



Minutes of the Cabinet

3 March 2011

-: Present :-

Mayor of Torbay (Chairman)

Councillors Aiton, Bent and Tolchard

(Also in attendance: Councillors Addis, Amil, Ellery, Excell, Faulkner (A), Faulkner (J), Horne, Hytche, Lewis, Morey, Oliver, Pentney, Richards and Thomas (J))

571. Apologies.

Apologies for absence were received from Councillors Carroll and Butt.

572. Minutes.

The Minutes of the meetings of the Cabinet held on 7 and 17 February 2011 were confirmed as a correct record and signed by the Mayor.

573. Urgent Item.

The Cabinet considered the items in Minute 574.1, and not included on the agenda, the Mayor being of the opinion it was urgent by reason of special circumstances i.e. the matter having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

574. Matters for Consideration.

The Cabinet considered the following matters, full details of which (including the decisions of the Mayor) are set out in the Record of Decisions in Appendix 1 to these Minutes.

- 574.1** Proposed Amendments to Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions
- 574.2** Princess Parade, Princess Gardens, Marina Car Park, Pavilion and Theatre, Torquay
- 574.3** Review of Primary School Places in Brixham: Chestnut Primary School and St Margaret Clitherow Catholic Primary School

Mayor

APPENDIX 1

to the Minutes of the meeting of the Cabinet
held on 3 March 2011

Record of Decision

Proposed Amendments to Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions

Decision Taker

The Mayor at the Cabinet meeting held on 3 March 2011.

Decision

That the Council be recommended:

- (i) that paragraph 6.5 of the Planning Contributions and Affordable Housing Update and Mitigation Paper 2010 be revised to read:

“Smaller developments must also contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000 will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable (as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments)”;

- (ii) that the first sentence of Paragraph 4.19 of the Interim Guidance on Principal Holiday Accommodation Areas (March 2010) be deleted, as will any other reference to the £5,000 threshold;
- (iii) that the principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need, be incorporated into the emerging Community Infrastructure Levy; and

APPENDIX 1 (continued)

- (iv) that all references to “overage” of “clawback” be changed to read “deferred contribution”.

Reason for Decision

To respond to the recommendation of Council.

Implementation

The recommendation will be considered at the Council meeting on 24 March 2011.

Information

Report 47/2011 set out the following amendment to the Planning Contributions and Affordable Housing Supplementary Planning Document: Threshold for Contributions, which were agreed at the Council meeting on 24 February 2011:

- “(i) that paragraph 6.5 of the Planning Contributions and Affordable Housing Update and Mitigation Paper 2010 be revised to read:

“Smaller developments must also contribute towards mitigating any adverse impacts they may have, individually and collectively, on Torbay. Consequently there is no minimum threshold for contributions. This approach also avoids creating perverse incentives, or unintended consequences (such as artificial division of planning units), which could result in no contributions towards mitigation of adverse impacts. Due to the cost of drafting and monitoring S106 Agreements, applicants for smaller schemes, specifically those where the contribution would be less than about £5,000 will be encouraged to pay the contribution before grant of permission in exchange for an agreement by the Council to return these sums in the event that development does not proceed. In seeking financial contributions from smaller schemes, regard will be had to the need for them to be reasonable (as per Circular 5/2005), and the need to avoid imposing undue costs on businesses. In addition, regard will be had to whether the application is a standalone scheme or affects part of a larger planning unit (e.g. a block of holiday apartments)”;
- (ii) that the first sentence of Paragraph 4.19 of the Interim Guidance on Principal Holiday Accommodation Areas (March 2010) be deleted, as will any other reference to the £5,000 threshold;
- (iii) that the principle of charging smaller developments for a fair proportion of the infrastructure for which they create a need, be incorporated into the emerging Community Infrastructure Levy; and
- (iv) that all references to “overage” of “clawback” be changed to read “deferred contribution”.

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The following amendment to the proposal was agreed by the Council:

- (v) that the above changes are applied retrospectively to currently undetermined applications.”

In accordance with Standing Order F4.9 the Mayor considered the recommendation of the Council in (v) above.

The Cabinet noted the legal advice from the Monitoring Officer, that the proposed amendment, if adopted, could lead to complaints to the Ombudsmen and, if any such complaint resulted in the Ombudsman finding in favour of the complainant, the Council could be criticised and required to pay compensation.

The Mayor rejected the amendment in (v) above as he was concerned about how the proposal may affect the Council's reputation and about the risk of complaints to the Ombudsman, but supported the original proposal set out in (i) to (iv) above.

Alternative options considered and rejected at the time of the decision

None

Is this a Key Decision? (Give reference number if applicable)

No

Does the call-in procedure apply? (If no, please give reason)

No, as the Council will make the final decision.

Declarations of interest (including details of any relevant dispensations issued by the Standards Committee)

None

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Record of Decision

Princess Parade, Princess Gardens, Marina Car Park, Pavilion and Theatre, Torquay

Decision Taker

The Mayor at the Cabinet meeting held on 3 March 2011.

Decision

- (i) that the Chief Executive of Torbay Development Agency, in consultation with the Mayor, the Portfolio Holder for Regeneration, the Environment Commissioner and the Executive Head of Tor Bay Harbour Authority, be authorised to investigate and deliver a solution to the repairing liabilities at Princess Gardens, Princess Parade, The Pavilion and Princess Pier which may incorporate a combination of a) and b) below:**

 - (a) Private sector investment to deliver, subject to planning consent, appropriate levels of commercial and residential development on-**

 - (i) the site of the Marina Car Park;**
 - (ii) additional land on Princess Parade;**

with such development to include the refurbishment of, and the incorporation of, the Pavilion as well as any associated car parking; and
 - (b) Torbay Council officers being asked to identify funding sources and financial implications of meeting some or all of the costs of repairs including possible new funding sources that may become available in the near future;**
- (ii) that if the approved private sector development does not fund all of the repairs then the Chief Executive of Torbay Development Agency, in consultation with the Mayor, the Portfolio Holder for Regeneration, Environment Commissioner and the Executive Head of Tor Bay Harbour Authority, be permitted to procure the design and the costing of a schedule of works which would take into account all of the options available for the area under consideration;**
- (iii) that the Chief Executive of Torbay Development Agency be authorised, on Torbay Council's behalf, to apply for grant funding from all appropriate sources to contribute towards the cost of the repairs detailed in (ii)(b) above;**
- (iv) in addition to the grant funding in (iii), the Chief Executive of Torbay Development Agency, in consultation with the Council's Chief Finance Officer, look at and report back to the Cabinet and if necessary the Harbour Committee, on the funding options and costs to meet the works covered in (ii)(b);**
- (v) that, if necessary, once the works in (ii)(b) above have been identified and agreed, and once the funding for these works has been secured, Torbay Development Agency be allowed to procure these works in accordance with appropriate European Union Procurement Regulations, if applicable;**

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- (vi) that the Chief Executive of Torbay Development Agency in consultation with the Head of Legal, the Harbour Committee and the Mayor be authorised to advertise and sell, at best value, a long lease of The Marina Car Park, the Pavilion and such additional land required to carry out the development covered in (i);
- (vii) that the Chief Executive of Torbay Development Agency, working with the Harbour Committee, be asked to revisit the principle of a Torquay Inner Harbour Pontoon Berthing Project, as outlined in report 150/2009; and
- (viii) that the Chief Executive of Torbay Development Agency and the Executive Head of Tor Bay Harbour Authority be asked to prepare a further report on the Torquay Inner Harbour Pontoon Berthing Project, including private sector investment options, for consideration by the Harbour Committee, the Mayor and/or Council.

Reason for Decision

To agree an approach that would lead to the regeneration of the Princess Gardens, Princess Parade, Marina Car Park, Pavilion and Theatre area of Torquay in accordance with the Torbay Harbour Area Action Plan.

Implementation

This decision will come into force and may be implemented on Tuesday, 15 March 2011 unless the call-in procedure is triggered (as set out in Standing Orders in relation to Overview and Scrutiny).

Information

Report 41/2011 set out a proposal that would lead to the regeneration of the Princess Gardens, Princess Parade, Marina Car Park, Pavilion and Theatre area of Torquay in accordance with the Torbay Harbour Area Action Plan and at the same time addressing the Council's significant repairing liability for the Princess Gardens, Princess Parade, Princess Pier and the Pavilion.

The following representations were made at the meeting:

- Iris Gunther presented the petition on behalf of the Community Co-operative containing approximately 2218 signatures and spoke against any proposed development of Princess Promenade, Princess Gardens, the Pavilion and the North Quay End of Vaughan Parade;
- Susie Colley spoke in favour of the principle of development but was against the two large blocks proposed, she supported increasing the size and improving the structure of the Princess Theatre but was against increasing its footprint;
- Julie Brandon spoke against the proposals;
- Fiona McPhail spoke against the proposals;
- Carolyn Custerson, Chief Executive of the English Riviera Tourism Company Board spoke in support of the proposals;
- Alan Archer, Torbay Business Forum spoke in support of the proposals; and
- Councillor Horne, Chairman of the Harbour Committee requested more time for the Harbour Committee to consider further information before they were able to give their advice on the proposals particularly relating to the inner harbour.

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The following documents were circulated at the meeting:

- letters of representation against the proposals from Julie Brandon and Fiona McPhail;
- the covering letter and sample of the petition containing approximately 2218 signatures from the Community Co-operative against the proposal (a further page of the petition containing six signatures was handed to the Clerk at the start of the meeting);
- letter from Keith Richardson, Owner of the Grand Hotel in support of the proposals – which was read out at the meeting by the Mayor;
- letter from Lucy Ball, Chief Executive Officer of Torbay Town Centres Company in support of the proposals;
- email from Rob Newman, Kitsons Solicitors in support of the proposals; and
- statement from Ian Handford on behalf of Torbay Civic Society in support of the proposals – which was read out at the meeting by the Mayor.

Alternative options considered and rejected at the time of the decision

The alternative options were set out in Report 41/2011 and not discussed at the meeting.

Is this a Key Decision? (Give reference number if applicable)

Yes – Reference Number X40/2010

Does the call-in procedure apply? (If no, please give reason)

Yes

Declarations of interest (including details of any relevant dispensations issued by the Standards Committee)

None

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APPENDIX 1 (continued)

Record of Decision

Review of Primary School Places in Brixham: Chestnut Primary School and St Margaret Clitherow Catholic Primary School

Decision Taker

The Mayor at the Cabinet meeting held on 3 March 2011.

Decision

That the decision regarding the Review of Primary School Places in Brixham: Chestnut Primary School and St Margaret Clitherow Catholic Primary School be deferred to 22 March 2011.

Reason for Decision

To enable further information which has come to light since Report 43/2011 was published to be considered by the Mayor.

Implementation

This decision will come into force and may be implemented on Tuesday, 15 March 2011 unless the call-in procedure is triggered (as set out in Standing Orders in relation to Overview and Scrutiny).

Information

Report 43/2011 set out the results of the public consultation on the review of primary school places in Brixham which was held between 26 November and 7 January 2011 and centred around the following three options (the consultation also allowed for other options to emerge during the consultation):

- Option One: Status Quo – no change to school organisation;
- Option Two: Closure of Chestnut Primary School; and
- Option Three: Closure of Chestnut Primary School and the relocation of St Margaret Clitherow Catholic Primary school to the Chestnut site.

In addition to the representations received during the consultation period the Mayor had received the following representations which were circulated at the meeting:

- covering letter and sample of petition containing approximately 72 signatures from Members of Our Lady Star of the Sea Church in support of moving St Margaret Clitherow School to the Chestnut School site provided that this kept the school open;
- covering letter and sample of petition containing approximately 798 signatures from residents of Brixham requesting St Margaret Clitherow School to be kept at the Polhearne Way site;
- letter from Margaret Bickley, Chair of Governors from Chestnut Primary School setting out the results of the Governors' votes on the proposals (1 for Option One, 8 for Option Three and 2 for Option 4);
- letter from Sarah Welsh, Chair of Governors from St Margaret Clitherow Catholic Primary School advising that the Diocese and majority of Governors from the School supported

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Option Three but suggested that there were two separate decisions: (a) a decision whether or not to close Chestnut Primary School – a decision for the Council; and (b) a decision whether to move St Margaret Clitherow Catholic Primary School to the Chestnut site – a decision which rests with the Catholic Diocese of Plymouth.

The following representations were made at the meeting:

- Glen Page, Headteacher from Chestnut Primary School spoke on behalf of all Brixham Primary and Secondary School Headteachers in support of Option Three;
- Sarah Welsh, Chair of Governors from St Margaret Clitherow Catholic Primary School spoke on behalf of all Headteachers, Chairs of Governors in Brixham, the Catholic Community and Diocese in support of Option Three;
- Ken Kies, Headteacher from Eden Park Primary School spoke on behalf of the Headteachers in Brixham in support of Option Three.

The Mayor advised that the recommendations set out in Report 43/2011 had been prepared based on the strong feeling of the community made during the consultation. Since the report has been published he has received strong representations from the Director of Children's Services, the Head of School Leadership and Improvement, various Headteachers and Governors that the retention of Chestnut Primary School was unsustainable. The Mayor therefore felt that it was not appropriate to make a decision at the meeting and requested the People Commissioner and Director of Children's Services to prepare a further report to be submitted to the Cabinet meeting on 22 March 2011 separating the two issues of the closure of Chestnut Primary School and any consideration regarding the relocation of St Margaret Clitherow Catholic Primary School.

Alternative options considered and rejected at the time of the decision

The alternative options were set out in Report 43/2011 and not discussed at the meeting.

Is this a Key Decision? (Give reference number if applicable)

Yes – Reference Number X42/2010

Does the call-in procedure apply? (If no, please give reason)

No – as the decision has been deferred to 22 March 2011

Declarations of interest (including details of any relevant dispensations issued by the Standards Committee)

During consideration of Report 43/2011 Councillor Morey declared a personal interest as Chair of Governors at Brixham College.

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