies as having a disability has no bearing on the use of this legislation or its impact.
Gender reassignment (the process of transitioning from one gender to another.)	No	Whether or not a person is undergoing gender reassignment has no bearing on the use of this legislation or its impact.
Marriage & civil partnership	No	Whether or not a person is married or in a civil partnership has no bearing on the use of this legislation or its impact.
Pregnancy & maternity (Pregnancy is the condition of being pregnant & maternity refers to the period after the birth)	No	Whether or not a person is pregnant or on maternity has no bearing on the use of this legislation or its impact.
Race (ethnicity, colour, nationality or national origins & including gypsies, travellers, refugees & asylum seekers)	No	A person's race has no bearing on the use of this legislation or its impact.
Religion & belief (religious faith or other group with a recognised belief system)	No	A person's religion or religious beliefs have no bearing on the use of this legislation or its impact.
Sex (male / female)	No	A person's gender has no bearing on the use of this legislation or its impact.
Sexual orientation (lesbian, gay, bisexual, heterosexual)	No	A person's sexual orientation has no bearing on the use of this legislation or its impact.
Whilst Socio economic disadvantage that people may face is not a protected characteristic; the potential impact on this group should be also considered	No	A person's socio economic status has no bearing on the use of this legislation or its impact.

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

What evidence has been used to assess the likely impacts?

Government have already carried out an impact assessment regarding the introduction of this legislation, therefore further [local] assessment is not required.

What resource implications are there to deliver actions from this EIA?

Financial – It is estimated that the extension of mandatory licensing could generate approx. £505,540 in the first year (based on 460 additional HMO licences x £1,099.00 per licence) and approx. £358,800 on a five yearly cyclical basis (as licenses must be renewed at least every five years and renewal fees are lower at £780.00).

Legal – The extension of mandatory licensing is likely to generate additional enforcement work, as this part of the private rented sector has not been subject to this level of scrutiny before. Legal input may be required if cases proceed beyond the service of notices.

Outcome following initial assessment

Does the activity have a **positive** impact on any of the protected groups or contribute to promoting equality, equal opportunities and improving relations within target groups?

No

Does the activity have a **negative impact** on any of the protected groups, i.e. disadvantage them in any way.

No

Decision following initial assessment

Continue with existing or introduce new / planned activity

Yes

Amend activity based on identified actions

No

Action Plan (Has the EIA identified any positive or negative impact on any of the protected groups which requires action? E.g. adjustments to the approach or documents, changes to terminology, broadening parameters of policy, etc. If so record any actions to be undertaken and monitored)

Impact identified	Action required	Lead Officer	Deadline
None identified			

Monitoring & Review

Date of last review or Impact Assessment:

Not applicable

1 Section 63(7) of the Housing Act 2004

2 'Open for business – LGA Guidance on locally set licence fees'

3 Section 55 (5)(b) of the Housing Act 2004

Date of next 12 month review:	
Date of next 3 year Impact Assessment (from the date of this EIA):	

Date EIA completed:	9 th April 2018
Signed by Person Completing:	Hannah Martin
Date Sent to HR and Equalities Team:	
Approved by Head of Service:	

1 Section 63(7) of the Housing Act 2004
2 'Open for business – LGA Guidance on locally set licence fees'
3 Section 55 (5)(b) of the Housing Act 2004

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Crawley Borough Council

Report to Overview and Scrutiny Commission
25 June 2018

Report to Cabinet
27 June 2018

Crawley Growth Programme – Update

Report of the Head of Economic and Environmental Services, **PES/298**

1. Purpose

- 1.1. To provide a progress update to Cabinet on the Crawley Growth Programme, including further details on Programme governance, set out in sections 5 & 6 of this report.
- 1.2. To seek Cabinet approval to add the existing capital schemes for Three Bridges Station Improvement scheme and the Queensway – the Pavement scheme to the ‘Crawley Growth programme budget header’ as shown in section 7.2.
- 1.3. To seek Cabinet approval to increase the capital programme allocation to the Crawley Growth Programme by a further £587,595, of received S106 developer contributions. This will increase the budget to £7,381,354. The Table in section 7.6 below gives the breakdown of this overall budget.
- 1.4. To seek Cabinet approval to allocate £2.62m of capital monies from the existing Crawley Growth programme budget header in the capital programme to the individual Crawley Growth programme schemes set out in section 7.7 of this report.
- 1.5. To seek Cabinet approval to add the Station Gateway scheme to the capital programme under the Crawley Growth Programme budget header, as set out in section 7.3.

2. Recommendations

- 2.1. To the Overview and Scrutiny Commission:
 - 2.1.1. That the Commission consider the report and decide what comments, if any, it wishes to make to the Cabinet.
- 2.2. That Cabinet:
 - 2.2.1. Approve the addition of the existing Three Bridges station improvement scheme and the Queensway – the Pavement scheme to the ‘Crawley Growth programme’ budget header.
 - 2.2.2. Approve the allocation of £2,620,000 from the existing Crawley Growth programme capital programme monies to the individual schemes as outlined in section 7.7 of this report.
 - 2.2.3. Approve an increase to the overall Crawley Growth programme capital programme allocation of £587,595 of received S106 monies, as set out above and in section 7.5 of this report.
 - 2.2.4. Approve the addition of the Station Gateway scheme to the Crawley Growth Programme budget and an allocation of £100,000 to the scheme, as set out in section 7.3 of this report.

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3. Reasons for Recommendations

- 3.1. The eight schemes listed below in the table in section 5.2 of this report are all part of the Crawley Growth programme of schemes, in accordance with the funding agreement between West Sussex County Council and the Coast to Capital Local Enterprise Partnership and the Partnership Agreement between West Sussex County Council and Crawley Borough Council. The purpose of the recommendations in 2.2.1, 2.2.2 and 2.2.4 above therefore is to ensure that these schemes are added to the Crawley Growth programme budget header within the CBC capital programme, each with their own capital funding allocation, further to Cabinet approval of the Crawley Growth programme on 4 October 2017.
- 3.2. In addition, the previous Cabinet report on the Crawley Growth programme informed Members that the Crawley Growth programme will be part financed by an allocation of £2,481,000 of S106 funding, as set out in the report to Cabinet of 4 October 2017. To date Crawley BC has received £1,814,389 in developer contributions, of which £393,759 has already been allocated to Three Bridges Railway Station Improvement (PES/280). £833,035 has been set aside for Crawley Growth Programme schemes where West Sussex CC are the project lead (subject to the standard S106 approval process) and a further £113,000 of S106 contributions has been paid direct to West Sussex CC in accordance with a specific clause in a S106 agreement. The purpose of the recommendation set out in 2.2.3 is therefore to allocate the remaining £587,595 S106 funds currently held by Crawley BC to the Crawley Growth programme budget header.

4. Background

- 4.1. At the meeting of Cabinet on 4 October 2017, Cabinet members were informed that the total cost of the Crawley Growth Programme is anticipated to be £60.4 million and that it will be funded from multiple sources including £29.081m to be funded from private sector external organisations including Metrobus, MRBID, GAL and developer contributions.
- 4.2. The remaining £31.592m for the overall investment package is to be provided as follows :

Programme Funding	£m's	Comments
LGF	14.640	
West Sussex CC	7.891	
CBC Capital (see section 6.2)	5.400	
S106 (CBC)	2.368	NB subject to normal S106 approval process
S106 (WSCC – for the Worth Park Avenue cycle way scheme)	0.113	
CBC CIL (for the Three Bridges station and London Rd/ Manor Royal junction Improvement)	1.180	
TOTAL	31.592	

5. Programme update

- 5.1. The current funds available to the Crawley Growth Programme budget header within the CBC capital programme stand at £7,381,354 subject to the approvals included within this report; with an additional £1,490,646 anticipated to be received from CIL (£1,000,000), S106 (£168,646) and West Sussex County Council (£322,000). Once received these funds will be added to the Crawley Growth programme budget header.
- 5.2. Subject to receipt of the above additional funds, Crawley Borough Council will be the lead organisation for the delivery of Crawley Growth programme schemes totalling £8.872m. Crawley Borough Council will deliver part of the Station Gateway project with West Sussex County Council remaining as the lead authority. The individual scheme budget allocations are as below:

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Scheme Costs	Lead Org	Contractual Budget (£m's)
Manor Royal Cycle Imps	CBC	1.992
Manor Royal Superhubs	CBC	0.300
Queensway	CBC	2.200
Three Bridges Station	CBC	2.900
Town Centre Cycle Imps	CBC	1.100
Town Centre Signage	CBC	0.180
Town Centre Superhubs	CBC	0.100
Station Gateway	WSCC	0.100
	Total	8.872

5.3. Since the LEP Board granted funding for the Crawley Growth Programme in September 2017, significant progress has been made, both in terms of governance protocols and individual scheme delivery:

5.4. Key highlights include:

- **Queensway & The Pavement** – planning permission granted January 2018; currently seeking a construction contractor; works anticipated to start on site January 2019; completion October 2019.
- **Station Gateway and Eastern Gateway** public realm and highway improvements – preliminary designs complete; public information sessions to be held in June 2018. Anticipated construction period April 2020 to June 2021
- **Cycling & Walking Improvements** – priority schemes identified; initial design work commenced; design approach agreed with WSCC; process to recruit dedicated project manager complete. Project Manager starts Aug 18.
- **Haslett Avenue East / Three Bridges station- Traffic Signal Upgrades** - complete
- **Bus Shelter Real Time Passenger Information (RTPI) Installations** – completed with an additional 66 RTPI displays installed across the network
- **Worth Park Avenue Cycle Path to Three Bridges station**– complete
- **Manor Royal Junction Improvements** – progressing well with feasibility design work underway, work anticipated to be delivered in 2019 and 2020.
- **Gatwick Railway Station Improvements** – planning application submitted; decision due shortly
- **Three Bridges Station Improvements** – extensive public consultation completed Jan-Feb 2018; strategic partner commitment and funding secured; revised design proposals underway along with a programme of intensive traffic modelling.
- **Town Centre Commercial Space Growth** – consultants appointed to undertake town centre commercial space analysis, focused on key opportunity sites; final report due by end July 2018.
- **Town Centre Signage & Wayfinding** – 20 new fingerposts and monoliths installed across the town centre March 2018
- **Bandstand** relocation to Memorial Gardens complete; official opening 16 June 2018.

6. Crawley Growth Programme governance - update

6.1. West Sussex County Council has taken on the role of lead delivery body for the Crawley Growth Programme and a Funding Agreement between WSCC and the LEP has been signed to this effect. This sets out the obligations for overall delivery and financial management of the programme and provision of quarterly progress reports / financial claims to the Coast to Capital Local Enterprise Partnership in order to draw down LGF monies against agreed expenditure.

6.2. Crawley Borough Council has signed a partnership agreement with West Sussex County Council, which confirms the Crawley Growth programme governance, budget and delivery arrangements and the responsibilities of each authority for management of the programme.

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The partnership agreement references the Funding Agreement between West Sussex C.C and the Coast to Capital Local Enterprise Partnership. On 4 October 2017 (PES/259), Cabinet authorised delegated authority to the Head of Economic and Environmental Services (in consultation with Head of Legal and Democratic Services) to sign an agreed partnership agreement with West Sussex C.C

- 6.3. The overall co-ordination and strategic management of the Crawley Growth Programme is undertaken by the Crawley Growth Board, chaired by the Chief Executive of Crawley Borough Council with the Executive Director for Economy, Infrastructure and Environment at WSCC and attended by senior representatives from Crawley BC, WSCC and project specific partner organisations.
- 6.4. The regular monitoring and oversight of the individual schemes within the Programme is undertaken by the Crawley Growth Programme Delivery Team, comprising officer representatives from Crawley BC, WSCC and scheme partners. The Delivery Team reviews project updates (including projection initiation documents, risk registers, communication plans) and compiles programme level reports and analysis for the Crawley Growth Board.
- 6.5. The Crawley Growth Programme includes the following key strategic partners and delivery bodies: Manor Royal BID, Gatwick Airport Ltd, Arora Group, Network Rail, Govia Thameslink Railway (GTR) Southern, Town Centre Partnership and town centre businesses.
- 6.6. Ongoing key decisions related to the delivery of the Crawley Growth programme will be taken by Cabinet in regard to Crawley BC led schemes and through the West Sussex CC decision making processes, in regard to WSCC led schemes.

7. Proposals to add existing schemes to the Crawley Growth Programme budget header.

7.1. On 4 October 2017, (minute 32 refers) Cabinet approved the allocation of £2.8 million of Crawley BC capital programme funding from the Town Centre Regeneration Fund to the Crawley Growth Programme, to help unlock £14.6m of Local Growth Funding (LGF) from the LEP.

7.2. It is proposed to add the existing Three Bridges Station improvement scheme and Queensway – The Pavement to the Crawley Growth Programme, as set out in the table below.

Current Budget	Crawley	WSCC (Phase 1)	S106	Currently in the capital programme	Cabinet report
Crawley Growth	2,620,000			2,620,000	PES/259 - 04.10.17
Town Centre signage	180,000			180,000	PES/252 - 29.11.17
Sub total	2,800,000			2,800,000	
Queensway	1,100,000	900,000		2,000,000	PES/230 - 22.03.17
Three Bridges Station	1,500,000		393,759	1,893,759	PES/280 - 21.03.18
Combined total	5,400,000	900,000	393,759	6,693,759	

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Proposals to add Station Gateway, to the Crawley Growth Programme Budget.

- 7.3. Crawley Borough Council will be responsible for delivering part of the Station Gateway project related to the preparation of scheme detailed designs. West Sussex County Council is the lead authority for the project and will pay Crawley Borough Council for our contribution to scheme delivery, which will enable a budget of up to £100k.
- 7.4. **Station Gateway** – A programme of public realm upgrades to transform the living environment, with the provision of increased bus bays and new bus shelters. The scheme will also see a number of highway changes to improve pedestrian space and crossings. All of this will help unlock the redevelopment of the Station Gateway site, which has outline planning permission for 308 high quality residential apartments and a new railway station.

Proposals to add S106 funds to the Crawley Growth Programme Budget

- 7.5. The proposal is to increase the overall CBC capital programme allocation to the Crawley Growth Programme by a total of £587,595 of S106 developer contributions, which have already been paid to the Council. The S106 contributions will not be committed to specific projects until they have gone through the established Crawley Borough Council S106 approval process, subject to which S106 funds will then be requested to be added to individual Crawley Growth programme schemes through the Quarterly budget monitoring reports. Members will be kept informed as to the outcome of the approval process through the Members Information Bulletin.
- 7.6. The above additions to the 'Crawley Growth Programme mean that the total capital funding allocation to the Programme rises to £7,381,354 as shown in the table below.

Crawley Growth Programme	Budget
Current items in the capital programme	
Three Bridges Railway Station	£ 1,893,759
Queensway - The Pavement	£ 2,000,000
Unallocated Crawley Growth Programme monies	£ 2,620,000
Town Centre Signage & Wayfinding	£ 180,000
Total within the existing capital programme	£6,693,759
Station Gateway	£100,000
S106 allocation	£587,595
Revised capital programme for the Crawley Growth programme	£7,381,354

Proposed Allocations to Individual CGP schemes

- 7.7. It is proposed to allocate the above £2,620,000 of capital monies from the overall Crawley Growth programme allocation to the following schemes:
- **Manor Royal cycle improvements (£1,662,000)** – A programme of cycle path upgrades and cycle route network development across Manor Royal, linking Manor Royal more effectively to Crawley Town Centre and Gatwick and Three Bridges station railway stations. This will improve greatly the ability to commute by bike into and out of Manor Royal.
 - **Town Centre cycle improvements (£954,000)** - A programme of cycle path improvements to improve significantly connectivity within the town centre, including a “ring” route around the town centre core, along the Boulevard, College Road and Station Way. This will greatly improve cycle connectivity between key town centre regeneration sites and the town centre core.

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- **Super-hubs (£4,000)** - The provision of larger higher quality bus shelter facilities, such as WIFI and digital screens, at prominent locations in Manor Royal at Crawley bus station and at Three Bridges and Gatwick railway stations, so to boost bus patronage and increase volumes of sustainable commuting.

8. Financial Implication

- 8.1. These proposals require no direct additional financial revenue or capital funding commitment from Crawley Borough Council.
- 8.2. S106 resources proposed to be allocated to the Crawley Growth Programme through this report are already secured from site developers through the planning process.

9. Legal Implications

- 9.1. Crawley Borough Council has signed a partnership agreement with West Sussex County Council, which confirms the Crawley Growth programme governance, budget and delivery arrangements and the responsibilities of each authority for management of the programme.
- 9.2. The Coast to Capital Local Enterprise Partnership has drawn up a programme delivery contract for the Crawley Growth Programme, which it has signed off with West Sussex County Council, as lead delivery body. The County Council has in turn sought to confirm the participation and commitment of Crawley Borough Council to delivery of the Growth programme through a partnership agreement, as described above.

10. Background Information

Report to Cabinet 4 October 2017 - [Proposed Crawley Growth Programme 2017-21 \(PES/259\)](#)

Report to Cabinet 29 November 2017 - [Town Centre Signage & Wayfinding \(PES/252\)](#)

Report to Cabinet 27 March 2017 - [Town Centre Regeneration Programme \(Phase 2\) Queensway & The Pavement \(PES/230\)](#)

Report to Cabinet 21 March 2018 - [Three Bridges Station Improvement Scheme \(PES/280\)](#)

Report author and contact officer:

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Crawley Borough Council

Report to Overview and Scrutiny Commission 25 June 2018

Review of Outside Bodies and Organisations Scrutiny Panel Final Report

Report by the Chair of the Review of Outside Bodies and Organisations Scrutiny Panel:
Councillor C A Cheshire, **OSC/268**

1. Purpose

- 1.1 The Review of Outside Bodies and Organisations Scrutiny Panel was established in January 2018 to evaluate the current system and to consider how and if, it adds value to the Council. This report presents the findings and recommendations. The key objectives of the review were:
- a) To assess the current position (identify strengths/weaknesses in the ways of working)
 - does the Outside Body representative have to be in their official Councillor capacity
 - how often meetings are held and attendance
 - does the Councillor provide feedback (eg HASC feedback to OSC)
 - b) Identify how the Link Officers liaise with the Organisations and Councillors
 - c) Identify how the Organisations liaise with the Councillors
 - d) Improvements to the current system
- 1.2 The Panel met 3 times between January and June 2018. The Members of the Panel were:
Councillors C A Cheshire (Chair), M L Ayling, R G Burgess, R S Fiveash and A Pendlington.

2. Recommendations

2.1 To the Overview and Scrutiny Commission:

That the Commission considers the work of the Scrutiny Panel and the recommendations (further expanded upon in section 7), deciding what comments, if any, it wishes to submit to the Governance Committee at its meeting on 18 September 2018.

2.2 To the Governance Committee:

The Committee is recommended to approve:

- a) That an information sheet be prepared giving pertinent information relevant to the outside organisations to assist Councillors in agreeing nominations at group meetings which was trialled in advance of the 2018 AGM. (Further information is included in section 7).
- b) That it be highlighted that the nomination of Councillors to outside organisations is not predicated on their receipt of a Council grant or the need for scrutiny of its use, due to the stringent monitoring already in operation.

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- c) That Councillors who sit on outside bodies must accept their obligations to maintain their responsibilities and that guidance/support should be provided to enable an effective service (be this from the Council, the outside organisation or that the Councillor initiate this themselves through effective liaison).

Request Full Council to approve:

- d) That nominations for Conservation Area Committees be defaulted to 'Ward Councillor(s)'.
- e) That 'Friends Groups' be removed from the official list of outside bodies list as there should be no formal Councillor representation.
- f) That where a response was not received to the evaluation, an appointment is no longer made by the Council (this is in line with other authorities undertaking a similar review).
- g) That there should be a mutual understanding between Councillors and organisations to maintain communication and effective liaison.

3. Reasons for the Recommendations

- 3.1 To enable the Council to consider improvements to its current process (detailed in section 5) in appointing to Outside Bodies and Organisations as this is currently complex and confusing.
- 3.2 The review of outside bodies has been conducted to ensure that the Council activities in terms of outside bodies are more focused, that the information the Council holds is accurate and that Councillors have clear guidance on their role and responsibilities when appointed to an outside body.
- 3.3 To assist Councillors and Officers to continue to work in an efficient way. It is evident that the level of appointments to Outside Bodies has an impact on already busy Councillors' workloads. Whilst retaining links with Outside Bodies is an important aspect of community leadership, it is also important that the activities of the Council and Councillors are focused around corporate priorities and *where it can add most value to the Council or consider whether Councillor involvement could be undertaken differently.*

4. Background - The Panel's investigations and information gathering

- 4.1 Outside bodies are external organisations which have requested that the Council appoint a representative to them. Outside bodies have separate governance structures to the Council. Appointments to outside bodies can be an important mechanism for community leadership, partnership and joint working. However in contrast, the evaluation concluded it is necessary that Councillors take a keen interest in the organisation and its management but in some instances knowledge, information sharing and joint working could be undertaken through other approaches.
- 4.2 It was agreed to review the appointment of outside bodies to ensure that Council activities in terms of outside bodies are more focused and actually add value to the Council. It was also necessary to ensure that Councillors have clear guidance on their role and responsibilities when appointed to an outside organisation.
- 4.3 Several local authorities have also reviewed their appointments to outside bodies. In many of these cases, a number of organisations did not respond to the evaluation and

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it has been recommended that where a response was not received an appointment is no longer made by the Council.

4.4 Appointments to outside bodies can include different roles:

- Trustee
- Committee Member
- Company Director
- Observer

These different roles have different responsibilities and it is important that Councillors are aware of the nature of their appointment. It is imperative that guidance and support be provided for Councillors who sit on outside bodies and there should be an understanding of their responsibilities under law. The Legal Implications Guidance (Appendix A) have been updated and will be circulated to Councillors to assist them in their outside body roles.

4.5 As Councillors are appointed by the Council they must consider the code of conduct in terms of their actions on the outside bodies and adhere to the seven principles of public life and the general obligations under the code of conduct including acting with integrity and not bring the Council into disrepute.

5. Current Situation

5.1 Each year the Council proposes representations to Outside Organisations to which the Council is invited to make nominations. In the year 2017-2018 there were 28 Outside Organisations and an associated Link Officer to each group, with usually at least 2-3 Councillors nominated to each Outside Organisation.

5.2 Once nominations are agreed, the Outside Body are informed by the Members' and Mayoral PA, of the details of the appointed Councillor(s) in an email. The email should ask the organisation to provide the Councillor with a clear statement of what will be expected of them. It should also state the Council's requirement for the Councillor to be indemnified, or for their involvement with the Body to be regularly risk assessed.

5.3 The Outside Body should be advised that they would be required to provide Councillors and Link Officers with timely agendas, papers and minutes of meetings.

5.4 The Link Officer are informed by the Members' and Mayoral PA, of the details of the appointed Councillor(s) and the Outside Body in an email that sets out the basis for their involvement in the Outside Body.

5.5 A Councillor, who is asked to take part on an outside body, should confirm with the outside organisation what will be expected of them. Councillors should be aware that the rules of the outside body and the Council might limit their ability to take an active part in discussions on particular topics within the Council.

5.6 The role of Councillors on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. In essence, if the outside body comes into conflict with the Council and the Councillor is a director, trustee or on the management committee of the outside body, it is likely that their prime duty would be to the outside body in the conduct of the outside body's affairs.

5.7 If there is a major dispute between the Council and the outside body, then the Councillor may be placed in an untenable situation. Ultimately, it is possible that the Councillor may find they are unable adequately to carry out their responsibilities properly, both as a Councillor and as a director, trustee or voting member on the

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management committee of the outside body. In such circumstances there is no alternative but to resign from one of the positions. But this would be an exception, and should not deflect Councillors generally from being prepared to participate in and contribute to the outside organisation.

- 5.8 Councillors are urged to seek advice at an early stage if they are unsure of their responsibilities.
- 5.9 Councillors and officers on outside bodies are under a duty to exercise independent judgment in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and officers may have been appointed to represent the Council on the outside organisation, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or officer is partaking in an outside organisation in a representative capacity, they must declare that fact to the organisation on taking up the appointment. If it is not possible to bring this to the attention of the organisation before the first meeting, then this should be done at the first meeting of the organisation in question. There will be a fine line to tread between the duty to the organisation and to the Council.
- 5.10 Ultimately, the Councillor or officer in acting as a director/trustee or member of a management committee of an outside organisation must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or officer in breach of duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them. The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation. If this is not possible then the Councillor/officer should absent themselves from the consideration of the item and not participate in the decision on the matter.
- 5.11 Councillors and officers on outside bodies must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected, where appropriate, to seek professional advice.
- 5.12 Under the Members' Code of Conduct, a Councillor appointed as the Council representative to a specific body has a personal interest which must be declared and forms part of that Member's Register of Interests held by the Council. This also requires the Councillor to disclose the existence and nature of the interest whenever the Councillor wishes to speak on the matter at a meeting of the Council. Councillors will also need to consider whether the personal interest also gives rise to a prejudicial interest in the circumstances.
- 5.13 Councillor duties as directors, or trustees or as members of a Management Committee may well be regarded, on an objective appraisal, as giving rise to a legitimate perception of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Councillors will be aware that participation in the making of a decision by a Councillor disqualified by bias impairs the decision. In these circumstances legal advice should be sought prior to participating. If for example the Councillor simply participated in a decision making forum, bias is unlikely to arise. Similarly for membership of an advisory or consultative body a Court is unlikely to assume bias unless that body had determined a line which is being advocated by the Councillor.
- 5.14 The same rules do not apply to Councillors who attend meetings of outside bodies unambiguously as observers. Observers can participate in discussions of the outside body but will not have a right to vote.

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6. Methods of Investigation and Evidence Gathering

Witnesses

- 6.1 The following officers have been involved in the Review, as the most appropriate stakeholder representatives that had been identified through the Scoping Framework:
- Craig Downs (Funding and Commissioning Officer)
 - Anthony Masson (Senior Planning Officer)
 - Ian Warren (Senior Planning Officer)
- 6.2 Both Senior Planning Officers provided information on the role, the support services provided together with the work carried out with the appointed Councillor(s) throughout the appointment to the Outside Organisations and the Organisations themselves.
- 6.3 Both officers work was planning based, and for the purposes of the scrutiny panel was in connection with the Conservation Area Committees where there was a historic or architectural interest or if there were comments required on a planning application. The majority of the committees were independent but worked with the Council. Attendance by Councillors tended to be by Ward members. With regards to the role and responsibilities, it was made clear that the officers do not attend every meeting and only do so if there is a specific issue or item of concern. However if/when a new Conservation Area Committee is established greater attendance may be required at the outset purely to assist in the arrangements and to provide guidance. It was confirmed that the officers act as advisors as the Councillors tend to have the local knowledge and provide the conduit between the Council and the Committee.
- 6.4 The Funding and Commissioning Officer confirmed information relating to the grants process. It was acknowledged that the role of the Link Officer was advisory and assisted in enabling communications between the Council and outside organisations or voluntary/community sector.
- 6.5 It is therefore noted that Officers' roles should be advisory and the Councillors nominated to outside organisations should be the conduit (link member) and assist the organisation with providing links to other services within the Council should other queries arise. It is paramount for the nominated Councillors to be the link between the organisation and the Council.

All Link Officers are identified based on their specific knowledge of the service area and Outside Organisation.

Link Officer Role -

- To act in an advisory capacity.
- Assist in enabling communications between the Council and Outside Organisation / Voluntary Sector.
- To act as a local contact point if required between the Council and Outside Organisation / Voluntary Sector.

Desk Based Research

- 6.6 Desk based research was undertaken to survey other authorities that had reviewed their appointments to outside bodies or recently updated their guidance. These included: London Borough of Sutton, Hertsmere Borough Council, London Borough of Southwark, Southampton City Council, Worcester City Council and Dartford Borough Council.

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Consultation

- 6.7 The Scrutiny Panel sought views from internal and external stakeholders (Councillors and Link Officers) and all 28 Outside Bodies through a consultation exercise (survey).
- 6.8 At the time of writing, 11 responses had been received from outside organisations.
- 6.9 Of the 28 surveys sent to Link Officers (one per organisation), 11 responses had been received from Link Officers.
- 6.10 Of the 56 surveys sent to Councillors (one for each organisation), 20 responses had been received from Councillors nominated on outside bodies, 36 surveys remain unreturned which the Panel felt was disappointing.

7. Findings, Actions & Supporting Recommendations

- 7.1 Referring to the consultation analysis, it was clear that there were inconsistencies with regards to the survey responses.

Community Grants Programme

- 7.2 It was evidenced that some responses linked the nomination of outside organisations to the receipt of community grants. It was highlighted that this was a misunderstanding. The nomination of Councillors to Outside Organisations should not be undertaken based on the provision of, or the scrutiny of, the Council awarding a Community Grant.
- 7.3 The provision of Community Grants is specifically administered by the Funding and Commissioning Officer within Community Development and applies stringent terms and conditions. Organisations awarded funding are required to sign a standard funding agreement, which includes certain undertakings - which includes providing regular detailed monitoring reports on the use of any funding within a specified period. The Grants Process is audited through the Council's Internal Audit. This is included in the Internal Audit Plan, submitted to the Audit Committee.

Recommendation:

That it be highlighted that the nomination of Councillors to outside organisations is not predicated on their receipt of a Council grant or the need for scrutiny of its use, due to the stringent monitoring already in operation.

Survey Results

- 7.4 At the time of writing, 11 responses had been received from outside organisations. Other local authorities had been strict in their approach to reviewing appointments to outside organisations. It is recommended to duplicate this approach and despite reminders being issued, where responses are not received it is proposed that an appointment is no longer made.

Recommendation:

That where a response was not received to the evaluation, an appointment is no longer made by the Council (this is in line with other authorities undertaking a similar review).

- 7.5 The majority of those responses received from the outside organisations were positive in terms of the current relationship and how well this had worked over the last 12 months.

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- 7.6 However, one organisation highlighted that they no longer wished for a Councillor appointment, whilst another stated that their organisation was purely a 'group of volunteers' and the Councillor 'acts voluntarily as contact point to the Council and its services'.
- 7.7 It is apparent from this response, that there are groups where there may be no need for an official Council nomination. The Councillor would not serve on the body as a representative of the Council but through a natural interest in local activity and the group would be removed from the official outside bodies list. A 'Friends Group', by default was resident led or by voluntary group. The largest park in the town has Councillor attendance but not in a nominated Councillor capacity and Councillors can still become a 'Friend' through other ways. There was strong support to remove 'Friends Groups' from the outside bodies list as there should be no need for formal Councillor representation. A Councillor can continue to liaise and provide guidance as part of their constituency duties or attend independently.

Recommendation:

That 'Friends Groups' be removed from the official list of outside bodies list as there should be no formal Councillor representation.

- 7.8 At the time of writing, 11 responses had been received from Link Officers. Unfortunately one Link Officer also responded to say that they did not know which organisations they were a Link Officer for.
- 7.9 Whilst 73% (8) of the respondents receive agendas for the meetings, only 27% (3) regularly attend the meetings. This supports the information provided at the witness sessions by the Planning Officers that officers only attended where there was a specific need.
- 7.10 With reference to the responses from Councillors, 36 surveys remain unreturned. *Based on the 20 responses received, only 55% correctly identified their Link Officer.*
- 7.11 There was a mixed response in terms of 'adding value' to the Council. 75% (15) of Councillor responses had positive comments regarding the process. It should be noted that other respondents included inaccurate reference to the Community Grants process.
- 7.12 More alarmingly, following the analysis that had been completed it was clear that *Councillors were unaware or unsure of the capacity in which they serve on the various outside organisations.* When comparing and contrasting the results from the organisations along with those from Councillors nominated for that organisation it was apparent that the majority of Councillors were not clear, or misunderstood the role.
- 7.13 Out of the 7 responses received from both the outside organisation and Councillor, 4 Councillors answered that they did not know in which capacity they served, whilst only 3 Councillors correctly identified the capacity. This potentially has implications with regards to voting rights and liabilities. Where an organisation stated that the nominated Councillor would serve as an observer, 1 Councillor correctly identified this to be their role, however another response incorrectly identified that they would be a committee member. This could prove problematic if the Councillor believes they serve in a decision-making capacity.
- 7.14 Interestingly, when comparing the responses to the individual Councillors' Register of Interest forms on the website, these had the correct organisations documented and yet survey responses were still inaccurate. One organisation stated that the nominated Councillor would be a trustee; the Councillor's survey response stated that they did not know in what capacity they would serve and yet in their Register of Interest form documented the organisation as a 'Trustee Board'.

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- 7.15 There were responses regarding specific organisations, in particular Conservation Area Committees. Some Ward Councillors tended to be nominated to these as a matter of course. Some survey responses had incorrectly indicated that these Committees provided a way of being aware of activities within the ward. As documented via the witness sessions and the responses from the organisations themselves, the purpose of the Conservation Area Committees was planning based and dealt with historic and architectural interests or if there are comments required on a planning application.
- 7.16 Additionally, a response provided from a specific Conservation Area Committee questioned the need for a Councillor to attend every meeting.
- 7.17 Given this information, it is recommended that these be defaulted to 'Ward Councillor(s)'. In the rationale and grouping of organisations which have in the past had representation from the Council it is clear some groups require a liaison role. Therefore it would be possible for organisations to approach individual Councillors to provide advice and guidance as part of their constituency duties. However this would be at the discretion of the Councillor, rather than the Council.

Recommendation:

That nominations for Conservation Area Committees be defaulted to 'Ward Councillor(s)'.

- 7.18 As a result of the evidence collated, there is a need for Councillors to be better informed regarding the outside organisation to which they are appointed. Additional information giving pertinent information relevant to the outside organisations would assist Councillors in completing the nominations at group meetings. This would include information such as number of nominees required, frequency of meetings, time of meetings (daytime/evening) and location. It is therefore recommended that a detailed information sheet be compiled by Democratic Services as part of the nomination process (and this was trialled in advance of the 2018 AGM).

Recommendation:

That an information sheet be prepared giving pertinent information relevant to the outside organisations. The aim is to assist Councillors in completing nominations at group meetings.

- 7.19 That Councillors who sit on outside bodies must accept their obligations to maintain their responsibilities and support should be provided to enable an effective service (be this from the Council, the outside organisation or that the Councillor initiate this themselves through effective liaison).

Recommendation:

That Councillors who sit on outside bodies must accept their obligations to maintain their responsibilities and guidance/support should be provided to enable an effective service (be this from the Council, the outside organisation or that the Councillor initiate this themselves through effective liaison).

That there should be a mutual understanding between Councillors and organisations to maintain communication and effective liaison.

8. Legal Implications

- 8.1 Legal Implications Guidance document providing Councillors with further information relating to their role has been updated (Appendix A).

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9. **Background Papers**

[Scoping Framework](#)

[Review of Outside Bodies and Organisations Scrutiny Panel Notes 22.2.18](#)

[Review of Outside Bodies and Organisations Scrutiny Panel Notes 28.3.18](#)

10. **Panel Membership and thanks**

- 10.1 The Panel would like to thank all the Councillors and officers who gave up their time to attend the various Panel meetings, and for their valued comments, views and advice.

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GUIDANCE TO COUNCILLORS WHO SERVE ON OUTSIDE BODIES – LEGAL IMPLICATIONS

Introduction

This guidance is intended to help Councillors understand their duties when appointed to outside bodies, and how to handle the conflicts of interest that can arise. Councillors always need to be clear about their roles and alert to potential conflicts of interest, in order to ensure transparency and public confidence in local democracy.

1. General

1.1 Membership on outside bodies can take various forms and it is prudent to establish the capacity in which you are appointed. The first question is whether you are appointed by the Council, or in some other capacity. If you are not appointed by the Council to a particular position, you do not owe the Council any duties in relation to the way in which you carry on your membership of the outside body. However, the normal rules on declaring interests apply, and you will need to consider whether your role gives you a personal or pecuniary interest under the Code of Conduct for Councillors in relation to any Council business. The remainder of this guidance covers the case where you are appointed by the Council.

1.2 If you are appointed by the Council, this may be either:

- a) as a member of the management committee, board of directors, or committee of as a trustee of the outside body. Here, you will not only be representing the interests of the Council, but you will also have duties to the outside body and a role in its governance. If you serve in a decision-making capacity or have a position of general control or management on the outside body, whether company, trust or other association, you owe duties and responsibilities to that body which are separate and distinct from your duties owed to the Council. On occasions, it is likely that duties owed to the outside body and to the Council, will conflict e.g. If you are the treasurer of an outside body who has applied to the Council for grant funding and the rest of this guidance gives more detail on this; or
- b) As an 'observer', or an ordinary member, or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, but taking no part in the outside body's management or governance, other than to attend and vote at annual or general meetings. Here, you will be mainly concerned with representing the Council and will not have responsibilities for governance of the body.

1.3 Before accepting an appointment to an outside body, you should check:

- the legal status of the organisation e.g. company, trust, charity, unincorporated association;
- the capacity in which you are to be appointed e.g. director, trustee, member with voting rights or member with observer status;
- the purpose of the organisation and how this relates to the Council's functions and objectives;
- the relationship between the Council and the body and the likelihood and extent of any conflicts of interest;

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- the requirements of the organisation's governing instruction (e.g. constitution; trust deed, memorandum and articles of association), both as a member and generally;
- the organisation's governance and decision making arrangements, including the management of risk;
- the organisation's code of conduct for its members;
- the extent of the organisation's insurance/indemnity cover for its members;

It is your responsibility to obtain the answers to these matters.

- 1.4 Having checked the above matters, you should consider carefully whether you should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether your role as a representative of the Council, may be more effectively discharged as a non-voting member with observer status only.
- 1.5 You are entitled to all reasonable assistance from Officers in support of your role as Council representatives on outside bodies. Such assistance will include the provision of information about the body and the identification of a link officer to be available for briefing purposes and to assist you in reporting back to the Council on the activities of the body.

2. What sort of roles does this guidance apply to?

- 2.1 This guidance applies where you are: a member of another authority; a trustee of a charity; or a member of the management board for an unincorporated body.
- 2.2 The various roles will give you responsibilities to the organisation, and to the Council in so far as you are fulfilling a role for the Council, and this can create potential conflicts.
- 2.3 Your responsibilities will depend on the type of body in which you become involved. In summary, the main types are as follows:
- a) **Companies:** Companies are separate legal entities. They are set up by their members, who may be either shareholders or guarantors. Liability of company members is limited to the value of their shares or by guarantee. Directors of companies have a duty to the company to act properly and in good faith. If not, they can incur personal liability, particularly if the company becomes insolvent. The activities and operation of companies are regulated by their Memorandum and Articles of Association, and also by company law.
 - b) **Unincorporated Associations:** Unincorporated associations are informal organisations. The members regulate their relationship by agreement, such as a membership agreement or the rules of the club or association. Because the association has no legal existence separate from its members, the liability of the members is not limited. Each member can incur personal responsibility for liabilities incurred on behalf of the association, and relies on the membership agreement to be able to recover his/her costs from the other members.
 - c) **Charities:** A charity is an organisation which
 - (i) is established for charitable purposes only, and
 - (ii) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

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Some companies and unincorporated associations are established for charitable purposes. A charity gains relief from corporation tax, VAT and business rates, but is subject to stricter regulation by the Charity Commissioners, to ensure that it is properly managed and that it is spending its money properly on the charitable objects. As a trustee of a charity, you have a duty to act in the best interests of the charity and can be personally liable if you breach that duty.

3. Some other key points to consider at the outset

3.1 Firstly, make sure you are given a clear statement of what is expected of you if you are going to be nominated. You should be able to obtain this from the organisation involved

3.2 **The duty to act in the interests of the outside body** - Being on an outside body can bring many benefits to the Council, the organisation and the community, but it will sometimes create conflicts with your work as a Councillor. For Councillors, it will have to be included as one of your interests in the Members' Register of Interests. You will have a personal interest in Council business referring to it, and sometimes a pecuniary interest where finances or regulatory matters are concerned. You will need to be sure that involvement with the organisation will not prevent you from fully participating in your work as a Councillor, particularly in areas that interest you, or, where you need to represent the community who elected you. This will depend on the nature of the body and type of involvement.

3.3 On the other hand, you will also need to make sure that you are able to commit enough time and attention to the organisation. You will want to make a meaningful contribution to their work too. If you cannot attend meetings very often, or are often conflicted out of participating, you will not be able to give the support that the organisation needs, and this will reflect badly upon the Council and upon you. It is best not to be appointed if you cannot participate fully.

3.4 **Conflict with your role as a Councillor** - As a member of the organisation's management committee, as a director of a company, or as a trustee, you will not only be representing the interests of the Council, but you will also owe duties and responsibilities towards the organisation. You will have to exercise your own best judgement in the best interests of the outside body and you cannot just take instructions from the Council although you may take account of the Council's wishes. Where the Council's wishes may conflict with the best interests of the outside body you must nevertheless, if taking decisions for that outside body, act in its best interests. **Therefore where the Council's interests and the outside body's interests conflict it is crucial not to involve yourself in the decision-making.**

3.5 **Indemnities** - Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations, which are set out in more detail at paragraphs 8.1 to 8.4 below.

4. Duties and Responsibilities of Councillors on Outside Bodies

4.1 The following is a summary of the main duties and responsibilities of Councillors who are nominated by the Council to the most common types of outside body. The main principles of the obligations applying to company directors also apply to trustees and members of management committees. If you are in doubt about your duties and responsibilities, you may seek advice as above. In many cases, however, it will be more appropriate to seek advice from the advisers to the body involved, as they will have access to the rules and protocols of the body.

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5. Companies

- 5.1 A company is a separate legal entity which can hold property in its own right, enter into contracts, employ staff and sue and be sued in its own name. The company is distinct from its members, who may be either shareholders or guarantors. The Council itself may be a member of the company, either a shareholder or guarantor.
- 5.2 If the body is a limited company, and you are asked to be involved, it is likely that you will be appointed as a company director. The duties of a company director are now set out in the Companies Act 2006, which codifies the existing common law and equitable principles. The management of a company is usually the responsibility of the Board of Directors. Directors' powers are usually set out in the company's Articles of Association. Another important document is the Memorandum of Association, which sets out the Company's objectives and powers.
- 5.3 The duties of a company director are not the same as your responsibilities as a Councillor. **Basically, when involved in company business, the company must come first.** Directors must act in the interests of the company, and not in the interests of other parties, including shareholders.
- 5.4 **Directors' Responsibilities** are:
- a) **To promote the success of the company**, A director's primary duty is to act in good faith, in the best interests of the organisation and its objects. All directors owe a fiduciary duty to their company, which means they owe loyalty to the company and a duty of care to act in the best interests of the company, having regard to the interests of the members or shareholders of the company, the company's employees, and creditors. This includes having regard to the likely long term consequences of decisions, the interests of employees, fostering relationships with suppliers and customers and others, the impact of operations on the community and environment, maintaining a reputation for high standards of business conduct, and acting fairly between members of the company
 - b) **To exercise care, diligence and skill**, using your own knowledge, skill and experience, together with the care, skill and diligence which may reasonably be expected of a person who is carrying out the functions of a director. So a director with significant experience must exercise the appropriate level of diligence in exercising their duties in line with their higher level of expertise. Although directors are not bound to attend all meetings of directors, attendance should be as frequent as possible and directors should ensure that they are reasonably informed at all times.
 - c) **Not to exceed powers**. A company director must act in accordance with the company's constitution, and exercise powers for the purposes for which they were given.
 - d) **To comply with the Companies Acts** in relation to the keeping of accounts, and ensure that the relevant returns are made to the Registrar of Companies. Failure to do so will incur fines and persistent default can lead to disqualification as a director.
 - e) **To avoid conflicts of interest**. A director must avoid a situation in which he or she has, or may have, a direct or indirect interest which conflicts, or could conflict, with the interests of the company. This duty applies particularly to transactions between a director and a third party in relation to the exploitation of any property, information or opportunity.
 - f) **To exercise independent judgement**. A director nominated by the Council cannot, for example, simply vote in accordance with the Council's instructions. To do so would be a breach of duty. The director must act in the company's interests.

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- g) **Not to accept benefits from third parties.** A company director must not accept any benefit from a third party (whether monetary or otherwise) which has been conferred because of the fact that he or she is a director. This is based on the established principle that a director must not make a secret profit as a result of being a director. This duty applies unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- h) **To declare an interest in a proposed transaction or arrangement with the company.** A company director who has either a direct or an indirect interest in a proposed transaction or arrangement with the company must declare the 'nature and extent' of that interest to the other directors before the company enters into the transaction.

5.5 **Directors' Liabilities:** If a director fails to carry out his/her duties, action can be brought for breach of duty, either by the company itself, or by a liquidator if the company goes into liquidation, or with the consent of the court, by a shareholder. Such actions are unlikely where the company is properly controlled by the directors.

5.6 Some important considerations are:

- a) It is not always easy to reconcile the various factors which must be taken into account when reaching a major decision. The important thing as a director is to show that you are aware of and have taken account of the relevant factors, and have exercised due care and diligence in giving them all fair consideration.
- b) It may be difficult to be certain whether benefits may be regarded as giving rise to a conflict of interest. If you are unsure take advice from the company's advisers.
- c) Make sure you are aware of the company's constitution, its Memorandum and Articles of Association, so that you know what it can and cannot do. You must take this into account when making decisions, as well as any shareholder decisions that are relevant.
- d) Be diligent, and make sure you are well informed about the company's affairs. Make sure you are well briefed when taking up the role, and that you receive regular briefings throughout your term of office.
- e) Attend training and briefing sessions.
- f) Ensure insurance is in place.
- g) Some Board decisions may be reviewed on a future occasion. Make sure detailed minutes show that all necessary factors have been considered when major decisions are being taken. Obtain expert advice where necessary e.g. regarding impact of a decision on the environment. Take legal advice where there are doubts about a director's duty in relation to a particular matter.

6. Unincorporated Associations

6.1 "Unincorporated associations" have no separate identity from their members. The rules governing the members' duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management Committee members must act within the constitution, and must take reasonable care in exercising their powers. An unincorporated organisation may be charitable and may register as a charity.

6.2 If you are involved in a decision making capacity or have a position of general control or management on an unincorporated body, as the body has no separate corporate

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status, any liabilities will fall upon you personally. Councillors appointed to such bodies should familiarise themselves with the Constitution to understand the nature of their role, responsibilities and liabilities, and should assess the risk of personal liability, and the extent to which it has been covered by insurance.

7. Charities:

7.1 A charity is an organisation which operates for the public benefit and exclusively charitable purposes, either:

- the relief of poverty and human suffering
- the advancement of education
- the advancement of religion
- another purpose for the benefit of the community.

7.2 A number of useful publications are available on the Charity Commission's website at www.charitycommission.gov.uk. Publication CC3 - 'The Essential Trustee- What you Need to Know' is a useful guide. Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee and even though they are not strictly trustees. A charity may also be unincorporated.

7.3 Trustees of a charity retain personal liability, and can only delegate to the extent that the constitution authorises them so to do.

7.4 Charitable Trustees' Responsibilities are:

- a) To act in accordance with the charity's trust deed or governing document.
- b) To protect the charity's assets.
- c) To comply with the Charities Acts, and the Trustee Act 2000.
- d) Trustees must not make a private profit from their position. They cannot receive remuneration without the sanction of the Charity Commission.
- e) To perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
- f) Charitable trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent.
- g) Trustees are under a duty to ensure compliance with all relevant legislation (e.g. in relation to tax and land matters).

7.5 **Charitable Trustees' Liabilities:** Generally, a trustee may incur personal liability if s/he:-

- acts outside the scope of the trust deed
- falls below the required standard of care
- acts otherwise than in the best interests of the charity, in a way which
- Causes loss to the charity fund
- makes a personal profit from the trust assets

7.6 In such circumstances the trustee will be in breach of trust, and will incur personal liability for losses incurred. If in doubt, always consult the Charity Commissioners. You may avoid personal liability for breach of trust if you act in accordance with their advice.

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7.7 Trustees can incur personal liabilities for contracts they enter into in the name of the charity. They will normally be entitled to be reimbursed from charitable funds for liabilities and expenses properly incurred by them. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course of events, but will be personally liable if they commit a breach of trust, as stated above.

8. Indemnities

8.1 Councillors who participate in external bodies may be indemnified in relation to liabilities they incur in that capacity, though this is subject to certain limitations.

8.2 Indemnity by the outside body:

- a) Directors: Directors cannot be indemnified by the company against liability for negligence, default, breach of duty and trust. Companies can however purchase insurance to protect directors against claims of negligence, default, breach of duty and trust. Those appointed as directors should ensure that appropriate insurance is in place. Companies can, if their Articles of Association allow, provide for directors to be indemnified for the costs of defending such a claim if they are granted relief by the court or acquitted.
- b) Trustees: Provided a charitable trustee acts properly, and within his/her powers, indemnity can be given from the trust fund. Trustees can take out insurance to protect themselves from personal liabilities, but not for criminal acts such as fraud. If the premiums are to be paid out of the charitable funds, the consent of the Charity Commissioners will be needed.
- c) Unincorporated Associations: Members may be entitled to an indemnity if they act in accordance with the Constitution of the association, and are not at fault. However, regard must be had to the terms of the constitution. The constitution will determine whether insurance can be paid for by the organisation.

8.3 Indemnity by the Council: The Council may provide an indemnity where Councillors are acting on an outside body at the request of the Council, and provided:

- the appointment was made by the Council, or
- the nomination was made by the Council, and
- the appointment was specifically approved for the purpose of the indemnity.

8.4 The indemnity the Council can provide is subject to limitations. In general terms, if a Councillor is acting properly, within their powers and in good faith, the power to indemnify will usually apply. However, the Council cannot, for example, provide an indemnity in relation to any action or failure by any Member which constitutes a criminal offence, or for any action or failure by any Member which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of the Member. When you are serving on an outside body, the Council's indemnity will only apply after any indemnity or insurance from the body itself. There are further limitations and it is advisable to be clear about the scope of the Council indemnity that may be available to you. You can seek further advice on indemnity from the monitoring officer.

9. Code of Conduct – Councillors' Interests

9.1 **Code of Conduct:** Under the Localism Act 2011 all Councillors are subject to the Council's Code of Conduct for Councillors. You will find a copy of the full Code in the Constitution and on the Council's web page. When Councillors act as representatives of the Council on another authority, they must comply with the other

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authority's Code of Conduct. However, when Councillors act as the Council's representative on any other sort of outside body, they must comply with the Council's Code of Conduct unless it conflicts with the lawful obligations of the other body.

- 9.2 The Register of Members Interests requires Councillors to tell the Monitoring Officer in writing within 28 days of taking office, or within 28 days of any change to your interests, of any interests which fall within the categories set out in the Code of Conduct for Councillors. These categories include your membership or position of control or management in any other bodies to which you are appointed or nominated by the Council. It is your duty to keep this up to date.
- 9.3 This means that if you are present at a meeting when an item of business arises which relates to or affects an outside body to which you have been appointed, you must declare that you have a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to you.
- 9.4 An exemption applies where your interest arises solely from your membership of, or position of control or management on:
- any other body to which you were appointed or nominated by the authority
 - any other body exercising functions of a public nature (for example another local authority).

In these exceptional cases, provided that you do not have a pecuniary interest, you only need to declare your interest if and when you speak on the matter.

- 9.5 You will also have a pecuniary interest in Council business affecting the outside body if:
- the matter being considered affects the financial position of the
 - outside body; or
 - relates to an approval, consent, licence, permission or registration
 - affects the outside body e.g. an application for planning permission.
- 9.6 If you have a pecuniary interest in a matter under discussion you must declare it. You must then leave the meeting room, unless members of the public are allowed to make representations, answer questions or give evidence about the matter. If that is the case, you can make your representations etc., but must leave the room immediately after doing so. The Code of Conduct for Councillors supports your role as a community advocate and enables you, even with a pecuniary interest, to represent your community and speak on issues that are important to them and to you.
- 9.7 **Bias:** Where you might be inclined to the view that you have no pecuniary interest, your duties as a director, or trustee, or member of a management committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a Council committee meeting by a Councillor who is biased potentially invalidates the decision. If you find yourself in this position or are concerned please seek legal advice as above before meeting as the law is complex regarding bias, predisposition and predetermination. Overall the rules of natural justice must prevail.
- 9.8 Where membership of the outside body is on an advisory or consultative basis, bias will not be assumed from mere membership. However, once the outside body has a line which is being advocated by you and you take part in the Council's decision making process, this could potentially be viewed as bias, and the Council's decision on the issue could be vulnerable to challenge. It will depend on the facts,

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and in such circumstances advice should be sought as above.

- 9.9 **Substitution:** Where you take no part in the outside body's management or governance, other than to attend and vote at annual or general meetings e.g. as an 'observer', or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, another Councillor may substitute for you on the outside body. However, if you have a role in the governance of the outside body i.e. you serve in a decision-making capacity or have a position of general control or management as director, trustee, etc., no other Councillor can substitute for you.
- 9.10 **Feedback:** Feedback is an excellent vehicle to communicate the Council's involvement in outside bodies to the wider community. It is important for the Council to receive feedback on issues affecting outside organisations where Councillors are nominated to represent the Council.
- 9.11 **Further Guidance:** Further advice or clarification can be sought from the Monitoring Officer.

Legal and Democratic Services

May 2018