Part I
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WELWYN HATFIELD BOROUGH COUNCIL
CABINET – 7 JULY 2015
REPORT OF THE HEAD OF PLANNING

REVIEW OF WELWYN GARDEN CITY ESTATE MANAGEMENT SCHEME

1 Executive Summary

1.1 This report follows the instruction from the Estate Management Scheme Panel (Panel) at its meeting on 16 July 2013 for officers to prepare a report on the future of the Welwyn Garden City Estate Management Scheme (Scheme) to seek to resolve the ongoing problems concerning the Scheme's administration, enforcement and the resultant deterioration of public confidence and impact on the reputation of the Council. This is in addition to the various enforcement difficulties highlighted at the previous panel meetings of 17 December 2009 and 30 May 2013.

1.2 Members have requested that the report include an evaluation of the options for the future administration of the Scheme including clarification on the issues relating to the replacement and/or termination of the Scheme as a result of the use of alternative solutions, for example Article 4 Directions.

1.3 The report concentrates on four key areas:

- The operation of the Scheme
- Administration and Enforcement of the Scheme
- Changes to legislation outside of the Scheme
- Alternatives to the Scheme

However, it should be noted that these areas are interrelated. Legal advice has been sought and incorporated within the discussion where necessary.

1.4 The report also gives clarification on the possible financial implications for the Council of changes to the Scheme and members are presented with the recommendation that another organisation be invited to administer the Scheme and that subsequently, if another organisation cannot be found that the Scheme is effectively replaced by Article 4 Directions.

2 Background

2.1 The garden city movement was pioneered by Ebenezer Howard in '*Tomorrow: A Peaceful Path to Real Reform'*, later re-issued as '*Garden Cities of Tomorrow*.' His idea responded to the overcrowded, unhealthy and deteriorating cities of the late 19th century by proposing the creation of garden cities where "*the advantages of the most energetic and active town life, with all the beauty and delight of the country, may be secured in perfect combination.*" He subsequently founded the Garden Cities Association to secure investment and was able to purchase land at Letchworth and later at Welwyn to realise his ambition and inspire similar garden cities, new towns and urbanism projects through Europe, America and beyond.

2.2 Welwyn Garden City is one of only two Garden Cities in the UK. The ideas for the Garden City grew during the late 19th Century and were based around the idea that densely built-up towns and the countryside both had advantages and disadvantages. Howard's idea was to continue the advantages of both in a pleasant, co-operative egalitarian environment. This was encapsulated in his book of 1898 '*To-morrow – A Peaceful Path to Real Reform'*. The genius of Howard's idea is that his proposal to combine the best of town and country living remains a valid solution to many current town planning challenges and that realised Schemes have proven themselves to be enduringly successful and influential.

2.3 This view is upheld by the National Planning Policy Framework (NPPF) which considers that *'The supply of new homes can sometimes best be achieved through planning for large scale development, such as new settlements or extensions to existing villages and towns that follow the principles of Garden Cities'.*

2.4 The Town and Country Planning Association is the inherited standard-bearer of the garden city movement and it has both influenced and responded to the NPPF by publishing '*Re-imaging Garden Cities for the 21st Century*' which sets out pragmatic lessons from the garden city and new town movement for building new communities and '*Creating Garden Cities and Suburbs Today'* which highlights ways in which sustainable new communities can be created using garden city principles.

2.5 The Town and Country Planning Association recently announced that it intends to nominate Letchworth and Welwyn Garden Cities for UNESCO World Heritage status. This would place the town on a par with Stonehenge, the Taj Mahal, the Egyptian Pyramids and Sydney Opera House as sites of cultural heritage of outstanding value to humanity. The likely criteria for nomination are (ii) exhibiting an important interchange of human values on developments in town planning and landscape design and (iv) an outstanding example of a type of building, architecture or landscape which illustrates a significant stage in human history.

2.6 It is against this backdrop that decisions in relation to the future administration of the Scheme must be made.

The Estate Management Scheme

2.7 In recognition of the importance of the Welwyn Garden environment and in order to protect the amenities and values of the area and residents, in 1973 the High Court imposed a Scheme of management under the Leasehold Reform Act 1967. This is known as the Estate Management Scheme.

2.8 The aim of the administration of the Scheme is:

> *"for the purpose of maintaining and enhancing amenities and values in Welwyn Garden City with due regard to the convenience and welfare of persons residing, working and carrying on business there."*

2.9 Section 19 of The Leasehold Reform Act 1967 granted wide powers for leaseholders to buy the freehold of properties and also gave a 'window' of two years from the commencement of the Act (1 January 1968) in which landlords could apply to the minister for approval for management Schemes for particular areas. Section 19 of the Act provided:

(1)Where, in the case of any area which is occupied directly or indirectly under tenancies held from one landlord (apart from property occupied by him or his licensees or for the time being unoccupied), the Minister on an application made within the two years beginning with the commencement of this Part of this Act grants a certificate that, in order to maintain adequate standards of appearance and amenity and regulate redevelopment in the area in the event of tenants acquiring the landlord's interest in their house and premises under this Part of this Act, it is in the Minister's opinion likely to be in the general interest that the landlord should retain powers of management in respect of the house and premises or have rights against the house and premises in respect of the benefits arising from the exercise elsewhere of his powers of management, then the High Court may, on an application made within one year of the giving of the certificate, approve a Scheme giving the landlord such powers and rights as are contemplated by this subsection."

2.10 The Scheme does not cover the whole of Welwyn Garden City and was agreed by the Secretary of State by the Certificate granted on 8th January 1971 and approved by the High Court in 1973. One of the misconceptions of the Scheme is that it also covers commercial properties. For the avoidance of doubt the Scheme only covers residential properties where the freehold has been purchased under the Leasehold Reform Act, including, it is understood, 'Right to Buy' (RTB) properties.

2.11 The Scheme has the effect of applying similar controls to residential freehold properties that exist under the terms of the leases. The Scheme contains 11 conditions that are binding upon each subsequent owner of the building, including the need for prior consent for alterations to the appearance of the building. The report reviews whether any of the 11 conditions have been superseded by subsequent legislation and are still 'fit for purpose' and necessary should Article 4 Directions be considered appropriate.

2.12 The Scheme requires householders within the Scheme to obtain permission from the Council for a range of improvements or alterations to their properties. This includes the right for neighbours (with Council consent), the Council or their agents to enter land at a reasonable time to repair adjoining properties and

clean, maintain, repair or replace pipes, cables, fences, hedges, etc. There is also a restriction on the business use of dwellinghouses; the storage of caravans, boats and vehicles other than private motor vehicles and a requirement to keep properties insured against specified risks.

2.13 In 2006, Members will be aware that a Task and Finish Group was set up to consider the Estate Management Scheme and its operation and effectiveness. The group, reported to the Cabinet Planning and Transportation Panel, and examined the background and main features of the Scheme, enforcement and legal issues, and the extent of the Scheme. As part of the Group's review, visits were made to Letchworth Garden City and Hampstead Garden Suburb.

2.14 The conclusion of the group, following public consultation was:

> 1. In association with the Welwyn Garden City Society and the Welwyn Garden Heritage Trust, to explore the opportunities available for increasing awareness of the Scheme through the development of an Estate Management Scheme Communication Plan.
>
> 2. That Polices EM1, EM2, EM3 and EM4 are re-worded and that the amendments, as set out in the revised document attached to the committee report are, approved, in order to ensure that they are more legible to members of the public.
>
> 3. That the process and procedure for consultation (as set out in paragraph 6.3.11 [of Appendix 3]) on alterations to properties with a Council interest within the Estate Management Scheme area are formally adopted.
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> 4. That further opportunities for training officers and members be explored and carried out.
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> 5. That no moratorium be undertaken for works already carried out without consent but to review those cases where action has been put on hold following the outcome of the review.
>
> 6. To increase resources in the Planning Enforcement Team to investigate and enforce the new EMS policies for a temporary period.
>
> 7. The Planning Control Committee continue to determine appeals against refusal of consent

2.15 A full report was presented to the Cabinet Planning and Transportation Panel on 18th September 2008 and agreed

2.16 Members will recall that as part of the need to carry out an ongoing review which started in 2008 the following alterations are a summary of the agreed list of works which require consent:

- Extensions and alterations to the external appearance of any building (including windows and roof alterations);
- The erection of new buildings (i.e. garages, sheds and greenhouses);

- The formation of hard surfaces on the property frontage, such as paths and driveways;

- A satellite dish or aerial;

- Any advertisement;

- To use the house for any purpose other than as a single dwelling house (i.e. not for running a business or a boarding house);

- The storage of a boat, caravan or commercial vehicle on the frontage or within a garden;

- Planting or creating any enclosure, wall, hedge or fence upon the boundary adjacent to an area of open frontage;

- Any works to a tree more than 15ft or 4m in height;

- Removal and works to hedgerows (except trimming).

2.17 The Council is unique in being the body with the responsibility to enforce a Scheme set up under the terms of the Leasehold Reform Act 1967. Other areas with similar Schemes have an independent body that enforce the requirements of their Scheme (such as the Hampstead Garden Suburb Trust).

3 Recommendation(s)

3.1 That the Cabinet be recommended the following:-

1. To authorise officers to carry out consultation on the nature of the Scheme with appropriate organisations as to whether another body would be prepared to take over the management of the Scheme and if yes, to explore the implications and report back.

2. If this does not prove to be appropriate, then to authorise officers carry out a town wide review to establish whether permitted development rights would be prejudicial to the proper planning of the area or constitute a threat to the amenities of that area.

3. To authorise officers to draft immediate Article 4 directions

4. To note that a report will come back to Cabinet setting out the outcome of the consultation and proposing the content and area of the Article 4 direction and any further implications

5. To advertise the Article 4 direction by local advertisement and site displays the Article 4 Direction for a period not less than 6 weeks and, having regard to the Council's Statement of Community Involvement, to authorise officers to write to all affected households, Estate Agents and conveyancers affected stating the date the direction will come into force

6. Notify the Secretary of State on same date notice is given to owner/occupiers.

7. To agree that the Panel consider representations and report back to the Estate Management Appeals Panel and Cabinet

8. If agreed, to confirm direction before end of 6 month period from the date it came into force and send a copy to the Secretary of State

9. To apply to the High Court (Property Chamber of the First Tier Leasehold Valuation Tribunal) for the effective variation or termination of the Estate Management Scheme for Welwyn Garden City (in accordance with Paragraph 9(b) of the Scheme) when the Council have evidence that its requirements were better secured through alternative legislation

10. That authorisation is given to fund the implementation of the proposals in this report

4 Link to Corporate Priorities

4.1 The content of this report links to the Council's vision 'safe…community' and 'working in partnership' as well as a number of the corporate priorities. In particular 'our environment', 'environmental enforcement'; 'our places', housing...and infrastructure' and 'our Council', consultation and engagement'.

5 Legal Implication(s)

5.1 Legal advice has been sought on a number aspects of the Scheme, such as maintaining the Scheme as at present, managing it only in relation to certain aspects of the controls, transferring it to another body, no longer managing it as well as various options for enforcing. This advice is incorporated into this report where appropriate.

5.2 The Scheme is made under the terms of the Leasehold Reform Act 1967, following the decision of Mr Justice Walton in the High Court on 7th June 1973. Both that Act and the judgement predate the Human Rights Act 1998, which contains two articles that may be of relevance; Part 1 Article 8 - the right to respect for private and family life, home and personal correspondence and Part 2 Article 1 of the First Protocol - the right to protection of property, including peaceful enjoyment of possessions.

5.3 The Council could not lawfully (a) decide to keep the Scheme in place but also (b) decide not to enforce against any breach, other than in wholly exceptional circumstances (which legal advice considers has not been demonstrated and could be successfully challenged by Judicial Review).

5.4 In relation to the enforcement of the Scheme, the Council have a duty to investigate alleged breaches of the Scheme and, where it is proportionate and expedient to do so, to enforce the requirements of the Scheme. Such action (as outlined in previous reports) is only possible by means of Arbitration under the terms of the Scheme or by seeking injunctive relief.

5.5 Officers' are unaware of any court judgements relating to the human 'rights' (detailed above) in relation to the Scheme where managed within other parts of the country, e.g. Letchworth Garden City or Hampstead Garden Suburb. Accordingly it is considered likely that any defended case brought by the Council for a breach of the Scheme would need to establish whether the Scheme, and the additional restrictions it places on householders over and above those imposed by the planning legislation, are in compliance with the above articles of the Human Rights Act.

6 Climate Change Implication(s)

6.1 There is no climate change implications associated with this report.

7 Financial Implication(s)

7.1 The one-off set up cost for the implementation of the Article 4 directions are estimated to be in the region of £132,000. Of this £72,000 will be this financial year (2015-2016) and £60,000 in financial year 2016/17. This can be funded from the budget earmarked for Corporate Projects. Further details relating to the breakdown of these costs is set out in 10.16-10.20.

7.2 There will be ongoing revenue expenditure and income implications to consider (as detailed in 10.16 to 10.20) and the full implications for the Council will be presented in the next report.

8 Risk Management Implications

8.1 The following section sets out the general risks relating to retaining the status quo and replacing/terminating the Scheme. The general risks are:

1. That in maintaining the Scheme as is, it may appear unjust and thereby adversely affect the reputation of the Council, that only freehold properties in the tightly defined areas of the Scheme are bound by its provisions. Leasehold properties, Council owned properties, Freehold properties that were previously owned by the Council and properties owned by the Welwyn Hatfield Housing Trust are not bound by the Scheme.

2. The Garden City has a global reputation attracting visitors nationally and internationally which could be damaged as a result of any perceived deterioration to the environment from ineffective enforcement

3. A (perceived) deterioration of the environment within the town could detract from the town's value and attractiveness.

4. Removing the Scheme in its entirety without any effective 'replacement' of controls could affect the reputation of the Council and how Welwyn Garden City is perceived in the short and long term respectively. It is perceived that many of the controls that are in place have enabled the town to maintain much of its character.

5. There may be a number of residents and other interested parties who would vehemently object to the removal of Scheme (perhaps even with suggested measures for replacement). There is both strong support and opposition to the controls imposed by the Scheme and accordingly the control that the Council has (a point equally applicable to any organisation managing the Scheme).

6. Varying the Scheme, with or without any replacement controls could lead to confusion for residents within Welwyn Garden City. There is already confusion as to who is subject to the controls of the Scheme and any further variance would increase this. Any changes, therefore, would need to be supported by an extensive communication strategy.

7. There would also be substantial financial implications attached to any decision to apply to the Property Chamber of the First-Tier Tribunal to vary/terminate the Scheme. These would relate to advertising the proposal(s) to the areas of, and adjacent to, the EM area and to the costs of the Tribunal itself – the time needed for the case being estimated to be in the region of five days (as interested parties would probably be entitled to appear and make oral representations to the tribunal).

8. There could be claims for compensation from aggrieved owners who have had EMS consent incorrectly refused on Leasehold properties.

9. That the continued operation of the Scheme without effective enforcement will adversely affect the reputation of the Council, both with members of the public who bring matters to our attention and with local community groups.

10. In the future, that a failure to take effective enforcement action will lead to an increasing number of sites where owners ignore the requirements of the Scheme. Such widespread disobedience could lead to the collapse of the Scheme as a whole. This is already evident in certain streets, for example in relation to hardstandings in Newfields.

11. That the Scheme itself, which imposes considerably greater restrictions on property owners and their families than those imposed on houses (including listed buildings) elsewhere in England, may not be compatible with the requirements of the Human Rights Act 1988.

12. That enforcement of the Scheme, by whatever means, may lead to a perception in certain quarters that the Council is eroding the rights of householders to enjoy their properties as they see fit. Some individuals may consider that being in the Scheme area may reduce the number of prospective purchasers when they come to sell their property.

13. That a failure to enforce against significant breaches of the requirements of the Scheme will lead to a perception of poor customer care to complainants and will lead to a significant loss in confidence in certain parts of the community.

9 Explanation

9.1 It is felt by a number of parties that the Scheme is not fulfilling all of the original management provisions and the number of unenforced breaches of the Scheme continues to rise, particularly given the increased awareness of the Scheme amongst members of the public. As a result there is an adverse impact upon the good reputation of the Council.

9.2 There are a significant, and increasing, number of sites where owners are in breach of the requirements of the Scheme. In August 2013 there were 84 cases where owners were in breach of the Scheme, although this number has reduced given the new power of delegation for officers to close cases where it is not considered expedient to take enforcement action. At the time of writing this report there were a total of 52 open cases, 37 of which are being actively investigated and negotiated and 15 are waiting for referral to the Panel. As outlined in previous reports (Cabinet Planning and Transportation Panel – 18th

September, the December 2009 report to the then, Planning Control Committee and the most recent Estate Management Scheme Panel 30 May 2013).

9.3 The need for good customer care, both for complainants and transgressors, is an essential component of any enforcement regime and its importance cannot be overstated. Given the success of Members' strategy to increase awareness of the Scheme it is important to consider what impact the current enforcement regime has, and is likely to have in the future, with regard to customer care and service.

9.4 When the Scheme was introduced it was, under s19 of the Leasehold Reform Act, '*in order to maintain adequate standards* [of newly freehold properties] *of appearance and amenity and regulate redevelopment in the area'.* Subsequent to the Scheme, the RTB legislation of the 1980s led to the sales of significant numbers of former Council properties. For those former Council properties sold under the RTB Scheme the covenants contained in the Scheme are mirrored in the RTB conveyance/lease as far as is practically possible. However all of the currently owned Council properties located both inside and outside the tightly defined Scheme areas are not restricted by the terms of the Scheme and are controlled by the Welwyn Hatfield Housing Trust.

9.5 In relation to Leasehold properties, whilst technically these are not covered by the Scheme, they have to date followed the same route for approval as properties covered by the Scheme.

9.6 One of the difficulties that the Council has always had is the variety of tenures that exists within what is known as the Scheme's area (i.e. the areas highlighted in pink on the map attached to the Scheme) and officers are aware that these apparent discrepancies can lead to other freeholders feeling unjustly treated, leading to a loss of reputation through a lack of confidence in the Council to treat all residents with the same principles of Equality and Diversity. For clarity the table of different ownerships under the EMS is as follows:

Tenure	Covered by EMS	Current Department for consent	Enforcement Options
Long Leasehold Properties**	No	Planning	Action under the lease, Landlord & Tenant legislation
Freehold reversion (ex-long leasehold properties)	Yes*	Planning	Action under the Estates Management Scheme. & Action under the former landowners covenants (most likely sue for damages only)
Council Houses	No	Housing Trust	Action under the lease, Landlord and Tenant legislation
Former Council Houses (RTB)	Yes*	Planning	Action under the Estates Management Scheme. & Action under the former landowners covenants (most likely sue for damages only). Even more limited than Freehold reversions
Privately owned,	Yes*	Planning	Action under the Estates Management

but purchased from the NTC or Council			Scheme. & Action under the former landowners covenants (most likely sue for damages only)
Privately owned but never owned by NTC or Council	Yes*	Planning	Action under the Estates Management Scheme.

* Only if sold after the Operative Date contained within the EMS, otherwise not covered.

** This covers both Long leasehold houses and flats which have been sold under RTB (as these are sold on leases rather than freehold sales).

9.7 Regardless of the individual status of properties the view has always been taken that notwithstanding the variety of tenures the Scheme applies to all of the properties within that area. This decision was taken to ensure a simplified approach for residents, where one service (in this case Development Management) handles all approaches, enquires and applications regardless of the details of ownership. As such any approaches for consent on Leasehold or Council owned properties, within the boundaries of the Scheme, are currently considered by Development Management, using the same criteria as Freehold applications and any consent is therefore given by the Council, effectively as 'Landlord' although this is far from clear to residents. The exceptions to these are cases where consent under what is known as a single dwelling covenant is requested. This is essentially where an owner wishes to utilise surplus land to erect a single dwelling. In such cases the Council may be entitled to a percentage of the uplift in value from the grant of consent under the covenants of that dwelling. Therefore due to the high value of these cases and the fact that the ability to charge varies from case to case these are dealt with separately by Corporate Property. There are also cases whereby if approached directly by a resident, in relation to a leasehold property then the enquiry is deal with directly by that department.

9.8 The review of the Scheme in 2008 raised the profile of the Scheme which, in turn has led to an increasing number of complaints relating to the enforcement and administration of the Scheme as various cases progressed towards consideration of formal enforcement action. One of the main challenges is that there are very different and wide ranging enforcement options available to the Council under a number of different areas of legislation. For example the serving of an injunction is required for Freehold properties but for Leasehold the enforcement options are the forfeiting of the lease (taking back possession) or the Council can sue for damages although such action would need to demonstrate that the value of adjoining Council owned estate land has diminished and that there has been a loss of value. This action would also need to be heard by the Upper Tribunal (Lands Chamber) which is a complicated and costly process.

9.9 There have also been a number of requests made to the Council under the terms of the Freedom of Information Act 2000 and complaints over recent years requiring details of any enforcement action taken by the Council for breaches of the Scheme to be divulged. Such requests for information are indicative of the concern sections of the community have relating to the Scheme and its

enforcement and the ongoing deterioration in the reputation of the Council as the body that is tasked with administering and enforcing the Scheme.

9.10 These enforcement issues have had significant implications for the reputation of the Council, not only in terms of cases where consent has been refused or action taken by Development Management for properties not technically controlled by them in the Scheme area (Leasehold and Council owned properties) but also in terms of taking any future action where it would appear unjust that only Freehold properties are bound by the Scheme's provisions and are being enforced against.

9.11 Whilst the Council has acted in good faith in trying to make the 'consent regime' more straightforward, ultimately a situation will probably arise where there would be different departments taking action, for different reasons on different properties within the same street.

9.12 Whilst the Council could claim that this approach is a response to a difficult issue (mix of tenures) that those who framed the Scheme clearly may have had in mind, including the judge who approved the Scheme, the complexities of carrying this out on a day to day basis only adds to the potential and actual cost of administration and enforcement and will be difficult to communicate to residents.

9.13 Set against this will be those individuals and organisations such as the Welwyn Garden City Society who have been increasingly frustrated and even angry because of what they perceive to be the apparent inaction of the Council with regard to the administration of the Scheme and the enforcement of breaches.

9.14 Overall in seeking to make the process as easy and user friendly as possible for residents in terms of gaining consent the Council has inadvertently made it harder and more challenging to successfully communicate and enforce against breaches. The requirement for different action to be carried out by different departments would undoubtedly result in further complications and deterioration in reputation for the Council through a lack of confidence to treat all residents fairly. This in turn has led to the need to review its appropriateness and whether other, more suitable alternatives that would protect the town's unique character exist

10 Options

10.1 The Council can transfer the Scheme to another body, the Scheme can be terminated or varied by the High Court on application by the Council or any owner if a change in circumstances makes it appropriate. This section sets out options for the way forward for the future administration of the Scheme, including the possible use of Article 4 Directions. The alternatives below are not mutually exclusive and are set out within the report in further detail**.** They can be summarised as:-

1. Maintaining the Status Quo

2. Another Body Taking over the Management of the Scheme

3. Terminating the Scheme without alternative controls

4. Replacing the EM Scheme with Article 4 Direction(s) and provisions contained within other legislation

5. Other options

1. <u>Maintaining the Status Quo</u>

10.2 The first option is that the status quo continues. This means that alleged breaches of the Scheme are considered by the Panel with a view to seeking arbitration, followed, if necessary, by arbitration and/or injunctive relief in appropriate cases. The benefit of this course of action is that the Scheme and mechanisms are already in place but remain untried and untested in terms of enforcement action other than via Arbitration, which the Council has recently been successful in (in the case of a satellite dish on a Freehold property).

10.3 The disadvantages of maintaining the status quo are uncertainties surrounding enforcement if Arbitration is successful, the high cost of seeking injunctive relief, the possibility of a challenge to the Scheme under the Human Rights Act 1998 being made to the courts, the need to introduce a fee for applications to seek to cover these costs and the possible alienation of an active section of the community who are passionate about their environment should no action be taken.

10.4 In terms of financial implications a number of these are discussed in other sections of the report. The Scheme makes provision for the recovery of a reasonable fee for the approval of plans, elevations etc. Members could therefore conclude that applications under the Scheme could be charged at a reasonable rate and this may allow for further resources to be given to administration and enforcement. However, balanced against this is the fact that Members have previously expressed a view not to charge for such applications. This will also not resolve the issues in relation to inequalities of administration for freehold and leasehold properties.

10.5 Maintaining the status quo of retaining the existing Scheme clearly remains an option albeit with the associated risks and costs as set out within the report in relation to the reputation of the Council and the disproportionate use of officer and member time, along with the associated costs.

10.6 Accordingly, officers do not consider that this is an appropriate option.

2. <u>Another Body Taking over the Management of the Scheme</u>

10.7 Legal advice indicates that the Council will need to consult with bodies representing the community such as the Welwyn Garden City Society and Welwyn Heritage Trust and residents if another body is sought to administer the Scheme. In consideration of how the Scheme should be operated it is important because in preparing a robust case, the Council should ensure that ether is no alternative, for example in another body or organisation taking over control of the Scheme.

10.8 The Council could delegate their powers with regard to the Scheme. This option was considered as part of the previous Task and Finish Group which reported to Cabinet Planning and Transportation Panel on 21st February 2008 and was found not to be viable at that time.

10.9 The benefit of this course of action is that the Scheme would be managed by a third party. The disadvantage is that it is unlikely that any third party would take on such a responsibility without substantial funding and support from the Council. This approach may also result in continuing problems in terms of consistency of approach if an organisation who takes over administration takes a different view in relation to the various policy approaches the Council has adopted, for example in relation to roof alterations and hardstandings. However, any new body talking over the Scheme could only administer the Scheme on freehold properties and control over the leasehold properties would remain with the Council. In addition, many of the freehold properties would continue to have covenants in their title deeds which, under this Scheme, would require a separate consent from the Council.

10.10 It is also considered unlikely that any organisation would be prepared to take on such a responsibility without significant funding from the Council. This funding is likely to be ongoing and significant. This is an attractive option to the Council but depends on finding an organisation that is prepared to take on the management of the Scheme and any financial implications of such an agreement. If members agree to the recommendations set out in this report then officers consider it would be necessary to invite appropriate organisations to consider whether they would be interested and able to administer the Scheme.

3. <u>Terminating the Scheme without alternative controls</u>

10.11 It is possible to apply to terminate the Scheme if it can be proven that it no longer serves a useful purpose.

10.12 To terminate the Scheme the Council would have to articulate a case demonstrating effectively that the costs of administering the Scheme are now such either that other priorities for the Council command precedence, or that the inability to resource the Scheme is more likely to lead to the haphazard and potentially unfair enforcement in a way that is not consistent with the overall objectives of the Scheme.

10.13 Legal advice indicates that it would be “challenging” for the Council to demonstrate that wholesale variations and/or a termination of Scheme are appropriate, although if the Council could demonstrate that there are better ways of substantially achieving the objectives of the Scheme then that could be a powerful rationale supporting termination of the Scheme.

10.15 The benefit of removing the Scheme to the Council is that it would free up a significant amount of officer time to concentrate on the more effective and efficient delivery of the Development Management and Enforcement service. It would reduce complaints and confusion of local residents who would have less areas of ‘red tape’, not least because of the complexities regarding which properties the Scheme actually applies to and enforcement. However, as the freehold covenants would remain in place and consent would still need to be granted under these, any officer time released by the removal of the scheme could be lost as additional officer time would be required to deal with the freehold covenant applications although this could be funded by the release of covenant fee.

10.16 The clear and perhaps compelling disadvantage is the reduction in protection given under the Scheme to local residents and the environment/character of the Garden City. Used in isolation, this option is likely to result in significant opposition and officers consider that it would be difficult to justify a case for wholesale termination of the Scheme without alternatives.

4. <u>Replacing the EM Scheme with Article 4 Direction(s) and provisions contained within other legislation</u>

10.17 The Scheme could be amended to remove control(s) either by area or type if Members consider that elements of it are no longer appropriate (utility) or sufficient controls exist under different legislation to achieve its purpose, for example through an Article 4 direction. This would effectively result in the replacement of the Scheme and its subsequent termination.

10.18 Members will be aware that the Council have powers to remove permitted development rights where that is necessary for the efficient planning of an area. The National Planning Policy Framework is clear that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. Article 4 Directions can remove all or part of a 'right', in this case certain permitted development rights. For example the right to create a hard surface within the curtilage of a dwellinghouse could just be removed from front gardens unless under a certain size (to be policy compliant with existing hardstandings policy). Likewise the right to erect outbuildings could be withdrawn, except, say for greenhouses or garden sheds of a given maximum size with specified materials of construction. By omitting certain elements of a PD right the Council would be effectively granting permission for that operation. This would remove a very large number of very minor applications that would have to be determined and therefore give officers more time to focus on more complex cases and improvements to customer service.

10.19 The benefits are that the Council can use familiar, easier and less expensive powers for enforcement (where that is necessary) and that any unnecessary elements of the Scheme can be withdrawn. It could reduce, in the longer term, confusion for local residents. It would allow the elements of alterations that impact on the character of the area to be addressed and effectively enforced whilst maintaining other positive aspects of the Scheme. This option however, could cause short term confusion for residents without clear consultation and guidance. The Council could be seen as taking a proactive position whilst recognising the importance of maintaining the character of the Garden City in the future.

10.20 The evidence required would be that sufficient to demonstrate that it is indeed appropriate to make the proposed change and that such a change would be fair and practicable. The changes should not increase the level of control that might be applied by the Council out of proportion to that previously exercised by the Council or required for the purposes of the Scheme.

10.21 The Council would need to set out evidence along the lines of dealing with the creation of the Scheme, its evolution, attempts to enforce the Scheme, the costs of administration and enforcement, and the detailed reasons why the Council is seeking to vary the Scheme and why such variations may in reality be the best

way of preserving a Scheme that continues to deal with the most serious breaches.

10.22 Officers have previously advised that with regards to any subsequent 'replacement' and subsequent 'termination' or 'variation' of the Scheme this requires an altogether different and more challenging argument. Careful consideration will need to be given to those parts of the Scheme that could not be withdrawn under permitted development rights such as the right for neighbours, the Council or their agents to enter land at a reasonable time to repair adjoining properties and clean, maintain, repair or replace pipes, cables, fences, hedges etc. In most cases rights of access are enshrined in the deeds of a property but in this instance they are contained within the Scheme and accordingly the issue is whether an amended version of the Scheme should remain in place to cover these elements or that the Scheme should be terminated because the requirements are covered in other legislation. Each of the conditions are discussed in turn below.

Review of the Owners Conditions within the Scheme

10.23 The Scheme includes 11 conditions which are binding on each owner within the Scheme area. Many of these are replicated, or closely replicated within the leases or freehold transfers of the properties. These, in summary, are:-

1. To keep and maintain in good repair
    i. Main and exterior walls
    ii. Roofs including eaves, gathering and down-pipes
    iii. External doors and windows
    iv. All boundary walls, fences and hedges
    v. All drains, soil and other pipes and sanitary and water apparatus
2. Keep the garden in neat order
3. Not without consent to cut down, lop or top any tree over 15 feet in height or remove any boundary hedge (without written consent)
4. To paint the exterior of the buildings in harmony with the area
5. Not to excavate any sand, gravel, earth or minerals
6. To contribute to the repair of any party wall, fence, hedge, gutter, downspout, gulley, private sewer manhole, drain water pipe, gas pipe, cable wire or service used jointly with others
7. To allow access for inspections under condition 1
8. To allow access for repairs of services or adjoining properties
9. i. not to cause nuisance or damage to neighbours
    ii. not to use the premises for an immoral purpose

iii. not to keep any birds or animals which would become noisy or offensive

iv. not to use the front drive to store a vehicle, boat or caravan (without written consent)

v. not to use the premises for business purposes (without written consent)

vi. not to display advertisements (without written consent)

vii, viii and ix. not to erect an aerial/satellite at the premises (without written consent)

10. i. not to build or plant any enclosure (wall, fence or hedge) on an open frontage (without written consent)

ii. not to install a hard standing or change the external appearance of the premises (without written consent)

iii. to carry out approved works in a workmanlike manner

11. To keep the buildings insured and produce evidence of ownership when required

Condition 1 - To keep and maintain in good repair

10.24 Under Article 3 of the Scheme the Council has the right to enter premises to carry out works under Article 7 which is a power of entry to the premises to examine the state and condition with regards to the upkeep of the property. If anything is wrong then a notice can be served requiring works to be carried out. Under the Neighbouring Land Act 1992, officers are aware that every homeowner has the right to enter an adjoining owner's land for the purpose of building maintenance although in extreme cases this might entail having to obtain an order from the County Court.

10.25 Planning legislation contains powers under s215 of the Town and Country Planning Act 1990 (As amended) to secure improvements to the amenity of land and buildings. The scope of the requirements of notices is wide, including planting, clearance, tidying, enclosure, demolition, rebuilding, external repairs and repainting. Before 1971, the notice could only be used on 'gardens, vacant sites or other open land' but was changed to 'land' which includes buildings. Current powers state that if it appears to the local planning authority that the amenity of a part of their area, or an adjoining area is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a waste land notice. The notice shall require such steps for remedying the condition of the land within a specified period. Prior to 1981 a flaw existed in this part of wasteland legislation, which seriously undermined its effectiveness. This has now been remedied and the present position is that non-compliance with a notice can lead on summary conviction, to a level 3 fine (currently £1000). There is also the power for the Council to undertake works when the notice is not complied with and record cost as a local land charge which attracts interest (currently 8%). Used properly this is a substantial power to rectify issues that could be considered to be affecting the 'amenities and values' of the local area.

10.26 There is also other legislation which could be used including:

- S29 of the Local Government (Miscellaneous Provisions) Act 1982 – which is for the protection of buildings and is used primarily to stop the public entering buildings but can be used for other matters as well although a likely danger to public health needs to be shown.
  "*Where this section applies and it appears to the local authority that the building—*
  (a) is not effectively secured against unauthorised entry; or
  (b) is likely to become a danger to public health
  the local authority may undertake works in connection with the building for the purpose of preventing unauthorised entry to it, or, as the case may be, for the purpose of preventing it becoming a danger to public health"

- S83 Public Health Act 1936- Cleansing of filthy or verminous premises (covers residential and commercial)

- Prevention of Damage by Pests Act 1949

- Housing Act 2004 – Applies to any properties – If any risks identified notice can be served on landlord requiring them to remedy it. Could be used for Council owned as well as private properties.

Condition 2 – Keep the garden in good order

10.27 A S215 can be used in serious cases to ensure gardens are kept in good order.

Condition 3 – Not without consent to cut down, lop or top any tree over 15 feet in height or remove any boundary hedge

10.28 A Tree Preservation Order (TPO) can be made under planning legislation to protect trees in the interests of amenity. The term 'tree' is not defined in the legislation nor does the legislation limit the application of TPOs to trees of a minimum size. But for the purposes of the TPO legislation, the High Court has held that a 'tree' is anything which ordinarily one would call a tree. Officers understand that a Tree Preservation Order cannot be used to protect hedges or shrubs. There is no legislation to prevent the removal of hedges within a garden. The majority of hedge removals on the frontage of properties are in association with a hardtsanding which could be controlled although it may have to be accepted that removal of hedges in rear garden would no longer be controlled.

10.29 The existence of a TPO means that the owner of the tree has to apply to the Council for consent before carrying out any most works to the protected tree. There is no fee for such an application.

10.30 Trees in conservation areas which are already protected by a TPO are subject to the normal TPO controls. But the Town and Country Planning Act 1990 also makes special provision for trees in conservation areas which are not the subject of a TPO. Anyone proposing to cut down or carry out work on a tree in a conservation area is required to give the Council six weeks' prior notice. The purpose of this requirement is to give the Council an opportunity to consider whether a TPO should be made in respect of the tree. The benefit of this is that control could be exercised over the felling or lopping of high amenity value trees within the Council's existing planning powers. The disadvantages relate to the

possible need to employ external consultants, with the associated cost, to carry out any such technical assessment. It is estimated that the cost would be in the region of £15,000 plus staff resources to manage the consultants and notification. Additionally no protection could be given to trees which did not meet the statutory requirements for the issue of an order.

Condition 4 – To paint the exterior of the buildings in harmony with the area

10.31 Controls within planning legislation exist in relation to painting of buildings of any building which includes the application of colour. If a building is listed of being of special architectural or historic significance painting is controlled. A S215 notice can secure the painting of a building to remedy deterioration in appearance ensuring the painting in a harmonious colour so long as those works caused a loss of amenity to the area.

Condition 5 – Not to excavate any sand, gravel, earth or minerals

10.32 S78 Environmental Protection Act 1990 – This Act covers contaminated land and could be used depending on locality. If a "mine or quarry" is established there are controls provided through the Mines and Quarries Act 1956. If the operation is causing a problem then S79 of the Environmental Protection Act 1990 may come into play if the Environmental Health officer deems it to be a statutory nuisance in which case an abatement notice may be served. There may also be issues under the Health and Safety at Work etc Act 1974. The Health and Safety Executive may get involved and even the Environment Agency using the Environmental Protection Act 1990 but they are subject to different processes and procedures. The excavation of minerals could also be considered, as a matter of fact and degree to be a mining operation which could require permission from the county council as the Minerals and Waste Authority.

Condition 6 – To contribute to the repair of joint structures/services

10.33 In 2010 new legislation was brought in to bring private sewers serving more than one property under the control of the statutory sewage undertakers. This legislation does not apply to drains. However s17 of the Public Health Act 1961, deals with powers to repair drains etc. and to remedy stopped-up drains although there is a legislative maximum of repairs not costing more than £250 which effectively may limit its use.

In respect of communal access – s78 of the Public Health Act, 1936 Scavenging of common courts and passages could be used:

(1) If any court, yard or passage which is used in common by the occupants of two or more buildings, but is not a highway repairable by the inhabitants at large, is not regularly swept and kept clean and free from rubbish or other accumulation to the satisfaction of the local authority, the authority may cause it to be swept and cleansed.
(2) The local authority may recover any expenses reasonably incurred by them under this section from the occupiers of the buildings which front or abut on the court or yard, or to which the passage affords access, in such proportions as may be determined by the authority, or, in case of dispute, by a court of summary jurisdiction

However the provisions relating to scavenging and cleansing of courts, yards and passages are very old and have not been in general use for some time.

10.34 There are also potential powers under the Highway Act 1980 for the maintenance of privately maintainable footpaths and bridleways not adopted road and communal access). In addition there are powers under the Building Act 1984, which is sometimes used by Environmental Health to ensure adequate drainage.

10.35 Furthermore Section 33 Local Government (Miscellaneous Provisions) Act 1976 deals with the ability of the local authority to have the supply of water, gas or electric restored by the supplier (due to a failure by the occupier to pay or there may be a cut off due to such a failure) and seek to recover that money from the occupier together with interest.

Condition 7 – To allow access for inspections under condition 1

10.36 Under Article 3 of the EMS the Council has the right to enter premises to carry out works under Article 7 which is a power of entry to the premises to examine the state and condition with regards to the upkeep of the property. If anything is wrong then a notice can be served requiring works to be carried out. All of the above Acts also allow any officer so authorised to enter premises on reasonable notice for commercial properties and a minimum of 24 hours for residential. A warrant can be applied for if accessed refused which could also result in an obstruction offence if access is subsequently refused.

Condition 8 – To allow access for repairs of services or adjoining properties

10.37 As above allow any officer so authorised may enter premises on reasonable notice commercial but domestic minimum of 24 hours. A warrant can be applied for if access is refused and this would also be an obstruction offence. There is legislation which also allows rights of access under the Access to Neighbouring Land Act 1992 for use by residents or landlords. There are also some rights under s8 The Party Wall etc Act 1996:

Condition 9 i. - not to cause nuisance or damage to neighbours

10.38 Section 79 Environmental Protection Act 1990 could be utliised by Environmental Health contains the following provisions:

(1) Subject to subsections (1A) to (6A) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—

(a) any premises in such a state as to be prejudicial to health or a nuisance;

(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;

(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;

(h) any other matter declared by any enactment to be a statutory nuisance;

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or section 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.

(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.

(1B) Land is in a "contaminated state" for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—

(a) harm is being caused or there is a possibility of harm being caused; or

(b) pollution of controlled waters is being, or is likely to be, caused;

and in this subsection "harm", "pollution of controlled waters" *and* "substance"*have the same meaning as in Part IIA of this Act.*

10.39 The Anti Social Behaviour (ASB) Act 2003, Part 1A (Premises Closure Order due to ASB persistent disorder and nuisance) states in s11A, which the police can also use:

(1) This section applies to premises if a police officer not below the rank of superintendent ("the authorising officer") or the local authority has reasonable grounds for believing—

(a) that at any time during the relevant period a person has engaged in anti-social behaviour on the premises, and

(b) that the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public.

The above starts the process and Part 1A is split in section 11(A)-(L) and covers the process and ancillary matters. The only "department "that has used it is the Welwyn Hatfield Community Housing Trust and ASB falls within its remit. For

completeness it should be noted that closure powers are available to the ASB, environmental health and licensing teams, as well as the police.

10.40 The Noise Act 1996 is also used by Environmental Health. There are 14 sections to the Act which deal with three areas a) Summary procedure for dealing with noise at night; b) seizure of equipment used to make noise unlawfully and c) general provisions. The Act, due to its length is not set out.

Condition 9 ii. - not to use the premises for an immoral purpose

10.41 Officers consider that the purpose is not entirely appropriate anymore. If the use of the property is illegal there are powers under various other acts and there are issues in relation to the interpretation of 'immoral'. This is essentially a matter for the Police The council has controls available to deal with the regulation of sex shops, sex cinemas and sexual entertainment venues. These are dealt with by the council's licensing team and may be relevant in this context.
Condition 9 iii. - not to keep any birds or animals which would become noisy or offensive

10.42 This is essentially a matter that could be dealt with under Anti Social Behaviour or as a statutory nuisance under s79 of the Environmental Protection Act 1990. It should be noted that each case is determinable on its own merits and whilst one dog may be a nuisance in a one bed flat, three dogs in another location may not. There is no firm ruling and the general principle is that what may be a nuisance in one locality may be not be somewhere else.

Condition 9 iv. - not to use the front drive to store a vehicle, boat or caravan

10.43 If crossing or involving land that is not owned by the Council, then powers to take action lay with Hertfordshire County Council under the Highway Act 1980. There are some powers under a Community Protection Notice introduced in the Anti Social Behaviour, Crime and Policing Act, 2014 which deals with 'unreasonable' behaviour. Breach of the notice is a criminal offence and can be issued by the Council. As well as the test of unreasonableness for the use of community protection notices there is also a test of persistence and "affecting the quality of life of those in the locality" there is therefore some uncertainty surrounding if it could be used in the context of preventing the storage of a boat or caravan. it is only contravention of the community protection notice which constitutes an offence. The council can take certain action provided covenants exist on the property and provided that we own adjoining land which is being impaired or damaged by the use of land for such storage. However, such action is limited to recovery of damages and would not normally result in the cessation of the storage**.**

Condition 9 v. - Not to use the premises for business purposes

10.44 Could potentially be a material change of use under planning legislation (as a matter of fact and degree) which would need to be determined on a case by case basis. If it is causing a nuisance, then s79 Environmental Protection Act 1990 is normally used (See above). If activity is dangerous and/or injurious to health then there would be provision under the Health and Safety at Work etc Act 1974

Condition 9 vi. - Not to display advertisements

10.45 In some cases advertisements relating to businesses are controlled under the Planning legislation through the Advertisement Regulations. However, some signs have 'deemed consent' (permitted development for signs). All local planning authorities have special powers, which enable them to achieve more rigorous control over advertisements in certain circumstances. These powers may require that an advertisement, or use of a site for displaying advertisements, be discontinued. Also the benefit of deemed consent can be removed from a site and an Area of Special Control of Advertisements may be defined. Local authorities may seek the "discontinuance" of advertisements that enjoy deemed consent. This power is given by the Advertisement Regulations that requires a local authority to be satisfied that such action is necessary to remedy a substantial injury to the amenity of the locality or a danger to the public. Any person who displays an advertisement in contravention of the Regulations, either by flouting a Discontinuance Notice or otherwise by displaying an advert which is unauthorised, is guilty of an offence and may be liable on summary conviction to a fine. Such a fine will not exceed level 3 (£1000)on the standard scale. In the case of a continuing offence, the maximum fine is one tenth of level 3 for each day that it continues.

10.46 Orders may be made by local planning authorities under the Advertisement Regulations, with the approval of the Secretary of State, which define 'Areas of Special Control'. In Areas of Special Control, stricter rules for the display of deemed consent advertisements apply and certain types of advertisement are not permitted. These are normally endorsed in areas that are considered to merit special protection on amenity grounds, such as conservation areas and areas of townscape merit. Since landscapes and street scenes can change significantly over time there is an obligation for a five year review of designated areas.

10.47 If "A" Boards or flyer poster are causing a problem then a penalty notice under the Clean Neighbourhoods and Environment Act 2005, section 225 Town and Country Planning Act 1990 and the Highways Act could be utilised.

Condition 9 vii, viii and ix. - not to erect an aerial/satellite at the premises

10.48 An article 4 direction could be used to ensure that consent is sought for these works.

Condition 10i. - not to build or plant any enclosure (wall, fence or hedge) on an open frontage

10.49 An Article 4 direction could be used to ensure that consent is sought for any wall or fence within the front gardens of properties. However, it should be noted that so far as decision making is concerned there are no special planning policy considerations applicable when an Article 4 Direction is in force i.e. it does not convey any special or more stringent policy regime. Article 4 directions cannot control the planting of hedges since these do not fall within the remit of the planning legislation.

Condition 10ii. - not to install a hard standing or change the external appearance of the premises

10.50 An Article 4 direction could be used to ensure that consent is sought for these works.

Condition 10iii.- to carry out approved works in a workmanlike manner

10.51 If work being undertaken at unsocial hours it may be controlled using the Control of Pollution Act 1974 (s60). The issue of carrying out works in a workmanlike manner with sound and proper materials is a requirement of the GPDO that extensions and roof enlargements be constructed from closely matching materials. However this may not provide a similar level of control than exists under the Scheme.

Condition 11 – To keep the buildings insured and produce evidence of ownership when required

10.52 As previously noted, there is no legislation requiring insurance in respect of residential premises save for mortgage requirements. For the sake of completeness, commercial businesses have to have liability insurance and this would be enforced under the Health and Safety at Work etc Act 1974 by Environmental Health.

10.53 There are a number of conditions within the Scheme which impose obligations on the body managing it. The first of these relate to the submission of requests by the owner for prior consent for alterations or works. The Council is obligated to notify anyone it feels might be affected by the proposals and consider any views put forward. This is a similar process to that required under the planning legislation in respect of planning applications.

10.54 In the event that the Scheme is replaced by Article 4 Directions then any covenants contained within the leases or freehold transfers will remain. The residents will be required to make an application to the Council for consent under these covenants, in addition to any application they make under Article 4.

Conclusion

10.55 Since the Scheme was originally drafted (1971) there have been a number of changes in legislation. Each of the conditions of the Scheme set out above in order to demonstrate there is now legislation in place which can be used to achieve the Scheme's purpose of '*maintaining and enhancing amenities and values in Welwyn Garden City and with due regard to the convenience and welfare of persons residing, working and carrying on business there'*.

10.56 ***There appears to be only one condition within the Scheme where there is no alternative legislation and this is the removal of boundary hedges. However, members of the Estate Management Scheme Panel have requested that officers carry out further research in relation to this matter and the findings of this will be reported back to members in accordance with Recommendation 4 of this report.***

Article 4 Directions

This section has been written in accordance with The Town and Country Planning (General permitted Development) (England) Order 2015.

10.57 An Article 4 Direction is part of the planning legislation whereby works that would normally not require the submission of a planning application to the Council (or 'permitted development') would need to apply to the Council for planning permission. Permitted development rights are basically a right to make certain changes to a building without the need to apply for planning permission. These derive from a general planning permission granted from Parliament, rather than from permission granted by the local planning authority. Planning legislation gives a power at Article 4(1) whereby the Secretary of State or a local planning authority by may, in a specified area, take away all or some of the permitted development rights (including satellite dishes and aerials).

10.58 Guidance from central government states permitted development rights should not be withdrawn locally without compelling reasons. It adds that they should be withdrawn only in exceptional circumstances and will rarely be justified unless there is a real and specific threat to the amenities of the area i.e. there is reliable evidence to suggest that permitted development is likely to take place which would damage an interest of acknowledged importance and which should therefore be brought within full planning control in the public interest.

10.59 Around 70% of the directions dated from after 1995, when a streamlined system was introduced. The majority of Article 4 directions involve the removal of permitted development rights covering development within the curtilage of dwelling houses and other minor operations. However, a number have removed the right to demolish gates, fences and walls. The research also found that introduction of such controls does not necessarily mean an increase in applications because residents know that if they apply there is a strong likelihood that they will be refused.

10.60 While Article 4 directions are confirmed by local planning authorities, the Secretary of State must be notified, and has wide powers to modify or cancel most Article 4 directions at any point. However the Secretary of Sates powers to modify or cancel are restricted within conservation areas and other areas of land that are not associated with a listed building. An Article 4 Direction:-

a) Is made by the Council

b) Restricts the scope of 'permitted development' either in relation to a particular type of work, area or site.

c) Can be used to control works that could 'threaten' the character or amenities of an area.

d) Should only be used in exceptional circumstances where the works would harm the local amenity, the historic environment or the proper planning of the area.

Whereas before April 2010 the Secretary of State confirmed certain article 4 directions, it is now for local planning authorities to confirm all article 4 directions (except those made by the Secretary of State) in the light of local consultation.

10.61 The withdrawal of development rights does not necessarily mean that planning consent would not be granted. It merely means that an application has to be submitted, so that the planning authority can examine the plans in detail.

10.62 There are a number of elements requiring consent under the Scheme that would also require planning permission from the Council but for the terms of the Town and Country (General Permitted Development) (England) Order 2015 (as amended), which grants wide permitted development 'rights'. This includes extensions and alterations to the building, erection of outbuildings, the creation of hardstandings, roof alterations (including solar panels), the erection of satellite dishes and the application of colour (repainting).

10.63 It should be noted that Article 4 directions can remove all or part of a 'right'. For example the right to create a hard surface within the curtilage of a dwellinghouse could just be removed from front gardens unless under a certain size (to be policy compliant with existing hardstandings policy). Likewise the right to erect outbuildings could be withdrawn, except, say for greenhouses or garden sheds of a given maximum size with specified materials of construction. Such an alternative would remove a very large number of very minor applications under the Scheme and therefore give officers more time to focus on more complex cases and improvements to customer service.

10.64 Officers consider that the following restrictions on permitted development should be considered if Article 4 directions are considered appropriate:

10.65 **Class A – The enlargement, improvement or other alteration of a dwellinghouse**

Removal of whole of Class A except for:

1. Single storey rear extensions with flat roofs to a maximum depth of 3m on terrace and attached properties (semi detached) and 4m for detached.
2. Rear conservatories with glazed pitched/mono pitched roofs to a maximum depth of 3m on terrace and attached properties (semi detached) and 4m for detached.

Extensions to have a maximum height of 3m for flat roofs and 4m for conservatories. All proposals to be subject to conditions contained in GPDO. In effect these amendments allow (e) (i) of Class A

3. Window replacements and alterations provided that the windows match existing in terms of details (transoms/mullions/glazing bars)

4. Single storey side extensions not exceeding 3m in height and projecting no further than the rear wall of the dwelling

10.66 **Class B – The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.**

In 2014 the Council approved a new policy approach for the installation of Solar PV, Thermal equipment, wind turbines, flues, new chimneys, dormer windows, roof lights, sun pipes, aerials and antenna and any other alterations to the roof of a property covered by the Estate Management Scheme.

- Estate Management Consent will only be granted for energy efficiency measures and other roof alterations where they are sited on the rear or side roof slope and are sited to minimise the effect on the external appearance of the building.
- Estate Management Consent will only be granted if the proposed alteration, when viewed from any surrounding public vantage point does not have a detrimental impact on the character and appearance of the streetscene and the wider amenities and values of the area.
- Exceptions to this Policy approach will apply where, in the judgement of the case officer the architectural design and style of an individual property or the wider character of the area means that an alteration on a principal roof slope of a property would not have a detrimental impact on the character and appearance of the streetscene and wider amenities and values of the area.
- In all cases the decision maker will continue to weigh the environmental benefits of energy efficiency measures against the visual impact.

It is anticipated that this class will be removed in accordance with the above policy.

10.67 **Class C – Any other alteration to the roof of a dwellinghouse**

Removal of whole of Class C except for rooflights on the rear or single storey rear/side extensions

10.68 **Class D – The erection or construction of a porch outside any external door of a dwellinghouse**

Removal of whole of Class D

10.69 **Class E – The provision within the curtilage of the dwellinghouse of—**

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

Removal of Class E except for:

- Garden sheds and green/glass houses with a maximum footprint of 3m x 3m for attached properties and 5m x 4m for detached properties.

- Maximum ridge height of 3m with a dual pitched roof and 2.5m in the case of a garden shed within 2m of any boundary of the property.

- Materials – timber construction with felt only for sheds and wood or aluminium frames with single glazing for greenhouses

- Containers not exceeding 3500 litres

- Garden ponds of a certain size (for example not to exceed 25% of the rear garden)

10.70 **Class F – The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or**

(b) the replacement in whole or in part of such a surface.

Removal of whole of Class F except for hardstandings to side and rear of the property or to the front that do not exceed 50% of the front garden (side being no further forward than the original front wall of dwelling)

10.71 **Class G – The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse**

Removal of Class G except for alteration/replacement of chimneys, flue or soil and vent pipes on a like for like basis.

10.72 **Class H – The installation, alteration or replacement of a microwave antenna on a dwellinghouse or within the cartilage of a dwellinghouse**

Removal of Class H except for standard TV aerials and the alteration/replacement of a microwave antenna on a like for like basis and antennas/satellite dishes (maximum of one dish not exceeding 60cm) that do not face onto the highway and aren't visible from a highway

N: B – Planning permission is required within a conservation area for antenna which is located on a chimney, wall or roof slope which faces onto, and is visible from a highway.

<u>Part 2, Minor operations</u>

10.73 **Class A – The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.**

Removal of Class A apart from the erection of fences and walls between rear gardens no greater than 1.5m. There is an issue of consent not required for fences and walls but is required for the removal of hedgerows. The removal of the hedge can't be controlled under Planning legislation but a restriction on the height of a fence would, in most cases mean that anyone planning on erecting a fence would keep an existing hedgerow greater than 1.5m or not remove the hedge in the first place for security and privacy purposes

There are other alterations allowed under the Order such as Part 2, Class C which allows the application of colour (painting) to a building. However, as part of the review in 2008 Members allowed the painting of a building subject to the colour being in keeping with the colour of others in the neighbourhood. This can be taken away other than for repainting the exterior in a colour to match surrounding properties.

Furthermore, the removal of Class B which is the formation of a means of access to a highway would be dependent upon the street by street review as the Scheme only applies to curtilages of properties and there may well be a number

of instances where access onto the highway is straight onto the highway. This would be clarified as part of the review.

10.74 **Class F – The installation, alteration or replacement on a building of a closed circuit television camera to be used for security purposes.**

Removal of whole of Class F on front/side elevation

Part 14 – Renewable energy

10.75 **Class A – The installation, alteration or replacement of microgeneration solar PV or solar thermal equipment on—**

(a) a dwellinghouse or a block of flats; or

(b) a building situated within the curtilage of a dwellinghouse or a block of flats.

Under this class the installation of solar PV or solar thermal equipment, stand alone solar within the curtilage of a dwelling or block of flats, ground source heat pumps, water source heat pumps, biomass heating systems, air source heat pumps and wind turbines. As part of the recent review into roof alterations the Council now takes the approach set out in 4.18 and it is therefore recommended that these rights be removed or altered in accordance with this policy.

10.76 **Part 2, Class C – Exterior painting**

This class permits the painting of the exterior of any building or work. The removal of this right would need to be applied to mirror the provisions in Appendix (4) of the Scheme.

<u>Evaluation</u>

10.77 In deciding whether an Article 4 direction might be appropriate, one of the factors that local planning authorities can consider is whether the exercise of permitted development rights would undermine the visual amenity of the area or damage the historic environment. Given this option results in the effective termination of the Scheme this is a compelling reason for such use.

10.78 There should be no difficulty in distinguishing between different areas in the application of the Scheme and it is possible for the Council to seek to vary the provisions of the Scheme differently by area in response to, for example either current considerations or historical works that had been done in breach of the Scheme but in relation to which the Council could not or has chosen not to enforce. This power is very broad and encompasses any ‘change of circumstances’ that makes the change appropriate in those circumstances’. A good example of this is streets where a number of authorised and unauthorised hardstandings have, over time significantly altered the character of the area that makes further restrictions for additional hardstandings untenable.

10.79 Any replacement of the Scheme would need evidence relating to the creation of the Scheme, its evolution, attempts to enforce, costs of administration and enforcement and why such variations in reality are the best way of preserving the Scheme that still continues to deal with the most serious breaches.

10.80 Officers have historically considered that the replacement of the Scheme following the implementation of Article 4 directions across a wider area of the town than currently administered under the 'pink' areas would enable a significant amount of small scale and relatively minor works to no longer fall within the control of the Development Management Service. In turn, this would give officers a more appropriate amount of time to focus on more complex proposals in addition to allowing more time to be spent on improvements to service delivery. Such an approach would also assist in preserving the Council's reputation whilst still controlling the types of development that could, if left unchecked erode the special architectural qualities and character of the town. Enforcement of any breaches of this would be carried out under normal planning powers and therefore would be more efficient, effective and less costly than any future high court action. Given the fragmented coverage of the Scheme, officers consider that a targeted review of the whole town would need to be undertaken to establish those areas where certain developments would need to be controlled.

10.81 Such a review would help overcome the current discrepancy (and perceived unfairness) of the Scheme not affecting all homes and to also take account of those built since the Scheme came into effect. Such an approach is consistent with advice given by the Town and Country Planning Association in their Policy Advice Note: '*Garden City Settlements'*, October 2008.

10.82 The Council could also use the opportunity of the Article 4 Direction to ask residents which alterations are important to them and also to assess which aspects of alterations would have a significant impact on the character of the town.

10.83 The benefit of following this course of action is that the council could use their existing powers to issue enforcement notices for breaches of the Town and Country Planning Act, at a reduced cost (compared to injunctive relief). This would enable effective and proportionate enforcement of those requirements of the Scheme brought within the scope of the Town and Country Planning Act using existing statutory powers.

10.84 A disadvantage is the removal of hedgerows (and some other works such as removal of trees) could not be controlled by the Town and Country Planning Act 1990 (as amended), in officers' experience most hedgerow removal takes place to access hardstandings which have been created to park vehicles. Hardstandings themselves can, as indicated above, be controlled should permitted development rights be removed. The removal of some trees outside of Conservation Areas could be controlled by Tree Preservation Orders.

10.85 A combined disadvantage/advantage is that an Article 4 Direction would cover large areas of the town. This means in those areas which would be covered all properties would be subject to the Article 4 Direction reducing the inconsistency and confusion between property tenures. However, this means that a number of residents would now have a new level of control for alterations to their properties which does not currently exist.

The Article 4 Process

10.86 The process of issuing Article 4 directions, the mechanism for removing permitted development rights, requires that notice of the proposed order be given to the owner and occupier of each property affected as well as being locally advertised. There are about 11,000 homes in the EMS area that would need to be contacted by the Council at three different stages of the process to issue an Article 4 direction. The cost of printing and postage alone at each stage is likely to be in the region of £1.50 per property (£16,500) plus advice from specialist Counsel (about £5,000) in addition to the significant amount of officer time required to organise the process. However, if the number of owners or occupiers makes individual service impracticable then notification can be carried out by site notices and press adverts. This would significantly reduce the costs associated with the direction. Subsequently any representations from affected parties must be considered by the Council prior to confirming any order.

10.87 Provided there is justification for both its purpose and extent, it is possible to make an Article 4 direction covering:

- Any geographic area from a specific site to a local authority wide
- Permitted development rights related to operational development or change in the use of land;
- Permitted development rights with temporary or permanent effect.

10.88 In procedural terms there are two main types of article 4 direction:

- Non-immediate directions (permitted development rights are only withdrawn upon confirmation of the direction by the local planning authority following local consultation); and
- Immediate directions (where permitted development rights are withdrawn with immediate effect, but must be confirmed by the local planning authority following local consultation within six months, or else the direction will lapse).

10.89 The Council must consider whether 'the development to which the direction relates would be prejudicial to the proper planning of the area of constitute a threat to the amenities of their area'. Officers consider that the amenities of the town could be considered to be under threat given the variation/termination of the Scheme which is required to resolve the less than universal coverage of the Scheme both in terms of area and tenure which has led to ongoing problems of enforcement and reputation.

Why an Immediate direction?

10.90 Officers have included this as the most appropriate option because if a non immediate Article 4 is proposed then the council would have to continue administering the Scheme in the time taken to get a non immediate Article 4 (12 month period before it comes into effect) in place the issues associated with the administration and enforcement of the Scheme would still persist.

In terms of the process for an immediate direction, the following steps would be required:

1. Carry out review of amenities and values of Welwyn Garden City

2. Draft immediate Article 4 direction

3. Serve notice on the owner/occupier of every part of land to which the direction relates. Although individual service is not required if impracticable because of numbers and if owners/occupiers are not known.

4. Notify the Secretary of state on same date notice is given to owner/occupiers

5. Direction comes into force on the date on which the notice is served if individual service is impracticable the date on which the notice is first published or displayed.

6. There is a 21 day period for representations specifying the date the direction will come into force (at least 28 days from the date of the notice).

7. Consideration of any representations

8. The direction expires at the end of the period of six months unless confirmed by the council.

9. Notice of the direction is given in the same manner that it was publicised

10.91 In all cases notice of an Article 4 direction must:

- Include a description of the development and the area/ site to which the direction relates (as the case may be);
- Include a statement of the effect of the direction;
- Specify that the direction is made under article 4(1) of the GPDO;
- Name a place where a copy of the direction and a copy of a map defining the area/ site to which it relates (as the case may be) can be seen at all reasonable hours;

Compensation

10.92 There are circumstances in which local planning authorities may be liable to pay compensation having made an Article 4 direction. The Council may be liable to pay compensation to those whose permitted development rights have been withdrawn if they subsequently:

- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 direction; or
- Grant planning permission subject to more limiting conditions than the GPDO [the 1995 Order] would normally allow, as a result of an Article 4 directions being in place:

on any application made within 12 months of the order coming into force.

10.93 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights. All claims for compensation must be made within 12 months of the date on which the

planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GPDO). Where permitted development rights are removed (by a new Article 4 direction) with at least 12 months notice, no compensation is payable to householders and subsequent works in the categories covered by the Article 4 direction would then require planning permission.

10.94 Officers consider that there are not likely to be many, if any claims for compensation and the benefits to both the amenity of the town and the potential issues regarding leasehold property not falling within the Scheme outweigh the benefits of a delayed implementation of an Article 4 Direction.

10.95 Any enforcement action for matters that represent a breach of planning control is likely to consist of issuing statutory planning enforcement notices. Whilst there is a cost involved in the terms of officer time in such a process, there would not be any other additional financial implications for the Council.

10.96 Where permitted development 'rights' have been removed from dwellinghouses no fee is currently payable for planning applications, although previous Ministerial statements have indicated that this may change in the future. However as no fee is currently required for applications for approval under the Scheme, with the exception of retrospective applications, it is not anticipated that there will be a significant reduction in fee income.

<u>The period between notification of Article 4's and removal of scheme</u>

10.97 As soon as notice of the immediate directions is given then the requirements of the Article 4 direction come into force. This results in a situation whereby there could potentially be a requirement for residents to seek dual consent under planning legislation and under the Scheme as any application to amend or remove the Scheme would not yet have been made. For those works permitted by the GPDO that consent has not been taken away for then the Council could decide that consent under the Scheme is not required although this would need clear and effective communication. Officers consider that if individual notice is required then this information could be included with that correspondence, which could also include information relating to the release of land ownership covenants via Corporate Property.

10.98 During the process of writing this report, it has been suggested that Welwyn Garden City town centre also be included in any future Article 4. There is an argument that with a planning system that is only going to become more permissive in terms of permitted development, that not withdrawing permitted development rights in such areas and for example, on existing commercial properties such as single storey office buildings or shops that could be converted to a dwelling in the future, would have future implications. Given the timing of this report officers will consider this as part of the review as per recommendation 2 and the findings will be reported back to members in accordance with recommendation 4 of this report.

11 General Financial Implication(s)

11.1 It is clear that the Scheme is taking up a significant amount of resources in determining and negotiating applications that require no fee, dealing with enforcement matters, writing written reports, attending the Panel (and the associated costs with this additional meeting) and this is clearly disproportionate to the income that is being received from retrospective applications. Since 1st April 2008 the total amount of fees obtained through retrospective applications amounts to c. £19,000. This is significantly less than the cost of the overall time that has been taken in administering the Scheme.

Fees and Charges

11.2 There is no annual subscription payable by those who are bound by the terms of the Scheme, nor is there a fee for applications for consent under the Scheme with the exception of retrospective applications. This contrasts with other similar Schemes, for example Hampstead Garden Suburb Trust, who employ 12 members of staff to administer their Scheme, charge an annual subscription to cover the previous year's actual costs and have a scale of charges for applications.

11.3 The Scheme itself makes provision for the recovery of a reasonable fee for the approval of such plans elevations sections and specifications drawn to support an application for consent. It would be open to the council to seek to vary the Scheme in this regard in light of the funding considerations it now faces and the increasing economic difficulty in successfully enforcing the Scheme. However, it is uncertain that a tribunal would support a retrospective charge in that regard. The fact that certain works may also require planning permission and so attract the fees payable under that legislation is unlikely to affect the imposition of reasonable charges under the Scheme.

11.4 Furthermore, the Task and Finish Group previously decided not to pursue the issue of fees for Scheme applications (apart from retrospective applications) on two grounds:-

1. To encourage the submission of applications before works take place

2. The reputation of the Council, whereby the Planning Department is seen to be asking for two fees (planning and estate management) to consider the same works in parallel with similar considerations.

Costs of Enforcement

11.5 Seeking injunctive relief is the only means of taking enforcement action for breaches of the Scheme. Prior to seeking injunctive relief it is likely that the Council would also need to resource independent and binding arbitration by a RICS member. See paragraphs 11.9 – 11.15.

11.6 Injunctions, usually obtained from the High Court, are powerful enforcement tools. However it is necessary to employ external legal support to seek the grant of an injunction, in addition to the costs of the Court itself. Officers' consider that it is unlikely that those costs would be recouped in full from any defendant.

11.7 Whilst the cost of each individual case will vary, it is possible to give a general guide to likely financial implications. A website for a firm of specialist solicitors advises their clients that "*injunctions are in general an expensive and time consuming remedy and costs can quickly run into thousands and indeed tens of thousands of pounds.*" This view is supported by a recent conversation with the Manager of a similar Scheme. She informed officers that their initial costs of obtaining an injunction for a current case (involving the insertion of UPVC windows and the creation of a hardstanding) was circa £40,000. She stressed that their barrister's costs were '*very reasonable'* but added that they now need to go back to the High Court to instigate a further 'contempt' hearing as the property owner has not complied with the injunction. This will lead to further substantial costs.

11.8 Should a defence be mounted under the terms of the Human Rights Act 1998 it is possible that costs could escalate even further should that issue be progressed through all the levels of appeal available.

The issue of Arbitration

11.9 Any dispute or disagreement in relation to the Scheme, between the Council and an owner shall be determined by arbitration by a person nominated by the Royal Institute of Chartered Surveyors. Paragraph 8 of the Scheme provides that either the Council or the property owner may refer any dispute or disagreement with regard to the administration or interpretation of the Scheme to a single arbitrator.

11.10 Members may recall that the Estate Management Panel recently authorised officers to offer the independent arbitration provision of the Scheme with regard to a particular breach, relating to the erection of a large satellite dish. In that particular case the arbitrator found for the Council and the property owner has now removed the satellite dish. In this case however, the Council did not seek for the costs to be paid by the owner as it was essentially a test case.

11.11 During the course of that process officers' noted that since the Scheme was introduced in 1973 the Arbitration Act 1950 has been updated and superseded by a further Act. Arbitration that takes place under the terms of the new Act leads to an 'award' that is final and binding on both parties.

11.12 Unless the parties agree otherwise, the Act provides that costs will be awarded on the general principle that costs should follow the event. Furthermore the award may be enforced by either the County or High Court in the same manner as a judgment or order of the court to the same effect.

11.13 Initial advice from Legal is that it may be better to pursue any such future claims through the High Court as the County Court may not be familiar with claims other than those relating to cash awards.

11.14 Should the Council follow that route it is likely that the costs would be similar to those involved in applying for injunctive relief, although again costs normally follow the event in such cases. However to date it has not proved necessary to make such a decision. Members should also be aware that following the meeting of the Estate Management Scheme Panel on 15 June 2015 further arbitration has been authorised.

11.15 The Arbitration process does have potential risks for the reputation of the council if a number of cases that are being requested authorisation to pursue this course of action are successful and this could potentially undermine the issue of effective enforcement action being reason for applying or the Article 4's and any variation to the Scheme. However, it should be noted that this process is only available to the Council with regard to freehold residential properties within the designated ('pink') areas of Welwyn Garden City. No such process is available for leasehold properties, right to buy properties or for commercial or council properties as they are not controlled by the Scheme as such. Accordingly the wider use of this power may further highlight the different restrictions that apply to the (sometimes neighbouring) properties within the Scheme areas.

Future Costs

11.16 The cost of the work associated with the Article 4 directions will be in the region of £67,000-72,000 for this financial year (2015-2016). This cost is derived from the following estimates:

- Approximately £15-20,000 of Principal Major Developments Officer time to undertake the area wide review, draft the Article 4 directions and additional work associated with the outcomes
- Consultation and notification of Article 4 Direction, £30,000 (This is because EMAP have suggested that individual service is carried out, see Para 9.90)
- Legal advice costs approximately £10,000, subject to the extent of advice sought
- Existing staff costs (non PMDO) and all other incidentals £12,000.

11.17 In terms of the subsequent termination or variation of the Scheme at the High Court, officers estimate that this could be in the region of £35,000-40,000 for legal representation throughout the process and approximately £20,000 of officer time. This gives a total of £55,000-60,000 for 2016/2017 and for the whole process, £132,000-160,000.

11.18 This compares to an estimated cost of managing the Scheme on an annual basis of approximately £80,000 – 90,000. However, this figure does not include any costs relating to enforcement of the Scheme as this figure is largely unknown, although officers anticipate that based on similar cases elsewhere where similar Schemes operate, legal costs in relation to the issue and service of an injunction could be between £30,000-40,000 per case. In the case of Arbitration it would be in the region of £2,000-3,000 per case (inc VAT). However, if the owner does not comply with the order then further work and legal representation would be required which would result in significantly greater legal costs. The average income received in relation to the Scheme is approximately £7000 per annum.

11.19 One important factor is that there could also be a significant financial benefit to the Council from the release of covenants as landowner. Even if the Scheme is removed then consent from the Council would still be required under the terms of the lease for Leasehold properties and for privately owned properties which used to be Leasehold and contain covenants in the land transfer which the council is the beneficiary of. This could amount to a significant sum of money because fees

for covenant release range from £57.25 plus VAT for 'minor' works to £800 plus VAT for anything which requires greater consideration and investigations such as two storey extensions. The Development Management Service receives on average 500-600 EMS applications per year. Whilst an exact figure could not be put on the number of applications that would still require covenant release, officers estimate it would be a significant proportion. The management of consent under the covenants would be dealt with by Corporate Property, who already manage consents in areas outside of the Scheme and the resourcing requirements for this will need to be reviewed before a final decision is taken by Members to issue any future directions.

11.20 There would be a cost associated with dealing with planning applications submitted as a result of any Article 4 direction(s) because if the development would have been permitted development if the right had not been withdrawn it does not attract a fee. However, whilst the exact impact would be dependent on the limitations applied under Article 4 in effect the impact would be neutral (even less because such things as sheds no longer will require any application) because the consideration of EMS applications takes a considerable amount of officer time to resolve. There are opportunities for a simplified process for applications submitted as a result of the imposition of Article 4 directions which would save even more officer time, for example a simplified checklist.

12 Equality and Diversity

12.1 The report sets out an approach to ensure that an approach in administering the Scheme (and the areas where there is the most potential for concerns regarding equality and diversity) is considered. Given the range of options contained within this report, an Equality Impact Assessment (EIA) has not yet been carried out in connection with the proposals that are set out in this report. The Equality and Diversity implications of approaches will be considered in any future reports. An assessment of any Equality or Human Rights impacts will be considered on an individual case basis if the Panel resolve that enforcement action should be investigated.

13 Policy Implications

13.1 This report has been written taking into account other areas of national and public policy where appropriate. The most relevant of which includes the policy advice note created by the Town and Country Planning Association and English Heritage entitled '*Garden City Settlements'* (October 2008) which advises that local authorities should ensure that there is an up to date Conservation Area Appraisal in place and should undertake assessments to establish the application of Article 4 Directions.

14 Conclusions

14.1 As illustrated by the previous reports and the Task and Finish Group, there are no easy or obvious solutions in relation to the future management and enforcement of the Scheme. To move forward successfully the Council needs to be clear about the aspects of the Garden City it wishes to protect, or not.

14.2 Welwyn Garden City is one of only two garden cities in the United Kingdom. It is also arguably the finer example; boasting a more successful employment area, better range of town centre facilities, more epic scale of architecture and

landscape, a stronger hierarchy of tree-lined streets and better preserved residential areas.

14.3 There is no doubt that the garden city movement does represent a significant stage of development in town planning, as Howard and other industrialists proposed and built alternatives to the back-to-back terraces and dark satanic mills of London, Manchester and Glasgow. The garden city movement is a core academic module in town planning courses around the world and Letchworth and Welwyn Garden Cities are its touchstones, visited by students and practitioners from the US, China and other rapidly developing countries interested in their masterplanning, architecture, landscaping and land-value capture arrangements. They are also one of the foundation blocks of planning systems throughout the world and are repeatedly referenced in the design and construction of new towns and cities. They cannot be repeated and without protection they cannot be studied, learned from, copied and adapted.

14.4 It is for all of the above reasons that the Council must take its responsibility as the Local Planning Authority and as a landlord seriously, apply its policies rigorously and take swift and robust enforcement action against contraventions. Neighbourhoods should not become living museums, and must be allowed to adapt themselves to modern lifestyles and technologies, but residents should be restricted in the range and extent of changes they can make to their property in order to protect and retain as much of the original garden city ethos as possible.

14.5 There are considerable risks for each of the options outlined within this report. The recommendations are based on minimising these risks to the Council whilst maintaining the ethos of the Garden City and hence reputation of the Council plus reducing confusion and ‘red tape’ for residents.

14.6 Legal advice indicates that it would be challenging for the Council to demonstrate that termination of the Scheme without alternatives is appropriate, not least because the Council has, over the past few years given clear support for the Scheme and accepted the Scheme has real value. However, if the Council could demonstrate that there are better ways of substantially achieving the objectives of the Scheme then that could be a powerful rationale supporting termination of the Scheme.

14.7 Whilst officers have been proponents of managing the Scheme as effectively as possible this is mainly from a philosophical perspective. The realities of the day to day administration of the Scheme including ongoing issues with enforcement and the continuing complaints about this and the effectiveness of the current Scheme have taken valuable time away from delivering the Development Management Service more efficiently and effectively.

14.8 In seeking to make the process as easy and user friendly as possible for residents in terms of gaining consent the Council has inadvertently made it harder and more challenging to successfully communicate and enforce against breaches. The requirement for different action to be carried out by different departments would undoubtedly continue to result in further complications and deterioration in reputation for the Council through a lack of confidence in the Council to treat all residents fairly.

14.9 Whilst previously officers have considered a combined approach of Article 4 Directions and the variation of the Scheme would be the best option as it would maintain the fine balance between the Council being seen as undermining the ethos of the Garden City and being able to effectively manage (and enforce) the Scheme, officers now take the view that given the findings set out in this report in relation to the clauses that can be controlled by other legislation, a strong and compelling case could be made for its effective replacement with Article 4 Directions and subsequently, its termination.

14.10 In terms of process, any application to vary or terminate the Scheme would need to be made to the Property Chamber of the First-Tier Tribunal and notice would have to be given in order that any interested parties can make representations.

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