

Report to	-	Council
Date	-	21 May 2018
Report of the	-	Cabinet
Subject	-	References from Cabinet Meetings

The Council is asked to consider recommendations arising from the Cabinet meetings held on 9 April and 14 May 2018 (there were no recommendations to Council made at its meeting held on 12 March) as set out below.

CABINET – 9 April 2018

CB17/86. CIVIL PARKING ENFORCEMENT

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.

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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).

(Cabinet Agenda Item 6.1)

CB17/87. 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

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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

Cabinet also 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).

(Cabinet Agenda Item 6.1)

CB17/89. 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

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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 Amphill 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.

(Cabinet Agenda Item 8.1)

CABINET – 14 May 2018

CB17/94. REVIEW OF LOCAL PAY AWARD

Cabinet received and considered Minute LGP17/51 arising from the meeting of the Licensing and General Purposes Committee (L&GP) held on 16 April 2018 that had considered the review of local pay award. The Executive Director advised that the L&GP Committee had taken into account all relevant issues, was keen to continue to support the Council's existing commitment to matching the Living Wage and supported an increase of 2% for two years. Members were also reassured that with regard to the gender pay gap, male and female employees were all paid at the same rate of pay for doing the same job. The Council was aware that the gender pay gap review identified that there were more men in higher paid positions than women.

Cabinet was in agreement with the recommendations and, for the purposes of clarity, wished the recommendation to be amended to include "2% each year", over two years. The Leader of the Council led Members in thanking all levels of staff for all their hard work and commitment to the Council.

RECOMMENDED: That

- 1) the Council's commitment to matching the Living Wage from the Living Wage Foundation be continued for staff on SCP6 for 2018/19 and 2019/20 (representing a pay settlement offer of 3.6% for these staff only); and
- 2) subject to the Council's current financial position and outlook being maintained, a two year pay settlement increase of 2% each year for 2018/19 and 2019/20 be approved.

(Cabinet Agenda Item 6.1)

CB17/95. **COASTAL ENVIRONMENTS CORPORATE PROJECT – EAST PARADE**

Cabinet received and considered Minute OSC17/57 arising from the meeting of the Overview and Scrutiny Committee (OSC) held on 23 April 2018 that had considered the Coastal Environments Corporate Project – East Parade. Cabinet had originally considered the matter in March (Minute CB17/77 refers) and referred detailed consideration of the project to the OSC.

The Chairman of the OSC, Councillor Osborne, advised that the OSC had received a detailed and interesting presentation from Cheryl Poole, the Council's Programme and Projects Officer and Julian Porter, the District Curator on the history of East Parade and the Promenade, as well as the four heritage projects proposed. Following the presentation the OSC had held a detailed debate and it was pleasing to report that there was consensus amongst all political groups for the project and its aims and objectives. The only concern that had been expressed by some Members was the modernistic design of the clubhouse. It was considered that architecture was very much subjective and ultimately the design of the clubhouse would be determined by the Council as the Local Planning authority.

Cabinet was fully supportive of the project and agreed to recommend to Council that the project proceed as submitted. The project was considered long overdue and all Members were looking forward to it coming to fruition. It was hoped that as a consequence, public access to the Sea Angling Club and its facilities would be improved.

RECOMMENDED: That:

- 1) it be noted that £295,000 has been set aside by full Council in the Capital Programme from the car parks' earmarked reserves to progress Project A;
- 2) subject to Cabinet approval of Project A, the Bexhill Sea Angling Club be authorised to confirm Rother District Council's £295,000 contribution to lever in match funding from external grant awarding bodies;
- 3) subject to Bexhill Sea Angling Club securing funding for their element, an architect be procured by Rother District Council to progress the scheme to the detailed design phase, including planning permission, and project delivery, to be funded from the capital allocation; and
- 4) the remaining three projects (B, C and D as outlined within the report) being planned to address the heritage and environment of East Parade be further developed and brought before Members as appropriate.

(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).

CB17/96. CALL-IN AND URGENCY PROCEDURES

Cabinet received and considered Minute OSC17/58 arising from the meeting of the Overview and Scrutiny Committee (OSC) held on 23 April 2018 that had considered the Call-in and Urgency Procedures within the Council's Constitution.

The Call-In procedure was the mechanism by which the Council's OSC could challenge decisions made by the Executive that were not yet implemented. Following the reduction of membership on the OSC last year from 20 to 12, full Council had agreed to reduce the number of Members of the OSC who could call-in a decision from three to two to better reflect the ratio of opposition Members to controlling group Members serving on the Committee.

Whilst it was acknowledged that the procedure was operating well, the OSC had now requested that the procedure be further amended to allow any two non-executive Members of Council, who need not be Members of the OSC, to be able to call-in a decision with effect from the new civic year.

Cabinet agreed to support the recommendation to Council on the proviso that at least one of the two Members requesting a call-in must have been present at the Cabinet meeting in question and have heard first-hand the debate and reasons for decision; the proposed new structure would also be subject to review after one year. The Leader of the Council hoped that this condition would increase non-executive Member attendance at meetings of Cabinet from the new municipal year.

RECOMMENDED: That

- 1) the call-in procedure be amended to enable any two non-executive Members of the Council, one of whom must have been present at the Cabinet meeting in question, to call-in a decision with effect from the new civic year;
- 2) the Constitution be amended accordingly; and
- 3) the revised procedure be subject to review after one year.

(Cabinet Agenda Item 7.2)

CB17/97. PROPERTY INVESTMENT AND OTHER INVESTMENTS

In December 2017, full Council had agreed the Property Investment Strategy (PIS) (Minute C17/46 refers), however, following Government and CIPFA changes to the statutory guidance and Prudential Code it was necessary to revise the PIS. A briefing paper had been circulated to all Members at the February full Council meeting advising of this requirement.

A revised draft Strategy was attached at Appendix B to the report which now focused on supporting and safeguarding the economy of the

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Rother area, through the long term protection of existing and the creation of new employment space. For the plan to be sustainable the property investments must make a net positive return for the Council.

Whilst the changes brought a loss of flexibility in where investment could be made, which could be seen as unhelpful in achieving the best returns, it was however considered positive, in the sense that the Council's regeneration ambitions for the Rother area were now at the forefront of the PIS.

It was noted that whilst there were no plans currently to invest beyond the Rother border, either alone or in partnership with neighbouring councils, to do this would require the use of a wholly owned company in order to comply with legislation, in particular the Localism Act 2011 (see Minute CB17/98 below).

Although the portfolio would be managed from existing resources within the Council's Estates team, specialist external advice would be required, as needed. To this end a specific budget provision of £100,000 was recommended to acquire specialist advice in support of delivering the PIS which could be met from the Medium Term Financial Strategy Reserve. This approach would be subject to review by the Property Investment Panel (PIP) as the portfolio grew, training was currently being organised for the PIP Members and they would be supported with specialist valuation and financial advice. Members were reassured that ultimately the Council's Chief Financial Officer had the right of veto over any investment where it was considered the appraisal did not show the long term soundness of the investment.

RECOMMENDED: That the revised Property Investment Strategy set out at Appendix B to the report be approved and provision for £100,000 be made in the Revenue Budget to be met from the Medium Term Financial Strategy Reserve, to meet the costs of specialist advice as set out in the report.

(Cabinet Agenda Item 8.1)

CB17/98. **WHOLLY OWNED LOCAL AUTHORITY COMPANIES**

Members had previously been advised that to support the Council's income generating ambitions wholly owned subsidiary companies might need to be established (Minute CB17/45 refers). It was now considered appropriate to establish a holding company and thereafter other companies, as appropriate to deal with other Rother 2020 activities. The Council would require specialist external legal and accounting advice and support to establish the proposed company structure and an initial budget of £75,000 was proposed to cover these costs.

The detailed report before Members included the advantages and disadvantages, proposed structure, resource requirements, governance arrangements and the relationship between the companies and the Council. In order for the Council to move quickly, it was requested that the Council authorised the Executive Director in consultation with the Leader of the Council, Portfolio Holder for Finance, Monitoring Officer and Section 151 Officer to approve the

details of the companies following receipt of the further legal and financial advice.

The advantages of setting up wholly owned companies, which were unfettered by Council bureaucracy, included greater entrepreneurial freedom, lower operating costs, the ability to operate outside Rother geographical boundaries, independent commercial identity from the Council and the ability to sell as a going concern once established. The disadvantages included loss of direct control, possible loss of revenue through corporate taxation, possible inefficient VAT recovery compared to the Council, risk of commercial failure and reputational damage if unsuccessful.

Following the Council decision to operate a café/restaurant in-house from the Colonnade it was recommended that this business was operated through a subsidiary company. Due to tight timescales for a summer opening, a dormant trading company in the name of Colonnade Bexhill Limited had already been established, subject to Member approval of this approach.

It would also be necessary for the Council to provide an overdraft facility of up to £250,000 to the new holding and trading companies to be charged and repaid at commercial loan rates. This would allow the business to mobilise its operations, including advance purchase of stock, equipment and to meet any early staffing costs.

As the Council would be the sole shareholder of all companies, it was necessary to appoint company directors to each and it was proposed that the Executive Director be authorised to appoint company directors in consultation with the Leader of the Council, relevant Portfolio Holders, Monitoring Officer and the Section 151 Officer. It was proposed that each company had between two and five directors and relevant training would be provided to the company directors and any other officers or elected Members who were closely involved with each company. The Board of Directors would be responsible for delivery of the expected outcomes within the Business Plan of their respective company and have oversight of the performance, financial and operational management within the parameters agreed with the shareholder.

It was important that appropriate governance structures were in place to ensure proper supervision of the companies, thereby protecting the Council's financial and reputational investment in the company. The Articles of Association required for the setting up of the company would be drafted by legal to reflect the aims and objectives of the company. The governance and management structures would need to be included in the Articles of Association. It was recommended that the approval of the final Articles of Association for the company was delegated to the Executive Director in consultation with the Section 151 Officer, Monitoring Officer and the Leader of the Council following receiving legal advice.

In order to ensure good governance and demonstrate a clear separation between the Council's role as the municipal authority and the Council's role as shareholder, it was recommended that a

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Shareholder Board was created. The new Shareholder Board would be appointed by the Council and fulfil the Council's role as sole shareholder. The Leader of the Council proposed that the following six Members be recommended to Council to form the Shareholder Board: Councillors Lord Ampthill, Mrs M.L. Barnes, S.H. Earl, G.P. Johnson, I.R. Hollidge and M.J. Kenward.

The Shareholder Board would not be operational but would have powers to make decisions on behalf of the Council when it came to company matters. The Shareholder Board would provide updates to the Overview and Scrutiny Committee (OSC) on performance of the new companies. It was requested and agreed that any potential conflict with Members' role on the Shareholder Board and the Council's Code of Conduct in terms of interests would be considered and addressed within the Articles of Association.

A key governance issue was the relationship between the company's internal management and the Council, the sole shareholder. To this end, it was advised that a scheme of delegation be drawn up structuring the relationship between the Council and the companies. The scheme of delegation would set out in detail the powers and responsibilities of the Council's sole shareholding of the company, how it would exercise that power and how the directors of the company and the shareholder would interact. It would also set out which decisions were made by the Council and which decisions were made by the directors of the company.

RECOMMENDED: That

- 1) the setting up of a holding company be approved; and the setting up of a wholly owned local authority trading company limited by shares be retrospectively approved;
- 2) an overdraft facility of up to £250,000 be made available to the above companies to enable the mobilisation of the operation to be undertaken, to be charged at a commercial loan interest rate;
- 3) a budget of £75,000 be approved for the necessary specialist legal and financial advice required to be funded from the Medium Term Financial Strategy Reserve;
- 4) the Executive Director be granted delegated authority, in consultation with the Leader, Portfolio Holder for Finance, Monitoring Officer and the Section 151 Officer, the power to:
 - a. Establish a holding company.
 - b. Agree the name for the company.
 - c. Draft, in line with this report, and approve Articles of Association as required.
 - d. Name the directors of the company.
 - e. Make governance arrangements for the companies including agreement to the scheme of delegation.
 - f. Decide on the relationship between the Council and the Companies.

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- 5) a Shareholder Board be established made up of the following six Councillors Lord Ampthill, Mrs M.L. Barnes, S.H. Earl, G.P. Johnson, I.R. Hollidge and M.J. Kenward; and
- 6) the Monitoring Officer be authorised to make the necessary amendments to the Council's Constitution to establish the Shareholder Board.

(Cabinet Agenda Item 8.2)

Councillor C.R. Maynard
Leader of the Council