

# Public Document Pack

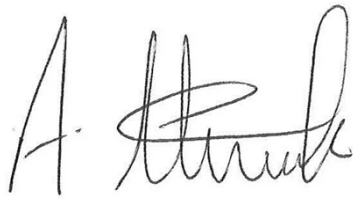
**Democratic Services Manager: Karen Shepherd**

**Direct line: (01628) 796529**

**TO: EVERY MEMBER OF THE COUNCIL FOR THE ROYAL BOROUGH OF WINDSOR & MAIDENHEAD**

YOU ARE HEREBY SUMMONED TO ATTEND the Extraordinary Meeting of the Council of the Royal Borough of Windsor & Maidenhead to be held in the **Council Chamber - Town Hall** on **Wednesday, 10 August 2016 at 7.30 pm** for the purpose of transacting the business specified in the Agenda set out hereunder.

Dated this Tuesday, 2 August 2016



Managing Director

Rev Stileman will say prayers for the meeting.
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## **A G E N D A**

### **PART 1**

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence

2. COUNCIL MINUTES

To receive the Part I minutes of the meeting of the Council held on 21 June 2016.  
(Page 5)

3. DECLARATIONS OF INTEREST

To receive declarations of interests in respect of any item to be considered at the meeting

4. COMMUNITY INFRASTRUCTURE LEVY (CIL) - ADOPTION OF THE CHARGING SCHEDULE AND ASSOCIATED DOCUMENTS

To consider the above report (page 15)

5. MAIDENHEAD REGENERATION UPDATE

To consider the above report (page 45)

6. MEMBERS' CODE OF CONDUCT REVIEW

To consider the above report (page 57)

7. PANEL MEMBERSHIPS

Members are asked to consider an increase in the membership of the Visitor Management Forum from 5 Members to 6 Members. The political balance would be: 5 Conservative, 1 The Group of Three.

Members are also asked to consider an increase in the membership of the Employment Panel from 7 Members to 8 Members. The political balance would be: 7 Conservative, 1 The Group of Three.

**RECOMMENDED: That:**

**i) The increase in membership of the Visitor Management Forum to 6 Members be approved and the terms of reference in the Constitution be amended appropriately.**

**ii) The increase in membership of the Employment Panel to 8 Members be approved and the terms of reference in the Constitution be amended appropriately**

8. URGENT DECISION - PURCHASE OF THRIFT WOOD FARM, COX GREEN

To consider the above report (page 77)

9. LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF THE PUBLIC

To consider passing the following resolution:-

"That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on items 10-11 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1-7 of part I of Schedule 12A of the Act"

## **PRIVATE MEETING**

10. **COUNCIL MINUTES**

To receive the Part II minutes of the meeting of the Council held on 21 June 2016 (page 87)

**(Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)**

11. **URGENT DECISION - PURCHASE OF THRIFT WOOD FARM (APPENDIX B)**

To receive a Part II appendix to the earlier Part I report (page 89)

**(Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)**

## COUNCIL MOTIONS – PROCEDURE

- Motion proposed (mover of Motion to speak on Motion)
- Motion seconded (Secunder has right to reserve their speech until **later** in the debate)
- Begin debate

Should An Amendment Be Proposed: (only one amendment may be moved and discussed at any one time)

NB – Any proposed amendment to a Motion to be passed to the Mayor for consideration before it is proposed and seconded.

- Amendment to Motion proposed
- Amendment must be seconded BEFORE any debate can take place on it  
(At this point, the mover and seconder of original Motion can indicate their acceptance of the amendment if they are happy with it)
- Amendment debated (if required)
- Vote taken on Amendment
- If Agreed, the amended Motion becomes the substantive Motion and is then debated (any further amendments follow same procedure as above).
- If Amendment not agreed, original Motion is debated (any other amendments follow same procedure as above).

- The mover of the Motion has a right to reply at the end of the debate on the Motion, immediately before it is put to the vote.
- At conclusion of debate on Motion, the Mayor shall call for a vote. Unless the vote is unanimous, a named vote will be undertaken, the results of which will be announced in the meeting, and recorded in the Minutes of the meeting.

*(All speeches maximum of 5 minutes, except for the Budget Meeting where the Member proposing the adoption of the budget and the Opposition Spokesperson shall each be allowed to speak for 10 minutes to respectively propose the budget and respond to it. The Member proposing the budget may speak for a further 5 minutes when exercising his/her right of reply.)*

**AT A MEETING OF THE BOROUGH COUNCIL held in the Council Chamber -  
Town Hall on Tuesday, 21st June, 2016**

PRESENT: The Mayor (Councillor Sayonara Luxton), Councillors Natasha Airey, Malcolm Alexander, Christine Bateson, Malcolm Beer, Hashim Bhatti, Phillip Bicknell, Clive Bullock, David Burbage, Stuart Carroll, Gerry Clark, John Collins, Carwyn Cox, Judith Diment, Simon Dudley, Dr Lilly Evans, David Evans, Jesse Grey, Geoff Hill, Charles Hollingsworth, Maureen Hunt, Mohammed Ilyas, Lynne Jones, Richard Kellaway, Paul Lion, Philip Love, Marion Mills, Gary Muir, Nicola Pryer, Eileen Quick, Jack Rankin, Samantha Rayner, Wesley Richards, MJ Saunders, Hari Sharma, Derek Sharp, Shamsul Shelim, Adam Smith, John Story, Lisa Targowska, Simon Werner, Derek Wilson Edward Wilson and Lynda Yong.

Officers: Russell O'Keefe, Alison Alexander, Simon Fletcher, David Scott and Richard Bunn

58. ONE MINUTE SILENCE

A one minute silence was observed in memory of Jo Cox, MP.

59. ORDER OF BUSINESS

**RESOLVED UNANIMOUSLY: That the order of business as detailed in the agenda be amended.**

60. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors M. Airey, Bowden, Coppinger, Gilmore, Hilton, Lenton, Majeed, McWilliams, C Rayner, Stretton and Walters

61. COUNCIL MINUTES

**RESOLVED UNANIMOUSLY: That the minutes of the meetings held on 26 April and 24 May 2016 be approved.**

62. DECLARATIONS OF INTEREST

Councillors Burbage, Dudley, and D. Wilson declared interests in the item 'Community Governance Review Bray Parish – Approval of Proposals' as Bray Parish Councillors.

Councillor Mrs Airey declared an interest in the item 'Community Governance Review Bray Parish – Approval of Proposals' as her husband was a Bray Parish Councillor.

Councillor Sharp declared a Disclosable Pecuniary Interest in the item 'Community Governance Review Bray Parish – Approval of Proposals' as he lived in the Fisheries and had signed the petition. He left the meeting for the duration of the debate and voting on the item.

Councillors Cox, Diment, Dudley, Hill, S. Rayner and Smith declared interests in the item 'Motion on Notice' as they owned a property in an area that was liable to flood.

63. MAYOR'S COMMUNICATIONS

The Mayor submitted in writing details of engagements that she and the Deputy Mayor had undertaken since the last meeting, which were noted by the Council. The Mayor highlighted the Queen's 90<sup>th</sup> Birthday celebrations and her delight at being able to present the Queen with a present from the borough.

64. PUBLIC QUESTIONS

None received

65. PETITIONS

None received

66. PANEL MEMBERSHIP - VACANCIES

Members noted the following vacancies, which had arisen as a result of the resignation of Councillor Majeed from the Panels in question:

Licensing Panel – full Member

Grants Panel – full Member

Maidenhead Development Control Panel – substitute

Members were encourage to contact Democratic Services if they wished to put themselves forward to fill any of the vacancies.

67. COMMUNITY GOVERNANCE REVIEW BRAY PARISH - APPROVAL OF PROPOSALS

Members considered approval of the draft proposals arising from the first stage of the consultation process of the Community Governance Review for Bray Parish and the area known as the Fisheries, following the Council's agreement to the Terms of Reference in December 2015, and the completion of the first phase of consultation.

The Returning Officer explained that the report recommended, in accordance with the Community Governance Review process, that the Council recommended the addition of the specific area known as The Fisheries to the Parish of Bray, to reflect the positive feedback and the absence of any adverse feedback from the first phase consultation.

If after the second period of consultation on the proposal, and the proposals continued to be supported, the Council would need to approve amending the parish area and bring these changes into effect for the next Parish elections in May 2019.

An additional recommendation was circulated to delegate authority to the Returning Officer to proceed with a Reorganisation Order if responses to the second stage continued to be favourable. If any adverse responses were received, a report would be presented to Council.

Councillor D. Wilson commented that he knew residents of the Fisheries would welcome the proposal. If the Fisheries was included, it would likely result in an additional Bray Parish Councillor. The area would remain in the Oldfield ward for the purposes of borough elections. Councillor Burbage commented that Fisheries

residents had wanted to be part of Bray parish for some time, in fact they already felt a part of the area. Councillor Dudley stated that the Fisheries comprised 112 properties and 223 electors. It was very important to ensure the work was undertaken to achieve the aims of the petition.

It was proposed by Councillor D. Wilson, seconded by Councillor Burbage, and:

**RESOLVED UNANIMOUSLY: That Council agrees**

- i. to proceed to the second phase of consultation under the Community Governance Review procedures for Bray Parish in accordance with the Local Government and Public Involvement in Health Act 2007.**
- ii. the proposal to include the specific area of the Fisheries be added to the current Parish of Bray, as set out in Appendix 1.**
- iii. to conduct the second phase of consultation to confirm the inclusion of the area of The Fisheries into Bray Parish, with a view to a Reorganisation Order being made to bring the changes into effect for May 2019 at the next Parish elections.**
- iv. to delegate to the Returning Officer, in consultation with the Strategic Director of Corporate and Community Services, authority to proceed to publish a Reorganisation Order to enable the area known as the Fisheries to be added to the Parish of Bray, in accordance with the published proposals if the response to the second stage Consultation remains favourable and no adverse responses are received.**

68. MEMBERS' QUESTIONS

- a) Question submitted by Councillor E Wilson (asked by Councillor N. Airey in the absence of Councillor E. Wilson) to Councillor Dudley, Leader of the Council.**

Will the Lead Member for Housing consider housing options for service personnel based in Windsor when they leave our armed forces?

Councillor Dudley responded that he was delighted to receive the question ahead of Armed Forces Day on 24 June 2016. He confirmed that the service personnel based in Windsor would be supported to access a full range of housing options to meet their needs, ranging from affordable housing; private rented accommodation and shared ownership options. This would be achieved by the Housing Options team working alongside the Army welfare service to provide advice and practical assistance such as interest free loans to ensure that service personnel could have a well planned transition into suitable accommodation. The council was working to secure more affordable housing options across the Royal Borough through the Borough Local Plan, which were approved by Cabinet in April 2016. Specifically in this area, officers would be working closely with Haig Housing, who were the

housing provider for ex service personnel, to bring forward potential sites for development in the borough.

Councillor N. Airey confirmed that there was no supplementary question.

**b) Question submitted by Councillor E Wilson (asked by Councillor N. Airey in the absence of Councillor E. Wilson) to Councillor S Rayner Lead Member for Culture and Communities**

Will the council take steps to provide community facilities for former service personnel following the closure of ex-servicemen's clubs in Eton and Windsor?

Councillor S Rayner responded that the ex-serviceman's club closed because of low attendance and financial difficulties. The borough had signed the Armed Forces Covenant in May 2014. The council was currently looking to extend the facilities at Broome Farm in conjunction with the Royal British Legion and the Army. The council was due to meet with the Royal British Legion the following month to discuss options.

Councillor N. Airey confirmed that there was no supplementary question.

**c) Question submitted by Councillor Beer to Councillor D. Wilson. Lead Member for Planning**

Some householders, paving contractors, concrete and tarmac suppliers involved in paving gardens unaware of or ignoring the legal requirements not to lay impervious surfacing are contributing to flooding. Please could this be publicised and removal and penalties be considered.

Councillor D Wilson responded that specific rules applied for householders wanting to pave over their front gardens. Planning permission was not needed if a new or replacement driveway of any size used permeable or porous surfacing which allowed water to drain through, such as gravel, permeable concrete block paving or porous asphalt, or if the rainwater was directed to a lawn or border to drain naturally.

If the surface to be covered was more than five square metres, planning permission would be needed for laying traditional, impermeable driveways that did not provide for the water to run to a permeable area.

The planning service was currently reviewing the content of its webpages on the Council website and could publicise this, although information was readily available on the Government's Planning Portal. The Environment Agency had also produced guidance which was on-line and specifically addressed paving front gardens.

In terms of enforcement, this would rely on residents bringing the matter to the council's attention by contacting planning enforcement. The Council has recently adopted a Local Enforcement Plan and this type of breach would be considered low priority; this did not mean that the council would not investigate it but that more priority would be given to breaches causing serious harm.

By way of a supplementary, Councillor Beer commented that the question had been prompted after he had seen a lorry on the A308 pouring concrete onto a front



garden. Some contractors seemed to be using a cement bed rather than course sand. He asked if the LGA could be asked to seek a national by-law and licensing policy on the issue in light of the increased incidents of local flooding.

Councillor D Wilson responded that if Councillor Beer gave him details of the particular property he had referred to he would ask planning enforcement to investigate. The council was covered by planning legislation which was constantly changing, therefore he did not wish to progress the issue through the LGA as planning legislation was the more up to date regulation.

69. MOTIONS ON NOTICE

Councillor Smith introduced his motion. He had proposed the motion to encourage the Environment Agency to keep maps up to date. Three primary parties were affected. The first party was residents seeking insurance. A scheme had been in place since April to correct market failure however this would only be in place for 20 years. The second party was planning authorities. Incorrect and vague maps created uncertain results if different decisions were taken at Development Control Panels and on appeal. This led to delay and expense for all concerned. The third party was planning officers who had to deal with the situation. Simplification would help the processing of applications.

Councillor Cox stated that he supported the motion. It was correct to say the maps were deeply unreliable, considering the effectiveness of the Jubilee River for the Maidenhead area. He was aware other areas of the borough had suffered in the 2015 floods, this was why Councillor Dudley was working with neighbouring authorities on the Lower Thames Scheme. Those residents who benefitted from the Jubilee River still had problems getting flood insurance. Premiums should reflect the reduced risk but they did not as the maps were not up to date.

Councillor Hill commented that he had moved to Chandlers Quay in 2000 when the flood relief scheme had been built but was not in operation. Since then there had been floods in other areas of the borough but in Chandlers Quay no more than 2 inches of water had come in. His own insurance had reduced because of the flood relief scheme. He made a plea to the environment agency to redraw the maps and change the criteria.

Councillor Dudley commented that the issue was costing residents a lot of money in terms of insurance. It also caused difficulties in relation to the building of extensions and new homes. The EA commented on planning applications, but with an out of date view. This was the reason the council was working hard on the River Thames scheme, to protect residents in areas such as Wraysbury and Datchet. He hoped that officers would put together a letter to go to both the relevant Minister and the Head of the EA setting out the contents of the motion and outlining the issues residents faced and the work the council was doing in relation to the River Thames scheme.

Councillor Saunders commented then he had been Lead Member for Planning a meeting had been held with the EA to understand why the maps had not been altered in light of the effectiveness of the Jubilee River. The explanation given had been that although it was true that the quantum of water flooding into east Maidenhead would in all probability have been substantially reduced because of the Jubilee River, it would still extend into many areas, but at a lower depth. Councillor Saunders stated that this

explanation for the lack of changes to the maps would only be logical if there were a cliff in east maidenhead, which there was not.

Councillor E. Wilson arrived at 8.15pm.

Councillor Quick commented that she had been given the explanation by the EA that as the flood relief channel was man-made, it could therefore fail. The new Oldfield school planning application had been affected by the flood maps as the EA concluded the site was in Flood Zone 3 when the council knew the area was well-protected.

Councillor D. Wilson commented that the EA had invested £110 million in the Jubilee River; if it had confidence in the scheme it should be able to redraw the maps. He had been told the EA did not have the resources to undertake a review of the maps. Revised maps could free up land for future development.

Councillor Beer commented that the original maps had been drawn in a short three month period at the request of the government. The maps had always been vague and incorrect in a number of places. All communities along the river were affected by the maps, even if they had never flooded, for example in parts of Old Windsor. It was a long standing government policy that man-made defences could fail, and the insurance industry went along with it. A halfway approach was needed. The EA measured risk in 50 year and 75 year periods; the insurance industry used the level of 75 year floods, making it difficult to compare.

Councillor Smith had been very encouraged by the debate, which had benefited from local knowledge.

It was proposed by Councillor Smith, seconded by Councillor D. Wilson, and:

**RESOLVED UNANIMOUSLY: That this Council:**

- i) Notes with concern how unreliable flood mapping can impede planning and cause mispricing of insurance, and:**
- ii) Calls on the Environment Agency to revise its flood maps in Maidenhead to take account of evidence accumulated since the 'Jubilee River' flood relief scheme was commissioned in 1999, including the heavy local flooding in January and February 2014.**

70. LOWBROOK SCHOOL ADDITIONAL CLASSROOM (URGENT DECISION)

Members considered the urgent decision, taken with the necessary approval of the Mayor in the absence of a Chairman of the Corporate Services Overview and Scrutiny Panel, to add a £1.6m capital budget to the capital programme to build an extension to Lowbrook School.

Councillor N. Airey highlighted that Lowbrook had been rated Outstanding by Ofsted; the proposal would allow a good school to expand to take a further 30 pupils. The decision had been made in response to urgent negotiations with the school due to a large number of children not getting into the school, which they had listed as their first preference. The school had taken in 30 children, two of whom were looked after children, the rest were allocated a place based on a sibling already being in attendance at the school. This meant that three children with a sibling already in the school and 27 children living in the catchment area did not get a place at the school.

The school was an academy, but the borough retained responsibility for school places. The proposal would increase the choice for parents. The cost of £13,300 per place was lower than primary school average of £13,700 published by the Education Funding Agency (EFA).

Councillor Dudley highlighted the council's manifesto commitment to give more choice. The Headteacher and his team at Lowbrook had done a fantastic job to achieve Outstanding status. On National Offer Day Councillor Dudley had been concerned at the tight situation for primary places, with less than 30 spare places across Maidenhead. School expansion was difficult, particularly in Green Belt areas. The opportunity to expand an outstanding school should be taken.

Councillor Bullock spoke on behalf of the Ward Councillors for Cox Green who fully supported the proposal. The only concern associated with the proposal was the likely increase in traffic in the area, which was already an issue. There were two other schools in the vicinity; he suggested phased intakes could help the situation.

Councillor D. Evans stated he was fully supportive of the proposal. The council had responded to demands from parents; officers should be credited for moving so quickly.

Councillor Werner welcomed the report; it was vital that parents were offered as much choice as possible. He was however disappointed that this had not happened a year earlier. He had heard from parents the previous year who could not get a place even though they lived close by. He hoped that information on birth rates would be used in future to ensure more parents were not disappointed. Councillor Jones stated that she fully supported the proposal; it had been very concerning that catchment area children had not got a place. She would like more information on the figure of £13,700 as published by the EFA. She suggested a table showing the average cost of each expansion programme would be useful.

Councillor E. Wilson highlighted that the average cost of the proposal was way above the average cost and that spent at Holyport college. It was therefore a great deal for taxpayers. The council was finding that academies were coming up with meaty costs as a result of the distributed model. Currently there were a couple of dozen admission authorities; eventually there would be 67. The council would need to plan because if it did not schools would be popping up asking for funding for expansion projects, which were large and un-costed. The Children's Services Overview and Scrutiny Panel had found numerous instances of the borough spending money it did not have to spend at Academies, for example skiing trips and bike shed repairs. A proposal for a £230,000 astro-turf at Dedworth was also non-statutory.

Councillor Bicknell commended that Head of Schools and Education Services who had done an excellent job to achieve the average cost of £13,300.

Councillor Airey explained that the council was trying as far as possible to give parents their first place choice. She commented that the traffic issues raised by Councillor Bullock would be taken into account. A academy was able to set its own admission criteria; Lowbrook had chosen to put sibling connection above catchment area. In relation to Councillor E. Wilson's comments, the council had repaired the bike shed as it had originally put the structure in. The council had a statutory responsibility for school places whether or not a school was an academy. The council had no way of

knowing a parent's first choice until the normal admissions round. Ofsted ratings could change year on year. It was therefore difficult to predict where demand would be highest. It had been known this was a bulge year and all children had received a school place. It was not possible to expand all schools because then there would be empty places across the borough.

Councillor Saunders highlighted that as a result of the admissions process, the council had immediately prompted a response from the council including negotiations with the school and creation of a coherent plan. He had admiration and respect for the clear and seamless coordination between the Lead Member and key officers to achieve what residents wanted. The council's focus on delivering more for less gave the council flexibility to deliver on such priority issues of resident need.

It was proposed by Councillor N. Airey, seconded by Councillor Saunders, and:

**RESOLVED UNANIMOUSLY: That Council notes the inclusion of a £1.6m capital budget in the 2016-17 capital programme for the construction of an extension to Lowbrook School along with temporary works for September 2016.**

71. LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF PUBLIC

**RESOLVED UNANIMOUSLY: That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on item 12 on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 1-7 of part I of Schedule 12A of the Act.**

## MEMBERS' GUIDANCE NOTE

### DECLARING INTERESTS IN MEETINGS

#### **DISCLOSABLE PECUNIARY INTERESTS (DPIs)**

DPIs include:

- Any employment, office, trade, profession or vocation carried on for profit or gain.
- Any payment or provision of any other financial benefit made in respect of any expenses occurred in carrying out member duties or election expenses.
- Any contract under which goods and services are to be provided/works to be executed which has not been fully discharged.
- Any beneficial interest in land within the area of the relevant authority.
- Any license to occupy land in the area of the relevant authority for a month or longer.
- Any tenancy where the landlord is the relevant authority, and the tenant is a body in which the relevant person has a beneficial interest.
- Any beneficial interest in securities of a body where
  - a) that body has a piece of business or land in the area of the relevant authority, and
  - b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body **or** (ii) the total nominal value of the shares of any one class belonging to the relevant person exceeds one hundredth of the total issued share capital of that class.

#### **PREJUDICIAL INTERESTS**

This is an interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it harms or impairs your ability to judge the public interest. That is, your decision making is influenced by your interest that you are not able to impartially consider only relevant issues.

#### **DECLARING INTERESTS**

If you have not disclosed your interest in the register, you **must make** the declaration of interest at the beginning of the meeting, or as soon as you are aware that you have a DPI or Prejudicial Interest. If you have already disclosed the interest in your Register of Interests you are still required to disclose this in the meeting if it relates to the matter being discussed. A member with a DPI or Prejudicial Interest **may make representations at the start of the item but must not take part in discussion or vote at a meeting.** The term 'discussion' has been taken to mean a discussion by the members of the committee or other body determining the issue. You should notify Democratic Services before the meeting of your intention to speak. In order to avoid any accusations of taking part in the discussion or vote, you must move to the public area, having made your representations.

If you have any queries then you should obtain advice from the Legal or Democratic Services Officer before participating in the meeting.

If the interest declared has not been entered on to your Register of Interests, you must notify the Monitoring Officer in writing within the next 28 days following the meeting.

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# Agenda Item 4

Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	NO - Part I
<b>Title</b>	Community Infrastructure Levy (CIL) – Adoption of the Charging Schedule and associated documents
<b>Responsible Officer(s)</b>	Russell O’Keefe – Strategic Director of Corporate & Community Services – 01628 796521
<b>Contact officer, job title and phone number</b>	Chris Hilton – Director of Planning, Development & Regeneration – 01628 683811
<b>Member reporting</b>	Cllr. D Wilson – Lead Member for Planning
<b>For Consideration By</b>	Full Council
<b>Date to be Considered</b>	10 August 2016
<b>Implementation Date if Not Called In</b>	1 September 2016
<b>Affected Wards</b>	All

## REPORT SUMMARY

1. The purpose of this report is to highlight the findings of the Examiner’s report (Appendix A) of the Draft Community Infrastructure Levy (CIL) Charging Schedule and supporting documents.
2. To gain approval of Full Council to the adoption of the Community Infrastructure Levy and associated documents with implementation of the Levy from 1 September 2016.

## If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. Funds can be collected to help provide the infrastructure required to support new development in the area.	From 1 September onwards

## 1. DETAILS OF RECOMMENDATIONS

### RECOMMENDATION: That Full Council:

- i. **Agree the modification recommended by the Inspector and delete the charge for large offices and set a zero rate (Appendix A)**

- ii. **Approve the adoption of The Royal Borough of Windsor & Maidenhead's CIL Charging Schedule (Appendix B)**
- iii. **Approve the CIL Charging Schedule to take effect from 1 September 2016**
- iv. **Approve the adoption of the Regulation 123 List (Appendix C)**
- v. **Approve the Instalments Policy (Appendix D)**
- vi. **Approve the Exceptions Policy (Appendix E)**
- vii. **Agree an implementation date of 1 September 2016**
- viii. **Delegate authority to the Monitoring Officer to amend the Constitution of the Royal Borough of Maidenhead to the make provisions for officers to have delegated powers to take enforcement action under the Community Infrastructure Levy Regulations (2010) as amended.**

## **2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

- 2.1 The Community Infrastructure Levy (CIL) Regulations came into force in 2010 and enables Councils to collect funds for the provision of infrastructure required to support growth in their boroughs. It is a tariff style system applied to the area of the development as a cost per square metre on net increase in floor space. The regulations brought in restrictions in the use of S106 Legal agreements and therefore it is essential that the Council adopts the levy to ensure that it has effective methods to collect funds to mitigate the effect of new development on infrastructure.
- 2.2 In December 2014 Cabinet agreed to progress with the preparation of CIL ahead of the adoption of the Borough Local Plan. This decision followed correspondence in August and October 2014 between the Council and Mr Brandon Lewis, the then Minister of State for Housing and Planning. The Mr Lewis' letter stated that whilst the NPPF guidance says that "Where practical levy charging schedules should be worked up and tested alongside the Local Plan" , overall it is robust evidence that is essential, and provided this is in place then CIL can be progressed ahead of the Local Plan. At the time this principle had not been tested at examination for any other Council and RBWM was a forerunner in progressing CIL on this basis.
- 2.3 The procedure for setting a CIL is set out in the Planning Act 2008 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended). This entails two sets of public consultation, the first on the Preliminary Draft Charging Schedule (PDCS) and the second on the Draft Charging Schedule (DCS). These were undertaken during 2015. Once all the comments had been analysed from each round of consultation and responses prepared the final DCS and supporting documents were submitted to an Independent Examiner.
- 2.4 Under Section 213 of the Planning Act 2008 (as amended), a charging authority (in this case the Royal Borough of Windsor & Maidenhead) can only approve a charging schedule if the appointed examiner has recommended approval and subject to any modifications the examiner recommends.
- 2.5 The examiner considers whether the charging authority has followed the CIL legislation and national guidance and whether it has struck an appropriate balance between the desirability of funding from CIL (in whole or part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding, and



the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

2.6 The Council appointed Mr Terrence Kemmann-Lane JP DipTP FRTPI MCMI as Inspector and he held a public examination on 3 March 2016.

2.7 Mr Kemmann-Lane's reports:

"I conclude that, subject to the modification set out in Appendix A the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved."

Appendix A of his report is as follows:

"Appendix A

Modifications recommended by the Examiner to allow the Charging Schedule to be approved.

Modification Number	Modification
EM1	Delete the "Offices" development type so that there is no charge for offices"

2.8 The modification recommended by the Examiner requires that the council amend the Draft Charging Schedule to set a zero rate for all types of offices. The evidence that was submitted for examination was challenged and the Inspector did not consider that the Council had provided sufficient evidence to substantiate this charge.

2.9 In order that the Council can implement a charging schedule this modification needs to be accepted. If not the Council cannot adopt and would need to undertake the whole rate setting process again. The modified Draft Charging Schedule is attached (Appendix B).

2.10 With the acceptance of the modification the Council is in a position to adopt its CIL Charging Schedule and in doing so set the date at which CIL charging will start. It is proposed that this will be 1 September 2016.

2.11 Once adopted the CIL Charging Schedule will be in place until the Council formally decides that it should cease to have effect. The intention will be that the CIL Charging Schedule will be reviewed at the adoption of the emerging Borough Local Plan.

2.12 There are a number of supporting documents that are required to be approved in order to implement CIL Charging Schedule.

- Regulation 123 List. The CIL regulations encourage authorities to identify the infrastructure it intends to fund through CIL and publish a list. The Regulation 123 List that was submitted in support of the CIL examination is

shown at Appendix C and approval is sought to use this on adoption. The Regulation 123 List will be kept under constant review and can be amended to reflect updated needs or as projects are complete. The process for this is a consultation and updating on the website.

- Instalments Policy. The process for collecting CIL is set out in the CIL regulations and funds are due on commencement unless an Instalments Policy is adopted. It is considered essential for larger schemes to be delivered that developers can have a phased payment schedule. The proposed Instalments Policy is attached as Appendix D. The Council can amend this instalments policy by publishing the new policy on the Council's website.
- Discretionary Reliefs. During the CIL setting process the Council has indicated that it will make available a number of discretionary reliefs from the need to pay CIL. These are optional under the CIL Regulations and can be made available or withdraw at any stage. The Discretionary Reliefs proposed are attached as Appendix D.

2.13 Governance of CIL spending – the CIL legislation requires that funds collected must be spent on supporting development by funding the provision, improvement, replacement or maintenance of infrastructure. A report will be taken to a future Cabinet Meeting with options and recommendations on a Governance Policy.

2.14 The CIL regulations sets out that a proportion of CIL receipts will be passed to Parishes (where one exists) or spent in consultation with neighbourhood groups where they do not. The proportion is as follows:

Parish Council Neighbourhood plan	Yes Yes	Parish Council Neighbourhood Plan	Yes No
= 25% uncapped paid to Parish		= 15% capped at £100 / dwelling paid to Parish	
Parish Council Neighbourhood Plan	No Yes	Parish Council Neighbourhood Plan	No No
= 25% uncapped, local authority consults with community		= 15% capped at £100 / dwelling local authority consults with community	

2.15 It is proposed to follow the CIL regulations payment schedule of twice yearly payments to Parishes as follows:

- Receipts received 1 April-30 September to be passed over by 28 October
- Receipts received 1 October -31 March to be passed over by 28 April

2.16 The Council is able to retain 5% of the CIL receipts to be applied to administration expenses and for the first three years of implementation may apply this to any expenses incurred before the CIL was adopted.

2.17 The CIL regulations allow for surcharges, late payment interest and direct enforcement action to be taken against developers who do not submit the correct forms and make payments at the due date. Delegation is sought for Officers to

use these methods to ensure that payment is received. A CIL Enforcement Policy will be prepared and presented to Cabinet for approval.

<b>Option</b>	<b>Comments</b>
Adopt the Draft Charging Schedule with amendment and associated documents	Adopting the CIL Draft Charging Schedule will allow the council to ensure funds can be collected to help fund the infrastructure needed to support development in the area
<b>Recommended Option</b>	
Don't adopt the Draft Charging Schedule	Without the mechanism of CIL it will be difficult for the Council to collect funds.
Not recommended	

### 3 KEY IMPLICATIONS

<b>Defined Outcomes</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date they should be delivered by</b>
Funds collected to provide the infrastructure required to support development	£0	£500K	£100K	£1M	31/03/2018

These figures are estimates only as the funds to be collected are based on the type of applications received and the number of variables that have to be taken into account in calculating CIL. The figures are suggested in light of the experience of nearby authorities in the first years of adopting their CIL.

### 4. FINANCIAL DETAILS

#### 4.1 Financial impact on the budget

	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>
	Capital £'000	Capital £'000	Capital £'000
Addition	£0	£0	£0

### 5. LEGAL IMPLICATIONS

- 5.1 The Planning Act 2008 (as amended) and CIL Regulations 2010 (as amended) set out the requirements for adopting a Community Infrastructure Levy. At the date of implementation of the Levy any planning applications which are undetermined in the system will become CIL liable. This will include any applications on which a resolution has been taken to grant subject to contributions through Section 106

agreements and these applications will have to be returned to a planning panel for a decision under CIL. CIL is a material planning consideration.

## **6. VALUE FOR MONEY**

6.1 The levy will provide funds to support the provision of infrastructure in the Borough which is required to support new development.

## **7. SUSTAINABILITY IMPACT APPRAISAL**

7.1 None

## **8. RISK MANAGEMENT**

8.1

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
Legal Challenge to the decision	Medium	None	

## **9. LINKS TO STRATEGIC OBJECTIVES**

9.1 Supporting Children and Young People  
Encouraging healthy People and Lifestyles  
Improving the environment, economy and transport  
Investing in the future

## **10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 The introduction of CIL and the Draft Charging Schedule will have no major change or specific negative effect.

## **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 Staff within Development Management will require training on the CIL Regulations and implementation which will be delivered within existing budgets.

## **12. PROPERTY AND ASSETS**

12.1 None

## **13. ANY OTHER IMPLICATIONS**

13.1 None

## **14. CONSULTATION**

14.1 The CIL Regulations set out the consultation required. Public consultation was undertaken on the Preliminary Draft Charging Schedule between 19 June 2015- 20 July 2015 and on the Draft Charging Schedule between 23 October 2015 and 23 November 2015.

## **15. TIMETABLE FOR IMPLEMENTATION**

15.1

Date	Details
01/09/2016	Implement the CIL Charging Schedule

## 16. APPENDICES

- Appendix A –Examiner’s Report
- Appendix B – the CIL Charging Schedule
- Appendix C – Regulation 123 List
- Appendix D – Instalments Policy
- Appendix E – Exceptions Policy

## 17. BACKGROUND INFORMATION

- The Planning Act 2008 (as amended)
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Infrastructure Delivery Plan
- RBWM Local Plan

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Cllr Dudley	Leader of the Council			
Cllr Wilson	Lead Member			
Russell O’Keefe	Strategic Director Corporate and Community Services	16.6.16		None
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health			
Simon Fletcher	Strategic Director Operations and Customer Services			
Mark Lampard	Finance Partner			
Christopher Targowski	Cabinet Policy Office			

<b>Name of consultee</b>	<b>Post held and Department</b>	<b>Date sent</b>	<b>Date received</b>	<b>See comments in paragraph:</b>
Jenifer Jackson	Borough Planning Manager	16.6.16	30.6.16	Incorporated throughout

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**Report to the Council of the Royal Borough of Windsor and Maidenhead**

by Terrence Kemmann-Lane JP DipTP FRTPI MCI

an Examiner appointed by the Council

Date: 13 June 2016

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PLANNING ACT 2008 (AS AMENDED)  
SECTION 212(2)

**REPORT ON THE EXAMINATION OF THE DRAFT ROYAL BOROUGH OF  
WINDSOR AND MAIDENHEAD COMMUNITY INFRASTRUCTURE LEVY  
CHARGING SCHEDULE**

Charging Schedule submitted for examination on 17 December 2015

Examination Hearing held on 03 March 2016

File Ref: PINS/T0355/429/8

## **Non Technical Summary**

This report concludes that, as submitted, the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy Charging Schedule does not fully provide an appropriate basis for the collection of the levy in the district. The evidence provided during the examination does not support the proposed rate for large office development. But with the appropriate modification, the charges will not put developments at risk, and it can be recommended for approval.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- Modify the draft Charging Schedule by deleting the charge for large office development

The specified modification recommended in this report is based on matters discussed during the public hearing sessions and does not significantly alter the basis of the Council's overall approach or the appropriate balance achieved.

## **Introduction**

1. This report contains my assessment of the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy (CIL) draft Charging Schedule (DCS) in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (DCLG Guidance on the Community Infrastructure Levy).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the district. The basis for the examination, on which hearings sessions were held on 3 March 2016, is the schedule submitted on 17 December 2015.



3. The Council proposes the following rates:

Development Type	CIL Charging Zone	Rate (per square metre)
Residential including retirement (C3) and extra care homes (including C2)	Maidenhead Town Centre (AAP area)	£0
	Maidenhead urban area	£100
	Rest of borough	£240
Retail	Borough wide retail warehouses	£100
	Borough wide other retail	£0
Offices	Borough wide – 2,000 m <sup>2</sup> or larger	£150
	Borough wide – less than 2,000 m <sup>2</sup>	£0
All other uses		£0

**Is the charging schedule supported by background documents containing appropriate available evidence?**

Does the Infrastructure Delivery Plan support the introduction of CIL?

4. The Royal Borough of Windsor and Maidenhead Borough Local Plan (Incorporating Alterations) (LP) was adopted in June 2003. There is a Schedule of local plan policies saved from the development plan after 27 September 2007. The LP provides detailed policies and proposals covering the period 1991 to 2006. As well as the LP, the Council adopted the Maidenhead Town Centre Area Action Plan (MTCAAP) in September 2011. This sets out a vision and strategy for the period up to 2026.
5. The LP included an appendix containing a Schedule of Infrastructure, Facilities and Other Works Required in Association with Development under the Local Plan. Similarly, the MTCAAP incorporated an appendix of Infrastructure Projects. However, for the purposes of the CIL submission, an Infrastructure Delivery Plan (IDP) covering the period 2013 to 2030 has been prepared, dated October 2015. As the IDP was prepared to support the draft Charging Schedule and has not been tested at another examination, it comes within the ambit of this examination.

6. Since there is no development plan for the whole borough covering the period 2013 to 2030 (the MTCAAP only covering a period to 2026) the IDS aims to provide an updated position on infrastructure need. It is unusual, to say the least, for a DCS to be submitted with the infrastructure requirements, the costs of which justify a CIL charge, based on future infrastructure requirements needed to support various growth scenarios for development between 2013 and 2030 leading to an as yet to emerge local plan. I therefore set out below the way that this is explained in the IDP:

*"1.2 Aims and Scope*

*The aim of this assessment is to provide an updated position on infrastructure need in RBWM. Given that the preparation of the Borough Local Plan is on going, this study seeks to test the future infrastructure requirements needed to support various growth scenarios over the period 2013– 2030. The assessment forecasts any potential additional demand for infrastructure arising from new homes and growth in the borough's employment base. The study considers the current supply of infrastructure and all planned infrastructure investment projects. It considers these alongside bespoke work to forecast any additional infrastructure that may be required. The work also encompasses the likely cost of additional infrastructure, when it will be required and how it could be funded and delivered."*

7. The scope of the study encompassed a growth trajectory by assessing infrastructure requirements arising as a result of anticipated housing growth as determined by four potential developments scenarios. The assessment covers the needs arising from the remainder of the new Borough Local Plan period (very recently agreed as running from 2013/14 to 2031/32), with current planning for infrastructure provision taking account of needs arising from housing developments completed between 2013 and 2015. The council has identified urban allocated sites that could support growth, with information on the potential supply of housing at these sites informing the potential demand for infrastructure. The assessment considers the following types of infrastructure: social, transport, and utilities infrastructure. The estimated funding gap has been collected by a desk-based review of available information, supplemented by consultation with RBWM council officers and infrastructure providers.
8. In response to my further questioning on the detail of how the growth scenarios had been used I was told that the IDP considers infrastructure and funding requirements for a baseline growth scenario and three additional scenarios with total housing units planned for of between 8,061 and 11,050 dwellings. It demonstrates an infrastructure funding gap requirement of between £155 million and £175 million (see Table E4, page ix and Table 7-1, page 67). The baseline housing trajectory figure used in the IDP provides for delivery of 474 units per annum and is reflective of the existing Local Plan's development framework; the emerging Local Plan policies and evidence base documents; and sites identified through the Council's development management and monitoring process.

9. With regard to the IDP's housing trajectory assumptions on small sites, the Council's historic record of delivery, which was analysed in the Housing Small Site Analysis (2013), was the basis for the rate and quantum of delivery. For larger sites the Council used both the Strategic Housing Land Availability Assessment and the range of other sources enumerated in the previous paragraph and listed on page 9 of the IDP.
10. The IDP total development scenarios are greater than the Local Plan Preferred Options Consultation figure of 7,415 dwellings to 2030 and more than average historic completions. Historic completions represent between 52% and 72% of the IDP growth scenarios. Infrastructure costs and associated funding gap are largely proportionate to the scale of development. As outlined in Section 8.5 and Table 8-5 of the IDP, projected CIL revenue under the Baseline scenario just covers the acknowledged under-estimate of the infrastructure funding requirement. Even if total infrastructure funding gap costs were assumed to reduce by these percentages they would largely remain proportionate to total development and are likely to be more than the estimated CIL revenues at the rates proposed.
11. The NPPG states "Information on the charging authority area's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant plan ..." It goes on to state "a Charging Authority may undertake additional infrastructure planning to identify its infrastructure funding gap if it considers the infrastructure planning underpinning its relevant plan ... is weak or does not reflect the latest priorities. This work may be limited to those projects requiring funding from the levy." (Reference ID: 25-015 & 16-20140612, revision date 12 06 2014).
12. The Council has acknowledged that the information used in the IDP primarily relates to the emerging Local Plan rather than the adopted Local Plan. I have no doubt that although the Local Plan period 'stopped' at 2006, development will not have stopped, and that, in due course, there will be an up-to-date Local Plan that will provide for a considerable amount of new development. The submitted IDP goes some way to show that substantial amounts of infrastructure will be needed to support further development at a considerable cost.
13. Given the context of the adopted Local Plan, the emerging Local Plan, and the pressing need to secure CIL to fund infrastructure requirements, I consider that there are good reasons in this case why it is appropriate to make an exception to the guidance given in NPPG. My reasoning is reinforced by the fact that, at present, the Council has little ability to raise funding to support development in the Borough due to the limitations on S106 agreements imposed by CIL regulation 123 (3)(b) and the generally small size of development sites. This makes it difficult to identify site-specific infrastructure for S106 contributions. It seems inevitable to me that, if the Council does not have the tool of CIL available, then less development than otherwise would come forward. This is because more of the development would become unacceptable in planning terms due to deficits in infrastructure and funding which the Council is unable to mitigate appropriately. Alternatively

development will take place without the necessary infrastructure to support it.

14. In respect of the infrastructure funding gap, the IDP shows total infrastructure costs relating to the four growth scenarios. These are: Baseline £155m; Scenario 1 £167.4m; Scenario 2 £175.4m; and Scenario 3 £174.9m. In making a judgment about the justification for levying CIL in the borough, I consider that it is prudent to take the Baseline figure as the infrastructure funding requirement over the local plan period since this is the lowest of the projected figures. Turning to sources of funding other than CIL, the council has estimated revenue from section 106 agreements that vary between £17.2m for the baseline and £24.7m as the highest income from the alternative scenarios. In addition, the council has secured or expects to secure approximately £45.8m between fiscal years 2010/11 and 2015/16 in grant funding derived from a range of different programs run by central government departments. Taking the baseline figures provided the resulting Infrastructure Funding Gap is £62.8m.
15. In conclusion I accept that there is a pressing need to secure infrastructure to support current and proposed development and there is a minimum identified funding gap of £62.8m that validates the implementation of CIL in the Borough.
16. The IDP also reports a modelling of the amount likely to be raised through the proposed CIL charges – set out in IDP section 8.5. Table 8-5 in this section sets out the total forecast infrastructure funding from CIL and the Infrastructure Funding Gap taking that into account. The Baseline Scenario and Scenario 2 show modest gaps of £0.1m and £0.7m respectively. The other two Scenarios show possible surpluses. These figures have to be treated with considerable caution because they are predicated on a continuation of the same level of grant that has historically been collected. Given that there have been clear signals from Government that a reduction in such grants is likely, the extrapolation of these figures is questionable. In addition, the recommendation I make in relation to the charge on large offices will result in less CIL being collected than the Council anticipates in the IDP. Nevertheless the collection of CIL will make a significant contribution to the cost of infrastructure in the borough.

In the absence of an up-to-date development plan, can the introduction of CIL be supported?

17. In addition to the matters dealt with in paragraphs 4 - 16 above, unsurprisingly, representations submitted that the Council's development plan is out of date/non-existent and it does not comply with the National Planning Policy Framework (NPPF) that CIL should be based on an up-to-date development plan or be developed alongside an emerging plan, coupled with the argument that future infrastructure based on a plan yet to be prepared could not be assessed. The introduction of CIL should await the adoption of the local plan that is now in course of preparation.

18. This type of argument is not new. A similar argument was put in the examination of the draft CIL Charging Schedule for Tandridge District Council. In that case I found that there was a continuing need to provide infrastructure for development based on provisions in the extant development plan for the district, and that the imposition of CIL was justified. The Tandridge District Council accepted the recommendation, adopted the charging schedule, and in due course this adoption was challenged by judicial review in the High Court. The High Court judge (Dove J) found in favour of the council and the complainant then took the matter to the Court of Appeal. Whilst this present case is not on all fours with the Tandridge situation, the decision of the Court of Appeal is very helpful in pointing to how the matter should be dealt with in the case of the DCS submitted by the Royal Borough of Windsor and Maidenhead. I set out below the salient points in the decision of the Court of Appeal.
19. The Court of Appeal issued its decision in the case of *Oxted Residential Ltd v Tandridge District Council* [2016] EWCA Civ 414 on 29 April 2016. The leading judgement was given by Lindblom LJ, which was agreed by Jackson LJ and Patten LJ. The appeal was dismissed. The following are extracts from the judgement.
- Firstly, a claimant may not argue afresh a case presented and rejected at the CIL examination, or invite the court to interfere with the examiner's judgment on matters of valuation or planning merit. The challenge may only be made on public law grounds.
  - Secondly, there is no statutory obstacle to the adoption of a CIL charging schedule when a relevant development plan document is, or may be considered, out of date in the light of subsequently issued national policy or guidance. An argument to the contrary was presented to the examiner, and he rejected it. Lindblom LJ quoted a section from the Examiner's Report headed "Is the charging schedule supported by background documents containing appropriate available evidence?" and said that he saw nothing legally wrong with those conclusions. It was not unreasonable for the examiner to accept the council's argument that, although a review of the core strategy was now in prospect, it would be logical and sensible in the meantime to have a CIL charging schedule in place to deal with the development planned in the core strategy as adopted, and to revise the CIL charging schedule in the light of the review, or sooner, under the statutory power to do so in section 211(9) of the 2008 Act.
  - Thirdly, there is no force in the submission that the examiner, and the council, failed to heed the Government's guidance on CIL, including the guidance indicating at the beginning of his report, in paragraph 1 in the "Introduction", the examiner expressly acknowledged the guidance. The examiner's reasons in paragraphs 11 and 37, read with the rest of the careful analysis to which I (Lindblom LJ) have referred, show very clearly why (the examiner) did not think the guidance on achieving consistency with, and support for, "up-to-date relevant plans" should stand in the way of the council's CIL charging schedule being adopted. If this was a departure from

the guidance, it was neither unexplained nor unlawful – nor even surprising.

- Fourthly, Dove J. rightly rejected the argument that the examiner failed properly to strike the "appropriate balance" under regulation 14 of the CIL regulations. In fact, the examiner did this with conspicuous care.
20. Taking the guidance provided by the judgement of the Court of Appeal, I consider that, in this case, there are sound reasons for departing from the CIL guidance that CIL charging schedules "should be consistent with and support the implementation of up-to-date relevant plans". Whilst for most of the district the adopted development plan only covered a period that ran up to 2006, the council is working on a new borough wide local plan. This has now reached a point where a preferred strategy has been produced, and further work has continued since then. Quite clearly, no plan has as yet emerged, but I consider that there is a difference between examining a DCS proposal and considering development management issues where specific development proposals have come forward. Development pressures will not cease just because a development plan is out of date or non-existent, and the fact that there are no allocations does not necessarily mean that a clear idea cannot be gained of the levels of development that will be needed.
21. The council has been able to demonstrate a range of likely development scenarios, has been able to indicate the cost of providing necessary infrastructure, and the amount of funding from non-CIL sources, and has shown that there is highly likely to be a funding gap and its probable size. In my view, it would be counter-productive to deny the council the opportunity of obtaining funding for infrastructure through the community infrastructure levy until such time as the local plan under preparation becomes formally adopted. To allow that situation to obtain would either mean drastically limiting the amount of development that can be permitted, or allowing development that is not properly supported by infrastructure.
22. I therefore conclude that the council is justified in bringing forward its DCS, and that I am justified in finding that the submission is supported by appropriate background documentation containing appropriate available evidence.

Is there economic viability evidence to justify the proposed CIL charges?

23. The Council commissioned a CIL Viability Study (VS), dated April 2015 to support its Preliminary Draft Charging Schedule (PDCS). A post PDCS update (VSU) of the VS was produced in September 2015. The VS and VSU use a methodology comparing the Residual Value generated by a development scheme with the Existing Use Value or an Alternative Use Value plus and appropriate uplift to incentivise a landowner to sell. This approach is in line with the Harman Guidance (Viability Testing in Local Plans, June 2012). There were representations that criticised some of the detail of the inputs to the VS, the material ones of which I deal with below under the appropriate headings. However, I am satisfied that, subject to the modification that I recommend

and the reasons leading to it, the economic viability evidence put forward by the Council justifies the proposed CIL charges.

## Conclusion

24. The draft Charging Schedule is supported by evidence of community infrastructure needs and a funding gap has been identified. Accepted valuation methodology has been used which was informed by reasonable assumptions, except as dealt with below, about local sale values, rents and yields

## **Are the charging rates informed by and consistent with the evidence?**

Are the levels of CIL proposed for residential development justified?

25. Representations include that there are shortcomings in the viability appraisals. In particular the build costs and benchmark land values are questioned. The build costs in the VSU, September 2015, have not been adjusted from the March 2015 figures. It is said that the BCIS are generic costs typically based on source data from affordable housing developments: the VS adopted build costs are too low.
26. In respect of Benchmark Land Values (BLV) it is represented that the majority of sites tested have been assessed against value for industrial land plus a 20% premium. This is not appropriate because matters such as market value based on having regard to what development plan policies will allow is more realistic and in line with guidance in 'Financial Viability in Planning' (RICS August 2012) and NPPF (paragraph 173). Particular criticism is made of the assumed value for industrial land in the VS, which is based on the Valuation Office Agency (VOA) Property Market Report 2011 for Reading and Hammersmith, but the VS value is well below those provided by VOA and no methodology has been provided to show how this value has been arrived at. Criticism is also made about the values used for retail land, and agricultural/paddocks/urban fringe land, for which no methodology has been provided. The VS is also criticised for not including 'strategic greenfield sites' in the residential typologies tested.
27. My questions of the Council elicited that the BCIS cost used in the VS is adjusted for Royal Borough of Windsor and Maidenhead costs. The BCIS costs only cover the cost of building and make no allowance for site costs, fees or anything else. VSU of September 2015 use the same costs used in the VS of March 2015. Revised BCIS costs were not used because the BCIS costs have fallen since the earlier work, and the consultants had some concerns about this and therefore did not make a downward adjustment. As far as the BLVs are concerned, the Council points out that these were tested through the consultation process. The Representor puts forward a different method from that recommended in the Harman guidance. The RICS Guidance quoted by the Representor does not provide the appropriate definition, which is to be found in Box 8: Site Value – area-wide assessments, but this must be read with Box 7: Site Value Definition. Whilst reference is made to market value, it is not

saying market value should be used as the reference. Instead reference is made to an 'adjusted' market value. The Representor does not make this adjustment. In addition all the values used were since checked against confidential development appraisals submitted through the development management process.

28. I am satisfied that the rate for residential development has been established by the Council on the basis of a Viability Study using methodology consistent with CIL Guidance. The Local Housing Delivery Group (Harman) guidance, which has found general acceptance in CIL examinations, sets out a detailed methodology for conducting area-based assessments, and this is the approach that has been adopted by the consultants on behalf of the Council. I consider that the input assumptions that have been made in testing residential developments and the range of benchmark land values are appropriate and reasonable.
29. I dismiss the Greenfield Strategic Sites point since the Local Plan that was adopted with minor alterations in 2003 had no sites of this nature included within it, and there is so far no emerged plan that indicates that such sites will be acceptable. It is unlikely that such sites will obtain planning permission during the likely lifetime of this charging schedule.

#### Conclusion

30. In conclusion, the evidence before me is a clear indication that general residential development will remain viable across most of the District if the proposed CIL rate is applied.

#### **CIL rates for Commercial Development**

Is the CIL rate for office development of 2,000 m<sup>2</sup> or larger justified by the Viability Assessment?

31. Office development of less than 2,000 m<sup>2</sup> is proposed to be zero rated, whilst developments above that size are to be charged £150 per m<sup>2</sup>. Comparison is made in representations with office rates in nearby charging authorities and some of those within inner London, whereby it is suggested that these areas are some of the most expensive office locations in the country, but the CIL rates adopted are either nil rates or a much lower rate than proposed in the Royal Borough. Criticism is made of the VS on the basis that there is no clear evidence to support the cut-off point between developments of less than 2,000 m<sup>2</sup> and those at or above that figure. Furthermore, the development scenarios set out in Appendix 5 of VSU do not include a scenario for a development of an office of 2,000 m<sup>2</sup>: the only scenarios tested are 2,500 m<sup>2</sup> and 150 m<sup>2</sup>.
32. For the Council, any comparison with other charging authority areas was thought spurious as it was the viability of development within its own area that was the compelling factor. As for the scenarios tested, the Council contends that it has tested an area/size that is representative of large offices, and its



consultants have made a professional judgement based on a considerable number of transactions.

33. Concern was also raised that both costs of construction and values in VS and VSU are based on Gross Internal Area, whereas it was suggested, value should be based on Net Internal Area. This became clearer at the hearing when it was confirmed that the viability work on offices used the gross area for both costs and value. At the hearing the issue of whether the Existing Use Value used for residential schemes in the Maidenhead Town Centre AAP (AAP) area should be used for offices was explored further. I asked for additional modelling and written responses to the both hearing discussions to be provided.
34. In the post-hearing documentation, the Council contend that in high-level appraisals for CIL and Local Plan viability assessments, normal practice is to take a conservative and cautious view of rental values and work to the whole building area. To use a net area for values would introduce the impression of a spurious level of accuracy. Nevertheless, the council has run a further set of appraisals assuming 10% circulation space. The results are set out in Table B of the Council's Post Hearing Additional Note (document POST-1). On this basis it is revealed that the proposed rate of £150 m<sup>2</sup> for large offices is not sustainable. On Brownfield sites, at a rate of £60 m<sup>2</sup> there is a 'cushion' by which the Residual Value exceeds the Viability Threshold.
35. Table C in document POST-1 uses the Representors assumption regarding BLVs, with the other assumptions as in Table B. For this scenario the Residual Value does not exceed the Viability Threshold. Whilst the Council does not believe that the value used for residential schemes should be applied in relation to the offices, it states that if it were applied then it might support the view that a Zero rate for large offices in the AAP area is appropriate.
36. An exercise was also done in document POST-1 on the basis that some office developments may come forward on sites that are already in office use so that development at the site may be intensified. I do not find this exercise adds significantly to the evidence of what are the appropriate CIL rates and I will not deal with it further.
37. Representors respond to the Council's argument by saying that Gross to Net ratios are standard practice in conducting viability appraisals. For high-level assessments, such as for CIL rate setting purposes, guidance on generally accepted gross to net ratios is outlined in numerous publications. For instance the RICS Guidance Note: Code for Measuring Practice 6th Edition<sup>1</sup> clearly

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<sup>1</sup> This Guidance Note appears to have been superseded by the RICS Professional Statement 'RICS Property Measurement, Part 1: Office Measurement' which only applies to office development and is part of a move to introduce international standards in surveying and valuation practice. However, with regard to the arguments that I am dealing with here, there appears to be no change of significance.

states at page 6 that building cost estimation for non-residential buildings (including offices) is based on GIA while estate agency and valuation is based on NIA. And on page 17 (APP 9) it is confirmed that NIA is the basis not only for valuation but also for marketing. Furthermore, for instance, the Homes and Community Agency Employment Density Guidance at paragraph 2.11 states "As a general benchmark, 15-20% acts as a suitable assumption for converting gross to net areas in non-industrial properties." This brings into question the councils use of the 10% Gross to Net ratio.

38. Taking these matters in turn, in my view the fact that many other charging authorities, where the viability of office development is likely to be at least as strong as within RBWM, have nil or considerably lower charging rates for offices is valuable only in so far as it suggests the possible need to carefully review the proposed rates and the evidence which underlies them. I also find that the viability evidence which only tabulates developments of 150 m<sup>2</sup> and 2,500 m<sup>2</sup> is less convincing than it might be when considering the justification between a nil rate and a rate of £150 m<sup>2</sup>.
39. In relation to the argument about Gross and Net ratios, I cannot see that using NIA for values would produce "the impression of a spurious level of accuracy". If values for non-residential buildings are normally based on NIA, to use GIA – ie a higher floorspace in m<sup>2</sup> which is then valued at £x m<sup>2</sup> - a higher value will result as compared with the use of NIA: in a situation where it is necessary to avoid setting CIL levels near the margin of viability this has to be undesirable. It is not 'measurement precision', but merely taking the hypothetical gross size of a building in a particular scenario and applying a reduction of 10% or 15% - whatever is taken to be a nominal average. The evidence before me is that the RICS Guidance Note: Code for Measuring Practice 6th Edition provides guidance on 'best practice' - procedures which in the opinion of the RICS meet a high standard of professional competence. This Guidance clearly refers to the use of NIA for arriving at values.
40. On this basis I consider that the Representors approach of using NIA as the basis for calculating the value of an office development is more appropriate. When using this approach in the appraisal in Table B (document POST-01) the result was that the proposed rate of £150 m<sup>2</sup> for large offices is not sustainable. This table also shows that on brownfield sites, a £60 m<sup>2</sup> CIL charge provides a 'cushion' by which the Residual Value exceeds the Viability Threshold. However this assessment uses a 10% reduction from GIA to NIA, when the Homes And Community Agency Employment Density Guidance at paragraph 2.11 states "As a general benchmark, 15-20% acts as a suitable assumption for converting gross to net areas in non-industrial properties." Therefore I am not satisfied that even a reduction from £150 m<sup>2</sup> to 60 m<sup>2</sup> for brownfield sites strikes the appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of office development. In addition, any differentiation between brownfield sites and other would bring problems of mapping. On the basis of the evidence before me, I conclude that all office development should be subject to a Nil rate. I will recommend accordingly.

41. I am not convinced of the soundness of the Council's argument that BLVs in Maidenhead Town Centre should not be increased to reflect the higher costs associated with the development of offices in this centre. In this context it is not a matter of the increased costs arising from contamination or other exceptional costs, which should indeed be reflected in the price paid for the land. In this case it is the value placed on land in a competitive situation that may well affect the price that has to be paid for a development site. Nevertheless I do not consider that I have sufficiently clear evidence one way or the other for it to be a decisive factor. In view of my conclusion in the paragraph above, the question does not need to be pursued further.

Is the CIL rate for Retail Warehouses justified by the Viability Assessment?

42. It has been suggested that there is insufficient testing in the VS to demonstrate that retail warehouses specialising in the sale of bulky goods would remain viable at the proposed rate. However, little in the way of evidence is provided to support the assertion that there is a very real risk that such units could be rendered unviable. I am not satisfied that there is a sound basis for a recommendation to modify this rate as I have no persuasive evidence to contradict the conclusion of the VS on this point.

Conclusion

43. I am satisfied that the VS follows good and accepted practice. Furthermore, there is evidence for the various inputs used in the VS and, save for the matter of large office development dealt with in paragraphs 31 to 41, I have heard and read nothing that persuades me that the rate for commercial development (in this case Retail Warehouses) is misjudged or unsupported.

### **A further matter**

44. In my note to the Council, document ED-4, I pointed out that the DCS included text that would not be required at the point of approval, and that the document could be made considerably more concise. There is also an omission of a requirement of CIL Regulation 12(2)(d) to contain an explanation of how the chargeable amount will be calculated. In response, document RBWM-CIL-05, the Council appended a revised text which meets the points that I made and which it intends to use in the document at the time of approval. I do not consider that I need make a formal recommendation on this since it is a matter that I can leave to the Council.

### **Overall Conclusion**

45. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the Royal Borough of Windsor and Maidenhead. The Council has tried to be realistic in terms of achieving a reasonable level of

income to address a gap in infrastructure funding, while ensuring that a range of development remains viable across the authority's area. With the modification that I recommend, this outcome should be achieved.

46. The Royal Borough of Windsor and Maidenhead has embarked on the preparation of a new Local Plan that is unlikely to be adopted for some time. I consider that it will be appropriate to review the effect and effectiveness of the Charging Schedule during the final preparation stages of the Plan.

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended 2011)	With the modification that I recommend the Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Schedule and is supported by an adequate financial appraisal.

47. I conclude that, subject to the modification set out in Appendix A the Royal Borough of Windsor and Maidenhead Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

*Terrence Kemmann-Lane*  
Examiner

This report is accompanied by Appendix A (below) – Modification that the examiner specifies so that the Charging Schedule may be approved.

## **Appendix A**

### **Modifications recommended by the Examiner to allow the Charging Schedule to be approved.**

Modification Number	Modification
EM1	Delete the "Offices" development type so that there is no charge for offices



THE ROYAL BOROUGH OF  
**WINDSOR AND  
MAIDENHEAD**

**Royal Borough of Windsor & Maidenhead**

**Community Infrastructure Levy**

**Charging Schedule**

Planning Policy Unit  
Royal Borough of Windsor and Maidenhead  
Town Hall  
St Ives Road  
Maidenhead  
SL6 1RF

[cil@rbwm.gov.uk](mailto:cil@rbwm.gov.uk)

## **1. The Charging Authority**

The Royal Borough of Windsor & Maidenhead is a charging authority as defined in Part 11 of the Planning Act 2008 (as amended). This charging schedule has been issued, approved and published by the Royal Borough of Windsor & Maidenhead in accordance with the CIL Regulations 2010 (as amended) and Part 11 of the Planning Act 2008 (as amended).

## **2. Date of Approval**

This Charging Schedule was approved by the Council on (to be inserted).

## **3. Date of Effect**

This Charging Schedule will come into effect on (to be inserted).

## **4. Calculation of Chargeable Amount**

4.1. The Community Infrastructure Levy regulations 2010 (as amended) specify that CIL will be charged on gross internal floorspace in new development. CIL will be calculated as set out in Part 5 of the CIL Regulations. The rates shall be updated annually for inflation in accordance with the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors' All In Tender Price Index.

4.2. Parts 2 and 6 of the Community infrastructure Levy Regulations 2010 (as amended) state that the following development will be exempt from CIL charges:

- Development where the gross internal area of new build is less than 100 square metres, although this does not apply where the chargeable development will comprise one of more dwellings;
- Buildings into which people do not normally go;
- Buildings into which people go only intermittently for the purpose of inspecting or maintain fixed plant or machinery; and
- Development where the owner of a material interest in the relevant land is a charitable institution, and the development will be used wholly (or mainly) for charitable purposes.

4.3. In addition, the CIL Regulations also allow exemptions to be claimed for self-build housing, and residential annexes and extensions over 100 square metres (regulation 42A and 42B). Affordable housing will be eligible for Social Housing relief from CIL (regulation 49).

## 5. CIL Rates

- 5.1. The table below contains the Council's CIL rates. The maps showing the three residential CIL charging zones are included in Appendix A.

Development Type	CIL Charging Zone	Rate (per square metre)
Residential including retirement (C3) and extra care homes (including C2)*	Maidenhead town centre (AAP area)	£0
	Maidenhead urban area	£100
	Rest of the borough	£240
Retail	Borough Wide Retail Warehouses <sup>1**</sup>	£100
	Borough Wide Other Retail <sup>1</sup>	£0
Offices	Borough Wide <sup>1</sup>	£0
All other uses		£0

*\* For the avoidance of doubt this development type includes sheltered housing, retirement housing, extra care homes and residential care accommodation*

*\*\* Retail warehouses are large stores specialising in the sale of comparison goods, DIY items and other ranges of goods catering mainly for car borne customers.*

## 6. Payment by Instalments

- 6.1. In accordance with the CIL Regulations, the Royal Borough will allow the payment of CIL by instalments. For further information on the Instalments Policy refer to the Council's website.

## 7. Monitoring CIL and the Regulation 123 List

- 7.1. The CIL Charging Schedule will be reviewed periodically to take account of the changes to the viability of development in the Royal Borough.
- 7.2. The Regulation 123 List sets out the infrastructure projects that the Royal Borough, as the CIL Charging Authority, may wholly or partly fund by the CIL. The List is available on the Council's website. This too will be reviewed periodically.

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<sup>1</sup> Applicable within the Maidenhead town centre (AAP area), the Maidenhead urban area and the Rest of the borough charging zones.



## Community Infrastructure Levy (CIL) Regulation 123 List

The list below sets out the infrastructure projects that the Royal Borough of Windsor and Maidenhead Borough Council, as the CIL Charging Authority, may wholly or partly fund by the CIL.

The inclusion of a project or type of infrastructure on this list does not signify a commitment from the Borough Council to fund (either in whole or in part) the listed project or type of infrastructure through CIL. Nor does the order of infrastructure items within the list imply or signify any order of preference or priority for CIL funding.

S106 will still be used for mitigation of development impacts but will always comply with the three statutory tests and negotiated on a case by case basis.

Strategic Highways / Transport	<ul style="list-style-type: none"> <li>• Strategic road network improvements</li> <li>• Public rights of way and cycle network improvements</li> <li>• Car park additions and improvements except for those located within the Maidenhead Town Centre Area Action Plan</li> </ul>
Education	<ul style="list-style-type: none"> <li>• Provision of additional primary and secondary schools</li> <li>• Enhancements to existing schools to enable the provision of additional school places</li> <li>• Provision of special education needs</li> </ul>
Health	<ul style="list-style-type: none"> <li>• Improvements to existing healthcare</li> </ul>
Social and Community Facilities	<ul style="list-style-type: none"> <li>• Provision of additional facilities at existing community halls and new community facilities</li> </ul>
Sport and Recreation	<ul style="list-style-type: none"> <li>• Provision of new facilities and enhancements to existing facilities</li> </ul>
Green Infrastructure	<ul style="list-style-type: none"> <li>• Improvements, maintenance and management of all strategic and neighbourhood parks, green spaces, play area and kickabouts</li> <li>• Provision of allotments</li> <li>• Strategic biodiversity projects</li> </ul>
Libraries	<ul style="list-style-type: none"> <li>• Provision of new static libraries and enhancements to existing facilities and increased provision of mobile units</li> </ul>
Public Realm Improvements	<ul style="list-style-type: none"> <li>• Public art &amp; heritage projects</li> </ul>
Flood Defence	<ul style="list-style-type: none"> <li>• Contribution to the Lower Thames Flood Relief Strategy</li> </ul>
Maidenhead Waterways Project	





## **Community Infrastructure Levy Instalments Policy**

The Council is able to accept payment of the Community Infrastructure Levy (CIL) in instalments under Regulation 69B of the CIL Regulations 2010 (as amended). In order to assist developers in financing development in the Borough, the Council proposes to allow payment of CIL by instalments, depending on the total amount of the liability, as set out in table below:

Amount Due	Installments	Schedule
Any amount less than £50,000	1	Full amount payable within 60 days of commencement.
Amounts equal to or more than £50,000 but less than £150,000	2	25% payable within 60 days of commencement 75% payable within 120 days of commencement.
Amounts equal to or more than £150,000 but less than £500,000	3	25% payable within 60 days of commencement 25% payable within 120 days of commencement 50% payable within 180 days of commencement.
Amounts equal to or more than £500,000 but less than £1,000,000	4	25% payable within 60 days of commencement 25% payable within 180 days of commencement 25% payable within 240 days of commencement 25% payable within 360 days of commencement.
Amounts equal to or more than £1,000,000	4	25% payable within 90 days of commencement 25% payable within 240 days of commencement 25% payable within 450 days of commencement 25% payable within 720 days of commencement



## **COMMUNITY INFRASTRUCTURE LEVY (CIL)**

### **Discretionary charitable relief – Regulation 44 and 45**

The Royal Borough of Windsor & Maidenhead (RBWM) hereby gives notice that discretionary charitable relief in line with Regulation 44 and Regulation 45 of the Community Infrastructure Levy Regulations 2010 (as amended) is available from the RBWM Community Infrastructure Levy.

This relief from the levy may apply where:

- The exemption of a charitable institution from liability to pay CIL in respect of a chargeable development would constitute a State aid and
- The charitable institution would otherwise be exempt from liability in respect of that development under Regulation 43 (Exemption for charities)
- RBWM is satisfied that the aid in question does not need to be notified to and approved by the European Commission

Notes:

Regulation 43 states that an owner (C) of a material interest in the relevant land is exempt from liability to pay CIL in respect of a chargeable development if:

C is a charitable institution; and the chargeable development will be used wholly or mainly for charitable purposes

But the relief does not apply if it would constitute a state aid.

Four criteria must be satisfied for aid to constitute state aid:

- It is granted by the state or through state resources
- It favours certain undertakings or production of certain goods. In other it provides a selective aid to certain entities engaged in an economic activity (an “undertaking”). Economic activity is the putting of goods or services on a given market.
- It distorts or threatens to distort competition
- It affects trade between Member States. This includes potential effects

Discretionary charitable relief can only be given where relief would not need to be notified to, and approved by the European Commission. State aid in these situations is not notifiable because it uses the de minimis block exemption. De minimis funding is exempt from notification requirements because the European Commission considers that such a small amount of aid will have a negligible impact on trade and competition. The current de minimis threshold is set at €200,000 over a rolling three year fiscal year period. The threshold applies cumulatively to all public assistance received from all sources and not to individual schemes or projects.

This means that the Council cannot offer relief from CIL of over €200,000 to any charitable institution whose activities would constitute a State aid.

### **Discretionary Social Housing Relief Regulation 49A**

RBWM hereby gives notice that discretionary social housing relief in line with Regulation 49A of the Community Infrastructure Levy Regulations 2010 (as amended) is available from the RBWM Community Infrastructure Levy.

Relief may be applied for qualifying dwellings that meet all of the following criteria:

- The dwelling is sold for no more than 80% of its market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market).
- The liability to pay CIL in relation to the dwelling remains with the person granted discretionary social housing relief.
- Only discounted housing that is accepted in an associated Section 106 Agreement as affordable housing will be eligible as a qualifying dwelling for relief from CIL.

Note: Any claims for social housing relief must be made prior to development commencing

### **Relief for Exceptional Circumstances Regulation 55**

The Council does not intend to introduce a policy for CIL relief under exceptional circumstances at the time of commencing CIL charging. The Council does have the power to introduce such a policy if it is considered appropriate.

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Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	No
<b>Title</b>	Maidenhead Regeneration Update
<b>Responsible Officer(s)</b>	Russell O'Keefe, Strategic Director of Corporate and Community Services
<b>Contact officer, job title and phone number</b>	Chris Hilton, Director of Planning, Development and Regeneration
<b>Member reporting</b>	Cllr J Rankin, Lead Member for Economic Development and Property  Cllr D Evans, Principle Member for Maidenhead Regeneration and Maidenhead
<b>For Consideration By</b>	Council
<b>Date to be Considered</b>	10 August 2016
<b>Implementation Date if Not Called In</b>	Immediately
<b>Affected Wards</b>	All

## REPORT SUMMARY

The report provides an update for Council on the work to regenerate Maidenhead, making it a town for everyone which is an even more attractive place to live, work and spend leisure time. It sets out the overall vision, the likely outcomes, and how the quality of life of residents will be improved. It provides an update on what we will achieve, how we will achieve it and when it will be delivered.

## If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. The development at York Road delivering over 210 residential units, restaurants and cafes, public spaces adjacent to the Waterway and an enhanced cultural facility in the centre of the town.	September 2021
2. The development of West Street, delivering over 95 residential units, public car parking and a high level pedestrian link between the town centre and Kidwells Park.	June 2020
3. The development of St Clouds Way, delivering over	June 2021

574 residential units.  This development will also fund the construction of the brand new leisure centre at Braywick Park.	June 2019
4. The development of Reform Road, which has the potential for mixed use development delivering residential accommodation whilst also retaining employment use.	December 2020
5. The development of Maidenhead Golf Club will provide over 1,500 new homes including affordable housing and new supporting infrastructure e.g. road improvements, school, health and community facilities.	2020 - 2029

## 1. DETAILS OF RECOMMENDATIONS

### RECOMMENDATION: That Council:

- i. **Notes the development work underway to regenerate Maidenhead to make it a town for everyone.**

## 2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

### Vision

- 2.1 The Maidenhead Town Centre Area Action Plan was originally adopted in September 2011. It defined the Vision for the town:

*“Maidenhead will become the distinctive heart of the community, a place that celebrates its green Thames Valley setting, which is welcoming, attractive and accessible to all, and provides a strong economic focus for the wider community.”*

The objectives of the plan are to:

- Improve the quality of and provision of public space.
- Introduce greenery into the town centre to reflect its Thames Valley setting.
- Enhance and introduce the use of water.
- Promote high quality built form.
- Quicken the pace of urban development and promote economic growth.
- Promote mixed use development.
- Foster greater civic pride.
- Improve the identity and image of the town centre.
- Optimise town centre accessibility.
- Reduce pedestrian and vehicular conflicts, and promote a people-friendly town.

- 2.2 In the Council’s Corporate Strategy 2016-2020 one of the key strategic priorities is that:

*“Residents will enjoy vibrant town centres, benefitting from Crossrail*

*and other major infrastructure investments, while retaining the unique character of our towns, villages and green belt countryside.”*

- 2.3 The arrival of Crossrail in 2019 will bring Maidenhead town centre within 40 minutes of London's West End. This is likely to have significant impact, increasing demand from companies looking for office locations and people wanting to move into the Borough.
- 2.4 The Berkshire wide Strategic Housing Market Area Assessment 2015 identified the level of objectively assessed need for the Borough as 712 new dwellings per annum, or 13,528 dwellings over the plan period 2013 to 2032. The emerging Borough Local Plan seeks to set out how this level of housing development will be satisfied whilst meeting the Council's commitment to maintain/protect the greenbelt.
- 2.5 Achieving high quality high density development in urban areas, and particularly close to the Crossrail station in central Maidenhead, is key to the Borough meeting the objectively assessed need of 712 dwellings per annum. Not only will development in Maidenhead meet future residents needs it will remove the pressure on the greenbelt and the impact on the Borough's road network can be minimised.
- 2.6 Maidenhead should be a vibrant place where people love to live, work and spend leisure time. Most of all it should be a high quality, sought-after place where people aspire to live. To ensure that it is, there is a need for strong design standards that include great public spaces, and iconic buildings which will define the town's character and be instantly recognisable as Maidenhead.
- 2.7 On becoming Prime Minister Theresa May said: "We will make Britain a country that works not for a privileged few but for every one of us". Our priority is to make Maidenhead a place that works for everyone. This means great schools for our children, good job opportunities for our residents and homes that are affordable to all not just the few.

#### **What has been achieved so far**

- 2.8 A range of work has already been successfully progressed including:
  - Stafferton Link Road completed December 2015.
  - Waterways – Stages 1, 2(A) and 2 (B) commenced July 2015 and to be completed in spring 2017. £5m has been invested.
  - Chapel Arches – Phases 1 and 2 due for completion in the autumn.
  - Berkshire House (Essential Living) due to complete in September. 68 apartments available to rent.
  - Nicholson Centre acquired by Vixcroft in early 2015. Refurbishment underway. H&M opened in May 2016. Smiggle (kids stationary / arts store) coming soon.
  - In June 2015 Maersk took 40,800 sq ft in The Point on a 10 year lease at between £33 and £35 per square foot (psf).
  - In June 2016 Blackberry took 16,500 sq ft in The Pearce Building on a 10 year lease at £37.50 psf.
  - Premier Inn (part of the West Street Opportunity area) was completed last year.

- Public Realm projects completed, including paving in High Street, subway improvements at West Street, Town Moor and St Clouds Way. Lighting schemes implemented on High Street.

### **What we will deliver**

- 2.9 The emerging Borough Local Plan and the supporting Infrastructure Delivery Plan will define the infrastructure, including schools, doctors, dentists, community uses etc, needed to support housing growth. Provision will be made in line with the Plan.
- 2.10 The planned Affordable Housing Supplementary Planning Document (SPD) will define the strategy for affordable housing provision. The document will set out how affordable housing will be delivered across a range of tenure types to provide homes for everyone and to help young people get on the housing ladder.
- 2.11 In line with the Council's Housing Investment Partnership Plan, the Council plans to use its extensive land ownership to provide affordable housing for key workers. A recent paper to Cabinet set out the definition of key workers. This work will ensure that the borough continues to attract excellent teachers, securing high quality education for all our children and social care and health professionals and other key professionals.
- 2.12 Over the next ten years the borough, based on the work carried out so far, will invest circa £138.5m alongside the private sector investment. This will include investing circa:
- £70 million into our schools including building a new school.
  - £30 million in sport and leisure.
  - £30 million in improving the infrastructure including new car parking and improved roads.
  - £3m in a cultural and community facility.
  - £5.5m in the Waterways project to bring the Thames into the town.
- 2.13 In total this investment will help to:
- Deliver circa 2,000 new homes across the six Opportunity Areas in Maidenhead town centre. 600 of which will be 'affordable'.
  - Deliver circa 1,500 immediately to the south of the town centre, adjacent to Crossrail, on the Maidenhead Golf Club site. 450 of these will be 'affordable'.
  - Deliver a new cultural and community facility in York Road adjacent to, and potentially incorporating part of, the Town Hall
  - Deliver a new public square outside the Crossrail station together with taxi facilities and bus interchange
  - Building a new state of the art leisure centre.
  - Deliver road improvements and new parking provision including an improved car park at the Nicholson's Centre and potentially a new car park in Stafferton Way.
  - Improve local health facilities working with health partners.
  - Provide 260,000 sq ft of quality office and retail space to attract prestige employers. Maidenhead This will predominantly be delivered through the



Landing Project which is a scheme that includes 225 apartments and a large range of office space around a new public square with bars, cafes and retail. The Conditional Sale & Development Agreement was signed in March 2015.

2.14 Total investment, public and private sector, in homes and community facilities within the Maidenhead town centre and the golf club site is likely to significantly exceed £1 billion.

**How we will deliver it**

2.15 A competitive process is already underway to select a development partner to work with the Council, as a joint venture, in delivering the four Opportunity Area sites that are in Council ownership:

- The York Road Opportunity Area, which has potential for >210 residential units, restaurants and cafes, public spaces adjacent to the Waterway and an enhanced cultural facility in the centre of the town.
- West Street, which has potential for >95 residential units, public car parking and a high level pedestrian link between the town centre and Kidwells Park.
- St Clouds Way, which has potential for >574 residential units. This development will fund the construction of the brand new leisure centre at Braywick Park.
- Reform Road, which has the potential for mixed use development delivering residential accommodation whilst also retaining employment use.

2.16 Under the joint venture the Council will retain a big stake in the development. This will give the Council significant control over delivery, helping to ensure the Council's vision for the town is achieved. In addition the Council intends to convert its land assets to income-producing property assets. This income will come from a mixture of residential, ground and commercial rents. These assets will also provide housing for key workers. The income achieved from the council's assets will be used to fund services for residents. This ensures the council is not holding on to assets and under utilising them but instead using them proactively in the most efficient and effective way for the benefits of residents through improving the area and services, in line with the council's priority to always put residents first.

2.17 The property assets will be held in the Council's trading company RBWM Property Co. The Council is the owner of the company and through its shareholding will ensure the Property Co deliver the Council's vision in all activity alongside operating in an open and transparent way.

2.18 The Council will also look to select a development partner(s) to work with the Council in delivering the Maidenhead Golf Club site. Under this partnership the Council will retain significant control over how this site is developed, ensuring it is sustainable and sympathetic to the local surroundings.

2.19 As all this work progresses there will be the opportunity for detailed review by members of the specific proposals through the Council's overview and scrutiny and planning processes.

2.20 Similarly, the Council will work proactively with developers and the local community to mitigate, wherever possible, impact on residents and local

businesses while development work is being carried out. This will, for example, include providing additional car parking whilst work is progressed at the Nicholson's Car Park.

2.21 The work will be carried out in an open and transparent way with significant opportunity for resident and stakeholder engagement. This will include formal consultation on the detailed proposals for each site as they are taken forward.

**When we will deliver it**

2.22 Key milestones are set out in section 15 .

**OPTIONS CONSIDERED**

<b>Option</b>	<b>Comments</b>
<p>1. Not progress the regeneration of Maidenhead.</p> <p><b>This is not the recommended option</b></p>	<ul style="list-style-type: none"> <li>• Maidenhead would not have the housing it needs to support the local population and would continue to underperform as a retail centre in the face of competition from other centres and from online retailers. The Regeneration programme will deliver much needed housing and bring greater life and vibrancy to the town centre.</li> <li>• Housing need would not be satisfied and pressure would grow to release more greenbelt.</li> </ul>
<p>2. Proceed with the programme as outlined in the report, retaining a stake in the development and converting our land assets to income producing property assets.</p> <p><b>This is the recommended option</b></p>	<ul style="list-style-type: none"> <li>• Delivers on the Council's priority to make Maidenhead a town for everyone by providing a range of new homes including affordable housing and improved community facilities e.g. schools, roads, leisure and community – which can cover health.</li> <li>• Joint venture relationships give the Council more control overall and enables achievement of higher standards.</li> <li>• This approach will provide income to the Council in the future which can be used to fund services for residents.</li> </ul>

### 3. KEY IMPLICATIONS

3.1 The key outcomes of this paper are set out in the table:

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Start on site York Road	October 2018	September 2018	August 2018	July 2018	September 2018
Start on site West Street	December 2018	November 2018	October 2018	September 2018	November 2018
Start on site Reform Road	January 2019	January 2019	December 2018	November 2018	January 2019
Complete new Leisure Centre	July 2019	June 2019	May 2019	April 2019	June 2019
Start on Site St Clouds Way	October 2019	September 2019	August 2019	July 2019	September 2019
Select development partner for Maidenhead Golf Club	Detailed timescales being developed. A report is to be considered by Cabinet Regeneration Sub-Committee in September				

### 4. FINANCIAL DETAILS

#### Financial impact on the budget

4.1 The programme will result in the Council receiving a mixture of property assets and capital receipt. Where we take assets we will look for these to either include the freehold or be on 999 year leases. All assets will be rented and provide income in future years that can be used to fund services for residents. The capital receipts can be used to fund the investment in infrastructure and community facilities. Detailed financial appraisals will be carried out on the proposals from potential development partners as part of the formal selection processes.

### 5. LEGAL IMPLICATIONS

5.1 The Council has the power to enter into the anticipated forms of land disposal (under options 1 to 3 within [Appendix A]) by virtue of section 123 Local Government Act 1972. Where land is appropriated for planning purposes prior to disposal, the power arises under section 233 Town and Country Planning Act 1990.

5.2 Land disposed of under the above powers must be on terms which secures the best consideration reasonable obtainable and the proposed procurement process will seek to achieve this. In simple terms, this means that the Council must look to maximise value unless there are exceptional reasons to depart from this e.g. supporting the council's wider priorities such as housing key workers. Disposal

includes sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements.

5.3 The power to enter into a joint venture arrangement arises under section 1 Localism Act 2011 and the incidental powers under s111 Local Government Act 1972. The terms of any financial arrangement between the Council and a developer must not contravene article 107 of the Treaty on the Functioning of the European Union (state aid) and the Council will rely on the Market Economy Investor Principle in this. Despite the recent vote for the United Kingdom to leave the European Union the Council has received legal advice that until transitional measures are known, it should continue to adopt a procurement of a development partner that complies with the Public Contracts Regulations 2015.

## 6. VALUE FOR MONEY

6.1 Any land disposed of under the above powers (see paragraph 5.1) must be on terms which secures the best consideration reasonable obtainable and the proposed procurement process will seek to achieve this.

## 7. SUSTAINABILITY IMPACT

7.1 By developing homes adjacent to the town centre and the Crossrail station we will minimise the need for car journeys.

## 8. RISK MANAGEMENT

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
Costs are higher than initial estimates impacting on cash flow and viability	Medium / High	Refine specification and cost using a professional cost consultant allowing robustly for contingencies and inflation.	Low / Medium
Fluctuations in the property market affects future receipts	Medium	Work with JV partners to time schemes and property disposals to optimise receipts	Low
Under performance of selected partners	Medium	Include key performance indicators in contract documentation, with appropriate dispute resolution and termination rights.	Low / Medium

## **9. LINKS TO STRATEGIC OBJECTIVES**

9.1 The work supports the following objectives:

### **Residents First**

- **Encourage Healthy People and Lifestyles**
- **Improve the Environment, Economy and Transport**
- **Work for safer and stronger communities**

### **Value for Money**

- **Invest in the future**

### **Delivering Together**

- **Deliver Effective Services**

### **Equipping Ourselves for the Future**

- **Changing Our Culture**

## **10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 N/A.

## **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 N/A.

## **12. PROPERTY AND ASSETS**

12.1 The Council own freehold land and property at the following locations referred to in this report:

- York Road OA
- West Street OA
- St Clouds Way
- Reform Road Industrial Estate
- Maidenhead Golf Club

## **13. ANY OTHER IMPLICATIONS**

13.1 None.

## **14. CONSULTATION**

14.1 The Partnership for the Rejuvenation of Maidenhead (PRoM) is a stakeholder forum with representatives from local business and local interest groups. The Council will work with PROM to develop new engagement and communication plans to ensure residents and local stakeholders are fully involved in the development of the area.

14.2 Formal consultation with local residents has already been carried out on the sites through different processes. Further consultation will be carried out with residents on the detailed proposals for each site as they are taken forward.

## 15. TIMETABLE FOR IMPLEMENTATION

Action	Timeframe
Commence EU-compliant process to select JV developer	July 2016
Shortlist JV developers	Late September 2016
Select JV developer and sign contracts	May 2017
Planning Application York Road	October 2017
Start on Site York Road	September 2018
Completion York Road	September 2021
Planning Application West Street	October 2017
Start on Site West Street	November 2018
Completion West Street	June 2020
Planning Application Reform Road	January 2018
Start on Site Reform Road	January 2019
Completion Reform Road	December 2020
Planning Application for new Magnet Leisure Centre at Braywick Park	April 2017
Start on Site of Leisure Centre	November 2017
Completion of Leisure Centre	June 2019
Planning Application St Clouds Way	June 2018
Start on Site St Clouds Way	September 2019
Completion St Clouds Way	June 2021
Completion of the Landing Project	December 2019
Selection of development partner for Maidenhead Golf Club.	Detailed timescales being developed.
Development of the Station Opportunity Area	Detailed timescales being developed.
Improved car park at the Nicholson's Centre and potentially a new car park in Stafferton Way.	Detailed timescales being developed.

## 16. APPENDICES

16.1 None.

## 17. BACKGROUND INFORMATION

17.1 None.

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal		5/1		

<b>Name of consultee</b>	<b>Post held and Department</b>	<b>Date sent</b>	<b>Date received</b>	<b>See comments in paragraph:</b>
Cllr Dudley	Leader of the Council			
Cllr Saunders	Lead Member for Finance			
Cllr Rankin	Lead Member for Economic Development and Property	31/07/2016	31/07/2016	Throughout.
Cllr Evans	Principle Member for Maidenhead Regeneration and Maidenhead d			
Russell O'Keefe	Strategic Director Corporate and Community Services			
Alison Alexander	Managing Director and Strategic Director Adults, Children's and Health	31/7/16	31/7/16	Throughout
Simon Fletcher	Strategic Director Operations and Customer Services			
Rob Stubbs	Head of Finance			

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>
Key Decision	No
28 June 2016	

<b>Full name of report author</b>	<b>Job title</b>	<b>Full contact no:</b>
Marie Percival	Regeneration and Property Officer	01628 796690

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Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	NO - Part I
<b>Title</b>	<b>Members' Code of Conduct Review</b>
<b>Responsible Officer(s)</b>	Russell O'Keefe, Strategic Director of Corporate and Community Services
<b>Contact officer, job title and phone number</b>	David Scott, Head of Governance, Partnerships, Performance and Policy and Monitoring Officer. 01628 796748
<b>Member reporting</b>	Cllr Targowska, Principal Member for HR and Legal, Chair of Constitution Subcommittee
<b>For Consideration By</b>	Council
<b>Date to be Considered</b>	10 August 2016
<b>Implementation Date if Not Called In</b>	N/A
<b>Affected Wards</b>	All

## REPORT SUMMARY

1. Following Council in December 2015, this report presents a review of the Members' Code of Conduct (Part 7A of the RBWM Constitution) by the Constitution Subcommittee, with a recommendation for no change to the code, and some minor changes to one of the related procedures. The current version of the code is shown in Appendix A.
2. The review has looked at our code of conduct in comparison to a selection of other authorities' codes, and has identified some proposed amendments in relation to dealing with allegations of breaches of the Members' Code of Conduct. A revised Appendix 4 to the Code of Conduct is proposed which moves the responsibility for conduction investigations to the Monitoring Officer, with a revised version attached in Appendix B.
3. The report seeks Council approval for the approved changes as recommended by the Constitution Subcommittee.
4. The Constitution Sub Committee were also asked to consider if they wish to recommend establishing additional panel(s) to assist in the arrangements for dealing with breaches of the Members' Code of Conduct. The Committee decided not to recommend establishing panel(s) to Council.

<b>If recommendations are adopted, how will residents benefit?</b>	
Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. A fit for purpose code of conduct with a transparent and fair process for complaints will help ensure trust in elected members and the democratic process.	17 August 2016

## 1. DETAILS OF RECOMMENDATIONS

### RECOMMENDATION: That Council:

- i. **Confirms that the current Code of Conduct is fit for purpose with the exception of Appendix 4.**
- ii. **Approves the revision of Appendix 4 of the Code of Conduct; transferring responsibility for dealing with breaches of the code to the Monitoring Officer in line with the majority of other similar codes of conduct,**
- iii. **Approves that the revised Appendix 4 (Arrangements for dealing with breaches of the Code of Conduct) is adopted.**

## 2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 The Council adopted its Code of Conduct (CofC) in 2012 as a result of changes introduced by the Localism Act 2011. Further changes to the Code including the Registration of Personal Interests was adopted by Council on 22 September 2015. These came into effect on 1 November 2015.
- 2.2 Council requested in September 2015 that the Constitution Subcommittee undertook a thorough review and consultation of the current Code, with a view (if necessary) to make recommendation to Council by December 2015.
- 2.3 To enable further discussion and consultation with Members and Officers, Council on 15 December 2015 agreed to extend this period of review with a view to reporting back to Council by July 2016.

### **Recommendation i - Review of Members' Code of Conduct**

- 2.4 The Royal Borough of Windsor and Maidenhead's Members' Code of Conduct was benchmarked against three unitary authorities (Bracknell Forest, Wokingham and Cheshire East), one County Council (Hampshire) and one London Borough (Wandsworth).
- 2.5 The comparison of the RBWM CofC compared to the other borough indicates that very largely the CofC remains fit for purpose, with the exception of Appendix 4 - Arrangements for dealing with breaches of the Code of Conduct.

<b>Option</b>	<b>Comments</b>
No change to the current Members' Code of Conduct	The current code of conduct is consistent with the other Local Authorities compared and achieves the following principles of selflessness, integrity, objectivity,

Option	Comments
	accountability, openness, honesty and leadership. <b>This is the recommended option</b>
Change the current Member's Code of Conduct	A review was undertaken and no changes were required. Not recommended.

### Recommendation ii & iii - Arrangements for dealing with breaches of the Code of Conduct

- 2.6 Arrangements for dealing with breaches of the CofC have also been benchmarked against the above Councils. Following this review, a number of changes have been recommended, combining our existing processes and adding what are considered to be the best practices from other Councils, especially Hampshire. These changes will allow for residents to have a clear and transparent mechanism for appropriate complaints to be assessed and decided. The new changes will also protect Members from frivolous or vexatious complaints, as well as providing clear timescales and updates

Option	Comments
Change the current Arrangements for dealing with Members' breaches of the Code of Conduct – Appendix 4 of the Code of Conduct	The following changes are being proposed: <ul style="list-style-type: none"> <li>Complaints are dealt with by the Monitoring Officer rather than the Managing Director, in consultation with the Independent Person. This would be consistent with all the other Councils reviewed and maintains the unique relationship between Members and the Head of Paid Service</li> <li>Adopt a greater level of rigour around anonymous complaints, such that complaints will only be accepted if there is documentary or photographic evidence.</li> <li>Consistent clarity around timescales and outcomes.</li> <li>An additional set of checks to determine whether the complaint should be accepted for further consideration or rejected, for example, sufficiency of information and seriousness of the complaint be established before progressing to formal stages.</li> <li>All complaints should be made through a standardised form. This could be an e-form or a downloadable template or both.</li> <li>See Appendix B for the revised Appendix.4.</li> </ul> <b>This is the recommended Option</b>
No change to the current Arrangements for dealing with Members' breaches of the Code of Conduct	The current arrangements while adequate do not allow residents to have a clear and transparent mechanism for appropriate complaints to be assessed and decided upon, and do not allow adequate protection for Members from frivolous or vexatious complaints. See Appendix A section Appendix 4. Not recommended.

### **Establishing additional panel(s) or any other proposals**

- 2.7 The Subcommittee noted in the period between June 2015 and May 2016, there were X matters raised to the Monitoring Officer which did not progress into the formal complaint mechanism.
- 2.8 As an alternative to leaving the responsibility with the Monitoring Officer as proposed, the Constitution Subcommittee was also asked to consider whether a panel(s) should be set up to decide whether:
- (a) a complaint should be considered, or
  - (b) to decide what sanction should be delivered, or
  - (c) both.

In other authorities there are a mixture of arrangements, with some having panels and others leaving the responsibility with the Monitoring Officer. Where panels are in place, they are generally made up of Members. The Constitutional Subcommittee unanimously agreed that the establishment of additional panels should not be recommended to July Council. The draft minutes have been published.

<http://rbwm.moderngov.co.uk/documents/g6542/Printed%20minutes%2021st-Jun-2016%2017.30%20Constitution%20Sub%20Committee.pdf?T=1>

- 2.8 The Subcommittee were also asked to consider if there are any other suggestions that should inform the recommendations to Council. These can be found in the draft minutes of the meeting and are reflected in this report. Minor changes in the arrangements for dealing with breaches in the code of conduct were also suggested and appendix 4 of the code of conduct has been updated accordingly. These included a clearer timetable for decisions on sanctions and monthly updates to be provided to all parties if an investigation is ongoing. In addition clarification of the definition of 'reasonable' legal costs, (Appendix B, 5.2 Support to Subject Members during an Investigation), this defined in 2.9 below.

### 2.9 Reasonable Legal Costs

The indemnity scheme is provided in relation to standards i.e. allegations of any action of or failure to act by the member, where the action is authorised by the council or forms part of or arises from any powers conferred or duties placed upon that member. In other words, the scheme is not an all purpose legal protection insurance - it won't operate to cover any action which constitutes a criminal offence or is the result of fraud or some other deliberate wrongdoing/recklessness. For claims of defamation, the guiding principle is that a local authority cannot indemnify a member where the member is making a claim, but it is possible to indemnify where the member is contesting or defending such a claim.

## 3. KEY IMPLICATIONS

<b>Defined Outcomes</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date they should be delivered by</b>
% of complaints dealt within the agreed procedure	Under 95%	95%	96-99%	100%	26 July 2017

<b>Defined Outcomes</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date they should be delivered by</b>
and timescales					
Reduction in spurious complaints	0%	1-5%	6-10%	11-15%	26 July 2017

#### **4. FINANCIAL DETAILS**

4.1 There are no financial implications arising from the recommendation in this report.

#### **5. LEGAL IMPLICATIONS**

5.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and other relevant statutory acts or guidance.

#### **6. VALUE FOR MONEY**

6.1 An updated Constitution will ensure the Council is less likely to be challenged on its procedures and processes.

#### **7. SUSTAINABILITY IMPACT APPRAISAL**

7.1 There is no impact on sustainability objectives.

#### **8. RISK MANAGEMENT**

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
There is a risk of challenge if the Constitution is not legally updated.	Constitution is not updated.	Constitution is regularly reviewed and updated.	Revised Constitution available on website.

#### **9. LINKS TO STRATEGIC OBJECTIVES**

9.1 The main links are to:

##### **Residents First**

- Work for safer and stronger communities

##### **Value for Money**

- Improve the use of technology

##### **Delivering Together**

- Enhanced Customer Services
- Deliver Effective Services

## **Equipping Ourselves for the Future**

- Developing Our systems and Structures

### **10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 Not at this stage.

### **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 None.

### **12. PROPERTY AND ASSETS**

12.1 None.

### **13. ANY OTHER IMPLICATIONS**

13.1 None.

### **14. CONSULTATION**

14.1 N/A

### **15. TIMETABLE FOR IMPLEMENTATION**

<b>Date</b>	<b>Details</b>
10 August 2016	Discussed at Full Council

### **16. APPENDICES**

Appendix A – Current Constitution Code of Conduct for Members – Part 7A

Appendix B – Revised Appendix 4 proposed to replace the current Appendix 4

### **17. BACKGROUND INFORMATION**

RBWM Constitution - Version 16.5 June 2016

Report to Full Council 15 December 2015

### **18. CONSULTATION (MANDATORY)**

<b>Name of consultee</b>	<b>Post held and Department</b>	<b>Date sent</b>	<b>Date received</b>	<b>See comments in paragraph:</b>
<b>Internal</b>				
Cllr Targowska	Principal Member HR & Legal	21 July 16	29/7/16	
Russell O'Keefe	Strategic Director Corporate and Community Services	19 July 16	21 July 16	
Alison Alexander	Managing Director/	21 July 16		

<b>Name of consultee</b>	<b>Post held and Department</b>	<b>Date sent</b>	<b>Date received</b>	<b>See comments in paragraph:</b>
	Strategic Director Adults, Children and Health			
Simon Fletcher	Strategic Director Operations and Customer Services	21 July 16		

## **REPORT HISTORY**

<b>Decision type:</b>	<b>Urgency item?</b>
Key decision	No

<b>Full name of report author</b>	<b>Job title</b>	<b>Full contact no:</b>
David Scott	Head of GPPP and Monitoring Officer	01628 79 6748

**Royal Borough of Windsor & Maidenhead Code of Conduct**

**Conduct expected of Members and co-opted Members of the authority when acting in that capacity**

You, as a member of the Royal Borough of Windsor and Maidenhead shall have regard to the following principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

When acting in your capacity as a Member or co-opted Member:

- i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
- ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- iii) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
- iv) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- v) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- vi) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the Appendices below.
- vii) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.



- viii) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

This Code of Conduct is supplemented by the provisions of Appendix 1 to 5

## **Appendix 1**

### **Registering and Declaring pecuniary and personal interests (s.30 Localism Act 2011)**

You must, within 28 days of taking office as a Member or co-opted Member, notify your authority's monitoring officer of any disclosable pecuniary interest ('DPIs') as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners. The definition of DPIs is in Appendix 5.

In addition, you must, within 28 days of taking office as a Member or co-opted Member, notify your authority's Monitoring Officer of any Personal Interest as defined in Appendix 5.

If any DPI or Personal Interest has not been entered onto the authority's Register of Interests, then the Member must disclose the interest to any meeting of the authority at which they are present, where they have an interest in any matter being considered and where the matter is not a Sensitive Interest as defined in Appendix 5.

Following disclosure of any interest not on the authority's Register of Interest or the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure in order that it may be placed on the Register of Interests.

You must, within 28 days of receipt, notify the Monitoring Officer, in writing, of any gift, benefit or hospitality, with a value in excess of £25, which will then be entered on the public register of gifts and hospitality.

A copy of the register will be available for public inspection and will be published on the authority's website.

## **Appendix 2**

### **Disclosure of interests and participation in meetings. (s.31 Localism Act 2011)**

#### Disclosure at Meetings

You are required to disclose interests at meetings when you are aware that you have either:

- (a) A DPI or a Personal Interest which is relevant to the matter being considered; or
- (b) A Personal Interest or a DPI which is not on your Register of Interests;

You are not required to (but can do so if you wish) disclose any other type of interest that you may have. If in doubt, it is always better to disclose an interest than not do so as the Council places a high value upon its public reputation for integrity.

### Participation for Decision Makers at Meetings

If you attend a meeting as a decision maker and have:

- (a) DPI which is relevant to the matter under discussion; or
- (b) a Prejudicial Interest;

then you must not participate in any debate of the matter and/or participate in any vote at the meeting, unless you have obtained a Dispensation.

Please see Appendix 5 for guidance on these terms. Appendix 3 states how you can obtain a Dispensation.

If you have a DPI or Prejudicial Interest (and do not have a Dispensation) as described then you must:

- (a) Declare the interest at the start of the meeting when the Chairman asks if there are any interests to declare; and
- (b) Before the item is to be discussed, you may make representations before there is debate on the matter but, when finished, you must move to the public area or leave the room and take no further part in the discussion or vote.

You cannot avoid disclosure of a DPI or Prejudicial Interest merely by withdrawing during that part of the meeting when the matter you have a DPI or Prejudicial Interest, is to be discussed. In respect to a DPI, failure to comply is a Criminal Offence.

If you remain in the room, you must not sit with the other members of the meeting and must move to the public area. You must not speak after making your representations. It is also important that you do not express your views in a non-verbal way, for example by using body language or expressing emotion.

## **Appendix 3**

### **How to obtain a Dispensation**

If you seek a Dispensation, you must make a written request to the Relevant Officer of the Council.

The Council may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—

- (a) considers that without the dispensation the number of persons from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) considers that granting the dispensation is in the interests of persons living in the Royal Borough of Windsor and Maidenhead.
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or
- (e) considers that it is otherwise appropriate to grant a dispensation.

A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

The Relevant Officer is the Managing Director or in substitute the officer clerking the meeting.

## **Appendix 4**

### **Arrangements for dealing with breaches of the Code of Conduct**

Complaints in respect of this Code are made to the Managing Director.

When a complainant makes a complaint they will receive:

- an acknowledgment within 3 working days
- a response within 10 working days setting out how the Council will consider the complaint and the likely timescale for resolution

When a complaint is made against you, you will be provided with a copy of the complaint and will be requested to provide your initial views and comments on the allegations. The Managing Director will consider this before making any decision whether to investigate the complaint.

The Council's arrangements for dealing with the breach will be determined by the Managing Director and will be proportionate to the complaint and will be timely and effective.

When a complaint is received, the Managing Director will decide on whether a complaint against you requires formal investigation or any other action, in consultation with the Independent Person, as appropriate.

If the Managing Director feels that it is inappropriate to take a decision on a complaint, the Managing Director will refer the particular complaint to a nominee. You are requested to communicate with any nominee on the facts under investigation.

The Managing Director must consult the Independent Person before making a decision on an allegation that the Managing Director has decided required investigation.

The Managing Director will inform you and the complainant of the decision in relation to the complaint.

#### Support to Members during an Investigation

The Council will support to you during the complaint investigation process:

- a. Independent Person: You can seek views of the second Independent Person (not the Independent person who is consulted by the Managing Director) on the complaint.
- b. Legal Support: The Council will provide financial support to allow you to seek any reasonable legal advice to defend (i) proceedings for criminal acts alleged as part of your role as Councillor, or (ii) any allegation of a breach of the Code of Conduct.

Any criminal acts must occur in the course of your duties as a Councillor. You must notify the Council's insurance manager before seeking legal advice. The advice and legal costs must be appropriate to the complaint. You will be required to immediately repay back all monies to the Council if you are convicted of a criminal offence or have failed to comply with the Code of Conduct.

#### Appeals

You have no right to appeal under the Code and the decision of the Managing Director will be final. However, you will have the option after the decision has been made to make any further statement that you wish on the complaint and the findings.

This further statement shall be published on the Council's website for the period stated in Transparency below.

If the complainant is unhappy with this decision, there is no further right of appeal to the Council. They may write to the Local Government Ombudsman as deem appropriate.

The Local Ombudsman acts as an independent 'referee' in disputes between individuals and their local councils. The Ombudsman is appointed by Government to investigate complaints against local authorities.

#### Transparency

The decision of the Managing Director will be sent to you and the complainant and also published on the Council's website for the following period:

- a. No Breach of Code – 3 months
- b. Breach of Code – 24 months (or when you are no longer a Member of the Council, if earlier).

Unless the Managing Director determines, only the decision notice and your statement will be published on the website.

## Definitions used in the Code of Conduct

### Criminal Offence

#### (s.34 Localism Act 2011)

It is a criminal offence if you fail, without reasonable excuse, to comply with the requirements under s30 or s31 Localism Act 2011 to register or declare DPIs, or take part in council business at meetings or when acting alone.

If you breach the above, the Magistrates Court may, upon conviction, impose a fine of up to level 5 (currently £5,000.00), and an order disqualifying the person from being a Member of a relevant authority for up to five years.

The Council would consider that taking legal advice from the Monitoring Officer or their nominee (even if such advice was not upheld) would amount to 'reasonable excuse' for the purposes of s34(1) of the Act.

### Disclosable Pecuniary Interest (DPIs)

Interests defined by regulations made under s30(3) of the Localism Act 2011 and described in the table below.

('M' means you and 'relevant person' means you and your partner). "Partner" means a spouse or civil partner of M, or a person with whom M is living as husband and wife or a person with whom M is living as if they were civil partners

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— a) under which goods or services are to be provided or works are to be executed; and b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— a) the landlord is the relevant authority; and b) the tenant is a body in which the relevant person has a

	beneficial interest.
Securities	Any beneficial interest in securities of a body where— a) that body (to M’s knowledge) has a place of business or land in the area of the relevant authority; and b) either—  i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on Disclosable Pecuniary Interests above are subject to the following definitions;

The Act	means the Localism Act 2011
Body in which the relevant person has a beneficial interest	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
Director	includes a member of the committee of management of an industrial and provident society;
Land	excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;
M	means a member of a relevant authority;
Member	includes a co-opted member;
Relevant authority	means the authority of which M is a member;
Relevant period	means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;
Relevant person	means M or any other person referred to in section 30(3)(b) of the Act;
Securities	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

### **Independent Person**

The Independent Person is the person engaged by the Council who:

- must be consulted by the Managing Director before making a decision on an allegation that the Managing Director has decided should be formally investigated.
- may be consulted by the Managing Director in respect of a complaint at any other stage.
- may provide views to a Member or co-opted Member if that Member's behaviour is the subject of an allegation.
- may assist in granting dispensations to members and co-opted members from requirements relating to interests set out in the Code of Conduct.
- will exercise all of the above functions in respect of Parish Councils and members of those Parish Councils within the Council.

### **Personal Interests**

A Personal Interest is :

- i) any body of which you are in a position of general control or management and to which you are elected appointed or nominated by the Council;
- ii) any body
  - exercising functions of a public nature; or
  - in receipt of any grant from the Council; or
  - directed to charitable purposes; or
  - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which the you are a member or have a close association or of which you are in a position of general control, influence or management.
- iii) Membership of any private club, society or association operating within the Borough Council's area, where you hold a position of general control or management
- iv) any other connection or association which a member of the public may reasonably think may influence you when you make a decision on Council matters and acting as a Councillor. e.g.. the decision relates to a close family member or friend and could have a substantial benefit to them.

You are not required to record any Personal Interest in point (iv) above on your Register of Interests (but may do so if you wish).

### **Predetermination**

Predetermination means that you have a closed mind and do not make a decision impartially and solely on the basis of the relevant facts. You have not predetermined a matter just because you have expressed a particular opinion previously or hold a view prior to any meeting. It is proper for Councillors to play an active part in local discussions and the expression of a view on a particular matter or campaigning on a particular platform should not prevent you from participating in council business relating to such an issue. If you have an open mind, are willing to listen and are open to

consider all the facts and arguments presented to you before making your decision, then you will not have predetermined a matter.

Predetermination should not be confused with Predisposition (see below)

### **Predisposition**

Any decision maker may have an initial view or opinion on a matter arising from personal experiences and preference. Simply holding an initial view or tendency in favour of a particular cause or matter does not preclude you from decision making. This is natural bearing in mind that Councillors are often elected based upon their stated views and opinions. Having a strong view on a matter will amount to only legitimate predisposition.

### **Prejudicial Interest**

This is Personal Interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it influences your judgement of the public interest. That is, your decision is influenced by your Personal Interest such that you are not able to impartially consider only relevant issues (you are biased). This would include where you have Predetermined a matter.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your Personal Interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

### **Sensitive Interest**

A Sensitive Interest occurs where you and the Monitoring Officer consider that disclosure of the details of a DPI or a Personal Interest could lead to you, or a person connected with you, being subject to violence or intimidation. If the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a DPI or a Personal Interest and that the details are withheld under Section 32(2).



## Appendix B – to the Council report 10 August 2016

### Proposed revised Appendix 4

#### Arrangements for dealing with breaches of the Code of Conduct

Complaints in respect of this Code are made to the Monitoring Officer.

##### 1. Receipt and Acknowledgment of the Complaint

When a complainant makes a complaint they will receive:

- An acknowledgment within 3 working days.
- An initial response within 10 working days setting out how the Council will consider the complaint and the likely timescale for resolution.
- The complainant will be told that full details of their complaint will be given to the Councillor concerned ('the Subject Member').
- Anonymous complaints will not be considered unless accompanied by documentary or photographic evidence, evidencing an exceptionally serious or significant matter.

If the Subject Member is a Parish or Town Councillor, the clerk will be informed of the complaint on a confidential basis, where it is a Parish or Town Council matter.

##### 2. Response of the Subject Member

The Subject Member will be informed of the complaint within 3 working days of the complaint being received. The Subject Member will be asked to supply written comments within 15 working days from the complaint being received.

##### 3. Initial Assessment of the complaint by the Monitoring Officer

The purpose of the initial assessment by the Monitoring Officer, in consultation with an Independent Person where appropriate, is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer may apply the following criteria:

- Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.
- Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or 'tit for tat'? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?
- Duplication – Is the complaint substantially similar to a previous allegation or subject of an investigation by another relevant authority?
- Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action
- Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?

The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the initial assessment decision within 20 working days of it being made. Should it be determined by the Monitoring Officer, in consultation with an Independent Person where appropriate, that the complaint should not proceed, then that is the end of the matter. There is no right of appeal.

#### **4. Initial Decision of the Monitoring Officer**

Should it be determined, having regard to the criteria referred to in section 3 above, that the complaint be accepted for further consideration the Monitoring Officer shall, subject to consultation with an Independent Person, have delegated authority to decide to take one of the following actions:

- Take no action if there is clear evidence that there has been no breach of the Code of Conduct. Nothing further will be required from the Subject Member and the matter will be closed.
- Where there has been a clear breach of the code of conduct, move straight to paragraph 2 of section 5.2 below.
- Where there has possibly been a breach of the Code of conduct, to require a formal investigation and a written investigation report by an Independent Investigating Officer and indicative timescale for the process should be given. At least a monthly update report will be provided to all parties in an ongoing investigation. The investigation report shall conclude whether there has been a breach of the Code of Conduct and give clear reasons for that conclusion. Copies of the investigation report will be provided in confidence to the Independent Person, and the Subject Member.

#### **5. Finding on Investigation**

##### **5.1 No Breach of Code of Conduct**

Where a formal investigation finds no evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person, shall make a decision to take no further action. The Subject Member and the complainant will both be informed. The Parish or Town Clerk, if appropriate, will be informed that there is no breach, but no further information will be supplied. There will be no appeal.

##### **5.2 Breach of Code of Conduct**

Where a formal investigation finds evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person shall make a decision whether there has been a breach of the Code of Conduct.

The Subject Member will be informed of the decision. The Subject Member will be asked for his or her comments on the Investigation report, to the Monitoring Officer, within 20 working days from receipt, and these comments will inform the Monitoring Officer regarding the sanction to be imposed.

#### **6. Sanction**

If the Monitoring Officer has decided that there has been a breach of the Code of Conduct, he or she has 15 working days from the date of receiving the Subject Member's comments to refer the matter to the Subject Member's Group Leader or his or her deputy, or Chairman or his or her Deputy if a parish or Town Councillor, with a recommendation for sanction e.g. removal from a panel or submitting a formal apology.

The Subject Member's Group Leader, or Chairman if a parish or Town Councillor will have a further 15 working days to respond to the recommendation, and to prepare a statement to be placed on the council website.

If the allegation appears to involve criminal activity, the Monitoring Officer will refer the matter to the police at any stage in this process they believe appropriate.

## **7. Support, Appeals and Transparency**

### **7.1 Support to Subject Members during an Investigation**

The Council will support Subject Members during the complaint investigation process as follows:

- a. Independent Person: Subject Members can seek support from one of the Independent Persons (not the Independent person who is consulted by the Monitoring Officer) with regard the complaint.
- b. Legal Support: The Council will provide financial support to allow Subject Members to seek any reasonable legal advice to defend (i) proceedings for criminal acts alleged as part of your role as Councillor, or (ii) any allegation of a breach of the Code of Conduct. Subject Members will be required to sign an agreement with regard to legal support.

Any criminal acts must occur in the course of the Subject Member's duties as a Councillor. They must notify the Council's insurance manager before seeking legal advice. The advice and legal costs must be appropriate to the complaint. Subject Members will be required to immediately repay back all monies to the Council if they are convicted of a criminal offence or have failed to comply with the Code of Conduct.

### **7.2 Appeals**

There is no right to appeal under the Code of Conduct and the decision of the Monitoring Officer will be final. However, Subject Members may make a statement about the complaint and the findings. This statement shall be published on the Council's website for the period stated in Transparency section below.

If the Complainant is unhappy with this decision, they may write to the Local Government Ombudsman to complain. The Local Government Ombudsman acts as an independent 'referee' in disputes between individuals and their local councils. The Ombudsman is appointed by Government to investigate complaints against local authorities.

### **7.3 Transparency**

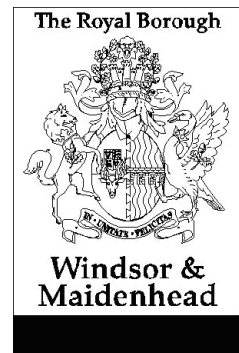
The decision of the Monitoring Officer will be sent to the Subject Member and the complainant and also published on the Council's website for the following period:

- a. No Breach of Code – 3 months
- b. Breach of Code – 24 months (or when you are no longer a Member of the Council, if earlier).

Unless the Monitoring Officer determines otherwise, the decision notice, the Group Leader/ Chairman's statement and the Subject Member's statement only will be published on the website.

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Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	No - Part I with exception of <b>Appendix B which is Part II (Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)</b>
<b>Title</b>	Urgent Decision - Purchase of Thriftwood Farm, Cox Green
<b>Responsible Officer(s)</b>	Russell O'Keefe, Strategic Director of Corporate and Community Services
<b>Contact officer, job title and phone number</b>	Chris Hilton, Director of Planning, Development and Regeneration, 01628 683811 Rob Stubbs, Head of Finance, 01628 796341
<b>Member reporting</b>	Cllr J Rankin, Lead Member for Economic Development and Property Cllr M Saunders, Lead Member for Finance
<b>For Consideration By</b>	Extraordinary Council
<b>Date to be Considered</b>	10 August 2016
<b>Implementation Date if Not Called In</b>	Immediately
<b>Affected Wards</b>	All

## REPORT SUMMARY

- This report deals with the urgent decision, taken with the necessary approval of the Chair of the relevant Overview & Scrutiny Panel, to add to the 2016/17 Capital Programme £813,500 to finance the purchase of Thriftwood Farm, Ockwells Road, Cox Green, Maidenhead.
- The Council owns the freehold of Ockwell's Park and the opportunity arose to purchase 86 acres of adjacent land at public auction. The land will increase the Council's overall open space / playing fields and will be available for all residents to enjoy.
- The decision required urgent approval to ensure that the Council could participate in the Allsop Property Auction held on 20 July 2016.
- In accordance with Part 3B, paragraph 4b of the Council's Constitution, the use of these powers is now reported to Council.
- The Report recommends that Council acknowledges and notes that this decision has been taken. **77**

- It should also be noted that the urgent action enabled a successful bid to be made for the freehold of Thriftwood Farm for £725k plus costs against a guide price of £725k - £775k plus costs.

**If recommendations are adopted, how will residents benefit?**

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. Residents will have access to an additional 86 acres of open space and playing fields in the Borough.	Winter / Spring 2016/17

**1. DETAILS OF RECOMMENDATION**

**RECOMMENDATION:** That Council acknowledges and notes that the urgent decision has been taken and that £813,500 has been added to the 2016-17 Capital Programme

**2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

2.1 An Open Space Strategy was completed in 2008, and it predicted that by 2026 Maidenhead could have a significant shortfall in open space compared to recommended local standards (see table below).

	Surplus / shortfall (hectares) compared to recommended local standard
Parks and Gardens	11.27
Natural and Semi-natural Greenspace	-85.27
Amenity Greenspace	-11.66
Children's Play Provision	-8.85
Outdoor Teenage Facilities	-8.17
Outdoor Sports Facilities	-59.55
Allotments	-9.04
<b>Total</b>	<b>-171.27</b>

2.2 The strategy is currently being updated to reflect the housing growth rates anticipated by the draft Borough Local Plan (BLP) – however we know that the BLP indicates up to 4,000 homes in total across the Area Action Plan area, Maidenhead Golf Club and the land to the south of the golf club. Inevitably there will be a need for an increase in provision of open space.

2.3 Thriftwood Farm comprises 86 acres of agricultural land and woodland adjacent to the Council's existing 44 acre Ockwell's Park. The Farm was offered as Lot 100

in the Allsop Residential Auction held on 20 July 2016 (the auction particulars are attached at Appendix A). The auction guide price was £725k - £775k plus costs.

- 2.4 The land will increase the Council's overall open space / playing fields and will be available for all residents to enjoy. This is an important acquisition to provide additional open space to support the increasing housing provision the Council is obliged to provide across the Borough.
- 2.5 An appraisal and bidding strategy briefing note was prepared by the Council's external property adviser, Kempton Carr Croft, and is attached at Appendix B (Part II confidential due to commercial sensitivity). The note included an upper bidding limit – the maximum price the Council would be prepared to pay to ensure best value was delivered.
- 2.6 The Council's Constitution requires Council approval before sums of this order can be added to Budgets. As the auctioneer was unwilling to remove Thriftwood Farm from the auction, the decision was made to use the Urgency Powers under the Constitution to facilitate a Council bid at auction. To enable the use of Urgency Powers, approval was sought from the Chair of Corporate Overview & Scrutiny to bid for Thriftwood Farm.
- 2.7 The Council's winning bid of £725k was substantially below its upper bidding limit representing excellent value for money.
- 2.8 Initial site preparation works will include making the site safe for public access, clearing blocked streams and integrating the site with the existing Ockwell's Park. There will be a requirement for the relevant Council department to formulate proposals to maximise the land for leisure use and submit the appropriate future capital bids.

Option	Comments
No decision to be taken as this report is asking Council to note the urgent decision taken in accordance with the Council's Constitution.	

### 3. KEY IMPLICATIONS

3.1

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Approval to release funding to bid at public auction	n/a	This was achieved when agreement to use of urgency	n/a	n/a	Auction held 20 July 2016

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
		process was granted			
Urgent decision taken within terms of the Council Constitution	n/a	This was achieved when agreement to use of urgency process was granted	n/a	n/a	20 July 2016

#### 4. FINANCIAL DETAILS

##### Financial impact on the budget

4.1 The total acquisition budget for Thriftwood Farm is £813,500 comprising:-

Purchase price	£725,000
Auction Fee	£750
Stamp Duty	£25,750
Initial Site Works	£50,000 (H&S, brook clearance, Ockwell's Park integration)
Legal / agent fees	£12,000
	=====
Total	£813,500

4.2 Approximately £240k of the purchase price will be funded from S106 monies for the acquisition of public open space.

#### 5. LEGAL IMPLICATIONS

5.1 The urgent action was taken with the approval of the Chair of Corporate Overview & Scrutiny in accordance with Part 3B, paragraph 4b of the Council Constitution which relates to Urgent Decisions within the Budget and Policy Framework Procedure Rules.

#### 6. VALUE FOR MONEY

6.1 The Council's winning bid of £725k was substantially below its upper bidding limit (advised by the Council's external property consultant) thereby demonstrating value for money.

#### 7. SUSTAINABILITY IMPACT APPRAISAL

7.1 None arising from this decision.



## **8. RISK MANAGEMENT**

8.1 Risk of being unable to bid at auction averted by urgency decision.

## **9. LINKS TO STRATEGIC OBJECTIVES**

9.1 Residents First

- Encourage Healthy People and Lifestyles
- Improve the Environment, Economy and Transport

Value for Money

- Invest in the future

## **10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 None.

## **11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 None.

## **12. PROPERTY AND ASSETS**

12.1 The Council owns the freehold of Ockwell's Park adjacent to Thriftwood Farm. The two sites will be integrated as open space / playing fields open to the public.

## **13. ANY OTHER IMPLICATIONS**

13.1 None.

## **14. CONSULTATION**

14.1 The Chair of the Corporate Services Overview & Scrutiny Panel was consulted along with Lead Members before the urgent decision was taken.

## **15. TIMETABLE FOR IMPLEMENTATION**

<b>Activity</b>	<b>Completion Date</b>
Contracts Exchanged – immediate on confirmation of winning bid (fall of the hammer).	20 July 2016
Purchase Completion	17 August 2016
Initial Site Preparation Works <b>81</b>	Winter 2016 / Spring 2017

Open to the Public	Spring 2017
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## 16. APPENDICES

16.1 Appendix A – Allsop Lot 100 auction particulars (Thriftwood Farm)

16.2 **Part II** Appendix B – Valuation Analysis & Bidding Strategy

## 17. BACKGROUND INFORMATION

17.1 None.

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Cllr Dudley	Leader of the Council			
Cllr Saunders	Lead Member for Finance			
Cllr Rankin	Lead Member for Economic Development and Property			
Cllr Evans	Principal Member Maidenhead Regeneration and Maidenhead			
Russell O'Keefe	Strategic Director Corporate and Community Services	29/7/16	29/7/16	Comments included
Alison Alexander	Managing Director and Strategic Director Adults, Children's and Health			
Simon Fletcher	Strategic Director Operations and Customer			

<b>Name of consultee</b>	<b>Post held and Department</b>	<b>Date sent</b>	<b>Date received</b>	<b>See comments in paragraph:</b>
	Services			
Rob Stubbs	Head of Finance	29/7/16		
Chris Hilton	Director of Planning Development and Regeneration	29/7/16		
Kevin Mist	Head of Communities & Economic Development	29/7/16	29/7/16	
Ben Smith	Head of Highways & Transport	29/7/16		
Chris Targowski	Cabinet Policy Manager			
<b>External</b>				

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>
Key Decision	Yes

<b>Full name of report author</b>	<b>Job title</b>	<b>Full contact no:</b>
Mark Shephard	Regeneration and Property Service Lead	01628 796082

**Maidenhead  
Thriftwood Farm,  
Ockwells Road,  
Cox Green,  
Berkshire  
SL6 3AB**

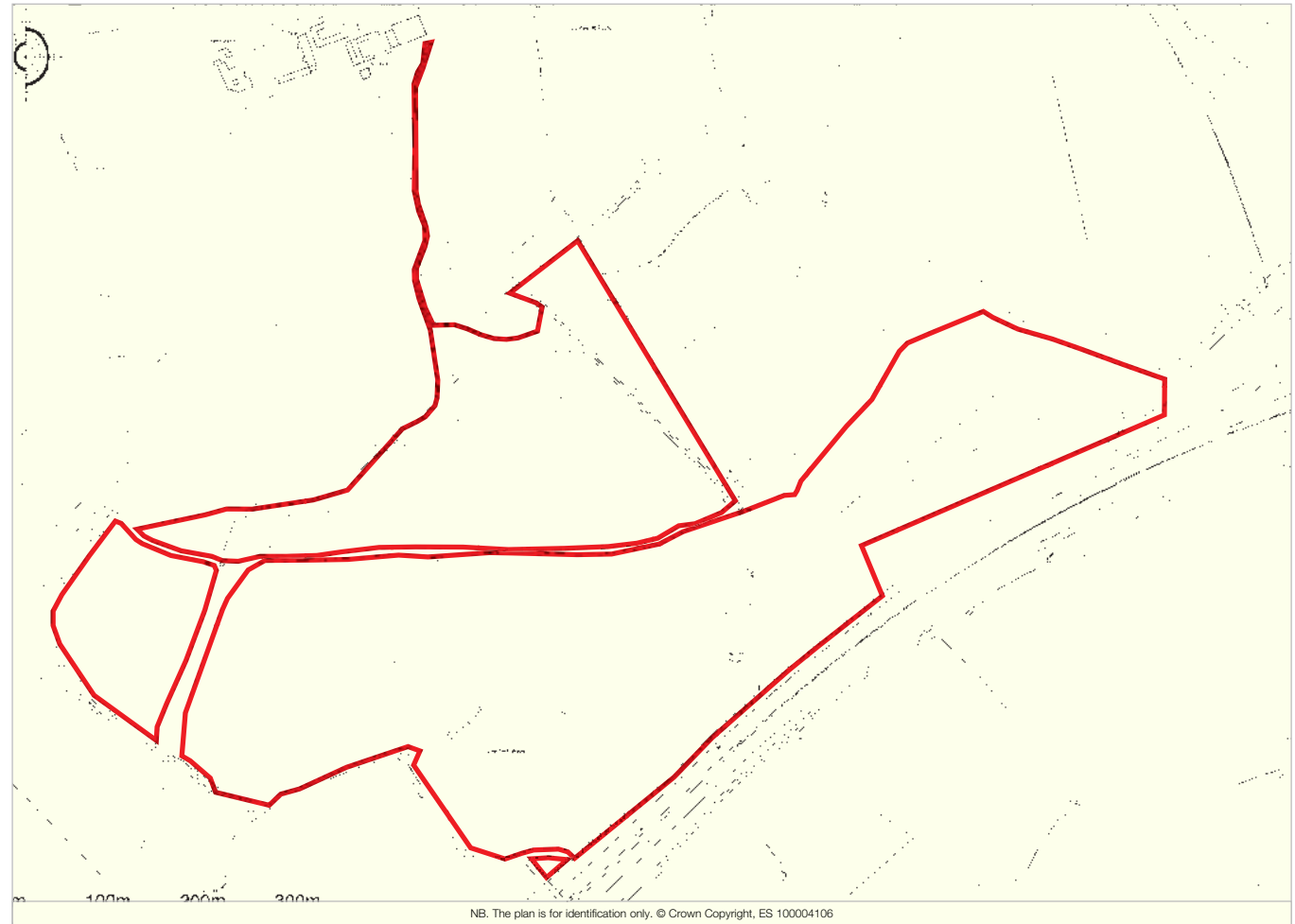
- **Freehold Site**
- **Total Site Area Approximately 34.91 Hectares (86.27 Acres)**
- **Possible Potential for Development subject to obtaining the necessary consents**

**Vacant Possession**

**Seller's Solicitor**

Messrs Judge Sykes Frixou (Ref: B Heap).  
Tel: 0207 379 3355.  
Email: bheap@jsf-law.co.uk

**VACANT – Freehold Site**



**Tenure**

Freehold.

**Location**

The property is situated on the south side of Ockwells Road, to the west of its junction with Cox Green Road. Access to the site is provided via Thrift Lane. Junction 9A of the A404 is situated approximately 0.3 miles to the north-east, providing direct access to the A308(M) and Junction 8/9 of the M4 Motorway. The facilities and amenities of Maidenhead town centre are approximately 1.9 miles to the north-east, with the more extensive facilities of Reading, Slough and Central London also accessible via the M4 Motorway. Public transport links are provided by local bus routes and Maidenhead Rail Station affording direct access to London Paddington. White Waltham Airfield and Heathrow International Airport are also nearby.

**Description**

The property comprises an irregular shaped site extending to approximately 34.91 hectares (86.27 acres).

**Accommodation**

**Total Site Area extending to Approximately 34.91 Hectares (86.27 Acres)**

**Planning**

Local Planning Authority: Royal Borough of Windsor and Maidenhead.  
Tel: 01628 683800.  
Email: [planning.maidenhead@rbwm.gov.uk](mailto:planning.maidenhead@rbwm.gov.uk)

**Overage**

The land is sold subject to a 40% overage agreement for a term of 15 years.  
For further information please refer to the legal pack.

Prospective buyers are strongly advised to read the Auctioneers' Notices Part One and Part Two and all applicable conditions of sale and addenda.

To request Legal Documents, Special Conditions of Sale and any Errata/Addenda please refer to pages 3, 8 and visit [www.alltop.co.uk](http://www.alltop.co.uk).

**BUYER'S FEE:** The successful Buyer will be required to pay to the Auctioneers a buyer's fee of £750 (including VAT) upon exchange of sale memoranda.



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M4  
Junction 8/9

NB. The photograph is for identification only.

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