

Time: 2.30 pm

**PLEASE NOTE: This will be a 'virtual meeting', held remotely in accordance with section 78 of the Coronavirus Act 2020 and section 13 of the related regulations.**

**Members of the press and public can view the meeting by clicking on the link provided on the agenda page on the Council's website or calling the number provided.**

**Instructions for members of the committee, officers and other participants to join the meeting have been circulated separately.**

**Membership:**

**Councillor James MacCleary (Chair); Councillors Zoe Nicholson (Vice-Chair).  
Matthew Bird, Julie Carr, Chris Collier, Johnny Denis, William Meyer, Emily O'Brien  
and Ruth O'Keeffe**

**Quorum: 4**

*Published: Wednesday, 17 March 2021*

## **Agenda**

**1 Minutes of the meeting held on 4 February 2021 (Pages 5 - 16)**

**2 Apologies for absence**

**3 Declarations of interest**

Disclosure by councillors of personal interests in matters on the agenda, the nature of any interest and whether the councillor regards the interest as prejudicial under the terms of the Code of Conduct.

**4 Urgent items**

Items not on the agenda which the Chair of the meeting is of the opinion should be considered as a matter of urgency by reason of special circumstances as defined in Section 100B(4)(b) of the Local Government Act 1972. A supplementary report will be circulated at the meeting to update the main reports with any late information.

**5 Public question time**

To deal with any questions received from members of the public in accordance with Council Procedure Rule 11 (if any).

**6 Written question from councillors**

To deal with written questions which councillors may wish to put to the Chair of the Cabinet in accordance with Council Procedure Rule 12 (if any).

**7 Matters referred to the Cabinet**

Matters referred to the Cabinet (whether by the Policy and Performance Advisory Committee or by the Council) for reconsideration by the Cabinet in accordance with the provisions contained in the Policy and Performance Advisory Procedure Rules or the Budget and Policy Framework Procedure Rules set out in part 4 of the Council's Constitution.

None.

**8 Interim Policy Statement for Housing Delivery (Pages 17 - 28)**

Report of Deputy Chief Executive and Director of Regeneration and Planning  
Lead Cabinet member: Councillor Emily O'Brien

**9 Planning Enforcement Policy Document (Pages 29 - 60)**

Report of Deputy Chief Executive and Director of Regeneration and Planning  
Lead Cabinet member: Councillor Emily O'Brien

**10 Investing in green energy initiatives (Pages 61 - 70)**

Report of Deputy Chief Executive and Director of Regeneration and Planning  
Lead Cabinet members: Councillors Matthew Bird and Zoe Nicholson

(This report contains an exempt appendix. Any discussion of this must take place at item 12 following exclusion of the public.)

**11 Exclusion of the public**

The Chief Executive considers that discussion of the following items is likely to disclose exempt information as defined in Schedule 12A of the Local Government Act 1972 and may therefore need to take place in private session. The exempt information reasons are shown beneath the items listed below. Furthermore, in relation to paragraph 10 of Schedule 12A, it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. (The requisite notices having been given under regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.)

(Note: Exempt papers are printed on pink paper).

## **12 Investing in green energy initiatives - Exempt Appendix 1 (Pages 71 - 78)**

Report of Deputy Chief Executive and Director of Regeneration and Planning  
Lead Cabinet member: Councillors Matthew Bird and Zoe Nicholson

Exempt information reason 3 – Information relating to the financial and business affairs of any particular person (including the authority holding that information).

## **Information for the public**

### **Accessibility:**

This agenda and accompanying reports are published on the Council's website in PDF format which means you can use the "read out loud" facility of Adobe Acrobat Reader.

### **Public participation:**

Please contact Democratic Services (see end of agenda) for the relevant deadlines for registering to submit a speech on a matter which is listed on the agenda if applicable. Where speeches are normally allowed at a Committee, live public speaking has temporarily been suspended for remote meetings. However, it remains possible to submit speeches which will be read out to the committee by an Officer.

## **Information for Councillors**

### **Disclosure of interests:**

Members should declare their interest in a matter at the beginning of the meeting.

In the case of a disclosable pecuniary interest (DPI), if the interest is not registered (nor the subject of a pending notification) details of the nature of the interest must be reported to the meeting by the member and subsequently notified in writing to the Monitoring Officer within 28 days.

If a member has a DPI or other prejudicial interest he/she must leave the meeting while the matter is being considered (unless he/she has obtained a dispensation).

### **Councillor right of address:**

A member of the Council may submit a question to ask the Chair of a committee or sub-committee on any matter in relation to which the Council has powers or duties or which affect the District and which falls within the terms of reference of that committee or subcommittee.

A member must give notice of the question to the Head of Democratic Services in writing or by electronic mail no later than close of business on the fourth working day before the meeting at which the question is to be asked.

### **Other participation:**

Please contact Democratic Services (see end of agenda) for the relevant deadlines for registering to speak on a matter which is listed on the agenda if applicable.

# Democratic Services

For any further queries regarding this agenda or notification of apologies please contact Democratic Services.

**Email:** [committees@lewes-eastbourne.gov.uk](mailto:committees@lewes-eastbourne.gov.uk)

**Telephone:** 01323 410000

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## Cabinet

**Minutes of meeting held remotely on 4 February 2021 at 2.30 pm.**

**Present:**

Councillor James MacCleary (Chair).  
Councillors Zoe Nicholson (Vice-Chair), Matthew Bird, Julie Carr, Chris Collier, Johnny Denis, William Meyer, Emily O'Brien and Ruth O'Keeffe.

**Officers in attendance:**

Robert Cottrill (Chief Executive), Homira Javadi (Chief Finance Officer), Ian Fitzpatrick (Deputy Chief Executive and Director of Regeneration and Planning), Tim Whelan (Director of Service Delivery), Becky Cooke (Assistant Director for Human Resources and Transformation), Oliver Dixon (Monitoring Officer and Head of Legal Services), Jo Harper (Head of Business Planning and Performance), Oliver Jones (Strategy and Partnership Lead), Helen Knight (Head of Human Resources), Millie McDevitt (Organisational Effectiveness and Performance Lead), Ola Owolabi (Deputy Chief Finance Officer (Corporate Finance)), Kate Richardson (Strategy and Partnership Lead for Sustainability), Simon Russell (Head of Democratic Services) and Nathan Haffenden (Head of Commercial Business Development).

**Also in attendance:**

Councillor Roy Burman, Councillor Isabelle Linington (Leader of the Opposition) and Councillor Julian Peterson (Chair of Audit and Standards Committee).

**33 Minutes of the meeting held on 10 December 2020**

The minutes of the meeting held on 10 December 2020 were submitted and approved and the Chair was authorised to sign them as a correct record.

**34 Apologies for absence**

Apologies for absence were received from visiting members Councillor Miller (Chair of Policy and Performance Advisory Committee) and Councillor Boorman (Vice-Chair of Policy and Performance Advisory Committee). Councillor Burman was in attendance to represent the Policy and Performance Advisory Committee.

**35 Declarations of interest**

Councillors MacCleary, Meyer and Nicholson declared a prejudicial interest in the second set of officer recommendations for agenda item 11 (General Fund Revenue Budget 2021/22 and Capital Programme) as members of the AHLLP Executive Committee. They withdrew from the meeting whilst this section of the item was discussed and determined. Councillor Collier was nominated to Chair

the meeting for the duration of this section.

Councillor O’Keeffe declared a personal interest in agenda item 18 (Voluntary sector support) as a Trustee of the Citizens Advice Bureau. She remained on the meeting but did not vote on the item.

### **36 Order of business**

Councillor Nicholson had notified the Cabinet that she would be slightly delayed in joining the remote Cabinet meeting. The Chair agreed to re-arrange the order of business, to enable Councillor Nicholson to present and speak on the items under her portfolio.

### **37 Ward issues raised by councillors at Full Council**

The Cabinet considered the report of the Head of Democratic Services, responding to the ward issue that was raised by Councillor Gauntlett at the meeting of the Full Council on 23 November 2020.

Councillor O’Brien presented the report and confirmed that all outstanding actions had taken place, and this was detailed in the report. Cabinet were advised that an update from the developer had been received and they confirmed that they were reviewing the commencement of their works. The Council were awaiting further information and would be following this up in the coming weeks.

In addition to writing to the Secretary of State for Housing, Communities and Local Government, Councillor O’Brien had also written to Maria Caulfield MP (Lewes), and she confirmed that she would be raising the points on Planning Law with ministers on the Council’s behalf.

#### **Resolved (Non-key decision):**

To note and agree the officer action detailed in the report.

#### **Reason for decision:**

To ensure that appropriate follow up action is taken.

### **38 Recovery and reset programme**

The Cabinet considered the report of the Chief Executive, updating them on progress of the Recovery and Reset Programme.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendation in full. Councillor Burman, was in attendance to present PPAC’s discussion.

#### **Resolved (Non-key decision):**

To note the progress made with the Recovery and Reset Programme.

**Reason for decision:**

The Recovery and Reset Programme provides a structured and accountable approach for delivering the level of significant organisational change needed to respond to current and future challenges.

**39 Portfolio progress and performance report quarter 3 - 2020-2021**

The Cabinet considered the report of the Deputy Chief Executive and Director of Regeneration and Planning, detailing the Council's progress and performance in respect of key projects and targets for the third quarter of the year (October to December 2020), as shown at appendix 1 to the report.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendation in full. Councillor Burman, was in attendance to present PPAC's discussion.

In response to a point raised at the PPAC meeting around the decline in recycling numbers, Councillor Carr clarified that this may be due to an increase in residual waste during this quarter as households' decluttered. Updated performance figures had been received since publication of the report and the key performance indicator for recycling was now marginally below the target (40.65%).

Visiting member and Leader of the Opposition, Councillor Linington praised the performance of staff during a very difficult period. This was unanimously supported by the Cabinet.

Helen Knight, Head of Human Resources addressed the Cabinet and detailed the various measures implemented during this period to support staff and contribute to the high attendance figures. This included extending the flexi-scheme for staff to work during the period of 7 am -10 pm, personal risk assessments, staff surveys, availability of mental health first aiders and extensive guidance on the Council's intranet page for mental health, wellbeing and home schooling.

**Resolved (Non-key decision):**

To note progress and performance for Quarter 3.

**Reason for decision:**

To enable Cabinet members to consider specific aspects of the Council's progress and performance.

#### **40 Climate change and sustainability strategy**

The Cabinet considered the report of the Deputy Chief Executive and Director of Regeneration and Planning, seeking their agreement of the strategy and action plan, to deliver against the Council's climate emergency declaration and net zero targets agreed in 2019.

Thanks were conveyed to Councillor Bird, Kate Richardson, Strategy & Partnership Lead for Sustainability, other officers involved and the Scrutiny Emergency Climate Change Panel for their work towards finalising the strategy.

The strategy provided a comprehensive evidence base for carbon emissions in both the council and the district and underpinned the many actions laid out in the action plan and set out the pathway to a Climate resilient future in the district.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendations in full. Councillor Burman was in attendance to present PPAC's discussion.

Visiting member and Leader of the Opposition, Councillor Linington praised the work undertaken in producing the report and welcomed an easily digestible communications strategy, highlighting key threads from the strategy to assist engagement with the public and partners.

Councillor Nicholson joined the meeting during discussion and determination of this item.

#### **Resolved (Key decision):**

(1) To approve the Climate Change and Sustainability Strategy 2021 and Action Plan set out at appendix 1 and 2 to the report.

(2) To require the Deputy Chief Executive and Director of Planning and Regeneration to produce an annual progress report detailing the council and district carbon footprints, and progress against the action plan in September each year.

(3) To note the 'Summary of Engagement Responses' report at appendix 3 to the report.

#### **Reason for decisions:**

To progress the aims of the Council's Climate Emergency Declaration (2019) to make the Council Net Zero Carbon by 2030 and to assist the same aim to be achieved within the wider district.



**41 Finance update - performance quarter 3 - 2020-2021**

The Cabinet considered the report of the Chief Finance Officer, updating them on the Council's financial performance in the quarter 3 period for 2020/21.

The current deficit detailed in the report factored in the Government's emergency Covid-19 grant and income compensation scheme. Councillor Nicholson reiterated that the income compensation scheme only covered less than 50% of the Council's overall income loss.

The Cabinet expressed their thanks to the work and efforts of the senior management team, to cover the shortfall from government.

**Resolved (Non-key decision):**

(1) To note the General Fund, HRA and Collection Fund financial performance for the quarter ended December 2020.

(2) To agree the amended capital programme as set out at appendix 2 to the report.

**Reason for decisions:**

To enable Cabinet members to consider specific aspects of the Council's financial performance.

**42 General Fund Revenue Budget 2021/22 and Capital Programme**

The Cabinet considered the report of the Chief Finance Officer, regarding the updated General Fund budget and updated Medium Term Financial Strategy, together with the updated Capital Programme position.

Despite the significant challenges of Covid-19, set out in the report, efficiencies, savings, and the limited use of reserves had made it possible for the Council to deliver a balanced budget for 2021/22.

The report also confirmed a major capital programme that focused on using the council's financial power to stimulate the local economy and tackle the climate emergency.

As part of her presentation and addressing the future recovery and conclusion of the furlough scheme, Councillor Nicholson proposed two additional resolutions, to support those in financial distress. This was unanimously agreed by Cabinet and detailed at resolutions (6) and (7) below.

The Policy and Performance Advisory Committee, at its meeting on 25 January 2021, made the following recommendation to Cabinet:

**To support the recommendations in the report subject to the following amendment being considered by the Cabinet:**

**Recommendation ii) in the Cabinet report be amended to read.... 'Zero increase in the Council Tax for Lewes District Council for 2021/22'.**

The recommendation from the Policy and Performance Advisory Committee (PPAC), was presented by Councillor Burman, member of PPAC and considered by Cabinet during their discussions. Visiting member and Leader of the Opposition, Councillor Linington also spoke in support of the PPAC recommendation.

The report proposed a 9.6p a week increase in Council Tax for 2021/22, which equated to £5 a year in the council's share of the bill. The Cabinet advised that this ensured that the council could continue to deliver essential services to residents, support local businesses and help the wider community to recover from the economic impact of Covid-19.

Councillors MacCleary, Meyer and Nicholson declared a prejudicial interest in the second set of officer recommendations for this item as members of the Aspiration Homes LLP Executive Committee. They withdrew from the meeting whilst this section of the item was discussed. Councillor Collier was nominated to Chair the meeting for the duration of this section.

**Recommended to Full Council (Budget and policy framework):**

Members recommended the following proposals to Full Council:

- (1) The General Fund budget for 2020/21 (Revised) and 2021/22 (original).
- (2) An increase in the Council Tax for Lewes District Council of £5 (per annum) resulting in a Band D charge for general expenses of £197.08 (per annum) for 2021/22.
- (3) The revised General Fund capital programme 2021/22 as set out at appendix 3 to the report.
- (4) That Cabinet endorses the continuation of the Flexible use of Capital Receipts and refers on to Council for approval.
- (5) To note the section 151 Officer's sign off as outlined in the report.

**Resolved (Key decision):**

- (6) That as soon as practicable officers bring to Cabinet a report on the statutory process for amending the Council Tax Reduction Scheme for 2022/23 and which sets out the financial and other implications of providing a 100% discount to qualifying persons.
- (7) That, in order to maximise the assistance to working age residents in financial distress, officers combine the remaining Council Tax Hardship Scheme funds (as previously agreed at Cabinet on 10 December 2020) with

the council tax relief grant made available under the recent Spending Review, to provide a lump sum payment in 2021/22 to qualifying persons, which in certain cases would – taking into account the council tax reduction awarded – equal 100% of their council tax liability.

(8) To approve, as a Restricted Matter under the LLP Agreement with Eastbourne Borough Council, the making of a loan facility of up to £10m by Eastbourne Borough Council (pursuant to an Eastbourne Borough Council Cabinet decision of February 2021) to AHLLP for the purpose of enabling the partnership to purchase and develop residential accommodation and other property. Also, to delegate authority to the Chief Finance Officer in consultation with the Lead Member for Finance to agree the terms of that loan facility and any associated documentation and to authorise the execution of any related documentation.

(9) To authorise the Chief Finance Officer to ensure that a new “Deed of Entrustment” and the appropriate Funding Agreements are entered into by AHLLP with Eastbourne Borough Council to ensure that:

(a) loans and other funding follow the new Subsidy Control regime which applies from 1 January 2021; and

(b) Right to Buy receipts are appropriated in accordance with legislative requirements and the retention agreement with Government in relation to “social housing”.

(10) To delegate authority to the Chief Finance Officer to determine the terms of such agreements.

**Reason for decisions:**

The Cabinet has to recommend to Full Council the setting of a revenue budget and associated council tax for the forthcoming financial year by law.

**43 Housing Revenue Account (HRA) Revenue Budget and Rent Setting 2021/22 and HRA Capital Programme 2020-24**

The Cabinet considered the report of the Chief Finance Officer, regarding the detailed Housing Revenue Account (HRA) budget proposals, rent levels, service charges for 2021/22, and the HRA Capital Programme for 2020-2024.

Ian Fitzpatrick, Deputy Chief Executive advised that continued engagement would take place over the coming year with Tenants of Lewes District (TOLD) about how to spend the funds available, as set out in the report.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendations in full. Councillor Burman was in attendance to present PPAC’s discussion.

In response to a point raised by PPAC around the garage rents, Councillor

Meyer advised that the Council was reviewing its garage stock and future potential.

Councillor Nicholson reported that prior to consideration by Full Council, any changes arising from current conversations with TOLD would be built into the final report.

**Recommended to Full Council (Budget and policy framework):**

(1) The HRA budget for 2021/22 and revised 2020/21 budget as set out at appendix 1 to the report.

(2) That social and affordable rents (including Shared Ownership) are increased by 1.5% in line with government policy.

(3) That private sector leased property rents are increased by 2.1% (RPI+1%).

(4) That the revised service charges are implemented.

(5) That garage rents are increased by 2.1% (RPI+1%).

(6) The HRA Capital Programme as set out at appendix 2 to the report.

**Reason for decisions:**

The Cabinet has to recommend to Full Council the setting of the HRA revenue and capital budget and the level of social and affordable housing rents for the forthcoming year.

**44 Treasury Management and Prudential Indicators 2021/22, Capital Strategy & Investment Strategy**

The Cabinet considered the report of the Chief Finance Officer, seeking approval of the Council's Annual Treasury Management Strategy, Capital Strategy, and Investment Strategy, together with the Treasury and Prudential Indicators for the next financial year.

Councillor Nicholson reported that work had been undertaken to revise the strategy to reflect the administration's environmental and sustainability objectives. Thanks, were conveyed to Ola Owolabi, Deputy Chief Finance Officer for his work in producing the report.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendations in full. Councillor Burman, was in attendance to present PPAC's discussion. Visiting member, Councillor Peterson also addressed the Cabinet and expressed thanks to officers.

**Recommended to Full Council (Budget and policy framework):**

- (1) To approve the Treasury Management Strategy and Annual Investment Strategy for 2021/22 as set out at appendix A to the report.
- (2) To approve the Minimum Revenue Provision Policy Statement 2021/22 as set out at paragraph 8 in the report.
- (3) To approve the Prudential and Treasury Indicators 2021/22 to 2023/24, as set out at paragraph 6 in the report.
- (4) To approve the Capital Strategy set out at appendix E to the report.

**Reason for decisions:**

It is a requirement of the budget setting process for the Council to review and approve the Prudential and Treasury indicators, Treasury Strategy, Capital Strategy and Investment Strategy.

**45 Annual review of fees and charges**

The Cabinet considered the report of the Chief Finance Officer, proposing the schedule of Fees and Charges to apply from 1 April 2021.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendations in full. Councillor Burman, was in attendance to present PPAC's discussion.

**Resolved (Key decision):**

- (1) To approve the scale of Fees and Charges proposed within appendix 1 of the report, to apply from 1 April 2021.
- (2) To implement changes to statutory fees and charges for services shown within appendix 1 of the report, as and when notified by Government.

**Reason for decisions:**

The Council's Constitution requires that all fees and charges, including nil charges, be reviewed at least annually and agreed by Cabinet.

**46 Eastbourne and Lewes Community Safety Partnership - Annual Report (Lewes)**

The Cabinet considered the report of the Deputy Chief Executive and Director of Regeneration and Planning, covering the 2020/21 performance of the Eastbourne and Lewes Community Safety Partnership.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendation in full.

Councillor Burman, was in attendance to present PPAC's discussion.

In response to a point made by PPAC in relation to online fraud, it was confirmed that this had been picked up by the Partnership and Sussex Police. Work was ongoing to provide the correct education to potential victims of online fraud.

**Resolved (Non-key decision):**

To note the achievements and activities of the Eastbourne & Lewes Community Safety Partnership in 2020/21.

**Reason for decision:**

For Cabinet to consider progress on delivery of the current Community Safety Plan.

**47 Voluntary sector support**

The Cabinet considered the report of the Deputy Chief Executive and Director of Regeneration and Planning, asking them to note response of the consultation exercise, give consideration to the method of awarding future grants and agree any changes to the council's voluntary sector grants policy.

The Policy and Performance Advisory Committee, at its meeting on 25 January 2021, made the following recommendation to Cabinet:

**To support the recommendations in the report subject to the following amendment being considered by the Cabinet:**

**That Cabinet consider the option of agreeing to award a combination of core grants (without a bidding process) alongside competitive grants on a tri-annual basis to be implemented from 2021/22'.**

The recommendation from the Policy and Performance Advisory Committee (PPAC), was presented by Councillor Burman, and considered by Cabinet during their discussions. Councillor Denis thanked PPAC for the recommendation and confirmed that this had been considered previously. Councillor Denis concluded that he believed that what was proposed in the report was the best approach to supporting local organisations.

**Resolved (Key decision):**

(1) To agree the grant allocations for 2021/22, to be allocated in line with the existing voluntary sector grants policy, as set out in paragraph 1.4 of the report.

(2) To note the consultation responses.

(3) To agree to award all grants tri-annually from 2022/23 onwards and introduce a competitive bidding process to be implemented in 2021/22.

(4) That a further report making recommendations for future funding priorities, in the form of a 'prospectus' against which organisations can bid, be considered at a future meeting of the Cabinet.

(5) An amended grants policy be prepared in line with the recommendations above for adoption at a future meeting of the Cabinet.

(6) That a Grants Working Group of three members be established, as set out at paragraph 2.4 of the report.

**Reason for decisions:**

The introduction of these changes to the voluntary sector grants policy will enable the council to be more transparent and flexible in how local voluntary organisations are supported and will ensure a focus on priority areas of need.

**48 Planning Technical Advice Notes**

The Cabinet considered the report of the Deputy Chief Executive and Director of Regeneration and Planning, seeking their approval for the publication and use of three Planning Technical Advice Notes, that addressed sustainability issues.

Policy and Performance Advisory Committee (PPAC), held on 25 January 2021, considered the report and were supportive of the recommendations in full. Councillor Burman was in attendance to present PPAC's discussion. Visiting member, Councillor Peterson, also addressed the Cabinet in support of the recommendations.

Thanks, were conveyed to officers for their work in pulling the Advice Notes together.

Councillor O'Brien confirmed that officers had worked closely with wildlife groups, builders, and developers to ensure that the Notes would not penalise local small businesses. A two-tiered approach was built into the guidance, dependent on the size of the proposed development.

Councillor O'Brien concluded that the Notes may need to be brought back to Cabinet in the future, once new Government legislation (Environment Bill) is implemented.

**Resolved (Key decision):**

(1) To agree the publication and use of the Sustainability in Development Technical Advice Note contained at appendix 2 to the report.

(2) To agree the publication and use of the Circular Economy Technical Advice Note contained at appendix 3 to the report.

(3) To agree the publication and use of the Biodiversity Net Gain Technical Advice Note contained at appendix 4 to the report.

(4) To provide delegated authority to the Director of Regeneration and Planning, in consultation with the Portfolio Holder for Planning and Infrastructure, to make minor or technical amendments to the Technical Advice Notes prior to their publication or as otherwise required following publication.

**Reasons for decisions:**

(1) To publicise the Council's expectations for the incorporation of sustainability issues, circular economy principles and biodiversity net gain in planning applications.

(2) To make minor amendments to address technical or drafting issues.

The meeting ended at 4.40 pm

Councillor James MacCleary (Chair)



<b>Report to:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>25 March 2021</b>
<b>Title:</b>	<b>Interim Policy Statement for Housing Delivery</b>
<b>Report of:</b>	<b>Director of Regeneration and Planning</b>
<b>Cabinet member:</b>	<b>Cllr Emily O'Brien, Cabinet Member for Planning and Infrastructure</b>
<b>Ward(s):</b>	<b>All wards in Lewes District that lie wholly or partially outside of the South Downs National Park</b>
<b>Purpose of report:</b>	<b>To seek Cabinet approval of the Draft Interim Policy Statement for Housing Delivery</b>
<b>Decision type:</b>	<b>Key</b>
<b>Officer recommendation:</b>	<b>That Cabinet approves the Draft Interim Policy Statement for Housing Delivery, as set out at Appendix 1</b>
<b>Reasons for recommendations:</b>	<b>To help provide a clear and consistent approach to the assessment of planning applications for housing development outside of the adopted planning boundaries.</b>
<b>Contact Officer(s):</b>	<b>Name: Robert King Post title: Senior Planning Policy Officer E-mail: robert.king@lewes-eastbourne.gov.uk Telephone number: 01273 085455 or 01323 415455</b>

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## **1 Interim Policy Statement for Housing Delivery (IPS)**

- 1.1 The IPS has been prepared in the context of the vision, objectives and policies set out in the adopted Lewes District Local Plan. It also reflects many of the priorities set out in the Council's Corporate Plan, including delivering new homes, promoting access to housing for all groups, encouraging more walking and cycling, increasing biodiversity, putting sustainability at the heart of the planning process, and ensuring an effective and transparent planning service
- 1.2 The Interim Policy Statement for Housing Delivery (IPS) has been drafted to facilitate the delivery of new housing. It seeks to provide clarity and guidance to applicants about how the Council will assess development proposals for housing on sites outside of the settlement planning boundaries. The full text of the draft IPS is set out at Appendix 1 to this report.
- 1.3 The IPS identifies the factors that are considered critical to achieving sustainable development in relation to the provision of housing outside of the settlement planning boundaries, having regard to the policies of the adopted Local Plan and

the NPPF.

1.4 It is important to note that the IPS will be published as informal guidance and will not alter the statutory planning framework for the district. Nor does it set out the full range of relevant national or local planning policy and practice that may be applied by the Council when considering applications for housing development outside of the planning boundaries.

1.5 It has been prepared to provide guidance and clarity to applicants, and should be read alongside the relevant development plan policies for the area and it will be used as a material consideration in the determination of planning applications.

## **2 Outcome expected and performance management**

2.1 The IPS has been produced as a positive and proactive document and it seeks to ensure that new homes are delivered in the right place, and at an appropriate scale, to help meet the local housing needs of the district, as required by national planning policy.

2.2 The effectiveness of the IPS will be monitored through the development management process, including appeal decisions. If the IPS fails to provide the necessary clarity and guidance to promote sustainable development, it can be reviewed or withdrawn at a future date.

## **3 Consultation**

3.1 As part of the consultation regime all towns and parishes, neighbouring authorities, the national park and the Planning Service Users Group were consulted with all responses received being report to the Local Plan Steering Group and where appropriate constructive amendments to the text of the IPS, have been incorporated in the draft document at Appendix 1 to this report.

## **4 Financial appraisal**

4.1 There are no financial implications of approving the IPS as a non-statutory guidance document for development management purposes.

## **5 Legal implications**

5.1 The Council has a statutory duty to determine applications in accordance with Section 38(6) of the Planning & Compulsory Purchase Act 2004. This requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. This duty includes taking into account relevant policies of the development plan and the policies of the NPPF.

The policy for the “tilted balance” under paragraph 11d)ii) NPPF 2012 provides that for decision-taking this means:

d) where there are no relevant development plan policies, or the policies

which are most important for determining the application are out-of-date , granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed

; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”

Recent case law confirms that decision makers may adopt a holistic approach to the performance of the duty in section 38(6) and provided the statutory duty is complied with, the decision-maker can go about the task in a way that seems suitable in the circumstances of the case and in doing so, relevant policies in the development plan may be taken into account. The Interim Policy Statement for Housing Delivery will help ensure the Council takes a consistent approach to determining development proposals for housing outside the settlement planning boundaries and enable the Council to demonstrate that it has done so.

Legal Implications Provided 22.02.21 JCS – 9928

## **6 Risk management implications**

6.1 The IPS represents a pro-active approach to housing delivery in the light of changed circumstances since the adoption of the strategic policies of the Local Plan in 2016. Its implementation is intended to improve the efficiency and effectiveness of the development management process for all parties.

## **7 Equality analysis**

7.1 The IPS has been prepared in the context of the vision, objectives and policies of the adopted Lewes District Local Plan Parts 1 and 2, for which EaFA's have already been completed at key stages of publication. No further direct implications for equalities have been identified at this stage.

## **8 Environmental sustainability implications**

8.1 The IPS has been prepared within the context set by the vision, objectives and policies of the adopted Lewes District Local Plan, which has been subject to Sustainability Appraisal incorporating the requirements of the Strategic Environmental Assessment Directive. The IPS identifies the factors that are considered critical to achieving sustainable development in relation to the provision of housing outside of the settlement planning boundaries. Its implementation should therefore contribute towards meeting the target of net zero carbon by 2030.

## 9 Appendices

- Appendix 1: Draft Interim Policy Statement for Housing Delivery

## 10 Background papers

The background papers used in compiling this report were as follows:

- [Lewes District Council Five Year Housing Land Supply Position Statement 1 April 2020](#)
- [National Planning Policy Framework](#)
- [Lewes District Council Revised Local Development Scheme](#)
- [Lewes District Local Plan Part 1: Joint Core Strategy](#)
- [Lewes District Local Plan Part 2: Site Allocations and Development Management Policies](#)



## **Draft Interim Policy Statement for Housing Delivery**

### **March 2020**

#### **1 Introduction**

- 1.1 This Interim Policy Statement sets out the criteria that the District Council will use to determine planning applications for housing development outside of the settlement planning boundaries, as defined in the adopted Lewes District Local Plan. It has been produced as a positive and pro-active way forward if the Council is unable to demonstrate a five year supply of deliverable housing sites after 11 May 2021.
- 1.2 The Statement does not apply to land within the South Downs National Park, where the South Downs National Park Authority is the local planning authority.

#### **2 Background**

- 2.1 The adopted Lewes District Local Plan comprises two documents:
- Local Plan Part 1: Joint Core Strategy 2010-2030
  - Local Plan Part 2: Site Allocations and Development Management Policies
- 2.2 The Local Plan Part 1 (LLP1) sets out the long term vision and objectives for the whole of Lewes District and provides the strategic policies to guide development and change between 2010 and 2030. It identifies a housing requirement of 6,900 additional dwellings (345 dwellings per annum) across the whole district, including the area within the South Downs National Park, over the plan period. The LPP1 was adopted by the Lewes District Council on 11 May 2016 and by the South Downs National Park Authority on 23 June 2016.
- 2.3 The Local Plan Part 2 (LPP2) supports and seeks to deliver the strategic objectives of the LPP1, but only covers the area of Lewes District outside of the National Park. This is because the South Downs Local Plan has superseded the LPP1 in that part of the district within the National Park. The LPP2 identifies a housing requirement of 5,494 additional dwellings (275 dwellings per annum) for that part of the district outside the National Park. The LPP2 was adopted by Lewes District Council on 24 February 2020.
- 2.4 Since the adoption of the LPP1, the Government has made a number of changes to the planning system and published revisions to National Planning Policy Framework (NPPF) and Planning Practice Guidance. Most significantly,

the Government introduced a new standard method for calculating local housing need in 2018 and has instructed local planning authorities to identify a five year supply of housing land sufficient to meet this housing need if their adopted strategic policies are more than five years old.

- 2.5 From 11 May 2021 (five years after the adoption of the LPP1), the district's housing land supply will therefore be assessed against a provisional local housing need figure of 782 dwellings per annum, rather than the 345 dwellings per annum currently set out in the adopted Local Plan. The district's housing land supply and delivery position will be reviewed at that time, but it is unlikely that Council will be able to demonstrate a five year supply of deliverable housing sites sufficient to meet the need for 782 dwellings per annum, as required by the Government.
- 2.6 As a consequence, decisions on planning applications involving the provision of housing will be tilted in favour of sustainable development, in accordance with Paragraph 11 of the NPPF. This means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 2.7 The Council is currently reviewing and updating the policies of the adopted Local Plan, as required by Regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012. However, it is not anticipated that the new, updated Local Plan will be adopted before 2023. In the meantime, the Council must continue to determine planning applications on their individual merits, having regard to the policies of the approved development plan and any other material considerations, including national planning policies.

### **3 Purpose and Status of this Document**

- 3.1 The adopted Local Plan uses 'planning boundaries' to positively focus growth on the most sustainable settlements, reduce the need to travel, and protect the intrinsic character and beauty of the countryside. However, these settlement planning boundaries were defined on the basis of accommodating a housing requirement of 345 dwellings per annum, as set out in Spatial Policy 1 of the Local Plan. If the Council is unable to demonstrate a five-year supply of deliverable housing sites, it is acknowledged that the planning boundaries may need to be breached in order to help meet local housing needs.
- 3.2 This Interim Policy Statement therefore applies to planning applications for the provision of housing on sites located outside of the planning boundaries (as defined on the Local Plan Policies Map). Its purpose is to facilitate the delivery of new housing by providing a clear and consistent approach to the assessment of development proposals on such sites over the period from 11 May 2021 until the adoption of the new Local Plan. It seeks to ensure that new homes are delivered

in the right places, and at an appropriate scale, to help meet the needs of the plan area in the short term.

- 3.3 The Statement identifies the factors that are considered critical to achieving 'sustainable development' in relation to the provision of housing outside of the planning boundaries. It has been prepared within the context set by the vision and objectives of the adopted Local Plan, in particular the need to actively manage patterns of growth to make the fullest possible use of walking, cycling and public transport. It also reflects the Council's declaration of a climate emergency in 2019, and its aim to deliver new homes and promote access to housing for all groups whilst creating sustainable communities (*LDC Corporate Plan 2020-2024*).
- 3.4 The Statement does not form part of the development plan and does not alter the statutory planning framework for that part of Lewes District outside of the South Downs National Park. Nor does it set out the full range of relevant national or local planning policy and practice that may be applied by decision-makers when considering applications for the provision of housing. It has been prepared to provide clarity and guidance for applicants and should be read alongside the relevant development plan policies for the area. However, the Statement will be used as a material consideration in the determination of planning applications.
- 3.5 As the Statement has been prepared to address concerns about the anticipated shortfall in housing land supply prior to the adoption of the new Local Plan, the Council expects applications to be accompanied by evidence of deliverability at the time they are submitted. Sites should be fully within the applicant's control and their development should not be dependent upon the delivery of significant off-site infrastructure which is not yet programmed. They should be capable of delivering housing completions within the period up to the end of 2023, i.e. the anticipated adoption date of the new Local Plan. The Council will seek to attach conditions to planning permissions, requiring commencement of development within 2 years from the date of the grant of planning permission.

#### **4 Interim Policy Statement for Housing Delivery**

- 4.1 The Council recognises the presumption in favour of sustainable development, as set out in the National Planning Policy Framework, and its application where a local planning authority cannot demonstrate a five year supply of deliverable housing sites. While the presumption applies, the Council will take a positive approach to planning applications for the provision of housing outside of the adopted settlement planning boundaries, subject to compliance with all appropriate development plan policies and the following criteria:
1. The site boundary is contiguous with an adopted settlement planning boundary, as defined on the Local Plan Policies Map.

*Relevant Local Plan Policies:*

- *LPP1 Spatial Policy 2 (Distribution of Housing)*
- *LPP1 Core Policy 10 (Natural Environment & Landscape Character)*
- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM1 (Planning Boundary)*
- *LPP2 Policy DM25 (Design)*

2. The scale of development is appropriate to the size, character and role of the adjacent settlement, having regard to the settlement hierarchy set out in LPP1 Table 2 (attached as an Appendix). In deciding whether the scale is appropriate, the Council will take account of the cumulative impact of extant unimplemented permissions in the relevant settlement.

*Relevant Local Plan Policies:*

- *LPP1 Spatial Policy 2 (Distribution of Housing)*
- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM1 (Planning Boundary)*
- *LPP2 Policy DM25 (Design)*

3. The proposed development will provide safe and convenient pedestrian and cycle access to key community facilities and services within the adjacent settlement.

*Relevant Local Plan Policies:*

- *LPP1 Core Policy 13 (Sustainable Travel)*
- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM25 (Design)*

4. The proposed development, individually or cumulatively, will not result in the actual or perceived coalescence of settlements. Where appropriate, this should be demonstrated through the submission of a visual and landscape character impact assessment.

*Relevant Local Plan Policies:*

- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM25 (Design)*

5. Within the setting of the South Downs National Park, an assessment is undertaken to demonstrate that the proposed development will conserve the special qualities of the National Park. This assessment should be informed by the SDNP View Characterisation & Analysis Study 2015, the SDNP Tranquillity Study 2017, and the SDNP Dark Skies Technical Advice Note 2018.

*Relevant Local Plan Policies:*



- *LPP1 Core Policy 10 (Natural Environment & Landscape Character)*
- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM25 (Design)*

6. An ecological impact assessment is undertaken and appropriate measures identified and implemented accordingly to mitigate any potential adverse impacts of the development on biodiversity and secure biodiversity net gain in accordance with the Council's Biodiversity Net Gain Technical Advice Note (February 2021).

*Relevant Local Plan Policies:*

- *LPP1 Core Policy 10 (Natural Environment & Landscape Character)*
- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM24 (Protection of Biodiversity and Geodiversity)*
- *LPP2 Policy DM27 (Landscape Design)*

7. The proposed development will make the best and most efficient use of the land, whilst responding sympathetically to the existing character and distinctiveness of the adjoining settlement and surrounding rural area. Arbitrarily low density or piecemeal development, including the artificial subdivision of larger land parcels, will not be acceptable.

*Relevant Local Plan Policies:*

- *LPP1 Core Policy 2 (Housing Type, Density and Mix)*
- *LPP1 Core Policy 11 (Built & Historic Environment and High Quality Design)*
- *LPP2 Policy DM25 (Design)*
- *LPP2 Policy DM27 (Landscape Design)*

8. It can be demonstrated that the proposed development is deliverable and viable, having regard to the provision of necessary on-site infrastructure, including affordable housing, green infrastructure and other requirements. Where the proposed development would create the need to provide additional or improved off-site infrastructure, a programme of delivery should be agreed with the relevant infrastructure providers to ensure that these improvements are provided at the time they are needed.

*Relevant Local Plan Policies:*

- *LPP1 Core Policy 1 (Affordable Housing)*
- *LPP1 Core Policy 7 (Infrastructure)*
- *LPP1 Core Policy 8 (Green Infrastructure)*
- *LPP1 Core Policy 12 (Flood Risk, Coastal Erosion, Sustainable Drainage and Slope Stability)*
- *LPP1 Core Policy 13 (Sustainable Travel)*
- *LPP1 Core Policy 14 (Renewable and Low Carbon Energy and Sustainable Use of Resources)*
- *LPP2 Policy DM15 (Provision for Outdoor Playing Space )*

- *LPP2 Policy DM16 (Children’s Play Space in New Housing Development)*

This Interim Policy Statement does not apply to planning applications for rural exception sites, accommodation for agricultural and other rural workers, the conversion of redundant rural buildings to residential use, or the replacement of existing dwellings in the countryside. Such applications will continue to be determined in accordance with LPP2 Policies DM2, DM3, DM4 and DM5.

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## Appendix: LPP1 Table 2 – Settlement Hierarchy

Settlement category	Function	Settlements within this category
Primary Regional Centre	A large settlement accessible by road and public transport with a centre containing a large range of retail units, including the sale of higher order goods, a range of leisure opportunities, significant levels of employment and facilities such as a hospital with A & E services. Such settlements meet all of their own needs for higher level services.	Brighton and Eastbourne (both settlements are outside Lewes District, but they exert a strong influence on the district)
Secondary Regional Centre	A settlement accessible by road and public transport with a centre containing a range of retail units, including high street chains. A reasonable range of leisure opportunities are available and the town contains significant levels of employment. Key facilities, such as a hospital, are available. Such settlements meet the majority of their own needs.	Haywards Heath (this settlement is outside Lewes District, but it exerts a strong influence on the northern part of the district)
District Centre	Accessible settlements by road and public transport containing a range of shops, employment opportunities and facilities including a secondary school. Such settlements are not reliant upon other centres to meet day to day needs, but they require support from nearby secondary or primary centres to meet the higher level	Burgess Hill (this settlement is outside Lewes District, but it immediately borders the eastern boundary and is an influence on the north western part of the district), Uckfield (outside Lewes District, but is a strong influence on the north eastern part of the district), Seaford, Lewes, Newhaven,

	needs of their residents.	Peacehaven & Telscombe
Rural Service Centre	Sustainable locations (with either a frequent bus or rail service) with a number of key services and facilities that meet many day to day needs of their residents and those from the wider rural hinterland. Some employment opportunities are available.	Newick, Ringmer
Service Village	Villages that have a basic level of services and facilities, public transport provision (possibly not frequent) and limited employment opportunities. Residents can have some of their day to day needs met in such locations, although higher order settlements need to be accessed to enable this to be fully achieved.	Barcombe Cross, Ditchling*, Firle*, Glynde*, Plumpton Green, Wivelsfield Green
Local Village	Villages that have very few facilities and services and have poor levels of accessibility to higher order settlements. Few, if any, employment opportunities are available.	Broyle Side, Cooksbridge, Chailey North, Chailey South, Falmer*, Kingston*, Piddinghoe*, Rodmell*, South Street (Chailey Parish), South Heighton
Hamlet	Settlements that generally have a population of less than 100, have an historic core (generally with a church), but are generally lacking social infrastructure and ease of accessibility to higher order settlements.	Barcombe, Bishopstone*, Norton*, Chailey Green, East Chiltington*, Hamsey*, Offham*, Plumpton, Iford*, Streat*, Southease*, Tarring Neville*, Telscombe Village*, Wivelsfield, Westmeston*

\* Settlements within the South Downs National Park where this Policy Statement is not applicable.

# Agenda Item 9

<b>Report to:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>25 March 2021</b>
<b>Title:</b>	<b>Planning Enforcement Policy</b>
<b>Report of:</b>	<b>Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning</b>
<b>Cabinet member:</b>	<b>Cllr Emily O'Brien, Portfolio Holder for Planning and Infrastructure</b>
<b>Ward(s):</b>	<b>All wards</b>
<b>Purpose of report:</b>	<b>To seek Cabinet approval for the adoption and publication of the Council Enforcement Policy document and to use it for managing/processing planning enforcement related matters.</b>
<b>Decision type:</b>	<b>Key</b>
<b>Officer recommendation(s):</b>	<b>(1) To agree the publication and use of the Planning Enforcement Policy contained in Appendix 1.</b> <b>(2) To provide delegated authority to the Director of Regeneration and Planning, in consultation with the Portfolio Holder for Planning and Infrastructure, to make minor or technical amendments to the Planning Enforcement Policy prior to their publication or as otherwise required following publication.</b>
<b>Reasons for recommendations:</b>	<b>(1) To publicise the Council's expectations for the delivery of the planning enforcement function.</b> <b>(2) To make minor amendments to address technical or drafting issues.</b>
<b>Contact Officer(s):</b>	<b>Name: Leigh Palmer</b> <b>Post title: Head of Planning</b> <b>E-mail: <a href="mailto:leigh.palmer@lewes-eastbourne.gov.uk">leigh.palmer@lewes-eastbourne.gov.uk</a></b> <b>Telephone number 07939 57 82 35</b>

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## 1 Introduction

- 1.1 Attached is the proposed Council's Planning First Enforcement Policy
- 1.2 Following the establishment of Planning First it has given the opportunity to set out the Council's approach to planning enforcement. The purpose of this policy document is to ensure that Councillors and officers, external agencies and the public are aware of the Council's proactive approach to its planning enforcement responsibilities.
- 1.3 The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors, and businesses of the Borough from the harmful effects of unauthorised development.
- 1.4 The National Planning Policy Framework states '...effective enforcement is important as a means of maintaining public confidence in the planning system...' The need for effective enforcement is very important as it assists in-
- Tackling breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area;
  - Maintaining the integrity of the decision making process;
  - Helping to ensure that the public acceptance of the decision making process is maintained.
- 1.5 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means.
- 1.6 Breaches of planning control are viewed very seriously and it is our policy to exercise these powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.
- 1.7 The integrity of the development management process depends on the Council's readiness to take effective enforcement action when it is justifiable.
- 1.8 This report outlines the importance of delivering enforcement investigations and subsequent actions in a prompt and efficient manner.

## **2 General Approach to Enforcement**

2.1 The decision to take enforcement action is discretionary and the Council will always act in a proportionate manner.

2.2 In considering whether to pursue action, the Council will have regard to:

- whether the breach of planning control unacceptably harms public amenity, or the authorised use of land and buildings merits protection in the public interest.
- ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity.
- ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds.
- statutory time limits for taking enforcement action.
- relevant planning policies and other material considerations

## **3 Complaint Priorities**

3.1 The Policy document outlines that to make the most effective use of resources, all reports of suspected breaches of planning control will be investigated and progressed in accordance with a priority rating of '1', '2' or '3' depending on the nature of the breach and the degree of harm caused. Individual cases may be reprioritised as the investigation progresses

## **4 Where no further action is proposed.**

4.1 When it is proposed to take no further action, either because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter, the person reporting the suspected breach of control will be notified preferably in writing within 15 working days of the initial site visit that no further action will be taken and an explanation provided of the Council's reason(s).

## **5 Where a breach of planning control is established**

5.1 Where a breach of control is established, the person reporting the suspected breach will be notified which course of action the Councils intend to take to secure regularisation of the breach of planning control. In most instances this will involve one of the three following options:

- Attempt to negotiate a solution.
- Invite the submission of retrospective application for planning permission to allow the Councils to consider whether planning permission should be granted, and the development regularised.
- Consider formal enforcement action.

## **6 The Councils Policies for Enforcing Planning Control**

6.1 The policy document lists a range of policies that cover the key themes and common material breaches of planning control.

## **7 Corporate plan and council policies**

7.1 Effective operation of this policy will support both the Council's priorities in the Council Plan and Departmental Service Plan to protect and enhance the quality of the local environment.

## **8 Financial appraisal**

8.1 The Enforcement Policy Document will be used by the existing staffing structure and therefore there are no financial implications of this report.

## **9 Legal implications**

9.1 The Town and Country Planning Act 1990 and the other legislation which empowers the Council to take enforcement action are cited in the Policy Statement.

9.2 The Council's scheme of delegation requires consultation with the Council's senior legal officer before serving injunctions or taking proceedings for the recovery of CIL. However, it is also common practice for all statutory notices to be issued in consultation with the appropriate legal officers and this is a safeguard that is secured by the Head of Planning in the terms of his sub-delegation to the officers responsible for planning enforcement.

Legal implications provided by JCS 10.02.21 IKEN ref 9941

## **10 Risk management implications**

10.1 The following risk will arise if the recommendations are not implemented and the following mitigation is proposed:



**Risk:** if not implemented, the advice, policies and procedures within the enforcement policy would potentially result in delay and ad-hoc processing of complaints. This would result in an inconsistent service.

**Mitigation:** That the recommendations of this report are approved, allowing the publication of the enforcement policy to present the Council's expectations for how planning enforcement complaints should be addressed.

## **11 Equality analysis**

11.1 An Equality Screen has been completed in conjunction with this report. Although the proposals are unlikely to impact on protected groups, taking steps to promote equal access to the enforcement complaints process may improve the health and wellbeing of communities as well as the character and amenity of the area.

## **12 Environmental sustainability implications**

12.1 By seeking to influence how planning enforcement is undertaken and to ensure that planning permissions are monitored and adhered to will ensure that where appropriate actions will help to meet the target of zero carbon by 2030.

## **13 Appendices**

- Appendix 1 – Planning Enforcement Policy
- Appendix 2 – Minute extract (Planning Applications Committee – 10 March 2021)

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# PLANNING FIRST

## ENFORCEMENT POLICY STATEMENT for

Lewes District Council &  
Eastbourne Borough Council

April 2021

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## 1. Introduction

- 1.1 This policy sets out a joint policy approach. However, formal enforcement action can only be taken by an individual council against a breach of planning control within their administrative area and for the avoidance of doubt references to 'Council' in this policy statement means either LDC or EBC as appropriate.
- 1.2 The planning system seeks to regulate the development and use of land in the public interest. The effective and proper enforcement of planning control is essential to protect the local environment and the interests of residents, visitors and businesses of the District and Borough from the harmful effects of unauthorised development. It is also important for public acceptance of the planning system that unauthorised development is kept under control.
- 1.3 This document sets out Lewes District Council (LDC) and Eastbourne Borough Council (EBC) policy for the enforcement of planning control within their administrative areas. Effective operation of this policy will support both the Council priorities in the Council Plan and Departmental Service Plan to protect and enhance the quality of the local environment.
- 1.4 The South Downs National Park (SDNP) was designated in April 2010 and affects about half of Lewes District Council area. As from 1 April 2011 the South Downs National Park Authority (SDNPA) assumed the responsibility of Planning Authority for the designated area. The SDNPA has decided that a wide range of planning services, including enforcement, should be provided by Lewes District Council for that part of the district within the National Park. There is an agreed delegation and liaison procedure with the SDNPA dependent upon the significance of the case.
- 1.5 The SDNP have an enforcement guide which can be found using the link below.

<https://www.southdowns.gov.uk/wp-content/uploads/2015/01/SDNPA-Enforcement-Guide-Amended-Sep-2018.pdf>

## 2. Council Vision for Enforcement

- 2.1 The Council will seek to control unauthorised development, works and operations and ensure effective compliance with planning permissions, Listed Buildings and other relevant consents and regulations through an approach to enforcement that is fair, proportionate, targeted, timely, consistent and clear, and in the

interests of protecting the environment, local amenity and the community.

- 2.2 It is the developer's responsibility to ensure that the appropriate consent is applied for and that any development takes place in accordance with the decision, including any conditions or legal agreements. However, on occasions, unauthorised development does take place.
- 2.3 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means. Breaches of planning control are viewed very seriously and it is our policy to exercise these powers appropriately and rigorously so that development takes place in accordance with the appropriate legislation, or with the conditions and limitations imposed on any planning permission.
- 2.4 The integrity of the development control process depends on the Council's readiness to take effective enforcement action when it is essential. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the Council to intervene before serious harm to amenity results from it.
- 2.5 The Council will therefore act positively and swiftly in tackling breaches of planning control in accordance with the considerations and process described in Section 6 of this Enforcement Policy Statement.
- 2.6 The purpose of this policy document is to ensure that Councillors and officers, external agencies and the public are aware of the Council proactive approach to its planning enforcement responsibilities.
- 2.7 Lewes District Council (LDC) and Eastbourne Borough Council (EBC) are always trying to improve the service we provide. Please contact us if you would like to make comments or suggestions about how we can improve our planning enforcement service.
- 2.8 The Council are keen to assist and support key partners regarding joined-up enforcement. Co-operation is an integral part of the approach to enforcement and these working relationships will continue to be developed in the future to make the most effective use of available resources throughout the Council.

### 3. Openness

- 3.1 The planning enforcement service will:

- Review performance regularly and publish results. The success of policies will be monitored, and a report presented to the Planning Committee on a quarterly basis to show the results of enforcement investigations, actions, and outcomes.
- The enforcement policy will be subject to review at least every three years, but the policy will be reviewed on a more regular basis if circumstances dictate.
- Always provide information and advice to individuals and organisations to remain transparent.
- Keep all interested parties informed as to the progress with any investigation.
- Where formal action is necessary, make it clear as to why the Local Planning Authority intends to take, or has taken, enforcement action. Conversely, where it is decided that it is not expedient to take enforcement action any complainants will be informed of the reasons for this decision.
- Publish copies of all enforcement notices, stop notices, breach of condition notices and planning enforcement orders issued and served on the respective Planning Enforcement Registers which can be found at Lewes and Eastbourne Council website ([lewes-eastbourne.gov.uk](http://lewes-eastbourne.gov.uk)) Planning enforcement register - Lewes and Eastbourne Council ([lewes-eastbourne.gov.uk](http://lewes-eastbourne.gov.uk))

3.2 Each individual matter will be considered on its merits. There will be a consistent approach to enforcement action in similar circumstances.

3.3 Where immediate action is considered necessary, an explanation of the reasons will be given at the time and confirmed in writing together with a timescale for implementation.

3.4 Where formal action is taken by the Council issuing a statutory enforcement notice, all parties served with a copy of the notice will be informed of the appeal procedure and advised in writing of the consequences of non-compliance with such a notice.

3.5 The Council will consider prosecuting individuals or organisations who do not comply with any formal notice served on them and, in exceptional cases, will take direct action to remedy a breach of planning control, where this is necessary having regard to the degree of harm and public safety.

## 4 General Approach to Enforcement

- 4.1 The integrity of the development control process depends on the Council's readiness to take enforcement action when it is required to do so. Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action is necessary within their area and the Council will always exercise their planning enforcement powers rigorously when it is considered expedient to do so.
- 4.2 In considering enforcement, the Council will have regard to:
- Whether the breach of planning control unacceptably harms public amenity, or the existing use of the land and buildings merits protection in the public interest.
  - Ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of planning control which are considered to cause no harm to amenity.
  - Ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development or an unauthorised use fail, enforcement action may be required to make the development acceptable on planning grounds, or to compel it to cease.
  - Statutory time limits for taking enforcement action.
  - Relevant planning policies and other material considerations, including where appropriate, the individual circumstances of the person, business, or other organisation in breach of planning control.
- 4.3 The identity of persons reporting suspected breaches of planning control will be treated as **confidential** unless the complainant authorises otherwise, or the complainant is required to give evidence at a public hearing, inquiry, or court case. The Council will **not accept anonymous** complaints relating to a suspected breach of planning control and will require the full address or site description and location to investigate any suspected breaches of planning control.
- 4.4 The right to privacy under the Human Rights Act 1998 enhances and strengthens the Council's policy on the protection of complainants. The more recent implementation of the Freedom of Information Act



2000 does not apply in these circumstances and the identity of complainants will not be revealed to third parties unless any of the circumstances above apply.

- 4.5 However, where success of an appeal or prosecution is dependent on evidence being provided by the person who reported the breach of planning control, the Council will discuss with the complainant whether they are willing to relinquish their confidentiality and provide the required evidence before proceeding with formal action or a prosecution.
- 4.6 When the development has become 'established' the Council should make known the provisions for the application of a Certificate of Lawfulness. (Section 192 of the Town & Country Planning Act 1990 as amended by Section 10 of the Planning & Compensation Act 1991).

#### 4. Type and Incidence of Enforcement Problems

##### Responding to Complaints (Reactive)

- 5.1 Both Councils typically receive between 400 and 500 planning enforcement complaints annually. Many of these are dealt with within a relevantly short period of time, as there is either no breach of planning control taking place, or the enquiry relates to minor technical breaches of planning control that can be resolved without formal action. Others lead to formal enforcement action being taken to resolve the breach.
- 5.2 A variety of breaches occur throughout both the Council areas from unauthorised development, non-compliance with planning conditions and unauthorised changes of use, to unlawful advertisements, works to listed building and to protected trees.

##### Taking the Initiative (Proactive)

- 5.3 There are several areas where the Council instigates positive action to remedy breaches of planning control, or to remedy harm to the environment. These include:
- Development carried out without the necessary planning permission, listed building consent, conservation area consent, scheduled ancient monument consent, or other consents necessary under planning legislation.
  - Action under Section 215 of the Town & Country Planning Act 1990 to remedy the environment harm caused by unsightly land and or buildings.

- Monitoring of planning conditions to ensure that development is carried out in accordance with the approval issued.
- Action against unlawful advertisements situated around the council areas.
- Action against any unauthorised felling, or other works, to protected trees.

## 5. Investigation of Suspected Breaches of Planning Control

### Service Standards

- 6.1 Reports of suspected breaches of planning control will be acknowledged within three working days of receipt. Acknowledgements will be provided by letter or email. The acknowledgment will provide the name of the officer investigating the matter and details of how they can be contacted. To avoid the unnecessary use of resources, anonymous reports of suspected breaches of planning control will not normally be pursued unless evidence suggests that a breach of planning control has occurred or it is obvious that the breach is causing serious harm to the environment or the amenities of residents.

### Recording Alleged Breaches of Planning Control

- 6.2 Where a breach of planning control is suspected, this should be reported in writing see Section 10 on how to do this.

We will:

- ✓ Give all complaints a reference number and inform the complainant of name and contact details of the case officer.
- ✓ It is important for the Council to receive as much information as possible regarding the alleged breach to enable the investigating officer to investigate fully.
- ✓ Allocate each complaint a priority code according to the assessed level of harm.
- ✓ Investigate all complaints made in writing. Anonymous complaints and letters will not normally be dealt with, although this is at the discretion of the Enforcement team.
- ✓ Complaints lodged with either of the Councils will be handled in confidence.

- ✓ Where possible, acknowledge all complaints within three working days.
- ✓ Aim to inform complainants of progress in writing or by telephone within 15 working days of the alleged breach being reported. Complainants will be updated as appropriate and informed of the proposed action, within 10 working days of a decision on the case being made.
- ✓ Aim to keep all parties informed of progress where complex investigations are becoming protracted.

### Priorities

- 6.3 To ensure that our resources are used and targeted effectively, we will allocate each case a code according to the alleged or potential level of harm caused and the urgency of the case.

The following priority coding system will be used:

#### Level 1

- Demolition or alterations to a Listed Building
- Demolition in a Conservation Area that is causing immediate and irreparable harm.
- Works to trees subject to a Tree Preservation Order or within a Conservation Area
- Development that is causing serious harm or danger to the public, such as affecting traffic safety
- Unauthorised works affecting protected sites such as Sites of Special Scientific Interest, National and Local Nature Reserves, sites of archaeological interest etc.
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action is imminent.

#### Level 2

- Development/uses that cause serious harm to the amenities of neighbours or to the character and appearance of an area or are otherwise contrary to significant policies in the Development Plan.
- Advertisements causing serious harm to amenity or public safety.
- Disrepair of a Listed Building
- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours.

### Level 3

- Other advertisements
- Businesses being operated from home, except where they cause serious harm to the amenity of neighbours.
- Minor works i.e. gates, walls, fences, domestic outbuildings, and satellite dishes
- Untidy land and/or buildings

6.4 In most cases, a site visit will be required to establish whether a breach of planning control has occurred. The initial site visit will be conducted within the following timescales:

- Level 1 cases – within one working day
- Level 2 cases – within ten working days
- Level 3 cases – within fifteen working days

6.5 On completion of the initial site visit, the findings will be assessed, and a view taken as to how the investigation will proceed.

6.6 The code given to a case only reflects our initial assessment. Once investigations commence, it may be found that the harm caused is greater or less than originally anticipated. The initial coding is therefore undertaken without prejudice to any subsequent enforcement action.

6.7 All level 1 & 2 cases that fall within the South Downs National Park (SDNPA) will involve close liaison with the SDNPA. Consultation with the SDNPA on level 3 cases will be discretionary.

#### **Where no further action is proposed:**

6.8 When it is proposed to take no further action, either because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter, the person reporting the suspected breach of control will be notified preferably in writing within 15 working days of the initial site visit that no further action will be taken by the Council and an explanation provided of the reason(s).

#### **Where further investigation is required:**

6.9 Where it is not possible to determine from the initial site visit whether or not a breach of planning control has occurred, the person reporting the suspected breach of control will be notified either verbally or in writing within 15 working days of the initial site visit that further investigation is required. Further investigation may involve additional

site visits, documentary research, seeking advice from other services or agencies, seeking information from the person reporting the suspected breach of control, or the owner or other person responsible for the land or building.

- 6.10 In some cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration, and nature of the suspected breach. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may hinder the Council's investigation, due to the difficulty of gathering sufficient evidence.
- 6.11 Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice to obtain information relating to the suspected breach.
- 6.12 In cases where further investigation is required, the person reporting the suspected breach of planning control will be notified either verbally or in writing within 15 working days of the Council determining whether or not a breach of planning control has occurred, and if so, what course of action the Council intend to take.

**Where a breach of planning control is established:**

- 6.13 Where a breach of control is established, the person reporting the suspected breach will be notified which course of action the Council intends to take to secure regularisation of the breach of planning control. In most instances this will involve one of the three following options:
- Attempt to negotiate a solution.
  - Invite the submission of retrospective application for planning permission to allow the Council to consider whether planning permission should be granted, and the development regularised.
  - Consider formal enforcement action.

## 6. Consideration of Enforcement Action

- 7.1 Where it is established that a breach of planning control has occurred, the Council will determine whether to take formal enforcement action and the nature of such action. In determining this, the Council will have regard to the level of harm resulting from the breach. In assessing the level of harm, the Council will have regard to current planning policies, and other material considerations.

### **Negotiating a solution:**

- 7.2 Where a breach of planning control has occurred, the Council will normally try to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of the unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the Council are unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, the Council will proceed with formal enforcement action where it is expedient to do so.

### **Retrospective application for planning permission:**

- 7.3 Where a breach of planning control has occurred, but no harm is being caused, or any harm caused might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified timescale. In such circumstances it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether it is expedient to take formal enforcement action.

## **7. Powers available to the Local Planning Authority**

- 8.1 Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers is discretionary, but they will always be used when it is considered expedient to do so.
- 8.2 The decision to take enforcement action or commence prosecution will be taken in accordance with the delegation arrangement detailed in the Council's Constitution and will be fully documented on the case file, prior to any decision being made by an authorised officer. All such decisions to take formal action shall only be taken by the Council after authority has been given by the Council's Planning Applications Committee, or the Head of Planning or other Senior Officers of Planning Services in accordance with the Council's Scheme of Delegation.

### **Requisition for Information Notices:**

- 8.3 Under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, the Council can require the receipt of a requisition for information notice to supply in writing details of their interest in the property. A reply must be supplied within 14 days. A person who fails to comply with the requirements of a notice, or makes a false statement in a reply, is guilty of an offence punishable by a fine of up to £5,000.
- 8.4 Under Section 330 of the Town & Country Planning Act 1990, the Council can require the recipient to state in writing the nature of their interest in a property and to state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, lessee or otherwise. Failure to return the form, or to provide a misstatement, is an offence punishable by a fine of up to £1,000.

### **Planning Contravention Notice (PCN):**

- 8.5 A PCN can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine being £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000.

### **Police & Criminal Evidence (PACE) Act 1984:**

- 8.6 A PACE interview may or may not be appropriate. This depends on the evidence already gathered by the Enforcement Officer. Occasionally in serious cases where an offence may have been committed, it may be necessary to conduct an interview under caution, as required by the Police and Criminal Evidence Act 1984.

### **Breach of Condition Notice (BCN):**

- 8.7 In cases of a breach of planning condition it may be appropriate to serve a Breach of Condition Notice (BCN). Consideration should be given to the type of condition and the steps required remedying the breach. Once issued and served the Notice does not take effect for 28 days although there is no appeal against a BCN. The failure to comply with the notice is dealt with by a prosecution in the Magistrates Court. The maximum fine is £2,500. This may not be a sufficient deterrent in the more serious cases. The BCN is ideal for

matters where the steps to be taken are relatively straightforward and can be readily achieved.

- 8.8 Where the breach of planning control relates to non-compliance with a condition on a planning permission, or a limitation on a deemed permission has been exceeded, the Council will consider the expediency of serving a BCN.
- 8.9 The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time for compliance.

**Enforcement Notice:**

- 8.10 The Council will consider the service of an Enforcement Notice where unauthorised operations or development, or changes of use, have taken place and it is considered appropriate to do so. Where a breach of planning control exists and any harm caused would be removed or alleviated by the impositions of conditions on a planning permission, but the invitation to submit a retrospective planning application or rectify the breach voluntarily has been declined, the Council will consider the appropriateness of serving an Enforcement Notice.

**Listed Building Enforcement Notice:**

- 8.11 If the breach of planning control relates to a Listed Building, or unauthorised demolition within a Conservation Area, the Council will consider the expediency of serving a Listed Building Enforcement Notice or a Conservation Area Enforcement Notice and where appropriate, commencing a prosecution in the courts.
- 8.12 The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time for compliance.
- 8.13 Service of an Enforcement Notice will be made on any person with an interest on the land. The Notice will come into effect after a minimum period of 28 days. There is a mechanism for an appeal against the Notice. Once the Planning Inspectorate holds an appeal valid, the Enforcement Notice has no effect until the appeal has been heard and a decision published.

**Stop Notice:**

- 8.14 Where a breach of planning control is causing very serious harm to public amenity and the environment, and this harm could not be removed or alleviated by the imposition of conditions on a planning permission, the Council will consider the expediency of serving a



Stop Notice (at the same time or after the service of an Enforcement Notice) in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry period for compliance with the related Enforcement Notice.

- 8.15 The Stop Notice will refer to the Enforcement Notice to which it relates, specify the activity or activities that are required to cease and the date that it takes effect. Failure to comply with the notices is a triable either way offence and carries an unlimited fine.

**Temporary Stop Notice:**

- 8.16 A Temporary Stop Notice can also be served; however, this can be served without the service of an Enforcement Notice and becomes effective immediately and will stay in effect for 28 days.

**Section 215 Notice:**

- 8.17 In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider serving a Notice under Section 215 of the Town & Country Planning Act 1990. The failure to comply with the notice can be dealt with by a prosecution in the Magistrates Court. The maximum fine is £2,500.
- 8.18 The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time within which the steps must be taken and the date that it takes effect. The Council will firstly write to the owner of the land or building requesting improvements to be made before considering the service of a formal notice.

**Prosecution:**

- 8.19 The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.
- Enforcement Notice
  - Listed Building Enforcement Notice
  - Conservation Area Enforcement Notice
  - Breach of Condition Notice
  - Section 215 Notice
  - Stop Notice
  - Temporary Stop Notice
- 8.20 The Council will also consider commencing a prosecution in the Courts where:

- Unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area.
- An advertisement is being displayed without the necessary consent and the Council request to remove it within a specified timescale has been declined or ignored.
- Unauthorised works have been carried out to a Listed Building.
- Unauthorised demolition has been carried out in a Conservation Area.
- The recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time or has supplied false or misleading information.

8.21 Before commencing any legal proceedings, the Council must be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

**Injunction:**

8.22 Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Court for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause, exceptional harm.

**Direct Action:**

8.23 Where any steps required by an Enforcement Notice or S215 Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise its power under Section 178 or Section 219 of the Town & Country Planning Act 1990 (as amended) to:-

- a) Enter the land and take the steps to remedy the harm: and
- b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them doing so.
- c) A charge against the land will be imposed where direct works are undertaken, and the expenses are not recovered.

**Monitoring of Conditions:**

8.24 The Council actively monitors conditions to ensure that development is carried out in accordance with a planning permission. Failure to comply with a planning condition will be viewed seriously and appropriate action taken in accordance with the powers outlined above.

### **Trees & Landscape:**

- 8.25 When alleged cases of unauthorised works on a protected tree(s) come to the attention of the Council, an initial investigation will be carried out as soon as reasonably practicable. The initial investigation will consist of a check to establish whether the tree is protected, whether any consent for the works has been granted, and, where appropriate conduct a site visit. In certain circumstances the Council can invoke a right of entry to enter private land to carry out such investigations where appropriate.

### **High Hedges:**

- 8.26 From the 1 June 2005 Local Authorities have the power, under Part 8 of the Anti Social Behaviour Act 2003, to adjudicate on disputes over high hedges subject to various legal tests being met which include the requirement for occupiers to take all reasonable steps to resolve matters by negotiation before making a complaint to the Council. In cases where the Council finds in favour of the complainant the Council will ensure, through enforcement action if necessary, that any specified schedule of remedial works is carried out.

### **Common Land:**

- 8.28 When alleged cases of unauthorised works have been undertaken on Common Land comes to the attention of Lewes District Council, an initial investigation will be carried out as soon as reasonably practicable. This will likely involve a site visit to assess the situation. Efforts will be made to contact the person(s) alleged to be carrying out the works to try and establish the reasons and objectives for the works. Action will only be considered where there is a clear breach of the Commons Act 2006 and where applicable the Lewes District Council Scheme of Regulation made under section 1 of the Commons Act 1899 and Lewes District Council byelaw dated 28 May 1997. The Council (LDC) can undertake enforcement action where it is appropriate or necessary to do so.

### **Community Infrastructure Levy Enforcement Procedures:**

- 8.29 To ensure that the CIL collection process runs smoothly, collecting authorities have been given a stringent set of enforcement powers, including surcharges for failing to submit CIL notices prior to commencement. The CIL regulations also allow collecting authorities to penalise late or non-payment of CIL charges, including applying interest on late CIL payments and imposing surcharges where payments are not received in full when due.

Persistent failure to pay CIL charges due may result in the council serving a CIL stop notice prohibiting further development on the site, and taking action to recover the debt due, including seizing assets.

The consequences of failing to follow the CIL collection and payment procedures are set out on our website's CIL Section. Guidance on the Community Infrastructure Levy, including the collection and enforcement process, can be found on the Planning Practice Guidance website: Government's Online Planning Practice Guidance.

## 8. The Council Policies for Enforcing Planning Control

### **POLICY EN1: General enforcement policy 1**

The Council recognise the importance of establishing effective controls over unauthorised development, to assist in the preservation and enhancement of the qualities of both the built and natural environment, and to protect public amenities and will vigorously exercise its enforcement powers to ensure that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.

### **POLICY EN2: General enforcement policy 2**

The Council will exercise its powers in relation to enforcement that are granted under the provisions of the TCPA 1990 and other relevant Acts of Parliament, Orders, Regulations and Bylaws, to control unauthorised development effectively having regard to the significance and seriousness of the breach, the policies in Development Plan and all other material considerations.

### **POLICY EN3: General enforcement policy 3**

In considering enforcement action, the Council will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings.

### **POLICY EN4: Serious breaches of planning control**

The Council will immediately commence planning enforcement action against any unauthorised development which has a seriously adverse impact on public amenity or causes unacceptable harm to land or buildings.

### **POLICY EN5: General approach for other breaches of planning control**

The Council will attempt to persuade an owner or occupier of land to remedy voluntarily any harmful effects of unauthorised development. The Council will not, however, allow discussions to delay any necessary formal enforcement action to make the development more acceptable on planning grounds, or to make it cease.

### **POLICY EN6: Derelict or unsightly land or buildings**

Where a building or land is in a condition which seriously detracts from, or affects the visual amenity of an area, the Council will take the following measures:

- a) the owner will be requested in writing to improve the appearance of the land or building(s).
- b) where no improvement works are carried out within a reasonable time (as specified in writing), the Council will serve a Notice under Section 215 of the Town and Country Planning Act 1990.
- c) where the Notice has not been complied with prosecution proceedings will be commenced and consideration will be given to entering the land and carrying out the works in default.

### **POLICY EN7: Protection of tourist accommodation (EBC)**

Within the Tourist Accommodation Area, designated in the Eastbourne Borough Plan and the Eastbourne Core Strategy Local Plan 2027, enforcement action will be taken against the unauthorised change of use of Tourist Accommodation to any other use unless it can be proven that the change of use meets the viability criteria in the Council Supplementary Planning Guidance: "Assessment of Financial Viability of Tourist Accommodation".

### **POLICY EN8: Development without planning permission**

Where development has been, or is in the process of being, carried out without planning permission and where immediate action under Policy EN4 would not be justified, the following steps will be taken:

- a) an assessment will be made to establish if it is likely that unconditional planning permission could be granted.
- b) If planning permission is likely to be granted, the submission of a retrospective planning application will be invited.

c) where a retrospective planning application has been requested but not submitted within a reasonable time, a planning contravention notice may be served.

d) where there is no specific planning objection to the development, further enforcement action will not normally be considered appropriate.

e) where the development is considered to cause demonstrable harm then formal enforcement action will be taken.

### **POLICY EN9: Development not in accordance with approved plans**

a) Where development is carried out with planning permission, but it does not strictly accord with the approved plans, an assessment will be made to establish whether the changes from the approved plans are sufficiently material to constitute new development, requiring a separate planning permission or whether they can be dealt with under a non-material change application. Where the changes are of a very minor nature they may sometimes be considered as being "de-minimis" (i.e. so small that they are of no consequence) and no action will be taken.

b) where development is being carried out which is significantly different from the approved plans and the changes cause serious harm to public amenity, immediate enforcement action may be taken, including the issue of a Stop Notice or Enforcement Injunction to stop the unauthorised development.

### **POLICY EN10: Imposition of conditions to make development more acceptable.**

Where development has been carried out without planning permission and the development could only be made acceptable by imposing conditions to overcome planning objections, the Council will request the submission of a retrospective application for planning permission. If after a reasonable period no application has been submitted, an Enforcement Notice will be issued. The notice will have the effect of granting planning permission subject to full compliance with those steps specified in the notice which will address any harm caused by the development.

### **POLICY EN11: Non-compliance with conditions**

Where conditional planning permission has been granted for development, but conditions have not been complied with, a Breach of Condition Notice or Enforcement Notice will be served where demonstrable harm is caused by the development.

### **POLICY EN12: Minor variations to works carried out under 'Permitted Development' rights**

Where development carried out under permitted development rights exceeds the limitations specified in the relevant Order the Council will not necessarily take enforcement action solely to counteract a slight variation over what would be permitted, unless the excess causes unacceptable harm to public amenity.

### **POLICY EN13: Retrospective applications**

Where unauthorised development has been carried out which causes demonstrable material harm to amenity, the submission of a retrospective application will not be encouraged and will not stop enforcement action being taken. When a retrospective application has been refused and enforcement action has not already been taken in accordance with the Council enforcement policies, the applicant will be advised that an enforcement notice is to be issued.

### **POLICY EN14: Refusal of retrospective applications**

Where retrospective planning permission has been refused, enforcement action will be taken, and the appropriate Notices served even if an appeal has been lodged against the refusal of planning permission.

### **POLICY EN15: Trivial or technical breaches of planning control**

Formal enforcement action will not normally be taken against trivial or technical breaches of planning control that cause no material harm to amenity.

### **POLICY EN16: Unauthorised works to listed buildings.**

Where works without consent have been carried out to a listed building and they materially affect its character and appearance either internally or externally, consideration will be given to issuing a Listed Building Enforcement Notice and/or starting criminal proceedings.

### **POLICY EN17: Unauthorised development in conservation areas**

Where development has been carried out in a conservation area without planning permission or conservation area consent, and the development does not preserve or enhance the character and appearance of the area, enforcement action will be considered in accordance with the general enforcement policies EN1 to EN5.

**POLICY EN18: Unauthorised business development where re-location is feasible.**

Where business development has been carried out without planning permission and it is unacceptable on the site, alternative acceptable sites, if available, will be investigated, with a timetable to allow for re-location. If the timetable is ignored, an Enforcement Notice may be issued giving a reasonable time to allow re-location to take place.

**POLICY EN19: Acceptable unauthorised development by small businesses**

Where development has been carried out by a small business without planning permission, consideration will be given to allowing the business to continue operating acceptably from the site or operate less intensively.

**POLICY EN20: Unauthorised development by small businesses**

If unauthorised activity by a small business cannot be allowed to continue, an Enforcement Notice may be issued giving a realistic time to stop the activity and allow for re-location if necessary. Where it is clear to us that serious attempts are being made to comply with the requirements of the Enforcement Notice, consideration may be given to extending the time for compliance.

**POLICY EN21: Display of illegal advertisements**

Where an advertisement which has been displayed without express consent causes substantial injury to amenity or public safety the Council will ask for it to be removed. Where the advertisement continues to be displayed, prosecution proceedings will be commenced.

**POLICY EN22: Fly Posting**

Where resources permit, all posters illegally displayed will be removed. Where flyposting has been carried out on sensitive sites and it causes substantial injury to the character or amenity of the area, prosecution proceedings will be commenced against all those responsible for its display.

**POLICY EN23: Advertisements on listed buildings**

Where an advertisement has been displayed on a listed building without consent, and that advertisement adversely affects the character and appearance of the building or compromises its setting, the Council



will ask for it to be removed. Where the advertisement continues to be displayed, action will be taken to secure its removal.

**POLICY EN24: Retrospective applications for advertisement consent**

Where a retrospective application for express consent has been refused, the applicant will be asked to remove the advertisement within a specified time. If the advertisement continues to be displayed, proceedings will be commenced even if an appeal has been lodged against the decision to refuse consent.

**POLICY EN25: Lawful uses or activities**

Where unauthorised development has taken place, but it is claimed that the use or activity is lawful, the submission of an application for a lawful development certificate will be invited. A lawful use or activity will not be conclusively accepted unless a certificate has been granted. Where a certificate has not been granted, enforcement action will be considered in accordance with the general enforcement policies EN1 to EN5.

**POLICY EN26: High hedges applications**

In cases where the Council finds in favour of the complainant the Council will pursue the necessary enforcement action to ensure that that the specified schedule of remedial works is carried out within a specified timescale.

**POLICY EN27: Resources for effective planning enforcement**

The Council will commit reasonable resources to ensure effective implementation and maintenance of planning enforcement control.

10. How to Contact the Council (LDC and EBC) in respect of a suspected breach of planning control:

For further information about the Planning Enforcement function or to report an alleged breach of planning control please email [customerfirst@lewes-eastbourne.gov.uk](mailto:customerfirst@lewes-eastbourne.gov.uk)

Alternatively call 01273 471600 or 01323 410000 or visit our website and follow this link <https://www.lewes-eastbourne.gov.uk/planning-and-building-control/development-management/planning-enforcement/>

11. Appeals

11.1 If you are served with an Enforcement Notice, there is a right of appeal. The appeal procedure is set out and explained in the enforcement notice.

11.2 The appeal is lodged with the Planning Inspectorate and further details relating to appeals can be found at <https://www.gov.uk/government/publications/enforcement-appeals-procedural-guide>



**Meeting:** Cabinet  
**Date:** 25 March 2021  
**Subject:** Planning Enforcement Policy  
**Report of:** Leigh Palmer, Head of Planning

Cabinet is asked to consider the minute and resolution of the Planning Applications Committee held on 10 March 2021 as set out below.

**Minute extract**

**Planning Applications Committee - 10 March 2021**

**109. Planning Enforcement Policy**

The Committee received a report which presented the details of the proposed Planning Enforcement Policy as set out in Appendix 1.

The Head of Planning presented the report. He explained that the purpose of the proposed Planning Enforcement Policy was to ensure that Councillors, Officers, external agencies and members of the public were aware of the Council's proactive approach to its planning enforcement responsibilities.

The Committee queried whether the words 'protected species' could be added to paragraph 6.3 of the proposed policy, as set out in Appendix 1.

The Council's Solicitor explained the amendment to include the words 'protected species', could be referenced within the proposed Planning Enforcement Policy, but that as protected species were protected by other legislation, she advised that action may involve appropriate referrals being made to bodies such as the police, rather than action being taken by the Council itself.

The Committee expressed its gratitude to the new Specialist Advisor (Planning Enforcement) and the Planning department for all of their hard work in respect of planning enforcement issues.

**Resolved:**

1. That the contents of the report be noted; and

2. That Cabinet be recommended to approve the new Planning Enforcement Policy as set out in Appendix 1, subject to the addition of the words 'protected species' to paragraph 6.3 of the new policy.

For a copy of the report please contact Democratic Services:

Tel. (01273) 471600

E-mail: [committees@lewes-eastbourne.gov.uk](mailto:committees@lewes-eastbourne.gov.uk)

A copy may be downloaded on the Council's website by following the link below:

<https://democracy.lewes-eastbourne.gov.uk/ieListDocuments.aspx?CId=428&MId=3264&Ver=4>

<b>Report to:</b>	<b>Cabinet</b>
<b>Date:</b>	<b>25 March 2021</b>
<b>Title:</b>	<b>Investment in green energy initiatives</b>
<b>Report of:</b>	<b>Ian Fitzpatrick, Deputy Chief Executive and Director of Planning and Regeneration</b>
<b>Cabinet member:</b>	<b>Cllr Zoe Nicholson, Cabinet member for finance &amp; assets Cllr Matthew Bird, Cabinet member for sustainability</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose of report:</b>	<b>Allocation of revenue funding to: enable a later decision to be made regarding development of, or financing of, proposed green energy initiatives; and to facilitate associated due-diligence work.</b>
<b>Decision type:</b>	<b>Key</b>
<b>Officer recommendation(s):</b>	<ol style="list-style-type: none"><li><b>(1) To delegate authority to the Deputy Chief Executive to initiate feasibility and due-diligence work as required for the project outlined in section 2 and Appendix 1 of this report, and for other potential green energy initiatives up to a value of £50,000 from revenue funds.</b></li><li><b>(2) Subject to (1) above, to delegate authority to the Deputy Chief Executive, in conjunction with the Chief Finance Officer and Cabinet member for finance and assets, to provide up to £100,000 for development funding to take the solar farm proposal set out in section 2 and Appendix 1 of this report, to planning submission, subject to further due diligence being carried out.</b></li><li><b>(3) Delegate authority to the Deputy Chief Executive to procure Local Partnerships to carry out due diligence work as required, including that of the development proposal referred to in recommendation (2) above.</b></li></ol>

**Reasons for recommendations:** **Investigating the opportunities to develop and enable solar energy production directly supports the aims of the Council detailed within the Corporate Plan 2020-2024 to lead the community to net zero carbon and engage with the community energy sector.**

**Supporting community energy generation could enable community investment and assist with community wealth building objectives.**

**Developing solar generation within the district will help meet goals and targets detailed within the Climate Change & Sustainability Strategy including the overarching net zero carbon by 2030 targets.**

**Investing in operational solar farms is a potentially viable financial decision for the authority that could diversify the investment portfolio.**

**Contact Officer(s):** **Name: Kate Richardson**  
**Post title: Strategy & Partnership Lead- Sustainability**  
**E-mail: kate.richardson@lewes-eastbourne.gov.uk**  
**Telephone number: 01323 415202**

## **1 Introduction**

1.1 The Council has a publicised interest in pursuing investment in local solar energy for the following interlinked reasons:

- Climate Emergency Declaration made in 2019
- Net zero by 2030 targets for the council and the district
- Target to reduce Council carbon emissions by 60% by 2025
- Target to increase solar generation in the district by 12MW by 2025
- Desire to encourage community owned renewable energy generation
- Desire to generate community wealth through community investment opportunities and increasing the Council's local spend.
- Encouragement and support for a local, green economic recovery.

1.2 This paper is seeking approval for:

1. Delegated authority to allocate a £50,000 budget to pay for feasibility and due diligence on the proposed solar farm and other possible green investment opportunities;
2. Delegated authority to provide up to £100,000 of development finance to enable a community solar farm located within Lewes district to progress to planning submission, subject to further due diligence and an acceptable level of risk.

1.3 OVESCO is seeking to develop a solar farm of up to 12MW capacity generating up to 14,000MW of power each year.

The project is at feasibility stage and comprehensive community engagement work will occur prior to submission of a planning application.

A 12MW solar farm could supply around 4% of the district's annual electricity consumption (2018).

The solar farm will provide the Council with an opportunity to secure a local source of green electricity and support a community owned energy company.

Community investment may be raised through a community share or bond offer in the community energy company OVESCO.

#### 1.4 Opportunity for Reducing the Council's Carbon Emissions

The council currently procures a REGO backed green electricity tariff.

Centrally procured tariffs such as these indicate demand for green power to suppliers and help to achieve the organisations net zero aims if a 'market based' approach is used when reporting emissions. Green tariffs do not in themselves result in additional renewable capacity, nor do they mean that at any given time the power being consumed is actually being generated by renewable sources.

Procuring power through a Power Purchase Agreement (or similar) direct with a solar farm developer means the Council can guarantee a certain amount of solar power has been generated that the Council can utilise and claim meets 'scope 2' zero carbon credentials without relying on accounting protocols.

Investing in direct generation actively supports the decarbonisation of electricity and could provide more price certainty long-term when compared to a green tariff.

## 2 **Project proposal summary – see exempt Appendix 1**

2.1 OVESCO is seeking to develop a solar farm within the district that would be between 6-12MW capacity, generating approximately 7,000-14,000MW of power each year.

2.2 OVESCO is a not-for-profit enterprise working to develop and operate community-owned renewable energy to reduce carbon emissions and benefit the communities of Lewes and across East Sussex. To date, OVESCO has delivered over 5MW of community solar on local schools and businesses, and manages Meadow Blue solar farm near Chichester. These solar installations are mainly financed through share capital raised from the local community. Surplus income generated is re-invested in supporting further local carbon reduction initiatives.

2.3 OVESCO has secured £40,000 of grant funding from the Government's Rural Community Energy Fund (RCEF) to fund feasibility and initial development work which has now been completed. The feasibility work was carried out by Buro Happold Engineers, Engain environmental consultants and Communities for Renewables CIC (CfR).

The total estimated cost of further work required to get to submission of the planning application is £250,000.

OVESCO will be applying for a further £100,000 of RCEF funding (decision due end of June) and are requesting £100,000 from the Council to go towards the costs of work up to the planning submission.

Illustrative future capital finance requirements and potential Return on Investment

For the 6-12MW scheme the required capital investment is in the region of £3-5million with illustrative returns provided by the developer of 3-4%

2.4 Project Timeline

Year	2020	2021				2022	
Quarter	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Feasibility	■	■					
Land option and lease		■	■				
Planning	■	■	■	■			
UKPN Grid Connection Application and offer		■	■				
Power purchase Agreement (private wire and/or sleeved export PPA)		■	■				
Ownership and governance set up		■	■				
Finance (construction and long-term debt + community share offer)			■	■	■	■	■
Community and stakeholder engagement	■	■	■	■	■	■	■
Procurement and preconstruction					■		
Construction						■	■

2.5 Details of the project proposal are to be found within exempt Appendix 1

**3 Summary of the development finance request**

3.1 OVESCO are initially seeking development finance of £100,000 to take the project to construction readiness. This investment in conjunction with other funds potentially gained from the RCEF and/or others would enable the project to reach shovel ready condition enabling the following steps to take place:

- Procurement of reports required for planning including ecological and archaeology reports and drawings.
- Project management
- Appoint legal team to secure land option agreement
- Connection design and application
- Developer fee
- Further costs post planning to construction
- Community engagement



- 3.2 The need for this type of finance is common to construction projects where feasibility reports and legal work are required to be undertaken before a project can submit a planning application.

This type of finance is quite often the most difficult for a community energy project to secure.

- 3.3 If Cabinet provide delegated authority to provide this funding (along with the feasibility monies requested), and the decision is made to provide this initial £100,000, subject to satisfactory progression of the scheme (such as receipt of the RCEF funding), an outline business case for long-term capital finance can be expected at Cabinet by July 2021.

## 4 **Local Partnerships**

### 4.1 Local Partnerships- Background

Local Partnerships is a joint venture between the Local Government Association, HM Treasury and the Welsh Government. They provide an interface between central government policy and local delivery.

Local Partnerships has been supporting the development of solar PV projects as part of the Welsh Government Energy Services since 2014. Local Partnerships regularly reviews proposals from contractors to install solar PV into a variety of settings and have access to market intelligence.

#### Scope of work

Initial conversations have been had between the Council's officers and Local Partnerships (LP) to begin due diligence work. LP have provided a brief review of the proposed solar farm to assist in initial decision making with regards to investing in the proposed scheme and to highlight matters for further consideration.

LP have reviewed the document presented as exempt Appendix 1 amongst others and has conducted a call with key people involved in the project to clarify and expand on the information provided.

- **The work carried out to date does not constitute full or formal due diligence.**

#### Initial feedback

There is a deliverable scheme at the site, though more in depth discussions are needed around the size/details of the scheme, and further work on details of the development finance to ensure optimum value for the Council.

The Council's involvement in the scheme has the potential to ensure that the scheme is delivered, where without that there is deemed to be a significant chance that the scheme will fail, either through development failures or through an inability to raise the necessary development finance.

#### 4.2 Procurement exemption

In consultation with Homira Javadi, Chief Finance Officer, and Ian Fitzpatrick, Deputy Chief Executive, the council has commissioned Local Partnerships to carry out an initial review of the project proposal.

Procurement of further feasibility and due-diligence studies from Local Partnerships is not bound by the Council's Contract Procedure Rules\*, as the awarding of a contract to Local Partnerships falls within regulation 12(4) of the Public Contracts Regulations 2015 by reason of Local Partnerships being a "controlled legal person" through its part ownership by the LGA, of which the Council is a member.

\*Rule 2.3.1 makes an exception with regard to: a) Public services contracts which are excluded from the application of the PCR 2015 under Regulation 10 (Specific exclusions for services contracts) and Regulation 12 (Public Contracts between entities within the public sector).

Accordingly, the Council may award a contract to Local Partnerships without a competitive tendering exercise, but subject always to the Council being assured that the award to Local Partnerships represents best value.

### 5 **Potential other and community benefits**

- 5.1
- The Council has committed to supporting the expansion of community-owned renewable energy projects within the Council Plan 2020-2024.
  - The programme will help stimulate demand in the local supply chain and help maintain jobs in the solar PV industry locally. Local jobs will also be sustained through work financed by the Community Benefit Fund and residents will benefit directly from the funds outputs (see 5.2 below).
  - It will help Lewes district reduce its CO2 emissions and contribute to the district's solar generation targets as contained in the Climate Change and Sustainability strategy.
  - It will potentially enable the council to purchase the power generated and reduce the reliance on REGO backed grid supplies of green energy.
  - A delegated budget of £50,000 for feasibility work (recommendation 1) would enable due-diligence to be carried out in full on current projects and will enable a pot of money to be available for additional work to be undertaken on future projects without requiring further formal authorisation from Cabinet.
- 5.2
- In addition to the carbon savings, the financial models for the solar farm included a £50,000 minimum contribution to a community benefit fund. The fund would support local projects and enable the recruitment of a part-time Community Energy Officer for the benefit of the local community. The overall objective is that

the energy savings achieved will be significantly greater than the cost of delivering the programme. The Energy Officer would complement OVESCO's other activities that relate to education through its school and STEM activities, energy saving advice and support of the District in transitioning to net zero by 2030.

Being a community project, all the surplus income from the solar farm will be returned to the community.

## **6 Financial appraisal**

- 6.1 Developing solar generation within the District will help in meeting goals and targets detailed within the Council's Climate Change & Sustainability Strategy. This new initiative will require an initial contribution of £100,000 from the Council to fund feasibility and initial project development work, which will be in addition to grants/contributions from other partners including the Government's Rural Community Energy Fund (RCEF).
- 6.2 The initial contribution will be funded from the Council's Local Energy Schemes projects allocation within the capital programme, and various construction stages within the project delivery programme will have financial implications for the Council. Therefore, as work develops and further funding is required, projects and activities will be subject to individual business cases as appropriate, due diligence and financial scrutiny will be carried out to assess the construction costs, subject to management review before recommendations are made to the Cabinet.

## **7 Legal implications**

- 7.1 The Council could use the general power of competence (GPOC) in section 1 of the Localism Act 2011 for the proposals in this report to provide either a grant or a loan. However, the exercise of that power would be subject to any limitations and restrictions of existing legislation, including those under section 12 of the Local Government Act 2003 (concerning the Council's powers to invest).

Section 12 of the 2003 Act permits the Council to invest for any purpose relevant to its functions under any enactment or for the purposes of the prudent management of its financial affairs. In exercising that power, the Council must have regard to statutory guidance on local government investments, the most recent edition having effect from 1 April 2018. This guidance advises that an "investment" includes loans made by a local authority to third parties.

The new Subsidy Control regime applies from 1 January 2021, as the EU State aid rules no longer apply due to Brexit. In place of the EU State aid rules, the UK has committed to introducing its own domestic subsidy control regime which includes the requirements set out in the UK-EU Trade and Cooperation Agreement (TCA) and other trade agreements. The Council will need to keep under review the question of whether there is any subsidy in the arrangements as the proposals are progressed and take appropriate steps to ensure that any funding given is lawful. Subsidy may occur in this situation either through funding being given other than on commercial market terms to OVESCO or

possibly where any aid might flow though in terms of any other arrangements in, for example, providing subsidy to private sector entities.

It should be noted that some subsidies are excluded from the TCA regime and this would include subsidies where the total amount of subsidies granted to a single economic actor is below 325,000 Special Drawing Rights (in the region of £335,000 currently) over any period of three fiscal years – this is similar to the previous State aid de-minimis aid rules.

In addition, the TCA recognises the importance of a secure, affordable and sustainable energy system and environmental sustainability, notably in relation to the fight against climate change which represent an existential threat to humanity. Therefore, without prejudice to the general principles that apply when granting a subsidy, it provides that the subsidies in relation to energy and environment must be aimed at, and incentivise the beneficiary in, delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market or increasing the level of environmental protection compared to the level that would be achieved in absence of the subsidy.

*Date of legal advice: 10.03.21*

*Legal ref: 008444-JOINT-OD*

## **8 Risk management implications**

8.1 Similar to our own in-house developments, this initial finance requirement for pre-planning submission feasibility work and reports is at-risk. If the project fails to gain planning permission or fails to complete for another reason, the monies will be lost.

Officers are requesting the delegated authority for up to £100,000 development funding. If deemed appropriate by due-diligence work, payments can be staged to be issued as certain, to be determined, gateways/milestones are met by the developer.

If the £100k feasibility finance is provided to OVESCO and the Council seeks to provide further construction finance or a post-construction re-financing investment, a full business case and due diligence will be completed for review by Councillors at July 2021 cabinet.

There may be reputational risks to be managed for both the council and OVESCO if the project fails to proceed and the investment is lost.

## **9 Equality analysis**

9.1 No direct implications for equality have been identified at this stage, although improved responses to the impacts of climate change and reducing carbon emissions will generate co-benefits for people living and working in the district and potentially improve the environmental legacy passed on to young people.

## **10 Environmental sustainability implications**

- 10.1 There are potentially positive environmental and sustainability implications around the production of local solar electricity as discussed above. Any site specific negative implications will be considered through the planning application and reports that are due to be produced. The land is currently agricultural.

Successful development of the project will assist both the Council and the district meet its net zero carbon by 2030 targets.

## **11 Exempt Appendices**

- 11.1 Appendix 1 - Scheme proposal

## **12 Background papers**

- 12.1 The background papers used in compiling this report were as follows:

- [Lewes District Council Full Council July 2019- Declaration of Climate Emergency](#)
- [Lewes District Council Cabinet December 2020- Community wealth building](#)
- [Lewes District Council Cabinet February 2021- Climate Change & Sustainability Strategy](#)

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

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