

**MINUTES OF A MEETING OF THE EXECUTIVE
HELD AT FOLLATON HOUSE, TOTNES ON THURSDAY, 26 APRIL 2007**

MEMBERS

* Cllr R O Yonge - Chairman

ø Cllr R J Tucker - Vice-Chairman

* Cllr N A Barnes

* Cllr R Rowe

* Cllr D W May

* Cllr M F Saltern

* Cllr S L Rankin

* Cllr I P Steer

* Denotes attendance

ø Denotes apologies for absence

Also in attendance at the invitation of the Chairman:
Cllrs V A Harvey, J W Squire, D W S Thorning and A R Vale

Officers in attendance:

All Agenda Items: Chief Executive, Strategic Director (Community) and Strategic Director (Operations), Head of Corporate Services, Head of Planning and Building Control and Principal Solicitor.

E.128/06 MINUTES

The minutes of the meeting of the Executive held on 5 April 2007 were confirmed as a correct record and signed by the Chairman.

E.129/06 MEMBERS IN ATTENDANCE

It was noted that the following Members were in attendance and participated during the discussion on the under-mentioned items:-

Item 8 – (minute E.133/06 below refers) – Cllrs Squire and Vale.

Item 9 – (minute E.134/06 below refers) – Cllr Harvey

E.130/06 DECLARATIONS OF INTEREST

Members were invited to declare any interests in the items of business to be considered during the course of the meeting but none was made.

E.131/06 PUBLIC QUESTION TIME

It was noted that no public questions had been received.

E.132/06

A PROPOSED APPLICATION TO THE HIGH COURT TO RECTIFY AN ERROR IN RELATION TO A GRANT OF PLANNING PERMISSION – 45 HIGHFIELD DRIVE, KINGSBRIDGE

A report was considered which sought the agreement of the Executive to support and consent to an application to the High Court to challenge and quash the grant of planning application 28/0434/07/F, relating to a proposal for alterations and improvements to a private dwelling, namely, the installation of a new balcony, balustrade and dormer window at 45 Highfield Drive, Kingsbridge.

The report noted that planning permission for 45 Highfield Drive had incorrectly been issued before the period for public consultation had elapsed. It was therefore necessary to quash the permission to ensure that a decision may be properly taken following the due process.

The report concluded in stating that it was not possible in law for the planning permission document to be returned to the Council by agreement to be disposed of. There was no procedure in planning legislation that could avoid the need for the High Court's intervention.

RESOLVED

That, on behalf of the Council and upon the legal advice of the Deputy Monitoring Officer and Principal Solicitor, the Executive resolve to:-

1. support and consent to an application to be brought by Cllr Geoffery Fielden in Judicial Review proceedings in the High Court to challenge and quash a grant of planning permission dated 23 March 2007, in respect of application number 28/0434/07/F, relating to a proposal for alterations and improvements to a private dwelling, namely, the installation of a new balcony, balustrade and dormer window, at 45 Highfield Drive, Kingsbridge;
2. indemnify both Cllr Fielden, as the claimant, and the Head of Corporate Services as his solicitor, for all costs, expenses and claims on their behalf and against them, both in the proceedings and consequent upon them;
3. authorise, if it be needed, the Head of Corporate Services to act for Cllr Fielden in the proceedings.

E.133/06

A PROPOSED APPLICATION TO THE HIGH COURT TO RECTIFY AN ERROR IN RELATION TO A GRANT OF PLANNING PERMISSION – FAIRFIELD NURSING HOME, CHILLINGTON

Consideration was given to a report which sought the agreement of the Executive to support and consent to an application to the High Court to challenge and quash the grant of planning application 53/0070/07/F, relating to a proposal to part demolish the existing building and the construction of new bedroom wings with ancillary accommodation at Fairfield Nursing Home, Chillington.

The Group was informed that contrary to what the presented report stated, i.e that planning permission for Fairfield Nursing Home had incorrectly been issued before the period for public consultation had elapsed, the reason for withdrawing permission was in fact due to the procedures for determining planning applications not having been strictly adhered to, and therefore key information not being considered. It was therefore necessary to quash the permission to ensure that a decision may be properly taken following the normal process of determination.

During discussion on the circulated report, a non-Executive Member queried the financial implications of such an application as the circulated report noted that costs were yet to be assessed. In response, the Head of Corporate Services informed that it was difficult to quantify costs at this stage. Legal costs for the proceedings would be the Council's responsibility, subject to the proceedings being unopposed. Due to the nature of this discussion, it was then:-

RESOLVED

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item of business as the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A to the Act is involved.

Officers and Members proceeded to discuss the anticipated financial implications. Once all Members were satisfied that they had no further questions in relation to this issue, it was then:

RESOLVED

That the public and press be re-admitted.

Following this re-admittance, it was then:-

RESOLVED

That, on behalf of the Council and upon the legal advice of the Deputy Monitoring Officer and Principal Solicitor, the Executive resolved to:-

- 1.) support and consent to an application to be brought by Cllr Geoffery Fielden in Judicial Review proceedings in the High Court to challenge and quash a grant of planning permission dated 6 March 2007, in respect of application number 53/0070/07/F, relating to a proposal to part demolish the existing building and the construction of new bedroom wings with ancillary accommodation, of Fairfield Nursing Home, Chillington;
- 2.) indemnify both Cllr Fielden, as the claimant, and the Head of Corporate Services as his solicitor, for all costs, expenses and claims on their behalf and against them, both in the proceedings and consequent upon them;
- 3.) authorise, if it be needed, the Head of Corporate Services to act for Cllr Fielden in the proceedings.

E.134/06

TO APPROVE THE DESIGN OF A RETAINING WALL ADJACENT TO THE HIGHWAY AT 8 LEECHWELL STREET, TOTNES

Consideration was given to a report which sought approval for the design of a proposed retaining wall adjacent to the highway at 8 Leechwell Street, Totnes, following the collapse of a section of the wall in January 2007. Section 167 of the Highways Act 1980 required that the construction for any wall to which the section applies was to be approved by the local authority after consultation with the Highways Authority.

In conclusion, the report noted that the approval of the design would allow the reconstruction work to be progressed to a satisfactory conclusion at the earliest opportunity.

During discussion on the report, it was confirmed that the appearance of the wall would be the same as previously, using the walls original stone. Furthermore, the Group was informed that the recommendation within the circulated report should read to approve the 'construction' of the proposed wall, as opposed to the 'design' of the wall as stated in the circulated report. This amendment was subsequently **MOVED** and **SECONDED**. It was then:-

RESOLVED

1. that, on behalf of the Council, the Executive approve the construction of the proposed wall adjoining the highway at 8 Leechwell Street, Totnes subject to satisfactory response from the Highways Authority;
2. that the Council be **RECOMMENDED** that the Scheme of Delegations be revised to enable officers to approve the design of walls in accordance with section 167 of the Highways Act 1980, following consultation with the Highways Authority, and that the Monitoring Officer be authorised to make the necessary textual amendments.

(NOTE: THESE DECISIONS, WITH THE EXCEPTION OF E.134/06 (PART 2) (WHICH IS A RECOMMENDATION TO THE COUNCIL MEETING ON 21 MAY 2007) WILL BECOME EFFECTIVE FROM 5.00PM ON 8 MAY 2007 UNLESS CALLED IN, IN ACCORDANCE WITH SCRUTINY PROCEDURE RULE 18).

(Meeting commenced at 10.00 am and concluded at 10.30 am).

Chairman