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CABINET AGENDA

Date: Wednesday 15th June 2022

Time: 6.30pm NB Time

Venue: Council Chamber

This meeting will be webcast live on the internet.

Membership:

Councillor Blackwell	Chairman - Leader of the Council
Councillor Cole	Special Projects (Deputy Leader of the Council)
Councillor Fuller	Resources
Councillor Gibson	Place – Infrastructure
Councillor Mountford	Waste & Environmental Health
Councillor Palmer	Regeneration & Economic Growth
Councillor Mrs Sach	People, Health Wellbeing & Housing
Councillor Savage	People & Community

Cabinet Enquiries: **Ann Horgan ext. 2413
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Reference: **1/2022/2023**
Publication Date: **Tuesday 7th June 2022**

AGENDA
PART I
(Business to be taken in public)

- 1. Apologies**
- 2. Members' Interests**
- 3. Minutes**
To approve the Minutes of the meeting held on 16th March 2022.
- 4. Forward Plan**
To review the Forward Plan.
- 5. Energy Bill Rebate – Ratify Scheme**
(Report of the Cabinet Member – Resources)
- 6. Suicide Policy & Protocol –**
(Report of the Cabinet Member – People, Health Wellbeing & Housing)
- 7. Regulation of Investigatory Powers Act 2000 (RIPA) Policy –**
(Report of the Cabinet Member – People & Community)
- 8. Report on the Notice of Motion regarding the Castle Point Local Plan.**
- 9. Matters to be referred from /to Policy & Scrutiny Committees**
- 10. Matters to be referred from /to the Standing Committees**

PART II
(Business to be taken in private)
(Item to be considered with the press and public excluded from the meeting)

There were no items known at time of publication of the agenda.



CABINET



16TH MARCH 2022

PRESENT:

Councillor Sheldon	Chairman – Leader of the Council
Councillor Cutler	Waste & Environmental Health
Councillor Mrs Egan	People – Health & Wellbeing
Councillor Hart	Place – Infrastructure
Councillor Isaacs	People – Community
Councillor Johnson	Resources
Councillor Mrs Thornton	Economic Development Delivery
Councillor Varker	Special Projects – Deputy Leader of the Council

ALSO PRESENT:

Councillors: Acott, Anderson, Blackwell, Blissett, Campagna, Dixon, Fuller, Greig, Mrs Haunts, C Mumford, S Mumford, Palmer, Mrs Sach and A.Thornton.

APOLOGIES:

There were none

73. MEMBERS' INTERESTS:

Councillor Isaacs declared an interest in respect of Minute 79 Big Local Project for Canvey Island as he had attended meetings of the Big Local as Cabinet member for People - community. Councillors Palmer and Anderson who were present at the meeting declared an interest in the same item as the Chairman and Deputy Chairman of the Big Local. They all remained in the Chamber. Cllr Isaacs taking part in the deliberation and vote on the item.

74. MINUTES:

The Minutes of the Cabinet meeting held on 23.2.2022 were signed and approved as a correct record.

75. FORWARD PLAN:

To comply with regulations under the Localism Act 2011, the Leader presented a revised Forward Plan to the meeting which outlined key decisions likely to be taken within the next quarter of 2022. The Plan is reviewed each month.

Resolved: To note and approve the Forward Plan as amended.

76. NOTICE OF MOTION – EXAMINATION OF MINISTER'S COMMENTS

Cabinet received a report setting the implications of the Motion referred from Council.

'We call on the Council to stop and assess the recent announcements made by the Conservative Government and the new Secretary of State Michael Gove with regard to changes to the planning system (and take whatever action is necessary)

to protect and preserve the precious green belt in our local area and reduce the housing numbers and extend the term of delivery in the emerging new local plan.'

Resolved:

That Cabinet notes the implications of the Motion and refers the report to Ordinary Council to inform debate on the Motion

77. CORPORATE PERFORMANCE SCORECARD QUARTER 3

Cabinet considered a report setting out the performance figures for the Corporate Performance Scorecard for Q3 2021/22.

In discussion of the report, Members acknowledged the work of the community groups in keeping in open spaces clean and the prompt action of staff responding to fly tipping.

Resolved:

That Cabinet notes the report and continues to monitor performance.

78. PARTNERSHIP MEMORANDUM OF UNDERSTANDING

Cabinet considered a report seeking approval from Cabinet to enable the Council to enter into a partnership Memorandum of Understanding (MoU) with Basildon Borough Council and Brentwood Borough Council.

The option to approve the MOU was recommended because

- a) It might provide opportunities to work in ways that improve organisational efficiency
- b) Economies of scale could be explored and delivered through wider partnership working
- c) It might provide opportunities to build greater resilience in essential services, enabling consistent and high standards of service for residents

Resolved:

That Cabinet approves Castle Point Borough Council entering into a Memorandum of Understanding (MoU) with Basildon Borough Council and Brentwood Borough Council to enable the commencement of exploratory work in relation to potential joint working opportunities.

79. BIG LOCAL PROJECT FOR CANVEY ISLAND

Cabinet considered a progress report on the improvements to the Gunny site proposed by the Big Local Partnership and on the future management arrangements which were being considered.

Canvey Island Town Council had indicated that it was willing to acquire freehold ownership of the site rather than a long-term lease if it was to take over the responsibility for the site.

The Solicitor to the Council would be instructed to grant, negotiate, and agree any terms relating to the disposal of the land as deemed appropriate by the Chief Executive, the Strategic Director (Corporate Services) and Head of Environment.

Members were pleased to note the progress being made.

Resolved - That Cabinet note the improvements to the Gunny site as proposed by the Big Local Partnership and endorses, supports the future management and ownership arrangements for the site.

80. MATTERS TO BE REFERRED FROM / TO POLICY & SCRUTINY COMMITTEES

There were no matters.

81. MATTERS TO BE REFERRED FROM / TO THE STANDING COMMITTEES

There were no matters.

Chairman



Castle Point Borough Council

Forward Plan

MAY/JUNE 2022

CASTLE POINT BOROUGH COUNCIL

FORWARD PLAN

MAY /JUNE 2022

This document gives details of the key decisions that are likely to be taken. A key decision is defined as a decision which is likely:-

- (a) Subject of course to compliance with the financial regulations, to result in the local authority incurring expenditure which is, or the savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates subject to a threshold of £100,000; or
- (b) To be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the area of the local authority.

The Forward Plan is a working document which is updated continually.

Date	<u>Item</u>	Council Priority	Decision by Council/ Cabinet	Lead Member(s)	Lead Officer(s)
June /July 2022	<u>Notice of Motion Notice (Local Plan)</u>	Economy and Growth	Council	– Leader of the Council /Special Projects /Resources	Interim Chief Executive/ Head of Place & Policy/Section 151 Officer
June 2022	<u>Refresh Regulation of Investigatory Powers Act 2000 (RIPA)Policy</u>	Enablers	Cabinet	People & Community	Solicitor to the Council
June 2022	<u>Refresh Suicide Protocol</u>	Enablers	Cabinet	People, Health Wellbeing &Housing	Strategic Director Corporate Services
June 2022	<u>Energy Bills Rebate – Ratify Scheme</u>	Enablers	Cabinet	Resources	Head of Customer and Digital Services
July 2022	<u>Corporate Performance Score Card Quarter 4 – to monitor</u>	All	Cabinet	Special Projects	Strategy Policy & Performance Manager
July 2022	<u>Public Space Protection Order – Report from Policy &Scrutiny Committee</u>	People	Cabinet/ Council	People & Community	Corporate Services
July 2022	<u>Financial Update –</u>	All	Cabinet	Resources	Strategic Director (Resources)
July 2022	<u>Playing Pitch Indoor Built Strategy – to approve</u>	Place /Environment	Cabinet	Place – Infrastructure	Head of Place & Policy

2022	<u>Waste Collection Arrangements</u> – to consider recommendations from Environment PSC	Environment	Cabinet	Waste & Environmental Health	Head of Environment
September 2022	<u>Award of Grounds Maintenance, Street Cleansing and Building Cleansing Contract</u>	Environment	Cabinet	Place - Infrastructure	Head of Environment
October 2022	Draft Update of the Developer Contributions Guidance referred from Place & Community PSC	Economy and Growth	Council Cabinet	Growth – Leader of the Council	Head of Place & Policy
Standing item 2022 –	<u>Transformation – Response to Budget Challenge</u>	All	Cabinet	Resources	Interim Chief Executive Strategic Directors Section 151 Officer and Heads of Service

CABINET

15th June 2022

Subject: Energy Bill Rebate – Ratify Scheme

Cabinet Member: Councillor Fuller – Resources

1. Purpose of Report

To provide an update to Cabinet in respect of the Energy Bills Rebate Scheme and to seek formal ratification from Cabinet of the local Energy Bills Rebate Discretionary Fund Scheme.

2. Links to Council's priorities and objectives

This report links to the Council's Corporate Plan objective, to provide a commercial and democratically accountable Council by ensuring it is fit for purpose by meeting national and local requirements to agreed timescales and to optimum performance levels.

Central Government requires all Councils to support households with the rising cost of energy bills by administering the Council Tax Rebate element of the scheme and by adopting a local Discretionary scheme.

3. Recommendations

1. That Cabinet note the information summarised in sections 6 and 7 of this report and the information detailed in Appendices A and C.
2. That (to enable swift implementation) Cabinet ratify the adoption of the proposed Discretionary Rebate Scheme to commence 17th June 2022.
3. That Cabinet recommend the Scheme for retrospective Council ratification on 27th July 2022.

4. Background Information

- 4.1 On 3rd February 2022, in response to rising energy bills, Central Government announced a package of support known as the Energy Bills Rebate and issued Guidance accordingly (**Appendix A**).

4.2 This package includes;

- A £200 discount on energy bills this autumn for domestic electricity customers in Great Britain, delivered by energy suppliers and paid back automatically over the next 5 years
- A £150 non-repayable Council Tax Energy Rebate, delivered by billing authorities to households in England in council tax bands A to D
- £144 million of discretionary funding for billing authorities to also support households who are in need but are not eligible for the Council Tax Energy Rebate

4.3 On 26th May 2022, further to this original package of support, the Chancellor of the Exchequer also announced a raft of further measures targeted at those most in need of support with the Cost of Living – bringing the total support provided to £37 billion (**Appendix E**).

4.4 Full details of these new measures and how they will be delivered are yet to be finalised.

4.5 In the meantime, this report focusses on delivery of the £150 non-repayable Council Tax Rebate and the Discretionary schemes from the original support package.

4.6 These schemes are both fully funded by Central Government, with Castle Point Borough Council receiving £4.6M funding for the Rebate scheme, and £178k for the Discretionary scheme.

4.7 Councils are expected to spend their allocated Rebate funding by 30th September 2022 and their Discretionary funding by 30th November, with any unspent funding to be repaid to Government.

4.8 Under both schemes, payment is to be made direct to the tax payers bank account and is only to be credited to the Council Tax account in exceptional circumstances.

4.9 To prevent fraud, prepayment checks are required on all awards under both schemes and, where necessary, further enquiries may be made before payment is released.

4.10 Further details specific to each scheme are set out below.

5. The Council Tax Rebate Scheme

5.1 Under the scheme, which is prescribed by Central Government, households falling under the following criteria on 1st April 2022 are entitled to receive a £150 one-off payment;

- a) liable council tax payers who occupy a property valued in council tax bands A to D which they occupy as their sole or main residence.
 - b) Occupants of properties which are solely occupied by students as term time accommodation or as a student hall of residence.
 - c) Occupants of properties solely occupied by people under the age of 18.
 - d) Occupants of properties solely occupied by people who are severely mentally impaired.
 - e) Occupants of annexes occupied by dependant relatives of the occupant of the main property.
- 5.2 Where the Authority holds bank details for Council Tax direct debit purposes, no application form is required and payments can be made automatically, subject to satisfactory prepayment checks.
- 5.3 Where the Authority does not hold bank details or bank details have not successfully cleared prepayment checks customers are required to complete an online application form, which includes an automated identity check – required to help prevent fraud.
- 5.4 Customers can find the online application form, together with full details of the scheme (**Appendix B**), on the website.
- 5.5 First Contact are available to provide support to those who do not have access to the internet or who require assistance with the application process.
- 5.6 The Authority launched delivery of this scheme on 22nd April 2022 and has so far awarded over £3.5m to just over 23,500 residents – over 73% of those identified as eligible.
- 5.7 The scheme has been actively publicised via social media – reaching over 10,000 residents – however a written communication inviting applications and offering assisted support will be sent from June onwards to all residents who have not applied but are known to be eligible, to engage those who do not use the internet or social media.

6. The Energy Bills Rebate Discretionary Fund Scheme

- 6.1 Central Government have provided billing authorities with discretionary funding in recognition that they may wish to provide support to other energy bill payers who are not eligible under the core Council Tax Rebate scheme, or some form of targeted ‘top-up’ payments to the most vulnerable households in bands A to D.
- 6.2 Local Authorities can determine how best to make use of this funding and once determined are required to publish their scheme setting out the eligibility criteria.

6.3 The proposed Discretionary scheme for Castle Point Borough Council is set out in full at **Appendix C** and incorporates the following key criteria;

- a) That for the purposes of this scheme, the Council will award a single one-off payment of up to £150 to households where;
 - i. the dwelling has a Council Tax band E to H and the applicant is in receipt of Local Council Tax Support; or
 - ii. the dwelling has a Council Tax band E to H and an exemption under Class U (Severe Mental Impairment) has been awarded; or
 - iii. the dwelling has a Council Tax band E to H and a resident Carers disregard is awarded; or
 - iv. the dwelling has a Council Tax band F to H and a disabled banding reduction has been applied under the Council Tax (Reduction for Disabilities) Regulations 1992; or
 - v. the dwelling has a Council Tax band E to H and the applicant is able to prove exceptional hardship (financial and personal), or
 - vi. the dwelling has a Council Tax band A to D and the applicant has already been awarded a payment under the prescribed Energy Bills Rebate Council Tax Rebate scheme and the applicant is able to prove exceptional circumstances (both financial and personal).
- b) That the Council will determine eligibility based on the Council Tax position at the end of day on 1st April 2022, subject to any proven inaccuracies and retrospective adjustments to Council tax records.
- c) That only one payment per household will be permitted under the scheme.
- d) That residents who wish to apply for the scheme are required to do so via an online application form, with assisted support available via First Contact where required.
- e) That all applications will be determined individually on a case-by-case basis by Officers of the Council with reference to the priorities and award levels itemised in para 6.4 below.
- f) That applications based on exceptional hardship (para 6.4 - Groups E and F) will also be required to complete an income and expenditure form (**Appendix D**) and may be asked to provide further evidence/information, such as;
 - i. Bank statements for a two or three month period
 - ii. Utility Bills
 - iii. Any paperwork where debts are being repaid through a “debt management agreement”
 - iv. Any paperwork relating to mortgage, rent or council tax debt
 - v. Evidence that shows how long the debts have been an issue

- g) That award levels for applications based on exceptional hardship will be determined on a case by case basis following a thorough financial assessment - akin to the process adopted for Discretionary Housing Payment and Exceptional Hardship Scheme applications – which may include a referral to Peabody, StepChange, or similar such agency for budgeting advice where necessary.
- h) That all payments made will be subject to available funding.
- i) That residents will be notified of the outcome of their application by letter or email.
- j) That, where an applicant disagrees with the decision to award or not award their application, the Council will operate an internal review process via a Senior Officer of the Council.
- k) That no further right to appeal against the Council's decision will apply beyond the internal review.

6.4 To ensure funding reaches those who have not already received support through other means, but also adequately caters for those in exceptional hardship, it is proposed that funding is initially prioritised and allocated as follows;

Priority Order	Description	Estimated Caseload	Award Level	Estimated Allocation
1	Group A Band E to H and in receipt of Local Council Tax Support	194	£150	£29,100
	Group B Band E to H and Class U (Severe Mental Impairment) applies	18	£150	£2,700
	Group C Band E to H and a resident carers disregard applies	14	£150	£2,100
	Group D Band F to H and a disabled band reduction applies	26	£150	£3,900
2	Group E Band E to H and exceptional hardship is proven	unknown	Up to £150	£140,200
3	Group F Band A to D and been paid under the prescribed Council Tax Energy Rebate scheme and has proven exceptional hardship	unknown	Up to £150	
Total Available Funding				£178,000

- 6.5 This ensures all those in the highest priority groups will receive a payment equivalent to the £150 paid under the core Council Tax Energy Rebate scheme, with the remaining funds allocated on a case by case basis and level of up to £150, to those suffering exceptional hardship.
- 6.6 It is impossible to predict or identify the level of exceptional hardship that exists within the borough, so the scheme needs to contain mechanisms that allow it to adapt quickly and easily as these needs emerge.
- 6.7 It is therefore proposed that take up is closely monitored and reported back to the Cabinet Member for Resources and the Section 151 Officer on a monthly basis and that the Section 151 is authorised, under the Scheme of Delegation, to make any changes subsequently deemed necessary to ensure the scheme meets these needs – i.e. changing the maximum award level, priority order, or defined eligible groups.
- 6.8 The scheme will also be publicised widely via a combination of the following mechanisms to maximise awareness and take up;
- i. a Press Release,
 - ii. the Tenants Newsletter
 - iii. a series of Social Media posts,
 - iv. the website and Latest News page,
 - v. targeted SMS, email, letters and OPENPortal messaging
 - vi. proactive signposting by staff, key partners, and advice agencies (i.e. Peabody, Citizens Advice, CAVs etc.)

7. Corporate Implications

a. Financial Implications

- 7.1 Central Government has provided Billing Authorities with a share of a £144million Discretionary Fund to enable support to energy bill payers who are not eligible under the prescribed Council Tax Rebate scheme, meaning the scheme is fully funded.
- 7.2 The proposed scheme incorporates a number of tried and tested financial controls, similar to those adopted during the recent public health crisis – which are expected to mitigate the risk of fraud and ensure the scheme remains within budget.
- 7.3 The scheme is designed to support those in the most financial need, and in doing so is expected to mitigate impacts of the Cost of Living crisis on residents and the local economy – including any impacts to Council Tax collection.

b. Legal Implications

- 7.4 A local policy is required, and the Council's proposed policy is attached at **Appendix C**. The Energy Bill Rebate Discretionary Scheme policy has been drafted taking into consideration the guidance provided by government and the level of funding available.

c. Human resources/equality/human rights

- 7.5 Implementation of the scheme is expected to place an additional burden on the Benefits Service.
- 7.6 No New Burdens funding has yet been provided to support with delivery of the scheme, however Central Government have confirmed that they will undertake an assessment and confirm funding arrangements for reasonable costs in due course.
- 7.7 In the meantime implementation and delivery of the scheme will be prioritised and provided by existing resources within the Benefit Service.

d. Timescale for implementation and risk factors

It is proposed that the scheme is launched with effect from 17th June 2022 and closes on 16th November 2022.

There is a risk that the allocated funding under any individual group may not be fully taken up, causing financial detriment to other groups who may have a high take up rate but who's funding is completely exhausted. To mitigate this risk, take up will be closely monitored and where necessary the funding allocation between the groups may be revised under the scheme of delegation.

Key timescales are as follows:

Milestone	Timeframe	Purpose
Cabinet Report	15.6.22	Discretionary Scheme is adopted
Discretionary Scheme application window opens	17.6.22	Scheme is published and launched to residents
Discretionary Scheme application window closes	16.11.22	To ensure all applications are received, assessed, and paid by the statutory deadline

Discretionary Scheme Payments end	30.11.22	Statutory deadline – no further payments can be made after this date
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8. Background Papers:

Appendix A

[Support for energy bills - the council tax rebate 2022-23: billing authority guidance - GOV.UK \(www.gov.uk\)](#)

Appendix B

[S:\Customer Services\CAG\ENERGY REBATE SCHEME 2022\Castle Point - Council Tax Rebate Mandatory Scheme \(003\) 1.4.22 FINAL.pdf](#)

Appendix C

[S:\Customer Services\CAG\ENERGY REBATE SCHEME 2022\Castle Point Discretionary Rebate Scheme FINAL3.pdf](#)

Appendix D

[S:\Customer Services\CAG\ENERGY REBATE SCHEME 2022\Discretionary Rebate Scheme - Income & Expenditure Form.pdf](#)

Appendix E

[Overall government support for the cost of living: factsheet - GOV.UK \(www.gov.uk\)](#)

Report Author:

Eddie Mosuro – Head of Customer & Digital Services

CABINET

15th June 2022

Subject: Suicide Policy and Protocol

**Cabinet Member: Councillor Mrs C Sach – People, Health Wellbeing
& Housing**

1. Purpose of Report

This report presents the Suicide Policy and Protocol which assists Council staff dealing with people at risk of suicide or self-harm to the Cabinet for formal adoption.

2. Links to Council's Priorities and Objectives

This report links to our priority area People and the objective of health and wellbeing

3. Recommendation

The Suicide Policy and Protocol is to be adopted and published by the Council following consideration and agreement by the Cabinet.

4. Background

There are 4,500 suicides each year in England. Men are three times more likely than women to take their own life. It is also a leading cause of death in young people and men under 50.

This policy and protocol has been developed pursuant to the Government requirement to put effective suicide prevention measures in place and provides practical guidance on responding to and managing people who threaten suicide or self-harm.

Any member of staff could encounter a distressed person threatening suicide or self-harm either in person, on the phone or in writing. This type of personal crisis can be difficult to handle and traumatic for any staff who are engaged by the person in crisis.

The updated guidance includes information and links to support agencies to offer

practical assistance and professional help to any affected person. It can be used by all staff including those who do not have specialist knowledge and training.

The policy and protocol links to the Council's Safeguarding Vulnerable Adults and Children Policy and supports the local Southend Essex Thurrock (SET) strategy in its ambition to a 'Zero Suicide' approach

5. Corporate Implications

5.1. Financial Implications

Any costs associated with the refresh of the Council's Suicide Prevention Plan and Protocol will be met from existing budgets.

5.2. Legal Implications

The Council is acting in accordance with Government Policy issued by the Under Secretary of State at the Department of Health and following the increased risk of suicide arising from the recent and ongoing public health crisis. (Covid)

Every Council is required to have an effective suicide prevention policy in place under a new Government drive to tackle suicide and Whitehall has [published](#) a cross-government suicide prevention plan, which focuses on how social media and the latest technology can identify those most at risk.

5.3. Human Resources and Equality Implications

This policy applies to all services provided by staff employed by Castle Point Borough Council. It applies to all employees, paid or unpaid, permanent or temporary, casual workers, voluntary workers, work experience students, agency staff, consultants, and other contracted persons within the duration of that contract.

5.4. IT and Asset Management Implications

None

6. Timescale for implementation and Risk Factors

6.1. The policy and protocol will be implemented immediately

7. Background Papers

Suicide Prevention Cross Government Plan

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benfleet | canvey | hadleigh | thundersley

Suicide and Self Harm

**Prevention policy and protocol for
responding to threats of suicide or
self-harm**

Purpose

To provide practical guidance on responding to a threat of suicide or self-harm.

Scope

This protocol applies to all services within the remit of Castle Point Borough Council. It applies to all employees, paid or unpaid, permanent, temporary, casual workers, voluntary workers, work experience students, agency staff, consultants, and other contracted persons within the duration of that contract.

Wider Context

Suicide is more common among some groups than others; It is more likely among men than women, in particular men in their 40s and 50s from lower socio-economic groups.

Our local protocol will support the wider Southend, Essex and Thurrock ambition to enable a 'zero suicide' approach to all that we do, and actively supports the Talk Suicide Essex campaign.

Acknowledgements

This guide for Castle Point has been largely adapted from the same guide produced and used by other Essex Councils.

Background

Any member of staff could encounter a distressed person threatening suicide or self-harm, either in person, on the phone or in writing. It could be a customer, colleague, family member or friend. This type of situation can be difficult to handle and particularly when those in receipt of the threat are not trained or qualified to help.

There are numerous factors which can lead a person to the point of making such a threat including when a member of staff has to tell a customer something they don't want to hear – especially if it will affect their finances, or home.

Although people often say things that they don't mean, any threats of self-harm or suicide should be taken seriously. All staff have a duty of care to the person, to, as far as possible and practicable, assist them with support to obtain the professional care and assistance that they need. At the same time, staff should ensure their own safety when carrying out business on behalf of the Council.

This document provides guidance on the procedures to be followed in all instances.

What are the warning signs for individuals?

Suicide is complex and often involves a combination of lots of different factors interacting with each other. Although you might not be in a position to know, factors that could lead to or indicate a decline in a person's mental health include:

- stressful events such as failing exams; being made redundant; divorce;
- traumatic events
- experiencing bereavement or loss;
- feelings of shame, isolation or loneliness;
- loss of self-esteem
- giving away possessions
- sleep problems – particularly waking up early
- taking less care of themselves, for example eating badly or not caring what they look like
- a sense of uselessness and having no purpose – feeling "What's the point?"
- someone talking about ending their life or about suicide in general
- a significant change of behaviour – someone may appear to be calm and at peace for the first time or, more usually, may be withdrawn and have difficulty communicating.

What will not help someone who is feeling suicidal?

Someone who wants to end their life will not want to:

- feel rejected patronised, criticised, or analysed
- have people change the subject when they are talking about how they feel
- be told that they are wrong or silly
- be told to cheer up or 'snap out of it'
- be told that they should be grateful for having such a good life.

Reassurance, respect, and support can help a person recover at this difficult time.

Are people with mental illnesses at greater risk of suicide?

People with mental illnesses *are* generally more likely to feel suicidal and try to take their own lives than people who do not have mental illnesses. A person could be more likely to try to end their own life if they have recently been discharged from a mental health hospital.

Responding to a person threatening suicide or self-harm

There is no universal procedure for these situations and how staff deal with a person who is threatening suicide or self-harm may depend on a range of factors, for example:

- the relationship they may already have with the person
- if they are a housing association tenant (housing staff may already be aware of their issues or have contact information)
- if there are other factors involved e.g., criminal or anti-social behaviour

- whether there are children or other vulnerable people present
- the member of staff's own levels of confidence in tackling such an issue.

Talking about suicidal thoughts doesn't make someone more likely to end their life. If you are faced with this situation, one of the most important things you can do is to talk to them about how they feel and listen to them. Do not assume that because someone has talked about suicide they will not try to take their own life.

Try to get an understanding of the person's intentions by asking non-judgemental questions:

- are you having thoughts of ending your life or harming yourself?
- have you tried to end your life before?
- have you made any plans on how to end your life?
- is anyone with you at the moment? (especially if you think they have children)

In all cases you need to follow these procedures

In an emergency

If someone has seriously injured themselves or attempted suicide **dial 999 immediately**. If you are with them when this happens, stay with them until the ambulance arrives.

If you feel someone is in **mental health crisis** and at **immediate risk of self-harm or danger** (for example if they are talking about suicide and / or harming themselves) you should:

- Advise them that threats of suicide and self-harm are taken seriously by the Council and you will need to refer them to someone who is more qualified to help
- Get details of the person: their name, address, phone number, their GP's details, their current location (if speaking to them on the phone)
- Call **999** for an ambulance
- Encourage the person to talk to someone they trust, i.e., a friend, family member or a support worker, if they have one. Alternatively, they can call **111** and select **Option 2** where a trained member of staff will provide appropriate advice and support 24 hours a day, 365 days a year
- If it is a young person, they can call the **Crisis Support Service** for young people on **0300 555 1201**
- If no one is available to help, suggest they go straight to the nearest A&E department
- Encourage them to talk to an organisation such as the Samaritans (dial **116 123** from any phone, 365 days, 24 hours) to get extra more appropriate and immediate support.

For non-emergencies

If you're worried that someone **may be at risk**, but **not in immediate danger**, you should:

- Find out if they already have contact with any mental health services or support agencies and encourage them to get in touch.
- Encourage them to book an emergency appointment with their GP
- Try and get them to talk to an organisation such as the Samaritans (dial **116 123** free from any phone, 24 hours a day) to get immediate and more appropriate support.
- Offer information on other helplines that can offer advice and support (**see Useful Contacts on page 7**).

In all situations

- If the person refuses to seek support, wherever possible get their agreement to contact a support person or service on their behalf.
- Do not attempt to counsel the person or make a judgement about whether you think the person will carry out the threat of suicide or self-harm; refer the matter to appropriately qualified people at the earliest opportunity.
- Let your line manager know as soon as possible, telling them what action you've taken.
- Notify the Council's Designated Safeguarding Lead Officer. Refer to the council's [safeguarding reporting procedures](#).

Monitoring and Review

This Protocol will be reviewed periodically unless an earlier review is required.

Other relevant documents

Other policies and procedures that are relevant to this Protocol are:

- CPBC Safeguarding Policy (located within the Policies tab on the Intranet, see Internal Policies, and look under Human Resources)
- Southend, Essex & Thurrock (SET) – Child Protection Procedures
<http://www.escb.co.uk/>
- Southend, Essex & Thurrock (SET) – Safeguarding Vulnerable Adult Guidelines
<http://www.essexsab.org.uk/>

Useful contacts

24-hour Mental Health Crisis Response Service (NHS 111 Option 2)

Call **111** and select **Option 2**, where a trained member of staff will provide advice and support.

Samaritans

Samaritans are available 24 hours a day, 7 days a week, 365 days a year, for anyone who is struggling to cope and / or who needs someone to listen without judgement or pressure.

Call **116 123**

Papyrus

Papyrus provides confidential support and advice to people under the age of 35 who are experiencing suicidal thoughts. Their helpline **HOPELINEUK** is open 9am – 12 midnight every day of the year.

Tel: **0800 068 4141**

SHOUT 85258

Shout is a free, confidential 24/7 text messaging support service that is available for anyone in the UK who is in distress and feels unable to cope.

To start a conversation simply text the word '**SHOUT**' to **85258**.

Childline

Childline is a free, private, and confidential service for young people up to the age of 19. You can access support online and over the phone to talk about anything that is troubling you. The helpline is free to contact and is accessible 24 hours a day.

Tel: **0800 1111**

Campaign Against Living Miserably (CALM)

CALM runs a free, confidential helpline and webchat service 7 days a week, 365 days a year

Tel: **0800 585 858**
5pm – 12 midnight

Suicide Prevention Training

Suicide prevention training is available online free to all from the Zero Suicide Alliance (ZSA) as part of the Talk Suicide Essex suicide prevention campaign.

In just 20 minutes you will learn how to identify the signs of when someone might be experiencing suicidal thoughts and behaviour, feel comfortable speaking about suicide in a supportive manner, and know where to signpost someone in crisis to the correct support services.

[ZSA Suicide Awareness Training](#)

Staff self-care

Dealing with a situation such as this can be very distressing. If you need to talk to someone in confidence, you can contact any of the council's Mental Health First Aiders.

The Council's appointed Union Representatives may also be consulted and provide assistance.

Contact details for the above may be obtained from the HR Manager at Castle Point Borough Council.

Staff self care offer a confidential service for council staff who are experiencing fear and anxiety. Contact details 0800 174 319 www.carefirst-lifestyle.co.uk

Alternatively, you can find details of local organisations offering support with emotional wellbeing and mental health on the [Essex Local Offer website](#).

This policy is published by Castle Point Borough Council in June 2022.

CABINET

15th June 2022

**Subject: Regulation of Investigatory Powers Act 2000 (RIPA)
Policy**

Cabinet Member: Councillor Savage – People & Community

1. Purpose of Report

- **To provide an update to the Cabinet and Council on the current RIPA policy and its use.**
- **To approve the updated Regulation of Investigatory Powers Act 2000 (RIPA) Policy (2022) attached.**

2. Links to Council's Priorities and Objectives

This report is linked to the Council's Priorities and objectives as an enabler

3. Recommendation

- **That the Cabinet notes the content of this Report.**
 - **That the Cabinet approves the Regulation of Investigatory Powers Act 2000 (RIPA) Policy 2022, annexed as an indication of the Council's commitment to complying in its practices with current legislation.**
-

4. Background

The Regulation of Investigatory Powers Act (the Act) was introduced by Parliament in 2000. The Act sets out the reasons for which the use of directed surveillance and covert human intelligence source may be authorised.

Local Authorities' abilities to use these investigation methods are restricted in nature and may only be used for the prevention and detection of crime or the prevention of disorder. Local Authorities are not able to use intrusive surveillance.

When undertaking an investigation, the Council would more than likely use overt technology such as CCTV or open-source methods rather than covert methods (without the individual's knowledge) of gathering information.

As a result, the Council has not found it necessary to make any RIPA applications to the Magistrates' Court in the past year. However, should overt means of gathering of information for investigations prove to be insufficient the Council has the necessary policy and procedures in place whether the surveillance is to be unregulated or regulated by the Act.

Widespread, and often misinformed reporting led to public criticism of the use of surveillance by some Local Authority enforcement officers and investigators. Concerns were also raised about the trivial nature of some of the 'crimes' being investigated. This led to a review of the legislation and ultimately the introduction of the Protection of Freedoms Act 2012 and the RIPA (Directed Surveillance and CHIS) (Amendment) Order 2012.

In addition to defining the circumstances when these investigation methods may be used, the Act also directs how applications will be made and how, and by whom, they may be approved, reviewed, renewed, cancelled and retained.

When carrying out covert surveillance the Act must be considered in tandem with associated legislation including the Human Rights Act 1998 (HRA), and the Data Protection Act 1998.

The purpose of Part II of the Act is to protect the privacy rights of anyone in Castle Point Borough Council's area, but only to the extent that those rights are protected by the HRA. A public authority, such as Castle Point Borough Council, has the ability to infringe those rights provided that it does so in accordance with the rules, which are contained within Part II of the Act. Should the public authority not follow the rules, the authority loses the impunity otherwise available to it. This impunity may be a defence to a claim for damages or a complaint to supervisory bodies, or as an answer to a challenge to the admissibility of evidence in a trial.

5. Proposals

Local Authorities may conduct covert surveillance in order to perform its duties and core functions. The Council also has a responsibility to its community to investigate and protect the community from potentially criminal and disorderly conduct which may not be possible to detect or stop through overt surveillance.

The attached Policy sets out the approach that the Council is taking towards Regulation of Investigatory Powers Act 2000 (RIPA) in relation to its policies, practices and services.

It is a requirement under paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice 2018 that the RIPA policy is approved by Council and endorsed. It is also a requirement to report to Council annually whether there have been any such applications made under the act.

6. Corporate Implications

(a) Financial Implications

Managed within existing service budgets

(b) Legal Implications

As set out above the Council will comply with the Legislation when carrying out surveillance within its remit under the Policy and Legislation. Following a telephone-based inspection of our RIPA Policy and Procedures, The Rt. Hon. Brian Leveson, The Investigatory Powers Commissioner in his letter of 24 April 2020 determined that the Council is demonstrating a level of compliance that removes, for the present, the requirement for a physical inspection and is satisfied with the arrangements the Council has in place in relation to RIPA.

The Council's updated 2022 RIPA policy requires approval from councillors in order to comply with paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice 2018. It is also a requirement to report to Council annually whether there have been any such applications made under the attached policy. No applications have been made in the last 12 months.

(c) Human Resources and Equality Implications

Human Resources

Managed within existing resources.

Equality Implications

On each individual RIPA application an equality impact assessment will be undertaken.

(d) IT and Asset Management Implications

None to be addressed by this report.

7. Timescale for implementation and Risk Factors

Publication of the Policy on the Council's website once a decision has been made by Cabinet.

8. Background Papers

Regulation of Investigatory Powers Act 2000 (RIPA) 2022 Policy.

Home Office Covert Surveillance and Property Interference Code of Practice 2018

Report Author:

Jason Bishop – Solicitor to the Council.



Policy and Procedures
for undertaking Directed Covert Surveillance and
the use of Covert Human Intelligence Sources and
Communications Data acquisition for the prevention
and detection of crime or the prevention of disorder.

Regulation of Investigatory
Powers Act 2000 (RIPA) Corporate Policy

Version Control Sheet

<i>Title:</i>	RIPA Policy for Castle Point Borough Council
<i>Purpose:</i>	To advise staff of the procedures and principles to follow to comply with the RIPA Act 2000.
<i>Author:</i>	Jason Bishop
<i>Owner:</i>	Jason Bishop: Solicitor to the Council/ Head of Legal Services
<i>Approved by:</i>	Updated document/ Cabinet approved earlier version. First version 1.0 – Approved 2017. Version 2 required amendment. Version 3 amended version as approved by Investigatory Powers Commissioner's Office 2000 and Approved by Cabinet 2000. Version 4 refreshed and for Cabinet Approval April 2022.
<i>Date:</i>	1 March 2022
<i>Version Number:</i>	4.0
<i>Status:</i>	Draft
<i>Review Frequency:</i>	Bi-annually
<i>Next review date:</i>	2024

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Any enquiries about this policy should be referred to Jason Bishop, Solicitor to the Council/Head of Legal Services on 01268 882462.

A. Introduction

The performance of certain investigatory functions of Local Authorities may require the surveillance of individuals or the use of covert human intelligence sources. Such actions may intrude on the privacy of individuals and can result in private information being obtained and as such, should not be undertaken lightly or without full and proper consideration. Legislation governs how Local Authorities should administer and record surveillance and the use of intelligence sources/ undercover officers and which renders evidence obtained lawful for all purposes. This Policy sets out the Council's rules and procedures.

The purpose of this Policy is to ensure that there is a consistent approach to the undertaking and authorisation of surveillance activity in Castle Point Borough Council's area. Therefore, this Policy is to be used by all Council service areas and officers undertaking investigation work using these techniques of surveillance or the use of Covert Human Intelligence Sources (CHIS's).

1. A brief overview of RIPA

(For text in **bold**, see glossary of terms – Appendix 1)

The Regulation of Investigatory Powers Act (the Act) was introduced by Parliament in 2000. The Act sets out the reasons for which the use of **directed surveillance** (DS) and **covert human intelligence source** (CHIS) may be authorised.

Local Authorities' abilities to use these investigation methods are restricted in nature and may only be used for the prevention and detection of crime or the prevention of disorder. Local Authorities are not able to use **intrusive surveillance**.

Widespread, and often misinformed, reporting led to public criticism of the use of surveillance by some Local Authority enforcement officers and investigators. Concerns were also raised about the trivial nature of some of the 'crimes' being investigated. This led to a review of the legislation and ultimately the introduction of the Protection of Freedoms Act 2012 and the RIPA (Directed Surveillance and CHIS) (Amendment) Order 2012 (Appendix 2).

In addition to defining the circumstances when these investigation methods may be used, the Act also directs how applications will be made and how, and by whom, they may be approved, reviewed, renewed, cancelled and retained.

The Act must be considered in tandem with associated legislation including the Human Rights Act (HRA) (Appendix 3), and the Data Protection Act (DPA) (Appendix 4).

The purpose of Part II of the Act is to govern the use of directed covert surveillance or covert human intelligence sources. As a public authority, Castle Point Borough Council, has the ability to lawfully infringe the rights of individuals of Castle Point, provided that it does so in accordance with the rules, which are contained within Part II of the Act. Should the Council not follow the rules, the authority loses the impunity otherwise available to it. This impunity may be a defence to a claim for damages or a complaint to supervisory bodies, or as an answer to a challenge to the admissibility of evidence in a trial.

Further, a Local Authority may only engage the Act when performing its 'core functions'. For example, a Local Authority may rely on the Act when conducting a criminal investigation as this would be considered a 'core function', whereas the disciplining of an employee would be considered a 'non-core' or 'ordinary' function.

Some examples of when local authorities may use RIPA and CHIS are as follows:

- Trading standards, including action taken against loan sharks and rogue traders, consumer scams, sale of counterfeit goods, unsafe toys and electrical goods.
- Environmental health, including action against large-scale waste dumping, dangerous workplaces, pest control and the sale of unfit food.
- Benefit fraud, including action to counter fraudulent claims for housing benefits, investigating 'living together' and 'working whilst in receipt of benefit' allegations and council tax evasion.
- Local authorities are also responsible for tackling issues as diverse as anti-social behaviour, unlicensed gambling, threats to children in care, underage employment and taxi regulation.

The examples do not replace the key principles of necessity and proportionality or the advice and guidance available from the relevant oversight Commissioners. **The offences must be in accordance with the Crime Threshold mentioned below.**

2. Directed Surveillance

This policy relates to all staff directly employed by Castle Point Borough Council when conducting relevant investigations for the purposes of preventing and detecting crime or preventing disorder, and to all contractors and external agencies that may be used for this purpose as well as to those members of staff tasked with the authorisation and monitoring of the use of directed surveillance, CHIS and the acquisition of communications data.

The policy will be reviewed annually and whenever changes are made to relevant legislation and codes of practice.

It is essential that the Chief Executive, or Head of Paid Service, together with the Directors and the Heads of Service should have an awareness of the basic requirements of RIPA and an understanding of how it might apply to the work of individual Castle Point Borough Council departments. Without this knowledge at senior level, it is unlikely that any authority will be able to develop satisfactory systems to deal with the legislation. Those who need to use, or conduct directed surveillance or CHIS on a regular basis will require more detailed specialised training (IPCO – Investigatory Powers Commissioner’s Office).

The use of directed surveillance or a CHIS must be necessary and proportionate to the alleged crime or disorder. Usually, it will be considered to be a tool of last resort, to be used only when all other less intrusive means have been used or considered.

Necessary

A person granting an authorisation for directed surveillance must consider *why* it is necessary to use covert surveillance in the investigation *and* believe that the activities to be authorised are necessary on one or more statutory grounds. The statutory grounds are, if it is necessary;

- a) in the interests of national security;
- b) for the purpose of preventing or detecting crime or of preventing disorder;
- c) in the interests of the economic well-being of the United Kingdom;
- d) in the interests of public safety;
- e) for the purpose of protecting public health;
- f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department;
- g) for any purpose (not falling within paragraphs (a) to (g)) which is specified for the purposes of this subsection by an order made by the Secretary of State.

As a local Authority we are only able to proceed with a RIPA Application on the basis of point B above.

If the activities are deemed necessary, the authoriser must also believe that they are proportionate to what is being sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

Proportionate

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity

should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

Castle Point Borough Council will conduct its directed surveillance operations in strict compliance with the DPA principles and limit them to the exceptions permitted by the HRA and RIPA, and solely for the purposes of preventing and detecting crime or preventing disorder.

The **Senior Responsible Officer** (SRO) (as named in Appendix 5) will be able to give advice and guidance on this legislation. The SRO will appoint a **RIPA Coordinating Officer** (RCO) (as named in Appendix 5) The RCO will be responsible for the maintenance of a **central register** that will be available for inspection by the (IPCO) – Investigatory Powers Commissioner’s Office. The format of the central register is set out in Appendix 6.

The use of hand-held cameras and binoculars can greatly assist a directed surveillance operation in public places. However, if they afford the investigator a view into private premises that would not be possible with the naked eye, the surveillance becomes intrusive and is not permitted. Best practice for compliance with evidential rules relating to photographs and video/CCTV footage is contained in Appendix 8. Directed surveillance may be conducted from private premises. If they are used, the applicant must obtain the owner’s permission, in writing, before authorisation is given. If a prosecution then ensues, the applicant’s line manager must visit the owner to discuss the implications and obtain written authority for the evidence to be used. (See R v Johnson (Kenneth) 1988 1 WLR 1377 CA (Appendix 10).

The general usage of Castle Point Borough Council’s CCTV system is not affected by this policy. However, if cameras are specifically targeted for the purpose of directed surveillance, a RIPA authorisation must be obtained.

Wherever knowledge of **confidential information** is likely to be acquired or if a vulnerable person or juvenile is to be used as a CHIS, the authorisation must be made by the Chief

Executive, who is the Head of Paid Service (or in their absence whoever deputises for this role).

Directed surveillance that is carried out in relation to a **legal consultation** on certain premises will be treated as intrusive surveillance, regardless of whether legal privilege applies or not. These premises include prisons, police stations, courts, tribunals and the premises of a professional legal advisor. Local Authorities are not able to use intrusive surveillance. Operations will only be authorised when there is sufficient, documented, evidence that the alleged crime or disorder exists and when directed surveillance is considered to be a necessary and proportionate step to take in order to secure further evidence.

Low level surveillance, such as a 'drive-by' or everyday activity observed by officers in the course of their normal duties in public places, does not need RIPA authority. If surveillance activity is conducted in immediate response to an unforeseen activity, RIPA authorisation is not required. However, if repeated visits are made for a specific purpose, authorisation may be required. In cases of doubt, legal advice should be taken.

When vehicles are being used for directed surveillance purposes, drivers must always comply with relevant traffic legislation.

Collateral Intrusion

The authorising officer should also consider the risk of intrusion into the privacy of persons other than those who are directly the subject of the investigation (collateral intrusion). Measures should be taken to avoid any unnecessary intrusion into the lives of those not directly connected with the investigation or operation. Castle Point Borough Council may not engage in 'intrusive' surveillance i.e. no surveillance of the inside of residential areas of any premises. Regular reviews of authorisations shall be undertaken to assess the need for the surveillance to continue. Particular attention is drawn to the need to review authorisations frequently where the surveillance involves collateral intrusion.

The person applying for authorisation and the authorising officer must consider the necessity for the use of the tactic, the proportionality of the investigation and the collateral intrusion on any individual's private life, against the need for the activity.

Measures should be taken, wherever practicable, to avoid or minimise interference with the private and family life of those who are not the intended subjects of the investigation. Where such collateral intrusion is unavoidable, the activities may still be authorised providing this collateral intrusion is considered proportionate to the intended aims of authorised activity. Any collateral intrusion should be kept to the minimum necessary to achieve the objective(s) of the operation or investigation.

All applications should therefore include an assessment of the risk of collateral intrusion and details of any measures taken to limit this, to enable the authorising officer to fully consider the proportionality of the proposed actions.

Crime Threshold

An additional barrier to authorising directed surveillance is set out in the Regulation of Investigatory Powers (Directed Surveillance and CHIS) (Amendment) Order 2012. This provides a 'Crime Threshold' whereby only crimes which are either punishable by a maximum term of at least 6 months' imprisonment (whether on summary conviction or indictment) or are related to the underage sale of alcohol or tobacco can be investigated through Directed Surveillance.

The crime threshold applies only to the authorisation of directed surveillance by local authorities under RIPA, not to the authorisation of local authority use of CHIS or their acquisition of CD. The threshold came into effect on 1 November 2012.

Castle Point Borough Council **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.

Castle Point Borough Council may therefore continue to authorise use of directed surveillance in more serious cases so long as the other tests are met – i.e. that it is necessary and proportionate and where prior approval from a Magistrate has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial fraud.

For example, an offence which only allows a maximum sentence of 3 months custody cannot be investigated using RIPA authorisation. However, if the offence allows a maximum sentence of 6 months in custody this can be investigated using RIPA.

Castle Point Borough Council may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a Magistrates' Court has been granted.

A local authority such as Castle Point Borough Council **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences.

3. Covert Human Intelligence Sources (CHIS)

A person who reports suspicion of an offence is not a CHIS, nor do they become a CHIS if they are asked if they can provide additional information, e.g. details of the suspect's vehicle or the time that they leave for work. It is only if they establish or maintain a personal relationship with another person for the purpose of covertly obtaining or disclosing information that they become a CHIS.

If it is deemed unnecessary to obtain RIPA authorisation in relation to the proposed use of a CHIS for test purchasing, the applicant should complete Castle Point Borough Council's CHIS form and submit to an Authorising Officer for authorisation. Once authorised, any such forms must be kept on the relevant investigation file, in compliance with the Criminal Procedure for Investigations Act 1996 ("CPIA").

The times when a local authority will use a CHIS are limited. The most common usage is for test-purchasing under the supervision of suitably trained officers.

Officers considering the use of a CHIS under the age of 18, and those authorising such activity must be aware of the additional safeguards identified in The Regulation of Investigatory Powers (Juveniles) Order 2000 and its Code of Practice.

A vulnerable individual should only be authorised to act as a CHIS in the most exceptional circumstances. A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness, and who is or may not be able to take care of himself. The Authorising Officer in such cases must be the Chief Executive, who is the Head of Paid Service, or in their absence whoever deputises for this role.

Any deployment of a CHIS should take into account the safety and welfare of that CHIS. Before authorising the use or conduct of a CHIS, the authorising officer should ensure that an appropriate bespoke risk assessment is carried out to determine the risk to the CHIS of any assignment and the likely consequences should the role of the CHIS become known. This risk assessment must be specific to the case in question. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset.

A CHIS handler is responsible for bringing to the attention of a CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect the validity of the risk assessment, the conduct of the CHIS, and the safety and welfare of the CHIS.

The process for applications and authorisations have similarities to those for directed surveillance but there are also significant differences, namely that the following arrangements must be in place at all times in relation to the use of a CHIS:

- There will be an appropriate officer of Castle Point Borough Council who has day-to-day responsibility for dealing with the CHIS, and for the security and welfare of the CHIS; and
- There will be a second appropriate officer of the use made of the CHIS, and who will have responsibility for maintaining a record of this use. These records must also include information prescribed by the Regulation of Investigatory Powers (Source Records) Regulations 2000. Any records that disclose the identity of the CHIS must not be available to anyone who does not have a need to access these records.

An Authorising Officer's Aide-Memoire has been produced to assist Authorising Officers when considering applications for directed surveillance.

Public authorities should ensure that arrangements are in place for the proper oversight and management of CHIS, including appointing individual officers acting as 'controller' and 'handler' for each CHIS (as defined in sections 29(4A) and (4B) and 29(5)(a) and (b) of the 2000 Act).

The person referred to in section 29(5)(a) of the 2000 Act (the "handler") will have day to day responsibility for:

- dealing with the CHIS on behalf of the authority concerned;
- directing the day to day activities of the CHIS;
- recording the information supplied by the CHIS; and
- monitoring the CHIS's security and welfare.

The person referred to in section 29(5)(b) of the 2000 Act (the "controller") will normally be responsible for the management and supervision of the "handler" and general oversight of the use of the CHIS.

Detailed records must be kept of the authorisation and use made of a CHIS. Section 29(5) of the 2000 Act provides that an authorising officer must not grant an authorisation for the use or conduct of a CHIS unless they believe that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. The Regulation of Investigatory Powers (Source Records) Regulations 2000; SI No: 2725 details the particulars that must be included in these records. Where a CHIS is authorised under the terms of a Police Act 1996 collaboration agreement, that agreement should explicitly state on which force or agency's central record the authorisation should be recorded. This is likely to be either the force or agency providing the authorising officer, or the designated lead force or agency. The fact that the authorisation was given under these terms should be recorded on the central record.

4. The Authorisation Process

The processes for applications and authorisations for CHIS are similar as for directed surveillance, but note the differences set out in the CHIS section above. Directed Surveillance applications and CHIS applications are made using forms that have been set up in a shared network drive by Castle Point Borough Council. These forms must not be amended, and applications will not be accepted if the approved forms are not completed.

The authorisation process involves the following steps:

Investigation Officer

A risk assessment will be conducted by the Investigation Officer before an application is drafted. This assessment will include the number of officers required for the operation; whether the area involved is suitable for directed surveillance; what equipment might be necessary, health and safety concerns of all those involved and affected by the operation and insurance issues. Particular care must be taken when considering surveillance activity close to schools or in other sensitive areas. If it is necessary to conduct surveillance around school premises, the applicant should inform the head teacher of the nature and duration of the proposed activity, in advance. A Police National Computer Records (PNC) check on those targets should be conducted as part of this assessment by the Counter Fraud & Investigation team or the Safer Communities Officer.

The Investigation Officer prepares an application. When completing the forms, Investigation Officers must fully set out details of the covert activity for which authorisation is sought to enable the Authorising Officer to make an informed judgment. Consideration should be given to consultation with a member of the Legal Department concerning the activity to be undertaken (including scripting and tasking).

The Investigation Officer will obtain a unique reference number (URN) from the central register before submitting an application.

The Investigation Officer will submit the application form to an authorising officer for approval (see Appendix 5).

All applications to conduct directed surveillance (other than under urgency provisions – see below) must be made in writing in the approved format.

Authorising Officer (AO)

The AO considers the application and if it is considered complete the application is signed off and forwarded to the SRO for review and counter approval.

An Authorising Officer's Aide-Memoire has been produced to assist AO's when considering applications for directed surveillance.

If there are any deficiencies in the application further information may be sought from the Investigation Officer, prior to sign off.

Once final approval has been received from the SRO (see below), the AO and the Investigation Officer will retain copies and will create an appropriate diary method to ensure that any additional documents are submitted in good time.

Senior Responsible Officer (SRO)

The SRO then reviews the AO's approval and countersigns it.

If the application requires amendment the SRO will return this to the AO for the necessary revisions to be made prior to sign off. Once the SRO is satisfied that concludes the internal authorisation procedure and he or she will countersign the application.

Application to Justice of the Peace/Magistrates' Court

The countersigned application form will form the basis of the application to the Justice of the Peace/Magistrates' Court (see further below)

Authorised Activity

Authorisation takes effect from the date and time of the approval from the Justice of the Peace/Magistrates' Court.

Notification of the operation will be made to the relevant police force intelligence units where the target of the operation is located in their force area. Contact details for each force intelligence unit are held by the Group Manager Counter Fraud & Investigation - Counter Fraud & Investigation team or the Safer Communities Officer.

Before directed surveillance, activity commences, the Investigation Officer will brief all those taking part in the operation. The briefing will include details of the roles to be played by each officer, a summary of the alleged offence(s), the name and/or description of the subject of the directed surveillance (if known), a communications check, a plan for discontinuing the operation and an emergency rendezvous point. A copy of the briefing report (Appendix 7) will be retained by the Investigation Officer.

Where 3 or more officers are involved in an operation, officers conducting directed surveillance will complete a daily log of activity an example shown at Appendix 9. Evidential notes will also be made in the pocket notebook of all officers engaged in the operation

regardless of the number of officers on an operation. These documents will be kept in accordance with the appropriate retention guidelines and Criminal Procedure and Investigations Act 1996 (CPIA).

Where a contractor or external agency is employed to undertake any investigation on behalf of Castle Point Borough Council, the Investigation Officer will ensure that any third party is adequately informed of the extent of the authorisation and how they should exercise their duties under that authorisation.

Conclusion of Activities

As soon as the authorised activity has concluded the Investigation Officer will complete a Cancellation Form.

The original document of the complete application will be retained with the central register.

5. SRO Review and Sign Off

The SRO will review the AO approval prior to it being submitted for Magistrates'/JP authorisation.

If in the SRO's opinion there are inconsistencies, errors or deficiencies, in the application such that the AO's approval requires amendments or augmentation, the SRO will return the application form to the AO with recommendation for alternative wording or further information and the AO will incorporate the same.

The form will then be returned to the SRO for countersigning.

Once the SRO has countersigned the form this will form the basis of the application to the Magistrates' Court for authorisation.

There is however only one "authorising officer" and the SRO's role is limited to ensuring the integrity of the process.

6. Judicial Authorisation

From 1 November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 came in to force. This requires that local authorities who wish to authorise the use of directed surveillance and use of a CHIS under RIPA will need to obtain an order approving the grant or renewal of an authorisation or notice from a Justice of the Peace or District Judge (JP/DJ) before it can take effect. If the JP/DJ is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.

The judicial approval mechanism is in addition to the existing authorisation process under the relevant parts of RIPA as outlined above and in this section. The current process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an authorising officer/designated person will therefore remain the same.

The appropriate officer from Castle Point Borough Council will provide the DJ/JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the DJ/JP and should contain all information that is relied upon.

The original RIPA authorisation or notice should be shown to the DJ/JP but also be retained by Castle Point Borough Council so that it is available for inspection by the Commissioners' officers and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT). The Court may also wish to keep a copy so an extra copy should be made available to the Court.

Importantly, the appropriate officer will also need to provide the DJ/JP with a partially completed judicial application/order form.

Although the officer is required to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.

The order section of the form will be completed by the DJ/JP and will be the official record of the DJ/JP's decision. The officer from Castle Point Borough Council will need to obtain judicial approval for all initial RIPA authorisations/applications and renewals and will need to retain a copy of the judicial application/order form after it has been signed by the DJ/JP. There is no requirement for the DJ/JP to consider either cancellations or internal reviews.

The authorisation will take effect from the date and time of the DJ/JP granting approval and Castle Point Borough Council may proceed to use the techniques approved in that case.

It will be important for each officer seeking authorisation to establish contact with Her Majesty's Court and Tribunals Service (HMCTS) administration at the magistrates' court. HMCTS administration will be the first point of contact for the officer when seeking DJ/JP approval. Castle Point Borough Council will need to inform HMCTS administration as soon as possible to request a hearing for this stage of the authorisation.

On the rare occasions where out of hours access to a DJ or JP is required, then it will be for the officer to make local arrangements with the relevant HMCTS legal staff. In these cases, we will need to provide two partially completed judicial application/order forms so that one can be retained by the DJ/JP. They should provide the court with a copy of the signed judicial application/order form the next working day.

In most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior DJ/JP approval. No RIPA authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it (for instance when criminal activity is observed during routine duties and officers conceal themselves to observe what is happening).

Where renewals are timetabled to fall outside of court hours, for example during a holiday period, it is the local authority's responsibility to ensure that the renewal is completed ahead of the deadline. Out of hours procedures are for emergencies and should not be used because a renewal has not been processed in time. The hearing is a 'legal proceeding' and therefore our officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the DJ/JP.

The hearing will be in private and heard by a District Judge or a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters.

The attending officer will need to be able to answer the DJ/JP's questions on the policy and practice of conducting covert operations and the detail of the case itself. Castle Point Borough Council officers may consider it appropriate for the SPoC (single point of contact) to attend for applications for RIPA authorisations. This does not, however, remove or reduce in any way the duty of the authorising officer to determine whether the tests of necessity and proportionality have been met. Similarly, it does not remove or reduce the need for the forms and supporting papers that the authorising officer has considered, and which are provided to the DJ/JP to make the case (see 4. Authorisation Process in particular investigation officer paragraphs 1 and 2).

It is not Castle Point Borough Council policy that legally trained personnel are required to make the case to the DJ/JP, however if a member of the Legal Department wishes to attend with the applicant this is not discouraged.

It is advised that the Authorising Officer be the appropriate officer or at the very least attend the Court to assist the DJ/JP if necessary.

The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided. The DJ/JP may note on the form any additional information he or she has received during the course of the hearing but information fundamental to the case should not be submitted in this manner.

If more information is required to determine whether the authorisation or notice has met the tests, then the DJ/JP will refuse the authorisation. If an application is refused the local authority should consider whether they can reapply, for example, if there was information to

support the application which was available to the local authority, but not included in the papers provided at the hearing.

The DJ/JP will record his/her decision on the order section of the judicial application/order form. HMCTS administration will retain a copy of the local authority RIPA authorisation or notice and the judicial application/order form. This information will be retained securely. Magistrates' Courts are not public authorities for the purposes of the Freedom of Information Act 2000.

Castle Point Borough Council will need to provide a copy of the order to the communications SPoC (Single Point of Contact) for all CD requests. SPoCs must not acquire the CD requested, either via the CSP or automated systems until the DJ/JP has signed the order approving the grant.

7. Authorisation periods

The authorisation will take effect from the date and time of the DJ/JP granting approval and Castle Point Borough Council may proceed to use the techniques approved in that case.

Renewals should not normally be granted more than seven days before the original expiry date. If the circumstances described in the application alter, the applicant must submit a review document before activity continues.

As soon as the operation has obtained the information needed to prove, or disprove, the allegation, the applicant must submit a cancellation document and the authorised activity must cease.

CHIS authorisations will (unless renewed or cancelled) cease to have effect 12 months from the day on which authorisation took effect, except in the case of juvenile CHIS which will cease to have effect after 4 months (SI/2018/715 refers). Urgent authorisations will unless renewed, cease to have effect after 72 hours.

8. Urgency

Approval for directed surveillance in an emergency can only be obtained in written form. Oral approvals are no longer permitted. In cases where emergency approval is required an AO must be visited by the applicant with two completed RIPA application forms. The AO will then assess the proportionality, necessity and legality of the application. If the application is approved, then the applicant must then contact the out-of-hours HMCTS representative to seek approval from a Magistrate (DJ or JP). The applicant must then take two signed RIPA application forms and the judicial approval form to the Magistrates' Court for the hearing to take place.

As with a standard application the test of necessity, proportionality and the crime threshold must be satisfied. A case is not normally to be regarded as urgent unless the delay would, in the judgment of the person giving the authorisation, be likely to endanger life or jeopardise the investigation or operation. Examples of situations where emergency authorisation may be sought would be where there is intelligence to suggest that there is a substantial risk that evidence may be lost, a person suspected of a crime is likely to abscond, further offences are likely to take place and/or assets are being dissipated in a criminal investigation and money laundering offences may be occurring. An authorisation is not considered urgent if the need for authorisation has been neglected or the urgency is due to the authorising officer or applicant's own doing.

9. Communications Data and NAFN

Before considering submitting an application for the acquisition of communications data, all officers must first refer the matter to the senior responsible officer or the RIPA Monitoring Officer

Communications Data ('CD') is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). Local Authorities are not permitted to intercept the content of any person's communications.

Part 3 of the Investigatory Powers Act 2016 (IPA) replaced part 1 chapter 2 of RIPA in relation to the acquisition of communications data (CD) and puts local authorities on the same standing as the police and law enforcement agencies. Previously local authorities have been limited to obtaining subscriber details (known now as "entity" data) such as the registered user of a telephone number or email address. Under the IPA, local authorities can now also obtain details of in and out call data, and cell site location. This information identifies who a criminal suspect is in communication with and whereabouts the suspect was when they made or received a call, or the location from which they were using an Internet service. This additional data is defined as "events" data.

A new threshold for which CD "events" data can be sought has been introduced under the IPA as "applicable crime". Defined in section 86(2A) of the Act this means: an offence for which an adult is capable of being sentenced to one year or more in prison; any offence involving violence, resulting in substantial financial gain or involving conduct by a large group of persons in pursuit of a common goal; any offence committed by a body corporate; any offence which involves the sending of a communication or a breach of privacy; or an offence which involves, as an integral part of it, or the sending of a communication or breach of a person's privacy. Further guidance can be found in paragraphs 3.3 to 3.13 of CD Code of Practice.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf

Finally, the IPA has also removed the necessity for local authorities to seek the endorsement of a Justice of the Peace when seeking to acquire CD. All such applications must now be processed through NAFN and will be considered for approval by the independent Office of Communication Data Authorisation (OCDA). The transfer of applications between local authorities, NAFN and OCDA is all conducted electronically and will therefore reduce what can be a protracted process of securing an appearance before a Magistrate or District Judge (see local authority procedures set out in paragraphs 8.1 to 8.7 of the CD Code of Practice).

10. Internet / Social Media / Telephones

Internet

Castle Point Borough Council already has a policy on Internet use by its employees. This is the Internet Security Policy that sets out employees' responsibilities and liabilities. A copy of this Policy is currently made available to all employees on the Intranet. With the increasing availability of the Intranet and internal e-mailing facilities, it is important that all employees are made aware of and subject to the policy.

Castle Point Borough Council's policy of restricting access to certain undesirable Internet sites will continue through web filtering software. During work times, the content of employees' emails should be restricted to matters relating to their work and job descriptions. Any employee who now uses the Internet at work for private e-mails will do so in the knowledge that such usage can be monitored and consequently implicitly consents to the removal of any expectation of privacy.

Telephones

Castle Point Borough Council will also continue its current practice of providing information monthly about telephone usage on a Departmental basis. This information gives details of the call volume from every telephone extension and mobile 'phone supplied to Officers and paid for by Castle Point Borough Council and, if required, can provide a breakdown of the numbers dialled, the duration of the calls and the dates and times they were made.

Employees' use of Castle Point Borough Council's telephones for private calls is already covered in the Staff Handbook and Code of Conduct for Employees. Any employee who now uses work telephones for private calls will do so in the knowledge that such usage can be monitored, as described in this policy and consequently implicitly consents to the removal of any expectation of privacy.

Social Media

Information gathered in relation to investigations regarding members of the public shall be gathered through publicly available information only. Unless the person involved has given

their consent in writing to allow the investigating officer to invade their privacy further. **However, continued visits to a person's public page could amount to covert surveillance.**

An example of this is would be viewing a member of the public's publicly available Facebook pages only and not accessing further information through links with their friends.

Any member of a public authority, or person acting on their behalf, who conducts activity on the internet in such a way that they may interact with others, whether by publicly open websites such as an online news and social networking service, or more private exchanges such as e-messaging sites, in circumstances where the other parties could not reasonably be expected to know their true identity, should consider whether the activity requires a CHIS authorisation. A directed surveillance authorisation should also be considered, unless the acquisition of that information is or will be covered by the terms of an applicable CHIS authorisation.

Where someone, such as an employee or member of the public, is tasked by a public authority to use an internet profile to establish or maintain a relationship with a subject of interest for a covert purpose, or otherwise undertakes such activity on behalf of the public authority, in order to obtain or provide access to information, a CHIS authorisation is likely to be required. For example:

- An investigator using the internet to engage with a subject of interest at the start of an operation, in order to ascertain information or facilitate a meeting in person.
- Directing a member of the public (such as a CHIS) to use their own or another internet profile to establish or maintain a relationship with a subject of interest for a covert purpose.
- Joining chat rooms with a view to interacting with a criminal group in order to obtain information about their criminal activities.

A CHIS authorisation will not always be appropriate or necessary for online investigation or research. Some websites require a user to register providing personal identifiers (such as name and phone number) before access to the site will be permitted. Where a member of a public authority sets up a false identity for this purpose, this does not in itself amount to establishing a relationship, and a CHIS authorisation would not immediately be required, though consideration should be given to the need for a directed surveillance authorisation if the conduct is likely to result in the acquisition of private information, and the other relevant criteria are met.

Example 1: An HMRC officer intends to make a one-off online test purchase of an item on an auction site, to investigate intelligence that the true value of the goods is not being declared for tax purposes. The officer concludes the purchase and does not

correspond privately with the seller or leave feedback on the site. No covert relationship is formed and a CHIS authorisation need not be sought.

Example 2: HMRC task a member of the public to purchase goods from a number of websites to obtain information about the identity of the seller, country of origin of the goods and banking arrangements. The individual is required to engage with the

Where a website or social media account requires a minimal level of interaction, such as sending or receiving a friend request before access is permitted, this may not in itself amount to establishing a relationship. Equally, the use of electronic gestures such as “like” or “follow” to react to information posted by others online would not in itself constitute forming a relationship. However, it should be borne in mind that entering a website or responding on these terms may lead to further interaction with other users and a CHIS authorisation should be obtained if it is intended for an officer of a public authority or a CHIS to engage in such interaction to obtain, provide access to or disclose information.

Example 1: An officer maintains a false persona, unconnected to law enforcement, on social media sites in order to facilitate future operational research or investigation. As part of the legend building activity he “follows” a variety of people and entities and “likes” occasional posts without engaging further. No relationship is formed and no CHIS authorisation is needed.

Example 2: The officer sends a request to join a closed group known to be administered by a subject of interest, connected to a specific investigation. A directed surveillance authorisation would be needed to cover the proposed covert monitoring of the site. Once accepted into the group it becomes apparent that further interaction is necessary. This should be authorised by means of a CHIS authorisation.

When engaging in conduct as a CHIS, a member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without considering the need for authorisation. Full consideration should be given to the potential risks posed by that activity.

Where use of the internet is part of the tasking of a CHIS, the risk assessment carried out in accordance with section 6.13 of the CHIS 2018 Code of Practice and should include consideration of the risks arising from that online activity including factors such as the length of time spent online and the material to which the CHIS may be exposed. This should also take account of any disparity between the technical skills of the CHIS and those of the handler or authorising officer, and the extent to which this may impact on the effectiveness of oversight.

Where it is intended that more than one officer will share the same online persona, each officer should be clearly identifiable within the overarching authorisation for that operation,

providing clear information about the conduct required of each officer and including risk assessments in relation to each officer involved.

The growth of the internet, and the extent of the information that is now available online, presents new opportunities for public authorities to view or gather information which may assist them in preventing or detecting crime or carrying out other statutory functions, as well as in understanding and engaging with the public they serve. It is important that public authorities are able to make full and lawful use of this information for their statutory purposes. Much of it can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. But if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered. The following guidance is intended to assist public authorities in identifying when such authorisations may be appropriate.

The internet may be used for intelligence gathering and/or as a surveillance tool. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be considered, as set out elsewhere in this code. Where a person acting on behalf of a public authority is intending to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed (paragraphs 4.10 to 4.16 of the Covert Human Intelligence Sources code of practice provide detail on where a CHIS authorisation may be available for online activity).

In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if no further steps are taken to conceal the activity. Conversely, where a public authority has taken reasonable steps to inform the public or particular individuals that the surveillance is or may be taking place, the activity may be regarded as overt and a directed surveillance authorisation will not normally be available.

Depending on the nature of the online platform, there may be a reduced expectation of privacy where information relating to a person or group of people is made openly available within the public domain, however in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.

Where information about an individual is placed on a publicly accessible database, for example the telephone directory or Companies House, which is commonly used and known to be accessible to all, they are unlikely to have any reasonable expectation of privacy over the

monitoring by public authorities of that information. Individuals who post information on social media networks and other websites whose purpose is to communicate messages to a wide audience are also less likely to hold a reasonable expectation of privacy in relation to that information.

Whether a public authority interferes with a person's private life includes a consideration of the nature of the public authority's activity in relation to that information. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered. These considerations apply regardless of when the information was shared online.

Example 1: A police officer undertakes a simple internet search on a name, address or telephone number to find out whether a subject of interest has an online presence. This is unlikely to need an authorisation. However, if having found an individual's social media profile or identity, it is decided to monitor it or extract information from it for retention in a record because it is relevant to an investigation or operation, authorisation should then be considered.

Example 2: A customs officer makes an initial examination of an individual's online profile to establish whether they are of relevance to an investigation. This is unlikely to need an authorisation. However, if during that visit it is intended to extract and record information to establish a profile including information such as identity, pattern of life, habits, intentions or associations, it may be advisable to have in place an authorisation even for that single visit. (As set out in the following paragraph, the purpose of the visit may be relevant as to whether an authorisation should be sought.)

Example 3: A public authority undertakes general monitoring of the internet in circumstances where it is not part of a specific, ongoing investigation or operation to identify themes, trends, possible indicators of criminality or other factors that may influence operational strategies or deployments. This activity does not require RIPA authorisation. However, when this activity leads to the discovery of previously unknown subjects of interest, once it is decided to monitor those individuals as part of an ongoing operation or investigation, authorisation should be considered.

In order to determine whether a directed surveillance authorisation should be sought for accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

- Whether the investigation or research is directed towards an individual or organisation;
- Whether it is likely to result in obtaining private information about a person or group of people (taking account of the guidance at paragraph 3.6 above);
- Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;
- Whether the information obtained will be recorded and retained;
- Whether the information is likely to provide an observer with a pattern of lifestyle;
- Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;
- Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
- Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.

Internet searches carried out by a third party on behalf of a public authority, or with the use of a search tool, may still require a directed surveillance authorisation.

Example: Researchers within a public authority using automated monitoring tools to search for common terminology used online for illegal purposes will not normally require a directed surveillance authorisation. Similarly, general analysis of data by public authorities either directly or through a third party for predictive purposes (e.g. identifying crime hotspots or analysing trends) is not usually directed surveillance. In such cases, the focus on individuals or groups is likely to be sufficiently cursory that it would not meet the definition of surveillance. But officers should be aware of the possibility that the broad thematic research may evolve, and that authorisation may be appropriate at the point where it begins to focus on specific individuals or groups. If specific names or other identifiers of an individual or group are applied to the search or analysis, an authorisation should be considered.

For further Information please see the Office of Surveillance Commissioners Procedures and Guidance notes July 2016, Section 289.

11. Handling of material and use of material as evidence

Material obtained from properly authorised directed surveillance or a source may be used in other investigations. Arrangements shall be in place for the handling, storage and destruction of material obtained through the use of directed surveillance, a source or the obtaining or disclosure of communications data, following relevant legislation such as the Criminal Procedure and Investigations Act (CPIA). Authorising Officers must ensure compliance with

the appropriate data protection and CPIA requirements, having due regard to the Public Interest Immunity test and any relevant Corporate Procedures relating to the handling and storage of material.

Where the product of surveillance could be relevant to pending or future proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review.

12. Training

Officers conducting directed surveillance operations, using a CHIS or acquiring communications data must have an appropriate accreditation or be otherwise suitably qualified or trained.

Authorising Officers (Appendix 5) will be appointed by the Chief Executive and will have received training that has been approved by the Senior Responsible Officer. The Senior Responsible Officer will have appointed the RIPA Coordinating Officer who will be responsible for arranging suitable training for those conducting surveillance activity or using a CHIS.

All training will take place at reasonable intervals to be determined by the SRO or RSO, but it is envisaged that an update will usually be necessary following legislative or good practice developments or otherwise every 12 months.

13. Surveillance Equipment

All mobile surveillance equipment is kept in secure premises of each investigation and enforcement team in the Civic Offices. Access to the area is controlled by the relevant team, who maintain a spreadsheet log of all equipment taken from and returned to the area.

14. The Inspection Process

The IPCO – Investigatory Powers Commissioner’s Office will make periodic inspections during which the inspector will wish to interview a sample of key personnel; examine RIPA and CHIS applications and authorisations; the central register and policy documents. The inspector will also make an evaluation of processes and procedures.

15. GUIDANCE ON CASTLE POINT BOROUGH COUNCIL’S CORPORATE POLICY STATEMENT

All forms of covert surveillance will be regulated by Castle Point Borough Council's Corporate Policy.

Castle Point Borough Council will conduct its covert surveillance operations, including the interception of telecommunications to investigate alleged abuses of telephone, e-mail or

Internet facilities, within the eight principles of the Data Protection Act and restrict those operations to situations falling within the permitted exceptions of the Human Rights Act and RIPA. Consequently, covert surveillance for monitoring or recording communications will only be carried out for the purpose of preventing or detecting crime or of preventing disorder;

Surveillance equipment will be installed or a CHIS, used for one of the above legitimate purposes, only when sufficient evidence exists and has been documented to warrant the exercise and surveillance is shown to be both the least harmful means of meeting that purpose and meets the requirements of this policy and government legislation.

Care must be taken to ensure all reasonable alternative methods to resolve a situation, such as naked eye observation, interview or changing methods of working or level of security, must be considered first and recorded in writing and the reason for surveillance being requested fully documented. [Where the subject of covert surveillance is an employee, the Head of Service/Chief Personnel Officer and Internal Audit must be informed to ensure compliance with Castle Point Borough Council's other relevant policies].

All requests to conduct, extend or discontinue a covert surveillance exercise must be made in writing on the relevant form. Requests must be submitted to the appropriate level of Officer within each Service (see the authorisation section set out in Appendix 5). All requests must be authorised in accordance with this policy before any covert surveillance operation can commence. The power to grant, extend and discontinue authorisations will be limited in accordance with this policy. Written authorisations for a covert surveillance operation will be subject to review within that period to establish whether the authorisation should continue for the entire three-month period.

Officers should ensure that when considering carrying out covert surveillance it is carefully planned so that the necessary consultations regarding risk assessment, insurance and health and safety can be carried out and the required provisions put in place before surveillance commences as per this policy.

In the event of covert surveillance needing to be carried out in an emergency, a written request and authorisation is still required, using the relevant forms.

However, Surveillance that is unforeseen and undertaken as an immediate response to a situation when it is not reasonably practicable to get authorisation falls outside the definition of directed surveillance and, therefore, authorisation is not required. If after, however, a specific investigation or operation is to follow an unforeseen response, authorisation must be obtained in the usual way before it can commence. In no circumstances will any covert surveillance operation be given backdated authorisation after it has commenced.

Embarking upon covert surveillance or the use of a CHIS without authorisation or conducting covert surveillance outside the scope of the authorisation will mean that the "protective umbrella" of RIPA is unavailable.

Each Head of Service will ensure that the originals of all authorisation documents are retained and maintain a Register of all requests for authorisations for covert surveillance, together with the reasons for any request being denied, and provide copies to the SRO.

No covert operation will be embarked upon by a Castle Point Borough Council Officer without detailed consideration of the points in this policy and of the insurance and health and safety implications involved and the necessary precautions and insurance being put in place.

During a covert operation, recorded material or information collected will be stored and transported securely. Both any evidence revealed and the need for authorisation should be reviewed regularly to ensure authorisation is only given for as long as is necessary and, once enough evidence has been collected, consideration should be given to either cancelling it or checking initial authorisation grounds are still valid. It should also be noted under the Data Protection Act 1998 that evidence should only be retained for as long as is necessary and access to it will be restricted to the authorising Officers concerned. The authorising Officer will decide whether to allow requests for access by third parties, including Castle Point Borough Council Officers. Access will generally only be allowed to limited and prescribed parties, including law enforcement agencies, prosecution agencies, legal representatives and the people subject to the surveillance (unless disclosure would prejudice any criminal enquiries or proceedings) in accordance with this policy, the Human Rights Act, the Data Protection Act, RIPA and any other relevant legislation.

Only high-quality video and audio tapes will be used. All video and audio tapes will be identified uniquely and erased prior to re-use.

Once a covert operation results in an individual being under suspicion of having committed a criminal offence that individual must be informed of this as promptly as is reasonably practicable in order to ensure their right to a fair trial or hearing within a reasonable time in accordance with the Human Rights Act. In a situation where it is considered that a matter gives rise to a potential criminal offence, any interview with the suspect must be under caution and conducted by a suitably trained Officer or, if appropriate, the Police must be involved immediately to ensure that evidential procedures and the requirements of current legislation are observed.

16. Resources

Full Codes of Practice can be found on the Home Office website:

<http://www.homeoffice.gov.uk/>

Covert Surveillance & Property Interference:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742041/201800802_CSPI_code.pdf

CHIS:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742042/20180802_CHIS_code.pdf

Acquisition and Disclosure of Communications Data:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf

Further information can also be found on The Investigatory Powers Commissioner's Office website.

<https://www.ipco.org.uk/>

GLOSSARY OF TERMS

CD

Communications Data

Collateral intrusion

The likelihood of obtaining private information about someone who is not the subject of the directed surveillance operation.

Confidential information

This covers confidential journalistic material, matters subject to legal privilege, and information relating to a person (living or dead) relating to their physical or mental health; spiritual counselling or which has been acquired or created in the course of a trade/profession/occupation or for the purposes of any paid/unpaid office.

Covert relationship

A relationship in which one side is unaware of the purpose for which the relationship is being conducted by the other.

Directed Surveillance

Surveillance carried out in relation to a specific operation which is likely to result in obtaining private information about a person in a way that they are unaware that it is happening. It excludes surveillance of anything taking part in residential premises or in any private vehicle.

Intrusive Surveillance

Surveillance which takes place on any residential premises or in any private vehicle. A Local Authority cannot use intrusive surveillance.

Legal Consultation

A consultation between a professional legal adviser and his client or any person representing his client, or a consultation between a professional legal adviser or his client or representative and a medical practitioner made in relation to current or future legal proceedings.

Residential premises

Any premises occupied by any person as residential or living accommodation, excluding common areas to such premises, e.g. stairwells and communal entrance halls.

Senior Responsible Officer (SRO)

The SRO is responsible for the integrity of the processes in order for Castle Point Borough Council to ensure compliance when using Directed Surveillance or CHIS.

Service data

Data held by a communications service provider relating to a customer's use of their service, including dates of provision of service; records of activity such as calls made, recorded delivery records and top-ups for pre-paid mobile phones.

Surveillance device

Anything designed or adapted for surveillance purposes.

Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

The Order consolidates four previous Orders relating to directed surveillance and the use or conduct of covert human intelligence sources by public authorities under Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) and to reflect the outcome of a public consultation which took place between April and July 2009.

It identifies the 'relevant public authorities' authorised to conduct RIPA and CHIS activities. This list includes local authorities in England and Wales. It also gives examples of such activity, as shown on page 3 of this document.

The Human Rights Act 1998

Articles 6 and 8 of the Human Rights Act are relevant to RIPA.

Article 6 relates to the right to a fair trial.

Article 8 relates to the right to respect for a private and family life.

If it is proposed that directed surveillance evidence is to be used in a prosecution, or other form of sanction, the subject of the surveillance should be informed during an interview under caution.

The Data Protection Act 1998 (DPA)

The eight principles of the Act relating to the acquisition of personal data need to be observed when using RIPA. To ensure compliance, the information must:

- Be fairly and lawfully obtained and processed
- Be processed for specified purposes only
- Be adequate, relevant and not excessive
- Be accurate
- Not be kept for longer than is necessary
- Be processed in accordance with an individual's rights
- Be secure
- Not be transferred to non-EEAJ countries without adequate protection.

List of Authorising Officers

The following post holders may authorise RIPA applications where there is a likelihood of obtaining Confidential Information: Chief Executive or deputy.

The following post holders may authorise the use of a vulnerable person or a juvenile to be used as a Covert Human Intelligence Source: Chief Executive, as Head of Paid Service or his or her deputy.

The following post holders may authorise applications, reviews, renewals and cancellations of Directed Covert Surveillance of Covert Human Intelligence Sources: Chief Executives and Directors, or in their absence, the Head of Legal and Democratic Services.

Principal RIPA Officers

Jason Bishop Solicitor to the Council and Head of Legal Services	Senior Responsible Officer (SRO)	01268 882462	jbishop@castlepoint.gov.uk
David Bland Legal Executive	RIPA Co- ordinating Officer (RCO) (Single Point of Contact)	01268 882328	dbland@castlepoint.gov.uk

Authorising Officers

Chief Executive	Authorising Officer		
Head of Environments	Authorising Officer	01268 882476	tbragg@castlepoint.gov.uk
Head of Housing	Authorising Officer	01268 882419	jgrisley@castlepoint.gov.uk
Head of Licensing	Authorising Officer	01268 882369	mharris@castlepoint.gov.uk

Central Register

A central register will be maintained by the RIPA single point of contact. The register will contain details of all RIPA and CHIS applications (whether approved or not) and all reviews, renewals and cancellations.

Each operation will be given a unique reference number (URN) from which the department involved, and the year of the operation may be readily identified.

The register will also contain the following information:

- The operation reference name or number
- The name of the applicant
- The name of the subject of the surveillance or CHIS activity (for internal enquiries a pseudonym may be used)
- The date and time that the activity was authorised
- The date and time of any reviews that are to be conducted
- The date and time of any renewals of authorisations
- The date and time of the cancellations of any authorisations

Kept in conjunction with the register will be the details of the training and updates delivered to authorising officers, a list of authorising officers, a copy of the RIPA policy and copies of all relevant legislation.

The original of all documents will also be held with the register, which must be available for inspection by the Office of the Surveillance Commissioners.

Briefing Report

Before any RIPA or CHIS operation commences, all staff will be briefed by the officer in charge of the case using the format of this briefing report. The original will be retained with the investigation file.

RIPA URN

Name and number to identify operation

Date, time and location of briefing

.....

Persons present at briefing

.....

Information (Sufficient background information of the investigation to date to enable all those taking part in the operation to fully understand their role).

Intention (What is the operation seeking to achieve?).

Method (How will individuals achieve this? If camcorders are to be used, remind officers that any conversations close to the camera will be recorded).

Administration (To include details of who will be responsible for maintenance of the log sheet and collection of evidence; any identified health and safety issues; the operation; an agreed stand down procedure – NOTE It will be the responsibility of the officer in charge of the investigation to determine if and when an operation should be discontinued due to reasons of safety or cost-effectiveness – and an emergency rendezvous point. On mobile surveillance operations, all those involved will be reminded that at ALL times speed limits and mandatory road signs MUST be complied with and that drivers must NOT use radios or telephones when driving unless the equipment is 'hands free').

Communications (Effective communications between all members of the team will be established before the operation commences).

Best practice regarding photographic and video evidence

Photographic or video evidence can be used to support the verbal evidence of what the officer conducting surveillance actually saw. There will also be occasions when video footage may be obtained without an officer being present at the scene. However, if it is obtained, it must be properly documented and retained in order to ensure evidential continuity. All such material will be disclosable in the event that a prosecution ensues.

Considerations should be given as to how the evidence will eventually be produced. This may require photographs to be developed by an outside laboratory. Arrangements should be made in advance to ensure continuity of evidence at all stages of its production. A new film, tape or memory card should be used for each operation.

If video footage is to be used start it with a verbal introduction to include day, date, time and place and names of officer's present. Try to include footage of the location, e.g. street name or other landmark so as to place the subject of the surveillance.

A record should be maintained to include the following points:

- Details of the equipment used
- Confirmation that the date & time on the equipment is correct
- Name of the officer who inserted the film, tape or memory card into the camera
- Details of anyone else to whom the camera may have been passed
- Name of officer removing film, tape or memory card
- Statement to cover the collection, storage and movement of the film, tape or memory card
- Statement from the person who developed or created the material to be used as evidence

As soon as possible the original recording should be copied, and the master retained securely as an exhibit. If the master is a tape, the record protect tab should be removed once the tape has been copied. Do not edit anything from the master. If using tapes, only copy on a machine that is known to be working properly. Failure to do so may result in damage to the master.

Stills may be taken from video. They are a useful addition to the video evidence.

Surveillance Log

Daily log of activity, to be kept by each operator or pair of operators.

A – Amount of time under observation

D – Distance from subject

V - Visibility

O - Obstruction

K – Known, or seen before

A – Any reason to remember, subject or incident

T – Time elapsed between sighting and note taking

E – Error or material discrepancy – e.g. description, vehicle reg etc.

Operation name or number

Date

Time of activity (from) (to)

Briefing location and time

Name of operator(s) relating to THIS log

.....

Details of what was seen, to include ADVOKATE (as above).

.....

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.....

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.....

R v Johnson

R. v. Johnson [1988] 1 WLR 1377 laid down the correct procedure when using observation posts:

- The police officer in charge of the observation, who should be of no lesser rank than sergeant, should testify that he had visited the observation posts and ascertained the attitude of the occupiers to the use of the premises and to disclosure which might lead to their identification. (It is suggested that the 'Sergeant' could be replaced by a section manager).
- An inspector should then testify that immediately before the trial he visited those places and ascertained whether the occupiers were the same persons as those at the time of the observations. (It is suggested that 'inspector' could be replaced by head of department).
- If they were not s/he, should testify as to their attitude to the use made of the premises and to possible disclosure which might lead to their identification.
- The judge should explain to the jury when summing up or at some other point the effect of his ruling to exclude the evidence of the location.

Public Interest Immunity (PII) protects the identity of a person who has permitted surveillance to be conducted from private premise, so this extends to the address and any other information that could reveal their identity. If, however, the location can be revealed without identifying the occupier, then it should be.

CABINET

15TH JUNE 2022

Subject: Report on Notice of Motion regarding the Castle Point Local Plan

Cabinet Member: Interim Chief Executive, Section 151 Officer and Head of Place and Policy

1. Purpose of Report

To set out a response to and implications of the Motion:

'The Local Plan examination has now been completed and in the event of the Local Plan not being adopted we call on the Council to start work immediately on a new Local Plan that reflects the central government stated aim to protect and preserve the precious green belt in our local area. A priority of this new Local Plan would be to produce a target housing number that genuinely reflects local need. As this housing target will be lower than previous proposals this must be supported by robust evidence. All housing developments should prioritize brownfield development. We hope that in the interests of our borough this motion is supported on a cross party basis.'

2. Links to Council's Priorities and Objectives

The local plan seeks to achieve elements within each of the new Corporate Plan objectives - Economy and Growth, People, Place and Environment .

3. Recommendations

That Cabinet notes the implications of the Motion and refers this report to Council to inform debate on the Motion

4. Background

Notice of Motion

- 4.1 At the Ordinary Council on 23rd March 2022 the Motion in respect of the new Castle Point Local Plan set out below was deferred without debate for a report

to Cabinet on the Motion to consider the implications and report Council Rule 13 applied. The Motion as published was:

Councillor Gibson has given notice of the following:

'The Local Plan examination has now been completed and in the event of the Local Plan not being adopted we call on the Council to start work immediately on a new Local Plan that reflects the central government stated aim to protect and preserve the precious green belt in our local area. A priority of this new Local Plan would be to produce a target housing number that genuinely reflects local need. As this housing target will be lower than previous proposals this must be supported by robust evidence. All housing developments should prioritize brownfield development. We hope that in the interests of our borough this motion is supported on a cross party basis.'

The Motion is to be seconded by Councillor Mountford'

The New Castle Point Local Plan

- 4.2 The current Development Plan for Castle Point is the Castle Point Local Plan which was adopted in 1998. That plan ran to 2001 and was prepared prior to the 2004 Act, which established the 'new style' local plan based on a local development framework.
- 4.3 The 2004 Act did allow for local planning authorities with recently adopted 'old-style' local plans to save policies, which met the objectives of national policy at that time. In 2007 the Council saved some of the Policies in the 1998 Local Plan.
- 4.4 The Council is currently in a position of not having an up-to-date local plan in place. National policy changed in 2012 with the National Planning Policy Framework, and an out-of-date Local Plan puts the Council at risk of not be able to defend against inappropriate development, including on appeal.
- 4.5 On 22nd October 2019 the Council agreed to proceed with the publication of the Pre-Submission Local Plan and submit the Plan for examination, following a period of public consultation.
- 4.6 The Plan was submitted for examination in October 2020. The Inspector, Mr Philip Lewis, held hearings in May and June 2021 and issued his post hearings letter in September 2021, in which he concluded that *'Overall, I consider that, subject to main modifications, the Plan is likely to be capable of being found legally compliant and sound.'* He further stated in that paragraph that he *'will set out my reasoning for this in my final report.'*
- 4.7 Following consultation on the proposed main modifications, and the Inspector's consideration of responses to the main modifications, he published his final report on 3rd March 2022. In paragraph 220 of his Report, the Inspector, Mr Philip Lewis, concluded that:

'The Council has requested that I recommend MMs [Main Modifications] to make the Plan sound and/or legally compliant and capable of adoption. I

conclude that the duty to cooperate has been met and that with the recommended main modifications set out in the Appendix the New Castle Point Local Plan satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.'

- 4.8 The Inspector's report together with a final version of the new Local Plan, the Sustainability Appraisal, Habitats Regulations Assessment and the Equalities Impact Assessment were reported to Ordinary Council on 23rd March 2022, with the recommendation that the new Local Plan be adopted.

- 4.9 The Council voted not to adopt the new Local Plan.

- 4.10 Recommendation 8 of the report for 23 March 2022, said:

'In the event that recommendation 2 [to adopt the plan] is not agreed, that a report be made to a future meeting of the Council.'

- 4.11 It is not the purpose of this report to consider what a new local plan would incorporate, but to address the issues raised in the Motion. A further report will need to be made, together with a new Local Development Scheme if the Council decides to prepare a new local plan.

The report

- 5.1 The Motion before Cabinet is:

'The Local Plan examination has now been completed and in the event of the Local Plan not being adopted we call on the Council to start work immediately on a new Local Plan that reflects the central government stated aim to protect and preserve the precious green belt in our local area. A priority of this new Local Plan would be to produce a target housing number that genuinely reflects local need. As this housing target will be lower than previous proposals this must be supported by robust evidence. All housing developments should prioritise brownfield development. We hope that in the interests of our borough this motion is supported on a cross party basis.'

The new Castle Point Local Plan ("unadopted plan")

- 5.2 The current adopted Local Plan is the Castle Point Local Plan 1998. That Plan will remain as the development plan until a new plan, which replaces it, is adopted. The intention with the new Castle Point Local Plan was that the new plan would replace the 1998 Plan in its entirety on adoption.

- 5.3 Any new local plan under preparation going forward will grow in weight as a material planning consideration as it is progressed but will not carry full weight until it has been examined, found sound **and** adopted. As the situation currently stands, the unadopted local plan is a significant material planning consideration as it has been examined and found sound.

The Motion

- 5.4 The Motion as drafted suggests that the Council should in the event of non-adoption of the local plan, prepare a new local plan that, in summary:
- a) protect and preserve the precious green belt in our local area;
 - b) produce a target housing number that genuinely reflects local need. As this housing target will be lower than previous proposals this must be supported by robust evidence.
 - c) Prioritise brownfield development.
- 5.5 This report takes each in turn. However, there is a logical sequence in the preparation of a plan on those principles namely to:
- a) assess local housing need;
 - b) assess the urban capacity; and
 - c) assess the need for green belt sites.

This report will, therefore, follow that sequence.

Assess local housing need

- 5.6 The report in response to the motion by Councillor Mountford that was considered at Council on 23 March 2022, sets out in detail background on housing numbers for the borough. This can be found in paragraphs 5.52 to 5.66 at:

<https://www.castlepoint.gov.uk/download.cfm?doc=docm93jjm4n6508.pdf&ver=10444>

- 5.7 The Government state in paragraph 61 of the NPPF:

'To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals.'

- 5.8 The Standard methodology is, therefore, the starting point. It will be for the Council to justify an alternative approach and prove that exceptional circumstances apply. The further below the Standard Methodology target the Council plans for, greater the risk of a plan being found unsound. In addition, the Council will still need to demonstrate where any unmet need will be accommodated.
- 5.9 The Council will need to commission an assessment of housing need that is independent of the standard methodology, but robust enough to be successfully examined and found sound. The methodology of determining objectively assessed needs verifiable data on population (the 2021 Census may be available) and household formation projections. It will also need to take account of affordability, concealed households and inward and outward migration, economic and jobs growth within the Borough and surrounding area (out commuting) and other factors.

- 5.10 The standard methodology is based on the 2014 Household Projections (ONS) which have been updated since. The most recent projections (2018) show the projected number of households to be lower than the 2014 projections. Therefore, a new assessment will need to test both the 2014 and 2018 household projections. There is a potential argument to central Government that the 2014 household projections should not be used. However, this is not an easy argument, as it does not necessarily deal with economic growth and the needs of concealed households.
- 5.11 The Council will need to commission this work through a specialist consultant. However, as with all local plan evidence, it must be independently prepared and a robust examination of all the data and evidence rather than having a pre-determined conclusion. It will be for the Council to decide how that evidence is used and whether the development needs can be accommodated within the borough. Unmet need will have to be met elsewhere, however.
- 5.12 An independent assessment was prepared for the unadopted local plan. The South Essex Strategic Housing Market Assessment (SHMA) in 2017 concluded that the housing need for the Borough was 311 dwellings per annum. However, that was prepared prior to the introduction of the standard methodology. The South Essex planning authorities have commissioned a new SHMA: this will provide a starting point for assessing need in Castle Point.
- 5.13 The housing needs assessment will also need to set out what type of dwellings are required. This will take into account demographics; the housing register; aspirations for those seeking a new home; the needs of concealed households; and specialised housing, amongst others. This will provide the Council with a target for affordable housing and housing mix.
- 5.14 The housing mix requirements affects the potential site selection and densities. The unadopted plan set a target of up to 40% affordable housing and a balance of 68% houses, 25% bungalows and 7% flats: as well as 22% two-bed homes, 43% three-bed, and 29% four or more bed.

Assess the urban capacity

- 5.15 Running alongside an assessment of need, work will need to be undertaken on a new urban capacity assessment. This will incorporate the findings of the previous assessments; a call for sites to demonstrate that the sites are deliverable; a sustainability appraisal of each site; and an appraisal of whether the sites are developable, and for what scale of development.
- 5.16 Urban land is a finite resource, in particular brownfields urban land. Each year the Council must publish a Register of Brownfield sites. Those sites are already factored into the housing supply contributing an estimate 179 homes.
- 5.17 In addition, the unadopted plan includes a total of 272 homes on policy compliant sites – small sites in the urban area – and a windfall allowance of 600 (sites not yet identified).

- 5.18 The unadopted plan also includes allocations on brownfield and urban sites totalling 1,272 units.
- 5.19 Together with extant permissions (as at 1 April 2021) the above suggest an urban capacity (and non-urban extant permissions) of 2,323 dwellings. This would be the baseline for a new study.
- 5.20 However, in order to achieve the standard methodology target this is not enough. It may also be insufficient to meet an independently assessed need. In such a scenario the urban capacity study will need to consider the implications of achieving higher figures within urban areas. This could be in the form of higher densities. What must be borne in mind, however, is that higher densities are usually in the form of flatted development, but current evidence suggests that only 7% of the new homes requirement is for flats. This is something that the new evidence will need to test.
- 5.21 Alongside this work and the preparation of a new local plan, viability assessments will be undertaken, and a new infrastructure delivery plan prepared. The evidence prepared to support the Community Infrastructure Levy (CIL) concluded that brownfield sites are less viable which may mean it is not possible to secure high levels of affordable housing, and large infrastructure contributions.

Assess the need for Green Belt sites

- 5.22 The report in response to the Motion by Councillor Mountford that was considered at Council on 23 March 2022, sets out in detail background on housing numbers for the Borough. This can be found in paragraphs 5.39 to 5.51 at:

<https://www.castlepoint.gov.uk/download.cfm?doc=docm93jjm4n6508.pdf&ver=10444>.

- 5.23 National policy is clear (NPPF paragraph 140):

‘Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans.’

And (NPPF paragraph 141):

‘Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:

- a) *makes as much use as possible of suitable brownfield sites and underutilised land;*

- b) *optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and*
- c) *has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.'*

- 5.24 Even though an objective of a new plan is to protect the green belt from development, in order to demonstrate that there is no need for green belt allocations and such an approach is sound, the tests outlined above will need to be satisfied.
- 5.25 Members also need to note that if the objective is to protect the green belt, that will include all of the green belt. Whilst it is not the objective of a local plan examination Inspector to allocate additional sites, if the Council does not have clear evidence the Inspector may find the plan unsound or ask the Council to find land for additional development. If that means that a limited green belt release, is required, then a green belt review will be required of all of the borough.
- 5.26 Part c of paragraph 141 of the NPPF, implies that where need cannot be met that through discussions with neighbouring authorities need could be met elsewhere. However, through duty to cooperate, nearby local authorities have advised that they are not prepared to accept any unmet need and similarly experienced the same issue in making their own plans. Indeed, through duty to cooperate they have asked Council officers, if Castle Point would be willing to take any of their unmet need. This has been resisted.
- 5.27 A new plan that does not meet housing need (as defined by the standard methodology) and in order to meet that need does not allocate sufficient land, including green belt, will be subject to objections for landowners, housebuilders and developers. The most robust argument in favour of the Council's approach will be needed.

6. Implications

Status of the unadopted plan

- 6.1 Preparation of a new local plan has significant implications for the unadopted plan. The Motion does not specifically call for the withdrawal of the unadopted local plan. However, in order to prepare a new local plan and have that plan examined, the unadopted plan would have to be withdrawn. The options and implications for doing so, are set out below.
- 6.2 The Planning and Compulsory Purchase Act 2004 ("the 2004 Act") states in section 22 that:

'22 Withdrawal of local development documents

- (1) A local planning authority may at any time before a local development document is adopted under section 23 withdraw the document.'*

Section 23 refers to the powers of an authority to adopt a local plan.

- 6.3 It is, therefore, permissible for a Council to withdraw a plan prior to adoption, although it should only be done in consideration of all of the risks.
- 6.4 Withdrawing a local plan to prepare a new plan has very significant implications:
- a) The Council will not have an up-to-date local plan in place. This means that decisions on planning applications will have to take into account the 1998 Plan and the NPPF.

Planning law is clear, as set out in paragraph 2 of the National Planning Policy Framework (NPPF) that:

'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.'

If the unadopted plan is withdrawn, that plan ceases to be a material consideration, as it effectively no longer exists.

As a consequence, the Council will have less control through an up-to-date suite of policies to ensure that development proposals provide maximum benefit for the Borough and minimum harm and to most effectively secure affordable housing and infrastructure. The NPPF does provide significant obligations on developers, it does not set local thresholds for things such as affordable housing, which the government expects local plans to do.

Withdrawing the plan does not mean that speculative developments will cease or that planning applications for sites allocated in the unadopted plan will not be submitted. Some developers have already undertaken pre-application public consultation and are preparing planning applications for sites allocated in the unadopted plan.

Officers will do everything they can to ensure that development proposals have the minimal impact on the environment and amenities of residents, but without an up-to-date local plan or an unadopted but sound local plan, the ability to do so is diminished.

- b) Until a new plan is adopted, the Council will not be able to demonstrate that there is five-year housing land supply and passing the annual housing delivery test will not be possible (the test's annual target is the standard methodology figure).

The Authority Monitoring Report is clear that housing delivery remains below 50% of the target and the Council is failing the Housing Delivery Test. This

puts the Borough at risk of continued inappropriate speculative development including within the green belt, and results in a small number of affordable homes being built.

- c) Without a supply of development sites, affordable housing delivery will be at risk. The Council has a current waiting list of about 600 households, which is growing annually faster than people can be housed through relets.

The unadopted local plan not only allocates sufficient housing land to meet the assessed need, it includes an affordable housing policy that would secure up to 40% of the new dwellings as affordable (and could have delivered around 1,200 affordable homes). In addition, the viability of these sites has been tested through the plan making process, and proven that affordable housing, and infrastructure can be provided.

- d) Without an up-to-date local plan in place, there is an increased risk of appeals and associated costs. It is difficult to quantify what the full implications will be without knowledge of what applications will be submitted and what the grounds for an appeal will be.

Although in the event of the plan being withdrawn, its policies cease, the evidence that was used to prepare the unadopted plan remains and will be used by developers as justification for their proposals for sites that were allocated in the unadopted plan.

The risks were set out in paragraphs 6.17 to 6.19 the report to adopt the plan on 23 March 2022:

'During plan preparation a critical factor in demonstrating whether a site is developable, or deliverable is through discussion with prospective landowners and developers. The Council has established the Local Plan Delivery Board as a discussion forum to ensure that developers submit planning applications that accord with the Plan and can deliver, inter alia, the necessary infrastructure, highest quality standards and affordable housing. The formation of this board was a recommendation of the Development Control Peer Review.'

In the event that the plan is delayed or not adopted, it is highly likely that the developers will continue with the preparation and submission of planning applications. Without an up-to-date local plan, there is a risk that the Council would decide to refuse planning permission. Developers will contend that there are very special circumstances to grant planning permission and appeal a decision to refuse.'

The evidence that informed the current plan remains valid, as are the conclusions in the Inspector's report. The Inspector has examined the plan using this evidence and is satisfied that the evidence supports the plan and its soundness. Whilst the weight attributed to an Inspector's conclusions does not hold the same weight as an adopted plan, in the absence of an adopted plan and no five-year land supply, there is a risk of the evidence being used successfully by developers on appeal.'

It must also be borne in mind that should the Council lose more than 10% of appeals, the Secretary of State could exercise their Designation powers under Section 62A of the Town and Country Planning Act to determine planning applications. The Secretary of State used those powers for the first time in February 2022, when he served notice of designation on Uttlesford.

- e) There remains a risk of Government intervention. Notwithstanding statements in the last year regarding planning reforms, the Secretary of State and Housing Minister want plans in preparation to proceed in accordance with the current regulations, national guidance, and local development schemes. This was set out in some detail in the report on the Motion by Councillor Mountford reported to Council on 23rd March 2022.

In 2018 the Council was put on formal notice of possible intervention by the Secretary of State. Unless the Council made progress in its plan making, the implications of the intervention notice was that the Secretary of State would appoint another body to prepare a new local plan. The Council has avoided full intervention by the progress made on the Local Plan, but withdrawing the plan puts the Council back to where it was in 2017/2018.

Section 27 of the 2004 Acts states that

‘...if the Secretary of State thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document

(2) The Secretary of State may—

(a) prepare or revise (as the case may be) the document, or

(b) give directions to the authority in relation to the preparation or revision of the document...

In doing so the Secretary of State will also hold an examination and publish any modifications to his plan.

The Secretary of State also has powers by the 2004 Act to approve the Plan. Sub-section 5 of Section 27 states that:

(5) The Secretary of State may—

(a) approve the document, or approve it subject to specified modifications, as a local development document,

(b) direct the authority to consider adopting the document by resolution of the authority as a local development document, or

(c) (except where it was prepared or revised by the Secretary of State under subsection (2)(a)) reject the document.’

In order for the Secretary of State to use his powers he will need to be aware of the risk of a sound plan not being adopted or withdrawn.

Secretary of State approval of a local plan is not something that is to be taken lightly. For the Council it indicates that there is a failing in the ability of the Council to adopt a plan. For the Secretary of State, although the powers exist, it is seen as imposing on local decision making.

The Secretary of State now knows the outcome of the examination process and that the Council did not adopt the plan in March 2022. The withdrawal of the unadopted plan may be taken by the Secretary of State as unsatisfactory and could trigger a call-in.

- f) The financial implications of withdrawing the unadopted plan and preparing a new plan are set out in paragraphs 7.1 to 7.10 of this report.

Members will need to note that in addition to the direct costs, the costs incurred in the preparation and examination of the unadopted plan amounted to £1.4 million. Much of this was spent on producing evidence, but also the examination costs which in themselves amounted to c£130,000.

Officers will test the evidence to see whether it needs updating or a completely new set, but a new local plan will need to be examined and similar costs could be incurred.

If the Council decides to prepare a new local plan, a full report will need to be made to Council on a Local Development Scheme which will set out the process (including engagement), resources and timetable for preparing a new local plan.

- g) There is a risk that a new plan will not be found sound.

A new plan that does not meet the requirements of the standard methodology is likely to be challenged and the Council should only proceed if it is certain it has the most robust justification for doing so. If it does not, there is a high likelihood that the plan would be found unsound.

- h) There could be a negative impact on infrastructure investment. The Infrastructure Delivery Plan that accompanied the unadopted plan set out the infrastructure needed to support growth. Securing that investment will be in doubt. Whilst the need for the new infrastructure to support growth is diminished, not having the tools to obligate developers and provide the strongest justifications for grant investment will impact on the Council's ability to address infrastructure issues in the Borough. This includes revenue from CIL.

After the Council meeting in March, the CIL Examiner has asked the Council to set out the implications of non-adoption and asked for an addendum to the Infrastructure Delivery Plan and Viability assessment, effectively stripping out the local plan sites.

- i) The Government require that each local planning authority has an up-to-date local plan in place by the end of 2023. The preparation of a new plan to replace the unadopted plan is unlikely to be completed by that date. The Council is at risk of failing to meet that deadline. It is not clear what the sanction from the government would be, however.

Planning Reform

- 6.5 The Government published the Levelling Up and Regeneration Bill on 11 May 2022. That Bill contains changes to the planning system. There is no definitive timetable for the passage of the Bill towards enactment, although it was announced in the Queens Speech on 10 May for this parliamentary session.
- 6.6 The Government has also announced that there will be further revisions to national planning policy and a revised NPPF. It is not clear what that will contain. It would not be appropriate to speculate on what may or may not be in revised national policy.
- 6.7 If works start on a new local plan, any changes in national policy will need to be taken into account as they emerge.

7 Financial Implications

- 7.1 The Motion calls for the preparation of a new local plan. This will at some point require the withdrawal of the unadopted plan.
- 7.2 Should a new local plan be prepared; the Council will find itself with significant costs to fund. The estimated costs are shown in the following table. With such significant costs, this is very clearly an issue which could have an impact on the financial stability of the whole Council.

	2022/23	2023/24	2024/25	Total
	£000s	£000s	£000s	£000s
Plan formulation	855	855	0	1,710
Staffing	150	150	0	300
Costs of appeals	338	1,262	295	1,895
Total	1,343	2,267	295	3,905

- 7.3 The cost of appeals is an estimate based on planning applications being submitted on all of the strategic allocations in the green belt in the unadopted plan and the costs the Council may incur if the developments are allowed on appeal and costs awarded against the Council. This will be offset to some extent by the additional planning application fees and does present a worst-case scenario.
- 7.4 The table does not include the Government intervention costs likely to be recharged to the Council by the Department for Levelling Up, Housing and Communities should they intervene under section 27 of the Planning and Compulsory Purchase Act 2004.

- 7.5 Also excluded is North West Thundersley which is referenced in the unadopted plan as a possible area for long term development. If the Council was to pursue that area in a new local plan the costs of evidence and master planning is estimated at about £900,000.
- 7.6 Every year, the Council's Section 151 Officer (Strategic Director, Resources) is required under section 25 of the Local Government Act 2003 to report on the adequacy of the proposed financial reserves, and this is done within the Policy Framework and Budget Setting Report.
- 7.7 Whilst a very small amount is allowed for as a provision for planning appeals, that envisages only the usual 'business as usual' type appeals rather than appeals on larger sites such as those coming forward in the local plan. Consequently, the Council does not have the reserves earmarked to meet the estimated costs shown above, whilst any significant use of the reserves could result in the Section 151 determining the proposed financial reserves are inadequate.
- 7.8 With reserves unavailable to fund the estimated costs, the Council would instead need to find new savings in order to balance the budget. Service areas have already, as part of the 2023/24 budget process, been identifying savings so that the existing budget gap of £1.4m (as reported in the Policy Framework and Budget Setting for 2022/23 report) can be closed.
- 7.9 Given services have already been identifying savings, and against the backdrop of the Council needing to find savings in prior years as Government funding as reduced, there are no easy options that remain. Should the Council need to incur the estimated costs above, the Council's activity will need to be scaled back significantly with a number of non-statutory services being reduced or, more likely given the scale of the issue, ceased altogether.
- 7.10 The Council has a legal requirement to set a balanced budget, with a risk of significant Government intervention if there is or, in the opinion of the Section 151 Officer, is likely to be an unbalanced budget. Therefore, in the event significant additional savings are required, a report containing an initial analysis of available options will be presented to a future Council meeting for consideration.

8. Corporate Implications

(a) Financial Implications

These are set out in a main report

(b) Legal Implications

The Council has a statutory duty to prepare and maintain an up-to-date local plan. Sanctions of intervention are included within the Planning Acts as set out in the main report.

The report also highlights the implications for decision making, appeals and ability to secure necessary infrastructure and affordable housing. In defending appeals, the Council may need legal representation.

There is also a risk of judicial review into any decision by the council to withdraw the plan.

(c) Human Resources and Equality Implications

Human Resources

It is likely that should applications on sites allocated in the draft plan result in appeals, the Council will need to employ consultants to represent the Council at those appeals. Officers who represented the Council in support of the plan would be precluded from arguing against the development of the same sites by the RTPI Code of Ethics and Professional Standards (rtpi.org.uk).

Preparing a new plan will require new staff. The new plan will need to be adopted by the end of December 2023, to meet the Government's deadline. This is less than two years away. In response to the decision to withdraw the Plan, the Housing Minister advised Basildon Council that he may consider intervention, unless progress is made towards a new plan.

It will be more difficult for the Council to attract new professional staff, and retain existing staff, if the uncertainty of the local plan remains.

Should the Council be in the position of needing to find new savings to fund the costs shown in paragraph 7.2 above, it is likely that a reduction in services will be required.

Equality Implications

A new local plan will be subject to an equalities impact assessment at each stage.

(d) IT and Asset Management Implications

The unadopted Local Plan includes green belt releases of two parcels of land owned by the Council: the Former WRVS site in South Benfleet and land to the east of Kings Park Village. The Plan also includes the allocation of the Hadleigh Island site, which is partly owned by the Council.

The Government have announced greater investment in a digital approach to planning, including plan making. Details of this are awaited, but investment in IT may be required by the Council, unless New Burdens Funding is made available.

8. Background Papers

As highlighted in the report

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