

FULL COUNCIL MEETING – 11 MARCH 2015

AGENDA ITEM 3 – PUBLIC QUESTION TIME – ORDER IN WHICH THE CHAIRMAN OF THE COUNCIL WILL INVITE QUESTIONS BELOW RECEIVED IN WRITING IN ADVANCE OF THE MEETING

1. From Mr Dixon to the Leader of the Council, Councillor Mrs Brown
2. From Mr Ellis to the Cabinet Member for Planning & Infrastructure, Councillor Bower
3. From Mr Dixon to the Leader of the Council, Councillor Mrs Brown
4. From Mr Dixon to the Cabinet Member for Planning & Infrastructure, Councillor Bower

THE FULL DETAIL OF THE QUESTIONS TO BE ASKED IS DETAILED BELOW

NOTE: The Chairman will invite questions from members of the public who have submitted in writing their questions in line with the Council's Constitution. Chairman will explain that the questions received will be answered by the appropriate Members of the Cabinet or the Chairman of the Overview Select Committee. Chairman to confirm that Public Question Time allows Members of the public to ask one question at a time and that a maximum of one minute is allowed for each question. Chairman is to state that questions will be invited in the order in which they have been received and that if there is time remaining from the 15 minutes allowed for Public Question Time, questioners will be allowed to ask a supplementary question.

QUESTION ONE

From Mr Dixon to the Leader of the Council, Councillor Mrs Brown

Question

The Council's failure to maintain a 5 year Housing Land Supply (HLS) has had catastrophic consequences for the communities in Eastergate and Westergate.

The appeal by Land Fund Ltd for 268 houses at Nyton Nurseries has been approved. The appeal by Hallam Land Management Ltd for 79 houses between Hook Lane and Lamorna Gardens has also been approved.

The Council has lost control as a direct consequence of its own incompetence and now the entire District is vulnerable to predatory planning applications.

This is clearly a failure of political leadership.

You recently expressed your confidence in the Cabinet Member for Planning, so will **you** now, as Leader of the Council, accept responsibility for this catastrophic failure on the part of your Council, and resign?

Can I please also receive a written response to this question.

Response

At the time when the Council considered the planning applications you refer to it was reported that the Council had a 5 year land supply, albeit a marginal one. This is why the Council defended its position at the first appeal which was the Nyton Road Inquiry

The issue as to whether there is a 5 year land supply is ultimately a matter for the Planning Inspector to determine. The Cabinet Member for Planning & Infrastructure, Councillor Bower, in response to following questions will set out a more detailed explanation to the Council's current position with an explanation on policy off and policy on figures which will be reflected in the discussion as to whether we have a 5 year supply or not.

If the current position is that we don't have a 5 year housing supply then the solution to this is to get our Local Plan through examination. The longer this takes the greater the risk that the Council will have to consider favourably planning applications outside the defined built up areas.

My answer to the last part of your question is no, I won't be resigning.

QUESTION TWO

From Mr Ellis to the Cabinet Member for Planning & Infrastructure, Councillor Bower

Question

At a recent Planning Inspectorate meeting two separate planning appeals for an additional 347 house were allowed in the Village of Westergate. This was contrary to the emerging Aldingbourne Neighbourhood Plan and the additional ADC allocation of a strategic development for 2,000 houses between Barnham, Eastergate and Westergate and also against the wishes of ADC.

This planning appeal was weakened by ADC not being able to provide to the Planning Inspectorate details of a five year land supply for further housing, for

which the Council had duty to provide before the Appeal. If this was the case, why was the Leader, Mrs Brown, not advised by the Council's Solicitor that spending money on this appeal would be futile and therefore the subsequent request by Mrs Brown to the Council for a further £40,000 of Resident's and taxpayer's money should never had been made, to launch this Appeal, and why was the Cabinet Member for Planning & Infrastructure, Ricky Bower, also not in the position to advise Cllr Mrs Brown about the futility of the Appeal.

Response

In order to answer the question fully it is important to understand the context in which the Council and the Planning Inspectorate made their decisions. Firstly, at the time of when the Council considered the planning application it was reported that the Council had a 5 Year Land Supply (YLS), albeit a marginal one. The Council defended its position at the first appeal which was the Nyton Road Inquiry. The evidence submitted by the appellants for the second appeal – Hook Lane - included within it a refreshed position statement on what is termed the Council's Objectively Assessed Needs (OAN). This is used as part of the process of determining the scale of housing required in a given area and considers the area's demographics and economy. The evidence presented by the Hook Lane appellants was based on more recent demographic data than that contained with the studies the Council had used to determine the OAN which formed part of the Local Plan process.

The appellants were in accordance with the appeal process seeking to agree a statement of common ground with the Council. The Council is not obliged to agree anything, but there is an expectation that the Council must seek to justify any position contrary to the appellant's evidence. The Council sought the advice of its expert witnesses and advisors including Counsel who conceded that this more up to date assessment of our OAN would be difficult to challenge. As a consequence, and as a reasonable Council, we had to concede our position on the OAN for the purposes of this appeal. Furthermore, as a reasonable authority it was also appropriate for us to explain this change of position to the Planning Inspectorate and appellants in respect of the first appeal.

It is also important to recognise that the National Planning Policy Framework considers these issues quite differently for planning appeals and the setting of Local Plan targets. In a planning appeal the required approach requires the Council to consider the 'policy off' position. That is to say the OAN, without taking account of infrastructure or constraint issues. That is because these should be considered and examined during the Local Plan process. In the policy 'off' position therefore with a full OAN the total amount of housing to be provided can be very significant. Without an up to date Local Plan the 5 year HLS is based on the policy 'off' position. All of this is reflected in the conclusions of the Inspectors in the two appeals.

As stated earlier the Council can seek to argue what the policy 'on' position should be as part of the local plan process. If a policy 'on' position is agreed then as this will form the up to date local plan, the 5 HLS becomes based on this.

What this all demonstrates is that there are lots of variables which influence the Council's position at any one time. It is also important to recognise that an appeal can still be dismissed even where a 5 year HLS doesn't exist if the Inspector believes that is appropriate when considering the other issues.

The examination of the Council's Local Plan will happen over the coming months. In light of the evidence presented by developers at the Hook Lane appeal, officers anticipate that the Council will be invited by the Inspector to comment on the up to date OAN position using the latest demographic and economic data. As a result a refreshed OAN has therefore been commissioned but this is not yet finalised. The first opportunity to formally present the results of this work to Members will be in June at the first meeting of the Local Plan Sub Committee after the Election.

There is an irony here that each delay in progressing the local plan brings about a requirement to refresh our OAN with each version showing a higher requirement than the one before. The Council will continue to make its arguments based on the information in the Local Plan and that to require changes now to the scale of housing would undermine the 11 Neighbourhood Plans that have been supported through the democratic mandate of a referendum. However, Members need to acknowledge that our Local Plan Inspector might not agree with our position and should that circumstances arise, then the Council will have to respond positively to the Inspector's comments.

Reference has been made to the Aldingbourne Neighbourhood Plan. This has only just been published for public consultation and has yet to be considered by an Examiner. As a consequence it had not reached the advanced stage the Secretary of State would have required before he would have considered calling in these appeals.

Nationally there is a need for LPAs to be able to draw a line under the 5 YLS calculation when an emerging Local Plan has been approved for submission – a point recently made by Nick Herbert, MP. The developers in these two appeals took advantage of this gap in the Planning Appeal system.

Returning to the appeals the Council is seeking legal advice on whether there is any sound ground upon which to challenge the decision(s). Principally, on the weight given to 5 YLS, versus the weight that should be given to emerging Neighbourhood Plans, as Arun has been a leading Planning Authority in the development of Neighbourhood Plans it is inevitable that the issue of weight granted to these two issues requires legal testing.

The Council has only today received Counsel's legal opinion which in both appeals concludes there are no sound grounds for seeking to challenge the decisions. However neither decision refers to the emerging Aldingbourne Neighbourhood plan as it is yet to be 'made' and cannot therefore be considered legally as part of Planning Policy. I am aware the Secretary Of State has 'recovered' at least three PINS decisions to grant permission elsewhere in the Country against Neighbourhood Plans at an advanced stage or had been 'made' and the local planning authority's 5 YLS was an issue. I am now consulting Officers on what representations Arun should make direct to the Secretary of State on these matters which as far as I am concerned are far from concluded. As Arun has been a leading Planning Authority in the development of Neighbourhood Plans it is inevitable that the issue of weight granted to these two issues requires clarity.

It is also important to understand the planning system makes Appeals re-active. The Local Planning Authority has no choice in the matter but to defend its decisions.

In terms of the costs the Council used Counsel as our advocate. For both appeals the total cost was £43,000.

The questioner requested if he could receive this very substantial response in writing.

QUESTION THREE

From Mr Dixon to the Leader of the Council, Councillor Mrs Brown

Question

As Leader of Arun District Council, you said in a public statement relating to the Cabinet Office mystery shopper investigation, published on the Council's web site on 8 April 2014 that: *"The Cabinet Office has conceded that the information given to Mr Dixon was untrue"*.

I was concerned that the Council might have willfully misrepresented the Cabinet Office in order to deceive the public – which would amount to a serious abuse of the public's trust relating to a major public procurement project. So I challenged Richard Heaton, Permanent Secretary and First Parliamentary Counsel to the Cabinet Office, to clarify the Cabinet Office position.

On 10 February 2015, the Permanent Secretary responded saying: *"In particular, it is clear to me that we did not provide information to you that was untrue."* I have attached Mr Heaton's letter for information.

Who should the public believe – you or the Permanent Secretary?

Response

A separate detailed response was circulated to the meeting and this is attached at the back of this document.

QUESTION FOUR

From Mr Dixon to the Cabinet Member for Planning & Infrastructure, Councillor Bower

NOTE: As the time dedicated to Public Question Time had expired, the Chairman drew Public Question Time to a close. The fourth question submitted is therefore detailed below along with the response that would have been provided to the meeting.

Question

I am conscious that the Council recently pressed ahead with (and lost) two planning appeals in Aldingbourne even though it knew it did not have a 5 Year Housing Land Supply.

What legal advice did the council's Monitoring Officer give? How much did the appeals cost the taxpayer? Can you please explain the reason for the Council failing to maintain a 5 Year Housing Land Supply?

Response

I have given a very lengthy and detailed explanation in response to the question from Mr Ellis which essentially covers the same points raised by Mr Dixon in his e-mail including external costs. Regarding the advice of the Monitoring Officer, both sites were outside of the built up area boundary and it is the role of the Planning Inspector on such appeals to decide on the facts of each case if there is a housing supply shortfall, and if there is, is that shortfall to be given more weight than the existing planning policies for protection of green field sites. The officer advice given to the Development Control Committee is recorded in the Committee report on the application. The Council has used planning counsel to advice for these matters.