

## **EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Planning Services Scrutiny Standing Panel      **Date:** Thursday, 2 December 2010

**Place:** Council Chamber, Civic Offices, High Street, Epping      **Time:** 7.30 - 10.10 pm

**Members Present:** J Philip (Chairman), Mrs A Grigg, Mrs S Jones, A Watts and J M Whitehouse

**Other Councillors:** Mrs P Smith and D Stallan

**Apologies:** H Ulkun, Mrs P Brooks, C Finn, Mrs M McEwen, J Markham and W Pryor

**Officers Present:** J Preston (Director of Planning and Economic Development), R Palmer (Director of Finance and ICT), N Richardson (Assistant Director (Development Control)), C Neilan (Landscape Officer & Arboriculturist), I White (Forward Planning Manager) and M Jenkins (Democratic Services Assistant)

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### **36. SUBSTITUTE MEMBERS**

There were no substitute members present.

### **37. DECLARATIONS OF INTEREST**

There were no declarations of interest made pursuant to the Member's Code of Conduct.

### **38. NOTES FROM THE LAST MEETING**

#### **RESOLVED:**

That the notes of the Panel meeting held on 2 September 2010 be agreed.

### **39. TERMS OF REFERENCE**

A new version of the Terms of Reference for the Panel were submitted to the Panel. The reference to the East of England Plan had been deleted, as this Plan had been heralded as being replaced by new local arrangement.

### **40. WORK PROGRAMME**

The following was noted:

#### **(1) (a) Regional Plan**

There was a legal challenge to the Secretary of State's decision to abolish the Regional Plan. Currently this was awaiting developments.

**(b) Local Development Framework**

A Community Visioning Exercise had taken place, the first workshop had been on 29 November 2010.

**(c) Current Staffing**

There was a slightly amended version of the staff list in the Business Plan, on the panel's agenda.

**(2) Value for Money Provision**

The New Homes Bonus was on the current agenda. Planning fees set by Local Authorities consultation had a deadline as 9 January 2011. Officers' views were being forwarded to the Government.

**(3) Chairmen and Vice Chairmen of Area Planning Committees to be invited to a meeting to provide Feedback**

A meeting had taken place in August 2010. The intention was to meet more regularly.

**(5) Comments from the Planning Agents and Amenity groups required matching**

A successful meeting had taken place on 26 October 2010. The draft notes would be circulated. Again this would be a regular occurrence.

**(6) That a report be produced for the Panel setting out the possible route any planning enforcement investigation could take.**

This would be submitted to the Panel at a later date.

**(7) Review the Corporate Planning Protocol**

This was being considered by another Panel

**(8) To review a selection of controversial planning decisions to see if lessons can be learnt from their consideration.**

Three suggested sites had been located. A report would be scheduled into the Work Programme.

**(9) S106s**

Part of this was covered in the New Bonus Homes Consultation

Members were advised that a further item would be scheduled into the Work Programme regarding the standard Directorate letters sent to neighbours regarding planning applications and enforcement.

**41. IMPROVEMENT PLAN**

The Director of Planning and Economic Development went over the Improvement Plan briefly. It was felt that this item should be discussed more fully at a future meeting. Mr J Preston added that there would be a consultation document put before Panel members regarding planning fees.

#### 42. CONSTRUCTION DAMAGE TO HIGHWAYS

At the Planning Services Scrutiny Standing Panel meeting on 3 June 2010 officers were required to look at the issue of damage to highway infrastructure during construction work, and whether there was a way of forcing developers to make good any damage they had created at their expense.

In attendance at the meeting by invite was Ms Emma Featherstone, Development Manager Engineer at Essex County Council. The County Council advised that ultimately any damage to the highways included grass verges should be reported to the Maintenance Team at the West Area Highway Office. It was advised that the main difficulty was in gathering evidence and proving who had caused the damage and also how those responsible should pay and rectify the damage. Members asked about the sorts of evidence required to prove the extent of damage, perhaps photographs. Ms E Featherstone replied that more evidence was needed apart from photographs. It was problematic proving damage to a developer. There could also be sub-contractors involved. In some cases applicants had signed up to a unilateral agreement to repair any damage made. Conditions can be made when agreeing an application.

Since October 2008 there was now a great deal of extension work to houses that no longer required planning permission. Even where extension work did require planning permission, the highway authority were only consulted if there was a highway safety issue, this was very rare. For large scale planning applications it was possible to condition a construction management plan and a condition survey where construction damage was put right. However planning should not take on a responsibility that is controllable by the landowner, in this case, likely to be the highway authority.

Mr N Richardson advised that he was shortly attending the Essex Development Control Forum and a meeting of the Planning Officer's Society and would make enquiries about this.

Officers were informed of a particular problem in Theydon Bois where vehicles being used in a development had damaged resident's gardens. The development had involved match funding, it was felt that the investment made should be protected. Officers suggested that a Code of practice should be developed for builders. It was only on large scale developments that a maintenance payment was required for damage. Members requested that officers find out how recovery costs take place, members also asked how kerb stones were fixed for householders.

#### **RESOLVED:**

- (1) That N Richardson, Assistant Director of Planning and Economic Development, and Ms E Featherstone, Development Manager Engineer at Essex County Council, find out how frequent recovery costs take place; and
- (2) That N Richardson liaise with Essex County Council to seek how damage to footways during construction is resolved.

#### 43. NEW BONUS HOMES CONSULTATION

The Panel received a report from Mr I White, Forward Planning Manager, regarding the Communities and Local Government Consultation on the New Homes Bonus (NHB). The consultation was the Coalition Government's approach to incentivising

local authorities to increase housing supply and it ran from 12 November to 24 December 2010.

The consultation contained the following questions:

**1. Level of Bonus**

For each new home built in a specified period within a year, the Council would receive the “Bonus,” equal to the national average for the appropriate Council Tax band. This would be paid for each new property for the following six years as an unringfenced grant. The first consultation question was:

**(a) Do you agree with CLG’s proposal to link the level of grant for each additional dwelling to the national average of the Council Tax band?**

**Response:**

There were many other current and complex changes underway to local government financing which would lead to a reduction in Revenue Support Grant. The Housing and Planning Delivery Grant had also been abolished so, unless new housing was built, the Council would be receiving significantly less money from central government. Conversely, local authorities that allocated significant land for housing through the Local Development Framework would receive much more. In the last 5 years an annual average of 158 new houses had been built in the district.

Members asked if there would be a maximum amount of bonus that could be paid to a Council in any one year, and would the scheme be retrospective when it started. Officers were requested to prepare scenarios of different annual building numbers to provide members with some feeling for the potential financial implications.

**2. Affordable Housing Enhancement**

The document proposed an additional £350 for each of the six years for every new affordable unit. This was described as “about 25% of the current average Band D Council Tax.” The second question asked:

**(b) What do you think the enhancement should be?**

**Response:**

An annual average of 43 new affordable houses were built in the last 5 years. Since the Council recognised the importance of, and need for, affordable housing, it was felt that an enhancement would be beneficial. In recent years, permission for 80-100% affordable housing, on some Green Belt sites, had been granted for very special reasons.

Members felt that the enhancement should be a percentage rather than a flat fee.

**3. Definition of Affordable Housing**

The definition should include social rented and intermediate housing. In addition pitches on Gypsy and Traveller sites in public ownership were considered to contribute to the supply of affordable homes. While this Council had made significant progress in increasing the number of authorised pitches in the last couple of years, these have all been on privately owned sites. Any further provision in the district was most likely to be on non-public land, so, with this definition of “affordable” the Council

would not gain any NHB enhancement from increased number of Gypsy and Traveller pitches. The third question asked:

**(c) Do you agree to use PPS3 and publicly owned Gypsy and Traveller sites to define affordable homes?**

**Response:**

As part of the Comprehensive Spending Review, the Government announced its proposed introduction of “affordable rented” properties replacing the social rented tenure of new housing association homes. These would be at rents of up to 80% of private rents. Members agreed that the definition of “affordable housing” should include affordable rented housing as introduced in the recent Comprehensive Spending Review.

The Panel concluded that it was appropriate for the Bonus to apply to each new Gypsy and Traveller pitch. However the enhancement should not apply, as these sites were not considered to be affordable housing. The total number of pitches granted planning permission since 2008, now stood at 34, the target for 2011 set in the East of England Plan Single Issue Review.

#### **4. Empty Homes**

The consultation document was not entirely specific about the details, merely saying that it proposed “to reward local authorities for bringing empty properties back into use through the NHB.” There were two questions associated with this:

**(d) Do you agree with the proposal of reward?; and**

**(e) Are there any practical constraints?**

**Response:**

While initiatives to incentivise and reward local authorities for bringing empty properties back into use would be welcomed, the consultation was not sufficiently detailed to assess how the NHB would work.

Members supported the principle of renewal but agreed that there was insufficient information in the consultation document. Clarity was needed around the renewal applying to house sub-divisions. No firm conclusions were drawn about houses in multiple occupation.

#### **5. Tier Split of Bonus**

The document recognised that “for the incentive to be most powerful, it must be strongest where the planning decision sits.” It therefore proposed an 80:20 split “as a starting point for local negotiation.” There was also discussion of the pooling of funding with other local service providers, and with Local Enterprise partnerships, but these cases would depend upon individual circumstances, and the Government stated again that “local authorities were best placed to negotiate to meet the needs of local neighbourhoods and communities.” Two questions flowed from this proposal:

**(f) Do you agree to the 80:20 split between lower and higher tier authorities, as a starting point for local negotiation?; and**

**(g) If not, what would the appropriate split be, and why?****Response:**

Local authorities would be free to spend the grant in line with community wishes. However this could lead to disagreement between local communities.

As RSG would be reduced to assist with funding the NHB, officers believed that RSGs to upper tier authorities should be similarly reduced. They proposed that if there were no infrastructure costs to upper tier authorities, the proportion of NHB should be nil. The members asked who would be the arbiter if there was disagreement between the district and county councils about the split of the bonus. The split should be prescribed in legislation and should not be a matter of local negotiation. It was felt that the split should be 90:10 in favour of the District Council. It was suggested that there should be a Memorandum of Understanding with the County Council to ensure that the bonus was spent within the district.

**6. Basis of Calculation**

This section discussed sources of data minimising additional burdens on authorities, and the timing of grant allocations and payments. Six questions were posed:

**(h) Do you agree to use data collected on the Council Tax base form as at October to track net additions and empty homes?**

**(i) Do you agree with one annual allocation based on the previous year's Council Tax Base form, and paid the following April?**

**(j) Do you agree that allocations should be announced alongside the local government finance timetable?**

**(k) Do you agree that local authorities should be rewarded for affordable homes using data reported through the official statistics on gross additional affordable supply?**

**(l) How significant are demolitions?**

**(m) Is there a proportionate method of collecting demolitions data at local authority level?**

**Response:**

Officers agreed with the first four questions with the proviso that the definition of affordable homes should be expanded. Demolitions were not considered to be significant in this district and the information was already collected as part of the Annual Monitoring Report for the LDF. Members asked that the issue of local authority boundary changes should be brought up in the response to the consultation.

**7. Additional Issues**

This covered equalities impacts and "consultation stage impact assessment." CLG's view was that the NHB was fair as all relevant local authorities were able to access the scheme funds. The bonus was not ringfenced, so authorities could spend the grant as they see fit – and they would be subject to equality legislation in making those decisions.

Two questions were asked:

**(n) Do you think the proposed scheme would impact any groups with protected characteristics?; and**

**(o) Do you agree with the methodology used in the impact assessment?**

**Response:**

The first question raised potentially controversial issues, where perhaps a perception may arise that permissions had been granted for financial reasons.

Members asked that their concern about the shortness of the consultation period should form part of the response. It was also suggested that “transitional arrangements” were needed as enough was not known at this stage about the impact on local government financing.

**Wider Views**

The document asked for other comments, particularly where there were issues that had not been addressed.

The district was entirely within the Green Belt with only towns and larger villages excluded by tightly drawn boundaries. How would “incentivisation” sit with the strategic aim of growth restraint, and with the Government committed to protecting the Green Belt?

Members were sceptical about the statement on “Rural Proofing” in the “Specific Impact Tests” section of the appendices of the consultation document. There was concern that a potential increase in development could impact adversely on rural areas. The document suggested that the risks were mitigated given that local authorities determined the quantity, type and location of housing development.

It was unclear how the existence of the bonus should be treated in considering the planning merits of such schemes. There was concern that some residents, or other observers, would argue that some permissions had been “sold.” Members were advised of “The Planning System: General Principles” (2005), that the “use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold.” It was therefore “not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer.”

The Government intended that the scheme would become a permanent feature of local government funding. There was concern about the medium and long-term effects this would have on settlements such as Harlow which had very little land left for new housing. This may lead to increased pressure for boundary reviews and loss of Green Belt.

Similar issues applied to any urban extensions in Harlow. This could increase pressure for early boundary changes which could mean the Council losing nomination rights for any affordable housing included in such schemes. It was believed that the Council permitting the housing should retain the NHB, irrespective of boundary changes. The example of Church Langley was mentioned where permission was granted when the land was within Epping Forest, but a boundary change meant that all the housing was now in Harlow. It was felt that the latter could

argue that the NHB should rightly be paid to the authority which was picking up the service costs created by the households.

Members felt that the timescale of the consultation was far too short. The scheme was being introduced on 1 April 2011, therefore it was difficult to ascertain how the Communities and Local Government (CLG) could take on board all the responses during this period of time. Although the consultation was being put before the Council on 14 December 2010, it was felt that members should be given advanced warning of its potential impact before the meeting. Members requested that the three M.P.s representing the district area should be advised of the Council's response to the consultation.

**RECOMMENDED:**

That a report be submitted to the Council recommending that the annotated version of the report by the Director of Planning and Economic Development containing suggested responses and recommendations on the comments to be made be approved.

**44. TREE PRESERVATION ORDERS CONSULTATION DOCUMENT**

The Panel received a report regarding Tree Preservation Orders: Proposals for Streamlining – Consultation.

The Government was consulting on a proposal to consolidate legislation and streamline the Tree Preservation Order (TPO) system, the consultation closed on 20 December 2010.

The key measures outlined were:

1. The creation of a unified system for all TPOs
2. To shorten and simplify the model TPO

The new regulations were expected to be brought into effect in 2011. Officers considered the consultation proposals to be largely beneficial. The chief benefit were considered to be that new orders would be both easier for the public to understand and for the Local Planning Authority to administer. There would be some saving in the time taken to make an order and the opportunity for error would be reduced.

Of the originally suggested responses members had comments and suggestions to alter or elaborate several.

**The Questions and Responses**

**Question 1 Will the proposal to consolidate legislation and introduce one system for TPOs benefit tree owners and local planning authorities?**

**Response** There would be real and significant benefits for both. However there would also be drawbacks as well. The particular set of solutions proposed within a single format was not supported by evidence.

**Question 2 Will bringing all existing and future TPOs into the same shorter format be clearer for tree owners and help local planning authorities?**

**Response** It would undoubtedly be clearer for tree owners, and it would assist in effective tree protection by speeding up the production of new TPOs.

**Question 3** Is the proposed provisional protection helpful to local planning authorities and, given the interests of tree owners, fair and reasonable?

**Response** It confirmed what was the general de facto position in any case. It was felt though, that a provisional order would become void after 6 months, which was negative.

**Question 4** Is the proposed minimum notification of new or varied TPOs targeting the right people?

**Response** It would still ensure that those most closely affected by a TPO were made aware, and in doing so will reduce the administrative burden of making an order to some extent, and reduce costs.

**Question 5** Are the proposals to remove the current exemption for work to dying trees and limiting work to dangerous trees useful clarification, and reasonable?

**Response** It provided useful clarification and closed a potential loophole. However it still left the biodiversity value of veteran trees in particular vulnerable to pruning that may have threatened their biodiversity value.

**Question 6** Do you agree that the power to vary or revoke consents for work under TPOs made before 2 August 1999 should be removed?

**Response** Not a power that this authority had exercised.

**Question 7** Is a default period of one year for the duration of consents reasonable?

**Response** On balance, two years would be preferable. Many consents were not exercised within a year, so the change would potentially increase the number of applications without an increase in tree protection.

**Question 8** Will the opportunity to consider repeated operations, or programmes of work, assist tree owners in their management of protected trees?

**Response** This made explicit what was a useful opportunity – serving to reduce unnecessary bureaucracy for LPAs as well as owners.

**Question 9** Is the proposed change to secure planting of replacement trees in woodlands by conditions reasonable?

**Response** This was a modest change, it was one that could weaken the council in respect of protecting woodland amenity.

**Question 10** Are the proposed changes with regard to compensation fair and reasonable?

**Response** There was no evidence supporting the complete withdrawal of article 5 certificates, this was likely to have a negative impact on the retention of large and special trees in urban areas.

**Question 11 Do you have any further comments to make about the draft regulations?**

**Response** That the status of Area Orders appeared unclear, they were mentioned in the draft order, but not in the draft regulations. The retention of out-of-date terms, notably “lopping” and “topping” was regrettable. That the reference to “good Forestry” alone was regrettable, and that it should be expanded to /include “good woodland management practice.”

**Question 12 Do you have any general comment of the outcomes predicted in the impact assessment, particularly about the costs and benefits?**

**Response** The Authority considered that the draft impact assessment was too limited to be truly useful.

There was no “Question 13” in the consultation.

**Question 14 Are there any benefits to the “do nothing” option of not consolidating regulations and creating a unified system for TPOs?**

**Response** Members considered that having regard to the considerable reservations expressed it should be answered that there were benefits to the “do nothing” option. It was noted with concern that the proposed changes were not backed by evidence that alternative options for change were not considered and that although a review was proposed, there were no arrangements for systematic collection of monitoring information for future review.

Mr C Neilan advised that he would put together all the responses made and email the present Panel members to check for accuracy before submitting the final response to the Government.

**RESOLVED:**

That subject to accuracy, the responses to the consultation be forwarded to the Government.

**45. PLANNING AND ECONOMIC DEVELOPMENT - DIRECTORATE BUSINESS PLAN**

The Panel received the Planning and Economic Development Directorate Business Plan. Mr J Preston advised that this was a first draft and required more work. It was felt that there was not enough time in the meeting to discuss this fully and that it would be brought back to the extra-ordinary Panel meeting in January 2011. It was requested that Mr P Millward, Business Manager, should come to that meeting to present the Business Plan.

**RESOLVED:**

That the Directorate Business Plan be re-scheduled for the Panel Extra-Ordinary Meeting on 10 January 2011.

**46. ANY OTHER BUSINESS**

There was no other business.

**47. DATES OF FUTURE MEETINGS**

The next meeting of the Panel was on 10 January 2011, an extra-ordinary meeting, and the following meeting was on 3 March 2011.

**CHAIRMAN**

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