

**EXECUTIVE DECISION NOTICE****CABINET**

**A record of the decisions made at the virtual meeting of the Cabinet held on Thursday, 5 November 2020, at 10.00 a.m.**

Present

Councillors

Giles Archibald (Leader and Promoting South Lakeland Portfolio Holder) (Chairman)

Robin Ashcroft	Economy, Culture and Leisure Portfolio Holder
Jonathan Brook	Deputy Leader and Housing and Innovation Portfolio Holder
Philip Dixon	Customer and Commercial Services and People Portfolio Holder
Andrew Jarvis	Finance and Resources Portfolio Holder
Dyan Jones	Climate Emergency and Localism Portfolio Holder

An apology for absence was received from Councillor Suzie Pye (Health, Wellbeing and Financial Resilience Portfolio Holder).

Also in attendance at the meeting were Shadow Executive Members Pat Bell (Shadow Cabinet (Health, Wellbeing and Financial Resilience Portfolio)), Tom Harvey (Shadow Cabinet Leader (Climate Emergency and Localism Portfolio)) and John Holmes (Shadow Cabinet Deputy Leader (Finance and Resources)).

Apologies for absence were received from Shadow Executive Members James Airey (Shadow Cabinet (Promoting South Lakeland Portfolio)), Roger Bingham (Shadow Cabinet (Economy, Culture and Leisure Portfolio)), Helen Irving (Shadow Cabinet (Customer and Commercial Services and People Portfolio)) and Kevin Lancaster (Shadow Cabinet (Housing and Innovation Portfolio)), and Mark Wilson (Leader of the Labour Group).

Officers

Inge Booth	Legal, Governance and Democracy Specialist
Lawrence Conway	Chief Executive
Linda Fisher	Legal, Governance and Democracy Lead Specialist (Monitoring Officer)
Dan Hudson	Strategy Lead Specialist
Simon McVey	Operational Lead Support Services
Simon Rowley	Director of Customer and Commercial Services
Helen Smith	Finance Lead Specialist (Section 151 Officer)

**CEX/70****CHAIRMAN'S INTRODUCTION**

Following confirmation that the live stream of the meeting had commenced, the Leader referred to the new Government legislation allowing councils to conduct remote meetings and explained in detail to all taking part, and for the benefit of members of the public, the procedures for the meeting. He then invited Members of the Cabinet, the Shadow Cabinet and the Leader of the Labour Group to introduce themselves, to

advise whether they were taking part by video or audio and to confirm that they were able to see (where practicable) and hear all Members participating in the meeting. All Members present, including the Leader himself, having indicated that this was the case, he referred to officers present at the meeting who would introduce themselves when asked to address the meeting.

The Leader took the opportunity to express gratitude to all officers involved in supporting the Council's virtual meetings, acknowledging the large amount of effort involved, and he asked the Legal, Governance and Democracy Lead Specialist (Monitoring Officer) to pass on his thanks.

#### **CEX/71 CABINET EXECUTIVE DECISIONS**

No Member having raised concern when asked by the Chairman, it was

***RESOLVED – That the Chairman be authorised to sign, as a correct record, the Executive Decisions made by Cabinet on 9 September 2020.***

#### **CEX/72 DELEGATED EXECUTIVE DECISIONS**

No Member having raised concern when asked by the Chairman, it was

***RESOLVED – That the Delegated Executive Decisions made by Portfolio Holders or Officers on 10 September 2020 be received.***

#### **CEX/73 EMERGENCY DELEGATED EXECUTIVE DECISIONS**

No Member having raised concern when asked by the Chairman, it was

***RESOLVED – That the Emergency Delegated Executive Decision made by the Chief Executive on 9 October 2020 (010), in accordance with the Leader's decision noted by Cabinet at CEX/104 (2019/20), be received.***

#### **CEX/74 DECLARATIONS OF INTEREST AND DISPENSATIONS**

The Legal, Governance and Democracy Lead Specialist (Monitoring Officer) referred to her recent briefing note on interests and reminded Members that a dispensation had been granted to all Members with regard to allowances in respect of matters relating to Local Government Reform and Devolution for a period of four years.

The Legal, Governance and Democracy Lead Specialist (Monitoring Officer) informed Members that, for Agenda Item Nos. 9 and 10 regarding Local Government Reform, councillors who were dual-hatted, i.e. District Councillors and County Councillors, would have an Other Registrable Interest under the Code of Conduct. The other registrable interest would be recorded and, unless any Member considered themselves to be biased or predetermined, they could speak and vote on both items.

The Leader having asked if there were any other declarations of interest, it was

**RESOLVED – That it be noted that, in respect of Agenda Item No.12, Councillor John Holmes, for the purpose of transparency, explained that he was a Director on the Board of South Lakes Housing.**

**CEX/75 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS**

There were no excluded items on the agenda.

**CEX/76 PUBLIC PARTICIPATION**

No questions, representations, deputations or petitions had been received in respect of this meeting.

**CEX/77 FORWARD PLAN**

No Member having raised concern when asked by the Chairman, it was

***RESOLVED – That the contents of the Forward Plan published on 27 October 2020 be noted.***

**CEX/78 LOCAL GOVERNMENT REFORM - PROPOSAL FOR BAY AREA****Summary**

Copies of Appendix 1 to the report, which had been marked “to follow” on the agenda, had been circulated to Members and published on the Council’s Website on 2 November 2020.

The Leader and Promoting South Lakeland Portfolio Holder reported that, at its meeting on 6 October 2020, Council had authorised himself and the Chief Executive to work with Barrow Borough and Lancaster City councils to explore devolution, including the development of a high level case for a new unitary council for the area comprising the three districts. It had also been noted that the Secretary of State may then invite the Council to put forward a formal proposal which would be subject to future agreement.

Prior to consideration of a high level case, on the 9 October 2020, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under Part 1 of the Local Government and Public Involvement in Health Act 2007, had invited any principal authority in the area of the county of Cumbria to submit a proposal for a single tier of local government, in accordance with the following criteria:-

- by 9 November 2020, authorities must at least submit an outline proposal, and if a full proposal had not been submitted by that date, the full proposal must be submitted as soon as practicable thereafter and by no later than 9 December 2020;
- authorities must have regard to the guidance from the Secretary of State; and
- an authority may either make its own proposal or make a proposal jointly.

In exploring devolution around the Bay area, Barrow, Lancaster and South Lakeland Councils had now developed the initial work to prepare an outline proposal to meet the guidance set out by the Secretary of State in responding to an invitation.

The draft Outline Proposal formed Appendix 1 to the report. The Outline Proposal set out the rationale for developing a new unitary council. The proposal indicated the opportunities, strengths and strategic needs of the area’s communities and economy and how they may best be addressed through the leadership and resources of local government based on the geography of the functioning economic area and health services footprint.

In addition to structural change, the proposal indicated the benefits which could be realised through public service reform, within local government and collaboratively with other service providers. The area offered the population scale envisaged by the Government's invite, with a population circa 320,000.

The proposal acknowledged the historic and current associations between places and communities across the Morecambe Bay area. This strengthened the rationale for the organisation of local government at a scale and footprint readily identified by residents and businesses. This enabled locally based, accessible and engaged local government.

The development of further information, proposal and detail would be identified and set out in an action plan to establish the Full Proposal. This would include, for example, further assessment of:-

- the degree of local support for the proposal;
- functions currently performed by the County Councils and modelling their delivery in the unitary arrangement;
- proposals regarding Police, Fire and Rescue services;
- opportunities for service reform with regards to health and care services;
- options for complementary arrangement of Combined Authorities and powers and resources which may be devolved to them;
- financial modelling:-
  - The operational costs of the new council, including comparison with alternative proposals and implications for costs to Council Tax payers; and
  - The costs and funding of transition from the existing to future arrangements; and
- proposals with regard to the structure of local government in the remainder of Cumbria should the Proposal be implemented.

Members were being asked to consider and agree the outline proposal for submission to Government by 9 November 2020.

Subject to Council approval, work would continue on the full proposal, with a report to be presented back to Cabinet and Council prior to the deadline date of 9 December 2020.

It was expected that Cumbria County Council would submit a proposal for a single unitary council for Cumbria. As an alternative to the single unitary proposal, it was likely that options would be proposed by other district councils for two unitary councils based on combinations of the geographic footprints of the existing district councils. The range of the other proposals would not become clear until 9 November.

In presenting the report, the Leader and Promoting South Lakeland Portfolio Holder informed Members that the same report would be discussed by full Council at its meeting in the evening, with Barrow and Lancaster's councils also today considering the matter. Following these meetings, engagement would continue to take place with parish and town council and key stakeholders. The short timescale prescribed necessitated a shorter period of consultation than normally undertaken by the Council and consultants were, therefore, being appointed to assist in this task, as detailed within the next item of business on the Agenda.

The Leader and Promoting South Lakeland Portfolio Holder referred to the County Council's proposal for a single unitary Cumbria and to potential submissions from the other districts for other combinations. He believed, however, that the option of a unitary authority based on the footprint of Morecambe Bay was vital for the residents of South Lakeland and drew attention to the shared and functioning economy, similar cultural history, the shared health trust and the LA postcode. He referred to the suggestion that substantial savings and efficiencies could be made by a single unitary Cumbria with which he disagreed, pointing out that independent research showed no conclusive evidence of this. Independent research, which he hoped Members had seen, also indicated that in large authorities, voter turnout reduced, there was less trust in councillors and less engagement. He also pointed out that a number of the Members of Parliament in the area were in favour of smaller unitaries.

The Leader and Promoting South Lakeland Portfolio Holder turned to questions raised previously around, for example, social care, child services, assets, care homes and finances. He explained that work was being carried out in relation to these areas and that he did not see any implications for a Morecambe Bay unitary authority in this regard.

The Leader and Promoting South Lakeland Portfolio Holder stressed the fact that all possible was being done to keep to the Government short timescale in putting together a professional submission and reiterated that it was essential to provide South Lakeland's residents the option of a Bay unitary authority.

Members expressed support for the proposal. The Economy, Culture and Leisure Portfolio Holder spoke from an economic perspective and referred to informal discussions he had had with a number of businesses where strong concerns had been raised at the short timeframe imposed and to the timing, particularly in the light of the current Covid-19 pandemic. He said that opinions were divided across the business community, however, pointed out that the Bay was a functioning economic region which would be of increasing importance emerging from the pandemic. The Deputy Leader and Housing and Innovation Portfolio Holder stressed that this was an important decision and that it was incumbent on councillors, as leaders in their communities, to try to engage with residents in this process. The Council had been seeking to do this in a variety of fora, through community groups, parish councils and business leaders. With little time remaining, he stressed that it was key to get input from residents. He referred to the independent analysis of people views being commissioned by the Council, explaining that this could only be a limited exercise given the time and resources available. All of these inputs will feed in ultimately to the final proposals going forward, hopefully towards the end of November for the final December submission date. He strongly endorsed the direction of travel and looked forward to further engagement and clarity.

The Leader and Promoting South Lakeland Portfolio Holder thanked the Deputy Leader and Housing and Innovation Portfolio Holder for his work in the process, as well as other Member of the Cabinet who were engaged in different aspects in preparation of the submission and business case. He further expressed gratitude to those officers involved who had worked hard to get to this point and who continued to develop the business case, and asked the Chief Executive to pass on these thanks.

The Leader asked the meeting if the motion was agreed. There was no dissent.

**Decision****RESOLVED - That**

- (1) the outline proposal as attached at Appendix 1 to the report be agreed for submission to the Ministry of Housing, Communities and Local Government by 9 November 2020;**
- (2) the Chief Executive and Leader be authorised to approve any minor amendments that may arise following consideration by Barrow Borough and Lancaster City councils prior to submission and to continue with the work on the final proposal; and**
- (3) a final Proposal be submitted to a future meeting of Cabinet and Council prior to the requested deadline from Government of 9 December 2020 and it be noted that a date of 8 December has been scheduled for this purpose.**

**Reasons for Decision**

If approved the councils will present the option to Government demonstrating how a unitary council will be an effective driver of economic, social and environmental benefits for the area's residents, businesses and visitors, realise the strategic potential of the area and enable transformation of public services.

Exploring the case for devolution will consider the benefits a change to local government could deliver for economic growth within a highly valued environment with opportunity to improve and maximise the wellbeing of residents. This accords with the Council's priorities of working across boundaries to deliver economic growth, delivering a balanced community, reducing income and health inequalities and responding to climate change and enhancing biodiversity.

**Alternative Options Considered and Rejected**

There is an option not to submit a proposal. This would mean that the opportunity and benefits of a unitary council, based on the footprint of the three councils, would not be considered by Government alongside other proposals submitted. The draft Outline Proposal indicates the benefits and opportunities which could be realised for residents and businesses. These would be foregone if a proposal were not submitted. By not submitting a proposal, the Council would significantly reduce its influence in the reorganisation of local government. This option is not recommended.

There is an option to consider some other combinations of district footprints within Cumbria, including the single unitary proposal. It is very likely that these alternative options will be submitted by other councils for consideration by Government. The draft Outline Proposal provides an initial commentary on the benefits of the proposal for a unitary council based on the footprint of our three authorities. To ensure that a full range of options is considered by Government, this option is not recommended.

**CEX/79****LOCAL GOVERNMENT REFORM (BUILDING A CASE FOR CHANGE)**

***Note - The Constitution stated that the call-in procedure should not apply where a decision being taken by the Cabinet was urgent and any delay likely to be caused by the call-in process would, for example, seriously prejudice the Council's or the public's interests. In accordance with paragraph 16(j) of the Constitution, the Chairman of the Council had been consulted and had agreed that the decision proposed was reasonable in all the circumstances and for it to be treated as a matter of urgency and that the call-in process should be waived.***

## Summary

The Leader and Promoting South Lakeland Portfolio Holder presented a report seeking additional funding to support the work required to consider and submit a proposal to Government for a single tier of local government.

Council, on 6 October 2020, had approved exploring Local Government Reform and devolution, including the development of a high level case for a new Unitary Council for the area comprising Barrow Borough, Lancaster City and South Lakeland councils. It had also been noted that the Secretary of State may then invite the Council to put forward a formal proposal which would be subject to future agreement.

Prior to consideration of a high level case, the Secretary of State for Housing, Communities and Local Government, in exercise of his powers under Part 1 of the Local Government and Public Involvement in Health Act 2007, had now invited any principal authority in the area of the county of Cumbria to submit a proposal for a single tier of local government, in accordance with the following criteria:-

- by 9 November 2020, authorities must at least submit an outline proposal, and if a full proposal had not been submitted by that date, the full proposal must be submitted as soon as practicable thereafter and by no later than 9 December 2020;
- authorities must have regard to the guidance from the Secretary of State; and
- an authority may either make its own proposal or make a proposal jointly.

In exploring devolution around the Bay area, Barrow, Lancaster and South Lakeland Councils had started work to prepare a high level case. This work would be considered in terms of the Outline Proposal required to meet the guidance set out by the Secretary of State in responding to an invitation to make a proposal. If the Outline Proposal was approved for submission, work would continue in developing a Full Proposal for consideration by Cabinet and Council prior to the submission deadline of 9 December 2020.

The three Councils were equally sharing the costs of developing the proposal. Additional resources would be required to support this and extra funds of £65,000 were requested to be set aside from existing budgets (GTH Other Items budget) to help develop the proposal for submission.

A decision on whether to submit a proposal would be presented to a future meeting of the Cabinet and Council prior to submission to the Secretary of State.

In presenting the report, the Leader and Promoting South Lakeland Portfolio Holder stressed the importance of appointing consultants with expertise in this field.

The Finance and Resources Portfolio Holder explained that he was keen in his role to avoid expenditure where there was no direct and immediate impact on the lives of the residents of South Lakeland, adding that he was of the opinion that this was not the right time for focussing of Local Government Reform when resources could be better used to fight the current pandemic. However, with the tight timescale involved and with Council having voted to explore a Morecambe Bay Unitary, he believed that the many different issues which needed to be addressed could only currently be done so through the appointment of external consultants.

The Leader asked the meeting if the motion was agreed. There was no dissent.

**Decision****RESOLVED - That**

**(1) approval be given for additional funding of £65,000 from existing budgets for external consultancy services and related costs related to preparing a proposal for Government;**

**(2) contract procedural rules with regards to the appointment of consultants be waived and the Chief Executive be authorised to agree and appoint consultants for the purpose of developing a proposal for submission prior to the deadlines set by the MHCLG; and**

**(3) it be noted that further reports will be brought back to Cabinet and Council to agree any proposal prior to submission to Government.**

**Reasons for Decision**

The additional funding is to support the work required to consider and submit a proposal for a single tier of local government.

**Alternative Options Considered and Rejected**

The Council may choose not to submit a proposal for a single tier authority. This option is not recommended.

**CEX/80****COUNCIL PLAN PERFORMANCE MONITORING REPORT QUARTER 2 2020/21****Summary**

Copies of the tourism data which had been missing from page 145 of Appendix 2 to the report had been circulated to Members and published on the Council's Website on 2 November 2020.

The Leader and Promoting South Lakeland Portfolio Holder presented an update report on progress with the current Council Plan for Quarter 2 of 2020/21. Monitoring the success of the Council Plan demonstrated improvements and ensured that Council services addressed the needs of residents in an open and transparent way. The Council was committed to delivering high quality, cost-effective services that met the needs of residents and improved quality of life. The performance management process helped the Council to demonstrate how well it was doing.

The measures listed within the report showed very good performance, demonstrating that South Lakeland was a very desirable place to live, work and explore. However, in line with the national trend and the influence of Covid-19, the number of homeless households living in temporary accommodation was increasing.

The report also included the Council's Strategic Risk Register at Appendix 1. Following a review of the Strategic Risks for Quarter 4 2019/20, it could be seen that 65% of risks were now above tolerance. The Leader and Promoting South Lakeland Portfolio Holder expressed strong concern at this significant change which was due to the pressures brought about by Covid-19 which had completely changed the outlook for the Council and its residents and, in particular, the most vulnerable. He pointed out that the report demonstrated that these were difficult times for the Council and its residents. This was not likely to change soon and, until a vaccine for Covid-19 arrived, there would be risks to address and manage.



The Leader and Promoting South Lakeland Portfolio Holder drew attention to a new and dedicated Appendix 2 which had been produced in light of the current situation regarding Covid-19 and which provided sight of business and economic health for the District.

The Finance and Resources Portfolio Holder referred to Risk 6 – Medium Term Financial Planning – delivery of a balanced budget. He drew attention to the latest round of Government funding to councils for Covid-19 which, he said, was highly disadvantageous to South Lakeland. This funding for Covid-19 was based on the levels of deprivation in a district in 2019 and, as a consequence, he said, took no recognition of the specific pressures faced by South Lakeland. The district had experienced above average cases and deaths within the vulnerable and older population, there had been a huge impact on the hospitality business, the area had had amongst the highest rates of furlough in the country and had been hit hard in terms of poverty, with massive increases in Universal Credit. He hoped that Members would continue to campaign to urge Government to recognise South Lakeland's specific needs in relation to Covid-19 and to work to try to get proper support from Government without which there was a major financial risk both this year and in the long term. The Economy, Culture and Leisure Portfolio Holder referred to a gloomy set of figures and stressed the need not to underestimate the challenges faced by residents and businesses, the most significant fact being that there were circa 46,000 residents who had been put into furlough. This was the highest figure in the UK which reflected the importance of the visitor economy, which had been so badly impacted, to the district. He praised officers' performance which was demonstrated within the statistics in the report and referred to the positive figures provided around work on business grants, small business relief, discretionary business grants and assistance for the self-employed. He thanked officers for their work, however, recognising the seriousness of the situation and the impact on the economy of South Lakeland.

The Leader asked the meeting if the motion was agreed. There was no dissent.

### **Decision**

***RESOLVED – That the following be noted:-***

- (1) the Summary of Performance as detailed in the report; and***
- (2) the detailed risks information contained within Appendix 1 to the report; and***
- (3) the detailed Business and Economy Statistics within Appendix 2 to the report.***

### **Reasons for Decision**

The report is directly linked to the Council Plan commitment to ensure that the Council is equipped to provide the best, most cost effective services. Details regarding performance monitoring are published in line with the Council's latest Performance Management Framework.

### **Alternative Options Considered and Rejected**

None – the purpose of the report is to receive a performance update. The Council must note successes, monitor progress and take action where appropriate.

CEX/81

**AFFORDABLE HOUSING - SUGGESTED APPROACH TO MORTGAGEE IN POSSESSION CLAUSES**

***Note – The Legal, Governance and Democracy Lead Specialist (Monitoring Officer) drew attention to paragraph 7 of the report relating to legal implications and advised that it would be noted within the minutes that Members present who were also Members on the Planning Committee would reserve their position, with, as outlined at paragraph 7.7, a number of applications having already obtained approval and which had subsequently requested inclusion of a mortgagee in possession clause due to be taken back through Planning Committee or delegation sought for officers to deal with outstanding matters, when each case would be considered on planning merits.***

**Summary**

The Housing and Innovation Portfolio Holder presented a report which referred to development proposals where affordable housing delivery was being secured by Section 106 Agreements in those parts of South Lakeland District Council outside the Lake District and Yorkshire Dales National Parks (i.e. the area for which South Lakeland District Council was the local planning authority). In the National Parks, Section 106 Agreements were negotiated with the relevant national park authority, although still advised by South Lakeland District Council as Housing Authority.

Mortgagee in possession clauses were currently being sought on a number of sites affecting the delivery of affordable homes.

The report explained in detail what a mortgagee in possession clause was. A mortgagee in possession was a lender (person or body) which had entered into a mortgage in respect of a dwelling constructed on the proposed development site or part of the proposed development site and had taken action, in the form of taking possession of the said dwelling, following a default by the borrower in respect of the repayment due under that mortgage.

In the context of Affordable Housing, as defined at Annex 2 of the National Planning Policy Framework June 2019, mortgagee in possession clauses were increasingly being sought in Section 106 Agreements by Housing Associations (Registered Providers) – both in new Section 106 Agreements and via modifications to existing Section 106 Agreements. Most Mortgagee in Possession clauses sought to nullify requirements in Section 106 Agreements related to restrictions on sale price, rental, occupancy, income eligibility and local needs requirements in the event of ownership of the property transferring to a mortgagee from the housing association (Registered Provider, or owner of shared ownership or discounted sale property) through the inclusion of mortgagee in possession clauses.

The argument being put forward by applicants and housing associations (Registered Providers) as regards seeking mortgage in possession clauses was that lenders and (in the case of schemes supported by grant aid) Homes England were either making support for schemes conditional on mortgagee in possession clauses or development finance was being made available on less favourable terms. It was, therefore, argued that the absence of mortgagee in possession clauses was preventing the delivery of affordable housing.

The mortgagee in possession clause issue related to the (very rare) circumstance in which a Housing Association (Registered Provider) failed and its assets had to be disposed of. Assets might include affordable homes for rent and shares in shared ownership properties. Under Section 96 of the Planning and Housing Act 2015, when a Housing Association went into administration, in addition to the normal administration objectives, the administrator also had a duty to keep social housing within the regulated sector. Generally when a Housing Association failed, it was taken over by another Housing Association. Housing Association failure resulting in the disposal of assets was rare.

The mortgagee in possession issue was not unique to South Lakeland. The Greater London Authority had produced a standard Mortgagee in Possession clause for use by all Greater London Authorities. The issue had been considered in the Cumbrian Model Section 106 Agreement produced in 2012, although a cross-Cumbria standard approach had not been agreed. The National Housing Federation produced a standard clause that was being used widely.

Standard mortgagee in possession clauses such as the National Housing Federation model and the Greater London model mitigated the risk with the inclusion of a cascading clause to the effect that before a mortgagee in possession clause was triggered, there was a period (normally 3 months) during which the property had to be offered for sale to another housing association or a local authority.

The report examined the Council's policy. Affordable housing delivery in South Lakeland (outside National Parks) was regulated by Policy 6.3 of the Council's Local Plan - Core Strategy (adopted in 2010). In addition to seeking an on-site affordable housing contribution of 35% for sites over a certain size, it required that affordable housing provided was made available solely to people in housing need at an affordable cost for the life of the property. Policy 6.3 applied predominantly to market housing schemes and these were predominantly on sites allocated in the Local Plan.

A small number of schemes were also delivered as exceptions sites. These were sites which would not normally be granted consent but were approved on an exceptional basis because they were all or predominantly affordable. Policy DM14 of the Local Plan Development Management Policy regulated schemes of this type and required that affordable housing provided in this way be affordable in perpetuity.

However small the risk of affordable properties being lost in this way, mortgagee in possession clauses were contrary to the letter of both policies in that, in the event of the mortgagee in possession clause being triggered, the properties would cease to be available to people in need at an affordable cost and would not be affordable in perpetuity.

The report examined how a flexible approach might be applied. Planning policy could only be changed through the preparation of a new Development Plan Document. This was a long process requiring informal and formal consultation and independent examination by a planning inspector. All planning policies were currently being examined through the Local Plan review. If the proposals proposed in the Government's Planning White Paper were implemented on the timescale envisaged, the whole planning landscape, including matters currently dealt with through Section 106 Agreements, matters dealt with through local plan policy and matters dealt with in national policy and mechanisms for delivering affordable housing, may look very different.

Councils could produce supplementary planning documents which provided guidance on the interpretation and implementation of policy. However these could not change policy.

Under Section 38 of the Planning and Compulsory Purchase Act 2004 planning applications were considered against the Council's Development Plan and other material considerations of each individual planning application on a case by case basis. Each application had to be determined on its own merits. The inclusion of a mortgagee in possession clause in a Section 106 Agreement meant that affordable housing affected by it was contrary to the letter of Policy 6.3. Therefore, upon a strict reading of the policy it would indicate that the proposal to include mortgagee in possession clauses should be refused unless other material considerations justified an exceptional approach.

However, in many cases the policy requirement for affordable housing for the lifetime of the property needed to be balanced against impacts on the wider policy objective of affordable housing delivery, the very low risk of the clause being triggered and the mitigating measures in place to ensure that other solutions are explored before it happens.

Cases for exceptional approvals needed to be supported by evidence and were likely to have greater weight if the risk of harm (the loss of affordable housing) was mitigated by the inclusion of cascading or other appropriate risk mitigation.

Paragraph 3.17 of the report suggested that, whilst judgments on individual planning applications could not be fettered, the following approach was felt to be of relevance in considering planning applications seeking mortgagee in possession clauses:-

*Policy*

- The clear policy requirement that new dwellings should be made available in perpetuity.

*The scale and quality of the affordable housing offer*

- Issues might include the scale of any non-delivery including how many affordable homes would be delivered with or without the mortgagee in possession clause. Also of relevance would be how such provision relates to evidenced local housing needs identified in the Strategic Housing Market Assessment and other reputable evidence sources. Consideration may need to be given to the proportion of affordable housing for rent, whether provision is optimal in terms of size and design and whether any would be fully disabled accessible.

*The degree to which the proposal is supported by evidence*

- Another issue may be the potential threat to the wider objective of affordable housing delivery and the degree to which this is supported with evidence. Direct evidence in the form of a letter from the lender or from Homes England carries the greatest weight. It needs to be shown that the clause will prejudice the delivery of affordable housing on the scheme in question. Wider impacts on the finances of the Housing Association asset base and the capacity to deliver elsewhere are not relevant.

*The extent to which the risk of the clause being triggered can be mitigated*

- Consideration will also be needed of the degree to which the risk of loss of affordable units can be mitigated. Strong means of achieving this include:-
  - By the inclusion of a cascading clause requiring that the mortgagee in possession clause be triggered only after a period during which the property must be offered for sale to a Housing Association or South Lakeland District Council (and any successor authority). The longer such a period is, the greater effect it will have in mitigating the risk and minimising policy conflict; or
  - By the limitation of mortgagee in possession clauses to mortgagees of housing associations. This would obviate the greater risk to the affordable housing stock of defaults on mortgages by purchasers of shared ownership or discounted sale.

The Customer and Commercial Services and People Portfolio Holder expressed support for the proposal, thanking officers for their work to ensure that these homes which had been built for the benefit of local occupancy remained so for future generations of local people. Councillor John Holmes pointed out that this situation was rare, the risk being negligible, and pointed out that the Regulator monitored Housing Associations carefully. On behalf of South Lakes Housing and other housing associations, he welcomed the paper and proposal which was felt to be a reasonable solution to the present problem.

The Leader and Promoting South Lakeland Portfolio Holder thanked the Deputy Leader and Housing and Innovation Portfolio Holder and officers for their work involved in addressing various competing concerns.

The Leader asked the meeting if the motion was agreed. There was no dissent.

## **Decision**

### ***RESOLVED – That***

***(1) the report be noted; and***

***(2) the principles of the approach set out at paragraph 3.17 of the report and outlined above be approved.***

## **Reasons for Decision**

The mortgagee in possession issue relates directly to the delivery of affordable homes to rent and the Council's target of 1,000 new homes to rent between 2014 and 2025.

## **Alternative Options Considered and Rejected**

Planning Policy can only be changed through the preparation of a new Development Plan Document. This is a long process requiring informal and formal consultation and independent examination by a planning inspector. All planning policies are being examined through the current Local Plan review. If the proposals proposed in the Government's Planning White Paper are implemented on the timescale envisaged, the whole planning landscape including matters currently dealt with through Section 106 agreements, matters dealt with through local plan policy and matters dealt with in

national policy and mechanisms for delivering affordable housing may look very different. Whilst planning policy can be changed in the longer term, this is of no assistance with current proposals.

Councils can produce Supplementary Planning Documents which provide guidance on the interpretation and implementation of policy. However these cannot change the substance of local plan policy.

## **CEX/82**

### **PLANNING WHITE PAPER - PLANNING FOR THE FUTURE**

#### **Summary**

The Deputy Leader and Housing and Innovation Portfolio Holder presented the report, explaining that in July, the Government had produced a white paper proposing a comprehensive redesign of the planning system, replacing the current system of local plans and development management with a rules-based system based on zoning, design codes, nationally set development management policies, nationally set housing requirements and permissions in principle, increased permitted development rights and technical approvals based on rules based policies with most community engagement to take place at the local plan stage. The White Paper called 'Planning for the Future' was attached to the report in the supporting documents and was had been out for consultation until the end of October 2020. Because the date of the Cabinet meeting had moved from 28 October to 5 November, due to competing priorities around Local Government Reform, a response to this significant White Paper had had to be submitted ahead of the Cabinet meeting which had originally been scheduled to take place on 28 October. Endorsement of that response, attached as Appendix 1 to the report, was, therefore, being requested.

The implementation of the new system would require primary legislation and, as an interim measure, a number of measures were also proposed to amend the existing system. These included:-

- changes to the Standard Method used by Government for calculating local housing need;
- changes to Affordable Housing including the introduction of a requirement for a proportion of 'first homes' (essentially discounted homes for sale) as part of affordable housing contributions;
- a temporary increase in the minimum size of site required to provide affordable housing from ten to 40-50 for a limited period of 18 months (not applicable in designated rural areas); and
- extending the right to apply for Permission in Principle to major development.

These were considered within the report and the detailed response attached as Appendix 2.

The report further outlined details relating to delivery and information on the timetable for delivery.

A lengthy discussion ensued. Concern was raised with regard to the impact on rurality and communities, and at the lack of detail on the future and protection of the environment. Concern was further raised regarding the provision of affordable houses and the proposal that Section 106 agreements be substituted with a development levy. A problem already existed with developers raising arguments around viability and seeking reductions in the percentage of affordable housing on developments. It was

felt that the same argument could be used with regard to a development levy. This could result in problems for housing associations that depended on acquiring additional properties through Section 106 agreements and, if this opportunity disappeared, this raised the question of how the development grant was worked and provided back to them to fund new building. This could lead to housing associations developing their own estates, which was very costly, given the value of land, which would make it increasingly difficult for affordable housing to be developed. Also raised was the need to raise building regulations and increase the efficiency and sustainability of houses at a national level. It was felt that the current planning system was impracticable, that something needed to be done, and it was hoped that appropriate compromises could be made. A further concern was raised in relation how the proposals fitted in with the Localism Act.

The Leader and Promoting South Lakeland Portfolio Holder believed that the proposals were seriously deficient, taking power away from local areas, reducing affordable homes and reducing democracy and local accountability. The proposals did nothing to address climate change, changed Section 106 requirements and deferred payments. Not addressed, he said, was the impact on councils' housing's targets. He also felt that co-operation between councils could be damaged and environmental impacts on neighbouring authorities ignored. He also questioned the way in which the proposals were to be implemented through zoning. He pointed out that the concerns raised had been addressed with in the response to the White Paper and urged Members to use their channels of communication to express their concerns to Government.

The Strategy Lead Specialist provided clarity on the proposals around delivery of affordable housing, with the replacement of Section 106 agreements by a single levy and the potential impact.

The Deputy Leader and Housing and Innovation Portfolio Holder thanked Members for their comments, welcoming broad cross-party support. He stressed the need, where possible, for engagement with Government in seeking the best outcome. If enshrined in law, these proposals would have a significant and long lasting impact on South Lakeland's communities and on the built environment.

Thanks were expressed by all to the Strategy Lead Specialist and his Team and to all involved.

The Leader asked the meeting if the motion was agreed. There was no dissent.

## **Decision**

***RESOLVED – That the following be endorsed:-***

***(1) the comments in Appendix 1 to the report as South Lakeland District Council's response to the consultation on the Planning White Paper; and***

***(2) the comments made to the related consultation on changes to the current planning system attached as Appendix 2 to the report.***

## **Reasons for Decision**

The planning system is a key means by which the Council Plan is delivered. The proposals in the White Paper, if implemented, will significantly affect the Council's ability to deliver economic growth, affordable housing, sustainable development and healthy communities, as well as the carbon reduction and biodiversity issues.

**Alternative Options Considered and Rejected**

The Council does not have to respond to the consultation. However, the White Paper raises major concerns and, whilst it cannot be guaranteed that Government will respond to those concerns, it is vital that these are conveyed to Government.

The meeting ended at 11.20 a.m.