

## BABERGH DISTRICT COUNCIL

<b>From: Senior Development Management Officer – Key Growth Projects</b>	<b>Report Number: S94</b>
<b>To: Council</b>	<b>Date of meeting: 20 December 2016</b>

### **DEVOLUTION OF DEVELOPMENT CONTROL POWERS ON A CROSS BOUNDARY PLANNING APPLICATION “THE APPLICATION” IN RESPECT OF LAND AT STAFFORD PARK, LISTON**

#### **1. Purpose of Report**

To seek approval of Full Council to devolve the Council’s planning control functions to Braintree District Council to determine a cross-boundary planning application and to negotiate the terms of any necessary planning obligation, subject to this Council’s final approval, insofar as the land subject to the Application lies within Babergh District, thereby making Braintree District Council the sole determining planning authority for the Application. The significant majority of the land subject to the Application lies within Braintree District Council’s area.

#### **2. Recommendation**

- 2.1 That full Council devolve to Braintree District Council the discharge of Babergh District Council’s planning control functions under section 70(1) (Part III) of the Town and Country Planning Act 1990 to determine a cross boundary planning application in relation to land at Stafford Park, Clare Road, Long Melford in respect of the land within the Babergh District Council administrative area and its functions under section 106 of the same Act to negotiate the terms of any necessary planning obligation subject to this Council’s final approval.

#### **3. Financial Implications**

- 3.1 Administrative costs associated with the commissioning of specialist consultee advice and all such other costs have been borne by Braintree District Council, which would receive the entirety of the planning fees. Council should note that no planning application fee is payable to Babergh District and in the event this Council decides not to delegate its decision making powers the full cost of the administration of the Application would fall to the Council.

#### **4. Legal Implications**

- 4.1 Section 101(1) of the Local Government Act 1972 authorises a local authority to arrange for the discharge of functions by any other local authority. In this way it is possible for one Local Planning Authority to delegate its development control functions to another in respect of a specific cross-boundary planning application or site. In this way Braintree District Council would determine both planning applications.

#### **5. Risk Management**

- 5.1 This report is not directly linked with any of the Councils’ Significant Risks, but the following risks should be noted:

Risk Description	Likelihood	Impact	Mitigation Measures
Braintree District Council fail to take account of relevant policies in the Babergh Development Plan in making their decision leading to a decision that has not been made in accordance with the Development Plan and is therefore open to challenge.	Highly Unlikely - 1	Noticeable - 2	Babergh DC Officers will be inputting into the preparation and checking of reports to Braintree DC Committee.
That due process is not followed in the devolution of powers to Braintree DC to determine this planning application, leaving the process open to legal challenge.	Highly Unlikely - 1	Noticeable - 2	This report seeks to address this risk, by ensuring that the decision is taken by Full Council in accordance with the relevant statutory provisions.

## 6. Consultations

- 6.1 As part of the handling of this application to date, both Babergh DC and Braintree DC have carried out consultations with statutory consultees and local residents in accordance with the relevant statutory provisions. Each authority has shared consultation responses between them to ensure that both authorities have up to date information on which to consider the applications.

## 7. Equality Analysis

- 7.1 No issues

## 8. Shared Service / Partnership Implications

- 8.1 No issues

## 9. Links to Joint Strategic Plan

- 9.1 Whilst this is a proposal that primarily relates to the delivery of housing, the housing falls with the Braintree District area and would not directly contribute to the delivery of housing within Babergh despite its close proximity to Long Melford.
- 9.2 However, the proposed housing would enable the decontamination of the former landfill site to the north of the application site (which is, itself, subject to a separate application for planning permission for the remedial works needed to deal with that contamination). It is recognised in the Joint Strategic Plan that the protection and enhancement of the environment should be regarded as a priority in its own right. Because it is so pervasive, however, rather than elaborate it separately, it is mentioned throughout the Plan in those places where it is especially important.
- 9.3 In this regard, the proposal would deliver much needed decontamination works, providing protection to the environment.

## 10. Key Information

- 10.1 Planning application B/15/00649/OUT is an outline planning application which proposes a development of up to 100 dwellings and the change of use of existing buildings to create up to 22 apartments and a community centre, to enable remediation of the adjoining licensed landfill site to the north. Proposals also include the demolition of the other existing buildings, associated works to remediate the land on the Application site, flood attenuation measures, reinstatement of the River Stour to include the removal of the sluice gate and the creation of a series of rock riffle weirs and associated infrastructure improvements, landscaping and provision of public open space, on land at Stafford Park, Clare Road, Long Melford (also known as Stafford Park, Liston Lane, Liston). The land on the north side, and which forms part of the development area, is within the administrative area of Babergh District Council. However, the land to the south is within the administrative area of Braintree District Council. The significant majority of the application site is in Braintree District. The community centre and areas of open space are the only elements of the development which would be within Babergh District Council's area.
- 10.2 In circumstances where an application site crosses the administrative boundary between two Local Planning Authorities (LPAs) the Planning Practice Guidance states in the section "Fees for Planning Applications":
- "If an application site is on land that falls within the boundary of more than one local planning authority, then identical applications must be submitted to each local planning authority, identifying on the plans which part of the site is relevant to each. The planning fee is paid to the local planning authority whose area contains the largest part of the application site."
- 10.3 In this case, the significant majority of the application site falls within the administrative area of Braintree District Council, accordingly, the application fee is payable solely to Braintree District Council.
- 10.4 In the absence of alternative administrative or statutory arrangements, a planning application should be determined by the LPA in whose administrative area the development is proposed to be carried out. In the case of cross-boundary applications, this can lead to two LPAs making individual determinations, imposing different conditions on the permissions and entering into separate s106 agreements. This is not recommended as it does not promote a coordinated approach to development management and the permissions granted by each LPA may be inconsistent in terms of the conditions attached to them and the obligation entered into the related s106 agreements. This is of course highly undesirable in terms of achieving a coordinated approach to delivering development. It is also contrary to Government guidance, which encourages joint working between LPAs in relation to the use of their planning powers. Paragraph 178 of the National Planning Policy Framework (NPPF) advises that public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to strategic priorities. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities, a concept that underpins the approach to strategic plan-making pursued jointly by Babergh District Council and Braintree District Council. Accordingly it is recommended that Babergh District devolve powers in order that Braintree District Council can determine the application in its entirety.

- 10.5 Pursuant to section 101(1) of the local Government Act 1972 a local authority may arrange for the discharge of any of its functions by a Committee, a Sub-Committee, an officer of the authority or by any other local authority.
- 10.6 Accordingly the Council could delegate its decision making powers to Braintree District Council in respect of the determination of this particular cross-boundary planning application, in respect of which Braintree District Council will be paid the full application fee in any event and would then determine both the applications. It could also delegate the function of agreeing the terms of any necessary planning obligation under section 106 of the 1990 Act, subject to this Council's final approval. This Council would be the enforcing authority for any planning obligation relating to that part of the development in the Council's area and if the obligation was in the form of an agreement this Council would need to be a party to the agreement.
- 10.7 As the proposed development within Babergh would involve only the community centre, some open space and works within the river only officers consider that it would be appropriate in this particular case for Babergh District Council to delegate its development control functions to Braintree District Council. This Council will be consulted on the application and the Planning Committee will be asked to agree comments to be sent to Braintree District Council. Any further applications relative to this matter, including any reserved matters applications, would be the subject of a further report to Council if further devolution of powers is required. It is not considered appropriate to seek devolution for future applications at this stage as it is not known what form any future applications may take.
- 10.8 Work on any necessary planning obligation under section 106 of the 1990 Act will also be delegated to Braintree District Council, subject to Babergh District Council's final approval.

## 11. Appendices

Title	Location
(a) Location Plan (showing County Boundary) ref: 13064 (OS) 001F	Attached
(b) Indicative Layout Plan ref: 13064 (PL) 002A	Attached

## 12. Background Documents

- 12.1 Planning application documents B/15/00671/OUT, available via the planning application search facility on the Council's website.

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