

# AGENDA

## General Overview & Scrutiny Committee

Date: **Wednesday 18 February 2015**

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Time: **10.00 am**

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Place: **The Council Chamber, Shire Hall, St. Peter's Square,  
Hereford, HR1 2HX**

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Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

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If you would like help to understand this document, or would like it in another format, please call Ben Baugh, Governance Services on 01432 261882 or e-mail [bbaugh@herefordshire.gov.uk](mailto:bbaugh@herefordshire.gov.uk) in advance of the meeting.

# Agenda for the Meeting of the General Overview & Scrutiny Committee

## Membership

**Chairman**

**Councillor WLS Bowen**

**Vice-Chairman**

**Councillor BA Durkin**

Councillor AM Atkinson  
Councillor AJM Blackshaw  
Councillor ACR Chappell  
Councillor DW Greenow  
Councillor EPJ Harvey  
Councillor TM James  
Councillor JG Jarvis  
Councillor RL Mayo  
Councillor PJ McCaull  
Councillor AJW Powers  
Councillor A Seldon  
Councillor DB Wilcox

## **Co-optees**

(education items)

Mr P Burbidge  
Miss E Lowenstein  
Mr P Sell

Roman Catholic Church  
Secondary School Governor  
Church of England

## AGENDA

		Pages
1.	<p><b>APOLOGIES FOR ABSENCE</b></p> <p>To receive apologies for absence.</p>	
2.	<p><b>NAMED SUBSTITUTES (IF ANY)</b></p> <p>To receive details of members nominated to attend the meeting in place of a member of the committee.</p>	
3.	<p><b>DECLARATIONS OF INTEREST</b></p> <p>To receive any declarations of interest by members.</p>	
4.	<p><b>MINUTES</b></p> <p>To receive the minutes of the meetings held on 24 November 2014, 2 December 2014, and 14 January 2015.</p>	7 - 28
5.	<p><b>SUGGESTIONS FROM THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY</b></p> <p>To consider suggestions from members of the public on issues the committee could scrutinise in the future.</p> <p>(There will be no discussion of the issue at the time when the matter is raised. Consideration will be given to whether it should form part of the committee's work programme when compared with other competing priorities.)</p>	
6.	<p><b>QUESTIONS FROM THE PUBLIC</b></p> <p>To note questions received from the public and the items to which they relate.</p> <p><b>Note:</b> To ensure that the committee has sufficient time to consider the items, it is not intended that verbal questions will be received from the public at the meeting. Please submit questions in writing no later than <b>4.00pm on Thursday 12 February 2015</b> to <a href="mailto:bbaugh@herefordshire.gov.uk">bbaugh@herefordshire.gov.uk</a>; these should be relevant to the contents of report.</p>	
7.	<p><b>REVIEW OF LEASE RESTRUCTURING WITH HEREFORD UNITED (1939) LTD</b></p> <p>To consider lessons learned from the lease restructuring with Hereford United (1939) Ltd.</p>	29 - 46
8.	<p><b>DRAFT WORK PROGRAMME</b></p> <p>To consider the committee's work programme.</p>	47 - 52
9.	<p><b>DATE OF NEXT MEETING</b></p> <p>The next scheduled meeting is <b>Tuesday 10 March 2015</b> at 10.00 am</p>	



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- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
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HEREFORDSHIRE COUNCIL

**MINUTES of the meeting of General Overview & Scrutiny Committee held at The Council Chamber, The Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Monday 24 November 2014 at 11.30 am** (actual start time 12.15 pm)

**Present:** Councillor WLS Bowen (Chairman)  
Councillor BA Durkin (Vice-Chairman)

**Councillors:** AJM Blackshaw, ACR Chappell, DW Greenow, KS Guthrie, EPJ Harvey, JG Jarvis, AJW Powers and A Seldon

**In attendance:** Councillors CNH Attwood, AW Johnson (Leader), MD Lloyd-Hayes, JW Millar (Cabinet Member), PM Morgan (Cabinet Member), J Norris, GJ Powell (Cabinet Member), PD Price (Cabinet Member) and P Rone (Cabinet Member)

**Officers:** H Coombes (Director for Adults Wellbeing), J Davidson (Director for Children's Wellbeing), G Hughes (Director for Economy, Communities and Corporate), P Robinson (Chief Financial Officer), B Norman (Assistant Director Governance), B Baugh and D Penrose (Governance Services).

Note: This meeting followed on from the Health and Social Care Overview and Scrutiny Committee, where the presentation on the Budget 2015/16 and Medium Term Financial Strategy was received. The presentation was provided in a supplement to the agenda.

**31. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors TM James and DB Wilcox. Apologies were also received from Councillor H Bramer (Cabinet Member Contracts and Assets).

**32. NAMED SUBSTITUTES**

Councillor KS Guthrie substituted for Councillor DB Wilcox.

**33. DECLARATIONS OF INTEREST**

No declarations of interest were made.

**34. MINUTES OF PREVIOUS MEETING**

The minutes of the meeting held on 4 November 2014 were received. Referring to minute 27, paragraph 2, a committee member thanked the Director for Economy, Communities and Corporate for providing comprehensive details about the council's vehicle fleet and said that he hoped that it would be kept up to date. Another committee member drew attention to resolution (b), that 'Committee members be provided with details of the range of council assets and a briefing note on the assumptions being used in relation to the Medium Term Financial Strategy', and said that it was regrettable that the information had not been provided in time for this meeting.

**RESOLVED:** That the minutes of the meeting held on 4 November 2014 be approved as a correct record.

### **35. BUDGET 2015/16 AND MEDIUM TERM FINANCIAL STRATEGY**

The Chairman noted that members had asked a number of questions at the earlier meeting of the Health and Social Care Overview and Scrutiny Committee that were relevant to the remit of this committee and he invited further questions.

The Chief Financial Officer provided answers to a number of questions from committee members, the responses included:

1. The Projected Breakdown of Council Funding Sources 2013/14 - 2016/17 slide (page 8 of the supplement) showed where sources of funding would need to come from over the next four years; as the government funding proportion reduced, the Council Tax and Business Rates proportions increased.
2. Assumptions within the budget plans included an increase in Council Tax of 1.9% and an element of growth in Council Tax resulting from new housing.
3. Attention was drawn to the Budget Consultation slide (page 15 of the supplement) and the statement that 'On average the results indicated a reduction in Council Tax increase to 0.9% from 1.9%'.
4. Reference was made to the treasury management details contained in regular budget monitoring reports to Cabinet and it was confirmed that the loan portfolio was being managed actively, with quality assurance provided by external advisors. It was reported that the authority was taking advantage of low short- and medium-term borrowing rates wherever possible but it was not always beneficial to reschedule existing long-term debts because of the prohibitive penalties involved. The Chief Financial Officer agreed to provide more detail to a committee member after the meeting.
5. It was not anticipated that increased savings in terms of Back Office Services from £200k to £420k in 2015/16 would impact on direct service provision as this principally related to changes in arrangements with the council's back office service provider, Hoople; a related report would be considered by Cabinet in January 2015.
6. The savings plans for Customer & Library Services were consistent with the changes to service delivery agreed by Cabinet on 23 January 2014 (minute 65 refers). The Cabinet Member Corporate Services confirmed that the Masters House redevelopment in Ledbury would co-locate customer service and library facilities. It was suggested that the wording on page 34 of the report be revisited.
7. In terms of 'one off costs to achieve improvements and savings' (page 25 of the supplement), future relief road development work would be capitalised as planned for previously and the reduction in car parking income at Merton Meadow would result from development associated with the link road.

In response to questions from the Chairman:

- i. The Chief Financial Officer advised that gaps in expertise needed to be addressed, especially around change management, but the authority was trying to reduce the use of external consultants over time and this was reflected in the Annual Governance Statement.
- ii. The Leader said that it would not be possible to limit the level of Council Tax increase to 0.9%, as this would require approximately £800k of additional savings.



Responding to a question from a committee member about the recommendations made at the last meeting about proposed changes to the Council Tax Reduction Scheme (minute 28 refers), the Leader drew attention to the risks and pressures outlined in the presentation and commented on the difficulties of identifying alternative savings.

A committee member, noting that asset sales plans had slipped (page 13 of the supplement), said that many people, especially tenants, wanted clarity about the future of the council's property portfolio. The Chairman noted that an assurance had been provided previously that there would be no changes to the policy in relation to smallholdings during the remainder of the current administration.

In response to a question carried over from the earlier meeting, the Chief Financial Officer suggested that ideas for 'pump priming' or 'spend to save' schemes be referred to the relevant director to assess potential benefits and savings that might arise. The Chairman suggested that the authority might wish to examine the concept of 'time banking', as being explored by The City of Cardiff Cardiff Council, to incentivise people to share knowledge and experience across public, private and community sectors.

A committee member, referring to histograms in the presentation (pages 10 to 12 of the supplement), said that consistent comparisons needed to be made. In particular, it was suggested that it would be helpful to understand debt as a proportion of net revenue in comparison to counties. The Chief Financial Officer advised that the comparisons provided had been readily available in the public domain and it would be time consuming to collate and present the material in a different way. He added that the most relevant comparisons for Herefordshire Council were with other unitary authorities.

A committee member commented that a case could be made for further borrowing to invest in infrastructure projects given the historically low interest rates currently available and the average borrowing position of the authority compared to other unitary authorities.

In response to further member comments about comparisons, the Chief Financial Officer said that reserves were relevant to the financial standing of all councils but debt levels could vary significantly between different councils; this could depend on variables such as the type of authority, infrastructure and investment over time. The Leader commented that the range of permutations was almost endless and he considered comparisons with unitary authorities to be the most sensible.

A committee member wished to register a note of concern about the amount included in the 2015/16 budget for one-off change management and the proportion to be financed from reserves, especially as reserves had only recently been increased above the minimum required in the Constitution. The Chief Financial Officer advised that the amount included for change management was £3.418m, of which £1.585m was to be financed from reserves. He commented on the major changes being undertaken to deliver savings and the need for additional investment to support this. The Leader added that the authority would not wish to use reserves automatically and invited members to identify other parts of the budget where savings could be made.

The Chairman thanked attendees for their contributions and asked officers to action the written responses required at the earliest opportunity.

**RESOLVED: That the Budget 2015/16 and the Medium Term Financial Strategy be noted.**

The meeting ended at 1.00 pm

**CHAIRMAN**



**MINUTES of the meeting of General Overview & Scrutiny Committee held at The Council Chamber, Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Tuesday 2 December 2014 at 2.00 pm**

**Present:** Councillor WLS Bowen (Chairman)  
Councillor BA Durkin (Vice-Chairman)

**Councillors:** AJM Blackshaw, ACR Chappell, EPJ Harvey, TM James, Brig P Jones CBE, PJ McCaull, AJW Powers and A Seldon

**In attendance:** Councillors PJ Edwards, J Hardwick, AW Johnson (Leader), JLV Kenyon, MD Lloyd-Hayes, PM Morgan (Cabinet Member), C Nicholls, FM Norman, GJ Powell (Cabinet Member), PD Price (Cabinet Member), P Rone (Cabinet Member) and P Sinclair-Knipe.

**Officers:** R Ball (Assistant Director Place Based Commissioning), M Lane (Construction Manager), B Norman (Assistant Director, Governance) and B Baugh (Democratic Services Officer). Attending as observers: G Hughes (Director for Economy, Communities, and Corporate) and A Neill (Chief Executive) for part. Details of consultants in attendance are given on the third page of this document.

The Chairman explained that the purpose of the meeting was to consider whether Cabinet followed due process in making its decision on the selection of route SC2 as the preferred route for the Southern Link Road (SLR). The Chairman emphasised that the committee needed to focus on the reasons for the call-in and he explained how the meeting would be conducted.

**36. APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Councillors DW Greenow and DB Wilcox. Apologies had also been received from Councillors RI Matthews and J Millar (Cabinet Member Young People and Children's Wellbeing).

**37. NAMED SUBSTITUTES**

Councillor Brigadier P Jones CBE substituted for Councillor DB Wilcox.

**38. DECLARATIONS OF INTEREST**

No declarations of interest were made at the meeting.

**39. QUESTIONS FROM THE PUBLIC**

The Chairman thanked members of the public for their interest and for the fifty questions that had been received. Attention was drawn to Supplement 2 to the agenda which contained the questions, along with officer responses to those questions considered relevant to the call-in; written responses would be provided to the remainder in due course, in the order submitted.

The Democratic Services Officer reported that a draft version of the questions had identified Mr. Bryant as a member of Callow and Haywood Group Parish Council but both Mr. Bryant and the Chairman of the group parish council wished to make it clear that the question had not been submitted on behalf of the group parish council.

#### **40. CALL-IN OF THE CABINET DECISION ON THE SOUTH WYE TRANSPORT PACKAGE**

##### **Adjournment to review the agenda supplements**

A committee member noted that Supplement 2, containing the 'Questions from the public' and the 'Response to South Wye Transport Package Call-in' documents had been published two hours before the meeting and requested that the meeting be adjourned to provide members of the committee with additional time to review the documents; it was also noted that Supplement 1, containing a report by Alan James and an extract from the draft and unapproved minutes of Cabinet of 13 November 2014, had been published the day before the meeting.

The Assistant Director, Governance suggested that an adjournment of an hour should be sufficient for members to familiarise themselves with the documents; it was noted that the response document addressed the matters set out in the call-in notice and provided further detail but it did not raise new issues. In response to a question, the mover of the motion said that he was personally content with an adjournment of an hour. The motion was seconded and agreed by the committee.

##### **Comments by the members that submitted the call-in notice**

Upon the recommencement of the meeting, the Chairman invited the members that submitted the call-in notice to address the committee.

A committee member commented on: the potential complexities of the planning process; the need to be assured that the processes were done thoroughly; the call-in provided an opportunity to review the issues ahead of any challenge; there was a perception of haste and perhaps even pre-determination; he felt that the response document raised more questions than it answered; he considered it difficult to understand some decisions without sight of the original brief to the consultants; four routes options had been ruled out as they impacted on ancient woodland but the route selected would impact on ancient woodland at Grafton Wood; and limited direct consultation with English Heritage could leave the authority vulnerable to challenge.

Another committee member commented on: it was welcomed that the call-in notice had been accepted and the level of public interest was evidence of wider public concerns; in addition to the stated reasons for the call-in, he considered that the decision was based on incomplete and flawed evidence and an unsound option appraisal process, and the consultation was based on misleading and partial information and failed to engage with key stakeholders; and he also considered that the decision could result in a challenge, with the potential for loss of scheme funding.

##### **Executive response**

The Cabinet Member Infrastructure read out a statement, the principal points included:

- Cabinet had selected route SC2 as the preferred route for the Southern Link Road (SLR) at its meeting on 13 November 2014;
- the call-in reasons were noted and Cabinet Members, whilst of the view that the decision was sound, wanted to hear what the committee had to say;
- a comprehensive response had been provided to the reasons in the call-in notice;

- Cabinet had considered the work undertaken by Parsons Brinckerhoff (PB) and the officer report;
- the aim was to promote growth by reducing congestion and enabling access to developments such as the Hereford Enterprise Zone (HEZ), along with environmental and health objectives;
- the consultants had looked at the range of options and, in accordance with the Local Transport Plan (LTP), had concluded that a package of measures comprising a new road and sustainable transport measures was proportionate;
- the decision had been informed by detailed route assessment and feedback to the consultation;
- the authority had consulted widely and had regularly updated those people most directly affected by the proposed scheme;
- a series of well attended events had been held at the Three Counties Hotel;
- responses had been received from a number of key stakeholders, such as the Highways Agency and English Heritage, and work was ongoing with key stakeholders to develop the scheme towards the submission of a planning application;
- independent advice confirmed that the consultation work was robust;
- the objectives of the SWTP had been defined clearly and the options had been appraised against these objectives and it was considered that the package would meet all of the objectives;
- detail of the potential sustainable transport measures would be set out in the Package Appraisal Report which would form part of the planning application;
- representatives of PB and officers from the project team were in attendance to respond to points in detail;
- attention was drawn to the responses already provided in the 'Questions from the public' document;
- the Marches Local Enterprise Partnership's (LEP) examination had concluded that the process and findings were robust and funding was agreed; and
- if the authority did not act, it might be a long time before such infrastructure could be provided to support the development of the local economy.

The Leader of the Council said that this was a fully funded scheme which, in the view of Cabinet, was essential to the future prosperity of the county.

**'Response to South Wye Transport Package Call In', Introduction and Background**  
[Supplement 2, pages 21 to 22]

The Assistant Director Place Based Commissioning read out paragraphs 1 to 7 of the covering report. Mr. Williams, Contract Director (Balfour Beatty Living Places) introduced the representatives of PB in attendance at the meeting and their roles: Martyn Brooks, Project Review Lead / Transport; Ben Pritchard, Project Director; Marc Thomas, Environmental Impact Assessment Lead; Phil Davidson, Ecology Lead; Jason Collins, Transport Lead; and Gary Dymond, Highways Lead.

**'Response to the South Wye Transport Package: Southern Link Road, Comments on Parsons Brinckerhoff Route Selection Report November 2014 (by Alan James)'**  
[Supplement 1, pages 3 to 12]

Mr. Brooks said that, whilst there had not been the chance to produce a detailed rebuttal, points needed to be addressed, including: in the section 'Scoring system', it was considered that an incorrect appendix had been used by Mr. James in the analysis; the claim that there had been 'double-counting' was incorrect as the wider benefits had been assessed in accordance with Department for Transport WebTAG guidance; referring to the section 'Chapter 7: Traffic Forecasts', the assertion in paragraph 2 that "This suggests that very little of the forecast traffic on the SLR (perhaps as little as 5%) carries on to the B4399..." was incorrect as the figures were 36% in the morning and 24% in the afternoon; and it was not considered that Mr. James' report acknowledged the benefits of the sustainable transport measures identified in the SWTP. Mr. Brooks added that PB had been balanced in the work undertaken and had been open about the adverse environmental impacts associated with the SLR but had also been open about the benefits of the road and the package of sustainable transport measures.

In response to a question from a committee member, Mr. Brooks clarified that he considered that Mr. James' should have referred to Appendix B in his analysis, as this included the sustainable transport measures. The committee member said that it was his understanding that the report challenged the objectivity of the scoring system and the way that it had been implemented. Mr. Brooks re-iterated that the benefits of the sustainable transport measures had been ignored by Mr James.

**'Response to South Wye Transport Package Call In', Key Considerations, Response to Reason 1 [Supplement 2, pages 23 to 24]**

The Assistant Director Place Based Commissioning gave a detailed overview of paragraphs 1.1 to 1.11 of the response.

A committee member expressed concerns about traffic figures and about the potential impact of the selected route on smallholdings. The Chairman reminded the committee of the purpose of the meeting.

A committee member noted that Cabinet considered the decision to be consistent with the council's LTP but it was his understanding that the steps set out in the Network Capacity Management Hierarchy should not relate to desktop studies and scenarios but should involve actual implementation of those steps; reference was made to a response from the Highways Agency that "[SWTP]... is welcomed in principle as under current guidance the building of new road infrastructure could only be justified in policy terms when other avenues such as travel planning and sustainable travel modes had been developed and shown not to address the transport needs and issues identified...". The Assistant Director Place Based Commissioning advised that the LTP set out the process for assessing the steps to be delivered to address problems and the appraisal process undertaken had been consistent with this and had demonstrated that those steps had been considered. In response to a further question, he commented that certain elements of the sustainable transport measures could not be implemented without new road infrastructure and it was considered that the complementary package was in line with WebTAG guidance. Mr. Brooks, using the example of a recent announcement about the upgrade of the A303, said that he did not consider the interpretation of the guidance regarding implementation by the committee member to be correct.

In response to further questions from the committee member, the Assistant Director Place Based Commissioning advised that the award of funding by the LEP was for the SWTP rather than a particular route and it was probably clearer to refer to the principle of "a preferred option" rather than "the preferred option" in paragraph 1.8 of the response. In response to further points made by the committee member about sequencing and implementation, the Cabinet Member Infrastructure said that the package had been considered by the LEP and the funding awarded, and Cabinet had made a further decision on the selection of the preferred route for the SLR which was the

subject of the call-in. The Leader added that it was sensible to get the package right, the funding right and then to look at the preferred route.

A committee member noted that the Cabinet report briefly outlined some of the aims of Sustainable Transport Max but questioned the measures included. Clarity was also sought about paragraph 46 of the Cabinet report. In response, the Assistant Director Place Based Commissioning advised the committee that:

- i. The public exhibition panels reproduced as appendix D of the PB Report on Consultation (page 290 of the Cabinet report) identified example elements that could be developed and he summarised the measures given under the bus priority, cycling, walking, safety, behavioural change and townscape headings. It was reiterated that the focus of the Cabinet report was on the selection of the preferred route and work was ongoing on the detailed design of the sustainable transport measures; and
- ii. It was considered important to look at paragraph 46 of the Cabinet report in context and paragraphs within the Financial Implications section were read out.

In response to a question about reference made in the call-in notice to de-coupling, Mr. Brooks drew attention to paragraph 4.6 of the Response to Reason 4 [Supplement 2, page 30] which stated that it was not correct to assert that "...the SLR has been de-coupled from the Package for separate appraisal and decision". In response to a question about reference made in the call-in notice to planning conditions, the Assistant Director Place Based Commissioning suggested that it was an appropriate point to look at the related traffic considerations in the Response to Reason 3.

**'Response to South Wye Transport Package Call In', Key Considerations, Response to Reason 3 [Supplement 2, pages 28 to 29]**

Mr. Brooks summarised paragraphs 3.1 to 3.3 and read out paragraphs 3.4 to 3.6 of the response. He drew attention to Figures 16 and 17 of the Preferred Option Report [reproduced in Supplement 2, pages 33 and 34] and made a number of points, including:

- a. Figure 16 showed '2017 Do Minimum Traffic Flows', Figure 17 showed '2017 Traffic Flows with an SLR', with each point having four boxes; two for the morning peak and two for the evening peak. Both peaks had a demand flow and an actual flow but, for simplicity, the presentation concentrated on actual flow comparisons.
- b. For east to west movements (including Holme Lacy Road, Walnut Tree Avenue and Haywood Lane) reductions in traffic flow were shown where the SLR was added in both time periods and in both directions.
- c. Along the A465, there were 14 different boxes with 28 comparisons. Of these 28 comparisons, 23 showed reductions in traffic. Of the remaining 5, 2 were adjacent to the SLR and 2 were close by; this was not unexpected, as traffic would find its way to the new road. It was reported the majority of the A465 would benefit from the introduction of the SLR and would enable elements of the sustainable transport measures to be implemented.
- d. Along the A49, there were 8 boxes with 16 comparisons. Of these 16 comparisons, 9 showed reductions in traffic. Of the remaining 7, 5 were adjacent to the SLR. The other 2 boxes related to locations north of the Holme Lacy Road junction; it was explained that the model was sophisticated enough to amend traffic signal arrangements to give priority to through traffic on the A49, resulting in some additional traffic due to motorists taking advantage of the change to signal timings.
- e. It was concluded that the SLR was shown to provide traffic relief over most of its length, would simplify and improve the operation of the A49, and reduce capacity constraints thereby assisting in releasing development at the HEZ.

A committee member tabled a letter dated 7 April 2014 to an unidentified recipient from Patrick Thomas, Asset Manager, Network and Delivery and Development Directorate, Midlands Team, Highways Agency. There was a short adjournment to enable the document to be circulated and read. Upon the recommencement of the meeting, the committee member drew attention to point 2 of the letter which read that the "Highways Agency has not set any 'traffic movement limits' along the length of the A49" and this was repeated at point 4. Mr. Brooks drew attention to the remainder of point 2 of the letter which confirmed that "A Local Development Order (LDO) had been put in place as part of the Hereford Enterprise Zone (HEZ)" and questioned what practical restrictions could be put in place to limit 'traffic movements' on the A49. The Assistant Director Place Based Commissioning explained the LDO process and said that he did not consider that there was any inconsistency with the advice provided by Mr. Brooks. In response to a comment by the Cabinet Member Infrastructure, the Assistant Director, Governance said that the identity of the recipient of the letter did not appear material to the content. He added that the further development of the HEZ was governed through the planning process and the generation of additional, unacceptable vehicle movements was a potential ground for refusing planning applications.

In response to questions from a member in attendance, the Assistant Director Place Based Commissioning advised that:

- 1) The purchase of land required was included within the estimated scheme costs; and
- 2) Funding was allocated for the SWTP prior to the selection of a preferred route; it was for the council to determine the route or other elements of the package. He added that the authority needed to be mindful that funding had been allocated for a particular timescale.

In response to another question, Mr. Brooks gave an overview of how, informed by various surveys, the traffic model was built, calibrated and validated. It was noted that there could be significant variations between different days and the model sought to represent average conditions for a given period. He commented on the importance of using the same traffic model to evaluate options and, whilst no model could claim to be 'absolutely accurate', it was considered that the traffic model was fit for purpose.

A committee member and ward member for St. Martin's and Hinton asked questions about the history of transport measures in the South Wye area but the Chairman explained that this was outside the scope of the call-in notice.

In response to a question from a member in attendance, Mr. Brooks commented that one of the aims of the SLR was to improve accessibility to the HEZ but acknowledged that care would be needed in terms of the potential for other induced traffic across the network. The Leader re-iterated the need to facilitate the further development of the HEZ.

A ward member for Belmont noted the council had introduced some sustainable transport measures in the area and there was more to do but current levels of congestion limited the effectiveness of public transport provision.

A committee member noted the similarity in scoring for routes SC2 and SC8, apart from the 'Cost to Broad Transport Budget' and a question was asked about the cost modelling. The Assistant Director Place Based Commissioning drew attention to the Appraisal Summary Table, reproduced at paragraph 34 of the Cabinet report (page 62), and said that the routes had been appraised to the same level of detail. The Assistant Director, Governance reminded the committee that the grounds for the call-in had been specified in the call-in notice and responses had been prepared and circulated



accordingly, members should not seek to add additional grounds at the call-in meeting itself. The committee member considered that the issue of cost modelling was relevant to Reason 5; this was further debated under Reason 5 below.

**‘Response to South Wye Transport Package Call In’, Key Considerations, Response to Reason 2** [Supplement 2, pages 24 to 27]

Mr. Davidson paraphrased paragraphs 2.1 to 2.9 of the response.

A committee member noted that Cabinet had been informed that the project team had been made aware of Grafton Wood being added to Natural England’s ancient woodland inventory in July 2014 and asked for clarification about: why its status had not been reflected in subsequent consultations and reports; the potential mitigations for the loss of irreplaceable habitat and associated costs; and the ability to meet the requirements of the National Planning Policy Framework (NPPF) given the impact of the SLR on the woodland.

Mr. Davidson explained that the candidate status of Grafton Wood had become clear in July 2014 and its ecological value had been considered; the Preferred Option Report made reference to its candidate status. In response to a comment made by the committee member, the Assistant Director, Governance reminded that committee that the Cabinet decision was the subject of the call-in, not the report by PB, and the issues relating to the woodland and its status at the date of the meeting had been made clear at Cabinet and discussed before the decision was taken.

Mr. Davidson said that the woodlands within the study area had been avoided where possible but it was not possible in relation to Grafton Wood. The mitigation approaches would be dealt with in an Environmental Statement; potential mitigation measures could include replacement habitats, retaining felled timber on site, and woodland planting.

In response to a further question about the risks of challenge, the Assistant Director, Governance re-iterated that relevant information had been provided to Cabinet and the Leader confirmed that Cabinet was aware of the status of Grafton Wood at the time the decision was taken.

Mr. Davidson said that the issues relating to ancient woodland had been looked at carefully and the survey work was robust and had been peer reviewed. He added that the loss of woodland was unavoidable in this instance but, in view of other projects in the country, this was not without precedent.

A member in attendance felt that further consideration should be given to the route options to avoid the woodland. The committee was advised that the Highways Agency supported the location of the junction with the A49 at the roundabout with Rotherwas Access Road and the council had to be cognisant of the required design standards.

In response to comments by a committee member, the Assistant Director Place Based Commissioning said that it was for the planning authority to determine whether the scheme was compliant with the NPPF, whereas this committee was considering the process in relation to the Cabinet decision. An overview was provided of the potential traffic, environmental and economic benefits of the SWTP. Attention was also drawn to the response to question 6 of the ‘Questions from the Public’ document [Supplement 2, page 5] which identified that “A Benefit to Cost Ratio of 3.55 for the South Wye Transport Package was reported in the Strategic Outline Business Case submitted to the LEP”.

**‘Response to South Wye Transport Package Call In’, Key Considerations, Response to Reason 4** [Supplement 2, pages 29 to 30]

Mr. Brooks noted that the second part to the reason had been dealt with earlier in the meeting [see the final paragraph of Response to Reason 1 above]. In terms of issues around consultation, he read out paragraphs 4.1 to 4.5 of the response.

The Chairman questioned whether there should have been more effort to consult English Heritage, even if was not a statutory duty at this stage. Mr. Brooks said that he did not believe so and a comprehensive advertisement process had been undertaken.

A committee member said that he had seen correspondence from English Heritage to an individual which appeared to be at odds with the response to reason 4. The committee member did not consider that the consultation was as thorough and robust as had been claimed, particularly the lack of detail about Grafton Wood's status and about the impact of the continuation of the road to the B4349.

Mr. Brooks provided an overview of the WebTAG drivers of transparency and proportionality and considered that the consultation had followed the guidance, as detailed in the response. Mr. Thomas explained the stages involved and how English Heritage had been consulted twice in 2012, when Amey were the council's consultants, about corridor options and about the Belmont Transport Package.

In response to further questions, Mr. Thomas advised that the English Heritage case officer changed between 2012 and 2014; and clarified that information that had been simplified for public exhibition, hence a comment by English Heritage about there being 'no further evidence' in respect of the appraisal scoring for historic environment. He added that negative scores recognised the adverse impact on the historic environment and this would need to be considered in the detailed design through the planning process.

A committee member drew attention to the 'The Procedure Outlined' section on page 298 of the Cabinet report and questioned the nature of the "Further Public Consultation" between "Preferred Route" and "Submit Planning Application". The Assistant Director Place Based Commissioning advised that the further consultation related to the statutory consultation as part of the formal planning process.

A ward member for Belmont commented that constituents had some of the highest rates of respiratory conditions in England, ambulances were delayed by traffic congestion, and he hoped that smoother traffic flows could be achieved.

**'Response to South Wye Transport Package Call In', Key Considerations, Response to Reason 5 [Supplement 2, pages 30 to 31]**

Mr. Brooks summarised paragraph 5.1 and read out paragraphs 5.2 to 5.5 of the response.

In response to a comment from a committee member, Mr. Brooks acknowledged that reference had been made to route SC2 being 'the best performing option' but he did not agree that it had been inferred that it was the preferred option during the consultation. The Assistant Director, Governance clarified that consultation exercises undertaken with only one option were recognised as being lawful but the consultation in this case contained a number of route options.

Further to a point made under Response to Reason 3 above, a committee member wished to explore the scoring in relation to the costs. The Assistant Director, Governance noted that the call-in notice did not identify dissatisfaction or concern with this particular aspect.

In response to a question, the Assistant Director Place Based Commissioning drew attention to the following:

- i. the range of scheme costs given in the Preferred Options Report: SC2 £16.5M (without contingency allowance) - £25M (with contingency allowance of 44% on construction cost), SC2A £19.5M-£29M, SC5 £24M-£35M, SC7 £21M-£31M, SC8 £17.9M-£26.5M, SC8A £25.4M-£38.6M, and SC9 £17.2M-£25.3M;
- ii. the Cost to Broad Transport Budget scoring in the Appraisal Summary Table reproduced in the Cabinet report (page 62): SC2 2, SC2A 1, SC5 0, SC7 0, SC8 1.5, SC8A 0, and SC9 2; and
- iii. the sentence in paragraph 53 of the Cabinet report (page 65) that ‘...the preferred SC2 route, (which was subject to public consultation), is a projected £1m less expensive than any of the alternatives, and a projected £1.6m less expensive than the alternative SC8 route.’

The committee member commented on the close scoring between routes SC2 and SC8 and considered the differences in costs to be within the margin of error. In response, Mr. Dymond explained that prices and contingency had been applied consistently across each of the routes. Mr. Williams added that the figures had been reviewed and validated by BBLP Construction Services.

**‘Response to South Wye Transport Package Call In’, Key Considerations, Response to Reason 6 [Supplement 2, page 31]**

Mr. Brooks read out the paragraphs under 6.1 of the response.

A committee member noted that the Package Assembly Report was not yet in existence and questioned whether it ought to be at this stage of the process. Mr. Brooks reiterated the concept of proportionality within WebTAG guidance, where increasingly more detailed assessment was required, and confirmed that this was being followed.

**Closing comments**

The Vice-Chairman felt that any doubts about consultation and woodlands had been addressed by the officer and consultant responses. In response to a question, the Assistant Director Place Based Commissioning considered that the process had been robust and there was confidence in the recommendations made.

The local ward member for Hollington wished to place on record that, although he supported measures to alleviate traffic problems, he did not prefer one route rather than another. He added that soundness was an important matter but he did not feel able to say that all of his concerns had been allayed.

The Cabinet Member Infrastructure re-iterated that he considered the decision to be robust, said that comprehensive responses had been provided to the call-in reasons, and thanked the officer and consultant teams.

A committee member noted the detail that would be required during the planning process, especially in terms of the Environmental Impact Assessment.

The Leader thanked committee members for thoroughly reviewing the documents and said that the rigorous examination of the issues had confirmed that the decision was secure and appropriate processes had been observed.

A committee member: re-iterated that the acceptance of the call-in notice was welcomed; noted that there had been a good level of public attendance throughout the

meeting; and commented that the Cabinet decision entailed the spending of significant sums of public money, therefore the meeting was warranted.

The Chairman thanked attendees for their contributions and noted that it was essential that the right outcome was achieved for the county.

There was a short intermission during which committee members identified potential recommendations. Upon recommencement of the meeting, the following motion was proposed and seconded, and supported by a majority of the committee members present.

**RESOLVED:**

**That the decision on the preferred route option be referred back to Cabinet, with the following recommendations:**

- 1. So that Cabinet can be advised by the Finance Director (and council's Section 151 Officer) as to the robustness of the approach and actuality of the cost modelling and the consequent scoring given to all routes under the options appraisal process; and**
- 2. As Grafton Wood is now designated Ancient Woodland that SC2 is re-examined, in the light of mitigations and extra costs required, as the preferred option.**

The meeting ended at 6.45 pm

**CHAIRMAN**

**MINUTES of the meeting of General Overview & Scrutiny Committee held at The Council Chamber, Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Wednesday 14 January 2015 at 10.00 am**

**Present:** Councillor WLS Bowen (Chairman)  
Councillor BA Durkin (Vice-Chairman)

**Councillors:** AM Atkinson, AJM Blackshaw, ACR Chappell, PGH Cutter, DW Greenow, EPJ Harvey, JA Hyde, NP Nenadich, AJW Powers, A Seldon and DB Wilcox

**In attendance:** Councillors J Hardwick, AW Johnson (Leader), J Norris, GJ Powell (Cabinet Member), P Rone (Cabinet Member) and P Sinclair-Knipe

**Officers:** R Ball (Assistant Director Place Based Commissioning), B Norman (Assistant Director, Governance), P Robinson (Chief Financial Officer) and B Baugh (Democratic Services Officer). Attending as an observer: G Hughes (Director for Economy, Communities, and Corporate). Also present were: M Pearce (Enterprise Zone Managing Director) and A Smith (Senior Director, DTZ).

**41. APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Councillors BA Durkin, TM James, JG Jarvis and RL Mayo. Apologies had also been received from Mr P Sell, an education co-optee.

**42. NAMED SUBSTITUTES**

The following substitutions were made: Councillor PGH Cutter for Councillor BA Durkin; Councillor NP Nenadich for Councillor JG Jarvis; and Councillor JA Hyde for Councillor RL Mayo.

**43. DECLARATIONS OF INTEREST**

No declarations of interest were made at the meeting.

**44. QUESTIONS FROM THE PUBLIC**

Attention was drawn to Supplement 1 to the agenda which contained ten questions received from the public, together with officer responses to those questions considered relevant to the call-in. The Chairman advised that written responses would be provided to the remainder in due course, in the order submitted.

**45. CALL-IN OF THE MARCHES LOCAL ENTERPRISE PARTNERSHIP JOINT EXECUTIVE COMMITTEE DECISION ON MARCHES ENTERPRISE ZONE**

The Chairman welcomed attendees and invited the Assistant Director, Governance to outline the circumstances of this call-in. The principal points included:

1. The call-in related to a decision about the Marches Enterprise Zone taken by the Marches Local Enterprise Partnership (LEP) Joint Executive Committee (JEC) at its meeting on 11 December 2014.
2. The JEC was a decision-making body recognised by law; Cabinet had approved the establishment of a joint committee to exercise executive functions in relation to the Marches LEP on 31 July 2014. Councillor AW Johnson was Herefordshire Council's representative on the JEC and was representing the decision-making body at this meeting.
3. The call-in primarily related to the non-listing of the 'Hereford Enterprise Zone, Accelerating Delivery: Investment Strategy' prepared by DTZ (the DTZ report) on behalf of the Department for Communities and Local Government (DCLG). Following the receipt of the call-in notice, the Assistant Director, Governance had circulated an email to committee members explaining that, although not required legally or by the Constitution (due to the exempt information contained in the report), a better approach would have been to have listed the DTZ report as a background paper given that this had been relied upon in the preparation of the JEC report. The Assistant Director, Governance had provided the document, with Appendix C removed, to committee members and it had been published on the council's website. Appendix C, with appropriate redactions, was included within Supplement 1 to the agenda.
4. The call-in notice stated that 'Further concerns regarding the substance of the decision and the options considered cannot be ruled out at this stage'. It was noted that the JEC report was in the public domain prior to call-in and the committee should focus on new issues that came to light with the publication of the DTZ report.

The Chairman invited the Assistant Director Place Based Commissioning to comment on the briefing note included in Supplement 1 to the agenda 'Policy background regarding infrastructure to support the development of the Hereford Enterprise Zone'. Attention was drawn to the following:

- a. The decision of the JEC 'allocates future business rate income to support the development of the Hereford Enterprise Zone (HEZ) by providing funding for such infrastructure as may be required to enable the HEZ to be completed. However, this decision does not pre-determine what infrastructure (if any) may be required nor pre-empt decisions that would need to be taken locally in the future regarding the details of what infrastructure should be provided and where.'
- b. The remainder of the briefing note provided background on: the purpose of the Local Development Order (LDO); the consultation undertaken on the LDO, including with the Highways Agency; the recognised need for further infrastructure investment to enable the full development of the HEZ; the strategic policy context, including the draft Local Development Framework (LDF); and the timetable for the LDF examination process.

Committee members that submitted the call-in notice made a number of comments, including:

- i. Investment was not being challenged per se; it was acknowledged that the HEZ was an asset to the county and the Marches LEP. However, concerns remained about assertions made in the DTZ report, particularly that the LDO 'effectively sets a cap' on HEZ development, and the potential financial implications of the assumptions being made.

- ii. Officers were thanked for making the DTZ report available in response to the call-in notice. It was felt that further understanding was needed about the relationship between the LDO and the HEZ and the nature of the constraints referred to in the DTZ report.

The Assistant Director Place Based Commissioning said that the LDO permitted a certain set of developments within the HEZ to proceed without the need for a formal planning application. The HEZ Managing Director said that the LDO allowed for a certain number of extra traffic movements, or 'trips', to ensure that development could be accommodated within the existing highway infrastructure. The Assistant Director Place Based Commissioning outlined the consultation undertaken with statutory bodies, including the Highways Agency, during the preparation of the LDO.

A call-in member commented that traffic volumes on the A49 had reduced in recent years and asked a number of questions in respect of: the results of discussions with the Highways Agency on the uplift of traffic movement caps; the results of the council's public consultation on the variation of the LDO; the timetable for the publication of the results; and whether DTZ should have been given details to inform the option modelling in the draft report.

Points made in response to the above and to further clarifications sought by call-in members included:

- The HEZ Managing Director said that he welcomed any reductions in traffic volumes on the A49, as this could provide additional capacity for HEZ development. He added that the simplified planning process facilitated by the LDO was important as it provided certainty to prospective developers.
- The Assistant Director Place Based Commissioning advised that the planning authority had the opportunity to review the LDO at appropriate times and discussions were ongoing between the planning authority and the Highways Agency; a written response on the latest position would be provided to the call-in members.
- The Director for Economy, Communities, and Corporate emphasised that the council had been pro-active in the process of revising the LDO to ensure that any additional network capacity was captured to benefit the HEZ.

A committee member referred to a letter tabled at the last meeting (dated 7 April 2014 to an unidentified recipient from Patrick Thomas, Asset Manager, Network and Delivery and Development Directorate, Midlands Team, Highways Agency) which stated that the "Highways Agency has not set any 'traffic movement limits' along the length of the A49". Clarification was sought on the constraints referred to in the DTZ report. The Assistant Director Place Based Commissioning said that analysis by the council's consultants and the Highways Agency had informed the current controls within the LDO. It was reported that the Highways Agency had the statutory power to direct the council to change its approach if it was not satisfied.

A committee member noted the statement that the JEC decision 'does not pre-determine what infrastructure (if any) may be required' but, with repeated reference to the River Wye Crossing in the DTZ report, was concerned that apparent constraints were being used as a reason to progress other infrastructure which may not be specifically required by the HEZ. The Assistant Director Place Based Commissioning said that the JEC decision was an enabling decision and the work by DTZ reflected the council's current policy position. Mr. Smith reported that DTZ was tasked by DCLG to consider how EZ performance could be optimised and Scenario 3 considered the potential of the HEZ with interventions fully implemented and River Wye Crossing completed.

In response to a comment from a call-in member, the HEZ Managing Director said that certainty about the level of development that could be accommodated strengthened the appeal of the HEZ to prospective developers.

Comments made by other committee members included:

- 1) EZ status was difficult to obtain, especially in isolated rural areas, and the council should do all it could to empower the successful development of the HEZ, to support further economic development and employment opportunities.
- 2) Progress was being made in developing security and defence industry growth in the county, alongside tourism and agriculture sectors.
- 3) Future central government and European funding would flow through the LEPs, so it was essential that the JEC worked collectively and efficiently, with effective support from its constituent authorities.
- 4) There was competition from neighbouring counties, the rest of the UK and internationally, therefore the authority had a responsibility to work together with the private sector to ensure that the benefits of the HEZ were realised.

A call-in member commented that funding from a rural regeneration zone programme had been withdrawn in the past and questioned what assurances could be provided that monies and support would be maintained for the HEZ. In response, the Assistant Director, Governance said that the JEC decision set out the investment approach and committed the authorities of the Marches LEP to reimburse Herefordshire Council, from business rates generated by the HEZ, for the infrastructure investments made to enable the HEZ to be expanded and built out. Therefore, Herefordshire Council would place reliance upon that decision in making requisite investments. He added that there were compelling reasons for ensuring that momentum was maintained.

Councillor Johnson said that it was gratifying to hear the level of support for the HEZ from councillors but reminded the committee that the purpose of this meeting was to consider the call-in of the specific JEC decisions and not how and where money would be spent, this would be for future discussions and decisions.

The Chairman invited the Chief Financial Officer to comment on financial implications. The principal points included:

- a) Although the EZ was located in Herefordshire, it was for the JEC / LEP to decide on the allocation of business rates.
- b) The JEC / LEP had decided to reimburse Herefordshire Council for investments in the HEZ, as there would not be growth and additional business rates generated without such investments.
- c) The JEC / LEP had also decided to provide £100k a year from the additional business rates to help meet LEP running costs from 2016/17 onwards; one-off government funding was due to expire at the end of 2015/16. The remaining running costs would be shared between the three constituent authorities.

Councillor Johnson said that the principle of investment in the HEZ did not seem to be disputed and decisions had yet to be taken on how monies might be spent, therefore he considered the call-in unnecessary.



At the request of the Chairman, the Assistant Director, Governance, repeated that the JEC was a decision-making body recognised by law, it had delegated authority to exercise executive functions, and clarified the position with background papers.

A committee member commented on industrial development in other areas and how the HEZ could contribute to growth and jobs at Rotherwas and in the wider local economy. He felt that the benefits should be realised as soon as possible.

Mr. Smith gave a brief presentation on the work undertaken by DTZ on behalf of the DCLG, the principal points included:

- i. Mr. Smith was a Senior Director at DTZ, head of the public sector advisory team. DTZ had been appointed by DCLG to a framework to provide advice on 20 of the 24 Enterprise Zones (EZs) in England and Wales. DTZ had been tasked with understanding what could be done to optimise performance of the HEZ and had completed its report by the end of September 2014.
- ii. Occupier benefits included rates relief for a set period, enhanced capital allowances, and simplified planning zones. LEP benefits included business rates income growth, local taxation in the hands of the LEP, ability to invest against revenues accruing from growth achieved; and the creation of Tax Increment Finance schemes.
- iii. As the EZs were time bound, with an evaluation period of 25 years, it was important to make investments as early as possible to ensure viability and enable costs to be recouped through business rates income growth.
- iv. The HEZ had the potential for c. 150,000 square metres of new development but a River Wye crossing was considered essential to expansion beyond 50,000 square metres.
- v. An overview was provided of the options analysis and the key features of three scenarios: Scenario 1, 'Base Case'; Scenario 2, EZ Interventions partially implemented (River Wye Crossing is not completed); and Scenario 3, EZ Interventions fully implemented and River Wye Crossing completed.
- vi. The income and expenditure profiles were explained for each scenario, along with estimated surplus figures; £10.6m for Scenario 1, £10.8m for Scenario 2, and £43.9m for Scenario 3. It was noted that the figures had been informed by details from DTZ property and development teams. It was also noted that the difference between Scenario 1 and Scenario 2 was marginal in terms of surplus but Scenario 2 would create more jobs and other positive outcomes.
- vii. The findings were also shown in terms of net income and expenditure summary, floor area change, jobs created, and gross development value.
- viii. The report recommendations (as detailed on page 52 of the agenda) were summarised. It was emphasised that Scenario 3 focused on the HEZ, it did not consider the specific details of what road infrastructure might be required.

A motion was proposed and seconded to resolve that 'this committee endorses the decision of the JEC, with thanks to our LEP partners for their support'. A committee member commented that the JEC decision was backed by the other constituent authorities and had not been called-in by their respective scrutiny committees. He said that the reasons for the call-in were understood but considered that the publication of the DTZ report and the further information and advice received at this meeting had addressed the issues.

A call-in member commented on the role of overview and scrutiny committees, historic issues with the delivery of major projects, the value of detailed analysis to identify potential pitfalls, the increasing need for local authorities to offset decreasing central government funding through business and job growth, and the importance of openness and transparency.

In response to questions from a committee member: the Assistant Director, Governance said that it would not be appropriate to speculate on the future status of LEPs but expressed an opinion that, where a body placed reliance upon a decision to let contracts and incur costs, it would not be permissible for local or central government to make a contrary decision which exposed the body that relied upon the earlier decision; and the Chairman said that it was not appropriate to ask the HEZ Managing Director to express a view on the river crossing at this meeting. The committee member said that he understood that EZ status had been awarded on the basis that the zone was 'shovel ready' and considered the infrastructure requirements now being brought forward were of a different scale to those previously envisaged. The Chairman reminded the committee of the purpose of the call-in.

In response to questions from a call-in member:

- Mr. Smith said that: Scenario 3 identified the benefits that could be accrued as a result of removing constraints; it was acknowledged that the report did not go into detail about the means to remove constraints but it had been written for a particular purpose and wider distribution had not been expected; the HEZ was perceived as being in a very constrained location in transport terms, therefore Scenario 3 would make the site more attractive from an occupier perspective.
- The Chairman reminded the committee that the decision did not pre-empt future decisions on infrastructure.
- Mr. Smith advised that the report had been prepared prior to the discussions about a sum to help meet future LEP running costs. Councillor Johnson noted that the sum was relatively marginal in comparison to overall income and expenditure involved. The HEZ Managing Director confirmed that revised figures had been incorporated in the JEC report.
- In response to a question about key sensitivities, Mr. Smith reported that: future rates of income was a function of the amount of floor area that was developed; commitments from occupiers on site, or those intending to go on site, informed the first three to four years; future projections were based on market evidence, with input from DTZ's industrial and development teams; and the costs of enabling works in connection with the development of the site and environmental factors had been informed by previous work undertaken by council and HEZ teams. He said that a point had been reached where DTZ, the council and DCLG were comfortable with the analysis and the scenarios to be taken forward.

It was proposed and seconded that 'the question be now put' but the Chairman considered that a few more questions should be permitted before the procedural motion was put to the vote.

In response to questions from a call-in member:

- 1 - Mr. Smith provided further information about cost modelling, including the treatment of inflation.

- 2 - With reference made to paragraph 4.2 of the DTZ report (page 50 of the agenda), the Chief Financial Officer advised that borrowings were intended to be repaid on a priority basis after the £100k contribution to the LEP (if required) and revenue costs rather than an annuity basis.
- 3 - Mr. Smith said that the report had been prepared to create a level of understanding and commented that other EZs were struggling as agreements were not being reached at the LEP level.
- 4 - The Assistant Director, Governance drew attention to paragraph 10 of the JEC report (page 15 of the agenda) which read 'The recommendation is that Herefordshire Council will fund the interventions specified in Scenario 3 and the other two authorities agree that those investments and associated costs are repaid from the business rates accrued.'

***The procedural motion that 'the question be now put' was voted upon and supported by the majority of committee members.***

***The substantive motion was then voted upon and supported by a majority of committee of committee members.***

**RESOLVED: That this committee endorses the decision of the Joint Executive Committee, with thanks to our Local Enterprise Partnership partners for their support.**

#### **46. DATE OF NEXT MEETING**

A meeting scheduled for 26 January 2015 was postponed.

It was suggested that the next meeting be held on 10 February 2015 but a committee member requested that this be rescheduled, as it would coincide with the start of the examination sessions on the Local Development Framework.

[The next meeting was subsequently confirmed as Wednesday 18 February 2015 at 10.00am]

The meeting ended at 12.15 pm

**CHAIRMAN**





<b>Meeting:</b>	<b>General Overview and Scrutiny Committee</b>
<b>Meeting date:</b>	<b>18 February 2015</b>
<b>Title of report:</b>	<b>Review of lease restructuring with Hereford United (1939) Ltd</b>
<b>Report by:</b>	<b>Director of Economy, Communities &amp; Corporate</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Central (Although considerable countywide interest).

## **Purpose**

To consider lessons learned from the lease restructuring with Hereford United (1939) Ltd.

## **Recommendation(s)**

**THAT:**

- (a) **the committee identify any additional learning points to inform future decision making.**

## **Alternative options**

- 1 None.

## **Reasons for recommendations**

- 2 The recommendation is in accordance with the terms of reference of the review.

## **Key considerations**

- 3 The terms of reference of the review are provided in appendix 1.
- 4 The considerations are incorporated into the briefing report provided in appendix 2.
- 5 Copies of all leases and the development agreement are available to view on the council's web site.
- 6 Plans illustrating the areas covered by the respective leases are provided in appendix 3.

## **Community impact**

- 7 The Edgar Street Athletic Ground is considered an important asset to the county and there are community aspirations that the council provides support to a club to enable league football to continue at the ground. The former club was involved in a number of community activities and the lease restructuring is seen as a means for facilitating additional benefits to the local and wider community.

## **Equality duty**

- 8 There are no implications arising from this report.

## **Financial implications**

- 9 There are no financial implications arising from this report.

## **Legal implications**

- 10 There are no legal implications arising from this report.
- 11 Legal advice and interpretation of the leases is provided within the briefing note in appendix 2.

## **Risk management**

- 12 The GOSC review is intended to inform future executive decisions regarding the grant of leases and mitigate against the replication of any past oversights that might have exposed the council to unnecessary risk as a landlord.

## **Consultees**

- 13 None, as the report is a briefing note only.

## **Appendices**

Appendix 1 GOSC scoping for the review.

Appendix 2 Briefing report.

Appendix 3 Plans of ground indicating extent of leases.

- Pre 2014 lease
- 2014 leases
- 2015 proposed lease

## **Background papers**

- None identified.





<b>Title of item:</b>	<b>Review of lease restructuring with Hereford United (1939) Ltd</b>
<b>Date:</b>	<b>Wednesday 18 February 2015, 10.00am, Shire Hall</b>

### Scoping

#### Reason for enquiry

To examine what happened around the lease restructure in 2013/14 and identify any lessons learned overall and from recent events.

To understand the history of the relationship between HUFC (1939) Ltd and Herefordshire Council and its predecessors.

#### Links to strategy

N/A

#### Summary of review and terms of reference

##### Summary

- This is not a call-in. The meeting should focus on identification of the lessons learned and advice scrutiny would want to offer by way of recommendations to the executive in terms of the future approach.
- Cabinet considered a report on 22 January 2015 in relation to 'Hereford United Football Club (1939) Ltd (approval to seek new tenant at Edgar Street athletic ground, Hereford)', and agreed to invite expressions of interest for a short term lease in time to facilitate football at the ground in September 2015, in accordance with advice received from the Football Association. It was also agreed that a further report will be submitted to Cabinet on the longer term options for the site and for support for league football within the county.

##### Terms of reference

- The report will set out the history, the reasons for the lease restructure, the lessons learned from the process, and the interim arrangements currently being pursued; hyperlink to the Cabinet report of 22 January 2015:  
<http://councillors.herefordshire.gov.uk/documents/s50023300/Edgar%20St%20Athletic%20Ground%20-%20approval%20to%20seek%20new%20tenant%2022%20January%202015.pdf>
- The discussion will focus on the council's areas of responsibility.

#### What will NOT be included

- As the meeting will be focussed on the lessons learned, the meeting will not consider any allegations made against individuals.
- The options for the longer term will be subject to a further Cabinet report and broader consultation; the committee may wish to undertake more detailed scrutiny activity during 2015/16 to inform the development of this further report.

#### Potential outcomes

To

- identify any issues with the process followed during the restructure of the leases in 2013/14 that should be considered by Cabinet;
- identify any related matters that might need to be included in the GOSC work programme for 2015/16.

### **Key questions**

- Was the lease restructure robust and effective?
- What was the purpose of assigning development rights?
- What alternative options were considered and why were they not pursued?
- What is different about the interim short term lease arrangement?
- What can be done to ensure that leases are managed in the public interest in the future?
- Are there any additional provisions that need to be included in the leases?

### **Cabinet Member (s)**

- Councillor AW Johnson, Leader of the Council
- Councillor H Bramer, Cabinet Member Contracts and Assets

### **Key stakeholders / consultees to be invited to contribute**

- The Central Ward Member. However, it is recognised that there are broader city and county considerations.
- The Chairman of the Supporters' Group, for views about the lessons learned.
- The Football Association, to explain their policy position [if they cannot attend, written statement to be requested]
- The Chairman of Hereford United at the time of the lease restructure, David Keyte, to be provided with an opportunity to give the club's perspective on the renegotiation of the leases and the assignment process.
- Councillor NP Nenadich to be invited, as a former HUFC Board Member.

### **Potential witnesses**

- Geoff Hughes (Director of Economy, Communities and Corporate), supported by Tony Featherstone (Head of Corporate Asset Management).
- Donna Burgess (Deputy Solicitor to the Council, Property and Commercial).

### **Research required**

- Tony Featherstone / Donna Burgess to provide contact details for non-council based invitees.
- Invitees to be offered opportunity for pre-meeting discussion (Chairman / Vice-Chairman / scrutiny support officers) if considered helpful.

### **Potential visits**

- None at this stage but could inform future scrutiny activity in municipal year 2015/16.

### **Publicity Requirements**

- Intention to publish report on or before Tuesday 10 February 2015.

**BRIEFING REPORT**  
**HUFC**  
**GOSC 18TH FEBRUARY 2015**

**Purpose of briefing** - To examine what happened around the lease restructure in 2013/14 and identify any lessons learned overall and from recent events.

**This briefing** will set out the history, the reasons for the lease restructure, the lessons learned from the process, and the interim arrangements currently being pursued.

<b>Key questions</b>
----------------------

- Was the lease restructure robust and effective?
- What was the purpose of assigning development rights?
- What alternative options were considered and why were they not pursued?
- What is different about the interim short term lease arrangement?
- What can be done to ensure that leases are managed in the public interest in the future?
- Are there any additional provisions that need to be included in the leases?

**Current status**

- In November 2014 an application was made to court for forfeiture of the club's leases. Following on from the issue and service of proceedings all monies owed to the council were repaid.
- On 22<sup>nd</sup> December 2014 following on from the making of a winding up order against HUFC (1939) Ltd, the leases were forfeited by peaceable re-entry. The development agreement was terminated on the making up of the winding up order.
- The official receiver is the current liquidator of the club and has indicated no desire to appeal against that forfeiture and has no grounds to do so.
- The council is now inviting expressions of interest for an interim lease of the stadium.

## **Background**

### **The old leases**

Two leases were granted in 1982 by the then Hereford City Council to Hereford United Football Club (1939) Ltd (“the club”).

#### **Lease 1, the football ground lease:**

Granted 12<sup>th</sup> August 1982 for a term of 33 years expiring 11<sup>th</sup> August 2015. Subsequently this was extended by a deed of variation to a term of 38 years to 12 August 2020.

#### Key terms

- Full repairing obligation;
- Tenant to insure premises (against fire only);
- Permitted use as athletic sports and football ground and for ancillary purposes connected with raising of funds for the club or other charitable purpose;
- Obligation to promote and encourage promotion of high class football matches and athletic sporting events professional and amateur;
- No assignment without consent not to be unreasonably withheld;
- Subletting permitted without consent provided to for promotion of football/to certain bodies including the Herefordshire British legion;
- Forfeiture – rent arrears, breach of covenant, winding up;
- Security of tenure;
- 5 yearly market rent reviews

#### **Lease 2, the East Stand:**

- Term - 75 years from 12<sup>th</sup> August 1982 expiring 1<sup>st</sup> August 2057;
- Tenant to insure premises (against fire only);
- Full repairing obligation;
- Permitted use as social, restaurant or licensed or sporting facilities or combination with shop and offices associated with sporting facilities;
- Assignment permitted with consent not to be unreasonably withheld;
- Underletting permitted but no obligations about what lease to contain;

- Maintenance obligations on landlord - areas coloured brown on plan;
- Forfeiture - rent arrears, breach of covenant, widening up;
- Security of tenure;
- 5 yearly market rent reviews.

### **The move to new leases**

As part of the programme of activity relating to the Old Livestock Market site regeneration, and in response to an approach from the then owners, negotiations commenced with the club in 2011 to restructure the leases. The aim was to facilitate the securing of investment into improvements of the Edgar Street ground at no cost to the council.

This was against the backdrop of the then anticipated development of the adjoining Old Market site and the longer term aspiration to create the urban village. Both these projects adjoin the stadium.

Heads of Terms for the surrender of the old leases and re-granting of new were agreed in September 2011 and signed off by the club and the council in April 2012. Negotiations then took place with the leases finally settled in February 2014. The club had been a tenant of the council for some years and as such as with any other longstanding tenant, their financial situation was known to the council as their landlord. With an existing tenant already entitled to occupy under current leases no new financial checks would have been undertaken or necessary as they would not tell the council what it did not already know. The council wished to help this tenant improve their situation and also improve the ground via investment.

The leases were modern form leases linked to a development agreement to enable the club to develop the ends of the ground and in doing so generate income to carry out improvements to it. They were designed so that the club could seek and obtain investment.

### **The 2014 leases**

#### Key terms

- Area 1 - football pitch and stadium
- Area 2 - Blackfriars end
- Area 3 - Merton meadow end
- 30 year term;
- Tenant to insure against all usual insurable risks;
- Repair obligation limited by reference to schedule of condition evidencing condition at start of lease but in the event practical completion of redevelopment did not occur within timescales fixed in the development agreement the tenant would become liable for full repairing of the premises;

- Right to request an additional 15 years on the expiry of the term;
- No security of tenure;
- Alienation - the leases prohibit assignment of part only of each lease;
- They allow assignment of the whole subject to consent, which cannot be unreasonably withheld but tenant must have paid all outstanding sums before any assignment and assignee to be assigned membership of the FA;
- No underletting of whole or part without consent. Provisions as to the terms of those underleases including no security of tenure;
- Charging of whole permitted but subject to various conditions including landlord not to unreasonably withhold consent if borrowing is to improve the stadium;
- Forfeiture on rents arrears (including rates), breaches of covenant, CVA, winding up, appointment of receiver/liquidator/administrator. Any charge to have chance to remedy.

### **Was the lease restructure robust and effective?**

The leases sought to achieve a balance between helping the club and protecting the landlord. They were a better protection for the landlord than the old leases. The restructure was effective - the development agreement also comprised an agreement for surrender and grant allowing for the old leases to be terminated and the new ones put in place and for a contribution to legal costs.

With hindsight a question has been raised as to whether these leases should have included a landlord's break clause allowing the council to terminate them triggered by the change of control in the club.

It would be unusual for a commercial lease to contain such a clause. A tenant would resist it as allowing the landlord to interfere in its company and trigger termination not based on its default.

Even if such a clause had been in the leases all this would have allowed is earlier termination by the council but such termination would not have resulted in repayment of any of the monies owing and this would not have operated in the interests of the public.

A break clause is not a mechanism for the rectification of a tenant's default i.e. unpaid rents or breach of repair obligations. Recourse for such default lies in forfeiture. This recourse was used in this instance to gain repossession of the sites occupied pursuant to leases and to get repayment of monies owed.

A break clause is also not the correct mechanism for control of who occupies leased areas. The mechanism for this is the alienation clauses which ensured that if HUFC wished to pass on the leases to another party they had to get the consent of the council to do so. The change of control of the tenant did not change their status as being HUFC (1939) Ltd and therefore did not trigger this.

### **What was the purpose of assigning development rights?**

The council wanted to secure the club's long term future in the football league and create an environment whereby it could either directly or with an external funder/developer undertake commercial development of surplus land at the Blackfriars and Merton Meadow ends to generate income for investment in new stadium or improvements to the existing facilities.

#### **Key terms:**

- Provisions concerning the development of the areas at the Merton meadows and Blackfriars ends of the football ground with obligations on HDC to grant long (250 year unless residential use in which case 999 year leases to enable units constructed on the sites to be sold).
- Before any development can commence payment is to be made into an escrow account in the names of the landlord and tenant. What is to be paid is calculated based on the proposed heads of terms for any development with a proposed developer/buyer and what the tenant is going to be paid for that and the lease. Costs incurred by the tenant are deductible from this sum.
- Before actual completion of the grant of the new lease the tenant must notify the landlord the final actual receipts that the buyer is to pay for the grant of the lease and the receipts subject to deduction of all costs incurred in obtain the planning permission and documenting the sale terms and other costs incurred either the terms or development (with the landlord to approve the deduction of such costs) the receipts are to be paid into the escrow account. The tenant is to use such sums for investment into the ground and associated purposes.
- Pre-agreed investment plan for all income generated from the development.
- Pre-approval by the council to the development terms in advance of any legal agreement between Club and funder/developer.
- A timescale by which the development must be undertaken after which development rights lost.
- Long term leases only granted on completion of the new development.
- The agreement was personal to the tenant and therefore not assignable to a third party.

### **What alternative options were considered and why were they not pursued?**

- Do nothing and the Club would be unlikely to secure any significant funding for further investment in improvements to the stadium.
- The council agree terms to take part area 2 & 3 as a partial surrender of original leases and take direct control the redevelopment. Financial cost to council, receipt to the Club insufficient to deliver required investment, potential state aid risk.

### **What is different about the interim short term lease arrangement?**

- There will be one lease of the ground only with limited rights to use other areas for access and collecting footballs only. Route can be altered by landlord;
- Short term - only runs from March 2014 - July 2017 and no renewal rights;
- No alienation - no assignment or subletting permitted at all;
- Tenant must at all times be a member of the FA;
- Change of control termination clause. Neither the old leases nor the new leases continued a provision allowing the landlord to terminate - a landlord's break clause - on the change of control of the company comprising the tenant. This is a clause used in commercial contracts but unusual in commercial leases. It would if in the leases have allowed for earlier termination but it would not have resulted in any payment to the council which the standard forfeiture route used did;
- This is to be included in the interim lease now being offered and may be included in a future long term lease which will be the subject of a separate report at that time;
- Forfeiture wider so any insolvency event triggers the right;
- Obligation on tenant to maintain lighting rig;
- It is being dealt with in house led by the asset management team with in house legal representation.

### **What can be done to ensure that leases are managed in the public interest in the future?**

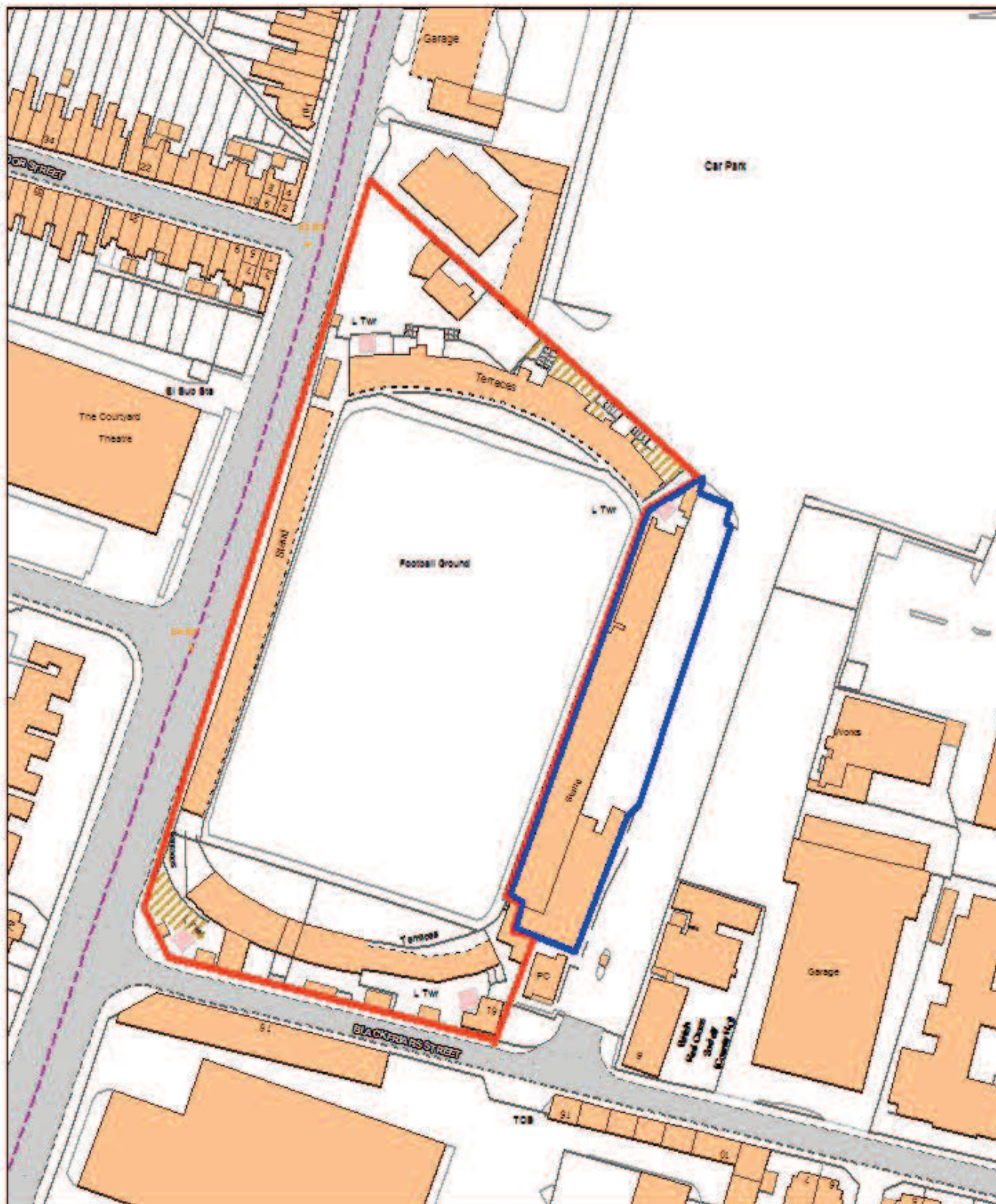
The council has now taken control of all sites leased to the club. The council will lease the ground only and retain control of the ends of the ground leaving it open to the council to develop itself or seek other opportunities as to the sites in the public interest and in accordance with its duties and powers.

### **Are there any additional provisions that need to be included in the leases?**

There is only one lease and additional terms include those items listed above.



### 3(i) ORIGINAL HEREFORD CITY COUNCIL LEASES



**LOCATION PLAN - Edgar Street Football Ground - Herefordshire Council,  
Asset Management,**

PO Box 4, Hereford  
HR4 0XH  
propertyinformation@herefordshire.gov.uk

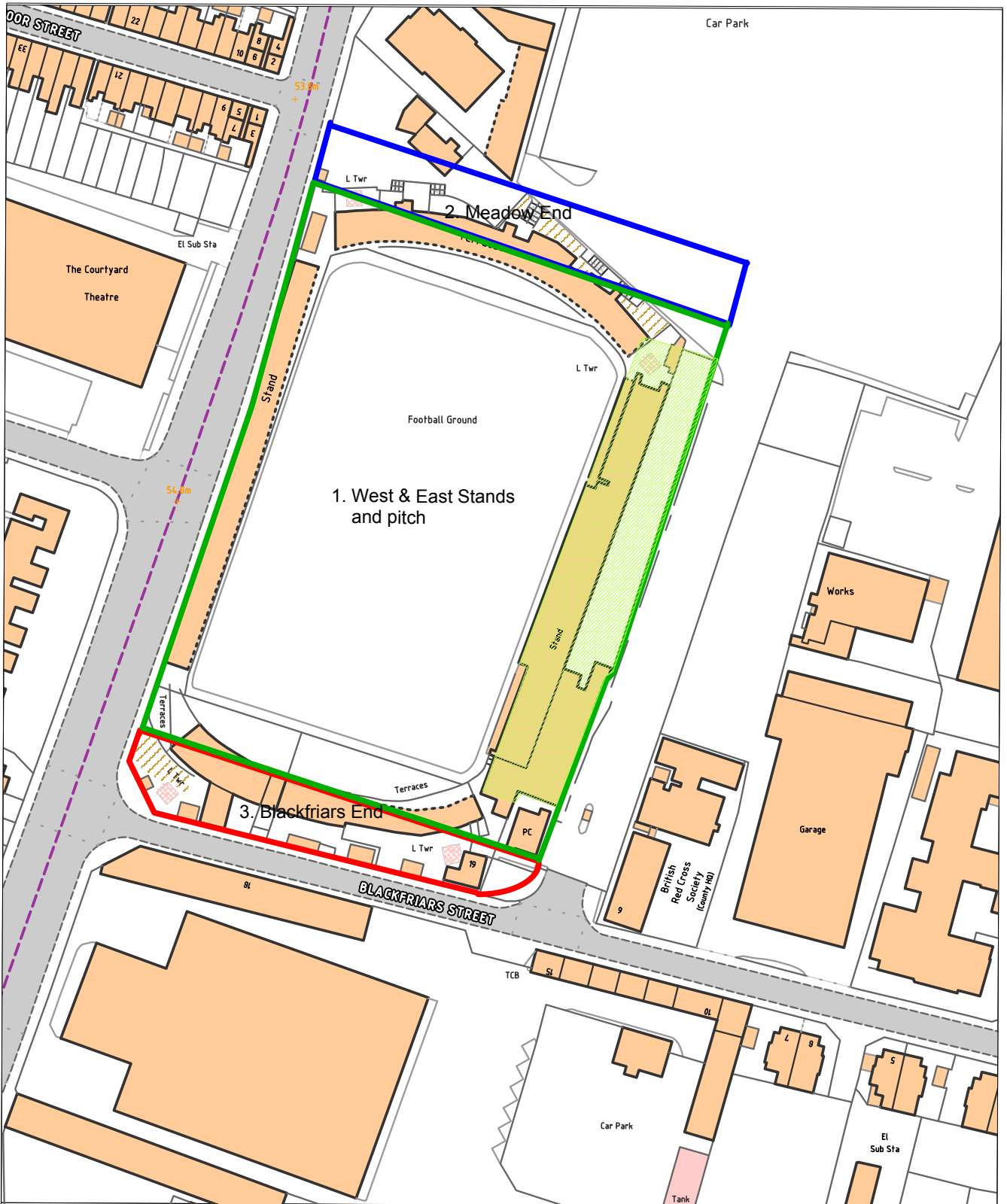


**SCALE 1:1250**

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# 3(ii) 2014 LEASES



**LOCATION PLAN - Hereford United,  
Edgar St Football Ground  
SCALE 1:1250**

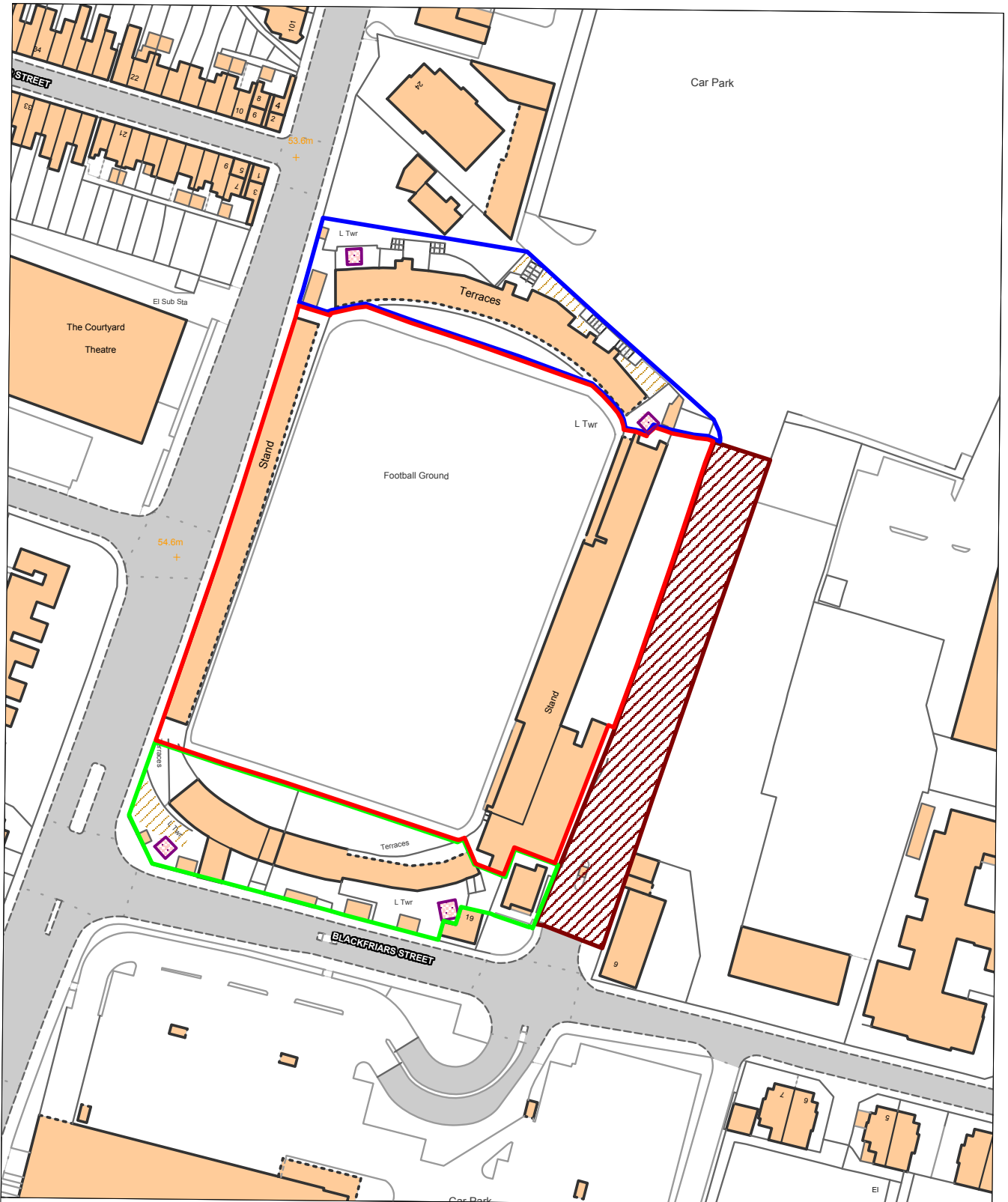


Herefordshire Council,  
Asset Management,  
PO Box 4, Hereford  
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propertyinformation@herefordshire.gov.uk

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# 3(iii) PROPOSED 2015 LEASES



LOCATION PLAN - Edgar Street Stadium, Hereford

NORTH  
SCALE 1:1250

- Access Road retained in ownership
- Area 2 (access rights afforded)
- Area 1 (the premises)
- Area 3 (access rights afforded)
- Floodlights

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Herefordshire Council, Asset Management, PO Box 4, Hereford HR4 0XH [propertyinformation@herefordshire.gov.uk](mailto:propertyinformation@herefordshire.gov.uk)





<b>MEETING:</b>	<b>General Overview and Scrutiny Committee</b>
<b>MEETING DATE:</b>	<b>18 February 2015</b>
<b>TITLE OF REPORT:</b>	<b>Draft work programme</b>
<b>REPORT BY:</b>	<b>Governance services</b>

## Classification

Open

## Key Decision

This is not an executive decision.

## Wards Affected

County-wide

## Purpose

To consider the committee's work programme and to receive updates on work allocated to task and finish groups.

## Recommendation

**THAT the work programme (Appendix 1) be noted, subject to any comments the committee wishes to make.**

## Alternative Options

- 1 It is for the committee to determine its work programme as it sees fit to reflect the priorities facing Herefordshire. The committee needs to be selective and ensure that the work programme is focused, realistic and deliverable within the existing resources available.

## Reasons for Recommendations

- 2 The committee needs to develop a manageable work programme to ensure that scrutiny is focused, effective and produces clear outcomes.

## **Key Considerations**

### **Draft Work Programme**

- 3 An outline work programme is attached at Appendix 1, it is under continuous review.
- 4 The work programme needs to focus on the key issues of concern and be manageable allowing for urgent items or matters that have been called-in.
- 5 Should committee members become aware of issues please discuss the matter with the Chairman, Vice-Chairman and the Statutory Scrutiny Officer.

### **Task and Finish Groups**

- 6 The committee can allocate tasks drawn from the work programme to a task and finish group. It is for the committee to confirm an outline scope including, as a minimum, the composition of the group, the desired outcomes and what will not be included in the work.
- 7 Three task and finish groups are currently in progress: Balfour Beatty Living Places - Public Realm Services; Community Infrastructure Levy; and Development Management (Planning).
- 8 Due to work in progress on the task and finish groups and the additional resources required to service recent call-in meetings, work on Digital Strategy will not be progressed further during 2014/15. Officers have been asked to provide a briefing note to update members on related issues before the end of March 2015.
- 9 Similarly, work on the topics of Pupil Premium and the Hidden / Actual Costs of Education will not be progressed further during 2014/15. Again, officers have been asked to provide a briefing note.

## **Community Impact**

- 10 The topics selected for scrutiny should have regard to what matters to residents.

## **Equality and Human Rights**

- 11 The topics selected need to have regard for equality and human rights issues.

## **Financial Implications**

- 12 The costs of the work of the committee will have to be met within existing resources. It should be noted the costs of running scrutiny will be subject to an assessment to support appropriate processes.

## **Legal Implications**

- 13 The council is required to deliver an Overview and Scrutiny function.

## **Risk Management**

- 14 There is a reputational risk to the council if the Overview and Scrutiny function does not operate effectively. The arrangements for the development of the work programme should help mitigate this risk.



## **Consultees**

15 The Chairman and Vice-Chairman meet on a regular basis to consider the work programme.

## **Appendices**

Appendix 1 Draft Work Programme

## **Background Papers**

- None identified.



## General Overview and Scrutiny Committee: Draft Work Programme 2014/15

### Agenda Items

<b>Tuesday 10 March 2015 at 10.00 am</b>	
Education Strategy - School Estates	To provide scrutiny input into the development of the Education Strategy specifically focussing on estates strategy for schools to meet the council's duties in relation to sufficiency of school places and maintenance of buildings.
Performance Summer 2014	The educational performance in summer 2014.
Task and Finish Group Reports	To receive reports from any completed task and finish group reviews commissioned by the committee.
Progress Report on the Housing Allocation Policy	A progress report following the implementation of the Housing Allocation Policy (to be confirmed, this may be provided to members in the form of a briefing note)

### Task and Finish Groups

<b>The following Task and Finish Groups have been commissioned:</b>	Status:
Balfour Beatty Living Places - Public Realm Services	The draft report is being finalised for submission to General Overview and Scrutiny Committee in March 2015.
Community Infrastructure Levy	Phase three work underway.
Development Management (Planning)	Work in progress, draft report to be prepared shortly.

### Briefing Notes

<b>The following topics shall be dealt with via briefing notes for committee members:</b>	Status:
Update on the Executive Response to the Task and Finish Group Report on Household Recycling Centres	A briefing note to be prepared by the end of March 2015.
Pupil Premium and Hidden / Actual Costs of Education and Pupil Premium	A briefing note to be prepared by the end of March 2015.
Digital Strategy	A briefing note to be prepared by the end of March 2015.

