



REPORT TO:	COUNCIL
DATE:	21 OCTOBER 2013
REPORT OF THE:	CORPORATE DIRECTOR (s151) PAUL CRESSWELL
TITLE OF REPORT:	REPORT UNDER SECTION 114 LOCAL GOVERNMENT FINANCE ACT 1988
WARDS AFFECTED:	ALL

1.0 PURPOSE OF REPORT

- 1.1 Members of Council are asked to consider this Section 151 Officer's report in relation to part (i) of the Motion on Notice, on the Agenda for the Extraordinary Council Meeting on 21 October 2013:

'The five members below wish to call an Extraordinary Full Council preferably in Kirbymoorside. This Council to debate the Gladman application at Kirbymoorside (1300342/MOUT).

We wish to consider the decision taken on the 28th August 2013. As a result the Council resolves to approve the following:

- i. Instruct the Chief Executive to proceed with revocation of the decision; and*
- ii. To not contest the Judicial Review that is expected on this planning application.'*

- 1.2 The Local Government Finance Act 1988 places certain responsibilities on the Chief Finance Officer (in Ryedale's case the Corporate Director (s151)), namely:

(2) Subject to subsection (2A), the chief finance officer of a relevant authority shall make a report *under this section if it appears to him that the authority, a committee of the authority, a person holding any office or employment under the authority, a member of a police force maintained by the authority, or a joint committee on which the authority is represented—*

(a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,

(b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or

(c) is about to enter an item of account the entry of which is unlawful.

(3)The chief finance officer of a relevant authority shall make a report under this section if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

1.3 This requirement is replicated on the Council's Constitution: Part 2 Articles of the Constitution, section 11.3 functions of the Chief Finance Officer – Ensuring lawfulness and financial prudence of decision making (page 30).

1.4 Under Section 115 of the same Act the authority shall consider the report at a meeting where it shall decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it. In this case the meeting is the Council meeting to be held on 21 October 2013.

2.0 RECOMMENDATIONS

2.1 It is recommended that:

- (i) this report be received; and
- (ii) Council considers this report before deciding whether or not to approve the motion set out in paragraph 1.1 to be considered by Council on the 21 October 2013.

3.0 BACKGROUND

3.1 On the 28 August 2013, the Council's Planning Committee resolved to approve application 1300342/MOUT:

“Development of up to 210no. (Use Class C3) residential dwellings, 50no. (Use Class C2) apartments with care for older people, the provision of expansion land to Kirkbymoorside Community Primary School (Use Class D1), landscape, open space, highway improvement works and associated works (site area 11.6ha) Land At Westfields Kirkbymoorside North Yorkshire”

4.0 REPORT

4.1 Independent external legal advice has been sought on the motion from Counsel. This advice is available for members to read.

4.2 Having considered the contents of the report of the Monitoring Officer and having regard to the Council's statutory obligations and procedures, I have decided to exercise my powers as the Council's Section 151 Officer and Chief Financial Officer under Section 114 of the Local Government Finance Act 1988 to prepare a report with respect to the Extraordinary Council meeting considering the adoption of the resolution to incur substantial expenditure to revoke the planning permission dated 30 August 2013 for major residential development on land near Kirkdale Road, Kirkbymoorside, North Yorkshire.

4.3 Members are asked to refer to the report of the Monitoring Officer on issues relating to the reasonableness and legality of passing a resolution in the terms proposed in the Motion on Notice. The conclusion on revocation from the legal advice is most pertinent to this report and says:

It is unlikely that the Council will be able to persuade the Secretary of State that it is expedient to revoke the permission, if any revocation is opposed. In deciding whether

to revoke the Council will want to take into account the compensation that would be due, estimated at between £3 and £5million.

- 4.4 A review of the Council's finances and available revenue resources which could be used to meet such an amount of compensation has been undertaken. It is of note that the developer has indicated that their estimate of compensation is significantly higher and undoubtedly should compensation be payable a potentially expensive legal process may be involved to determine the actual figure.
- 4.5 The Local Government Act 2003 (Section 27) requires each local authority's Chief Finance Officer to report to the authority if it appears likely that the authority's reserves will fall below the prescribed minimum level, and to explain why this is likely to happen, and what action should be taken. Therefore a minimum balance would need to be retained on the Council's general fund balances. The total of all remaining balances not yet committed to be spent (although in some cases there are plans for the spending of these balances for service delivery in the future) could meet c£700k of any compensation payment. Members should be aware that such a move could have serious impacts on the quality and standard of service delivery.
- 4.6 The Council would therefore, in the event that compensation was payable, likely to be several million pounds short of meeting its obligations and there would be insufficient resources available to meet its expenditure.
- 4.7 The exact process that would ensue is uncertain and would be without precedent. The LGA have said in considering the position of viability of a Council that there was no process nationally prescribed to deal with such a situation where a Council was not viable.
- 4.8 Sections 32 and 33 of the Local Government Finance Act 1992 prescribe the calculation of a Council's budget requirement and factors to be taken into account. These include
'such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year as has not already been provided for'
- 4.9 Therefore it is likely that the Council would meet a compensation payment through short term borrowing which it would then have to resolve as part of its following year's budget either through the cessation of services and/or increases in Council Tax.
- 4.10 A shortfall of say £2m, using the current Council Tax Base, would necessitate a c£103 increase in Council Tax per band D property, a 58% increase. This would require a referendum of Ryedale residents which if not approved would result in the Council being unable to set a balanced budget and meet the requirements of the legislation.
- 4.11 An alternative is that the Council could apply for capitalisation permission from the Government which would then allow long term borrowing (subject to affordability) or capital receipts to finance the costs. This is an uncertain process and the latest guidance states that capitalisation should be sought only for costs which are due largely to factors beyond the local authority's control and the capitalised expenditure is unavoidable. Clearly the rules in force at the time of the compensation being payable would be relevant, but based on existing guidance such an application is unlikely to be successful.

- 4.12 Clearly during this process high level discussions with the Government would need to take place and predicting that outcome would be highly speculative.
- 4.13 Auditor scrutiny may consider issues such as a Public Interest Report and with or without this there would be significant adverse media coverage.
- 4.14 Against the background of the information above I conclude that should Council approve the motion on the on the Agenda for the Extraordinary Council Meeting on 21 October 2013 and pursue it to its conclusion, it would lead to the authority being in an unlawful position and likely to cause a loss or deficiency on the part of the authority.
- 4.15 Although this is my view as Section 151 Officer for the Council only the Courts can give a definitive interpretation.
- 4.16 Under Section 114(4) of the Local Government Finance Act 1988 I am required to send a copy of this report to the Council's External Auditor and to each Member of the Council which has been done.

Paul Cresswell
Corporate Director (s151)

Author: Paul Cresswell, Corporate Director (s151)
Telephone No: 01653 600666 ext: 214
E-Mail Address: paul.cresswell@ryedale.gov.uk

Background Papers:
None.