

EAST DEVON DISTRICT COUNCIL

Minutes of a meeting of the Scrutiny Committee held at Knowle, Sidmouth on 6 September 2018

Attendance list at end of document

The meeting started at 6.00pm and ended at 8.23 pm.

***14 Public speaking**

There were no members of the public present.

***15 Minutes**

The minutes of the Scrutiny Committee held on the 5 July 2018 were confirmed and signed as a true record.

***16 Declarations of interest**

No interests were declared.

***17 Questions in advance of the meeting from Members of Scrutiny Committee**

In response to a request by the Chairman for Questions to be received from members in advance of the meeting, 9 questions had been submitted, and the printed [questions and answers](#) were circulated prior to the meeting. The Chairman read through the questions and answers and asked Councillors submitting questions to put any related supplementary questions to the meeting. The response to the supplementary questions asked are set out below.

- a) Question 1 – The supplementary question queried the definition of the term ‘that it is in the public interest to prosecute the offence’, referred to in point 2 of the response to the first question from Cllr Chapman.

In response, Ed Freeman, the Service Lead for Planning Strategy & Development Management gave a comprehensive explanation about the assessment made by officers to establish the nature of the harm caused.

- b) Question 2 – The supplementary question related to the fourth question from Cllr Chapman, and was whether there was a disincentive to the Council in taking cases to court.

In response, Members were told that an assessment would be made about any cases which could be taken to court based on a variety of criteria, including whether it was expedient to do so and proportionate to take such action, in order to make a balanced judgement. The Chief Executive stated that it was a good thing for the Council to pursue prosecutions in order to show that it would take action and also to assist magistrates understand the issues involved. However, it was important to choose the cases to take to prosecution.

Although there was no formal comparison of Councils which pursued actions, it is understood that EDDC may take one or two forward each year which was similar to other Councils.

- c) Question 3 - The supplementary question queried whether there was a sufficient deterrent at present.

In response, the Chief Executive stated that there were unscrupulous developers who may not be put off by the fines at present. Ed Freeman stated that EDDC will try to publicise instances where this occurs, which can be more of a deterrent to developers. Cllr Mike Howe stated that it was possible to insist that when trees are felled by developers, they are replaced so that it is impossible for them to use the land as anticipated.

The Chief Executive confirmed that a lot of work was involved in taking forward prosecutions, such as evidence gathering, and following up witnesses and landowners before a public interest test was undertaken, because some cases were very difficult to prove in court.

The Chairman asked when the few outstanding recommendations from the TAFF will be completed. In response Ed Freeman informed members that a Planning Enforcement Policy was currently being developed, which would include tree works. It is well advanced and will shortly be sent to the Tree Team for consultation.

Cllr Darryl Nicholas commented that there appeared to be a lack of information about cases coming from the Tree Team and asked about the possibility of developing a register of complaints which could be accompanied by a brief explanation for the public in relation to subsequent action or non-action. Ed Freeman stated that Tree Enforcement cases were entered onto the same system as all the other Planning Enforcement cases, and it would be difficult to separate them out numerically. There were currently 643 enforcement cases and very few would relate to trees. However, any local residents putting in a complaint would have the case logged and numbered, and be able to check progress on their individual case.

Cllr Howe stated that he did not recall signing off any non-action orders as Chair of Development Management Committee (DMC). Ed Freeman responded by informing members that if there were proven breaches, they would be submitted to the Chair of DMC and the fact was that there are very few compared to all other planning enforcement actions. Following further discussion, Cllr Howe's request for more involvement in future cases was endorsed.

Ed Freeman explained that all officers needed to understand the system and the reasons for actions in some cases but not others. Documenting the process would assist in providing a rationale for outcomes, and understanding that there are other actions which can be pursued apart from prosecutions, such as cautions and replacement planting. The Planning Enforcement Policy will soon be completed and presented to DMC or Strategic Planning Committee for approval.

In response to Cllr Howe's suggestion that an officer from the Tree Team could sit with the planning team as part of the systems thinking process, the Chief Executive responded that different lines of reporting for officers in the Tree Team and Planning were built in to provide constructive challenge within the system.

The Chairman asked if there were any further supplementary questions. He confirmed that Cllr De Saram was happy with the answers he had received for his questions in advance.

***18 Update from the Service Lead for Planning Strategy & Development Management following the Scrutiny Committee meeting of 7 June**

The Chairman welcomed Cllr Mike Howe as the chair of the TAFF, and Ed Freeman for this item. He stated that in hindsight it would have been better if officers from both the Tree Team and Planning Team had been present at the meeting on 7 June but thanked those for attending this meeting.

Scrutiny Committee had requested an update from Planning relating to Minute 49; Tree Team Update, from the meeting of 7 June, about how outstanding recommendations agreed by the Tree Task and Finish Forum (TAFF) in 2015, will be implemented. In the light of discussion arising from the questions in advance, the Chairman asked if there were further comments relating to this issue and reiterated that a Planning Enforcement Policy was currently being developed, which would include tree works and which it was understood was due to be completed in the near future. There were no further comments.

***19 Resolution by Cabinet of 11 July to refer recommendations back to Scrutiny Committee**

At its meeting on 7 June the Scrutiny Committee made two recommendations to Cabinet on 11 July relating to Minute 49; Tree Team Update, and also a further two recommendations to Cabinet relating to Minute 50; Effectiveness of local authority overview and scrutiny committees.

The recommendations were sent back to Scrutiny.

In relation to Cabinet Minute 49, there were no further comments from members relating to the first recommendation. In relation to the second recommendation for Minute 49, Ed Freeman reassured members that the Tree Team were involved in all of the relevant planning processes.

In relation to Minute 50, the Chairman referred to the Communities & Local Government's Select Committee report on the effectiveness of local authority overview and scrutiny committees, the Government's response to the report and the view of Scrutiny Members having considered both. He stated that Cabinet appeared not to be in agreement with the findings and recommendations. The Chief Executive clarified that the matter was not one of disagreement by Cabinet but a communication issue. Cabinet had been clear in its response. As a result of EDDC operating through a Cabinet political model rather than a Committee model, certain functions are reserved for Cabinet as executive matters and reports should be submitted to Cabinet. However, the input into reports to Cabinet include legal and financial considerations and an analysis of issues in full before they are submitted to Cabinet. Some matters will go to Scrutiny before going on to Cabinet, but the process for Scrutiny to send reports and recommendations directly to Council is not yet practised sufficiently for members other than those on Scrutiny Committee to understand fully what has been taken into account, before Scrutiny Committee makes recommendations. Cabinet would currently be at a disadvantage if Scrutiny Committee made a recommendation to Council because it would not be clear about the information which had been taken into account. The outcome could be that Council send it back which would build in delays. The Chairman asked if Cabinet were happy for Scrutiny to send recommendations to Council on some occasions and to Cabinet on others. The Chief Executive confirmed that legally, Cabinet cannot stop reports and recommendations from Scrutiny to Council, but they would need to include inputs from legal and financial officers, members of the senior management team and any relevant experts if appropriate.

The Chairman then asked members to consider whether a further response is required, and if so what it should be.

Cllr Gardner sought clarification about why the second recommendation under Minute 50 had been rejected since there was no explanation in the text from Cabinet. The Chief Executive stated that Cabinet would probably have regarded the two recommendations as connected rather than as separate items, and referred them back together.

Cllr Darryl Nicholas confirmed that he understood the purpose of Cabinet comments in terms of preventing spurious reports being presented without strong recommendations, and that to report to Council meant that what is sent by Scrutiny is robust and shows the thought process involved.

Cllr Godbeer stated that he did not consider that Cabinet were attempting to gag Scrutiny as a Committee, but that it needed to follow set procedures.

As Legal Advisor, Anita Williams outlined that reports going to Cabinet were dealt with very differently to reports going to Scrutiny. Using the Tree Team report as an example, she stated that if it had been going to cabinet, the draft would have been circulated to get comments from both Planning and Tree Teams, before obtaining financial and legal comments prior to being submitted to Cabinet.

The Chief Executive confirmed that Scrutiny had a right to challenge, but this carried a responsibility to go through a rigorous process beforehand. This operated at two levels. One which reflected that Scrutiny Committee had a concern which it wanted to take to Cabinet for consideration or action, and which Cabinet could then respond to. Another which results in a report to Council through the same quality assurance process as if going to Cabinet.

The Chairman asked the Chief Executive to explain where EDDC and its scrutiny function stood, if it were not to follow Government guidance that scrutiny recommendations should go to full Council rather than to Cabinet.

Further discussion took place about the obligation to challenge placed on local authorities by government and reference was made to situations such as at Rotherham, when it was not considered that this had been done effectively by local authorities in their scrutiny role. Clarification was sought by Cllr Moulding about executive items needing to go to Cabinet, and those items which could go directly to Council. The Chief Executive clarified that issues relating to a new policy or monies not budgeted for were examples of items which could go to Council, as outlined in the Constitution.

The Legal Advisor stated that the Constitution was clear already that Scrutiny Committee could report to Council or Cabinet, and advised that there was no need to recommend changes.

The Chairman asked for a proposition to close the debate.

Cllr Darryl Nicholas proposed and Cllr Chapman seconded as follows:

‘That where Scrutiny considered that a recommendation(s) should be made to Council rather than Cabinet then as a matter of good practice it should ensure that any such recommendation(s) were made following consideration of a full report from officers that addressed all the relevant corporate, legal, financial and any other material matters’.

This was agreed by members.

In addition Cllr Gardner proposed the second recommendation under Minute 50 be adopted as a Scrutiny procedure rule and recommend to Cabinet that the Constitution be amended accordingly. Cllr Darryl Nicholas seconded the proposal and members agreed. The Chief Executive pointed out that technically this was the legal position currently.

RECOMMENDED to Cabinet

“That the constitution be amended to the effect that members of Cabinet should only participate by invitation of the committee, making the distinction between participation and attendance”.

RESOLVED;

‘that where Scrutiny considered that a recommendation(s) should be made to Council rather than Cabinet then as a matter of good practice it should ensure that any such recommendation(s) were made following consideration of a full report from officers that addressed all the relevant corporate, legal, financial and any other material matters’.

***20 Review of Environmental Health & Car Parks Service Plan 2018/19**

The Chairman welcomed Councillor Marcus Hartnell as Deputy Portfolio Holder for the Environment; Councillor Jill Elson as Portfolio Holder for Sustainable Homes & Communities; John Golding as Strategic Lead for Health, Housing and the Environment and Andrew Ennis as Service Lead for Environment & Car Parks.

At its meeting on 5 July, Scrutiny Committee agreed to review existing service plans ahead of the formal budget setting process, and specifically to receive presentations on existing service plans at its forthcoming meetings prior to February 2019. It was also agreed to commence this review with the current [Environmental Health & Car Parks Plan](#), inviting the Portfolio Holder for the Environment, Strategic Lead and Service Lead to attend.

This item is the first of a series of reviews of existing Service Plans which may result in recommendations from members related to service planning in the future.

John Golding gave a broad overview of the service and that its overall purpose was to protect and improve people's health, undertaking a series of activities under the umbrella of Environmental Health, which also incorporated public health; health and safety; food safety and a range of other work such as car parks. The Service Plan is linked directly to the Council Plan, Transformation Strategy and Finance Strategy.

Discussion included the following points;

- Members sought clarification about the use of surplus funds of £2+m generated from car parks, and commented that it was not used solely for the purposes of managing car parking.
- Simon Davey, Strategic Lead for Finance, confirmed that this income was a significant part of the Council's income, and the level of it was important for the running of other services. Car parking charges were an income generator at EDDC and for many councils.
- Service Planning starts within each service but is part of the budget setting process. The Service Plan will be submitted to Senior Management Team (SMT) to ensure there is no competition or duplication. Service Plans need to sit together as a whole. In October, the Medium Term Financial Plan (MTFP) will be drawn up to reflect the actions required to put a balanced budget together for the Council as a whole.
- Members raised the issue of how significant it was to set objectives and how they can be more SMART (Specific, Measurable, Achievable, Realistic and Timebound).
- Officers stated that it was necessary to be clearer about what we wanted to achieve, and that good ideas needed to be backed up by robust business cases.
- Members asked why there were no Performance Indicators (PIs) for some Key Service Objectives (KSOs). The Chief Executive explained that previous governments had made an industry of PIs and targets, under initiatives such as Best Value, but very few had a real impact on service delivery. As a result the coalition government had got rid of the majority of PIs and cut budgets, in favour of introducing measures most meaningful to the service being delivered. Performance is very different now to when PIs were mandatory, and EDDC has been rigorous in implementing a systems thinking process. Transactional areas are more difficult to measure than others, such as Revenues & Benefits.
- Money from car parks is not ring-fenced and goes towards trying to balance the budget overall.
- Vandalism and theft in car parks has resulted in installing upgraded machines in some areas in order to future proof. The future budget will include an allowance to facilitate upgraded machines in more car parks.
- Comparisons will be done of charges in other coastal areas.

- Members queried the future Digital Data Platform to be introduced which was referred to by Karen Jenkins, Strategic Lead for Organisational Development & Transformation, and how the new platform would incorporate new PIs if Service Planning was already underway. What benchmarks would be used to measure achievement?
Karen Jenkins clarified that the system would be more automated and with customers able to interact online. The old system of benchmarking with other councils did not always allow comparisons with the same items, and was ineffective and lacking in clarity.
- Members queried why District Councils did not have a formal place on public health boards, such as the Sustainability & Transformation Partnerships, when they are being required to do more on this agenda.
The Chief Executive clarified that the Council had to use its influence, as at Cranbrook's Health & New Town Initiative, where the ability to influence the NHS may be minimal but it is possible to influence other key partners.
- John Golding confirmed that the District had always had a statutory role to work with Devon County Council on health issues, which allowed us to concentrate effort and a limited budget on what could be achieved locally.
- Members asked about charging for campervans on car parks, and what were the mechanisms for getting rid of waste? Andrew Ennis confirmed that a trial was being undertaken in Exmouth, including consideration of charging points and water supplies. It was difficult to identify suitable sites.
- Members asked about Section 6 of the Service Plan relating to risk, and how EDDC addressed risks. Simon Davey, as the responsible officer for risk overall, stated that there was a complex process for dealing with risk and financial implications. Once identified they were reviewed quarterly, were submitted to SMT to check strategic and operational risks, before being presented to Audit & Governance Committee.
- The issue of risk in Service Plans was addressed in a risk register which was reviewed regularly by Simon Davey and other officers, and also by both internal and external audits.
- The Chairman asked what consideration had been given to the impact of Brexit on the service.
Officers were not yet aware of government's plans in relation to regulations in future, but there is an option to replicate EU regulations. Emergency situations may create future challenges if they take place across borders, such as an oil tanker crisis. Brexit was not identified on the risk register.
- There is expected to be a £700K deficit across the Council next year which should be manageable. However, for the 2020/21 budget, Government has indicated that there will be changes to the Business Rate and a re-evaluation of business charges, which may lead to a reduction in council income.

Members asked whether officers and portfolio holders considered that the questions put forward at the meeting were helpful in terms of service planning, because the Committee will be conducting a similar process for each service plan. Karen Jenkins stated that the focus on Service Plans had given officers a renewed interest, and that points made about SMART objectives made a difference to quarterly and annual reporting. The work will feed into the Council Plan.

Cllr Hartnell confirmed that looking at service plans will generate more information for members about how the Council is performing which is helpful and also which PIs can be of most use in driving service delivery.

The Chief Executive stated that the Council was complex and that officers appreciated opportunities to explain how services work with members.

Cllr Godbeer told members that he would be having a meeting with Karen Jenkins about how to approach Service Plans from the perspective of Overview Committee, and wanted to involve services via the Portfolio Holders.

The Chairman concluded the debate by thanking senior officers for their input and attending the meeting.

***21 Scrutiny forward plan**

Members agreed that at the forthcoming meeting in October they would consider the Service Plans for Economy & Regeneration Services, and the Growth Point team.

Since Cllr De Saram had sent questions in advance which appeared to have been answered to his satisfaction, the Chairman suggested clearing the penultimate point from the Forward Plan.

An invite and dates of future meetings of the Scrutiny Committee had been sent to the Police & Crime Commissioner and a response is currently awaited.

The Street Trading report was due to come to the October meeting, but members agreed that the agenda for 4 October should be restricted to the Service Plans agreed and the Election report. The report on Street Trading would be re-arranged.

Cllr Rylance suggested putting an item on council housing on the Forward Plan, but after a brief discussion involving Cllr Jill Elson as Portfolio Holder for Sustainable Homes & Communities, it was agreed that these issues were addressed at Housing Review Board which Scrutiny members were welcome to attend.

The Chairman closed the meeting at 8.23pm.

Attendance list (present for all or part of the meeting):

Scrutiny Members present:

Maddy Chapman
Cathy Gardner
Roger Giles
Graham Godbeer
Cherry Nicholas
Darryl Nicholas
Val Ranger
Eleanor Rylance
Eileen Wragg

Other Members

Colin Brown
John Dyson
Jill Elson
Marcus Hartnell
Mike Howe
Andrew Moulding

Officers present:

Mark Williams – Chief Executive
Simon Davey – Strategic Lead - Finance
Karen Jenkins – Strategic Lead – Organisational Development & Transformation
Anita Williams - Principal Solicitor & Deputy Monitoring Officer
John Golding - Strategic Lead – Housing, Health & Environment
Andrew Ennis - Service Lead, Environmental Health & Car Parks
Sue Howl - Democratic Services Manager

Apologies from Scrutiny Members:

Brian Bailey
Bruce De Saram
Simon Grundy
Stuart Hughes
Bill Nash
Marianne Rixson

Apologies from Non – Scrutiny Members:

Geoff Pook
Ian Thomas
Tom Wright

Chairman Date.....