

**EXTRAORDINARY COUNCIL MEETING held at COUNCIL OFFICES  
LONDON ROAD SAFFRON WALDEN on 5 AUGUST 2014 at 7.30pm**

Present: Councillor J Salmon – Vice Chairman.  
Councillors G Barker, S Barker, R Chambers, J Cheetham, J Davey, P Davies, A Dean, R Eastham, K Eden, M Felton, M Foley, E Godwin, S Harris, E Hicks, S Howell, D Jones, A Ketteridge, J Ketteridge, T Knight, R Lemon, J Loughlin, K Mackman, J Menell, D Morson, E Oliver, J Parry, D Perry, V Ranger, J Redfern, J Rich, H Rolfe, J Rose, A Walters and L Wells.

Officers in attendance: J Mitchell (Chief Executive), R Auty (Assistant Director Corporate Services), R Dobson (Principal Democratic Services Officer), R Harborough (Director of Public Services), M Perry (Assistant Chief Executive – Legal) and A Webb (Director of Corporate Services).

**CHAIRMAN'S ANNOUNCEMENTS**

The Vice Chairman welcomed all those present. He informed members that Part 1 of the meeting would be streamed live, and recorded and made available on the internet.

**C31 PUBLIC SPEAKING**

Jen Beaton made a statement, a summary of which is appended to these minutes.

**C32 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillors Artus, Cant, Evans, Smith and Watson.

*Councillor Lemon declared a non-pecuniary interest in that the public speaker was married to his nephew.*

Councillor Dean raised a point of order. He said the meeting had not been properly convened, and members of the public had only found out what the meeting was about by asking officers. He said there was nothing of substance in Part 1 to tell the public what the business to be discussed was, and this was unsatisfactory. He understood there was to be a presentation in Part 1 of which the public had not been made aware. It was wrong not to publicise an agenda without it being clear what the business was. Alternatively a press release should have been issued about the Part 1 presentation. He proposed the meeting should be adjourned and be reconvened properly.

Councillor Lemon seconded the proposal.

Councillor Rolfe said in opposing the motion that the meeting had been called by the Chairman. Matters of this nature were ideally discussed in full forum of Council and the meeting had to be called quickly as there was some urgency due to the deadline for submissions regarding the appeal of 29 August 2014. The Chief Executive's presentation would be heard in Part 1 of the meeting and would be broadcast on the website. He would take questions in Part 2. Councillor Rolfe said there was a need for a full debate on these issues, and he opposed holding that debate in Part 1.

The Assistant Chief Executive-Legal said it was wrong to state no proper notice of the meeting had been given or that because there was a Part 2 this indicated to the public they should not attend. The public could attend and see whether the meeting went into Part 2 or not. The agenda and the meeting were properly constituted.

Councillor Morson said in support of the motion that there was a principle that the public should be made aware of any extra information to be considered other than the Part 2 item. He understood the decision to have a presentation was only made today. He asked how the public could make up their minds whether to attend or not if the agenda was not clear on the substance. The process had been mishandled.

Councillor S Barker moved to vote on Councillor Dean's proposal.

The voting was 5 in favour, 24 against. The motion was therefore defeated.

The Vice Chairman then asked the Chief Executive to give a presentation.

The Chief Executive gave a presentation setting out the situation and providing information about the current position in relation to the appeal.

The presentation ceased in order to permit consideration by Members whether the meeting should continue in Part 2.

Councillor S Barker said members felt the pressures of this issue so would wish to discuss counsel's advice, and she proposed that the meeting move to Part 2 accordingly.

Councillor Ranger seconded the proposal.

Councillor Dean, speaking against the proposal, said the Chief Executive had indicated to him in correspondence that if the legal advice went in the public domain it would undermine the case of an organisation to fight this appeal. That organisation had written to him stating the item should be in the public domain and that they assumed the appellant knew all the arguments already. He was inclined to agree. There were important matters about the process leading to this full council meeting tonight, and it seemed a process which was previously unprecedented was becoming something of a habit. Aside from the Part 2 matter there were important issues about process and principle, and he would vote against Part 2 at this stage.

Councillor Redfern, speaking in support of the proposal, said it made no sense not to go into Part 2. The rationale was not to do with another third party whose case might be undermined but because the Council's own case might be. There had to be meaningful debate and this could only be done in Part 2.

Councillor Cheetham agreed with Councillor Redfern that it was important to have a full and frank discussion, there was sensitive information in these papers and it would be ridiculous to consider them except in part 2.

Councillor Rolfe proposed the meeting go to the vote.

Councillor Dean requested a recorded vote.

Upon being put to the vote, the motion was carried by 24 votes to 7 against, with 3 abstentions.

**For the proposal:** Councillors G Barker, S Barker, Chambers, Cheetham, Davey, Davies, Eastham, Eden, Felton, Harris, Hicks, Howell, A Ketteridge, J Ketteridge, Menell, Oliver, Ranger, Redfern, Rich, Rolfe, Rose, Salmon, Walters and Wells.

**Against the proposal:** Councillors Dean, Godwin, Lemon, Loughlin, Mackman, Morson and Parry.

**Abstain:** Councillors Jones, Knight and Perry.

### C33 **EXCLUSION OF THE PUBLIC**

RESOLVED under Section 100I of the Local Government Act 1972 that the public be excluded for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

### C34 **LEGAL ADVICE ON APPEAL**

Members discussed legal advice on appeal in relation to the matters detailed in the report.

Councillor Howell proposed the following motion:

*That having considered counsel's advice, the Council instruct the Assistant Director of Planning & Building Control not to defend the appeal.*

Following discussion by members, Councillor Redfern proposed the following amendment:

*That the Council take second independent counsel's advice on the likely outcome of defending the decision at appeal; if this advice is consistent with existing counsel's advice, then the decision not to defend the appeal stands and is delegated to the Assistant Director of Planning & Building Control.*

Discussion took place on the amendment, which was put to the vote and carried by 30 votes to 5 against.

A recorded vote was requested and voting was as follows:

**For the proposal:** Councillors G Barker, S Barker, Davey, Davies, Dean, Eastham, Eden, Felton, Foley, Godwin, Harris, Howell, Jones, Knight, Lemon, Loughlin, Mackman, Menell, Morson, Oliver, Parry, Perry, Ranger, Redfern, Rich, Rolfe, Rose, Salmon, Walters and Wells.

**Against the proposal:** Councillors Chambers, Cheetham, Hicks, A Ketteridge and J Ketteridge.

**Abstain:** none.

The amendment having become the substantive motion, further discussion was held.

The substantive motion being on the table, a Member raised a point of order about whether a further amendment could be made that the meeting be adjourned until after receipt of the second legal opinion.

Following advice from the Assistant Chief Executive-Legal that where a motion had been proposed and a proposal for it to be amended was made, it could then be debated if it became the substantive motion. Councillor Redfern's amendment was now the substantive motion and this was what was now being discussed.

An amendment was proposed to the substantive motion, as follows:

*To delete the words "if this advice is consistent with existing counsel's advice, then the decision not to defend the appeal stands and is delegated to the Assistant Director of Planning & Building Control" and to substitute the words "and this meeting is adjourned until such time as this advice is received".*

The amendment was put to the vote, and lost by 17 votes to 18 against.

A recorded vote was requested.

**For the proposal:** Councillors Davey, Dean, Eastham, Eden, Foley, Godwin, Jones, Knight, Lemon, Loughlin, Mackman, Morson, Oliver, Parry, Perry, Rich, Salmon.

**Against the proposal:** Councillors G Barker, S Barker, Chambers, Cheetham, Davies, Felton, Harris, Hicks, Howell, A Ketteridge, J Ketteridge, Menell, Ranger, Redfern, Rolfe, Rose, Walters and Wells.

The substantive motion was then proposed and put to the vote in the original terms as follows:

*That the Council take second independent counsel's advice on the likely outcome of defending the decision at appeal; if this advice is consistent with existing counsel's advice, then the decision not to defend the appeal stands and is delegated to the Assistant Director of Planning & Building Control.*

A recorded vote having been requested, the substantive motion was carried, by 33 votes to 2 against.

**For the proposal:** Councillors G Barker, S Barker, Cheetham, Davey, Davies, Dean, Eastham, Eden, Felton, Foley, Godwin, Harris, Hicks, Howell, Jones, A Ketteridge, Knight, Lemon, Loughlin, Mackman, Menell, Morson, Oliver, Parry, Perry, Ranger, Redfern, Rich, Rolfe, Rose, Salmon, Walters and Wells.

**Against the proposal:** Councillors Chambers and J Ketteridge.

RESOLVED that the Council take second independent counsel's advice on the likely outcome of defending the decision at appeal; if this advice is consistent with existing counsel's advice, then the decision not to defend the appeal stands and is delegated to the Assistant Director of Planning & Building Control.

The meeting ended at 9.30pm.

## **PUBLIC SPEAKING**

Summary of statement of Jen Beaton:

Thank you for the opportunity to speak on behalf of We Are Residents. I understand members will be considering legal advice on the Kier application and that it is likely the Council will not defend the appeal. We have written to the Council about our concerns, which are that we consider the legal advice is likely to be weak and has not been independently verified. We consider there are strong reasons for refusal, including DEFRA advice. If in Part 2 you take the irregular step of not fighting the appeal you are overriding the Planning Committee. Saffron Walden expects you to take decisions for the right reasons. I would ask you to act as an independent decision making body and uphold the democratic process. Please defend the appeal.