

REPORTS FROM THE EXECUTIVE, COMMITTEES AND SUB-COMMITTEES TO COUNCIL

1 REPORT OF THE LOCAL DEVELOPMENT FRAMEWORK SUB-COMMITTEE

New Local Plan Evidence Base – Environmental Capacity Study

- 1.1 This item of business was referred by the Local Development Framework Sub-Committee on 30 July 2015 to Full Council with a recommendation on accepting an Environmental Capacity Study. An extract of the key elements of the report of the Director to the Sub-Committee is attached at Appendix A. The Sub-Committee also received a presentation from Enfusion Ltd, independent environmental planning and sustainability consultants, on the scope and overall findings of an environmental capacity study of Rochford District. All Councillors have received an electronic copy of the presentation by Enfusion.
- 1.2 The Sub-Committee noted that the Environmental Capacity Study is looking at the Local Plan post 2025 and it was anticipated that significant improvements in air quality would have been achieved by this time; however, improvement in air quality as a result of lower vehicle emissions may not be quite as significant as was originally thought.
- 1.3 It was noted that the current version of the Study would be updated to include comments raised by neighbouring authorities and environmental bodies, as detailed in Appendix 2 to the report to the Sub-Committee. A copy of the updated Study (Appendix B) will be circulated to Members under separate cover.
- 1.4 It was agreed that all Members of the Council should be invited to comment on the Study prior to its finalisation as part of the evidence base for the new Local Plan. Members were invited to email any comments they had on the draft Study to the Council's Planning Policy team by 30 September 2015.
- 1.5 It is proposed that Council **RESOLVES**

That the finalised Environmental Capacity Study be accepted as part of the evidence base for the new Local Plan.

2 REPORT OF THE REVIEW COMMITTEE

Regulation of Investigative Powers Act 2000 (RIPA)

- 2.1 This item of business was referred by the Review Committee on 6 October 2015 to Full Council with a recommendation relating to approval of a revised RIPA Policy.

- 2.2 The role of the Review Committee is to provide a strategic overview of the Council's use of RIPA powers in terms of reviewing policy and considering quarterly and annual statistical reports. The existing policy needs to be revised due to recent changes. An extract of the key elements of the report of the Director to the Committee, together with a copy of the proposed amended Policy, is attached at Appendix C.
- 2.3 It is proposed that Council **RESOLVES** that the proposed changes to the Council's 'Covert Surveillance Policy and Procedure Manual' (RIPA Policy), be approved.

If you would like this report in large print, Braille or another language please contact 01702 318111.

NEW LOCAL PLAN EVIDENCE BASE – ENVIRONMENTAL CAPACITY STUDY

1 SUMMARY

- 1.1 The Council is committed to an early review of the Core Strategy. This early review will ensure that an up-to-date plan is in place covering at least 15 years. The Council is currently in the initial evidence gathering stages of the review, which will inform the preparation of the new Local Plan in due course, the replacement for the Core Strategy and the Allocations Plan.
- 1.2 This report considers an Environmental Capacity Study of the District prepared by independent environmental planning and sustainability consultants, Enfusion Ltd, and seeks Members' approval for the publication of this study as an evidence base document to support and inform the preparation of the new Local Plan.

2 BACKGROUND

- 2.1 The new Local Plan will need to conform to the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), and be based on updated evidence. The NPPF (paragraph 14) continues the requirement for development to be sustainable and, as part of this, has identified that for plan-makers this means 1) being positive about opportunities for meeting development needs and 2) meeting Objectively Assessed Needs (OAN). The latter requirement, which is reiterated in paragraph 47, is caveated such that any adverse impacts may be balanced against the benefits taking into consideration all the policies in the NPPF.
- 2.2 The OAN should be identified through the preparation of a Strategic Housing Market Assessment (SHMA). As part of this requirement the five Local Authorities in South Essex – Basildon, Castle Point, Rochford, Southend and Thurrock – have commissioned Turleys Associates to undertake a review of the 2013 SHMA to ensure compliance with the PPG. The SHMA will determine the OAN for each Local Authority. Under the Duty to Co-operate – which was introduced by the Localism Act 2011 – it is possible that the total housing requirement for the housing market area may ultimately be distributed such that the District accommodates more or fewer of the total need for the sub-region.
- 2.3 It is important that the potential cumulative and in-combination effects of any new proposals for Rochford District with those proposed in neighbouring areas are carefully considered. Therefore in addition to the statutory appraisals and reports which accompany each iteration of a local development plan (including Sustainability Appraisals and Habitat Regulations Assessments) it was considered important to strengthen the evidence base by

developing a better understanding of the environmental capacity of the District.

3 ENVIRONMENTAL CAPACITY STUDY

- 3.1 Enfusion Ltd. were commissioned to undertake a study to consider the environmental implications for the District of development beyond the current plan period. In particular the consultants were tasked with considering the potential for the District to accommodate additional residential and employment development between 2025 and 2031.
- 3.2 The environmental considerations are divided into five key themes in the study: Air and Climate; Land, Soils and Minerals; Water; Biodiversity; and People, Health and Well-Being. Each theme and its component topics was investigated individually to determine environmental constraints, issues and capacity (where possible) relative to a spatial area. Interactions between topics were identified, together with the potential for any significant cumulative effects.
- 3.3 To inform the preparation of this study – and in the interests of the Duty to Co-operate – key stakeholders (including neighbouring local authorities, Essex County Council, Natural England, Environment Agency, English Heritage, RSPB and Essex Wildlife Trust) were invited to attend a workshop. The purpose of the workshop was to introduce the study, including the method and approach proposed, and discuss emerging findings on each theme. The workshop was held on 25 November 2014 and attendees consisted of neighbouring local authorities and Essex County Council.
- 3.4 Several actions to consider emerged from the workshop, as detailed in Appendix II of the study. Following the workshop, a copy of the draft maps, which formed the basis of the discussions with key stakeholders, were circulated alongside the draft notes of the meeting seeking additional comments to inform the study. Comments were received from the Marine Management Organisation and Essex County Council. The draft Environmental Capacity Study was also circulated to key stakeholders for further comment prior to finalisation. A copy of the comments received and Enfusion's response to these is provided in Appendix 2, which will be circulated under separate cover.
- 3.5 The key findings from the draft Environmental Capacity Study in relation to each theme addressed are briefly summarised below. It should be borne in mind that the assessment carried out in the report relates to the period post 2025, the end date of the current Core Strategy.

Air and Climate (Air Quality and Climate Change)

- 3.6 Vehicle emissions can impact on air quality and have implications for climate change. Roads to the west and south west of the District are at or near

capacity. Mitigation may be possible through improving the provision of, and accessibility to, sustainable transport modes, but the impact of such measures will be somewhat limited by where people choose to live and work.

Land, Soils and Minerals

- 3.7 The quality of agricultural land varies across the District; the eastern area encompasses soils which support internationally protected marine biodiversity, the central area includes high grade agricultural land (Grades 1, 2 and 3) and the western area contains the established urban environment alongside Grade 3 agricultural land. The land in the western area is considered to be the most able to accommodate change and absorb housing growth.

Water (Resources, Quality and Flood Risk)

- 3.8 The latest Waste Water Treatment Works (WWTWs) Study suggests that there are no constraints on WWTWs for identified development in the sub-region up to 2032, however it is unclear whether increase in flow consent would meet water quality requirements. Therefore there is some uncertainty with regard to additional development. Water efficient development is a potential mitigation measure.
- 3.9 The eastern half and the northern edge of the District are characterised by a high risk of tidal and fluvial flooding with no capacity for accommodating additional development – unless proposals are designed and operated with water neutrality and do not contribute to any surface water run-off. Much of the rest of the District is also at significant risk from surface water flooding. Sustainable drainage systems (SUDs) are likely to be suitable in some site specific locations for small housing proposals in the western developed part of the District.

Biodiversity

- 3.10 The eastern third of the District comprises internationally and nationally important biodiversity, much of which is not accessible to the public and therefore, it may be considered that there is no capacity for additional housing.
- 3.11 The farmland areas to the north and through the central area could accommodate minor housing development without affecting the overall biodiversity character and value, but would need to be directed away from sensitive biodiversity areas.
- 3.12 The urban areas of Rayleigh, Hockley, Hawkwell and Rochford are least sensitive to change for biodiversity with less adverse impacts and opportunities for biodiversity enhancements through provision of Green Infrastructure as part of housing developments.

People, Health and Well-Being (Landscape, Recreation, Cultural Heritage and Historic Environment)

- 3.13 The east of the District has a coastal landscape character; there is no capacity for additional development in this area due to the likely impact on the special character, disturbance of key habitats and species, and special recreational attributes.
- 3.14 The east and north of the farmland landscape has less capacity, whereas development in the west of this landscape area would likely have the least impacts as it can connect to existing development and infrastructure and could have a lesser impact on prominent views.
- 3.15 Rayleigh, Hockley and Rochford around the Upper Roach Valley have some capacity for limited development, but development could decrease settlement gaps; there is a potential loss of Green Belt, impact on landscape character and historic and conservation assets to consider. The Upper Roach Valley is a key green area which has low capacity for new development.

Environmental Capacity for Additional Development and Recommendations

- 3.16 In general, the Study suggests that there is no environmental capacity to accommodate additional housing development in the eastern coastal and wetland parts that comprise internationally important biodiversity. There would appear to be only limited capacity for very small scale housing development in the central farmland areas due to the particular constraints on the capacities of the landscape character, agricultural land resources, and sustainable transport systems.
- 3.17 There may be limited capacity for additional housing through small scale housing development near the existing urban areas. Green Belt is a key consideration. Site specific studies will be needed, together with careful consideration of cumulative impacts. There are clear capacity constraints associated with road transport and air quality; biodiversity, landscape and agricultural land resources; and there may also be constraints on wastewater capacities.
- 3.18 It seems uncertain that there would be the environmental capacity to accommodate 1,440 additional dwellings in the District (suggested through the 2013 SHMA) and unlikely that the District could accommodate additional dwellings identified as needed from adjacent Council areas, although this is subject to review.
- 3.19 The Study makes some recommendations, including differentiating between agricultural land Grade 3a and 3b in the western part of the District, updating the Water Cycle Study following the review of the SHMA, and undertaking site specific studies (particularly around the northern and western urban areas) to

identify any small scale sites for housing development, which could comprise a Green Belt review.

- 3.20 The Study concludes that it is uncertain whether the cumulative impacts of even small scale housing development will be acceptable post 2025.

4 RISK IMPLICATIONS

- 4.1 The Environmental Capacity Study will form a key part of the Council's evidence base to support the preparation of the new Local Plan, which considers the potential for the District to accommodate its own needs and – additionally – development from neighbouring Local Authorities as part of the Duty to Co-operate.

5 ENVIRONMENTAL IMPLICATIONS

- 5.1 The Environmental Capacity Study has considered the potential environmental implications of accommodating additional development in the District as set out above.

REGULATION OF INVESTIGATORY POWERS ACT 2000 ("RIPA")

1 SUMMARY

- 1.1 The purpose of this report is to update Members on the use of RIPA over the past year and to allow for the review of the Council's RIPA policy. It also makes some recommendations to amend certain aspects of the policy which arose out of the inspection carried out last year.

2 INTRODUCTION

- 2.1 On 8 March 2011, Members of the Review Committee agreed to provide a strategic overview of the Council's use of RIPA powers in terms of reviewing the policy and considering quarterly and annual statistical reports on usage.
- 2.2 On 12 July 2011 the Committee agreed that in the interests of saving resources, it would consider statistics and review the Council's RIPA policy on an annual rather than quarterly basis.
- 2.3 The last report to this Committee regarding RIPA usage was on 8 April 2014 which also proposed changes to the Council's RIPA policy.
- 2.4 Members and officers received RIPA training on 31 January 2014. Further training has been scheduled for the New Year which Members of this Committee should attend.
- 2.5 The Office of Surveillance Commissioner ("OSC") inspected the Council's RIPA arrangements on 14 October 2014 and commended officers and Members for the way in which RIPA was managed. The report also made some minor recommendations in terms of adjusting the policy, which are dealt with below.

3 ANNUAL STATISTICS ON THE COUNCIL'S USE OF RIPA POWERS

5 March 2014 – 18 September 2015

Authorisation Date	Nature of Authorisation	Expiry date / Review Date(s)/ Cancellation Date
NIL		

- 3.1 Members will note that the Council is a sparing user of RIPA powers, the last authorisation having been made on 8 February 2011.

- 3.2 Due to the redesign and changes in personnel, this report has been brought to this committee later than anticipated, which explains the extended date above. The next report on annual usage will cover the time period 18 September 2015 – 17 September 2016.

4 ANNUAL POLICY REVIEW

- 4.1 Arising from the OSC's report, some further minor amendments are required to be made to the policy as follows:-

Front Cover Page delete replace "A.J. Bugeja...etc" with "Nicholas Khan, Director, RIPA Senior Responsible Officer.

5.1 Delete "Surveillance by" and replace with "use of". Delete "and such use will usually only be authorised when working alongside the police".

5.5 Replace all of paragraph 5.5. with "There is a risk that a member of the public covertly providing information to the Council may in reality be a CHIS if he is obtaining it in the course of, or as a result of the existence of, a personal or other relationship. A duty of care would be owed to such a person, who may be at risk of reprisals if the information is acted on. What matters is not whether the informant has been tasked to obtain information for the Council (which should not arise), but the manner in which he has obtained the information which he covertly passes on."

Section 9 relating to stage 2 of the process to follow the existing sections 10 and 12.

11.1 delete.

Page 6.20 replace "Albert Bugeja" etc with "Nicholas Khan, Director, RIPA Senior Responsible Office (and appropriate contact details). Replace "Nick Khan – Principal Solicitor" etc with "Angela Law Assistant Director – Legal Services, Monitoring Officer and RIPA Monitoring Officer (and appropriate contact details).

Page 6.21 Delete "Nick Barnes" etc and replace with "Paul Gowers, Overview & Scrutiny Officer"

Page 6.21, Insert "1(b) Senior Responsible Officer – Nicholas Khan, Director"

Page 6.21, Insert "1(c) RIPA Monitoring Officer – Angela Law, Assistant Director – Legal Services, Monitoring Officer"

Page 6.22 Delete "Hannah Weston" from the table

Page 6.22 Delete "Nick Barnes" from the table

Page 6.22 Replace “Nicholas Khan” with “Angela Law”

- 4.2 An amended version of the policy is attached as an appendix to this report.

5 RISK IMPLICATIONS

- 5.1 The improper or disproportionate use of RIPA powers could lead to adverse publicity in the media and serious reputational damage.

6 CRIME AND DISORDER IMPLICATIONS

- 6.1 The use of RIPA powers when necessary and proportionate may assist in the prevention and detection of crime.

7 LEGAL IMPLICATIONS

- 7.1 Failure to comply with RIPA legislation may mean that covert investigatory evidence will not be accepted in court and there may be issues of privacy/human rights contraventions, as well as a claim for damages.



ROCHFORD DISTRICT COUNCIL

COVERT SURVEILLANCE POLICY AND PROCEDURE
MANUAL

PURSUANT TO THE
REGULATION OF INVESTIGATORY POWERS ACT
2000

This manual has been prepared to assist officers who undertake covert surveillance but is not intended to be an exhaustive guide

Nicholas Khan

Director
RIPA Senior Responsible Officer

GUIDANCE

1 PURPOSE

- 1.1 The Council's officers in the course of investigating frauds, regulatory criminal offences and in the interests of the safety and well being of the district may be required to undertake covert monitoring operations to gather evidence to present to a court. In doing so those officers must comply with the relevant legislation i.e, the Regulation of Investigatory Powers Act 2000 (RIPA) and the associated regulations and codes of practice. Evidence collected without complying with the statutory procedures may become inadmissible and prejudice the outcome of the investigation and may be the subject of a claim for damages under the Human Rights Act 1998.

2 SCOPE

- 2.1 This guidance applies to the planned deployment of directed covert surveillance or the use of Covert Human Intelligence Sources (CHIS) against specified individuals in such a manner as is likely to result in obtaining private information about the person. The following provisions relate therefore to the observation of specified individuals from a vehicle, foot surveillance, the setting up of covert observation positions, the use of equipment for the monitoring of specified individuals and the use of informants or undercover officers.
- 2.2 The Council's policy does not contemplate the monitoring of internet use, telephone use or portal use (communications data) other than in exceptional circumstances as this is unnecessary and disproportionate in most if not all local authority criminal investigations. Guidance regarding the acquisition of communications data is beyond the scope of this document and separate advice from the RIPA Senior Responsible Officer, Monitoring Officer or Ray How (as the Council's Single Point of Contact regarding communications data) should be obtained.

3 BACKGROUND

- 3.1 Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism for public authorities to undertake certain investigative techniques in compliance with the Human Rights Act 1998. In particular it allows lawful interference with Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) rights.
- 3.2 The Home Office has issued revised Codes of Practice to provide guidance to public authorities on the use of RIPA to authorise covert surveillance that is likely to result in the obtaining of private information. The revised Codes of Practice are titled "Covert

Surveillance and Property Interference” and “Covert Human Intelligence Sources”.

- 3.3 All Codes of Practice issued pursuant to section 71 of RIPA are admissible as evidence in criminal and civil proceedings. If any provision of the Codes appear to be relevant to a court or tribunal considering any such proceedings, or to the Investigatory Powers Tribunal established under RIPA, or to one of the Commissioners responsible for overseeing the powers conferred by RIPA, they must be taken into account.
- 3.4 This Procedure sets out the procedures that must be followed when the Council undertakes authorised covert surveillance and brings into effect a number of changes that have been implemented by the revised Codes as well as recent changes to the law in this area. It is intended to be a best practice guide. This Manual is not intended to replace the Home Office Codes.
- 3.5 Those officers that intend to apply for an authorisation under RIPA must familiarise themselves with the appropriate Code of Practice as well as this Procedure. The Codes of Practice are available online and in the G/Shared/RIPA/Code of Practice area.
- 3.6 The covert surveillance regulated by RIPA and covered by the above Codes of Practice is in three categories; intrusive surveillance, directed surveillance and covert human intelligence. The Act and Codes set up procedures for the authorisation of these activities.
- 3.7 The authorising officer should first satisfy themselves that the authorisation is necessary for the purpose of investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1 below) and that the surveillance is proportionate to what it seeks to achieve. Authorising and requesting officers (See Annex 1 and 2 for lists of named officers) should have regard to the Code of Practice “Covert Surveillance and Property Interference”, paragraphs 3.3 - 3.6. This states that obtaining an authorisation will only ensure that there is a justifiable interference with an individual’s Article 8 Rights if it is necessary and proportionate for these activities to take place.
- 3.8 It first requires authorising officers to believe that the authorisation is necessary in the circumstances of the particular case which further to changes to the law, means for the purpose of investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1) Authorising officers should ask themselves if the evidence could be obtained in any other way? Is the surveillance operation really necessary to what the requesting officer is seeking to achieve? Should there be a less intrusive means of obtaining the information, then the authorisation should not be granted. Judicial approval of the

authorisation will also be required before the surveillance takes place which is set out further at paragraph 9

- 3.9 If the activities are considered necessary, the authorising officer must then satisfy himself that they are proportionate to what is sought to be achieved by carrying them out. He should consider the four elements of proportionality:
- i) balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
 - ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,
 - iii) considering whether the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
 - iv) evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

4 COVERT SURVEILLANCE

- 4.1 Covert surveillance means surveillance, which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place. There are two categories of covert surveillance defined in RIPA: intrusive surveillance and directed surveillance.

Intrusive Surveillance

- 4.2 Covert surveillance is “intrusive surveillance” if it:-

- Is covert;
- Relates to residential premises and private vehicles; and
- Involves the presence of a person in the premises or **in** the vehicle or is carried out by a surveillance device in the premises or the vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises or vehicle. This is unlikely in the case of equipment such as a DAT recorder when used to assess noise nuisance but care must be taken in setting up of equipment and locating the microphone.

- 4.3 This form of surveillance can therefore only be carried out by the police and other law enforcement agencies. Council Officers **must not** carry out intrusive surveillance.

Directed Surveillance

- 4.4 Directed surveillance, as defined in RIPA Section 26, as surveillance which is covert, but not intrusive, and undertaken:
- (a) For the purpose of a specific investigation or operation; and
 - (b) In such a manner as is likely to result in obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
 - (c) Otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this part to be sought for the carrying out of the surveillance.

5 COVERT HUMAN INTELLIGENCE SOURCES (“CHIS”)

- 5.1 Use of a CHIS will not be authorised by the Council other than in exceptional cases due to the adverse risk to the health and safety of officers.
- 5.2 If use of a CHIS is contemplated officers must familiarise themselves with the Code of Practice on Covert Human Intelligence Sources and advice should be sought from the RIPA Senior Responsible Officer and RIPA Monitoring Officer.
- 5.3 A CHIS is defined as a person who establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating anything that:
- (a) Covertly uses such a relationship to obtain information or to provide access to any information to another person; or
 - (b) Covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- 5.4 A relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose. This relationship is established or maintained specifically to obtain or provide access covertly to information about private or family life of another person. It also covers those activities where the relationship itself can be construed as an infringement of a person’s private or family life.

- 5.5 There is a risk that a member of the public covertly providing information to the Council may in reality be a CHIS if he is obtaining it in the course of, or as a result of the existence of, a personal or other relationship. A duty of care would be owed to such a person, who may be at risk of reprisals if the information is acted on. What matters is not whether the informant has been tasked to obtain information for the Council (which should not arise), but the manner in which he has obtained the information which he covertly passes on.

6 AUTHORISATIONS

- 6.1 An authorisation for directed surveillance or the use or conduct of a CHIS, may only be authorised by the council on the following ground:

for the purpose of investigating crimes which carry a custodial sentence of 6 months or more or for offences relating to the sale of alcohol or tobacco to children and those under 18 (see paragraph 10.1)

The authorising officer must believe that:

- (a) The action is necessary on the ground set out above; and
- (b) The surveillance is proportionate to what it seeks to achieve.

The Authorising Officer will be responsible for considering all applications for covert surveillance and for granting or refusing authorisations as appropriate. The Authorising Officer will also be responsible for carrying out reviews and ensuring that authorisations are renewed or cancelled where necessary.

- 6.2 The minimum office, rank or position of an Authorising Officer has been designated by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. For a local authority the Authorising Officer must be the Director, Head of Service, Service Manager or equivalent.
- 6.3 The Council should also have in place a back-up system for situations where the Authorising Officer is unavailable to grant a written authorisation and the situation becomes urgent. This will enable officers to identify the person who is able to give authorisations in the Authorising Officer's absence.
- 6.4 Wherever knowledge of confidential information, such as a doctor's report, is likely to be acquired through the directed surveillance, a higher level of authorisation is needed. In the Council, this would be the Head or Paid Service (the Chief Executive) or the person acting as Head of Paid Service in his absence.
- 6.5 A list of those officers who have been nominated as Authorising Officers is given below at Annex 1.

- 6.6 It is also now recommended best practice that there should be a Senior Responsible Officer (SRO) in each public authority who is responsible for :
- The integrity of the processes in place to authorise directed surveillance
 - Compliance with RIPA and with the Codes of Practice
 - Engagement with the Commissioners and inspectors when they conduct their inspections, and
 - Where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.
- 6.7 As the SRO for a local authority has to be a member of the corporate leadership team, the Senior Responsible Officer for this Council will be the person named in Annex 1(b). He will also be responsible for ensuring that all authorising officers are of an appropriate standard in light of the recommendations or concerns raised_in the inspection reports prepared by the Office of Surveillance Commissioners following their routine inspections.
- 6.8 The SRO will also undertake an annual audit of records and will be responsible for the day-to day quality control.
- 6.9 There is also now a requirement for elected members of the Council to review the use of RIPA and to set the policy on covert surveillance at least once a year. Therefore, the Review Committee will review this Policy every 12 months and will report to Full Council, should they be of the opinion that it is not fit for purpose or requires amendment.
- 6.10 The Review Committee will also consider the Council's use of RIPA every 12 months to ensure that it is being used consistently with the Council's Policy.
- 6.11 The Committee should not, and will not, be involved in making decisions on specific authorisations.
- 6.12 RIPA Monitoring Officer (RMO) will be the person named in Annex 1(c). The role of the RMO is as follows:
- Maintaining the Central Record of authorisations and collating the original applications/authorisations, reviews, renewals and cancellations.
 - Oversight of submitted RIPA documentation.
 - Organising and maintain a RIPA training programme.
 - Raising RIPA awareness within the Council.
 - Appointment of investigating officers as authorised applicants by their inclusion in annex 2.

AUTHORISATION PROCEDURE

7 STAGE 1 - Internal Authorisation

- 7.1 Any of the Council's authorised applicants(Annex 2) (who will invariably also be the investigating officer) may make an application for authorisation under RIPA to conduct a covert operation to an authorised officer (Annex 1). Any application for permission to conduct a covert operation must be in writing on the appropriate form. The forms listed below are standard forms for use by all public authorities that are listed in Schedule 1 of RIPA. The forms are an indication of the information required before an authorisation can be granted and are consistent with the requirements in the codes of practice. The Home Office recommends that all users of the form should add any information that is relevant to their organisation but avoid taking any information out of the forms.
- 7.2 Forms for the application, review, renewal or cancellation of authorisations are available in the Council's G/shared/RIPA/RIPA forms file.

Directed Surveillance

- DIRECT1 – Authorisation Directed Surveillance
- DIRECT2 – Review of a Directed Surveillance Authorisation
- DIRECT3 – Renewal of a Directed Surveillance Authorisation
- DIRECT4 – Cancellation of a Directed Surveillance Authorisation
- JUDICIAL1 – application for judicial approval for authorisation to conduct directed surveillance

Covert Human Intelligence Source

- CHIS1 – Application for Authorisation for the use or conduct of a Covert Human Intelligence Source
 - CHIS2 – Review of a Covert Human Intelligence Source Authorisation
 - CHIS3 – Application for Renewal of a Covert Human Intelligence Source Authorisation
 - CHIS4 – Cancellation of a Covert Human Intelligence Source Authorisation
 - JUDICIAL1 – application for judicial approval for authorisation to use CHIS
- 7.3 A written application for authorisation must record:
- (a) The action to be authorised, including any premises or vehicles involved

- (b) The identities, where known, of those to be the subject of surveillance;
- (c) A full account of the investigation or operation;
- (d) Justifying that the authorisation is sought for investigating a crime which carries a custodial sentence of 6 months or more (see paragraph 10.1)
- (e) How and why the investigation is both necessary and proportionate.
- (f) Authorising Officer should state in his own words why the investigation is necessary and proportionate.

7.4 It is considered good practice for a simple sketch map of the immediate area of investigation, detailing specific observation points, location of monitoring equipment etc, to be appended to the application for authorisation. Further details on completing a written application for authorisation are contained in the Codes of Practice.

8 CONSIDERATION

- 8.1 The investigating officer will keep notes during the initial stages of gathering intelligence. Such records will be held on the case file.
- 8.2 Requests to the authorising officer for authorisation to mount a covert operation will be subject to and based on, the intelligence gathered and recorded on the investigator's notes. The officer will consider if such an operation would assist in investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1)
- 8.3 Responsibility for authorisation for a covert operation will be considered on the grounds that any operation is likely to be of value in connection with;
 - investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1)
 - and that the proposed covert operation is a reasonable means of achieving the desired result. This must be balanced with the individual's rights under the Human Rights Act 1998.
- 8.4 Any authorisation must be on the basis that the activity is both necessary and proportionate. The Authorising Officer must also take into consideration the risk of intrusion into the privacy of persons other than those directly implicated in the operation or investigation (collateral intrusion)
- 8.5 Additional considerations with respect to the use of a CHIS are
 - their likely value as a source of information
 - assessment of any risks to them
 - the use of vulnerable individuals

- juvenile sources i.e. under 18 years

8.6 For further guidance on these issues please see the Home Office code of practice on the use of Covert Human Intelligence Source. The use of CHIS will only be in exceptional circumstances (See paragraph 5.1 above), and prior advice should be sought from the SRO or RMO.

8.7 If in doubt, ask the SRO or RMO Officer BEFORE any directed surveillance and/or CHIS is authorised, rejected, renewed or cancelled.

9 SERIOUSNESS THRESHOLD

9.1 No officer may make an authorisation under this policy unless it concerns conduct which constitutes one or more criminal offences (or would do if it all took place in England and Wales) and either the criminal offence (or one of the criminal offences):

- Is or would be an offence which is punishable by a maximum term of at least 6 months of imprisonment; or
- Is an offence under:
 - i. Section 146 of the Licencing Act 2003(3) (sale of alcohol to children);
 - ii. Section 147 of the Licencing Act 2003 (allowing the sale of alcohol to children);
 - iii. Section 147A of the Licencing Act 2003(4) (persistently selling alcohol to children);
 - iv. Section 7 of the Children and Young Persons Act 1933(5) (sale of tobacco, etc., to persons under eighteen).

9.2 In exceptional circumstances, where no named authorising officer is available, any Service Manager or more senior appointment is prescribed within legislation as an authorising officer. They would not however be permitted to authorise unless they have previously received relevant RIPA training.

9.3 Officers should not authorise their own activities except as a matter of urgency.

10 DURATION OF AUTHORISATIONS

10.1 Authorisations for directed surveillance will cease to have effect three months from the day of issue and for the use of covert human intelligence sources, twelve months. The expiry date and time on the authorisation form will therefore always be three/twelve months from the date of authorisation, controlled by review and cancellation. Authorisations should be reviewed on a regular basis, using the

appropriate form, to ensure that they are still necessary and proportionate.

- 10.2 Authorisations can be renewed prior to their expiry providing the criteria in paragraph 3.9 and the Code of Conduct is met. Applications for renewal must be in writing and the application and the decision, detailing the grounds for the renewal or refusal to renew or withdrawal of the authorisation.
- 10.3 When the case is closed prior to the authorisation expiring or covert surveillance is no longer required or meets the criteria for authorisation, which ever is the sooner, the authorisation must be cancelled by the authorising officer using the appropriate form.

11 STAGE 2 - Judicial Oversight and Approval

- 11.1 The *Protection of Freedoms Act* brought into law the Judicial oversight of all RIPA approvals by Local Authorities. It inserts sections into the 2000 Act which mean that authorisations whilst still given by Council staff, do not take effect until a Magistrate has approved them. The Judicial oversight does not take the place of the current authorisation process – it is an oversight function and not an authorisation function. **The Authority may not undertake the regulated activity until Judicial Approval has been given.**
- 11.2 The Authority has appointed all investigation officers and managers to make applications under this part (Annex 2) (in accordance with s.223(1) of the Local Government Act 1972), subject to their inclusion in the approved list at annex 2 by the *RMO*. The Authority has authorised the *RMO* to appoint as many investigation officers and managers to make applications under this part as he sees fit. Those officers must be listed at annex 2 and any decisions to or deletions from that list must be notified to Members as part of the regular reporting protocols.
- 11.3 Once the application has been approved by an officer listed in Annex 1, the Authority must apply to the Magistrates Court for an order confirming that:
- a. The person who granted or renewed the authorisation, or the notice, was entitled to do so;
 - b. The grant or renewal met the relevant restrictions or conditions;
 - c. There were reasonable grounds for believing (at the time it was made or renewed) that obtaining the information described in the form was both necessary and proportionate; and
 - d. It is still (at the time the court considers it) reasonable to believe the grant/renewal to be both necessary and proportionate.

- 11.4 The oversight will be determined at a hearing in front of a single Magistrate or District Judge. An officer appointed to do so (and listed at Annex 2 i.e. also the authorised applicant) must approach the court office to arrange the hearing.
- 11.5 There is a form held in G/Shared/RIPA/RIPA forms/JUDICIAL1 that must accompany all applications. The authorised applicant (normally the *Officer in Charge* of the case) must complete this form electronically, once the *Authorising Officer* has approved the application. (This also applies to requests for renewals of authorisations.)
- 11.6 Once the form has been completed, the authorised applicant must submit this, along with electronic copies of any accompanying documents (set out below) to the *Authorising Officer for checking*. Once satisfied with the standard of the form and any attachments, the *Authorising Officer* must submit the bundle electronically to the *RMO* for onward transmission to the courts.
- 11.7 The bundle for submission to the courts must include:
- a. The application for the order approving the authorisation;
 - b. The authorised application or renewal form;
 - c. Any supporting information, that exceptionally, does not form part of the form;
 - d. Any information you have that might show a reason to refuse the application;
 - e. An extract from the relevant legislation showing the offence being investigated and that it carries the relevant maximum sentence (unless it is one of the offences provided for in 7A(3)(b) of the 2010 regulations (see 10.1 below) and
 - f. A copy of the Annexes 1 and 2 to this policy, showing that the *Authorising Officer* and the authorised applicant are both persons duly approved to carry out those functions by the Authority.
- 11.8 The form requires that the authorised applicant makes a declaration of truth and disclosure, as part of the application for Judicial approval. **It is important that this is not signed lightly;** check that all material facts have been disclosed within the bundle and that the contents are accurate and true.

- 11.9 The authorised applicant must attend the hearing and assert the accuracy of the application. They must also be prepared to answer any questions about the application and the investigation which the Magistrate may have. At the end of the application, the magistrate will give the Court's decision.
- 11.10 Once the bundle has been submitted the *RMO* will note this in the central record. Within 24 hours of receiving the Court's decision, the applicant must notify the *RMO* and the *Authorising Officer* by sending them an email. Both parties must also be sent copies of any court order. The original must be retained on the investigation file. The *RMO* will note the record of the outcome.
- 11.11 In the event that the Court refuses the application, the authorised applicant, the *Authorising Officer* and the *RMO* will review the decision within 24 hours and decide if they wish to make representations to the Court before a *Quashing Order* is made.
- 11.12 If the Authority decides to make representations about a refused application, the *Authorising Officer and RMO* will immediately notify the court officer of this and request a hearing.
- 11.13 Grounds for the submission should be set out in writing and notified to the court before the hearing. It must be drafted by the applicant and approved by the *Authorising Officer and RMO*. It must contain the standard declaration as set out above.
- 11.14 If the Authority elects to seek a hearing, the applicant, *Authorising Officer and RMO* will attend the hearing.
- 11.15 At the conclusion of the hearing, the *RMO* will note the outcome in the central record.

12 CENTRAL RECORD OF ALL AUTHORISATIONS

- 12.1 The SRO, Head of Legal, Estates and Member Services will maintain a central record of all authorisations granted, renewed or cancelled by the council. These records to be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners, upon request.

- 12.2 Within one week of the relevant date, a copy of the application, review, renewal, court order and cancellation form is to be placed in the RIPA Records File kept secure by the Secretary/Personal Assistant to the Head of Legal, Estates & Member Services.
- 12.3 All records shall be retained for a minimum of three years to ensure that they are available for inspection by the Commissioner. Where there is a belief that the material relating to an investigation could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with the Criminal Procedure and Investigations Act 1996 and kept a period of at least five years.

13 CONFIDENTIAL INFORMATION

- 13.1 There are no special provisions under RIPA for the protection of “confidential information”. Nevertheless, special care needs to be taken where the subject of the investigation or operation might reasonably expect a high degree of privacy or where confidential information is involved.
- 13.2 Confidential Information can include matters that are subject to legal privilege, confidential personal information or confidential journalistic material.
- 13.3 In practice, it is likely that most of the surveillance authorised and carried out by the Council would not involve confidential information. However, where there is a possibility that the use of surveillance will enable knowledge of confidential information to be acquired e.g. conversations between a doctor and patient, a higher level of authority for such surveillance is required.
- 13.4 In cases where it is likely that knowledge of confidential information will be acquired, the use of covert surveillance is subject to a higher level of authorisation, namely by the Head of Paid Service (Chief Executive) or, in his/her absence, the Chief Officer acting as Head of Paid Service.
- 13.5 The authorised applicant should complete the application for authorisation of directed surveillance in the usual way, but with sufficient indication of the likelihood that confidential information will be acquired.
- 13.6 At all times during any operation officers are to conduct themselves in a manner that will not breach
- The Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000
 - Data Protection Act 1998
 - The Council’s Enforcement Concordat
 - This Guidance & Working Code of Practice

- Any code of practice issued by the Home Office

14 COMPLAINTS

- 14.1 There is provision under RIPA for the establishment of an independent Tribunal. This Tribunal will be made up of senior members of the legal profession or judiciary and will be independent of the Government.
- 14.2 The Tribunal has full powers to investigate and decide upon complaints made to them within its jurisdiction, including complaints made by a person who is aggrieved by any conduct to which Part II of RIPA applies, where he believes such conduct to have taken place in "challengeable circumstances" or to have been carried out by or on behalf of any of the intelligence services.
- 14.3 Conduct takes place in "challengeable circumstances" if it takes place:
- (i) with the authority or purported authority of an authorisation under Part II of the Act; or
 - (ii) the circumstances are such that it would not have been appropriate for the conduct to take place without authority; or at least without proper consideration having been given to whether such authority should be sought.
- 14.4 Further information on the exercise of the Tribunal's functions and details of the relevant complaints procedure can be obtained from:

Investigatory Powers Tribunal
 PO Box 33220
 London
 SW1H 9ZQ
 020 7273 4514

- 14.5 Notwithstanding the above, members of the public will still be able to avail themselves of the Council's internal complaints procedure, where appropriate, which ultimately comes to the attention of the Local Government Ombudsman.

15 THE OFFICE OF SURVEILLANCE COMMISSIONERS

- 15.1 The Act also provides for the independent oversight and review of the use of the powers contained within Part II of RIPA, by a duly appointed Chief Surveillance Commissioner.

- 15.2 The Office for Surveillance Commissioners (OSC) was established to oversee covert surveillance carried out by public authorities and within this Office an Inspectorate has been formed, to assist the Chief Surveillance Commissioner in the discharge of his review responsibilities.
- 15.3 One of the duties of the OSC is to carry out planned inspections of those public authorities who carry out surveillance as specified in RIPA, to ensure compliance with the statutory authorisation procedures. At these inspections, policies and procedures in relation to directed surveillance and CHIS operations will be examined and there will be some random sampling of selected operations. The central record of authorisations will also be inspected. Chief Officers will be given at least two weeks notice of any such planned inspection.
- 15.4 An inspection report will be presented to the Chief Officer, which should highlight any significant issues, draw conclusions and make appropriate recommendations. The aim of inspections is to be helpful rather than to measure or assess operational performance.
- 15.5 In addition to routine inspections, spot checks may be carried out from time to time.
- 15.6 There is a duty on every person who uses the powers provided by Part II of RIPA, which governs the use of covert surveillance or covert human intelligence sources, to disclose or provide to the Chief Commissioner (or his duly appointed Inspectors) all such documents and information that he may require for the purposes of enabling him to carry out his functions.

IMPORTANT NOTE

This Procedure Manual has been produced as a guide only and is primarily based on the revised Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources published by the Home Office. These Codes can be found at www.homeoffice.gov.uk.

For further information please contact Legal Services:

Nicholas Khan, Director, RIPA Senior Responsible Officer– 01702 318169, EXT 3702 nicholas.khan@rochford.gov.uk

Angela Law – Assistant Director (Legal) Monitoring Officer, RIPA Monitoring Officer– 01702 318131, EXT 3701 angela.law@rochford.gov.uk

ANNEX 1

Appointment of Authorised Officers

The following officers have been appointed by the Council as Authorising Officers for the purposes of RIPA:

Martin Howlett (Principal Environmental Health Officer)

Paul Gowers (Overview & Scrutiny Officer)

Ray How (Fraud Manager)

Amar Dave (Chief Executive and Head of Paid Service)

1(b) Senior Responsible Officer

Nicholas Khan, Director

1(c) RIPA Monitoring Officer

Angela Law, Assistant Director (Legal) Monitoring Officer

ANNEX 2

Council's Authorised Applicants

In order for the Authority's RIPA authorisations to take effect, they must be approved by a Magistrate. That process requires applicants in person to appear for the Authority and the official court service guidance makes it clear that these should be investigators not lawyers.

Any person from this Authority wishing to make an application must be named in this annex and must take to court a copy of this annex and their official identification.

I certify that the following have been appointed under section 223(1) of the Local Government Act 1972 to appear for the Authority and are approved applicants in accordance with paragraph 9.2 of this policy:

Name	Section	Appointed from	Appointment terminated
Caroline Bell	Street Scene	15/04/14	
Graham Manser	Fraud	15/04/14	
Ivor Chapman	Environmental Health	15/04/14	
Jane Spink	Environmental Health	15/04/14	
Kim Appleby	Fraud	15/04/14	
Lesley Athey	Street Scene	15/04/14	
Yvonne Dunn	Planning Enforcement	15/04/14	
Graham Browne	Anti social behaviour	15/04/14	
Martin Howlett	Environmental Health	15/04/14	
Ray How	Fraud	15/04/14	
Janette Fowler	Licensing	15/04/14	
Andrew Paddon	Environmental	15/04/14	

Signed.....

Angela Law
RIPA Monitoring Officer