

WELWYN HATFIELD BOROUGH COUNCIL
CABINET – 7 NOVEMBER 2017
REPORT OF THE EXECUTIVE DIRECTOR (PLANNING, PUBLIC PROTECTION AND GOVERNANCE)

WELWYN GARDEN CITY ESTATE MANAGEMENT SCHEME

1 Executive Summary

- 1.1 Cabinet first considered a report on the review of the Welwyn Garden City Estate Management Scheme (EMS) in July 2015 to seek to resolve ongoing problems and concerns regarding the Scheme's administration, notably the different enforcement arrangements for freehold and leasehold properties. The July 2015 report covered in significant detail a number of alternative options that could be considered with the main thrust of the report being to look at replacing the Scheme with one or more Article 4 Directions and to apply to the High Court Land Tribunal to vary or terminate the Scheme.
- 1.2 In August 2016, Cabinet considered a report on the Welwyn Garden City Estate Management Scheme which sought agreement to an 8 week period of public consultation on alternative options for the future of the Scheme. The consultation took the form of a letter to all residents within the Scheme area and a slightly different letter to all other residents who live within Welwyn Garden City. The letters were accompanied by an information brochure and a questionnaire. The consultation took place during October and November 2016 and was publicised on the Council's website and in press articles. Responses were received from residents of the town and those from elsewhere.
- 1.3 The consultation was undertaken following legal advice on what, at the time, Officers considered may be the intended way forward which was to present a case to the High Court that the Scheme should be either varied or terminated, and replaced with one or more Article 4 Directions. Legal advice specified that an Article 4 Direction would need to provide at least equivalent protection as the existing Scheme and that issues that cannot be satisfactorily covered by an Article 4 Direction should be retained as part of the Scheme. In addition, the Council was advised to publicly consult on this, and alternative options, and to analyse the responses before proceeding.
- 1.4 In the proceeding months since the consultation, Officers have analysed the responses that were received from both residents of Welwyn Garden City, and some from further afield with a view to finding a solution which is fair and equitable to all of the residents of Welwyn Hatfield Borough. In particular, the current funding arrangements for the management of the Scheme which result in funding coming from planning application fees and Council Tax.
- 1.5 The purpose of this report is to summarise the results of the consultation, identify key themes in the responses, update on latest legal advice and set out a recommended way forward in order to seek a resolution to the ongoing challenges

of the Estate Management Scheme. It is not proposed to reiterate the background to the Scheme, and how it is administered at present, as this has been comprehensively detailed in previous reports to Cabinet which can be viewed at <http://www.welhat.gov.uk/article/6773/Cabinet-Meetings-Archive>

2 Recommendations

- 2.1 That Cabinet agrees to the principle of creating an EMS team to determine EMS applications and seek to resolve breaches of the Scheme through negotiation and enforcement action.
- 2.2 That Cabinet agrees to the principle of establishing fees for EMS applications, to cover the costs of an EMS team. Indicative fees are set out in this report.
- 2.3 That Cabinet agrees to the production of a Welwyn Garden City Estate Management Scheme Design Guide. This will be funded from the existing review budget and undertaken by suitably qualified consultants following a procurement exercise.
- 2.4 That Cabinet agrees an eight week period of public consultation which seeks views on the principles set out above. This will take the form of a letter to every property in Welwyn Garden City. It will also include meetings and workshops with residents and community groups to inform the design guide.
- 2.5 That officers prepare a final report which sets out the responses to the public consultation, details the arrangements for an EMS team, details the fees for EMS applications and proposes the adoption of a design guide.

3 Explanation

The 2016 Consultation

- 3.1 During the course of October and November 2016 the Council consulted approximately 15,000 households in Welwyn Garden City, that is to say all known addresses, both within and outside the EMS as it is currently defined. Each household was sent a covering letter, information booklet and questionnaire about the EMS and potential options for how it could be administered in future. Slightly different covering letters and questionnaires were sent depending on whether a property was located within or outside the EMS, with a small number of questions tailored to each category of property. The questionnaires were also available for completion online for people who do not live within Welwyn Garden City.
- 3.2 Approximately 1,700 responses were received, representing an 11% response rate. This is a good rate of return compared with many public consultation exercises that the Council carries out. A broad range of individual comments on the proposals were made alongside the responses to the specific questions that were posed. Whilst the individual comments were wide ranging, many referred to the need for equity in the Scheme and for the character of the Garden City to be maintained.
- 3.3 There are a number of important results that have emerged from the questionnaire responses and which point to a desire amongst residents to see the ongoing protection of Welwyn Garden City in a fair and equitable way.

- 3.4 In particular, 86% of respondents who live within the EMS area think that the EMS rules should be applied in the same way, regardless of tenure. This figure is 73% amongst residents who live outside the EMS area.
- 3.5 Further, 81% of respondents who live within the EMS area think that the context and history of Welwyn Garden City justifies additional rules and controls. This figure is 80% amongst residents who live outside the EMS area.
- 3.6 Reasons given for the responses set out above include equality and fairness and the need to preserve the Garden City ethos and character of the town. In particular there is a perceived unfairness amongst residents regarding the way that the Scheme is enforced against freeholders and leaseholders. Also that strong protections are required in order to maintain green spaces, trees, verges and other aspects that are unique to the Garden City. Respondents also strongly support the view that the historical significance of the Garden City movement justifies the extra controls that exist.
- 3.7 Residents both within and outside the EMS area were given the opportunity to express a preference for one or more of a number of options for how the EMS could be administered or modified in future. The results are set out in the table below.

Option	EMS Resident	Non-EMS Resident
Maintain status quo	38%	33%
Replace with Article 4 Direction	16%	20%
Terminate Scheme without alternative controls	8%	5%
Find another body to administer	1%	3%
Combination of options	11%	20%
Another option	25%	19%

- 3.8 Also of note is the response given to a question regarding application fees. Existing residents of the EMS area, which is those who currently have to make applications to the Council for EMS consent in some circumstances, were asked if they would be prepared to pay an application fee. 46% of those who responded said that they would, and 54% that they would not. The Council's questionnaire did not suggest an application fee level but it was suggested by a number of respondents that a fee in the range of £50-£100 may be acceptable, although this was not widely supported.
- 3.9 A question regarding the aspects of properties that residents both inside and outside consider to be most important revealed that trees and hedges are considered most important to both groups, followed by front elevations of houses and front gardens, windows and roofs. These are all matters which are controlled by the EMS and support the conclusion that its retention is supported by residents.
- 3.10 The majority of respondents to the consultation considered that the west side and the Howardsgate/town centre areas are those which are best preserved and maintained as part of the EMS. Respondents in both groups were fairly evenly split as to whether more attractive areas should be given more protection than others, although some respondents note that they do not consider this to be a reason to revoke the Scheme in other areas as the Council should look to improve those areas instead.

- 3.11 Residents were also asked whether they considered that the original EMS rules, which came into effect in the 1970s, are still appropriate for today. 71% of residents who live within the EMS area considered that they were, as did 45% of residents who live outside the EMS area. This represented the majority of respondents and demonstrates further support for the objectives of the Scheme
- 3.12 It is clear from the responses received to the consultation that residents of the town value the EMS in terms of the protection that it provides to the special character of Welwyn Garden City as the World's second Garden City. The responses to the question regarding how the Scheme should be administered in future are also clear, but only insofar as they do not comprehensively identify one single option as being preferred. As a result of this ambiguity, Officers have continued to consider the available options.

Options

- 3.13 The options given further consideration by Officers following the consultation are:
- Maintaining the status quo
 - Replace the Scheme with an Article 4 Direction
 - Introduce an application fee and retain the Scheme

Maintaining the status quo

- 3.14 If the Council were to decide to maintain the status quo this would be likely to mean that all of the existing administrative and enforcement challenges of the Scheme would remain. The EMS would continue to be managed within the planning department and EMS applications would continue to be dealt with by professional planning Officers alongside their planning application caseload. The EMS would continue to be funded by a combination of planning application fees and Council Tax. The challenges associated with the different enforcement regimes for freehold and leasehold properties would remain.

Replace the Scheme with an Article 4 Direction

- 3.15 At the time of the last Cabinet report in August 2016, this was considered by Officers to be the favoured approach as it would bring the aims of the EMS within the mainstream planning system. However, legal advice at that time made clear that an Article 4 Direction to replace the EMS would need to be at least as effective as the current Scheme, a challenge which could not be addressed in respect of trees and hedges as they are not always part of the planning system. To add to this, the results of the consultation make clear that only 16% of existing EMS residents are in favour of replacing the Scheme with an Article 4 Direction.
- 3.16 Should the Council decide to seek to proceed with an Article 4 Direction, there would be a number of risks that should be considered. Firstly, it remains a lengthy process of approximately 2 years with significant financial costs attached. Secondly, given the far from overwhelming support suggested in the consultation responses, there is a high likelihood of legal challenge being made to this option. Legal advice has suggested that, given the low level of support for this option, the Council would be unlikely to be successful in any attempt to vary/delete the EMS subsequent to

the imposition of an Article 4 Direction. It is therefore not in the public interest to proceed with this option.

Introduce an application fee

- 3.17 The option to introduce an application fee for residents who live in properties within the EMS area is one which would deliver the greatest degree of fairness and equity to residents of the Borough, although it is acknowledged that it will not deliver absolute fairness. It would enable the creation of an EMS team to deal specifically with EMS applications and the enforcement and resolution of breaches of the EMS. It is acknowledged that the introduction of an application fee was not fully supported by respondents. However, an application fee is something that is common to many of the other towns and settlements where such Schemes exist. Examples of this include Hampstead Garden Suburb and Dulwich Estate. It is noted that Letchworth Garden City Heritage Foundation does not charge an application fee but rather they fund the administration of their Scheme from income generated by land and property that they own within Letchworth Garden City. This is a unique situation and not replicable in Welwyn Garden City.
- 3.18 The introduction of an application fee would enable the Council to more fully resource a team, the sole objective of which would be to administer EMS applications and to investigate and resolve suspected breaches of the EMS. This outcome has been a core objective both of the review as well as residents of the town. Further, this option would maintain the status quo in respect of those properties which are within the EMS area, and required to make an application to the Council.
- 3.19 This option would mean that the Council accepts that it cannot change the 'pink' area; that is the area of the town within which properties are subject to the EMS. This was defined when the EMS was created in 1972 and can only be changed by applying to the High Court Lands Tribunal. Should the Council want the EMS designation to apply to properties in the town more widely, this would also require a justification to the High Court Lands Tribunal.
- 3.20 This option would also mean that the Council accepts that the 'gap' in the rules which apply to freehold and leasehold properties would remain. This may mean that some of the existing challenges, particularly in respect of the effective enforcement of the EMS would remain. In this regard, consideration should be given to the relevant sections of the August 2016 report detailing the differences between freehold enforcement (negotiation, arbitration and Court action in accordance with the EMS Green Booklet) and leasehold enforcement (in accordance with the Law of Property Act 1925).
- 3.21 EMS applications are currently dealt with by planning officers and the administration of the EMS is funded by a combination of planning application fees and Council Tax. The introduction of EMS application fees would improve the current financial situation by ensuring that the administration and determination of EMS applications would be self-funded. It should be noted that, were an EMS application fee to be introduced, this would also be used to undertake enforcement investigations and action against those who breach the Scheme
- 3.22 Officers have sought legal advice in respect of the principle of introducing an application fee. This advice is clear in that the existing Scheme does deal

specifically with the issue of fees and charges. At paragraph 10 of the Green Booklet Appendix the Scheme permits recovery of a reasonable fee for the approval of such plans, elevations, sections and specifications as are necessary to support an application for consent under the EMS. It is noted however that there is no other provision for imposing, for example, an annual maintenance, monitoring or implementation fee. The legal advice obtained goes on to express the clear view that, should the Council decide that the introduction of an application fee is the preferred option, then this should be subject to public consultation, as has been the previous custom and practice of the Council.

An Estate Management Scheme Team

- 3.23 It is intended that an EMS team could be grown out of the existing Development Management service. This would enable the team to have built-in resilience for periods of absence as well as maintaining a link with planning officers who may be determining planning applications at the same property. The EMS team would continue to use the Planning Support team and MasterGov IT software that is already in place to register applications and undertake necessary consultations. It is estimated that a team of two officers could administer the EMS at an estimated cost of £76,000 including on-costs.
- 3.24 A team of two officers, one senior and one officer, subject to the outcome of a job evaluation process, is considered to provide sufficient capacity to deal with pre-application advice requests, the determination of applications and the investigation of breaches of the EMS, all of which would be eased by the existence of a comprehensive EMS design guide. The determination of applications related to works to trees would remain part of the Landscapes and Ecology team, as at present. By way of context, the Council received 1,043 non tree related EMS applications over the last three years. This would mean each of the two EMS officers would deal with an average of 174 applications per year or 14 per month. This includes site visits, writing up reports and defending appeals. Having regard to the straightforward nature of many of the applications that are received, this is not considered to be an unrealistic caseload. This will allow capacity for the investigation and resolution of suspected breaches of the EMS.
- 3.25 A risk of establishing an EMS team, and applying a charge for EMS applications, is that it raises public expectations in respect of EMS enforcement to an unachievable level. As will be discussed in the next section of this report, officers have sought to recommend a set of application fees which would cover a team of two officers but would also be realistic in the context of the type of applications that are being made to the Council.
- 3.26 In terms of the technical administration of EMS applications, the EMS team would continue to use the same back office system as the Development Management team. The Planning Support team would continue to validate and register applications, collect application fees, consult neighbours and other administrative tasks. The EMS team would determine applications with reference to a new EMS design guide. Decisions would be recorded using tick box and commentary sheets, in much the same way as at present. Most importantly, EMS applications would be determined entirely independently of any related planning applications. This is important because there is a common misconception that planning and EMS are one and the same thing, which is not the case. The Estate Management Appeals Panel (EMAP) would remain in place for the consideration of appeals against

applications that are refused. There would be no further recourse if EMAP upholds the decision. EMS officers, in conjunction with the Head of Planning, would have delegated authority to take action against breaches of the EMS. The agreement of EMAP would be required to proceed to arbitration against freehold properties.

Application Fees

- 3.27 In considering the appropriate level at which to recommend application fees, officers have had regard to both the estimated costs of an EMS team, the type of applications that the Council receives and the charges set for similar Schemes elsewhere in the country. As well as this, officers have considered the impact that different types of proposals can have on the values and amenities of the EMS area and the need to avoid residents being put off from making EMS applications for relatively minor projects, which in turn could lead to an increased demand for EMS enforcement activity. All of this is reflected in the proposed fee table below.

Indicative EMS Fees

	No per year	EMS fee	Estimated Total
<p>Large projects likely to have high amenity impact:</p> <ul style="list-style-type: none"> ▪ Conservatories ▪ Extensions 	<p>Single storey 126 Two storey 40</p>	<p>£30 per sqm To max £500</p>	<p>£45,000 £20,000</p>
<p>Medium projects likely to have some amenity impact:</p> <ul style="list-style-type: none"> ▪ Garage conversion ▪ Sheds and outbuildings ▪ Hardstanding, driveways ▪ New dormers, porches, doors, windows, rooflights, solar panels, chimney, gates, walls, fences, etc 	<p>20 45 60 25</p>	<p>£100</p>	<p>£15,000</p>
<p>Small projects that may have some amenity impact:</p> <ul style="list-style-type: none"> ▪ Replacement dormers, porches, doors, windows, rooflights, solar panels, chimney, gates, walls, fences, etc 	<p>35</p>	<p>£50</p>	<p>£1,750</p>
<p>Tree Work</p>	<p>200</p>	<p>Free</p>	<p>£0</p>

NB: An average size of 12 sqm for single storey conservatories and extensions has been used to calculate the estimated total.

3.28 Proposed fees would form part of a consultation which would include which types of project should be in which category. The proposed fee option set out above proposes a charge for all types of application except for those related to trees, which are also free of charge under the planning system. The scale of the fees is focussed not only on those projects that are likely to take a greater amount of officer time to administer but also those which are likely to have the greater impact on the values and amenities of the town.

4 Link to Corporate Priorities

4.1 The subject of this report is linked to the Council's Business Plan Priorities 2 (to protect and enhance the environment), 3 (to meet the borough's housing needs), 4 (to help build a strong local economy) and 5 (to engage with our communities).

5 Legal Implications

5.1 The legal advice regarding the Estate Management Scheme is set out within the body of this report. The Council is at legal risk if it does not consult on options for the future of Scheme before pursuing any particular option.

5.2 It may be necessary to update the Constitution and Planning Scheme of Delegation depending upon the decision making arrangements that are ultimately implemented.

6 Financial Implications

6.1 This proposal is aimed at creating a fair and cost neutral service, so that the EMS team is financed by the new application fees.

6.2 Public consultation letters to every property in Welwyn Garden City and the appointment of consultants to produce an EMS design guide would be funded from the EMS review budget.

7 Risk Management Implications

7.1 The Council has a responsibility to administer the Estate Management Scheme, but this is challenging given the different enforcement rules for freehold and leasehold properties. There is a risk management implication if the Council does not consider alternative options. A period of consultation demonstrates that the Council is seeking to resolve the current problems with the Scheme but wants to understand the views of the community and those who are affected by the current Scheme and will be affected by any changes before pursuing any particular option.

8 Security and Terrorism Implications

8.1 There are no security or terrorism implications associated with this report.

9 Procurement Implications

9.1 The Council will undertake a tender process for the production of an EMS design guide. There will also be a recruitment process for the appointment of EMS officers.

10 Climate Change Implications

10.1 There are no climate change implications associated with this report.

11 Policy Implications

11.1 The EMS design guide may update some of the existing EMS policies in the glossy brochure.

12 Equalities and Diversity

12.1 An Equality Impact Assessment (EIA) has been carried out in connection with the recommendations in this report. This has identified neutral impacts in respect of all of the protected characteristics, although it is noted that the design guide could contain advice on specialist adaptations for those with a disability.

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Background Papers:

- Review of the Welwyn Garden City Estate Management Scheme, Cabinet, 7 July 2015
- Welwyn Garden City Estate Management Scheme, Cabinet, 2 August 2016