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11 November 2016

Dear Councillor

I am now able to enclose, for consideration at the meeting of the **SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE** on Wednesday 16 November 2016 at 6.00 pm, the following reports that were unavailable when the agenda was printed.

4 **MINUTES** (Pages 2 - 8)

To confirm the Minutes of the meetings of the Committee held on 12 October 2016.

Yours sincerely

A handwritten signature in black ink, appearing to read "Nicky", written over a horizontal line.

Chief Executive

Minutes of the meeting of the **SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE** held at the Council Offices, Whitfield on Wednesday, 12 October 2016 at 6.01 pm.

Present:

Chairman: Councillor L A Keen

Councillors: T A Bond
P M Brivio
P I Carter
N Dixon
R J Frost
P J Hawkins
S Hill
M J Ovenden
G Rapley

Officers: Head of Regeneration and Development
Head of Legal Services
Team Leader – Democratic Support

37 APOLOGIES

There were no apologies for absence received.

38 APPOINTMENT OF SUBSTITUTE MEMBERS

There were no substitute members appointed.

39 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

40 MINUTES

The Minutes of the meeting of the Committee held on 25 May 2016 were approved as a correct record and signed by the Chairman.

41 PUBLIC SPEAKING

The Team Leader – Democratic Support advised that in accordance with the public speaking protocol, the following questions had been received from members of the public:

Q1. In the absence of Mr R Preddy who submitted the question, the Chairman asked it on his behalf:

“With reference to Lydden Hill Race Circuit, why has Dover District Council repeatedly allowed the track to justify development after the fact, by way of

retrospective planning permission? This includes the two 'temporary' grandstands granted permission after their construction.”

The Head of Regeneration and Development advised that applications for retrospective planning permission were a normal method of regularising a situation where works had been undertaken without permission. The Council would consider the application and, if not granted, take necessary action.

In respect of the grandstands, these had been granted temporary permission for 3 years ending in January 2013 and no complaints had been received in respect of these since the permission expired. In the absence of complaints, no enforcement action had been taken since the expiry of the temporary permission as a new planning application had been received and the Council did not normally take action where a pending application existed.

The current live planning application had been received 18 months ago and prior to that the Council had been involved in pre-application discussions with the circuit.

Q2. Ms P James asked the following question:

“With reference to the Article 4 Direction (1990) in connection with Lydden Hill Race Circuit: Article 4 Direction removes any permitted use or development to additional land situated adjacent to the LHRC site, which is also owned by the Circuit proprietor. Why then has Dover District Council not enforced this Direction in respect of camping, caravanning and grass tracking at any point since 2008?”

The Head of Regeneration and Development advised that the Article 4 Direction applied to land to the east of the circuit. The complaints received so far related to alleged breaches that were either sporadic, short term or low level and had ended by the time the complaint was received. As a consequence it had not been deemed an expedient use of resources to take enforcement action. Furthermore, no complaints had been received relating to grass track racing.

The planning application that had been received by the Council contained an application for camping and therefore enforcement action would not be taken as it could prejudice the outcome of the application.

In response to a comment from the questioner, it was confirmed that there were no Article 4 Directions relating to land to the south of the circuit.

The Chairman asked that a written response explaining why the Council had not taken enforcement action against camping during the period from 2011 until the submission of the current planning application be sent to the questioner.

42 ISSUES REFERRED TO THE COMMITTEE BY COUNCIL, CABINET, SCRUTINY (POLICY AND PERFORMANCE) COMMITTEE OR ANOTHER COMMITTEE

There were no items of business for consideration.

43 ITEMS CALLED-IN FOR SCRUTINY OR PLACED ON THE AGENDA BY A MEMBER OF THE COMMITTEE, ANY INDIVIDUAL NON-EXECUTIVE MEMBERS OR PUBLIC PETITION

There were no items of business for consideration.

44 NOTICE OF FORTHCOMING KEY DECISIONS

The Team Leader – Democratic Support presented the Notice of Forthcoming Key Decisions to the Committee for its consideration.

RESOLVED: That the Notice of Forthcoming Key Decisions be noted.

45 SCRUTINY WORK PROGRAMME

The Team Leader – Democratic Support presented the Scrutiny Work Programme to the Committee for its consideration and advised that East Kent Housing had been confirmed for the 16 November 2016 meeting and Southern Water for the 14 December 2016 meeting.

Councillor T A Bond advised that he had raised the issue of attending a meeting of the committee with South Eastern Trains but that he did not expect them to attend. Members discussed whether to invite a trade union representative to attend a future meeting in view of the lack of response from South Eastern Trains.

Councillor S Hill proposed that a senior trade union representative be invited to attend in the absence of South Eastern Trains and this was duly seconded.

On their being an equality of votes, the Chairman used her casting vote and it was

RESOLVED: That an invitation be extended to a senior trade union representative to attend a future meeting of the committee to discuss South Eastern Trains.

It was agreed that the invitation to South Eastern Trains to attend the meeting as well should be held open.

RESOLVED: That the work programme be noted.

46 ENFORCEMENT AND MONITORING OF PLANNING CONDITIONS

The Chairman welcomed the Head of Regeneration and Development and the Head of Legal Services to answer the Key Questions previously set by the Committee and advised that with the consent of members of the Committee, which was duly granted, she would let members of the public present ask follow-up questions in respect of Lydden Racing Circuit and other enforcement matters during proceedings.

Q1. How are planning applications allocated to officers?

The Head of Regeneration and Development advised that this was determined on a case-by-case basis with consideration given to the complexity of the application, whether an officer had experience of a particular site or the type of development and their caseload.

In response to concerns raised that the number of part-time officers was delaying the progress of applications, and in particular larger applications, the Head of Regeneration and Development advised that nationally and locally there were difficulties in recruiting planning officers and some applicants only wanted to undertake part-time work. This was partly attributed to a historic cut back in the number of university places that was filtering through and a loss of some officers to the private sector. It was emphasised that the difficulties in recruiting officers was not due to not having the necessary resources but rather in the difficulty in getting applicants to apply for vacancies.

A private sector contractor panel had been set-up in an attempt to alleviate the difficulty in recruiting new officers and these were suitable for use with most applications as they could agree a charge on a case-by-case basis. In addition, steps were being taken to develop officers in-house, although this required experienced officers to give up time for mentoring activities that they could be spending dealing with applications.

Councillor L A Keen asked for the percentage of applications dealt with by contractors, the number of trainees and a copy of the manpower plan for the planning section. The Head of Regeneration and Development advised that he would need to gather this information and provide it to members subsequent to the meeting.

Q2. Once a condition has been applied what process, if any, is in place to remind officers that they need to be implemented?

Members were advised that the onus was with applicants to ensure that the complied with conditions.

Prior to two years ago, it would have been for the original case officer to deal with conditions after a planning application was approved. However, following an audit review it was recommended that the post of conditions officer be created. The conditions officer monitored those conditions that required further action and sent reminders to the applicant. The new conditions officer also freed up planning officers to deal with new applications and the system was working well.

Councillor T A Bond stated that he believed that the members of the Planning Committee expected conditions to be proactively monitored to ensure implementation and he proposed that a system be created to ensure that every condition is implemented correctly as per the permission granted.

Councillor L A Keen proposed that an effective system of monitoring with key indicators be created in respect of monitoring all planning conditions.

Q3. Why hasn't the planning department imposed a mandatory condition for a section 38 where a road is being built?

Councillor T A Bond informed Members that this question related to developments where a road was constructed and then could either be

proposed for adoption by Kent County Council or operated as a private road. He wanted a planning application to be required to say what sort of road it would be.

The Head of Legal Services advised that in her view this would not be possible as it would put an unenforceable requirement in place for the developer to enter into a legal agreement with Kent County Council. It was not possible for the Council to compel Kent County Council to enter into a section 28 agreement to adopt a road.

The Head of Regeneration and Development advised that the details of any roads would be set out in the application and as most developers wanted the highways authority to adopt the roads to relieve them of the burden these would usually be designed to meet the specifications of the highways authority.

Members were advised that this was different from the situation in respect of Southern Water (such as drainage works) as it did not require any parties to enter into a contractual agreement and water companies were under statutory duties in respect of drainage.

The Head of Legal Services confirmed that there was work underway to investigate if a standard condition could be applied so as to require developers to ensure roads were adequately surfaced and it was agreed that this would be circulated to Members for information once completed.

Q4. Explain what is 'reasonable' and 'enforceable' for planning conditions?

The Head of Regeneration and Development advised that 'reasonable' and 'enforceable' in respect of planning conditions was defined in the 'Planning Practice Guidance' which set out six tests in respect of conditions.

An enforceable condition had to be one which must be within the applicants control to remedy and to be reasonable, a condition couldn't be unjustifiable.

Members requested a copy of the guidance, including the definitions of 'reasonable' and 'enforceable', be circulated to them.

In response to a question relating to Lydden Hill Racing Circuit, it was stated that planning guidance and law had changed since the 1980's and some of the conditions applied then were no longer enforceable.

Q5. How many planning enforcement officers does the council have, how many should it have and how many does it need?

The Head of Regeneration and Development advised that the Council had 3 planning enforcement officers, two of who were investigators and one was a planner. All three were full time and reported to the Planning Team Leader.

There were approximately 200 enforcement cases being dealt with by the Council at any one time and sufficient resources were allocated to deal with these on a reactive basis. The level of resourcing also enabled the Council to undertake some pro-active enforcement in respect of s.215 notices which related to the improvement of the appearance of buildings, predominantly in town centres.

As planning enforcement was a discretionary rather than mandatory service, when investigating a complaint consideration was given to the significance of the breach (including if there was any pattern to the breach and the persistence of the breaches) and the harm resulting from it.

Members of the public were welcome to submit evidence of breaches as part of complaints but ultimately it was for officers to make a decision as to the expediency of enforcement.

The final decision as to whether to take enforcement action or not was taken collectively rather than by a single individual, with the involvement of the legal team where appropriate. The Council's Planning Enforcement Plan, which was available on the website, set out matters in more detail.

In respect of out-of-hours enforcement, the Committee was advised that planning enforcement officers had been to sites at weekends and evenings when necessary. In addition, Environmental Health Officers were able to deal with pollution based breaches of planning conditions through the environmental health out-of-hours service.

In response to a question from Councillor R J Frost concerning satellite dishes in the Deal Conservation Area, the Head of Regeneration and Development advised that he would investigate the matter further and respond to him outside of the meeting.

Lydden Hill Racing Circuit

In response to questions from members of the public present at the meeting, it was stated that the age and language used in the conditions relating to Lydden Hill Racing Circuit made it difficult for them to be enforced. In addition, where complaints about potential breaches were reported it was necessary to consider what harm was being done as part of the enforcement process.

It was acknowledged that in comparison to Environmental Health enforcement, planning enforcement was slower due to the processes involved. A planning enforcement notice would have to demonstrate harm to justify its issue and could be appealed to the Planning Inspectorate. A 'stop notice', which was not subject to appeal, could only be issued after an enforcement notice had been issued. If an enforcement notice appeal was lost and a Stop Notice had been served in the interim, the Council could be liable to pay a significant sum of money in compensation.

Councillor R J Frost queried where the planning enforcement policy was to be found and it was agreed that a link to it would be circulated to members.

In response to discussions on Lydden Hill Racing Circuit enforcement issues it was suggested that the 2 members for Eythorne and Shepherdswell Ward could request that a meeting be held with officers and with representatives of the local community in attendance, to discuss the matter further. Councillor L A Keen indicated that as the Chairman of the Scrutiny (Community and Regeneration) Committee she would like to attend the meeting and Councillor N Dixon also expressed an interest in attending the meeting.

RESOLVED: That it be recommended to Cabinet:

- (a) That the Head of Regeneration and Development be requested to provide the Committee with the following information:
 - (i) The percentage of applications dealt with in-house and the percentage using private sector contractors
 - (ii) The number of trainees in the planning department.
 - (iii) A copy of the manpower plan for the planning department.
- (b) That a system be created to ensure that every planning condition was implemented correctly as per the permission granted.
- (c) That a system of monitoring with key indicators be created in respect of all planning conditions.
- (d) That in the event of a standard planning condition in respect of road surfaces being developed, a copy of the condition be circulated to Members for information.
- (e) That a copy of the Planning Practice Guidance and the Council's Planning Enforcement Plan be circulated to Members.
- (f) That the Head of Regeneration and Development and the Head of Legal Services provide written answers in respect of the remaining unanswered key questions (Q6 – Q18) for discussion at a future meeting.

The meeting ended at 8.28 pm.