

LOCAL GOVERNMENT FINANCE ACT 1992 NOTIFICATION OF DESIGNATION (NOMINATION) FOR 2004/05

PROGRAMME AREA RESPONSIBILITY: CORPORATE STRATEGY AND FINANCE

CABINET

13TH MAY, 2004

Wards Affected

County-wide

Purpose

To determine whether or not to challenge the “designation” of the authority pursuant to Section 52D(2)(a) of the Local Government Finance Act 1992 and, if so, to approve the Notice to be issued to the First Secretary of State in the form of the attached Appendix 1.

Key Decision

This is not a Key Decision.

Recommendation

- THAT (i) the attached draft Notice to the First Secretary of State challenging his proposed budget requirement for the financial year 2004/05 and substituting the higher amount as determined by Council on 5th March, 2004 be approved; and
- (ii) the Leader of the Council on the advice of the Chief Executive and County Treasurer be authorised to make detailed amendments to the presentation of the challenge following the receipt of any further advice.

Reasons

To determine the Council’s response to the proposed designation of the authority under the Local Government Finance Act 1992.

Considerations

1. At its meeting on 5th March, 2004 the Council established its budget requirement for 2004/05 at the figure of £175,573,000 resulting in a Band D council tax expenditure for the Council of £959.53. That budget was approved by the Council on 5th March without dissent and without any alternative budget proposal being promoted although there were a number of abstentions recorded.

2. Cabinet will recall that initial consideration was given to the recommendations of Budget Panel at the Cabinet meeting held on 29th January, 2004. Those initial recommendations were then submitted to the Strategic Monitoring Committee and formed the basis of the Cabinet's initial recommendation on the budget proposals for 2004/05 considered at its meeting on 19th February, 2004. All those considerations centred on a budget requirement for 2004/05 of £176,433,000 which would have produced a Band D council tax of £972.45. The Strategic Monitoring Committee made the following observations on the revenue budget for 2004/05. It
 - (a) registered its concern over the levels of investment in Social Care (Adults) notwithstanding the proposed investment of £1 million and invited Cabinet to re-assess the risks of that approach.
 - (b) drew attention to the impact of levying council tax at the proposed Band D level of £972.50 and the hardship that could be created for some sections of the community.
 - (c) offered support for the concept of fulfilling the commitment to replenish reserves by accumulating the additional revenues raised from second homes as detailed in paragraph 14 of the report, whilst noting some concern expressed that the sums mentioned might be optimistic.
3. Cabinet subsequently resolved to recommend to Council at its meeting on 19th February, 2004 a budget requirement of £176,433,000 generating a Band D council tax of £972.45.
4. Subsequent to the making of that recommendation, the Leader and Deputy Leader of the Council and the Chief Executive and County Treasurer were invited to a meeting within the Office of the Deputy Prime Minister on Tuesday, 24th February, 2004. The contents of what was a constructive meeting with the Parliamentary Under-Secretary of State, Phil Hope, MP, were confirmed in a letter dated 26th February, 2004. That letter was reported in full at a special meeting of Cabinet held on 4th March, 2004 specifically to consider the correspondence. Whilst clearly indicating the concern which had been expressed by Phil Hope, MP about the extent of the increase proposed in Herefordshire, the letter also stated:

"I also emphasise that we are not pre-judging who would be capped or what our capping principles will be. We will wait to see actual budgets and council tax rises before taking decisions."
5. Cabinet on 4th March, 2004 decided to make reductions in the budget proposed for 2004/05 reducing the budget requirement to £175,573,000 and as a consequence reducing the Band D council tax from £972.45 (10.4%) to £959.53 (8.9%).
6. The Leader of the Council subsequently wrote to Phil Hope, MP on 12th March, 2004 to outline the action taken to address the concerns that had been aired at the February meeting and the consequential reductions which the Council had made in its budget. In his response to the Leader of the Council dated 6th April, 2004, Phil Hope, MP stated

"I cannot, of course, give any indication at this stage as to whether Herefordshire might be capped at the level of the increase the Council has now set. As my letter of 26th February made clear we are not pre-judging which authorities might be capped or what our capping principles will be. We first need to consider the budget"

information we have received from all local authorities. Decisions on excessiveness are likely to be based on a number of principles

..... but no decisions have been taken and we are not pre-judging anything at this stage.”

Designation and Nomination

7. On 29th April, 2004, the Chief Executive was informed by the Office of the Deputy Prime Minister (ODPM) that the First Secretary of State had formed the opinion that the amount calculated by the authority as its budget requirement for 2004/05 is excessive. He was further advised that the First Secretary of State had decided to designate the authority pursuant to the Local Government Finance Act 1992. If that designation is maintained then it would have the effect of imposing a lower maximum budget requirement which would require the authority to make substitute calculations for its budget requirement in 2004/05 and lead to the re-billing of council tax payers.
8. The principles determined for the authority (and all other authorities falling within the same category) are that its budget requirement is excessive if
 - (a) there is a 6.5% or greater increase in the amount calculated by an authority as its budget requirement (less local precepts) for 2004/05 compared to 2003/04;
 - (b) there is a 8.5% or greater increase in the (Band D) basic amount of council tax (calculated after excluding a contribution to meeting local precepts) for 2004/05 compared to 2003/04.
9. The Council has 21 days beginning with the day of the receipt of the letter to challenge the First Secretary of State by notice in writing. That challenge has to be made by 19th May, 2004.
10. After he has considered the reasons set out in the authority's challenge and any additional information that has been provided, the First Secretary of State will either
 - (a) make an Order (which is subject to the approval of the House of Commons) and impose a lower budget requirement for 2004/05 which will then require the re-billing of council tax payers; or
 - (b) he can cancel the designation, in effect withdrawing his proposals to designate the Council in 2004/05, and nominate the authority effectively reserving to himself powers to limit the budget requirement for 2005/06. There are two ways in which he can do that. He can
 - (i) designate the authority for 2005/06, effectively determining the maximum budget requirement for that year; or
 - (ii) determine a notional amount to be calculated by the authority as its budget requirement for 2004/05 against which the reasonableness of increases in the following year will be measured.
11. There is then a further right of challenge to the process of nomination.

The Form of the Challenge

12. The challenge is by way of Notice as previously explained and if it is to be successful will need to be supported by reasons.
13. Additionally, the Council is required to provide the following documentation.
 - (a) Reports and minutes of Council meetings at which the budget and precept were considered.
 - (b) The County Treasurer's report under Section 25 of the Local Government Act 2003.
 - (c) The County Treasurer's report to the Council on its borrowing limits.
 - (d) The authority's most recent Statement of Accounts and the external auditor's opinion.
 - (e) The Council's most recent external auditor's Annual Letter and any public interest reports from its Auditor received post 1st January, 2002.
 - (f) The council tax leaflet for 2004/05.

Conclusion

14. It is theoretically possible to challenge the First Secretary of State's decision by way of judicial review. Such challenge would be on the basis that the criteria adopted by the Secretary of State for the designation of the authority are unreasonable. There is concern that the criteria adopted by the Secretary of State in relation to unitary authorities differ materially from those adopted in relation to non-metropolitan district councils, combined fire authorities and police authorities. In relation to non-metropolitan district councils, fire authorities and police authorities in addition to the budget criteria adopted, the Secretary of State has applied a further test by only designating or nominating authorities in circumstances where their equivalent Band D council tax for 2004/05 is greater than the family of authorities to which they belong.
15. Whilst there is some limited justification offered for the different treatment of those authorities as opposed to unitary authorities, there may be an argument that exclusion of that criteria in relation to unitary authorities is unreasonable. If that criteria was applied then Herefordshire would not be capped because its Band D council tax is below that of the average of the unitary authorities.
16. However, the Regulations which govern capping do enable the Secretary of State to apply different criteria to different types of authorities and the prospects for a successful judicial review may fall on that point alone. There is a general reluctance on the part of the Courts to interfere with the legitimate role of Government. This course is not, therefore, recommended although further legal advice could be sought from Counsel if Cabinet wished to give consideration to such a challenge.
17. There are, however, sound and reasoned grounds for challenging the designation. That is not to say they will be accepted by the Secretary of State but they are soundly based. In particular, there is a concern that the decision to designate the authority at the figure of £253,000 fails to adhere to the principles of Best Value when compared with the additional re-billing costs of approximately half that sum.

That ought to provide a compelling argument for nomination as opposed to designation. The costs of re-billing are, of course, an additional expense to the council tax payer. Effectively the Council would, therefore, have to find approximately £400,000 in budget reduction as opposed to the headline designation figure of £253,000.

18. A draft Notice setting out the reasons for challenge is annexed. These will remain the principles on which the Council's challenge will be made. Authority is sought, however, for the Leader of the Council in consultation with the Chief Executive and County Treasurer to make further amendments to the presentation of the challenge acting on the further advice of the Local Government Association and other sources of support. A copy of the final form of challenge will be made available to the Executive and to the annual meeting of Council to be held on 21st May, 2004.

Alternative Options

There are three basic options available to the Council

Alternative Option 1

To accept the designation and take no further action. This would involve the re-billing of council tax payers once the designation is confirmed by Parliament.

Alternative Option 2

To challenge the proposal of the Secretary of State to designate the Council. This is the course which is recommended.

Alternative Option 3

To challenge the criteria under which the Council has been designated by way of judicial review. This course is not recommended for the reasons set out in the report.

Risk Management

The risks to the Council are twofold.

- (a) There is a financial risk to the Council if it is designated. The revenue budget was carefully drawn on the initial recommendations of the Budget Panel and following consultation with the Strategic Monitoring Committee. The final proposals of the Council represented a reduction of approaching £1 million from those recommendations. There were no alternative budget proposals put forward at the meeting of Council in March, 2004 and the majority of the observations which have been made through the budget process have been to increase the level of spend rather than to decrease it. The Council was already having to face and manage expectations from the public and from partner organisations arising from the reductions already made and the further reduction of £400,000 would simply exacerbate those.
- (b) The second area of risk is the risk to reputation. The Council is a Good performing authority under the Comprehensive Performance Assessment. Nevertheless, in most of the reports of external inspectors the pressure has been on the Council to increase levels of spend and unfavourable comparisons have been drawn between levels of spend within this Council and other comparable authorities even where the

authority is spending at or above FSS. There is therefore a clear continued risk to reputation.

Consultees

None.

Background Papers

None.