

CORPORATE POLICY AND PERFORMANCE COMMITTEE

17 June 2021 at 6.00 pm

Present: Councillors Gunner (Chair), Pendleton (Vice-Chair), Cooper, Dixon, Oppler, Roberts, Seex, Stanley and Walsh.

Councillors Bower, Brooks, Clayden, Mrs Cooper, Coster, Edwards, Thurston and Worne were also in attendance for all or part of the meeting.

79. WELCOME

The Chair welcomed Members and Officers to this first and virtual meeting of the Corporate Policy and Performance Committee.

The Chair confirmed that this meeting was being held in accordance with the resolution made at the Extraordinary Council Meeting held on 12 May 2021 (Minute 551) which continued Section 5 Part 5 of the Constitution (The Virtual Meeting Procedure Rules) and declared the use of Council powers, under Section 111 of the Local Government Act 1972, and the general power of competence under Section 1 of the Localism Act 2011, for making advisory decisions, as appropriate.

80. DECLARATIONS OF INTEREST

Councillor Walsh declared a Personal Interest in Agenda Item 10 [Minutes from the Meeting of the Planning Policy Committee - 1 June 2021 – Minute 42 – Delivery of West Bank Strategic Allocation] as a Member of the Littlehampton Harbour Board, representing Arun District Council.

Councillor Pendleton also declared a Personal Interest in the same item as a Member of the Littlehampton Harbour Board, but in her capacity as a West Sussex County Councillor.

81. URGENT ITEMS - START TIMES

The Committee

RESOLVED

That its start times for meetings during 2021-22 be 6.00 pm.

82. PUBLIC QUESTION TIME

The Chair confirmed that no questions had been submitted for this meeting.

83. TERMS OF REFERENCE FOR THE CORPORATE POLICY AND PERFORMANCE COMMITTEE; MATTERS RESERVED; AND DELEGATION TO OFFICERS

The Chair invited the Interim Monitoring Officer to present his report. He provided a short introduction confirming the Committee's Terms of Reference as given by Full Council and he asked the Committee if it wished to make suggestions for change to the Constitution Working Party as appropriate. He outlined to Members that this report was different to others that had already been presented to other Committees where reference had been made to the Matters Reserved scheme. This Committee was different in that a large number of its Terms of Reference were policy matters which were reserved to Members, it was not necessary to have a reserved matters scheme unless Members wanted one.

No requests were made by the Committee to change its Terms of Reference, though in making reference to the Committee's Calendar of Meetings for 2021/22, the Chair proposed that the next meeting of the Committee scheduled for 2 September 2021 be moved to 1 September 2021, for a range of reasons. This proposal was seconded by Councillor Pendleton.

Following discussion around the need to make this change in date, Councillor Walsh proposed an amendment which was that the meeting date be 31 August 2021. This was seconded by Councillor Stanley.

Following some discussion around the need to ensure that any change in meeting date should be consulted with all Members of the Committee in advance, Councillor Walsh's amendment was put to the vote. As the result of this vote was split with 4 voting for and 4 voting against, the Chair used his casting vote and the amendment was declared NOT CARRIED. A vote was then held on the substantive motion to move the date to 1 September 2021, and on putting this to the vote, the result was again split with 4 voting and 4 voting against. The Chair then used his casting vote and the substantive amendment was then declared CARRIED.

The Chair then returned to the substantive recommendations as outlined in the Interim Monitoring Officer's report.

The Committee

RESOLVED – That

- 1) the general Terms of Reference for Committees in Part 3 Paragraph 3 of the Constitution be noted and the specific Terms of Reference for the Corporate Policy and Performance Committee as established by Full Council on 19 May 2021 as set out in part 1 and Part 2 of Appendix 1 attached to the report be noted;

- 2) no suggestions were identified to be considered by Full Council through the Constitution Working Party (CWP) for clarifications of these Terms of Reference;
- 3) the schedule of Corporate Policy and Performance Committee meetings as set out in the Calendar of meetings provided as an e-link in the background papers section of this report be noted but as amended at the meeting in that the next meeting of the Committee be moved from 2 to 1 September 2021; and
- 4) it was confirmed that there were no matters to be on the matters reserved scheme whereby matters not reserved by Committee to itself are delegated to Officers by default and set out in Appendix 2 (attached).

84. CARAVAN SITES AND CONTROL OF DEVELOPMENT ACT, 1960 - FIT AND PROPER PERSON TEST

The Chair invited the Group Head of Technical Services to present his report. He explained that in Arun there were over 1,100 households that lived in residential park homes and that most site owners managed these households effectively treating their residents well. It was confirmed that in 2017 the Government undertook two calls for evidence and that in 2018 it published its response. Part of this response included a package of measures which were committed to in policy to include introducing legislation to prevent exploitative service charges on residents and to prevent complex and opaque ownership structures from depriving residents of security of tenure. A Working Group had been established (which Arun participated in) to help promote awareness of rights amongst residents. In addition, the Government committed to engaging with Local Authorities through a forum which Arun had set up nationally which was the Site Licencing Officers Group which had a membership of over 200 Local Authorities. This had been an effective way to focus on best practice and to engage with the Government. The final piece of the Government's response was to introduce a 'fit and proper persons test' to protect the best interest of residents on sites and this was added to Local Authorities' existing powers in order to target the worst offenders in this sector.

The Group Head of Technical Services explained that in response to this, Officers had worked with the Site Licencing Officers Forum to commission barristers to help with the implementation of this new regulatory function which led to the production of two policies [the Fit & Proper Person Determination Policy and the Fit & Proper Person Fees Policy] which had been attached as appendices to the report for the Committee to approve so that they could be adopted. This new regime had to be implemented by local authorities on 1 July 2021. Legislation confirmed that applications could be received by local authorities from 1 July 2021 until midnight on 30 September 2021, with the local authority being able to recover costs, once the appropriate Fees Policy had been adopted.

The Chair then invited questions. One Member made reference to the part of the Policy that referred to the instance where if a site manager was unable or unwilling to submit a Fit and Proper Person Test then could the Council install its own Fit and Proper Person to then manage the site '*with the site owner's permission*'. This led to further questions being asked as to what would happen if the Council did not get this permission and what would be the consequences for that site. The same Member also asked if there was an ongoing rating mechanism after the initial judgement or whether this test happened annually to deal with future acquired criminal offences.

In response, the Group Head of Technical Services confirmed that as part of the technical consultation it was suggested to Government through the forum that Local Authorities should have powers to act in such circumstances and not be reliant upon site owners' cooperation but that this was not currently legislated for so in situations of non-cooperation the Council could revoke the licence meaning the site owner was committing a criminal offence by continuing to run a site without one and that penalties could be imposed by the Courts. He further confirmed that inclusion on the Fit and Proper Person Register would last for five years after which a new application would have to be submitted, but that if evidence was brought to the Council then a review of status and inclusion on the register could happen in the interim.

In response to another Member asking whether these were nationally drafted or local versions of policies, the Group Head of Technical Services explained that the Officer Forum provided template policies for all its member Local Authorities to assist in implementation and to ensure consistency where site owners had properties over several Districts' jurisdictions.

Councillor Walsh then proposed the recommendations which were then seconded by Councillor Stanley.

The Committee

RESOLVED – That

- 1) The Fit and Proper Person Determination Policy be adopted;
- 2) The Fit and Proper Person Fees Policy be adopted;
- 3) Delegated authority be given to the Group Head of Technical Services to have the ability to make minor revisions to the Fit and Proper Persons Fee Policy, including amendments to the fees schedule.

85. SUPPLEMENTARY ESTIMATE TO COVER COSTS AWARDED AGAINST THE COUNCIL IN APPEAL P/58/19/PL

The Chair invited the Director of Place to present his report. He explained that planning permission for application P/58/19/PL had been refused by the then Development Control Committee contrary to the advice of Officers from this Council, West Sussex County Council and the Council's appointed Highways consultant.

In deciding the subsequent appeal, the Inspector had concluded that the Council had acted unreasonably in refusing planning permission and had awarded costs against the Council. This report sought a supplementary estimate of up to a maximum of £26,000 to settle that award of cost.

The Chair then invited questions. One Member, commenting on the Planning Inspector's decision, asked whether the Council would have fared better if it had provided more photographic evidence and he asked how well the Council had performed in providing sound evidence for the appeal. In response, the Director of Place could not confirm if any specific photographs had been provided as part of the evidence submitted (but would confirm this outside of the meeting) but he did confirm that plentiful evidence had been provided to the Inspector and he invited Members to learn from what the Inspector had confirmed in Paragraph five of the decision letter, which was read out as follows:

'Committee Members are not bound by this advice, and I accept that they have important local knowledge. However, in this case the extensive professional evidence from both main parties prior to the determination of the application indicates that this application should have been permitted. Furthermore, as can be seen in my main decision, I have not been presented with evidence at appeal which leads me to disagree with the recommendations of these professionals at the application stage. Therefore, this application should clearly have been permitted. Consequently, refusing the application on this basis is unreasonable behaviour.'

He concluded that, though Members had the right to make a decision that was contrary to an Officer's recommendation, this had to be done in a reasonable manner and the Planning Inspector had come to the view that the decision taken was unreasonable. Further confirmation was sought in terms of where the fault for this decision laid and whether the appeal had been defended robustly enough. The Director of Place was asked if, after consulting the appeal paperwork, to circulate to all Committee Members his response regarding the inclusion of photographs.

Another Member asked for clarification on whether the report concerned a single application or multiple applications, and how the figure of £26,000 had been established as settlement negotiations were still on-going. Concern was expressed as to whether such negotiations could be weakened on the Council's side as it had publicly declared a maximum figure it would be prepared to settle at. The Director of Place confirmed that this report related to one application [P/58/19/P] and that a figure had been set although Officers were still in discussion with the appellant around agreement on what the reasonable costs associated with the reasons for refusal were. The Member, having been given the right to respond by the Chair, suggested that the wording in the recommendation be amended so that it was clear that it related to just one planning application. Concern was expressed that confirming an award sum in a public setting was 'perhaps declaring the Council's hand' and could weaken Officers' power of negotiation. A suggestion was made as to whether this item should be deferred until further evidence gathering had taken place.

The Director of Place explained that the costs discussed in the report were a debt because the Council's actions had been deemed to be unreasonable. He urged Members not to defer this matter to the next meeting of the Committee as the Council would run the risk of being legally challenged for not meeting its debt. A Member spoke about there being lessons to be learnt by Officers and Members of the Development Control Committee in accepting Officer advice and ensuring decisions made were robust enough to stand up to inspection.

The Interim Monitoring Officer outlined the awarding of costs process for Members' clarity confirming that when a Planning Inspector made a decision that costs should be awarded the amount was not quantified at that stage but agreed through subsequent negotiation which, if unsuccessful, returned for determination. He acknowledged that publicly agreed budgets could pose a risk to negotiations but also indicated to the appellant that that was all the money available, and that there might be the case to hold some of these type of discussions in the exempt part of the agenda. The Director of Place confirmed that this was an upper estimate but as correspondence with the appellant was still ongoing was reluctant to give further details in the meeting.

A non-Committee Member raised possible contradictions within the Planning Inspector's written decision which could have suggested the need for a judicial review but that the Council's Solicitor was not asked to explore this and only considered the issue of appropriate assessment which was not an issue when the planning application went to the Development Control Committee and was not discussed. The Director of Place explained that he had believed a judicial review, whether a decision maker had got something wrong in law sufficiently that the decision be substantially flawed, was not justified. Legal advice had been sought which confirmed there were no reasonable grounds to pursue a judicial review and that this had previously been explained separately to the Member.

In response to the Chair, the Interim Group Head for Corporate Support confirmed that a figure did need to be set as the report was budget related and the budget would need to be regularised. In concluding the discussion, the Chair suggested that these matters be dealt with under Exempt business going forward.

Councillor Roberts then proposed the recommendation which was then seconded by Councillor Cooper.

The Committee

RECOMMEND TO FULL COUNCIL

That approval be given to a retrospective supplementary estimate of up to a maximum of £26k to settle the award of costs in respect of application P/58/19/PL (equivalent to a Council Tax Band D of £0.42) in order to regularise the budget position.

86. SUPPLEMENTARY ESTIMATE TO COVER COSTS FOR DEFENDING APPEAL ON LAND SOUTH OF BARNHAM STATION, BARNHAM

The Chair invited the Director of Place to present his report. He explained that the Council had refused an application for substantial development south of Barnham railway station and that there had been ten sound reasons for this refusal. As a result, the applicant had appealed against the decision and it was confirmed that the appeal would be heard by way of a Public Inquiry that was estimated to last eight days later in 2021.

The Council now needed to fund its legal representation to include Counsel costs and costs associated with the appointment of planning consultants and any specialist consultants to assist with defending the appeal. A supplementary estimate of £50,000 was requested in this respect.

The Director of Place outlined that there was no alternative to defending the appeal, but that Council Officers could defend the appeal instead of appointing planning consultants but that they did not have the capacity to undertake such a huge task and that if this option was suggested as an alternative it would mean that Officers would be taken away from their normal activities to act as the Council's witness for this appeal. Notwithstanding that, a supplementary estimate of some form would still be needed to pay for the services of an Advocate to act on the Council's behalf in this matter. The Director of Place confirmed that the £50,000 was the approximate cost of the Advocate and a total of £30,000 was for expert witnesses with these sums representing a worst case scenario for budgeting purposes.

In response to Members, the Director of Place confirmed that the application had been refused by Officers under Delegated Authority and not by the Development Control Committee, the reasons for this application not being presented to Committee were explained.

Another non-Committee Member implored Members to allow the Council to make the strongest possible representation by approving this recommendation.

Following further discussion, Councillor Stanley then proposed the recommendation which was then seconded by Councillor Oppler.

The Committee

RECOMMEND TO FULL COUNCIL

That approval be given to a supplementary estimate of £50,000 for costs associated with defending the appeal in respect of application BN/142/20/OUT. These include Counsel costs and costs of the appointment of planning consultants and any specialist consultants to assist with defending the appeal. A supplementary estimate of £50,000 equates to a Band D equivalent Council Tax of £0.80.

87. CORPORATE PLAN 2018-2022 - QUARTER 4 AND END OF YEAR PERFORMANCE REPORT FOR THE PERIOD 1 APRIL 2020 TO 31 MARCH 2021 FOR THE CORPORATE PLAN AND SERVICE DELIVERY PLAN INDICATORS

The Group Head of Policy presented this report confirming that the commentary for each indicator set out the extent to which each target had achieved for the period covering 1 April 2020 to 31 March 2021 with an explanation where necessary and also setting out which indicators required special monitoring in 2022.

It was explained that there was an error in the report at Paragraph 1.14 [Actions] where it had been suggested that the targets for SDP 16 [Business Rates Collected] and SPD 18 [Cost of Emergency Accommodation] be changed for 2021/22. There were no recommendations to change these indicators.

The Chair then invited debate and questions reminding Members that this item was being presented to this Committee so that it could fulfil its scrutiny role.

A range of questions were then asked, which have been summarised below:

- SDP 6 [Vacant Private Sector Dwellings Returned to Occupation] – praise was directed towards the Council’s Empty Homes Officer for achieving another award for her work undertaken. In the commentary it stated that much of that success had been due to the temporary provision of additional administration resource. It was hoped that this resource could continue to ensure that this valuable work could provide a long term solution to this problem.
- SDP 7 [Income received from general fund assets] – it was important for Arun to continue to have a strong presence as a landlord.
- SDP 1 [Major Applications Determined in 13 weeks] SDP 2 [Minor Applications determined in 8 Weeks] and SDP 3 [Other Applications Determined in 8 Weeks] – concern was expressed over the way the Council was measuring these indicators. They were being presented as successes when in fact the targets were failing in that they were only over-achieving by using extensions of time agreements. The Director of Place explained that an Extension of Time agreement was a voluntary agreement between the Council and the applicant to agree that rather than determine an application within the real time period of 8 or 13 weeks, an arrangement could be agreed for a longer determination time usually to allow time to iron out a wide range of issues, and examples were provided.

The point was made that if the Council was under performing in anything that the first stage in improving performance was to acknowledge that there was under performance and to then address the problem.

- CP7 [Homelessness Applications where Homelessness is Prevented] – what were the reasons for this target being below target, apart from Covid. The Director of Services explained that the reason for underperformance had mostly been attributed to Covid-19 but that there were other reasons in that the probate rented sector was stagnant; family relationships were under strain, partly due to the pandemic and subsequent on and off lockdowns. As a result, the ability to negotiate for people to remain living at home had become very limited.

88. MINUTES FROM THE MEETING OF THE PLANNING POLICY COMMITTEE - 1 JUNE 2021

The Chair introduced this item explaining that at Minute 42 [Delivery of West Bank Strategic Allocation] there were two recommendations for this Committee to consider. It was explained that the minutes had been provided to the Committee as a supplement pack which had been uploaded to web on 15 June 2021.

The Director of Place was invited to explain the recommendations to the Committee. He outlined that this item related to West Bank, Littlehampton and that this strategic site allocation in the Local Plan had not been delivered due to a variety of challenges and so consequently an alternative plan of action was now proposed which where the recommendations that had been resolved by the Planning Policy Committee on 1 June 2021. The issue for this Committee was that there was a cost associated with that alternative strategy which had not been budgeted for and so this was why this Committee was being asked to approve the funding required to allow the actions approved on 1 June 2021 to be taken forward. Members' attention was drawn to the second recommendation for it to consider which was for the Council to accept financial contributions from third parties to support the delivery of Recommendations (1) and (2) approved on 1 June 2021. The Director of Place confirmed that he had been in discussion with a number of third parties [third party landowners] and that financial commitments had been made totalling £50,000 towards the cost of this work and that there might be other contributions that could come forward in due course. Members were asked to reflect on this in considering the two recommendations which were before them.

(At this point in the meeting, Councillor Walsh redeclared his Personal Interest made at the start of the meeting).

There were key concerns expressed by several Members relating to spending £100k on this project despite this site being an allocation in the Council's Local Plan. The concerns were centred around the sea defences at Clymping breaking through and the flooding that had extended up to the A259 and to other parts of the road, making this land extremely floodable. Another issue was the cost of the required flood work which had been estimated to be in the £30-40m mark which would be an additional cost on top of buying the land and developing it. Based on such facts, there was great uncertainty that this land would ever be an attractive proposition and so there was a reluctance to spend up to £100k on what was seen as a risk. It was acknowledged that if the decision was made to not pursue this work, there was no alternative suggestion of where this housing might go if de-allocation was pursued. This was therefore a difficult

decision for the Committee to make and it had to consider the amount of money to be spent on potentially an undevelopable piece of land.

The Committee was reminded that £50k had since been committed from external funders and so the recommendation before the Committee needed to be amended in terms of the £100k supplementary estimate which should now read £50k.

Many of the points being raised by the Committee were a repeat of the debate that had taken place at the Planning Policy Committee on 1 June 2021. The Chair reminded Councillors that the matter before this meeting was to decide whether to recommend to Full Council that a supplementary estimate of £50k be approved, not the merits around whether this was a suitable site or not.

The Chair asked if this decision had to be considered today and whether it should be deferred pending the outcome of the bid made to the Community Renewal Fund. The Director of Place confirmed that any deferral would mean that four months of valuable work would be lost.

Following further discussion, Councillor Cooper then proposed the recommendations, amended to show a figure of £50k, and this was seconded by Councillor Roberts.

The Committee

RECOMMEND TO FULL COUNCIL – That

(1) should any application for funding for this project submitted to the UK Community Renewal Fund be unsuccessful, then a supplementary budget of up to £50,000 to fund the cost of recommendations (1) & (2) approved by the Planning Policy Committee on 1 June 2021, be agreed as the Council's contribution to the cost of the project; This equates to a Council tax equivalent of £0.80 for a Band D property; and

(2) the Council accept financial contributions from third parties to support the delivery of recommendations (1) and (2) approved by the Planning Policy Committee on 1 June 2021.

89. FEEDBACK FROM JOINT ARUN AREA COMMITTEES

Although there were no items for this meeting, the Chair provided the Committee with a brief update as he had been consulted by West Sussex County Council regarding the abolition of Joint Arun Area Committees. He was consulting with Group Leaders with regard to the response that should be sent back to West Sussex County Council.

90. OUTSIDE BODIES

The Chair confirmed that there were no feedback reports from Outside bodies to present to this meeting.

91. LOCAL COUNCIL TAX SUPPORT SCHEME

The Committee received a report from the Chief Executive confirming that in accordance with the provisions of the Officer Scheme of Delegation in the Council's Constitution, he had taken a decision to incur expenditure and to take urgent action to continue the Covid-19 Hardship Fund for claimants or the Local Council Tax Support Scheme for 2021-22. The Committee was being asked to ratify the decision made by the Chief Executive.

The Committee

RESOLVED – That

(1) the urgent decision to continue the Covid-19 Hardship Fund for claimants of the Local Council Tax Support Scheme for 202/21, which continued an additional discretionary discount of up to £150 per household for working age claimants be ratified and

(2) the funding of the proposal from the balance of the funding allocated in 202/21 (approximately £210k) be noted.

92. CONTAIN OUTBREAK MANAGEMENT FUND (COMF) GRANT

The Committee received and noted a report from the Interim Group Head for Corporate Support and Section 151 Officer which provided an update on the Contain Outbreak Management Fund (COMF) grant allocations.

A question was asked regarding the Settled Status Advisor and the deadline in place. The Interim Group Head of Corporate Support and Section 151 Officer confirmed that she would provide a written response to the Committee outside of this meeting.

93. THE COUNCIL'S RESPONSE TO THE COVID-19 PANDEMIC SITUATION

The Committee received and noted a report from the Chief Executive which updated the Committee on the Council's response to the pandemic situation.

A range of questions were asked in terms of the arrangements in place to conduct a gradual return to staff working in the Civic Centre from 19 July 2021 onwards.

The Chief Executive confirmed that in preparing for the opening of the Civic Centre, the next meeting of the Planning Committee would be held physically, the date to be confirmed. This meeting would need to adhere to any Covid-19 restriction in place. Tests were underway to ensure that the webcasting equipment, cameras and projector were working sufficiently.

The Chief Executive was asked if all physical meetings would take place in the Council Chamber so that the webcasting equipment could be used moving forward. Other points made were the need to accept that as a result of the 15 month lockdown, many things would need to operate differently, such as the way in which the Council interacted with the public as demand would be different.

94. WORK PROGRAMME

The Chief Executive introduced the Committee's draft Work Programme for 2021-22 confirming that this was work in progress.

As a way forward, the Chair invited Councillors to have a think about future items and to email suggestions to him so that he could discuss these with Officers.

The Committee was reminded that one of its strategic aims was to address climate change by way of approving an Action Plan. This would be added to the work programme and would also be incorporated into the new Corporate Plan which was in the process of being developed via a series of Member workshops that would be held in July and August 2021. It would be this Committee that would oversee the development and adoption of a new Corporate Plan.

Having corrected when the Budget Monitoring Report would be reported to the Committee in February 2022 instead of 9 March 2022 and having received no further suggestions, the Chair thanked Members for their input.

(The meeting concluded at 8.41 pm)