



Meeting	Cabinet Member for Housing & Asset Management Decision Day
Date and Time	Monday, 6th September, 2021 at 10.30 am.
Venue	Walton Suite, Winchester Guildhall

Note: *This decision day is being held in person at the location specified above. In line with relevant legislation and public health guidance the following arrangements apply. Members of the public should note that a live audio feed of the decision day will be available from the councils website (www.winchester.gov.uk) and the video recording will be available shortly afterwards.*

For members of the public and “visiting councillors” who are unable to utilise this facility a limited number of seats will be made available at the above named location however attendance must be notified to the council at least 3 working days before the decision day. Please note that priority will be given to those wishing to attend and address the decision day over those wishing to attend and observe.

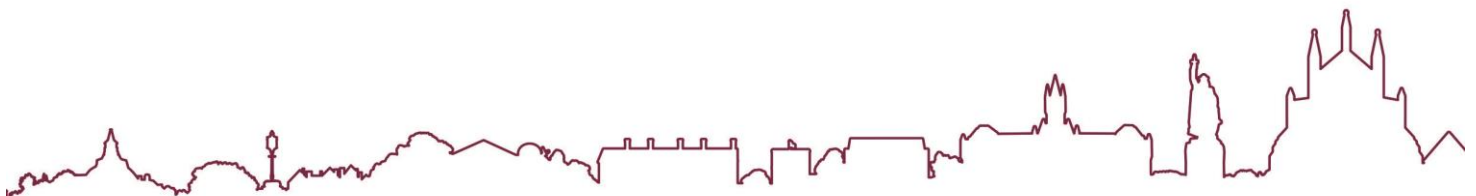
AGENDA

PROCEDURAL ITEMS

- 1. Disclosure of Interests**
To receive any disclosure of interests from Members and Officers in matters to be discussed.
Note: Councillors are reminded of their obligations to declare disclosable pecuniary interests, personal and/or prejudicial interests in accordance with legislation and the Council’s Code of Conduct.

BUSINESS ITEMS

- 2. Public Participation**
– to note the names of members of the public wishing to speak on items for decision
Note: members of the public wishing to speak about a particular agenda item are required to register three working days in advance if they wish to speak at a Cabinet Member Decision Day.



Members of the public and visiting councillors may speak at decision days on a specific item due for decision, provided they have registered to speak three working days in advance. Please contact Democratic Services by close of play **on Tuesday, 31 August 2021** via democracy@winchester.gov.uk or (01962) 848 264 to register to speak and for further details.

3. Visiting Councillors Representation

To note any request from visiting councillors to make representations on an item for decision.

Note: Councillors wishing to speak about a particular agenda item are required to register three working days in advance if they wish to speak at a Cabinet Member Decision Day. Councillors will normally be invited by the Chairman to speak during the appropriate item (after the Cabinet Member's introduction (and any comments from the leading officer) and any public participation).

4. Draft Caravan Site Licensing Policy 2021 (DD32) (Pages 5 - 32)

5. New Homes Scheme - Outline Business Case, Witherbed Lane (DD31) (less exempt appendix) (Pages 33 - 46)

6. EXEMPT BUSINESS

To consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- (i) To pass a resolution that the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100 (I) and Schedule 12A to the Local Government Act 1972.

7. New Homes Scheme - Outline Business Case, Witherbed Lane (DD31) (Exempt appendix) (Pages 47 - 48)

**Lisa Kirkman
Strategic Director and Monitoring Officer**

All of the Council's publicly available agendas, reports and minutes are available to view and download from the Council's [Website](#) and are also open to inspection at the offices of the council. As part of our drive to minimise our use of paper we do not provide paper copies of the full agenda pack at meetings. We do however, provide a number of copies of the agenda front sheet at the meeting which contains the QR Code opposite. Scanning this code enables members of the public to easily access all of the meeting papers on their own electronic device. Please hold your device's camera or QR code App over the QR Code so that it's clearly visible within your screen and you will be redirected to the agenda pack.



26 August 2021

Agenda Contact: Claire Buchanan, Senior Democratic Services Officer
Tel: 01962 848 438 Email: cbuchanan@winchester.gov.uk

TERMS OF REFERENCE

Cabinet Member for Housing & Asset Management Decision Day – Included within the Council's Constitution (Part 3, Section 2)

Public Participation

Representations will be limited to a maximum of 3 minutes, subject to a maximum 15 minutes set aside for all questions and answers.:-

To reserve your place to speak, you are asked to **register with Democratic Services three clear working days prior to the decision day** – please see public participation agenda item above for further details. People will be invited to speak in the order that they have registered, subject to the maximum time period allowed for speaking not being exceeded. Public Participation is at the Chairperson's discretion.

Filming and Broadcast Notification

This decision day may be recorded and broadcast live on the Council's website. The decision day may also be recorded and broadcast by the press and members of the public – please see the Access to Information Procedure Rules within the Council's Constitution for further information, which is available to view on the [Council's website](#).

Disabled Access

Disabled access is normally available, but please phone Democratic Services on 01962 848 264 or email democracy@winchester.gov.uk to ensure that the necessary arrangements are in place.

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DD32

DECISION TAKER: CABINET MEMBER FOR HOUSING AND ASSET
MANAGEMENT – COUNCILLOR KELSIE LEARNEY

REPORT TITLE: DRAFT CARAVAN SITE LICENSING POLICY 2021

6 SEPTEMBER 2021

Contact Officer: John Easey Tel No: 01962 848429 Email
jeasey@winchester.gov.uk

WARD(S): ALL

PURPOSE

The Government recently introduced regulations (The Mobile Homes (requirement for manager of site to be fit and proper person) (England) Regulations 2020) which bring into force Section 8 of the Mobile Homes Act 2013. The regulations are effective from 1 July 2021.

The council requires a policy indicating how it will assess whether an applicant or the applicant's proposed site manager meets the test, and outlining the fees applicable to applications.

The council has not previously had a policy for the wider subject of site licensing, but has had a published fees policy for this matter.

The advent of the new regulations provided an opportunity to produce such a policy and include matters related to the Fit and Proper Person regulations

RECOMMENDATIONS:

1. That the council adopts the Private Sector Housing Caravan Site Licensing and Fees Policy 2021 Policy as provided.

IMPLICATIONS:

1. COUNCIL PLAN OUTCOME

- 1.1 The policy supports the Council Plan 2020 - 2025 priority - Homes for all. Ensuring the provision of residential permanent caravan and mobile home sites meet an acceptable standard of licensing compliance and are suitably managed.
- 1.2 Living Well - The provision of good quality housing provision is linked to well-being. The policy of licensing of sites is aimed at better regulating standards and management of permanent caravan/mobile site homes to reduce the inequalities of this tenure option.

2. FINANCIAL IMPLICATIONS

- 2.1 Financial implications are minimal. There are currently 14 licenced permanent residential sites in the district and the Private Sector Housing team have no expectation of many, if any, new sites requiring a licence and an application for the licence holder or site manager to be included on the register of fit and proper persons during the next 5 years. (NB an individual can be included on the Register for up to 5 years following an application) The scheme will generate very little income (even if a fee were charged for ALL applications) and will require little officer time to administer, time for which the council already levies an annual site licence fee on licence holders

3. LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The policy will require minimal legal input to administer the legislative duties attached to the policy. The council has 14 sites it administers and most comply with the current site licenses and it is not anticipated that many site managers will fail the Fit and Proper Person test. Regulations include prosecutor powers where a failure to comply is identified and a Private Sector Housing Enforcement policy is in place. There is no procurement implications.
- 3.2 The policy has been subject to a Data Protection Impact Assessment and minor actions arising are being taken forward.

4. CONSULTATION AND COMMUNICATION

- 4.1 The proposed Policy has been reviewed, and agreed in principal, by the Corporate Head of Housing and the Portfolio Holder for Housing and Asset Management. In setting the policy the Private Sector Housing team benefitted from legal advice obtained through the Knowledge Hub local authority officer forum for caravan site licencing. The draft policy itself is similar to that adopted and published by Eastleigh Borough Council and updated to include the new regulations. Documents can found in Other Background Documents.

5. ENVIRONMENTAL CONSIDERATIONS

- 5.1 The Caravan Site Licensing and Fees Policy has little impact on environmental implications overall other than the usual service delivery of a digital application process keeping travel and paper use to a minimum.

6. EQUALITY IMPACT ASSESSEMENT

- 6.1 The council manages 14 Caravan/mobile home parks and the residents affected by this policy will be positively impacted. The policy aim is to maintain compliance with conditions of the site licence, to undertake proactive site maintenance to improve standards and to provide better management of sites across all tenures.
- 6.2 The site licencing scheme has been in operation for over 8 years and the specific scheme for relevant protected sites since 2014. The council has not to date received any previous communications or complaints regarding inequality in respect of service delivery.
- 6.3 The policy is introduced in line with the government's legislative impact assessment as part of the statutory regulatory change introduced on 1st July 2021.
- 6.4 An EIA of the Caravan Licensing Policy can be found in background documents.

7. RISK MANAGEMENT

- 7.1 The Regulations came into force on 1 July 2021 and allow existing site licence holders until 30 September 2021 to submit applications. There is a legal and reputational risk in not having a suitable Policy and fee structure in place before the deadline for applications.

Risk	Mitigation	Opportunities
<u>Property</u> Site Managers do not comply with the caravan licensing policy and/or fail the Fit and Proper Person test.	Licensing enforcement powers. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, requires the council to assess applications and keep a register of whether the "relevant person" (owner or site manager) is a fit and proper person to manage a relevant protected site.	Good news story Improved caravan/mobile home site standards and management regime.

<u>Community Support</u> None		Positive impact on the community through improved caravan/mobile home site standards and management regime.
Timescales		
<u>Project capacity</u> None - capacity within current business area.		
<u>Financial / VfM</u> Minimal financial implications. The policy will require little officer time to administer and the council already charge an annual site licence fee on licence holders.		Good news story Improved caravan/mobile home site standards and management regime
<u>Legal</u> Minimal legal implications. The policy will require minimal legal input to administer the legislative duties attached to the policy.		
<u>Innovation</u>		
<u>Reputation</u> Positive impact. The policy of licensing of sites is aimed at better regulating standards and management of caravan /mobile home sites to reduce the inequalities of this tenure option.		
<u>Other</u>		

8. OTHER KEY ISSUES

8.1 None

9. SUPPORTING INFORMATION:

9.1 The Policy states how the council will fulfil the statutory requirements of Caravan Site Licensing. The only areas where the council has notable

discretion is in the matters of fees, and in considering more anecdotal matters relating to the behaviour of applicants for the Fit and Proper Person test.

- 9.2 The council has previously agreed and published a fees policy for Caravan Site Licencing, LR442 Licensing and Regulation Committee Report -18.3.13 (found in background documents). Fees have since been subject to an annual rate of inflation increase. The fess policy is subsumed into this new Policy with the sole change of the fee for applications under the new regulations.

The council already charges an annual site licence fee to all sites affected by these new regulations. This fee is expected to be set to cover the council's costs in running the licencing scheme and not to be a source of profit.

Officers do not envisage the work involved in accepting applications from existing sites to be extensive. Officers have a good long term relationship with the majority of licence holders. The policy is expected to involve a brief administrative check of applications and supporting documentation.

An application, once approved, can allow the applicant to be listed on the register of fit and proper persons for up to 5 years, and there is no reason why a shorter term would be considered for current licence holders.

The existing annual site fee over 5 years more than adequately covers officer time that may be spent dealing with applications, but a fee would be appropriate to charge should a site wish to add or change a site manager during that period. The fee for a new licence application and the subsequent annual fee more than adequately covers officer time that may be involved in dealing with a new site application.

The regulations allow the council to take into consideration past complaints from residents or other parties, regarding consideration of an applicant's behaviour. The regulations and available guidance provide little to clarify the extent of such consideration and as such the Policy indicates that such matters will be considered on their merit on a case by case basis. Should an application be refused on such grounds the regulations require the council to give reasons and the applicant has a route of appeal through the First Tier Tribunal enabling such decisions to be tested.

10. OTHER OPTIONS CONSIDERED AND REJECTED

- 10.1 Charging fees to all applications under the Fit and Proper Person regulations. This was rejected on the grounds stated above – that the current annual site licence fees, aggregated over a 5 year period, more than adequately cover the officer time and the cost of processing applications.

BACKGROUND DOCUMENTS:-

Previous Cabinet/Committee Reports or Cabinet Member Decisions:-

LR442 – Licensing and Regulation Committee Mobile Homes Act 2003. Fees Policy and Licensing Residential Park Home Sites - 19 March 2013. [Previous committee report for site licence fees](#)

Other Background Documents:-

[Mobile Homes \(Requirement for Manager of Site to be Fit and Proper Person\)\(England\) Regulations 2020](#)

[Mobile Homes Act 2013](#)

[Equality Impact Assessment – Caravan Licensing Policy](#)

[Government Guidance on the Fit and Proper Person regulations](#)

[Eastleigh Borough Council Policy](#)

APPENDICES:

Appendix 1 - Draft Caravan licensing Policy

Appendix 2 - Previously published site licence fees guidance – updated April 2021 to include annual increase.

PRIVATE SECTOR HOUSING Caravan Site Licensing & Fees Policy 2021

1. Introduction –

The Caravan Sites and Control of Development Act 1960 requires that, with some exemptions, where land has planning permission to be used as a caravan site, the site must also be licensed by the council.

The Mobile Homes Act 2013 made amendments to the 1960 Act allowing for the council to charge a site licence fee for relevant protected sites – principally sites that are permanent residential sites operated on a commercial basis.

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 brought Section 8 of the 2013 Act into force, requiring the owner and/or manager of such a site to be registered as a Fit and Proper Person.

This policy sets out how Winchester City Council will assess applications for site licences and applications to be on the register of Fit and Proper Persons, and the information that will be required to inform that assessment, and the fees that will be applied for various processes.

2. Legislation, Regulations and Guidance – the following is the legislation covering caravan and residential mobile homes site licensing, and guidance as to their application.

2.1 Legislation and Regulation

- Caravan Sites & Control of Development Act 1960
- The Mobile Homes Act 2013
- Local Government (Miscellaneous Provisions) Act 1976
- The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020
- The Mobile Homes (Site Rules) (England) Regulations 2014

2.2 Guidance

- Model Standards 2008
- Mobile Homes Act 2013 – Explanatory Notes
- Park Homes: Site Licensing – Definition of relevant protected site
- Mobile Homes Act 2013: A guide to local authorities on setting site licensing fees
- Mobile Homes Act 2013: A Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime
- Mobile Homes Act 2013: Advice to local authorities on the new regime for applications for the grant or transfer of a site licence

3. Wider Context

The purpose of Caravan Site Licensing is to ensure that all sites meet a minimum acceptable standard and are suitably managed. This is particularly applicable to relevant protected sites (permanent residential Mobile Home, or Park Home sites) where for residents this is their permanent home.

A person's home environment has a significant influence on their overall health and wellbeing. Mobile homes on permanent residential sites are often occupied by some of the most vulnerable in society. In many, but not all cases, the occupier owns their caravan and has a pitch agreement with the site owner allowing them to station their caravan on the site. They may then be dependent on the site owner for the provision of key services such as water and electricity supply, and the site owner will have responsibility for the maintenance of the common parts of the site as a whole. Licensing of sites, in particular relevant protected sites, is aimed at better regulating standards in this type of tenure so as to lessen any widening of inequalities for those residents.

4. Objectives

- To provide a service that is consistent, transparent, and proportionally targets relevant protected sites that are subject to licensing in accordance with the Mobile Homes Act 2013 & Parts 1 & 3 of the Caravan Sites & Control of Development Act 1960.
- To provide a service that complements and is consistent with the Council's current policies, strategies and corporate objectives.

- To ensure all charges related to the service are consistent, transparent, and proportionate, with due regard given to the specific nature and requirements of each relevant protected site licensed
- In addition, the policy aims to encourage site owners to maintain compliance with the conditions of the site licence and to undertake proactive maintenance so as to provide better standards across the site for the residents.

5. Scope of the policy

This document outlines the policy adopted by Winchester City Council to respond to licence applications generally and the particular regulations applicable to relevant protected sites.

This policy is consistent with the Private Sector Housing Enforcement Policy and Regulatory Services Enforcement Policy which was produced in accordance with the principles of good enforcement that were prescribed within the Enforcement Concordat.

The Private Sector Housing service shall provide assistance, advice, education and the promotion of good practice to businesses, organisations and the public, in addition to taking enforcement action, where appropriate.

6. Licensing Scheme

In accordance with the legislation mentioned previously, the council shall licence all caravan sites within the district, except where they meet one of the specified exemptions from the licensing requirements.

6.1. Exemptions

Exemptions are specified in Schedule 1 of the Caravan Sites & Control of Development Act 1960 and are, subject to meeting the conditions in the Schedule:

- Where the use is incidental to, and within the curtilage of, a dwelling/house
- Where forestry workers, builders, or seasonal workers (like fruit pickers) stay in caravans on the site
- Where the site is being used by Travelling Showmen
- The site is 5 or more acres and there are 3 or less caravans there for 28 days or less a year
- The site is a member of an organisation like a caravan club and have a caravan exemption certificate
- The site is approved by an organisation with a caravan exemption certificate
- Members of an exempted organisation stay in their caravans on the site
- The site is used for a social get-together of members of an exempted organisation (a 'rally')
- Sites owned by the licensing authority

7. Responding to Licence Applications

The council will endeavour to provide an initial response to all licensing applications within 5 working days following the day of receipt.

7.1. Inspections

The council will endeavour to inspect, when it is considered necessary and subject to capacity, all relevant protected sites that are subject of a licence application before the licence is granted. The council is committed to ensuring suitable standards for residents and maintaining a strong stance in enforcing this commitment. For this reason, all inspections required in determining an application for a Caravan Site Licence will be undertaken by authorised officers of the council.

This will enable the council to identify and address issues on those sites that are not in compliance with the Model Standards 2008 or are otherwise prejudicial to health or in such a state as to cause a nuisance and to set appropriate site licence conditions.

7.2. Determining Applications

All licence applications will be determined by an authorised officer of the council. The council aims to process, decide and (where granted) issue a site licence within 6 months from receipt of a valid application. An application will be considered valid at the point all of the following has been received:

- A completed application form
- Full payment of the correct licence application fee
- ALL supplementary paperwork as specified on the application form

Determinations will have due regard to the following criteria which must be satisfied:

- Compliance with the Model Standards 2008 or any other model standards that are applicable, and as are appropriate to the particular site (ascertained through site inspection).
- There are satisfactory arrangements for the management of the site
- The proposed site rules (if any) are in compliance with the site rule regulations.
- The site is owned/managed by a fit and proper person who has been entered on the fit & proper person register.

7.3. Provisions for Management of the Site

Satisfactory provisions for management of the site include that:

- A clear and accessible system is in place for the site residents to report defects, including emergency repairs, and satisfactory arrangements exist for remedying such defects
- A system of periodic inspections by management is in place to identify repairs and maintenance matters pro-actively.
- the site owner provides a declaration where he/she is not the manager, that adequate funding will be provided to the manager to deal with repairs.

- the site owner / manager provides a declaration as to the time periods in which it is expected that all standard repairs and emergency repairs will be completed.

7.4. Site Rules

The council must be satisfied that the proposed site rules (should there be any) provided by the applicant must be in full compliance with the Mobile Homes (Site Rules) (England) Regulations 2013 and that systems are in place should the site owner / manager propose to alter, add or cancel a site rule so as to comply with the procedural requirements of the regulations.

7.5. Fit and Proper Person

Under The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 the “relevant person” (owner and/or site manager) of relevant protected sites must apply for entry on to a Fit & Proper Person register held by the council except when they meet a specified exemption. This applies to new and existing sites alike.

An authorised officer of the council will undertake the assessment.

Further details of the assessment requirements, procedures, specified exemptions, details held on the register and duration of any entry can be found in Appendix 1.

As permitted under the regulations, the council may charge a fee for consideration of an application for entry onto the fit & proper person register and this must be paid in full before the application will be considered valid.

8. Duration of Licence

As required under the Caravan Site & Control of Development Act 1960, where an application for a licence has been determined to grant a licence, the duration of the licence is required to be issued in perpetuity except where the planning permission granted for the site has a specified expiry date, then the site licence will be issued with an expiry date consistent with that on the sites planning permission.

9. Licence Conditions

A site licence shall always have site licence conditions attached. These will be informed by the Model Standards 2008, however, discretion will be given to the authorised officer to amend or add to these model standards on a case-by-case basis where it is felt the particular circumstances of the individual site mean there is appropriate justification to do so.

10. Ongoing monitoring of compliance with licence conditions

Every licensed site shall be inspected ideally at least once a year in order to identify any hazards and areas of non-compliance with the conditions attached to the site licence. The council aims to provide an inspection report to the site

owner / manager within 1 month of the inspection being carried out. Any hazards or areas of non-compliance will be brought to the site owner/manager's attention and a specified timescale to address the items identified given. Subsequent site visits may then be made to check that these have been complied with.

Inspections will assess the whole of the site and any hazards and non-compliance will be considered in reference to the Private Sector Housing Enforcement Policy, and may result in the service of a Compliance Notice under the Caravan Sites and Control of Development Act 1960 Section 9A.

As permitted under the Mobile Homes Act 2013, an annual fee will be charged to licence holders of relevant protected sites for the monitoring regime.

11. Variation of Licence Conditions

Licence conditions may be varied by the council, subject to the licence holder being invited to make representations. Variation may also be requested either by the licence holder or relevant person. Where a variation is requested by the licence holder or relevant person this must be completed and submitted to the council in writing. As permitted under the Mobile Homes Act 2013, the council may charge a fee for consideration of a variation request and this must be paid in full at the point of submitting the application for the request to be considered valid.

12. Transfer of Licences

A licence may be transferred by the council on agreement to a new licence holder upon request from the current licence holder. A transfer cannot be requested by the proposed new licence holder. Where a transfer is requested by the licence holder this must be submitted in writing. As permitted under the Mobile Homes Act 2013, the council may charge a fee for consideration of a transfer request and this must be paid in full at the point of submitting the application for the request to be considered valid. The proposed new licence holder must have also applied for fit & proper person assessment and been granted and entered onto the register accordingly.

13. Revocation of Licences

The council cannot revoke a site licence but may apply to a magistrate's court for an order of revocation where a licence holder has been convicted 2 or more times of relevant offences, such as defaulting on compliance notice(s), or may apply for a revocation if the First Tier Tribunal has made an Order following non-payment of the site licence fee, and that Order has not been complied with.

14. Appeals against decisions

The council will not unreasonably refuse a licence, impose unreasonable licence conditions or refuse any request for variations to conditions, or to transfer a licence. Where such a refusal is made or conditions considered unreasonable, the applicant may appeal to the First Tier Tribunal within 28 days of the decision being made.

The address for the First Tier Tribunal (Property Chamber) is:

The Court House,
Havant Justice Centre,
Elmleigh Rd,
Havant
PO9 2AL

01243 779394

Appendix 1.0 Fit & Proper Person Assessment

1.1 Regulations

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, requires the council to assess applications and keep a register of whether the “relevant person” (owner or site manager) is a fit and proper person to manage a relevant protected site.

1.2 Offences

The regulations create three offences. These being:

- Operating a site in contravention of the fit & proper person regulations, i.e. where the site owner or their appointed manager has not been assessed by the council as a fit & proper person.
- Withholding information or including false or misleading information in a registration application.
- Failing to comply with a condition.

The council are responsible for enforcing the regulations. Any site owner the council believe to have committed one of the above offences may be prosecuted and on summary conviction would be liable to a level 5 (unlimited) fine.

If a site owner is convicted for operating a site without they or their appointed manager having been assessed by the council as a fit & proper person, the council may apply to a tribunal (or a magistrates court if convicted twice or more) for an order to revoke a site licence.

1.3 Exemptions

Under the above regulations there are specified sites which are exempt from the requirement of the fit & proper person assessment. These are listed below:

- Non-commercial family-occupied sites are exempt from these regulations.
- Holiday and touring sites (on the grounds that they are not a relevant protected site)

1.4 Applications

Site owners will be required to apply for inclusion onto the fit and proper person register. Once received, the council may:

- Grant the application unconditionally,
- Grant the application subject to conditions, or
- Reject the application

A fee may be charged for consideration of an application and only on receipt of full payment of this fee will an application be valid. A Criminal Records Certificate (also referred to as DBS) issued no more than 6 months before the date of application must be supplied along with the application.

1.4.1. Assessment

The assessment will be undertaken by an authorised officer and due regard will be given to the following matters when making assessment.

- Any previous convictions relating to offences involving fraud, violence, arson or drugs, or listed in Schedule 3 of the Sexual Offences Act 2003 (offences attracting notification requirements)
- Contravention of any provisions of law relating to housing, caravan sites, mobile homes, public health, planning, environmental health or of landlord and tenant law
- Contravention of the Equality Act 2010 in, or in connection with, carrying out of any business.
- Having harassed any person in, or in connection with, the carrying on of any business. The council will have regard to any previous complaints from site residents in this regard, and the outcome of subsequent investigations.
- Having been personally been insolvent within the past 10 years
- Having been disqualified from acting as a company director within the past 10 years
- Has the right to work in the UK
- Being a member of any redress scheme for dealing with complaints in connection with the management of the site
- Where any other local authority has rejected an application for the relevant person to be included in a register

In addition to the above the council will take account of other relevant matters including, but not limited to, whether the applicant has:

- Secured proper management of the site in terms of compliance with the site licence and long-term maintenance of the site.
- Whether the relevant person has a sufficient level of competency to manage the site.
- Whether there is a sufficient management structure and funding arrangements in place.
- Been refused a licence or convicted of breaching the conditions of a licence
- Been in control of a caravan site where work in default was carried out by a local authority and the debt is outstanding.

1.4.2. Decision

Once an application has been received, the council must make a decision as soon as reasonably practicable to either;

- Grant the application unconditionally, include on to the register for a period of up to 5 years and serve a final decision notice on the applicant; or
- Serve a preliminary decision notice on the applicant (either refusal of the application or grant of the application subject to conditions)

Applicants receiving a preliminary decision notice may make written representation to the council within 28 days, beginning on the day after the notice was served.

Where a preliminary notice has been served, the council must make a final decision and serve a final decision notice as soon as reasonably practicable after the 28 day representation period.

1.5 Register

The council are required to establish & maintain an up-to-date register of the persons who have been assessed to be fit and proper persons to manage a site. The register must also contain information on rejected applications.

The register is required to be available for inspection by members of the public and to be published online.

1.5.1. Information contained in the register

The register must contain the following details:

- Name & business contact details of the relevant person
- Name & address of the site to which application relates
- The status of the person
- The dates of first & last day of the period the persons' inclusion in the register is effective.
- Whether any condition is attached to the persons' inclusion in the register
- Where any condition is attached the number of any such condition(s)
- The dates of the first & last day of the period on which the condition applies (if applicable)
- The date any condition is varied or satisfied (if applicable).

Where an application has been rejected the following information must be included on the register

- Name & Address of the site to which the application relates
- That an application in respect of the site has been rejected
- The date on which the application was rejected

1.5.2. Period of Entry

Where an entry on to the register has been granted this will be for a period as determined by the council and for no longer than 5 years, at which point re-application and assessment will be necessary.

Where information regarding a rejected application is included on the register, this shall remain until such time as a successful fit & proper person application is made in respect of the owner or manager of the site.

1.5.3. Removal from the register & variations of conditions

Where a person is included on the register, and subsequently new evidence relevant to the person's inclusion becomes available, the council may:

- Remove the person from the register
- Impose a condition on the person's inclusion onto the register, or
- Vary or remove a condition already imposed by virtue of the regulations

1.6 Notice of Proposed Action & Notice of Action

Prior to taking any action to either remove a person from the register, impose a condition, or vary an existing condition the council must serve a Notice of Proposed Action on the site owner.

The subject of the Notice of Proposed Action has the opportunity to make a written representation within 28 days, starting from the day after the notice was served.

Following the end of the representation period, the council must consider fully any representation made and, as soon as reasonably practicable, decide whether to continue to take the action proposed. If it is decided to continue with the action, then a Notice of Action must be served on the site owner within 5 working days of the decision being made.

1.7 Withdrawal or amendment of Notices

There may be circumstances where the council may decide not to continue with an action it has previously decided to take. In such circumstances the council may withdraw or amend:

- A preliminary decision notice before service of the final decision notice,
- A final decision notice before the decision to which it relates takes effect, or
- A notice of proposed action before the proposed action is taken.

In order to withdraw or amend a notice in any of the above circumstances the council must serve notice on the person on whom the original notice was served detailing the withdrawal or amendment and the implications of the decision in relation to their entry on the register.

1.8 Appeals

A person on whom a final decision notice or notice of action is served, still has a right of appeal to the First Tier Tribunal (Property Chamber).

1.9 Local Authority appointed site manager

In exceptional circumstances where a site licence holder has been unable to find a fit & proper site manager to put forward, they can approach the council to discuss if it can appoint a suitable alternative person by agreement.

The council and site licence holder would discuss and agree the terms on which the council could assist in finding a suitable site manager and the scope of that person's authority.

Where the council is able to identify a suitable person, the person must undergo the fit & proper assessment and their details included on the register. Any costs incurred by the council in making the appointment can be recovered from the site licence holder.

Appendix 2 - Fees

1. The Mobile Homes Act 2013 (the Act) introduced the ability for the council to charge fees for their licensing functions in respect of 'relevant protected sites'. A 'relevant protected site' is defined as any land to be used as a caravan site other than one where a licence is:
 - Granted for holiday use only
 - In any other way subject to conditions which restrict the usage of the site for the stationing of caravans for human habitation at certain times of year (such as planning conditions).

Relevant protected sites are generally known as residential parks, mobile home parks, Gypsy Roma and Traveller sites etc. and the Act enables the council to charge site owners on a cost recovery basis a fee for applying for a new site licence and amendments or transfers of existing licences. The council can additionally charge an annual fee for holding a site licence although the legislation does allow the site owner to pass on each year to residents through their annual 'pitch fees' the amount of the charge imposed on the site owner by the council in the first year and subsequent years.

Fees are only applicable to those sites that fall within the relevant protected sites definition.

Department for Communities and Local Government (DCLG) Guidance

2. In setting the fees to be charged, the Council had regard to The Mobile Homes Act 2013 – a Guide for Local Authorities on setting site licence fees' issued by the Department for Communities and Local Government. The council is not permitted to make a profit and can only pass on to the site owner the costs incurred in carrying out the licensing function. The council however is also not expected to make a loss in undertaking its licensing functions which should be a self-financing function which local taxpayers are not required to subsidise.
3. Fees charged by the council are required to be published and the level of fee is based upon the estimated time and cost involved in undertaking a site inspection and / or the administrative activities involved in a particular process. Publication of the council's fees will enable fee recovery by the council in such circumstances where despite the request for a fee to be paid, no money is received.
4. The Act also introduced the ability for the council to serve enforcement notices and charge for fees incurred for undertaking works in default to remedy breaches of site licence conditions. In such instances the recovery of costs would be calculated on a case by case basis and do not therefore fall under the scope of this Fees Policy.

Fees associated with the licensing of relevant protected sites and for applications to be included on the Fit and Proper Persons Register

5. The fees associated with applying for a new site licence, for transfers / variations of existing licences, for annual fees and the holding of a site licence are detailed in Table 1 below.
6. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 brought Section 8 of the Mobile Homes Act 2013 into force from 1st July 2021. The Regulations allow the local authority to charge a fee for processing applications to be included on the register that the council is required to produce, make available for public inspection, and publish online. Fees for this process are also detailed in Table 1 below.

Table 1 Park Homes Annual Fees (Relevant Protected Sites only)

Number of Pitches	1 to 5	6 to 15	16 to 45	46 to 75	76 plus
	£	£	£	£	£
Site licence annual Fee					
Charge to site owner	164.00	188.00	248.00	329.00	409.00
New site licence application – fee charges					
Charge to site owner	373.00	390.00	410.00	427.00	447.00
Application to transfer a site licence – fee charges					
Charge to site owner	125.00	125.00	125.00	125.00	125.00
Application to be included on the Fit and Proper Person Register:					
Application for existing site licence holder – included in the Site Licence Annual fee detailed above.					
First application on application for a new site licence – included in the application fee detailed above.					
Any further application within the period for which the initial application is granted (no more than 5 years) will be charged as follows:					
Charge to site owner	125.00	125.00	125.00	125.00	125.00
Application to vary a site licence – fee charges					
Charge to site owner	125.00	125.00	125.00	125.00	125.00
Deposit and publishing of site rules – fee charge					
Charge to owner	54.00	54.00	54.00	54.00	54.00

7. Sites that do not fall within the definition of a relevant protected site are still subject to the licensing requirements contained within the Caravan Sites and Control of Development Act 1960 unless exempt under Schedule 1 of the Act, but the provisions relating to the payment of fees do not apply. This exemption applies to sites that are for holiday use only and those that are only allowed to have units stationed on them at certain times of year.
8. The Mobile Homes (Site Rules) (England) 2014 also introduced changes to the administration of site rules and caused all existing site rules on residential parks in England to cease to be effective on 3rd February 2015. If a park owner wished to continue to have park rules after that date, they had to undertake a formal consultation with all their park residents about any proposed new park rules. This process had to be completed in accordance with the legislation and all new park rules were required to be deposited with the council, for which a fee could be charged.
9. Site Rules that have been duly deposited with the council will be accepted if their contents are believed to be consistent with legislation and created having been correctly consulted upon and that there are no outstanding appeals.
10. Site rules that have been duly deposited with the council will be published on the Winchester City Council's web site and available to view or download.

Cost Recovery

11. Fees are calculated by the council on the basis that it will recover the costs incurred in administering licences, including both fixed costs and officer time spent inspecting sites. The fees were calculated with reference to 'The Mobile Homes Act 2013 – a Guide for Local Authorities on setting site licence fees'.
12. The appropriate fee must be included with any application for a new site licence, for amending a site licence or for transferring a site licence etc, and for any application to be on the Fit and Proper Person register.

Review of fees

13. Fee levels will be reviewed annually to take into account the effect of inflation.

Annual Fees

14. Fees for existing sites will be payable annually during May/June. The fee is charged in arrears and covers the yearly period from 1st May to 30th April.
15. Where an annual site licence fee is payable, a request for payment will be made by the Council in May/June each year and must be paid to the council within 28 days.

16. Where a fee is overdue to the council, it may apply to the First Tier Tribunal for an order requiring the licence holder to pay the council the amount due by the date specified in the Order. Should a licence holder fail to comply with such an Order within a period of three months from the date of the order, the council may apply to the First Tier Tribunal for an Order revoking the site licence.

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Guidance Note For Residential Park Homes Sites Licensing Fees

The Mobile Homes Act 2013 (the Act) introduced the ability for the Council to charge fees for their licensing functions in respect of 'relevant protected sites'. A 'relevant protected site' is defined as any land to be used as a caravan site other than one where a licence is:

- Granted for holiday use only
- In any other way subject to conditions which restrict the usage of the site for the stationing of caravans for human habitation at certain times of year (such as planning conditions).

Relevant protected sites are generally known as residential parks, mobile home parks, Gypsy Roma and Traveller sites etc. and the Act enables the Council to charge site owners on a cost recovery basis a fee for applying for a new site licence and amendments or transfers of existing licences. The Council can additionally charge an annual fee for holding a site licence although the legislation does allow the site owner to pass on each year to residents through their annual 'pitch fees' the amount of the charge imposed on the site owner by the Council in the first year and subsequent years.

Fees are only applicable to those sites that fall within the relevant protected sites definition.

The Act also introduced the ability for the Council to serve enforcement notices and charge for fees incurred for undertaking works in default to remedy breaches of site licence conditions. In such instances the recovery of costs would be calculated on a case by case basis and do not therefore fall under the scope of this Fees Policy.

Fees charged by the Council are required to be published and the level of fee is based upon the estimated time and cost involved in undertaking a site inspection and / or the administrative activities involved in a particular process. Publication of the Council's fees will enable fee recovery by the Council in such circumstances where despite the request for a fee to be paid, no money is received.

Fees associated with the licensing of relevant protected sites

The fees associated with applying for a new site licence, for transfers / variations of existing licences, for annual fees and the holding of a site licence are detailed in Table 1 below.

Table 1 Park Homes Annual Fees (Relevant Protected Sites only)

Number of Pitches	1 to 5	6 to 15	16 to 45	46 to 75	76 plus
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Sites that do not fall within the definition of a relevant protected site are still subject to the licensing requirements contained within the Caravan Sites and Control of Development Act 1960, but the provisions relating to the payment of fees do not apply. This exemption applies to sites that are for holiday use only and those that are only allowed to have units stationed on them at certain times of year.

The Mobile Homes (Site Rules) (England) 2014 also introduced changes to the administration of site rules and caused all existing site rules on residential parks in England to cease to be effective on 3rd February 2015. If a park owner wished to continue to have park rules after that date, they had to undertake a formal consultation with all their park residents about any proposed new park rules. This process had to be completed in accordance with the legislation and all new park rules were required be deposited with the Council, for which a fee could be charged.

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The appropriate fee will require to be included with any application for a new site licence, for amending a site licence or for transferring a site licence etc.

Review of fees

Fee levels will be reviewed annually to take into account the effect of inflation.

Annual Fees

Fees for existing sites will be payable annually during May / June.

Where an annual site licence fee is payable, a request for payment will be made by the Council in May each year and must be paid to the Council within 28 days.

Where a fee is overdue to the Council, it may apply to the First Tier Tribunal for an order requiring the licence holder to pay the Council the amount due by the date specified in the Order. Should a licence holder fail to comply with such an Order within a period of three months from the date of the order, the Council may apply to the First Tier Tribunal for an Order revoking the site licence.

New Site Licence / transfer of site licence

The appropriate application fee must accompany any application for a new site licence, or the transfer of an existing site licence.

Depositing of Site Rules

Site Rules that have been duly deposited with the Council will be accepted if their contents are believed to be consistent with legislation and created having been correctly consulted upon and that there are no outstanding appeals.

Site rules that have been duly deposited with the Council will be published on the Council's web site and available to view or download.

Department for Communities and Local Government (DCLG) Guidance

In setting the fees to be charged, the Council had regard to 'The Mobile Homes Act 2013 – a Guide for Local Authorities on setting site licence fees' issued by the Department for Communities and Local Government. The Council is not permitted to make a profit and can only pass on to the site owner the costs incurred in carrying out the licensing function. The Council however is also not expected to make a loss in undertaking its licensing functions which should be a self-financing function which local taxpayers are not required to subsidise.

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DD31

DECISION TAKER: CABINET MEMBER FOR HOUSING AND ASSET MANAGEMENT – COUNCILLOR KELSIE LEARNEY

REPORT TITLE: NEW HOMES SCHEME – OUTLINE BUSINESS CASE – WITHERBED LANE

6 SEPTEMBER 2021

Contact Officer: Andrew Palmer Tel No: 01962 848 293

Email: apalmer@winchester.gov.uk

WARD(S): WHITELEY AND SHEDFIELD

PURPOSE

This report seeks approval of the outline business case to construct four dwellings to be affordable homes located at Witherbed Lane, Segensworth including the submission of a planning application and obtaining tenders to construct the scheme.

The proposals contained in this report support the target contained in the Housing Development Strategy of building 1,000 homes between 2021 and 2030.

Additionally, the report's proposals support, and are consistent with the Council Plan priority of achieving carbon neutrality in the district by 2030.

RECOMMENDATIONS:

1. Authorise the Corporate Head of Asset Management to prepare and submit a planning application to the statutory planning authority to obtain planning permission for the construction of four residential properties at Witherbed Lane, Segensworth.
2. Authorise the Corporate Head of Asset Management to approve expenditure of pre-construction costs up to £75,000 and that this work proceeds at a financial risk to the Council.
3. Authorise the Corporate Head of Asset Management to prepare procurement documentation and subject to planning approval to invite tenders to undertake the design and build of four properties at Witherbed Lane, Segensworth, using

a standard JCT Design and Build Contract the results of which will be reported back to Cabinet prior to an award of contract.

4. Authorise the Corporate Head of Asset Management to negotiate and agree terms for easements, wayleaves and related agreements with utility providers, telecom/media suppliers, the Highways Authority and neighbours in order to facilitate the development subject to final decision by Cabinet to proceed with the proposed scheme.
5. Approve a deviation from the tender evaluation model within Contract Procedure Rules (60% cost / 40% quality) to use a tender evaluation model giving more emphasis to quality than cost (60% quality / 40% cost).

IMPLICATIONS:1 COUNCIL PLAN OUTCOME

- 1.1 The building of new energy-efficient council homes assists in the delivery of Council Plan outcome – Homes for All. This strategy sets out how the Council can achieve ‘*All homes to be energy efficient and affordable to run*’ by ‘*Building significantly more homes ourselves*’ and ‘*Moving the energy efficiency of new and existing homes towards zero carbon*’. The proposed scheme will be constructed to the highly energy-efficient PassivHaus Building Standard and certified as such. This approach aligns with the Council’s commitment to tackling the climate emergency. It will also meet the requirements of Approved Document M4 (2) Accessible and adaptable dwellings.

2 FINANCIAL IMPLICATIONS

- 2.1 The scheme meets the Councils financial viability test criteria as follows:

- Scheme Net Present Value (NPV) – PASS
- Interest cover – PASS
- Total Scheme Cost (TSC) / market value – PASS

- 2.2 The proposed scheme has a positive NPV of £261,463, rental income covering interest costs, and the assessed indicative market value of the scheme exceeding its net costs. This is based on indicative rents at 70% of market rent.

- 2.3 The financial commitment to submit a planning application and start the tender process has been budgeted for within the Housing Revenue Account

- 2.4 The Total Scheme Cost (TSC) is estimated at: £1,040,667 including a risk contingency and uplift to achieve PassivHaus building standard. This represents an average build cost of £260,166 per unit.

- 2.5 The financial appraisal is contained in Exempt Appendix 1. This shows that under the current assumptions of cost, project delivery and the application of RTB 1-4-1 receipts the scheme is viable.

- 2.6 The inclusion of the scheme in the HRA Business Plan demonstrates that under current HRA Business Plan assumptions it can be cash flowed and the HRA Business Plan remains viable and sustainable.

- 2.7 With the exception of individual grants and funds hypothecated for particular schemes, the funding of the overall programme is undertaken annually to maximise the Council’s financial flexibility and this means decisions upon the final mix of funding have yet to be made.

Please see Exempt Appendix 1 for further details on scheme viability.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 Under section 1 of the Localism Act 2011, the council has the power to undertake any activity a normal person could undertake, so long as not otherwise prohibited by an express statutory restriction. There are no such prohibitions that apply, and therefore the council may pursue the scheme under this power and take steps to deliver it. In doing so, it will be subject to other statutory and common law obligations, including in relation to consultation.
- 3.2 The Council has a broad power to provide housing accommodation under section 9, Housing Act 1985 that can be relied on in this project. Section 9 contains no restriction on the type of tenure that must be used if the Council decides to provide the accommodation, or on whether the Council must retain ownership. The power can be relied on where some properties will be developed for tenure such as shared ownership.
- 3.3 The Council has had regard to its obligations under section 1 Local Government Act 1999 to secure continuous improvement in the way in which its functions are exercised having regard to economy, efficiency and effectiveness. A range of options have been properly considered.
- 3.4 Baker Ruff Hannon has been appointed by the Council as Employer's Agent for this project and has provided a report (Appendix 2) outlining procurement and contract options.
- 3.5 The report recommends a single-stage tender process, and adopting a design and build approach using a standard JCT contract.
- 3.6 The recommended tender evaluation model (60% quality / 40% cost) places emphasis on quality to facilitate the appointment an experienced contractor to minimise the performance gap given that building to the Passivhaus standard is new to the UK construction industry.
- 3.7 The tender exercise will be run in accordance with the Council's Contract Procedure Rules and Contract Procurement Regulations 2015 (PCR 2015) with the support of the Procurement Team.

4 CONSULTATION AND COMMUNICATION

- 4.1 Ward councillors have been consulted from an early stage and support the proposed scheme.
- 4.2 There has been direct consultation with immediate neighbours. Due to the site's location – an isolated residential road within an industrial estate – it was possible to contact residents of the six properties on Witherbed Lane directly

with details of the proposed scheme. Two of the six neighbours responded to the consultation and raised concerns about parking and the existing road surface. Adequate parking in line with planning requirements will be provided for the four proposed new homes and these homes will be situated beyond the current houses on Witherbed Lane, all of which have off-street parking. For these reasons it is not anticipated that vehicles associated with the proposed new homes will affect parking for the current residents of Witherbed Lane. The condition of the road surface will be photographed by the contractor prior to commencing work on site so any deterioration resulting from construction traffic will be apparent and can be rectified after building work is complete. Where possible and practicable these concerns will be addressed.

- 4.3 An online consultation was hosted on Citizen Space from 19 – 31 May 2021: <https://winchester.citizenspace.com/housing/witherbed-lane-consultation/>. No responses were received.
- 4.4 TACT (Tenants and Council Together) has had the opportunity to comment on the New Homes programme which this scheme forms a part of and will be invited to comment on these specific plans prior to submission of a planning application.

5 ENVIRONMENTAL CONSIDERATIONS

- 5.1 These homes will be built and certified to the PassivHaus building standard so will be highly energy-efficient meaning residents will use less energy and have lower bills. This fabric first approach to construction supports the Council's ambition to be a carbon neutral district by 2030.
- 5.2 Green Box Associates – an experienced and certified PassivHaus design consultancy – has been appointed to: develop PHPP models; review designs; advise on renewables; and support PassivHaus certification. Green Box has shown that these homes' carbon emissions will be reduced by 44% (based on SAP 12 methodology) as a result of the energy efficiency measures and the use of low and zero carbon technologies.
- 5.3 High levels of airtightness will necessitate mechanical ventilation with heat recovery. An air-source heat pump will provide heating and hot water.
- 5.4 An ecological assessment has been conducted by Eco Support recommending the following measures: ecologist to supervise felling of oak tree containing potential bat roost features; suitable external lighting to protect bats; four bat boxes; Dormouse Mitigation Strategy; protect boundary trees; protect nesting birds; and provide two hedgehog homes.

6 EQUALITY IMPACT ASSESSEMENT

6.1 The Council's Housing Strategy and Housing Development Strategy are relevant to this decision and were subject to an Equality Impact Assessment which has been considered by Officers in the preparation of this report and project and no update is required. Officers will re-evaluate the public sector equality duty on an on-going basis as this project progresses.

7 RISK MANAGEMENT

7.1 The scheme proposed is the Council's second PassivHaus project and first that will be undertaken using a design and build contract. The Employer's Agent has considerable experience overseeing PassivHaus projects and the procurement process will aim to secure competitive tenders from building contractors with commensurate experience. A risk register will be maintained and updated throughout the project.

7.2 The main risk is tender prices exceeding available budget – this is linked to current buoyancy of the building sector and relative novelty of building to the PassivHaus standard in the UK. There is a risk that suitable building contractors do not submit tenders or submit inflated tenders reflecting current high levels of demand and increasing costs of building materials.

Risk	Mitigation	Opportunities
Property – <i>PassivHaus performance gap (not built as designed)</i>	Clerk of Works to monitor. PassivHaus certification. Appointed Employer's Agent has considerable experience overseeing PassivHaus projects.	Identify and share any performance gap / build issues that arise in order to learn lessons from this pilot project.
Community Support – <i>planning objections</i>	Direct consultation with affected neighbours. Sympathetically designed scheme in keeping with local area.	Maintain involvement with local residents and improve visual amenity of Witherbed Lane benefiting existing residents / homes.
Timescales – <i>ecology work to take place at particular times of year (avoiding nesting seasons) could delay start on site</i>	Instruct seasonal ecology work outside of build contract to enable timely starting on site	Include recommendations from ecology report to benefit wildlife in immediate area and demonstrate best practice.
Project capacity – <i>lack of New Homes capacity (no project support officer in post) / staff shortage leading to delays</i>	Share project plan and agreed timescales with colleagues to escalate in case of staff absence	To fully understand all elements of project management and administration involved
Financial / VfM – <i>tender prices exceed available budget</i>	Select procurement route that provides greatest flexibility in terms of products and materials i.e. Design and Build	Work with new contractor who is willing to upskill and learn about PassivHaus to work with the Council

Legal – successful procurement challenge	The tender process will be conducted in accordance with Contract Procedure Rules and PCR2015. The Procurement Team will support the process.	Work with bidders to include consultation feedback
Innovation – building to PassivHaus standard	Experienced Employer’s Agent overseeing project	New building standard. Reduced energy bills for residents.
<i>Reputation</i>		
<i>Other</i>		

8 OTHER KEY ISSUES

8.1 None

9 SUPPORTING INFORMATION:

9.1 **Site** – the site is 2,254 sqm of Council-owned land, adjacent to a railway line and close to the M27. The site contains low vegetation and a number of self-seeded semi-mature trees which are of little arboricultural value. It is currently an unused pocket of land between the railway cutting and six existing semi-detached homes on Witherbed Lane.

9.2 **Planning** – this report is seeking approval to submit a planning application for the development of four new affordable housing units. Pre-application advice about the proposed development has been sought and taken into account.

9.3 **Procurement** – this report is also seeking approval to tender for a design and build contract inviting building contractors to submit tenders to complete the detailed design and build of these four new affordable homes at Witherbed Lane, Segensworth. A design and build approach is recommended to reduce the Council’s financial risk by transferring this to the contractor. The relative simplicity of the build has led to a single-stage tender process being recommended. In their procurement options report (Appendix 2) the Council’s Employer’s Agent has recommended this single-stage procurement and a Design and Build approach, using a standard JCT contract. The Employer’s Agent has indicated that quality will be a significant factor to consider when evaluating tenders to ensure an appropriate appointment so a deviation from the council’s tender evaluation model is being sought to increase the weighting on quality (60% quality / 40% cost) and 10% of the quality element will be allocated for social and environmental factors. As the council’s first Passivhaus scheme using a Design and Build contract it is critical to appoint a competent and experienced contractor to guard against the quality of the design and build being compromised to make financial savings. Weighting tender evaluations in favour of quality, places emphasis on value which should minimise the performance gap between building design and operation

given that building to the Passivhaus standard is not yet commonplace in the UK construction industry.

- 9.4 **Accommodation** – there are four affordable rented homes proposed: 2no. 3bed 5person; and 2no. 2bed 4person. These new homes will be sensitively designed to be in keeping with the existing aesthetic. The new properties will each have a garden and adequate parking provision. Homes will meet the Nationally Described Space Standards and will comply with Building Regulations Approved Document M4 (2) Accessible and adaptable dwellings, and Building Regulations Approved Document Part Q Security.
- 9.5 **Building standard** – the new homes will be built to the PassivHaus building standard (and certified) which ensures a high level of airtightness and therefore low energy demand. An air-source heat pump will provide heating and hot water. Mechanical ventilation with heat recovery will ensure fresh air circulation. No photovoltaic panels are included because the area is shaded by large trees. Green Box Associates has been appointed to model energy demand (using PassivHaus software) for the proposed homes and to oversee the PassivHaus certification process which starts during the early design stage and continues through to practical completion.
- 9.6 **Ecology** – initial ecology and bat emergence surveys have been completed and recommendations from the ecological report will be implemented. No evidence of dormice has been found. Bat and bird boxes will be included to promote biodiversity along with hedgehog houses and runs between gardens to provide routes through gardens to the surrounding woodland. Proposals will benefit the retained trees by allowing light to encourage low level vegetation which in turn will support small mammals, reptiles and insect life.
- 9.7 **Consultations** – ward councillors have been consulted on the scheme from an early stage and are supportive of the proposed new homes. The residents have been approached directly due to the small number affected and none objected to the principle of some further development in Witherbed Lane. No responses were received to the online consultation.
- 9.8 **Financial viability** – the scheme is financially viable as shown in Exempt Appendix 1. It passes the financial tests that have been applied, detailed in 2.1 above. The new homes are proposed for rent at 70% of market value and are to be held within the Housing Revenue Account.
- 9.9 **Abnormals** – designing and building to the PassivHaus Building Standard and complying with Approved Document M4 (2) attracts additional costs. The site also requires piled foundations (recommendation from ground investigation report) that are more expensive. These costs are reflected in the TSC.
- 10 **OTHER OPTIONS CONSIDERED AND REJECTED**

10.1 Two alternative building standards:

- Building Regs compliance (+19% Dwelling Emissions Rate improvement on Part L1B)
- AECB (Association of Environmental Conscious Building) building standard
- Above options were both considered but are lower than the PassivHaus building standard; because PassivHaus is achievable and practicable on this relatively simple build and is in line with the Council's carbon reduction targets, it is the building standard that has been adopted.

10.2 Alternative building contract: a traditional procurement route was considered and the advantages – including maintaining more control of the build – were considered but this route was disregarded in favour of a design and build route using a standard JCT contract that transfers risk to the contractor enabling the council to better control the cost.

10.3 Do nothing: would result in no new homes being built on site and no increased rental income to the Council. Not considered good use of asset.

10.4 Build six houses: the pre-application planning received resulted in a reduction of units on the site being proposed.

BACKGROUND DOCUMENTS:-**Previous Cabinet/Committee Reports or Cabinet Member Decisions:-**

None

Other Background Documents:-

None

APPENDICES:

Exempt Appendix 1 – Financial viability assessment

Appendix 2 – Procurement and contract options report

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Executive Summary

Introduction

The objective of this report is to summarise Baker Ruff Hannon's Recommendations in respect of the procurement strategy for Winchester City Council on the Witherbed Lane development.

This report looks at:

- Procurement Routes
- Contract Forms

This is a fairly simple scheme, comprising of 4 residential units. Whilst they are designed and required to be Passivhaus, this does not, of itself, add any real complications to the structure or services installation of the properties. In our view, if anything, they can be simpler than traditional wet heating system houses.

There is no real need for complicated detail design for the contractor to follow, as most experienced contractors in the residential sector, know how to build houses. We will need to draft the requirements carefully to be fully clear on the Passivhaus elements of the scheme and the requirements for heating using air source heat pumps and the mechanical ventilation and heat recovery system (MVHR).

Provided, through the pre-qualification / procurement process, we can select a contractor with the right Passivhaus experience, we recommend that a Design and Build approach is taken.

This provides risk transfer to the contractor and allows them to select materials that are available at the time, as long as they meet the specification and could result in a more cost effective design solution. Whilst there is often debate about single or two stage design and build, for a scheme of this nature we would recommend single stage, with quality being a significant factor in the selection process.

We recommend the use of a JCT form of contract due to the familiarity and lack of ambiguity assisting with the timely agreement of contract terms with the chosen contractor. The particular form of contract required to tie in with the procurement approach recommended above would be the JCT 2016 Design and Build Form of Contract. As part of the tender return we will ask for a detailed contract sum analysis with approx quants provided to allow us to check that everything has been included and that the tenders are comparable.

Procurement route options

Traditional Procurement

Traditional procurement involves a full design prepared by the Client's team and tendered in competition to contractors.

The Client retains responsibility for the design of the project and retains a design team to check that the construction of the scheme is in accordance with the drawings and specifications, and that the materials and workmanship are of the required standard. Elements of design responsibility can be transferred to the contractor using design portion supplements or performance specified works.

With this route there is very limited contractor input into the buildability of the design and the cost of the project is a factor of the design team's solution.

The approach is very common and well understood in the industry.

July 2021

Design and Build

The Client's team develop the design to an agreed RIBA stage and produce a set of Employer's Requirements setting out what the Employer would like to achieve from the works and the levels of specification expected.

The contractor then produces a set of proposals in response to the requirements and engages a design team to develop the design fully ready for construction on site. This could be the Clients' team that are novated or the contractor's own team. This is not a decision that needs to be made yet.

The responsibility for design and a great deal of risk are therefore transferred to the contractor. The other big advantage is that the design does not need to be completed prior to tender action and, since the contractor is preparing the final construction details, a start on site can be made more quickly than using a traditional approach.

The latter stages of design can run concurrently with the early phases of construction. However, it is usual to allow a longer tender period so that the contractor can evolve the design and prepare a price from the information provided.

Since, generally, the design is not completed by the Client's team, the final specifications, materials selections and detailing are the contractor's responsibility and can be perceived to be of a lesser quality than would be expected from a solution where the Client retains responsibility for the design team. However, the design can benefit from the contractor's input as it is in their interests to optimise the solution for site work and buildability. Finding a contractor with the level of expertise and availability to undertake the works under Design and Build in the region may prove difficult and to employ a contractor from a location distance from Micheldever may well incur further costs. The contractor is responsible for the detailed design of the scheme and cost certainty can be provided at tender stage.

Issues can arise if the contractor changes the design to improve margins that negatively impacts on quality and this may be a factor on this project.

The design team can either be the contractor's own team or the Client team novated to the contractor. This approach is again very common and well understood in the industry.

Contract Forms options

There are a number of standard forms of contract available to WCC to appoint the contractor: -

- JCT Standard forms – suitable for traditional or design and build approaches.
- NEC Standard forms – Suitable for traditional or design and build approaches plus others

These are the two most commonly used. Baker Ruff Hannon would recommend the use of JCT. The JCT Forms have been in existence for many decades and until recent years were the only real option for building projects in the public and private sector. They have been cited as adversarial and the amount of case law around them is used to support this. However, their sheer age and longevity is in itself grounds for lots of the case law. They are generally understood by all in the industry and are relatively straightforward to administer and manage.

The contracts have evolved over the years to respond to weaknesses in their drafting and to reflect changes in statute and legislation pertaining to construction and the built environment. The forms can be used for all sizes and types of projects and bespoke forms are available to support the traditional and design and build approaches covered earlier.

Traditional contracts can be set up using with / without quantities or with approximate quantities. The design and build form is a bespoke version clearly setting out the obligations of the parties in the contract.

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The type of construction and the type of contractor employed, drives the use of the JCT type contract, as many contractors and clients are comfortable with these contracts. The NEC forms are very heavy on administration and require a good level of understanding regarding how they operate and sufficient resources from the Client and contractor to be a success. The very nature of the NEC places more risk on the Client due to the administrative burden and the extensive list of events that can give rise to an extension of time and additional payment.

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

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