

THE MEETING OF EXETER CITY COUNCIL

Guildhall
Tuesday 21 February 2017

The Right Worshipful the Lord Mayor (Cllr Thompson)

The Deputy Lord Mayor (Cllr Holland)

Councillors Ashwood, Baldwin, Bialyk, Branston, Brimble, Denham, Edwards, Foale, Foggin, Gottschalk, Hannaford, Hannan, Harvey, D Henson, Mrs Henson, Keen, Lamb, Lyons, Mitchell, Morse, Musgrave, Newby, Owen, Packham, Pearson, Prowse, Robson, Sheldon, Sills, Spackman, Vizard, Wardle, Warwick and Wood

1 MINUTES

The minutes of the Ordinary meeting held on 13 December 2016 and the Extraordinary meeting held on 24 January 2017 were moved by Councillor Hannaford and seconded by Councillor Pearson, taken as read and signed as correct.

2 APOLOGIES

Apologies for absence were received from Councillors Leadbetter and Sutton.

3 OFFICIAL COMMUNICATIONS

The Lord Mayor announced that she was delighted that the City Council had received national recognition as it had won an award for its "Exeter Best Bar None" scheme, which was praised as being the most innovative scheme at the recent awards ceremony in London. The Best Bar None scheme was aimed at reducing alcohol related crime and disorder in the City. The Portfolio Holder for Place congratulated all the officers involved for this award and their joint working with the Police to tackle Anti-Social Behaviour in the city.

The Lord Mayor referred to a letter she had received from the President of Poland thanking the City Council for its continuing commitment to commemorate the Polish Airmen who were stationed at RAF Exeter during the Second World War some of whom lost their lives serving as part of the allied forces. She also brought to Members attention the success of the Holocaust Memorial Day.

The Lord Mayor advised that as a consequence of the Senior Management Restructure five Assistant Directors Richard Ball, Roger Coombes, Bob Norley, Richard Short and Sarah Ward would be leaving on 31 March. On behalf of the Council she recorded her appreciation and thanks for all they had done during their time with the Council, and wished them well for the future.

On behalf of the Council, the Lord Mayor congratulated Bindu Arjoon who had been appointed to one of the new Director posts and Jon-Paul Hedge who had been appointed to the Director of Communications & Marketing post. The remaining two Director posts were to be advertised soon.

4

PLANNING COMMITTEE - 9 JANUARY 2017

The minutes of the Planning Committee of 9 January 2017 were presented by the Deputy Chair, Councillor Lyons, and taken as read.

RESOLVED that the minutes of the Planning Committee held on 9 January 2017 be received.

5

PLANNING COMMITTEE - 13 FEBRUARY 2017

The minutes of the Planning Committee of 13 February 2017 were presented by the Deputy Chair, Councillor Lyons, and taken as read.

In respect of Minute 14 (Planning Application No.16/1390/03 – 2 Lymeborne Avenue, Exeter) and in response to a Member, the Portfolio Holder for Economy commented that as this application was in her ward she was aware of the issues with the built structure, and that as the scheme had been refused there would be further investigation as to what enforcement action could be taken and if the application would be brought back to Planning Committee for consideration.

RESOLVED that the minutes of the Planning Committee held on 13 February 2017 be received.

6

LICENSING COMMITTEE - 7 FEBRUARY 2017

The minutes of the Licensing Committee of 7 February 2017 were presented by the Chair, Councillor Spackman, and taken as read.

RESOLVED that the minutes of the Licensing Committee held on 7 February 2017 be received.

7

PEOPLE SCRUTINY COMMITTEE - 5 JANUARY 2017

The minutes of the People Scrutiny Committee of 5 January 2017 were presented by the Chair, Councillor Wardle, and taken as read.

RESOLVED that the minutes of the People Scrutiny Committee held on 5 January 2017 be received.

8

PLACE SCRUTINY COMMITTEE - 12 JANUARY 2017

The minutes of the Place Scrutiny Committee of 12 January 2017 were presented by the Chair, Councillor Brimble, and taken as read.

RESOLVED that the minutes of the Place Scrutiny Committee held on 12 January 2017 be received.

9

CORPORATE SERVICES SCRUTINY COMMITTEE - 26 JANUARY 2017

The minutes of the Corporate Services Scrutiny Committee of 26 January 2017 were presented by the Chair, Councillor Sheldon, and taken as read.

RESOLVED that the minutes of the Corporate Services Scrutiny Committee held on 26 January 2017 be received.

10

AUDIT AND GOVERNANCE COMMITTEE - 7 DECEMBER 2016

The minutes of the Audit and Governance Committee of 7 December 2016 were presented by the Chair, Councillor Vizard, and taken as read.

RESOLVED that the minutes of the Audit and Governance Committee held on 7 December 2016 be received.

11

STRATA JOINT SCRUTINY COMMITTEE - 16 JANUARY 2017

The minutes of the Strata Joint Scrutiny Committee of 16 January 2017 were presented by Councillor Lyons and taken as read.

RESOLVED that the minutes of the Strata Joint Scrutiny Committee held on 16 January 2017 be received.

12

STRATA JOINT EXECUTIVE COMMITTEE - 16 JANUARY 2017

The minutes of the Strata Joint Executive Committee of 16 January 2017 were presented by Councillor Edwards, and taken as read.

RESOLVED that the minutes of the Strata Joint Executive Committee held on 16 January 2017 be received and, where appropriate, any recommendations contained therein approved.

13

EXECUTIVE - 10 JANUARY 2017

The minutes of the Executive of 10 January 2017 were presented by the Leader, Councillor Edwards, and taken as read.

RESOLVED that with the exception of Minute no. 8 (2017/18 Council Tax Base and NNDR1), which was considered at the Extraordinary Council Meeting on 21 February 2017 preceding this meeting, the minutes of Executive held on 10 January 2017 be received and, where appropriate, adopted.

14

EXECUTIVE - 14 FEBRUARY 2017

The minutes of the Executive of 14 February 2017 were presented by the Leader, Councillor Edwards, and taken as read.

In respect of Minute 19 (Appointment of Director of Communications & Marketing) and in response to a Member, the Leader stated that the business case for this post and those of the other Directors had been the subject of a report that had been considered by Executive and approved by Council. In light of the high use of social media it was essential the Council had a strategic role in respect of both Communications and Marketing.

In respect of Minute 20 (Proposals for the Implementation of a Public Spaces Protection Order) the Leader advised that the Council had received a petition from 38 Degrees with over 1,400 signatures under the banner of 'Don't fine the homeless of Exeter for begging' but in essence the request was 'Remove begging from the list of things police and PCSO's can move people on or fine people for'.

The Leader stated that the prohibition on begging had been removed from the provisions of the proposed PSPO, and had been replaced with a prohibition on aggressive begging.

A Member welcomed the order which would give the Police an extra tool to help keep the streets of the city centre safe.

Members supported the PSPO, commenting that it would provide assurance for city centre residents and visitors and help engagement with vulnerable people living on the city's streets. They considered the petition from 38 Degrees but were of the view that at this stage the Order should not be altered noting that it would be reviewed after six months of operation.

RESOLVED that the minutes of Executive held on 14 February 2017 be received and, where appropriate, adopted.

15

**AMENDMENTS TO THE CONSTITUTION INCLUDING THE SCHEME OF
DELEGATION & FINANCIAL REGULATIONS**

The report of the Corporate Manager Democratic & Civic Support was submitted setting out proposals to amend the Scheme of Delegation to Officers to match operational arrangements, taking particular account of the recent restructure of Senior Management and to update the Financial Regulations.

The Leader moved and Councillor Hannaford seconded the recommendation.

In response to questions from a Member, the Corporate Manager Legal & HR Services stated that an officer from the County Council was informally seconded to the City Council specifically in order to deal with Parking Contravention Notice Appeals.

The recommendation was put to the vote and carried.

RESOLVED to approve:-

- (1) the changes to the Scheme of Delegation to Officers set out in Appendix 1 to this report; and
- (2) the Financial Regulations as set out in Appendix 2 to this report.

16

**QUESTIONS FROM A MEMBER OF THE COUNCIL UNDER STANDING ORDER
NO. 8**

In accordance with Standing Order No. 8, the following questions were put by Councillor Prowse to the Leader.

Question – Given the plethora of applications to construct or convert sites for student accommodation both on and off the campus does the Leader of this Council now agree that it is time to implement a policy that encourages alternative applications for mixed use sites that will at last allow and offer permanent residents to have the opportunity to have their own home?

The Leader responded that he had made reference to the number of houses that had been built and were planned to be built in his Budget Speech. Whilst, some

Councillors had voted against proposals for student accommodation, the Council does need to bring forward further purpose built accommodation on suitable sites such as Streatham Campus and in the City Centre to reduce the imbalance in some residential areas.

Question – How many units of Social Housing have been built since January 2010 by the council?

The Leader replied that 21 units of council housing had been built by the Council since January 2010. A further 26 were currently under construction with a further 53 due to start later this spring. The Council had a further 25 units with planning consent which had not commenced due to borrowing restrictions in the Housing Revenue Account.

In case, Councillor Prowse wanted to know the total number of affordable homes delivered across the city since January 2010, this equated to 666 units to date which included the Council new build homes, homes built by housing associations and Section 106 transfers to housing associations (and the Council).

Question – The Council will recall my questions regarding the situation where the Council had leased/contracted car parks to a private parking company. Station Road CP (7.3.13) & Flowerpot Lane (16.1.14) respectively. These questions were tabled at Economy Scrutiny. The PH responded.

It transpires that we have since continued to treat other car parks and areas of land in our ownership with the same process. It is believed that we have continued with the same private parking company.

The County of Devon became a Civil Parking Enforcement area with effect from 5th May 2008. Exeter City Council DID NOT seek the Secretary of States approval for dispensation to treat its car parks and land in a different way. In fact if it had done the likelihood is that it would have been refused. This said what is clear is that land and car parks in the ownership of this Council is not PRIVATE land. I repeat is NOT private land.

On the 16th September 2014 the Secretary of State for the Dept. for transport wrote to this Council clearly setting out that land owned by a Council is not private and that where used for car parking it should be regulated by a Traffic Order (TRO) or Parking Places Order (PPO). The purpose of this is that where infringements may occur drivers have the right to full statutory protection in the appeals system under the Traffic Management Act 2004.

Can the Leader confirm that immediate action has taken place to withdraw/suspend the private parking regime.

Can the Leader explain the consequences of all those motorists who have received tickets from the private parking company on land which they had no authority to "Police".

The Leader stated that the Portfolio Holder for Economy would respond to this question.

The Portfolio Holder for Economy replied that the provision of car parks by the private parking company in these circumstances complied with the provisions of the Road Traffic Regulation Act 1984. Action would not be taken to withdraw or suspend enforcement at these car parks.

It was intended that the car parks at Flowerpot Lane and Station Road would be incorporated into Exeter City Council's Parking Places Order later this year when the leases come to an end. Enforcement would then be carried out by Exeter City Council.

In response to Councillor Prowse's supplementary question the Portfolio Holder for Economy clarified that Flowerpot Lane and Station Road car parks were leased to a third party and were not regulated by the Parking Places Order. These leases were ending shortly and the Council would look to incorporate them into the Parking Place Order.

Question – Penalty Charge Notice Appeals. (PCNs)

I have received information and subsequently confirmed by Devon County Council that since April last year this Council has used a member of Devon County Council (DCC) to process all appeals whether formally or informally made by driver's/keepers of vehicles who have received PCNs in our car parks. Records show this amounts to several hundred. This authority is obliged by law to carry out its statutory duties in respect of this function.

We are further required to account by way of an audit trail the issue of each ticket and its ultimate disposal.

The Chief Executive of the County Council has confirmed that any agency agreement that previously allowed this function to be performed by them ceased to exist in March 2014.

The Leader is asked to respond to the following:

- a) Who sanctioned this?*
- b) Can the Leader confirm that this role is referred to in our Constitution that would normally allow a member of ECC staff to conduct this role.*
- c) Can the Leader confirm that no qualified member of the ECC staff exists to do this duty.*
- d) Is the leader aware that by employing a member of DCC staff to perform this role it can only be lawful if an agency agreement exist. As one does not then explain how this has happened*
- e) Section 10.16 of the Secretary of State's Statutory Guidance to Local Authorities on Civil Enforcement of Parking Contraventions to have a person who has no authority to decide upon representations. We have breached this as an authority. Can the Leader explain this breach in FULL.*
- f) As this authority has breached our statutory requirement to comply with our duty to deal with appeals as prescribed can the Leader explain what he will do to rectify this serious position?*
- g) Disregarding whether any of those who did appeal were successful or not there has been a very serious procedural impropriety in how their appeals have been dealt with. Given that records show this is in the hundreds it is apparent that in respect of those who lost their appeals informally, formally or at the Traffic Penalty tribunal we will have to repay those amounts. What is the Leader's view on this dire position?*
- h) Does the Leader agree that an internal enquiry should be held to establish what went wrong?*
- i) The County of Devon become a Civil Parking Enforcement area on the 5th May 2008. This includes Exeter. This Council ceased to delegate its authority to Devon County Council to deal with PCN appeals in MARCH 2014. How or who decided it was still lawful to do so?*

The Leader stated that the Portfolio Holder for Economy would respond.

The Portfolio Holder for Economy replied as follows:-

- a) The secondment of an officer from Devon County Council to Exeter City Council was agreed by the Assistant Director – Public Realm. The Constitution makes it very clear that Assistant Directors are enabled ‘To take all necessary action for the economic, efficient and effective day to day management, administration and supervision of [their] service...including authorising the filling of posts.’
- b) There is no legal requirement for the role to be set out in the Council’s Constitution, although I accept that we could be more closely aligned with the guidance.
- c) The officer seconded to Exeter City Council from Devon County Council is suitably qualified to undertake the role.
- d) I do not agree with you. There is no requirement to have an agency agreement in place, particularly where an officer has been seconded to work for the Council.
- e) It is accepted that the scheme of delegation should identify the specific person or persons authorised to cancel PCNs. This will be rectified.
- f) I do not agree that the Council is in breach of its statutory obligations. There is no breach of an Act of Parliament. I accept that the Council has not followed the guidance on this point. The only issue to be complied with is to clarify the post which deals with appeals against Penalty Charge Notices.
- g) I do not agree that there is any procedural impropriety in the way appeals have been dealt with. Therefore no repayment will be made.
- h) Nothing went wrong. No inquiry is required.
- i) Devon County Council has never dealt with Exeter City Council’s appeals.

In response to Councillor Prowse’s supplementary question the Portfolio Holder for Economy clarified that an officer was informally seconded to Exeter City Council from Devon County Council to process appeals.

17

CIVIC SERVICE

The Lord Mayor reminded Councillors that they were all invited to the Civic Service which would take place at St Michael & All Angels Church, Pinhoe on Sunday 5 March at 10.30am.

(The meeting commenced at 6.50 pm and closed at 7.54 pm)

Chair