

# Cabinet

Wednesday, 27 January 2021

**Attendees:** Councillor Mark Cory, Councillor Adam Fox, Councillor Martin Goss, Councillor Theresa Higgins, Councillor David King , Councillor Michael Lilley, Councillor Julie Young

Also in attendance: Councillors Barber, Dundas, Goacher, Hazell, Lissimore, Luxford Vaughan and G. Oxford

## **No. Publication and Call in Arrangements**

Date Published 28 January 2021

Date when decisions may be implemented (unless 'called in') 5pm 4 February 2021.

NB All decisions except urgent decisions, those subject to pre-scrutiny and those recommended to Council may be subject to the Call-in Procedure.

Requests for the scrutiny of relevant decisions by the Scrutiny Panel must be signed by at least ONE Councillor AND FOUR other Councillors to countersign the call-in form OR to indicate support by e-mail. All such requests must be delivered to the Proper Officer by no later than 5pm on 4 February 2021.

## **532 Minutes of Previous Meeting**

*RESOLVED* that the minutes of the meeting held on 23 November 2020 be confirmed as a correct record.

## **533 Moment of Reflection**

Councillor Cory, Leader of the Council, invited Cabinet and those present to take a moment of reflection to mark Holocaust Memorial Day, the milestone of 100,000 deaths arising from the Coronavirus pandemic and to reflect on the efforts of Council staff and the Council's partners in supporting communities to minimise the impact of the pandemic on the borough.

## **534 Urgent Items**

The Assistant Director, Customer, submitted a report a copy of which had been circulated to each Member.

Councillor Cory, Leader of the Council and Portfolio Holder for Strategy, indicated that he had agreed to take the report on Test and Trace Support Payments as an urgent item. The urgency arose from the need for the scheme to be implemented as soon as possible to enable payments to be made to a wider group of those required to self-

isolate. The Chair of Scrutiny and Monitoring Officer had certified the decision as urgent so that the call-in provisions would not apply. Therefore the decision could be implemented immediately.

*RESOLVED* that the Test and Trace Support Payment Local Scheme Policy and the associated funding allocation be agreed.

#### *REASONS*

To implement the Test and Trace Support Payment Local Scheme and the associated funding allocations.

#### *ALTERNATIVE OPTIONS*

Funding could be solely allocated to the central government discretionary scheme. This would not allow for wider eligibility to be introduced and this could in turn affect the Council's ability to best support residents.

### **535 Have Your Say! (Virtual Meetings)**

Councillor Dundas attended and with the consent of the Chairman, addressed the Cabinet. He expressed his sadness at the recent death of Alderman Sutton. Residents had expressed concerns that saplings planted as part of the Woodland Project were not thriving and asked whether there was a target for the number saplings that grew into trees, and if not, whether one should be set. Consideration should be given to looking at the budget ratio between the purchase and planting of trees and their ongoing maintenance and care.

Councillor King, Portfolio Holder for Business and Resources, expressed his thanks for the work residents and Councillors had put into the Woodland Project. The Project was changing the way it operated in the light of experience. A considerable number of saplings had been lost because of poor weather. The Project was now utilising experienced staff as well as volunteers. There was an economic balance to strike between the purchase of stock and the ongoing maintenance, but the expert advice remained that the planting of whips was the best way forward. He would be shortly setting out the plans for the Woodland Project for 2021.

Councillor Lissimore attended and with the consent of the Chairman, addressed the Cabinet. She thanked Dorian Kelly for his work on issues relating to Queen Street and the Alumno development. She also expressed concern about the supplies of recycling materials to residents, especially clear recycling sacks. Each political group should be given a supply of recycling materials that could be given to residents, when they were unable to obtain them through the usual challenges. Clarification was sought as to whether there were plans to introduce charges for clear plastic sacks.

Councillor Goss, Portfolio Holder for Waste, Environment and Transportation, responded and explained that residents were waiting no more than three weeks for deliveries of clear plastic sacks. Supplies of sacks would not be provided to Councillors as the existing process was working well, and to provide supplies in the

way proposed would also be a breach of Coronavirus regulations in that would encourage unnecessary journeys. There were no plans to introduce charges for clear plastic sacks.

## 536 **Budget 2021-22 and Medium Term Financial Forecast**

The Chief Operating Officer submitted a report a copy of which had been circulated to each Member together with the draft resolution from the Scrutiny Panel meeting of 26 January 2021.

Councillor King, Portfolio Holder for Business and Resources, introduced the report and expressed the Cabinet's thanks to the Council's Finance team and service managers for their help in developing the budget. The proposed budget for 2021-22 and the Medium-Term Financial Forecast (MTFF) had been subject to constructive and robust scrutiny by the Scrutiny Panel and their recommendation was welcomed. The budget had been informed by a series of cross-party budget workshops and there a clear understanding of the challenges faced both in the short and medium term. As requested by the Scrutiny Panel a further programme of workshops would be held, and the car parking assumptions had been checked and were robust.

The budget proposed a strategy of reducing costs, organisational transformation and raising income in order to deliver a balanced budget. The Council would be looking at new ways of working, how it worked with partners to deliver services and how it managed its assets such as Rowan House. Whilst the budget did involve the use of reserves, the Council would still retain considerable reserves of over £15 million.

Councillor Cory, Leader of the Council and Portfolio Holder for Strategy, explained that the administration had taken a transparent approach to the budget setting process through the budget workshops. The impact of the coronavirus pandemic had made it a particularly challenging budget, and the Council had not received all the support it had been promised by central government. However, the budget still enabled the Council to support its strategic priorities such as building homes, supporting communities and helping the arts and heritage sectors. This would help issues of inequality, which had been exacerbated by the pandemic, raised by the Scrutiny Panel.

*RESOLVED* that:-

- (a) The 2021/22 Revenue Budget and revised Medium Term Financial Forecast as set out in Appendix A of the Chief Operating Officer's report be approved.
- (b) The budget robustness statement and forecast level of balances set out in Appendix B of the Chief Operating Officer's report be noted.
- (c) The Treasury Management Strategy 2021/22 to 2024/25 set out in Appendix C of the Chief Operating Officer's report be noted.
- (d) *RECOMMENDED TO COUNCIL* the 2021/22 revenue budget requirement of £20.623m as set out in Table E1 in Appendix E of the Chief Operating Officer's report

(e) *RECOMMENDED TO COUNCIL* Colchester's element of the Council Tax at £200.52 per Band D property being an increase of £4.95.

(f) The officer delegation to write off bad debts be increased to £10k as per Section 12 of the Chief Operating Officer's report, subject to the approval of 19 January 2021 Governance and Audit Committee.

(g) The proposed government changes to external audit arrangements set out in Section 8.17 to 8.20. of the Chief Operating Officer's report be noted.

(h) the following paragraph be approved and added to section 14 of the 'Budget 2021/22 and Medium-Term Financial Forecast' report:

*14.2 All budget measures will be assessed for their likely impact on inequality, reflecting the Council's commitment to addressing the inequality existing within our Borough, as highlighted by the effects of the Covid-19 pandemic.*

#### **REASONS**

To balance the 2021/22 budget and revise the Medium-Term Financial Forecast.

#### **ALTERNATIVE OPTIONS**

No alternative options were presented to Cabinet.

### **537 Resetting the Capital Programme and the Capital Strategy**

The Chief Operating Officer submitted a report a copy of which had been circulated to each Member.

Councillor G. Oxford attended and with consent of the Chair addressed the Cabinet to express his thanks for the support being provided through the capital programme for the St Marks Community Centre which would support Highwoods. This would be welcomed by the local community who would be very grateful.

Councillor King, Portfolio Holder for Business and Resources, introduced the report and highlighted the ambitious nature of the capital programme and strategy, relative to the size and scale of the borough. It would generate jobs and income and provide social benefits through the provision of housing and addressing community needs. Investment in Council assets such as Leisure World and Rowan House would benefit both residents and employees.

The capital programme and strategy had been scrutinised robustly. It was prudent and affordable and would help drive economic recovery.

**RESOLVED** that:-

(a) The revised capital strategy set out in Appendix A of the Chief Operating

Officer's report be approved.

(b) The additional capital programme set out in Appendix B of the Chief Operating Officer's report be approved.

(c) The additional schemes set out in Section 14 of the Chief Operating Officer's report be approved.

#### *REASONS*

To take forward continuing investment in Colchester, in the interests of regeneration and the health, social and economic wellbeing of residents and how they are housed, local businesses and the local economy, and the attractiveness of Colchester as a destination.

#### *ALTERNATIVE OPTIONS*

A reduced Capital Programme would reduce the benefits investments will provide in the health and wellbeing of our town, impacting regeneration, the quality of services, the accessibility of housing and the state of the public realm, regeneration and economic recovery.

### **538 Matters Relating to Third Party Rights at Queen St and the Alumno Development**

The Strategic Director, Policy and Place, submitted a report a copy of which had been circulated to each Member.

Dorian Kelly addressed Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meetings Procedure Rules. The report before Cabinet did not include a number of relevant points around the appropriation process and that without this information no decision was possible or should be taken. Whilst the report stressed the financial considerations and the compensation available, this was irrelevant to most right holders who wanted to retain their quiet life. The loss of the rights was not properly discussed or quantified, and powers requested should not be vested in officers or their agents. Appropriation was unnecessary and issues of rights of way were for the Planning Committee to determine. Alumno had had plenty of time to solve the intrinsic design problem in the scheme so there was no justification for extending the time before the lease agreement expired. Further legal advice should be taken and the Council had already taken the reasonable steps that were required,

Alan Short addressed Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meetings Procedure Rules. The legislation around Council governance specifically excluded issues around the regulation of footpaths and bridleways from Cabinet. This was also clear in the Council's constitution which specified that issues on rights of way were a non-executive matter and were for Planning Committee. Therefore, Cabinet's consideration of the matter was ultra vires and it should be referred to the Planning Committee. The Council should withdraw all its correspondence to rights holders and publications on these matters. The Planning Committee was protected and was not subject to whipping but any future

consideration of this issue by the Planning Committee could have been compromised.

John Burton MBE addressed Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meetings Procedure Rules. There was no convincing evidence the student accommodation would bring additional funding or increase student spend as student numbers were set by the educational establishments and not by availability of bed space. The impact on rights holders of loss of rights needs to be carefully considered. This included the NHS in respect of Open Road/NHStar. The loss of rights was likely to infringe the human rights of those affected. In addition, the Cabinet should take account of the fact that parts of the land had been bequeathed to the Council at nominal rates to allow for community benefit.

A statement from Sir Bob Russell was read to Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meeting Procedure Rules. It was unedifying and damaging for Colchester Borough Council and Essex County Council to be engaged in a legal dispute on this issue. The legislation on appropriation was not intended to be used in this way and for the benefit of a private developer. Concerns about how awareness of these issues was addressed during the sale of the former Tourist Information Centre needed to be addressed. A fair balance had not been struck between the public interest and the private rights of individuals, as required by the Human Rights Act. The development did not enjoy public support, and had been unanimously rejected by the Planning Committee, which was the only opportunity Councillors, other than Cabinet, had had to consider the matter.

A statement from Jennifer Brown was read to Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meeting Procedure Rules detailing the impact the loss of rights would have on rights holders and the considerable inconvenience and problems that would result for at least two years. The impact would not be for the greater good of fellow residents but for the benefit of a private company. Once the works were complete, there would be continued difficulties from the installation of bollards which would continue to impede free access.

A statement from Matthew Maestrani was read to Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meeting Procedure Rules reiterating continued objections to the development and appropriation of rights of way. A more sympathetic development would be welcomed.

A statement from Elia Valentini was read to Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meeting Procedure Rules proposing that the area be used for cultural and community enhancement purposes rather than a commercial use. How did the Alumno development fit with the necessary urban green planning?

A statement from Jo Edwards, Vice Chair of Priory Road Area Residents Association was read to Cabinet pursuant to the provisions of paragraph 5(1) of the Remote Meeting Procedure Rules stressing the huge disruption and stress that would be caused to users whose right of way were being removed. This would be for at least two years and would not be completely restored. There were safety concerns arising from the loss of rights and the need to use Priory Street car park at night. Cabinet needed to recognise the implications of appropriation for both businesses and residents and refuse the request for appropriation.

Councillor Barber attended and with the consent of the Chairman, addressed Cabinet. He requested further information about who signed the contract with Alumno and the justification for doing so. He did not consider it was usual practice to use appropriation powers to override the rights of individuals. Councillors should be given sight of the contract so that could be reassured that it did require the Council to use such powers, as previous assurances had been given that appropriation would not be used. Information about costs of appropriation should also be made available.

Councillor Dundas attended and with the consent of the Chairman addressed Cabinet on the behalf of Councillor Crow, who was unable to attend. Residents and business would lose the rights to access their properties for an unwanted development from which the Council would receive a small annual return. This would have a severe impact on these residents and businesses. Residents would be offered car parking at Priory Street car park, but would not be guaranteed a space, and there was a more convenient private car park available. Once the development was complete their access would still be limited by bollards. Public safety considerations arising the loss of access which meant vulnerable residents would have to walk to and form a car park late at night needed to be addressed.

Councillor Goacher attended and with the consent of the Chairman address the Cabinet. He did not agree with development and believed the land should be used for public space. However, as a ward Councillor he had no say as the Council governance system vested power in the Cabinet. Previous assurances had been given that the land would not be appropriated. Issues of disabled access which formed the basis of the refusal by the Planning Committee had not yet been resolved. Residents concerns about loss of access to their properties and the bollard system needed to be addressed. The Cabinet needed to provide an assurance that all the conditions imposed on the development by the Planning Inspector had been met.

Councillor Luxford Vaughan attended and with the consent of the chairman addressed the Cabinet. This was not the right development for the site and did not enjoy support of the majority of Council. She understood that the Council was required to use its reasonable endeavours on behalf of Alumno and this could be done without resorting to appropriation. Full planning permission was required and this had not yet been obtained as the issue of disabled access had not yet been resolved. This would be a suitable site for the development of a Youth Zone, which was one of the Council's Strategic Priorities.

Councillor G. Oxford attended and with the consent of the Chairman addressed the Cabinet. Issues around disabled access to the site were unresolved as the Planning Committee had considered options to provide this and refused to endorse either of them. He had raised issues about lack of access with the Ombudsman and this had not yet been determined. The Cabinet had already made all reasonable efforts to help Alumno deliver the development and should not seek to use appropriation powers.

Andrew Weavers, Monitoring Officer was invited to address the Cabinet on some of the constitutional issues raised. Whilst the Cabinet had no role in planning, this was not a planning issue. The issues were about the Council acting as a landowner and these were matters for Cabinet, and it was appropriate and proper that Cabinet

determine the issues before it. In respect of the use of section 203 powers, and whether a planning consent should be unconditional, the position was that the required conditions should have been discharged when the powers were exercised but did not need to be at the point the decision to appropriate was taken.

The Monitoring Officer explained that the Council had received a letter from Essex County Council on 26 January 2021 which had been circulated to all Cabinet members and which would be subsequently published on the Council's website. The letter was a formal objection to the appropriation process. The letter invited him as Monitoring Officer to consider exercising his powers under section 5 of the Local Government and Housing Act to stop the Cabinet taking the decisions in the report on the basis that the decisions could give rise to a contravention of an enactment or rule of law. After taking his own legal advice, he did not believe that was the case and that the Cabinet could continue to consider the report. The Monitoring Officer then provided formal advice to the Cabinet on the issues raised by Essex County Council as follows:

1. *Consultation.*

*The comments regarding lack of consultation are not accepted. We are in an ongoing dialogue on this issue which has been going on for months if not years which is acknowledged in the report and which this letter helpfully forms part of. The dialogue included our intentions in relation to appropriate and our wish to be able to come to an agreement. There is no statutory requirement for consultation when a Local Authority decides to appropriate land under s122 Local Government Act 1972. The duty to consult arises when a Local Authority intends to appropriate land which comprises open space which we have complied with.*

2. *Incorrect application of the legal tests.*

*We do not accept the position here. The report at paragraph 4.7 makes it clear that the development would bring economic, social and environmental wellbeing benefits to the Council's area.*

3. *Material considerations*

*We do not accept the majority of the points made here. The report is dealing with a land transaction and is not reciting the planning history of the site.*

*One issue I do want to address is the reference to section 40 of the Natural Environment and Rural Communities Act 2006 which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity.*

*The Cabinet should consider this in the context of exercising their functions covered in this report including potential appropriation of the land. The functions being considered are not those relating to the consideration to grant planning permission, but the matter of biodiversity was considered at that stage and the report at the time*

noted:

*“15.60 The planning application is supported by a Preliminary Ecological Assessment, which is supplemented by specialist surveys (bats, Stag Beetles and Lichens). The Ecological Assessment concludes that the habitats and plant species that are present on the application site are of negligible value. Given this, the report states that there is potential to significantly enhance the site for wildlife through the provision of bat and bird boxes, native species planting and the provision of a vertical log pile for stag beetles. In addition to above, the introduction of green roofs and the landscaping of the student courtyards also offer material ecological benefits.*

*15.61 The application site is within a zone of influence of a European designated site and in order to comply with the Habitats and Species Regulations 2017 (as amended), mitigation of any recreational impact will be required in accordance with the draft Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS). This will equate to a financial contribution that can be secured via S106 agreement*

*15.62 Subject to conditions to secure ecological enhancement measures, it is considered that the proposed development accords with adopted policy ENV1 and the requirements of the NPPF which seek to minimise impacts on biodiversity and, where possible, to provide net gains in biodiversity.”*

*It is considered that given there is limited ecological value of the current site and there is potential of regeneration to improve its biodiversity that there is no extra concerns raised by the potential decisions recommended in this report that would have any significant adverse impact on conserving biodiversity.*

#### *4. Equalities*

*The letter mentions that the report sets out the requirements of section 149 of the Equality Act 2010 and the fact that there is a link to an EQIA which relates to the Colchester Borough Council Asset Management Plan 2016-21. The letter points out that this is a high level impact assessment which does not cover the equality impacts of the development itself.*

*The following factors are of particular relevance to Members in considering the recommendations in this report.*

*The public sector equality duty is a continuing duty which Members must consider and review at all stages of decision-making. Officers have considered the effect of deciding to progress with appropriation and development of the land on those with protected characteristics.*

*There will be a temporary disruption to those rights holders in being able to access the car park area and the rear of their premises parking during the construction period. Although officers are seeking to negotiate a solution with firstsite on being able to utilise Lewis Gardens, for these equality impact purposes the position needs to be considered on the assumption that this may not be possible.*

*This will be particularly onerous for those rights holders who are disabled and/or*

*elderly or who may have issues with walking a longer distance to get to their home from Priory Street car park, for example pregnant women.*

*There is also a health and safety implication for all rights of way holders in having to walk from Priory Street car park to their homes, especially at night.*

*If we are unable to successfully negotiate the use of Lewis Gardens with Firstsite, there is no alternative vehicular access possible to the car park area during the construction period. Every effort will be made to try and find a solution to assist any right of way holders and others with protected characteristics and those who feel unsafe in walking from Priory Street car park.*

*In conclusion, Cabinet should now proceed to consider the report taking into account this further advice.*

Councillor King, Portfolio Holder for Business and Resources, thanked those members of the public and Councillors who had given their views and responded to the issues raised. The Alumno development would bring benefits, but it was appreciated it would cause worry and inconvenience. The Monitoring Officer had provided a reassurance that the Cabinet did have the authority to act in this matter. This was an issue about land ownership and the Cabinet was not seeking to impinge on the Planning Committee's role and responsibilities. It was appreciated that there was considerable opposition to the design and location of the development, but it would bring benefits such as improved access to the Roman Wall and a public square.

Concerns about the negotiations on rights and the suitability of some of the mitigation being offered were noted. These issues needed to be considered further and the possibility of further mitigation explored. The possibility of access through Lewis Gardens during the period of development was being looked at. Councillor J. Young, Portfolio Holder for Culture and Performance, explained that discussion on this issue were ongoing and making good progress. Councillor King stressed the need for the Council to ensure it communicated effectively on these issues with those affected and took full account of equality issues. He stressed that some of the mitigation would bring benefits such as improved safety from the installation of the bollards.

The Council had an ongoing dialogue with Essex County Council on this matter and hoped that this would be maintained, notwithstanding their objection.

There was a balance to be struck between the greater public good arising from the development against the inconvenience that would result to a number of residents and businesses. However, the inconvenience would be temporary, and their rights would return in due course. There would be a clear and lasting economic benefit from the development. The primary economic benefit was not the cash receipt from Alumno but the fact that the development would bring a large number of students and hotel guests and their spending power into the heart of Colchester.

Whilst the suggestions about alternative uses for the site were noted, the site had not attracted a suitable use since 2005. The site was unlikely to be large enough for a Youth Zone. In addition, the use of site as a Youth Zone or other commercial use was likely to lead to the same issues around rights.

In respect of concerns about the sale of the Tourist Information Centre and the timing of the contract with Alumno there, was nothing underhand about either of these issues.

Councillor J. Young stressed that the Cabinet had not approached this issue lightly. However, the Cabinet needed to consider the interests of the borough as a whole. Whilst the concerns about the development were noted, it had been granted planning permission, and therefore these issues needed to be addressed. There was no alternative use on the table. Given the impact of the pandemic on the town centre, it was important to look at the economic benefits it would bring, particularly to food retailers in the town centre. In considering the impact on those residents affected, the Cabinet also needed to be mindful of its responsibilities in respect of the Equality Act and issues of biodiversity.

Councillor Lilley, Portfolio Holder for Communities, Wellbeing and Public Safety, explained that the changing economic circumstances meant that he now supported the development. Many town centre business including pubs were struggling to survive. The development would deliver a boost to the daytime and nighttime economies in Colchester. However, the concerns expressed by rights holders needed to be taken seriously and additional mitigation measures looked at.

Councillor Cory, Leader of the Council and Portfolio Holder for Strategy, stressed the need to ensure that the planning conditions imposed by the Inspector were complied with and that accessibility issues were properly addressed. The Monitoring Officer's advice had been very helpful in clarifying how issues around equalities and access needed to be addressed and the need to provide reassurance on these issues for residents. The Council did not want to undertake legal action against the County Council and was looking to go forward with dialogue with the County Council and residents. This was a brownfield site, with no alternative options for development at this stage. The scheme would bring public realm and economic benefits.

Councillor Higgins, Portfolio Holder for Commercial Services, sought confirmation as to whether the section 106 agreement required by the planning consent had been agreed, and if not agreed, whether the planning permission would be valid. Ian Vipond, Strategic Director, Policy and Place, explained that any section 106 agreement would need to be completed before the development could commence. He also explained that what was being proposed was not unusual in terms of large commercial developments, and similar processes would have accompanied other major town centre developments such as Culver Square.

In summary Councillor King believed that the Cabinet had addressed the relevant points in its consideration of the issues. The concerns raised about access were understood and there was a commitment to look at mitigation further, and the issues raised about biodiversity and equalities raised in the Monitoring Officer's advice were understood and would be taken into consideration.

*RESOLVED* that:-

(a) In relation to the Open Space, all objections received by the Council within the period stated in the notice given in accordance with section 122(2A) of the Local

Government Act 1972, be considered before deciding whether or not this part of the Land should be included in the land to be appropriated for planning purposes pursuant to paragraph 2.4.

(b) It be noted that if the Land is appropriated for planning purposes, section 203 of the Housing and Planning Act 2016 would enable the development to be carried out on the part of the Land which comprises the Site, notwithstanding any infringement of third party rights and interests covered by section 203 which burden the Site. The effect of this decision would be to override those third party rights, subject to payment of statutory compensation to affected parties under section 204 of that Act. It is acknowledged that discussions continue between the Council and Essex County Council, which is hoped will obviate the necessity to use section 203 in relation to their rights over the Site.

(c) Authority be delegated to the Strategic Director, Policy and Place in consultation with the Portfolio Holder for Business and Resources to conclude legal documentation with individual rights holders (where known) in respect of the release or modification of their rights and to agree any compensation payable to these right holders.

2.4 Subject to paragraph (a) above and consideration of the information in the reports in Parts A and B of this agenda, the Land be appropriated for planning purposes (as defined by section 246(1) of the Town and Country Planning Act 1990), pursuant to section 122(1) of the Local Government Act 1972.

2.5 Authority be delegated to the Strategic Director, Policy and Place in consultation with the Portfolio Holder for Business and Resources to vary the Agreement for Lease with Alumno and extend the long stop date of 1st March 2021 by a period sufficient to allow the completion of the leases to Alumno.

## *REASONS*

Appropriation will facilitate the redevelopment of the Site which would bring a number of benefits to the locality and contribute to the achievement of those adopted Local Plan planning policies that are relevant and the adopted St Botolph's Master Plan which together promote the regeneration of the area to bring economic, social and environmental well-being benefits.

The proposed Alumno development would be a major multi-million pound scheme at a time when inward investment would significantly boost confidence in the economic future of the Town Centre and aid the post Covid-19 recovery of Colchester in line with the Council's Coronavirus Recovery Plan. The additional student population and hotel users will benefit Queen Street and the Town Centre as a whole helping the sustainability of Colchester Town Centre as well as firstsite and Curzon. Benefits will also include a substantial amount of additional jobs both during and after construction and a significant improvement to the general environment and public realm. Additional detail is in the later sections 4.7, 12 and 18 of this report. Covid 19 has had a significant detrimental effect on Colchester town centre and at a time when property developers are re-examining their commitment to schemes, Alumno have made it clear that they are still committed to Colchester and want to commence with their

investment as soon as possible.

As described in section 5 of the Strategic Director's report, the Land is understood to be subject to a number of third-party rights and restrictions which could potentially inhibit its development. The full extent of the rights burdening the Land and the degree to which they are legally enforceable are not known or easily ascertainable. Whilst efforts to negotiate with certain identified parties are underway (and will continue if the recommendations in this report are approved) it is considered highly unlikely that securing releases of all such rights by private agreement with individuals can be completed in a reasonable timescale if at all, and would still leave significant uncertainty. It is therefore considered that appropriation of the Land is necessary to enable the development to proceed within a reasonable timescale.

Given the constraints, it is unlikely that any scheme could be designed to avoid inference with the rights. Without appropriation there would be a risk of an injunction or damages and no developer is likely to progress a development as it is considered unlikely that releases will be successfully negotiated with all of the affected parties within reasonable timescales.

For the majority of the rights holders, there will only be disruption during the construction period (approximately 18 – 24 months) and the various rights of way to the rear of their premises, access to the car park and servicing area shown in Appendix B will be reinstated once construction has been completed. Furthermore, any person who suffers a relevant loss as a result of their rights being infringed, either on a temporary or a permanent basis, would be entitled to receive compensation under section 204 of the 2016 Act.

The appropriation of all of the Land (including that outside the blue line of "the Site" shown on the plan at Appendix A) will ensure that the entirety of the Council's freehold interest in the Land is held for planning purposes for potential future regeneration where appropriate. In the case of the Open Space, if the currently permitted development proceeds, the major part of this land would continue to be available for use by the public as open space and it will be maintained in association with the development of the Site.

The current long stop date within the Agreement for Lease to Alumno is 1st March 2021. This needs to be extended as a consequence of the planning consent taking longer than expected to obtain after going to appeal, the time taken in seeking to negotiate with rights holders and other interested parties and the corresponding impact on compliance with outstanding conditions in the Agreement for Lease. The amount of the extension required before the leases can be completed will depend on how quickly these remaining obligations can be addressed.

#### *ALTERNATIVE OPTIONS*

No alternative options were presented to Cabinet.

**539**

### **Housing Revenue Account Estimates 2021-22**

The Assistant Director, Place and Client Services, submitted a report a copy of which had been circulated to each Member.

*RESOLVED* that:-

- (a) The 2021/22 HRA revenue estimates as set out in Appendix A of the Assistant Director's report be approved.
- (b) Dwelling rents as calculated in accordance with central Governments rent policy (set out in paragraph 5.7 of the Assistant Director's report) be approved.
- (c) The HRA revenue funded element of £7,253,200 included within the total management fee for Colchester Borough Homes (CBH) (set out in paragraph 5.14 of the Assistant Director's report) be approved.
- (d) The inclusion in the budget of a revenue contribution of £3,790,000 to the Housing Investment Programme (HIP) be noted (see paragraph 5.30 of the Assistant Director's report).
- (e) The HRA balances position in Appendix B of the Assistant Director's report be noted.
- (f) The Medium-Term Financial Forecast (MTFF) set out at Appendix C of the Assistant Director's report and the 30 Year HRA financial position set out at Appendix E of the Assistant Director's report be noted.

#### *REASONS*

Financial Procedures require the Assistant Director for Place and Client Services to prepare detailed HRA estimates for approval by the Cabinet, setting the new rent levels for the new financial year.

#### *ALTERNATIVE OPTIONS*

No alternative options were presented to Cabinet.

**540**

### **Housing Investment Programme 2021-22**

The Assistant Director, Place and Client Services submitted a report a copy of which had been circulated to each Member.

Councillor Fox, Portfolio for Housing, introduced the report. The Housing Investment Programme provided £40 million investment in housing for 2021-22. It was funding a number of key strands of work such as acquisitions, through the 100 Homes project, and contributing to meeting the Climate Emergency response, through sustainability improvements to the Council's housing stock.

Councillor Fox made a presentation to Cabinet highlighting the “new build” sites that were being funded through the Housing Investment Programme. These would deliver affordable housing right across the borough, both in urban and rural wards. It was also funding the redevelopment of Elfreda House, which would result in a redeveloped high quality sheltered housing scheme by 2023.

The funding provided through the Housing investment Programme provided opportunities for local contractors and suppliers and therefore made a real contribution to the local economy.

*RESOLVED* that:-

- (a) The Housing Investment Programme for 2021/22 be approved.
- (b) The Capital Medium Term Financial Forecast (CMTFF) set out at Appendix A of the Assistant Director’s report be approved.

#### *REASONS*

Each year as part of the process to agree the Council’s revenue and capital estimates the Cabinet is required to agree the allocations to the Housing Stock Investment Programme. These allow for work to be undertaken to maintain, improve, and refurbish the housing stock and its environment.

Cabinet annually agrees to accept a proposed 5 year Housing Investment Programme (HIP) in principle as the framework for procuring housing related planned works, improvements, responsive and void works and cyclical maintenance.

The proposed investment programme is linked to the Asset Management Strategy (AMS) and reviewed annually in the light of available resources and for each annual allocation to be brought to Cabinet for approval as part of the overall HIP report.

The Colchester Borough Homes (CBH) Board have considered the content of the Cabinet report submitted and is now seeking approval for the 2021/22 Capital programme.

The Assistant Director’s report seeks the release of funds under grouped headings as described in the AMS and supported by the Management Agreement dated 9th August 2013, which governs the contractual relationship between Colchester Borough Council (CBC) and CBH.

#### *ALTERNATIVE OPTIONS*

No alternative options were presented to Cabinet.

## **541 Delegation of Authority for the Award of a Contract for the Redevelopment of Elfreda House**

The Assistant Director Place and Client Services submitted a report a copy of which

had been circulated to each Member.

*RESOLVED* that authority for the award of the contract to demolish and rebuild Elfreda House in Shrub End be delegated to the Portfolio Holder for Housing.

#### *REASONS*

The project and budget had previously been agreed, with the project having already been through pre-planning development, a public planning application, and the completion of a technical details pack for the tender to be advertised. Expressions of Interest in this contract were invited in November 2020, evaluated in December 2020 and an invitation to Tender was issued to 6 contractors in early January 2021.

Bids will be returned in February including Social Value offers which are expected to be significant given the estimated budget for the project. The time required to evaluate the bids means that the recommendation for award is likely to be within the pre-election period when Cabinet meetings will not take place and to delay the contract award until after the election would mean an avoidable delay to the commencement of works on site and the ultimate completion and occupation of the building. As the building will benefit tenants who may otherwise have no, or less, suitable accommodation; the decision to delegate authority to the Portfolio Holder for Housing allows that social benefit to be realised without this delay.

#### *ALTERNATIVE OPTIONS*

To delay the delegation, or present the recommended contractor decision to the March Cabinet. However, realistically the knowledge gained would not have significantly advanced. Although the tender exercise would have closed, it is considered too little time following the conclusion of the procurement exercise to allow sufficient scrutiny of the responses. That means that it would not be possible at that time to choose the winning contractor. The ensuing pre-election period would return to the same position of delegating authority to prevent the successful contractor mobilising quickly and commencing works on site in accordance with the agreed project plan.

### **542 Request for Delegated Authority for the Award of Housing Revenue Account Contracts 2021**

The Assistant Director, Place and Client Services, submitted a report a copy of which had been circulated to each Member.

*RESOLVED* that authority be delegated to the Portfolio Holder for Housing for the award of the contracts for works within the Housing Investment Programme 2021/22, including but not limited to:

- Window and Door Replacements
- Heating System Renewals
- Climate Emergency Response Works

## *REASONS*

Within the Housing Revenue Account (HRA), the Council owns almost 6,000 affordable homes, benefitting people in need of social housing. The housing stock is managed through an Arm's Length Management Organisation (ALMO), Colchester Borough Homes (CBH) and each year a number of maintenance contracts are managed within an agreed Housing Investment Programme. This keeps these homes in a suitable condition, as part of an ongoing planned approach set from the HRA Asset Management Strategy and 30-year HRA Business Plan.

The maintenance contracts that are due to expire over the next year need new contracts to be procured and awarded for the Housing Investment Programme in 2020/21. These are contracts that are likely to require Cabinet approval due to estimated costs (over £500k for the scope of the contracts, over multiple years) and borough-wide span.

The decision to delegate powers to the Portfolio Holder for Housing to approve the award of these contracts, as they arise, will make those awards smoother and faster if they arise between meetings scheduled for the next year, or during the pre-election period. A similar decision was taken in 2018 and 2020 and has demonstrated the success and benefit of this approach in past/current contract awards.

## *ALTERNATIVE OPTIONS*

Not to delegate the powers requested; but this would then need to be individually reported to Cabinet for each contract award increasing the time and resourcing required, for a procurement process that is already heavily scrutinised and regulated. The time/benefit balance would therefore suggest that delegation to the Portfolio Holder would be more effective and efficient use of Council resources, without introducing risks; demonstrated by recent practices. The Portfolio Holder decisions would remain available for call-in should individual concerns arise.

### **543 Request for Delegated Authority for New Utilities and Energy Bureau" Contracts**

The Assistant Director Policy and Corporate submitted a report a copy of which had been circulated to each Member.

*RESOLVED* that authority for the contract awards for the provision of utilities and an "Energy Bureau Service" be delegated to the Portfolio Holder for Business and Resources, in consultation with the Portfolio Holder for Housing.

## *REASONS*

To ensure continuation of each service and avoid any adverse impacts on all Council services (utilities), as well as the Council's financial functions.

## *ALTERNATIVE OPTIONS*

Not to delegate authority: However, failure to ensure continuation of each service will have an adverse impact on Council property and services (utilities) and affect the Council's financial functions.

To wait until March Cabinet.

#### **544 Half Year 2020-21 Performance Report including Progress on 2020-2023 Strategic Action Plan**

The Assistant Director, Policy and Corporate submitted a report a copy of which had been circulated to each Member.

Councillor J. Young, Portfolio Holder for Culture and Performance, introduced the report and highlighted that the impact of the Coronavirus pandemic had inevitably had an impact on the Council's performance against its Key Performance Indicators. However, not withstanding this, considerable progress had been made in the reporting period, including:-

- The completion of the Northern Gateway Sports Park;
- The introduction of a no idling policy;
- The introduction of e-cargo bikes;
- The Woodland Project;
- The delivery of Heritage Open days online, which demonstrated how the challenges of the pandemic were driving fresh approaches to service delivery.

A further report on Key Performance Indicators for 2021-22 would be brought to the next Cabinet meeting.

*RESOLVED* that:-

(a) The performance described in the Assistant Director's report and appendices and the progress in delivering against Key Performance Indicators and the Strategic Plan be noted.

(b) The impact of Covid-19 on performance be noted and Key Performance Indicator targets be maintained for the remainder of the financial year.

*REASONS*

To ensure robust performance management of key Services and to monitor progress in achieving key Strategic Objectives of the Council.

*ALTERNATIVE OPTIONS*

No alternative options were presented to Cabinet.

**545 Progress of Responses to the Public**

The Assistant Director, Corporate and Improvement Services submitted a progress sheet a copy of which had been circulated to each Member.

*RESOLVED* that the contents of the Progress Sheet be noted.

*REASONS*

The progress sheet was a mechanism by which the Cabinet could ensure that public statements and questions were responded to appropriately and promptly.

*ALTERNATIVE OPTIONS*

No alternative options were presented to the Cabinet.

**546 Matters Relating to Third Party Rights at Queen St and the Alumno Development - Part B**

**The Cabinet resolved under Section 100A(4) of the Local Government Act 1972 and the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.**

This minute is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (information relating to the financial or business affairs of a particular person, including the authority holding the information).