

# City Council - 6 March 2023

## Report of the Leader of the Council

### Corporate Director/ Director:

Mel Barrett, Chief Executive

### Report Author and Contact Details:

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### Title: Update on Statutory Intervention

#### Does the report form part of the Budget or Policy Framework?

☒ Yes ☐ No

#### Does this report contain any information that is exempt from publication?

Yes

An appendix to the report (Appendix Three) is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the finance or business affairs of a particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it contains commercially sensitive information and the disclosure of that information could jeopardise the commercial interests of a third party.

#### Relevant Council Plan Key Outcome:

|                                 |                                     |
|---------------------------------|-------------------------------------|
| Clean and Connected Communities | <input type="checkbox"/>            |
| Keeping Nottingham Working      | <input type="checkbox"/>            |
| Carbon Neutral by 2028          | <input type="checkbox"/>            |
| Safer Nottingham                | <input type="checkbox"/>            |
| Child-Friendly Nottingham       | <input type="checkbox"/>            |
| Healthy and Inclusive           | <input type="checkbox"/>            |
| Keeping Nottingham Moving       | <input type="checkbox"/>            |
| Improve the City Centre         | <input type="checkbox"/>            |
| Better Housing                  | <input type="checkbox"/>            |
| Financial Stability             | <input type="checkbox"/>            |
| Serving People Well             | <input checked="" type="checkbox"/> |

## 1. Summary

- 1.1 This report updates City Council regarding the statutory intervention currently in place to secure the council's compliance with its Best Value Duty; confirms the Government's latest decision and further confirms that Instructions have been received from the Improvement and Assurance Board which the council must comply with.

## **2. Recommendations**

- 2.1 That the latest position on the statutory intervention and the Instructions issued by the Improvement and Assurance Board are formally noted.
- 2.2 That the Instructions are appended to the Together for Nottingham Plan.

## **3. Reasons for recommendations**

- 3.1 The council is under statutory intervention which seeks to ensure that the council complies with its statutory Best Value Duty. This has implications for the whole council and as such it is important that councillors are kept apprised of the latest position regarding this process.
- 3.2 The Together for Nottingham Plan is the overarching document which sets out the council's improvement journey and is part of the suite of the council's policy documents. Given the status of the Instructions and their central role in ongoing improvement activity then it is appropriate to formally append them to the Together for Nottingham Plan.

## **4. Other options considered in making recommendations**

- 4.1 The other option would be to not note the latest position regarding the statutory intervention. This would miss the opportunity to ensure that the council has both formally noted the latest decision from the Department for Levelling Up, Housing and Communities (DLUHC) on the matter and the issuing of Instructions by the Improvement and Assurance Board.

## **5. Consideration of Risk**

- 5.1 Formally noting the update on statutory intervention does not have any risk implications directly associated with it.

## **6. Best Value Considerations**

- 6.1 The council is currently subject to a statutory intervention as the Secretary of State for Levelling Up, Housing and Communities considers it to be failing to comply with its Best Value Duty.
- 6.2 The report provides an update on the statutory intervention and recently issued Instructions by the Improvement and Assurance Board which are designed to ensure that the council moves to a position whereby it can give assurance that it is fully compliant with its Best Value Duty. The Instructions issued by the Improvement and Assurance Board must be complied with and any failure to do so would lead to a strong likelihood of Commissioners being appointed by the Government.

## **7. Background (including outcomes of consultation)**

### Update on Statutory Intervention

- 7.1 On the 2<sup>nd</sup> September 2022 the council's Chief Executive received a letter from DLUHC which confirmed that the government considered the council to be failing to comply with its Best Value Duty, stemming from the investigations into the council's historic use of its Housing Revenue Account.

- 7.2 The letter also provided Directions to the council, under Section 15 (5) of the Local Government Act 1999, which placed the Improvement and Assurance Board, the body appointed to oversee the council's improvement journey, onto a statutory footing. This meant that the Improvement and Assurance Board became "empowered to direct, rather than guide, the council's improvement activities", in order to secure the council's compliance with its Best Value Duty.
- 7.3 This change in status of the Improvement and Assurance Board was noted at the City Council meeting on the 31<sup>st</sup> October 2022.
- 7.4 The Directions issued on the 2<sup>nd</sup> September 2022 are due to remain in force for two years unless the Secretary of State for Levelling Up, Housing and Communities decides in the interim that sufficient progress has been made which would allow them to be revoked or amended beforehand or, if ongoing concerns remain the Directions could be extended for a further period of time.
- 7.5 The letter also set out a very clear expectation from the Secretary of State that they would need to see significant progress in the council's improvement journey over the first three months of the new arrangements being in place. Stating that he would again consider exercising his powers under the Local Government Act 1999, including whether to appoint commissioners at the beginning of 2023.
- 7.6 In a letter dated the 2<sup>nd</sup> February 2023 (Appendix One), DLUHC confirmed to the council's Chief Executive that ministers had now reviewed the position on statutory intervention at the council and were content to continue with the current arrangements, concluding that the status of intervention would remain unchanged.
- 7.7 This decision was informed by a report received by the Secretary of State from the Improvement and Assurance Board and the submission of a body of evidence from the council. These submissions demonstrated a further step up in delivery of the improvement programme since the Directions were issued in September 2022, alongside satisfactory progress against the Improvement and Assurance Board's priority areas during that period.
- 7.8 The letter stressed the importance that both focus and momentum on improvement is retained going forward and that the Ministers will be reviewing the current intervention arrangements following the receipt of the next report from the Improvement and Assurance Board. On receipt of this report Ministers will determine whether further powers under the Local Government Act 1999, including the appointment of commissioners, need to be used.

#### Instructions from the Improvement and Assurance Board

- 7.9 The Improvement and Assurance Board has subsequently issued a number of Instructions to the council following on from the direction issued under Section 15 (5) of the Local Government Act 1999. These are, with one exception, provided in Appendix Two. The one Instruction not included in Appendix Two is included as a separate confidential appendix (Appendix Three).
- 7.10 Appendix Three is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the finance or business affairs of a particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in

maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose the information as it contains commercially sensitive information and the disclosure of that information could jeopardise the commercial interests of a third party.

7.11 The Instructions cover six priority areas which are:

- Governance
- Finance
- Transformation
- Corporate Planning
- Companies
- Workforce Culture and Performance Outcomes

7.12 It is important that the council not only delivers against these Instructions but that it also continues to complete the wider actions set out in its Together for Nottingham Plan at the required pace. Failure to do so will not only delay the council's improvement journey with implications as to how it is delivering its Best Value Duty, but is also likely to lead to an increase in the level of statutory intervention that it is subject to.

## **8. Finance colleague comments (including implications and value for money)**

8.1 In response to the Instructions, officers are undertaking an assessment of the required resourcing requirements to ensure there is sufficient organisational capacity to allow the Council to address and/or implement the Instructions. A report will be brought back to Executive Board setting out the necessary investment alongside a funding plan to make available the necessary resources. It should be noted that the Council's overall financial capacity remains very limited with respect to investment in new obligations and the allocation of funds to the Instructions will take priority over other commitments where necessary.

Ross Brown, Corporate Director Finance and Resources 21<sup>st</sup> February 2023

## **9. Legal colleague comments**

9.1 The legal issues that continue to arise out of the directions issued by the Secretary of State are alluded to in the body of the report. The Council remains under a statutory obligation to comply with those directions by virtue of section 15 (6) (b) of the Local Government Act 1999 and to provide such assistance as may be required in order to ensure that the directions are complied with. The instructions now issued by the Improvement and Assurance Board follow on from the directions issued by the Secretary of State and failure to comply with them will result in further ministerial action.

Malcolm R. Townroe – Director of Legal 22<sup>nd</sup> February 2023

## **10. Other relevant comments**

10.1 None

## **11. Crime and Disorder Implications**

11.1 Not applicable – this report concerns the formal noting of the latest position on the council's statutory intervention and the Instructions recently received.

**12. Social value considerations**

12.1 Not applicable – this report concerns the formal noting of the latest position on the council's statutory intervention and the Instructions recently received.

**13. Regard to the NHS Constitution**

13.1 Not applicable – this report concerns the formal noting of the latest position on the council's statutory intervention and the Instructions recently received.

**14. Equality Impact Assessment (EIA)**

14.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because this report concerns the formal noting of the latest position on the council's statutory intervention and the Instructions recently received.

**15. Data Protection Impact Assessment (DPIA)**

15.1 Has the data protection impact of the proposals in this report been assessed?

No



A DPIA is not required because this report concerns the formal noting of the latest position on the council's statutory intervention and the Instructions recently received.

**16. Carbon Impact Assessment (CIA)**

16.1 Has the carbon impact of the proposals in this report been assessed?

No



A CIA is not required because this report concerns the formal noting of the latest position on the council's statutory intervention and the Instructions recently received.

**17. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

17.1 None

**18. Published documents referred to in this report**

18.1 Nottingham City Council: Improvement and Assurance Board Report (2<sup>nd</sup> February 2023)

[Nottingham City Council: Improvement and Assurance Board report \(2 February 2023\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/Nottingham_City_Council_Improvement_and_Assurance_Board_report_2_February_2023.pdf)

18.2 Letter to Nottingham City Council Chief Executive, regarding statutory directions – 2<sup>nd</sup> September 2022 (Appendix One)

[Nottingham - letter to Chief Executive \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114444/Nottingham_-_letter_to_Chief_Executive.pdf)

18.3 City Council Report: Statutory Intervention and the Refresh of the Together for Nottingham Plan – 31<sup>st</sup> October 2022

[Agenda for City Council on Monday, 31st October, 2022, 2.00 pm - Nottingham City Council](#)

**Councillor David Mellen**  
**Leader of the Council**