

WELWYN HATFIELD BOROUGH COUNCIL
ESTATE MANAGEMENT SCHEME MEMBER GROUP – 6 DECEMBER 2021
REPORT OF THE HEAD OF PLANNING

PROPOSED CHANGES TO THE OPERATION OF THE ESTATE MANAGEMENT SCHEME

1 Executive Summary

- 1.1 Cabinet first considered a report on the review of the Welwyn Garden City Estate Management Scheme in July 2015 to seek to resolve ongoing problems and concerns regarding the Scheme's administration, notably the different enforcement arrangements for freehold, leasehold and council-tenanted properties. The July 2015 report covered in significant detail a number of alternative options that could be considered, including applying to the High Court Land Tribunal to vary or terminate the scheme and replacing it with one or more Article 4 Directions.
- 1.2 Following legal advice that specified that an Article 4 Direction would need to provide at least the equivalent protection as the existing scheme, the Council was advised to publicly consult on this proposal and other available options before proceeding.
- 1.3 As a result, Cabinet agreed to an eight week period of public consultation on alternative options for the future of the Scheme in August 2016. The public consultation ran during October and November 2016 and, following analysis of the feedback received, the following recommendations were made to and agreed by Cabinet in November 2017:
 - The principle of creating an Estate Management Scheme (EMS) team to manage and administer the Scheme;
 - The principle of establishing fees for EMS applications to cover the costs of the team;
 - The production of an EMS design guide;
 - An eight week period of consultation to seek the views on the principles above and the draft design guide;
 - The production of a report which: sets out the responses to the consultation, details the arrangements for an EMS team, details of the fee schedule and proposes the adoption of a design guide.
- 1.4 A two year fixed term appointment was made to the EMS Manager post at the beginning of May 2019 (extended to March 2022) to deliver the consultation and begin the handover process from the Development Management team for determining applications and investigating breaches. The EMS Manager has also undertaken research on how properties across the different tenures are affected by the Scheme, its policies and procedures.
- 1.5 The consultation ran from the end of June to the beginning of September 2019, and sought answers for specific questions relating to the future management proposals for the EMS and residents individual thoughts with a view to determining the enthusiasm for the introduction of an application fee schedule,

the establishment of a dedicated EMS team and the launch of an EMS website and design guide.

- 1.6 The purpose of this report is to:
- Summarise the results of the consultation undertaken over summer 2019 which sought views on the creation of an EMS team, indicative fees for applications and the draft design guide;
 - Highlight how freehold, leasehold and council-tenanted properties are captured by the EMS;
 - Propose a defined future for the management and delivery of the EMS.

2 Recommendations

- 2.1 The EMS Member Group note the results of the consultation that 231 people responded to express concerns but that this is a very low return rate which might imply that the majority of residents living within the EMS area do not feel strongly about the proposed future management arrangements for the Scheme and feedback any comments to Cabinet on the consultation.
- 2.2 The EMS Member Group note the adoption of the EMS website www.wgc-ems.org as a one-stop portal for residents and other interested parties to access the design guide, EMS policy information and the EMS application process.
- 2.3 The EMS Member Group recommends that Cabinet agrees to the adoption of the EMS Design Guide (www.wgc-ems.org/design-guide/) and delegate authority to the Head of Planning in consultation with the Executive Member, Environment, Planning, Estates and Development, to make minor changes and improvements to the EMS Design Guide.
- 2.4 The EMS Member Group recommends to Cabinet that the current terms of reference of the Welwyn Garden City Estate Management Appeals Panel are amended to review cases brought to them by officers and those “called-in” by members and be renamed the Welwyn Garden City Estate Management Panel. The current terms of reference of the panel are at Appendix 1 of this report.
- 2.5 The EMS Member Group note the introduction of application fees and proposed fees as set out in the report, providing any comments to Cabinet for consideration as part of the budget setting process.

3 Explanation

The proposed way forward

- 3.1 Following the agreement of Cabinet to the principle of establishing an EMS team, the principle of fees and the creation of a design guide, Place Services were commissioned to undertake research into similar schemes elsewhere in the country to establish an appropriate fee schedule for the various proposals that are typical within the EMS. Welwyn Hatfield principal planners were involved in the development of the draft design guide, helping to advise Place Services on the interpretation of the current EMS policies and how they are currently applied. This knowledge was drawn together to create the draft design guide which it is hoped will provide clearer guidance on acceptable alterations within the EMS area. Place Services also created the Welwyn Garden City Estate Management Scheme website which includes historical information, the

review process so far, the application procedure, the proposed new principles and the draft design guide.

The 2019 Consultation

- 3.2 From 24 June to 6 September 2019, the Council consulted approximately 10,900 known addresses within the EMS areas of Welwyn Garden City. Each address was sent a letter which provided a brief history of the EMS, the challenges faced and the progress made so far with regard to future management options. The letter introduced the draft EMS website and invited people to view the new principles and design guide before completing an online feedback form. Residents were also given the option of being sent a paper copy of the new principles and design guide should they prefer. As the new management proposals affect only those living in the EMS area, and to reduce cost, it was decided to limit the letter to addresses within the EMS area only. The consultation was promoted more widely via the Council’s One Welwyn Hatfield website, press release and Twitter feed.
- 3.3 The consultation had received 200 responses through the website feedback page or through submitting a hard copy, of which 198 are residents of Welwyn Garden City and of these 91% live within the EMS area. In addition to the responses received via the prescribed feedback routes, the consultation also received 31 representations to the EMS email inbox and through the post. Most of these responses raise a specific question regarding the EMS rather than give a positive or negative view on the new proposals. Where a view was given it is generally negative toward the new principles and fees (approximately 1 in 4 in favour). Overall, the response rate to the consultation was low and represents a 2% return rate.
- 3.4 The previous consultation of autumn 2016 explored options for the future of the scheme which attracted a higher return (11%), and of this, 81% of respondents thought that the context and history of Welwyn Garden City justified the additional rules and controls. This may indicate that, although residents feel the EMS is important to preserve the Garden City, they are less concerned with the detail of how this is achieved by the council.
- 3.5 Prior to giving individual views and feedback on the proposals, the consultation asked three questions which are set out, with results, in the table below:

Question	Agree	Disagree
Do you agree that the formation of an EMS team is a positive change for the Garden City?	41%	59%
Do you agree the launch of a design guide will raise awareness and promote good design?	55%	45%
Do you agree that the fee levels are suitable for the application grades?	24%	76%

- 3.6 Generally, the responses to the questions and supporting comments fell into two categories: people who were strongly opposed to the new principles and fees, and people who were broadly supportive. There were also responses that, despite not agreeing to the establishment of an EMS team and the introduction of fees, were supportive of the design guide as a tool to influence future applications.
- 3.7 The proposed fee levels are set out in Appendix 2.

4 **The Estate Management Scheme Draft Design Guide**

4.1 Until recently there has not been an easily accessible source of information or guidance to help residents, tenants, planning agents, ward councillors, estate agents, future residents/tenants, etc understand the EMS policies and how they should be interpreted to influence plans for potential development. The draft design guide (www.wgc-ems.org/design-guide/) has allowed the Council to distil officer knowledge and experience into a single guide which translates the EMS policies into clear design directions for the types of alteration most commonly undertaken on residential properties.

4.2 Respondents to the consultation agreed that the introduction of a design guide for the EMS would be a positive step. Comments received were focused on specific aspects of the design guide with some thoughtful and insightful recommendations made, particularly concerning front door colour and design. The decision to refuse an appeal at the August 2019 meeting of the Estate Management Appeal Panel to retain a front door was picked up by respondents and used as an example to illustrate the frustration and overly prescriptive assessments made regarding front doors. This was a view that was supported by the Welwyn Garden City Society. As a result of the comments received the following revisions are proposed for discussion by the group and possible inclusion within the design guide:

- **Front doors:** The primary focus for front doors should be on suitable design, based on, where known, the original door or the style of the house and/or a prevalent type of door typical to the street scene. There should be less restriction on door colour, but residents should avoid strong bright colours opting for softer pastel or more natural heritage colours. It is proposed to add some examples of acceptable and unacceptable designs and colours to the design guide. Garage doors visible from the public realm should follow the same principals.
- **Hardstanding:** The addition of, or increase to, hardstanding can be one of the most harmful alterations to the EMS area. Considerate design is essential to avoid harm to the character of Welwyn Garden City. Car parking in most residential areas of the EMS is challenging and the pressure to secure off-road parking is increasing, and likely to continue with the rise in electric car ownership. Members may wish to review the current expectations regarding hardstanding and whether there is room for more flexibility if green landscaping is used effectively.
- **Commercial vehicles:** The design guide prohibits the storing or parking of caravans, motorhomes, heavy /industrial commercial vehicles, boats or trailers upon properties within the EMS area. Many tradespeople park their vans on their driveways for security and insurance reasons, which is permitted, and clarity is needed within the design guide to differentiate large commercial vehicles from acceptable domestic scale vehicles.
- **Homes in Multiple Occupation (HMO):** Over the last 12 months there has been a small increase in applications to convert single dwellings into HMO compared to the previous year. At present an application to convert a single home into an HMO is assessed against the existing EMS policies and design guidance which is limited to the physical changes to the external appearance of the property only. The EMS policies do not give consideration to retaining

homes within the EMS area as single dwellings only. Members may wish to discuss the impact of HMO conversions within the EMS area and develop policy accordingly.

- **Solar Panels:** In June 2019 the council declared a climate emergency and began to work toward carbon neutrality. The Estate Management Scheme should support this goal and enable residents to also make alterations to offset climate change. However, current design guidance expects solar panels to be located to the rear or side roof slopes and not upon a street facing slope. As the effectiveness of solar panels is dependent upon orientation relative to the sun, many properties within the EMS area would be unable to install solar panels as front facing roof slopes are the only viable option. Members may wish to discuss the environmental gain of solar panels on front facing roof slopes against the aesthetic impact to the property and wider Estate Management Scheme area.

- 4.3 It is not intended for the design guide to be a static document and should be revised in response to circumstances that highlight the need for greater clarity around design proposals or in response to changes in building control regulations (e.g. doors and windows to meet stricter environmental/energy efficiency controls). It is recommended that delegated authority be given to the Head of Planning in consultation with the Executive Member, Environment, Planning, Estates and Development to approve minor changes to the design guide where the principles of the EMS policies are not compromised. Where new policy or significant change to existing policy is required, then proposals would be brought to the EMS Member Group for discussion before recommendations for change are presented to Cabinet for approval.

5. Estate Management Appeals Panel

- 5.1 Under the current arrangements an applicant may appeal the refusal of consent to the Estates Management Appeal Panel (EMAP). Typically, an appellant will submit the appeal based on why they disagree with the officer decision whilst the EMS Team will make the case for how they came to the original decision supported by policy and established design guidance. The panel will hear from both sides before voting on whether to allow the appeal or not.
- 5.2 In practice, EMAP revisits delegated decisions that have been assessed and decided using the agreed EMS policies and the established design requirements. Essentially, EMAP is a revisit of an application when a reasoned decision has already been made. Successful appeals are infrequent and when allowed they typically involve the more contentious areas of the EMS such as proposals for front doors and hardstanding, which are areas of the scheme recommended for review by the EMS member group.
- 5.3 The schedule within the “green booklet”, which sets out the EMS, does not specify the need for an appeals panel. Instead the schedule directs parties to appoint a single arbitrator to hear any dispute or disagreement between the council and an owner in connection with administration or interpretation of the EMS. Legal advice suggests that an arbitrator would not determine the application afresh, but would consider whether the council had acted unreasonably by withholding consent.

- 5.4 The scheme recommends the appointment of an arbitrator through the Royal Institute of Chartered Surveyors (RICS). It is understood a fee is payable to RICS to appoint the arbitrator. The nominated arbitrator would also have a fee for services which varies by individual. It would be expected that the losing party would be liable for costs.
- 5.6 It is, therefore, recommended that owner appeals against the refusal of consent are to be directed to an independent arbitrator rather than be decided by EMAP and that the terms of reference of the Welwyn Garden City Estate Management Panel are amended accordingly. It is further recommended that the EMS Member Group recommends to Cabinet that the current terms of reference of the Welwyn Garden City Estate Management Appeals Panel are amended to review cases brought to them by officers and those “called-in” by members and be renamed the Welwyn Garden City Estate Management Panel.
- 5.7 It is acknowledged that some applications may be more complicated or include proposals that are not covered by the existing policies or design guidance. In cases such as these, it is recommended the delegated officer consult the EMP member group for guidance before issuing the decision. This mechanism will also allow members to “call in” EMS applications should they, or other consultees, have concerns.

6 Enforcement of the Estate Management Scheme

- 6.1 Within the Estate Management Scheme area there are broadly three tenure types: freehold, leasehold and council housing stock. The EMS was approved by the High Court in 1973 and initially only covered residential properties where the freehold had been purchased under the Leasehold Reform Act. However, the scheme also captures leasehold properties that have been bought or sold since the scheme’s introduction in June 1973. In addition, council housing stock is also covered by the scheme as a result of the 1977 transfer of property from the Commission for New Towns. It is likely that the majority of residential property within the EMS area is captured by the scheme.
- 6.2 Over preceding years there has been a lack of clarity and action regarding enforcement of the EMS and there are now many hundreds of breaches across the Scheme area and across all tenures. These legacy issues will be very difficult to resolve and would include the council needing to remedy breaches on its own stock. It is, therefore, important that the council is seen to be consistent and equal in any action it takes to tackle breaches of the scheme.
- 6.3 The EMS would benefit from an enforcement protocol based on the five principles within Corporate Policy (proportionality, accountability, consistency, transparency, targeted). It should also be understood that it is at the council’s discretion as to what (if any) action should be taken as not all breaches can be judged as harmful. At present, there is an expectation that any breach of the scheme will see the breach tackled/removed.
- 6.4 Action should be targeted at newer harmful breaches that are in areas with few historic precedents. In the first instance the council should look to negotiate and attempt to resolve the issue via informal means. Should a resolution not be forthcoming then the council may look to record the breach within the relevant deed packet so the breach may be taken into account with a view to it being

corrected before a property is sold/bought. In the case of serious breaches the council may look to seek a county court injunction.

7 Covenant Consent for Long Leasehold Properties

- 7.1 In most cases, a tenant of a long leasehold property would be required to obtain covenant consent from the council to carry out certain works to the property. This is also the case for properties which have been sold by the council where former landowner consent would be required. This is an additional obligation to Estate Management Scheme consent. The Estates Team are informed of all leasehold applications so residents could be contacted as there is sometimes a charge to pay.
- 7.2 Covenant consent is significant as, depending on the alteration to the property, the council may be due 50% of any uplift in value of the property. It should be noted that the terms of covenant consent are set out within the lease and therefore specific to each property.
- 7.3 A long leasehold tenant or owners of property where the council is the former landowner, would still need to apply for EMS consent to ensure an acceptable design that protects the character of WGC.
- 7.4 The application process for EMS will be reviewed so that where possible, a single application could be used for both covenant consent and EMS consent, with clear explanation on fees payable, so residents understand which fees may apply.

8 Links to Corporate Priorities

- 8.1 The subject of this report is linked to the following priorities: Quality Homes and A Well-Run Council.

9 Legal Implications

- 9.1 The High Court approved the Estate Management Scheme on 7th June 1973. The Scheme applies to properties within the EMS area in respect of which the freehold has been acquired since 7th June 1973.
- 9.2 Previous legal advice has been considered and appropriate steps were taken concerning consultation on future options for the EMS.
- 9.2 It may be necessary to update the Constitution and Planning Service Scheme of Delegation depending upon the decision-making arrangements that are implemented.
- 9.3 QC advice is that the council would be likely to sustain reputational damage and may be at risk of legal challenge should it ignore its obligation to administer the Estate Management Scheme.

10 Financial Implications

- 10.1 The future financial arrangements for the Estate Management Scheme will be presented as part of the budget proposals following consultation with Financial Services, Housing Services and the Estates Team.

10.2 The proposed fees and charges will be incorporated into the budget setting process, for a Council decision in February 2022. Income will also be estimated and included in the budget proposals. The intention is that the income from the scheme covers the cost of administering the scheme which is around £57k per annum.

11 Risk Management Implications

11.1 Potential risk management implications should the Estate Management Scheme be inconsistently applied across different tenures.

12 Security and Terrorism Implications

12.1 There are no security or terrorism implications associated with this report.

13 Procurement Implications

13.1 The Council undertook a tender process for the production of the EMS design guide and website.

14 Human Resources Implications

14.1 Should the fees be approved, the Corporate Management Team will consider the resource requirements for the administration of the scheme.

15 Climate Change Implications

15.1 Following the climate change emergency declared by the Council, it is recommended that policy and design guidance for renewable energy and offsetting is reviewed to ensure the EMS is supporting the Council's priorities.

16. Policy Implications

16.1 Responses to the proposals within the draft design guide will allow the Council to clarify its position regarding certain types of alterations, however, these changes are unlikely to materially affect the existing EMS policies.

17 Equalities and Diversity

17.1 An Equality Impact Assessment (EqIA) has been carried out in connection with the recommendations in this report. This has identified neutral impacts in respect of all the protected characteristics, although it is noted that the design guide could contain advice on specialist adaptations for those with a disability.

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Date: November 2021

Background Papers

Draft design guide www.wgc-ems.org/design-guide/

Appendixes

Appendix 1 Terms of Reference
Appendix 2 Proposed Fee Structure
Appendix 3 Permissions required and fee schedule