

**DEPUTY CHIEF EXECUTIVE'S OFFICE**  
A Williams (Interim)

**TO: ALL MEMBERS OF THE COUNCIL**

Your Ref:

Our Ref: AMcL/SAHC

Please ask for: Mrs S Cole

Direct Line/Extension: (01432) 260249

Fax: (01432) 261868

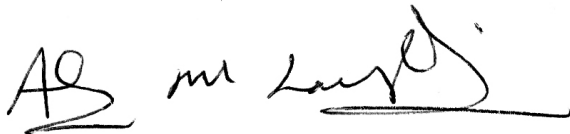
E-mail: scole@herefordshire.gov.uk

Dear Councillor,

**YOU ARE HEREBY SUMMONED** to attend the extraordinary meeting of the Herefordshire Council to be held on **Thursday, 4th September, 2008** at The Shire Hall, Hereford. at 10.30 a.m. at which the business set out in the attached agenda is proposed to be transacted.

Please note that 30 car parking spaces will be reserved at the Shirehall and 10 car parking spaces at the Town Hall for elected Members.

Yours sincerely



**A. McLAUGHLIN**  
**ASSISTANT CHIEF EXECUTIVE**





# A G E N D A

## EXTRAORDINARY COUNCIL

Date: **Thursday, 4th September, 2008**

---

Time: **10.30 a.m.**

---

Place: **The Shire Hall, Hereford.**

---

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

*For any further information please contact:*

*Sally Cole, Committee Manager*

**Tel: 01432 260249, E-mail  
sianclark@herefordshire.gov.uk**

---

**Herefordshire Council**





# AGENDA

## for the Meeting of the COUNCIL

To: All Members of the Council

### Pages

**1. APOLOGIES FOR ABSENCE**

To receive apologies for absence.

**2. DECLARATIONS OF INTEREST**

To receive any declarations of interest by Members in respect of items on the Agenda.

**GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS**

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is and leave the meeting room.

**3. FORMAL QUESTIONS FROM COUNCILLORS TO THE CABINET MEMBERS AND CHAIRMEN UNDER STANDING ORDERS ABOUT AGENDA ITEM 5**

To receive any written questions from Councillors.

**4. NOTICES OF MOTION UNDER STANDING ORDERS**

To consider any Notices of Motion.

Councillors ACR Chappell and GW Dawe have submitted the following Notice of Motion as a matter of urgency:

*NOTES the Judgement by Mr. Justice Collins in the case of the Dinedor Hill Action Association v Herefordshire County Council.*

*NOTES that the Rotherwas Access Road has been completed without any financial contribution from JS Bloor Ltd.*

*NOTES that JS Bloor Ltd have submitted a Planning Application to build 300 houses at Bullinghope without any socially affordable element.*

*RESOLVES that the Chief Executive, in consultation with the Political Group Leaders, should appoint suitable persons independent of the Council to conduct a full and public enquiry and to publish the outcome.*

*INSTRUCTS the Chief Executive to include in the Terms of Reference for this Enquiry:*

*The circumstances that on 28 July 2006 led the Leader of the Council to move the rejection of a decision by his own Cabinet, despite assurances given to the contrary less than 24 hours previously.*

*Whether Councillor Phillips and others were warned by Legal Officers as to the conduct now found unlawful by Mr Justice Collins.*

*A full and detailed chronology of discussions, proposals and responses between Council Members, Council Officers and representatives of JS Bloor Ltd, concerning the Rotherwas Access Road and housing allocations at Bullinghope.*

*An investigation of whether or not inappropriate pressure was placed on Planning Officers during this process, and if so by whom.*

*What professional advice was given to Councillor Phillips concerning the Planning Inspector's view on future housing numbers.*

*How have the Government's targets for housing in Herefordshire been determined and whether that process has been influenced directly or indirectly by JS Bloor Ltd.*

*What evaluation was made of proposals for alternative methods of funding the Rotherwas Access Road.*

*What understandings have been reached with JS Bloor Ltd about issues additional to the application for 300 houses at Bullinghope.*

*What pre-application discussions were held with JS Bloor Ltd in relation to Flood Risk, water supply, sewerage and traffic.*

*Why the Council submitted its evidence to the High Court late and withheld crucial evidence.*

*Why the Council's Scrutiny procedures failed to challenge the conduct that has led to the current circumstances.*

*Whether any Members failed to Register or declare Interests that should have been registered or declared in relation to JS Bloor Ltd.*

*Any other matters that they believe to be relevant to the matter and that the public would expect to know.*

The Chairman will rule whether the motion is urgent.

**5. HEREFORDSHIRE UNITARY DEVELOPMENT PLAN: OUTCOME OF LEGAL CHALLENGE**

1 - 48

To inform Members of the outcome of the High Court challenge to the allocation of land for housing at Bullinghope.

Wards Affected: Countywide – but with focus on Hollington and St. Martins and Hinton



# **The Public's Rights to Information and Attendance at Meetings**

## **YOU HAVE A RIGHT TO:-**

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- 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.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of the Cabinet, of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50, for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.
- A member of the public may, at a meeting of the full Council, ask a Cabinet Member or Chairman of a Committee any question relevant to a matter in relation to which the Council has powers or duties or which affects the County as long as a copy of that question is deposited with the County Secretary and Solicitor more than seven clear working days before the meeting i.e. by close of business on a Tuesday in the week preceding a Friday meeting.

Please Note:

Agenda and individual reports can be made available in large print, Braille or on tape. Please contact the officer named below in advance of the meeting who will be pleased to deal with your request.

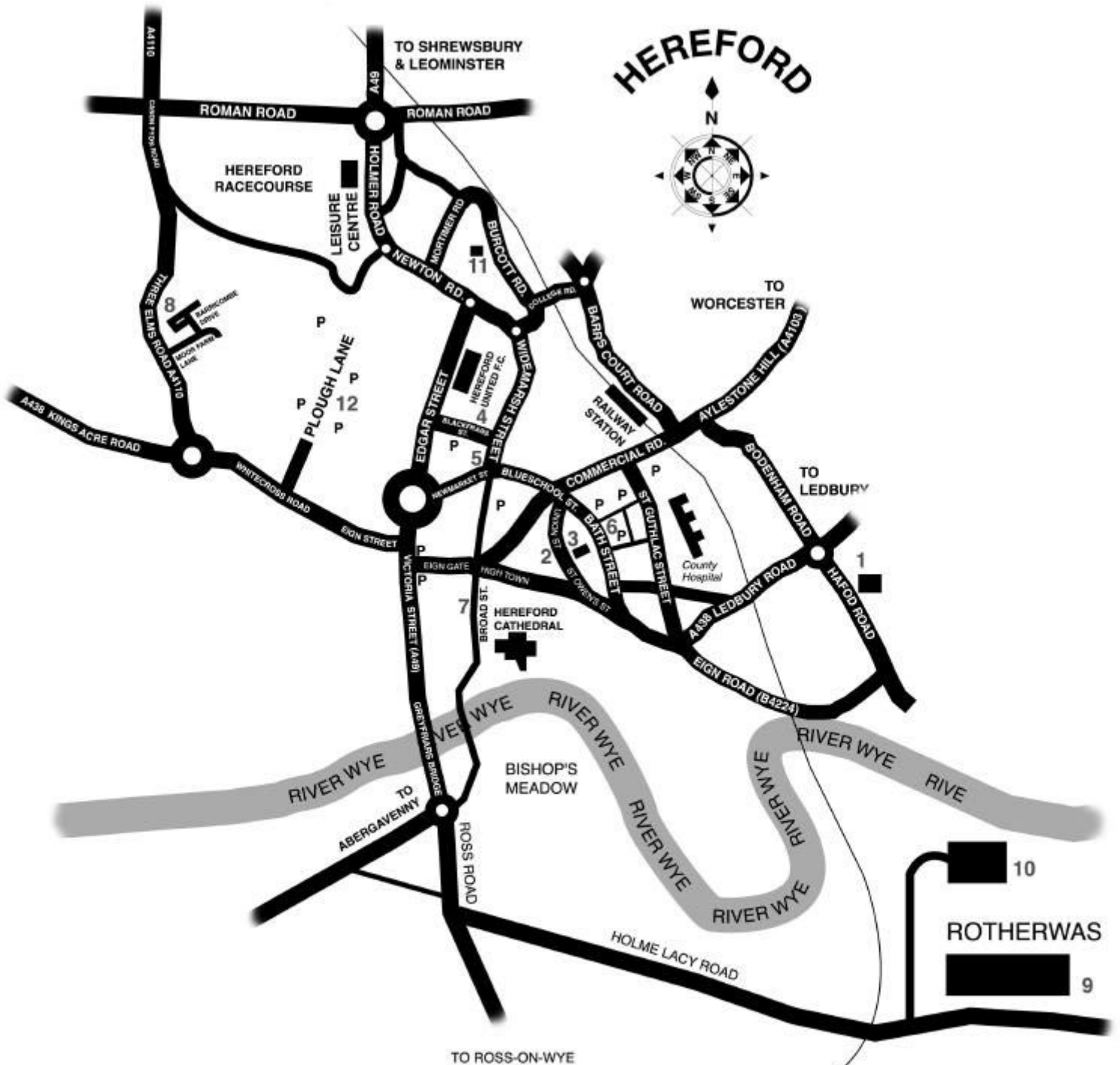
The meeting room is accessible for visitors in wheelchairs via the main entrance by prior arrangement. Please telephone 01432 272395

A map showing the location of the Shirehall can be found opposite.

If you have any questions about this Agenda, how the Council works or would like more information or wish to exercise your rights to access the information described above, you may do so either by telephoning the officer named on the front cover of this agenda on 01432 260249 or by visiting in person during office hours (8.45 a.m. - 5.00 p.m. Monday - Thursday and 8.45 a.m. - 4.45 p.m. Friday) at the Council Offices, Brockington, 35 Hafod Road, Hereford.



Where possible this agenda is printed on paper made from 100% Post-Consumer waste. De-inked without bleaching and free from optical brightening agents (OBA). Awarded the Nordic Swan for low emissions during production and the Blue Angel environmental label.



- |   |                  |    |                                   |
|---|------------------|----|-----------------------------------|
| 1 | Brockington      | 7  | Kemble House                      |
| 2 | Town Hall        | 8  | Trinity House                     |
| 3 | Shire Hall       | 9  | Thorn Office Centre               |
| 4 | Education Centre | 10 | Herefordshire Commercial Services |
| 5 | Garrick House    | 11 | Merchant House                    |
| 6 | Bath Street      | 12 | Plough Lane                       |



# **FIRE AND EMERGENCY EVACUATION PROCEDURE**

## **IN CASE OF FIRE (no matter how small)**

1. Sound the Alarm
2. Call the Fire Brigade
3. Fire party - attack the fire with appliances available.

## **ON HEARING THE ALARM**

Leave the building by the nearest exit and proceed to assembly area on:

## **GAOL STREET CAR PARK**

**Section Heads will call the roll at the place of assembly.**



## **HEREFORDSHIRE UNITARY DEVELOPMENT PLAN: OUTCOME OF LEGAL CHALLENGE**

**Report By: Assistant Chief Executive – Legal and Democratic**

### **Wards Affected**

Countywide – but with focus on Hollington and St. Martins and Hinton

### **Purpose**

1. To inform Members of the outcome of the High Court challenge to the Full Council resolution of 28<sup>th</sup> July 2006 allocating land for housing at Bullinghope.

### **Financial Implications**

2. None outside current budgets.

### **Background**

3. The Unitary Development Plan was adopted with amendments by Council in July 2006 and is a “Saved plan” for three years, i.e. until March 2010. It is part of the Council’s Development Plan, along with the Regional Spatial Strategy (RSS). It will, in due course, be replaced by the emerging Local Development Framework. The modification identifying the Bullinghope site for housing was approved by Council on 28<sup>th</sup> July 2006. Following adoption by Council a group of objectors formed a company, the Dinedor Hill Action Association, to challenge, by way of Judicial Review, the allocation of a site for 300 new houses at Bullinghope. Bloor Homes were also a party to the proceedings and separately represented as an “interested party”.
4. The case was heard in the High Court of Justice on 26<sup>th</sup> and 27<sup>th</sup> June 2008 and Mr Justice Collins handed down his judgement on 24<sup>th</sup> July 2008 which was to the effect that the allocation at Bullinghope should be deleted from the Unitary Development Plan. Following receipt of the judgment from Mr Justice Collins the Council have decided to accept that decision and not to seek leave to appeal.
5. There were certain other consequential deletions from the text of the Unitary Development Plan but the plan, with those deletions, remains a fully operative part of the Development Plan.
6. Mr Justice Collins did not order any change to the Settlement Boundary for Hereford because that boundary is the subject of a separate policy. That leaves the proposed site of the 300 houses within the Settlement Boundary but not allocated for development. Mr Justice Collins did not consider this to be a problem as the removal of the site from the list of allocations would be a material consideration in the determination of any planning application on the site.
7. The Council has been served, as an interested party, with Notice of Leave to Appeal by Bloor Homes which was received on the 15<sup>th</sup> August 2008.

The grounds for leave to appeal are as follows:-

- (1) The construction given to “maxima” in the RSS is wrong (paragraph 7 of the judgment).
- (2) The proper test is whether the Council provided reasons to answer the particular objection to the modification, not some wider and expansive set of reasons in respect of each aspect of the Inspector’s report, contrary to the conclusion reached by the judge at paragraph 20 of his judgment.
- (3) Given the nature of the objection to the modification, the Claimant cannot be substantially prejudiced – such prejudice only arises if the reasons given rejecting the objection to the modifications fails to deal with the substance of that objection (see Ground 2 above).
- (4) Paragraphs 26, 27 and 28 of the judgement deal with the question of the materiality of the removal of Bullinghope from H2 and the reason for it. At paragraph 28 it is said that the removal and reason for it are a material consideration. This is incorrect because the plan has been adopted, as amended by the judgment. By analogy with the judgment, the Inspector’s report is then no longer a material consideration, because it is the development plan which prevails, not the report. The judgment is silent on the merits of Bullinghope, as it should be, so there is nothing material in the judgment.

The Council has not sought leave to appeal but if leave is granted an appeal hearing will be ordered at which the Council will be an interested party. The Council will be required to assist the court if such a situation arises with all evidence previously submitted. The appeal, if successful or not, may have implications as a result for the Council to consider at the conclusion of the legal proceedings.

**Consequences for the Development Plan in accordance with the judgment if the appeal is not successful.**

8. The Unitary Development Plan remains in effect until March 2010, with the possibility that some policies can be “Saved” for a further period depending on the need for them in the light of the emerging Local Development Framework. In respect of any planning applications to develop the land at Bullinghope the judgment makes it clear that the site can no longer be regarded as allocated for new residential development. Planning permission for residential development is now probably unlikely during the plan period of the Unitary Development Plan, i.e. up to 2011 but that will depend on a consideration of any relevant material considerations including the results of the annual monitoring reports and the outcome of the revision of the RSS. Beyond that the potential for residential development, or any other development of the site, will need to be considered alongside all other land as part of the emerging Local Development Framework. It is not appropriate at this stage to give any indication of the future options for this site.
9. The Unitary Development Plan itself could be completely republished with the relevant parts of the text amended. However, given that there are only four references in the text which need amending, it is suggested that a simple



**COUNCIL****4TH SEPTEMBER 2008**

amendment sheet be published and appended to copies of the document as issued following adoption in March 2007. The cost of re-publishing the whole document and all the maps is considered to be excessive given the limited lifetime of the document as a whole and the limited changes now required. Copies of the addendum sheet can be sent to all interested parties on the database of names and organisations developed for the UDP.

10. The changes that need to be made to the text of the Unitary Development Plan are set out in the table below:
11. The Proposals Map (Inset Map HER1 – Hereford City) also needs amending by removing the relevant colouring on the Bullinghope site and the reference to policy H2 (g).
12. The changes will also be posted on the part of the Council's website devoted to the Unitary Development Plan.

<b>CHANGES TO THE TEXT OF THE UNITARY DEVELOPMENT PLAN 2007</b>		
<b>Page</b>	<b>Topic</b>	<b>Change</b>
52	Policy S.3	Reduce total allocation of dwellings in Hereford from 3,781 to 3,481
53	Table 5.2	Reduce relevant sub-totals and final total number of allocated dwellings by 300
55	Paragraph 5.4.13	Delete whole paragraph and sub-heading relating to the allocation at Bullinghope
60	Policy H.2	Remove reference to site at Bullinghope and reduce total allocation figure by 300

**RECOMMENDATION that:**

- (i) **Council note the outcome of the High Court decision which is the subject of appeal;**
- (ii) **Council to receive a further report from Assistant Chief Executive – Legal and Democratic following the completion of legal proceedings; and**
- (iii) **Council notes the proposed amendments to the Unitary Development Plan at this stage**

**BACKGROUND PAPERS**

- Appendix 1 – Minutes of Council meeting – 28<sup>th</sup> July 2006 (which include the named vote record)
- Appendix 2 – Judgment in the High Court.
- Agenda Item 4 – Notice of Motion
- Appendix 3 Cabinet report to council – 13 July 2006

---

Further information on the subject of this report is available from Alan McLaughlin, Assistant Chief Executive, (Legal and Democratic) on (01432) 260200



**MINUTES of the meeting of COUNCIL held at Whitecross High School, Three Elms Road, Hereford on Friday, 28th July, 2006 at 10.30 a.m.**

**Present:** Councillor J.W. Edwards (Chairman)  
Councillor J. Stone (Vice Chairman)

**Councillors:** Mrs. P.A. Andrews, B.F. Ashton, Mrs. W.U. Attfield, Mrs. L.O. Barnett, Mrs. E.M. Bew, W.L.S. Bowen, H. Bramer, R.B.A. Burke, A.C.R. Chappell, Mrs. S.P.A. Daniels, P.J. Dauncey, N.J.J. Davies, Mrs. C.J. Davis, P.J. Edwards, D.J. Fleet, Mrs. J.P. French, J.H.R. Goodwin, Mrs. A.E. Gray, K.G. Grumbley, J.G.S. Guthrie, P.E. Harling, J.W. Hope MBE, B. Hunt, T.W. Hunt, Mrs. J.A. Hyde, T.M. James, J.G. Jarvis, Brig. P. Jones CBE, Mrs. M.D. Lloyd-Hayes, G. Lucas, R.I. Matthews, J.C. Mayson, R. Mills, J.W. Newman, Mrs. J.E. Pemberton, R.J. Phillips, Ms. G.A. Powell, R. Preece, Mrs. S.J. Robertson, D.W. Rule MBE, R.V. Stockton, D.C. Taylor, W.J.S. Thomas, Ms. A.M. Toon, P.G. Turpin, W.J. Walling, D.B. Wilcox, A.L. Williams, J.B. Williams and R.M. Wilson

The Chairman and Council stood in silent tribute to the memory of Mrs. R.F. Lincoln, who had been Councillor for Kerne Bridge Ward until her resignation in April and who had died since the last meeting of Council.

**22. PRAYERS**

The Very Reverend Michael Tavinor, the Dean of Hereford, led the Council in prayer.

**23. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors M.R. Cunningham, G.W. Davis, R.M. Manning, Miss F. Short, Mrs. E.A. Taylor and J.P. Thomas.

**24. DECLARATIONS OF INTEREST**

The following declarations of interest were made:

Councillors R.J. Phillips and D.B. Wilcox both declared a personal interest in the Youth Justice Plan as set out at page 19 of the agenda.

The Chairman of Council, Councillor J.W. Edwards, declared a prejudicial interest in the Kings Caple Parish Plan, set out at Page 32 of the agenda and indicated he would vacate the Chair and Chamber if there was any discussion on the item.

**25. MINUTES**

Before calling on Council to agree the minutes, the Chairman advised that it had been necessary to change the date of the Council meeting previously scheduled to be held on 10th November, 2006. This meeting will now take place on 3rd November, 2006.

**RESOLVED:** That the minutes of the meeting held on 12th May, 2006 be approved as a correct record and signed by the Chairman.

**26. CHAIRMAN'S ANNOUNCEMENTS**

The Chairman welcomed the Council to its first meeting in the new Whitecross High School. He wished the Head Teacher, staff and pupils well in their endeavours and thanked the management company for allowing the meeting to take place on the premises.

He welcomed Councillor John Jarvis to his first meeting of Council as Councillor for Kerne Bridge ward and wished him success in his new role.

He presented an award to Councillor D.B. Wilcox, Cabinet Member (Highways and Transportation) for the refurbishment of Eign Gate. The Award was made by the Local Government News as part of its Street Design 2006 national awards. The scheme was judged to be fourth out of more than 100 entries throughout the country.

The Chairman reminded Councillors of a reception for the Three Choirs Festival which was to be held on 7th August and asked those who had not responded to the invitation to do so as a matter of urgency.

**PETITIONS**

The Chairman presented a petition in support of provision of a relief road at Rotherwas to Councillor R.J. Phillips, the Leader of the Council.

He also presented a petition to Councillor P.J. Edwards, the Cabinet Member (Environment) asking for planning control on the siting and erection of large scale polytunnels.

**27. QUESTIONS FROM MEMBERS OF THE PUBLIC**

Under the Constitution a member of the public can ask a Cabinet Member or Chairman of a Committee any question relevant to a matter in relation to which the Council has powers or duties, or which affects the County, as long as a copy of the question is deposited with the Head of Legal and Democratic Services more than six clear working days before the meeting. A number of questions had been received in time to be included in the agenda. The questions and responses are set out below:

**Question from Mr M Hubbard, Hereford in a personal capacity:**

*"As a riparian owner on the Wye and keen to maintain the charter rights of the citizens of Hereford, enabling free use of the river for leisure & fishing purposes, can I be assured that those rights, that have been protected by the city for several hundred years and are now held in stewardship by the Herefordshire Council, are still being protected and how?"*

Councillor D.B. Wilcox, Cabinet Member (Highways and Transportation) replied that many matters concerning the River Wye, including those relating to ecology, wildlife, pollution and navigation are regulated by the Environment Agency. The Council has no power to interfere with the private riparian rights of persons who own land adjoining the rivers within the County. The Council is engaged in litigation regarding various claims to historic fishing rights within the City of Hereford. That litigation is still ongoing and in consequence no final resolution of the competing claims has yet been achieved.

**Question from Mr M Hubbard, Hereford in his role as Chairperson of the Friends of Castle Green:**

*"Please would Herefordshire Council provide me with a breakdown of the total costs of maintaining & repairing the city parks known as Castle Green, Redcliffe Gardens and Cantilupe Gardens, including Castle Pool, over the past year. Please would Herefordshire Council also provide a breakdown of projected long-term spending on capital projects for the same areas."*

Councillor R.V. Stockton, Cabinet Member (Community Services) stated that the costs of maintaining the areas known as Castle Green, Redcliffe Gardens and Cantilupe Gardens in respect of routine grounds maintenance activity for the financial year 2005/6 were in the region of £40,486. This figure did not include any emergency work which was unlikely to exceed £5,000. He advised that there was no specific allocation for the maintenance of the Castle Pool area.

He also advised that there was no ongoing capital allocation for these sites. However, in recent years there had been a one-off allocation of £110,000 for the cleansing and de-silting of the Castle Pool and in addition there had also been a one-off sum of £34,000 allocated for the renovation of the Mill Street steps leading to the Castle Green. He said that there were no future items of capital expenditure identified for these areas at this time.

**Questions from Mr R Hattersley, Hereford**

**City Assets**

*"There has been rumour and counter rumour locally about the selling off of key council property in the City of Hereford. For the benefit of the City residents and taxpayers who own these properties collectively, can the Council please confirm : -*

*Which properties, if any, have already been sold?*

*Which properties are already "on the market"?*

*Which properties are still being discussed?*

*Which properties can the Council guarantee will not be considered for sale?*

*What plans do the Council have for consulting the residents of the City of Hereford before any such sales of their property proceed?*

*Can the Council please confirm precisely what any monies raised through such sales will be spent on?*

*Can the Council please confirm whether it is their intention to begin proceeding with such sales before or after the next local elections in May 2007?"*

Councillor R.M. Wilson, Cabinet Member (Resources) said that the question asked by Mr. Hattersley was based on a misunderstanding about the basis on which property is held by the Council. Herefordshire Council was formed in 1997 and became operational from 1st April, 1998. It inherited property from the four outgoing District Councils and from the outgoing Hereford and Worcester County Council. Statutory provision was made for the transfer of that property. As at 1st April, 1998, the whole of the Council's property portfolio would have consisted of property inherited from the former Councils. The Council holds that property for the benefit of the whole of its area.

In relation to the specific questions asked, he said that the questions were based on the incorrect premise that property was held for the specific benefit of residents of the City. As no such properties were held on that basis, it would only be possible to

respond by providing, a complete list of all the properties that have been sold by the Council since 1st April, 1998.

However, he did advise that the only recent sales within the City have been those of numbers 9 - 15 and 17 St. Owen Street.

Within the City Council's area, 47 Gaol Street and the Burcott Road Depot are currently "on the market".

He said it was not possible to respond accurately to the question about what properties are still being discussed, because the Council's Asset Management Plan requires it to keep the whole of its property portfolio under constant review.

With regard to the sale of properties in the future he advised that the Council was not legally able to give a guarantee of the kind that was sought. It is a well-established principle of administrative law that no Council can fetter the discretion of its successor. Any guarantee this administration sought to give could therefore only be effective until the next elections in May 2007. However, he added that it was very unlikely that this administration would sell iconic public buildings such as the Old House in High Town or the Shire Hall

He said that the Council did not consult on the disposal of individual properties and nor would it seem appropriate to do so. The Council will, however, consult on its Medium Term Financial Strategy, which sets out the principles within which the Council will finance its revenue and capital requirements. The Council also has procedures in place to ensure that strategic partners, service providers and service users or their representatives are consulted appropriately prior to a decision to dispose of an asset being undertaken.

The capital receipt income generated from the sale of assets is applied in accordance with the Council's corporate priorities. In the case of the Town Hall, should the City Council proceed with its request to purchase the building, the capital receipt would be used to part pay for the alternative accommodation that would be needed for Herefordshire Council staff currently located in that building.

Finally, he advised that a number of property related issues would be taken into account in determining when surplus assets were brought to the market. Clearly, the Council would need to have alternative accommodation available and consideration of the prevailing property market conditions would also be pertinent. Realistically, however, the Council would not be in a position to negotiate alternative accommodation and complete the sale of additional property prior to May, 2007. He felt it was highly likely that other properties across the County would be offered for sale before the elections in May 2007, in line with the Council's current accommodation strategy.

#### **Question from Mr Hattersley**

##### **Rotherwas Access Road**

*"Given that the Rotherwas Access Road has been turned down repeatedly as "poor value for money", can the Council confirm that it is still their intention to pursue its construction?"*

*If so, can the Council give some indication as to what sources of funding they will be accessing for the road, given that government sources appear inaccessible?"*

*Recent research by the Campaign for the Protection of Rural England and the*

*Countryside Agency\* found that new roads in Newbury, Eastbourne and Blackburn generated unexpectedly high levels of traffic growth both on the new roads themselves **and in town centres**. Does the Council believe that a Rotherwas Access Road and indeed a bypass would have solved any of Hereford's traffic problems **within 10 years of their construction**, and, if so, will they bring forward the evidence on which they are making such claims."*

Councillor D.B. Wilcox, Cabinet Member (Highways and Transportation) replied that the Council remained committed to delivering the Rotherwas Access Road. He said that the new road was essential to overcoming the transport problems of the area and ensuring the Rotherwas Industrial Estate maintained its status as the major home of Herefordshire's businesses. The recent announcement regarding funding from the Department for Transport related to their assessment of the scheme against the Department's scheme appraisal criteria, which did not fully recognise the wider benefits of the scheme to Herefordshire. The Council considered that the road does represent value for money and would make a major contribution to the local economy and economic development within Herefordshire. He said that the scheme had been supported by the Regional Development Agency, Advantage West Midlands. The West Midlands Regional Assembly had identified the scheme as making a major contribution to regional objectives and concluded that it should be a priority for investment.

As a matter of urgency, the Council was considering all potential sources of funding.

The Council is aware of the recent report produced by Campaign for the Protection of Rural England and the Countryside Agency, entitled "Beyond Transport Infrastructure" and other reports regarding research into the generation of traffic.

Government guidance makes clear that it is important for new road schemes to be considered as part of an integrated transport strategy. The Council identified the need for the Rotherwas Access Road following an integrated transport study that focused on solutions to the transport problems of the estate. This study recommended an integrated package of measures to address access to the estate by all modes of transport. Through the Local Transport Plan, the Council has already implemented improvements for pedestrians, cyclists and public transport and continues to support a successful Travel Plan for the Estate to encourage the use of alternative modes and help reduce congestion. The provision of a new Access Road to the estate would complete this package and address the problems of access to the estate by HGVs and allow further measures on Holme Lacy Road to reduce the environmental impact of traffic on the area.

The Council's second Local Transport Plan published in March 2006, highlights the need for an Outer Distributor Road in the longer term, as part of the integrated transport strategy for addressing the transport problems of the city. This strategy was developed following a comprehensive local multi-modal study. This was completed in 2003 and carried out in partnership with the Government Office for the West Midlands, Advantage West Midlands, the Highways Agency, the Chamber of Commerce and the West Midlands Sustainability Forum. Therefore, had such a road been built earlier then this would have been of great benefit to Hereford.

These comments were made without addressing the significant additional benefits that an Access Road would achieve in respect of economic regeneration and employment prospects for the area.

**Question from Mr R Gill, Cradley**

*"The Planning Inspector in paragraph 9.56/1 of his report on the draft UDP chooses to back the views of a developer against the wishes of many objectors, many villagers and the Parish Council, in denying HBA9 (Open Space) status to the field opposite St Katherine's in Cradley. Whilst his expert knowledge of the requirements of HBA9 status is not being questioned, his understanding of the application to this particular field is limited compared to the knowledge of the locals. He does however admit that the road alongside is "at this point still like country lane" recognising a weakness in his case. His view that the field is "contributing little to the appreciation of the settlement or the neighbourhood" is strongly disputed by the villagers, who have a much better acquaintance with the locality and who could demonstrate his error in court.*

*It might be reasonably inferred that the recommendation of Council officials to accept his view and reverse the previous decision of the Council is influenced by fear of the legal costs of any future dispute with the developer. Would the Council please give some indication of the legal costs which they would incur in defending a decision to deny HBA9 status were this decision to be challenged in the courts by a group of concerned villagers in Cradley and would the Council please opine whether they consider that it is an appropriate use of council tax payers' money to attempt to defeat the wishes of the community?*

*A recitation of an answer prepared by council officials will be informative, but the views of councillors are also solicited."*

Councillor P.J. Edwards, Cabinet Member (Environment) advised that the Inspector's recommendation on this land has been reached on the basis of access to all relevant material, including the community views expressed through the Village Design Statement and the Parish Plan, which were designated as Inquiry Core Documents. On this basis, and with the benefit of a site visit, the Inspector concluded that the land did not qualify for protection under the policy; and recommended accordingly.

This recommendation and the Inspector's reasoning has been carefully considered. The conclusion that has been reached by the UDP Working Group of members and by Cabinet, taking full account of the representations submitted by the local member on behalf of the local community, was that the Inspector's recommendation should be accepted.

This conclusion had been reached on the planning merits of the case. Legal costs are not relevant to the planning merits and no meaningful indication can be given as this would depend on the nature of any action.

**Question from Mr David Creed-Newton, Chairman of Cradley Parish Council,**

*"Would the Council care to comment on an apparent denial of the democratic process?"*

*Community involvement in planning accords with people's right to participate in decisions that affect their lives. It is an important part of the trend towards democratisation of all aspects of society." – Community Planning Website, funded by the Department for Communities and Local Government*

*The villagers of Cradley have expressed their view that the plot opposite St Katherine's be protected as an open space. They voted five to one in favour of this in a systematic consultation process (Planning for Real ®). The village has, in partnership with Herefordshire Forward Planning, developed a Village Design*



*Statement and a Parish Plan promoting this. Cradley Parish Council, representing the villages of Cradley and Storrige, has laboured hard to keep this as an open space. Herefordshire Council had commendably recognised the importance of this matter in its last redraft of the Unitary Development Plan. Yet all this is to be ignored in the face of the opinion of one unelected official (however distinguished), visiting from outside the area if the Council reverses its position and accepts the Inspector's recommendation 9.56/1.*

*Is there any point in seeking the opinions of the electorate, of producing Parish Plans and Design Statements, of voting for councillors, of turning up to meetings of the Council, or would the Council advise voters and parishioners not to bother?"*

Councillor P.J. Edwards, Cabinet Member (Environment) stated that the future use of the land referred to has been fully assessed and discussed through the process of preparing the Unitary Development Plan.

In doing so, regard had been had to community views that the land should be protected. Indeed the Council had sought to achieve such protection through designation under a policy of the Plan – HBA9. This designation had been objected to and therefore fell to be considered at the Public Inquiry.

The independent assessment by the Inspector was part of the normal process of scrutinising the Plan. In this case, the Inspector considered the specific matter of whether the site qualified for protection under the policy. As part of that process, all objectors had the opportunity to prepare and submit evidence to the Inquiry. The Inspector had access to all relevant material, including the community views expressed through the Village Design Statement and the Parish Plan, which were designated as Inquiry Core Documents. On this basis, and with the benefit of a site visit, he concluded that the land did not qualify for protection under the policy; and recommended accordingly.

The Council's Unitary Development Plan Working Group, after careful consideration, accepted the Inspector's recommendation. This was not, in itself, a denial of the democratic process. The recommendation was soundly based and should be accepted on planning merits.

## **28. QUESTIONS TO THE CABINET MEMBERS AND CHAIRMEN UNDER STANDING ORDERS**

Councillors may ask questions of Cabinet Members and Chairmen of Committees so long as a copy of the question is deposited with the Head of Legal and Democratic Services at least 24 hours prior to the meeting. A list of questions, set out in the order in which they had been received, was circulated at the beginning of the meeting.

The Chairman reminded those Councillors who had submitted questions that they were entitled to ask a supplementary question and asked that they did not use this as an opportunity for further debate.

### **Question from Councillor B. Hunt**

*"Given the unique function of the Members' Support Service, does the Cabinet Member agree with me:-*

- a) *that it is inefficient to dismember the service into three locations i.e. the present offices for secretarial, the remote garden pavilion for the Members' Information and Support Officer and Rotherwas for Members'*

*I.T. Support?; and*

- b) that no notice or consultation was given to Members as to their requirements?; and*
- c) that it was only the minor financial saving that initiated this exercise and that it lowers the standard of service to Councillors, the grass roots interface with our public?; and*
- d) what action do you propose taking to remedy this unsatisfactory situation?"*

Councillor Mrs. J.P. French, Cabinet Member (Corporate and Customer Services and Human Resources) replied that the changes were designed to link officers to the professional base that most closely identified with the work they undertook and to make better use of the resources. A key piece of work for the Members Information and Support Officer, as part of the Communications Team, would be to work on those Communications activities for Members which Members would like to see improved.

She said that the Local Government Act 1972 provided for the delegation of managerial responsibility to officers reserving wider strategic responsibilities to Members. This distinction was reinforced in amendments to the Local Government Act which required the Head of Paid Services (Chief Executive) to account to Members on: the manner in which the discharge of the different function was co-ordinated; the number and grades of staff required for the discharge of its function; the organisation of the authority's staff and the appointment and proper management of those staff.

She said that the job description of individual Directors required them to support the Chief Executive in that role by requiring them to lead and manage the Directorate in a manner which created a highly motivated, developing and committed workforce. It was because these services were used and valued by Members that the proposals were discussed with Group Leaders on two separate occasions – at the beginning of the consultation period and when the proposals were confirmed following discussion with staff and consultation with the Trade Union.

She advised that the only financial saving to result from the restructure would be to pay for the services of IT support as required rather than maintaining a support resource, often with no use being made of it, which was not an efficient use of the resource.

She said that no further action was proposed but as with all intended improvements the new arrangements would be monitored carefully to ensure the maximum benefit to all Councillors. She asked any Councillors who felt they were receiving an unsatisfactory service to contact her or the Head of Legal and Democratic Services with details of their concerns.

In response to a call to revert to the original staffing structure Councillor Mrs. French expressed disappointment that Members were unwilling to accept the new structure. She encouraged Members to use the service and report any failings to her.

**Question from Councillor B Hunt**

*"Following the near-disaster in Bromyard several years ago when a petrol tanker demolished a bridge parapet and stopped next to an overhead power line pylon Highways Officers met on site with myself, Councillor P. Dauncey and Councillor T.W. Hunt.*

*Officers who attended have failed to implement agreed measures to improve road marking, sign-posting and other road safety measures on this section of the A44; and despite correspondence from Bromyard and Winslow Town Council and telephone requests from myself, no response has been forthcoming.*

*What action do you propose taking to remedy this unsatisfactory situation?"*

Councillor D.B. Wilcox, Cabinet Member (Highways and Transportation) confirmed that officers had investigated the feasibility of making some further improvements to signing and lining at the site, but reported that the additional work could not be justified.

Some minor improvement works had been carried out in 2002 and since then there had been only one recorded personal injury accident. As a result, the site was no longer identified within the Council's county-wide ranking of accident sites.

He said that, given that there had been several local representations for additional works to be carried out at Petty Bridge, he would request a further site inspection .

He agreed to keep the local Members informed of the outcome of the inspection.

**Questions from Councillor A.C.R. Chappell**

*"Will the Cabinet Member for Children's Services confirm that teaching staff at Whitecross School have been advised that they may enter the school for eight hours only during the school summer holiday, after which time the Private Finance Company who owns the school will charge them for entering the school?"*

*Will he confirm that teachers at the new Riverside Primary School, and Sutton County Primary School, will be able to enter their new premises for more than eight hours during holidays without the school being charged for the privilege?"*

*Will the Cabinet Member for Children's Services, confirm that the community aspect of the new Whitecross School is being fully utilised and that there are no restrictions of use by the community for out of school hours. Can he confirm that the contract with the PFI Partner is being fully implemented?"*

Councillor D.W. Rule Cabinet Member (Children and Young People) advised that the legal contract signed by the Council and Whitecross School Governors defined the hours of use by the school as between 7.30am and 6.30pm on 190 days in a year and an additional 550 hours in any one year which includes access to the school in the week at the beginning of the summer holiday and 10 days at the end of the holiday. On top of this contractual provision the manager on site told school staff that they can have access throughout the holiday period on week-days as he would be on site on these days.

In relation to the new Riverside and Sutton Schools, he said that the management of the premises would be the responsibility of the respective Governing Bodies. He was not aware of any discussions about access during the holiday period. The contractual arrangement for caretaker and cleaners in charge do vary greatly and

their employment in the summer holidays, particularly in smaller schools, is often very limited.

He said that teachers worked in excess of their contracted hours because of their commitment but did not feel that this should be exploited. Holidays were essential for teachers to recharge their batteries.

Referring to community use, he advised that the legal agreement was constructed to encourage third party use and a programme of use was expected to be implemented from the autumn of 2006 onwards. The PFI company had appointed HALO as its subcontractor to manage the income from that, which was expected to yield at least £25,000 in the first three years.

Councillor Chappell said that teachers were not aware that they could access the school in the manner described and asked that the Acting Chair of Governors be informed.

#### **Question from Councillor D.J. Fleet**

*"Is the Cabinet Member satisfied with the cleanliness of the Eign Gate paving following his instruction for the area to be thoroughly cleaned."*

Councillor D.B. Wilcox, Cabinet Member (Highways and Transportation) said that the paving in Eign Gate had been cleaned and the joints sealed earlier in the month. He advised that he had visited the area the previous evening and found that the cleanliness had not been particularly good, with various stains inadequately removed. He said that the light colouring of the paving contributed to the situation. He said he would discuss the problems with the consultants to see whether better cleaning results could be achieved.

#### **Question from Councillor D.J. Fleet**

*"Is the Cabinet Member proposing to take any action to stop vehicles parking for long periods on the pavement area of High Street. These vehicles drip oil onto the new paving, obstructing shop windows and causing congestion for pedestrians trying to shop."*

Councillor D.B. Wilcox, Cabinet Member (Highways and Transportation) advised that the current activity was due to the refurbishment of the old Littlewoods store and any damage would have to be made good. High Street is a pedestrianised area daily between 10.30 a.m. and 4.30 p.m. which facilitates the flow of pedestrians.

In response to a further question Councillor Wilcox advised that the contractors had an order to use the compound in front of the store and that the situation was being closely monitored.

#### **Question from Councillor Mrs. M.D. Lloyd-Hayes**

*"Would the Council reconsider its proposal to close the whole of the open space at the Rose Garden, Ledbury Road for a two year period while work is underway on the new extra-care village? The area is used by a great number of people on a daily basis and there is much concern locally that this facility is to be denied them. Would it be possible to divide the area affected so that only half of the space is closed at any one time, therefore allowing those residents and visitors who use the open space on a regular basis the use of at least part of the area?"*

Councillor Mrs. L.O. Barnett, Cabinet Member (Social Care Adults and Health) advised that, following legal advice, it had been determined that the best way forward would be a temporary closure of the open space for a **maximum** period of two years. The temporary closure was necessary because of the flood alleviation works required. If it was possible to lessen this time, she would do everything in her power to do so.

Councillor Mrs. Lloyd-Hayes said she couldn't see why the works could not be carried out on one half of the site in the first year and on the other half in the second year. She asked if it would be possible to move benches from one side of the site to the other so that they could still be available for use.

Councillor Mrs. Barnett said she would be happy to investigate the moving of the benches but advised Councillor Mrs. Lloyd-Hayes that this was a matter that could have been raised with the officer responsible.

### **Questions from Councillor W.L.S. Bowen**

*"When is Herefordshire Council going to join the many other councils (nearly 50 in all) that require all developers to provide at least 10% of the energy needs of their developments to come from on-site renewable technologies?"*

*How much money does Herefordshire Council set aside each year to upgrade and improve the energy efficiency of all its properties?"*

*Is Herefordshire Council going to incorporate "planning policies for sustainable building" into its planning guidance for all developers?"*

Councillor P.J. Edwards, Cabinet Member (Environment) advised that the current planning policies in the Unitary Development Plan encouraged and promoted sustainable energy generation particularly from renewable sources and that the requirement for such on-site renewable energy generation would be reviewed as part of the ongoing production of the Local Development Framework.

He said that Herefordshire Council was investing £200,000 to upgrade and improve the energy efficiency of all its properties and, in addition, had been successful at the first stage in the process of securing £200,000 match funded via a Government initiative. Energy efficiencies were being made to buildings which would compensate for energy price increases.

He advised that sustainable building principles had been incorporated in Policy S1 (Sustainable development) and Policy H13 (Sustainable residential design) of the Unitary Development Plan and consolidated in the Supplementary Planning Guidance Note *Design and Development Requirements* adopted in July 2004. Such principles were expected to be incorporated into the forthcoming Design and Access Statements which all developers would be required to submit with applications after 10 August 2006.

In response to further comments Councillor Edwards said that the Council would be participating in a national consultation exercise on these issues. He said that the Unitary Development Plan encouraged developers to incorporate the measures promoted by Councillor Bowen. He also thanked Councillor Bowen for his involvement in developing the Council's policies on renewable energy, energy efficiency and sustainable building.

**Questions from Councillor Ms A. Toon**

*"Following a presentation to the Children's Services almost a year ago, we were advised that mechanisms were in place for parents to elect to attend parenting courses or that the council could compel parents to attend these courses where issues of children's behaviour were of concern. Can the Leader advise on how many courses have been held, where have they been held, and how do parents or teachers find out where they are being held?"*

*Could the Cabinet Member for Children's Services advise what action has been taken following a recommendation by the Local Admissions Forum to refer 12 schools to the adjudicator for failure to comply with government regulations in their admissions process. As he will be aware this matter has been raised repeatedly over the past 2 years giving rise to a clear recommendation last year that if the schools concerned did not comply that the committee would have the matter forwarded to the adjudicator.*

*Could the council advise on how many truancy officers are now employed and how long they have been in post?*

*Could the council advise on how many nursery, after school placements and school staff with direct children contact have been through the child concern model and reporting training during the past 6 months?"*

**Councillor D.W. Rule, Cabinet Member Children and Young People responded as follows:.**

**Parenting Courses** - 16 programmes involving up to 236 parents have been held for the financial year 2005/2006 via Council services. Councillor Rule advised that this number should be treated with caution because places on these courses are counted quarterly so there may have been some double counting – information for year 2006/7 will be more reliable. A new stream of parenting courses will be available through the local Youth Offending Service in September.

Courses being offered by the Education Welfare Service, have been delayed due to a very serious illness of one of the officers but are now scheduled to start in the Autumn.

Courses are held in a variety of places depending on need, but mostly in Hereford and Leominster.

Advice has been sent out to schools (September 2005) with regard to Parenting Contracts and Parenting Orders. Most referrals for parenting courses, however come from the agencies that support children in need, e.g. the Children's Fund and the mechanism of Child Concern Model.

Councillor Rule advised that the Children and Young People Directorate had identified an additional £25,000 to expand the use of parenting courses as from April 2006.

**Regarding Local Admissions Forum** - At its last meeting the Local Admissions Forum recommended that the issue of compliance to the draft DfES guidance on oversubscription criteria in 12 aided schools in the County should be raised with the National Adjudicator. DfES had been asked when their draft guidance would be issued as formal guidance. Their timetable has now been received which states that 'consultation (is) due to take place around the beginning of the next school year in

September and the new Codes coming into force in time for admission authorities to take them into account in determining their admission arrangements for September 2008.' In light of the proposed further consultation and the suggested DfES stipulation that the new code is to come into force in September 2008, Councillor Rule said that he was not minded to refer the issue to the National Adjudicator until it was shown that aided schools were working outside the final guidance but he was open to further advice on that point and would keep in contact with the DfES on the matter.

**Regarding Truancy Officers-** Councillor Rule stated that the Council did not employ Truancy Officers. However, the Education Welfare Service, in partnership with the Police, regularly carried out truancy sweeps. Usually this would be one every half-term. The location for these changed (although it is usually Hereford City), as did the dates, but 'hot-spot' times like the May Fair week were always covered. Occasionally the full Education Welfare Service team plus police officers conducted an intensive truancy sweep in one area, for example High Town in Hereford. He stated that, although the levels of truancy in Herefordshire were low in comparison with other Authorities, he was not complacent.

**Regarding Child Concern Model – Training -** Councillor Rule thanked Councillor Ms Toon for her question but said that it had not been possible to obtain the necessary detail in the time available. He agreed to provide her with a response as soon as he had gathered the information.

Following a number of comments from Councillor Ms Toon, the Chief Executive reminded Council that the Constitution provided for written questions to be answered in a formal way and that there was provision for questioners to ask one supplementary question. He advised that this was not the time to open up further debate around the questions. He also advised that Members should submit comprehensive written questions rather than relying on gleaning additional information through the supplementary question.

#### **Questions from Councillor Mrs. S. Robertson**

*"A recent request for a post office at Tillington Village Stores has proved unsuccessful despite the support of the community, myself, Bill Wiggin MP and also as identified in the Burghill Parish Plan.*

*This decision is contrary to both national and local policy and the government is encouraging rural regeneration including post offices. Many rural communities have limited or non-existent services and the village stores/post office is a vital link in sustaining these communities.*

- (a) *What is the cabinet member doing to support initiatives such as rural post offices?*
- (b) *Has the Council an adopted policy for supporting rural post offices bearing in mind how important these are to rural communities, and if not, why not?"*

**Councillor J.C. Mayson, Cabinet Member (Rural Regeneration and Strategy)** said that he was disappointed to hear that the request for a post office at Tillington Village Stores had proved unsuccessful and would explore whether the Council could provide any assistance in support of the request.

He advised that the Post Office had to consider the sustainability of any new Post Office in terms of its commercial viability and felt that any decision to open a new

rural post office would be affected by the current uncertainty over future government funding for the rural post office network.

He said that the Council recognises the importance of rural post offices as one of the key rural services needed to sustain a high quality of life in the County. The Council administers a number of grant schemes which could provide some practical support for rural post offices including the shop front grant schemes and the Community Regeneration Grant, with an annual budget of around £20,000, helps support new activities, facilities and services across Herefordshire.

## 29. NOTICES OF MOTION UNDER STANDING ORDERS

There were no Notices of Motion.

## 30. CABINET

The Leader of the Council, Councillor R.J. Phillips, presented the reports of the meetings of Cabinet held on 25th May, 15th and 29th June and 13th and 20th July, 2006.

**In relation to Item 1.2 - Herefordshire Unitary Development Plan (UDP): Inspector's Report, Statement of Decisions and Reasons, and Proposed Modifications** the Leader proposed an amendment to the recommendation. He proposed that the Council rejects the Inspector's recommendations 5.14/1 and 5.3/3 reference to land at Bullinghope and amends the relevant Modifications accordingly. This would have the effect of including the Bullinghope site and text as it was in the revised Deposit Draft. He stated that there were no proposals to reject the Inspector's recommendations in relation to housing land at Holmer, Hereford.

In moving the recommendation, he spoke of the need for additional housing within Hereford City by the end of 2011. He also said it would be an opportunity to raise additional funding which may be required to fund the access road at Rotherwas which was vital to the economic development of the City.

Councillor P.J. Edwards, Cabinet Member (Environment) seconded the proposal.

Councillors A.C.R. Chappell and Mrs. W.U. Atfield, expressed shock and concern at the proposal. While recognising the need for improved access to the Rotherwas Industrial Estate, they felt that Bullingham Lane would be unable to cope with the amount of traffic likely to be generated by 300+ new houses. In one direction the lane passed under a narrow railway bridge which would be impossible to widen and in the other direction it joined the Ross Road which was already renowned for its traffic problems. Although some improvements were expected once the new road layout at the Asda store was completed, additional traffic from over 300 homes would cause serious congestion south of the river. They reminded Council of the previous opposition to additional housing from local residents at Bullinghope and warned of further objections if the proposal was carried. They urged Council to reject the proposal, saying that investigations should be carried out into other means of funding the Rotherwas Access Road.

Councillor W.J.S. Thomas, whose ward includes the proposed route for the Rotherwas Access Road, said that the building of the road was one of the most important things that the Council had to achieve. He said that the businesses located at the Rotherwas Industrial Estate had suffered because of the inadequate access and this was having an effect on jobs. Unless more jobs, and better quality jobs, were provided more and more young people would be leaving the county to live and work elsewhere. He spoke of other improvements which were needed in and



around the City, for the benefit not only of businesses and residents but also for visitors - flood alleviations measures particularly at the Holme Lacy causeway, a road to join the A49 and the A465 with the new section of the Roman Road, and another bridge over the River Wye as well as the provision of a park and ride scheme for the City. He said the proposal had his total support.

Councillor T.M. James, the Leader of the Liberal Democrat group said he would support the amendment but would abstain from voting on the Unitary Development Plan itself because he was concerned that the proposed housing densities would lead to slum developments in the market towns.

A number of other Members also spoke in support of the proposal.

The Leader sympathised with the views expressed by the Councillors Mrs Attfield and Chappell, but stated that if Hereford was to develop into a modern, progressive and economically viable City it was vital that the road infrastructure in and around the City be improved.

In accordance with Standing Order 4.15.4 a named vote was held and is attached at Appendix 1 to these minutes. The voting in support of the proposal was as follows:

For - 43

Against - 4

Abstained - 5.

Further discussion took place on other aspects of the Unitary Development Plan. In answer to a number of comments and queries the Cabinet Member (Environment) stated that studies showed that there would be a continuing need for additional housing both at Bullinghope and at Holmer. He said that City Councillors were afforded every opportunity to make their views known to the Inspector. He thanked Councillor T.W. Hunt, Chairman of the Planning Committee for his support in the Regional Planning Partnership. He also welcomed the support of Councillor W.J.S. Thomas and Councillor James and endorsed the latter's comments on the need to look again at proposed housing densities.

He referred to the rejection of the Inspector's recommendations in respect of the Leominster Zone of Interest and the need to improve the road infrastructure around the town.

It was noted that measures may be needed to ensure an acceptable level of air quality on the Holme Lacy Road, Hereford.

The Leader agreed, in consultation with officers, to amend the policy on housing density to ensure a degree of flexibility in areas where high densities may be considered inappropriate, particularly in respect of minimum density requirements in town centre locations.

**In relation to Item 4.1(iii) - Accommodation Strategy Update** - in response to a query, the Leader said he was unaware of any plans for the Police to acquire buildings in Catherine Street, Hereford but would investigate this further.

**In relation to the previous item and Item 4.1 (vi) - Draft Medium Term Financial Strategy** - The Leader confirmed that the £27 million referred to in the draft strategy included the operational costs of running the Council including the Herefordshire Connects programme which would lead to savings for reinvestments in vital services such as Adult Social Care. He welcomed views from any Members who thought they could propose a viable alternative.

**In relation to Item 4.1(v) - Proposed Police Restructure** - The Leader welcomed the news that the proposed merger would not take place and said that good sense had prevailed.

**In relation to Items 5.1(i) Herefordshire Council - Children's Services - Annual Performance Assessment (APA) by Ofsted and Commission for Social Care Inspection (CSCI) Self Assessment Report and Item 5.2(i) Progress on Improvement following the Joint Area Review (JAR) in Herefordshire** - Councillor D.W. Rule, Cabinet Member (Children and Young People) said that he would be happy to talk to individual members if they had any concerns about the service. He said that the changing level of assessment had a knock-on effect on the number of referrals.

**In relation to Item 7.2(i) - The Lyons Inquiry** - The Leader agreed with Councillor T.M. James, the Leader of the Liberal Democrats that the Council should resist any changes to the way in which National Non-Domestic Rates were allocated, especially in the light of recent changes in the way central government allocates fund to local government.

In response to a query on availability of exempt or confidential papers to Members, Council noted that certain categories of exemption required members to demonstrate a "need to know". Other exempt or confidential papers were routinely included in agenda for cabinet/committee meetings as the need arose and were available to non Cabinet/Committee members on request. Exempt or confidential reports to Cabinet were highlighted in the Cabinet Bulletin in **bold text** and any papers containing exempt or confidential information continued to be printed on pale yellow paper, for easy identification. Any Members who felt they were inappropriately refused access to confidential or exempt papers should refer the matter to the Head of Legal and Democratic Services.

Before the vote on acceptance of the report was cast, the Chief Executive advised that the recommendations reserved to Council were highlighted in bold in the Cabinet Reports for ease of reference. He also explained that voting in favour of the Medium Term Financial Strategy would not commit the Council to individual budget decisions.. The Strategy would be used as the framework for debate on the budget strategy. The Annual Budget decisions continued to be reserved to full Council.

Voting was by a show of hands and there was a clear majority in favour of adopting the report and recommendations. No-one voted against.

**RESOLVED: That the reports from the meetings of Cabinet held on 25th May, 15th and 29th June and 13th and 20th July, 2006 be received and the recommendations set out below be adopted:**

- That**
- (a) the Youth Justice Plan be approved;**
  - (b) that the Statement of Decisions and Reasons and the Proposed Modifications, as amended, and including rejection of the Inspector's recommendations reference 5.3/3 and 5.14/1, be approved;**
  - (c) Council agrees to amend the Constitution to provide for a Cabinet to be established of between three and nine members. Those members to be appointed by the Leader of the Council. The membership of Cabinet and the individual portfolios then to be notified to the Head of Legal and Democratic Services for**

inclusion as an Appendix to the Constitution;

- (d) Council agrees to the extension to the powers of the Strategic Monitoring Committee to allow it to commission work from any of the four Scrutiny Committees;
- (e) Council agrees that the Council meeting in March be reserved to approve the budget and the setting of the council tax and associated business together with statutory plans that need to be approved by Council and that cannot be delayed and consequentially Standing Order 4.25.10 "Questions will not be accepted at the March meeting of the Council that sets the budget and council tax except in relation to those items listed on the agenda" be introduced;
- (f) Council approves the revised Financial Standing Orders, copies of which have been made available to the Constitutional Review Working Group and a further copy of which is available for inspection in the Members' Room;
- (g) Council agrees to make the following amendments to the Constitution in respect of the role of the Audit Committee;
  - (i) the name of the Committee be amended to the Audit and Corporate Governance Committee;
  - (ii) the Terms of Reference as recommended by CIPFA be approved;
  - (iii) the Audit Committee approve the Terms of Reference for Internal Audit, the Internal Audit Strategy and consider the resourcing of Internal Audit; and
  - (iv) the Constitution be amended to permit the appointment of an independent Chairman of the Audit Committee, the appointment and term of office of an independent Chairman to be approved by the Council as a whole;
- (h) provision be made in the Constitution for the establishment of a Compensation (Enhanced Payments) Panel whose Terms of Reference would be to address the award of compensation to senior employees in circumstances where their contracts are terminated and that that Panel consist of the Cabinet Member (Resources); the Cabinet Member (Corporate and Customer Services and Human Resources) and the Chairman of the Audit Committee;
- (i) Council approves the following detailed amendments to the Constitution to improve the arrangements for delegating powers in respect of Traffic Regulation Orders and Food Safety prosecutions:
  - (i) Appendix 23 of the Constitution be amended to provide for the Director of Environment to make a decision to advertise any proposals for a Traffic Regulation Order (including traffic calming measures) and to proceed to

make the same if no objections are forthcoming; and

(ii) Part 12, 12.7.4 of the Constitution be amended by adding a specific reference enabling the Director of Environment to commence prosecutions under the provisions of the Food Safety Act, 1990 (As Amended) and the European Communities Act 1972 including any Regulations made pursuant to those acts or any re-enactment thereof; and

(j) the Head of Legal and Democratic Services be given delegated power to undertake the necessary drafting amendments to give support to the recommendations contained above.

**31. RE-CONFIRMATION OF APPOINTMENT TO OFFICES RESERVED TO COUNCIL**

**RESOLVED:** That the appointments to office holders of the offices described in Appendix 1 to the Minutes of the Meeting held on 12th May, 2006 be extended to May 2007.

**32. REGULATORY COMMITTEE**

Councillor R.I. Mathews presented the report of the meetings of the Regulatory Committee held on 23rd May and 4th July, 2006.

**RESOLVED:** That the report of the meetings of the Regulatory Committee held on 23rd May and 4th July, 2006 be received.

**33. PLANNING COMMITTEE**

Councillor T.W. Hunt presented the report of the meetings of the Planning Committee held on 9th June and 14th July, 2006.

**RESOLVED:** That the report of the meetings of the Planning Committee held on 9th June and 14th July, 2006 be received.

**34. STRATEGIC MONITORING COMMITTEE**

Councillor T.M. James presented the report of the meeting of the Strategic Monitoring Committee held on 26th June, 2006.

**RESOLVED:** That the report of the meeting of the Strategic Monitoring Committee held on 26th June, 2006 be received.

**35. STANDARDS COMMITTEE**

In the absence of Mr Robert Rogers, Councillor J.W. Edwards presented the report of the meeting of the Standards Committee held on 30th June, 2006.

**RESOLVED:** That the report of the meeting of the Standards Committee held on 30th June, 2006 be received.

**36. AUDIT COMMITTEE**

Councillor A.C.R. Chappell presented the report of the meeting of the Audit Committee held on 30th June, 2006.

**RESOLVED:** That the report of the meeting of the Audit Committee held on 30th June, 2006 be received.

**37. RESULT OF THE KERNE BRIDGE BY-ELECTION**

Council received formal notification of the results of the Kerne Bridge By-Election held on 1st June, 2006.

The full result of the by-election was as follows:

John Gilchrist Jarvis	Conservative	482 Elected
Paul John Truman	Liberal Democrat	308
Simeon Wood Cole	Independent	249
George James Jones	Independent	119

**38. WEST MERCIA POLICE AUTHORITY**

Councillor B. Hunt presented the report of the West Mercia Police Authority held on 13th June, 2006.

**RESOLVED:** That the report of the meeting of the West Mercia Police Authority held on 13th June, 2006 be received.

**39. HEREFORD & WORCESTER FIRE AND RESCUE AUTHORITY**

In the absence of Councillor G.W. Davies, Councillor Brig. P. Jones, CBE presented the report of the meeting of the Hereford & Worcester Fire and Rescue Authority which was held on 12th June, 2006.

In response to a query he agreed to suggest that the job title for the post involved with prevention of firesetting by juveniles be reconsidered.

**RESOLVED:** That the report of the meetings of the Hereford & Worcester Fire and Rescue Authority which were held on 12th June, 2006 be received.

The meeting ended at 12.55 p.m.

**CHAIRMAN**



## NAMED VOTE LIST

Council 28th July 2006

**RECOMMENDATION: That the Council rejects the Inspector's recommendations 5.14/1 and 5.3/3 reference to land at Bullinghope and amends the relevant Modifications.**

Councillor	FOR	AGAINST	ABSTAIN	Councillor	FOR	AGAINST	ABSTAIN
Mrs. P.A. Andrews	X			Brigadier P Jones	X		
B.F. Ashton	X			Mrs. M.D. Lloyd-Hayes		X	
Mrs. W.U. Attfield		X		G. Lucas	X		
Mrs. L.O. Barnett	X			<del>R.M. Manning</del>			
Mrs. E.M. Bew	X			R.I. Matthews	X		
W.L.S. Bowen			X	J.C. Mayson	X		
H. Bramer	X			R. Mills	X		
R.B.A. Burke	X			J.W. Newman			X
A.C.R. Chappell		X		Mrs. J.E. Pemberton	X		
<del>M.R. Cunningham</del>				R.J. Phillips	X		
Mrs. S.P.A. Daniels	X			Ms. G.A. Powell	X		
P.J. Dauncey	X			R. Preece		X	
N.J.J. Davies	X			Mrs. S.J. Robertson	X		
Mrs. C.J. Davis	X			D.W. Rule	X		
<del>G.W. Davis</del>				<del>F. Short</del>			
P.J. Edwards	X			R.V. Stockton	X		
D.J. Fleet			X	J. Stone	X		
Mrs. J.P. French	X			D.C. Taylor	X		
J.H.R. Goodwin	X			<del>Mrs. E.A. Taylor</del>			
Mrs. A.E. Gray	X			J. P. Thomas			
K.G. Grumbley	X			W.J.S. Thomas	X		
J.G.S. Guthrie	X			Ms. A.M. Toon			X
P.E. Harling	X			P.G. Turpin	X		
J.W. Hope	X			W.J. Walling			X
B. Hunt	X			D.B. Wilcox	X		
T.W. Hunt	X			A.L. Williams	X		
Mrs. J.A. Hyde	X			J.B. Williams	X		
T.M. James	X			R.M. Wilson	X		
J.G. Jarvis	X			J.W. Edwards (Chairman)	X		
				<b>TOTALS</b>	<b>43</b>	<b>4</b>	<b>5</b>







Neutral Citation Number: **[2008] EWHC 1741 (Admin)**

Case No: CO/3902/2007

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24 July 2008

**Before:**

**Mr Justice Collins**

**Between:**

**Dinedor Hill Action Association**

Claimant

- and -

**County of Herefordshire District  
Council**

Defendant

- and -

**J S Bloor (Tewkesbury) Limited**

Interested  
Party

**Mr David Forsdick** (instructed by Friends of the Earth) for the Claimant  
**Mr Timothy Jones** (instructed by Mr Alan McLaughlin, Solicitor to the Council) for  
the Defendant

**Mr Ian Dove Q.C. & Richard Kimblin** (instructed by Hammonds) for the  
Interested Party

Hearing dates: 26 & 27 June 2008

**Judgment Approved by the court  
for handing down  
(subject to editorial corrections)**

**Mr Justice COLLINS :**

1. The claimant is a company limited by guarantee which was formed to enable this claim under s.287 of the Town & Country Planning Act 1990 to be brought. The claim is directed at and seeks to quash Policy H2 in the Herefordshire Unitary Development Plan 2007 (the UDP) insofar as that policy allocates land at Bullinghope for housing. The claimant has the support of a number of individuals who objected to the inclusion of this land for housing purposes and who made their objections both at the public inquiry which was held in 2005 and to the defendant's intention to reject the inspector's conclusion that the land should not be included in policy H2.
2. Under the new procedures provided for by the Planning and Compulsory Purchase Act 2004, UDPs are no longer to be part of the planning process. However, there are transitional provisions in the 2004 Act which are designed to preserve the 1990 Act in relation to UDPs which in September 2004 were going through the process which would lead to their adoption. This is the relevant date for the purposes of the transitional provisions: see s.119 of the 2004 Act applying Schedule 8. It was, following argument and consideration of the relevant paragraphs, common ground that, having regard to the stage reached in consideration of the UDP, the 1990 Act provisions continued to apply and, in particular, the procedure to be adopted was governed by the Town and Country Planning (Development Plan)(England) Regulations 1999 (the 1999 Regulations)(SI 1999 No.3280).
3. Following a deposit draft in 2002, a revised deposit draft of the UDP was produced in 2004. In order to deal with a number of objections to various policies in the UDP, a public inquiry was held between February and June 2005. The inspector's report was published on 2 March 2006. At that point, Regulation 27(1) of the 1999 Regulations required the defendant:-

"... after considering the report of the person holding the inquiry ...  
[to] prepare a statement of

- (a) the decisions they have reached in the light of the report and any recommendations contained in the report, and
- (b) the reasons for any of those decisions which do not follow a recommendation contained in the report."

Where the intention of a planning authority is not to accept a recommendation, a further inquiry can be held into any objection to that intention: Regulation 29(4)(d). If the authority decides not to hold an inquiry, Regulation 28(1) requires it to "prepare a statement of case of their decisions as respects all the objections and their reasons for each decision." The defendant decided that a further inquiry need not be held and that decision is attacked. The claimant submits that a particular part of the reasons for failing to accept the recommendation should, since it had not been considered in depth in the inquiry that had been held, be subjected to the inquiry process.

4. There was thus a statutory obligation upon the authority to give reasons for deciding not to accept any recommendation made by the inspector. Separate reasons must be given in respect of each objection to any such decision (Regulation 28(1)). The courts' approach to the reasons given is, to adapt what was said by Lord Brown in *South Bucks D.C. v Porter (No 2)* [2004] 1 W.L.R. 1953 at p.1964 (Paragraph 36), that they must enable the reader to understand

why the particular conclusions were reached in relation to the objections so that the objectors can assess the lawfulness of the conclusions and what follows from them, so that any future action (if any) can be considered. Further, if the reasons are inadequate, relief can only be granted if the claimant has been substantially prejudiced by the inadequacy. S.287 of the 1990 Act enables a person aggrieved to make an application to the High Court on the ground that inter alia a plan or a policy in it is:-

“(2)(a) not within the appropriate power; or

(b) a procedural requirement has not been complied with.

(3B) provides that the court may quash the policy if satisfied that it was outside the appropriate power, or if there was a failure to comply with a procedural requirement, that failure substantially prejudiced the claimant.”

5. It is, I think, obvious that the reasons for rejecting an inspector’s recommendation must explain clearly why the authority in question found it necessary to disagree with it. Since the authority is both proposer and judge, the obligation to deal thoroughly, conscientiously and fairly with any objection is enhanced: see per Thorpe LJ in *Stirk v Bridgnorth DC* (1997) 73 P. & C.R. 439 at p.444. Where there is an exercise of planning judgment based on a balancing of prospective housing need against the disadvantages of such development on a particular site, the reasons must enable readers to understand how the balance has been struck and why the inspector’s judgment has not been accepted. When such a balance has to be struck, it is not solely a matter of subjective planning judgment: see *Peel Investments (North) Ltd v Bury Council* [1999] EWCA Civ 738.
6. Because of the new powers established by the 2004 Act, the UDP had a very limited life. The plan’s period runs until March 2011 and its policies are saved for three years from the date of adoption, i.e. until March 2010, with the Secretary of State having power to extend this period. The defendant had provided in the deposit plan for 11,700 dwellings in the period 1996 – 2011 which reflected figures derived from a regional planning guidance of 1998. In order to meet that figure, the defendant had included a site to the north of the city at Holmer. This would provide 300 homes. A number of objections were raised to this site (which, in common with Bullinghope, is greenfield land). These included concerns about flooding and drainage and the high infrastructure costs, which among other things had to deal with overhead electricity services which at present cross the site. The objections persuaded the defendant to prefer instead of Holmer the Bullinghope site which would also produce 300 homes. Thus the defendant’s case at the inquiry involved the choice of Bullinghope rather than Holmer. The defendant never suggested and it was no part of its submissions to the inspector that both sites were needed in order to meet the housing requirements in the plan period.
7. The inspector considered that the figures should be based on the up-to-date RPG11 which expressed housing requirement in terms of annual average rates. Applying this approach to known completions between 1996 and 2001, provision would have to be made for a maximum of 4800 to 2007 and 2400 from 2007 to 2011, namely 800 and 600 per annum respectively. This would mean that over the plan period there was a maximum requirement of 12,200, some 500 more than the figure used by the defendant. I have said a maximum. The requirement is expressed as a minimum for Major Urban Areas (in which Hereford is not included) but a maximum elsewhere: see Policy CF3 A in RPG11. Mr Dove submits that maximum means only that there should be no more than the

allocation, not that it should not be met. Mr Forsdick submits that it means that, while no doubt it is desirable to meet the allocation and it can properly be regarded as a target, there can be no real concern if it is not met. Thus it is unnecessary for the allocation in the plan to go above the figures required in case all are not completed within the period. It seems to me that the differentiation between minimum and maximum supports Mr Forsdick's construction. Particularly in the light of the expressed need for further study, it would not be right to allocate land in the UDP for housing development which was not required save in order to provide a surplus to meet unspecified future failures of identified sites to produce what was anticipated. The defendant itself in its Housing Land Study in 2004 identified a shortfall in the annual rate of completion, but indicated that rates should increase when the UDP allocation sites began to be developed (Paragraph 3.9).

8. The figures were discussed during the inquiry and I cannot believe that the possibility of the higher quantity which the inspector finally lighted on in his report was not mentioned. Whether or not this was so, the defendant at no time suggested that there was a need for both Holmer and Bullinghope in order to meet any allocation figure. Thus no objector dealt with this. The objections to Bullinghope were largely based on the contention that to develop the site would constitute an unwarranted and, in planning terms, harmful extension of the city into the countryside.
9. The revised deposit draft described the Bullinghope site thus:-

"This 13 hectare site includes land for structural landscaping and forms the largest Greenfield housing site in the Plan and lies directly adjacent to the Marches railway line (Hereford – Newport) south of the city of Hereford. This land, which lies between Bullingham Lane and Hoarwithy Road and is crossed by the Withy Brook to the east, would form the first phase of a much larger residential development to take place at Bullinghope beyond this Plan period. Access to this initial development of 300 dwellings would be via Bullingham Lane and Hoarwithy Road with new cycle and pedestrian routes within the development to link to those existing and the bus routes in the adjoining residential areas. Development within this area would be conditional on the delivery of the Rotherwas Access Road, the route of which is safeguarded through Plan policy T10 and now has planning permission. The release of housing development land will be subject to appropriate planning obligations and conditions of planning permission being in place to enable and ensure construction of the Rotherwas Access Road. In recognition of this requirement on the development, no affordable housing is being sought. The housing will be required to be designed and laid out to take account of existing residential amenity and issues of health and safety in respect of the railway line and Withy Brook, providing a range and mix of dwelling units with useable open space in accordance with Plan Policies. Initially a development brief will be required which will form part of an overall master plan for the area to establish the community facilities and development concepts required for this emerging new district of Hereford."

The reference to forming the first phase of a much larger residential development beyond the plan period has been deleted in the UDP as adopted (see paragraph 5.4.13). However, it is, I think, obvious that once a significant development is

allowed on the proposed site, it will be easier to establish that future requirements for housing should be allocated to adjacent land.

10. It is to be noted that there were a number of objectors, notably builders and developers, who wanted the figures to be increased and challenged assumptions made by the defendant in relation, for example, to windfalls and commitments which might not be delivered in the plan period or at all. All these matters the inspector resolved in the defendant's favour.
11. The site in question lies south of the railway line where at present it forms a natural boundary to the city. There is to the east outside this boundary an industrial site known as the Rotherwas Industrial Estate. This was established in 1914 as a munitions factory, no doubt making use of the railway to transport material. Access to it had become unsatisfactory since road traffic had become the main means of transport and heavy lorries had to use a minor road which meant driving through a residential area and there were problems with a railway bridge whose headroom was only 4.5 metres. It was considered essential to enable the estate to meet its potential that a new access road should be constructed. Planning permission had been granted for this and a Compulsory Purchase Order was pursued. This was granted by the Secretary of State for Transport on 29 August 2006 following an inquiry. The road has now been built, funding for it having been obtained by the defendant. This is of some importance since the defendant's decision to include Bullinghope in H2 was, to a considerable extent driven by the expectation that the developers would provide funds for the road. Indeed, this expectation was said to justify a decision that no affordable housing needed to be built on the site.
12. In his covering letter with his report, the inspector said, in relation to the extra 500 dwellings which he had decided needed to be provided for (Paragraph 15):-

"Part of the extra 500 dwellings would be made up from increased capacity at allocated sites. In addition, there are a number of previously developed sites, all but one in Hereford, which I consider to be suitable in principle for residential development. However, I have not recommended the allocation of these sites. To do so could delay adoption of the Plan ..."

He dealt with the Holmer and Bullinghope sites in Paragraphs 17 to 19, which read:-

"17. In the deposit draft version of the Plan, an allocation was made for 300 dwellings at Holmer. This allocation was the subject of considerable objection. Also the Council later perceived benefits in a development at Bullinghope associated with the Rotherwas Access Road. As a result, in the Revised Deposit Draft, the allocation was switched to Bullinghope.

18. I support the initial position of the Council. I find that the Holmer site is suitable for housing development of the scale envisaged. It is a relatively well contained site that is seen in an urban context. By comparison, the Bullinghope site is totally unsuitable. Development there would be a major incursion, physically separated from the built-up limits of the city and harmful to the rural character and appearance of the area. In addition, the employment and transport imperatives that influenced the Council are no longer material.

19. I have considered all the objections to the alternative sites as well as the representations of support. Relevant matters were before the inquiry. As such, I feel that it would be possible to allocate the Holmer site without recourse to a modifications inquiry. I have no hesitation in commending the Holmer site."

Not surprisingly, Mr Forsdick relies heavily on the inspector's clearly expressed opinion that the Bullinghope site was "totally unsuitable". Paragraph 18 reflects what he said in Paragraph 5.15.35 of his report.

13. The inspector concluded that the objections to Holmer should not prevail and that it was far superior to Bullinghope in land use terms. It is not necessary to go into any further detail since the defendant has not disagreed with the inclusion of Holmer. I should, however, deal with the inspector's reasons for rejecting Bullinghope. He rejected the view that Bullinghope was an appropriate site for future development beyond the plan period so that the 300 would represent a first phase allocation. This has now, as I have already indicated, been deleted from the UDP. He considered that, although considerably more than 300 dwellings would be needed to meet Hereford's future requirements, the shortfall could be met from other sites. He recognised that the allocation of 300 houses to the site would be an obvious commitment to future further development, but this would be premature and would prejudice open discussion of alternatives in the city. While this conclusion was reached in the context of an expressed approval for future development, it is, as it seems to me, clear that the objection has validity even without any specific reference to possible future development in the UDP.
14. In Paragraph 5.14.23 he noted that the Rotherwas Access Road would be intimately linked with the proposed housing allocation and regarded the funding of the road on the back of the housing development as legitimate, noting the unequivocal commitment by the prospective developers to fund the construction of the road. This justified in his view waiver of the normal requirement to provide affordable housing. His conclusions on damage to landscape quality local amenity and on the need to retain the railway as a boundary are contained in Paragraphs 5.14.34 to 5.14.37 which read:-

"5.14.34. In terms of landscape quality and local amenity, I have visited this area several times. I have observed the objection site from roads, from footpaths and from the high ground of Dinedor Hill. On each occasion, the predominant impressions that I gained in this locality are of open countryside; of a landscape that is distinctly rural in its character and appearance; and of an extensive, gently rolling agricultural prospect.

5.14.35. I appreciate that there is an outlier of development at Bullinghope Lane and at Bullinghope itself. Also, further to the east, the Rotherwas Industrial Estate is to be found beyond Watery lane. I have also borne in mind the likely impact of the Rotherwas Access Road. However, the abiding picture is of a landscape devoid of large scale built development and the associations of an urban area. The objection site itself has all the hallmarks of the open rural countryside; and it is an integral part of the wider agricultural landscape unsullied by urban development.

5.14.36. I consider that the proposed development would be a material and unjustified incursion into the open countryside

surrounding Hereford. It would be significantly harmful to the rural character and appearance of the area and, in the circumstances that I have described, an unwarranted accretion to the south of the city. I have no hesitation in recommending that the proposed allocation should not be pursued under the unitary development plan.

The railway as a physical barrier.

5.14.37. I strongly support the view that the railway is an obvious physical boundary to the spread of Hereford. I appreciate that, as referred to above, there are elements of built development to the south of the railway line. There is also the prospect of the Rotherwas Access Road. However, to my mind, these elements do not in any way diminish the marked contrast between the city to the north of the railway and the agricultural land to the south. To breach this boundary and to allow housing development to spill into the rural countryside would not be justified."

15. The defendant's reasons for rejecting the inspector's recommendation and in respect of each objection made to its proposal are contained in a document of September 2006. The reasons for rejecting the recommendation are:-

"The Inspector has increased the overall strategic dwelling requirement for the County from 11,700 to 12,200 dwellings for the Plan period, in line with the Regional Spatial Strategy. To ensure certainty that this requirement will be delivered, and given the proximity of the end of the Plan period (2011) and the fact that development of several allocated sites is yet to commence, it is considered that an additional allocation is required. Further provision should be made at Hereford which is a defined sub-regional foci within the Regional Spatial Strategy. The Bullinghope site offers the opportunity to help ensure that the strategic housing requirement is appropriately met. Its allocation and development will serve to provide new housing in a Greenfield location to the south of Hereford, well related to employment provision at Rotherwas.

The site also offers the opportunity to secure funding for the proposed Rotherwas Access Road. The Inspector has accepted that this is a legitimate requirement and that the Access Road would be a necessary accompaniment of housing development at Bullinghope. Further promotion of industrial development on the Estate is a key priority of the Council and is recognised as an essential component in sustaining the growth and competitiveness of the local community. This is in line with the objective of the Plan (as proposed to be modified pursuant to the Inspector's recommendation 3.19/5) to direct most new employment development to Hereford. The provision of access improvements through a package of transport measures which include the Access Road will help achieve this aim."

Mr Forsdick attacks these reasons as inconsistent with its approach at the inquiry and on the ground that they fail to address the inspector's reasons for disapproving the allocation in planning terms and for concluding that it was not needed to meet the requirements for housing completion to 2011. The defendant

has produced material which, it is said, shows that it was correct to doubt that allocations would come forward and, which, incidentally, shows that development at Holmer has not commenced. But that material cannot show that the defendant was at the time justified in rejecting the inspector's view since it did not (because it could not at the time) refer to those matters. If it had, objections could have focussed on this and further evidence might have been produced. Mr Forsdick further attacks the first sentence since, as he submits, it shows a flawed approach. It was not necessary to be certain that the housing numbers could be achieved: they were maxima. Thus over allocation to meet possible shortfalls was unnecessary and no reason was given to differ from the inspector's planning judgment.

16. The reasons must however be read as a whole and further details are given in dealing with specific objections. I do not propose to lengthen this judgment by citing them all, but I should note any further points raised. I will do so by reference to the material page numbers of the document. At page 5, in answer to an objection that the defendant's doubts that the sites apart from Bullinghope could not all come forward were inconsistent with its approach at the inquiry this is said:-

"The housing strategy, in terms of both the levels and distribution of housing was the subject of considerable debate at the inquiry ... [The] proposed modification does not indicate that allocated sites will not come forward within the Plan period, but rather doubts whether all such sites will be completed by 2011. It is delays in the Plan's progress rather than problems with the sites themselves which has resulted in this uncertainty ... The reasons for the rejection of the inspector's recommendation make clear that this will ensure certainty that its target of 12,200 will be achieved, rather than exceeded."

On page 9, the point is made that "the site is that which best relates to the existing built form of the city in this location and does not fall within any designated landscape." These do no more than specify the concern that there will be insufficient completions by 2011 and assert that the absence of any designated landscape together with the alleged good relationship with the built form of the city justify the objection based on landscape impact.

17. Mr Dove makes the point that planning permission to develop the site has been sought and should be considered very soon. Whether in the light of present economic conditions it (or indeed any major housing developments) will go ahead is I imagine unclear, but that is not a relevant consideration for me. It merely shows that forecasts for the future are always uncertain, but the best must be done on the evidence produced at the material time. In challenges to the lawfulness of such decisions, subsequent developments are of only limited relevance; they are of no relevance unless they can be used to throw light on what may properly have been taken into account at the time.
18. No doubt the defendant was entitled to take account of any change of circumstances since the conclusion of the inquiry and the inspector's report. But it did not deal with the inspector's detailed assessment of the allocations and the numbers which would be available. It is true that there is evidence that the figures were not being met, but that was, on the defendant's own case at the inquiry, to a considerable extent because the UDP had not made clear that the sites were allocated. Furthermore, no reasons are given to reject the inspector's planning judgment and, since there was a need to balance any disadvantages in planning terms against potential gains, some such reasons were in my view



needed. The expressed need for certainty is suspect in the light of the approach that the figures were maxima. The need for clear reasons was all the more important because the defendant had never suggested at the inquiry that both Holmer and Bullinghope were needed. If there was cogent new evidence that that was no longer appropriate, it should at least have been identified.

19. It is clear from the minutes of the Council meeting in July 2006 which considered the cabinet reports on the UDP and the inspector's report that the funding of the Rotherwas Access Road was regarded as of vital importance for the economic well being of Hereford. Housing development at Bullinghope would provide this funding. It is apparent that the development was not needed since the road has now been constructed. This renders doubtful the decision to waive the requirement for affordable housing reflected in paragraph 5.4.13 of the UDP.
20. Mr Jones and Mr Dove submitted that it was not open to the claimants to rely on the grounds put forward since they had not been raised as objections to the proposed modifications by the defendant. It is hardly surprising that the assertion that there was a need for both sites was not addressed since it had not been raised by the defendant until the proposed modifications. Reliance is placed on the objections put forward by Mr David Miller on behalf of the Dinedor Hill Action Group, the claimant's predecessors. These did not specifically refer to the need for both sites. But I see no reason to preclude a claimant from relying on grounds which establish that a plan or a policy in it was not within the appropriate power even though they had not been raised before. No doubt in appropriate cases the raising of a new ground which the Council was unable to deal with may result in the court deciding that relief should not be granted, at least if the ground should have been raised earlier. But here, whether or not by members or supporters of the Action Group, the relevant ground was raised and the defendant was able to and purported to deal with it.
21. The defendant has in my judgment failed to deal with the inspector's findings in the reasons given for disagreeing with his recommendation. The inclusion of Bullinghope was considered most desirable because of the expectation that only thus could the Access Road be assured. That expectation has been shown to be wrong, but I have no evidence to suggest that it was not at the time reasonable. Nevertheless, the reasons given by the inspector for rejecting Bullinghope had to be dealt with. They were not and that in my judgment amounted to a substantial flaw in the decision making process.
22. It has been submitted that the claimant cannot show that it has been substantially prejudiced. It represents a number of people who had objected to the allocation at Bullinghope and who pursued their objections at the inquiry and thereafter. They clearly had an interest in what happened on the site and were entitled to expect that the inspector's recommendation would be rejected only if proper reasons were given for that rejection. They and so the claimant have in my view been substantially prejudiced by the failure of the defendant to carry out the duty to give reasons which is required by the 1999 Regulations: cf *Miller v Wycombe DC* [1997] JPL 951 at p.956. That failure has led to a decision which is flawed. Since the approach that certainty of achieving the figure was needed is incorrect and there are, in the light of the inspector's positive findings, very strong reasons to reject the allocation on planning grounds, it cannot be said that the flawed reasons could make no difference and the same decision would be made if the matter were reconsidered. Thus I would not refuse relief on the ground that the flawed reasons could have made no difference to the result.
23. Mr Forsdick submitted that the defendant should have reconvened the inquiry to deal with the need for both Holmer and Bullinghope to meet the number of

dwellings to be completed in the Plan period. This was said to be a new matter and so the refusal to have an inquiry, which was based on the contention that new matters had not been raised, was wrong. At the inquiry the only issue was whether the allocation should be Holmer or Bullinghope and it was not suggested that an increase of 500 would mean that both would be needed: indeed, the inspector's analysis was that they would not. Thus it would be important to have the full facts before assessing whether the disadvantages in planning terms – the 'total unsuitability' as the inspector found of the site – was outweighed by the need for the extra dwellings.

24. Mr Forsdick relies on the observations of Mr Robin Purchas, Q.C., sitting as a deputy judge in *Drexfine Holdings Ltd v Cherwell DC* [1998] JPL 361 at 371-373. The defendant had a discretion whether or not to hold a second inquiry and was entitled to have regard to the cost and delay which would be occasioned as against the matters which favoured a consideration by an independent inspector. Mr Purchas said this:-

"The fact that a proposed modification involves issues which have not been subject to consideration at the deposit stage could be a highly material consideration in determining whether or not a further inquiry should be held.

Considerations which would generally be material to that decision would include:

(1) whether or not the issue raised had been previously subject to independent scrutiny by an inspector so as to provide independent examination of the opposing contentions; ...

(3) the practical implications of a second inquiry and, in particular, whether it would potentially be of material benefit to the decision making process;

(4) delay and the desirability of securing an up to date adopted development plan;

(5) fairness to the objector and to other parties, as with all decisions of this kind, the determination whether or not to hold a further inquiry should seek to achieve fairness, balancing the interests of all relevant parties ... [subject to Wednesbury principle]."

25. While the precise issue whether both sites were needed was not before the inspector, he did consider how many dwellings should be provided and whether that provision could be met with the 300 at one or other of the two sites. He decided that it could. The defendant has clearly made up its mind that it should have Bullinghope and so any further recommendations by an inspector were, in the light of the robust rejection of the allocation, unlikely to make any material difference. The plan needed to be adopted as soon as possible having regard to its short life. In all the circumstances, I do not think that the exercise by the defendant of its discretion not to hold an inquiry could be said to have been irrational and be flawed. All I can do in accordance with the terms of s.287 is to quash the policy if persuaded that the decision making process was flawed. Now that time has elapsed and the plan has only some 21 months of life, it would not, I think, be cost effective or sensible to hold a further inquiry but that will be for the defendant to decide if the inclusion of Bullinghope in H2 is quashed.

26. The claim is aimed at the inclusion of Bullinghope in H2 and that is the only relief which is sought. Policy H1 refers to the settlement boundary of Hereford and provides that within it residential development will be permitted. Mr Dove pointed out that this would remain so that, even if Bullinghope were removed from H2, the site would, since it lies within the redrawn settlement boundary, be one in respect of which the plan would permit residential development. Thus s.38(6) of the 2004 Act would mean that such development was in accordance with the plan and should therefore be permitted unless material consideration required refusal. While Mr Dove is, I think, correct, it seems to me that the removal of Bullinghope from H2 because the process whereby it was included was wrong in law is a material consideration.
27. Mr Forsdick submitted that it was possible to quash the settlement boundary insofar as it surrounded the Bullinghope site and keep it to what it had been, namely the railway line. Mr Dove and Mr Jones submitted that it is not possible for this to be done since s.287(4) requires any challenge to be made within 6 weeks from, in this case, March 2007. The decision of the House of Lords in *Smith v East Elloe DC* [1956] A.C. 763 means that there is no power to extend time and a decision is unimpeachable if not challenged within the 6 weeks. It follows, it is submitted, that policy H1 cannot now be challenged.
28. It is now too late to challenge the settlement boundary. That means that policy H1 will remain, but, as I have said, I do not think that is at all problematical. While an application for planning permission can be made and policy H1 can be said to favour it, the defendant or, on appeal, the Secretary of State would be entitled to have regard to the removal of Bullinghope from H2 (and the deletion of Paragraph 5.4.13 which must follow that removal) and the reason for it as a material consideration in considering any application.
29. Since drafting this judgment, I have received (I fear that they took some time to reach me) further material which I had suggested should be produced, namely the records of the relevant Council and cabinet meetings. That material ought to have been produced before the hearing since it was clearly relevant and I shall add a postscript to deal with the procedure which should be adopted to avoid late or absence of proper disclosure. It shows that the decision of the cabinet, following advice, was to accept the H2 recommendation and to remove Bullinghope. That was on 29 June 2006. On 6 July 2006 the government refused to provide funding for the Rotherwas Access Road. On 28 July 2006 at the full Council meeting the leader of the Council (it seems from evidence produced without prior notice) stated that the recommendation should be rejected because of the importance of funding being provided through the development at Bullinghope for the Access Road. The Council agreed. Mr Forsdick has asked what change there was between the cabinet decision and the full Council meeting in the perceived need for both Bullinghope and Holmer. The answer is, on the material produced, none. In my view, this supports the contention that the decision was in reality driven by the Access Road funding and explains the absence of any proper reasons for rejecting the inspector's recommendation.
30. Mr Dove has made further written submissions in the light of the new material and the further submissions of Mr Forsdick. He correctly makes the point that the full Council and not the cabinet were the ultimate decision makers and so there was no reason why the cabinet decision should be followed if, after full consideration and discussion, the Council decided otherwise. He also refers to the existence of material which led to the conclusion that the actual completion rates had fallen behind what was required up to and including the year 2003 – 4. Thus it was said to be 'unlikely that the housing completions anticipated in the UDP for the period 2001 – 2006 will be achieved': see the Housing Land Study 2004. But

this document was available for the inspector when he considered the figures and the need for more than the 300 dwellings to be provided either at Bullinghope or Holmer. No doubt if the defendant had the material to justify the addition of Bullinghope on housing need grounds it could have referred to it in its reasons since it would have been a justification for changing its approach. But it did not and I fear that what is referred to by Mr Dove is in reality an ex post facto justification which was not relied on at the time. I do not find the further submissions persuasive.

31. There can be no doubt that the minutes and officer advice ought to have been disclosed. Not only are they relevant but in some aspects (certainly so far as the claimant is concerned) may be thought to be detrimental to the defendant's case. Ever since the decision of the Court of Appeal in *R v Lancashire CC ex p Huddleston* [1986] 2 All ER 941 it has been made clear that a public body against whom judicial review proceedings are brought is obliged to adopt a 'cards on the table' approach. It must put before the court all relevant material making full and fair disclosure and not adopting a partial approach. The same principle applies to claims under ss.287 and 288 of the 1990 Act and their successors under the 2004 Act. It has been suggested on behalf of the defendant that it was entitled to assume that the existence of the documents in question must have been known to the claimant and in particular that it must have been aware of the existence of minutes of Council meetings. Thus their absence from the claimant's documentation meant, so the defendant believed, that the claimant thought they did not assist. I do not accept that reasoning. It should have been apparent to the defendant that they did assist and were clearly relevant and, since for whatever reason the claimant had not produced them, the defendant should have done so.
32. The failure to produce this relevant material was compounded by the failure of the defendant to produce its evidence until after 5 June 2008, albeit the claim was lodged in May 2007. This was only at most 3 weeks before the hearing. It is unfortunate that the CPR do not contain any timetable for the lodging of evidence or grounds to resist the claim by either the defendant or any interested party. This has meant in too many cases that such evidence and grounds has been left very much to the last minute. This is a thoroughly unsatisfactory state of affairs and is not compliant with CPR 1.1(2).
33. The court's case management powers, in particular those contained in CPR 3.1(2)(m), enable the court to make any orders to achieve a just result. When initiating a claim under ss.287 or 288 or their successors, the claimant should, if he considers it appropriate, apply in the claim for an order for directions as to the filing of any evidence and defence by the defendant or any interested party. I recognise that there is no need for the defendant, who will normally be a planning authority or the Secretary of State, to be given advance notice of any claim; indeed, the requirement that it be brought within 6 weeks will often make such advance notice somewhat impractical. Thus a somewhat longer period than is appropriate in judicial review claims, where there will usually have been advance notice, an Acknowledgement of Service and a lapse of time before permission is granted so that the defendant or interested party will have had time to prepare evidence and detailed grounds of defence, is required.
34. I am aware that the Treasury Solicitor needs some time to consider a decision letter (which may be lengthy and complicated) and must seek instructions from the inspector before advising the Secretary of State whether the claim should be conceded or resisted. Equally, no doubt, planning authorities will have to go through the same process with their legal advisors. Accordingly, the general rule will be if directions are sought that evidence and at least summary grounds of

defence should be lodged within 10 weeks. If a shorter period is sought, it must be requested specifically and good reasons given for the shorter time. Equally, if the defendant or interested party wants a longer time, they should make a specific request, again giving good reasons for it.

35. In the circumstances and for the reasons I have set out I propose to grant the relief sought and quash the housing allocation at Bullinghope in policy H2 together with the reference to the Bullinghope allocation (paragraph (g) in paragraph 5.4) and the narrative at paragraph 5.4.13 of the UDP.



## REPORT OF THE MEETINGS OF CABINET

**HELD ON 25TH May, 15th and 29th June and 13th July, 2006**

**Cabinet Members:** R.J. Phillips (Leader of the Council),  
D.W. Rule, MBE (Deputy Leader),  
Mrs. L.O. Barnett, P.J. Edwards, Mrs. J.P. French,  
J.C. Mayson, R.V. Stockton, D.B. Wilcox, R.M. Wilson.

This is the first report submitted to Council for the current year and covers proceedings of the meetings listed above. A supplementary report covering the meeting of 20th July will be circulated separately.

### **1. DECISIONS RESERVED TO COUNCIL UNDER PART 4 OF THE CONSTITUTION**

- 1.1 **Youth Justice Plan 2006/07** – Cabinet has endorsed the Youth Justice Plan which, as part of the Policy Framework, requires approval by Council. The Plan is enclosed as a separate document and is available in the Members' Room, on the Council's website or on request. The Youth Justice Plan is prepared on an annual basis on behalf of Herefordshire Council and Worcestershire County Council.

**Cabinet recommends to Council that the Youth Justice Plan be approved.**

- 1.2 **Herefordshire Unitary Development Plan (UDP): Inspector's Report, Statement of Decisions and Reasons, and Proposed Modifications** – Cabinet considered the recommendations made by the Inspector following the UDP Public Inquiry. The statutory plan-making process requires that each of the Inspector's recommendations are considered by the local planning authority and any modifications agreed by Council. The Statement of Decisions and Reasons lists each of the Inspector's recommendations and sets out a proposed response in terms of acceptance or rejection. It was noted that over two thirds (70%) of the Inspector's recommendations were for no change to be made to the Plan. Only seven of the Inspector's recommendations (representing 1% of the total of 633 recommendations) were proposed for rejection. Cabinet endorsed the outline recommendations with two amendments: to accept the Inspector's recommendations in respect of the Greyfriars site, Hereford and to reject the Inspector's recommendations in respect of the Leominster Zone of Interest for the following reasons: The reference to the zone of interest reflects the consideration given to additional road infrastructure expected to be required to accommodate the development of Leominster. Transport factors and constraints such as air quality are expected to require the provision of further road infrastructure to enable growth. The Plan, as paragraph 8.8.21 makes clear, does not map specific land or safeguard a route for protection. It is however reasonable and necessary to record known constraints and likely requirements beyond the Plan period in the interests of future planning.

The relevant papers are enclosed as a separate appendix for those Members who have not received them already and are otherwise available on the Council's website.

Cabinet thanked the officers for the hard work that had gone into producing the UDP.

**Cabinet recommends to Council that the Statement of Decisions and Reasons and the Proposed Modifications, as amended, be approved.**

## **2. NOTICES OF MOTION**

- 2.1 No motions to Council were considered by Cabinet during the reporting period.

## **3. KEY DECISIONS BY INDIVIDUAL EXECUTIVE MEMBERS WHICH WERE NOT INCLUDED IN THE FORWARD PLAN**

- 3.1 **Enforcement of Clean Neighbourhood and Environment Act 2005 (Revision)** The Cabinet Member (Environment) made a decision on 8 September 2005 that Fixed Penalty Notices be issued for litter, fly-posting and graffiti offences. The fines were set at £100 or £50 if paid within 14 days of the offence. In May 2006 the Government, under the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations, set £80 as the statutory maximum for these offences. The Cabinet Members has now agreed that the fine for litter, fly-posting, and graffiti offences be set at the statutory maximum imposed by Government (£80 as of May 2006); and that the fine will be reduced to half the statutory amount if paid within 14 days of issue.

## **4. CORPORATE STRATEGY AND FINANCE (Chairman of Cabinet – Councillor R.J. Phillips)**

### **4.1 Report on Decisions Taken**

- (i) **Proposed Performance Improvement Cycle** - Cabinet has approved the immediate introduction of a performance improvement cycle for the Council that integrates fully corporate, service and financial planning and performance management. It has noted that the framework presented in the report depicts a "perfect year" and that some time will need to be made up this year to stay on track.
- (ii) **Community Forums** - Cabinet has received a report on the April - May 2006 round of Community Forum meetings. Cabinet has thanked the Community Forum Co-ordinator for her report and for her efforts in arranging and attending the meetings. It continues, however, to be concerned about the continuing low attendance rates. Cabinet has discussed how to improve the attendance figures and has proposed that other partnership organisations could be involved in the Forum meetings. The Leader has agreed to write to the Police Divisional Commander requesting that the police do not develop their Police and Community Together (PACT) meetings without a proper dialogue with this Council. (A seminar for all Members on the future



of community policing and the role of the local Member has since been arranged for 31st July, 2006).

- (iii) **Accommodation Strategy Update** - Cabinet has received an exempt report and has agreed a number of actions for the acquisition of the Plough Lane site including approval of the budget.
- (iv) **Response to the Review of the Strategic Service Delivery Partnership** - The report of the Strategic Monitoring Committee represented the first major scrutiny of the operation of the Council's partnership arrangements with Herefordshire Jarvis Services Limited and Owen Williams Limited since they were instituted in September 2003. Recommendations from the review have been considered and an action plan prepared. Cabinet felt that the Review Group had provided a useful set of recommendations concerning the development of the partnership, many of which were already in hand or in process as part of existing management initiatives. The report has helped to give impetus to the process and has helped all members of the partnership to focus on how to optimise the working arrangements both for the immediate benefit of the Herefordshire public and also to set the foundations for a successful long term business model with scope for expansion, recognition for excellence and replication. To address some continuing concerns that were expressed by Scrutiny members at the meeting, Cabinet has asked that an external consultant be engaged to undertake a brief piece of work to verify a number of aspects of the services supplied by the Partnership.
- (v) **Proposed Police Restructure** – Cabinet has agreed a response to the Secretary of State for Home Affairs reaffirming the Council's support for retaining a West Mercia Police Force and registering the Council's objection to the proposed merger of the Staffordshire, West Midlands and Warwickshire forces into a single police force for the whole of the West Midlands area. The Secretary of State for Home Affairs has recently announced that there should be more talks before the proposed merger of many of the police forces. This will provide the Council with more time to work out issues relating to the mergers, including costs, council tax and local accountability. The Council had been advised that it had until 2nd July, 2006 to submit its proposals to the Home Office, however, this date has now been extended. (The current position is that mergers are on hold but have not been formally abandoned by the government. The merger between Cumbria and Lancashire Police Forces, who agreed to merge, has been abandoned due to the costs involved.)
- (vi) **Draft Medium Term Financial Management Strategy** - Herefordshire Council is determined to provide a sound basis for sustainable improvements in services and a better quality of life for the people of Herefordshire. The Medium Term Financial Management Strategy (MTFMS) will provide the financial context for ensuring service improvement aspirations for the future are both affordable and sustainable. Cabinet has approved the draft Medium Term Financial Management Strategy (MTFMS) as a basis for

consultation both within the Council and with strategic partners prior to approval of the final document in October 2006.

- (vii) **Report on Herefordshire Council Support to the Voluntary and Community Sector** - A report on this item is to be found at item 6.1(i) of this report.

#### 4.2 **Report on Items of Interest**

- (i) **Report of the Strategic Monitoring Committee** - Cabinet has received and noted the report of the Strategic Monitoring Committee which is the subject of separate report to Council

### 5. **CHILDREN AND YOUNG PEOPLE** **(Cabinet Member: Councillor D.W. Rule, MBE)**

#### 5.1 **Report on Decisions Taken**

- (i) **Herefordshire Council - Children's Services - Annual Performance Assessment (APA) by Ofsted and Commission for Social Care Inspection (CSCI) Self-Assessment Report** - Following the JAR inspection in 2005 the Council is in a routine programme of annual performance assessment and is required to indicate progress since the JAR. Cabinet has noted that the most challenging aspects are the reporting on Staying Safe and service management. There have been some significant improved outcomes for children and families in recent months. The social work resources have increased to respond to referrals, so concerns are assessed more promptly. The DfES Challenge and Support Review has been undertaken and the feedback has been mainly positive. The Cabinet has also endorsed the APA self-assessment and agreed that Grade 2 would be an appropriate overall score.

#### 5.2 **Report on Items of Interest**

- (i) **Progress on Improvement Following the Joint Area Review (JAR) in Herefordshire** - Cabinet has received a further progress report on the latest improvement position following the JAR inspection. It has noted that there has been significant progress on a number of recommendations and this has been acknowledged by the Department for Education and Skills (DfES) and the Commission for Social Care Inspection (CSCI). All of the areas of activity in the JAR Improvement Plan due by the end of June 2006, have been completed. Recommendations for the development of new Common Assessment processes including a pilot in South Wye are on track. However, steady and continuing progress is still required in relation to a number of issues including: permanent social work staffing; the rising number of referrals and trends and capacity considerations; case allocation in the duty team and the waiting list for occupational therapy.

The improvement agenda for children's services is progressing well. In those areas where further progress is required, particularly in relation to performance management, information management and

commissioning, additional external support is already being accessed. The DfES response to the review report has been to confirm that the response has been positive and services have improved as a result.

Cabinet has been advised that a new Head of Service (Safeguarding and Assessment) has been appointed. It has also noted the role of the Challenge and Support Board which will report progress back to the Minister. A decision will be taken in December on whether the Board needs to continue.

Cabinet has noted that the Director of Children's Services is exploring a number of options to ensure adequate staffing and service delivery.

## **6. COMMUNITY SERVICES (Cabinet Member - Councillor R.V. Stockton)**

### **6.1 Report on Decisions Taken**

- (i) **Report on Herefordshire Council Support to the Voluntary and Community Sector** - The 2004 Review of Council Support to the Community and Voluntary Sector highlighted the need for a Council strategy for Voluntary and Community Sector support. National policy is for the Voluntary Sector to be supported to deliver public services, to encourage volunteering and social enterprise and to build stronger communities. Cabinet has received a report on the responses received during the consultation process on the Strategy Framework and proposals to take the Framework forward. It has endorsed the Strategy Framework and agreed that the Community Regeneration Team should take the lead in developing a more detailed Action Plan and implement the Framework across the Council. It has also endorsed the principles set out as a basis for negotiations with the members of the Herefordshire Infrastructure Consortium on service level agreements for future years. Cabinet has noted that, over time, the consortium will take on responsibility for allocating funding to individual organisations.

## **7. CORPORATE AND CUSTOMER SERVICES AND HUMAN RESOURCES (Cabinet Member - Councillor Mrs. J.P. French)**

### **7.1 Report on Decisions Taken**

- (ii) **Integrated Performance Report** - The Council's Corporate Plan for 2005/08 sets out the Council's objectives, priorities and targets for the three years 2005/08. The Annual Operating Plan is the detailed action plan for the first of these years, 2005/06. Cabinet has received a report on performance for the operating year 2005/06 against the Annual Operating Plan 2005/06; the Best Value Performance Indicators and the capital budget position and corporate risks.

Cabinet has supported a number of actions being taken to improve performance. These include: clearer and simpler graphical templates; continuing to ensure that templates are completed to a high standard as the basis for monitoring during the year; and piloting a standardised agenda for the monthly performance improvement meetings between Cabinet Members and Directors.

A number of outturns for Best Value Performance Indicators (BVPIs) are awaiting closure of accounts before they can be reported. Given the high level of indicators that are not showing improvement an action plan will be developed with the Heads of Service to ensure improvement in the future.

The Capital Programme outturn for 2005/06 totalled £31,8445,000 compared to an original budget forecast of £37,131,000 which represents a decrease of £5,286,000 or 14%.

In noting the report Cabinet has recognised that progress against the Annual Operating Plan has been reported against target and not against previous performance. The BVPIs show that 58% of the indicators have either improved or maintained performance compared to 57% last year; 36% of PIs have deteriorated in performance compared with 43% deterioration in 2005/05. This comparison has been made against last year's performance and not against the targets set.

## 7.2 Report on Items of Interest

- (i) **The Lyons Inquiry** – Cabinet has noted Sir Michael Lyons' latest report and the areas of particular interest to Herefordshire where representations to the Inquiry might be appropriate. The final report from Sir Michael is due in December 2006 and is widely seen as being hugely influential for the future shape, financing and functions of Local Government. There is an opportunity for the Council to provide some comments by responding to the interim report in advance of the Government White Paper and the final report of the Lyons Inquiry. Cabinet has also noted that Shropshire County Council is a link authority to the Inquiry. This could be beneficial to Herefordshire, as it is a similar rural authority.
- (ii) **Integrated Performance Report** – Cabinet has noted the Integrated Performance report to the end of May 2006 which measures performance against the Annual Operating Plan 2006-07, together with performance against corporate risks, and any remedial action to address areas of under performance. The report also covered the progress being made against the Council's Overall Improvement Programme, which includes the Joint Area Review (JAR) Action Plan, the Adult Social Care Improvement Plan, currently being developed, and the Herefordshire Connects Programme. Revenue and Capital monitoring will be included in the next Integrated Performance Report, which will report progress for the period April to July 2006. It was noted that this was the first Integrated Performance Report for the current operating year, using the new templates for each of the strategic performance indicators. Development of the templates will continue to ensure that baseline data and end of year performance for 2005/06 is included on the templates and will provide a sound basis for future two-monthly reports to Cabinet.
- (iii) **Pay and Workforce Development Strategy** - Cabinet has received an outturn report on the Council's Pay and Workforce Development Strategy operating plan for 2005/06. The Plan was based on five key

themes from the Employers' Organisation for Local Government: Pay, Reward and Recognition; Resourcing; Developing Leadership Capacity; Developing the skills and capacity of the workforce; and Organisation Development. It has noted a number of key achievements during 2005/06 and the Key Actions for 2006/07.

**8. ENVIRONMENT**

**(Cabinet Member: Councillor P.J. Edwards)**

**8.1 Report on Decisions Taken**

- (i) There were no decisions by Cabinet relating to this portfolio during the reporting period.

**9. HIGHWAYS AND TRANSPORTATION**

**Cabinet Member - Councillor D.B. Wilcox)**

**9.1 Report on Decisions Taken**

- (i) There were no decisions by Cabinet relating to this portfolio during the reporting period.

**10. RESOURCES**

**(Cabinet Member - Councillor R.M. Wilson)**

**10.1 Report on Decisions Taken**

- (i) **Final Revenue Outturn 2005/06** - Cabinet has noted that the final outturn position for 2005/06 was an underspend of £3.7m on directorate Budgets and that each Directorate's final outturn budget was better than forecast. It has agreed the Corporate Management Board's proposals for carry forward of unspent budget into 2006/07 and the creation of new reserves and provisions in the 2005/06 Accounts. This includes £1,366,000 for Waste Management and £1,928,000 for Herefordshire Connects. It has recommended that an increase in the minimum level of general reserves be considered as part of the Council's Medium Term Financial Plan.

**11. RURAL REGENERATION AND STRATEGY**

**(Cabinet Member - Councillor J.C. Mayson)**

**11.1 Report on Decisions Taken**

- (i) There were no decisions by Cabinet relating to this portfolio during the reporting period.

**12. SOCIAL CARE ADULTS AND HEALTH**

**(Cabinet Member Councillor Mrs. L.O. Barnett)**

**12.1 Report on Decisions Taken**

- (i) **Adult Social Care Budget** - Cabinet has received an exempt report and noted the budget position and progress to date in developing the Directorate's budget management plan for 2006/07 for Adult Social

Care. It has approved a range of measures to help manage the Adult Social Care budget deficit.

## 12.2 Report on Items of Interest

- (i) **Homelessness Update** - In July 2005, Cabinet agreed a number of 'invest to save' initiatives to address the financial pressures created by the demand for homelessness services in Herefordshire. It is estimated that investment of £46,000 in homelessness' prevention payments has saved in excess of £1 million. In the past year other changes have been implemented, including the return in-house of homelessness and housing advice services from Herefordshire Housing Ltd, which have led to an improving position around homelessness prevention in Herefordshire.

During the final quarter of 2005/06, the Council took 94 homelessness applications, resulting in 45 acceptances. This compares to 44 applications in this first quarter of 2006/07 with 22 acceptances. The homelessness activity level is expected to settle at around this latest first quarter figure from now on. Targets set for 417 homeless acceptances for 2006/07 were met earlier than anticipated

Despite the substantial progress made in reducing homeless acceptance rates and the associated use of B&B, the budget for bed and breakfast accommodation in 2006/07 may not be adequate, even though additional budget has been allocated. The implications will be reported as part of the integrated performance report throughout the financial year, and every effort is being made to prevent an overspend occurring. Continued use of bed and breakfast accommodation for families could result in judicial review proceedings being taken against the Council by families accommodated in Bed and Breakfast for longer than six weeks contrary to the Homelessness (Suitability of Accommodation) Order (England) 2003. Further progress reports will be submitted to Cabinet on a quarterly basis for the remainder of the year.

Cabinet has congratulated the staff for the improvements realised over the past few months, while recognising that there is still a lot of work to do.

**COUNCILLOR R.J. PHILLIPS  
LEADER OF THE COUNCIL**