

The Council Meeting

Council Chamber, Town Hall
13 October 2010 at 6.00pm

Information for Members of the Public

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COLCHESTER BOROUGH COUNCIL

TO ALL MEMBERS OF THE COUNCIL

13 October 2010

You are hereby summoned to attend a meeting of the Council to be held at the Council Chamber, Town Hall on **13 October 2010 at 6:00pm** for the transaction of the business stated below.



Chief Executive

AGENDA

Pages

1. Welcome and Announcements

(a) The Mayor to welcome members of the public and Councillors and to invite the Chaplain to address the meeting. The Mayor to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Mayor's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Have Your Say!

(a) The Mayor to ask members of the public to indicate if they wish to ask a question, make a statement or present a petition on any matter relating to the business of the Council – either on an item on the agenda for this meeting or on a general matter not on this agenda (Council Procedure Rule 6(2)).

(b) The Mayor to invite contributions from members of the public who wish to address the Council on a general matter not on this agenda.

(Note: A period of up to 15 minutes is available for general statements and questions under 'Have Your Say!').

3. Minutes

1 - 8

A... Motion that the minutes of the meeting held on 14 July 2010 be confirmed as a correct record.

4. Mayor's Announcements

Mayor's Announcements (if any) and matters arising pursuant to Council Procedure Rule 8(3).

5. Personal Interests of Members

Disclosures by Members under Council Procedure Rule 9(3) to 9(9) (if any).

6. Prejudicial Interests of Members

Disclosures by Members under Council Procedure Rules 9(10) and 9(11) (if any).

(Note: Members should only declare personal and/or prejudicial interests on items that are to be considered at the meeting).

7. Items (if any) referred under the Call-in Procedure

To consider any items referred by the Strategic Overview and Scrutiny Panel or the Finance and Audit Scrutiny Panel under the Call-In Procedure because they are considered to be contrary to the policy framework of the Council or contrary to, or not wholly in accordance with the budget.

8. Recommendations of the Cabinet, Panels and Committees

i. 2009/10 Year End Review of Risk Management

9

B... Motion that the recommendation contained in minute 25 of the Cabinet's meeting of 8 September 2010 be approved and adopted.

ii. Revised Executive Arrangements

10 - 11

C... Motion that the recommendations contained in minute 28 of the Cabinet's meeting of 8 September 2010 be approved and adopted. See also note from Monitoring Officer clarifying the delegations agreed by Cabinet at its meeting on 8 September 2010.

iii. Adoption of Development Policies Development Plan Document **12 - 13**

D... Motion that the recommendation in minute 18 of the Local Development Framework Committee meeting of 29 September 2010 be approved and adopted.

iv. Adoption of Site Allocations Development Plan Document **14 - 16**

E... Motion that the recommendation in minute 19 of the Local Development Framework Committee meeting of 29 September 2010 be approved and adopted.

v. Licensing of Sexual Entertainment Venues (Sex Establishment Licence) **17 - 18**

F... Motion that the recommendation in minute of the Licensing Committee meeting of 6 October 2010 be approved and adopted.

9. Notices of Motion pursuant to Council Procedure Rule 11

i. Royal Mail

G... Proposer: Councillor Dave Harris

Motion that this Council:-

- Believes that throughout its long history, Royal Mail has provided a vital public service to isolated rural and urban communities alike across the length and breadth of the country, including the Borough of Colchester, providing a unique one-price-goes-anywhere daily service;
- Is convinced that privatisation will lead to widespread closure of Post Offices, jeopardise the uniform tariff and universal service for letters and lead to a deterioration of services, particularly for small businesses, domestic customers, vulnerable groups and communities;
- Supports the work Royal Mail continues to do, and furthermore is opposed to the privatisation of this valuable service;

- Resolves to write to the Minister responsible to make a plea that Royal Mail is left in full public ownership to ensure that the service is not put at risk for short term profit and to copy the letter to all 3 local MPs urging their support.

As the motion relates to a non-executive function, it will be debated and determined at the meeting.

10. Questions to Cabinet Members and Chairmen pursuant to Council Procedure Rule 10

To receive and answer pre-notified questions in accordance with Council Procedure Rule 10(1) followed by any oral questions (ie not submitted in advance) in accordance with Council Procedure Rule 10 (3).

(Note: A period of up to 60 minutes is available for pre-notified questions and oral questions by Members of the Council to Cabinet Members and Chairmen (or in their absence, Deputy Chairmen)).

No prenotified questions have been received.

11. Schedules of Decisions taken by Portfolio Holders

19 - 24

To note schedules covering the period 3 July 2010 - 29 September 2010

12. Reports Referred to in Recommendations

25 - 111

The reports specified below are submitted for information and are referred to in the recommendations specified in item 8 on the agenda:

Report to Cabinet 8 September 2010: 2009/10 Year End Review of Risk Management

Report to Cabinet 8 September 2010: Revised Executive Arrangements

Report to Local Development Framework Committee 29 September 2010: Adoption of Development Policies DPD

Report to Local Development Framework Committee 29 September 2010: Adoption of Site Allocations DPD

Report to Licensing Committee 6 October 2010: Licensing of Sexual Entertainment Venues (Sex Establishment Licence)

13. Urgent items

To consider any business not specified in this summons which by reason of special circumstances the Mayor determines should be considered at the meeting as a matter of urgency.

14. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

COUNCIL

14 JULY 2010

Present :- Councillor Sonia Lewis (the Mayor) (Chairman)
Councillor Helen Chuah (Deputy Mayor)
Councillors Christopher Arnold, Nick Barlow,
Kevin Bentley, Mary Blandon, Elizabeth Blundell,
John Bouckley, Peter Chillingworth, Barrie Cook,
Nick Cope, Tina Dopson, John Elliott, Andrew Ellis,
Margaret Fairley-Crowe, Margaret Fisher,
Stephen Ford, Wyn Foster, Bill Frame, Ray Gamble,
Christopher Garnett, Martin Goss, Scott Greenhill,
Mike Hardy, Dave Harris, Pauline Hazell, Peter Higgins,
Theresa Higgins, Mike Hogg, Martin Hunt (Deputy
Leader) , John Jowers, Margaret Kimberley,
Justin Knight, Michael Lilley, Sue Lissimore,
Jackie Maclean, Jon Manning, Richard Martin,
Colin Mudie, Kim Naish, Nigel Offen, Beverley Oxford,
Gerard Oxford, Philip Oxford, Ann Quarrie,
Lesley Scott-Boutell, Paul Smith, Henry Spyvee,
Colin Sykes, Laura Sykes, Jill Tod, Anne Turrell (Leader
of the Council) , Dennis Willetts, Julie Young and
Tim Young

The meeting was opened with prayers by the Mayor's Chaplain, The Reverend Richard Allen.

17. Minutes

The minutes of the meeting held on 19 May 2010 were confirmed as a correct record.

18. Have Your Say!

Darius Law addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He thanked the Portfolio Holder for the response he had received to his queries at the Council meeting on 24 March 2010 about Gosbecks Archaeological Park. However he was concerned that the funding set aside for Gosbecks was being eroded on maintenance costs alone. He sought an assurance that the Council was considering proposals from Destination Colchester about Gosbecks.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy and Performance, responded that the Council was working closely with Destination Colchester.

The Mayor of Wivenhoe, Councillor Brain Sinclair, addressed the Council pursuant to the provisions of Council Procedure Rule 6(2) to explain that Wivenhoe Town Council

would have to take on the costs of maintenance and public liability insurance for the facilities arising from the redevelopment of Cook's Shipyard, without receiving any additional funding. He appreciated the difficult economic climate and that local government would be forced to make cuts, but asked that Colchester Borough Council bear in mind the additional burden that Wivenhoe faced.

Councillor Dopson, Portfolio Holder for Communities, acknowledged the challenges faced by Wivenhoe Town Council.

Paula Whitney addressed the Council pursuant to the provisions of Council Procedure Rule 6(2) about the importance of environmental issues and to urge the Council to sign up to Friends of the Earth "Get Serious" Campaign. All decision making by the Council should be aimed at reducing carbon emissions. The Council needed to look at issues such as tree-planting, congestion, encouraging greener forms of transport and supporting public transport. The bus station should be preserved on its present site and the High Street should not be pedestrianised as this would interfere with bus services.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy and Performance indicated that a written response would be sent but that she was aware of the Get Serious campaign and had looked at the Get Serious campaign cards that had been presented to the Cabinet. Councillor Hunt, Portfolio Holder for Street and Waste Services, explained that the Council supported the "Trees for Years "campaign which addressed some of the concerns expressed by Ms Whitney.

19. Mayor's Announcements

The Mayor made the following announcements:-

- the Mayor would be presenting former Councillors with certificates thanking them for their service on 20 July;
- 20 July would also be the first "buttonhole wearing" day for Colchester in Bloom;
- Colchester In Bloom Shop and Garden judging would be on 28 July;
- Mayor's Escort at home would be on 29 July in the Mayor's Parlour.

20. Colchester Borough Council Safeguarding Adults Policy

RESOLVED that the recommendation contained in minute 5 of the Cabinet meeting of 26 May 2010 be approved and adopted (UNANIMOUS).

21. 2011/12 Budget Strategy, Medium Term Financial Forecast and Budget Timetable/VAF Issues Relating to Legal Proceedings

RESOLVED that the recommendations contained in minutes 13 and 15 of the Cabinet meeting of 30 June 2010 be approved and adopted (MAJORITY voted in favour).

Councillor Bill Frame (in respect of his position as Chairman of Colne Housing) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

22. Schedules of Decisions taken by Portfolio Holders

RESOLVED that the schedule of Portfolio Holder decisions for the period 12 March 2010 - 2 July 2010 be noted.

23. Questions to Cabinet Members and Chairmen pursuant to Council Procedure Rule 10

Questioner	Subject	Response
Oral Questions		
Councillor Arnold	The arrangements for scrutiny of decisions on the procurement of new freighters in March 2011.	Direct oral answer provided by the Portfolio Holder for Street and Waste Services.
Councillor Chillingworth	Whether the Leader of the Council's campaigning against further housing development in Mile End compromised her responsibilities to the strategic development of the Borough.	Direct oral answer provided by the Leader of the Council and the Portfolio Holder for Strategy and Performance.
Councillor Cope	Update on progress of legal action taken by Banner Holdings against the Council.	Direct oral answer provided by the Portfolio Holder for Resources and Diversity.
Councillor Willetts	Would the Leader of the Council and Portfolio Holder for Strategy and Performance undertake a review of the parking penalty strategy to ensure volunteers helping those in need were not hindered.	Direct oral answer provided by the Leader of the Council and the Portfolio Holder for Strategy and Performance.
Councillor Quarrie	The responsibilities of Parish Councils.	Direct oral answer provided by the Portfolio Holder for Communities.
Councillor Bentley	The Cabinet's position on Local Enterprise Partnerships.	Direct oral answer provided by the Leader of the Council and the Portfolio Holder for Strategy and

		Performance.
Councillor Hazell	Whether the level of service presently provided to residents and tenants could be guaranteed.	Direct oral answer provided by the Portfolio Holder for Customers
Councillor Hazell	Whether the Council would maintain the war memorial to a standard that would reflect its importance.	Direct oral answer provided by the Portfolio Holder for Communities.
Councillor G. Oxford	Whether a badge could be introduced to identify volunteer drivers helping the vulnerable.	Direct oral answer provided by the Portfolio Holder for Communities.
Councillor Jowers	The Council's position on an Integrated County Strategy and whether the Leader of the Council was aware of problems in Suffolk County Council in relation to such a strategy.	Direct oral answer provided by the Leader of the Council and the Portfolio Holder for Strategy and Performance.
Councillor J. Young	Could the Portfolio Holder for Communities look into the possibility of extending the blue badge scheme so that it included carers.	Direct oral answer provided by the Portfolio Holder for Communities.

24. Increase in VAT

It was PROPOSED by Coouncillor Dopson that:-

This Council:-

(i) Believes that:-

- the increase in VAT from 17.5% to 20% announced in the Government's June Budget will fall hardest on those least able to afford it.
- the increase in VAT will lead to higher prices for goods and services; will have a disproportionate impact on pensioners and other low income groups; and will have a severe impact on businesses, charities and community groups in Colchester.
- the effect of the increase in VAT, when taken with other measures in the Budget, will be unfair to pensioners, who have not had a compensatory increase in other benefits and allowances.
- the way the VAT increase will affect pensioners and other low income groups runs counter to the Government's Coalition Agreement statement on 20 May 2010 that it would "ensure that fairness is at the heart of those decisions so that all those most in need are protected."

(ii) Notes that the Institute of Fiscal Studies has stated the VAT increase was not

"unavoidable," as the Chancellor of the Exchequer announced in his Budget speech.

(iii) Resolves to write directly to the Chancellor of the Exchequer raising concerns about the impact of the proposed VAT increase on pensioners, other vulnerable groups and businesses in Colchester.

(iv) Calls on the Members of Parliament representing the Borough of Colchester to stand up for Colchester, pensioners, businesses and wider community, by voicing their opposition to this unfair increase in VAT and to vote against it in Parliament.

A MAIN AMENDMENT was moved by Councillor Smith as follows:-

The Motion concerning the increase in VAT be approved and adopted subject to the following amendments:-

(i) In paragraph (i):-

(a) in the first bullet point the deletion of the word "will" and its replacement with the word "may";

(b) in the second bullet point the deletion of the word "will" at the second and third points it occurs and its replacement with the word "may" on each occasion;

(c) at the end of the second bullet point the insertion of the following additional words after the words "community groups in Colchester":-

"but this Council welcomes the restoration of the link between pensions and earnings, the increase in personal allowance which will take over eight hundred thousand low earners out of income tax altogether, and the closing of the capital gains tax loophole, all of which the Labour Government failed to achieve in 13 years."

(d) the deletion of the third and fourth bullet points.

(ii) In paragraph (iii) the insertion of the following additional words after the words "other vulnerable groups and businesses in Colchester":-

"and calls on the Chancellor of the Exchequer to undertake an impact assessment of the proposed 2½% VAT rise before it is implemented in January ."

(iii) the deletion of paragraph (iv).

The MAIN AMENDMENT was lost (MAJORITY voted AGAINST).

The MOTION was thereupon put and was LOST (TEN voted FOR, TWENTY ONE voted AGAINST and TWENTY THREE ABSTAINED from voting).

A named vote having been requested pursuant to the provisions of Council Procedure Rule 15(2), the voting was as follows:-

Those who voted FOR were:-

Councillors Dopson, Ford, Harris, Lilley, Naish, B. Oxford, G. Oxford, P. Oxford, J. Young and T. Young.

Those who voted AGAINST were:-

Councillors Bentley, Blundell, Bouckley, Chillingworth, Cook, Elliott, Ellis, Fairley-Crowe, Foster, Garnett, Hardy, Hazell, Hogg, Jowers, Kimberley, Lissimore, Maclean, Martin, Quarrie, Tod and Willetts.

Those who ABSTAINED from voting:-

Councillors Barlow, Blandon, Cope, Fisher, Frame, Gamble, Goss, Greenhill, P. Higgins, T. Higgins, Hunt, Knight, Manning, Mudie, Offen, Scott-Boutell, Smith, Spyvee, C. Sykes, L. Sykes, Turrell, the Mayor (Councillor Lewis) and the Deputy Mayor (Councillor Chuah).

25. Suspension of Procedure Rules

RESOLVED that Council Procedure Rule 11(2) be suspended to permit the following motion to be debated and determined at this meeting.

Councillor Tina Dopson (in respect of her employment by Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Dave Harris (in respect of his position as a Governor of the Stanway Federation School) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Tim Young (in respect of his spouse's membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Kevin Bentley, Councillor John Jowers, Councillor Anne Turrell and Councillor Julie Young (in respect of membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

26. Secondary School Education in Colchester

Mr Slater addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). He expressed concern that there was insufficient capacity at Colchester's secondary schools for the growing population. For instance the additional

school places generated by the garrison redevelopment would not be met by the proposed level of extra provision at Philip Morant. Therefore Alderman Blaxhill and Thomas Lord Audley schools should be kept open under the Stanway Federation. Pupils and parents needed to know what the position as the uncertainty only made the problems worse. Essex County Council should be encouraging schools rather than threatening them with closure.

It was PROPOSED by Councillor J. Young that:-

(a) This Council is disappointed that the proposed major investment in Colchester Secondary schools will not now go ahead.

(b) This Council supported Option 4 and supports the Stanway Federation intention to form a single school operating over two sites in Stanway and Monkwick.

(c) This Council calls upon Essex County Council:-

- to confirm its support for the Federation proposals;
- to review its capital programme in order that the necessary and planned parallel investment can be made available at the Thomas Lord Audley site and at Stanway School to provide suitably enhanced learning environments.

Councillor Dopson moved a SECONDARY AMENDMENT as follows:-

The motion concerning Secondary School Education in Colchester be approved and adopted subject to the following amendments:-

(a) At paragraph (b):-

- the insertion of the word "initially" between the words "school" and "operating";
- the deletion of the word "two" and its replacement with the word "three";
- the deletion of the word "and" between Stanway and Monkwick and its replacement with a comma;
- the insertion of the words "and Shrub End." after the word "Monkwick."

(b) In the second bullet point of paragraph (c) the deletion of the words "at the Thomas Lord Audley site and at Stanway School".

Councillor J. Young indicated that she ACCEPTED the SECONDARY AMENDMENT whereupon the MOTION was deemed amended accordingly.

The MOTION AS AMENDED was thereupon put and CARRIED (MAJORITY VOTED IN FAVOUR).

27. Review of Future Debate Opportunities

RESOLVED that the recommendations contained in the Monitoring Officer's report be

approved and adopted.

Extract from the minutes of the Cabinet meeting on 8 September 2010

25. 2009/10 Year End Review of Risk Management

The Head of Resource Management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix B to these minutes in the Minute Book.

RESOLVED that:-

- (a) The risk management work undertaken during 2009/10 be noted.
- (b) The current strategic risk register be noted.
- (c) The risk management strategy for 2010/11 be approved.

RECOMMENDED to COUNCIL that the risk management strategy for 2010/11 be included within the Policy Framework.

REASONS

- (a) Cabinet has overall ownership of the risk management process and is responsible for endorsing its strategic direction. Therefore the risk management strategy states that Cabinet should receive an annual report on progress and should formally agree any amendments to the strategy itself.
- (b) During the year quarterly progress reports are presented to the Finance and Audit Scrutiny Panel (FASP) detailing work undertaken and current issues. A report was presented to FASP on 27 July 2010 where they approved its referral to Cabinet
- (c) The Risk Management Strategy is one of the Corporate Governance documents that supports the Constitution of the Council. Therefore any amendments have to be approved by full Council.

ALTERNATIVE OPTIONS

It was open to Cabinet not to approve the risk management strategy for 2010/11 or not to recommend to Council that it be included within the Policy Framework.

Extract from the minutes of the Cabinet meeting on 8 September 2010

28. Revised Executive Arrangements

The Monitoring Officer submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix E to these minutes in the Minute Book.

Councillor Turrell, Portfolio Holder for Strategy and Performance, explained that in view of the advice from the Minister of Housing and Local Government, the Cabinet had no option but to institute the necessary arrangements to comply with the requirement to adopt revised executive arrangements under the Local Government and Public Involvement in Health Act 2007, even though further changes may be required within a year. If it did not do so the Council may not be legally constituted.

(a) *RECOMMENDED TO COUNCIL* that it note the procedure and timetable for the review of executive arrangements under Part 3 of the Local Government and Public Involvement in Health Act 2007 and that it authorise the required public consultation be carried out as the initial stage of the procedure.

(b) *RESOLVED* that the outcome of the public consultation and the decision required of Council be delegated to the Leader of the Council in consultation with Group Leaders.

(c) *RECOMMENDED TO COUNCIL* that it delegate to the Leader of the Council in consultation with Group Leaders the decision on which of the options to adopt.

REASONS

The Council is obliged to comply with the requirements set out in part 3 of the Local Government and Public Involvement in Health Act 2007. If it fails to adopt either, the Secretary of State has power to impose on it the Leader and Executive form.

ALTERNATIVE OPTIONS

Although options will be available to the Council at a later stage of this process, the decisions set out in the Monitoring Officer's report deal with a statutory procedure which the Council must follow.

Revised Executive Arrangements

This note is intended to clarify the delegations agreed by Cabinet at its meeting on 8 September 2010.

The final and most important decision on which of the options to adopt will be taken by Full Council at a special meeting on 9 December 2010 with the revised arrangements coming in to effect in May 2011.

The timetable available to us in order to comply with the statutory duty to adopt is:

1. 8 September 2010 - report to Cabinet setting out details of timescales and options.
2. 8 September 2010 - Cabinet recommends to 13 October 2010 Council meeting to agree timetable and authorise consultation on options.
3. 8 September 2010 - Cabinet agreed "that the outcome of the public consultation and the decision required of Council be delegated to the Leader of the Council in consultation with Group Leaders".

This delegation is intended to enable the Leader of the Council in consultation with the Group Leaders to consider the results of the consultation and to recommend to Council which option it should adopt at the Special Council meeting on 9 December 2010. The recommendation will be debated and determined by Council.

4. 8 September 2010 - Cabinet recommends to 13 October 2010 Council meeting that "it delegate to the Leader of the Council in consultation with the Group Leaders the decision on which of the options to adopt".

This delegation is intended to enable the Leader of the Council in consultation with Group Leaders to publish the required public notice of intention to adopt revised arrangements prior to the Special Council meeting on 9 December 2010. The final decision will be taken by Council on 9 December 2010.

5. 9 December 2010 - Special Council meeting where Council adopts its preferred option.

The explanatory wording in bold will (subject to Cabinet's agreement at its meeting on 20 October 2010), be included in the minutes of the Cabinet meeting of 8 September 2010 in order to clarify the position.

The delegations at 3 and 4 are required as there are no scheduled meetings to determine them. Delegations are required for both the executive and non-executive parts of the process otherwise we will need to convene additional Cabinet and Council meetings to determine the issues.

Andrew Weavers
Monitoring Officer
7 October 2010

Extract from the minutes of the Local Development Framework Committee meeting of 29 September 2010

Councillor Jowers (in respect of his membership of Essex County Council and role as Cabinet Portfolio Holder for Communities and Planning) declared his personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

18. Development Policies Development Plan Document (DPD)

The Committee considered a report by the Head of Strategic Policy and Regeneration on the Development Policies DPD. An Independent Examination had taken place by the Planning Inspector who had submitted his binding report which was appended to the report by the Head of Strategic Policy and Regeneration. The Inspector had found that the Development Policies DPD was 'Sound' and his recommendation was that it be adopted in accordance with Section 23(3) of the Planning and Compulsory Purchase Act 2004. The only changes recommended were those detailed in the Annex, a schedule of minor changes put forward by the Council in order to bring the document up to date factually, correcting minor errors, to add clarity or to improve consistency. This document was annexed to the Inspector's report and was circulated at the meeting to assist the Committee. Once adopted the Development Policies DPD would form part of the statutory development plan for the Borough and together with the Core Strategy and the Site Allocations DPD would replace the Local Plan. The Committee was requested to recommend to the Council that the Development Policies DPD be adopted.

Karen Syrett, Spatial Policy Manager, attended to assist the Committee in its deliberations. In her presentation she explained that this DPD would add detail to the Core Strategy and set local standards against which planning applications could be determined. She also referred to specific policy areas which had been changed from those in the Local Plan and to the Annex detailing the minor changes.

Some Committee members were disappointed that the Annex had not been made available in advance of the meeting because its late submission did not conform with this Council's standards of integrity and transparency, although it was acknowledged that the content of the Annex did not appear to have revealed any surprises. It was explained that the Annex document had not been included in the agenda papers because it had only been received in its current format a few days before this meeting. The document had been available on the website and was updated throughout the examination process but it appeared that some members had not been aware of this fact. The Committee were reminded that there would be an opportunity for councillors and the public to comment on the content of the Annex at the Council meeting but in any case the Inspector's Report and the Annex were both binding on the Council and could not be altered.

Members wished it to be recorded that the provision of these documents immediately prior to the Committee's meeting would not set a precedent for the future.

RECOMMENDED to the Council (ONE ABSTAINED from voting) that the Development Policies Development Plan Document be adopted by the Council as recommended by the Inspector in accordance with Section 23(3) of the Planning and Compulsory Purchase Act 2004.

RESOLVED (ONE ABSTAINED from voting) that the Spatial Policy Manager be authorised to deal with all the necessary adoption documentation and other consequential matters in accordance with the appropriate Regulations.

Agenda item 8(iv)

Extract from the minutes of the Local Development Framework Committee meeting 29 September 2010

Councillors Blundell, Garnett, Goss and C. Sykes (in respect of their respective memberships of Marks Tey Parish Council, Langham Parish Council, Myland Parish Council and Stanway Parish Council) and Jowers (in respect of his membership of Essex County Council and role as Cabinet Portfolio Holder for Communities and Planning) each declared their individual personal interests in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3).

19. Site Allocations Development Plan Document (DPD)

The Committee considered a report by the Head of Strategic Policy and Regeneration on the Site Allocations DPD. An Independent Examination had taken place by the Planning Inspector who had submitted his binding report which was appended to the report by the Head of Strategic Policy and Regeneration. Subject to four binding changes needed to meet the statutory requirements as set out in Annex 1 of the Inspector's report, the Inspector had found that the Site Allocations DPD was 'Sound' and his recommendation was that it be adopted in accordance with Section 23(3) of the Planning and Compulsory Purchase Act 2004. A schedule of minor changes put forward by the Council in order to bring the document up to date factually, correcting minor errors, to add clarity or to improve consistency was set out in Annex 2 to the Inspector's report and was circulated at the meeting to assist the Committee. Once adopted the Site Allocations DPD would form part of the statutory development plan for the Borough and together with the Core Strategy and the Development Policies DPD would replace the Local Plan. The Committee was requested to recommend to the Council that the Site Allocations DPD be adopted.

Karen Syrett, Spatial Policy Manager, attended to assist the Committee in its deliberations. She expanded further upon the four binding changes made by the Inspector and commented on other significant parts of the Inspector's report where he had supported the Council's approach including the safeguarding of existing open space, the retention of the local employment zone on Mersea waterfront and the approach to allocations in Langham. The Inspector concluded that in terms of the North Growth Area, the Site Allocations DPD was in accord with the Core Strategy, and there was no basis for reducing the amount of development or delaying its delivery. In paragraphs 2.40 and 2.41 of the Inspector's report, he confirmed that an Area Action Plan for the North Growth Area was unnecessary and further that he did not believe the land allocated as open space within the Local Plan and now forming part of the North Growth Area Urban Extension was ever realistically going to be delivered given that the land was in private ownership.

Catherine Clouston addressed the Committee pursuant to the provisions of

Meetings General Procedure Rule 5(3). She found it very difficult to use public transport, apart from trips into the town centre, because the available public transport was inadequate to meet her travel needs. She recognised that this resulted in her being part of the congestion problems, particularly during the peak times. She considered that if 4,000 new homes were to be built in North Colchester by 2021 the congestion would increase significantly. People may wish to use public transport but it may not be a viable option.

David Clouston addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(3). The Site Allocations DPD was sound within the Inspector's terms of reference and the Committee would recommend adoption to the Council. However, from a qualitative point of view he considered the report to be ingenuous. The Inspector did not appear to have taken suggestions made by Myland Parish Council into account. He considered that the Inspector had too willingly favoured expediency over justice in his Inspector Change No. 2, that housing on greenfield sites could be brought forward ahead of brownfield sites but noted that the Inspector had not removed the phasing element altogether. Bringing greenfield sites forward would put more pressure on the next stage of the process.

In response to Mrs Clouston, the Spatial Policy Manager referred to the Inspector's comment on transport issues in paragraph 2.44 of his report concerning the evidence base, part of which is in the Core Strategy but more recent evidence was also included. The Council continued to develop the evidence base, in partnership with Essex County Council, with ongoing modelling work. In response to Mr Clouston, she confirmed that some of Myland Parish Council's comments had been incorporated by the Inspector.

The Chairman drew the Committee's attention to the background papers circulated at the meeting and to a letter, also circulated, from Myland Parish Council which contained a request for a statement to be included in both DPD documents on this agenda. This request could not be met because there was no ability for the Council to change either document.

At the Chairman's request the Spatial Policy Manager confirmed that legal advice had confirmed that failure to adopt the Site Allocations DPD would be unwise and the Council would need to have a strong justification for such action which could lead to a Judicial Review. The Inspector's report is a material consideration from the time it is published. In addition where a local planning authority fails to prepare a document in accordance with the provisions of the Act, the Secretary of State may use default powers "to prepare, revise or approve" such a document.

Councillor Turrell, Leader of the Council, attended and, with the consent of the Chairman, addressed the Committee. She was also concerned at the Inspector's Change No. 2 which appeared to be making it easier for greenfield sites to be developed ahead of brownfield sites on the basis of the need to ensure the delivery of housing. In response, the Spatial Policy Manager referred to the Council's barrister taking the view that the Inspector was seeking to ensure flexibility which was a requirement of the system. She also referred to the Annual Monitoring Report which provided information on

housing completions. There was no basis for reducing the amount of development or delaying its delivery.

Some members of the Committee did not entirely support all the comments made by the Inspector but there was an understanding of his rationale. Having heard the public representations and having first hand and daily experience of the congestion in the town, other members of the Committee felt unable to support the Site Allocations DPD. There was some concern about flexibility being provided by permitting greenfield sites to be developed in advance of brownfield sites, although the document did not permit that to occur if there was a reliance on infrastructure being provided through another site which had not been developed. There were concerns about insufficient affordable housing being provided particularly on brownfield sites which were expensive to develop and often the affordable housing element was reduced or lost. Open space should be provided on the site where the housing is built, not allocated to existing large tracts of open space which had been the case on some developments.

The Committee acknowledged the likelihood of the Core Strategy being reviewed in 2012 and there was also the possibility of the Site Allocations DPD being reviewed at the same time because the two documents were closely linked. It was considered possible but not probable that such a review may lead to some of the sites being put back or removed, although if some development was removed it may be necessary to replace the allocation elsewhere in the borough. The majority of the contentious sites were not due to come on stream until 2016. It was noted that the document had been open to debate at the Examination stage and that if the Council did not adopt the document it may lead to unwelcomed development.

RECOMMENDED to the Council (TWO voted AGAINST and ONE ABSTAINED from voting) that the Site Allocations Development Plan Document be adopted by the Council as recommended by the Inspector in accordance with Section 23(3) of the Planning and Compulsory Purchase Act 2004.

RESOLVED (TWO voted AGAINST and ONE ABSTAINED from voting) that the Spatial Policy Manager be authorised to deal with all the necessary adoption documentation and other consequential matters in accordance with the appropriate Regulations.

Extract from the Minutes of the Licensing Committee meeting 6 October 2010

7. Licensing of Sexual Entertainment Venues

The Committee considered a report by the Head of Environmental and Protective Services on proposed changes to the licensing of sexual entertainment venues which would give the local authority and local people a greater influence on the granting of these licences. The aim of the new legislation was to bring the licensing of sexual entertainment venues in line with other sex establishments such as sex shops and sex cinemas and to recognise that local people had concerns about where such premises were located and may wish to play an active part in any debate and decision made about their location. The proposed changes would not have any effect however on the licensing of sex shops and sex cinemas which would continue to be licensed separately in their own right.

Adult entertainment such as lap dancing was currently licensed under the provisions of the Licensing Act 2003 and representations concerning such applications had to demonstrate how the proposed activities would either undermine or promote the four licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. Refusal of applications also had to relate to the licensing objectives.

The adoption of the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009 would enable the Council to grant a sex entertainment licence to a sexual entertainment venue where relevant entertainment was being provided before a live audience for the financial gain of the organiser or the entertainer. The amended legislation would permit representations to be made on a much wider basis by local people than was currently possible under the Licensing Act 2003. It would also enable the local authority to consider other factors such as whether the applicant was a 'fit and proper' person to hold such a licence and the Committee would be able to consider the character of the relevant locality in determining whether to grant a licence. Premises holding a sex entertainment licence would still need to be licensed under the Licensing Act 2003 if they wished to sell alcohol or carry out other regulated entertainment such as the provision of hot food after 23.00.

The report outlined the work that would be required in the adoption of the legislation and further consideration would need to be given to the design and issue of applications forms and setting of fees which were not prescribed. The Licensing Manager sought the Committee's views on the establishment of a policy in respect of such applications and in particular the grounds on which the Committee might wish to refuse an application. The Committee discussed the matter at length having particular regard to the issue of limiting

the number permitted and examined that inherent contradiction that in setting a limit on the overall number permitted in a locality it may encourage such businesses to come into the area. There was currently one venue in the Council's locality that would require a licence under the amended legislation. The Committee concluded that further work should be done to create a draft policy for consideration by the Committee at a later date.

RECOMMENDED to COUNCIL that:- –

The amendments made to Schedule 3 of the Local Government (Miscellaneous) Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009 be adopted and that the amendments shall apply within the Borough of Colchester and come into force not more than one month after the day on which the resolution was passed.

RESOLVED that:-

1. The Head of Environmental and Protective Services be requested to formulate a licensing policy in respect of how applications for sex establishment licenses (sexual entertainment venues, sex shops and sex cinemas) will be considered by the licensing authority in accordance with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
2. The Head of Environmental and Protective Services be Instructed to prepare a report and draft policy for consideration by the Licensing Committee in order that the draft policy can be discussed and amended as appropriate by the Committee, prior to it being subject to public consultation and scrutiny.

Record of Decisions taken under Scheme of Delegation to Cabinet Members 3 July 2010 – 29 September 2010

Portfolio – Communities						
Date	Number	Report Title	Author	Decision	Result	
18/6/10	COM-002-10	Gosbecks Archaeological Park Work Plan 2010-2013	Paul Vickers	To approve the proposed work plan for Gosbecks Archaeological Park for the period 2010 to 2013 and to release the funding needed to support this programme of work from the Gosbecks reserve	Agreed 6/7/10	
25/6/10	COM-003-10	Allocation of grant to Age Concern 2010-11	Tamara Moreau	To approve a grant of £30,000 to Age Concern from the Welfare Rights Service budget for one year	Agreed 13/7/10	
6/7/10	COM-004-10	Colchester Parish & Community Initiatives Capital Grant Scheme (previously known as Town & Parish Councils' Grant Scheme)	Ian Vipond	To authorise the allocation of individual grants from the Colchester Parish & Community Initiatives Capital Grant Scheme	Agreed 20/7/10	
26/7/10	COM-005-10 HOU-005-10	Parks and Recreation & Housing HRA Access Licence Review (including fees and charges)	Bob Penny Claire Pick Paul Clarke	To set fees and charges for access licences for the next five year period from April 2011 -September 2016 and review the management arrangements for the access licence system	Agreed 12/8/10	
20/8/10	COM-006-10 STS-001-10	High Woods Country Park – car park charging proposals	Bob Penny Richard Walker	To agree to the introduction of car park charging at High Woods County Park at the Visitor Centre at Turner Road only	Called-in 27/8/10. Reviewed at Finance and Audit Scrutiny Panel 7 September 2010.	

**Record of Decisions taken under Scheme of Delegation to Cabinet Members
3 July 2010 – 29 September 2010**

27/8/10	COM-007-10 RES-004-10	Lease of land and construction of Tiptree Community Centre	Bridget Tighe	To agree the Council's funding and involvement in the project to build a new community centre in Tiptree ward	Confirmed that decision be referred back to Portfolio Holder. Agreed 10/9/10
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Portfolio - Customers					
Date	Number	Report Title	Author	Decision	Result

Portfolio – Economic Development, Culture and Tourism					
Date	Number	Report Title	Author	Decision	Result

**Record of Decisions taken under Scheme of Delegation to Cabinet Members
3 July 2010 – 29 September 2010**

Portfolio – Housing and Community Safety						
Date	Number	Report Title	Author	Decision	Result	
17/6/10	HOU-003-10	Temporary Accommodation Review	Matt Sterling	To approve decisions which are now required to maintain the progress of the implementation of the review of temporary accommodation	Agreed 23/7/10	
23/6/10	HOU-004-10	CCTV Maintenance Contract	Cassandra Fallows	To appoint Baydale Control Systems Ltd to undertake CCTV Maintenance contract for the CBC Town Centre system	Agreed 6/7/10	
26/7/10	COM-005-10 HOU-005-10	Parks and Recreation & Housing HRA Access Licence Review (including fees and charges)	Bob Penny Claire Pick Paul Clarke	To set fees and charges for access licences for the next five year period from April 2011 -September 2016 and review the management arrangements for the access licence system	Agreed 12/8/10	
17/8/10	HOU-006-10	Waveney Council joining Gateway to Home Choice choice based letting scheme	Matt Sterling	Concerns the Gateway to Home Choice choice based letting scheme for the Housing Register; and Waveney Council's request to join	Agreed 8/9/10	
26/8/10	HOU-007-10	CBH Action Plan following HQN Benchmarking report into the delivery of the Responsive, Voids and Adaptations service	Lindsay Barker John Rock	To accept the Action Plan to address recommendations made by HQN following their report into the delivery of the Responsive, Voids and Adaptations service	Agreed 10/9/10	

Record of Decisions taken under Scheme of Delegation to Cabinet Members 3 July 2010 – 29 September 2010

Portfolio – Planning and Sustainability					
Date	Number	Report Title	Author	Decision	Result
23/8/10	PLA-001-10	Scheme for the fixing and recovery of charges for or in connection with the performance of functions in relation to building regulations	Peter Tyler	To approve the scheme for the fixing and recovery of charges for or in connection with the performance of functions in relation to building regulations	Agreed 17/9/10

Portfolio – Resources and Diversity					
Date	Number	Report Title	Author	Decision	Result
12/7/10	RES-002-10	Award of Internal Audit Contract	Elfreda Walker	Award of Internal Audit Contract	Agreed 20/7/10
6/8/10	RES-003-10	Proposed Travellers Site, Severalls Lane East, Colchester	Mike Shorten	To approve draft heads of terms for a letting to Essex County Council of the proposed Travellers Site. To authorise Estates Manager to serve notice upon the agricultural tenant and conclude negotiations with Essex County Council	Called-in 19/8/10. Reviewed at Finance and Audit Scrutiny Panel 31 August 2010. Decision confirmed and can be implemented.
27/8/10	COM-007-10	Lease of land and construction of	Bridget Tighe	To agree the Council's funding and	Agreed

Record of Decisions taken under Scheme of Delegation to Cabinet Members 3 July 2010 – 29 September 2010

	RES-004-10	Tiptree Community Centre			involvement in the project to build a new community centre in Tiptree ward	10/9/10
23/9/10	RES-006-10	Irrecoverable Debts Over £5000	Peter Evans		To write off debts totalling £91,662.83	Due 30/9/10
23/9/10	RES-007-10	Local Authority Mortgage Interest Rates	Peter Evans		To set the Local Determined Interest Rate as [^] .02% for the sixth months starting 1 October 2010	Due 30/9/10

Portfolio – Strategy and Performance

Date	Number	Report Title	Author	Decision	Result
18/8/10	STR-001-10	Appointment to Local Highway Panel	Richard Clifford	To appoint Councillor Bill Frame to the Local Highway Panel	Agreed 25/8/10
21/9/10	STR-002-10	Local Enterprise Partnership	Ian Vipond	That Colchester Borough Council indicates that it supports the representation of the Haven Gateway Partnership in supporting the principles of an Essex/Kent Local Enterprise Partnership (LEP) and an East Anglian LEP on the understanding that the LEP landscape should better reflect the rationale and coherence of cross boundary working between South and East Suffolk and North Essex.	Agreed 28/09/10
21/9/10	STR-003-10	Response to Consultation on the Regional Growth Fund	Lindsay Barker	To approve the Council's response to the consultation on the Regional Growth Fund. To note the Regional Cities East	Agreed 28/9/10

**Record of Decisions taken under Scheme of Delegation to Cabinet Members
3 July 2010 – 29 September 2010**

22/9/10	STR-004-10	Appointment to Essex Partnership for Flood Management	Richard Clifford	response to the consultation	Agreed 29/9/10
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Portfolio – Street and Waste Services					
Date	Number	Report Title	Author	Decision	Result
20/8/10	COM-006-10 STS-001-10	High Woods Country Park – car park charging proposals	Bob Penny Richard Walker	To agree to the introduction of car park charging at High Woods County Park at the Visitor Centre at Turner Road only	Called-in 27/8/10. Reviewed at Finance and Audit Scrutiny Panel 7 September 2010. Confirmed that decision be referred back to Portfolio Holder.



Cabinet

Item
7(i)

8 September 2010

Report of	Head of Resource Management	Author	Hayley McGrath 508902
Title	2009/10 Year End Review of Risk Management		
Wards affected	Not applicable		

**This report reviews the Risk Management work undertaken
for the period 1 April 2009 to 31 March 2010.**

1. Decision(s) Required

- 1.1 Consider and note the risk management work undertaken during 2009/10.
- 1.2 Consider and note the current strategic risk register.
- 1.3 Approve the proposed risk management strategy for 2010/11 and refer it to full Council for inclusion in the Policy Framework.

2. Reason for Decision(s)

- 2.1 Cabinet has overall ownership of the risk management process and is responsible for endorsing its strategic direction. Therefore the risk management strategy states that Cabinet should receive an annual report on progress and should formally agree any amendments to the strategy itself.
- 2.2 During the year quarterly progress reports are presented to the Finance and Audit Scrutiny Panel (FASP) detailing work undertaken and current issues. This report was presented to FASP on 27 July 2010 where they approved its referral to this meeting.
- 2.3 The Risk Management Strategy is one of the Corporate Governance documents that supports the Constitution of the Council. Therefore any amendments have to be approved by full Council.

3. Key Messages

- The economy and cuts in public spending have had a significant impact on the key risks during the year. The highest risk on the current strategic register relates to the potential impact of future central government decisions to reduce public funding, including that of the Council's partners.
- As well as having a direct effect on resources, cuts in public spending are also influencing non-financial risk areas, such as staff motivation, as a result of implementing required savings.
- The 2008/09 Audit and Inspection Letter, issued by the Audit Commission in December 2009, stated that "There is an effective internal risk management system embedded within the organisation". Which was endorsed by the 2008/09 Use of Resources level 3 score for the 'management of risk' key line of enquiry.

4. Supporting Information

- 4.1 The aim of the Council is to adopt best practices in the identification, evaluation, cost-effective control and monitoring of risks across all processes to ensure that risks are properly considered and reduced as far as practicable.
- 4.2 In broad terms risks are split into three categories:
- Strategic – those risks relating to the long term goals of the Council
 - Operational – risks related to the day-to-day operation of each individual service
 - Project – consideration of the risks occurring as a result of the Council's involvement in specific initiatives
- 4.3 Strategic risks are essentially those that threaten the long term goals of the Council and therefore are mainly based around meeting the objectives of the Strategic Plan. They may also represent developing issues that have the potential to fundamentally effect service provision, such as proposals to dramatically change the corporate assessment process. Strategic risks are owned by members of the Senior Management Team.
- 4.4 Operational risks are those that threaten the routine service delivery of the Council. Each service area has their own operational risk register that details the risks associated with providing the service. These registers are reported, in summary format, to the Senior Management Team and committee on an annual basis. High risks and the success in controlling them are reported to Senior Management Team on a quarterly basis, as these assist in the formulation of the strategic risk register.
- 4.5 Project risks are those that relate solely to the successful delivery of that specific project. They tend to be quantifiable issues, such as resource or time related, and constantly change and develop over the course of the project as each stage is completed. The lead on the project is responsible for ensuring that there is an appropriate risk register and high level issues are reported to the senior management team.
- 4.6 Identified risks, in all three categories, are judged against levels of probability and impact to give them an overall score. This allows the risks to be shown as 'high, medium or low' which enables the Council to set a prioritised action plan for managing its risks. There are insufficient resources to be able to reduce all risks - and in some cases it would not be cost effective. Therefore resources are more effectively targeted at the high, and in some cases medium, risks as these would have the severest effect on the Council if they occurred. Categorising an issue as 'high risk' indicates that it would have a fundamental effect on the Council, if it occurred, and therefore plans need to be put in place to either stop it happening or reducing the effect if it does. High risk does not mean that it has, or will definitely, occur.
- 4.7 In many cases the causes of risks are outside of the Council's control, such as general economic issues. The Council cannot stop these risks from occurring (the probability score) but can put plans in place to mitigate against their effect if they occur (the impact score). Likewise there are occasions that risks can be reduced with preventative actions but there is not much that can be done to mitigate their effect if they do occur, such as a failure to protect public resources. Therefore some risks will tend to maintain the same score, regardless of the controls that the Council puts in place.

5. Summary of 2009/10

- 5.1 The primary focus for 2009/10 was to ensure that the operational risk registers were reviewed and had a more defined link to the strategic risk register. Work has been undertaken with many of the service management teams, to provide additional risk awareness training and to ensure that the registers reflect the key risks. The top risks for each service are now included, for information, as part of the strategic risk register.
- 5.2 There were no fundamental changes to the risk management function, or the processes used to identify and control risk, during 2009/10.
- 5.3 The internal audit of the risk management function, carried out in February 2010, gave a substantial assurance and produced four level 2 recommendations, all of which related to the way that information was shown on the registers. These were implemented before the end of the year.
- 5.4 The Audit Commission qualified the 2008/09 accounts for the Joint Museums Service due to a lack of a dedicated risk management strategy and specific risk register. Therefore work has been undertaken with the service during the year to ensure that they have an embedded risk management process. This has also been undertaken for the Parking Partnership.
- 5.5 The project risk management process was reviewed during the year and a more structured approach to risk identification and recording was adopted by the regeneration team.
- 5.6 The strategic risk register has been refined so that it now includes details of any previous scores for the risks and details of how the scores are made up.

6. Strategic Risk Register

- 6.1 During 2009/10 the strategic risk register was reviewed every quarter and reported to FASP. A detailed fundamental review of the strategic risks was carried out in May 2010 which set the register for 2010/11, a copy of which is attached at appendix 1. These risks have been mapped onto a risk chart as shown at appendix 2.
- 6.2 The fundamental review revised several of the risks with many of the wordings and scores being updated to reflect the economic issues. Due to the changes to the risks previous scores have not been included on the register in all cases. The review has decreased the number of risks but it can be seen from the risk chart that the scores have increased. The previous risk chart, from the end of 2009/10, has also been included at appendix 2 so that it can be seen how the spread of risk has changed.

7. Risk Management Strategy for 2010/11

- 7.1 The Council's approach to managing risk was fundamentally reviewed in 2006/07 and a revised strategy was produced. A requirement within the strategy, and also of the annual audit assessment, is an annual review of the strategy to ensure that it is still appropriate to the Council's needs.
- 7.2 Therefore a review has been undertaken and the strategy has been updated for 2010/11. The revised strategy is attached at appendix 3. There are no fundamental changes proposed to the risk process with amendments only to the areas of external review comments and work plans.

8. Proposals

- 8.1 To note and comment upon the Councils progress and performance in managing risk during 2009/10, the current strategic register and the revised risk management strategy and endorse the submission of the revised Risk Management Strategy to full Council.

9. Strategic Plan References

- 9.1 The strategic risk register reflects the objectives of the strategic plan and the actions have been set with due regard to the identified key strategic risks. Therefore the risk process supports the achievement of the strategic objectives.

10. Risk Management References

- 10.1 The failure to adequately identify and manage risks may have an effect on the ability of the Council to achieve its objectives and operate effectively.

11. Other Standard References

- 11.1 There are no direct Publicity, Financial, Consultation, Human Rights, Community Safety or Health and Safety implications as a result of this report.

**Colchester Borough Council – Corporate Strategic Risk Register
Quarter 1 2010/11 - June 2010**

Specific Risks		1. AMBITION					ACTION PLAN – AMBITION				
		SCORE					Action	Owner	Timing		
		Current	Previous	P	I	O					
1a	In a period of public sector resource reductions the ability to have ambition and to deliver on that ambition.	3	2	6		Major changes needed to the town of Colchester would not be delivered thus affecting the quality of life of its residents and businesses.	Constantly challenge the ambition shown by the Council and look for new and innovative ways of delivering that ambition.	Chief Executive / Executive Directors / Heads of Service	Sep 2010		
1b	Unrealistic internal and external expectations on the speed of delivery.	3	3	9		Major economic downturn in public sector resourcing over the next few years will hamper the speed of delivery across the services provided.	To make the most of Information and Communication Technology; continue the process of Fundamental Service Reviews; and concentrate on the core strategic, tactical and operational services.	Executive Management Team	March 2011		
1c	The Council is unable to effectively respond to changes in the Borough economy.	2	4	8	2	5	10	Poorer external assessments by independent agencies and loss of Council reputation.	Continue internal assessment of service effectiveness and seek external assessments for continuous improvement purposes.	Senior Management Team	March 2011
1d	Over reliance on a limited number of key personnel to deliver the ambition.	3	3	9	2	3	6	The Borough Council loses its status and influencing ability at sub-regional, regional and national levels.	Consider longer term impacts of short-term decisions in staffing reductions.	Senior Managers and Human Resources function	Sep 2010

Specific Risks		2. CUSTOMERS						ACTION PLAN – CUSTOMERS													
		SCORE			Consequence	Action	Owner	Timing													
		Current	Previous	o																	
P	I	o	P	I	o																
2a	The increasing expectations of our customers, set alongside the financial challenges to service delivery may pose some challenges to customer excellence, service and delivery and the reputation of the authority.	3	3	9																	

3. PEOPLE							ACTION PLAN – PEOPLE			
Specific Risks	SCORE						Consequence	Action	Owner	Timing
	Current		Previous		P	I				
	I	O	P	I						
3a Economic climate means very low turnover with a risk that skills date and we have a stagnant workforce	3	4	12				Decline in service performance Disengaged and demotivated staff	ED People & Performance ED People & Performance	July 2010 July 2010	
3b Unable to update skills at a time when we need a changing skill set to deliver in a different economic climate	3	3	9				Efficiency and productivity reduction Inability to meet changing requirements and needs Customer perceptions decline as we deliver less	ED People & Performance ED People & Performance	Sept 2010 Sept 2010	
3c Failure to sustain adequate resource to support Training and Development because of the financial situation	3	3	9				Loss of key staff	ED People & Performance	July 2010	
3d Declining number of staff affects our capacity and impacts on our ambitions	3	4	12				Active promotion and use of Colchester Learning Managers programme and development to meet evolving needs	ED People & Performance	July 2010	

3. PEOPLE										ACTION PLAN – PEOPLE		
Specific Risks	SCORE						Consequence	Action	Owner	Timing		
	Current		Previous		P	I						
	P	I	P	I								
3e Failure to provide effective and visible political and managerial leadership.	3	3	9				Ensure outcomes of fundamental service reviews reflect training and development needs to support changes in services.	ED Customer Excellence	Sept 2010			
3f Staff motivation declines with impact of fundamental service reviews and other budget implications	4	4	16							July 2010		

Specific Risks		4. HORIZON SCANNING					ACTION PLAN – HORIZON SCANNING				
		SCORE					Consequence	Action	Owner	Timing	
		Current	Previous	P	I	O					
4a	To continuously assess future challenges to ensure Council is fit for future purpose	2	4	8			If not properly managed then either the Council will lose the opportunity to develop further or will have enforced changes to service delivery. Adverse impact on local residents / resources.	Ensure organisational readiness to respond to external challenges through the Way We Work programme strands: - People - Transformation - Customer Excellence - Leadership of Place	EMT	July 2010 & ongoing agenda items	
4b	Not taking or creating opportunities to maximize the efficient delivery of services through shared provision, partnerships or commercial delivery	4	3	12			Missed opportunities to boost local economy. Conflict between Council / Government agendas. Reduction in levels of service provision and potential withdrawal of services.	Supported by a robust Medium term Financial strategy and organisational development strategy.	EMT	July 2010 & ongoing agenda items	
4c	Failure by the Council to spot / influence at an early stage the direction of Central Government policies / new legislation.	3	3	9	2	3		Continuous review of strategies and policies to reflect changing context.	EMT	July 2010 & ongoing agenda items	
4d	Potential impact of future central government decisions to reduce public funding, including that of our partners	4	5	20	3	5	15		The budget situation is under constant review, including the impact of decisions from central government. Additional actions and areas for spending reviews are being identified.	EMT	July 2010 & ongoing agenda items

5. PARTNERSHIPS				ACTION PLAN – PARTNERSHIPS			
Specific Risks	SCORE			Consequence	Action	Owner	Timing
	Current	Previous	o				
	P	I	o	P	I	o	
5a Failure or inappropriate performance management of one or more strategic partnerships or key contracts E.g. Haven Gateway, RCE, Serco, CBH	4	3	12	The cost of service delivery is increased however quality decreases. Failure to deliver key priorities. Reputational and financial loss by the Authority.	Assess proposed strategic partnerships to ensure that they will satisfy the Council's objectives before commitment to new partnerships is made.	EMT	July 2010 & Ongoing as part of partners hip strategy
5b Change of direction / policy within key partner organisations and they revise input / withdraw from projects.	3	3	9	Failure to deliver expected outcomes through partnerships Requirement to repay external funding granted to partnership – taking on the liabilities of the 'withdrawn' partner. External assessment of the Councils partnerships are critical and score poorly.	Define a relationship / performance management process for partnerships	ED People & Performance	July 2010
5c Potential inability to agree shared outcomes/ agendas with partners and the Council's ability to influence partner's performance, particularly in relation to LAA requirements.	3	3	9		Ensure that there is a mechanism to review partnerships and assess the value added.	ED People & Performance ED Leadership of Place	July 2010

Specific Risks		6. ASSETS & RESOURCES				ACTION PLAN – ASSETS & RESOURCES					
		SCORE				Consequence	Action	Owner	Timing		
		Current	Previous	Impact	Probability						
P	I	O	P	I	O						
6a	Failure to protect public funds and resources – ineffective probity / monitoring systems	2	4	8	2	5	10	Service delivery failure Financial and reputational loss by the Authority Personal liability of Officers and Members. Legal actions against the Council Loss of stakeholder confidence in the Borough Inability to sustain costs	Ensure that there is a robust system of internal control that encompasses all assurance systems including Internal Audit, Risk Management, Budget process, Corporate Governance and performance management. This must be reported to senior officers and members on a regular basis to ensure that it is fully embedded	EMT / Head of Resource Management	There is cycle of reviewing and reporting including internal Audit, Risk management and the AGS Review July 2010
6b	Risk that Asset Management is not fully linked to strategic priorities and not supported by appropriate resources	3	4	12				Failure to deliver a balanced budget Required to use Reserves & Resources to fund services and capital priorities Severe impact on cash-flow leading to negative effect on performance targets	Continue to ensure that the budget monitoring process is reflective of finances across the whole Council not just individual service areas	Head of Resource Management	Regular reporting to PMB. & FASP. Review July 2010
6c	Inability to deliver the budget strategy in the current economic climate	3	5	15					Develop the annual budget strategy to ensure it has controls built in to be able to respond to changes in the strategic objectives and is innovative to reflect the current climate and emerging options	Head of Resource Management	Annual exercise. Council approves budget in Feb 2011

Specific Risks		6. ASSETS & RESOURCES					ACTION PLAN – ASSETS & RESOURCES			
		SCORE					Consequence	Action	Owner	Timing
		Current	Previous							
P	I	O	P	I	O					
6d	Failure to set aside sufficient capital funds for strategic priorities	3	4	12	3	2	6	Review the medium term financial outlook and capital programme processes to ensure they are kept up to date and realistic	Head of Resource Management	MTFS is part of the budget strategy & considered during the process. Capital programme reported to FASP quarterly Review July

SCORE DEFINITIONS	1 Very Low	2 Low	3 Medium	4 High	5 Very High
Impact	Insignificant effect on delivery of services or achievement of Strategic Vision & Corporate Objectives.	Minor interruption to service delivery or minimal effect on Corporate Objectives.	Moderate interruption to overall service delivery/effect on Corporate Objectives or failure of an individual service.	Major interruption to overall service delivery or severe effect on Corporate Objectives.	Inability to provide services or failure to meet Corporate Objectives
Probability	10% May happen – unlikely	10 -25% Possible	26 – 50% Could easily happen	51 – 75% Very likely to happen	Over 75% Consider as certain

KEY OPERATIONAL RISKS – For Information

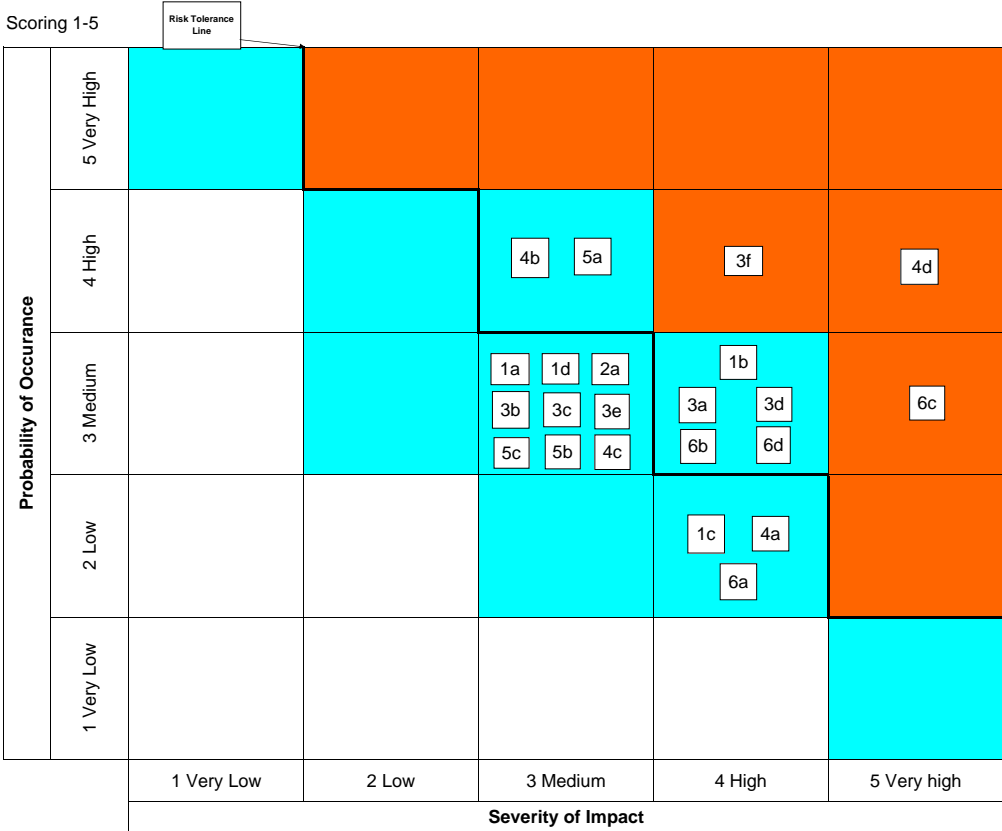
SERVICE	RISK	CONSEQUENCE	CONTROLS	RESPONSIBILITY
Corporate Management	Failure to comply with statutory duties (e.g. health and safety, freedom of information, data protection) and failure to comply with The Constitution.	<ul style="list-style-type: none"> Financial and reputation loss to the service, and to the Council. Injury to staff. Complaints and potential threat of legal action Prosecution of staff 	<ul style="list-style-type: none"> Ensure that the responsibility for the health and wellbeing of staff is properly allocated within the service. Ensure that there is adequate training for staff, at all levels, to understand their responsibilities. Ensure that information is up to date and available to all staff on the Hub (intranet) 	Head of Corporate Management
Corporate Management	Unplanned emergency expenditure on repairs and maintenance of buildings	<ul style="list-style-type: none"> Lack of resources to fund essential items of expenditure or deliver on agreed targets. Cuts in service provision. 	<ul style="list-style-type: none"> Work with Estates to ensure Asset Management Plan is up to date. 	Head of Corporate Management
Enviro & Protect Servs	Inability to recruit suitably qualified / experienced staff.	<ul style="list-style-type: none"> Lack of expertise Missed deadlines Burden on remaining staff. 	<ul style="list-style-type: none"> Embed a succession planning process linked to a structured training programme 	Head of EPS
Enviro & Protect Servs	Need to ensure that back / front office functions are integrated.	<ul style="list-style-type: none"> Failure to realise efficiency savings and increase capacity 	<ul style="list-style-type: none"> Produce a development strategy. 	Head of EPS & Systems team.
Life Opportunities	Inadequacy of Repairs and Renewals provision.	<ul style="list-style-type: none"> Reduction or closure of services due to failure of plant, equipment or infrastructure. 	<ul style="list-style-type: none"> Funding programmes presented during budget setting process. 	Head of Life Opportunities
Life Opportunities	Significant loss of customers.	<ul style="list-style-type: none"> Reduction in income leading to cuts in service provision, negative impact on customers and reputation. 	<ul style="list-style-type: none"> Continuous review and improvement of use / satisfaction and level/type of service provision / competitors Insurance against disasters. 	Head of Life Opportunities

SERVICE	RISK	CONSEQUENCE	CONTROLS	RESPONSIBILITY
Resource Management	Loss of key members of staff	<ul style="list-style-type: none"> Lack of expertise Impact on service provision Impact on other staff 	<ul style="list-style-type: none"> Identification of key staff and roles Succession planning Documented procedures Establishment of training for customer focused, vulnerable service and roles 	Head of Resource management & HRBP
Resource Management	The detrimental effect that Fundamental Service Reviews may have on staff morale and productivity	<ul style="list-style-type: none"> Decrease in service delivery levels and output Personal impact on staff wellbeing 	<ul style="list-style-type: none"> Ensure that there are adequate staff support mechanisms in place to address staff concerns. 	Finance Manager Collections & Control
Strategic Policy & Regeneration	Lack of focus on governance issues	<ul style="list-style-type: none"> Poorly informed business processes Lack of focus on critical issues 	<ul style="list-style-type: none"> Clear information and expectations are required as part of the management process. SSP to allow focus on priorities FSR to tackle process in Housing Project management in regen 	Head of SPR
Strategic Policy & Regeneration	Inability to deliver the Decent Homes programme within budget and according to timetable	<ul style="list-style-type: none"> Negative effect on reputation Increased customer complaints Over spend on budget allocation 	<ul style="list-style-type: none"> Ensure there is effective partnership working COG group SPG 	Contract risk and Service Manager
Street Services	Reduction in investment in services	<ul style="list-style-type: none"> Cuts in service provision Negative impact on image / reputation 	<ul style="list-style-type: none"> Financial planning and reporting to Members / CMT / SMT Ensure services meet community needs and strategic plan objectives Measure to increase on external income 	Head of Street Services
Street Services	Car park income targets not met	<ul style="list-style-type: none"> 10% shortfall in takings equates to over £400k reduction in income that supports other services. 	<ul style="list-style-type: none"> Regular monitoring in use and income. 	Parking Services Manager.

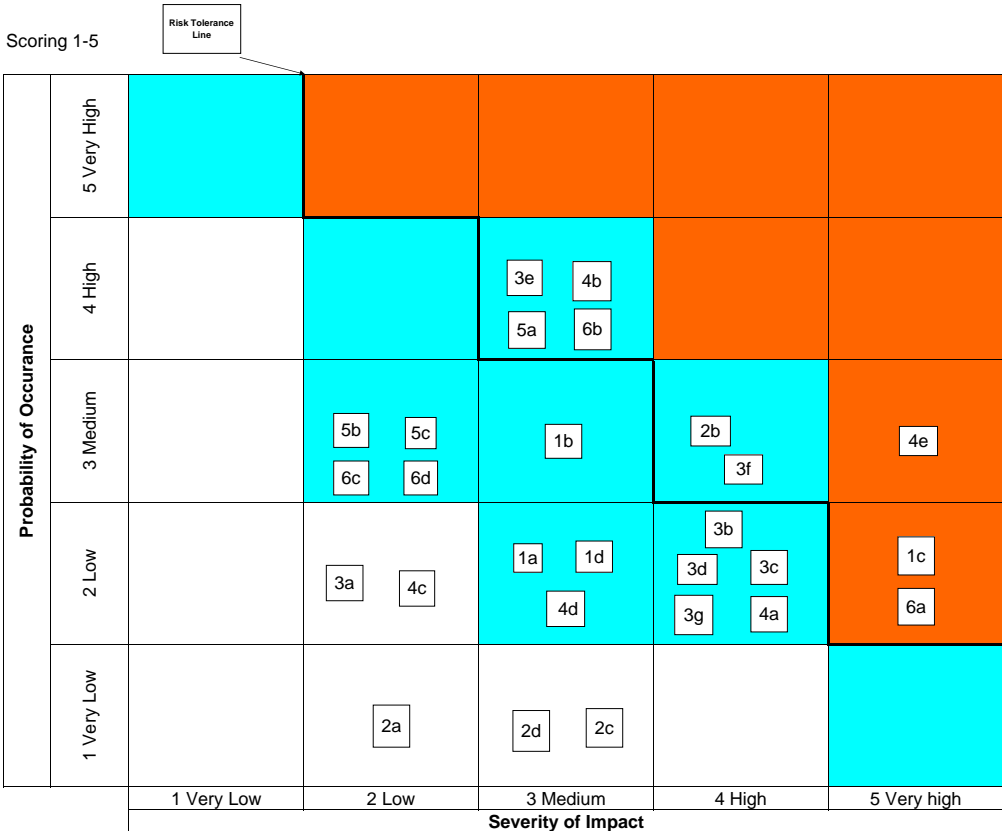
Appendix 2

RISK MATRIX QUARTER 1 2010/11 - JUNE 10

Low Risks	Medium Risks	High Risks
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PREVIOUS CHART FOR COMPARISON - FROM MARCH 2010



RISK MANAGEMENT STRATEGY

This document outlines the Council's commitment to managing risk in an effective and appropriate manner. It is intended to be used as the framework for delivery of the Risk Management function and provides guidance on developing risk management as a routine process for all services.

INTRODUCTION

The Council undertakes that this strategy will promote and ensure that:

1. The management of risk is linked to performance improvement and the achievement of the Council's strategic objectives.
2. Members and the Senior Management Team own, lead and support on risk management.
3. Ownership and accountability are clearly assigned for the management of risks throughout the Council.
4. There is a commitment to embedding risk management into the Council's culture and organisational processes at all levels including strategic, programme, project and operational
5. All members and officers acknowledge and embrace the importance of risk management as a process, by which key risks and opportunities are identified, evaluated, managed and contribute towards good corporate governance.
6. Effective monitoring and reporting mechanisms are in place to continuously review the Council's exposure to, and management of, risks and opportunities.
7. Best practice systems for managing risk are used throughout the Council, including mechanisms for monitoring and reviewing effectiveness against agreed standards and targets.
8. Accountability to stakeholders is fully demonstrated through periodic progress reports and an annual statement on the effectiveness of and the added value (benefits) from the Council's risk management strategy, framework and processes.
9. The Council's approach is regularly assessed by an external, independent body against other public sector organisations, national standards and Best Practice.
10. The Risk Management Strategy is reviewed and updated annually in line with the Council's developing needs and requirements.

Endorsement by Adrian Pritchard, Chief Executive

“Colchester Borough Council is committed to ensuring that risks to the effective delivery of its services and achievement of its overall objectives are properly and adequately controlled. It is recognised that effective management of risk will enable the Council to maximise its opportunities and enhance the value of services it provides to the community. Colchester Borough Council expects all officers and members to have due regard for risk when carrying out their duties.”

A handwritten signature in black ink that reads "A. R. Pritchard." The signature is written in a cursive style with a long, sweeping underline.

WHAT IS RISK MANAGEMENT

Risk Management is the control of business risks in a manner consistent with the principles of economy, efficiency and effectiveness. It is an essential performance management process to ensure that both the long and short term objectives of the Council are achieved and that opportunities are fully maximised.

Risk Management is not about eliminating risk, as this would limit the ability of the organisation to develop and deliver its ambitions. Its purpose is to recognise the issues that could effect the achievement of our objectives and develop actions to control or reduce those risks. Acknowledgement of potential problems and preparing for them is an essential element to successfully delivering any service or project. Good management of risk will enable the Council to rapidly respond to change and develop innovative responses to challenges and opportunities.

‘The Good Governance Standard for Public Services’ issued by The Independent Commission on Good Governance in Public Services states that there are six core principles of good governance including ‘Taking informed, transparent decisions and managing risk’. The document goes on to state ‘Risk management is important to the successful delivery of public services. An effective risk management system identifies and assesses risks, decides on appropriate responses and then provides assurance that the chosen responses are effective’.

BACKGROUND

Current Position

The first Risk Management Strategy was adopted by the Council in September 2003 and incorporated in the Council's policy framework. This introduced the concept of risk and identified the process to be followed.

In broad terms risks are split into three categories:

- Strategic – those risks relating to the long term goals of the Council
- Operational – risks related to the day-to-day operation of each individual service
- Project – consideration of the risks occurring as a result of the Council's involvement in specific initiatives

A significant amount of progress has been made in managing the risks to the Council. The following are some of the achievements since the adoption of the strategy:

- Creation of an overall strategic register.
- Creation of operational risk registers for all service areas.
- Consideration of risk in Committee reports.
- Development of a comprehensive risk register for the regeneration programme and consideration of risk as a project management tool.
- Successful internal and external assessment.
- Provision of advice to other authorities regarding our management of risk.

The Audit Commission, in the 2008/09 Audit and Inspection Letter, stated that "There is an effective internal risk management system embedded within the organisation".

This is an endorsement that we have devised a practical and workable approach to managing risk. This has resulted in the Council becoming more risk aware and actually taking more risks, as demonstrated by the comprehensive risk register for the renaissance projects. Colchester is also highly regarded for managing risk by both our insurers and other authorities.

The annual Use of Resources assessment for 2008/09 scored the Key Line of Enquiry that covers risk management at a level 3, well managed. And the 2009/10 internal audit of risk management gave a substantial assurance opinion. Some recommendations were raised during this audit and these mainly related to how the information was shown on the risk registers.

OWNERSHIP

The responsibility to manage risk rests with every member and officer of the Council however it is essential that there is a clearly defined structure for the co-ordination and review of risk information and ownership of the process.

Appendix D is from the CIPFA/SOLACE risk management guide, Chance or Choice. It is a generic map of responsibility for each part of the risk management process.

The following defines the responsibility for the risk management process at Colchester:

Cabinet – Overall ownership of the risk management process and endorsement of the strategic direction of risk management.

Portfolio Holder for Resources & Diversity – Lead member for the risk management process

Finance & Audit Scrutiny Panel (FASP) – Responsible for reviewing the effectiveness of the risk management process and reporting critical items to cabinet as necessary.

Performance Management Board (PMB) – Ownership of the strategic risks and overview of the operational risks. Actively support the Risk Management Strategy and framework.

Executive Director – People & Performance – Lead officer for the risk management process, demonstrating commitment to manage risk

Head Of Resource Management – Responsible for co-ordination of the risk management process, co-ordinating and preparing reports and providing advice and support.

Heads of Service – Ownership, control and reporting of their service's operational risks. Contribute to the development of a risk management culture in their teams.

All Employees – To understand and to take ownership of the need to identify, assess, and help manage risk in their individual areas of responsibility. Bringing to the management's attention at the earliest opportunity details of any emerging risks that may adversely impact on service delivery.

Internal Audit, External Audit and other Review Bodies – Annual review and report on the Council's arrangements for managing risk throughout the Council, having regard to statutory requirements and best practice. Assurance on the effectiveness of risk management and the control environment.

THE WAY FORWARD

Aims & Objectives

The aim of the Council is to adopt best practices in the identification, evaluation, cost-effective control and monitoring of risks across all processes to ensure that risks are properly considered and reduced as far as practicable.

The risk management objectives of Colchester Borough Council are to:

- Integrate risk management into the culture of the Council
- Ensure that there are strong and identifiable links between managing risk and all other management and performance processes.
- Manage risk in accordance with best practice
- Anticipate and respond to changing social, environmental and legislative requirements
- Prevent injury, damage and losses and reduce the cost of risk
- Raise awareness of the need for risk management by all those connected with the Council's delivery of services.
- Ensure that opportunities are properly maximised through the control of risk.
- Reduce duplication between services in managing overlapping risks and promote 'best practise'.

Risk Management forms an important part of the Council's system of Internal Control and is therefore one of the Use of Resources Key Lines of Enquiry. The Risk Management function was assessed at level 3 in 2008/09. The objectives outlined above have been set to ensure that the function can maintain this assessment level. Currently, however, the Use of Resources assessment has been discontinued but the criteria laid down for each assessment level, set out in Appendix C, still provides a robust framework for delivering an effective service.

Strategic Risk Management

Strategic risks are essentially those that threaten the long term goals of the Council and therefore are mainly based around meeting the objectives of the Strategic Plan. They may also represent developing issues that have the potential to fundamentally effect service provision, such as proposals to dramatically change the corporate assessment process.

Strategic risks will be controlled using a register that will detail the risks and associated controls. The register will be owned by the Senior Management Team, with ownership for risks being assigned to individual officers, and will be reviewed every quarter. The strategic risks will be reported to F.A.S.P. every quarter.

Operational Risk Management

Operational risks are those that threaten the routine service delivery of the Council. Each service area will have their own operational risk register that details the risks associated with providing the service. These registers will be reported, in summary format, to the Senior Management Team and committee on an annual basis. High risks and the success in controlling them will be reported to Senior Management Team on a quarterly basis, as these will help in the formulation of the strategic risk register.

Links

It is essential that risk management does not operate in isolation to other management processes. To fully embed a risk management culture it has to be demonstrated that risk is considered and influences all decisions that the Council makes. It is essential that there is a defined link between the results of managing risk and the following:

- The Strategic Plan
- Service Plans
- Revenue and Capital Budgets
- Annual Internal Audit Plan

Action Required

The following actions will be implemented to achieve the objectives set out above:

- Considering risk management as part of the Council's strategic planning and corporate governance arrangements.
- Ensuring that the responsibility for risk management is clearly and appropriately allocated
- Maintaining documented procedures for managing risk
- Maintaining a corporate approach to identify and prioritise key services and key risks across the Council and assess risks on key projects.
- Maintain a corporate mechanism to evaluate these key risks and determine if they are being adequately managed and financed.
- Establish a procedure for ensuring that there is a cohesive approach to linking the risks to other management processes
- Including risk management considerations in all committee reports
- Providing risk management awareness training to both members and officers.
- Developing risk management performance indicators.
- Establishing a reporting system which will provide assurance on how well the Council is managing its key risks and ensures that the appropriate Members and officers are fully briefed on risk issues.
- Preparing contingency plans in areas where there is a potential for an occurrence to have a significant effect on the Council and its business capability.
- Regularly reviewing the risk process to ensure that it complies with current national Governance Standards and Best Practice.
- Creation of an annual 'Action Plan' that details particular areas of development for the coming year, including details of the value added and how they will be embedded.

REVIEW

To ensure that the risk management process is effective it will need to be measured and reported to P.M.B., F.A.S.P. & Cabinet. As well as a structured reporting process of risks and controls during the year there will need to be an annual review demonstrating the success of the following:

- The inclusion of risk management principles within Service Plans and budgets.
- The development of the Internal Audit plan based on the risk issues.
- Achievement against identified performance indicators.
- Members consistently ensuring managing risk is considered as part of the decision making processes within the Council.
- Service managers making recommendations that regard risk as an opportunity as well as a threat .
- Risk management principles being considered in service reviews, for example in areas such as options for change and service improvements.
- Changes in risk being independently identified and assessed by Service Managers
- Compliance with the use of resources criteria and self assessment requirements.

Suitable opportunities to benchmark the risk management service against other organisations should also be explored to ensure that it is effective and the work carried out by the Council conforms to best practise.

The four appendices attached give greater detail of key issues:

Appendix 1 – Outline of the risk management process

Appendix 2 – Details of how Risk Management will be reported.

Appendix 3 – The 2007 Use of Resources Criteria for Risk Management

Appendix 4 – CIPFA guidance on Risk Management Responsibilities

APPENDIX A

The Risk Management Process

Risk Management is a continual process of identifying risks, evaluating their potential consequences and determining the most effective methods of controlling them and / or responding to them. The risks faced by the Council are constantly changing and the continual process of monitoring risks should ensure that we can respond to the new challenges. This process is referred to as the risk management cycle.

Stage 1 – Risk Identification

Identifying and understanding the hazards and risks facing the council is crucial if informed decisions are to be made about policies or service delivery methods. There is detailed guidance available on how to identify risks which includes team sessions and individual knowledge. Once identified a risk should be reported to the Head of Service who will consider its inclusion on the relevant risk register. If the risk is identified in between register reviews then it is reported to the Risk & Resilience Manager for information and the Head of Service is responsible for managing the risk.

Stage 2 – Risk Analysis

Once risks have been identified they need to be systematically and accurately assessed. If a risk is seen to be unacceptable, then steps need to be taken to control or respond to it.

Stage 3 – Risk Control

Risk control is the process of taking action to minimise the likelihood of the risk event occurring and / or reducing the severity of the consequences should it occur.

Stage 4 – Risk Monitoring

The risk management process does not finish with the risk control procedures in place. Their effectiveness in controlling risk must be monitored and reviewed. It is also important to assess whether the nature of the risk has changed over time.

APPENDIX B

Reporting

No matter how good the process to identify and control risks is, it will not be effective unless the information gained from it is reported and used to influence other management issues / processes. Therefore it is essential that there is a defined process and timetable for reporting the results of the risk management process to both members and officers.

Types of Report

- A quarterly report to P.M.B., detailing the *high level* operational risks along with comment from the Services regarding the progress that they have made in controlling the risk.
- The strategic risk register needs to be reviewed on a quarterly basis by P.M.B.
- A quarterly report needs to be provided to Committee (F.A.S.P.) detailing the current strategic and high level operational risks and the progress made in controlling them.
- Six monthly review of the operational risk registers and a summary report of these reviews to P.M.B.
- An annual report reviewing Risk Management activity and an action plan for the coming year - taking into account changes in methodology and results of internal and external reviews. Going to P.M.B., FASP and Cabinet. This needs to cover all of the three areas of risk
- Ad-hoc reports need to be provided to P.M.B. when new, significant risk issues arise.

The reports can be summarised as follows:

	Service's	P.M.B.	F.A.S.P.	Cabinet
Quarterly		Progress of high level operational risks Review of strategic risk register	Progress report of strategic & high level operational risks	
6 Monthly	Review of operational risk register	Summary of operational review from services		
Yearly		Scrutiny of annual progress report to cttee on R.M. & action plan for coming year.	Endorsement of annual progress report on R.M. & action plan for coming year	Summary of past years work on R.M. and agreement of action plan for the coming year.

Appendix C Use of Resources Criteria

4. INTERNAL CONTROL		
How well does the council's internal control environment enable it to manage its significant business risks?		
Key line of enquiry		
4.1 The council manages its significant business risks		
Audit Focus		
Evidence that: the council has a risk management process in place the risk management system covers partnership working		
Criteria for Judgement		
Level 2	Level 3	Level 4
<p>* The council has adopted a risk management strategy/policy that has been approved by members.</p> <p>* The risk management strategy/policy requires the council to:</p> <ul style="list-style-type: none"> • identify corporate and operational risks • assess the risks for likelihood and impact • identify mitigating controls • allocate responsibility for the mitigating controls. <p>* The council maintains and reviews a register of its corporate business risks linking them to strategic business objectives and assigns named individuals to lead on the actions identified to mitigate each risk.</p> <p>* Member responsibility for corporate risk management is identified in the terms of reference of one or more committees as appropriate.</p> <p>* Reports to support strategic policy decisions, and project initiation documents, include a risk assessment.</p>	<p>1.1.2</p> <p>* The risk management process is reviewed and updated at least annually.</p> <p>* The risk management process specifically considers risks in relation to significant partnerships and provides for assurances to be obtained about the management of those risks.</p> <p>* All appropriate staff are given relevant training and guidance to enable them to take responsibility for managing risk within their own working environment.</p> <p>* The members with specific responsibility for risk management have received risk management awareness training.</p> <p>* Members with responsibility for corporate risk management receive reports on a regular basis and take appropriate action to ensure that corporate business risks are being identified and effectively managed, including reporting to full council as appropriate.</p>	<p>* A senior officer and member jointly champion and take responsibility for embedding risk management throughout the council.</p> <p>* The council can demonstrate that it has embedded risk management in its business processes, including:</p> <ul style="list-style-type: none"> • strategic planning • financial planning • policy making and review • performance management <p>* All members receive risk management awareness training appropriate to their needs and responsibilities</p> <p>* The council considers the opportunity side of innovative and challenging projects.</p> <p>* Reports to support strategic policy decisions, and initiation documents for all major projects, require a risk assessment including sustainability impact appraisal.</p>

Appendix D Risk Management Responsibilities – CIPFA / SOLACE Guidance

	Framework, Strategy and Process	Identifying risk	Analysing Risk	Profiling risk	Prioritising action based on risk appetite	Determining action on risk	Controlling risk	Monitoring & Reporting	Reporting to external stakeholders.
Members	Agreeing the Framework, Strategy and Process Determined by Officers	Identifying risk	Analysing Risk	Profiling Risk	Determining the risk appetite and prioritising risk. Agreeing the priorities determined by officers			Reviewing the effectiveness of the risk management process.	Reporting to external stakeholders on the framework, strategy, process and effectiveness .
Risk Management Team	Providing advice And support to the executive Management Team and Members	Providing advice and support.	Providing Advice and support	Providing advice and support	Providing advice and support			Co-ordinating the results for reporting to the corporate management team and members	
Senior Management Team	Determining the framework, Strategy and Process	Identifying strategic and cross-cutting issues	Analysing Strategic and cross-cutting issues.	Profiling strategic and cross-cutting issues.	Determining the risk appetite and prioritising strategic and cross-cutting issues	Determining action on strategic and cross-cutting issues. Delegating responsibility for control.		Monitoring progress on managing strategic and cross-cutting risks and reviewing the implementation of the risk management framework, strategy and process. Reporting to members.	Reporting to external stakeholders on the framework, strategy, process and effectiveness.
Head of Resource Management	Providing Advice and Support	Providing advice and support	Providing advice and support	Providing advice and support	Providing advice and support	Providing advice and support	Providing advice and support	Co-ordinating the results for reporting to the executive management team and members	Preparing draft reports for the corporate management team and members to issue.
Service Managers / G.M.T'ss		Identifying service Risks	Analysing Service risks.	Profiling service risks.	Prioritising action on service risks.	Determining action on service risks. Delegating responsibility for control.		Monitoring progress on managing service risks. Reporting to the group management team	
Employees, contractors And partners		Maintaining awareness of risks and feeding these into the formal process.	Maintaining awareness impact of risks and feeding information into the processes				Controlling risk in their jobs.	Monitoring progress on Managing job related risks Reporting to the service manager.	

8 September 2010

Report of	Monitoring Officer	Author	Andrew Weavers
Title	Revised Executive Arrangements		
Wards affected	All wards		

This report provides an update of the process required to comply with the requirement for the Council adopt revised Executive arrangements.

1. Decision(s) Required

- 1.1 That the Council be recommended to note the procedure and timetable for the review of executive arrangements under Part 3 of the Local Government and Public Involvement in Health Act 2007 and to authorise that the required public consultation be carried out as the initial stage of the procedure.
- 1.2 To delegate to the Leader of the Council in consultation with the Group Leaders on the outcome of the public consultation and the decision required of Council.
- 1.3 That the Council be recommended to delegate to the Leader of the Council in consultation with the Group Leaders the decision on which of the options to adopt.

2. Reasons for Decision(s)

- 2.1 The Council is obliged to comply with the requirements set out in part 3 of the Local Government and Public Involvement in Health Act 2007. If it fails to adopt either, the Secretary of State has power to impose on it the Leader and Executive form.

3. Alternative Options

- 3.1 Although options will be available to the Council at a later stage of this process, for now this report deals with a statutory procedure which the Council must follow.

4. Background Information

- 4.1 The Cabinet at its meeting on 30 June 2010 considered a previous report on executive arrangements and resolved that:
 - “the report be deferred to the next Cabinet meeting, and
 - advice be sought from a senior government minister as to the Coalition Government’s intentions as regards any review of executive arrangements”.
- 4.2 On 7 July 2010 the Minister for Housing and Local Government, Rt Hon Grant Shapps MP wrote to all Leaders on Non-Metropolitan District Councils in England confirming whilst it was the Governments’ intention to repeal the requirement to adopt revised executive arrangements under the Local Government and Public Involvement in Health Act 2007 until new legislation could be implemented district councils “must resolve by 31

December 2010 to move to either the new leader and cabinet model or mayor and cabinet model". A copy of the letter is attached at Appendix 1 to this report. Accordingly the Minister's letter is expecting District Councils to follow the process. It does however also raise the prospect of a further changes being required within a year or so. Any changes to this legislation will be included in the Decentralism and Localism Bill which is expected to be introduced into Parliament in the Autumn.

- 4.3 The Council's present executive arrangements were adopted under the Local Government Act 2000 and are based on a Leader and Cabinet form of executive. They came into effect in May 2001. Part 3 of the Local Government and Public Involvement in Health Act 2007 amends the 2000 Act and requires that local authorities adopt new types of executive arrangements in accordance with set timetables. In the case of district councils, the new arrangements must be adopted by 31 December 2010 and will come into effect on 8 May 2011.
- 4.4 Under the 2007 Act, councils have the choice of adopting one of two types of executive:
- a Leader and Executive, or
 - an elected Mayor and Executive
- 4.5 Both models place all executive powers in the hands of one individual, either an elected Mayor or a "strong" Leader. The features of each model and the powers of the Leader and elected Mayor are described below.

5. The Options for Executive Arrangements

Leader and Executive Model

- 5.1 The Leader is elected by the Council at the Annual Meeting after the borough elections. He or she serves as Leader for the remainder of his or her term of office as a councillor, i.e. a maximum of four years. However, the Constitution may, if the Council wishes, provide for the removal of the Leader by a majority resolution of the Council. This is particularly relevant where there is change in political control of the Council. The Minister's letter has indicated that the Government intend to remove the necessity to elect a leader for four years.
- 5.2 When initially appointed the Leader holds all of the Council's executive functions under his or her personal control, except for those reserved to the full Council under the Constitution (these include the setting of the budget and adoption of major policies and strategies). It will then be for him or her to choose whether to exercise some or all of these functions personally or to make arrangements for their discharge by the executive (i.e. the Cabinet), by a Cabinet member, or by officers. The extent of these delegation arrangements will need to be detailed in the Constitution, as they are now.
- 5.3 The Leader will choose which members to appoint to the executive, and how many, although it must be between two and nine members. One of them must be appointed as Deputy Leader who will ordinarily serve for the length of the Leader's term of office. The Leader will decide which portfolios to allocate to the Cabinet members and what, if any, executive powers they should exercise. Cabinet members may be appointed and dismissed at any time by the Leader during his or her term of office. If the Leader is unable to act or the position becomes vacant, the Deputy Leader will assume his/her responsibilities.

5.4 Budget proposals from the Leader (or Cabinet, depending on the delegation arrangements) may be overturned by a simple majority of the Council.

The Elected Mayor Model

5.5 If this option is chosen, the Mayor will be elected by the local government electors for Colchester at the same time as the local elections on 5 May 2011. As with the Leader and Executive option the Mayor will:

- be elected for four years unless he or she resigns or becomes disqualified.
[That person need not be a member of the Council but if a serving councillor is elected as Mayor his or her seat on the Council automatically becomes vacant]
- initially hold all the authority's executive powers (except for those reserved to the Council by its Constitution);
- appoint between two and nine members of the Council to the Executive and decide what, if any executive powers they will exercise. The Mayor may dismiss any executive member at any time and appoint a replacement;
- appoint one of those executive members as Deputy Mayor and that person will exercise the powers of the Mayor in his or her absence or if he or she no longer holds office;
- the Mayor's budget proposals can be overturned only by a two thirds majority of the Council

6. The Procedure for Changing Executive Arrangements

6.1 The 2007 Act requires that the process for making changes to the executive arrangements is carried out in three distinct stages:

1. Before drawing up proposals for change, the authority must "take reasonable steps to consult the local government electors and other interested persons in the area".

The Minister's letter has clarified this requirement by highlighting the Government's view that Council's should not incur any significant expenditure on this requirement and that it should be pursued at minimal cost. It is therefore suggested that whilst there are a range of channels through which the Council can consult at no cost, any consultation is undertaken via the Council's web site.

2. The authority must then draw up proposals, which should be a schedule of the proposed changes to the Constitution, the implementation timetable and any transitional arrangements. The reference to the "authority" drawing up the proposals indicates that this requires a second resolution of Council. Once the proposals have been drawn up, the authority must make them available to the public and advertise that they are available (although there is no provision for anyone to comment on them or for the authority to have regard to any such comments). The period for such publicity is also not prescribed.
3. The Act then requires that the authority (i.e. Council) must resolve to implement the proposals.

- 6.2 The first step, therefore, is to consult the residents of Colchester and find out which of the options they prefer. It is proposed to do this during October.
- 6.3 The results of the consultation will then be reported to the Cabinet, which will be asked to recommend to the Council the preferred option, taking into account the views expressed by the residents of Colchester.
- 6.4 The Council must then give notice of its intention to adopt its preferred option and publish the detailed arrangements for moving over to it, including the amendments required to the Constitution and the timetable for implementing the change. There is no requirement to seek the views of residents on the details of the proposals, merely a requirement to publish them. The Council must then formally resolve to adopt the new arrangements.
- 6.5 In drawing up the proposals, the Council must consider the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

7. Proposed Timetable

The timetable for the review and implementation of the new arrangements is suggested as follow:

- 8 September 2010 - Report to Cabinet
- 13 October 2010 - Report to Council seeking approval to timetable
- Consultation period to 1 November 2010
- Due to the tight timetable:

Cabinet to agree that the decision on the outcome of the consultation and the decision required of Council be delegated to the Leader of the Council in consultation with Group Leaders.

Council to agree to delegate to the Leader of the Council in consultation with the Group Leaders the decision on which of the options to adopt

- 22 November 2010 - Publication of notice of intention to adopt new arrangements and publication of detailed proposals
- 9 December 2010 - Resolution of the Council to give effect to the new executive arrangements and to adopt the required constitutional changes from the next Annual Meeting
- 10 December 2010 - Inform Secretary of State of change in executive arrangements
- 17 December 2010 - Publish notice of change in arrangements
- 8 May 2011 - New form of executive arrangements come into effect

8. Conclusion

- 8.1 The Council must adopt one of the forms of executive described in this report, in the timescale mentioned. If it fails to adopt either, the Secretary of State has power to impose on it the Leader and Executive form.
- 8.2 The consultation on the options should present a balanced statement of the features of each and it would not be appropriate for the Council to come to a view on which it prefers until local people have had a chance to make their views known.
- 8.3 The process for changing executive arrangements and the timing of its elements are such that an additional meeting of the Council will need to be held in November to pass the necessary resolution to give notice of the Council's preferred option before it

9. Strategic Plan References

- 9.1 The Council's governance arrangements forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.

10. Financial Considerations

- 10.1 None at this stage. However at later stages there will be costs associated with giving public notice of proposals and electoral costs associated with holding a referendum to elect a Mayor, if that option is chosen.

11. Equality, Diversity and Human Rights Implications

- 11.1 No particular implications

12. Publicity and Consultation Considerations

- 12.1 The Council's proposals will be subject to public consultation as mentioned above.

13. Community Safety Implications

- 13.1 None

14. Health and Safety Implications

- 14.1 None

15. Risk Management Implications

- 15.1 If the Council fails to adopt new executive arrangements within the prescribed timescale, the Government will impose changed arrangements, to the detriment of the Council's reputation.



Leaders of Non-Metropolitan District Councils
in England

The Rt Hon Grant Shapps MP
Minister for Housing and Local Government

**Department for Communities and Local
Government**

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London SW1E 5DU

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www.communities.gov.uk

7 July 2010

Dear Leader

Requirement to consult under the Local Government and Public Involvement in Health Act 2007

I am writing to you about the requirements on your council to adopt a new governance model from May 2011, and before doing so to consult your local electorate and interested parties in the area. Whilst it is for each council to decide how it will meet these requirements, I would wish to highlight the Government's view that councils need not incur any significant expenditure on these requirements, and our expectation in today's circumstances that all councils will pursue this at minimal cost.

These requirements are in the Local Government and Public Involvement in Health Act 2007 and necessarily remain in force unless or until that Act is repealed by fresh primary legislation. It is our intention to do this. For your council the requirements mean that you must resolve by 31 December 2010 to move to either the new leader and cabinet model or mayor and cabinet model, and before so resolving you must take reasonable steps to consult the local electorate and other interested parties in your council's area.

In considering how to approach these requirements you will wish to have regard to the circumstances of today, including both the priority of cutting out all wasteful spending and the Government's commitments to allow councils to return to the committee system, should they wish to, and on elected mayors. We also intend to remove the necessity to elect a leader for four years. We intend to provide for these commitments in our Localism Bill to be introduced later in this Parliamentary session. This may mean that any governance model you adopt in May 2011 may be further changed within a year or so. Your decisions about consultation will also be taken in the context of the greater transparency and openness agenda which I am confident you will be putting in place throughout your council.

Accordingly, the case is strong for any consultation now about future governance arrangements to be the minimal cost option. It will be for each council to decide, but in our view no more than a small newspaper advert/article or press release on your website may be proportionate and right in these circumstances.

Yours sincerely

A handwritten signature in black ink, reading "Grant Shapps". The signature is written in a cursive style with a large initial 'G' and a trailing flourish.

GRANT SHAPPS MP



Local Development Framework Committee

Item
7

29 September 2010

Report of	Head of Strategic Policy and Regeneration	Author	Karen Syrett 01206 506477
Title	Adoption of Development Policies DPD		
Wards affected	All		

**The Local Development Framework Committee is asked to recommend to
Council the adoption of the Development Policies Development Plan
Document (DPD)**

1. Decision(s) Required

- 1.1 To recommend to Full Council that it adopts the Development Policies DPD at its meeting on 13th October 2010 as recommended by the Inspector in accordance with Section 23 (3) of the Planning and Compulsory Purchase Act 2004.
- 1.2 The Spatial Policy Manager be authorised to deal with all the necessary adoption documentation and other consequential matters in accordance with the appropriate Regulations.

2. Reasons for Decision(s)

- 2.1 The binding report of the Planning Inspector, following the Independent Examination in the spring, has been received by the Council. This report finds that the Development Policies DPD is 'Sound' and recommends that it be adopted in accordance with the legislative requirements.
- 2.2 In the absence of a clear national policy framework it is considered particularly important for the Council to have a comprehensive and effective local policy framework.

3. Alternative Options

- 3.1 The Planning Inspectors Report on the Development Policies DPD is binding on the Council. The adoption of a Development Plan Document is governed by Section 23(2) – (5) of the Planning and Compulsory Purchase Act, 2004.

4. Supporting Information

- 4.1 In 2004, Colchester Borough Council started work on the production of their Local Development Framework (LDF). The overarching Core Strategy Development Plan Document was the first document to be produced, in line with Government guidance on the priorities for the LDF. The Core Strategy is the most important element of the Council's LDF as it provides the long term vision and objectives for steering and shaping development growth in the Borough up to 2021 and beyond. The document was adopted by the Council in December 2008.
- 4.2 An Inspector, appointed by the Secretary of State, conducted an Examination in the spring to consider the 'soundness' of the Development Policies document. The Inspector

has subsequently produced a report with recommendations that are binding upon the Council.

- 4.3 The Inspector concludes that the Development Policies DPD provides an appropriate basis for managing development in the borough and that there is sufficient evidence to support the policies. The DPD is 'Sound' and the inspector recommends its adoption subject to minor changes. A full copy of the Inspector's binding report is set out in Appendix 1. The appendices to the report are available as background papers.
- 4.4 The Inspector does not recommend any changes other than the schedule of minor changes put forward by the Council in order to bring the document up to date factually, correcting minor errors, to add clarity or to improve consistency. The changes do not alter the thrust of the Council's development policies. No changes are required to meet legal and statutory requirements.
- 4.5 As soon as practicable after the Council adopts the Development Policies DPD it must comply with Regulations 35 and 36 of the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended by the 2008 Regulations). These relate to the deposit of documents and publication arrangements including the Adopted Development Policies, Sustainability Appraisal, public notice and adoption statements.
- 4.6 A Sustainability Appraisal adoption statement must be prepared as part of the adoption documentation. This will detail how the Development Policies DPD has been produced in accordance with the requirements of Regulation 16 of the Environmental Assessment of Plans and Programmes Regulations 2004. The statement will summarise how sustainability issues have been integrated into the DPD, how the sustainability appraisal and consultation has been taken into account, and the reasons for choosing the document as adopted in light of other reasonable alternatives.
- 4.7 Any person aggrieved by the Development Policies DPD may make an application to the High Court under section 113 of the Planning and Compulsory Purchase Act 2004, on the grounds that the document is not within the appropriate power or that a procedural requirement has not been complied with. Any applications must be made not later than the end of the period of six weeks starting on the day on which the Development Policies DPD is adopted by the Council.
- 4.8 Once adopted, the Development Policies DPD becomes part of the statutory development plan for the Borough and will be used in the determination of planning applications. Together with the Core Strategy and the Site Allocations document the Development Policies DPD, will replace the Local Plan.
- 4.9 The Colchester LDF will now comprise the following documents:
- Adopted Statement of Community Involvement;
 - Approved Local Development Scheme;
 - Approved Annual Monitoring Report;
 - The adopted Core Strategy;
 - The adopted Site Allocations DPD;
 - The adopted Development Policies DPD
 - Supplementary Planning Documents on the Provision of Open Space, Sport and Recreation; Community Facilities; Backland and Infill Development; Sustainable Construction; Extending Your House; The Magdalen Street Development Brief and Colne Harbour Masterplan.

5. Proposals

- 5.1 It is proposed that the Committee recommend to Full Council the adoption of the Development Policies DPD.

6. Strategic Plan References

- 6.1 Effective strategic planning will be important in achieving all the priorities identified in the Strategic Plan but in particular those related to providing homes for all and enabling job creation.

7. Consultation

- 7.1 Full consultation has taken place at various stages in the preparation of the Development Policies DPD. Those who made representations were also able to attend and take part in the examination hearing sessions which were held in the spring.

8. Publicity Considerations

- 8.1 The regulations require the Council to publish details of the adoption process and give notice by way of a local advertisement that the Development Policies DPD will be adopted.

9. Financial Implications

- 9.1 Hard copies of the final document will be kept to a minimum. Printing costs have been included in existing budgets.

10. Equality, Diversity and Human Rights Implications

- 10.1 An Equality Impact Assessment has been prepared for the Local Development Framework and is available to view on the Colchester Borough Council website by following this pathway from the homepage: Council and Democracy > Policies, Strategies and Performance > Diversity and Equality > Equality Impact Assessments > Strategic Policy and Regeneration > Local Development Framework.

11. Community Safety Implications

- 11.1 None

12. Health and Safety Implications

- 12.1 None

13. Risk Management Implications

- 13.1 The Development Policies DPD is intended to reduce the risk of inappropriate development. It will provide consistent advice to landowners, developers, officers, Councillors and members of the public.

Background Papers

Development Policies DPD
Inspectors Report and Appendices



Report to Colchester Borough Council

by **Terrence Kemmann-Lane JP**
DipTP FRTPI MCI
an Inspector appointed by the Secretary of State
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Date 17th September 2010

PLANNING AND COMPULSORY PURCHASE ACT 2004

SECTION 20

**REPORT ON THE EXAMINATION INTO THE
COLCHESTER BOROUGH DEVELOPMENT POLICIES
DEVELOPMENT PLAN DOCUMENT**

Document submitted for examination on 30 November 2009

Examination hearings held on 15 and 20 April 2010

File Ref(s): PINS/A1530/429/5

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Non-Technical Summary
Legal Requirements
Introduction & Overall Conclusions
Assessment of Soundness
Overall Conclusions

ABBREVIATIONS USED IN THIS REPORT

AA	Appropriate Assessment
CIL	Community Infrastructure Levy
DPD	Development Plan Document
LDS	Local Development Scheme
LDF	Local Development Framework
PPS	Planning Policy Statement
s	Section
SA	Sustainability Appraisal
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy

Non-Technical Summary

This report concludes that the Colchester Borough Development Policies Development Plan Document provides an appropriate basis for managing development in the borough. The Council has sufficient evidence to support the policies.

The Council has put forward a schedule of minor changes in order to bring the document up to date factually, correcting minor errors, to add clarity or to improve consistency, in part responding to points raised and suggestions discussed during the public examination. The changes do not alter the thrust of the Council's development policies. No changes are needed to meet legal and statutory requirements.

Legal Requirements

Local Development Scheme (LDS)	The Development Policies DPD is contained within the Council's Local Development Scheme, the updated version being approved on 17 December 2008. There, it is shown as having a submission date of November 2009.
Statement of Community Involvement (SCI) and relevant regulations	It is evident from the documents submitted by the Council, including the Regulation 30(1)(d) and 30(1)(e) Statements and its Self Assessment Paper, that the Council has met the requirements as set out in the Regulations.
Sustainability Appraisal (SA)	Alongside the preparation of the DPD it is evident that the Council has carried out a parallel process of sustainability appraisal.
Appropriate Assessment (AA)	In accordance with the Habitats Directive, I am satisfied that as a result of the scoping exercise carried out at the SA Scoping stage, there is no need for an Appropriate Assessment.
National Policy	I am satisfied that the Development Policies DPD has had regard to national policy.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act and Regulations (as amended)	The Development Policies DPD complies with the Act and the Regulations.

Introduction and Overall Conclusion

- 1.1 Under the terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004, the purpose of the independent examination of a development plan document (DPD) is to determine:
- (a) whether it satisfies the requirements of s19 and s24(1) of the 2004 Act, the regulations under s17(7), and any regulations under s36 relating to the preparation of the document
 - (b) whether it is sound.
- 1.2 This report contains my assessment of the Development Policies DPD in terms of the above matters, as required by s20(7) of the 2004 Act. I am satisfied that the DPD meets the requirements of the Act and Regulations. My role is also to consider the soundness of the submitted Development Policies DPD against the three criteria of soundness set out in PPS12 paragraphs 4.51-4.52. In line with national policy, the starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan.
- 1.3 A schedule of minor changes has been put forward by the Council which are factual updates, corrections of minor errors or other minor amendments in the interests of clarity. As these changes do not relate to soundness they are generally not referred to in this report although I endorse the Council's view that they improve the plan. These are shown in the Annex to this report. I am content for the Council to make any additional minor changes to page, figure, paragraph numbering, etc and to correct any spelling errors prior to adoption.

2 Assessment of Soundness

- 2.1 I consider that the policies of the Development Policies DPD are in conformity with the adopted Colchester Borough Core Strategy, and that they are consistent with national policy and advice as set out in Circulars, Planning Policy Statements and Planning Policy Guidance Notes.

Issue – Whether the document provides an appropriate basis for managing development in the borough

- 2.2 The policies stem from and elaborate on the Colchester Borough Core Strategy policies. There is occasional repetitiveness of these and national policies, but where this occurs they add clarity by bringing policies together in one document and generally bring local distinctiveness. The explanation of the policies provides more detail and guidance. I comment on individual policies only where necessary: all the other policies I conclude are sound.
- 2.3 Policy DP3 sets out the Council's approach to Planning Obligations and the Community Infrastructure Levy (CIL). The Community Infrastructure Levy Regulations 2010 brought this new planning

charge into force on 6 April 2010. It is therefore understandable that Policy DP3 sets out an intended approach rather than a more precise policy as to how the Community Infrastructure Levy will be implemented alongside the existing powers for planning obligations under section 106 of the Town & Country Planning Act 1990. In March 2010 the previous government produced 'An Overview note on the Community Infrastructure Levy' which foreshadowed a new policy for planning obligations and a replacement for Circular 5/05, together with new guidance and support for local authorities concerning the setting and operation of CIL, including the effective use of planning obligations alongside CIL. It remains to be seen what the new coalition government will do in this respect. I consider that it is helpful to have the Council's intentions stated in this way, and that it is the most appropriate strategy when considered against the reasonable alternatives.

- 2.4 Policy DP5 is a detailed policy, helping the delivery of 14,200 jobs required by the Core Strategy and the protection and enhancement of existing employment. I do not agree with representations that there is a need for the policy to provide for more mixed live-and-work opportunities within residential areas to reduce the need to travel. I consider that the policy is appropriate in focusing B1 office uses in the Town Centre and Mixed Use Centres. An addition to this policy which would permit employment opportunities in all existing and new residential communities would not be appropriate. It would fail to direct employment in accordance with the hierarchy, and would make it difficult for the Council to deal with proposals which would have negative impacts on residential amenity.
- 2.5 I consider that there is sufficient clarity with regard to the nature of business uses which are acceptable within the Employment Zones. As far as particular employment uses in rural Local Employment Zones are concerned, the Local Employment Zones table in the Site Allocations DPD provides the necessary site-specific requirements for individual zones.
- 2.6 I do not consider that Policy DP6 dealing with Colchester Town Centre uses should embrace Urban District Centres, including further support for retail uses and/or developing strategies for strengthening centres within the Borough. I consider that such an addition is unnecessary since the policy for Urban District Centres is sufficiently set out in Core Strategy policy CE2b. Of necessity these Urban District Centres are situated around the Town Centre and within Colchester town, and therefore the policy is resistive of new retail proposals as they are to meet identified local needs and do not compete with the town centre.
- 2.7 I consider that Policy DP7, dealing with local centres and individual shops, should not be made more flexible since the policy of the Core Strategy is that higher order retail facilities should be located in the town centre.

- 2.8 Policy DP13 supports the housing policies of the Core Strategy. I am not convinced by the arguments about difficulties in obtaining planning permission for replacement dwellings were a Lawful Use Certificate has been obtained, nor about separate residential annexes for the purposes of providing care.
- 2.9 Policy DP15 deals with the retention of open space and sports facilities. I consider that it would not be appropriate or necessary to change the policy so that it deals with other facilities. There is no need for this policy to cover the provision of major public open space, to make up for what is contended is a deficiency in the Council's plans for the development of new Housing Growth Areas. I consider the provision of open space to cater for a Growth Area is a matter for the Site Allocations DPD and the subsequent development management process. In addition, policy DP16 deals with Private Amenity Space and Open Space Provision for New Residential Development.
- 2.10 I consider that policy DP16 is flexible and effective in terms of the provision of private amenity space for various forms of dwelling, including the question of the extent to which overlooking is accessed with regard to shared communal space. I note that guidance on 'shared space streets' is provided in the Essex Design Guide Urban Place Supplement. It would be inappropriate to consider such places as an alternative to public areas of strategic or local open space. As noted in paragraph 7.7 of the explanation to this policy, there is further guidance on open space requirements provided in the Open Space, Sport and Recreational Facilities Supplementary Planning Document. In addition, the evidence base for this policy includes the Council's 'PPG17 Study'. It is unnecessary for this policy to include guidance on the provision of new sports facilities, including sports pitches, since other policies deal with such facilities.
- 2.11 The only contentious element of Policy DP18 is related to Park and Ride. I am satisfied that the policy includes a requirement for a full business case, including demand/need and economic sustainability, which covers Park and Ride schemes as well as other elements of transport infrastructure. Furthermore, as far as use of rail is concerned, the Council is part of the Essex and South Suffolk Community Rail Partnership, so that whilst 'Park and Rail' is not specifically mentioned in the policy, it is clear that it is not overlooked and can be accommodated within the policy and its explanation.
- 2.12 Representations have been made that policy DP25 will be ineffective, not making a significant impact on energy consumption and that it fails to make provision for innovation and does not account for the high energy requirements unique to Colchester. I cannot see that there is anything in the policy which suggests that innovative renewable energy technologies will not be supported.

Nor can I see that Colchester has uniquely high energy requirements which lead to a need for an individual local approach.

- 2.13 In this respect the prime responsibility for ensuring an adequate energy supply for the country rests with national government. It is unrealistic to expect an individual local authority to plan for renewable energy developments, and seek to ensure that they are carried out, which would meet its area's total needs or some proportion of them. The arguments put forward also ignore the huge development in offshore wind farms in the Thames Estuary and off the coasts of Essex, Suffolk and Norfolk, and plans for nuclear power station developments in Essex and Suffolk to take relatively local examples - plans which the new government seems set to retain. It appears to me that it is also likely that there might well be fairly rapid development of energy generation powered by tides and waves for which the sea areas close to Colchester might well provide suitable locations. Furthermore, I cannot see how the Borough Council could itself promote and fund renewable energy projects.
- 2.14 Thus I conclude that Policy DP25 follows an appropriate course of encouraging renewable energy developments, and is consistent with the Core Strategy and national guidance. Whilst I understand, in view of the need to maximise production of renewable energy, the suggestion that the policy might be worded to unconditionally support any proposals anywhere in the borough with this policy taking precedence over all other planning policies, I cannot agree that this would be acceptable in terms of national guidance and I doubt that the Courts would uphold such a policy in the event of challenge.
- 2.15 National guidance to local authorities with regard to combating climate change, reducing carbon emissions, and encouraging renewable energy sources has been emerging and developing in recent years, including during the time when Colchester's Local Development Framework (LDF) documents have been in the course of preparation. This remains a developing policy area, and one in which the new coalition government will no doubt be setting out its own policies in due course. The Development Policies DPD, and policy DP25 in particular, have to be seen in this context. It will be necessary for the Council to keep the LDF documents under review and to prepare revisions for public consultation at opportune moments.
- 2.16 I agree that the future work of the Council, in terms of taking forward policies for combating climate change, reducing carbon emissions, and encouraging renewable energy sources, requires consultation and collaborative working with interested parties. In this regard I have no doubt that the Council will seek constructive dialogue as time goes on, particularly with local people who have a specific interest and expertise in this field.

- 2.17 The desirability of reducing energy consumption rates from existing buildings raises perhaps intractable problems, particularly in respect of historic buildings, the nature of which and the desirability of preserving them, adds to the difficulty. Certainly national policy with regard to listed buildings and conservation areas would need to be changed if over-cladding were to be considered an available solution. In any event, policy DP25 does not seek to address measures for the reduction of energy consumption, although other policies seek to achieve this in other ways. There is no suggestion before me of a policy approach which would be acceptable in terms of overarching national guidance and policies.
- 2.18 The explanation for the policy makes clear that wind farms are covered and I see no need to refer specifically to offshore wind farms.
- 2.19 I have considered whether this document is unsound because it does not provide a policy explicitly relating to the provision of housing for older people in the form of Continuing Care Retirement Communities or retirement villages. Policy wording has been suggested, divided into two parts. The first part would deal with retirement living in the urban areas. I see no need for this, since other policies of the plan, and of the Core Strategy, would enable such a proposal to be considered. In particular policy H3 - Housing Diversity of the Core Strategy and policy DP 12 - Dwelling Standards of this document. The second part of the suggested policy would allow for large-scale Continuing Care Retirement Communities or retirement villages to be permitted on land beyond built-up areas and urban extension sites. A blanket policy of the kind suggested would not be justified, would not be consistent with national policy, and would not conform to Colchester's Spatial Strategy.
- 2.20 I conclude that the document provides an appropriate basis for managing development in the borough.

3 Overall Conclusions

- 3.1 It is not for me to 'improve' the document, or make it 'more sound'. My task is simply to follow the criteria of soundness set out in Planning Policy Statement 12: "creating strong safe and prosperous communities through Local Spatial Planning". **I conclude that the document is sound: the Colchester Borough Development Policies DPD satisfies the requirements of s20(5) of the 2004 Act and meets the criteria for soundness in PPS12. For the avoidance of doubt, I endorse the Council's proposed minor changes, set out in the Annex to this report.**

Terrence Kemmann-Lane

Inspector



Local Development Framework Committee

Item

8

29 September 2010

Report of	Head of Strategic Policy and Regeneration	Author	Karen Syrett
Title	Adoption of Site Allocations DPD		01206 506477
Wards affected	All		

The Local Development Framework Committee is asked to recommend to Council the adoption of the Site Allocations Development Plan Document (DPD)

1. Decision(s) Required

- 1.1 To recommend to Full Council that it adopts the Site Allocations DPD at its meeting on 13 October 2010 as recommended by the Inspector in accordance with Section 23 (3) of the Planning and Compulsory Purchase Act 2004.
- 1.2 The Spatial Policy Manager be authorised to deal with all the necessary adoption documentation and other consequential matters in accordance with the appropriate Regulations.

2. Reasons for Decision(s)

- 2.1 The binding report of the Planning Inspector, following the Independent Examination in the spring, has been received by the Council. This report finds that the Site Allocations Development Plan Document is 'Sound' and recommends that it be adopted in accordance with the legislative requirements.
- 2.2 In the absence of a clear national policy framework it is considered particularly important for the Council to have a comprehensive and effective local policy framework.

3. Alternative Options

- 3.1 The Planning Inspectors Report on the Site Allocations DPD is binding on the Council. The adoption of a Development Plan Document is governed by Section 23(2) – (5) of the Planning and Compulsory Purchase Act, 2004.

4. Supporting Information

- 4.1 In 2004, Colchester Borough Council started work on the production of their Local Development Framework (LDF). The overarching Core Strategy Development Plan Document was the first document to be produced, in line with Government guidance on the priorities for the LDF. The Core Strategy is the most important element of the Council's LDF as it provides the long term vision and objectives for steering and shaping development growth in the Borough up to 2021 and beyond. The document was adopted by the Council in December 2008.

- 4.2 An Inspector, appointed by the Secretary of State, conducted an Examination in the spring to consider the 'soundness' of the Site Allocations document. The Inspector has subsequently produced a report with recommendations that are binding upon the Council.
- 4.3 The Inspector concludes that the Site Allocations DPD is 'Sound' and recommends its adoption subject to minor changes. In his report, the Inspector concludes that the Colchester Borough Site Allocations Development Plan Document provides an appropriate basis for enabling development by the allocation of sites in the borough. The Council has sufficient evidence to support the policies. A full copy of the Inspector's binding report is set out in Appendix 1. The appendices to the report are available as background papers.
- 4.4 The Inspector has proposed that a limited number of changes are needed to meet the statutory requirements. These can be summarised as follows:
- The addition of 3 new Local Employment Zones which are currently in employment use and which the Council agrees, having now been subject to SA and consultation, meet the Council's selection criteria. These are at Oak Farm, Layer Marney, Holly Lodge, Great Horkesley, and Pattens Yard, Nayland Road, West Bergholt. The employment allocations only cover that part of the site currently in commercial use, and do not include any enlargement suggested by the applicant's agent.
 - Provide greater flexibility for bringing forward housing sites in the current economic climate, emphasising the importance of maintaining delivery during the years immediately following the adoption of the document. This does not remove the 2016 phasing requirement but monitoring will need to take account of the 'lead' time for development, brought about by the need for surveys, design, etc, and the processes of development management;
 - Making an element of the strategy more certain of delivery by increasing the size of a site in Tiptree from 70 dwellings to 140, and making it relate better to the existing settlement.
- 4.5 In addition to the Inspectors changes the Council put forward a schedule of minor changes to bring the document up to date factually, correct minor errors, add clarity or improve consistency. The changes do not alter the thrust of the overall strategy and have been subject to public consultation and sustainability appraisal where necessary.
- 4.6 As soon as practicable after the Council adopts the Site Allocations DPD it must comply with Regulations 35 and 36 of the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended by the 2008 Regulations). These relate to the deposit of documents and publication arrangements including the Adopted Site Allocations, Sustainability Appraisal, public notice and adoption statements.
- 4.7 A Sustainability Appraisal adoption statement must be prepared as part of the adoption documentation. This will detail how the Site Allocations DPD has been produced in accordance with the requirements of Regulation 16 of the Environmental Assessment of Plans and Programmes Regulations 2004. The statement will summarise how sustainability issues have been integrated into the DPD, how the sustainability appraisal and consultation has been taken into account, and the reasons for choosing the document as adopted in light of other reasonable alternatives.

- 4.8 Any person aggrieved by the Site Allocations DPD may make an application to the High Court under section 113 of the Planning and Compulsory Purchase Act 2004, on the grounds that the document is not within the appropriate power or that a procedural requirement has not been complied with. Any applications must be made not later than the end of the period of six weeks starting on the day on which the Site Allocations DPD is adopted by the Council.
- 4.9 Once adopted, the Site Allocations DPD becomes part of the statutory development plan for the Borough and will be used in the determination of planning applications. Together with the Core Strategy and the Development Policies, the Site Allocations DPD will replace the Local Plan.
- 4.10 The Colchester LDF will now comprise the following documents:
- Adopted Statement of Community Involvement;
 - Approved Local Development Scheme;
 - Approved Annual Monitoring Report;
 - The adopted Core Strategy;
 - The adopted Site Allocations DPD;
 - The adopted Development Policies DPD
 - Supplementary Planning Documents on the Provision of Open Space, Sport and Recreation; Community Facilities; Backland and Infill Development; Sustainable Construction; Extending Your House; The Magdalen Street Development Brief and Colne Harbour Masterplan.

5. Proposals

- 5.1 It is proposed that the Committee recommend to Full Council the adoption of the Site Allocations DPD.

6. Strategic Plan References

- 6.1 Effective strategic planning will be important in achieving all the priorities identified in the Strategic Plan but in particular those related to providing homes for all and enabling job creation.

7. Consultation

- 7.1 Full consultation has taken place at various stages in the preparation of the Site Allocations DPD. Those who made representations were also able to attend and take part in the examination hearing sessions which were held in the spring.

8. Publicity Considerations

- 8.1 The regulations require the Council to publish details of the adoption process and give notice by way of a local advertisement that the Site Allocations DPD will be adopted.

9. Financial Implications

- 9.1 Hard copies of the final document will be kept to a minimum. Printing costs have been included in existing budgets.

10. Equality, Diversity and Human Rights Implications

- 10.1 An Equality Impact Assessment has been prepared for the Local Development Framework and is available to view on the Colchester Borough Council website by following this pathway from the homepage: Council and Democracy > Policies, Strategies and Performance > Diversity and Equality > Equality Impact Assessments > Strategic Policy and Regeneration > Local Development Framework.

11. Community Safety Implications

- 11.1 None

12. Health and Safety Implications

- 12.1 None

13. Risk Management Implications

- 13.1 The Site Allocations DPD is intended to reduce the risk of inappropriate development. It will provide consistent advice to landowners, developers, officers, Councillors and members of the public.

Background Papers

Site Allocations DPD

Proposals Maps

Inspectors Report and Appendices



Report to Colchester Borough Council

by **Terrence Kemmann-Lane JP**
DipTP FRTPI MCMI
an Inspector appointed by the Secretary of State
for Communities and Local Government

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Date: 17th September 2010

PLANNING AND COMPULSORY PURCHASE ACT 2004

SECTION 20

**REPORT ON THE EXAMINATION INTO THE
COLCHESTER BOROUGH SITE ALLOCATIONS
DEVELOPMENT PLAN DOCUMENT**

Document submitted for examination on 30 November 2009

Examination hearings held between 23 March and 15 April 2010

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ABBREVIATIONS USED IN THIS REPORT

AA	Appropriate Assessment
AMR	Annual Monitoring Report
CCRC	Continuing Care Retirement Community
CIL	Community Infrastructure Levy
CS	Core Strategy
DPD	Development Plan Document
LDF	Local Development Framework
LDS	Local Development Scheme
LEZ	Local Employment Zones
NGAUE	North Growth Area Urban Extension
PPS	Planning Policy Statement
s	Section
SA	Sustainability Appraisal
SA DPD	Site Allocations DPD
SCI	Statement of Community Involvement
SCS	Sustainable Community Strategy
SPD	Supplementary Planning Document
WMASC	West Mersea Area of Special Character

Non-Technical Summary

This report concludes that the Colchester Borough Site Allocations Development Plan Document provides an appropriate basis for enabling development by the allocation of sites in the borough. The Council has sufficient evidence to support the policies.

A limited number of changes are needed to meet the statutory requirements. These can be summarised as follows:

- The addition of 3 new Local Employment Zones which are currently in employment use and which the Council agrees, having now been subject to SA and consultation, meet the Council's selection criteria;
- Provide greater flexibility for bringing forward housing sites in the current economic climate, emphasising the importance of maintaining delivery during the years immediately following the adoption of the document;
- Making an element of the strategy more certain of delivery by increasing the size of a site in Tiptree, and making it relate better to the existing settlement.

These changes that I recommend do not alter the thrust of the Council's overall strategy and have been subject to public consultation and sustainability appraisal where necessary.

The Council has put forward a schedule of minor changes in order to bring the document up to date factually, correct minor errors, add clarity or to improve consistency in part responding to points raised and suggestions discussed during the public examination. The minor changes do not materially alter the substance of the plan and its policies, or undermine the sustainability appraisal and participatory processes undertaken.

Legal Requirements	
Local Development Scheme (LDS)	The Site Allocations DPD is contained within the Council's Local Development Scheme, the updated version being approved on 17 December 2008. There, it is shown as having a submission date of November 2009.
Statement of Community Involvement (SCI) and relevant regulations	It is evident from the documents submitted by the Council, including the Regulation 30(1)(d) and 30(1)(e) Statements and its Self Assessment Paper, that the Council has met the requirements as set out in the Regulations.
Sustainability Appraisal (SA)	Alongside the preparation of the DPD it is evident that the Council has carried out a parallel process of sustainability appraisal.
Appropriate Assessment (AA)	In accordance with the Habitats Directive, I am satisfied an Appropriate Assessment has been undertaken and that there would be no significant harm to the conservation of any European sites as a result of the policies and proposals within this DPD.
National Policy	I am satisfied that the Site Allocations DPD has had regard to national policy.
Sustainable Community Strategy (SCS)	Satisfactory regard has been paid to the SCS.
2004 Act and Regulations (as amended)	The Site Allocations DPD complies with the Act and the Regulations.

1 Introduction

- 1.1 Under the terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004, the purpose of the independent examination of a development plan document (DPD) is to determine:
- (a) whether it satisfies the requirements of s19 and s24(1) of the 2004 Act, the regulations under s17(7), and any regulations under s36 relating to the preparation of the document;
 - (b) whether it is sound.
- 1.2 This report contains my assessment of the Site Allocations DPD in terms of the above matters, along with my recommendations and the reasons for them, as required by s20(7) of the 2004 Act.
- 1.3 I am satisfied that the DPD meets the requirements of the Act and Regulations. My role is also to consider the soundness of the submitted Site Allocations DPD against the three criteria of soundness set out in PPS12 paragraphs 4.51-4.52. In line with national policy, the starting point for the examination is the assumption that the local authority has submitted what it considers to be a sound plan. The changes I have specified in this binding report are made only where there is a clear need to amend the document in the light of the legal requirements and/or the criteria of soundness in PPS12.
- 1.4 The changes that are needed to make the Site Allocations DPD sound are identified in bold in Annex 1 to this report. None of these changes should materially alter the substance of the plan and its policies, or undermine the sustainability appraisal and participatory processes undertaken.
- 1.5 The Council has put forward some changes which are factual updates, corrections of minor errors or other minor amendments in the interests of clarity, in part responding to points raised and suggestions discussed during the public examination. As these changes do not relate to soundness they are generally not referred to in this report although I endorse the Council's view that they improve the plan. These are shown in Annex 2. I am content for the Council to make any additional minor changes to page, figure, paragraph numbering, etc, and to correct any spelling errors prior to adoption: indeed any such amendments should be made.

2 Assessment of Soundness

Main Issues

- 2.1 Taking account of all the representations, written evidence and the discussions that took place at the examination hearings I have identified five main issues upon which the soundness of the plan depends.

Issue 1 – Whether the document makes appropriate provision for employment, having regard to the needs of the borough as a whole

2.2 The Centres and Employment policies stem from, and are in conformity with, Core Strategy policies SD1 to SD3, and CE1 to CE3. The policies and allocations of the Site Allocations DPD provide for the delivery of at least 14,200 jobs between 2001 and 2021, in line with the now revoked Regional Strategy, contributing towards the requirements of the Essex part of the Haven Gateway Growth Point. Nothing has led me to consider that the document is unsound in this regard.

Rural Local Employment Zones

2.3 The majority of employment land allocated is within the urban area of Colchester, with its good transport infrastructure connections and large population. However, there are a number of Local Employment Zones (LEZ) allocated in rural areas which balance economic, social and environmental concerns in line with the provisions of policy EC6 in PPS4: Planning for Sustainable Economic Growth. These rural LEZs either carry forward similar allocations from the Local Plan or are new allocations based on existing rural employment sites where sustainability appraisal justifies the allocation. I consider that sustainability appraisal has been adequately carried out in respect of these sites, and that the allocations made are justified through a balancing exercise. Save for the sites I deal with in paragraph 2.7 below, I consider that the correct selection has been made, with respect to those sites put forward at Regulation 25 stage, when considered against reasonable alternatives, and the document is sound in that respect.

2.4 I consider that the general approach of the LEZ allocations being strictly tied to the extent of existing employment buildings is sound. Since these rural allocations are within the countryside, the Council is justified in drawing the boundaries tightly. Any specific proposals extending beyond the allocation can be considered against the criteria of policy DP9 of the Development Policies DPD.

2.5 A number of new LEZs have been put forward which had not been identified during the earlier plan making process. These new sites had not been subject to public consultation and Sustainability Appraisal, without which I would not be able to recommend new allocations. Steps have been taken to overcome this difficulty in respect of a number of the new sites, by seeking to undertake an SA on the same basis as the Council's comprehensive SA work, and by undertaking fresh public consultation.

2.6 The process of sustainability assessment is a comparative one, enabling reasonable options to be compared one with another so that the most appropriate outcome is achieved. There is a difficulty

in maintaining a uniform approach to SA when it is not undertaken as a continuous iterative process and when the assessments are carried out by a number of different individuals. For the most part therefore, I consider that the sustainability appraisals which have been carried out separately from the Council's own work need to be examined with particular care. The important point is that the SA of the new sites should not undermine the overall SA of the plan.

- 2.7 As a result of reviewing the outcome of the consultation and SA work just referred to, the Council accepted that three of these sites have met the criteria which it used in allocating LEZs at the earlier stage. The document would not be sound when considered against reasonable alternatives, if sites which meet the Council's criteria and were judged satisfactory within the SA process, were not allocated. I therefore set out in my **Recommendation No 1** below the inclusion of these sites as allocations, together with text which the Council has prepared as additions to the table below paragraph 3.14 of the DPD. These sites are Oak Farm, Layer Marney, Holly Lodge, Great Horkesley, and Pattens Yard, West Bergholt. Unless the Proposals Map is amended at adoption to identify these sites, the document will be unsound.
- 2.8 There is an existing LEZ at School Road, Langham. Representations have been made to extend the site, and also to replace it with a much larger LEZ to the west of the A12 Trunk Road. The latter proposal is associated with representations for a new residential allocation on School Road and Wick Road which I deal with under the Housing issue below.
- 2.9 The proposals in representations relating to an extension of the existing LEZ on School Road were subject to SA by the Council. Whilst some of the individual elements of the assessment were favourable, the conclusion reached was that only the 1.06 ha site currently in employment use should be allocated as an LEZ. I see nothing unsound in this conclusion. The existing LEZ, in pursuance of the policy objective, provides employment opportunities in this rural location, and in my opinion it is of a size commensurate with the scale and character of Langham. When existing businesses outgrow their existing sites, it is not always appropriate for an expansion to take place at the same location. I note that there has been a recent appeal relating to an application for a rear extension to the site which was dismissed. My colleague found that the extension would be visible and would be a damaging incursion into open countryside and his conclusion that the development would have an adverse effect on the character and appearance of the countryside echoes the conclusion of the Council in its sustainability appraisal. Reasonable alternatives have been considered, and the allocation in the plan is sound.
- 2.10 The proposal for a much larger LEZ to the west of the A12 Trunk Road which would replace the existing LEZ has been the subject of a sustainability appraisal. It has been put to me that, in addition,

full consultation was undertaken in November 2009 when a 'flyer' was circulated around the parish, and an exhibition held with comment forms available for completion. However, I have not been provided with any of the comments which were made. Public consultation cannot be claimed to have taken place unless the responses of the public are made available, analysed, and are taken into account. The more recent consultation carried out between 25 May and 6 July 2010 covered the residential development proposals but not the new LEZ. Furthermore, with the exception of the Highways Agency there does not appear to have been consultation with the specific consultation bodies. Since there has been no full consultation I am not able to make a recommendation in favour of this proposal. In any event, on the basis of the material which is before me, I am not convinced that a new 4 ha site for use as a business park adjacent to the A12 would be sustainable. Nothing put before me is persuasive that the Site Allocations DPD is unsound in respect of rural Local Employment Zones at Langham.

- 2.11 Representations have been made about the LEZ at West Mersey which is within the West Mersea Waterside Area of Special Character (WMASC). Whilst there is a mix of uses in the vicinity of this LEZ, including residential, I consider that it is important to maintain the character of WMASC by retaining a mix of maritime, fishing, leisure and boating related uses. I do not find that the evidence about the frontage building, unsupported by a structural survey report or marketing details, demonstrates that the only way to deal satisfactorily with the frontage of the site is by allowing residential development. Certainly nothing I heard leads me to conclude that the document is unsound in respect of the West Mersea LEZ.
- 2.12 All other sites put forward in representations have either not been subject to sustainability appraisal or public consultation or, taking into account the Council's SA assessment, I do not consider that they perform well when judged against sustainability appraisal criteria and policy EC6 of PPS4: Planning for Sustainable Economic Growth.
- 2.13 Nothing in the representation leads me to think that the document is unsound in respect of the Strategic Employment Zones or the Mixed Use Centres.

Issue 2 – Whether the document makes sound provision for housing, in terms of the overall number of dwellings, their distribution and timing throughout the borough, and provision for particular types of dwellings, including sites for Gypsies, Travellers and Travelling Showpeople

- 2.14 This issue encompasses consideration of the Annual Monitoring Report and the Housing Trajectory, whether the plan is flexible

enough to deal with results of the economic downturn, the extent to which there is adequate housing provision in villages, whether the provision for gypsy and traveller accommodation is appropriate, as well as consideration of sites which have been put forward for additional allocation.

- 2.15 The Site Allocations DPD does not contain a housing trajectory. I consider that this is not an omission requiring a change because any trajectory must be regularly monitored and setting one out in a document which will have a life span beyond a number of monitoring periods suggests unreal certainty. The Annual Monitoring Report (AMR) and the Housing Trajectory are the most appropriate methods of fulfilling the requirement. Whilst it was acknowledged by the Council at the hearing that there is a lack of immediate clarity about certain aspects of the AMR, that is a matter for the Council to address in future reviews, rather than a matter for a recommendation by me.
- 2.16 There has also been some criticism of the way in which residential allocations are shown on the proposals Map. The Proposals Map is a matter for the Council, but I will comment that I consider that the presentation of the allocations provides sufficient guidance as to the location and extent of the areas where new residential development will take place.
- 2.17 There has been little in the representations to suggest that there is an inadequate overall housing land supply in the Borough to meet the CS dwellings target. I conclude that the allocations in this DPD meet the requirement.
- 2.18 However, at a time of economic downturn, there is naturally a concern about maintaining an adequate housing build rate and about whether the policies of the document are flexible enough to respond to a changing situation. I have been pressed to consider the need to remove all phasing requirements from the document so as to allow greenfield allocations to begin development as soon as possible. Although the Housing Trajectory shows a 15 year supply, the evidence about the delivery of housing in the coming two 5-year periods shows a heavy reliance on delivery from brownfield sites. Whilst the emphasis must remain on prioritising development of brownfield sites, I accept the evidence that these are generally more expensive and more complex to deliver and that in times of economic uncertainty the situation needs to be kept under careful scrutiny, with the ability for the Council to act quickly as monitoring dictates the need for action. I conclude that it would not be appropriate to remove all reference in the document to phasing requirements; but to be sound, in particular to meet the test of effectiveness through deliverability and flexibility, I consider that there is a need for a change.
- 2.19 In my **Recommendation No 2** in Annex 1 to this report, I set out an additional paragraph under the heading 'Phasing and

Implementation' of the Housing chapter of the document. I consider that this is the appropriate point in the document, rather than in the Urban Renaissance chapter where each Growth Area is dealt with, because this is the first opportunity in the document to deal with the matter, and it is an overarching question of phasing. In addition, within the text for each Growth Area there is a reference to the monitoring of housing delivery, with recognition that "if necessary the sites will be brought forward earlier in response to changing market demands". This will be read with the contents of the new paragraph I recommend.

- 2.20 Much has been made in representations about the need for additional housing in villages, and the need to review village envelopes. However, Core Strategy (CS) policy ENV2 – Rural Communities provides that the vitality of rural communities will be enhanced by supporting appropriate development on infill sites and previously developed land. The explanation to this policy notes that evidence indicates that "villages in the catchment area of larger towns struggle to retain facilities, even when more housing is built". It goes on to say, in relation to Colchester Borough, that "In general, rural communities do not provide sufficient shops, services and facilities to support significant growth." The third paragraph under the policy notes that "The Site Allocations DPD will provide an opportunity to review the extent of village envelopes..." and that this "...will need to optimise the sustainability of villages by contributing towards community facilities, open space, and local employment." Save for mention of affordable housing on 'rural exception sites', there is no reference to facilitating new residential development through this exercise.
- 2.21 Nor do I find anything in the housing policies of the Core Strategy which sets a target for housing within villages. Policy H1 of the CS focuses housing development in the key areas listed which are the Town Centre and the Growth Areas. Table H1a lists a number of villages with a figure given for the number of dwellings, with an entry for 'Other Villages'. I see nothing in this which justifies a comprehensive review of village boundaries to identify additional housing development opportunities. As alluded to in paragraph 2.20 above, villages within the Borough will struggle to retain facilities, and I am clear that even significant growth in the villages would be very unlikely to add significant support to local services. Such significant growth would be against the settlement hierarchy of the CS, and indeed is not suggested in the representations.
- 2.22 The Council has carried out a 'Settlement Boundary Review and Village Survey' which I consider meets the need foreshadowed by the Explanation under CS policy ENV2. In this connection, my attention has been drawn to a comment of the Inspector who examined the CS. She stated (paragraph 7.6 of her report) that "...The CS lacks analysis of the rural District Centres and Villages...and does not seem to look beyond carrying forward existing permissions and allocations. Allowing for a very limited

amount of further growth in certain rural District Centres or villages might be possible without undermining the overall strategy. However, it would need to be supported by robust and credible evidence relating to CS objectives." This comment was not a binding recommendation and is open to interpretation. I consider that it is a matter which the Council is entitled to determine. I conclude that adequate provision has been made for residential development, and nothing that I have heard or read persuades me that the document is unsound in this regard; it is a strategy with a credible evidence base and is most appropriate when considered against reasonable alternatives.

- 2.23 I therefore conclude that there is no justification for the provision of additional housing sites in villages, or for a further review of village settlement boundaries at this time. In the light of these conclusions there are just a few sites which require further comment. For the rest, my reasoning for finding the document sound in respect of this issue should be clear.

Langham

- 2.24 My conclusions on the need for additional housing allocations by way of a review of the village settlement boundaries generally applies to Langham. A proposal has been made for a substantial allocation of housing on three parcels in Langham which is tied to the proposal for a substantial new LEZ which I have dealt with at paragraph 2.10 above. It has been put to me that full consultation on the combined proposal was undertaken in November 2009 when a 'flyer' was circulated around the parish, and an exhibition held with comment forms available for completion. However, I have not been provided with any of the comments which were made. Public consultation cannot be claimed to have taken place unless the responses of the public are made available, analysed, and are taken into account.
- 2.25 The more recent consultation carried out between 25 May and 6 July 2010 covered these residential development proposals and a sustainability appraisal has been undertaken. However, I repeat what I said at paragraph 2.06 above, the process of sustainability assessment is a comparative one, enabling reasonable options to be compared one with another so that the most appropriate outcome is achieved. There is a difficulty in maintaining a uniform approach to SA when it is undertaken as a separate process, with the assessments carried out by a number of different individuals. The Council's officer who carried out its own SA has serious disagreements with a number of the conclusions in the separate assessment of the proposed three parcels at Langham. I conclude that the SA of the Langham housing proposals cannot be relied upon.
- 2.26 In any event, the material which is before me leads me to conclude that there is no justification for the allocation proposed, which

would not conform to the pattern of development set out in the Core Strategy. Nothing put before me is persuasive that the Site Allocations DPD is unsound in respect of allocations at Langham.

- 2.27 There is a proposal for a Continuing Care Retirement Community (CCRC) on land at London Road, Copford made by Hanover Bloc. Hanover Bloc is a public/private joint venture vehicle recently established by Hanover Housing Association. I understand that Hanover Housing Association is one of the largest providers of Extra Care retirement housing in the UK, and owns and operates a site at London Road, Copford. It proposes the establishment of a retirement village, or CCRC, based on the existing Willow Park Care Home, Dorothy Curtis Court retirement apartments, and Copford Place – a currently vacant Regency listed building. The frontage of the site is clearly previously developed land, but development at the rear would be on greenfield land as an extension to Copford, albeit that it would not extend further back from London Road than the existing development around Queensberry Avenue, from which it could gain access. The development would enable the refurbishment of Copford Place.
- 2.28 At the hearing I interpreted statements made as indicating that consultation and sustainability appraisal had taken place. However, in writing this report I sought to establish that this indeed was the case from the evidence base. In the absence of finding what I was looking for, I asked for the Council's understanding of the situation, and for the Representor's comments on this. It is now apparent that there has been no consultation with general or specific consultation bodies, nor has the proposal been subject to SA. Whilst the site has been submitted at every stage of consultation during the preparation of the DPD, because the Council never supported it as a 'reasonable option', considering that it did not conform to the pattern of growth set out in the Core Strategy and that it is in a high flood risk zone, it was not included in the Council's SA work. Since this is the case, I am not able to form any conclusion which could lead to a recommendation for a change to the document.
- 2.29 I make the following comments on the clear understanding that they do not amount to any finding by me in the absence of consultation and SA appraisal.
- 2.30 On the material which is before me it is apparent that Hanover Bloc is a not-for-profit organisation with expertise in the development of CCRCs. It is common ground that there is a need to address the housing requirements of the aged in the Borough, including those over 75 and those wishing to live as independently as possible, but with extra support being available to enable them to do so. The document "Continuing Care Retirement Communities" (document CBC/EB/117) published by the Joseph Rowntree Foundation in association with the Planning Officers Society offers support for the CCRC approach to providing an integrated form of care and community building. It would be a borough-wide provision,

apparently within the ability of Hanover Bloc to deliver, and it may well be a development form of housing for the elderly which is not easy to promote or integrate into a general housing allocation.

- 2.31 As I have indicated in paragraph 2.28 above, I am not able to take the matter further. It may be that an outcome could be achieved through the development management process, or that the Council would wish to give further consideration to this form of development in its future plan-making work. What I can be clear about, however, is that the Site Allocations DPD cannot be said to be unsound for the lack of an allocation for a CCRC at Copford.
- 2.32 Ashcroft Care Home, Eight Ash Green caters for people with severe dementia and behavioural problems. The existing accommodation is not up to modern standards, but there is, nevertheless, a waiting list. The proposal by the owner is to extend the home at the rear beyond the village envelope. The representation that has been made is that the site should be allocated for housing. In line with my view that additional housing is not justified by enlarging village settlement boundaries, I consider that this proposal is ill-founded. Nor would it be appropriate to make a one-off allocation for a care home. The proposal for an extension to the care home is one that needs to be judged on its individual merits within the development management process. In the event that planning permission were granted for the extension to the home, it would still not be appropriate to allocate the site because this would imply that the land is suitable for development, and would open the way, in due course, for normal residential development.
- 2.33 Turning briefly to the matter of sites within the urban area, as I have concluded at paragraph 2.17 above, overall this DPD makes allocations sufficient to meet the CS dwellings requirement. Therefore there is no need to allocate additional sites within the urban area which are currently in another use. This applies to sites which are in an open space use, such as the Bromley Road Sports Ground, including where it is suggested that there is an over-supply in a particular area. Existing open space should be protected in the absence of a compelling need for an alternative use, in line with Development Policy DP15.
- 2.34 I am satisfied that the document makes adequate provision at the present time for sites for Gypsies and Travellers in policy H2. The Council has suggested minor changes to the text of this part of the document to take into account the formal revocation of the East of England Plan, and to clarify the evidence base, and to set out the need to review post-2011 requirements for pitches in the light of further government guidance that may follow as a consequence of the intention to revoke Circular 01/2006.
- 2.35 The one allocated site under Policy H2 which calls for comment is that at Orchard Place, Vernons Road, Chappel, shown for 3 pitches. A previous planning application for 6 pitches on this site was

refused permission on amenity and traffic grounds, having been faced with considerable local opposition. It has been suggested that the same grounds for objection hold good for a site with 3 pitches. I consider that the reduced number of pitches does not necessarily raise the same amenity issues, whilst the highway authority has clearly stated that the allocated development can be accessed safely with reduced sight lines which are achievable. I support the balanced decision of the Council. I conclude that policy H2 is justified and sound.

Issue 3 – Whether policies for Urban Renaissance are soundly based

- 2.36 With respect to retail uses, the Site Allocations DPD follows the Core Strategy policy which specifies shops as one of the 'Primary Land Uses' within Mixed Use Centres (Table CE1b). Thus, taking for example Turner Rise within policy SA TC1, a Mixed Use Centre the subject of representations, the policy seeks, among other objectives, "a more diverse mix of uses". The constraint on new retail development in such a centre is that it should meet local needs and not adversely impact on the vitality and viability of the town centre. I consider that this accords with national policy and is a sound strategy. Similar considerations apply to the Tollgate Urban District Centre which is also listed as a Mixed Use Centre.
- 2.37 I consider that the document is sound in the way in which it deals with suitable locations for hotel development. It is in conformity with the Core Strategy, and there is no conflict with policy DP10 of the Development Policies DPD. It is not necessary for the Site Allocations document to allocate sites for hotels, since the policies make clear the general locations where hotels are an acceptable form of development. The site put forward for allocation for hotel development is not within a location where hotel development is shown to be an acceptable form of development. On a similar basis, I see no sound reason for including hotel use in policy SA STA3.
- 2.38 Policy SA EC7 of the Site Allocations DPD makes provision for the expansion of the University of Essex. Most of the matters relating to soundness of this policy, suggested in representations, have been resolved within a statement of common ground (document CBC/EB/188). It is necessary for me to deal only with one or two matters. I am satisfied that there is no other reasonable alternative strategy for the expansion of the University and that the measures for additional landscaping and biodiversity will minimise impact on nature conservation and landscape impact. Furthermore, the proposals protect the open countryside gap between the University and Wivenhoe. Representations suggest that there is a need for enabling development in the form of a mixed use housing allocation on the edge of Wivenhoe. However, no evidence to justify the need for enabling development has been produced, and there is no basis for a finding that the policy is unsound.

- 2.39 With regard to policy SA EC8, I consider that there is no need for any amendment to protect the Wivenhoe Trail because it is adequately protected by other policies, in the Core Strategy and Site Allocations document. I note that there is a mapping error on the submission Proposals Map which omitted the Wivenhoe Trail which the Council is rectifying.
- 2.40 The proposals for the North Growth Area arise from Core Strategy policies which identify it as a Growth Area in a sustainable location (policy SD1), which would deliver Key Community Facilities (SD3), strategic levels of employment (CE1 and CE3), and be a focus for housing, including a substantial amount (2200 dwellings) on greenfield land (H1 and Table H1a). The Site Allocations proposals for the North Growth Area are in conformity with, and in furtherance of these CS policies. In the light of the adopted Core Strategy, there is no basis for reducing the amount of development planned for this area, or delaying its delivery to a later period. The matter of community development is one for the emerging SPD, master planning and the development management process. Furthermore, I regard this DPD as a satisfactory approach to planning for the North Growth Area: the preparation of an Area Action Plan might have been an alternative, but is not necessary.
- 2.41 Opposition has been expressed to the fact that the North Growth Area Urban Extension (NGAUE) (policy SA NGA2) in part covers land which was previously allocated as Proposed Public Open Space in the Adopted Review Colchester Borough Local Plan March 2004 (document CBC/EB/011). However, this land has remained in private ownership, and there has never been any proposal for public acquisition which would make the Local Plan proposal a reality. Nor is there any realistic likelihood of that occurring in the absence of the NGAUE allocation. The emerging SA DPD has clearly identified this area for development, and there has been adequate consultation on the proposal. The evidence base supports the North Growth Area policies. I do not regard the fact that Strategic Open Space within the area has not been identified on the Proposals Map justifies a conclusion that the document is unsound. Policy DP16 in the Development Policies DPD includes requirements for accessible strategic and local open space within new residential areas. This is a matter which can be left for the emerging SPD, master planning and the development management process. With regard to these existing open areas, I am also satisfied that there is adequate safeguarding for wildlife, provided for in particular by Development Policies DPD policy DP21.
- 2.42 At paragraph 2.18 above I deal with contentions about the economic downturn, the effect on housing delivery and the need to introduce additional flexibility into the document with respect to the timing of the release of greenfield sites for housing development. The same arguments have been raised in connection with the delivery of the required amount of housing in the North Growth Area. I consider that my Recommendation no 2, referred to in

paragraph 2.19 is the appropriate answer to the situation and that no change is required to this part of the document to make it sound.

- 2.43 I do not agree that there is a need for the policy to provide for more mixed live-and-work opportunities within new residential areas of the North Growth Area to produce a more sustainable community and to reduce the need to travel. I consider that the approach of the document which is to focus B1 office uses in the Town Centre and Mixed Use Centres is appropriate. A policy which would permit employment opportunities in new residential communities would not be appropriate: it would fail to direct employment in accordance with the hierarchy, and would make it difficult for the Council to deal with proposals which would have negative impacts on residential amenity. Many employment opportunities within residential areas do not need planning permission or can be accommodated by the development management process. In addition, the area is well connected to existing and proposed employment provision.
- 2.44 Concern has been expressed about the adequacy of transport infrastructure to deal with the extent of new development. However, the policies require infrastructure to be provided, and each development proposal will have to be accompanied by a Transport Assessment. I am satisfied that the Council, working with the Highway Authority, has an adequate evidence base to underpin the decisions which have been made as to the allocations and the transport infrastructure required.
- 2.45 Another concern raised is in relation to the way in which infrastructure already committed through existing legal obligations will be related to new development in the NGAUE, and whether the Council will seek requirements which go beyond the terms of Circular 05/2005. Any contributions sought by the Council in respect of new infrastructure required as a direct result of a new development application will have to be justified on a rational basis. In this regard, from 6 April 2010 Regulations make it unlawful for a planning obligation to be taken into account in determining a planning application for a development, or part of a development, that is capable of being charged Community Infrastructure Levy (CIL), whether there is a local CIL in operation or not, unless it meets three tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and, (c) fairly and reasonably related in scale and kind to the development. It is unlikely that it would be possible for non-CIL development to be treated any differently in respect of planning obligations. I consider that policies SA NGA4 and NGA5 dealing with transport infrastructure are sound.
- 2.46 The necessity for an SPD to be prepared as a Master Plan for the Stanway Growth Area has been questioned, primarily on the basis that it will slow progress on residential development. There are

important infrastructure considerations across this Growth Area which a Master Plan can address, with the added benefit of consultation taking place at the Growth Area level. The SPD is set out in the LDS for current preparation: I am told that the same approach was taken to the Garrison Area, and that no delay resulted. I conclude that master planning by way of the preparation of SPD is sound. The content of paragraph 2.19 above concerning greenfield sites is relevant to the Stanway Growth Area.

- 2.47 Tiptree is a Rural District Centre as defined in the adopted Core Strategy Table CE1a. Table H1a, under policy H1 of the Core Strategy, shows a requirement of 680 dwellings, with a footnote explaining that the figures in this table are minimum numbers. I am not persuaded that the CS intentions for Tiptree, as needing to be fulfilled through the SA DPD, are excessive and out of scale with this sizeable settlement with a good town centre, albeit that there are shortcomings in the existing community infrastructure that are identified by the Parish Council.
- 2.48 It is clear from the discussion at the hearing that dwelling completion numbers change over time and it is not always straightforward to understand what is the net outcome. However, I am clear that the CS Table H1a figures subsumed a specific figure of 140 dwellings on a site at Grange Road, and that subsequent preparation of the SA DPD was based, until just before the publication of the submission document, on this intended allocation. This intention was supported by the Council's housing evidence base. Importantly, the figure of 140 dwellings, and the overall site within which they would be provided, justified an expectation of a mixed-use development comprising sports facilities, housing and employment land, recognising the potential for securing community benefits from the comprehensive development of a relatively large greenfield site, rather than several smaller sites. In addition to community benefits from the site itself and required infrastructure previously expected, there is now the prospect of the Warriors Rest Sports Ground being reconfigured to provide local youth sports development, assisting in addressing the identified playing pitch deficit.
- 2.49 The submission SA DPD reduced the extent of the Predominantly Residential allocation at Grange Road, whilst significantly increasing the Public Open Space notation (to include part of what had been shown as Predominantly Residential). I consider that this change from what had previously been envisaged is not credible, not supported by the evidence and is not the most appropriate strategy when considered against reasonable alternatives. What remains as 'Predominantly Residential' is not well related to the settlement and is unlikely to provide the expected community benefits. My **Recommendation No 3** sets out what is required to make policy SA TIP1 sound, incorporating minor changes which the Council has already promulgated. For the avoidance of doubt, the allocation subject to this recommendation encompasses the areas of land

annotated Phases 1 & 3, 2 and, separately, 3, together with 'Village Green' on drawing C8120_L012, dated Feb 2009 submitted to the examination by Lawson Planning Partnership Ltd. Unless the Proposals Map is amended at adoption in the way described the policy will be unsound.

- 2.50 I have considered the other sites in Tiptree put forward for residential development. There is no justification for any additional residential allocation in Tiptree. My conclusions in paragraphs 2.20 - 2.23 above are relevant. Nothing in the written representations or those made at the hearing lead me to consider that the document is unsound by omitting settlement boundary extensions and the greenfield sites put forward.
- 2.51 With regard to the allocation of the Employment Zone to enable Wilkin and Sons Ltd to expand, I am satisfied that an appropriate balance has been arrived at, taking into account the need for modernisation by a company with an iconic brand which is important for both Tiptree and the Borough, and the need to carefully consider the physical relationship of Tiptree with the neighbouring village of Tolleshunt Knights. With respect to the latter, I am satisfied that the remaining gap is sufficient to maintain a clear separation, although the detail to be considered in the development management process will be important. A minor change has been suggested by the Council to make clear the reason for this allocation. In respect of the site proposed by Wilkin and Sons Ltd to the east of Factory Hill for residential development, I am not persuaded that the need for additional funding for the new factory outweighs the general public need to carefully control additional development in Tiptree, and encroachment into the countryside. Furthermore, I consider that the Council's judgements in its SA are appropriate.

Issue 4 – Whether the policies will achieve adequate Strategic Areas of Open Space

- 2.52 The question raised is whether Strategic Areas of Open Space should be shown as allocations on the Proposals Map, it being argued that the extent of such open space should be open for public comment and that since it can be identified in later SPD, there is no reason why it should not be identified within the Site Allocations DPD. This issue arises from concerns raised about the soundness of the document in relation to the proposals for the North Growth Area, which I have dealt with at paragraph 2.41 above.
- 2.53 Paragraph 6.14 of the DPD sets out the definition of Strategic Areas of Open Space, where it is pointed out that, in Growth Areas, delivery is expected to coincide with the development timetable. I consider that there is no unsoundness in the document's approach to this, since the detailed definition of this space will come about through SPD, master planning or the development management process, all of which have provision for public consultation.

Issue 5 – Whether the document is sound in relation to phasing of greenfield residential allocations.

2.54 This issue has been addressed when dealing with housing at paragraphs 2.18 and 2.19 above. In that section of my report I found the document unsound in this regard without a change which I set out in my Recommendation No 2 in Annex 1.

3 Consequential changes

3.1 As a result of the recommendations which I have made, as explained above, it is necessary for one consequential change to be made to Chapter 1 of the document - Executive Summary. I set this out in my **Recommendation No 4** in Annex 1.

4 Overall Conclusions and Recommendation

4.1 There are no other matters raised which persuade me that the document is unsound and which warrant mention in this report.

4.2 It is not for me to 'improve' the document, or make it 'more sound'. My task is simply to follow the soundness criteria set out in Planning Policy Statement 12: "creating strong safe and prosperous communities through Local Spatial Planning".

4.3 **I conclude that, with the changes that I recommend, set out in Annex 1, the Colchester Borough Site Allocations DPD satisfies the requirements of s20(5) of the 2004 Act and meets the criteria for soundness in PPS12. For the avoidance of doubt, I endorse the Council's proposed minor changes, set out in the Annex 2 to this report.**

Terrence Kemmann-Lane

INSPECTOR

Annex 1**Changes that the Inspector considers are needed to make the plan sound**

Inspector Change No. 1		
Policy/Paragraph:		Within the table after paragraph 3.14
Change:		
Site	Area in Ha	Comments
Oak Farm, Layer Marney	0.23	<ul style="list-style-type: none"> • New allocation – to be limited to the lawful use of the site • B8 distribution uses not considered appropriate • Site should be well screened to reduce the impact on the landscape • An ecological survey will be required as part of any future proposals for the site
Holly Lodge, Great Horkesley	0.21	<ul style="list-style-type: none"> • New allocation – to be limited to existing buildings on the site • Site should be well screened to reduce the impact on the landscape
Pattens Yard, Nayland Road, West Bergholt	0.43	<ul style="list-style-type: none"> • New allocation – to be limited to the lawful use of the site • Site should be well screened to reduce the impact on the landscape • Landscaping, including improved hard surfacing, required as part of any redevelopment • There is a population of great crested newts close to the site; an ecological survey will be required as part of any future proposals for the site

Note

The following plans supplied by the Council indicate the extent of these sites. Unless the Proposals Map is amended at adoption to identify these sites, the document will be unsound.



Siteplan[®] 1:1250



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Centre Coordinates: 591590 217273

National Grid sheet reference at centre of this Siteplan: TL2117

Supplied by: Trident Map Services
Serial Number: 00634000

OAK FARM
LAYER MARNEY
CO5 9XU



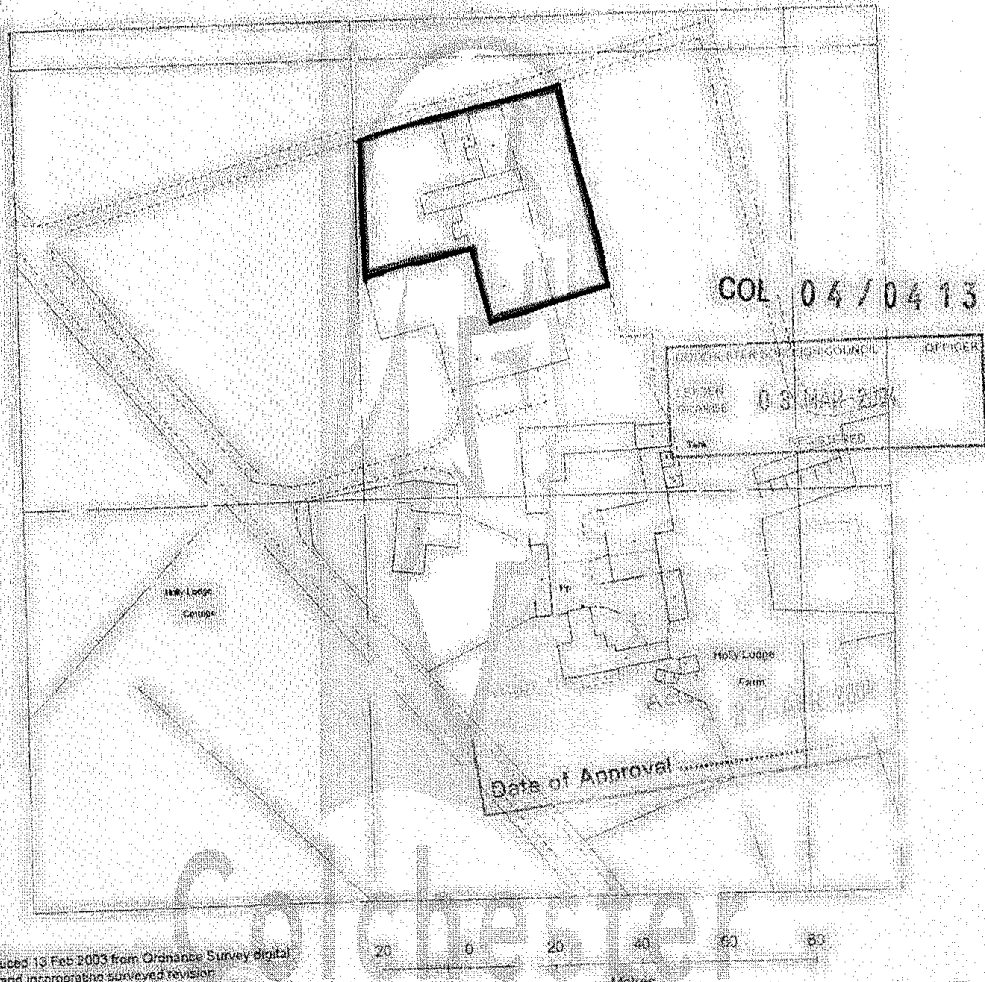
DRAWING



Holly Lodge,
Great Horkesley

Siteplan

1:1250 Scale



COL 04/0413

DATE	OFFICER
05 MAY 2004	

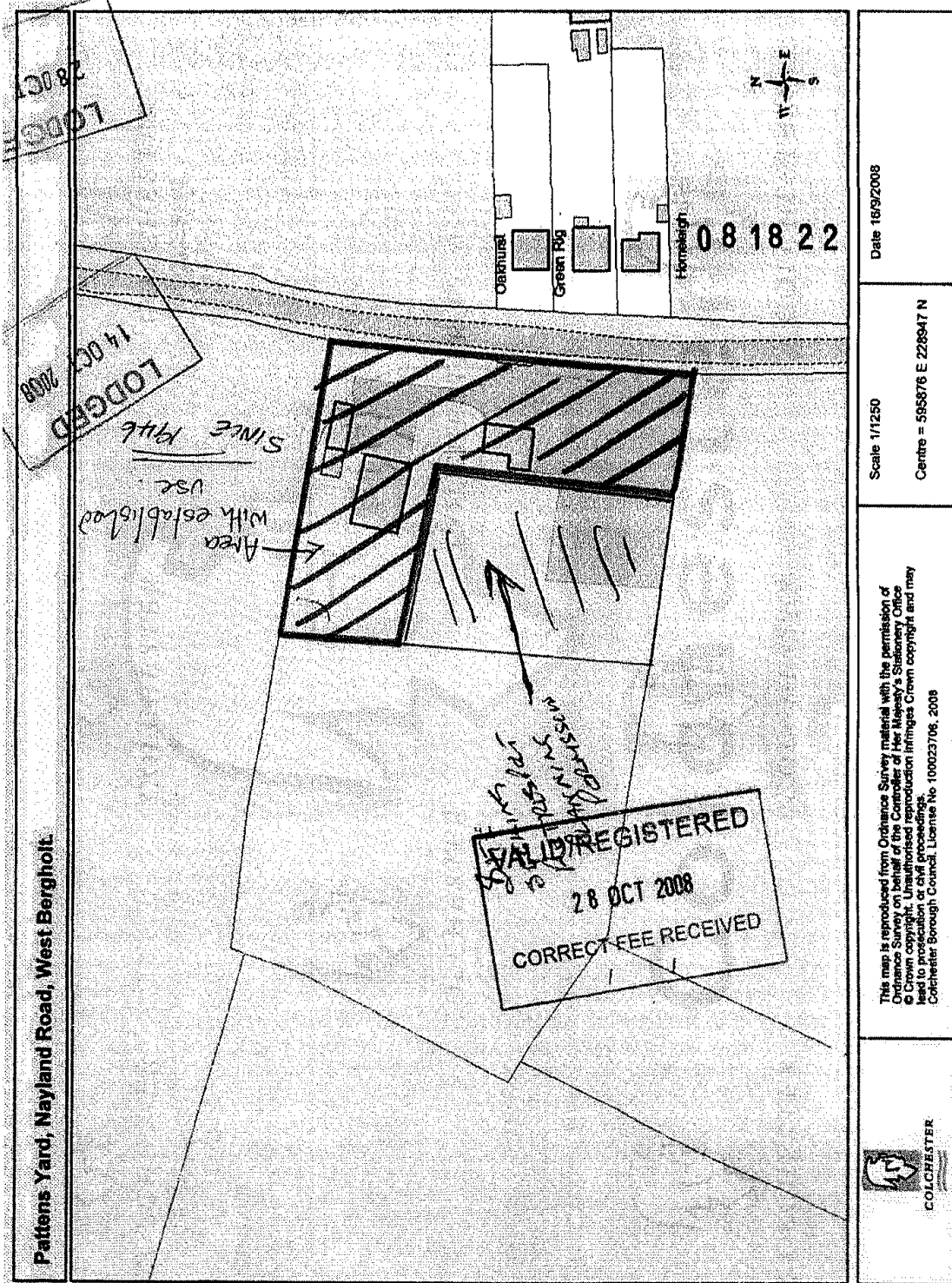
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HOLLY LODGE, HOLLY LANE
GREAT HORKESLEY
COLCHESTER
CO6 4AW



Inspector Change No. 2	
Policy/Paragraph:	After paragraph 4.21
Change:	
<p>New paragraph</p> <p>In the period leading up to the submission of this document there was a downturn in the UK economy reflecting a general global financial problem. Whilst, at the point of adoption of the document, it appears that a recovery is underway, there remains uncertainty, and difficulty for businesses to obtain necessary finance. This uncertainty and difficulty perhaps affects the housing market more than some others. It is therefore essential that the Council can act quickly to ensure the continued delivery of an adequate number of housing units in the Borough, certainly in advance of any necessary general review of the document. In the policies of this document there is generally an expectation that greenfield sites will not come forward until after 2016, which is subject to the caveat that sites will be brought forward if monitoring shows this to be necessary. This monitoring will need to take account of the 'lead' time for development, brought about by the need for surveys, design, etc, and the processes of development management. The Council intends to use all appropriate flexibility, particularly in the years immediately following adoption, to seek to ensure that the 5 year supply of housing, and its delivery, is not interrupted by general adverse economic circumstances.</p>	

Inspector Change No. 3	
Policy/Paragraph:	Policy SA TIP1 Residential Sites in Tiptree
Change:	
<p>Replace the text with the following:</p> <p>Policy SA TIP1 Residential sites in Tiptree Within Tiptree a number of small sites have been identified within areas allocated predominately residential on the Proposals Map which will contribute to the delivery of the housing targets identified in the Adopted Colchester Borough Core Strategy.</p> <p>In addition to this a site at Grange Road is allocated to deliver approximately 140 homes. Development of this site is not expected to commence until 2016. Development cannot take place until there is capacity at the Tiptree Sewage Treatment</p>	

Works. Development of the site will also be expected to deliver the following infrastructure;

- **Transport improvements (see policy SA TIP2)**
- **Open space, allotments, sport and recreational facilities in Grange Road.**

Inspector Change No. 4	
Paragraph:	1.9
Change:	
<p>Amend the text of the second sentence of paragraph 1.9 to read as follows:</p> <p>Additional land has been allocated to provide for approximately 140 new dwellings.</p>	



Licensing Committee

Item

6

6 October 2010

Report of	Head of Environmental & Protective Services	Author	Simon Harvey ☎ 282701
Title	Licensing of Sexual Entertainment Venues (Sex Establishment Licence).		
Wards affected	All		

This report concerns the adoption of Section 27 of the Policing & Crime Act 2009 by Colchester Borough Council to allow sexual entertainment venues to be licensed and regulated under amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

1. Decision Required

- 1.1 To recommend to full Council that it resolves to adopt the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009 and that the amendments shall apply within the Borough of Colchester and come into force not more than one month after the day on which the resolution was passed.
- 1.2 Determine whether or not it wishes its officers to formulate a licensing policy in respect of how applications for sex establishment licences (sexual entertainment venues, sex shops and sex cinemas) will be considered by the Council in accordance with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and give guidance to officers as to what matters it would like to be included and considered in such a policy.
- 1.3 Instruct officers to prepare a report and draft policy back to the Licensing Committee in order that the draft policy can be discussed and amended as appropriate by the Committee, prior to it being subject to public consultation and scrutiny.

2. Reasons for Decision

- 2.1 Section 27 of the Policing & Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow a Local Authority to grant a Sex Establishment Licence to a 'Sexual Entertainment Venue' where 'relevant entertainment' is being provided before a live audience for the financial gain of the organiser or the entertainer.
- 2.2 If Colchester Borough Council wishes to adopt the new amendments introduced by Section 27 of the Policing & Crime Act 2009 the Licensing Committee will need to formally recommend to the full Council that it passes a resolution confirming that the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 shall be applied in the Borough and will come into force on a specified day not earlier than one month before the day on which the resolution was passed.

3. Alternative Options

- 3.1 Colchester Borough Council does not have to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by the provisions of Section 27 of the Policing & Crime Act 2009. The new provisions are discretionary not mandatory in that regard.
- 3.2 However if the Council were to decide not to adopt the amendments within one year of Section 27 coming into force, they must consult local people about whether or not it should make such a resolution.
- 3.3 For the purposes of this duty, 'local people' is defined as anyone who lives or works in the local authority area.

4. Supporting Information

- 4.1 The Committee may recall being asked to give their response to a Home Office consultation document at their meeting of the 25 November 2009 regarding the additional regulation of venues providing 'adult entertainment' such as lap dancing, pole dancing and striptease.
- 4.2 At the time of the Home Office consultation document such 'adult' entertainment could only be encompassed under the provisions of the Licensing Act 2003 which regulates the sale of alcohol and entertainment such as music and dancing or performance of dance for example. This would remain the case if the Council decided not to adopt the new provisions of Section 27 of the Policing & Crime Act 2009.
- 4.3 Under the Licensing Act 2003, the Licensing Authority can only consider representations to a premises licence application which directly relate to how the proposed activities will either undermine or promote the four licensing objectives in the vicinity of the premises, regardless of whether the entertainment sought by the application is for what might be considered as 'adult' entertainment'. These objectives are:
- The Prevention of Crime and Disorder,
 - Public Safety,
 - The Prevention of Public Nuisance, and
 - The Protection of Children from Harm.
- 4.4 Refusal of an application is also restricted to much narrower criteria under the Licensing Act 2003 and once again must relate to the negative impact that an application might make on one or more of the four licensing objectives if it is granted
- 4.5 Section 27 of the Policing & Crime Act 2009 which came into force on the 6 April 2010 allows for representations to be made on a much wider basis by local people for example and gives Local Authorities under paragraph 12(3) of the Local Government (Miscellaneous Provisions) Act 1982 the flexibility of additional powers or measures to refuse to grant or renew an application for a sexual entertainment venue if it wished to do so. These are:
- (a) That the applicant is unsuitable to hold the licence, by reason of having been convicted of an offence or for any other reason;
- (b) That if the licence were to be granted, renewed or transferred, the business to which it refers would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he had made the application himself;

(c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;

(d) That the grant or renewal of the licence would be inappropriate having regard;

i) to the character of the relevant locality

ii) to the use to which any premises in the locality are put or

iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

4.6 Paragraph 12 (4) of the Local Government (Miscellaneous Provisions) Act 1982 also allows a Local Authority to determine that it might be inappropriate to have any Sex Establishments at all in a given relevant locality, or to determine a set number of licences that it will grant in a particular locality for example.

4.7 Relevant terms, restrictions or conditions can also be added to any grant of a Sex Establishment Licence for a specific sexual entertainment venue.

4.8 The meaning of a sexual entertainment venue is set out under Paragraph 2A of the Local Government (Miscellaneous Provisions) Act 1982 as inserted by Section 27 of the Policing & Crime Act 2009 as any premises at which 'relevant entertainment' is provided before a live audience for the financial gain of the organiser or the entertainer. The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances this is likely to be the manager of the premises.

4.9 Relevant entertainment is defined as any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person, for example where the entertainment might take place in a private booth. The guidance also defines what constitutes male and female nudity.

4.10 Each application must be judged in its own right and on its own merits but the Home Office Guidance expects that the definition of relevant entertainment would apply to the following forms of adult entertainment. These are:

- lap dancing
- pole dancing
- table dancing
- strip shows
- peep shows
- live sex shows

4.11 The new legislation does not encompass a display of nudity which may form part of a legitimate drama or performance of dance that may take place as part of a theatre production for example.

4.12 It is therefore clear that the aim of the new legislation is to bring the licensing of sex entertainment venues in line with other 'sex establishments' such as 'sex shops' and 'sex cinemas' and to recognise that local people may have concerns about where such premises are located and will want to play an active part in any debate and decision

made over the grant of a licence for such a venue. Sex shops and sex cinemas will still continue to be separately licensed in their own right under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

- 4.13 However the amendments introduced in the Policing and Crime Act 2009 will not require premises to hold a sex establishment licence where the premises has held events involving relevant entertainment on 11 occasions only within the last 12 months with at least one month between each event and where no such event has lasted more that 24 hours. Neither will a spontaneous display of nudity be regarded as relevant entertainment if there is no financial gain to the organiser or entertainer.
- 4.14 Premises that will be required to apply for and hold a sex establishment licence in order to operate as a sexual entertainment venue to provide 'relevant entertainment' such as lap dancing or pole dancing at their venue, will also still need to hold a premises licence or a Temporary Event Notice granted under the Licensing Act 2003 to be able to sell alcohol or provide any other licensable activities which are not covered under the definition of 'relevant entertainment'. Live music or recorded music which is integral to the provision of relevant entertainment such as lap or pole dancing is excluded from the definition of regulated entertainment under the Licensing Act 2003 however.
- 4.15 There is no prescribed application form for a sex establishment licence under the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and if the Council resolves to adopt the amended provisions of this Act as introduced by Section 27 of the Policing & Crime Act 2009 it will need to create an appropriate application form to include such details and information as the authority may reasonably require in addition to the applicants name an address for example.
- 4.16 There is no prescribed fee for a sex establishment licence (sexual entertainment venue) set out in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the Council will therefore need to set its own reasonable level of fee for the grant, renewal, variation or transfer of a sex establishment licence in accordance with the European Services Directive: Guidance for Local Authorities and LACORS Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector. Fees should be cost neutral however and set to cover the reasonable cost of administration and enforcement.
- 4.17 Sex establishment licences (sexual entertainment venue licences) can be granted for up to one year.
- 4.18 At this present moment in time, there is only one venue in the Borough that is licensed under the Licensing Act 2003 which is regularly providing lap dancing or entertainment that will be regarded as relevant entertainment on more than 11 occasions in a 12 month period under the new provisions as introduced by the Policing & Crime Act 2009.
- 4.19 It is believed however that at the time that their original applications were submitted under the Licensing Act 2003, there were other premises that indicated that they would or could be providing 'adult entertainment' and that there have been premises in Colchester that have provided such entertainment, but it is not known whether they have done so with the frequency that would require them to hold a sex establishment licence, i.e. on more than 11 occasions in a 12 month period.
- 4.20 Colchester Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in the nineteen eighties in order to be able to licence sex shops and sex cinemas in its area and so will need only to resolve to adopt

the provisions made by Section 27 of the Policing & Crime Act to amend Schedule 3. Such a resolution must be made by the full Council.

5. Transitional Arrangements - General

- 5.1 The provisions of Section 27 of the Policing & Crime Act 2009 came into force on the 6 April 2010. Councils have 12 months from that date in order to decide whether or not they wish to adopt those requirements to licence lap dancing and other similar relevant entertainment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. If Colchester Borough Council decides not to adopt the new provisions it has to carry out a public consultation with 'local people' as to whether or not it should adopt them.
- 5.2 Therefore the transitional period will last for 12-months beginning with the date that Colchester Borough Council passes a resolution that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing & Crime Act 2009) will come into force in their area and which will be known as 'the 1st appointed day'. Six months following the 1st appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'.

6. Transitional Arrangements – Existing Operators

- 6.1 To give them time to comply with the new legislation and new licensing requirements, existing operators, who hold a premises licence under the Licensing Act 2003 immediately before the '1st appointed day' and use the premises as a sexual entertainment venue under that licence, (or are currently undertaking 'preparatory work' to use the venue for that purpose) will be allowed to continue to provide relevant entertainment (i.e. lap dancing and other similar entertainment) up until the 3rd appointed day, or the determination of any application they have submitted before that time, including any appeal against the refusal to grant a licence for example, or whichever is later.
- 6.2 'Preparatory work' in the context of the new licensing requirements under the Policing & Crime Act 2009 refers to tangible work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a lap dancing club or similar venue in the future. The operator in question will have already been granted a premises licence under the Licensing Act 2003 before the 1st appointed day, but will not have used the premises as a sexual entertainment venue by that date. It would be beneficial and encouraged for any such prospective operator to make themselves known to the Council before the 1st appointed day or as soon after as it is practically possible for them to do so.

7. Transitional Arrangements – New Operators

- 7.1 New applicants are those who wish to operate a premises as a sexual entertainment venue after the 1st appointed day, but do not already have a Premises Licence or Club Premises Certificate to use it as such under the Licensing Act 2003, or do have such a licence but have not taken any steps towards operating the premises as a sexual entertainment venue. It is important for any such applicant to note that after the 1st appointed day, new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sex establishment licence to operate as a sexual entertainment venue.

8. Application Procedure

- 8.1 Applicants will be able to submit their application from the 1st appointed day onwards (i.e. the day that the Council resolves that the new licensing requirements for lap dancing clubs and those providing similar relevant entertainment will come into force).
- 8.2 If the Council decides to adopt a policy in relation to the grant of sex establishments and sexual entertainment venues in particular, it may decide in that policy for example to refuse applications having regard to the number of sex establishment they consider appropriate for a particular locality. Therefore all applications made on or after the 1st appointed day, but on or before the 2nd appointed day, must be considered together. The Home Office have stipulated this to ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on any first come first serve basis.
- 8.3 However no applications for sexual entertainment venues can be determined before the 2nd appointed day. After the 2nd appointed day, the Council must decide what if any applications for licences should be granted.
- 8.4 If a new applicant is granted a sex establishment licence (sexual entertainment venue) it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, but up to the point of the 3rd appointed day, they will still be allowed to operate under their existing Premises Licence or Club Premises Certificate granted to them under the Licensing Act 2003.
- 8.5 Applications made after the 2nd appointed day must be considered when they are made, but only once all applications made on or before the 2nd appointed day have been determined. This determination does not include references to the time taken in the resolution of any appeal lodged by an applicant against the refusal of a licence.
- 8.6 As with applications received on or before the 2nd appointed day, sexual entertainment venue licences granted to new applicants will take effect immediately and licences granted to existing operators will take effect from the 3rd appointed day or later if the application is determined after this date.
- 8.7 The Council would be required to determine any outstanding application made for a Premises Licence under the Licensing Act 2003 where it is possible to do so which includes the provision of activities regarded as relevant entertainment under the new licensing requirements, before the date that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing & Crime Act 2009 came into force in our area.
- 8.8 If it has not been possible to determine an application before the 1st appointed day however, the Council must advise applicants that they will need to submit an application for a sex establishment licence as set out in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, if they wish to provide relevant entertainment.
- 8.9 In effect this means that from the 1st appointed day onwards, any applications outstanding under the Licensing Act 2003 which includes the provision of relevant entertainment, must be considered as though they are new applicants under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.10 Applicants for a sex establishment licence (sexual entertainment venue), must give public notice of the application no later than 7 days after the date the application has been submitted to the Council by publishing an advertisement in a local newspaper that is circulated in the local authority area. Where the application relates to a premises, a

notice must also be displayed on or near the premises, but always in a place where it can be conveniently read by members of the public. The notice must be displayed for a period of 21 days beginning from the date the applications was submitted.

- 8.11 The Council can prescribe the form of notice that it requires an applicant for a sexual entertainment venue licence in our area to use which must also identify the premises in question or if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 8.12 The Council will be able to impose terms, conditions or restrictions on any sex establishment (sexual entertainment venue) that it grants a licence to in the form of conditions specific to the individual premises under paragraph 8 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.13 Alternatively, under regulations made by the Council in accordance with paragraph 13 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, it can attach standard conditions which would then be applied to all sex establishments, or to particular types of sex establishments.
- 8.14 It should be noted however that any conditions attached to the licence of an existing lap dancing club (or similar venue) which relate to what will be known as 'relevant entertainment' under the new provisions and which was granted under the Licensing Act 2003, will be deleted by those new provisions as from the 3rd appointed day onwards.
- 8.15 Therefore the Council may wish to replicate those conditions or replace them with new conditions on a sex establishment licence (sexual entertainment venue) which are consistent with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.16 Any conditions that remain on the operators Premises Licence that they and the Licensing Authority may consider superfluous to retain on the Premises Licence or Club Premises Certificate can be removed by way of the operator submitting an application under the minor variations procedure (Section 41A of the Licensing Act 2003).

9. Objections to an Application

- 9.1 Where it considers an application for the grant, renewal or transfer of a sex establishment licence the Council should have regard to any observations submitted to it by the Chief Officer of Police and any other objections that they have received from anyone else within 28 days of the application having been submitted. Any person can object to an application, but their objection must be relevant to the reasons that the Council can refuse a licence application and which have been detailed in paragraph 4.5 of this report. Objectors must give notice of their objection in writing, stating the grounds on which they are objecting.
- 9.2 If the Council receives a written notice of any objection it will give notice in writing to the applicant detailing the reasons for the objection before it considers their application. The Council will not reveal their name or address of the objector to the applicant without the consent of the objector.

10. Hearings

- 10.1 The Council will give all applicants the opportunity to appear before and be heard by the Licensing Committee or Licensing Sub-Committee that will be responsible for

determining the application in accordance with paragraph 10(19) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, before refusing an application.

- 10.2 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 does not make explicit provision for any objectors to be heard at a hearing, but this does not mean that the Licensing Committee will not hear those objections. Case law on this question states that while Local Authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. It should be noted however that the Council is under a duty to consider any objections made within 28 days of the application being submitted to it, but has discretion to hear any late objections provided the applicant is given the opportunity to respond to those objections

11. Appeals

- 11.1 An applicant may appeal any decision that the Council has made to refuse an application for the grant, renewal or transfer of a sex establishment licence to a Magistrates Court unless the application was refused under paragraph 12(3) (c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982 in which case the applicant can challenge the decision to refuse by way of a judicial review. The detail of paragraph 12(3) (c) or (d) is as follows:

(c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;

(d) That the grant or renewal of the licence would be inappropriate having regard;

i) to the character of the relevant locality

ii) to the use to which any premises in the locality are put or

iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

12. Policy

- 12.1 Although Colchester Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 many years ago, it has never adopted a licensing policy in respect of the grant of applications for sex establishments, i.e. sex shops and sex cinemas.
- 12.2 The Councils Licensing Policy made under the Licensing Act 2003 gives advice to potential applicants the Council's approach to applications that intend to provide 'adult' entertainment involving nudity or striptease. The content of this advice is as follows:

Nudity, Striptease and Sex Related Entertainment

- 3.35 Applicants should clearly specify in their operating schedule whether they propose to have adult entertainment involving nudity or striptease or any other activity involving full or partial nudity, e.g. topless waitresses etc, or sex related entertainment such as the showing of films or other recordings with an 18 restricted category.

3.36

Nudity, Striptease and Sex Related Entertainment Policy

(i) Where relevant representations are made, applications involving nudity or striptease or sex related entertainment, may be granted subject to reasonable and proportionate conditions being attached to the grant of a licence that are commensurate to the adult entertainment offered and which are also considered necessary for the promotion of the licensing objectives.

12.3 This advice and guidance will be for the most part superseded if the Council resolve to adopt the provisions of Section 27 of the Police & Crime Act 2009 and licence sexual entertainment venues in accordance with the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

12.4 The Licensing Committee may therefore wish to give its officers a steer towards whether they want to now have a policy formulated in respect of applications for sex establishments to include sexual entertainment venues (lap dancing and other relevant entertainment etc), sex shops and sex cinemas which are all now covered by the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and also want the content of that policy might be. Particularly in relation to the question of the following matters that are reasons to refuse an application for a sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982:

(c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;

(d) That the grant or renewal of the licence would be inappropriate having regard;

i) to the character of the relevant locality

ii) to the use to which any premises in the locality are put or

iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

12.5 The Home Office Guidance advises that what constitutes 'relevant locality' is a matter for the Council to decide, although the question must be decided on the facts of the individual location and all applications must still be considered on their individual merits. Case law has indicated however that the relevant locality does not have to be a clearly pre-defined area, nor is the Council required to be able to define its precise boundaries.

12.6 Therefore the Council would not be prevented from defining the exact area of the relevant locality, or equally if it so wished, the Council could conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition.

12.7 In any event, such a policy may provide a useful guide to potential applicants about whether a particular application is likely to be successful or not.

13. Strategic Plan References

- 13.1 The new provisions introduced by Section 27 of the Policing & Crime Act 2009 which amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 links into the Council's strategic plan for the following criteria:
- Community Safety
 - Community Development
- 14. Consultation**
- 14.1 There is no public consultation required for the Council to resolve to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the provisions of Section 27 of the Policing & Crime Act 2009, but it would be required to undertake a consultation with 'local people' if it decides not to adopt the amendments to Schedule 3 within one year of the provisions coming into force as from the 6 April 2010 so as to determine whether or not the Council should adopt those provisions. In this context, 'local people' is defined as anyone who lives or works in the Borough of Colchester.
- 15. Publicity Considerations**
- 15.1 If the Council resolves to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 it must publish a notice that it has passed a resolution that it is adopting the amendments made by paragraph 2(2) of Schedule 3 to the Policing & Crime Act 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's area. The notice should state the general effect of Schedule 3.
- 15.2 The existing lap dancing club in Colchester which provides regular relevant entertainment as defined by the new provisions and which will need to apply for a sex establishment licence if those provisions are adopted by the Council, is aware that the provisions have come into force and has made regular enquiries with licensing officers as to whether or not the Council will be adopting these provisions. The licence holders for the club have therefore been sent a copy of this report for their information and guidance and have also been advised that the Licensing Committee will be considering this question and may be making a recommendation to full Council that it resolves to adopt the new provisions.
- 16. Financial Implications**
- 16.1 There will be costs to the Council in resolving to adopt the amended provisions to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. These costs will include considerable officer time in preparation of reports, forms and notices, dealing with enquiries and applications in relation to this adoption and a substantial amount of additional officer time if the Licensing Committee determine that it requires the formulation of a written policy in regards to how the Council will consider applications for the grant of a sex establishment licence for sexual entertainment venues, sex shops and sex cinemas. Such a policy would also be subject to public consultation.
- 16.2 A significant additional expenditure will be required to advertise in a local newspaper any resolution that the Council may make in regards to the adoption of the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009.

16.3 There is also a potential cost to the Council in an applicant appealing a refusal of an application for the grant of a sex establishment licence to the Magistrates Court, or in their seeking to judicially review the Licensing Authority's decision in respect of any refusal made under paragraph 12(3) (c) or (d) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The cost of any such successful appeal or judicial review could be awarded against the Council.

17. Equality, Diversity and Human Rights Implications

17.1 If adopted, the Transitional Order will allow the Council to refuse an application for a sex establishment licence (sexual entertainment venue) whether it is from an existing operator or a new applicant, on one or more grounds which are set out in paragraph 12 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. When making such a decision, the Council must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights, (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

17.2 All other equality and diversity matters will have been considered when the Policing and Crime Act 2009 was passed by Parliament and by the Home Office when issuing its guidance to Local Authorities, existing operators and new applicants entitled 'Sexual Entertainment Venues', guidance for England and Wales.

18. Community Safety Implications

18.1 The adoption by the Council of the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009 will enhance community safety in regards to how and what the Council is able to consider when determining applications which wish to provide relevant entertainment at sexual entertainment venues and will also allow 'local people' to have a greater input into this process than the Licensing Act 2003 currently allows for.

19. Health and Safety Implications

19.1 Not applicable within the context and recommendations of this report.

20. Risk Management Implications

20.1 All risk management implications are outlined in paragraphs 14.1 and 16.2 of this report.

21 Recommendations

21.1 The recommendations made to the Licensing Committee are those shown under paragraphs 1.1, 1.2 and 1.3 of this report.

Background Papers

Home Office Guidance document for England and Wales entitled 'Sexual Entertainment

