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## Council

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Minutes of Proceedings

At the **Extraordinary Meeting of the District Council of Ryedale** held in the **The School Hall, Lady Lumley's School, Swainsea Lane, Pickering, YO18 8NG** on **Monday 21 October 2013**

## Present

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Councillors    J Andrews  
                    P J Andrews  
                    Arnold  
                    Bailey  
                    Clark  
                    Collinson  
                    Mrs Cowling  
                    Cussons  
                    Mrs Frank (Chairman)  
                    Fraser  
                    Mrs Goodrick  
                    Hawkins  
                    Hicks  
                    Hope  
                    Mrs Hopkinson (Vice-Chairman)  
                    Raper  
                    Richardson  
                    Wainwright  
                    Ward  
                    Windress

## In Attendance

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Simon Copley  
Paul Cresswell  
Gary Housden  
Janet Waggott  
Anthony Winship

## Minutes

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### 65      **Apologies for absence**

Apologies for absence were received from Councillors Acomb, Mrs Burr, Ives, Mrs Keal, Maud, Mrs Sanderson, Mrs Shields, Walker and Woodward.

### 66      **Public Question Time**

The following public question was submitted by Brian Hewitt:

*“What is the current five-year land supply for Ryedale, how was it calculated, and was it not incompetent of officials to allow it to fall below the minimum prescribed level, thus negating the entire Local Plan Strategy criteria for housing development, rendering Ryedale vulnerable to exploitation by developers, and over-riding public opinion?”*

The Chairman thanked Mr Hewitt for his question and the Chief Executive replied:

*“The current five year housing supply is approximately 5.9 years. This is calculated by dividing the number of committed housing plots (1179) by the annual housing figure (200) = 5.895*

*It was not incompetent of officials to allow it to fall below the minimum prescribed level because the maintenance of a 5 year housing supply relies on sites coming forward for consideration by the Council. Council officers have not ‘let’ housing supply fall below 5 years. It is a function of any new planning applications for housing being approved and how quickly permissions are built. This is a constantly shifting situation. The Council is in a transitional period following the adoption of the Local Plan Strategy but before site specific allocation documents are at an advanced stage. Each application has to be determined in accordance with the development plan unless material considerations indicate otherwise. (Many other Councils find themselves in this position and it is not a unique situation for Ryedale.) Developers are entitled to put in applications for residential development and the Council has a duty to consider them on their merits.*

*Para 49 of the National Planning Policy Framework (NPPF) sets out that if a Council does not have a 5 year housing supply, then their policies on housing supply should be considered out of date. However this does not mean that all other policies in the plan therefore should be considered out of date. Applications are considered against all other relevant policies in the Local Plan Strategy and therefore the plan is not entirely ‘negated’ by the lack of a five year housing supply.*

*Public views are always sought on planning applications through consultation in accordance with the regulations. All relevant views received from consultation form part of the material considerations to be weighed up as part of the planning judgement.*

*It should be noted that Central Government circular guidance on planning has consistently made it clear for many years that strong local opposition to a proposal is not of itself a basis for refusal unless based on proper planning grounds.”*

Mr Hewitt then asked a supplementary question:

*“Could I ask, were the 5 year land supply requirements satisfied on the 28 August and how was this affected by the adoption of the Local Plan Strategy on 5 September?”*

The Head of Planning and Housing replied:

*“The answer to the first part of the question, No the five year housing supply was not met on 28 August. In terms of the adoption of the Local Plan Strategy, the Council's target is still 200, which was the historical target from the Regional Spatial Strategy.”*

The following public question was submitted by Christine Dowie, Chairman of Kirkbymoorside Town Council:

*“Why is it that the Planning Committee does not follow the Council's constitution in that when there is an amendment that is voted on, e.g. for refusal and that amendment is defeated, the substantive motion e.g. for approval is not voted on, when it should be according to the Constitution?”*

The Chairman thanked Ms Dowie for her question and the Chief Executive replied:

*“The decision of the Planning Committee meeting on 28 August 2013 on the planning application submitted by Gladman Developments Limited for major residential development on land near Kirkdale Road, Kirkbymoorside is the subject of an application for Judicial Review lodged by Mr William Shaw and Mr Brian Hewitt.*

*The voting procedures of the Planning Committee are an issue which will be considered by a High Court Judge should an application for Judicial Review be granted*

*Historically, Chairmen of the Planning Committee at Ryedale District Council have taken one of two approaches to voting on planning applications:-*

- (a) The first approach has been that if a proposal for approval or refusal falls then the Chairman declares the result in the alternative as being the sense of the meeting as a consequence of the outcome of the vote.*

*It is considered that this approach has support in paragraph 11.24 of the 6<sup>th</sup> Edition of Knowles on Local Authority Meetings. The text referred to clearly acknowledges the informality of Committee proceedings and the role of the Chairman in making a declaration of the decision.*

*(b) Occasionally the Chairman can call for a proposal in the alternative and ask for it to be seconded when a proposal has fallen.”*

Ms Dowie then asked a supplementary question:

*“My question was not mentioning the Gladman application. I was asking a question about the practices of the Planning Committee and the fact that your Constitution says that the substantive motion should be voted on, which I would have thought was more appropriate than going - taking advice from an individual which is general, when your Constitution clearly says that it should be voted on - the substantive motion should be voted on. So I feel - I'm asking you a question about the principle not about specifically what has happened at different Planning Committee meetings.”*

The Chief Executive replied:

*“That's why I've tried to then outline the processes that the Council has followed - it's used the - and again given the Knowles edition and what the Chairman can do - so I have tried to answer that question without being specific. I just did make the point that as we all know that we have got a court case pending.”*

The following public question was submitted by Ann Gray:

*“When did the Council's solicitor last remind planning committee members of their duty to hear each application on it's own merits i.e. the material planning considerations?”*

The Chairman thanked Ms Gray for her question and the Chief Executive replied:

*“Members are required to undertake training on planning prior to sitting on the planning committee together with follow up training. This training (amongst other things) makes it clear to Members that each application must be determined on its own merits.*

*All Members and Substitute Members of the Planning Committee have been supplied with copies of the Planning Code of Practice which gives Councillors on the Planning Committee advice on making planning decisions.*

*Members have immediate access to this Code on their Ipads because it is in the Council's Constitution.*

*The Council Solicitor, with others, has been instrumental in developing, the Planning Code of Practice.*

*The Planning Code of Practice is a comprehensive guidance note for Members of the Planning Committee on how to make proper planning decisions.*

*The Planning Code of Practice has received praise from Mr Nick Dobson a well known private sector lawyer specialising in Local Government Law.*

*The Council Solicitor does not adopt the practice of repeating advice in the Planning Code of Practice at each meeting of the Planning Committee.”*

Ms Gray then asked a supplementary question:

*“I wonder also how often it is brought to the attention of the officers that when they are submitting reports to the Planning Committee that they do not refer to other identical applications or any other that seems to relate in any way to it?”*

The Chief Executive replied:

*“Planning history is a material consideration and officers do receive training as well. I haven't got a date but officers do go through continuous professional development training and they do attend training sessions alongside elected members as well.”*

The following public question was submitted by Joe Coughlan:

*“At a meeting earlier in the year Cllr Mrs Burr did not vote as she had made her feelings about the application known in advance. Why then would the Chairman of Planning Committee be able to use a casting vote when he had made it known, in advance of using the vote, that this would always be used to support officer recommendation?”*

The Chairman thanked Mr Coughlan for his question and replied:

*“It is understood that Councillor Mrs Burr had expressed a view on a planning application in the past prior to the Planning Committee meeting and this view was expressed publicly.*

*The Chairman of the Planning Committee had not previously indicated which way he was going to vote on the planning application prior to the Planning Committee. Accordingly, there is no comparison.”*

Mr Coughlan then sought clarification:

*“I have public note that Councillor Raper made clear in his own words when he was appointed Chair of the Planning Committee, not, I'm not referring to any specific planning meeting, or any specific planning application. But in correspondence Councillor Raper's made clear, that he made clear to members when he was appointed Chair that he would always vote according to the officer recommendation, which is why I asked the question.....I would assume - just for clarity - Chair you made reference to a specific planning application. I'm making reference to a statement made in advance of any performance of that office of Chair of the Planning Committee.”*

The Chairman responded:

*“The Constitution of the Council does say that it's up to the Chair to use his casting vote in which ever way he chooses.”*

Mr Coughlan then asked a supplementary question:

*“My supplementary question will be that, given that the County's Solicitor, the Council's Solicitor has indicated in the background information 5.2.2 - Members of the Planning Committee are required to keep an open mind until they have all the information before proceeding to a decision and should not predetermine planning applications - and bearing in mind what you've just said in response, although I would suggest not in answer, my supplementary question is, how is it therefore that Councillor Raper can continue as Chair of the Planning Committee?”*

The Chief Executive replied:

*“That is a political decision and appointments to Committees are made at the annual Council. Should Council choose not to have the same Chairman of any committee they will make that decision. If the Chairman believes they have done something wrong, that is up to the Chairman and also there are Member Codes of Conduct that we apply as well as officers to members and so forth.”*

The following public question was submitted by Michael Gray:

*“Officers and members may take decisions/actions which lead to massive damages claims. Why does the council not have insurance to cover these circumstances?”*

The Chairman thanked Mr Gray for his question and replied:

*“The Council is insured for any ‘accidental acts errors or omissions’ it may commit in the course of discharging the Councils functions – in simple terms this means negligent acts committed by the Councils Officers and Members. If the Council owes a third party a duty of care, and the Council breaches that duty and the third party suffers losses as a result of that breach then they can sue for compensation for the losses.*

*Decisions the Council may make which knowingly can or do cause a loss to a third party are not insured as this is a deliberate decision on the part of the Council.*

*In this case, revoking the planning decision is a legal decision available to the Council under Section 97 of the Town and Country Planning Act 1990, and the legislation itself gives the right to compensation. This is not therefore a ‘damages claim’ it is statutory compensation.”*

The following public question was submitted by Judy Watson:

*"When does a green field site take precedence over a brown field site? Could examples be given, other than for any which may prejudice the Council in any forthcoming judicial review?"*

The Chairman thanked Ms Watson for her question and the Chief Executive replied:

*"There have been no examples where the Planning Committee has had to directly compare and make decisions in respect of development proposed on a Greenfield site to that being concurrently proposed on a Brownfield site.*

*There are, however, numerous examples of residential development which have been granted on Greenfield sites at or on the periphery of the District's Market Towns and Service Villages in recent years. Recent examples include Cheesecake Farm, Beverley Road, Norton; Westfield Nurseries, Norton; Land off Heron Way, Norton; Broughton Road, Malton; The Former Rogers Nurseries site, Whitby Road, Pickering; and Land off Station Road, Nawton, Beadlam.*

*Para 4.15 of the LPS states that*

*"New housing sites will be of varying size and will be made up of a combination of Brownfield sites and Greenfield land. Although the redevelopment of Brownfield land and buildings will be prioritised, Greenfield sites will be required. There are insufficient Brownfield sites available in appropriate locations to enable all new homes to be built on Brownfield land and those sites which do exist are constrained for a number of reasons. The limited availability of Brownfield land is illustrated by the Strategic Housing Land Availability Assessment and from monitoring past sources of supply".*

The following public question was submitted by Frank Youren:

*"In what circumstances is it considered acceptable for councillors to abstain from voting?"*

The Chairman thanked Mr Youren for his question and replied:

*"The law relating to local authority meetings and the Council's constitution allows Members to abstain. Members are able to vote or abstain on any motion.*

*It is the responsibility of the individual Members to decide how they are going to vote. Whether they should exercise the right to vote is a matter between them, the electorate and their conscience.*

*This is an issue which may be considered by a High Court Judge should an application for Judicial Review be granted.*

*Against that background it would be inappropriate to comment on the matter which is the subject of legal proceedings."*

Mr Youren then asked a supplementary question:

*“This, this particular project, this development is of massive importance to a lot of people in Kirkbymoorside. It's the biggest development that's ever taken place in the area. My question is this. If only four people on this planning committee voted, the rest must have been completely uninterested. Are you as a Council Chairman happy with that state of affairs?”*

The Chairman replied:

*“I would say this. I am not entirely happy with that situation - No. But I can't change what happened at that meeting. I can't - it's not within my power to change what happened at that meeting. I'm not on the Planning Committee but I will say that I wasn't entirely happy with what happened at that meeting.”*

## 67 **Declarations of Interest**

The following interests were declared:

Councillor Paul Andrews declared a personal non-pecuniary but not prejudicial interest as he had been lobbied by other Members.

Councillor Arnold declared a personal non-pecuniary but not prejudicial interest as he had been lobbied and knew a lot of the people in the room.

Councillor Clark declared a personal non-pecuniary but not prejudicial interest as he had been lobbied.

Councillor Collinson declared a personal non-pecuniary but not prejudicial interest as he had been lobbied.

Councillor Mrs Cowling declared a personal non-pecuniary but not prejudicial interest as she had been lobbied.

Councillor Cussons declared a personal non-pecuniary but not prejudicial interest as he had been lobbied by email and letter, as his nephew owned land to the north of the site and as his neighbour, Mr Shaw, had land adjoining the site.

Councillor Mrs Frank declared a personal non-pecuniary but not prejudicial interest as she had been lobbied.

Councillor Mrs Goodrick declared a personal non-pecuniary but not prejudicial interest as she had been lobbied.

Councillor Hicks declared a personal non-pecuniary but not prejudicial interest as his cousin owned land nearby and his brother owned land the other side of the road.



Councillor Hope declared a personal non-pecuniary but not prejudicial interest as he had been lobbied.

Councillor Raper declared a personal non-pecuniary but not prejudicial interest as he had been lobbied by email and letter.

Councillor Richardson declared a personal non-pecuniary but not prejudicial interest as he had been lobbied and as a resident of Kirkbymoorside.

Councillor Ward declared a personal non-pecuniary but not prejudicial interest as a resident of Kirkbymoorside and a member of the Town Council.

Councillor Windress declared a personal non-pecuniary but not prejudicial interest as he had been lobbied.

**68 Notices on Motion Submitted Pursuant to Council Procedure Rule 11**

1. It was moved by Councillor Clark and seconded by Councillor Ward

*“The five members below wish to call an Extraordinary Full Council preferably in Kirkbymoorside. This Council to debate the Gladman application at Kirkbymoorside (1300342/MOUT).*

*We wish to consider the decision taken on the 28<sup>th</sup> August 2013. As a result the Council resolves to approve the following:*

*i. Instruct the Chief Executive to proceed with revocation of the decision*

*and*

*ii. To not contest the Judicial Review that is expected on this planning application.”*

In considering the above Motion on Notice, Members were requested to have due regard to the following Officer reports which were attached to the agenda and were presented to the meeting by the relevant officers:

(i) The Monitoring Officer’s report (Appendix 1)

(ii) The Corporate Director (Section 151) Officer’s report (Appendix 2)

An amendment was moved by Councillor Mrs Cowling and seconded by Councillor Mrs Goodrick:

*To delete (i) and replace (ii) with*

*“To authorise the Chief Executive to use her delegated authority to respond to the judicial review in the best interests of the Council and residents of Ryedale as a whole.”*

Upon being put to the vote the amendment was carried.

**Recorded Vote**

For

Councillors Arnold, Bailey, Collinson, Mrs Cowling, Cussons, Mrs Frank, Fraser, Mrs Goodrick, Hawkins, Hicks, Hope, Mrs Hopkinson, Raper, Wainwright and Windress.

Against

Councillors Joy Andrews, Paul Andrews, Clark, Richardson and Ward.

Abstentions

None.

Upon being put to the vote, the substantive motion was carried.

**Recorded Vote**

For

Councillors Arnold, Bailey, Collinson, Mrs Cowling, Cussons, Mrs Frank, Fraser, Mrs Goodrick, Hawkins, Hicks, Hope, Mrs Hopkinson, Raper, Wainwright and Windress.

Against

Councillors Joy Andrews, Paul Andrews, Clark, Richardson and Ward.

Abstentions

None.

**Resolved**

*“The five members below wish to call an Extraordinary Full Council preferably in Kirbymoorside. This Council to debate the Gladman application at Kirbymoorside (1300342/MOUT).*

*We wish to consider the decision taken on the 28<sup>th</sup> August 2013. As a result the Council resolves to approve the following:*

*To authorise the Chief Executive to use her delegated authority to respond to the judicial review in the best interests of the Council and residents of Ryedale as a whole.”*

The meeting closed at 9.32pm.