
**MINUTES OF THE SPECIAL MEETING OF THE CORPORATE MANAGEMENT
SCRUTINY COMMITTEE HELD ON MONDAY 12 SEPTEMBER 2016 AT 7.30 P.M. IN THE
COUNCIL CHAMBER, COUNCIL OFFICES, WEELEY**

Present: Councillors Steady (Chairman), Baker, Heaney, Massey, Stephenson, Scott, Whitmore

In Attendance: Head of Finance, Revenues & Benefits Services (Richard Barrett), Head of People, Performance and Projects (Anastasia Simpson), Head of Planning (Cath Bicknell) and Committee Services Officer (Janey Nice)

21. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor Platt (with Councillor Heaney substituting) and from Councillor Chittock (with no substitute).

22. MINUTES OF THE SPECIAL MEETING OF THE COMMITTEE HELD ON 27 JUNE 2016

The Minutes of the special meeting of the Committee, held on 27 June 2016, were approved as a correct record and signed by the Chairman.

23. DECLARATIONS OF INTEREST

There were none.

24. PLANNING BRIEFING SESSION

The Committee received a briefing from the Head of Planning (Cath Bicknell) on topics including Planning Enforcement and the North Essex Garden Communities Project.

Councillor Stephenson asked why this matter was being discussed at a special meeting of the Corporate Management Committee (CMC) and he was informed by the Chairman that this had been brought up at the informal CMC meeting held on 18 July 2016 and more information was needed on planning enforcement in order that the Committee could make a recommendation to Cabinet.

Mrs Bicknell explained that the purpose of planning enforcement was to make sure national policies were being followed and to help with the implementation of local planning policies and legislation; to build public confidence in a just and fair system; and help to protect the environment from 'harm' by preventing breaches of planning control which would adversely affect the environment.

Mrs Bicknell explained to the Committee that breaches of planning control were:

- Carrying out development (operational development or change of use) without the required planning permission; or
- Failing to comply with any condition or limitation subject to which planning permission had not been granted. (S171A(1) Town and Country Planning Act 1990).

She said that any enforcement action was discretionary and Local Planning Authorities should act proportionately in responding to breaches and potentially would not need to take any further action if not in the public interest. An example of this, she said, if a shed had been built without planning permission and it did not materially cause harm a retrospective planning application could be applied for. If the shed builder was unwilling to either apply for retrospective planning permission or take down the shed and if it was

causing harm, then the Planning Department could issue an enforcement notice, however they did try and take an informal approach to minor breaches.

Mrs Bicknell explained what remedies could be taken:

- Voluntary Resolution especially where a breach had been a genuine mistake;
- Planning application (retrospective);
- Enforcement notice; and
- Legal Action

She said that a voluntary resolution was often the quickest and most efficient means to resolve a breach and changes to development could eliminate the breach (bringing it within the scope of permitted development) and this in fact was achieved in many cases.

Mrs Bicknell said that a retrospective application would allow for a breach brought about by a genuine mistake to be resolved, an acceptable development could be made lawful, would enable the imposition of conditions to control development, avoid costs incurred through formal action (which could include appeals) and bring certainty to all involved.

Mrs Bicknell then explained about Enforcement Notices which:-

- must specify the nature of the breach;
- must give detailed reasons (including policies) why enforcement was necessary;
- must specify action required to remedy the breach/alleviate harm;
- must allow a minimum of 28 days from service of the enforcement notice to come into effect (this would be for appeal); and
- must specify a reasonable date for compliance of the notice.

She added that an Enforcement Notice could be suspended whilst the case was being considered, this could be as short as four weeks for a shed and six months for a more complex issue.

Mrs Bicknell then informed the Committee of Stop Notices which were served in conjunction with an Enforcement Notice and those were issued in exceptional circumstances where it was essential that activities ceased immediately to safeguard amenity, or public safety, or to prevent serious, or irreversible, harm to the environment. She said that failure to comply with a Stop Notice was a criminal offence which carried a maximum fine on conviction of £20,000.

She also mentioned Temporary Stop Notices which also had to be justified explaining that again those had to be brought in exceptional circumstances giving the Council a period of up to 28 days to make further investigations and consider whether to take further action. Again, she added, failure to comply with a Temporary Stop Notice was a criminal offence also carrying a maximum fine on conviction of £20,000.

Mrs Bicknell said that the remedy of Legal Action – Prosecution would normally be brought in the Magistrates' Court against:

- failure to comply with a notice;
- unauthorised display of advertisements;
- unauthorised works to a protected tree; or
- unauthorised works to a listed building

She added that some serious cases could be or referred to the Crown Court.

Mrs Bicknell said that also under remedies, Legal Action – Injunctions, the Local Planning Authority (LPA) could apply to the High Court, or County Court, for an injunction, this could relate to an actual, or apprehended, breach of planning control and the LPA must consider it was expedient for the breach to be restrained and an application could be made whether or not the LPA had exercised, or proposed to exercise, any of their other powers to enforce planning control. She added that the LPA would need evidence to take this action.

She said that Direct Action would involve the LPA carrying out work that had been required by a Notice with which the property owner had failed to comply and also a legal land charge could be registered on the property in order for the LPA to recover any reasonable costs involved. However, the step of putting a legal land charge on a property was rarely used as often the property involved would already have an outstanding mortgage registered.

Mrs Bicknell said there were two tests to be applied where a prosecution appeared likely and they were:

Evidential Test – to prosecute the LPA would need sufficient, admissible and reliable evidence that the offence had been committed and that there was a reasonable prospect of conviction; and

Public Interest Test – the LPA would only bring a prosecution where this would be in the public interest and other methods of seeking compliance with a Notice had failed.

She informed the Committee that ‘Stops and Checks’ were built into the system to ensure reasonableness of action by the Council, to ensure safeguarding an individual’s rights and ensuring the exercise of justice in the use of the powers used. She also said there were special controls for untidy land and buildings, works to Listed Buildings, Display of Advertisement and works to trees.

Mrs Bicknell then said that in resolving breaches there were 10 stages of enforcement which were:

1. Awaiting initial Inspection;
2. Inspected but more information required;
3. Breach found but awaiting further information;
4. Breach found awaiting voluntary resolution;
5. Planning application received
6. Planning application determined – awaiting further action;
7. Section 330/PCN;
8. Enforcement Notice served;
9. Appeal; and
10. Court action

She said that in resolving such breaches there were varying timescales and the LPA would try and resolve before any action was taken as these could often be waiting for a planning application.

Mrs Bicknell said that the Council worked with other agencies and/or other Council departments. She said that Council teams involved would often include building control, licensing, environmental health, economic development and housing. She added that Essex County Council (ECC) teams, including highways, minerals and waste and also town and parish councils could be involved. In addition, she said that other agencies could be involved such as Essex Police, the Environment Agency and Natural England. She said that by working with other agencies a breach could be resolved more quickly,

perhaps by leaving another agency to solve the issue although that could happen the other way around. It was often a case of all working on the same issue, but working together.

Mrs Bicknell circulated to the Committee a copy of a Planning Investigation Exercise which gave Members a flavour of how the scoring system worked and how it could take years for an Officer to learn how to complete

She then informed the Committee of the Planning Department's total caseload for the last three years which was: 2014 – 376 cases, 2015 – 407 cases and so far in 2016 - 213 cases.

Mrs Bicknell explained to the Committee the types of breach involved during 2014-2016 and the number of formal notices served for the same period. She said that since 1 April 2015 up until 31 March 2016 there had been four appeal decisions published and that all had been dismissed.

Members then discussed the various issues involved and asked Mrs Bicknell questions about the various actions involved.

Mrs Bicknell then moved onto the North Essex Garden Communities Project Management and explained what the Project involved, which was:

- Potentially three significant areas of development across North Essex;
- Large scale – long term (possibly 30 years) with circa 35,000 homes;
- For Tendring one area – West Tendring/East Colchester; and
- Long term about 7,000 homes (with part in Colchester/part in Tendring)

Mrs Bicknell then explained how the Project differed to other development proposals in:-

- Quality (Garden City Principles);
- Housing and employment;
- Early infrastructure;
- Pace of development;
- Councils involvement as Planning Authority but also leading development and possibly owning land; and
- Investment opportunities – share in increased land values.

She then also explained how the Project fitted in with the Local Plan for Tendring. When a Member commented that the Local Plan needed to highlight whether there would be compulsory purchasing of peoples' land and whether a road might go through an owner's house, she said that there no road lines known yet as it was still very early in the process.

Mrs Bicknell then explained that the progress of the Project needed to be monitored and the milestones also needed to be monitored.

The Head of People, Performance & Projects (Anastasia Simpson) gave examples of Planning Officer scales of salaries across the board compared against other Local Authorities and commented that all Local Authorities were in the same staffing position as the Council, this being in response to a Member's comments on the Planning Department's staffing levels. She said that it could take five years for an Officer to become a qualified Planner and that the after being asked, she confirmed that the Planning Department still employed Career Track trainees.

The Committee commented that it was more difficult to keep Planning Officers in Tendring when compared with other areas such as Brentwood and Colchester and Mrs Bicknell agreed that it was easier to keep Officers who lived in the Tendring District.

Members during their discussions expressed concern about the Garden Village being more about money than people and land grabbing, they were also worried about the infrastructure and road network and attracting people to come and work in Tendring. It was also commented that Colchester might be more tempted to build in the direction of Marks Tey than towards Tendring and it was vital to ensure that Colchester kept an interest in West Tendring.

Members also asked if it would be possible to have more briefings on the Garden Village proposals as they progressed.

The Chairman thanked Mrs Bicknell for her detailed and thorough presentation.

25. FINANCIAL STRATEGY – WORKING PARTIES

The Committee discussed various issues concerning Portfolio Holder working parties and Councillor Baker commented he had recently attended the Working Party concerning various options for a financial strategy. Councillor Stephenson commented that his Group were not part of the Working Parties but he asked what assets the Council currently had, why were they needed and that they should be scrutinised by a Working Party.

It was also commented as there was not a lot of money in the budget working on looking at energy efficiency and improvement would be a possible saving.

The Chairman commented on the Environment Working Party, which had started work.

Mr Barrett said he would like ideas from the Committee's Working Parties to take forward

There were comments made about three of the Council's buildings which were costing money including Pier Avenue, Town Hall and Weeley Council Offices.

The meeting was declared closed at 9.37 p.m.

Chairman