

TEWKESBURY BOROUGH COUNCIL

Minutes of a Meeting of the Council held at the Council Offices, Gloucester Road, Tewkesbury on Tuesday, 7 December 2021 commencing at 6:00 pm

Present:

The Worshipful the Mayor
Deputy Mayor

Councillor A S Reece
Councillor J W Murphy

and Councillors:

K Berliner, R A Bird, G F Blackwell, G J Bocking, C L J Carter, C M Cody, K J Cromwell, J H Evetts, P A Godwin, M A Gore, D W Gray, D J Harwood, M L Jordan, E J MacTiernan, J R Mason, H C McLain, P D McLain, C E Mills, H S Munro, P W Ockelton, C Reid, J K Smith, P E Smith, R J G Smith, V D Smith, C Softley, R J Stanley, P D Surman, M G Sztymiak, S Thomson, R J E Vines, M J Williams and P N Workman

CL.40 ANNOUNCEMENTS

- 40.1 The evacuation procedure, as noted on the Agenda, was advised to those present.
- 40.2 The Mayor welcomed the new Borough Councillor for Brockworth East, Councillor Charlotte Mills.

CL.41 APOLOGIES FOR ABSENCE

- 41.1 Apologies for absence were received from Councillors M Dean and R D East.

CL.42 DECLARATIONS OF INTEREST

- 42.1 The Committee's attention was drawn to the Tewkesbury Borough Council Code of Conduct which was adopted by the Council on 26 June 2012 and took effect from 1 July 2012.
- 42.2 The following declarations were made:

Councillor	Application No./Item	Nature of Interest (where disclosed)	Declared Action in respect of Disclosure
K Berliner	Item 8 – Planning Scheme of Delegation.	Is a Member of Woodmancote Parish Council.	Would speak and vote.
G F Blackwell	Item 8 – Planning Scheme of Delegation.	Is a Member of Churchdown and Hucclecote Parish Councils.	Would speak and vote.

G J Bocking	Item 8 – Planning Scheme of Delegation.	Is a Member of Churchdown and Innsworth Parish Councils.	Would speak and vote.
C L J Carter	Item 8 – Planning Scheme of Delegation.	Is a Member of Brockworth Parish Council.	Would speak and vote.
C M Cody	Item 8 – Planning Scheme of Delegation.	Is a Member of Tewkesbury Town Council.	Would speak and vote.
P A Godwin	Item 8 – Planning Scheme of Delegation.	Is a Member of Northway Parish Council.	Would speak and vote.
D W Gray	Item 8 – Planning Scheme of Delegation.	Is a Member of Winchcombe Town Council.	Would speak and vote.
D J Harwood	Item 8 – Planning Scheme of Delegation.	Is Chair of Brockworth Parish Council.	Would speak and vote.
M L Jordan	Item 8 – Planning Scheme of Delegation.	Is a Member of Churchdown Parish Council.	Would speak and vote.
E J MacTiernan	Item 8 – Planning Scheme of Delegation.	Is a Member of Northway Parish Council.	Would speak and vote.
J R Mason	Item 8 – Planning Scheme of Delegation.	Is Chair of Winchcombe Town Council.	Would speak and vote.
P W Ockelton	Item 8 – Planning Scheme of Delegation.	Is a Member of Innsworth Parish Council.	Would speak and vote.
A S Reece	Item 8 – Planning Scheme of Delegation.	Is a Member of Bishops Cleeve Parish Council.	Would speak and vote.
C Reid	Item 8 – Planning Scheme of Delegation.	Is a Member of Wheatpieces Parish Council.	Would speak and vote.
J K Smith	Item 8 – Planning Scheme of Delegation.	Is a Member of Highnam Parish Council.	Would speak and vote.
R J G Smith	Item 8 – Planning Scheme of Delegation.	Is a member of Churchdown Parish Council.	Would speak and vote.

V D Smith	Item 8 – Planning Scheme of Delegation.	Is a Member of Tewkesbury Town Council.	Would speak and vote.
P D Surman	Item 8 – Planning Scheme of Delegation.	Is a Member of Shurdington Parish Council.	Would speak and vote.
M G Sztymiak	Item 8 – Planning Scheme of Delegation.	Is a Member of Tewkesbury Town Council.	Would speak and vote.

42.3 There were no further declarations made on this occasion.

CL.43 MINUTES

43.1 The Minutes of the meeting held on 20 October 2021, copies of which had been circulated, were approved as a correct record and signed by the Mayor.

43.2 A Member noted that he was still awaiting the information promised at that meeting in response to his supplementary question as set out at Minute No. CL.33.4.

CL.44 ITEMS FROM MEMBERS OF THE PUBLIC

44.1 There were no items from members of the public.

CL.45 MEMBER QUESTIONS PROPERLY SUBMITTED IN ACCORDANCE WITH COUNCIL PROCEDURE RULES

45.1 The following questions had been received from Councillor Ockelton to the Leader of the Council. The answers were given by the Leader of the Council, Councillor Bird, but were taken as read without discussion.

At January 2021 Council meeting I asked several questions, one being

“As TBC have lost 64% of appeals, I would suggest that the strategic plan is demonstrably flawed. Would Cllr Bird please inform Council, as to the cost to the taxpayer of these appeals and, what is his plan B”.

I was given written responses the following month. Can I thank the Leader of the Council and the member for Built Environment for their replies?

However, I would ask for a much fuller response, from the Leader of the Council, this time to actually answering the question instead of asking one himself and I quote: -

“Before any response can be made, further information is requested as to the derivation of the specified percentage of appeal losses”. To clarify, noun “derivation”, the action of obtaining something from source or origin.

The source of the percentage question was a report, by Pegasus Group, Proof of Evidence on Housing Need and Supply Matters on the appeal reference APP/G1630/W/18/3210903, Land at Fiddington, Ashchurch, Near Tewkesbury, Gloucester dated 7 July 2019, LPA (TBC) Reference 17/00520/OUT, Statement of Common Ground and other information included at that appeal which are held by the Planning Department.

Question 1

Will the Leader of the Council please give Council a full and detailed answer to the cost to the taxpayers of lost appeals for major housing development, in the plan period 2011 to date, to now include the appeals lost this financial year.

Answer

The cost to the Council of lost appeals for major housing development includes external costs for Counsel / Advocate's fees together with the costs of appointing consultants as required to give evidence on behalf of the Council (e.g. landscape evidence, planning evidence, arboricultural evidence). In addition, there are significant amounts of work carried out by Council officers to prepare for appeals including, where required, attendance at Public Inquiries. Whilst those costs for which invoices are raised can be quantified, Council Officers do not routinely record their time and it is therefore not practically possible, over the period 2011 – 2021, to quantify the officer time spent on those appeals. I can confirm that the total of the external costs to the Council of the 16 appeals for major housing development that have been lost during the period 2011 to date, including related High Court challenges, amounts to £454,130.32.

Question 2

The Statement of Common Ground agreed by the Council and the Appellants in respect of the appeal for residential development at Fiddington held in June 2019 included the following:

- "It is agreed that there is a considerable level of housing need in Tewkesbury Borough, and this is worsening year on year".
- It is agreed that if the approach to land supply as recently endorsed by the Secretary of State in the Highnam Appeal decision is adopted, then using the Council's figures it is able to demonstrate a 2.77-year land supply.
- It is agreed that the five-year land supply shortfall will worsen from now (07 06 2019) and in the coming years.
- It is agreed that the JCS identifies that there was a plan shortfall of 2,455 homes. It is agreed that there is no plan in place to address this.

Would the Leader of the Council agree with the comments within the SOCG made above?

Answer

That is an accurate statement of the Council's position as at 7 June 2019, the date when this Statement was prepared.

Question 3

As the Conservative administration has failed completely on the issue of housing land supply and more importantly, as pointed out by the planning inspector and supported by Mr Justice Dove, repeatedly on the Highnam and recent Gotherington appeals, the lack of deliverable sites in the housing trajectory, what has the administration in mind to rectify this grotesque mismanagement of the plan led process?

Answer

The Council has worked hard to prepare a Local Plan to reflect the needs of the Borough. The Local Plan has been through an independent examination and the Inspector has advised the Council that, subject to main modifications which the Council is currently consulting upon, the Plan will be sound. Upon the adoption of the Tewkesbury Borough Plan, anticipated in Spring 2022, the Council will have a 5-year housing supply.

45.2 The Mayor invited the Member to ask any supplementary questions. The Member asked the following and responses were provided as detailed below:

1. Would the Leader of the Council agree that once the final cost comes in on the Gotherington appeal and we give an estimated cost to staff time the cost would be closer to a million pounds?

The Leader undertook to provide a written response following the meeting.

2. Would it be fair to say that with the decision at Highnam even officers had started to question the methodology “the decision has run contrary on a particular element of our calculation” which means we don’t have a 5YHLS.

The Leader advised that the response to the original questions set out what the Council was doing to ensure it was soon able to demonstrate a five-year housing land supply.

3. I would thank the Leader of the Council again for his response. However, if Cllr Bird agrees with question two then the basis for his response is flawed! He is basing his answer on the Council currently having over a four year Housing Land supply. The statement of common ground and the findings of Mr Justice Dove on both the Highnam and Gotherington appeals quite clearly put TBC’s current housing trajectory below two years. How would Cllr Bird address that?

The Leader advised that the Housing Land supply had been addressed in the preparation of the Local Plan and upon its adoption, the Council would have a five-year supply.

45.3 The following questions had been received from Councillor Munro to the Lead Member for Built Environment, Councillor Gore. The answer was given by the Lead Member for Built Environment, Councillor Gore, but was taken as read without discussion.

Question:

Please can Members be updated with the progress the S106 Officer has made since appointment on updating the S106 system and the timeline with dates for the tasks that need to be completed to enable planning staff and Members to have clear visibility of all S106 agreements, upcoming trigger points and dates in S106 agreements?

Answer:

Overview

S106 deeds are currently visible to the public in their entirety via the Tewkesbury Borough website ‘Planning – Simple Search’ tool. The current monitoring software EXACOM, purchased previously by the council, is specifically designed for the monitoring of S106 and CIL obligations and has the option to purchase a publicly accessible module. Once EXACOM is up to date the public module would allow for S106 financial obligations due, received, and spent to be viewed in real time.

A S106 monitoring officer has been in position since 5 October 2021 and is employed on a fixed two-year contract of twenty-two hours a week. The overall objective for the monitoring officer is to create an efficient, streamlined, and transparent process for the implementation, monitoring, and delivery of S106's at Tewkesbury Borough Council. Steady progress is being made through taking a multi focus approach which includes 1) updating the current system 2) implementing monitoring practices for current developments and 3) working towards creating robust processes for all future monitoring and funding. With regards to timelines, these are difficult to quantify at this stage given the complexity of the task of updating the system which involves collating large amounts of information from a variety of sources. Added to this are the ongoing tasks of responding to live requests and the establishment and monitoring of current obligations. Therefore, all dates provided below are provisional.

Objectives, timelines, and related tasks

Updating monitoring software (EXACOM)

Purpose To allow for an efficient monitoring review system of S106's moving forward, production of annual infrastructure and quarterly reports, and to allow for the option of the public facing module thereby providing transparency and reducing time spent responding to S106 public enquiries.

Timeline September 2022 - with all tasks currently ongoing

- Inputting all historical receipts and spends so that the system balances with the current financial system.
- Entry of claw back dates so system can allow for monitoring.
- Training carried out so services responsible for spends and delivery of non-financial obligations use the EXACOM software in real time and in doing so provide a clear audit trail.
- Updating all non-financial obligations on the system including Affordable Housing, Public Open Spaces, Community Buildings etc.
- Inputting review dates for live monitoring moving forward.

Monitoring of current S106's

Purpose To allow for efficient monitoring and a proactive approach moving forward.

Timeline Ongoing tasks in real time and worked in conjunction with updating the system as above

- Establishing a list of current developments and triaging as appropriate.
- Carrying out a full audit on each S106 and setting up review dates.
- Responding to queries relating to current S106 and calling on obligations.
- Work with other services ensuring obligations are/have been met.

Develop, implement, and enhance S106 processes

Purpose To develop relevant standard operating procedures, protocols, and guidance including publishing information to allow for streamlined monitoring, public transparency, and reduced workload burden.

Timeline Draft procedures produced by September 2022 with tasks ongoing

- Adoption of a standard S106 deed (draft currently out for consultation).
- Work with other officers on standard procedures of delivery and spends.
- Check compliance of financial reporting and data protection.
- Investigation re purchasing the public facing and back-office finance modules of EXACOM to reduce workload.
- Collaboration with and learning from other councils S106 process.
- Update the website to provide clear communication allowing the public to understand the borough's approach to S106 and any processes.

Self-Funding of S106 Monitoring

Purpose Work towards establishing ongoing funding to cover the costs of S106 monitoring

Timeline September 2022

- Research other Council's approaches (initial scoping exercise completed).
- Costing exercise carried out with a view to producing clearly justifiable monitoring and administration fees for inclusion within any new S106.

45.4 The Mayor invited the Member to ask a supplementary question. The Member asked the following and a response was provided as detailed below:

September 2022 seems to be a key date – can Members be advised of any changes to the timeline that might take the project beyond that date?

The Lead Member for Built Environment advised that Members would be told if the timeline changed.

CL.46 RECOMMENDATIONS FROM EXECUTIVE COMMITTEE

Annual Infrastructure Funding Statement (IFS) and Community Infrastructure Levy (CIL) Rate Summary Statement Requirements

- 46.1 At its meeting on 17 November 2021 the Executive Committee had considered a report on the Annual Infrastructure Funding Statement (IFS) and Community Infrastructure Levy (CIL) Rate Summary Statement Requirements and recommended to Council that the publication of the Infrastructure Funding Statement (IFS) relating to the financial year ending 31 March 2021 by 31 December 2021 be approved; and the Annual Community Infrastructure Levy (CIL) Rate Summary Statement be published alongside the IFS.
- 46.2 The report which was considered by the Executive Committee had been circulated with the Agenda for the current meeting at Pages No. 10-38.
- 46.3 The Chair of the Executive Committee proposed the recommendation and the Vice-Chair seconded it.
- 46.4 A Member noted that the Council was requiring S106 money faster than it was being spent meaning there was quite a large balance and she questioned how much of the £10.4 million was unallocated and how much had been spent this financial year. The Head of Development Services advised that she would check and advise Members accordingly. Another Member raised a query in terms of infrastructure and the Head of Development Services confirmed that the list included all infrastructure identified in the JCS adopted in 2017 and she would look at providing a list of the infrastructure for the JCS. In addition, Officers were

currently reviewing the CIL and as part of that would have to look at what infrastructure was currently required so this would be available in due course. Referring to the JCS examination inspector, a Member indicated that it had been made clear that the County and Borough Councils could not 'double dip' on infrastructure in strategic sites and that there should be a Memorandum of Understanding to ensure this was the case; he questioned whether that had yet been agreed. In response, the Head of Development Services undertook to find out and advise the Member accordingly.

46.5 It was

- RESOLVED**
1. That the publication of the Infrastructure Funding Statement (IFS) relating to the financial year ending 31 March 2021 by 31 December 2021 be **APPROVED**.
 2. That the Annual Community Infrastructure Levy (CIL) Rate Summary Statement be published alongside the IFS.

CL.47 PLANNING SCHEME OF DELEGATION

- 47.1 The report of the Head of Democratic Services, circulated at Pages No. 39-55, proposed an amendment to the Scheme of Delegation, with a full review of the Scheme planned to take place in the medium term (12-18 months), which Members were asked to approve.
- 47.2 The Borough Solicitor advised that this followed on from the Executive Committee's approval of the action plan which had resulted from an external review of the Development Management service. The review had found that Tewkesbury Borough Council's Planning Committee considered significantly more minor applications than other authorities of a similar size. The consultants had indicated that to take an application to Committee cost approximately ten times as much as if it was delegated to Officers, so it had been agreed as a priority within the action plan to address this through the Scheme of Delegation. The suggested amendment, which would remove safeguard 5(i) in relation to objections from Town and Parish Councils being automatically referred to Committee, would help to ensure there were resources available within the Development Management team to improve the service. The Planning Scheme of Delegation had last been reviewed in 2015 with a majority of applications delegated to the Head of Development Services, subject to safeguards. Parish and Town Councils were not statutory consultees to planning applications but could be notified of applications within their areas, therefore their comments carried no more weight than any other third party. As with any person that made comments, if material planning considerations were raised those would be fully taken into account by the decision-maker.
- 47.3 A Member proposed that the matter be deferred to the next Council meeting in order to allow the Council to communicate with Parish and Town Councils and explain its reasons and the implications behind the amendment to the Scheme of Delegation. The proposal was seconded and the Mayor welcomed questions on the deferral. A Member asked for confirmation that, under the current scheme, all Parishes were aware that if they objected the application would go to Committee; whether Parishes had been informed of the costs of taking applications to Committee; of the applications that went to Committee how many had provided valid planning reasons; and whether Parishes were informed of the date that an application would go to Committee. In response, the Borough Solicitor advised that she did not know the level of awareness of Parish Councils about the Borough Council's process for any application to which a Parish Council had objected. In terms of the cost of taking applications to Committee, this was not something Parishes were advised of. No application would go before the Planning Committee

if there were no material planning reasons to do so as that was part of the Scheme of Delegation already. A Member indicated that he did not currently receive notification of planning applications made within the three Parishes he represented, and the Head of Development Services explained that for Members to receive this information automatically they had to request it; however, it was agreed that it made sense for all Members to receive details of applications in their area. Another Member requested that, as part of the deferral, Members be provided with a breakdown of the costs of taking an application to Committee versus Officer delegated decisions. The Head of Development Services explained that broadly this would include the resources required for Planning Officers to prepare the Committee reports and presentations as well as input from One Legal and Democratic Services in the process.

47.4 Referring to the consultant's report, the Chief Executive explained that this was a management report about the operation of the service. It had been considered by the Executive Committee which had approved the action plan that was available to Members. The issue was that everyone wanted the most efficient and effective planning service possible and the action plan was aimed at providing the best service within the resources available. The report now before Members had been prepared to assist in achieving that aim. He understood the views expressed about communicating with Parishes and, if the report was deferred, the comments made in that respect would be taken into account as it was important to explain the background to the suggested amendment.

47.5 A Member indicated that she had read the report and action plan thoroughly and agreed that it covered a lot of issues that were part of bigger concerns about the service. She felt that the deferral based on communication with Parishes was the correct thing to do as it meant those who were affected would be able to have a say. A Member questioned whether deferral until the next Council meeting in January would allow time for Parishes to discuss the matter. It was felt it would be better to defer without a timescale as there would be planning required to properly communicate. In offering clarification, the proposer of the motion indicated that her proposal was to speak to Parishes and provide the reasons and implications behind the amendment rather than to undertake formal consultation. Another Member proposed an amendment to include the word 'consultation' rather than 'communication' as follows: that the matter be deferred in order to allow consultation with all Parish and Town Councils and to explain its reasons and the implications behind the amendment to the Scheme of Delegation.

47.6 A recorded vote was requested and, upon receiving the appropriate level of support, voting was recorded as follows:

For	Against	Abstain	Absent
K Berliner	R A Bird	C M Cody	M Dean
G F Blackwell	J H Evetts	M A Gore	R D East
G J Bocking	E J MacTiernan	C E Mills	
C L J Carter	J R Mason		
K J Cromwell	R J E Vines		
P A Godwin			
D W Gray			
D J Harwood			

M L Jordan
H C McLain
P D McLain
H S Munro
J W Murphy
P W Ockelton
A S Reece
C Reid
J K Smith
P E Smith
R J G Smith
V D Smith
C Softley
R J Stanley
P D Surman
M G Sztymiak
S Thomson
M J Williams
P N Workman

47.7 With 27 votes in favour, five against and three abstentions, this became the substantive motion. Accordingly, upon being put to the vote, it was

RESOLVED That the matter be deferred in order to allow consultation with all Parish and Town Councils and for the Council to explain its reasons and the implications behind the amendment to the Scheme of Delegation.

CL.48 RECRUITMENT OF CHIEF EXECUTIVE

48.1 The report of the Borough Solicitor, circulated at Pages No. 56-59, set out proposals for the recruitment of a new Chief Executive following the current Chief Executive's announcement of his intention to retire. Members were asked to consider the report and agree the proposed way forward.

48.2 The Chief Executive explained that it was not often that a Council needed to change its Chief Executive but since he had announced his intention to retire on 30 June, Tewkesbury Borough Council now had to agree the process it wished to take to do this. He had been appointed in 2009 and since then it had been his honour and privilege to serve on behalf of the Council so there was a degree of sadness for him

that this was coming to an end but with that he felt the Council could get a really good Chief Executive to take it forward on its journey. In responding, the Leader of the Council offered his thanks to the Chief Executive on behalf of the Council for the outstanding work he had done during his time with the Council and he felt the authority owed him a huge vote of thanks for everything he had done. The organisation was vastly different now than when he had been appointed and the Chief Executive had gained influence not only within Tewkesbury Borough Council but across Gloucestershire as a whole which had been very helpful. The Chief Executive left the meeting for the remainder of the debate.

48.3 In introducing the report, the Borough Solicitor explained that it set out the proposed process to get the Council to the stage of appointing a new Chief Executive. This was a statutory role which must be appointed by Council but the report suggested the remainder of the work was undertaken by a Chief Executive Appointment Working Group and Committee. The report set out the role of each of those bodies and the intention that all Members would have some interaction with the shortlisted candidates and be able to provide feedback to the Chief Executive Appointment Committee. The Committee would be politically balanced, as set out in the report, to ensure the recommended candidate had cross-party approval. There was a need to agree the process at this evening's meeting to enable the post to be advertised early in the New Year. A Member questioned whether it was likely the Council would be able to recruit someone by June. In response, the Borough Solicitor felt it was possible but would certainly be tight as it largely depended on the notice period of the successful candidate. The role at Tewkesbury Borough Council was a fantastic opportunity for someone and it was hoped the post would attract some really good candidates so it was worth waiting to get the right person.

48.4 Accordingly, it was

RESOLVED

1. That the Council recruits a Chief Executive.
2. That a Chief Executive Appointment Committee be established with the composition and Terms of Reference as set out in Paragraphs 3.1 and 3.2 of the report.
3. That a Chief Executive Appointment Working Group be established with the same composition as the Chief Executive Appointment Committee and Terms of Reference as set out in Paragraph 3.3 of the report.
4. That a sum of £25,000 be vired from the Medium Term Financial Strategy reserve to support the costs of recruitment.

The meeting closed at 7:20 pm