

## Extraordinary Council – 23 July 2015

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Minutes of the meeting of **Extraordinary Council** held on **23 July 2015** when there were present:-

Chairman: Cllr Mrs H L A Glynn  
Vice-Chairman: Cllr J L Lawmon

Cllr C I Black	Cllr Mrs J R Lumley
Cllr Mrs L A Butcher	Cllr M Maddocks
Cllr T G Cutmore	Cllr Mrs C M Mason
Cllr R R Dray	Cllr J R F Mason
Cllr J H Gibson	Cllr Mrs J E McPherson
Cllr K J Gordon	Cllr D Merrick
Cllr J D Griffin	Cllr R A Oatham
Cllr Mrs A V Hale	Cllr Mrs C A Pavelin
Cllr J Hayter	Cllr Mrs C E Roe
Cllr B T Hazlewood	Cllr C G Seagers
Cllr N J Hookway	Cllr Mrs M H Spencer
Cllr Mrs D Hoy	Cllr D J Sperring
Cllr M Hoy	Cllr M J Steptoe
Cllr K H Hudson	Cllr I H Ward
Cllr G J Ioannou	Cllr M J Webb
Cllr Mrs G A Lucas-Gill	Cllr Mrs C A Weston

### **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs J C Burton, M R Carter, Mrs J A Mockford, S P Smith and Mrs B J Wilkins.

### **OFFICERS PRESENT**

S Scrutton	- Director
J Bostock	- Assistant Director, Democratic Services
A Law	- Assistant Director, Legal Services
K Rodgers	- Team Leader (Area Team South)
C Todman	- Trainee Solicitor
L Spicer	- Communications Officer
S Worthington	- Committee Administrator

### **155 EXCLUSION OF THE PRESS AND PUBLIC**

Cllr T G Cutmore moved a motion, seconded by Cllr K H Hudson, that the press and public be excluded from the meeting on the grounds that exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 would be disclosed, subject to the minute in relation to the following item being made publicly available prior to 14 August 2015.

In response to a Member question relating to the significance of 14 August, Cllr K H Hudson confirmed that this was the deadline for the Council to confirm its intentions in respect of a planning appeal to the Planning Inspectorate. Officers confirmed, in response to a further Member enquiry on

the legality of excluding the press and public from a debate relating to a planning appeal, that there were proven legal cases that illustrated the appropriateness of holding discussion on the legal and financial issues relating to an appeal out of public session.

On a show of hands it was:-

### **Resolved**

That the press and public be excluded from the meeting for the remaining business on the grounds that exempt information, as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 would be disclosed, subject to the minute in relation to the following item being made publicly available prior to 14 August 2015.

(Note: Cllrs C I Black, J Hayter, N J Hookway, Mrs D Hoy, M Hoy, Mrs C M Mason, J R F Mason and R A Oatham wished it to be recorded that they had voted against the above decision)

The meeting adjourned at 9.15 pm and reconvened in private session at 10.50 pm. (Note: Cllrs J H Gibson, Mrs D Hoy and M Hoy had had to leave prior to the meeting reconvening)

### **156 PLANNING APPEAL – LAND NORTH OF LONDON ROAD, RAYLEIGH**

Council considered the exempt report of the Director on a planning appeal lodged in relation to the Council having refused consent for the development of a site within allocation SER 1.

Cllr T G Cutmore moved a motion, seconded by Cllr K H Hudson, that the recommendation set out in the report be agreed.

During debate concern was expressed that the traffic modelling report submitted by Countryside in support of its planning application was not sound as there were clear errors within the table detailed at paragraph 6.57 of an appendix to the report, a copy of which was projected on screen. Officers advised that there was a minor glitch in the table whereby the table headings had been transposed; once the headings were amended in the order: survey-model-difference, the figures were meaningful and the associated commentary regarding the impact of the development correct.

One Member expressed disappointment with the report, and stated that the Council needed up to date information on the need for sports facilities. Reference was made to paragraphs 5.1, 5.3 and 6.1 of the Officers' Code of Conduct and that the decision taken by Members on 29 January 2015 in respect of this planning application was a democratic one. It was the officers' duty to defend this decision at the appeal. Another Member, however, stressed that the decision taken by Members had been contrary to the professional advice given by officers at the January Development Committee

meeting. Officers were adhering to the Officers' Code of Conduct by advising the Council that unnecessary legal costs should be avoided in a legal contest that the Council could not win.

One Member stressed, in response to another Member's assertion that the Council should defend the planning appeal, that individual Members could, if they wished, opt to fight the appeal on an individual basis.

Responding to a specific Member enquiry relating to the planning appeal process officers advised that, should the Council decide not to defend the appeal, the appeal would nevertheless continue on 5 January, with or without a statement of case and detailed evidence from the Council; the Inspector would make a recommendation directly to the Secretary of State since the appeal had been recovered. It would be for the Secretary of State to determine the appeal based on the advice from the Inspector. The applicant would, inevitably, incur legal costs associated with the appeal, although it was likely that these would be greater if the Council chose to defend itself at the appeal. In any event, there would be an application for costs against the Council and such costs would be substantial even if the Council offered no evidence.

Officers further advised that a second application had been submitted by the applicant, which would be considered by the Development Committee in due course and run concurrently with the appeal. If that application was approved it was possible that the applicant would withdraw their appeal.

In response to supplementary questions officers confirmed that the second application was similar to that refused in January and sought to address the concerns raised. The focus of the second application, when it is considered in due course by the Development Committee, would be around the four reasons for refusal of the application that was determined in January. There was no question of any pre-determination of the second application; each application considered by the Development Committee should always be considered on its own merit.

A vote was taken on the motion, which was carried on a show of hands, and it was:-

### **Resolved**

That, taking into account the analysis of the probability of the reasons for refusal being defended successfully, and the legal and financial implications, the Council submits no grounds of defence in relation to the statement of case for the Countryside appeal in respect of site allocation SER1. (Director)

(Note: Cllrs C I Black, J Hayter, N J Hookway and R A Oatham wished it to be recorded that they had voted against the above decision.)

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The meeting commenced at 9.10 pm, adjourned at 9.15 pm, reconvened at 10.50 pm and closed at 11.22 pm.

Chairman .....

Date .....

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