



Coventry City Council

Council Meeting

20 March 2007

Booklet 3

Recommendations

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CABINET

20th March 2007

Cabinet Members
Present:-
Councillor Arrowsmith
Councillor Blundell
Councillor Foster
Councillor Mrs Johnson
Councillor Matchet
Councillor H Noonan
Councillor O'Neill
Councillor Taylor (Chair)

Non-Voting Opposition
Representatives present:-
Councillor Benefield
Councillor Duggins
Councillor Mutton
Councillor Nellist

Other Members
Present:-
Councillor Batten
Councillor Gazey

Employees Present:-
J. Bolton (Director of Community Services)
A. Brown (City Services Directorate)
J. Daly (Finance and ICT Directorate)
D. Elliott (City Development Directorate)
A. Freeman (City Development Directorate)
M. Green (City Services Directorate)
T. Hiscocks (City Development Directorate)
L. Hobbs (City Development Directorate)
T. Jones (City Development Directorate)
L. Knight (Legal and Democratic Services Directorate)
G. Lewis (Chief Executive's Directorate)
S. Manzie (Chief Executive)
J. McGuigan (Director of City Development)
N. Mills (City Development Directorate)
C. Pearson (City Development Directorate)
K. Rice (Head of Legal Services)
K. Seager (City Services Directorate)
C. West (Acting Director of Finance and ICT)
P. Wingfield (City Services Directorate)
L. Wroe (City Development Directorate)

Apologies
Councillor Ridley

RECOMMENDATIONS

Public business

217. **Declarations of Interest**

Councillor O'Neill declared a personal interest in the matter referred to in Minute 222 below headed "Wood End, Henley Green and Manor Farm – New Deal for Communities (WEHM-NDC) Regeneration Proposals". Having been nominated by the City Council as a representative on the NDC Board, in accordance with paragraph 5.1.3.3.2(c) of the Constitution, he remained in the meeting and took part in the consideration of, and voting on, this matter.

219. **Exclusion of Press and Public**

RESOLVED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the item of business indicated below on the grounds that this item involves the likely disclosure of exempt information as defined in those paragraphs of Part I of Schedule 12A of that Act, as indicated:-

Minute No.	Subject	Relevant Paragraph of Schedule 12A
234	Street Lighting PFT Project Outline Business Case	3

223. **Wood End, Henley Green and Manor Farm – New Deal for Communities (WEHM-NDC) Regeneration Proposals**

The Cabinet considered a joint report of the Chief Executive, the Director of City Development, the Director of Community Services, the Director of Finance and ICT and the Director of Legal and Democratic Services, which outlined the major regeneration proposals for the Wood End, Henley Green and Manor Farm – New Deal for Communities (WEHM-NDC) area of the City and presented the outcome of negotiations between the Stakeholder Partners (Whitefriars Housing Group (Whitefriars), the Coventry New Deal for Communities (NDC) and the Council) and the preferred developer (BKW); along with a proposed scheme of development and regeneration, including associated contractual, commercial, financial, property and community implications.

This major housing-led regeneration project has been in preparation for several years and a number of reports had previously been submitted to the Cabinet on various aspects of the project. The report submitted also indicated the key milestones since the Council became the accountable body for the NDC in March 2001.

The Cabinet noted that the proposed scheme would depend on a number of key inputs including a contribution of 73% of the land within the Masterplan area by Whitefriars and 27% of the land (including two shopping centres at Broad Park Road and Dr Philips Centre, operational properties [Neighbourhood Management Office; Children's Services Office; Adventure Centre; and Deedmore School Site and other open space and leisure land) by the Council; use of Government Office for the West Midlands funding by NDC for Masterplanning and procurement (this aspect of grant support to NDC expires on 31st March 2007); and investment of approximately £350m by BKW, generated from the sale of approximately 2,400 new properties, which would be constructed on land provided by Whitefriars and the Council.

As a result of these inputs, it is expected that in return for the land provided free of charge by Whitefriars and the Council, BKW would provide a redevelopment project over two phases, taking at least 15 years; the demolition of 1,907 properties; 1,000 new social housing units for rent provided free to Whitefriars; 20 additional new social housing units on the Deedmore School site provided at 50% discounted price to Whitefriars, or another Registered Social Landlord; 2,378 new properties for private sale; 138 properties sold at a 50% discount to enable existing owner-occupiers to stay in the area; green space enhancements and play provision, as detailed in a Section 106 Agreement, to be negotiated as part of the planning process; new commercial retail centres to replace those lost as part of the scheme, subject to overall scheme viability; and new and upgraded street scene (road surfaces, footpaths etc).

In addition, as part of the programme to regenerate the area, there would be a capital receipt for the Council of at least £3.0m for the Deedmore School site (subject to DfES approval for building on a school site including playing field and statutory consultation) that would part fund a new Broad Spectrum Special Primary School in the area; a Leisure and Neighbourhood Centre, funded largely by the NDC; and 350 retained refurbished Whitefriars properties.

It is expected that the stakeholders and BKW would also receive overage, i.e. cash return from the increase in property values above those assumed at the commencement of the scheme. However the extent and timing of the overage would depend on the success of the scheme.

Since October 2005, the stakeholder partnership and its retained consultants have been working intensively on contractual and commercial negotiations, specific aspects of which were detailed within the report submitted. The Project Board has been meeting monthly to oversee the project management, review the risk register and seek to resolve critical issues, both within the stakeholder partnership and between the stakeholders and BKW.

The Council is a key stakeholder in this project, as it is a significant owner of land and property, both within the WEHM-NDC area and the extensive public open space, which surrounds the proposed development. Whilst the development would deliver its main regeneration impact through housing renewal, it would further many other aspects of the Council's strategic purpose, including: leisure provision, public open space enhancement, environmental improvement, as well as community cohesion and well-being.

The development proposals support the implementation of the Council's Housing Strategy, particularly its three core aims of achieving housing growth to support wider regeneration and economic investment; rebalancing housing markets to stem decline and to establish new and more stable communities; and improving pathways of choice for Coventry's people and to attract and retain newcomers.

In terms of central government and regional housing policy objectives contained in national planning guidance (importantly Planning Policy Statement 3) the Regional Spatial Strategy (Housing within the Major Urban Areas) and the Regional Housing Strategy (Urban Renaissance), the project presents opportunities to significantly contribute to

widening the choice of housing types and tenures; introducing an improved mix and design of high quality homes across the housing market; and expanding the range of new purpose-designed housing for people who are vulnerable, or have disabilities in this part of Coventry.

The strategic need for physical, environmental and community regeneration in the WEHM-NDC area is evident, and the challenge is greater than public investment alone could meet. Private sector investment has the capacity to achieve the required transformational change into a viable and vibrant mixed community. This significant private sector investment, coupled with substantial government funding via the NDC programme, would greatly enhance social and community infrastructure.

The report submitted outlined 3 proposed options for the WHEM-NDC area, with the preferred option being option 1. This proposal included the major redevelopment of the WEHM-NDC area to fulfil the commitment made to the community during Masterplanning consultation; to radically change the physical, environmental and socio-economic character of this disadvantaged area of the City; and to reverse the terminal decline of the area and create a sustainable mixed community.

It is proposed that the redevelopment be undertaken in two major phases over a period of about 15 years. It is anticipated that BKW would submit an outline Planning application in late 2007 and that clearance and redevelopment would commence approximately two years later.

The Cabinet noted a leaflet outlining the phased development proposals, which in summary included the clearance of 728 homes in Phase 1 and 1179 homes in Phase 2; 1217 new homes for sale in Phase 1 and a further 1161 in Phase 2; 46 new homes for displaced homeowners in Phase 1 and 92 in Phase 2; 399 new homes for rental with Whitefriars in Phase 1 and 601 in Phase 2 and a further 20 new homes for rental on the Deedmore School site in Phase 1. In addition, there would be 357 retained private homes; 350 refurbished Whitefriars homes and a further 358 homes for rent.

Option 2 would be to do nothing, which would be a grave disappointment to all stakeholders and, more importantly, to the community within the WEHM-NDC area.

Option 3 proposed a moderate redevelopment of the area by selective clearance of sites, which could be parcelled off to various developers and the report submitted outlined the potential disadvantages of such an approach.

Whitefriars would implement this regeneration project, in conjunction with its selected building consortium developer BKW. The Council has been asked to support the project with land assembly using compulsory purchase powers and including Council land as previously identified.

In order for the project to proceed, the Council must satisfy itself that it has the powers to support the project with the inclusion of land at nil cost. The Council's powers for this are the Local Government Act 1972, in particular the General Disposal Consent 2003. The disposal at nil value represents a disposal at less than best consideration, as the Council's property has an existing asset value of £494,517 and there is a limited amount of land that could potentially be developed in isolation in a "no scheme world".

However, employees are satisfied that the disposal can be justified under the General Disposal Consent 2003, which provides for such disposals to secure the promotion and improvement of the economic, social, or environmental well-being of the area. The overage provisions of the agreement with BKW would deal with any increase in development value subsequent to the disposal.

The Council would receive best consideration under Section 123 of the Local Government Act 1972 for the disposal of the site of the former Deedmore School, which was not included with the tender disposal and has been the subject of separate negotiations between the Council and BKW.

The Cabinet noted that the legal structure of the property transaction is complicated and that the Council has appointed external legal advisors Mills and Reeve to support the Council in the documents to which the Council is a party. Mills and Reeve have given the Council a report on the interlinking of the documents and a resumé of risks.

The Council has considered its overall involvement in the project in terms of its financial and land inputs and is satisfied that, in so far as the Council's position is concerned, there is no state aid implication.

The report submitted outlined the various agreements required in order to proceed with the project, which include the Master Development Agreement; Phased Development Agreement; Stakeholders Agreement; Direct Agreement; Compulsory Purchase Agreement Indemnity Deed; and Section 106 Agreements. The Cabinet noted that all the documents are complex and the Council has endeavoured to ensure that, whilst entirely supportive of the project, its contribution is limited to the identified land and financial contributions detailed.

The Cabinet were further advised that a group of residents from the Henley Green area had made an application to have an area of land, which is incorporated in the Masterplan, registered as a Village Green and that the Council is the 'Registration Authority' for this purpose, placing it under a duty to determine the application. In that capacity it has appointed an independent barrister to act as an Inspector at a non-statutory Public Inquiry due to be held from 7th to 15th June 2007.

The Council is also the landowner and, in that capacity, has engaged a specialist barrister to represent it at the Inquiry, to 'defend' the application, as, if the application were granted and the land registered as a Village Green, it would become 'sterile' land in terms of any future use and would also substantially affect the proposed regeneration scheme. The developer is also separately represented and has engaged specialist Counsel to 'defend' the application.

Once the Inspector has heard all the representations at the Inquiry, it is anticipated s/he would take some time to reflect and produce a report, with recommendations as to registering the land as a Village Green. That report would then form the basis of a report to the Planning Committee, in whose remit the decision finally rests.

A financial model that forms part of the Master Development Agreement has been constructed to determine whether the scheme is affordable and would provide sufficient return to BKW to enable the project to proceed. The model includes amounts derived from

the sale of the new properties, against which are set the costs of the project. At this time the Phase 1 forecast financial model is viable on a total scheme value of £350m, after allowing for the reduction in Whitefriars' Phase 1 units as explained in paragraph 8.6 of the report submitted.

At this stage, the financial model shows that Phase 2, which is forecast to commence in 8 to 10 years time, is not viable. It is difficult to determine the viability of Phase 2 given that its initiation is so far in the future, but it is anticipated that a successful Phase 1 would ultimately make Phase 2 viable as the scheme progresses. This would be dependent on the availability of land, which is currently subject to the Village Green application, and sales values increasing faster than building costs.

A financial model would be used to assess viability of the scheme at several key milestones during the scheme and employees would constantly review the financial model as the scheme progresses for any changes in assumptions that may affect the continued viability of the scheme and would report back to members at appropriate stages.

The report submitted also highlighted a number of financial and related issues for Stakeholders which include Displaced Owners Scheme (DOS) equity share and rent loss; securing phase 1 financial model viability at Master Development Agreement stage; additional Right to Buy (RTB) properties; Overage and land value; continuing Council project management costs; land to be redeveloped; ownership of redeveloped land on completion of scheme; land required for flood water balancing; the former Deedmore School site; and Asset and Development Values.

After due consideration of the options and proposals contained in the report and matters referred to at the meeting, the Cabinet decided to endorse the recommendations contained within the resolution below.

RESOLVED that the City Council be recommended to:-

- (1) Agree the phased development scheme described at section 5 of the report submitted.**
- (2) Note the Master Development Agreement (MDA) between the Developer (BKW) and Whitefriars Housing Group (WHG) which will be the principal contract governing the development.**
- (3) Authorize the execution of the Stakeholder Agreement between the Council, Whitefriars Housing Group and the Coventry New Deal for Communities (or its successor body: Moat House Community Trust).**
- (4) Authorize the execution of the conditional Direct Agreement (DA) between the Council and BKW, relating to the contractual obligations for the sale of land and other matters connected with preparation to administer a Compulsory Purchase Order on behalf of BKW.**
- (5) Approve the sale to BKW of the site of the former Deedmore School at open market value on terms detailed at paragraphs 6.4 and 9.15 of the report submitted, subject to Department for Education and Skills (DfES)**

consent.

- (6) Approve the disposal to BKW of land and buildings at nil consideration in support of the regeneration objectives of the scheme noting that this disposal is at less than best consideration and is under the General Disposal Consent (England) 2003.**
- (7) Approve the disposal of nine hectares of the above land, which is currently held and managed as public open space, and follow the statutory process for such disposal contained in the Local Government Act 1972.**
- (8) Approve the use of land to the north of the WEHM-NDC area for floodwater balancing purposes, for the reasons detailed at paragraphs 9.11 to 9.14 of the report submitted.**
- (9) Authorize appropriate employees, after consultation with existing leaseholders, to issue to BKW a licence to undertake works, to the satisfaction of the Environment Agency, relating to water balancing and flood mitigation on land to the north of the WEHM-NDC area, as referred to at 8 above.**
- (10) Authorize the reinvestment of Right To Buy (RTB) receipts, secured under the terms of the Stock Transfer Agreement between the Council and Whitefriars Housing Group, from new RTB applications in the NDC area for those properties included in Phase 1, so far as this is required to achieve the target number of replacement social housing units within the NDC area, as described in paragraph 8.9 of the report submitted.**
- (11) Approve the proposed arrangements for sharing any future land value and/or overage generated by the scheme, both between BKW and the stakeholders and between the three stakeholders, as set out at paragraph 8.10 of the report submitted.**
- (12) Approve the proposed Displaced Owners Scheme and the financial consequences for the stakeholders, including the Council, as described at paragraphs 8.2 to 8.5 of the report submitted.**
- (13) Note the intention to submit a further report relating to the need to make a Compulsory Purchase Order, upon an outline planning permission being obtained by BKW.**
- (14) Authorize the documents required to give effect to resolutions arising from this report, on behalf of the Council.**

225. Licensing Act 2003 – Consultation on Revised Guidance

The Cabinet considered a report of the Director of City Services which advised on the contents of a consultation document received from the Department of Culture, Media

and Sport (DCMS) and proposed a response to the questions raised therein. The consultation document and proposed response were appended to the report. The Cabinet noted that the report had also been considered by the Licensing and Regulatory Committee and Scrutiny Board 3, at their meetings held on 6th and 7th March 2007, respectively.

The Licensing Act 2003 requires the Secretary of State to issue licensing guidance to licensing authorities on the discharge of their functions under the Act. The guidance was first issued in July 2004. Following this, the DCMS commenced a two stage review of the Guidance, with the first stage focusing on providing clarification or additions to the Guidance on relatively uncontentious issues which were raised during the transitional period. This initial review resulted in the DCMS publishing supplementary guidance in June 2006.

The second stage of the review involved a consultation, which sought views on revisions to the guidance that the DCMS were proposing to make. The consultation document was published on 16th January, 2007 giving local authorities only 12 weeks to conduct their own consultation, draft a response and get approval through the political process.

Any revised guidance issued by the Secretary of State following this consultation would not come into force until it had been laid before parliament.

The Cabinet noted that the Licensing and Regulatory Committee and Scrutiny Board 3 had endorsed the proposed response, and had not proposed any amendments.

RESOLVED that the City Council be recommended to approve the draft response appended to the report submitted.

226. Coventry Development Plan 2001: "Saving Policies"

The Cabinet considered a report of the Director of City Development, which made recommendations as to which of the policies in the adopted Coventry Development Plan 2001 (CDP) should be "saved" until superseded within the Local Development Framework, which had resulted from the transition arrangements arising from the changes to the planning system being rolled out following the 2004 Act.

The Planning and Compulsory Purchase Act 2004, which introduced the new planning system of Local Development Frameworks, provided interim arrangements whereby the Local Planning Authority (LPA) could "save" the policies of their existing development plan for a three-year period commencing on 28th September 2004. This concept related to the need for continuity during the change from the old to the new planning system. The Act also gave the Secretary of State power to make a direction to "save" policies beyond this three-year period. As progress on new-style plans had not been as quick as envisaged when the Act was passed, it became clear that the coverage of new planning policies across the country was small. Action was needed to ensure that relevant policies remain in force, thus avoiding a policy vacuum. Therefore, last year, the Government issued a protocol on the "saving" of development plan policies, which were detailed in the report submitted.

LPA's are expected to submit lists by 1st April 2007 to Government Offices of proposed saved policies along with their intentions for them, and a further list of policies they do not wish to save. The Government Offices will then assess the lists and the Secretary of State will direct accordingly. In direction, the Secretary of State can agree with local authorities' recommendations or can decide to save a policy even where they have recommended deletion or alternatively decide that a policy will not be saved despite the local authorities' recommendation.

All policies within the CDP have been assessed against the criteria detailed within the report submitted, and the Local Development Framework Advisory Panel have considered employees' recommendations. The Cabinet noted that the only possible decision in relation to these policies is to either save or delete, and that the option of amending or revising a policy is not possible. Amendments would need to take place through work on the Core Strategy and other Development Plan Documents through the statutory planning process. The effect of this exercise is to provide with the Regional Spatial Strategy the development plan until the Core Strategy is adopted which is expected to be 2009

Policies have been recommended for saving where they agree with at least one of the specified criteria. They can form part of the CDP central strategy; they can express the priorities of the Coventry Community Plan; they can be allocation policies; and they can conform with or expand on the Regional Spatial Strategy; or expand on national policy.

It is recommended that all of the existing Overall Strategy, Housing, Employment and Green Environment policies should be saved. Policies recommended for deletion have generally been implemented; duplicate national guidance; duplicate other CDP policies or it is believed that there have been material changes in circumstances, which suggest they are no longer appropriate, and where greater flexibility is desirable.

Appendix 1 to the report submitted detailed all CDP policies and indicated the recommendation. Appendix 2 provided detailed information on policies not recommended to be saved

RESOLVED that the City Council be recommended to approve the recommendations for "saved" and deleted policies being submitted to the Government.

230. Street Lighting PFI – Outline Business Case

The Cabinet considered a joint report of the Director of City Services, the Director of Finance and ICT and the Director of Legal and Democratic Services, which summarised the progress on the Street Lighting Private Finance Initiative (PFI) project; showed the options appraised; and sought permission to submit an Outline Business Case (OBC) to the Department for Transport (DfT) by no later than 30th March 2007. The Cabinet noted that Scrutiny Board (3) had considered this report at their meeting held on 7th March 2007.

The Cabinet further noted that a corresponding private report, detailing commercially confidential aspects, had also been submitted to this meeting (Minute 234 below refers).

The Government announced in November 2005 that £600 million in PFI credits would be available to address the continuing problems of deterioration in street lighting stock. Interested councils were required to submit an Expression of Interest (Eol) to the DfT by 24th February 2006.

On 21st February 2006, the Cabinet and Council approved the submission of the Eol to the DfT. The Council also approved, in its Medium Term Financial Strategy, a budget allocation of £1.3 million per annum from 2008/09 onwards (the affordability gap) along with an estimated one-off project development budget of £70k in 2006/07 and £0.430 million in 2007/08 (their Minute 123/05 refers). On 26th July 2006 the DfT approved the Council's Eol for a Street Lighting PFI and granted £62.8 million of credits for the project.

On 20th February 2007 the Council confirmed the re-phasing of the costs of the PFI of £1.3 million per annum from 2009/10 onwards due to a revised indicative procurement programme; and approved a revised project development budget of £1.1 million (their Minute 88/06 refers).

The next stage in the programme is to submit an Outline Business Case (OBC) to the DfT by 30th March 2007. The Council has completed a detailed affordability study and is now seeking credit approval from the Government (PFI credits) of £64.3 million, an increase of £1.5 million from the Eol stage. The increase is due to a later assumed service commencement date of April 2009 and therefore inflation increases. It is expected that the DfT would agree to this increase in credit allocation. With an outsourced service such as this, there are no maintenance charges or energy costs over and above the Unitary Charge. The "affordability gap" (i.e. the amount over and above that which the Council currently expends on the service) currently remains the same as that reported to the Cabinet and Council in February 2006 at the Eol stage of £1.3 million per annum. This is already incorporated in the Council's Medium Term Financial Strategy. One off project development costs are also required, for which an additional budget has been identified in this years PPR process.

The PFI process is quite prescriptive, with the development of the PFI contract taking approximately 18 months to negotiate from the commencement of the procurement process when the Invitations to Submit Outline Solutions (ISOS) are issued, to start of contract. For the Coventry PFI, the ISOS is scheduled for issue in November 2007 with a service commencement date of April 2009. The street lighting contract would take full account of the Street Lighting PFI Procurement Pack developed by the 4ps, the Government agency set up to advise local authorities developing PFI projects. The detailed procurement programme was appended to the report submitted.

The duration of the PFI would be 25 years, during which time responsibility for service provision would transfer to a private contractor who would undertake major capital renewal of the street lighting infrastructure and all ongoing maintenance responsibilities. The majority of the capital investment would take place in the first 5 years of the contract period and the report submitted outlined the works to be included within that period.

The project would result in the provision of substantially modernised public lighting across the whole of the City and the additional investment would replace old and obsolete

equipment, which has or is reaching the end of its useful design life; provide additional lighting to unlit areas and provide a consistent and enhanced lighting quality across the City.

The proposal also replaces illuminated traffic signs and other illuminated highway street furniture ensuring a consistently high standard of provision is rapidly achieved and then maintained in the long term.

Coventry has approximately 33,000 street lighting columns, 4,000 traffic signs and beacons and 1,500 traffic bollards. Approximately 17,000 lighting columns are beyond their original life expectancy of 25 years and a further 9,400 of the younger lighting stock do not meet the current European standard for lighting. In addition an increase in column numbers of up to 6,300 may be required to ensure that all currently lit areas and the identified additional lighting requirements for previously unlit areas of the City meet the relevant standards.

Many of the City's illuminated traffic signs are at the end of their useful life and require modernisation and standardisation.

Much of the inventory needs replacement and the capital investment required to support the substantial improvement required cannot be resourced from the existing Council budgets. As time goes on, a higher and higher proportion of the existing lighting inventory would reach the end of its design life and need replacing.

Due to increasing concern from recent lighting column structural survey reports, the Council identified additional capital resources of £1.4 million in 2005/6 and £1.4m in 2006/7 to fund the replacement of 1,000 columns per annum. In the financial year 2007/08, a provisional allocation is identified for a further £1.4 million to be invested in street lighting infrastructure works. At the EoI stage it was reported that to continue this level of additional investment beyond 2006/7 it would take a further 28 years to replace the existing lighting only. However, it was recognised that this increased level of capital investment was unlikely to be sustained in the long term and an alternative long-term solution to lighting maintenance and funding needed to be found. To this end, the Council approved the EoI for the development of a PFI for street lighting, traffic signs and bollards in February 2006.

The creation of safer and stronger communities is a central theme that runs through the Corporate Plan and the quality of street lighting provision is a key element in achieving this. Safety, both in terms of road safety and personal security, is affected by street lighting provision. The project scope has been developed on the basis of a white light solution for residential areas as white light is closer to natural daylight allowing colours to be seen more clearly, which assists identification by CCTV installations. The project also includes the provision of a number of enhanced specification columns to enable CCTV and/or mobile Dome Hawk cameras to be attached to them in order to monitor crime hotspots.

Work carried out during the development of this project has sought to accommodate revisions to lighting codes of practice and increases in stock replacement and energy charges, whilst ensuring that the project remains value for money in terms of the benefits and costs. Just as importantly, the OBC has been developed to ensure that

the additional annual revenue budget support required from the Council is kept to the minimum required to ensure an acceptable and realistic level of service delivery throughout the entire PFI contract period.

A combination of all these factors has prompted the development of this project which would enable further capital investment in the lighting stock to minimise the risk of structural failure and electrical breakdown of the oldest columns and to achieve further quality improvements to bring the lighting up to modern standards.

Only with a PFI or through Prudential Borrowing can significant and early improvements in lighting standards be achieved. Prudential Borrowing could be utilised to improve the existing stock but would require the Council to fund all the costs of improvements. The PFI would enable a comprehensive investment programme to be undertaken to achieve the relevant modern standards and a long term service delivery arrangement would afford the opportunity for much of the cost to be met by Government grant. The service provision would be transferred to a private sector contractor.

The injection of substantial Government funding, if awarded, makes the PFI option the more affordable solution.

Due to the complexity of PFI projects and the specialist skill and experience required to develop such projects, a need to appoint financial, legal and technical advisors with specific experience of Street Lighting PFI has been identified. The wider commercial perspective and relevant experience offered by external PFI advisors is currently not available in-house. It is not the intention however to rely exclusively on external advice and employees would consider and record all the skills inputs, which would be required and would identify in-house skills and expertise before defining the precise role to be played by the external advisors.

All external advisors would be expected to work alongside the in-house team, supplying those competencies and capacities not available within existing Council departments. This complementary sharing of responsibilities would not only be more economic but also enable the in-house team to acquire specialist knowledge and skills for the future so that in the event of any subsequent procurements there is less dependence on external advisors.

A tendering exercise was undertaken and of three companies that were asked to bid, one declined due to a conflict of interest. Two tenders were received and evaluated against criteria agreed by the Project Team, which focused on experience, quality, capacity, availability, accessibility, price and best fit with in-house resources. Derek Rogers Associates, who have significant experience in delivering Street Lighting PFI Projects, were subsequently appointed.

During the development of the EOI, Deloitte provided external financial advice to the project. On obtaining approval by the DFT to proceed to the development of the OBC, a competitive process involving an evaluation of detailed proposals from two firms with specialist PFI Street Lighting experience and relevant financial expertise was undertaken by the project team. The proposals were evaluated against criteria, which focused on experience, quality, capacity and price and PricewaterhouseCoopers were appointed.

A tendering procedure was undertaken with an advert being placed in the Law Society Gazette (legal journal) for legal advisers. Nine expressions of interest were received and, after a preliminary evaluation, 5 were invited to submit formal tenders and attend a meeting to present their proposals to a panel made up of representatives from the project team. Following this exercise, Hammonds were assessed as providing the Most Economically Advantageous Tender (MEAT) and were therefore appointed.

The Cabinet noted that, having considered the report submitted, Scrutiny Board (3) had endorsed the recommendations proposed in it.

RESOLVED that the City Council be recommended to:-

- (1) Approve the submission of an Outline Business Case (OBC), based on a Fast Track Solution, as outlined in section 4.4.3 of the report submitted to the Department for Transport (DfT) for funding approval.**
- (2) Approve the commencement of the procurement process for the Street Lighting PFI Project, subsequent to the approval of the OBC by the DfT.**
- (3) Note that further reports will be brought to Cabinet and Council seeking approval at the key procurement stages.**
- (4) Approve the appointment of external advisors for this project, the cost of which is to be contained within the project development budget, that is, PricewaterhouseCoopers (PWC) as financial advisors, Derek Rogers Associates (DRA) as technical advisors and Hammonds as legal advisors for the purposes indicated in paragraph 4.6 of the report submitted.**
- (5) Delegate authority to the PFI Street Lighting Project Board to approve any minor changes to the OBC.**

Private Business

234. Street Lighting PFI – Outline Business Case

Further to Minute 230 above, detailing related public aspects of this matter, the Cabinet considered a joint report of the Director of City Services, the Director of Finance and ICT and the Director of Legal and Democratic Services, which summarised the progress on the Street Lighting Private Finance Initiative (PFI) project; showed the options appraised; and sought permission to submit an Outline Business Case (OBC) to the Department for Transport (DfT) by no later than 30th March 2007. The Cabinet noted that Scrutiny Board (3) had considered this report at their meeting held on 7th March 2007.

The report detailed the proposed terms of contracts, along with the financial implications of the proposed development.

The Cabinet noted that, having considered the report submitted, Scrutiny Board

(3) had endorsed the recommendations proposed in it.

RESOLVED that the City Council be recommended to:-

- (1) Approve the submission of an Outline Business Case (OBC), based on a Fast Track Solution, as outlined in section 4.4.3 of the report submitted to the Department for Transport (DfT) for funding approval.**
- (2) Approve the commencement of the procurement process for the Street Lighting PFI Project, subsequent to the approval of the OBC by the DfT.**
- (3) Note that further reports will be brought to Cabinet and Council seeking approval at the key procurement stages.**
- (4) Approve the appointment of external advisors for this project, the cost of which is to be contained within the project development budget, that is, PricewaterhouseCoopers (PWC) as financial advisors, Derek Rogers Associates (DRA) as technical advisors and Hammonds as legal advisors for the purposes indicated in paragraph 4.6 of the report submitted.**
- (5) Delegate authority to the PFI Street Lighting Project Board to approve any minor changes to the OBC.**

Report to
Cabinet and Council

20 March 2007

Report of
Chief Executive, Director of City Development, Director of Community Services, Director of Finance and ICT and Director of Legal and Democratic Services

Title
Wood End, Henley Green and Manor Farm – New Deal for Communities (WEHM-NDC)
Regeneration Proposals – Henley Ward

1 Purpose of the Report

- 1.1 The report refers to the major regeneration proposals for the Wood End Henley Green and Manor Farm – New Deal for Communities (WEHM-NDC) area of the City and presents the outcome of negotiations between the Stakeholder Partners (Whitefriars Housing Group, the Coventry NDC and the Council) and the preferred developer (BKW). It presents a proposed scheme of development and regeneration, along with associated contractual, commercial, financial, property and community implications.

2 Recommendations

- 2.1 Agree the phased development scheme described at section 5 of the report and displayed in plan form at the meeting.
- 2.2 Note the Master Development Agreement (MDA) between the Developer (BKW) and Whitefriars Housing Group (WHG) which will be the principal contract governing the development.
- 2.3 Authorize the Council to execute the Stakeholder Agreement between the Council, Whitefriars Housing Group and the Coventry New Deal for Communities (or its successor body: Moat House Community Trust).
- 2.4 Authorize the Council to execute the conditional Direct Agreement (DA) between the Council and BKW, relating to the contractual obligations for the sale of land and other matters connected with preparation to administer a Compulsory Purchase Order on behalf of BKW.
- 2.5 Approve the sale to BKW of the site of the former Deedmore School at open market value on terms detailed at paragraph 6.4 and 9.15 subject to Department for Education and Skills (DfES) consent.

- 2.6 Approve the disposal to BKW of land and buildings at nil consideration in support of the regeneration objectives of the scheme. This disposal is at less than best consideration and is under the General Disposal Consent (England) 2003.
- 2.7 Approve the disposal of nine hectares of the above land, which is currently held and managed as public open space and follow the statutory process for such disposal contained in the Local Government Act 1972.
- 2.8 Approve the use of land to the north of the WEHM-NDC area for floodwater balancing purposes, for the reasons detailed at paragraphs 9.11 to 9.14.
- 2.9 Authorize appropriate officers, after consultation with existing leaseholders, to issue to BKW a licence to undertake works, to the satisfaction of the Environment Agency, relating to water balancing and flood mitigation on land to the north of the WEHM-NDC area, as referred to at 2.8 above.
- 2.10 Authorize the reinvestment of Right To Buy receipts, secured under the terms of the Stock Transfer Agreement between the Council and Whitefriars Housing Group, from new RTB applications in the NDC area for those properties included in Phase 1, so far as this is required to achieve the target number of replacement social housing units within the NDC area, as described in paragraph 8.9.
- 2.11 Approve the proposed arrangements for sharing any future land value and/or overage generated by the scheme, both between BKW and the stakeholders and between the three stakeholders, as set out at paragraph 8.10 of the report.
- 2.12 Approve the proposed Displaced Owners Scheme and the financial consequences for the stakeholders, including the Council, as described at paragraphs 8.2 to 8.5.
- 2.13 Note the intention to submit a further report relating to the need to make a Compulsory Purchase Order, upon an outline planning permission being obtained by BKW.

The Council is recommended to:

- 2.14 Approve the above recommendations, as modified by the Cabinet, and authorize the documents required to give effect to resolutions arising from this report, on behalf of the Council.

3 Information/Background

- 3.1 This major housing-led regeneration project has been in preparation for several years. Previous reports have been made to the Cabinet on various aspects of the project, the most significant being:
 - Cabinet – 14 April 2004, which endorsed the NDC led Masterplan process to date and agreed the principle of pooling land assets at nil cost.
 - Cabinet – 5 April 2005, which approved the issuing of an invitation to submit outline proposals (ISOP) to short listed developers.
 - Cabinet – 18 October 2005, which endorsed the selection of Bovis, Keepmoat and Westbury (BKW) consortium as the preferred developer, appointed two Council directors to the Project Board and made budgetary provision to move the proposals forward.

3.2 Key milestones in the development of the project to date:

Table 1: Key milestone in the NDC scheme

Date	Milestone
March 2001	Council became Accountable Body for NDC
July 2001	NDC awarded £54m GOWM funding
April 2003	Masterplanners selected
April 2004	Development framework published
April 2005	ISOP published and issued
July 2005	Developers submissions returned from three consortia
October 2005	Selection and appraisal concluded Cabinet approval of BKW as Preferred Developer
March 2007	Financial and Contractual Close

3.3 The proposed scheme will depend on key inputs and outputs as follows:

Scheme inputs

- Whitefriars - contributing 73% of the land within the Masterplan area.
- Council - contributing 27% of the land including the two shopping centres (Broad Park Road & Dr Philips Centre) operational premises (Neighbourhood Management Office, Children's Services Office, Adventure Centre and Deedmore School Site) and other open space and leisure land.
- NDC – use of GOWM allocation to fund Masterplanning and procurement costs. This aspect of grant support to NDC expires on 31 March 2007.
- BKW - investing circa £350m generated from the sale of approximately 2,400 new properties, which will be constructed on the land provided by Whitefriars and the Council.

Scheme Outputs

In return for the land provided free of charge by Whitefriars and the Council, BKW will provide the following:

- A redevelopment project over two phases, taking at least 15 years.
- Demolition of 1,907 properties.
- 1,000 new social housing units for rent provided free to Whitefriars.
- 20 additional new social housing units on the Deedmore School site provided at 50% discounted price to Whitefriars, or another RSL
- 2,378 new properties for private sale.
- 138 properties sold at a 50% discount to enable existing owner-occupiers to stay in the area.
- Green space enhancements and play provision, as detailed in a Section 106 Agreement, to be negotiated as part of the planning process.
- New commercial retail centres to replace those lost as part of the scheme, subject to overall scheme viability.
- New and upgraded street scene (road surfaces, footpaths etc).

In addition, the following will also be provided as part of the programme to regenerate the area:

- A capital receipt for the Council of at least £3.0m for the Deedmore School site (subject to DfES approval for building on a school site including playing field and statutory consultation) that will part fund a new Broad Spectrum Special Primary School in the area.

- A Leisure & Neighbourhood Centre, funded largely by the NDC.
 - 350 retained refurbished Whitefriars properties.
 - It is expected that the stakeholders and BKW will also receive overage, i.e. cash return from the increase in property values above those assumed at the commencement of the scheme. However the extent and timing of the overage will depend on the success of the scheme.
- 3.4 Since the most recent major report on this subject, in October 2005, the stakeholder partnership and its retained consultants have been working intensively on contractual and commercial negotiations, specific aspects of which are reported below under financial and legal implications.
- 3.5 The Project Board has been meeting monthly to oversee the project management, review the risk register and seek to resolve critical issues, both within the stakeholder partnership and between the stakeholders and BKW.

4 Strategic Purpose

- 4.1 The Council is a key stakeholder in this project, as it is a significant owner of land and property, both within the WEHM-NDC area and the extensive public open space, which surrounds the proposed development. Whilst the development will deliver its main regeneration impact through housing renewal, it will further many other aspects of the Council's strategic purpose, including: leisure provision, public open space enhancement, environmental improvement, as well as community cohesion and well-being.
- 4.2 The development proposals support the implementation of the Council's Housing Strategy, particularly its three core aims of:
- "Achieving housing growth to support wider regeneration and economic investment.
 - Rebalancing housing markets to stem decline and to establish new and more stable communities.
 - Improving pathways of choice for Coventry's people and to attract and retain newcomers."
- 4.3 In terms of central government and regional housing policy objectives contained in national planning guidance (importantly Planning Policy Statement 3) the Regional Spatial Strategy (Housing within the Major Urban Areas) and the Regional Housing Strategy (Urban Renaissance) the project presents opportunities to significantly contribute to:
- Widening the choice of housing types and tenures,
 - Introducing an improved mix and design of high quality homes across the housing market; and
 - Expanding the range of new purpose-designed housing for people who are vulnerable, or have disabilities in this part of Coventry.
- 4.4 The strategic need for physical, environmental and community regeneration in the WEHM-NDC area is evident to any person who visits this part of the City. The challenge is greater than public investment alone could meet. Private sector investment has the capacity to achieve the required transformational change into a viable and vibrant mixed community.
- 4.5 This massive private sector investment, coupled with substantial government funding via the NDC programme, will greatly enhance social and community infrastructure, including: enhanced green space, new play areas, much improved urban design character, as well as the major new Leisure and Neighbourhood Centre, details of which have been reported recently to Cabinet.

- 4.6 The proposed development is significant also in Planning terms, but the Planning Committee will deal with such matters at a later stage.

5 Proposal and Other Options to be Considered

Option 1 - Preferred Proposal

- 5.1 Major redevelopment of the WEHM-NDC area is required for the following reasons:
- To fulfil the commitment made to the community during Masterplanning consultation.
 - To radically change the physical, environmental and socio-economic character of this disadvantaged area of the City.
 - To reverse the terminal decline of the area and create a sustainable mixed community.
- 5.2 It is proposed that the redevelopment be undertaken in two major phases over a period of about 15 years. It is anticipated that BKW will submit an outline Planning application in late 2007 and that clearance and redevelopment will commence approximately two years later.
- 5.3 Members have been provided with a leaflet outlining the phased development proposals and plans will be displayed at the meeting. In summary the numbers of residential properties involved in the scheme are set out in the table below.

Table 2: Residential Property Statistics

	Phase 1	Phase 2	Total
Clearance			
WF homes cleared	666	1058	1724
Private homes cleared	62	121	183
Total to be cleared	728	1179	1907
New and refurbished			
New homes for sale	1217	1161	2378
Retained private homes	-	-	357
New homes for displaced homeowners	46	92	138
New homes for rent (WF)	399	601	1000
New homes for rent (WF/RSL) – Deedmore School site	20	0	20
Refurbished homes (WF)	-	-	350
Other homes for rent (other RSLs)	-	-	358
Estimated final number of homes	-	-	4601

Option 2 – Do Nothing

- 5.4 To undertake no regeneration whatsoever would be a grave disappointment to all stakeholders and, more importantly, to the community within the WEHM-NDC area. Expectations have been raised since the NDC was established in early 2001 and particularly during almost four years of Masterplanning and scheme preparation. Some of the consequences of taking no action would be:
- Terminal decline in the physical environment and social structure of an area, which already exhibits signs of severe deprivation.
 - Serious consequences for community safety and anti-social behaviour.
 - Pressure on the financial viability of Whitefriars Housing Group, as increases in void properties impact on maintenance costs and rental income.

- Substantial recent investment by the stakeholders, in particular the NDC, would be wasted, through lack of sustained economic and community regeneration.

Option 3 – Moderate Redevelopment

- 5.5 It would be possible to undertake less radical redevelopment, by selective clearance of sites, which could be parcelled off to various developers. Potential disadvantages, however, of such an approach could be:
- Delay caused by the need to review and cost an alternative approach.
 - The renewal would be piecemeal rather than regenerative and transformational.
 - The opportunity for urban design coherence and the creation of a sense of place would be lost.
 - Such a scheme would not reflect community expectations that were distilled through Masterplanning consultation.
 - Partial renewal has been undertaken in this area in the past, with only limited and temporary success.
 - It would be less likely to achieve the dramatic change in public perception of the area required to attract new homebuyers and create a true mixed community.

6 Legal and Contractual Issues

- 6.1 Whitefriars Housing Group Limited will implement this regeneration project, in conjunction with its selected building consortium developer BKW. The Council has been asked to support the project with land assembly using compulsory purchase powers and including Council land as identified in section 9 of this report.

Vires

- 6.2 In order for the project to proceed, the Council must satisfy itself that it has the powers to support the project with the inclusion of land at nil cost. The Council's powers for this are the Local Government Act 1972, in particular the General Disposal Consent 2003. The disposal at nil value represents a disposal at less than best consideration, as the Council's property has an existing asset value of £494,517 and there is a limited amount of land that could potentially be developed in isolation in a "no scheme world". However, we are satisfied that the disposal can be justified under the General Disposal Consent 2003, which provides for such disposals to secure the promotion and improvement of the economic, social, or environmental well-being of the area. The overage provisions of the agreement with BKW will deal with any increase in development value subsequent to the disposal.
- 6.3 Underpinning the use of these powers are the following matters:
- The objective of regeneration in Wood End Henley Green and Manor Farm.
 - The provision of 1,000 new social housing units for Coventry. Those not used for 'decanting' existing residents will be let through the new Choice-based Lettings arrangements being introduced later this year.
 - There will be economic regeneration associated with the project.
 - There will be significant social and amenity benefits to the inhabitants of Wood End, Henley Green and Manor Farm.

- 6.4 The Council will receive best consideration under Section 123 of the Local Government Act 1972 for the disposal of the site of the former Deedmore School, which was not included with the tender disposal and has been the subject of separate negotiations between the Council and BKW.
- 6.5 The legal structure of the property transaction is complicated and the Council has appointed external legal advisors Mills and Reeve to support the Council in the documents to which the Council is a party.
- 6.6 Mills and Reeve has given the Council a report on the interlinking of the documents and a resume of risks.
- 6.7 The Council has considered its overall involvement in the project, in terms of its financial and land inputs as referred to in paragraph 9.16 (asset and development values) of this report, and is satisfied that, in so far as the Council's position is concerned, there is no state aid implication.

Structure of documents

- 6.8 **Master Development Agreement (MDA)** between Whitefriars and BKW is the overarching agreement, which sets out the conditions to be satisfied and the terms upon which the phased construction takes place followed by the land transfers – the conditions relate to planning and compulsory purchase to achieve vacant possession.
- 6.9 **Phased Development Agreement (PDA)** between Whitefriars and BKW is the agreement will be entered into for the particular phase once the conditions are satisfied.
- 6.10 **Stakeholders Agreement (SHA)** between the Council, Whitefriars and the NDC contains the obligations of the Council and Whitefriars for the transfer of land to BKW as and when the affordable housing units are constructed, the decanting of tenants by Whitefriars, approval of any changes to the agreed scheme and management of the project by Whitefriars. It also includes the overages provisions between the three parties detailed in paragraph 8.10.
- 6.11 **Direct Agreement (DA)** between the Council and BKW contains the obligations to comply with the MDA and SHA, the transfer of land and the sale of Deedmore Site, the Wyken Slough flood plain solution and the obligation to obtain Council approval to make a Compulsory Purchase Order for Phase 1.
- 6.12 **Compulsory Purchase Agreement Indemnity Deed (CPO deed)** between the Council and BKW is a conditional agreement to make a compulsory purchase order for Phase 1. The agreement obliges BKW to pay the administration costs up to a cap of £250,000 and all the acquisition costs for the properties involved, including any Blight arising from the CPO.
- 6.13 **Section 106 Agreement (s106agmt)** between the Council and BKW will be the subject of a report to Planning Committee following submission of an application for planning permission for the whole development from BKW. Initial discussions on planning have identified that there will be contributions required from BKW for the future maintenance of open space after it has been laid out to an agreed specification by BKW and possibly for off-site highways works.

- 6.14 All the documents are complex and the Council has endeavoured to ensure that, whilst entirely supportive of the project, its contribution is limited to the identified land and financial contributions identified in this report.

Village green

- 6.15 As Members may be aware, a group of residents from the Henley Green area has made an application to have an area of land, which is incorporated in the Masterplan, registered as a Village Green.
- 6.16 The Council is the 'Registration Authority' for this purpose, placing it under a duty to determine the application. In that capacity it has appointed an independent barrister to act as an Inspector at a non-statutory Public Inquiry due to be held from 7 to 15 June 2007 inclusive.
- 6.17 The Council is also the landowner and, in that capacity, has engaged a specialist barrister to represent it at the Inquiry, to 'defend' the application, as, if the application were granted and the land registered as a Village Green, it would become 'sterile' land in terms of any future use and would also substantially affect the proposed regeneration scheme.
- 6.18 The developer is also separately represented and has engaged specialist Counsel to 'defend' the application.
- 6.19 Once the Inspector has heard all the representations at the Inquiry, it is anticipated he will take some time to reflect and produce a report, with his recommendations as to registering the land as a Village Green. That report will then form the basis of a report to the Planning Committee, in whose remit the decision finally rests.

7 NDC Masterplan Scheme Affordability

- 7.1 A financial model that forms part of the MDA has been constructed to determine whether the scheme is affordable and will provide sufficient return to BKW to enable the project to proceed. The model includes amounts derived from the sale of the new properties, against which are set the costs of the project.
- 7.2 At this point in time the Phase 1 forecast financial model is viable on a total scheme value of £350m, after allowing for the reduction in Whitefriars' Phase 1 units as explained in paragraph 8.6.
- 7.3 At this stage, the financial model shows that Phase 2, which is forecast to commence in 8 to 10 years time, is not viable. It is difficult to determine the viability of Phase 2 given that its initiation is so far in the future, but it is anticipated that a successful Phase 1 will ultimately make Phase 2 viable as the scheme progresses. This will be dependent on the availability of land, which is currently subject to the Village Green application, and sales values increasing faster than building costs.
- 7.4 A financial model will be used to assess viability of the scheme at several key milestones during the scheme. Officers will constantly review the financial model as the scheme progresses for any changes in assumptions that may affect the continued viability of the scheme. Officers will report back to members at appropriate stages.

8 Financial and Related Issues for the Stakeholders

- 8.1 The following issues with a direct, or indirect financial impact have been agreed between the stakeholders (subject to Cabinet/Council approval) in order to make the scheme deliverable. These issues relate to the allocation and acceptance of risk in relation to benefits and costs generated by the scheme.

Displaced Owners Scheme (DOS) equity share and rent loss

- 8.2 BKW is providing 138 units at a 50% discount to owner occupiers whose homes are demolished as part of the scheme. The remaining 50% stake in the Displaced Owners Scheme (DOS) will be held by the stakeholders. When the owner occupier dies, or sells their house, their 50% cash stake will be paid to them and the remaining 50% cash stake will be paid to the stakeholders.
- 8.3 Whitefriars will lose rent during the decant and build period as its stock is removed and replaced at a later date. This rental income is required to meet operating costs and debt repayments on the loans that Whitefriars has drawn down to fund Decent Homes improvements. Failure to agree a mechanism to cover the rent loss would prevent Whitefriars participating in this scheme and, consequently, the physical regeneration of the WEHM area, including the housing renewal element of the scheme, would not take place.
- 8.4 Whitefriars, therefore, will receive the cash generated from the release of the stakeholders' 50% equity share held in the DOS for Phase 1, in order to fund Phase 1 rent loss. The actual timing and amount of this cash release will depend on when the owner occupier dies, or moves on.
- 8.5 Prior to commencement of Phase 2, if Whitefriars can demonstrate that it will lose rent in Phase 2 on the same basis as Phase 1, then it will be provided with the DOS equity stake cash from Phase 2.

Securing Phase 1 financial model viability at MDA

- 8.6 Phase 1 viability has been secured at MDA by reducing the number of social housing units delivered to Whitefriars in Phase 1 and by accepting a different mix of property type and size. This enables more units in Phase 1 to be sold on the open market instead of being provided to Whitefriars free of charge (in return for its land).
- 8.7 The reduction in the number of social housing units delivered to Whitefriars in Phase 1 leaves Whitefriars with additional rent loss cost. This will be met by an increase of £600k in the contribution from the City Council's Strategic Housing Regeneration Fund to a new Whitefriars housing development in Alderman's Green that will provide property that can be used to rehouse tenants being displaced by the NDC demolition programme.
- 8.8 The MDA provides for both the number of social housing units and the mix to be altered if additional external funding can be secured. The Housing Corporation has indicated a willingness to be involved in the scheme and to provide additional finance. Appropriate bids will be made, therefore, as part of the Housing Corporation 'bidding-round' beginning in June.

Additional Right to Buy (RTB) properties

- 8.9 New RTBs occurring in the NDC area from April 2006 will require additional CPO costs to be paid out through the scheme, because these will not have been provided for in the financial model. In order to maintain the viability of the financial model for Phase 1, these additional costs would be offset by a reduction in the number of social housing units delivered through the scheme, unless an alternative mechanism was found. A reduction in the number of social housing units delivered can be avoided if the Council grants back its share of the receipts for these additional Phase 1 RTBs (and only these units) that it would have been paid under the Stock Transfer Agreement. Whitefriars will use these funds to retain the number of social housing units delivered through the Phase 1 via a payment to BKW equal to additional CPO costs.

Overage and land value

- 8.10 It is expected that the stakeholders and BKW will receive overage, i.e. cash return from the increase in property values above those assumed at the commencement of the scheme. The extent and timing of the overage, however, will depend on the success of the scheme after the commencement of Phase 1. It is also possible that the stakeholders will receive land value, i.e. a cash return arising due to improvements in the scheme economics between MDA and the first PDA.
- 8.11 The financial model and legal agreements provide for a specified level of return to BKW from the scheme. Once BKW has achieved its required level of return, the stakeholders will split overage above this level 50:50 with BKW.
- 8.12 Scheme returns paid to the stakeholders will be used initially to contribute towards improving the housing mix of the scheme and reinstating the social housing and SHRF contribution required to secure Phase 1 viability (described in paragraphs 8.6 to 8.8). At the end of Phase 1, if Phase 2 is in deficit, the stakeholders will have the option to roll forward overage to make Phase 2 viable. Any excess returns of up to the first £9m of overage/land value will be split equally between the Council, Whitefriars and NDC. Thereafter overage/land value will be split equally between the Council and Whitefriars.

Continuing Council Project Management Costs

- 8.13 The Council has approved capped funding of £150k per annum as its contribution to costs incurred by Whitefriars in leading the management of the scheme on behalf of the stakeholders. This will be matched by a similar contribution from NDC (until 2011) and from Whitefriars. In addition, £50k has been approved through the PPR process to fund the Council's in-house project management costs.

9 Land and Property Issues

- 9.1 The WEHM-NDC Masterplan covers an area of 174 hectares (430 acres). The Council owns approx 73 hectares (42%) of the land, most of which is open space and Green Belt around the Sowe Valley, but also includes Housing Association ground leased developments and some commercial properties. Whitefriars owns the majority of the remaining 101 hectares (58%) of housing and vacant housing land, although there are 540 owner-occupiers within the area.
- 9.2 Approx 68 hectares (36%) within the area will be transferred to BKW for housing redevelopment. In land ownership terms this is made up as follows:

Land to be Redeveloped

	Hectares	
Whitefriars	40	59%
Council	15	22%
Highways	9	13%
Private (home-owners)	<u>4</u>	<u>6%</u>
Total	68	100%

Ownership of Redeveloped Land on Completion of Scheme

Whitefriars	20 (land returned with 1000 new homes)	29.5%
Council	1 (play areas etc. approx.)	1.5%
Highways (assume)	9	13%
Private	<u>38</u>	<u>56%</u>
Total	68	100%

- 9.3 In addition to this, Whitefriars retains 24 hectares, mainly in Henley Green, where stock is to be retained and refurbished. Whitefriars total ownership on completion of the development will be around 25%, whilst private housing will occupy approximately 22% of land in the NDC area.
- 9.4 In keeping with Mixed Communities objectives, the scheme will effect a dramatic shift in housing tenure from the current ratio of social to private of 82:18 to a position on completion of the scheme of 54:46 by area (38:62 by numbers of dwellings).
- 9.5 The principle of disposal of the council's land at nil consideration in return for the regeneration of the WEHM-NDC area was approved by Cabinet on 14 April 2004.
- 9.6 To dispose of public open space, the Council must comply with the provisions of the Local Government act 1972, which require public advertisement of the intention to do so and invitation of objections. If no objection is received then the Council is free to dispose. If objections are received then the decision to dispose, or not, is made by GOWM, on behalf of the Secretary of State for Communities and Local Government (DCLOG) in the light of the objections made.
- 9.7 The Council land comprises:
- Nine hectares of open space, of which only a small proportion is Green Belt. Three hectares of the open space is currently the subject of an application for Village Green status by the local community, which if successful would prejudice future development. The remaining six hectares are formal public open space.
 - 2.2 hectares of Education land – the former Deedmore Road School and the Venny adventure Centre in Milverton Road.
 - Approx four hectares comprising commercial and operational property. This includes:

Phase 1

- Wood End Community Centre and Family Support Centre, Hillmorton Road.
- NDC offices, Hillmorton Road.
- Caradoc Hall car park.

Phase 2

- Hillmorton Road and Broad Park Road shopping parades, let to retail tenants, community uses, a Doctors Surgery and a public house.
- 2 – 12 Honiley Way occupied by Mediation and Parent Support Service and Social Services offices.
- Binswood Close flats; 16 properties let on 99 year leases.
- Five sites leased to Orbit Housing and one to Focus Housing.
- 2 Ellacombe Road; former Doctors Surgery, but now in residential use.

The Council also leases property 1 – 11 Honiley Way from Whitefriars, for Neighbourhood Management offices.

- 9.8 The Council owns the freehold of the commercial properties at Hillmorton Road and Broad Park Road and the majority of these are let on short-term tenancies, although there are some 99-year leases. As some of the leases end within the project timetable, there may be an opportunity to use landlord and tenant powers to obtain vacant possession of some of the commercial properties and this will reduce the overall site assembly costs. Collectively, they produce an annual rental income of £28,345 pa. By comparison to other shopping parades in this area of the City, this is an extremely low income and there is little prospect of increasing this level. It is intended to relocate the tenants where possible, although rents in new replacement shops will be approx 4x higher.
- 9.9 Over the whole scheme there are currently 183 privately owned houses on land required for redevelopment, of which 62 are in Phase 1 and 121 are in Phase 2. These properties also will have to be acquired.
- 9.10 Some of the above will be re-provided in the new development by:
- Relocating all of the NDC operational and community uses, on rents and terms to be agreed, to the Neighbourhood and Leisure Centre, to be largely at NDC's cost on the site at the corner of Deedmore Road and Winston Avenue.
 - Replacing, or refurbishing the Broad Park Road shops and public house at BKW's cost. This retail area is designated as a local shopping centre in the Coventry Development Plan and therefore needs to be retained, or re-provided.
 - Seeking to replace the Hillmorton Road shops at BKW's cost with a new facility in this locality, subject to market demand. Replacement of the Doctors Surgery currently within this shopping parade will be the subject of discussions with the PCT.
 - The Orbit and Focus housing associations will be responsible for any replacement housing stock, which they might require, and securing sites for that purpose.
 - Caradoc Hall car park, currently leased to Coventry University, will be disposed of to BKW as part of its proposed purchase of the University's Caradoc Hall student residence. The site will then form part of the Manor Farm redevelopment in the latter stage of Phase 1.
 - NDC has identified a site for replacement of the Venny youth facility and has reported separately on this matter to Cabinet.

Land Required for Flood Water Balancing

- 9.11 Recent investigations commissioned by Arup, on behalf of BKW, into 1 in 100 year flood extent including climate change indicates an impact of up to four hectares reduction in land available for development. Further hydraulic modelling has been undertaken in order to identify water flow controls and off-site engineering works to the north of the WEHM-NDC area around Wyken Pool, which would mitigate this problem. A specialist consultant, JBA Consulting, has discussed these proposals with the Environment Agency, which agrees that the proposals would be beneficial to this scheme and to a wider area, by reducing 100-year flood levels along the whole of the River Sowe.
- 9.12 The Council owns the land concerned and its permission would be required for such works to be undertaken at BKW's expense. This could be achieved by means of a licence to enter the land to undertake the required works, backed by an indemnity agreement to ensure that no cost fell to the Council. This land is designated a Local Nature Reserve and currently is leased to Warwickshire Wildlife Trust, which will be consulted on the proposed works.
- 9.13 Jacobs has reviewed the report from JBA Consulting and, amongst other observations, points out that the increased volume of the water body, after flood mitigation works, would be subject to the Reservoir Act and, therefore, must be designed by a Reservoir Panel Engineer. Also compliance with this Act will demand expenditure on regular surveys and reports. Clearly the Council would require indemnity from BKW also for any inspection and maintenance costs arising from the use of its land for this purpose.
- 9.14 Further examination is required, but the Council is asked to agree to this approach in principle, subject to appropriate officers being satisfied as to the technical, contractual and financial aspects of this matter.

Former Deedmore School Site

- 9.15 This prominent Council owned site on Henley Road was not included in the redevelopment area at the time of tendering. BKW subsequently identified it as essential to achieve a "gateway" development to establish confidence in the area's housing market. Whitefriars also now relies on this site to provide an initial supply of housing to facilitate its decant programme. Disposal to BKW, therefore, has been agreed at £3.0m, index-linked to the date of disposal and with overage provisions, representing full market value for the site. The Council will receive all of the capital receipt and 100% of the stakeholders' share of any overage from this site, unlike the overage share arrangements for the rest of the development.

Asset and Development Values

- 9.16 Excluding the Deedmore site, the Council owned land to be developed is valued on the Asset Register at £494,517. In terms of development value, excluding the Deedmore and Village Green sites, the loss to the Council by disposing at nil value, assuming all of the land is developed for housing, is theoretically around £13m. However, as most of the Council land can only be developed comprehensively in conjunction with Whitefriars' land, and Whitefriars cannot fund the required replacement social housing (estimated cost £55m) to achieve this, the development value is lost. Development in the Green Belt, on open space and on education land would not be acceptable in the absence of a comprehensive regeneration scheme and the remaining vacant Council-owned land is unlikely to be of interest to developers in isolation. This disposal at nil value, therefore, is in accordance with the well-being provisions of the Local Government Act 2000.

10 Other Specific Implications

	Implications (See below)	No Implications
Best Value	✓	
Children and Young People	✓	
Comparable Benchmark Data		✓
Corporate Parenting		✓
Coventry Community Plan	✓	
Crime and Disorder	✓	
Equal Opportunities	✓	
Finance	✓	
Health and Safety		✓
Human Resources		✓
Human Rights Act		✓
Impact on Partner Organisations	✓	
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management	✓	
Property Implications	✓	
Race Equality Scheme		✓
Risk Management	✓	
Sustainable Development	✓	
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact	✓	

10.1 Best Value

Prospective developers and consultant advisors were procured by a rigorous tendering procedure to ensure best value. The fundamental concept of the project is based on major regeneration being achieved mainly through substantial commercial sector investment, with relatively modest public expenditure.

10.2 Children and Young People

The Masterplan addresses improved facilities and services for children and young people including play, recreation, training and employment opportunities. The scheme creates an opportunity to dispose of a redundant school site and secure a substantial capital receipt, to be invested in a new Broad Spectrum Special Primary School within the area.

10.3 Coventry Community Plan

The Masterplan makes a significant contribution to the Coventry Community Plan 2005 – 2010 and in particular the aims of:

- “Improving the quality of life for people in the most disadvantaged neighbourhoods” and
- “To close the gap between the quality of life experienced in the city’s most and least disadvantaged deprived neighbourhoods”.

The Masterplan also contributes to other aspects of the Community Plan including: housing, employment, transport, environment, community safety and equalities.

10.4 Crime and Disorder

As well as activities and programmes promoted by the NDC aimed specifically at community safety and crime and disorder issues, Secured by Design principles will apply to the proposed development. Site security during the extensive period of redevelopment will provide increased levels of supervision of the area. This will be achieved by close partnership working by Community Safety Team, Police, Fire Service, Whitefriars and BKW. All partners will follow an agreed protocol to include early demolition where possible and information sharing and clear agreed time parameters for action on reported problems and areas. This could be coordinated through the Safer Neighbourhood Groups, or the Multi Agencies Task Team.

10.5 Equal Opportunities

This regeneration is intended to improve living conditions and quality of life of all residents of the WEHM-NDC area, which is amongst the most disadvantaged areas of the City. Extensive community engagement has been undertaken and will continue throughout the life of the project.

10.6 Finance

Detailed financial implications are provided at sections 7 and 8 of the report.

10.7 Impact on Partner Organisations

Partnership is inherent to this project. It is being overseen by a stakeholder partnership, made up of the Council, Whitefriars Housing Association and the NDC. Long-term success of the regeneration will depend on establishing and maintaining a positive partnership with the preferred developer.

10.8 Legal Implications

Detailed legal and contractual implications are provided at section 6 of the report.

10.9 Neighbourhood Management

This Masterplan addresses the needs of one of the most disadvantaged neighbourhoods in the City and should also have a positive impact on adjacent neighbourhoods. The “mixed communities” approach should help to bring an improved tenure balance into the area. The NE Neighbourhood Management Office will be relocated as part of the Masterplan and this will create opportunities for joint working and collaboration with other services.

10.10 Property Implications

Detailed land and property implications are provided at section 9 of the report.

10.11 Risk Management

A detailed Project Plan and a Risk Register have been developed jointly by the Stakeholders' Project Team. Both of these key documents have been and will continue to be updated frequently, with exception reports presented to the Project Board. The Cabinet Member Advisory Panel will continue to monitor project progress and consequent changes to the Risk Register.

10.12 Sustainable Development

All aspects of sustainable development are being addressed in this project including: sustainable transport, environmental protection and enhancement, local provision of community facilities and services, sustainable design principles and energy efficiency. The Planning process will require the developer to prepare a Traffic Impact Assessment (TIA) and an Environmental Impact assessment (EIA). The MDA sets demanding targets on such matters as EcoHomes, which addresses a range of environmental impacts, including: energy, transport, pollution, materials, land use and ecology, and health and well-being.

The DCLG has designated this scheme as a Mixed Communities Pilot Project, which raises its profile with Government. This has resulted in direct input from the Commission for Architecture and the Built Environment (CABE) with a CABE Enabler assisting with design and sustainability aspects of the Masterplan.

10.13 Voluntary Sector – The Coventry Compact

Community engagement and partnership working with the voluntary sector are integral to the functions and purpose of the NDC. Such principles and ways of working will continue to inform all activity relating to this project.

11 Monitoring

11.1 During the life thus far of the NDC its community development work and Masterplanning have been overseen by the NDC Partnership Board, the membership of which is drawn from the stakeholder partner organisations and the local community.

11.2 During the preparatory stages of developing a viable scheme in conjunction with BKW, the work of the stakeholders has been directed by the Project Board, which has two members from each of the three stakeholder partners. The Council has been represented to date by the Director of Community Services and the Director of Finance and ICT.

11.3 A Cabinet Member Advisory Panel has been established to oversee the Council's interests in the project between formal reports to Cabinet and Council and give political guidance to officers during the negotiation of commercial and contractual issues.

Project Management

11.4 This long-term project will require management and monitoring throughout the period of implementation, which could last up to 20 years. BKW will make its own arrangements for management of the redevelopment process, though provisions within the MDA will govern certain aspects of these responsibilities. Similarly the stakeholders will have obligations to cooperate with BKW on aspects of estate management, including management of the decanting process, as well as overall project management of this large and complex undertaking.

11.5 The estimated costs of project management, both jointly by the stakeholder partnership and independently by the Council, are set out under paragraph 8.13.

12 Timescale

12.1 Detailed project plans have been maintained by the stakeholders and by BKW whilst the scheme has been developed and contractual and commercial negotiations have been underway. The table below contains best estimates of target dates for some of the key stages of the implementation programme.

Table 3: Implementation Programme - Key Stages

Date Best Case	Date Worst Case	Key Stage
March 2007	March 2007	Council and partners seek approval for proposed scheme
April 2007	May 2007	Council and partners execute contracts
Aug 2007	Sept 2007	BKW presents proposals to Council's Development Forum
Oct 2007	Nov 2007	BKW submits Outline Planning Application
Oct 2007	Nov 2007	Further report to Council for resolution to make a CPO
Feb 2008	April 2008	Resolution to grant outline permission
March 2008		End of GOWM 28 day referral period – no call-in
	Sept 2008	End of GOWM call-in procedure – call-in & PLI
April 2008	Oct 2008	Outline Planning Permission Granted
July 2008	Jan 2009	Approval of Reserved Matters for Phase 1A
Nov 2008	Aug 2009	CPO confirmed
March 2009	Dec 2009	CPO and land assembly concluded
June 2009	May 2010	BKW commences development at Phase 1A

- 12.2 With a scheme of this scale and complexity the Planning and CPO timetables are uncertain. The Stakeholder partners and BKW are determined to expedite all aspects of scheme implementation. Certain matters, however, are not within the control of any of the parties. Call-in of the planning application by GOWM and the consequent need to hold a Public Local Inquiry (PLI) can delay matters by up six months. Similarly the speed of the CPO process will depend on BKW's success in negotiating purchase of properties by agreement (PBA) and the extent of any resistance by property owners to the CPO. For these reasons the best and worst case prediction for development commencing on site varies by almost 12 months.
- 12.3 In the period between the signing of the legal documents and the completion of a Compulsory Purchase Order, BKW will begin the PBA process for privately owned properties required early in Phase 1. Also there will be an element of advanced demolition to clear sites ready for an early start when all the approvals are in place.
- 12.4 Provision of the Leisure and Neighbourhood Centre, which is a significant element of the regeneration proposals for the area, will commence on site towards the end of 2007 and is expected to be completed early in 2009.

	Yes	No
Key Decision	√	
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		√ Consideration by full Council on 20 March 2007
Council Consideration (if yes, date of Council meeting)	√ 20 March 2007	

List of background papers

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Papers open to Public Inspection

Description of paper	Location
1. Exhibition Boards	Cabinet meeting and various public locations previously.
2. Coventry NDC Masterplan Area Update (June 2006)	Distributed throughout the WEHM-NDC area and beyond.
3. Masterplan Development Framework Document HTA et al (April 2004)	Project Champions' Office
4. WEHM – ISOP (April 2005)	Project Champions' Office
5. BKW Tender Submission (July 2005)	Project Champions' Office
6. Homeowners Newsletter Issue 2 (April 2006)	Project Champions' Office





Coventry City Council

9.4.2

Public report

Report to

Licensing & Regulatory Committee
Scrutiny Board 3
Cabinet
Council

6th March 2007

7th March 2007

20th March 2007

20th March 2007

Report of

Director of City Services

Title

Licensing Act 2003 – Consultation on Revised Guidance

1 Purpose of the Report

- 1.1 The purpose of this report is to advise members of the contents of the consultation document (attached as Appendix A) and a proposed response to the Department of Culture, Media & Sport (DCMS) (attached as Appendix B).

2 Recommendations

- 2.1 Licensing & Regulatory Committee is asked to consider the DCMS document and draft response appended to this report and to forward its views to Cabinet for consideration.
- 2.2 Scrutiny Board 3 is asked to consider the DCMS document and draft response appended to this report and to forward its views to the Cabinet for consideration.
- 2.3 The Cabinet is asked to consider the DCMS document and the draft response, together with any comments from Licensing & Regulatory Committee and Scrutiny Board 3 and recommend to Council that it adopts the draft response, subject to any amendments that Cabinet may wish to make.
- 2.4 Council is asked to take account of the recommendations from Cabinet and approve the draft response appended to the report, amended as necessary in light of those recommendations.

3 Information/Background

- 3.1 The Licensing Act 2003 requires the Secretary of State to issue licensing guidance to licensing authorities on the discharge of their functions under the Act. Licensing authorities are required to have regard to this Guidance in carrying out their licensing functions, but may depart from it when they have reason to do so. It is

also important to note that the Guidance cannot override the requirements of primary or secondary legislation.

- 3.2 The Secretary of State first issued guidance in July 2004. The Department for Culture Media and Sport (DCMS) began a two stage review of the Guidance, with an initial review focusing on providing clarification or additions to the Guidance on relatively uncontentious issues raised during the transitional period. The initial review resulted in supplementary guidance that was published in June 2006.
- 3.3 This consultation forms part of the second stage of the Guidance review and seeks views on the revisions that DCMS propose to make.
- 3.4 Consultation has taken place with Responsible Authorities and members of the Licensing Forum. Their views and comments have been included in the attached Appendix B.

4 Proposal and Other Option(s) to be Considered

- 4.1 The DCMS Consultation document was released on 16th January 2007, giving local authorities 12 weeks to discuss and respond. Consequently the timescale is tight to review comments and seek approval through Council.
- 4.2 Any revised guidance issued by the Secretary of State following this consultation would not come into force until it is laid before parliament.

5 Other specific implications

	Implications (See below)	No Implications
Best Value		✓
Children and Young People	✓	
Comparable Benchmark Data		✓
Corporate Parenting		✓
Coventry Community Plan	✓	
Crime and Disorder	✓	
Equal Opportunities	✓	
Finance	✓	
Health and Safety		✓
Human Resources	✓	
Human Rights Act	✓	
Impact on Partner Organisations	✓	
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management		✓

	Implications (See below)	No Implications
Property Implications		✓
Race Equality Scheme	✓	
Risk Management		✓
Sustainable Development		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

6 Children & Young People

- 6.1 One of the licensing objectives is 'Protection of Children from Harm'. Applicants are required to show how they will address this objective in their operational schedule when making applications. The Coventry Safeguarding Children Board is the Responsible Authority consulted when applications are made. They have been made aware of the guidance review and have been consulted.

7 Coventry Community Plan and Crime and Disorder

- 7.1 Another of the four licensing objectives is 'prevention of crime and disorder'. The licensing policy acknowledges the Crime and Disorder Reduction Strategy and also gives information about proposed enforcement protocols with the police and other enforcement authorities. As a Responsible Authority the Police have been consulted.

8. Equal Opportunities & Human Rights

- 8.1 The decision making process of a Public authority must ensure that regard is had to the right of an individual to a fair hearing. The scheme of delegation reflects the Act's requirements for providing hearings and the Secretary of State's guidance; both of which have been certified by the government as complying with the Human Rights Act.

9. Financial Implications

- 9.1 Prior to the implementation of legislation Central Government made a Commitment to Local Authorities that fees would cover the costs of undertaking the Implementation of the Act..
- 9.2 An independent fee review (Elton Review) has recently been completed and has provided various recommendations to the Secretary of State. The Review identified that there has been an excess of cost over income during the implementation of the Act. They concluded that the total which should be refunded by Central Government to Local Government is £43m for the three year implementation period, 2004/05 to 2006/07.
- 9.3 The Review also recommends an increase in fees by 7% for a three year period up to 2009/10. Fees will continue to be set nationally and applied locally with the fee levels continuing to be based on the non-domestic rateable value.

9.4 Through the Council's PPR process £125k was allocated to cover the costs of setting up the new licensing functions. After the first year of premises licences being in force it is expected that income from the licences will match the costs of administration and enforcement.

9.5 The Government has not yet responded to the report and we await any decisions as to how Local Authorities may receive any monies due. The Review recommends allocating this as a specific grant.

10. Human Resources

10.1 Licensing duties are carried out by the Licensing Team located in Environmental Health. At present there is an additional officer in the team to meet the demands of new licensing functions. The long term size of the team will depend upon workload and set fee levels for the various licensing functions.

11. Impact on Partner Organisations

11.1 All Responsible Authorities and members of the Licensing Forum have been given the opportunity to comment on the guidance review.

12. Legal Implications

12.1 The Council will be required to have regard to any revised DCMS guidance when carrying out any licensing functions under the 2003 Act.

13. Race Equality Scheme

13.1 The Licensing Policy refers to the Council's Race Equality Scheme.

14. Monitoring

14.1 The licensing policy mentions a number of mechanisms for the licensing function to receive and give reports to other committees and authorities.

14.2 We will monitor the outcome of the consultation and incorporate into working practices once guidance has been updated.

15. Timescale and Expected Outcomes

15.1 The response must be with DCMS by 11th April 2007. It is proposed to obtain full Council approval on 20th March 2007.

	Yes	No
Key Decision		✓
Scrutiny Consideration (if yes, which Scrutiny meeting and date)	✓ Scrutiny Board 3 7th March 2007	
Council Consideration (if yes, date of Council meeting)	✓ 20th March 2007	

List of background papers

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Other contributors:
Mark Smith, Legal & Democratic Services ext 3037
Liz McSorley, Human Resources, City Services Directorate ext 2537
Elaine Tierney, Lead Accountant, City Services Directorate

Papers open to Public Inspection

Description of paper	Location
Licensing Act 2003	Environmental Health, Broadgate House
Licensing Act 2003 Guidance	

APPENDIX B

Licensing Act 2003 – Consultation on Revised Guidance

DCMS Question	Response from:	Summary of Responses	Appraisal of Issue	Response to DCMS
1. Do you agree that the current guidance on vicinity should remain unchanged	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Prefer that vicinity to premises remains unchanged as defining more may be restrictive.	Need to retain some flexibility in defining vicinity as affected areas may differ depending on local circumstances.	Agree
2. If not, what factors do you think should be considered and why	N/A			N/A
3. Do you agree that the current guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Incidental music is difficult to determine and further guidelines would always be useful. Volume would always be taken into consideration.	Guidance needs to be expanded to show factors that may apply, as shown at Section 3.21, but it would not be practicable to give too narrow a definition.	Agree
4. If not, please explain why and outline any alternatives	N/A			N/A
5. Do you agree that the current guidance on cumulative impact policies should remain unchanged	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	No areas at present where there was a need for adopting special policy. Aware if the situation was to change that this could be an option.	There are other options available to local authorities before applying special policies, these include initiatives such as Best Bar None and taxi marshals. Guidance as it stands makes it clear there must be an evidential basis for adopting a special policy.	Agree
6. If not, what amendments do you think should be made, and why	N/A			N/A
7. Do you agree that the pools of conditions in Annexes D-H should be: removed from the current guidance, but consider establishing an alternative source of good practice advice?	Police Environmental Health - Health & Safety and Environmental Protection	No		No

DCMS Question	Response from:	Summary of Responses	Appraisal of Issue	Response to DCMS
Or – Retain and updated/expanded as necessary	Police Environmental Health - Health & Safety and Environmental Protection	Prefer where possible for information relating to licences & conditions to be kept together with other guidance.	Guidance is always a useful tool for considering other options and it would be more useful to keep information at one point of reference	Agree - Retain pools of Conditions and update as necessary
8. Do you think that there are any other options that should be considered	N/A			No
9. Do you think that, if retained, there is a risk that the pools of conditions may increasingly be considered exhaustive and therefore inhibit the promotion of innovative conditions by the police, other responsible authorities and interested parties to address emerging problems? If so, why	Police Environmental Health - Health & Safety and Environmental Protection	No	Emerging problems will always need to be addressed, whether by conditions tried and tested or by providing innovative ideas	No
10. Do you think that the pools of conditions have value in promoting consistency and/or best practice.	Police Environmental Health - Health & Safety and Environmental Protection	Yes	Help in promoting best practice and consistency with other local authorities.	
11. Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Guidance will help but the issue of prejudicial interest is the factor that will always need to be taken into consideration. It was not considered to be soliciting for representations to notify Councillors of licensing applications.	Revised Guidance at Section 8.8-8.10 expands on Councillors decisions to make representations in their own right or for interested parties. A Councillors decision on prejudicial interest would be subject to the provisions of the code of conduct for members. The guidance emphasis the need for councillors to act in the interest of all their constituents. Councillors are made aware of applications through the members bulletin.	Agree
12. If not, please explain why and provide brief details of any alternative proposals.	N/A			

DCMS Question	Respondent	Summary of Comments	Appraisal of Comments	Response to DCMS
13. Do you agree with the proposed amendments to the guidance on authorisation of sale.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Clearer definitions are required to inform licence holders of their responsibilities. Would prefer that it was a legal requirement to put it in writing when responsibility is passed to other persons for authorising the sale of alcohol	Personal licence holders do not need to be on the premises at all times. Best practice would be that written authorisation should be given by a personal licence holder for the sale of alcohol	Agree with proposed amendments
14. If not, please explain why	N/A			
15. Do you agree that the guidance on variations should be amended as proposed.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Different types of variation applications. Variation of Designated Premises Supervisor and transfer of a licence are classed as minor variations and are easier to process. Any change to the premise licence regards hours or licensable activities is classed as a major variation.	Section 8.31 – 8.35 clarifies the difference between the types of applications and will delete the 'Major' from variation as this is misleading.	Agree with proposed amendments
16. If not, please explain why.	N/A			N/A
17. Do you agree that the guidance on evidence to support representations should remain unchanged.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Relevant representations are about the "likely effect of the grant of a premises licence on the licensing objectives." If making representations Responsible Authorities would provide evidence. Interested parties advised of evidence required.	Guidance does not restrict the licensing authority's discretion to give reasonable and appropriate weight to representations. As part of good practice we have produced an advice sheet for interested parties, which provides guidance on representations and evidence.	Agree
18. If not, please explain why.	N/A			N/A
19. Do you agree that it would be useful to add guidance on how licensing authorities might manage concerns about potential intimidation of interested parties.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Instances where Interested parties have raised concerns over intimidation in providing their name & address on representations. Interested parties can ask councillor or responsible authorities to speak on their behalf.	When parties make a representation the licensing authority would be able to make the decision about disclosing personal details. This would enable the licensing authority, as would be preferred, to provide applicants with street names only of persons making representations to satisfy they are in the vicinity.	Agree
20, If not please explain why.	N/A			

DCMS Question	Respondent	Summary of Comments	Appraisal of Comments	Response to DCMS
21. Do you agree that guidance on the control of nuisance/crime and disorder outside licensed premises should be clarified/expanded as proposed	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Licensing Act is to regulate licensable activities and is not for the general control of nuisance once individuals are away from the premises. Licensees should take reasonable measures to control drinking outside their premises. May be more problems when smoke free comes into force.	Unable to impose new conditions on licences already issued. Responsible Authorities are able to call a review and ask for conditions to be added. DPPO's in place to control consumption of alcohol in public places.	Agree
22. If not, please explain why.	N/A			N/A
23. Do you agree that the guidance on longer hours should be amended to reflect the Secretary of State's letter of 30 September 2005 and the current situation.	Licensing Authority Police Environmental Health - Health & Safety and Public Protection	Applications for longer hours should each be judged on their own merit. The guidance is not read as a presumption in favour of longer hours.	Revised Guidance provides clearer guidelines on hours of opening. The four licensing objectives are still the paramount consideration at all times.	Agree with proposed amendments
24. If not, please explain why and outline any alternatives.	N/A			N/A
25. Do you agree that chapter 11, explaining police powers to close premises, should be removed from the guidance and incorporated in specific and separate advice for police officers.	Licensing Authority Police Environmental Health - Health & Safety and Public Protection	The powers the police have is not a process that other responsible authorities would become involved. The Licensing Authority is made aware of closures through the magistrates court. The Local Authority must call a Review if a premise has been issued with a closure order.	As a non-statutory guidance it is not aimed at the local authority and would be better placed elsewhere.	Agree
26. If you do not agree, please explain why.	N/A			N/A
27. Do you agree that chapters 12 (sale & supply of alcohol to children) and chapter 14 (other offences) should be deleted from guidance.	Licensing Authority Police Environmental Health - Health & Safety and Public Protection	Offences relating to licensing are provided in the Act itself.	Repetition of information provided elsewhere.	Agree
28. If you do not agree, please explain why.	N/A			N/A
29. Are you happy with the overall format of the revised guidance.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Yes		Yes

DCMS Question	Respondent	Summary of Comments	Appraisal of Comments	Response to DCMS
30. If not, please explain why and what format you would prefer.	N/A			
31. Are there any other issues that you would like to see addressed in the revised guidance? If yes please specify.	N/A	N/A	<p>The current guidance is unclear and contradictory on the issue of the proper relationship between the Planning and Licensing regimes. On the one hand it suggests that the two are completely separate and on the other it suggests that applicants should have planning permission before applying for a premises licence.</p> <p>Guidance on the proper role of Responsible Authorities in the licensing process would be welcome. Whilst the role of some Responsible Authorities is obvious (e.g. the Police in relation to preventing crime and disorder), it is less so for others e.g. Planning and the Fire Authority following changes made by the Regulatory Reform (Fire Safety) Order 2005, which abolished the previous fire brigade inspection/fire certificate regime.</p>	<p>Further clarification is sought on para.3.51 on whether it is appropriate for a licensing authority to process a Premises Licence application where either a) the premises do not have planning permission for their proposed use or b) the proposed use would be outside time limits imposed by an existing planning permission?</p> <p>Clarification is sought, preferably with brief examples, on when it would be appropriate (or inappropriate) for each Responsible Authority to object to an application or call for a Review?</p> <p>Particular clarification is sought on the impact of the RRFSO on the Licensing process.</p>

Department for Culture, Media and Sport
TOURISM DIVISION

**CONSULTATION ON REVISED GUIDANCE MADE
UNDER SECTION 182 OF THE LICENSING ACT 2003**

Date: January 2007

How to respond to this consultation

This consultation document is available on the DCMS website at:

www.culture.gov.uk

Responses should be made by 11 April either by post to:

Simon Richardson
Licensing Guidance Review Team
Tourism Division
6th Floor
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

or by email to:

licensingconsultation@culture.gov.uk

If you have any queries about the consultation on revised Guidance you can contact the Licensing Guidance Review Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380

However, if you have any questions or complaints about the process of consultation on this paper, please contact Liz Sweet, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.
liz.sweet@culture.gsi.gov.uk

Freedom of information

A summary of the consultation responses, as well as copies of all responses, will be made available on the DCMS website within three months after the consultation has closed. It is assumed, therefore, that your reply can be made publicly available. In addition, all information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

QUESTIONS

Question 1: Do you agree that the current Guidance on vicinity should remain unchanged?

Question 2: If not, what factors do you think should be considered and why?

Question 3: Do you agree that the current Guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental?

Question 4: If not, please explain why and outline any alternative.

Question 5: Do you agree that the current Guidance on cumulative impact policies should remain unchanged?

Question 6: If not, what amendments do you think should be made, and why?

Question 7: Do you agree that the pools of conditions in Annexes D-H should be:

Option 1: Removed from the current Guidance, but consider establishing an alternative central source of good practice advice? Or

Option 2: Retained and updated/expanded as necessary.

Question 8: Do you think that there are any other options that should be considered?

Question 9: Do you think that, if retained, there is a risk that the pools of conditions may increasingly be considered exhaustive and therefore inhibit the promotion of innovative conditions by the police, other responsible authorities and interested parties to address emerging problems? If so, why?

Question 10: Do you think that the pools of conditions have value in promoting consistency and/or best practice?

Question 11: Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?

Question 12: If not, please explain why and provide brief details of any alternative proposal.

Question 13: Do you agree with the proposed amendments to the guidance on authorisation of sale?

Question 14: If not, please explain why.

Question 15: Do you agree that the Guidance on variations should be amended as proposed?

Question 16: If not, please explain why.

Question 17: Do you agree that the Guidance on evidence to support representations should remain unchanged?

Question 18: If not, please explain why.

Question 19: Do you agree that it would be useful to add guidance on how licensing authorities might manage concerns about potential intimidation of interested parties?

Question 20: If not, please explain why.

Question 21: Do you agree that guidance on the control of nuisance/crime and disorder outside licensed premises should be clarified/expanded as proposed?

Question 22: If not, please explain why.

Question 23: Do you agree that the Guidance on longer hours should be amended to reflect the Secretary of State's letter of 30 September 2005 and the current situation?

Question 24: If not, please explain why and outline any alternatives.

Question 25: Do you agree that Chapter 11, explaining police powers to close premises, should be removed from the Guidance and incorporated in specific and separate advice for police officers?

Question 26: If you do not agree, please explain why.

Question 27: Do you agree that Chapters 12 (Sale and Supply of alcohol to children) and 14 (Other Offences) should be deleted from the Guidance?

Question 28: If you do not agree, please explain why.

Question 29: Are you happy with the overall format of the revised Guidance?

Question 30: If not, please explain why and what format you would prefer instead.

Question 31: Are there any other issues that you would like to see addressed in the revised Guidance? If yes, please specify.

1. Introduction and overview

- 1.1 The Licensing Act 2003 ('the Act') received Royal Assent on 10 July 2003 and came into force on 24 November 2005. It replaced six existing licensing regimes concerning the sale and supply of alcohol, public entertainment, theatres, cinemas, night cafes and late night refreshment with a unified system of regulation.
- 1.2 Section 182(1) of the Licensing Act 2003 ("the Act") provides that the Secretary of State must issue Guidance to licensing authorities on the discharge of their functions under the Act. Section 182(3) of the Act gives the Secretary of State power to revise the licensing guidance from time to time.
- 1.3 The Guidance is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice, ensuring consistent application of licensing powers by licensing authorities and promoting fairness, equal treatment and proportionality. Section 4(3)(b) of the Act provides that, in carrying out its licensing functions, a licensing authority must have regard to Guidance issued by the Secretary of State under section 182 of the Act.
- 1.4 The Guidance was first issued and disseminated to licensing authorities in July 2004. On 1 December 2005, the Secretary of State for Culture, Media and Sport publicly announced the Government's intention to conduct a two phase review of the Guidance: an initial phase limited to clarifying uncontentious issues that had been raised with the Government during the Act's transitional period; and a full review culminating in the publication of full, revised Guidance.
- 1.5 The Government seeks views on the draft revised Guidance. In considering any revision of the current Guidance, it is important to understand that the Guidance cannot be used to attempt to amend the primary legislation or regulations made under the 2003 Act. Consultees should therefore recognise that the Government will be unable to take account of responses which deal with matters that can only be addressed through primary or secondary legislation.

2. Initial review of Guidance

- 2.1 The scope of the initial review was limited to:
 - providing clarification of, and additions to, the existing guidance in areas where there was broad consensus amongst stakeholders;
 - consolidating advice given in official correspondence, 'Countdown' newsletter, etc. during the transitional period; and
 - correcting simple factual errors and updating references.
- 2.2 Because of the broad consensus that had emerged during the transitional period around these issues, the Department decided that it was unnecessary to conduct a formal public consultation on the limited revisions. However, a dialogue was maintained throughout the review with key stakeholders, all of

whom were given an opportunity to submit their views on how the current Guidance should be amended.

2.3 The initial review culminated in the production of Supplementary Guidance which came into force on 22 June 2006, when it was laid in Parliament, and was published on the DCMS website¹.

3. Full review of Guidance

3.1 The full review of Guidance, which began in May this year, addressed two areas: substantive policy issues and the format and style of the Guidance document.

Policy issues

3.2 During the initial review of the Guidance, stakeholders raised a number of substantive issues with us, such as the definition of 'vicinity', which were too contentious and/or complex to be addressed without full consultation. These issues were carried forward into the full review and are considered in detail in section 4 below, together with the Government's recommendations in each case.

Format

3.3 Stakeholders told us that they found the Guidance over long and, in some places, repetitive and difficult to navigate. One of the main aims of the full Review was to revisit the format of the Guidance to produce a more user-friendly, concise and navigable document.

Role of the Licensing Advisory Group and sub group on the Guidance Review

3.4 The Licensing Advisory Group was originally established to assist DCMS officials in advising Ministers about the content of the Licensing Bill, the original Guidance and the associated regulations. It includes nearly thirty licensing stakeholders representing a wide range of interests including local government, the trade and professional bodies.

3.5 In May 2006, DCMS formed a sub group of the Advisory Group to assist with the review of the Guidance. The sub group comprises representatives of the following organisations:

Association of Chief Police Officers
Association of Convenience Stores
Association of London Government
Bar Entertainment and Dance Association
British Beer and Pub Association
Committee of Registered Clubs Associations
Local Authorities Co-ordinators of Regulatory Services

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We also co-opted onto the sub group:

- the Civic Trust, Action with Communities in Rural England and the Federation of Small Businesses to ensure that key stakeholder interests, such as residents groups and village halls, were represented; and
- a licensing officer from one of the Licensing 'Scrutiny Councils'² to provide a licensing practitioner perspective

3.6 The sub group considered in detail the substantive issues discussed below and the format of the Guidance and submitted recommendations to the full Advisory Group on 7 July. The proposals set out below are informed by these recommendations.

4. Substantive issues

Definition of 'in the vicinity'

- 4.1 An interested party as defined in sections 13 and 69 of the 2003 Act must either live or be a person involved in business "in the vicinity" of the premises seeking a premises licence or club premises certificate or be a body representing a person living or involved in business "in the vicinity". This restricts those who can make representations in respect of an application for the grant or variation of a premises licence or club premises certificate; and entitles a person to apply for a review of such a licence or certificate.
- 4.2 'Vicinity' is not defined in the Act or regulations. Paragraph 5.33 of the current Guidance suggests some factors which Local Authorities should consider in deciding vicinity, but does not define it. The Department's aim is to give licensing authorities as much latitude as possible in determining vicinity according to local factors, leaving the courts as the ultimate arbiter in the case of a dispute.
- 4.3 In the initial review, there was some support for expanding on the factors that Local Authorities might consider when deciding vicinity and actively discouraging them from defining it too rigidly. A further suggestion was that vicinity should encompass routes home from licensed premises. However, most stakeholders would prefer that the Guidance remains unchanged as any further attempt to define it would undermine local flexibility in this area.

Proposal

² In November 2005, DCMS invited a small representative group of 10 licensing authorities to help monitor and evaluate the new licensing regime as licensing 'Scrutiny Councils'. The final report from the initiative can be found on the DCMS website at:
http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/monitoring_and_evaluation/scrutiny_councils.htm

- 4.4 On balance, the Government recommends that the existing Guidance should remain unchanged.

Question 1: Do you agree that the current Guidance on vicinity should remain unchanged?

Question 2: If not, what factors do you think should be considered and why?

Incidental music

- 4.5 Under paragraph 7 of Schedule 1 to the 2003 Act, the provision of entertainment consisting of a performance of live music or the playing of recorded music is not regarded as the provision of regulated entertainment (and therefore licensable) to the extent that it is "incidental" to some other activity which is not itself entertainment or entertainment facilities requiring a licence.
- 4.6 The word 'incidental' is not defined in the Act or Regulations, but paragraph 5.18 of the current Guidance gives some indication of the factors that should be considered in determining whether music is incidental or not, such as volume, and gives a few examples. Although the question of what is or is not 'incidental' music remains a contentious issue, during the initial review most stakeholders agreed that it would not be useful to give a narrow definition or to provide examples, as there will always be an exception to the rule. However, some stakeholders suggested that it would be helpful to expand the guidance on factors that could be taken (or not taken) into consideration in determining whether music is incidental or not.

Proposal

- 4.7 The Government recommends that the current guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental or not. The proposed text is set out in paragraph 3.21 of the revised Guidance.

Question 3: Do you agree with the proposed amendment?

Question 4: If not, please explain why and outline any alternative

Cumulative impact policies

- 4.8 Cumulative impact is not mentioned in the Act or Regulations, but paragraph 3.13 of the current Guidance defines it as 'the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area'. Paragraphs 3.14-3.27 provide further guidance on the creation and limitations of special policies.
- 4.9 Some stakeholders said that they would like to see special policies applied where necessary to areas other than town and city centres such as suburbs or district shopping centres. There was also some support for widening the

scope to include off sales premises such as corner shops, etc. as it was felt that they might also contribute to cumulative impact.

- 4.10 There was also a view that the Guidance could encourage licensing authorities to take other steps, in partnership with the trade and other stakeholders, to address cumulative impact before they consider applying a special policy. These might include dispersal policies for clubs, litter and taxi marshals and police initiatives such as 'Best Bar None'.
- 4.11 At a more fundamental level, some stakeholders believe that cumulative impact as a policy goes beyond the Act and is therefore ultra vires.

Proposal

- 4.12 On balance, the Government recommends that the current Guidance should not be changed.
- 4.13 There is nothing in the Guidance to prevent special policies being established for areas other than town and city centres and, although the Guidance states that it would not 'normally' be justifiable to adopt a special policy for off-sales, it is implicit that this may be justified in exceptional circumstances.
- 4.14 Paragraph 3.17 of the current Guidance makes it clear that there must be an evidential basis for a special policy to be adopted. Paragraph 3.28 recognises that there are other approaches to controlling cumulative impact.
- 4.15 Removing the concept of cumulative impact from the Guidance would be highly problematic and disruptive for the many licensing authorities that have already adopted a special policy and those that are thinking of doing so. There is no evidence that a wide range of stakeholders is fundamentally opposed to the concept of cumulative impact.

Question 5: Do you agree that the current Guidance on cumulative impact policies should remain unchanged?

Question 6: If not, what amendments do you think should be made, and why?

Conditions

- 4.16 Chapter 7 of the Guidance provides general advice on conditions which may be attached to licences. Annexes D-H provide pools of conditions which could be applied for the promotion of each of the four licensing objectives and in theatres, cinemas, concert halls and similar places (Annex F) where they are appropriate and necessary. The four statutory licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm.

4.17 Some stakeholders told us that the inclusion of a pool of conditions in the Guidance discouraged licensing authorities and responsible authorities such as the police from developing other, innovative conditions and encouraged duplication of other statutory requirements (particularly those on health and safety). There also appears to be a potential risk of licensing committees and magistrates' courts increasingly treating the list as exclusive and the pool failing to respond to new developments and trends within the night-time economy. On this basis, they suggested that these Annexes should be removed from the Guidance.

4.18 An alternative view is that licensing authorities and responsible authorities need a central source of advice and guidance on the application of and terms of conditions (particularly those conditions which are regarded as good or best practice) and this encourages a consistent approach across authorities. The Annexes should therefore be retained but would need to be updated and expanded as necessary by further and possibly regular supplements to the Guidance.

4.19 The Government therefore seeks views on the following options:

Proposal

Option 1: Remove Annexes D-H from the Guidance, but consider establishing an alternative central source of advice for good practice purposes.

Option 2: Retain Annexes D-H in the Guidance, updating/expanding as necessary with regular supplements to the Guidance.

Question 7: Which of the above options do you agree with?

Question 8: Do you think that there are any other options that should be considered?

Question 9: Do you think that, if retained, there is a risk that the pools of conditions will be considered exhaustive and therefore inhibit the promotion of innovative conditions by the police, other responsible authorities and interested parties to address emerging problems? If so why?

Question 10: Do you think that the pools of potential conditions have value in promoting consistency and/or best practice?

Role of councillors in the licensing process

4.20 Currently, paragraph 5.32 of the Guidance states that councillors may represent an interested party or make representations as an interested party themselves if they reside in the vicinity of a licensed premises (as long as they do not participate in the decision making process).

4.21 However, this provision is subject to the operation of the code of conduct for local authority members. This provides that where a councillor has a

prejudicial interest in a matter, they are required by the code of conduct to withdraw from the meeting at which the matter is considered. The Department for Communities and Local Government will be consulting on a revised code of conduct, including possible changes to the rules relating to prejudicial interest later this year.

- 4.22 Furthermore, councillors have a duty to act in the interests of all of their constituents. This role as a community advocate must therefore be balanced with the above guidance that a councillor can act as an interested party for licensed premises.
- 4.23 Stakeholders would like to see further guidance to:
- a) clarify the role of ward councillors in the licensing process, taking account of issues around prejudicial interest, as discussed above;
 - b) assure councils that notifying councillors of applications, reviews, etc. in their wards is permissible under the current legislation.
- 4.24 A number of councils automatically notify councillors of licensing applications in their wards, although this is not a legal requirement. However, some licensing authorities have been given legal advice suggesting that this practice could arguably be seen as 'soliciting' representations and may be unlawful.

Proposal

- 4.25 The Government recommends that the Guidance should be amended to:
- further clarify the role of councillors in the licensing process and to indicate that where a member has a prejudicial interest in a matter which a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest, the member should, under the code of conduct for members, withdraw from a meeting at which that matter is discussed;
 - advise that there is nothing to prevent licensing authorities notifying ward councillors of licensing applications as long as the information they provide is strictly neutral. All ward councillors are members of the licensing authority which in most cases is the full council and as such, there can be no legal objection to providing them with relevant information. The Guidance should also make it clear that this is not a legal requirement of the 2003 Act and authorities would have to bear any costs themselves. The proposed changes are set out in paragraphs 8.8-8.10 of the revised Guidance.

<p>Question 11: Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?</p>

Question 12: If not, please explain why and provide brief details of any alternative proposal.

Role of Designated Premises Supervisor (DPS) and Personal Licence Holder (PLH)

- 4.26 Under the 2003 Act, it is a mandatory condition of all premises licences authorising sales or supplies of alcohol that:
- every sale of alcohol must be authorised by the holder of a personal licence; and
 - a personal licence holder must be specified on the premises licence as the designated premises supervisor
- 4.27 Paragraph 4.18 of the current Guidance explains that the main purpose of the DPS is to ensure that there is always 'one specified individual' amongst (potentially) several personal licence holders, who can be readily identified by the police and authorised persons at the premises and who will normally have been given 'day to day' responsibility for running the premises. The supplementary Guidance consolidates advice given during transition that neither the DPS nor any other PLH needs to be on the premises all the time, but may authorise others to sell alcohol in writing or verbally.
- 4.28 Many stakeholders feel that only written authorisation should be allowed, as the existence of verbal authorisation will usually be a matter of one person's word against another's and so will be difficult to prove in court. A number of trade associations are already advising their members to use written authorisation as a matter of best practice.

Recommendation

- 4.29 The Government recommends that the Guidance on authorisation of sale should be amended further to:
- advise that written authorisation is recommended as it clearly demonstrates due diligence in the event of any review or prosecution; and
 - clarify that this is not a legal requirement and that the DPS does not have to be on the premises at all times.
- 4.30 The proposed changes are set out in paragraphs 10.45-10.50 of the revised Guidance.

Question 13: Do you agree with the proposed amendments to the guidance on authorisation of sale?

Question 14: If not, please explain why.

Variations

- 4.31 Section 34 of the Act allows the holder of a premises licence to apply for a variation of the licence. Paragraph 5.65 of the original Guidance used the expression 'major' variation as a means of describing all variations except those which relate to a change of name or address of someone named in the licence or specification of a designated premises supervisor. These two exceptions involve a simplified application process and a reduced fee.
- 4.32 During the initial review, some stakeholders told us that the use of the expression "major variation" was confusing as it implied the existence of a specific statutory procedure for 'minor' variations in addition to the two exceptions described above. The supplementary Guidance explains why the word 'major' is used in the Guidance, but the general view is that this term is not helpful. Stakeholders also wanted more guidance on when it was appropriate to apply for a new licence as opposed to a variation.

Proposal

- 4.33 The Government recommends that the Guidance on variations should be amended and expanded to:
- remove the term 'major variation';
 - explain that the two exceptions outlined above are subject to a simplified application process;
 - clarify when a new licence is required as opposed to a variation;

The proposed changes are set out in paragraphs 8.31-8.35 of the revised Guidance.

Question 15: Do you agree that the Guidance on variations should be amended as proposed?

Question 16: If not, please explain why.

Nature of evidence required to support representations

- 4.34 Currently interested parties are not required by law to provide supporting evidence for representations and, of course, in the case of new premises, this may not be possible. However, some stakeholders are concerned that conditions, on noise for example, may be imposed when there is no history of disturbance at existing premises. Others are of the view that representations must always be evidence-based to meet the test of validity and relevance to the licensing objectives. There has also been a suggestion that the Guidance should contain guidelines to licensing committee members on deciding the weight to be given to representations of various kinds.

Proposal

- 4.35 The Government considers that new applications will inevitably involve a degree of reasonable speculation about the likely impact of the licensable activities at the premises on the four licensing objectives. The Guidance already allows for the likely impact of a new premises where there is no history of noise and disturbance. It does not restrict the licensing authorities' discretion to give reasonable and appropriate weight to representations and evidence depending on the nature of the application. This is consistent with section 18(6)(a) of the Act which states that relevant representations are about the 'likely effect of the grant of the premises licence on the promotion of the licensing objectives'. Paragraph 5.68C of the current Guidance states that 'In determining the application.....the licensing authority must give appropriate weight to ...the representations (including supporting information) presented by all parties'. The Government considers that any further advice/good practice on supporting representations with good evidence should be included in guidance for interested parties, rather than the statutory Guidance for licensing authorities.
- 4.36 The Government therefore recommends that the current Guidance on evidence to support representations should remain unchanged

Question 17: Do you agree that the Guidance on evidence to support representations should remain unchanged?

Question 18: If not, please explain why.

Representations: Disclosure of names and addresses

- 4.37 The Act requires any interested party making a representation to provide their name and address. Some licensing authorities have reported that in isolated cases, residents may be reluctant to make representations for fear of intimidation.
- 4.38 Licensing authorities have taken different approaches to address this issue. For instance, some encourage the interested party to approach the relevant responsible authority (for example, environmental health officers) and ask them to make representations. This means that their name and address are not disclosed at any point in the process. In such cases, the responsible authority has to satisfy itself that representations are necessary and justified. Other authorities encourage residents to make their representations, but withhold their name and address from the applicant, giving only details (such as street name) which are relevant to determination of the vicinity.

Proposal

- 4.39 The Government is minded to amend the Guidance to include advice on how isolated fears of intimidation may be managed, giving as examples the strategies outlined above. The possible changes are set out in paragraphs 9.13-9.17 of the revised Guidance.

- 4.40 The alternative would be not to amend the Guidance and to recognise that this is not an area in which the Government should not be seeking to promote particular approaches for the sake of consistency; and to allow licensing authorities the widest possible discretion to operate in a common sense way and as it sees fit in the best interests of the community.

Question 19: Do you agree that the Guidance on representations should be amended?

Question 20: If you would prefer the alternative outlined in paragraph 4.40, please explain why.

Control of nuisance/crime and disorder outside licensed premises

- 4.41 Paragraph 3.11 of the current Guidance makes it clear that licensing is about regulating licensable activities and that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and therefore beyond the direct control of the individual licensees or certificate holders. However, the Guidance also states that 'licensing law will always be part of a holistic approach to the management of the evening and night time economy in town and city centres'.
- 4.42 Some stakeholders have suggested that licensees should be responsible for taking reasonable measures to control drinking outside their premises, for example, on the pavement outside a pub or in a beer garden and for the orderly dispersal of customers when the premises closes (perhaps through a dispersal policy). It has also been suggested that plans should show areas for consumption and that LAs should be able to impose conditions on these areas on the grounds that this is necessary for the promotion of the licensing objectives.
- 4.43 However, there is no mechanism in the 2003 Act for imposing new forms of conditions universally on premises licences that are already in existence and such conditions, where they do not currently apply, could only be imposed following a review of the licence or in respect of a new premises licence where representations had been made. Accordingly, it will always be likely that some premises licences will be subject to such conditions and some will not.
- 4.44 The content of plans that must accompany applications for the grant or variation of a premises licence or club premises certificate are a matter for regulation made under the enabling powers in the Act and are not a matter that can be changed by Guidance.

Proposal

- 4.45 The Government is minded to provide further Guidance on what can be done within the Act to control crime and disorder outside licensed premises.

- 4.46 The Guidance already allows for conditions to be imposed on licensees to promote the prevention of crime and disorder immediately outside the premises where this relates to licensable activities. In addition, there is nothing to prevent the police, licensing authorities and the hospitality industry reaching voluntary agreements about best practice in areas where problems are likely to arise. Also, local authorities are already empowered by section 13 of the Criminal Justice and Police Act 2001 to make "designated public place orders" (DPPOs) to control the consumption of alcohol in a public place outside of licensed premises.
- 4.47 However, it may be useful to explain better in the Guidance the legal responsibility on licensees to control areas in the immediate vicinity of their premises and state more explicitly that problems in the immediate vicinity can be improved through conditions. The possible changes are set out in paragraph 1.23 of the revised Guidance.

(NOTE: The wording of such conditions would need very careful consideration. Conditions cannot be aspirational and must be within the capability of the premises licence holder to avoid the commission of a criminal offence. For example, although a condition may require premises to adopt a particular dispersal policy, a licensee cannot force customers to abide by it)

Question 21: Do you agree that the Guidance should be amended as proposed?

Question 22: If not, please explain why.

Paragraphs on longer hours.

- 4.48 Currently the Guidance states at several points that fixed and early closing times are likely to promote rapid binge drinking before closing time and that longer hours are likely to lead to a more gradual dispersal of customers from licensed premises. However, the Guidance also emphasises that each application must be considered on its own merits. It may be that in some cases, longer hours will not help to promote the licensing objectives.
- 4.49 Some stakeholders feel that the current Guidance has a presumption in favour of longer hours, which is unjustified. However, a recent judgment in the case of R (on the application of J D Wetherspoon plc) v Guildford Borough Council [2006] EWHC 815 (Admin) appeared to support the view that the balance between longer hours and the promotion of the licensing objectives as explained in the current Guidance is about right.
- 4.50 On 30 September 2005, the Secretary of State wrote to all licensing authorities emphasising that the Act contains no presumption in favour of longer hours and that the four licensing objectives should be paramount in any consideration of a licensing application. The Government is minded to reflect the terms of this letter in the Guidance.

Proposal

- 4.51 The Government recommends that the paragraphs on longer hours should be re-drafted to reflect the Secretary of State's letter of 30 September 2005 and be more focused. A few short paragraphs on this topic should be placed prominently at the front of the Guidance. Paragraphs should also reflect the current situation (i.e. we are no longer in the process of moving from 'fixed' to 'longer' hours). The proposed text is at paragraphs 1.17-1.19, 10.18-10.20 and 13.34-13.36 of the revised Guidance.

Question 23: Do you agree that the Guidance on longer hours should be amended as outlined above?

Question 24: If not, please explain why and outline any alternatives

Chapter 11: Police Powers to close premises

- 4.52 The Act limits the purpose of the statutory Guidance to guidance to licensing authorities (and not the police) about the carrying out of their licensing functions under the Act. Chapter 11 was included in the Guidance – as a non-statutory element - to provide advice to police officers on the operation of new closure powers in part 8 of the Licensing Act 2003 which has extended the powers of the police in certain areas. The mixing of statutory and non-statutory Guidance by the inclusion of Chapter 11 was questioned by the House of Commons Joint Committee on Statutory Instruments when they scrutinised the original Guidance and the review provides a useful opportunity to consider whether it should be retained.
- 4.53 Some stakeholders have suggested that the current Chapter 11 does not sit well with the rest of the Guidance which is aimed at licensing authorities. It has been suggested that this advice might form part of broader guidance for police officers on policing of the night-time economy, of which licensing forms only a part.

Proposal

- 4.54 The Government recommends that Chapter 11 of the Guidance should be removed from the main Guidance and incorporated in specific advice for police officers on dealing with problems at licensed premises which will be developed with the Home Office and ACPO and disseminated to all police forces.

Question 25: Do you agree that Chapter 11 of the Guidance should be removed?

Question 26: If you do not agree, please explain why.

Chapter 12: Sale and Supply of alcohol to children
Chapter 14: Other Offences

- 4.55 Chapter 12 of the current Guidance describes offences relating to the sale and supply of alcohol to children, whilst Chapter 14 describes other offences under the Act.
- 4.56 The information in these chapters is somewhat repetitious of the contents of the Act itself. It would also be inappropriate for the Government to give Guidance on the issue of prosecutions. The DPP, licensing authorities and weights and measures authorities must all exercise their discretions relating to prosecutions independently of the Executive. There is therefore a good case for removing this text completely from the statutory Guidance.

Proposal

- 4.57 The Government recommends that Chapters 12 and 14 should be deleted from the Guidance.

Question 27: Do you agree that Chapters 12 and 14 should be deleted from the Guidance?

Question 28: If you do not agree, please explain why

5. Format

- 5.1 The format of the Guidance has been substantially revised with the aim of making this a more user-friendly, concise and easily navigated document. Apart from the proposed deletion of Chapters 11, 12 and 14 described above, key changes are:
- a new foreword by the Secretary of State;
 - a new introductory chapter setting out the aims and principles of the legislation;
 - a new chapter on the four licensing objectives incorporating much of the information from the original Chapter 7 on Conditions;
 - the original Chapter 5 (Premises Licences) split into five new chapters for ease of reference;
 - the original Chapter 3 on Statements of Licensing Policy moved to the back of the document to reflect the fact that councils need to read the previous chapters before determining their licensing policy.

Question 29: Are you happy with the overall format of the revised Guidance?

Question 30: If not, please explain why and what format you would prefer instead.

6. Other issues

- 6.1 This consultative document covers the key issues that have been raised with the Government in connection with the Guidance, but there may be other issues that you would like to see addressed in the revised version. Respondents should

note that, as stated earlier, the Guidance cannot be used to amend the primary legislation or regulations made under the 2003 Act.

Question 31: Are there any other issues that you would like to see addressed in the revised Guidance? Please specify.

Report to

Cabinet
Council

Date of meeting

20 March 2007
20 March 2007

Report of

Director of City Development

Title

Coventry Development Plan 2001: "Saving" Policies

1 Purpose of the Report

This report results from the transition arrangements arising from the changes to the planning system being rolled out following the 2004 Act. In particular it makes recommendations as to which of the policies in your adopted Coventry Development Plan 2001 should be "saved" until superceded within the Local Development Framework.

2 Recommendations

- 2.1 The Cabinet are asked to agree to the recommendations for "saved" and deleted policies being submitted to the Government.
- 2.2 Council is asked to agree to the recommendations of Cabinet

3 Information/Background

- 3.1 The Planning and Compulsory Purchase Act 2004, which introduced the new planning system of Local Development Frameworks, provided interim arrangements whereby LPA could "save" the policies of their existing development plan for a three year period commencing on 28 September 2004. This concept relates to the need for continuity during the change from the old to the new planning system. The Act also gave the Secretary of State power to make a direction to "save" policies beyond this 3-year period. Because progress on new-style plans had not been as quick as envisaged when the Act was passed, it became clear that the coverage of new planning policies across the country was small. Action was needed to ensure that relevant policies remain in force, thus avoiding a policy vacuum. Therefore, last year, the Government issued a protocol on the "saving" of development plan policies.

The Protocol

- 3.2 The protocol explains how requests to save policies in old-style plans will be handled and sets out how decisions will be made (by the Government and Local Planning Authorities) on whether or not to save policies.
- 3.3 If Local Planning Authorities want to retain specified policies beyond the expiry of the 3-year period, they need to seek the Secretary of State's agreement to issue a direction. They need to demonstrate that the policies they wish to be saved reflect the principles of the new planning system; are consistent with current national policy; and that it is not feasible or desirable to replace them by 27 September 2007.
- 3.4 The table below shows the issues the Government says it will take into account in considering the matter.

PPS12 (Local Development Frameworks), paragraph 5.15, says that policies to be extended should comply with the following criteria:

- (i) where appropriate, there is a clear central strategy;
- (ii) policies have regard to the Community Strategy for the area;
- (iii) policies are in general conformity with the regional spatial strategy or spatial development strategy;
- (iv) policies are in conformity with the core strategy development plan document (where the core strategy has been adopted);
- (v) there are effective policies for any parts of the authority's area where significant change in the use or development of land or conservation of the area is envisaged; and
- (vi) policies are necessary and do not merely repeat national or regional policy.

In addition, the government will also have particular regard to:

- policies that support the delivery of housing, including unimplemented site allocations, up to date affordable housing policies, policies relating to the infrastructure necessary to support housing;
- policies on Green Belt general extent in structure plans and detailed boundaries in local plans/UDPs
- policies that support economic development and regeneration, including policies for retailing and town centres;
- policies for waste management, including unimplemented site allocations;
- policies that promote renewable energy; reduce impact on climate change; and safeguard water resources.

3.5 Local Planning Authorities are expected to submit lists to Government Offices of (i) saved policies, with their intentions for them, and of (ii) policies they do not wish to save. The lists are to be submitted by 1 April 2007. The Government Offices will then assess the lists and the Secretary of State will direct accordingly. In direction the Secretary of State can agree with your recommendations or can decide to save a policy even where you have recommended deletion or alternatively decide that a policy will not be saved despite your recommendation

4 Proposal and Other Option(s) to be Considered

4.1 Your officers have assessed all policies in the CDP against the PPS 12 criteria and the Local Development Framework Advisory Panel has considered officers' recommendations.. It is important to note that the decisions available to Members are either to save or to delete a policy. The option of amending or revising a policy is not possible: this needs to take place through work on the Core Strategy and other Development Plan Documents through the statutory planning process. The effect of this exercise is to provide with the Regional Spatial Strategy the development plan until the Core Strategy is adopted which is expected to be 2009

4.2 Policies have been recommended for saving where they agree with at least one of the criteria above. They can form part of the CDP central strategy; they can express the priorities of the Coventry Community Plan; they can be allocation policies; and they can conform with or expand on the Regional Spatial Strategy; or expand on national policy. Criterion (iv) is not yet relevant to the Council's Local Development Framework.

4.3 It is recommending that all of the existing Overall Strategy, Housing, Employment and Green Environment policies should be saved. Policies recommended for deletion have generally been implemented; duplicate national guidance; duplicate other CDP policies or it is believed that there have been material changes in circumstances which suggest they are no longer appropriate and where greater flexibility is desirable.

4.4 Appendix 1 lists all CDP policies and indicates the recommendation. Appendix 2 provides detailed information on policies not recommended to be saved

5 Other specific implications

5.1

	Implications (See below)	No Implications
Best Value		◆
Children and Young People		◆
Comparable Benchmark Data		◆
Corporate Parenting		◆
Coventry Community Plan		◆
Crime and Disorder		◆
Equal Opportunities		◆
Finance		◆

	Implications (See below)	No Implications
Health and Safety		♦
Human Resources		♦
Human Rights Act		♦
Impact on Partner Organisations		♦
Information and Communications Technology		♦
Legal Implications	☛	
Neighbourhood Management		♦
Property Implications		♦
Race Equality Scheme		♦
Risk Management		♦
Sustainable Development		♦
Trade Union Consultation		♦
Voluntary Sector – The Coventry Compact		♦

5.2 Legal implications

Section 86 of the 2004 Act requires that in determining applications for planning permission decisions shall be made in accordance with the development plan (ie the Regional Spatial Strategy and the Coventry Development Plan).

5.3 Monitoring

Nothing specific

6 **Timescale and expected outcomes**

6.1 The Government will consider the Council's response.

	Yes	No
Key Decision		√
Scrutiny Consideration (if yes, which Scrutiny meeting and date)		
Council Consideration (if yes, date of Council meeting)	√ 20 March 2007	

List of background papers

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Papers open to Public Inspection

Description of paper

Location

LDF 1

CC4/6.01

APPENDIX 1 : SUMMARY OF RECOMMENDATIONS FOR CDP POLICIES

Part 1 Policies are shown in Upper Case

Part 2 Policies are shown in Lower Case

⊕ indicates policy implemented

∅ indicates policy recommended to be deleted

all other policies are recommended for saving

Overall Strategy

OS 1:	THE OBJECTIVES AND OUTCOMES OF THE PLAN
OS 2:	STRATEGIC REGENERATION SITES
OS 3:	LOCAL AREA REGENERATION
OS 4:	CREATING A MORE SUSTAINABLE CITY
OS 5:	ACHIEVING A HIGH QUALITY CITY
OS 6:	CHANGE OF LAND USE
OS 7:	MIXED LAND USE
OS 8:	EQUAL OPPORTUNITY
OS 9:	ACCESS BY DISABLED PEOPLE
OS 10:	PLANNING OBLIGATIONS

Environmental Management

EM 1:	Alternative Energy Resources
EM 2:	Air Quality
EM 3:	Water Resources and Quality
EM 4:	Flood Risk and Development
EM 5:	POLLUTION PROTECTION STRATEGY
EM 6:	Contaminated Land
EM 7:	Hazardous Installations and Nearby Development
EM 8:	Light Pollution
EM 9:	WASTE STRATEGY
EM 10:	Re-use and Recycling
EM 11:	Materials Recycling Facilities
EM 12:	Composting
EM 13: ∅	Landfill

Housing

H 1:	PEOPLE AND THEIR HOUSING NEEDS
H 2:	BALANCING NEW AND EXISTING HOUSING
H 3:	THE IMPROVEMENT OF THE HOUSING STOCK
H 4:	Residential Extensions
H 5:	Conversion from Non-residential to Residential use
H 6:	Conversion to Multiple Occupation
H 7:	HOUSING LAND PROVISION
H 8:	Principal Housing Sites
H 9:	Windfall Additions to Housing Land Supply
H 10:	Affordable Housing
H 11:	Housing for People with Special Needs
H 12:	Design and Density of Housing Development
H 13:	Care Homes and Nursing Homes

H 14: Gypsies and Travellers

Economy and Employment

E 1: OVERALL ECONOMY AND EMPLOYMENT STRATEGY
E 2: Consolidating and Strengthening the City's Existing Economic Base
E 3: Diversification of the Local Economy
E 4: Hotels, Conference and Training Accommodation
E 5: Office Development
E 6: Principal Employment Sites
E 7: Site Reserved for the Expansion of Jaguar/Ford Cars
E 8: Redevelopment of Existing Employment Sites
E 9: Windfall Additions to Employment Land Supply
E 10: Accessibility to Job Opportunities
E 11: Employment and Training Initiatives to Assist the Priority Areas
E 12: Warehousing Development
E 13: General Industrial Development (B2) in Residential Areas

Shopping

S 1: SHOPPING STRATEGY
S 2: Major District Centres
S 3: Foleshill Gasworks Major District Centre
S 4: District Centres
S 5: Local Centres
S 6: Ground Floor Units in Defined Centres
S 7: ∅ Primary Retail Frontages
S 8: ∅ Upper Floor Units in Defined Centres
S 9: Local Shops
S 10: Catering Outlets
S 11: Edge-of-Centre and Out-of-Centre Retailing

Access and Movement

AM 1: AN INTEGRATED, ACCESSIBLE AND SUSTAINABLE TRANSPORT STRATEGY
AM 2: PUBLIC TRANSPORT
AM 3: Bus Provision in Major New Developments
AM 4: Bus Priority Measures
AM 5: Bus Park and Ride
AM 6: Hackney Carriage Ranks
AM 7: Rail Services
AM 8: IMPROVING PEDESTRIAN ROUTES
AM 9: Pedestrians in New Developments
AM 10: Traffic Calming
AM 11: IMPROVING CYCLING FACILITIES
AM 12: Cycling in New Developments
AM 13: Cycle Routes
AM 14: ROADS
AM 15: Highway Authority Road Schemes
AM 16: Other Road Schemes
AM 17: ∅ Car Parking
AM 18: ∅ Car Parking in Defined Centres
AM 19: Off-Street Car Parking Areas
AM 20: Road Freight
AM 21: ⊕ Rail Freighting at Keresley
AM 22: Road Safety in New Developments

Built Environment

BE 1:	OVERALL BUILT ENVIRONMENT STRATEGY
BE 2:	The Principles of Urban Design
BE 3:	∅ Design Statements as Part of Major Planning Applications
BE 4:	Road Corridors
BE 5:	The Canal Corridor
BE 6:	The West Coast Main Line Railway Corridor
BE 7:	Gateways
BE 8:	Conservation Areas
BE 9:	Development in Conservation Areas
BE 10:	The Retention of Buildings in Conservation Areas
BE 11:	Alteration or Extension of Listed Buildings
BE 12:	Changes of Use to Listed Buildings
BE 13:	Demolition of Listed Buildings
BE 14:	Locally Listed Buildings
BE 15:	Archaeological Sites
BE 16:	Telecommunications
BE 17:	∅ Outdoor Advertisements
BE 18:	Public Art
BE 19:	Lighting
BE 20:	Landscape Design and Development
BE 21:	Safety and Security

Green Environment

GE 1:	GREEN ENVIRONMENT STRATEGY
GE 2:	Green Space Enhancement Sites
GE 3:	Green Space Corridors
GE 4:	Protection of Outdoor Sports Facilities
GE 5:	Protection of Allotment Gardens
GE 6:	Control over Development in the Green Belt
GE 7:	Industrial or Commercial Buildings in the Green Belt
GE 8:	Control over Development in Urban Green Space
GE 9:	Green Space Provision in New Housing Developments outside the City Centre
GE 10:	Proposals for New Outdoor Sport or Recreation Facilities in Urban Green Space
GE 11:	Protection of Sites of Special Scientific Interest, Local Nature Reserves and Coventry Nature Conservation Sites
GE 12:	Protection of Other Sites of Nature Conservation Value
GE 13:	Species Protection
GE 14:	Protection of Landscape Features
GE 15:	Designing New Development to Accommodate Wildlife

Social, Community and Leisure

SCL 1:	SOCIAL, COMMUNITY, LEISURE AND INDOOR SPORTS FACILITIES
SCL 2:	Large Social, Community, Leisure and Indoor Sports Facilities
SCL 3:	Small Social, Community, Leisure and Indoor Sports Facilities
SCL 4:	∅ Childcare Facilities
SCL 5:	⊕ The Butts Stadium
SCL 6:	EDUCATIONAL FACILITIES
SCL 7:	Schools and Colleges of Further Education
SCL 8:	Coventry University
SCL 9:	University of Warwick
SCL 10:	HEALTH AND SOCIAL CARE
SCL 11:	⊕ Hospitals
SCL 12:	Local Health and Social Care Facilities
SCL 13:	∅ Enhanced Facilities
SCL 14:	Re-use or Redevelopment of Facilities

City Centre

CC 1:	CITY CENTRE STRATEGY
CC 2:	A Vibrant and Entertaining Market Place
CC 3:	A Living Heart
CC 4:	New Housing Sites
CC 5:	Sites and Areas with a Substantial Housing Element
CC 6:	Warm and Welcoming Public Spaces
CC 7:	Major Environmental Improvement Schemes
CC 8:	Accessible to All
CC 9:	∅ Car Parking and New Developments
CC 10:	Public Car Parking
CC 11:	Sparkling through Good Quality Design and Management
CC 12:	Distinctive Areas
CC 13:	The Central Shopping Area
CC 14:	⊕ Lower Precinct Refurbishment
CC 15:	Smithford Way Redevelopment
CC 16:	Barracks Redevelopment
CC 17:	∅ Primary Frontages
CC 18:	The West End Area
CC 19:	⊕ Belgrade Theatre Extension
CC 20:	⊕ Site at Upper Well Street / Bond Street
CC 21:	The Southside Area
CC 22:	∅ Sites at New Union Street/Little Park Street
CC 23:	The Queens Road/Butts Area
CC 24:	Queens Road/Butts Area - Social, Community and Leisure Uses
CC 25:	The Station Area
CC 26:	Station Area Sites
CC 27:	The Parkside Area
CC 28:	Parkside 2
CC 29:	∅ Parkside 3
CC 30:	The Coventry University Area
CC 31:	⊕ Gulson Road Site
CC 32:	⊕ Whitefriars Street Site
CC 33:	The Cathedral Area
CC 34:	The Phoenix Area
CC 35:	⊕ Phoenix 1
CC 36:	⊕ Museum of British Road Transport
CC 37:	∅ Phoenix 2
CC 38:	Phoenix 3
CC 39:	Pool Meadow
CC 40:	The Ring Road Area
CC 41:	Subways
CC 42:	Bridges
CC 43:	"At-grade" Crossings
CC 44:	The Swanswell Area
CC 45:	The Coventry and Warwickshire Hospital Site
CC 46:	⊕ The Drapers Fields Area

**APPENDIX 2 : COVENTRY UNITARY DEVELOPMENT PLAN
POLICIES PROPOSED NOT TO BE SAVED**

Policy Number	Policy Name (and purpose).	Request to save Policy beyond Sept 2007. YES/NO	CDP POLICY	If "NO" reason why Policy is not requested to be saved.
CC 9	Car Parking and New Developments	NO	<p>Private car parking provision for new developments will be limited to that necessary for essential operational needs and provision for "blue (orange) badge" holders.</p> <p>The balance of demand will be expected to be met through developer contributions to new public car parking, "Park and Ride" schemes or other transport measures.</p> <p>Supplementary Planning Guidance will implement these principles in detail.</p>	Policy is more prescriptive than PPG 13 and has deterred development in the centre. In recent decision on AXA, Planning Committee therefore decided to depart and referral to GOWM did not lead to call in
CC 14	Lower Precinct Refurbishment	No	The refurbishment of the Lower Precinct area shown on the Proposals Map for predominantly shopping uses will be promoted and encouraged.	The Policy has been implemented

CC 17	Primary Frontages	No	<p>Primary Frontages are shown on the Proposals Map and will remain predominantly in Class A1 use to protect their shopping role.</p> <p>Proposals for Class A3 use will be permitted if they contribute to the vitality and viability of a Frontage, subject also to Policy S 10. Proposals for increases in the number of Class A2 or other uses in a Frontage will not be permitted.</p> <p>A window display or open frontage will be required.</p> <p>Outside the Primary Frontages any mix of Class A uses will be accepted.</p>	<p>The policy is over prescriptive. PPS 6 give more flexibility particularly in A2 uses and provides sufficient policy base</p> <p>Para 2.17 of PPS 6 states that primary and secondary frontages should be realistically defined. "Having regard to the need to encourage diversification of uses in town centres as a whole, primary frontages should contain a high proportion of retail uses, while secondary frontages provide greater opportunities for flexibility and a diversity of uses</p>
CC 19	Belgrade Theatre Extension	No	Proposals for the extension of the Belgrade Theatre on land south of Bond Street shown on the Proposals Map will be promoted and encouraged.	The Policy has been implemented
CC 20	Site at Upper Well Street/Bond Street	No	Proposals for the development of the site at Upper Well Street/Bond Street shown on the Proposals Map for a mix of uses including a substantial housing element, hotel, leisure, business offices, small retail units and car parking will be promoted.	The Policy has been implemented

CC 22	Sites at New Union Street/ Little Park Street	No	Proposals for development of sites shown on the Proposals Map at: 1 1-8 Union Buildings; 2 Cheylesmore car park; should be mainly four storeys in height. Acceptable uses will include business offices and hotel with small retail units on the ground floor of 1-8 Union Buildings.	The policy is over restrictive in terms of design requirements and other policies exist to require quality development eg CC11, BE 1
CC 28	Parkside 2	No	Proposals for the redevelopment of the Parkside 2 area shown on the Proposals Map for business office, research and development, residential and Urban Green Space together with ancillary uses will be encouraged.	Almost fully developed
CC 29	Parkside 3	NO	Proposals for the redevelopment of the Parkside 3 area shown on the Proposals Map for predominantly business offices and research and development uses together with a public house/restaurant will be promoted and encouraged.	Not allocated in E6 – CDP Inspector deleted. Permission granted for residential development on part of site.
CC 31	Gulson Road Site	No	Proposals for the redevelopment of this site shown on the Proposals Map by Coventry University for a mix of academic, administrative and residential uses will be encouraged.	The Policy has been implemented
CC 32	Whitefriars Street Site	No	Proposals for the redevelopment of the site shown on the Proposals Map by Coventry University for academic, administrative or residential use will be encouraged.	The Policy has been implemented

CC 35	Phoenix 1	No	<p>Proposals to link the Cathedral Area with the Museum of British Road Transport through a sequence of major public spaces shown on the Proposals Map will be promoted and encouraged.</p> <p>Proposals will also include redevelopment for small shop units, a significant housing element, business office and hotel uses.</p>	The Policy has been implemented
CC 36	Museum of British Road Transport	No	Proposals for the refurbishment and expansion of the Museum of British Road Transport on the site shown on the Proposals Map will be promoted and encouraged.	The Policy has been implemented
CC 37	Phoenix 2	no	Within the Phoenix 2 area, shown on the Proposals Map, redevelopment for an overall mix of uses including the improvement of access from the Ring Road, a substantial housing element, hotel, business offices and leisure and tourism uses will be promoted and encouraged.	Over prescriptive in context of extent of housing now delivered within the ring road.
CC 46	The Drapers Fields Area	No	<p>The Drapers Fields Area is shown on the Proposals Map.</p> <p>Within this Area, further residential development will be encouraged as well as further enhancement of the Canal Basin and surrounding buildings.</p>	The Policy has been implemented
S 7	Primary Retail Frontages	No	Primary Retail Frontages are shown on Text Maps in the Ball Hill, Earlsdon and Far Gosford Street	Recent committee decisions have disregarded policy in

			<p>Centres at:</p> <p>Ball Hill : 173-239 Walsgrave Road.</p> <p>Earlsdon : 1-11 Earlsdon Street; 41 Moor Street and 13-45 Earlsdon Street;</p> <p>2-20 Earlsdon Street; 22-64 Earlsdon Street;</p> <p>Far Gosford Street : 52-60 Far Gosford Street; 61-73 Far Gosford Street; 116-133 Far Gosford Street.</p> <p>A proposal which would result in more non-retail uses in a Frontage than the number in that Frontage at the date of deposit of the Plan will not be permitted.</p>	Earlsdon and Far Gosford Street
S 8	Upper Floor Units in Defined Centres	No	<p>Proposals to use the upper floors of units within defined Centres for shopping, residential, employment, social, community or leisure uses will be permitted, subject to:</p> <ul style="list-style-type: none"> · compatibility with nearby uses; and · compatibility with other Plan policies. 	The Policy duplicates elements of Policies S 2, S 4 and S 5
SCL4	Childcare Facilities	No	<p>Proposals for childcare and pre-school facilities will be considered on the basis of:</p> <ul style="list-style-type: none"> · compatibility with nearby uses; 	Childcare facilities are, by definition, a social community or leisure use. Policies SCL2 and SCL3 set out the position in respect of

			<ul style="list-style-type: none"> · the provision or retention of a unit of residential accommodation if the facility is in a residential area; and · compatibility with other Plan policies. 	such proposals and is therefore considered not necessary as it merely repeats the provisions of the aforementioned policies. In any event, residential criterion is covered by SCL 3
SCL5	Butts Stadium	No	The Butts Stadium is allocated for sport and leisure development, as shown on the Proposals Map.	The Policy has been implemented
SCL11	Hospitals	No	<p>The location of new hospitals shall be determined in accordance with the sequential test set out in Government guidance.</p> <p>The new general hospital to serve Coventry and the sub-region should be located on the enlarged Coventry & Warwickshire Hospital site or on the Walsgrave Hospital site.</p> <p>Any proposals for a new hospital will require a comprehensive development scheme, including a Green Travel Plan, demonstrating that the site will be:</p> <ul style="list-style-type: none"> · readily accessible to its catchment area by public transport, walking and cycling; · provided with satisfactory site access arrangements to cope with emergency vehicles; · compatible with nearby uses; and 	The new hospital has been built on the site earmarked in this policy. Thus, the Policy has been implemented.

			<ul style="list-style-type: none"> · compatible with other plan policies. 	
SCL13	Enhanced Facilities	No	Where housing or commercial development would add significantly to demand for social, community, leisure, sport, education, health or social care facilities, and there would be a deficiency or shortfall in those facilities resulting from the proposed development, the provision or improvement of facilities, or a related financial contribution, will be sought by negotiations.	Repeats, in almost its entirety, Policy OS10 (Planning Obligations). The direct comparisons with Policy OS10 have already been established in the 2006 AMR, which cross-referenced the operation of Policy SCL13 to policy OS10 in terms of its performance.
BE 3	Design Statements as Part of Major Planning Applications	No	Applicants for planning permission for major new developments or redevelopments will be expected to submit a written statement setting out the design principles adopted and how they are achieved in relation to the site and the wider context as well as illustrative material in plan and elevation.	Since August 2006, Design & Access Statements have been required to accompany most planning applications
BE 17	Outdoor Advertisements	no	<p>Outdoor advertisements will be controlled in order to safeguard the interests of:</p> <ul style="list-style-type: none"> · amenity; and · public safety. <p>Detailed guidelines for the control of express consent to display outdoor advertisements will be set out in Supplementary Planning Guidance.</p>	Merely duplicates statutory guidance
AM 17	Car Parking Maximum Car Parking	No	Maximum levels of car parking for new developments will be set out in Supplementary Planning Guidance and are determined on the basis	RSS policy T7 PPG 13 (paras 49-56) and PPS 3 provide sufficient

	Standards		of: <ul style="list-style-type: none"> · the nature of the use(s); · the operational requirements of the use(s); and · the extent to which the site is or can be made accessible by a choice of means of transport. <p>The levels of car parking must ensure that developments do not cause car parking problems in the vicinity.</p> <p>In non-residential developments, 1 space suitably designed, located and reserved for "blue (orange) badge" holders should always be provided and, where 20 or more spaces are to be provided, 5% should be suitably designed, located and reserved for "blue (orange) badge" holders.</p> <p>Separate agreed provision may also be appropriate for major developments such as universities and hospitals.</p>	policy
AM 18	Car Parking in Centres	No	New car parking standards for defined centres will be set out in Supplementary Planning Guidance. If new car parking is required, it must be publicly available.	SPG has not developed in this way. Covered in Draft Parking Standards SPG
AM 21	Rail Freighting at Keresley	No	The retention and use of rail freighting facilities will be required in the development of the Keresley Strategic Regeneration Site to avoid road traffic nuisance and should be considered at other locations.	The Policy has been implemented

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Report to
Scrutiny Board 3
Cabinet and Council

7th March 2007
20th March 2007

Report of
Director of City Services, Director of Finance and ICT and Director of Legal and Democratic Services

Title
Street Lighting PFI Project - Outline Business Case

1 Purpose of the Report

- 1.1 This report summarises the progress on the Street Lighting Private Finance Initiative (PFI) project, shows the options appraised and requests permission to submit an Outline Business Case (OBC) to the Department for Transport (DfT). This has to be submitted no later than 30th March 2007.

2 Recommendations

Cabinet and Council are asked to approve:

- 2.1 **Scrutiny Board 3 are asked to consider and support the report and its recommendations detailed below in 2.3.1 to 2.3.5, and forward any comments to the Cabinet for consideration.**
- 2.2 **The Cabinet are asked to consider the report, together with any comments from Scrutiny Board 3, agree or amend the report as appropriate and make recommendations to the Council.**
- 2.3 **The Council are requested to take account of any comments received from Cabinet and to support and approve the report and its recommendations, amended as necessary in the light of any comments received from Cabinet.**
- 2.3.1 the submission of an OBC based on a Fast Track Solution as outlined in section 4.4.3 to the DfT for funding approval.
- 2.3.2 the commencement of the procurement process for the Street Lighting PFI Project, subsequent to the approval of the OBC by the DfT.
- 2.3.3 the proposal that further reports will be brought to Cabinet and Council seeking approval at the key procurement stages.

- 2.3.4 the appointment of external advisors for this project, the cost of which is to be contained within the project development budget. PricewaterhouseCoopers (PWC) as financial advisors, Derek Rogers Associates (DRA) as technical advisors and Hammonds as legal advisors for the purposes indicated in paragraph 4.6 of this report.
- 2.3.5 delegated authority be given to the PFI Street Lighting Project Board to approve any minor changes to the OBC after this approval.

3 Information/Background

3.1 Background

- 3.1.1 On February 21st 2006 Cabinet and Council approved the submission of the Expression of Interest (Eol) to the DfT. Council also approved in its medium term financial strategy a budget allocation of £1.3 million per annum from 2008/09 onwards (the affordability gap) along with an estimated one-off project development budget of £70k in 2006/07 and £0.430 million in 2007/08.
- 3.1.2 On February 20th 2007 Cabinet and Council confirmed the re-phasing of the costs of the PFI of £1.3 million per annum from 2009/10 onwards (re-phased due to a revised indicative procurement programme) and approved a revised project development budget of £1.1 million as detailed further in section 5.7 of this report.

3.2 Executive Summary

- 3.2.1 The Government announced in November 2005 that £600 million in PFI credits would be available to address the continuing problems of deterioration in street lighting stock. Interested councils were required to submit an Expression of Interest (Eol) to the DfT by February 24th 2006.
- 3.2.2 On 26th July 2006 the DfT approved the Council's Eol for a Street Lighting PFI and granted £62.8 million of credits for the project.
- 3.2.3 The next stage in the programme is to submit an OBC to the DfT by 30th March 2007.
- 3.2.4 This report seeks approval for the procurement of a street lighting PFI programme based on service commencement in April 2009. The Council has completed a detailed affordability study and is now seeking credit approval from the Government (PFI credits) of £64.3 million, an increase of £1.5 million from the Eol stage. The increase is due to a later assumed service commencement date of April 2009 and therefore inflation increases. It is expected that the DfT will agree to this increases in credit allocation. With an outsourced service such as this there are no maintenance charges or energy costs over and above the Unitary Charge¹. The "affordability gap" (i.e. the amount over and above that which the council currently expends on the service) currently remains the same as that reported to Cabinet and Council in February 2006 at the Eol stage of £1.3 million per annum. This is already incorporated in the council's medium term financial strategy.
- 3.2.5 One off project development costs are also required for which additional budget has been identified in this years PPR process.

¹ The price paid for energy is certain to change during the life of the PFI (especially with the volatility of the market). The PFI service provider would pass on any price fluctuation directly to the council with the volume risk being retained by the service provider.

3.2.6 The PFI process is quite prescriptive with the development of the PFI contract taking approximately 18 months to negotiate from the commencement of the procurement process when the Invitations to Submit Outline Solutions (ISOS) are issued to start of contract. For the Coventry PFI the ISOS is programmed to be issued in November 2007 with a service commencement date of April 2009. The street lighting contract will take full account of the Street Lighting PFI Procurement Pack developed by the 4ps, the Government agency set up to advise local authorities developing PFI projects. (See Appendix One for detailed programme).

3.3 Scope of the Project

3.3.1 The duration of the PFI will be 25 years during which time responsibility for service provision will transfer to a private contractor, who will undertake major capital renewal of the street lighting infrastructure and all ongoing maintenance responsibilities.

3.3.2 The majority of the capital investment will take place in the first 5 years of the contract period, and will include: -

- Replacement of 26,000 lighting columns
- An additional 6,300 lighting columns to achieve relevant lighting standards and to light unlit areas in the city
- Renewal of up to 230km of the private cable network
- Improved "white light" lighting design in residential areas for better colour rendition and energy efficiency
- Replacement of all illuminated signs, traffic bollards and beacons
- Improved LED illuminated signs and bollards for reduced maintenance and lower energy costs
- Replacement of some illuminated traffic signs with non-illuminated reflective signs to reduce maintenance and remove energy costs
- Enhanced specification columns to enable attachments to columns such as: CCTV, Dome Hawk mobile cameras, banners, hanging baskets
- Conversion of approximately 1,600 luminaires on deemed to comply columns to meet current lighting standards²

3.4 Reason for the Project

3.4.1 The project will result in the provision of substantially modernised public lighting across the whole of the city. This additional investment will replace old and obsolete equipment, which has or is reaching the end of its useful design life; provide additional lighting to unlit areas and to provide a consistent and enhanced lighting quality across the city.

3.4.2 The proposal also replaces illuminated traffic signs and other illuminated highway street furniture ensuring a consistently high standard of provision is rapidly achieved and then maintained in for the long term.

3.4.3 Coventry has approximately 33,000 street lighting columns, 4,000 traffic signs and beacons and 1,500 traffic bollards. Approximately 17,000 lighting columns are beyond their original life expectancy of 25 years and a further 9,400 of the younger lighting stock do not meet the current European standard for lighting³. In addition an increase in column numbers of up to 6,300 may be required to ensure that all currently lit areas and the identified

² Deemed to comply columns are those that meet the required standards as defined in the Output Specification.

³ Modern European standards as defined in EN13201.

additional lighting requirements for previously unlit areas of the City meet the relevant standards.

- 3.4.4 Many of the City's illuminated traffic signs are at the end of their useful life and require modernisation and standardisation.
- 3.4.5 Much of the inventory needs replacement and the capital investment required to support the substantial improvement required cannot be resourced from the existing Council budgets. As time goes on, a higher and higher proportion of the existing lighting inventory will reach the end of its design life and need replacing.
- 3.4.6 Due to increasing concern from recent lighting column structural survey reports, the Council identified additional capital resources of £1.4 million in 2005/6 and £1.4m in 2006/7 to fund the replacement of 1,000 columns per annum. In the financial year 2007/08, a provisional allocation is identified for a further £1.4 million to be invested in street lighting infrastructure works. At the EoI stage it was reported that to continue this level of additional investment beyond 2006/7 it would take a further 28 years to replace the existing lighting only. However, it was recognised that this increased level of capital investment was unlikely to be sustained in the long term and an alternative long-term solution to lighting maintenance and funding needed to be found. To this end Council approved the EoI for the development of a PFI for street lighting, traffic signs and bollards in February of 2006.
- 3.4.7 The creation of safer and stronger communities is a central theme that runs through the Corporate Plan and the quality of street lighting provision is a key element in achieving this. Safety, both in terms of road safety and personal security are affected by street lighting provision and as such, investment in this provision relates directly to the corporate objectives. Lighting improvements and column renewals can make the street environment a more pleasant place to use after dark by deterring criminal activity and helping people feel safer on the streets after dark. Better quality lighting can also contribute to the regeneration of a city with improvements to the nighttime ambience of an area. The project scope has been developed on the basis of a white light solution for residential areas. White light is closer to natural daylight allowing colours to be seen more clearly, which assists identification by CCTV installations. The project also includes for the provision of a number of enhanced specification columns to enable CCTV and/or mobile Dome Hawk cameras be attached to them in order to monitor crime hotspots.
- 3.4.8 The installation of modern lighting equipment will reduce the level of light pollution currently experienced
- 3.4.9 Of Coventry's lighting infrastructure 300km is powered from the Council's private cable network (PCN). This is a dedicated power supply providing energy only for the streetlights, signs and bollards. This cabling does not form part of the district network operators (DNO), (Central Networks) strategic network. It is anticipated that potential service providers will expect to renew this network and the replacement of approximately 230km of this cabling has been included in the technical solution developed for the project.
- 3.4.10 Work carried out during the development of this project has sought to accommodate revisions to lighting codes of practice and increases in stock replacement and energy charges, whilst ensuring that the project remains value for money in terms of the benefits and costs. Just as importantly, the OBC has been developed to ensure that the additional annual revenue budget support required from the Council is kept to the minimum required to ensure an acceptable and realistic level of service delivery throughout the entire PFI contract period.

3.4.11 A combination of all these factors have prompted the development of this project which will enable further capital investment in the lighting stock to minimise the risk of structural failure and electrical breakdown of the oldest columns and to achieve further quality improvements to bring the lighting up to modern standards.

4 Proposal and Other Option(s) to be Considered

4.1 Only with a PFI or through Prudential Borrowing can significant and early improvements in lighting standards be achieved. Prudential Borrowing could be utilised to improve the existing stock but would require the Council to fund all the costs of improvements. The PFI will enable a comprehensive investment programme to be undertaken to achieve the relevant modern standards and a long term service delivery arrangement would afford the opportunity for much of the cost to be met by Government grant. The service provision would be transferred to a private sector contractor.

4.2 The injection of substantial Government funding, if awarded, makes the PFI option the more affordable solution.

4.3 Characteristics of a PFI option.

4.3.1 A PFI contract passes responsibility for the City's street lighting to a private service provider who would be tasked with bringing the stock up to agreed standards and undertaking ongoing maintenance for a period of 25 years. During the first 5 years of the contract (2009 – 2013), around 26,000 old and poor condition lighting units would be replaced. In addition a further 6,300 new lighting columns would be installed to provide lighting levels to reach the relevant standards with up to 1,000 of these going into areas where currently no lighting exists. This will help improve community safety and enhance the nighttime environment.

4.3.2 A successful PFI OBC would bring Government support towards the capital cost of the initial improvement programme, however, no grant is payable for any capital improvement undertaken after the first 5 years or indeed towards any of the maintenance costs, etc. As a result there is an affordability gap as explained in section 5.7.

4.3.3 Responsibility for renewing and improving the street lighting assets, all maintenance services and energy provision falls to the private sector PFI contractor throughout the 25 year PFI contract period. Performance requirements as defined in an Output Specification will be incorporated into the contract. The PFI contractor will be incentivised, through performance penalties, to provide a high level of maintenance, responsiveness, customer care, etc and, through commercial gain, to reduce energy consumption and generate economies.

4.3.4 The PFI option will involve significant change in the way the street lighting service is provided in Coventry. A PFI contract will be with a private contractor and this would result in the transfer of the City Council's in-house Street Lighting function, retaining only a small client monitoring function.

4.4 A full options appraisal has been undertaken with our technical and financial advisors during the preparation of the OBC. This work established that there are 4 possible investment options, as follows:

4.4.1 Do Minimum – reactive maintenance only to repair faults and failures as they occur including "sleeving" failing concrete columns and one for one replacement of life expired and unsafe columns.

- 4.4.2 Partial Replacement – replacement of the oldest columns and those effectively life expired.
- 4.4.3 Fast Track Replacement and Improvement – rapid replacement of all outdated and failing columns and installation and additional columns as necessary to achieve BS EN 13201 lighting standards.
- 4.4.4 Full Replacement – replacement of all columns, irrespective of age, bringing the whole system up to modern standard
- 4.5 Subject to affordability considerations, it is desirable that the Council pursues the fast-track option as this offers the potential to deliver value for money.

4.6 Appointment of Advisors

- 4.6.1 Due to the complexity of PFI projects and the specialist skill and experience required to develop such projects your officers have identified a need to appoint financial, legal and technical advisors with specific experience of Street Lighting PFI.
- 4.6.2 The wider commercial perspective and relevant experience offered by external PFI advisors is currently not available in-house. It is not the intention however to rely exclusively on external advice. Your officers will consider and record all the skills inputs, which will be required and will identify in-house skills and expertise before defining the precise role to be played by the external advisors.
- 4.6.3 All external advisors will be expected to work alongside the in-house team, supplying those competencies and capacities not available within existing Council departments. This complementary sharing of responsibilities will not only be more economic but also enable your in-house team to acquire specialist knowledge and skills for the future so that in the event of any subsequent procurements there is less dependence on external advisors.

4.6.4 Technical Advisors

A tendering exercise was undertaken and of three companies that were asked to bid, one declined due to a conflict of interest. Two tenders were received. Their respective tenders evaluated against criteria agreed by the Project Team, which focused on experience, quality, capacity, availability, accessibility, price and best fit with in-house resources.

Your officers appointed DRA who have significant experience in delivering Street Lighting PFI Projects.

4.6.5 Financial Advisors

During the development of the EOI Deloitte provided external financial advice to the project. On obtaining approval by the DFT to proceed to the development of the OBC a competitive process involving an evaluation of detailed proposals from two firms with specialist PFI Street Lighting experience and relevant financial expertise was undertaken by the project team. The proposals were evaluated against criteria, which focused on experience, quality, capacity and price.

Your officers appointed PWC subject to your approval.

4.6.6 Legal Advisors

A tendering procedure was undertaken with an advert being placed in the Law Society Gazette (legal journal). Nine expressions of interest were received and, after a preliminary evaluation 5 were invited to submit formal tenders and attend a meeting to present their proposals to a panel made up of representatives from the project team. Following this exercise Hammonds were assessed as providing the Most Economically Advantageous Tender (MEAT) and were therefore appointed subject to your approval.

5 Other specific implications

5.1

	Implications (See below)	No Implications
Neighbourhood Management	✓	
Best Value	✓	
Children and Young People		✓
Comparable Benchmark Data	✓	
Corporate Parenting		✓
Coventry Community Plan	✓	
Crime and Disorder	✓	
Equal Opportunities		✓
Finance	✓	
Health and Safety	✓	
Human Resources	✓	
Human Rights Act		✓
Impact on Partner Organisations	✓	
Information and Communications Technology	✓	
Legal Implications	✓	
Property Implications	✓	
Race Equality Scheme		✓
Risk Management	✓	
Sustainable Development	✓	
Trade Union Consultation	✓	
Voluntary Sector – The Coventry Compact		✓

5.2 Neighbourhood Management

5.2.1 The implementation of a PFI contract with the replacement of over 26,000 lighting columns and approximately 6,000 additional columns within the first five years of the contract will require excellent communication and consultation links with local people and other

stakeholders. This process will be set out in a Consultation Strategy that will identify all the relevant internal and external organisations and groups that will need to be consulted and engaged with as part of the delivery plan for the PFI. During the dialogue process with potential service providers appropriate liaison arrangements will need to be agreed to ensure that residents and stakeholders are fully consulted by the service provider prior to any lighting improvements in their streets and communities.

5.2.2 It is intended that through engagement at ward forums and community and stakeholder groups there will be the opportunity for information sharing and consultation. For some schemes there may be an element of local choice where for example, there is a proposal to install lighting into a currently unlit area the local residents would be encouraged to provide their views on.

5.3 Best Value

5.3.1 The Best Value Review of Highways 2001 and Coventry's Street Scene 2004 both highlighted the need to develop properly funded plans to replace the ageing lighting stock.

5.3.2 The Street Lighting PFI provides very good value for money as the scheme attracts PFI credits from central government. The Council will be benefiting from approximately £63 million of new capital expenditure for an additional £1.3 million per annum.

5.3.3 The most notable difference between our current street lighting service provision and the PFI should it get approval will be that in the first five years of the contract there will be about 33,000 new lighting columns installed across the City to provide enhanced levels of lighting throughout the City. This could not be achieved if our current level of funding continued.

5.4 Comparable Benchmark Data

5.4.1 There are a number of successful street lighting PFI contracts already in existence across the country and Coventry has compared its current stock condition and proposed specification against other urban local authorities with similar lighting infrastructures and age profiles.

5.5 Coventry Community Plan

5.5.1 Delivery of a successful PFI will contribute to the Coventry Community Plan by supporting the creation of safer and stronger communities by reducing both the perception and incidence of crime and road traffic accidents, and by enhancing the nighttime environment and encouraging the growth of a nighttime economy in appropriate areas.

5.6 Crime and Disorder

5.6.1 Government research has shown that improved street lighting can support the reduction of crime and disorder in a number of ways:

- Lighting can reduce crime by improving visibility
- Lighting improvements can encourage increased street usage
- Better lighting can improve community confidence
- Lighting improvements and column renewals aid CCTV systems (including mobile Dome Hawk cameras that are moved around to target crime hotspots) by enhancing the quality of CCTV footage, including facial recognition and improved identification of colours, e.g. cars and clothing

- Improved illumination may reduce the fear of crime as it physically improves the environment and alters the public perception of it. People perceive that a well-lit environment as being less dangerous than one that is dark.

5.6.2 To ensure that the scheme properly addresses local crime hotspots, consultation will be ongoing with local communities, the City Council's Community Safety Team and neighbourhood management, the Active Intelligent Mapping (AIM) group and West Midlands Police.

5.7 Finance

5.7.1 The Council has identified budgets for the scheme, which include the element relating to the affordability gap of £1.3 million. The Council will receive Revenue Support Grant (RSG) Annuity Grant and from this total needs to pay the Unitary Charge and estimated client-monitoring costs. The surplus generated in the earlier years is then invested back into the project to pay the Unitary Charges in future years. At the end of the 25 years this balance is zero with the full costs of the project being covered by Council budget and RSG grant support.

5.7.2 In compiling the budget, officers have made assumptions around budget requirements for the residual service (including signs, barriers, architectural and multi-storey lighting). This work will continue to be refined during the procurement process. Work is also continuing to ensure that budgets or budget contributions, from other service areas which are included within the scope of the project but are not funded from the core street lighting budget are drawn into the project e.g. industrial estates, parks and so on.

5.7.3 Whilst the City Council has identified additional capital resources of £1.4 million in both 2005/06 and 2006/07 to improve street lighting, these levels of additional capital expenditure do not sustain the desired rate of replacement. If the Council maintained this level of investment beyond 2006/07 it would take a further 28 years to replace the existing lighting stock alone without the lighting of presently unlit areas.

5.7.4 Once the PFI contract is in place, the City Council will make monthly payments to the service provider for the replacement programme and the ongoing maintenance of the lighting stock, with the level of payments being linked to performance. The Council would receive a PFI revenue grant throughout the contract period, to meet the costs of the 5-year replacement programme. However, the PFI revenue grant does not cover the costs of any lighting column replacements in later years, or maintenance and energy costs.

5.7.5 The Council's finance staff and our external advisors have produced a financial model and affordability analysis for the PFI project. This analysis is based on the forecast costs to the private sector of providing the levels of service required by the Council in respect of street lighting provision.

5.7.6 The affordability of the project is an assessment as to whether the Council can afford the project. By modelling the annual Unitary Charge and the PFI credit support, the level of the additional revenue budget support needed can be calculated and compared with the existing street lighting budget. In the report to Council on 21st February 2006, an estimated initial revenue budget support of £1.3 million per annum was identified. This "affordability gap" was calculated based on the Expression of Interest submission for PFI credits of £63 million. The modelling undertaken during the development of the OBC has confirmed the affordability gap at £1.3 million. This figure includes all the new capital to be spent in the first 5-year fast track investment period (£63 million), any life cycle replacement of equipment and all revenue costs including energy. Whilst all projections are based on

current best estimates they are consistent with other similar projects of this type already undertaken elsewhere and are considered realistic.

5.7.7 If the OBC is submitted and approved by the DfT the costs of implementing the scheme up to service commencement in April 2009 is likely to be a sum up to £1.1 million, with the majority of costs being incurred in 2008/09.⁴ These costs include external advice from financial, technical and legal advisors as outlined in section 4.6 of this report, along with internal staffing costs and other projected costs for training and other requirements of the project team during the procurement stages.

5.7.8 The estimated budget requirement has erred on the side of caution based on known costs of similar street lighting procurement costs elsewhere (e.g. Bradford £1 million, Sheffield £2 million, Croyden £750k) and local experience of the costs of funding the development of large PFI's. An additional unknown during the procurement phase of this project is the recent introduction of the "competitive dialogue" procedure where the Council will have to negotiate with a number of service providers. The 4ps have advised all authorities that there will be an additional resource requirement and therefore additional costs for external advisors should be expected under this procedure compared to the negotiated procedure which has previously been used.

5.7.9 The Project Manager and the project team will ensure that robust management and control of the external advisor's charges will be maintained to ensure they provide good value for money. Wherever possible tasks will be allocated internally, and fees will be closely monitored. Any budget that is surplus to requirements will be returned to the "corporate pot" to be re-used.

Year £'000	2006/07	2007/08	2008/09	2009/10	Total
Estimated Procurement Costs	70	380	450	200	1,100

5.7.10 The Council's proposed medium term financial strategy presented to Council on 20th February 2007 includes the budget allocation of £1.3 million per annum from 2009/10 onwards for the affordability gap and a project development budget of up to £1.1 million. The principal reasons for the affordability gap are the increase in energy usage resulting from additional lighting columns required to meet the European lighting standard, the need to maintain and replace equipment over the lifetime of the contract and the provision of new columns in unlit areas. The project team will continue to work to maximise the efficiency of the scheme and every effort will be made to minimise the procurement costs

5.7.11 Throughout the development of the OBC the Council has sought advice from and worked closely with the DfT and the 4Ps, the Local Government Association's Specialist PFI advice agency and will continue to do so during the procurement phases.

5.8 Health & Safety

5.8.1 Health and Safety issues are an important part of the development and implementation of any contract and a Health and Safety Plan would be produced during the procurement process.

⁴ The £1.1 million is referred to as the project development budget.

5.9 Human Resources

5.9.1 If the PFI goes ahead and the street lighting service provision transfers to a private contractor this will involve the transfer of staff to that contractor. This transfer is covered by the "Transfer of Undertakings (Protection of Employment) Regulations" 1981 (known as TUPE Regulations). This will mean that the work carried out by street lighting staff in the Highways and Lighting Division will transfer to the contractor under TUPE Regulations. A very small number of staff may need to be retained to carry out those services currently undertaken by the lighting section that won't be transferred as part of the PFI ("the residual service").

5.9.2 A contract monitoring function requiring up to four staff will be needed by the Council to monitor progress and compliance with the specified outputs in the Contract.

5.9.3 Pensions, which are not covered by TUPE Regulations, will also have to be discussed as part of the process. It is usual to require the Contractor to either join the Local Government Pension Scheme or to require the contractor to offer an equivalent pension scheme.

5.10 Impact on Partner Organisations

5.10.1 A successful PFI will help assist a number of our partner organisations deliver their service objectives. For example, with improved lighting the incidents of nighttime crime should be reduced which will benefit West Midlands Police performance results.

5.11 Information & Communications Technology

5.11.1 There will be a need to ensure that should the project proceed, the appointed private contractor's IT system is able to receive and update information from the City Council's IT systems such as Customer Relationship Management System (CRM) and CONFIRM (the council's asset management system).

5.12 Legal Implications

5.12.1 The Council has the duty under section 97 of the Highways Act 1980 to provide and maintain street lighting columns. In addition, Section 2 of the Local Government Act 2000 allows Local Authorities the power to do anything, which is considered likely to achieve the promotion or improvement of the economic, social and/or environmental well-being of an area, which would include entering into a long term partnership arrangement.

5.12.2 The Crime and Disorder Act 1998 places a duty upon a local authority to take account of community safety issues in all of its work and government research has shown good quality lighting as being one of the keys to reducing crime.

5.12.3 Traffic signs are installed in accordance with the requirements of the Traffic Signs Regulations and General Directions 2004.

5.12.4 Appropriate written contractual arrangements will be put in place for the external advisor appointments by the Legal and Democratic Services Directorate, in accordance with the Financial Advisor Framework Agreement and the Council's Consultant Agreements.

5.12.5 The procurement will be in accordance with the EU procurement rules relating to the Competitive Dialogue procedure and the street lighting contract will take full account of the Street Lighting PFI Procurement Pack developed by 4ps, the Government agency set up to advise local authorities developing PFI projects (See Appendix 1 for detailed programme)

5.13 Property Implications

5.13.1 Any lighting columns that are not on the adopted highway and are included in this project will require an easement from the property owner to enable the contractor to carry out the required works.

5.14 Risk Management

5.14.1 The establishment of a PFI contract to renew street lighting within the City will result in the transfer of considerable risk from the Council to the private sector.

5.14.2 The implementation of a PFI lighting replacement programme with the replacement of some 26,000 lighting columns within the first five years will reduce the risk of claims resulting from poor lighting levels and their links to traffic accidents and pavement and carriageway related trip and damage claims. If the PFI doesn't progress the current state of the street lighting infrastructure will continue to deteriorate over the coming years, which will also result in additional maintenance costs with health and safety standards compromised as a result.

5.14.3 The funding required to cover the additional costs of the PFI will need to be met from within the overall resources of the Council. The affordability gap of £1.3 million was included in the Council's medium term financial strategy; presented to Council on 21st February 2006. This is explained in more detail in section 6 of this report.

5.14.4 In accordance with the Council's Risk Management Strategy the main procurement risks have been identified and are recorded on the risk register. These risks are reviewed regularly by both the project team and project board and measures are implemented to mitigate the risks.

5.14.5 Project risks have been identified and evaluated using the guidance issued by the DfT.

5.15 Sustainable Development

5.15.1 Modern street lighting equipment is more energy efficient than older apparatus but improved illumination standards will require an overall increase in energy consumption. Steel columns and associated lighting equipment are recyclable when replaced at the end of their designed life.

5.16 Trade Union Consultation

5.16.1 Consultation with the Trade Unions has commenced through the Directorate Health and Safety and Industrial Relation Forum meetings and will continue throughout the procurement process.

5.16.2 Employee consultation has also started with an introductory briefing undertaken with all potentially affected employees. This procedure will continue throughout the procurement process.

6 Monitoring

6.1 A project team has been established and has been meeting fortnightly since late summer, utilising experience from across the council and also the expertise of external technical and financial consultants to carry out the works required to complete the OBC. The project team reports to the Project Board that has been meeting on a monthly basis to provide strategic

direction on corporate issues. The Board also ensures that the risks associated with the project are being properly managed, that the project remains focussed on the project objectives and the critical success factors, and that any major deviations from the agreed milestones are resolved.

- 6.2 If the OBC is approved the ensuing procurement process takes approximately 18 months from issuing tender documents for service commencement. The project team will be tasked with the delivery of the project through the procurement phases to service commencement.
- 6.3 The quality and cost of the external advisors will be monitored by the Project Manager and Project Team. This will be undertaken using a framework agreed with the advisors which will include periodic review meetings, agreed work planning, planned billing and open book accounting to ensure that good value for money is achieved.

7 Timescale and expected outcomes

7.1 Please see timetable below:

Key Project Timetable Dates	Target date
OBC draft to DfT and 4Ps	End of February 2007
Scrutiny Board 3	7 th March 2007
Report to Cabinet seeking approval to submit OBC	20 th March 2007
Report to Council seeking approval to submit OBC	20 th March 2007
Final OBC submitted to DfT	30 th March 2007
DfT Approval process	April – July 2007 (approx 16 weeks)
Procurement Process	Late Autumn 2008
PFI Contract start	April 2009

	Yes	No
Key Decision	✓	
Scrutiny Consideration (if yes, which Scrutiny meeting and date)	✓ Scrutiny Board 3, 7 th March 2007	
Council Consideration (if yes, date of Council meeting)	✓ 20 th March 2007	

List of background papers

Proper officer: Director of City Services

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Papers open to Public Inspection

Description of paper

Location

Decision letter from Department for Transport 26th July 2006

Procurement Timetable

Procurement Stage	Target Date
Feasibility	November 2005
Expression of Interest submission	February 2006
EOI Approval/ request for OBC submission	July 2006
OJEU Notice Publication	January 2007
Return of PQQ Questionnaire	March 2007
PQQ Evaluation and Pre Qualified List of Bidders	April 2007
OBC approval	July 2007
Issue ISOS	November 2007
ISOS Returned	November 2007
First Stage Short-list	January 2008
Issue ISDS	February 2008
ISDS Returned	May 2008
ISDS Evaluation Report	June 2008
Dialogue and Call for Final Tender	August 2008
Final Tender Returned	September 2008
Final Tender Evaluation Report	October 2008
Preferred Bidder Selected	November 2008
Financial Close	January 2009
Mobilisation	January 2009
Service Commencement following Mobilisation	April 2009