APPENDIX 1

Section 25 – Statement of the Section 151 Officer

1. Introduction

1.1. The Council's members have a legal duty to have regard to the comments made by the Council's Chief Financial Officer (Section 151) in this section (report) when setting the budget.

2. Summary Opinion

2.1. The budget proposals have been drafted during unprecedented and exceptionally challenging times driven by the cost of living and inflationary pressures. The Council is facing increase in demand for many of its key services and exceptionally high demands for temporary and emergency accommodation.

2.2. The Council's response to these financial pressures coupled with the uncertainties around the state of the economy and local government future funding arrangements has been to further develop and extended its saving plans through its Stability and Growth (S&G) programme and deliver over £3.7m of efficiencies over the 2-3 years.

2.3. Having faced the alarming and rapid increase in demand for temporary and emergency accommodation the council has been in discussions with the Department of Levelling Up, Housing & Communities (DLUHC). The initial discussions have been around securing appropriate level of funding to support the costs incurred by the authority for delivering its statutory duties regarding emergency housing provision.

2.4. In managing the uncertainties around the additional costs of temporary accommodation, the council's MTFS and financial plans are developed based on four scenarios:

A. Receiving full funding for the additional cost of temporary accommodation- this option is the council's preferred option and had it been approved, would have result in the council delivering its Stability and Growth savings and achieve a strong and sustainable budget and resilient financial position. (this option is not supported by DLUHC)

B. Requesting Exceptional Financial Support including ability to use council tax flexibilities. Whilst using capital resources to fund revenue expenditure is unlikely to provide a long-term solution to the increasing need pressures, the ability to increase council tax by a further 5% would have helped to provide an ongoing financial sustainability. (this option has been limited to authorities with a significant financial deficit only)

C. Requesting Exceptional Financial Support without the ability to use council tax flexibilities- using capital resources to fund revenue expenditure to provide some headroom for the council to develop and implement a longer-term housing need strategy. (awaiting Ministerial decision)

D. No Exceptional Financial Support- this option will rely on significant use of council's reserves to offset the cost of temporary accommodation reducing its balances to below minimum level for a short time and will require urgent and immediate actions to deliver further annual savings of £3m (in addition to S&G targets) to replenish the used reserves to sustainable levels. (awaiting Ministerial decision)

2.5. Following the discussions with the colleagues from DLUHC and based on their advice, this report will be focussing on option C and option D only.

2.6. As the discussions with DLUHC developed, the council was advised to formally apply for Exceptional Financial Support (EFS) which was requested in early January 2024. The EFS request is for £6m to support the additional costs of TA/ EA, £3m in 2023/24 and £3m in 2024/25.

2.7. Councils receiving EFS are required to use their capital resources to fund exceptional revenue pressures. Capital resources are either from capital receipts (income from asset disposals) or through undertaking borrowing. Ordinarily, these resources can only be used for capital investment purposes and or reducing borrowing requirements.

2.8. It should also be noted that the financing cost of EFS is 1% higher than the Public Works Loan Board (PWLB) rates over 20 years.

2.9. Responding to the increased cost of borrowing, the council's Medium Term Financial Strategy (MTFS) and S&G programme includes assumptions of asset disposal to reduce the temporary borrowing levels and reduce the cost of capital financing. In contrast, the EFS will require the council to undertake further borrowing at a higher cost of interest. The council will need to revise its MTFS and S&G assumptions urgently and find alternative and additional savings to offset against reduced savings and increased costs.

2.10. The Council's overall savings strategy is reliant on the outcome from the following:

- Capitalisation direction (EFS) approved by the Secretary of State (DLUHC).
- Delivery of the anticipated saving targets from the S&G or new additional new extended S&G saving targets.
- Economic recovery and reduction in homelessness presentations.

- Geopolitical stability.
- Greater control of the revenue and capital expenditure and financing costs.

2.11. At the time of preparing this report, the council was awaiting the Ministerial response to its request for EFS and as such, I have taken an unusual step of preparing my Section 25 report based on two scenarios included in options C&D.

2.12. In an event that the council is having to plan for option D, it will have to activate its emergency plans which include:

i) Approving the use of its earmarked and non-earmarked reserves to balance the 2023/24 budget.
ii) Put in place urgent plans to stop all non-essential expenditure.
iii) To bring to council an alternative budget at the earliest opportunity.
iv) To further develop and extend its S&G programme to include additional savings of £3m per annum ahead of the £1.9m already identified in 2024/25 (c.£5m).
v) To develop a robust communication strategy to advise its key stakeholders, partners, etc appropriately.
vi) To develop a robust governance structure to oversee the development of the new extended S&G Programme.
vii) Chief Finance Officer working closely with the leadership team to form a command & control structure to oversee the delivery of the new extended S&G programme.
viii) To rebuild general reserve and other key earmarked reserves to the minimum required level by 2025/26.

2.13. In relation to option C the MTFS has already incorporated the required savings and use of reserves needed to support the budget until longer term solutions are in place.

3. Introduction

3.1. Section 151 of the Local Government Act 1972 requires local authorities to make arrangements for the proper administration of their financial affairs and appoint a Chief Financial Officer (S151) to have responsibility for those arrangements. This section of the budget report is made by the S151 officer and is non-political.

3.2. It aims to provide members with an understanding of the S151 view of the Council’s financial position and fulfils statutory reporting requirements.

3.3. The factors the S151 has considered are:

a. Legal Context and Duties of S151 (Director of Finance & Performance)
b. Financial Management Arrangements
c. Financial Outlook and Risks
d. Level of Reserves and Overall Financial Standing
e. Conclusion

4. Legal Context and Duties of the Chief Financial Officer

4.1. It has been established by legal case law that the S151 is not simply an officer of the authority but holds a fiduciary responsibility to the local taxpayers. This duty has been expanded overtime by legalisation discussed below. The Local Government Act 2003 Section 25 includes a specific personal duty on the Chief Financial Officer (CFO) to make a report to the authority when it is considering its budget and Council Tax for the forthcoming year. The report must deal with the robustness of the estimates and the adequacy of the reserves included within the budget. (For the purpose of the Act, 'reserves' include 'general balances.')

4.2. The Act requires the Council to have regard to the report in making its decisions. Sections 32 and 43 of the Local Government Finance Act 1992 also require authorities to have regard to the level of reserves needed for meeting estimated future expenditure when calculating the net budget requirement.

4.3. There are also a range of safeguards in place intended to prevent local authorities from overcommitting themselves financially. These include:

- The CFO's S114 powers, which require a report to the Cabinet and to all members of the local authority if there is or is likely to be unlawful expenditure or an unbalanced budget.
- The Prudential Code, which has applied to capital financing since 2004/05.
- Section 26 of the Act gives the Secretary of State power to set a minimum level of reserves for which an authority must provide in setting its budget.

4.4. The Secretary of State stated that 'the provisions are a fall back against the circumstances in which an authority does not act prudently, disregards the advice of its Chief Financial Officer and is heading for serious financial difficulty.' These safeguards should be further reinforced through detailed scrutiny by the Council's external auditors.

4.5. There is a requirement on the auditor to form a conclusion on the arrangements that the Council has in place to secure economy, efficiency, and effectiveness in its use of resources. In addition, the external auditors review the underlying assumptions used to support material estimates within the Council's financial statements, such as valuations of property assets and pension liabilities.

4.6. Clearly, the nationwide failure of audit firms to carry out timely audits of local authority accounts makes this control ineffective. CIPFA, who, working with Government, provide best practice on financial management to local authorities, have made a statement on how the role of the Chief Financial Officer in a public sector organisation should be.

4.7. The CFO in a public service organisation:

i) is a key member of the leadership team, helping it to develop and implement strategy and to resource and deliver the organisation's strategic objectives sustainably and in the public interest,
ii) must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer-term implications, opportunities, and risks are fully considered, and in alignment with the organisation's financial strategy,
iii) must lead the promotion and delivery by the whole organisation of good financial management so that public money is always safeguarded and used appropriately, economically, efficiently, and effectively.

4.8. To deliver these responsibilities the CFO:

i) must lead and direct a finance function that is resourced to be fit for purpose,
ii) must be professionally qualified and suitably experienced.

5. Financial Management Arrangements

5.1. When understanding the budget and financial position, Members of the Council need to be aware of the financial control and management arrangements. These arrangements must not only help manage, but also identify new risks.

5.2. In-year expenditure and income monitoring against the budget: the Council has established and continually updates its system of budget monitoring and financial control, with reporting to the Audit & Governance Committee (year-end review) and Cabinet.

5.3. Monitoring reports are produced for Management team and Cabinet members four times a year for revenue, capital, and Housing Revenue Account. These reports identify variances against the budget, risks to the forecast, and, where possible, actions to alleviate adverse variances.

5.4. Additionally, income and expenditure are reported monthly to budget managers. The Council has due regard to both statutory and non-statutory guidance including the Prudential Code for Capital Finance in Local Authorities and related Department of Levelling Up, Housing and Communities (DLUHC) Investment Guidance. Furthermore, the Council has a long-established Treasury Management and Investment reporting arrangements. These arrangements ensure cash, capital investment and borrowing decisions are made with appropriate information and monitoring taking place.

5.5. Budget Planning: the budget has been prepared within the terms of the Medium-Term Financial Strategy and in consideration of the key financial risks identified.

5.6. The process of setting the budget for 2024/25 has been the subject of the following report:

- Budget Framework – Interim Medium Term Financial Strategy
- Mid-Year Budget Review and Revised Financial Forecast

5.7. Independent Review of Financial Management is undertaken by: External Audit - under National Audit Office (NAO) Code of Practice regulations, external auditors are also required to make a Value for Money assessment to consider that local authorities have put in place proper arrangements to secure economy, efficiency, and effectiveness in its use of resources. The assessment must be published three months post audit completion. The Council's auditors (Deloitte) have not completed their audit of the accounts for 2021/22 nor 2022/23. The delays at Eastbourne are part of a national problem. The lack of Value for Money Assessment is therefore a weakness in the Council's financial arrangements, which the auditors are committed to address. However, they have not raised any concerns about value for money based on the work they have completed to date.

5.8. The lateness of external audit reports means the budget is being set without external validation of the reserve balances. The Section 151 officer does sign off the accounts with confidence that financial reporting (including reserves) is materially correct, but it is of great importance that timely external scrutiny of the accounts takes place.

5.9. The scrutiny of financial and performance management is also undertaken by Scrutiny and the Audit & Governance Committees.

5.10. Due to the extraordinary financial pressures faced by the Council, there have been other additional monitoring and governance arrangements in place to facilitate early intervention and mitigate against the growing number of placements and cost of Temporary and Emergency accommodation and to monitor the delivery of the Stability and Growth saving targets. With the exceptional financial pressures currently being faced, I intend to introduce the following additional monitoring steps to the exiting processes.

- Continuation of the budget discussions regarding the emerging issues (temporary accommodation and cost of living pressures) across the Council, by service managers, finance, Directors, and Cabinet members

- Strengthening the monitoring process for revenue and capital aim to increase the use of the following measures to deal with adverse income and expenditure projections by:
    - priority based approach to decision making;
    - slowing down or stopping spending if that is an appropriate mechanism,
    - increasing income elsewhere (identifying projections of overall resources) ;
    - early awareness of key variations to budget assumptions; and/or
    - moving funds around between services (virements).
- Statement by the S151 officer on the robustness of Financial Management arrangements:

5.11. I consider the Council's financial management arrangements and planned changes to be sufficiently robust to maintain adequate and effective control of the budget for 2024/25.

6. Financial Outlook and Risks

6.1. The financial forecasts and strategy are reported in the Medium-Term Financial Strategy (MTFS) to Cabinet and Council. This budget report updates the financial forecast for the next four years. It is not a comprehensive reworking but is sufficient to enable members to assess the ongoing sustainability of budget decisions. The forecast should be considered in conjunction with the comments included in this section from the S151 officer.

6.2. Looking ahead, the key financial pressures, risks and how they are being managed are discussed below:

i) Housing – Temporary and Housing Need costs: there has been an exceptional and disproportionate increase in demand for temporary housing services. Amongst many factors, the shortage of affordable housing locally and nationally would imply this will continue to be a long-term problem. The extent of demand and resultant cost increase is difficult to predict and can only be based on current trends and the professional views of the Council's housing officers. The additional cost of temporary accommodation and its impact on the Council's budget and available resources is as such that the Council in discussions with DLUHC was advised to request for Exceptional Financial Support. This would allow the Council to fund c.£3m of its related costs from capital resources i.e. capital receipts or additional borrowing. Whilst this is not an ideal solution, it is nevertheless the only option available. This option would provide time to seek actions to balance and ensure the extent of the additional Homelessness costs is the appropriate approach. The Homelessness estimates are as robust as possible considering there are a number of variables outside the Council's control, and the approach to manage the risks within the budget, using reserves or capitalisation (depending on the outcome of the EFS request) to offset additional cost whilst further work is undertaken to continue with action plans during 2024 to lower the costs of homelessness.

ii) Capital financing: The Council has significantly reduced its planned capital investment. The programme has been profiled to reduce the council's exposure to higher costs of financing due to high inflationary pressures and the high interest rates. There are, however, existing commitments, urgent and health & safety related expenditure which will require additional borrowing.

iii) As part of the Emergency Budget Planning the capital programme will be further reviewed to identify further reductions.

6.3. This generates several risks:

- The budget for the revenue cost of capital financing assumes a fall in long term interest rates.
- Capital schemes already approved in the capital programme are exposed to the risk that inflation will drive up the costs of the scheme before or during construction, which in turn will increase the revenue costs of financing.

6.4. To reduce the risk of cost overruns, the following actions are being taken:

- To ensure robust feasibility work has been undertaken before budget approval.
- No capital receipts of any material size have been included in financial planning. In the case of option C, it is likely that any material receipts received in 2024/25 will be put towards offsetting the cost of capitalisation (EFS) as a matter of priority. In the case of option D, any receipts from asset disposals will be put towards reducing the levels of temporary borrowing and the related cost of financing.

- Every £10m of proceeds from disposal will generate revenue benefit of about between £700k-£1m per annum if it was used to pay down debt. Disposal proceeds or income streams from the development are unlikely to be in 2024/25.
- Pay: with a 4% growth in planned staffing costs, there remains a significant risk that pay costs could be higher. This risk is due to the need to attract/retain staff, but also the ongoing policy of Government to significantly increasing National Living wage rates by more than local government public sector earnings increases. Since the inflation rate is now falling, it could mean, over the medium term, pay pressures should also ease.
- Energy: costs in 2023/24 are lower than originally budgeted by some £0.472m. The Council's energy is now being bought as part of a three-year rolling purchase contract, which should bring greater stability and less risk of increases, however, inevitably, should prices fall, the Council contract prices will lag those reductions.
- Business Rate Retention Income. The Council receives 40% of any growth above the base line, (this varies significantly year on year), but past income is not that useful in predicting future levels as the scheme is hard to predict with certainty. The Council has previously assumed c.£3m a year of this income to support ongoing revenue spend. Any potential surplus is set aside in an equalisation reserve and used to manage the risks arising from fluctuations in Business Rate Retention amounts and in supporting ongoing service expenditure. There is a real but unquantifiable risk that Government will reduce this source of funding in later years, and this could be as early as 2025/26 as Retention income is outside Core Spending Power calculations.
- Other risks. There are of course other risks, such as reduced car parking income, planning income declining due to economic conditions, and geo-political events. These and the many others will be managed via maintaining unearmarked reserves as near as possible to the £2.5m target and this is discussed below in the reserves' commentary.

6.5. Based on the factors above, I consider that these budget proposals take due regard to the exceptional risk, including the availability of EFS or not, financial and economic environment, and that the assumptions within the budget are reasonable and the estimates used for 2024/25 are as robust as possible.

6.6. Looking beyond 2024/25, if the financial pressures continue based on current trends and plans identified by services, and after substantial use of our reserve balances the size of the forecast budget gap for 2025/26 identified is still equivalent to over 6.3% of the general balance. However, the estimated budget gap for 2025/26 is not as robust due to uncertainty, as:

- At this time, it is impossible to say how Government funding will change post general election.

- Homelessness could taper off if demand and cost pressures ease, but there are many factors which could increase demand. The Council has limited control over these but is of course reviewing service provision to lessen costs.
- Inflation could be volatile due to world events.
- The forecast does not include any material measures undertaken to close the budget gap after 2024/25, such as savings, efficiencies or fees and charges reviews. After over a decade of annually identifying efficiency savings, it must be presumed the scope of achieving efficiencies is more limited and so there is a greater risk of reductions to key services especially the discretionary services. I have consulted with the Chief Executive and Leader and have been advised the Council will Implement its Stabilisation and Growth / New Extended Stability & Growth financial programme to move the Council's finances on to a more sustainable footing.

7. Level of Reserves and Overall Financial Standing

7.1. Last year, it was reported that nationally there was an increasing number of Councils issuing Section 114 notices. A S114 notice stops all non-essential spending and provides for a 21-day period for the Council to consider the report and what action it may take as a result. A significant number of Councils during the Autumn of 2023 stated publicly that their financial position was approaching the point where the S114 notices were becoming quite possible.

7.2. Demand and inflationary pressures were becoming unmanageable. The Council's own financial position remains very challenging, considering the two scenarios, whilst option C will require some use of reserves, option D will result in a significant reduction in balances lowering them to below the council's approved minimum levels. This is caused by the excepted planned use of reserves in 2023/24 and 2024/25 and further budget shortfalls forecast for 2025/26 and beyond. It is crucial for the council to ensure the New Extended S&G programme is put in place urgently to replenish its reserves to sustainable levels. The S151 officer of the Council declares if a Section 114 notice is necessary. At the time of preparing this report and based on an the assumption that either an Exceptional Financial Support agreement would be achieved, or an emergency budget will be activated to manage the projected shortfalls and expected use of reserves, the Council does not have an immediate need for a Section 114 notice.

7.3. The S151 officer's view of 2024/25 reserve use is:

- Longer term projections of the level of reserves show that whilst there may be a short-term demand on use of reserves, through delivery of its S&G or New Extended S&G programme (options C&D), they will be maintained within the set target.

- The cost increases facing the Council are significant and their impact should be spread over several years by using EFS and or reserves. This will enable the most effective longer-term resolution to be found.
- Government policy is that local authorities should be using reserves to manage the financial challenges in 2024/25. This is a matter that should be determined locally by members after careful consideration.
- The Council will, during 2024/25, implement its S&G or New Extended S&G savings programme to reduce reliance on reserves to fund ongoing services. This programme spreads over 3-5 years.

5.2. Determining the appropriate levels of reserves is a professional judgement based on local circumstances, including the overall budget size, risks, robustness of budget preparation, corporate plans, budget assumptions, earmarked reserves and provisions, and the Council's track record in budget management.

5.3. The reserves policy, approved by Cabinet in September 2021, contained a recommendation to increase the minimum target level of general reserve to £2.5m. This was in response to the pandemic. It is not possible, given the current budget forecast and lack of certainty over government decision or funding, to increase the general reserve. The reserves level should be determined by reference to the medium and long term need for reserves and, with the known risks. In the longer term to further lower the levels of reserves is not advisable.

5.4. Reserves can be allowed to fall below the target for temporary periods if risks materialise. The MTFS shows a decline in the level of general reserves. However, as stated, the longer-term forecast revenue position is not a robust estimate and will require further review and updates once the outcome of councils request for EFS is confirmed. Based on the above factors, I consider the level of reserves presented in the budget estimates to be adequate to support the immediate and short-term financial sustainability of the Council. I will be monitoring the progress made on the delivery of the S&G or New Extended S&G programme (option D) very closely to inform my view about the longer-term financial sustainability again upon receiving confirmation on the EFS position and will report to the council if needed.

6. Conclusions

6.1. The budget shortfalls shown in the financial forecasts are significant financial challenges and will be more difficult to manage than previous deficits because:

- Efficiency and savings require some radical actions and given that the Council has been successfully finding ways to meet shortfalls for over 10 years harder to achieve without having significant impact on services and standards.

- Reliance on income generation to balance the budget brings over the longer term increased risks, such as the potential for customer resistance to increases in charges or as seen currently, void periods in the Council's property portfolio.
- The economic and geo-political climate makes it difficult to predict demand and the cost of the provision of Council services.
- Use of reserves, asset disposal or borrowing to finance statutory revenue expenditure will not provide a long term and sustainable solution. Further engagement at national level to develop longer term solutions, policies and strategies should continue.
- Government funding is highly uncertain beyond 2024/25.

6.2. These issues are faced by all lower tier English local authorities. The development of a robust medium-term financial plan to balance the budget is an essential action for 2024/25. Taking all of the above into account, as the Council's Chief Financial Officer, I am satisfied that overall, the budget proposals set out in this report are robust and provide a high degree of sustainability and that the level of reserves is adequate to address the emerging financial risk facing the Council whilst longer terms saving plans are being put in place.

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Director of Finance & Performance

S151 Officer/Chief Financial Officer