

# Overview and Scrutiny Committee

Minutes of the meeting held on Tuesday 19 September 2023 in the Town Hall, Royal Leamington Spa at 6.00pm.

**Present:** Councillor Milton (Chair); Councillors Armstrong, Browne, Collins, Day, R Dickson, D Harrison, Luckhurst, Payne and Redford.

**Also Present:** Councillor Chilvers – Portfolio Holder for Resources and Councillor Davison – Leader of the Council.

## 30. **Apologies and Substitutes**

- (a) An apology for absence was received from Councillor Barton.
- (b) Councillor Dickson substituted for Councillor Russell.

## 31. **Declarations of Interest**

Minute number 35 – Item 10 on the Cabinet agenda – Kenilworth Wardens

The Chair asked that just a note was made of the fact that all Wards in Kenilworth would be impacted in respect of the Kenilworth Warden's report on the Cabinet agenda.

Councillor Dickson declared an interest when this report was being discussed because he was a Member of the Planning Committee, and he pointed out that the questions he had asked were not planning matters.

## 32. **Minutes**

The minutes of the Overview and Scrutiny Committee meeting held on 8 August 2023 were taken as read and signed by the Chair as a correct record.

## 33. **Planning Enforcement Update**

The Committee considered a report from Place, Arts and Economy which provided a further update on the recovery of the Council's Planning Enforcement Service and the relayed ongoing actions to maintain and improve efficiency and effectiveness.

Over recent years, the Planning Enforcement team had experienced significant issues with long term sickness, vacant posts (including the Team Manager role) and poor response levels to recruitment resulting in an under resourced team over much of that period.

At its worst, the situation contributed to an enforcement caseload of 434 cases of which 275 were awaiting investigation. This in turn led to a low level of customer satisfaction and increased numbers of service complaints.

Subsequent to the previous update to the Committee in early March 2023, the Enforcement Manager post had been filled on an agency basis and two key members of staff had returned from long term sickness.

At the time of the March update, the team were continuing to work proactively to investigate cases in the most effective manner and to move towards a position where an increasing amount of time was spent on addressing the most harmful cases rather than simply administering the backlog of work.

At that point, the overall enforcement caseload had reduced to 171 cases of which 27 were awaiting investigation, as compared to the update given in September 2022, when there were 225 cases of which 114 were awaiting investigation.

Subsequent to the March 2023 update, a new Senior Enforcement Officer post had been created and filled and a part-time Enforcement Officer post had now become full time and would shortly be filled.

At paragraph 1.14 in the report, a table showed the progress made in reducing the backlog of work from March 2022 through to September 2023. A table at paragraph 1.15 in the report showed that the number of notices issued had increased over a similar time period.

The report painted a positive picture for progress looking ahead, with the Council's Enforcement team now in a stronger position to work more effectively to investigate and where appropriate, address alleged breaches of planning control.

The Enforcement team was currently receiving in the order of 250-300 requests for enforcement investigations annually and it was anticipated that this increased capacity would offer an opportunity for officer to focus more effectively on those harmful and sometimes more complex cases requiring their attention whilst also efficiently completing those investigations which did not merit further action. It was anticipated that the timescales for completing investigations would now start to reduce because of the increased capacity within the team and the reduced workload level.

Most Council Enforcement teams operated on an entirely responsive basis, but there was now increased opportunities for the team to work more proactively in addressing issues and publicising outcomes including within the public domain where appropriate. This was intended to increase the public profile of the work of the team and also act as a deterrent in reducing instances of breaches of planning control.

Prior to the meeting, the Development Manager had circulated an email to Members of the Committee giving a short summary of the Planning Enforcement function (see Appendix 1 to these minutes). This email explained that Planning Enforcement was a discretionary function of the Local Planning Authority (LPA), and it was not compulsory for the LPA to act against a breach of planning control. The email explained in broad terms what the Council did in respect of planning enforcement. Members suggested that all District Councillors should have a broad understanding of the process because they were often the first port of call for residents

with issues. It was also suggested that this knowledge would be useful to Town and Parish Councils and that the Council should promote the good progress it had made with planning matters. The Enforcement Manager undertook to include a section in Member training on the enforceability of planning conditions; this arose from a question from a Member of Planning Committee who explained that Planning Committee Members were often advised that conditions the Committee wished to impose could not be because they were not enforceable.

In response to questions from Members, the Development Manager and the Enforcement Manager explained that:

- The Enforcement team did have an officer who dealt with enforcement issues on major sites. Major sites and complex developments had to be dealt with promptly because contraventions if not dealt with quickly would be on a much larger scale. The Enforcement Manager was confident that the team were improving response levels on these applications. Members were asked to notify the team if they became aware of problems.
- It would help the team when there were numerous complaints about the same site, if there could be a single point of contact rather than complaints coming in from numerous sources, each of which had to be acknowledged.
- The Enforcement Manager advised that when Members became aware of serious issues, they should contact him directly via email on his email address and he would then allocate it immediately to a member of his team if he had determined that it was high priority. Members would be informed if his conclusion was that the matter was not high priority.
- Section 215 maintenance notice (Town and Country Planning Act) – this could be used for untidy land. The Council would assess whether the land was untidy enough to justify a prosecution or it was not serious enough. The assessment was a judgement call of the Enforcement Officer on whether a warning letter would be sufficient; there was Government guidance on Section 215 and how the notices had to be served. After a warning letter was sent out, an officer would try to meet the individual concerned and this might give rise to extenuating circumstance such as the landowner might be elderly or infirm. These extenuating circumstances had to be considered before proceeding down the legal route. The Council was seeking solutions to dealing with 215's more efficiently.
- In respect of Enforcement notices, it became a criminal offence when the recipient of the notice was in breach of its obligations. If the Council was confident in the case to issue an Enforcement Notice, then it would be more likely to prosecute any breaches but there were times when this did not occur if the Council was content that most of the conditions of the Notice had been complied with and those left outstanding were not deemed serious enough.

The Chair thanked the officers for the report and for the progress made in improving Enforcement and requested that this be relayed to the whole team.

Officers were asked to ensure that the lessons that the Committee had learnt from the report and the progress made in enforcement matters and

from the email circulated beforehand was communicated to all District Councillors and to Town and Parish Councils.

It was agreed that a further update in six months' time was not required, and it could be removed from the Committee's Work Programme.

#### 34. **Corporate Strategy**

The Committee considered a report from Governance which formally informed the Committee of the draft strategic goals of the Cabinet and sought its comments on them, in line with the proposed timetable set out at paragraph 1.2 in the report, with the intention for the final new Strategy to be considered by Cabinet on 2 November, and for a recommendation from Cabinet to be considered by Council on 15 November.

The draft strategic goals were set out in Appendix 2 to the report, with the partners listed at Appendix 3. Appendix 1 to the report was an excerpt from the Council's Constitution on "Budget or Policy Framework Procedure Rules".

The finalised Corporate Strategy would set out the Council's corporate aims and ambitions for the next seven years, 2023 – 2030. It would underpin every project and initiative developed and implemented by the Council's Service Areas that set out how to deliver services over the next seven years.

Under the Constitution, the Cabinet were providing the Overview & Scrutiny Committee the draft Strategic Goals (Appendix 2 to the report). These were provided, in line with the Policy & Budgetary Framework Procedure Rules. Overview & Scrutiny Committee was asked to note the separate report on the Cabinet agenda where the Cabinet was seeking an exemption to these rules in order to bring forward the Corporate Strategy at the earliest possible opportunity.

The draft strategic goals were currently out for comment from the organisations listed at Appendix 3 to the report. However, the constitution allowed for the Overview & Scrutiny Committee to undertake further consultation if it so wished, so long as this did not duplicate the consultation by the Cabinet, and it was within the timescale that had been set.

The Chair gave the Committee some context to the report with what it should be considering. The report before the Members was written specifically for the Committee but the matter would also be considered by Cabinet the following evening when it considered a report written for it "Policy & Budgetary Framework Procedure Rules". The Chair advised Members that they would need to:

- advise if there were any other partners that should be consulted in addition to those listed in Appendix 3 in the Corporate Strategy report; and
- give guidance to the Chair if there were comments or recommendations they wished raised on the Committee's behalf at Cabinet the following evening.

Councillor Davison, Leader of the Council, explained that when the two political groups agreed to work together and formed a Cabinet, the parties then worked together to form a plan of what they wished to achieve and from that, the key aims to achieve. Once the Portfolio Holders had been in post for a while, they were each asked what their top two priorities in their time were. Cabinet and Senior Officers then reviewed this to produce the draft list (Appendix 2 to the report) for the Corporate Strategy. This was then circulated via Group Leaders to all Councillors mid-August. At this stage, it was a "skeleton" strategy and was not yet in the format that the final document would take and there was still much additional content to add. Cabinet had considered that it was better to produce something now than wait until there was time to include all sections and indicators that would be included in the final document. The Chief Executive explained that the same information had been circulated to staff and feedback had been received. A Managers' Forum would take place in the following week to discuss the feedback from staff and to discuss the "Vision / Values". This would help shape the final document anticipated in November when the missing sections would be included such as how success would be measured and the attitude to risk.

Members expressed reservations about the ability to make critiqued comments in view of the fact that the document was still in such a raw format. The Leader accepted this as a fair point because the document did have the appearance of a "wish list", but he maintained that there was sufficient content to pass comment on the focus the Council was planning to take.

In response to questions from Members, Councillor Davison – Leader of the Council, Councillor Chilvers – Portfolio Holder for Resources and the Chief Executive explained that:

- The Net Carbon DPD had been voted through already by the Council but there was still several areas that could be improved but the DPD dealt with new builds; there was mention of the Local Plan and how that could be pushed through for new buildings. Retrofitting was important as was renewable energy.
- Councillors had the opportunity to review the list and say what they felt should be omitted or left on the list. It was important to know the big picture to work out all of the pieces required to achieve this, an analogy of completing a jigsaw was used where you needed to know what the final jigsaw would look like in order to know where the pieces went.

The Chair asked for the "vision" and how the District would be different under the new administration to be explained; what would need to be achieved to provide this vision? The Leader explained that the current vision was for the District to be a great place to live, work and visit and be carbon neutral by 2030. He expected that the new vision would be along similar lines. Looking at the three areas of the draft strategic goals, the first one "Delivering Valued, Sustainable Services" meant doing the job all Councils should do in delivering excellent services by looking after the finances and providing good services. The second draft strategic goal "Low cost, low carbon energy across the District" meant reducing energy bills and carbon emissions from buildings. The third draft Strategic goal

"Creating Vibrant, Safe and Healthy Communities of the Future" was more difficult to define but it was something the Peers, when they did their Peer Review, felt was something this Council was good at. He cited the Kenilworth Wardens as an example of where the Council was continually trying to improve things. This was an example of something the Council was not required to do but was choosing to do to improve the District.

The Portfolio Holder for Resources explained that if the goals described by the Leader were the priorities, it meant acceptance that other matters might not be achieved, and Members needed to consider if they were content with the priorities set or that something else should be included. Members should think about the "levers" that could be used to focus on the objectives.

The Chair opened the debate to questions from Members again. In response to questions, the Leader, Portfolio Holder for Resources and Chief Executive explained that:

- Looking at Climate Change, the priority was working on buildings and working on reducing emissions rather than other areas of this where the Council would have less control.
- The first listed draft strategic goal, "delivering valued, sustainable services" was the most important priority because this was what the Council was expected to deliver and concerned the essential services. The actions/aims listed in the report under this heading were not in order of priority. It was difficult to prioritise these because of the nature of the services the Council provided with some being statutory and others discretionary. Even within this definition, it was difficult because some statutory services could be done at a discretionary level and some discretionary services had to be carried out at a statutory level. There would be some prioritisation on an annual basis because of decisions made on the Council's budget and Service Area Plans but it was not possible to prioritise for the next seven years because events would take over. The Chief Executive advised Members to look at the aims and evaluate if they should be there or should other goals be included and then consider whether the aims that were included were achievable over the course of the next seven years because if they were not achievable in this timescale, the question should be asked if those aims should be included. Members also needed to consider that Governments changed course, and this would affect priorities. Trying to set priorities now covering the next seven years was not achievable.
- There were risks in the Corporate Strategy and there were health and wellbeing implications but the report itself did not have any risks or health and wellbeing implications. The Chief Executive agreed that officers should consider how they responded to these headings in the report template used by the Council. There would be a complete overhaul of the Council's Risk Register when the Corporate Strategy was finalised. The health and wellbeing implications of the Strategy would need fuller detail when the Strategy came back to Cabinet in November.
- The previous goal of being net zero carbon by 2025 was unachievable other than by massive offsetting, so to continue with that would require confirmation of what that offsetting would be

and that might not be the way this Council would choose to go. Focussing on the Council's housing stock was the main way the Council could affect its Climate Change goals and have greatest impact.

- The draft Corporate Strategy did not yet give targets stating by when ambitions would be achieved.
- Under each strategic goal was a list with bullet points. The black bullet points represented the things that the Council would like to achieve; the white bullet points represented how this would be done in broad brush terms. More detail was required in respect of the Medium-Term Financial Strategy.
- Cabinet would welcome more input about how the Council could provide support with the cost-of-living crisis and strengthening the position of small businesses.
- The Council needed to look at what was within its control whilst recognising that it had a wellbeing duty for the whole of the District. Leeds Council was mentioned where the Council did a lot of work retrofitting its owned housing stock but then worked on a specific geographical area and worked with private landlords and private home occupiers to show them what could be done to their own properties. This was something the Cabinet would love to do but the Council had to acknowledge that the area over which it had most influence was with its own housing stock. The last white bullet point under the goal of low cost, low carbon energy across the District, dealt with all housing in the District – “explore multiple, innovative approaches to make it easier for the District's residents to reduce their heating bills and carbon emissions”.

The Chair summarised what comments he had understood should be made to Cabinet and these were agreed by the Committee, and this would be done when the “Policy & Budgetary Framework Procedure Rules” report was considered by Cabinet (shown in minute number 35).

35. **Cabinet Agenda (Non-Confidential items and reports) – Wednesday 20 September 2023**

The Committee considered the following items which would be discussed at the meeting of the Cabinet on Wednesday 20 September 2023.

Item 4 – Policy & Budgetary Framework Procedure Rules

The Committee held a good discussion on a draft Corporate Strategy for this Council.

The Committee considered that the Corporate Strategy report (in its draft stage) was difficult to scrutinise as a “Strategy” document because the document did not have either the structure or framework to understand the direction the Council wished to take, and whether the areas of focus listed in the report would help to achieve that. It made the following points that it wished Cabinet to bring more detail to in the Corporate Strategy:

1. The Committee encouraged Cabinet to “be brave” in setting out what it wished to achieve, particularly around climate ambitions.

2. There was a need for “smart objectives” showing what the Council intended to do, building on what it had already achieved in respect to its aims and there should be an indication of a timeframe.
3. The strategy should focus more on people and the different segments of people living or coming into the District such as new communities, visitors to the District, people who work in the District. It should seek to be “People first”.
4. A more wholistic view on finances should be taken, not just the profit and loss but also the balance sheet.

The Committee suggested that how the Council intended to support new communities, local enterprise and town centre regeneration should be added to the Strategy.

Parish Councils should be added to the list of consultees.

#### Item 10 – Kenilworth Wardens

The Committee held a good discussion on the project reflecting on the fact that it had taken a considerable amount of time to reach this stage and noting the complexity of the project.

The Committee recommended to Cabinet that as well as reviewing the financial case, that a best practice audit of governance of the club including confidence in the continuity of its management be carried out by officers. This should include how it planned to engage new communities and new members into the club to ensure its continued running.

#### Urgent Item – Earmarked Reserves 23/24

The Committee remarked on the late publication of the report which did not provide adequate time for proper scrutiny. The Committee would have preferred more time to undertake better scrutiny.

### **36. Work Programme, Forward Plan and Comments from the Cabinet**

The Committee considered its work programme for 2023/24 as detailed at Appendix 1 to the report as well as the comments Cabinet had made to reports the Committee had scrutinised at its meeting in August (Appendix 2 to the report).

The Chair explained that when he had attended Cabinet in August and had explained the Committee’s recommendation on the Resident Engagement Strategy report, the Portfolio Holder had declined this and had offered an alternative solution. The Chair suggested that this was noted by the Committee. The Committee agreed that it should consider an update report on this once it had been in action for six months to understand how it was going and if it was providing value for money as a Council and the benefits to residents.

The Final Accounts 21/22 and Q4 Budget Update reports had been delayed until the external auditors had finished their work. They would be considered once this work had been completed.



Following a request from Officers, the Committee would be considering a report on "Organisational Carbon Emissions Summary 2022/23" at the meeting 31 October.

The Chair had also agreed some changes to dates when reports from Neighbourhood Services would be delivered. The "Waste Review" report and the "No Mow May" reports would still be delivered for the 3 October meeting. The "Waste Enforcement Update" had been delayed until the 5 December meeting or 23 January meeting. The reason for this delay was to give the officer recently appointed to the role time to have something to report in respect of achievements rather than simply stating what their aims would be.

Councillor Armstrong was asked to explain a suggestion he had made to the Chair to be added to the Work Programme. Councillor Armstrong that this arose from items 12 and 13 on the Cabinet agenda "Associated Costs for the Purchase of Fifty-One s106 Dwellings at The Asps, Banbury Road, Warwick" and "Associated Costs for the Purchase of Twenty s106 Dwellings at Thickthorn, Kenilworth". He wanted to propose whether the Committee should ask for a review on whether the Council's housing stock and particularly new acquisitions were in line with the Climate Action Goals and mentioned Ambition 2 with all new housing stock being carbon net zero in operation. He asked that the review should see how close the Council was to achieving this and to have a definition of what net zero meant. He felt that whilst Grade A rating was good, it did not qualify as net zero.

The Chief Executive informed the Committee that its housing stock was not net zero and in response to a suggestion by the Chair that the Committee might wish to set up a Task & Finish Group, he explained the pressure the Housing Department was under. The Chair therefore suggested that a what would be required should be scoped and then officers could be approached about timings when they would be able support a Task & Finish Group. The Leader suggested the scope could include whether the Council was acquiring the right sort of houses.

Three years ago, Council agreed measures in response to recommendations a Task & Finish Group had made around equality and diversity. The Council had subsequently engaged an Equalities Officer on a two-year contract; this had subsequently been made a permanent post. The original post holder had sadly passed away and the Council was in the process of filling the vacancy. The Chair suggested that the Committee request an update on the work and plans once the new post holder had been in position for a suitable period of time.

**Resolved that:**

- (1) appendices 1 and 2 to the Work Programme report be noted;
- (2) to add a report to the Work Programme on the Resident Engagement Strategy once it had been in action for six months providing details on progress, value for money and the benefits to residents;

- (3) The Final Accounts 21/22 and Q4 Budget Update reports be carried forward on the Work Programme until the external auditors have completed their work;
- (4) The Waste Enforcement Update report be moved back until either the 5<sup>th</sup> of December or 23<sup>rd</sup> January meeting; and
- (5) A Scoping Document should be drawn up for a potential Task & Finish Group on the Council's housing stock and achieving net zero carbon. This would then be discussed with officers in Housing to work out a suitable timescale when they could provide support.

(The meeting ended at 8.13pm)

CHAIR  
31 October 2023

Email circulated by the Development Manager to Members of the Overview & Scrutiny Committee on 19 September 2023 giving a short summary of the Planning Enforcement Function

Dear Councillors,

In advance of this evening's meeting, the Chair suggested that it might be helpful for us to prepare a short summary of the Planning Enforcement function by way of context for the report that you'll be considering.

Please be aware that the below is very much a taster, which hopefully you'll find helpful.

Planning Enforcement is a discretionary function of the Local Planning Authority and it is not compulsory for the LPA to act against a breach of planning control. The role of Planning Enforcement is also not to punish individuals but rather to seek to remedy problems caused by unauthorised works. When a breach of planning control is reported the team have to assess whether the taking of formal action would be expedient. In other words, is the level of harm so significant that it warrants formal action. Where there is significant harm and it is in the public interest to do so, then action will be taken. Alternatively, if the breach of planning control is trivial in nature or raises little planning harm then no action would be taken. A further fundamental of Planning Enforcement is proportionality. In many instances it may be more appropriate to negotiate a resolution with the interested party than take formal action.

Prioritisation of cases for planning enforcement action is also crucial to make the best use of available resources. Therefore, demonstrably harmful cases will be likely to warrant further action, whilst cases where there is little or no planning harm are unlikely to be pursued. This ensures a focus on the most harmful of cases and that the appropriate action can be taken without delay.

The Local Planning Authority has different powers when formal action is required, and each case has to be assessed on its individual merits as to what power is the most relevant to resolve the matter. This can include forwarding the matter to a different department as they may have stronger powers to resolve the matter such private sector housing, environmental health or licensing. We are able to serve several types of Notice and also formally ask certain questions in a legal framework known as a Planning Contravention Notice (PCN) as well as a Section 330 Notice. This requires the owner/developer to provide us with certain details whilst the assessment of the breach is carried out. For formal action we are able to serve notices for untidy land under Section 215 of the Town and Country Planning Act, Temporary Stop Notices, Stop Notices, Breach of Condition Notices, Enforcement Notices. These are the most common, but we can also serve injunctions and prepare Article 4 Directions to remove certain permitted development rights.

When a Notice is served and not complied with, an offence is committed and we are able to prosecute those responsible and also potentially carry out works in default i.e. rectify the breach ourselves, however there is a cost implication to that approach. There is also the potential to prosecute under the Proceeds of Crime Act (POCA), if the developer has made a significant financial gain from the

breach of planning control. If successful, a proportion of any subsequent fine is given to the Local Planning Authority.