

CABINET

9 April 2018



Minutes of the Cabinet meeting held at the Town Hall, Bexhill-on-Sea on Monday 9 April 2018 at 11:00am.

Cabinet Members present: Councillors C.R. Maynard (Leader), Lord Ampthill, A.E. Ganly, Mrs S. Hart, I.R. Hollidge, I.G.F. Jenkins, G.P. Johnson, M.J. Kenward (Deputy Leader) and Mrs E.M. Kirby-Green.

Other Members present: Councillors J.J. Carroll, K.P. Dixon, Mrs D.C. Earl-Williams (in part), S.D. Elford (in part), R.V. Elliston, K.M. Field, B. Kentfield, M. Mooney, D.B. Oliver, P.N. Osborne (in part), J. Potts and M.R. Watson.

Advisory Officers present: Executive Director, Executive Director, Assistant Director Resources, Head of Service Environmental Health, Licensing and Community Safety, Planning Policy Manager, Neighbourhood Services Manager (in part), Operations Team Leader (in part) and Democratic Services Manager.

Also present: Inspector Dan Russell, Sussex Police and 9 members of the public.

Publication Date: 11 April 2018

The decisions made under PART II will come into force on 19 April 2018 unless they have been subject to the call-in procedure.

CB17/84. MINUTES

The Chairman was authorised to sign the minutes of the meeting held on 12 March 2018 as a correct record of the proceedings.

CB17/85. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Mrs J.M. Hughes. The Leader extended best wishes for a speedy recovery to Councillor Mrs Hughes who had recently undergone surgery.

PART I – RECOMMENDATIONS TO COUNCIL – not subject to call-in procedure under Rule 16 of the Overview and Scrutiny Procedure Rules.

**CB17/86. CIVIL PARKING ENFORCEMENT
(6.1)**

Cabinet received and considered Minute OSC17/51 arising from the meeting of the Overview and Scrutiny Committee (OSC) held on 19 March 2018 that had considered Civil Parking Enforcement (CPE). The OSC had undertaken a thorough review of CPE through the

establishment of the Civil Parking Enforcement Task and Finish Group (CPET&FG) Chaired by Councillor Elford.

Councillor Elford addressed Cabinet and outlined the extensive work carried out by the CPET&FG since October 2017, supported by officers from within Rother District Council and East Sussex County Council (ESCC) who had attended and assisted Members with their deliberations at each meeting. It was considered that the resulting scheme would provide a fair and affordable enforcement regime for the residents and visitors alike across the District.

Councillor Osborne confirmed that the OSC had also held a thorough debate and was pleased to recommend to Cabinet that the Council request ESCC to apply to the Department for Transport for CPE powers. The OSC had agreed that recommendation 2) (costs to be recovered from Wealden District Council) not be supported and this was agreed by Cabinet. It was confirmed that Rother District Council had not incurred any costs in relation to Wealden District Council. The OSC had also added recommendation 10) that Sussex Police be notified of the recommendation to Council on the proposed adoption of CPE and that in the interim, Sussex Police continue to carry out enforcement of illegal and dangerous parking. Councillor Mrs Kirby-Green, Cabinet Portfolio Holder for Safer Communities and Communications advised that Sussex Police had confirmed that in light of the Council's impending decision, interim resources would be found to enforce illegal and dangerous parking until CPE was introduced.

Cabinet Members acknowledged the benefits of introducing CPE to the district which included potential income to improve the local transport network, positive impact on the economy and environment, as well as reduced congestion and reduction of illegal and inconsiderate parking. In agreeing the recommendations to Council, Cabinet added a further recommendation (in place of the original recommendation 2) that was not supported) that subject to CPE being adopted, ESCC be requested to establish a parking board similar to those in Hastings and Lewes Councils which would meet regularly to monitor the scheme.

It was noted that the timeframe to introduce CPE was a long one, an estimated two years, which enabled the necessary change in law from criminal to civil and the appropriate legal / parliamentary steps that this required.

RECOMMENDED: That

- 1) Rother District Council write to East Sussex County Council to support an application to be submitted to the Department for Transport for Civil Parking Enforcement to be adopted;
- 2) Subject to CPE being adopted East Sussex County Council be requested to establish a parking board for Rother District Council to monitor the day to day running of the scheme;
- 3) the current charging structure and tariffs in Rother District Council's off-street car parks remain unchanged until the Civil Parking Enforcement decision is taken;

- 4) the Council's off-street parking provision remain under the current management framework of The District of Rother Parking Places Order 1983;
- 5) when the Council's Planning Core Strategy is reviewed, Electric Vehicle Charging Points be considered in planning policy, and subject to government advice received, as well as technological and industry advances;
- 6) the indicative timetable for Civil Parking Enforcement be noted;
- 7) future East Sussex County Council consultation on the detail of the Traffic Regulation Orders changes, includes liaison with the affected Ward Members to obtain the Council's comments for their areas;
- 8) the Civil Parking Enforcement Task and Finish Group be reconvened six months after Civil Parking Enforcement was adopted to consider the impact of the Civil Parking Enforcement Scheme in preparation for the first annual review;
- 9) during the first annual review, the Car Parking Review Working Group be reconvened to consider assessment of the impact of Civil Parking Enforcement on the usage and charging structure of the Council's off-street parking operation; and
- 10) Rother District Council notify Sussex Police of the recommendation to Cabinet and full Council that the Council support East Sussex County Council making an application for Civil Parking Enforcement and that in the interim the Police continue to carry out enforcement of illegal and dangerous parking.

(Councillor Maynard declared a personal interest in this matter as an Executive Member of East Sussex County Council and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

CB17/87.
(7.1)

CIVIL PENALTIES AND RENT REPAYMENT ORDERS

The Council had powers under various housing and public health legislation to require the improvement of privately rented properties and make them safe and fit to live in. Recent legislation under Section 126 and schedule 9 of the Housing and Planning Act 2016 that came into force on the 6 April 2017 gave the Council new powers to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The Council was required to adopt a policy before it could issue a financial penalty and a draft was set out at Appendix A to the report for approval. The Policy set out the criteria for using civil penalties, Rent Repayment Orders and the methodology to be used in setting the level of civil penalty fines. The Policy took into account the statutory guidance issued by the Government under Schedule 9 and Section 41

of the Housing and Planning Act 2016. The maximum civil penalties proposed ranged from Level 1, at £2,500 to Level 6, at £30,000.

The decision on whether to use civil penalty powers (and to what extent) or to seek a prosecution would be made by the Executive Director or the Head of Service Environmental Health, Licensing and Community Safety. Each case would be considered on an individual basis, however the principles in determining the form of action would be:

- What outcome was the Council trying to achieve – e.g. set an example, get the works done or a deterrent to committing future offences (a civil penalty would not be in the public domain, unlike a prosecution).
- Severity of the offence – was prosecution a better option based on the significance of the offence and the impact it has had.
- Type of property and its occupiers – were the occupiers particularly vulnerable.

There were some concerns expressed regarding officers determining whether or not to use civil penalty powers and the level to be used, without shared responsibility and input from elected Members. Members were reassured that a thorough process would be undertaken on each case, legal advice sought accordingly and all decisions would be made in line with the Policy, agreed by Members. It was noted that historically there were very few cases that would warrant the use of the new powers however, it was agreed that a report would be made to Cabinet in 12 months' time to monitor the use of the Policy.

Where a landlord received two or more civil penalties over a 12 month period, the Council would include that person's details in the database of rogue landlords and property agents that would be publicised by the Ministry of Housing, Communities & Local Government.

The Council could only impose a civil penalty as an alternative to prosecution and would not be permitted to impose a civil penalty and prosecute for the same offence. There was a right of appeal against the imposition of a civil penalty for the amount of the civil penalty to a First Tier Property Tribunal with costs being met by each party, unless the Tribunal fined the Council for acting irrationally.

RECOMMENDED: That the Civil Penalties and Rent Repayment Orders Policy be approved and adopted, as submitted; AND

***RESOLVED:** That

- 1) the Executive Directors and the Head of Service Environmental Health, Licensing and Community Safety be authorised to issue Civil Penalties and Rent Repayment Orders in accordance with the Policy; and
- 2) a report be made to Cabinet in 12 months' time to monitor the use of the Policy.

*The **RESOLVED** part of this minute is subject to the call-in procedure under Rule 16 of the Overview and Scrutiny Procedure Rules.

(Councillors A.E. Ganly and G.P. Johnson each declared a personal interest in this matter in so far as they are landlords and in accordance with the Members' Code of Conduct remained in the room during the consideration thereof).

CB17/88.
(7.3)

SEDLESCOMBE NEIGHBOURHOOD PLAN 2016-2028

Following an affirmative local Referendum result in relation to the use of the Sedlescombe Neighbourhood Plan (SNP) to help the determination of planning applications in the Parish Neighbourhood Area, Cabinet was requested to recommend to Council that the SNP be formally adopted and become part of the statutory Development Plan for the area.

In December 2017, the District Council resolved that the SNP (as amended in line with the Examiner's proposed modifications) should proceed to local Referendum. This decision together with a changed version of the Plan was published on the Council's website. Following the due legal process, and in accordance with the Neighbourhood Plan legislation, a local referendum was subsequently held on 15 March 2018 in the Sedlescombe referendum area of Sedlescombe Parish. Following a turnout of 46.04%, 86.2% were in favour of Rother District Council (RDC) using the Neighbourhood Plan for Sedlescombe to help it decide planning applications; 13.8% were against.

Following this result, it was incumbent on RDC under paragraph 38A(4)(a) of the Planning and Compulsory Purchase Act 2004 to 'make' a Neighbourhood Plan within eight weeks of the referendum result. Members were advised that this took account of a further screening of the Plan in accordance with the Habitats Regulations, which had shown that it would have no material effect on any European site. The principal effect of making the Neighbourhood Plan was that it would become part of the statutory 'development plan' for the area. Hence, planning applications within Sedlescombe Parish would be determined against the SNP, alongside relevant Local Plan policies, also having regard to the National Planning Policy Framework. The decision to make the SNP would need to be publicised together with a statement setting out how the environmental considerations had been integrated into the Plan.

It was therefore proposed that full Council be recommended to formally 'make' the SNP with immediate effect which would bring it into legal force. As there was not a full Council meeting within eight weeks of the referendum date an extra-ordinary meeting of full Council had been called to take place on Monday 23 April 2018 for this purpose. In future it was hoped that careful programming of the statutory timescales for the necessary stages of neighbourhood plan making would avoid the need for special full Council meetings, although this may not always be possible.

RECOMMENDED: That the Sedlescombe Neighbourhood Development Plan 2016-2028 incorporating the Examiner's modifications, as presented to local Referendum, be "made" with immediate effect and form part of the Council's Development Plan.

CB17/89.
(8.1)

MEMBER TRAINING AND DEVELOPMENT STRATEGY

In introducing the report, the Council's Member Development Champion, Councillor Lord Ampthill was pleased to confirm that the Council had been awarded the South East Employer's (SEE) Charter for Elected Member Development for the fourth time following the recent inspection held on 29 March 2018. A full report would be received from SEE and considered by the Member Development Task Group (MDTG) in due course. The Democratic Services Manager and her Team were thanked for their work in pulling the portfolio of evidence together and for their help and support to all elected Members in general.

The Council's Member Training and Development Strategy had been in place since 2007 as part of the Council's commitment to Member Training and Development. The Strategy set out how the Council developed its elected Members in order to assist both the Council in achieving its aims and priorities in accordance with the Corporate Plan and to assist Members to manage with the increasing demands placed upon them.

The Strategy was reviewed and re-adopted every four years in the year preceding the District Council elections to ensure that the Strategy remained fit for purpose and had taken account of any new or emerging issues. The MDTG had considered the revised Strategy at its last meeting held on 19 March 2018 and commended its re-adoption to Council. Councillor Lord Ampthill drew Members' attention to the mandatory requirement for Members to attend and receive equalities and diversity training at least once within their term of office. It was hoped that punitive measures would not be required in the future to ensure that all Members took part in any training that was deemed mandatory.

RECOMMENDED: That the revised Member Training and Development Strategy be approved and adopted, as submitted.

PART II – EXECUTIVE DECISIONS – subject to the call-in procedure under Rule 16 of the Overview and Scrutiny Procedure Rules by no later than 4:00pm on 19 April 2018.

CB17/90.
(7.2)

PUBLIC SPACES PROTECTION ORDERS – ANTI-SOCIAL BEHAVIOUR

In October 2017, Cabinet authorised officers to consult the public about making Public Space Protection Orders (PSPOs) to respond to certain anti-social behaviour. The consultation ran for nine weeks during which 458 responses were received, summarised at Appendix A to the

report together with information from Sussex Police at Appendix B. A complete report of all responses and comments had been placed in the Members' Room.

PSPOs were introduced by the Anti-social Behaviour, Crime and Disorder Act 2014 (the Act) and were intended to deal with a nuisance or problem in a particular area that was detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. PSPOs generally replicated existing laws and bye-laws and could be enforced by fixed penalty notices (FPN) rather than prosecutions in a Court. The breach of a PSPO was a criminal offence and enforcement officers could issue a FPN of up to £100 if appropriate, but a fine of up to £1,000 could be made on prosecution.

The Executive Directors had delegated authority to make or amend PSPOs for three months (Minute CB14/32 refers). At any point before expiry, the Council could extend a PSPO by up to three years if necessary to prevent the original behaviour from occurring or recurring.

Taking into account the consultation responses, previous Member concerns, past public complaints to the Council and the Police and the need to prevent future problems, officers had recommended that PSPOs be introduced in respect of nuisance begging; sleeping in vehicles; drinking alcohol in public places after been told not to; dangerous cycling; fly-tipping by residents or businesses and removal of fixed fossils on the beach. To provide further clarity with regard to sleeping in vehicles, it was agreed to add "caravan" into this Order.

Section 72(4) of the Act required consultation with the Chief Officer of Police for Rother, the Police and Crime Commissioner and East Sussex County Council as the Highway Authority. If PSPOs were made information signage would be displayed as appropriate and necessary.

Members were supportive of the introduction of the PSPOs as detailed in the report, but were keen to ensure that vulnerable persons within the district were not targeted by the introduction of these Orders, but helped and assisted, where appropriate, often as part of a multi-disciplined approach. Inspector Dan Russell reassured Members the use of these Orders was very much a partnership approach and that Sussex Police would use a common sense approach and discretion at all times.

PSPOs could also be enforced by the Council which had limited resources to carry out enforcement, with only one part-time Community Warden and other officers, who were authorised, as part of carrying out their primary roles e.g. Coastal Control Officers.

RESOLVED: That the Executive Director be authorised to undertake the final consultation with East Sussex County Council, the Police and Crime Commissioner and Chief Officer of Police and if there are no adverse comments to proceed to make a Public Spaces Protection Order (Anti-social Behaviour) in designated areas for three years, as follows:

a) Nuisance Begging: No person shall carry out persistent begging or loiter in a position to beg or solicit money in the vicinity of any cash machine or shop entrance. For these purposes loitering means “standing or waiting around without apparent purpose”. (Bexhill and Rye only).

b) Sleeping in vehicles or caravans: No person shall occupy for the purposes of sleeping or residing in stationary vehicles or caravans on the highway and any public open spaces (where the public can access without payment) between 23:00 and 07:00. (District-wide).

c) Drinking alcohol in a public place, after been told not to: No person shall consume alcohol or have an open alcohol container in any public place after having being requested by an Authorised Officer or Police Constable to cease consumption or hand over the container. This provision does not apply to alcohol being consumed on licensed premises or on pavements owned by the business or occupied under licence from East Sussex Highway Authority or on land which has the benefit of a Temporary Event Notice (Licensing Act 2003). (Bexhill only).

d) Dangerous cycling etc: No person shall cycle, skateboard or use any vehicle (whether mechanically propelled or not) on the Bexhill promenade (adjacent to West Parade, Marina and De La Warr Parade) and on any pavement in a reckless or wanton manner, including travelling at excessive speed, or travelling without paying due care and attention to others or conditions pertaining at the time. (Bexhill, High Street Battle and Main Road, Westfield only).

e) Fly-tipping by residents or businesses on the streets: No person shall deposit household waste originating from any premises, or any industrial or commercial waste, in or beside a litter bin. (Bexhill, High Street Battle and Etchingham, Church Lane and Main Road Westfield only).

f) Fossils: No person shall remove or attempt to remove fossils from the beach or foreshore except loose fossils.

CHAIRMAN

The meeting closed at 12.02pm

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