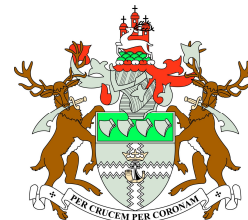


# Supplementary Council Agenda



**Epping Forest  
District Council**

## **Council Tuesday, 17th December, 2013**

**Place:** Civic Offices, High Street, Epping  
**Room:** Council Chamber  
**Time:** 7.30 pm  
**Committee Secretary:** Council Secretary: Ian Willett  
Tel: 01992 564243 Email:  
democraticservices@eppingforestdc.gov.uk

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### **7. REPORTS FROM THE LEADER AND MEMBERS OF THE CABINET (Pages 376 - 379)**

To receive reports from the Leader and members of the Cabinet on matters falling within their area of responsibility:

- (a) Report of the Leader;
- (b) Report of the Asset Management and Economic Development Portfolio Holder;
- (c) Report of the Environment Portfolio Holder;
- (d) Report of the Finance and Technology Portfolio Holder;
- (e) Report of the Housing Portfolio Holder;
- (f) Report of the Leisure and Wellbeing Portfolio Holder;
- (g) Report of the Planning Portfolio Holder - attached;
- (h) Report of the Safer, Greener and Transport Portfolio Holder;
- (i) Report of the Support Services Portfolio Holder.

### **14. DIRECTORATE RESTRUCTURING (Pages 380 - 381)**

#### **(a) Additional Recommendations**

(Proper Officer – I Willett, Assistant to the Chief Executive)

**(7A) That consideration be given to a report of the Proper Officer for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001 on any objection to the proposed appointment of Directors as listed in recommendation (8) by Cabinet members;**

**(7B) That in the event that any objection has been received, to determine whether they are not material and not well founded;**

**(12A) That consideration be given to a report of the Proper Officer for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001 on any objection to the proposed appointment of Assistant Directors as listed in recommendation (13) by Cabinet members;**

**(12B) That in the event that any objection has been received, to determine whether they are not material and not well founded.**

**(b) Legal Advice**

(Chief Executive) To consider Appendix 2 (Advice from the Council's appointed legal adviser on the new structure) (attached).

**19. JOINT ARRANGEMENTS AND EXTERNAL ORGANISATIONS (Pages 382 - 383)**

- (a) To receive from Council representatives the attached reports on the business of the following joint arrangements and external organisations and to receive answers to any questions on those bodies which may be put without notice:
  - (i) Waltham Abbey Town Partnership (Councillor H Kane)(attached);
  - (ii) Waltham Abbey Royal Gunpowder Mills Ltd (Councillor H Kane)(attached);and
  - (iii) Stansted Airport Community Trust Fund (Councillor R Morgan).
- (b) To request written reports from representatives on joint arrangements and external organisations for future meetings.

# ***Report to the Council***

**Subject: Planning Portfolio**

**Portfolio Holder: Councillor R Bassett**

**Date: 17 December 2013**

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## **Recommending:**

**That the report of the Planning Portfolio Holder be noted.**

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## **Local Plan**

### **Local Plan Workshop 4**

I am pleased to report that following this workshop the many questions raised have been written up, together with the answers, and have been circulated to invitees.

### **Mark Beard Legal Presentation**

There are many questions on the Local Plan and the legal situation. As such I arranged for a presentation on 18 November from Planning Barrister, Mark Beard who has advised the Council on planning issues for many years. About 30 councillors attended but for those who could not attend I placed a copy of the presentation and notes about questions and answers raised in the Bulletin.

Some key points which he made in relation to the presentation were:

- Evidence is key. Do not tweak or underplay evidence of need for housing, employment etc. – this has led a number of authorities' plans to founder, because Inspectors look at the evidence. If you don't plan for the needs in full then the government will do it for you by allowing appeals.
- It is not a negotiation with the Inspector at Examination in Public. If you ignore or underplay the evidence, you will be invited to withdraw the plan and go back and do more work, with consequent waste of time and resources, and delay which increases vulnerability to appeals.
- NPPF para 14 is the key to plan making. It sets out a presumption in favour of sustainable development. And it sets a high test, as development needs should be met unless there is actual evidence of adverse impacts of doing so assessed against the NPPF as a whole.
- There is recognised practice in the preparation of plans and the opportunity to depart from that is limited.
- You cannot rely on an old local plan. The longer it is in place, the harder it will be to resist development which is inappropriate in the eyes of the community.
- Developers will argue that the plan is out of date, that there is no 5 year land supply against realistic housing targets (not old RSS targets). Risk of loss of local control.
- Up to date plans have primacy in decision making on applications. The concept of Localism is meaningless without a local plan as the NPPF presumption in favour of sustainable development will prevail.
- Neighbourhood Planning is an important element of Localism which, broadly, does not work unless there is a Local Plan in place.

## **Demographics and Strategic Housing Marketing Assessment (SHMA)**

A report was submitted to Cabinet on 2 December on these pieces of evidence. It requested that the updated population forecasting report from Edge Analytics be noted and accepted into the Local Plan Evidence Base.

The meeting was also asked to note the updated Strategic Housing Market Assessment subject to the proviso that it would need to be further revised in light of the population forecasting report from Edge Analytics referred to above. The National Planning Policy Framework (NPPF) requires every local authority to be part of a SHMA, in order to adequately assess need, affordability and other issues within the housing market. A SHMA generally covers more than one local authority area as housing markets do not respect administrative boundaries; this is the case with this SHMA update. Unfortunately the update is based on the ONS 2010 population projections and does not take into account the 2011 census results used in the demographic report by Edge Analytics. We will therefore need to look at how we can update it with those numbers. However it does contain useful information on the type, size and cost of housing recently completed across the housing market area.

## **Gypsy and Traveller Needs Assessment**

The Essex-wide Gypsy and Traveller Accommodation Needs Assessment, which will feed into our Local Plan, have still not yet been published. It is hoped that it will be published in January.

## **Meetings under Duty to Co-operate**

We have continued our meetings under the Duty to Cooperate. While not strictly a meeting under this legal requirement, I met with the residents of West Sumners on 28 November to discuss with them the situation with the proposed development in that area east of Harlow. We explained we have not received any applications and that no decisions have been made.

We also have a meeting scheduled with Leader and Development Portfolio Holder of Harlow Council on the 18 December which I will report in due course.

I also attended the Enfield, Essex and Hertfordshire Border Liaison Group meeting at the City of London Guildhall on 5 December where we discussed a wide range of common interest topics such as Local Plans, Aviation, and Sustainable Urban Drainage/ Flood prevention, (very relevant at the moment). We also discussed Duty to Co-operate, LEP updates, Highways Agency corridor improvements, Rail Infrastructure, and Gypsy and traveller sites. I will make minutes available in the Members' Room when they are available.

I was also invited to attend a workshop held by Enfield on the North Enfield Enterprise Partnership (NEEP) on 2 December which is looking at issues such as the Northern Gateway Access Road (NGAR). As this was the night of Cabinet I invited two Waltham Abbey Councillors who would be affected to attend with an Officer and I will report in due course.

## **Budget arrangements to facilitate Direct Enforcement Action**

At the Cabinet Meeting on 2 December it was agreed that the taking of direct action by the Council using section 178 of the Town and Country Planning Act be confirmed as being delegated to the Director of Planning & Economic Development. This power is rarely used and as such we normally have to prepare reports for Cabinet to get the authority and funding. In many incidents there is a need

for speed in dealing with these matters. Therefore to facilitate a far speedier response the costs of taking such actions are met from the existing District Development Fund budget for Appeals and Contingencies and the costs of taking such direct action be placed as a charge on the land or property, in order to be eventually recouped.

### **Gypsy and Traveller incursion at Birchfield, Stapleford Tawney**

Members are most probably aware of the recent breach of planning control at a site known as Birch Field, Epping Lane, Stapleford Tawney. This involved the unauthorised use of the land as a travellers' caravan site, contrary to the requirements of an existing Enforcement Notice and in breach of the terms of an Injunction which we obtained in 2006 for the site. A court case was heard in the High Court on 13 November and the occupants were found to be in contempt of court and given 14 days to vacate the site.

You will be pleased to know that the gypsies have now left the site and the entrance has been barricaded with concrete blocks. We still have an invalid application which they travellers have indicated they will pursue.

At present we are still awaiting further information to be able to deal with this application.

I would like to thank the officers and Mark Beard for all their hard work which has helped bring a successful conclusion to this matter.

### **Lee Valley Food Task Force**

The Lea Valley Food Task Force, which I chair, held a meeting on 6 December at the Civic Offices. This group is gaining momentum and now we have been asked by Waltham Forest and Uttlesford if they might join. We also have representatives from LVRP and the London Stansted Cambridge Corridor consortium on the group.

At this meeting we discussed:

- Area vs criteria based land policies for the glasshouse industry
- Organisation & Funding of the Cucumber Festival
- EU Funding Bid - Discussion to determine the projects we wish to bid for
- Food Summit update
- Communications & PR for the Food Taskforce
- Working Group updates

### **Review of EFDC Building Control Services**

We are about to review the above services. This will consider the present arrangements, and, in particular the costs of running the service, and how these can be reduced by taking different actions.

Those costs include:

Staff costs including agency staff

Costs of accommodation

Costs which are recharged, and whether these are acceptable. This includes Human Resources, Legal, ICT and Corporate costs.

The review will also consider how those costs might alter if there was a different operating model. The review will consider how to improve the service for its customers. I have asked Councillor Lion if he can assist with this and a report will be brought to Council in due course.

### **Neighbourhood Plans**

The Government introduced Neighbourhood Planning as part of the Localism Act 2011, in order to enable town parish councils and neighbourhoods to actively participate in plan making. A Neighbourhood Development Plan (NDP), once it has passed a referendum, will be part of the statutory development plan and will need to be taken into account in the determination of planning applications. It can include housing and employment land allocations, policies and design statements and can be as simple or as complicated as the town/parish council chooses.

As such the Council has recently received an application from Chigwell Parish Council for the designation of a neighbourhood area as the first stage in the preparation of a Neighbourhood Plan. This is the second application to prepare a Neighbourhood Plan that the Council has received. The neighbourhood area covering the parish of Moreton, Bobbingworth and the Lavers was designated by Cabinet in July this year.

**Summary of legal advice**

1. The EFDC Redundancy & Redeployment procedure (the "EFDC Procedure") is comprehensive, and this should be followed throughout the process which appears to be the case to date.
2. In terms of whether there is a redundancy situation in this particular case, it would appear that there is roughly the same amount (or perhaps less) of a particular kind of work but fewer employees are needed to do it. As a result of the overarching reorganisation, it would also appear you are looking to make better use of resources and also potentially look to save money. It is anticipated that EFDC will satisfy the statutory definition of redundancy in most or all cases at this phase. That said, in instances where the statutory definition of "redundancy" is not satisfied, and in future, EFDC should be mindful that it may be possible to rely on "some other substantial reason" as a potentially "fair" reason for dismissal.
3. With respect to the 7 directors, and without detailed knowledge of each respective post, it would appear likely that there would be a legitimate redundancy situation here. Thus to ensure ensuing dismissals are deemed "fair", EFDC must ensure that the posts held by dismissed employees are actually "redundant", and, it must also ensure a fair process is undertaken with respect to each individual dismissal. This will include, but not be limited to, undertaking the appropriate individual and collective consultation.
4. In this particular instance, the redundancy is only to involve Director Level and Assistant Director level employees, entailing 7 proposed redundancies at Director level and around a further 17 - 20 proposed redundancies at AD level (in the worst case scenario). It is important to note here that, regardless that some employees may ultimately obtain voluntary redundancy, and, regardless that some may ultimately obtain alternative employment via ring fence and/or assimilation, all posts are proposed to be deleted before that occurs, so, all of these employees will be deemed "potentially redundant" for procedural/timing purposes by a Tribunal.
5. Employees have been put at risk of redundancy in accordance with the policy and procedure and carried out consultation of over 45 days, thus sufficient for the purposes of employment legislation. We understand that consultation has occurred both with the Unions and individually.
6. It appears clear from the documentation reviewed that the Council has taken on board the feedback from the consultation. This is important as what is required to be demonstrated is that any consultation was meaningful and therefore the documentation is helpful.
7. Individuals within the pool have now been advised in writing in accordance with the procedure.
8. In relation to the Director posts, it has been determined that the new roles are not sufficiently similar for the purposes of assimilation. Voluntary redundancy applications have been made by individuals and once these are accepted

formally the selection pool for the 7 Directors will be reduced. Those not applying for VR and/or not being accepted for VR will then form part of the selection pool for the new Director Roles and a ringfencing process will then ensue in accordance with the policy. In the event that there is more than one candidate per new role, an interview selection process will need to be adopted. In the event that only one candidate applies for a role and that individual is deemed to be appointable, that employee can be offered the role without the need to be interviewed. This role would be considered to be 'suitable alternative employment' in accordance with the Redundancy Policy, and as a result, a four week trial period will follow. It should be noted that in the event that an individual is not deemed to be appointable to the role it may be appropriate to recruit externally.

9. Individual AD's should also be individually consulted in a similar manner and this appears to have been done from the documentation reviewed. Again, once Voluntary Redundancies are agreed/finalised, individual post holder should be notified of their proposed redundancy and the proposed way forward. In the vast majority of cases, that will involve an assimilation process (as per part 8.2.1 of the EFDC Procedure). A four week trial period will also be applicable here.
10. Section 151 Officer and Monitoring officer: EFDC proposes that the Director of Resources be its Chief Financial Officer/s151 Officer. The qualifications required of that officer are listed within section 6 of the Local Government and Housing Act 1989. In this instance, I anticipate that this person would be an appropriately qualified person under that section.
11. EFDC also proposes that the Director of Governance (Solicitor to the Council) is to be its Monitoring Officer. This would also be appropriate.
12. Advice on the Returning Officer: In terms of the Returning officer role, this role can essentially be allocated to any officer. We understand that the Chief Executive is to take over responsibility of this role. That is acceptable.
13. If the EFDC Constitution and internal procedures refer to old positions/prior delegated powers, they will also need to be changed.

Emma Thomas, Solicitor, Essex Legal Services  
Kevin Lynch, Solicitor (Locum), Essex Legal Services



## **Report of Councillor R Morgan, the Council's Representative on the Stansted Airport Community Trust Fund**

During 2013 capital grants to the value of £111,000 were awarded to a wide variety of organisations within a 10-mile radius of Stansted Airport.

One grant for £1,500 was made to the Dunmow Majorettes for new equipment for the group and another grant was awarded to the Herts Hogline who needed new hutches for their rescued hedgehogs.

The closing date for the next round of applications is 28 February 2014.

Qualifying organisations can benefit from some additional funding of up to £2,000 to help with a project.

Applications forms and further advice is available from SACT, PO Box 11, County Hall, Chelmsford CM1 1LX or email [cllr.susan.barker@essex.gov.uk](mailto:cllr.susan.barker@essex.gov.uk)

The Trust does not fund projects for parish councils or individuals and does not grant money for completed projects.

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