

Corporate Policy Committee

Supplementary Agenda

Date: Tuesday, 13th February, 2024
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

14. **Urgent Decision - Exceptional Financial Support** (Pages 3 - 14)

Members are asked to consider this urgent report, which is necessitated by an opportunity which arose after the publication of the Corporate Policy Committee agenda, to finalise an application for exceptional financial support from the Department of Levelling Up, Housing and Communities (DLUHC) by 13th February 2024.

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Corporate Policy Committee

13 February 2024

Exceptional Financial Support

Report of: Director of Finance and Customer Services & Section 151 Officer

Report Reference No: CPC/78/23-24

Ward(s) Affected: All Council Wards are affected

Purpose of Report

- 1 To seek authority for the Chief Executive to request exceptional financial support of up to £17.6 million by way of a capitalisation directive for 2023/24 and 2024/25 from the Secretary of State for Levelling Up to address the Council's budgetary pressures as they relate to abortive costs associated with HS2 and interest payments on High Needs Education.
- 2 The proposed application for financial support aligns with all Council Corporate Plan Priorities:
 - Open
We will provide strong community leadership and work transparently with our residents, businesses and partners to deliver our ambition in Cheshire East
 - Fair
We aim to reduce inequalities, promote fairness and opportunity for all and support our most vulnerable residents.
 - Green
We will lead our communities to protect and enhance our environment, tackle the climate emergency and drive sustainable development.

Executive Summary

- 3 This is an urgent report to the Committee, which is necessitated by an opportunity which arose after the publication of the Corporate Policy Committee agenda, to finalise an application for exceptional financial support from the Department of Levelling Up, Housing and Communities (DLUHC) by 13th February 2024.
- 4 It is proposed that the Chief Executive be authorised to request this exceptional financial support in a sum of up to £17.6 million. DLUHC have confirmed the deadline of 13 February 2024 for any application to be made.
- 5 During the course of last week, Group Leaders were consulted, and a meeting took place with them on Friday 9 February. The options at that time were to utilise the Chief Executive's urgency powers under the Council's Constitution to make the decision to apply to DLUHC, or to present an urgent report to the Committee.
- 6 In order to achieve maximum democratic transparency, it was agreed that an urgent report should be presented to the Committee on 13 February 2024, despite this being the deadline day for any DLUHC application.

RECOMMENDATIONS

The Corporate Policy Committee is recommended to agree:

1. That the Chief Executive shall continue to seek resolution of financial issues related to the abortive costs of HS2 and the financial deficit in High Needs education budgets.
2. That the Chief Executive finalise and submit a request for exceptional financial support in the form of an in-principle capitalisation direction for 2023/24 and 2024/25 to the Secretary of State for Levelling Up for up to £17.6m.

Background

- 7 In order to address the risk to services from the Council's budgetary pressures, it is proposed that the Chief Executive be authorised to request exceptional financial support of up to £17.6 million from DLUHC. The deadline for such a request to be made is 13 February 2024, the day of the Corporate Policy Committee meeting.

- 8 The Council's general budget pressures are associated with high needs education spending, the impact of the cancellation of part of the HS2 project, and inflation. Cheshire East Council has now published its budget report ([Public Pack](#))[MTFS 2024/25-2027/28 Agenda Supplement for Corporate Policy Committee, 13/02/2024 14:00 \(cheshireeast.gov.uk\)](#). In making these current forecasts the Council will deplete reserves to sustain compliant services in 2024/25. Negative variations in the forecasts may put the Council at risk of a Section 114 Notice being issued by the Council's Section 151 Officer. The impact of this would be counter-productive to the Council's emerging transformation approach. In-principle approval for access to exceptional financial support would enable the Council to manage risks locally as well as enable the development of a programme of activities aimed at providing sustainable, affordable and local services.
- 9 Any exceptional financial support from DLUHC would not detract from the Council's approach to seeking compensation for abortive costs related to HS2 (£8.6m of capital) or from the approach of mitigating the impact of High Needs expenditure through the Safety Valve scheme (£9m of interest payments). Resolution of HS2 and High Needs funding issues relate to ongoing conversations with the Department for Transport (DfT) and Department for Education (DfE). In the immediate term the opportunity to capitalise the financial value of these issues would remove an immediate threat of a Section 114 Notice.
- 10 The Chief Executive and Chief Financial Officer have been in liaison with DLUHC's Exceptional Finance Support Team. The intent to work with the Council is clear in the correspondence from Suzanne Clarke, Deputy Director, Local Government Finance (Appendix A).
- 11 A recent announcement by the Secretary of State for Levelling Up, Housing and Communities, and the publication of the local government finance settlement last week: [Final local government finance settlement: England, 2024 to 2025 - GOV.UK \(www.gov.uk\)](#) provides additional measures for local authorities worth £600 million. This includes £500 million of new funding for councils with responsibility for adult and children's social care, distributed through the Social Care Grant. This response by the Secretary of State is an indication of the financial stress facing many local authorities. This additional funding is taken into account within the MTFS and is reflected in making this decision to only isolate the two material issues that are subject to ongoing correspondence and resolution with government departments.

12 Breakdown of Support Required

- a) **£9m (£3m – 2023/24 + £6m – 2024/25)**. The figures may vary if interest rates change but are stated in the report as £9m up to 31st March 2025.
 - b) **£8.6m (2023/24)**. The Council is seeking compensation for spending on HS2 of £11.2m (which adds £2.6m of incurred revenue expenditure). Compensation would remove this issue, but in the short term the ability to (re)capitalise £8.6m is the request.
- 13 The total request is therefore **£17.6m (£11.6m 2023/24 / £6.0m 2024/25)**.
- 14 The impact of approving the application is that the Council would have access to reserves of approximately 5% of the net revenue budget. This is in-line with frequently quoted guidance levels for Council reserves. At this level of reserves the Council would not have an immediate risk of Section 114 Notice. As set out in the local government finance policy statement 2024 to 2025, where councils need additional support from government, they should take every possible step to minimise the need for that support to be funded by national taxpayers. The MTFS forecasts outline £700m+ of financial estimates but does not provide adequate reserves to manage risks such as unknown events or even marginal variations in income or expenditure. The Council is therefore seeking the exceptional financial support detailed above. Reducing the immediate financial risk would enable investment in providing organisational capacity / resources in 2024/25 for a Council wide transformation change programme to create sustainability in the medium-term. This approach would also mitigate other risks such as insurance issues including emergency response to tree maintenance / flooding.

Consultation and Engagement

- 15 Consultation has taken place with the Council's political group leaders, who support the proposed course of action.
- 16 Whilst one option would have been to deal with this matter under officer urgency powers, it was agreed that maximum democratic accountability should be secured by taking an urgent report to the Committee, despite the day of the Committee meeting being the deadline date for the proposed application to DLUHC.

Reasons for Recommendations

- 17 The Committee is recommended to empower the Chief Executive to request exceptional financial support of up to £17.6 million from DLUHC

in order to address the Council's financial risks. The deadline for such a request to be made is 13 February 2024, the day of the Corporate Policy Committee meeting.

Other Options Considered

- 18 The Committee has four options in relation to the recommendations of this report:

Option	Impact	Risk
Do nothing	The Council has no access to exceptional financial support.	Minor negative variations could trigger the need to issue a Section 114 Notice
Apply for Exceptional Financial Support at the recommended level of £17.6m	This approach isolates the financial issues related to HS2 and interest on High Needs education spending currently under review with government.	As detailed in the report
Apply for Exceptional Financial Support in excess of £17.6m	This provides higher financial security than the recommended option.	The application may be refused if deemed excessive and not related to specific financial issues.
Apply for exceptional Financial Support of less than £17.6m	The application would not represent the value of the two specific issues, nor provide access to a recognised guidance level of general reserves.	Insufficient financial support may still present circumstances that could trigger the need to issue a Section 114 Notice.

Implications and Comments

Monitoring Officer/Legal

- 19 Section 10B (4) of the Local Government Act 1972 envisages that there will be special circumstances in which reports need to be considered by committees, without having been published in the usual way, with five clear working days' notice.

- 20 The Chair of the Committee is of the opinion that this report should be considered as a matter of urgency, and the report explains the reasons for this. These reasons will be recorded in the minutes of the meeting, as required by legislation.
- 21 The Chief Executive could take an urgent decision in these circumstances but, given the steps being taken to safeguard the Council's financial position, for transparency, the Committee are being asked to take the decision. There are no other legal implications to the report being considered as an urgent item of business, nor to the recommendations which are contained within it.

Section 151 Officer/Finance

- 22 The Council's MTFs presents a legal budget, in that local resources can support planned expenditure in the 2024/25 financial year. But the report also explains the relationship between the level of reserves and the associated risks. The financial impact of a capitalisation directive does not release new funds. The directive simply allows the Council to spread expenditure over a longer period. This reduces the immediate threat that the Council could run out of reserves.
- 23 If capitalisation is permitted the Council would have the ability to delay the immediate impact of expenditure up to the value of the directive as long as any conditions imposed by the Secretary of State were achieved.

Policy

- 24 The proposed course of action meets all of the Council's Corporate Plan priorities:

An open and enabling organisation	A council which empowers and cares about people	A thriving and sustainable place
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Equality, Diversity and Inclusion

- 25 The proposed course of action will have a positive impact in terms of equality, diversity and inclusion issues, removing the risk of a Section 114 Notice being issued with consequent impact upon the delivery of Council services.

Human Resources

- 26 If a Section 114 Notice was issued, there would be significant impacts upon services which would have a knock-on effect for Council employees.

Risk Management

- 27 If an application for exceptional financial support was not made, then the Council's budgetary pressures would remain, with the consequent risk of a Section 114 Notice being issued.

Rural Communities

- 28 Rural communities will benefit from the exceptional financial support available from DLUHC, should the Committee resolve to take the recommended course of action.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

- 29 These individuals will benefit from the exceptional financial support available from DLUHC, should the Committee resolve to take the recommended course of action.

Public Health

- 30 Securing exceptional financial support from DLUHC will have a positive overall impact on the health and wellbeing of all Cheshire East residents.

Climate Change

- 31 Securing exceptional financial support from DLUHC will enable the Council to continue to pursue its carbon-neutral approach.

Access to Information	
Contact Officer:	Brian Reed Brian.reed@cheshireeast.gov.uk
Appendices:	Correspondence from Suzanne Clarke, Deputy Director, Local Government Finance (Appendix A).

Background Papers:	The background documents relating to this report are set out as links within it and an appendix to it.
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24 January 2024

Dear Rob,

I wish to confirm receipt of Cheshire East Council's request for Exceptional Financial Support (EFS).

You have set out your assessment of your position to the Department and reported financial pressures, particularly in relation to general budget pressures, costs associated with high needs education spending and the impact of the cancellation of part of the HS2 project. I can assure you that government will continue to work closely with Council officers to find a way forward, i.e. by supporting the Council to maintain a balanced budget for 2023/24 and set a balanced budget for 2024/25.

The Department has worked closely with a number of councils through this process since it was established in 2020. In each of these cases, councils have been able to set and maintain balanced budgets, including where support has been agreed in principle only. Full details of all support agreed are published here: [Exceptional financial support for local authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/exceptional-financial-support-for-local-authorities)

I understand that Department officials have spoken with Council officers in detail about the EFS framework and the stages involved in this process. A summary of the process is included in annex. Requests are assessed against the principles of the Exceptional Financial Support framework, including value for money; longer-term financial sustainability; addressing underlying drivers of risk or fragility; avoiding moral hazard; being legally robust; and meeting eligibility requirements.

Ministers will consider the Council's request very carefully against the EFS principles, as well as various other factors including the Council's overall position, the interest of Cheshire East Council's residents, and the need to provide sufficient stability to the Council to make sure

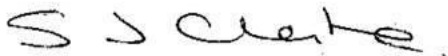
that service delivery, especially for the most vulnerable citizens, is not disrupted. To be clear, Ministers will decide the appropriate amount, form and structure of any support for the Council.

As set out in the [local government finance policy statement 2024 to 2025](#), where councils need additional support from government, they should take every possible step to minimise the need for that support to be funded by national taxpayers. As part of that process, the government will consider representations from councils, including on council tax provision.

In conjunction with working with the Council through the EFS process, the Department continues to engage with other government departments, where appropriate, on other potential support options for councils including invest to save projects, focussing on transformation and efficiency.

I appreciate your continued co-operation with the Department, as you continue to work through the Council's financial issues and the EFS process set out above.

Yours sincerely,



Suzanne Clarke

Deputy Director, Local Government Finance

Annex: Summary of exceptional financial support (EFS) process

The summary below sets out the typical process for Government to assess requests for exceptional financial support (EFS).

1. **Formal request:** A local authority approaches the Department seeking EFS, typically via a capitalisation direction. The local authority provides the amount of capitalisation sought and the rationale behind why this is required.
2. **Assessment:** The request is considered by the Department and includes an assessment of whether the authority has taken every possible step at local level to minimise the need for support to be funded by national taxpayers.
3. **Agreement of 'in principle' support:** Subject to Ministerial decision, Ministers will write to the authority setting out that they are 'minded to' issue a capitalisation direction subject to certain conditions. These conditions typically include the authority being required to undergo an external assurance review.
4. **Confirmation and legal direction:** Confirmation of legal directions is required to enable an authority and the external auditor to close its financial accounts for that year. There is not a set time of year when directions must be formalised. Previously, subject to demonstration that the authority has progressed against the conditions set out in the 'in-principle' offer of support, directions have been formalised at the end, or just after the end of the financial year to which the capitalisation applies. When formal directions are issued, conditions are attached.

Previous standardised conditions attached to formal capitalisation directions issued through the EFS framework

1. The Council may only capitalise expenditure when it is incurred.
2. Where the Council's capital financing requirement is increased as a result of the capitalisation of expenditure under this direction:
 - a. Any further borrowing from the date of the capitalisation letter up to and including, but not exceeding, the increase in the financing requirement must be obtained from the PWLB (Public Works Loan Board) and must be subject to an additional 1 percentage point premium on the interest rate above the rate the loan would otherwise be subject to. This requirement does not apply to borrowing in relation to your hour Housing Revenue Account. Where any borrowing to which these conditions initially apply is refinanced, the conditions must continue to apply to the resulting borrowing.
 - b. The Council shall charge Minimum Revenue Provision using the asset life method with a proxy 'asset life' of no more than 20 years, in accordance with the Department's Statutory Guidance on Minimum Revenue Provision issued by the Secretary of State under section 2(A) of the Local Government Act 2003.

Publication

Details of in-principle support and formal capitalisation directions are published on gov.uk:
[Exceptional financial support for local authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/exceptional-financial-support-for-local-authorities)

An example of a published in-principle agreement:
[Thurrock Council: Exceptional Financial Support request 2023-24 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/collections/thurrock-council-exceptional-financial-support-request-2023-24)

An example of a published formal capitalisation direction:
[Eastbourne capitalisation direction 2021-22 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/collections/eastbourne-capitalisation-direction-2021-22)

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