

Forward Plan reference number: Not applicable

Report title: Expansion of Intervention into Thurrock Borough Council : ECC's Role	
Report to: Councillor Kevin Bentley, Leader of the Council	
Report author: Gavin Jones, Chief Executive	
Date: 20 March 2023	For: Decision
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County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1 This report sets out how the Council will discharge its role as best value inspector and corporate commissioner for Thurrock Borough Council ('Thurrock') whilst still delivering on the four aims and twenty purposes of Everyone's Essex.
- 1.2 ECC has been appointed to these roles by the Secretary of State for Levelling up Housing and Communities and therefore has little choice but to discharge these duties.

2 Recommendations

- 2.1 Note the expansion of the directions as set out in Appendix A
- 2.2 Appoint Dr Dave Smith as Head of the Paid Service of Thurrock Council with immediate effect.
- 2.3 That the role of the Leader during the intervention shall be revised as at appendix B.
- 2.4 That the functions conferred upon the Council as a result of the statutory appointments with respect to Thurrock Borough Council be delegated as set out in the Appendix C.
- 2.5 That direction leads be appointed in accordance with Appendix D.
- 2.6 That revised instructions be given to Thurrock be revised in accordance with Appendix E.
- 2.7 That in principle any external advice or support required in connection with the intervention should be commissioned by Thurrock at the Commissioner's request.

3 Background and Proposal

- 3.1 On 2 September 2022 the Secretary of State appointed ECC, as a corporate body, as best value inspector and commissioner for Thurrock Borough Council. The intervention was under the provisions of the Local Government Act 1999 and was said to result from:
- (i) the scale of the financial and commercial risks potentially facing Thurrock, which are compounded by the circumstances around its need to re-finance its existing borrowing and the seriousness of the allegations that have been made by third parties about the processes that have been applied to the operation of its commercial strategy, and;
 - (ii) the failure of Thurrock to provide assurance to Ministers and the Department on the adequacy of the actions that they are taking to address the issues, taking account of the scale and pace of the response required.
- 3.2 The best value inspection report was submitted on 17 February 2023. Based on this, and the Commissioner's first report the Secretary of State proposed a broader intervention in the Council, including the appointment of a commissioner managing director. Thurrock's acting Chief Executive wrote to the Secretary of State to support the expansion of the intervention.
- 3.3 On 16 March 2023 the Secretary of State expanded the intervention and appointed Dr Dave Smith, an experienced Chief Executive, as a commissioner alongside ECC. The letter of intervention is at appendix A to this report.
- 3.4 The Secretary of State intended that Dr Smith will be Managing Director Commissioner who will act as interim chief executive. Dr Smith has not yet been appointed as Head of the Paid Service or as an officer of Thurrock and currently his only formal powers are to act as commissioner. One of the recommendations that the Leader is asked to make is to appoint Dr Smith as the Head of Paid Service at Thurrock. This is a technical decision to give effect to the wishes of the Secretary of State. It is likely that Thurrock's full Council will wish to formally endorse this at their next meeting but that is not until May 2023.
- 3.5 In the explanatory memorandum, the Secretary of State has made it clear that he expects Essex County Council and the Managing Director Commissioner to publish an agreed protocol of working practices with the Authority. He expects that:
- a. The Chief Executive of Essex County Council will provide oversight of and strategic leadership for the wider Commissioner team and will chair the Improvement and Recovery Board.
 - b. The Managing Director Commissioner will fulfil the role of a Chief Executive for the Authority and will be responsible for the day-to-day operations of the Authority. They will use their independent position to provide advice and guidance to the Authority on matters pertaining to infrastructure or regeneration projects in the local area, for example the Thames Freeport, local transport initiatives, and represent Thurrock in

any future discussions and negotiations on the expression of interest submitted to DLUHC in respect of wider devolution in Essex.

- c. The Section 151 Officer of Essex County Council will provide oversight of the Authority's finance functions and will chair the Finance Recovery Board.
 - d. The Leader of Essex County Council will provide political support to all members of the Authority to promote a whole council approach to improvement and recovery.
- 3.6 The activity at ECC on the directions has been led by the Chief Executive and Executive Director, Corporate Services. The expansion of the direction means that in order to do justice to the requirement it will be important to have more people from ECC involved. At the same time it is important that we do not overwhelm Thurrock with multiple requirements. Accordingly it is proposed to appoint 'direction leads' who will work with key individuals on a discrete part of the intervention.
- 3.7 The tasks that ECC will need to undertake immediately are:
- (a) Discharge the functions of commissioner with respect to the expanded directions.
 - (b) Put in place appropriate resourcing to ensure that
 - (i) ECC can satisfactorily discharge its duties under the directions; and
 - (ii) ECC maintains sufficient resource and focus to continue to deliver its own agenda and challenging financial position.
- 3.8 As a reminder, the potential conflicts of interests where Essex and Thurrock are jointly involved in such a matter are properly managed. Joint working occurs in many forms with Thurrock. An initial search has revealed:
- (i) Shared responsibility for Langdon Hills and Belhus Woods country parks.
 - (ii) Joint working on emergency planning (including joint working on the 'Just Stop Oil' protests which resulted in ECC and Thurrock jointly obtaining an injunction to protect our residents.
 - (iii) Shared back office services in libraries
 - (iv) Cross border working on highways
 - (v) A number of joint working strategies
 - (vi) Shared participation in the Mid and South Essex Integrated Care System
 - (vii) Shared participation in the Essex Police, Fire and Crime Panel as these services cover both areas
 - (viii) Shared working on the ActiveAte programme of holiday activities for children in Essex and Thurrock, delivered by Active Essex.
 - (ix) Shared participation in the following joint committees:
 - (a) Essex Countywide Traveller Unit
 - (b) South East Local Enterprise Partnership
 - (c) Association of South Essex Local Authorities
 - (x) Thurrock is a scheme employer in the Essex Pension Fund and takes part in the fund governance.

- (xi) Thurrock is responsible for reimbursing ECC with its share of the costs of running the HM Coroner service across the ceremonial county
- (xii) Essex and Thurrock share the Lord Lieutenant, although Thurrock doesn't currently contribute to ECC's costs of supporting the Lieutenancy.
- (xiii) Essex and Thurrock work together with multiple schemes.
- (xiv) The Essex Child and Adolescent Mental Health Service is jointly commissioned with Thurrock
- (xv) A number of non statutory informal joint discussion boards.

Those supporting the Council in its intervention role do not have any involvement in making decisions which could affect Thurrock's finances relating to the above. There is also a legal dispute between Thurrock and Essex about the sale of land which is currently before the courts and conflicts will also need to be avoided. This is considered to be manageable if we take care to avoid conflict. Those involved in the governance intervention at either council should minimise their involvement in litigation.

- 3.9 The costs of intervention will need to be paid by Thurrock and this may need backfilling of roles within ECC. The Chief Executive has already been given delegated authority to exercise the functions conferred upon ECC by the Secretary of State in September and it is proposed to take the same approach for the expanded delegation.
- 3.10 There are some things where the Council will need to exercise its powers (eg to exercise the functions which have effectively been transferred to Essex and to issue a best value inspection report) but there are also functions of an 'enforcement' type nature which are not likely to have to be exercised but which will be held in reserve in case necessary.
- 3.11 The direction of the Secretary of State confers additional functions on ECC, meaning that ECC's insurance will cover any liabilities that it has, although risks to ECC should be low, as ECC will be exercising Thurrock's functions and it will have its own insurance.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
- Strengthen communities through participation
 - Connect us to each other and the world
- 4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

5 Options

- 5.1 The Council can agree the delegations at Appendix B which provide a clear initial framework for decision making.
- 5.2 The alternative is not to do this, but that will lead to a lack of clarity and may not help this important work to start as well as it otherwise might.

6 Issues for consideration

6.1 Financial implications

- 6.1.1 Thurrock Council will be responsible for paying ECC's fees as commissioner and inspector. It is important for those spending their time on this to ensure that time is recorded so that we can charge. Some of those fees will be incurred on external advice to support the delivery of the intervention and some money may need to be spent on backfilling ECC resources used on the intervention.
- 6.1.2 There will be no direct financial impact on ECC. Appropriate charges for the support ECC provides as commissioner will be charged to Thurrock.

6.2 Legal implications

- 6.2.1 It is important to perfect Dr Dave Smith's appointment as Managing Director Commissioner by appointing him as Head of Paid Service at Thurrock. At present he is not an officer of Thurrock and has no decision making powers other than as Commissioner. This could be done in three ways:
- The Secretary of State could take the power to make the appointment and then appoint him. This has not happened.
 - Thurrock BC could appoint him. This would require a meeting of the full council which we understand isn't to take place until after the election.
 - ECC could make the appointment as Commissioner. This seems the best way of resolving the position quickly and is what we propose to do.
- 6.2.2 It is important that we ensure that we take steps to minimise any conflicts between ECC as commissioner and inspector and ECC as a partner authority of ECC, serving adjacent communities. The appointment of Dr Dave Smith as a second commissioner means that ECC can take a step back if any conflict arises, although in practice any conflicts have been effectively managed.

6.2.3 Advice has been sought from Thurrock's insurers who confirm that people employed by ECC who are working with or to support Thurrock will be covered if they incur any liability towards Thurrock.

7 Equality and Diversity Considerations

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 No Equalities Comprehensive Impact Assessment has been undertaken given that the appointment has happened very quickly.

8 List of Appendices

Appendix A – Revised Directions
Appendix B - Role of Leader
Appendix C - ECC Delegations
Appendix D - Directions Leads
Appendix E - Instructions to Thurrock

9 List of Background papers

None – all material relied upon is published

I approve the above recommendations set out above for the reasons set out in the report.	Date 20 March 2023
Councillor Kevin Bentley, Leader of the Council	

In consultation with:

Role	Date
Gavin Jones, Chief Executive	20 March 2023
Executive Director, Corporate Services (S151 Officer)	20 March 2023
Nicole Wood	
Director, Legal and Assurance (Monitoring Officer)	20 March 2023
Paul Turner	

Appendix A – Summary of Secretary of State's Appointment of ECC

1 Role of Commissioner

1.1 ECC has been appointed to exercise the following functions of Thurrock:

“The Authority” includes the Leader, Cabinet Members, any committee or subcommittee; and any other person who has responsibility for the matter in question.

“Statutory Officer” means any of: the Head of Paid Service designated under section 4(1) of the Local Government and Housing Act 1989; the Chief Financial Officer designated as having responsibility for the administration of the Authority's financial affairs under section 151 of the Local Government Act 1972; the Monitoring Officer designated under section 5(1) of the Local Government and Housing Act 1989; and the Scrutiny Officer designated under section 9FB of the Local Government Act 2000 (and the expressions “statutory officer” and “statutory office” are to be construed accordingly).

“Senior positions” are defined as the Chief Executive, direct reports to the Chief Executive and their direct reports, and their Group Managers – tiers one, two and three.

The Commissioners shall exercise:

1. All functions associated with the governance, scrutiny and transparency of strategic decision making by the Authority.
2. All functions associated with the financial governance and scrutiny of strategic financial decision making by the Authority.
3. The requirement from section 151 of the Local Government Act 1972 to make arrangements for the proper administration of the Authority's financial affairs, and all functions associated with the strategic financial management of the Authority, to include;
 - a. providing advice and challenge to the Authority on the preparation and implementation of a detailed action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its medium-term financial strategy (MTFS), including a robust multi-year savings plan;
 - b. providing advice and challenge to the Authority in the setting of annual budgets and a robust medium term financial strategy (MTFS) for the Authority, strictly limiting future borrowing and capital spending;
 - c. scrutiny of all in-year amendments to annual budgets;

- d. the power to amend budgets where Commissioners consider that those budgets constitute a risk to the Authority's ability to fulfil its best value duty;
 - e. providing advice and challenge to the Authority on the preparation of sustainable and affordable capital, investment and treasury management strategies; a strict debt reduction plan; and a revised minimum revenue provision (MRP) policy;
 - f. providing advice and challenge to the Authority on a suitable scheme of delegations for financial decision-making; and
 - g. ensuring compliance with all relevant rules and guidelines relating to the financial management of the Authority.
4. All functions associated with the Authority's operating model and redesign of services to achieve value for money and financial sustainability.
 5. All functions relating to the appointment and dismissal of persons to positions the holders of which are to be designated as statutory officers, and the designation of those persons as statutory officers, to include:
 - a. the functions of designating a person as a statutory officer and removing a person from a statutory office; and
 - b. the functions under section 112 of the Local Government Act 1972 of: i. appointing and determining the terms and conditions of employment of an officer of the Authority, insofar as those functions are exercised for the purpose of appointing a person as an officer of the Authority principally in order for that person to be designated as a statutory officer; and ii. dismissing any person who has been designated as a statutory officer from his or her position as an officer of the Authority.
 6. All functions to define the officer structure for the senior positions at the Authority, to determine the recruitment processes and then to recruit the relevant staff to those positions.
 7. All functions pertaining to the development, oversight and operation of an enhanced performance management framework for officers holding senior positions.

Appendix B – Role of the Leader

The Leader will:

1. Provide political support to all members of the Authority to promote a whole council approach to improvement and recovery Monitor progress of the inspection
2. Act as sounding board and consultee to officers involved in the intervention
3. Consider reports from the Chief Executive and others
4. Provide advice as to political culture as necessary.
5. Ensure there is complete understanding by the Political body of the Council the need for clear and transparent decision making.
6. Provide reports to the Secretary of State and Ministers of progress made in the intervention

Appendix C – Delegations

- A. The Chief Executive or, in his absence, the section 151 officer is authorised to:
1. Exercise all powers of Thurrock Borough Council which are exercisable by the Council as a result of any directions issued by the Secretary of State.
 2. In consultation with the monitoring officer, the section 151 officer and the scrutiny officer, to deal with and finalise any further issues relating to the Council's role as inspector under section 13 of the Local Government Act 1999
 3. Issue instructions to Thurrock under section 15 (6)(b) of the Local Government Act 1999, including instructions that Thurrock complies with any requirements of any particular individual.
 4. Require Thurrock to provide ECC with facilities and support for the purposes of the interventions.
- B. Any other officer of the Council may exercise these powers if, and to the extent that, they are for the time being nominated by the Chief Executive to do so.
- C. The Chief Executive may nominate any officer of the Council as a direction lead

Appendix D - List of Direction Leads

- Governance – Paul Turner
- Financial Management – Stephanie Mitchener
- Member strategic engagement, report writing and planning – Phil Cruddace
(to work closely with Governance lead)
- Transformation – Debbie Knopp
 - Direction team organisation and co-ordination
 - Assurance of Improvement and Recovery Plan/Transformation plan delivery and reporting
- Communications – Andy Allsopp
- Culture, Learning, HR and OD – Pam Parkes

Appendix E

Revised Instructions to Thurrock Council ('Thurrock')

Commissioners expect Thurrock Council and its officers and members to provide early sight on significant decisions but in particular these are formal instructions:

1. Thurrock shall not take any decision which on its own, or taken with any other linked decision, is likely to lead to the expenditure or investment of more than £500,000 without first notifying the Commissioner and giving the Commissioner three working days to comment on the proposed decision..
2. Thurrock shall not take any of the following decisions without first notifying the Commissioner and giving the Commissioner three working days to comment on the proposed decision:
 - (a) Any decision contrary to the Treasury Management Strategy
 - (b) Adoption or revision of the Treasury Management Strategy
 - (c) Any borrowing of more than £500,000
3. Thurrock shall not make any appointment of any manager (whether permanent or interim) in its finance team without first notifying the Commissioner.
4. Thurrock shall not make any appointment of any person to give it financial advice without first notifying the Commissioner and giving it three working days to comment on the proposed decision.
5. Thurrock shall consult Commissioners on all changes to decision making process and the internal control environment.
6. Thurrock shall co-operate with any person nominated by Commissioners as a Directions Lead and shall provide them with such information and support as they may request or require.