

## LONDON BOROUGH OF WALTHAM FOREST

Meeting / Date	<b>Cabinet</b> <b>5<sup>th</sup> June 2018</b>	
Report Title	<b>Secretary of State Direction – Waltham Forest News</b>	
Cabinet Portfolio	Councillor Clare Coghill	
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Wards affected	<b>All wards</b>	
Public Access	<b>OPEN except for Appendice 2 and 3 which are EXEMPT</b> in accordance with Section 100(A-H) of the Local Government Act 1972 and Schedule 12A as amended, on the grounds that it involves the likely disclosure of exempt information, as defined in Part 1, paragraph 5, as it contains information in respect of which a claim to legal professional privilege could be made in legal proceedings.	
Appendices	Appendix 1 – Direction issues by the Secretary of State  Appendix 2 Counsel’s opinion – Nigel Giffen QC (EXEMPT to be tabled at meeting)  Appendix 3 – Summary of Counsel’s opinion (EXEMPT to be tabled at the meeting)	

### 1. SUMMARY

- 1.1 The Secretary of State issued a direction against the Council on the 11 April 2018 requiring it to comply with the Local Authority Publicity Code 2011 (“the Code”), by commissioning or publishing no more than four issues of Waltham Forest News (or any equivalent newsletter, newsheet or similar communication) from 3 September 2018 or subsequent years.

- 1.2 The Director of Governance and Law instructed Nigel Giffen QC to advise on the lawful basis of the direction being issued and, following receipt of the counsel's opinion, is of the view that on balance the Secretary of State's decision can be successfully challenged by way of judicial review for the reasons set out in this report.

## **2. RECOMMENDATIONS**

- 2.1 Cabinet is recommended to:
  - 2.1.1 Authorise the Director of Governance and Law to instigate judicial review proceedings against the Secretary of State in relation to the legality of the direction issued.

## **3. Background**

- 3.1 The Local Authority Publicity Code 2011 ("the Code") states at paragraph 28 that where authorities commission or publish newsletters, news sheets or similar communications, they should not issue them more frequently than quarterly. The Council currently produce its newspaper Waltham Forest News ('WFN') approximately fortnightly. The Council has been in protracted correspondence over many years with the Secretary of State making it clear why WFN should not be subject to a direction and is disappointed that the Secretary of State has now decided that, despite the strong case made by the Council about the benefits of it continuing to publish WFN it has been necessary to issue a direction as set out in Appendix 1.
- 3.2 The Council could take the view that on the strength of the counsel's opinion the direction is in fact unlawful, and simply raise its invalidity as a defence to any proceedings brought against it by the Secretary of State for non-compliance. However it would be preferable for the Council to be seen to be proactive rather than passive and instigate proceedings for judicial review of the direction. Until such time as the legal proceedings were concluded the Council would be entitled to treat the directions as invalid and continue publishing WFN beyond the September 2018 deadline for compliance with the direction.
- 3.3 The grounds for challenge are set out in detail in Nigel Giffen QC's opinion attached at Appendix 2 (EXEMPT) and a summary of the legal position is set out in Appendix 3 (EXEMPT)

## **4. OPTIONS & ALTERNATIVES CONSIDERED**

- 4.1.1 Comply with the Notice

- This would result in a dramatic reduction in the production of WFN, which currently runs to approximately 25 publications a year going down to 4
- It would adversely impact upon the ability of local residents to obtain the information that the WFN contains. Although the relevant information can still be published quarterly, much of the information currently provided to readers is likely to be effectively pointless if it cannot be published promptly. This is compounded by the relative lack of coverage of alternatives to WFN especially in relation to less affluent parts of the borough
- It would adversely impact on the Council's ability to communicate effectively and cost-effectively, and in terms of the cost of publishing statutory notices. This would result in unnecessary extra costs in this particular respect.
- Accessing the information currently published in WFN would be felt disproportionately by disadvantaged sections of the community, including groups who have protected characteristics for the purposes of the Equality Act 2010. That is partly because it is likely to be those groups at whom much of the information in question is particularly aimed, and partly because they are the groups who are least likely to access the information by other (in particular, digital) means.
- The Council would be forced, in order to comply with certain statutory obligations concerning the publication of notices, to purchase a great deal of newspaper advertising space for the publication of such notices.

## **5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)**

5.1 None

## **6. CONSULTATION**

6.1 None

## **7. IMPLICATIONS**

### **7.1 Finance**

7.11 The WFN budget is set to make an annual surplus of £145,000 through advertising revenue. The targeted surplus has been met for the last few years. A reduction in the number of issues published per year would affect our opportunity of generating sufficient income to meet our

budgeted target. Any shortfalls on income would have to be funded corporately.

7.12 If the number of issues is reduced to four per annum, the shortfall in income would mean that (approximately) £112,400 would need to be funded corporately.

7.13 If the judicial review goes ahead we would be liable for our share of the legal costs (estimated at £25,000) and also those of the Secretary of State if we are unsuccessful. These costs would have to be met from central contingency.

7.2 **Risk-** There is always inherent risk with any litigation that the Council is unsuccessful. In this case should we fail in the judicial review proceedings then we would be liable for not only our own legal costs but also those of the Secretary of State. This risk is mitigated in two ways. Firstly the fact that we are likely to jointly bring proceedings with Hackney Council thereby sharing the burden of the legal costs in relation to bringing the judicial review between the two authorities. Secondly if we were unsuccessful the costs of the Secretary of State would be shared between ourselves and Hackney rather than just falling on the Council. However it is worth noting that should we be successful against the Secretary of State we would be looking for a costs order to reimburse us for the majority of our own legal costs.

### 7.3 Legal

7.3.1 Detailed legal implications relating to the expediency of taking legal action are set out in the body of this report and in the Exempt Appendices

### 7.4 Equalities & Diversity

7.4.1 The Equality Act 2010, requires public authorities to have due regard to the need to eliminate discrimination, and advance Equality of Opportunity. The Council must further, take into account its wider Public Sector Equality Duty (PSED), under S149 of the Equality Act 2010, when making its' decisions.

7.4.2 The public sector equality duty (S149, Equality Act 2010), requires the Council, when exercising its functions, to have "due regard" to the need to: eliminate unlawful discrimination, harassment and victimisation, and other conduct prohibited under the Act. Advance Equality of Opportunity between those, who share a "protected characteristic", and those who do not share that protected characteristic, and foster good relations between persons, who share a relevant protected characteristic and persons who do not share it, (this involves having

due regard, in particular, to the need to (a) tackle prejudice, and (b) promote understanding).

7.4.3 The equality implications are set out in summary within the body of this report and the exempt appendices.

**7.4.4 Sustainability  
(Including climate change, health, crime and disorder)**

None

**7.5 Council Infrastructure**

None

**BACKGROUND INFORMATION**

**(As defined by Local Government (Access to Information) Act 1985)**

None