

PLACE SCRUTINY COMMITTEE

Thursday 13 June 2019

Present:

Councillor Sills (Chair)

Councillors Buswell, Atkinson, Henson, D, Lyons, Moore, D, Moore, J, Owen, Pattison and Williams

Also present:

Director (DB), Environmental Health and Licensing Manager, Interim Principal Accountant (AR) and Democratic Services Officer (SLS)

In Attendance:

Councillor Harvey

- Portfolio Holder for Environment & City Management

Councillor Pearson

- Portfolio Holder for Leisure & Physical Activity

Councillor Sutton

- Deputy Leader and Portfolio Holder for Climate & Culture

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MINUTES

The minutes of the meetings of Place Scrutiny Committee held on 15 March and 26 April 2019 were taken as read, approved and signed by the Chair as correct.

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DECLARATION OF INTERESTS

No declarations of disclosable pecuniary interest were made.

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QUESTIONS FROM THE PUBLIC UNDER STANDING ORDER 19

In accordance with Standing Order 19, a member of the public submitted a question on the Council's Air Quality Action Plan and a number of local residents submitted questions in relation to the Exeter Skate Park facility (Attached as an appendix to these minutes).

A copy of the questions had been previously circulated to Members, and these, together with the responses from Councillor Sutton, Deputy Leader and Portfolio Holder Climate & Culture and Councillor Harvey, the Portfolio Holder, for Environment and City Management are appended to the minutes.

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REVIEW OF ENVIRONMENTAL HEALTH AND LICENSING STATUTORY SERVICE PLAN 2019/20

The Environmental Health and Licensing Manager presented a report which sought approval for the adoption of the Environmental Health and Licensing Statutory Service Plan 2019/20, which sets out the Council's regulatory function in respect of food safety, health and other licensing, environmental permitting and other statutory functions over the forthcoming year. He referred to the Statutory Service Plan which incorporated:-

- the service aims and objectives;
- information about all enforcement and related services provided by the Council's Environmental Health and Licensing Service;
- the Action Plan for 2019/20 detailing the actions and improvements for the service in an effective, risk based, proportionate and consistent way over the following year, and the
- financial arrangement for providing the service.

The Environmental Health and Licensing Manager also listed a number of notable achievements and the challenges his team had faced during 2018/19.

- the delivery of the Environmental Health and Licensing Service at a cost of £3.73 a head of the population.
- despite a difficult year in terms of the operational requirements, the Service had been ranked Number 1 in the Association of Public Service Excellence (APSE) whose aims were to promote excellence in the delivery of frontline services to local communities.
- 544 food businesses were inspected with a target inspection rate of 93% achieved during the year as at 31 March 2019. All premises had now been inspected.
- 428 inspections of Housing in Multiple Occupation (HMO's), were carried out.
- 3,695 requests had been received for investigation of complaints relating to a number of the service areas included food safety, health and safety, air quality and licensing.
- met the growing demands of their obligations to address anti-social behaviour and statutory nuisance.
- 15% of the 115 food samples taken, were found to be in a unsatisfactory to borderline classification.
- 565 delegates had attended education and awareness sessions run by the Service on a range of topics which included food hygiene.

The Chair also wished to highlight a number of areas of note, which included the replacement of air quality monitoring equipment, development of a new Air Quality Action Plan. The Service had undertaken two mystery shopping exercises to continue to drive up standards within the Hackney Carriage and Private Hire taxi trade, as well delivery of Disability and Dementia Awareness training for licenced taxi drivers to better understand the challenges faced by some of their passengers. He congratulated the Environmental Health and Licensing Manager and his team for delivering an array of important front line services despite the challenging financial situation external pressures placed upon them.

In response to Members' questions the Environmental Health and Licensing Manager stated the following:-

- new equipment at the air quality monitoring sites at the RAMM and in Alphington Street had been replaced during the course of last year. Data from the RAMM site was collated for the national monitoring network, overseen by DEFRA and provided high quality, reliable data on nitrogen dioxide, ozone, PM10 and PM2.5. Data on PM10 and PM2.5 was collected at Alphington Street. He would ensure that the location of the NO2 diffusion tubes network was sent to Members.
- the height of the monitoring stations were in line with national guidance. He would speak to the Senior Technical Officer to provide further information to the Member.

- monitoring of the city's air quality was the subject of a separate report and would be presented to the Place Scrutiny Committee later in the year. Although there was no legal requirement for District Authorities to have fixed air quality monitoring stations, the City Council should be commended for their decision to update the equipment to ensure that monitoring continued.
- there were elements in respect of the Air Quality Action Plan that the City Council did not have any direct control over as by its very nature, air quality did not have any borders. The City Council had declared an air quality management of the areas of the city with exceedance, but there were a multitude of partners with a wider programme of work taking place. Each of the local authorities and also individuals had a responsibility to enact some behaviour change in their mode of transport and that was something that had to be worked on as a society.
- it was not considered cost effective to provide trained staff for the two private water supplies, but there was trained support from neighbouring authorities with a greater number of such water supplies. A comment that the approach was taken for cost sensitive reasons was noted.

A Member commented on the Council's taxi operations and efforts made by officers to oversee the level of service provided to the public. The positive results of the recent mystery shopping exercise bore out the increasingly positive effect of the quality of the taxi service in the city. He also congratulated the team on the national APSE ranking. The Environmental Health and Licensing Manager stated that this included those authorities which participated and offered information on a whole range of services from all across the country, and Exeter City Council had been ranked number 1 for the lowest per head of population value for money.

The Environmental Health and Licensing Manager provided the following response to Members:-

- penalty enforcement related to offences to property used for multiple occupation. (HMO). There are no current plans to review the Council's enforcement policy to include those car users, found to be idling their vehicles.
- the air quality data for 2018 included in the Plan would be submitted to DEFRA to be audited at the end of June, and the detail which would include any comments would be reported back to Place Scrutiny Committee.
- the low Emissions Strategy was borne out of funding from DEFRA for work undertaken in 2014/15, but unfortunately as time passed the data was becoming outdated, but further reporting on particulate matter would be considered by the Committee when the Air Quality Action Plan was discussed later in the year.

Councillor D Moore suggested a reduction in the exceedance of air quality rather than just recording the data would present an opportunity for a change in the right direction. She proposed the following recommendation, that a reduction in the number of roadside locations that exceeded nitrogen dioxide (NO₂) should be a clear objective for review the coming year. Councillor J Moore seconded the proposal. Following a vote on the proposal, the proposal was lost.

Place Scrutiny Committee supported and requested Executive to recommend approval by Council of the Statutory Service Plan 2019/20, and the Environmental Health and Licensing Manager be authorised to change the Statutory Service Plan in the light of centrally issued guidance and/or to meet operational needs.

Members also wished to congratulate the Environmental Health team in recognition of the team's hard work and achievement and in particular the winning of the APSE award.

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BUDGET MONITORING 2018/19 OUTTURN

The Interim Principal Accountant (AR) presented the report which advised Members of any material differences, by management unit, between the approved budget and the outturn for the financial year up to 31 March 2019 in respect of Place Scrutiny Committee. It was noted that the final outturn had been calculated and the report highlighted the major differences by management unit from the approved annual budget after adjusting for supplementary budgets approved by Members during the year. The total variance for the year was provided and a brief description of the results including a more detailed update on the Environmental Health Service was given. Attention was drawn to the Section 151 comments of the Chief Finance Officer and the significant underspend in the areas of attention of this Committee for 2018/19 that were specific to the year, and as a result a request would be made to Council for supplementary budgets totalling £856,000 to be taken from the underspend and carried forward into the new year 2019/20, leaving the working balance at £4.395 million, £1.708 million more than budgeted for.

An outturn update in respect of the Place Capital Programme was also incorporated into the report and detailed a total spend of £7.785 million in 2018/19 in respect of the Place Scrutiny Committee budgets. It was proposed to carry forward budgets totalling £3.185 million to be spent in future years.

The Interim Principal Accountant responded to a Member's question relating to the fee income of the Planning Service and stated that the carry forward of income requested could resource an increase in the legal staff to expand the service capacity. He also explained that such carry forward requests often arose because the requirement for a local authority to reflect a balanced budget meant that the books were closed at midnight on 31 March and re-opened on 1 April each year, which did not impact most services, but some activities (for instance longer term growth or commercialisation projects) did not neatly start and end on those dates.

Place Scrutiny Committee noted the report.

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APPOINTMENT OF LEGACY LEISURE WORKING GROUP

The following Member appointments were made for the Legacy Leisure Working Group for the forthcoming Civic Year:-

Councillor Pearson
Councillor Buswell
Councillor D Henson
Councillor J Moore
Councillor Pattison

Place Scrutiny Committee noted the appointments for the Legacy Leisure Working Group.

To receive the minutes of the Exeter Highways and Traffic Orders meeting held on 9 April 2019.

(The meeting commenced at 5.30 pm and closed at 6.55 pm)

Chair

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**PUBLIC QUESTION RECEIVED for Place Scrutiny Committee – 13 June 2019
from Mr Mike Walton**

Question (Mr Walton was not in attendance at the meeting)

We note from Teignbridge District Council Executive meeting of 5th March that the GESP is now delayed by almost two years (with the Plan now not anticipated to be adopted until April 2022).

Given that five of the seventeen measures in the Air Quality Action Plan (AQAP) state that the GESP is the means for delivery, and that there is an urgent need to improve the city's air quality, what steps are being taken by the Council to ensure that these AQAP measures are progressed expeditiously?

Response by Councillor Sutton Deputy Leader and Portfolio Holder Climate and Culture

Councillor Sutton thanked Mr Walton for the question and she stated that the delays to the Greater Exeter Strategic Plan (GESP) were a source of frustration to Members and also the officer teams, but given the changes in the administration of the neighbouring authorities of East Devon, Mid Devon and Teignbridge District Councils, it was inevitable that there would have been some delay. She was aware that this question did relate to Teignbridge District Council Executive in March and before the Elections and the recent Elections results not going to help is of course out of our control and so democracy would of course takes its course.

She said that her response was that the Greater Exeter Strategic Plan would contribute to a number of measures in the Air Quality Action Plan (AQAP), so any delays in the development and implementation of the GESP could affect implementation of the AQAP as well. And that is to be regretted and many of us are unhappy about that, but progress with the implementation of all the Action Plan measures is currently being assessed as part of the Annual Status Report. This will be reported to the Place Scrutiny Committee by the end of the year. Changes to the Action Plan can be made and reported on by the same mechanism. This will allow us to amend the AQAP, or to introduce suitable mitigation, if alterations to the GESP timetable or changes to any other programmes make it necessary to do so.

So we are mindful of the challenges and we all want the GESP to work but when the results of the work going on the legal status and this will come back to this Committee and you will have the opportunity to question that and to debate it as see fit.

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PUBLIC QUESTION RECEIVED for Place Scrutiny Committee – 13 June 2019

from a local resident in Summer Lane (they were not in attendance at the meeting)

Question

The ASB from some skaters on the park throwing stones at our home and garden plus the ASB in the pedestrian tunnel and attempted property access by skaters in Summer Lane (all which have been reported to the police), causes me to ask the members this question!

What is being done to educate and create a sense of attachment in the minds of the skaters to the new park facility; if there is, it's obviously not working! So I would like ECC to fit several permanent notices around the park's fencing to inform the skaters that all forms of ASB in the park and just as importantly in the surrounding access roads will force the closure of the park for limited periods?

This I feel sure will focus their minds to either intervene, stop or report ASB whenever they witness it and help protect it for everyone or risk losing it.

Response by Councillor Harvey, Portfolio Holder Environment & City Management

Councillor Harvey offered thanks for the question which raises a good point. In our experience closure of the skate park for periods due to ASB is unlikely to have any effect on the minority of people causing ASB in the area. Locking the skate park will simply result in skaters climbing the fence to gain access.

However there may be benefit in notices making the point you suggest, and little to be lost by trying this.

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PUBLIC QUESTION RECEIVED for Place Scrutiny Committee – 13 June 2019

From a local resident in Kingsley Avenue (they were not in attendance at the meeting)

Question

Please note; that as a signatory of the recent petition; I never wanted to stop the skate park; only that it should be done properly; however the absence of a safety barrier for the raised level, seems a real mistake.

My question is to request this committee investigate fully the option for a suitable single barrier to be constructed along the south, south west & south east section of the new Arena skate park project.

This barrier would not only address the real “Health & Safety” concerns with the parks design (as mentioned by the skaters using the park), but it would also solve at least four other major disruptive issues that this expanded facility has introduced to the local communities living nearby.

Response by Councillor Harvey Portfolio Holder Environment & City Management

Councillor Harvey responded and advised that the design and subsequent Royal Society for the Prevention of Accidents (ROSPA) safety inspection found no requirement for a barrier for safety reasons.

The investigations by the Council’s Environmental Health Team to date have not substantiated a statutory nuisance. Despite this we are still trying to establish if noise mitigating measures are possible, potentially by screening of some form which may well be incorporated into the pedestrian cycle bridge which the County Council are intending to construct.

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PUBLIC QUESTIONS RECEIVED for Place Scrutiny Committee – 13 June 2019

From local residents in Summer Lane (in attendance)

Bullet points are comments copied and pasted directly from the Planning Submission for the scheme (taken from the ECC Planning Portal). Numbered Statements / Questions relate to each bulleted comment. We would like comment / assessment of the validity and basis of comments,

- (A) It is considered that the new facility would represent no significant increase in noise, disturbance or overlooking compared to the existing stake park.
- 1. How is this determined? By whom / and by what measure? Does significant NOT include relentless loud crashes of solid objects against solid objects, with associated times in no way limited to offer local residents any respite? (No previous activities within the park, gave any opportunity for 'overlooking.')
- (B) In terms of anti-social behaviour, the car park gates will be locked overnight, and the increased use of the site may prevent anti-social behaviour due to increased surveillance. The lighting will be turned off at 9.30pm, clearly signalling the skate park is closed.
- 1. This assumption, only describes ASB within the park? Where is the 'surveillance' and locking of park overnight? This does not happen.
- 2. This only provides a 'clear signal' that the lights have been turned off?
- 3. Use of the park often continues until much later into the night, or continues in the adjacent pedestrian tunnel, which is lit 24 hours.
- 4. Why no provision / mitigation for ASB for pedestrian tunnel at Summer Lane, which is lit for access 24/7? This pedestrian access is now considered part of the park, by skaters, due to the 'barrel' shape of the tunnel, and the collective disregard for the neighbouring residents demonstrated by these same people. (It is lit 24/7 and is used whenever the weather is wet and when skaters have left the park.)
- (C) Current Police statistics <https://www.police.uk/devon-and-cornwall/DEV.4059/crime/stats/> Show a 32.98% increase in ASB in Pinhoe district over the last April – April period...

The 'replacement' of the skate park equipment and addition of flood lights 'seems' in itself unlikely to increase any anti-social behaviour.

- 1. It was not a 'replacement' it was an expansion of the scale, length and height of the equipment.
- (D) It is 'considered' that there is insufficient evidence to suggest any significant increase in anti-social behaviour to warrant refusal, and any such behaviour would continue to be dealt with by site management and police.
- 1. Where / who is the site management, Aren't the police overstretched already? The 'committee' cannot assure that police patrols will monitor the park regardless of commitments elsewhere? The police can ever only provide a reaction to events, dealing with any event, retrospectively, does nothing to alleviate the mental strain of its relentless likelihood

2. 'Insufficient evidence' surely depends on where the 'evidence' is gathered and by whom?
 - (E) The original skate park used box frame construction, which could amplify sound as the skates and bikes landed on ramps. The new skate park is in-situ cast concrete, so will be considerably quieter. Ambient noise from the adjacent road and railway will mask noise generated on the site.
 1. The new skate park is significantly larger, the ramps have been brought much closer to the residents on the South side of the railway. They have also been significantly increased in height and length.
 2. Although these elements were NOT made clear to local residents, there was a drawing on the Portal, The drawing gave no point of reference for any dimensions, (Datums.) It also omitted to give any indication of relationship (in elevation) to the railway embankment, which concealed all but the most extreme noise from the adjacent residential area. The fundamental issue of noise is caused by the increased height of the ramps already on a location which is higher than the residential amenity due to the gradient increase in relation to the south side of the railway embankment.
 3. A query was raised by a local resident, regarding skatepark heights, in relation to the existing car park, no further information was offered from E.C.C?
 4. The in-situ concrete is not quieter. Perhaps, as previously requested, an explanation justifying this assumption, could be offered? (Skateboards striking concrete create less noise than when striking timber?)
 5. The traffic on the road highlighted is inconsistent? It will be busy during 'rush hour.' When people go to and from work / School. The road narrows to a single lane at the Railway bridge, where vehicles have to slow down, then wait to negotiate this bridge in turn?
 - (F) Particularly considering the other leisure uses nearby and disturbance caused by the railway line. The proposal would be an enhancement on existing facilities providing a valuable community facility, outweighing any potential harm to residential amenity, and should therefore be approved.
 1. What leisure users 'nearby' are every day, and are carried out until, 'officially' 21:30 pm?
 2. Exactly what 'disturbance' is caused by the railway line? (Two trains pass the location per hour, one in each direction, taking 8 seconds approximately to pass?)
 3. The traffic on the road highlighted is inconsistent? It will be busy during 'rush hour.'
 4. When people go to and from work / School. The road narrows to a single lane at the Railway bridge, where vehicles have to slow down, then wait to negotiate this bridge in turn?
 5. When the park is most noisy, in the evening, when older 'youths' and adults use the park, they are larger and create more noise, just when the traffic is at its most sporadic and infrequent.
 6. Ironically, the very time when residents are most likely to want to use their own outside space?
 7. The road is a residential one, with speed humps, and a 20mph speed limit. The traffic is significantly lighter in the evenings and on Sundays in particular, how then, can such an 'irregular' and 'inconsistent' factor, be cited as appropriate protection, where the noise of the activities it is claimed will be 'masked,' are not only of a completely different type of noise, but are invasive, loud and are an unavoidable part of the very activity encouraged within the park?
 8. The term 'potential' harm? Can anyone comment on the realities of the 'Actual' Harm, now being experienced by the community? Would anyone seeking to be able to access their homes and relax within them, without fear of disturbance or potential confrontation,

consider this deterioration in the 'actualities' of their neighbourhood, is 'outweighed' by the provision of a facility, which borders the homes of people most unlikely to make use of it, or benefit in any way.

- (G) No site machinery or plant shall be operated, no process shall be carried out and no demolition or construction related deliveries received or dispatched from the site except between the hours of 8am to 6pm Monday to Friday, 8am to 1pm Saturday and at no time on Sundays, Bank or Public Holidays.
Reason: To protect the amenity of the locality, especially for people living and/or working nearby.

1. Is this consideration only relevant during construction? As this statement relates to noise disturbance to local residents? Why is the noise created by the activity itself, of skate boarding etc, which fundamentally involves crashing eqpt into solid structures from height, not considered invasive or disturbing to local residents? In any event, it is worth reiterating that there are NO commercial locations adjacent to the skate park, the noise and associated ASB is a problem for anyone living near the facility every hour of every day.

- (H) The anticipated / intended increased use of the facility means increased numbers of users in the locality at all hours of the day and night. Elements of these park users are disruptive and are consistently showing no regard for people living close to the facility. The E.C.C have chosen to ignore any 'concerns' raised. There is absolutely no evidence to suggest consideration for those living next to this facility from any standpoint, whether it be noise disturbance, or the 'predicted' ASB.

Why?

Response from Cllr Harvey Portfolio Holder for Environment & City Management

Councillor Harvey thanked the resident for presenting these questions in person. The revamped Skate Park has proven to be hugely popular with the young people of Exeter and has received overwhelming support on social media. We do however acknowledge that a small number of residents in the area close to the skate park have raised concerns about the noise generated by the enhanced facility. We have been working on mitigating measures for some time and continue to do so.

Many of the 20 questions raised, relate directly to a planning application which was determined at committee on 29 October 2018. These are issues which should have been raised during the planning process and to do so now when the application has been passed and the facility has been built does not help to move us forward.

He summarised the planning process to date. The application was submitted mid-August and as part of the planning process consultations were sent to the relevant bodies, these being Network Rail, Environmental Health and County Council Highways.

Letters were also sent to 52 neighbouring addresses and objections were received from two residents, along with comments from a third. Issues raised included existing anti-social behaviour and potential for the application to increase, noise, overlooking, and drainage.

At Delegation Briefing the Members were supportive of the application, but noted that it needed to go to planning committee as it was a City Council application with objections.

The objections were summarised in the officer report to committee. However no objectors chose to speak in person at planning committee and so members reached their decision on

the basis of the drawings, supporting information and the officer report. The development has been constructed in accordance with the agreed plans.

Councillor Harvey said that he was sorry if the resident felt that the submitted plans did not make any aspect of the design sufficiently clear. However Member's had adequate information to determine the application and due process was followed. The planning process is now complete, and as with all planning applications the decision cannot be re-opened once determined.

Continued noise

Councillor Harvey said that he understood that from the Environmental Health Team that their investigations to date have not substantiated a statutory nuisance. A statutory nuisance can be described as an act that causes unreasonable and substantial interference in the use and enjoyment of one's property. There are no set levels, or times of the day, which determine whether noise is a statutory nuisance; officers use their professional judgement to assess each noise incident. When deciding whether a statutory nuisance exists, officers consider factors such as the frequency and duration of the disturbance, the times it takes place, and whether it is in context for the area.

In the case of noise from the skate park, despite asking, officers have not received detailed information from anyone about the frequency, duration and timing of the noise affecting you. They have therefore based their judgement on observations they have made of skate park use levels as well as the noise when they have visited neighbouring properties. Based on this, although the noise is recognised to be disturbing at times, officers do not consider that it would prevent normal use of the garden on a regular, prolonged basis.

If the skate park were a private business we would therefore not have any grounds to take enforcement action.

The old skate park generated noise and the new park generates noise but it is difficult if not impossible to quantify the increase. However we do recognise that a small number of residents feel strongly about the noise from the skate park, so despite there being no evidence to back up a claim of statutory nuisance, the Councils Engineers have been looking at potential ways of reducing noise from the skate park. These investigations are ongoing and have not yet yielded any practical measure which can be undertaken prior to the construction of the new bridge. Collaboration is ongoing with the bridge designers to examine if effective measures can be incorporated into the new bridge.

Anti-Social Behaviour

Anti-social behaviour in this area occurred prior to the redevelopment of the skate park and continues to do so now. We have been liaising closely with the Police over antisocial behaviour in the area and they have increased their patrols and have moved people on from the pedestrian tunnel. This is however part of the public highway and free for anyone to use.

We are exploring funding to erect a shelter on site to reduce the use of the tunnel during inclement weather conditions.

(H) Question from local resident

The resident stated that his presence at the meeting had been forced upon me because of the extremely poor engagement given by all council officials (except for Cynthia Thompson).

Those involved with the planning and implementation of this project; have left myself and others disillusioned and distrusting local democracy.

The only communications received was from back room departments, and this was only after persistent questioning; and proved to be the usual “corporate style” statements; with no supporting evidence; and it was these same statements that misled the full council into approving the scheme as being a like for like replacement, apart from flood lights.

My question asks this committee to please source the evidence that supports these statements and make it available for scrutiny; only then will the truth show how Mr Faulkner's conclusions were based on dubious assumptions. Why even the experts Maverick's who were commissioned because of their experience, illustrate on their own website how all their other skate parks are situated well away from homes; a fact also reinforced by the BBC programme “street patrol”.

Response from Cllr Harvey Portfolio Holder for Environment & City Management

Thank you for the further question and Councillor Harvey said he was sorry that the resident felt there had been poor engagement from the Council officials. He had seen the numerous responses provided by Council Staff to the large number of emails sent exclusively from two residents. The emails asked a large number of detailed questions, were addressed to a wide number of different individuals and departments within the Council and came in quick succession. He was not quite sure what was meant by ‘back room departments’ but the responses mainly came from the lead technical officers in each case and they did their best to respond in a full and comprehensive way.

The supporting information for the planning application for the skate park was publically available as part of the planning process. Due process was followed and the Committee members had all the information they needed to make an informed decision on the proposals to redevelop the skate park. It was clear at all times that the replacement skate park would be on a larger footprint, of concrete construction, and have elevated sections. This decision cannot be re-examined under current planning law.

As previously mentioned we are looking at ways to mitigate the concerns of a small number of local residents and we continue to do so.

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