

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

*PART 1 – PUBLIC DOCUMENT

SERVICE DIRECTORATE: Regulatory

1. DECISION TAKEN

To further extend the provision of external legal support for the Local Plan Examination.

2. DECISION TAKER

Ian Fullstone – Service Director, Regulatory

3. DATE DECISION TAKEN:

29 January 2021

4. REASON FOR DECISION

- 4.1 To support the continued progress of the Local Plan examination which requires the expert professional advice of Counsel

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 None. Counsel have been ‘embedded’ with the Council throughout the preparation and examination of the Local Plan. The Examination of the Local Plan by an Inspector appointed by the Secretary of State is a statutory requirement and the stage where the most significant legal costs are normally incurred. The Council has no control over the length (and, by association, cost) of the examination as its breadth and format is at the Inspector’s discretion within the boundaries of relevant legislation and guidance.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

- 6.1 The Executive Member and deputy are regularly briefed on the progress of the Local Plan examination. The Local Plan Project Board was established in 2016 to provide strategic oversight and guidance on the Local Plan and its examination. Financial updates have been included in relevant public reports, including setting the budget at Full Council in previous years and most recently the Extraordinary Full Council meeting of 8 October 2020 at which Queens Counsel attended.

7. RELEVANT CONSIDERATIONS

- 7.1 In March 2014, Suzanne Ornsby QC of Francis Taylor Buildings legal chambers was appointed as an experienced Silk to assist and advise on the Local Plan through to and including its examination. Ms. Ornsby QC and her (then) junior Melissa Murphy were appointed through a Single Tender Waiver which recognised that it was difficult to follow standard procurement and estimating procedures for this matter as
- i. There was a lack of certainty over the amount of work that would be required (as alluded to in Paragraph 5.1 of this report);
 - ii. Counsel are normally appointed on a direct approach and instruction basis; and

- iii. The services of Barristers are procured on an individual basis [as they are effectively self-employed], albeit it is co-ordinated through one set of Chambers.
- 7.2 Ms. Ornsby QC has provided extensive advice and support to the Council throughout the protracted examination process. Since 2017 and the submission of the Plan for examination, Caroline Daly has acted as Ms. Ornsby's junior. Ms. Daly has similarly provided extensive advice and support – both directly to the Council and to Ms Ornsby QC - and acted as the Council's legal representative at several examination hearing sessions.
- 7.3 This support has been resourced from agreed revenue budgets for the Local Plan. Since 2014 a series of purchase orders have been raised which are then billed against on an hour rate / day rate / issues / refresher basis (as applicable) until exhausted at which point a new purchase order is raised.
- 7.4 The latest purchase order for Ms. Ornsby QC was raised in April 2018 following the completion of the original Examination hearing sessions based upon an estimate of fees that might be accrued to the end of the examination process.
- 7.5 However, following the Main Modifications consultation in 2019 (which is normally a precursor to the receipt of the Inspector's report subject to any issues raised), the Inspector requested additional work and further hearing sessions. These sessions were due to be held in March 2020 but were then postponed due to the Covid-19 pandemic. Prior to their resumption in November 2020, the release of additional Government statistics led to further queries from the Inspector as well as the Extraordinary Full Council meeting of 8 October 2020.
- 7.6 As a consequence, it is necessary to raise a further order. A recorded decision has been issued for transparency in decision-making by virtue of
- i. The latest order being in excess of £50,000 in its own right; and
 - ii. The cumulative spend both with Ms Ornsby QC individually and through FTB Chambers collectively on the matter of the Local Plan since the award of the contract in 2014.
- 7.7 To date, and since the award of the contract in 2014, there has been a total expenditure of approximately £236,000 with Ms. Ornsby QC. A further order for £120,000 has been placed as part of this decision. This is an estimate based upon a combination of further fees accrued to date plus future work through towards adoption of the Plan.
- 7.8 There has been further expenditure of approximately £147,000 with Ms. Daly. This expenditure has generally been covered through lower value orders which have not individually exceeded the £50,000 threshold. The continued provision of advice by Ms. Daly is also covered by this decision.
- 7.9 At the time of writing, as the Council has not received correspondence from the Inspector following the 2020 Hearings and with further Hearings in February 2021, further orders may be required prior to the completion of the examination.

8. LEGAL IMPLICATIONS

- 8.1 Under the terms of reference 14.6.4(a)(ii) of the Constitution, the Service Directors are delegated the following functions, powers and duties for their respective service areas to, amongst other things: *enter into contracts to carry out works and / or for the supply of goods and services within approved budget.*

8.2 Under terms of reference 14.6.10(b)(viii) of the Constitution, the Service Director Regulatory has delegated authority for all functions of the Local Planning Authority primarily Planning Policy and Development Control other than matters reserved to the Planning Control Committee.

8.3 Contracts must be let in accordance with the Contract Procurement Rules and single tenders must be obtained in accordance with the rules for use thereof. The proper legal process has been followed in this regard.

9. FINANCIAL IMPLICATIONS

9.1 The cost of this contract will be met through the use of approved Local Plan budgets, earmarked reserves or identified financial risks. Where possible, a junior Barrister at a reduced rate or (where appropriate) a Pupil have been used with their work overseen by the QC.

9.2 As per paragraph 7.5 above, a decision notice is required as both the further expenditure to be authorised and the total cumulative spend with the supplier over a number of years exceeds £50,000.

10. RISK IMPLICATIONS

10.1 The Local Plan is a top Council risk. Failure to progress the plan without adequate expert guidance and legal advice could present a reputational risk to the Council. There is a risk of intervention by the Secretary of State.

11. EQUALITIES IMPLICATIONS

11.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

11.2 There are no additional equality implications associated with this proposal.

12. SOCIAL VALUE IMPLICATIONS

12.1 The Social Value Act and “go local” policy do not apply to this decision.

13. HUMAN RESOURCE IMPLICATIONS

13.1 None

14. BACKGROUND PAPERS

14.1 None

15. NOTIFICATION DATE

29 January 2021

Signature of Executive Member Consulted 

Date4th February 2021.....

Signature of Decision Taker 

Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS