

# Public Document Pack

## Council

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Minutes of Proceedings

At the **Ordinary Meeting of the District Council of Ryedale** held in the **Council Chamber, Ryedale House, Malton** on **Thursday 8 October 2015**

## Present

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Councillors	Acomb
	Joy Andrews
	Paul Andrews
	Steve Arnold
	Val Arnold (Chairman)
	Bailey
	Burr MBE
	Clark
	Cleary
	Cowling
	Cussons
	Duncan
	Farnell
	Frank
	Gardiner (Vice-Chairman)
	Goodrick
	Hope
	Ives
	Jainu-Deen
	Jowitt
	Keal
	Maud
	Oxley
	Raper
	Sanderson
	Shields
	Thornton
	Wainwright
	Windress

## In Attendance

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Jill Baldwin  
Simon Copley  
Peter Johnson  
Phil Long  
Clare Slater  
Janet Waggott  
Anthony Winship

## Minutes

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### 42      **Apologies for absence**

Apologies for absence were received from Councillor Evans.

43      **Public Question Time**

The following public question was submitted by Simon Thackray:

*"In order to protect the health of the people of Ryedale, and the residents of Malton and Norton and Old Malton in particular, will this Council please give an assurance that it will not, either now or in the future, approve any development that is predicted to cause, or is likely to cause, the air quality within the Malton AQMA to breach, or continue to breach, the EU limit value for the concentration of Nitrogen Dioxide, and EU laws on air quality?"*

The Chairman thanked Simon Thackray for his question and replied:

*"The District Council cannot make a decision on a planning application before hearing all the facts.*

*The question is framed in a yes/no way . The answer to the question is that if the Planning Committee is satisfied that any proposed development causes demonstrable unacceptable harm in air quality terms which is supported by expert opinion, it is open to the Planning Committee to refuse the planning application.*

*The answer below describes how the planning system determines if proposed development causes unacceptable harm which justifies refusal.*

*It is by going through due process of determining a planning application having regard to all material planning considerations that the Planning Committee reaches a yes/no answer to a planning application by means of approval or refusal.*

*It is important at the outset to note that planning decisions are made:-*

- on their merits;*
- on planning grounds;*
- by Members with an open mind and after considering all the evidence;*
- in the public interest and not as a result of any private interest.*

*The Planning Committee cannot adopt a blanket policy of opposition to any matter related to a planning application before hearing the facts of the case.*

*The starting point in considering planning applications is planning policy at both the National level and the local plan level.*

*At the local level the Ryedale Plan contains policies on Air Quality issues.*

*In relation to air quality issues the Air Quality policies contained in the Ryedale Plan use the word 'acceptable' as the standard that proposed development needs to meet before it is approved .*

*Planning applications may include supporting evidence including technical impact assessments . The District Council receives expert advice on matters of air quality from suitably qualified and experienced environmental health officers and/or consultants.*

*The Planning Committee or a Planning Inspector on appeal can be faced with representations expressing the fears of residents on air quality issues and the expert evidence on the issue of air quality which may be contrary to the residents fears. The decision maker needs to decide what weight to give those representations in the decision making balance before reaching a decision.*

*In the High Court case of Trevett v. Secretary of State relating to a judicial review of three inspector's decisions in Stroud, Mr Justice Sullivan, as he then was, gave advice to decision makers faced with this kind of situation in the context of telecommunication masts . The advice is summarised as follows :*

*It can be the case that the decision maker "considers that "greater weight" should be attached to the expertise of the organisations he identifies. I have underlined the word "greater" because it makes it plain that the decision maker is not dismissing the residents' fears as being of no account whatsoever because they were not objectively justified, but concluding that they should be given lesser weight."*

*The quote from Mr Justice Sullivan as he then was above emphasises the importance of expert advice in the decision making process. Residents and Town and Parish Councils need to be aware of that important fact of the decision making process.*

*Whether or not a planning application is refused on the grounds of unacceptable harm in air quality terms is ultimately a planning judgement to be made by Officers/Elected Members based on the expert evidence and other evidence presented to the Planning Committee."*

Simon Thackray then asked a supplementary question:

*"This Council has recently approved major development in Malton that will have a significant impact on air quality - it's unquestionable - more houses, more cars, more pollution. Therefore will the Council now request that an air quality assessment be submitted to support the live GMI Wentworth Street car park planning application, so the Council can confirm to itself and to the residents of Malton that the cumulative impact of all new developments when combined with the impact of the new supermarket and filling station on Wentworth Street car park will not have a negative effect, a negative impact on air quality and endanger the health of the public?"*

The Chairman agreed that a written reply would be provided.

The following public question was submitted by Lorraine Allanson:

*"Hydraulic Fracturing is highly likely to become a reality for Ryedale even though a number of councillors are at present opposed to the process. Many businesses and individuals in Ryedale are concerned that because of their negative stance the future benefits of playing a part in the supply chain could be lost. If Hydraulic Fracturing does develop in Ryedale this could offer many opportunities. Will councillors put aside their opposing political views to pull together for the betterment of Ryedale and work as a team to ensure that Ryedale responds quickly to the requirements of the gas industry?"*

The Chairman thanked Lorraine Allanson for her question and replied:

*"The legal position is that no fracking, or drilling for oil or gas , can take place without:*

*(a) Planning Permission, from the Minerals Planning Authority (in this case North Yorkshire County Council or the North York Moors National Park Authority); and*

*(b) Planning Permission for any ancillary related development which is a District matter from Ryedale District Council.*

*As the Mineral Planning Authority, North Yorkshire County Council must consult Ryedale District Council under Article 22 of the Town and Country Planning (Development Management Procedure)(England)Order 2010.*

*It is important to note that if any Member of Ryedale District Council is also a Member of North Yorkshire County Council and on the County Planning Committee, they are legally required to make planning decisions :-*

- on their merits;*
- on planning grounds;*
- with an open mind and after considering all the evidence;*
- in the public interest and not as a result of any private interest.*

*Any Member of the District Council Planning Committee dealing with ancillary fracking related development is bound by the above legal duties.*

*In relation to the District Council exercising its discretion to make a consultation response in relation to a fracking application, the decisions of the District Council and its Committees are subject to the normal public law principles. These principles include the requirement that power should not be exercised in an arbitrary way.*

*The District Council is subject to the common law principles which apply to all decision-making by local authorities, including the requirement to take a reasoned decision based upon all material information. When the District*

*Council exercises its discretion it abuses its discretion if it takes into account irrelevant considerations or failing to take into account relevant considerations."*

**44 Minutes**

The minutes of the Ordinary Meeting of Council held on 3 September 2015 were presented.

**Resolved**

That the minutes of the Ordinary Meeting of Council held on 3 September 2015 be approved and signed by the Chairman as a correct record.

**Recorded Vote**

For

Councillors Acomb, Steve Arnold, Val Arnold, Bailey, Cleary, Cowling, Cussons, Duncan, Farnell, Frank, Gardiner, Goodrick, Hope, Ives, Jainu-Deen, Maud, Oxley, Raper, Sanderson, Shields and Wainwright.

Against

Councillors Joy Andrews, Clark and Thornton.

Abstentions

Councillors Paul Andrews, Burr, Jowitt, Keal and Windress.

**45 Urgent Business**

There were no items of urgent business which the Chairman considered should be dealt with as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972 (as amended).

**46 Declarations of Interest**

The following interests were declared:

Councillor Paul Andrews declared a personal non-pecuniary but not prejudicial interest in Agenda Item 10 - Minute 24 (Land at Wentworth Street, Malton), as a supporter of the business community in Ryedale and Malton, and Agenda Item 11 (Notices on Motion), as he had been involved in the campaign against fracking.

Councillor Val Arnold declared a personal non-pecuniary but not prejudicial interest in Agenda Item 11 (Notices on Motion) as a North Yorkshire County Councillor, but not a member of its Planning Committee.

Councillor Clark declared a personal non-pecuniary but not prejudicial interest in Agenda Item 11 (Notices on Motion) as a North Yorkshire County Councillor, but not a member of its Planning Committee.

Councillor Keal declared a personal non-pecuniary but not prejudicial interest in Agenda Item 11 (Notices on Motion) as she had been involved in the campaign against fracking.

Councillor Sanderson declared a personal non-pecuniary but not prejudicial interest in Agenda Item 11 (Notices on Motion) as a North Yorkshire County Councillor.

Councillor Shields declared a personal non-pecuniary but not prejudicial interest in Agenda Item 11 (Notices on Motion) as a North Yorkshire County Councillor.

Councillor Thornton declared a personal non-pecuniary but not prejudicial interest in Agenda Item 11 (Notices on Motion) as he had been busy with fracking, attempting to find the truth for and against.

All Members present declared that they had been lobbied in relation to Agenda Item 10 - Minute 24 (Land at Wentworth Street, Malton) and Agenda Item 11 (Notices on Motion).

#### 47     **Announcements**

The Chairman made the following announcement:

- That Helmsley was in the final for the market town category of the Great British High Street and that Members could vote for it in the competition and encourage others to do so.

#### 48     **To Receive any Questions submitted by Members Pursuant to Council Procedure Rule 10.2 (Questions on Notice at Full Council)**

1.     Councillor Clark submitted the following question:

To Councillor Windress, Chairman of Planning Committee:  
"Have you reconsidered your position as Chair of Planning?"

The Chairman of Planning Committee, Councillor Windress replied  
*"If I thought I needed to consider my position as Chairman of RDC's Planning Committee, I would not need prompting from the Leader of the Liberal Party."*

Councillor Clark asked the following supplementary question:

"On the basis that your predecessor needed several promptings, I hope for your sake that you are right but on the basis that so far the planning decisions, £200,000 plus on the 2 Wentworth Street car park planning applications, £600,000 plus on affordable housing and public open space that other Council's

didn't fall into, that's £1.1 million that we didn't need to have wasted - how big has that number got to get before you reconsider your position?"

Councillor Windress replied:

*"Firstly I was not Chairman on either of the Wentworth Street planning committees, although I did chair the second one but it was as Vice Chairman...The £600,000 was not my decision, it was a Council decision - Full Council not Planning Committee."*

2. Councillor Clark submitted the following question:

To Councillor Windress, Chairman of Planning Committee:

"Could the Chair of Planning please inform Council why he has not with his committee produced a policy on fracking for Ryedale?"

The Chairman of Planning Committee, Councillor Windress replied

*"RDC are not the mineral authority. If RDC were the mineral authority a policy on this would have been in the Ryedale Local Plan. Perhaps Councillor Clark could tell us what the present policy on fracking at NYCC is, as they are the mineral authority?"*

Councillor Clark responded:

"I would be delighted to tell you what the fracking policy is at NYCC as the mineral authority, unfortunately they haven't got one but they have a policy that emerges on 20th of this month so Cllr Windress does that not give you 12 days to have a policy on fracking for Ryedale. 12 days to emerge and I think it'll take a little bit of time other than the moratorium we've got as a guidance to produce a policy so that you can feed that policy into your committee's decisions on what to recommend to NYCC where not one fracking well is proposed, not one tens, not one in hundreds but thousands or several thousands come forward. I do suggest to you seriously, it would be a good idea. We've done this tonight in a hurry, in a rush because it needs to be done for a couple of weeks time but it would be invaluable to Ryedale, invaluable to our industry in Ryedale if we could have a policy put through the system led by yourself please."

**49 To Receive a Statement from the Leader of the Council and to Receive Questions and Give Answers on that Statement**

This item of business was not considered at the meeting as the guillotine had fallen, with the duration of the meeting having exceeded three and a half hours.

**50 To consider for Approval the Recommendations in respect of the following Part 'B' Committee Items:**

**Policy and Resources Committee – 24 September 2015**

**Minute 23 - Exempt Information**

The meeting did not move into exempt session.

**Minute 24 – Land at Wentworth Street, Malton including the Motion on Notice proposed by Councillor Paul Andrews and seconded by Councillor Burr**

It was moved by Councillor Cowling and seconded by Councillor Arnold that the following recommendations of the Policy and Resources Committee be approved and adopted.

That Council be recommended:

That the following motion not be approved;

*"The Council is asked to resolve that as:*

- Clarification is needed for the business community in Malton and Ryedale*
- The Contract for the sale of WSCP to GMI is due to expire (unless renewed) on 4 May 2015; and*
- The Contract cannot be completed until GMI can provide a superstore developer to build a superstore on WSCP, and to date GMI have failed to comply with this condition; and*
- WSCP is, by reason inter alia of its location and absence of direct access to the A64, not a prime site for a superstore; and*
- The recent collapse of the market for new superstores is a permanent change in the business environment*

*The Council therefore resolves not to renew the contract to sell WSCP to GMI."*

An amendment was moved by Councillor Duncan and seconded by Councillor Goodrick:

*"To remove the words which state that the following motion not be approved and add after the resolves to terminate the contract:*

*This Council investigate other options available for the development of the Wentworth Street Car Park site. Any future plans for development on this site should have support from a cross section of the people of Malton and Norton, and the people of Ryedale as a whole."*

Upon being put to the vote the amendment was lost.

Voting Record

11 For

12 Against

3 Abstentions

Upon being put to the vote the motion was carried.



## **Resolved**

(i) That the following motion not be approved;

*"The Council is asked to resolve that as:*

- Clarification is needed for the business community in Malton and Ryedale*
- The Contract for the sale of WSCP to GMI is due to expire (unless renewed) on 4 May 2015; and*
- The Contract cannot be completed until GMI can provide a superstore developer to build a superstore on WSCP, and to date GMI have failed to comply with this condition; and*
- WSCP is, by reason inter alia of its location and absence of direct access to the A64, not a prime site for a superstore; and*
- The recent collapse of the market for new superstores is a permanent change in the business environment*

*The Council therefore resolves not to renew the contract to sell WSCP to GMI."*

## **Recorded Vote**

### For

Councillors Steve Arnold, Val Arnold, Bailey, Cowling, Cussons, Farnell, Frank, Hope, Jainu-Deen, Keal, Wainwright and Windress.

### Against

Councillors Joy Andrews, Paul Andrews, Burr, Clark, Cleary, Duncan, Goodrick, Ives, Jowitt, Maud and Thornton.

### Abstentions

Councillors Acomb, Gardiner and Oxley.

## **Minute 25 – Budget Strategy 2016/17**

It was moved by Councillor Cowling and seconded by Councillor Arnold that the following recommendations of the Policy and Resources Committee be approved and adopted.

That Council be recommended:

To approve the following strategy for the preparation of the 2016/2017 budget:

- (i) Proposals to be brought forward for a freeze in Council Tax for the next financial year;
- (ii) Increases in fees and charges to be to a maximum of 4.5% on a cost centre heading basis excluding VAT and only those charges

- officers recommend above this figure to be considered by the relevant policy committee;
- (iii) Efficiencies to be maximised;
  - (iv) The use of New Homes Bonus in line with the medium term financial plan; and
  - (v) Options for service cuts to be provided. These proposals to be considered by the Resources Working Party and brought to the Policy and Resources Committee and Council.

An amendment was moved by Councillor Clark and seconded by Councillor Thornton:

"Replace (i) with *Increase Council Tax by 1.99%*"

Upon being put to the vote the amendment was lost.

### **Recorded Vote**

#### For

Councillors Joy Andrews, Paul Andrews, Burr, Clark, Jowitt, Keal, Shields and Thornton.

#### Against

Councillors Acomb, Steve Arnold, Val Arnold, Bailey, Cleary, Cowling, Cussons, Duncan, Farnell, Frank, Gardiner, Goodrick, Hope, Ives, Jainu-Deen, Maud, Oxley, Wainwright and Windress.

#### Abstentions

None.

Upon being put to the vote the motion was carried.

### **Resolved**

That Council approve the following strategy for the preparation of the 2016/2017 budget:

- (i) Proposals to be brought forward for a freeze in Council Tax for the next financial year;
- (ii) Increases in fees and charges to be to a maximum of 4.5% on a cost centre heading basis excluding VAT and only those charges officers recommend above this figure to be considered by the relevant policy committee;
- (iii) Efficiencies to be maximised;
- (iv) The use of New Homes Bonus in line with the medium term financial plan; and
- (v) Options for service cuts to be provided. These proposals to be considered by the Resources Working Party and brought to the Policy and Resources Committee and Council.

## **Recorded Vote**

### For

Councillors Acomb, Steve Arnold, Val Arnold, Bailey, Cleary, Cowling, Cussons, Duncan, Farnell, Frank, Gardiner, Goodrick, Hope, Ives, Jainu-Deen, Maud, Wainwright and Windress.

### Against

Councillors Joy Andrews, Paul Andrews, Burr, Clark, Jowitt, Shields and Thornton.

### Abstentions

Councillors Keal and Oxley.

## **51 Notices on Motion Submitted Pursuant to Council Procedure Rule 11**

A procedural motion was moved by Councillor Paul Andrews and seconded by Councillor Burr to suspend standing order 11.4 to allow the notice on motion to be discussed.

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

### Voting Record

17 For

11 Against

1 Abstentions

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

"RDC is a consultee for the planning application currently in front of NYCC to perform a test frack and go into production for up to 9 years at the KM8 site in Kirby Misperton. The Planning Committee must discuss this by mid October in order that they can offer a view. RDC has no policy on fracking. The eyes of the country and the world will be watching with interest in the decision making process and we have yet to debate this issue. It is complex and of great significance for the future of Ryedale at many levels not least its economy, jobs, health and potential costs to the council. This process is now in its 11th hour so we must avoid losing our voice by taking it past midnight. This issue must therefore be debated on the 8th October 2015. If we do not debate the issues at this point then the voice of Ryedale people will become muted in the decision making process at NYCC.

On the scientific evidence to date Ryedale Liberals believe that the case for fracking is not made.

- 84% of peer reviewed science shows significant risks or impacts on health.
- 88% shows risks and impacts on air quality.
- 66% shows risks to water quality.

- The impact on agriculture is not known but is liable to be negative.
- The impact on tourism is not known but is liable to be negative.
- The impact in traffic is not known but is liable to be large.

This council therefore resolves:

- (i) On the present information available RDC calls for a 5 year moratorium on fracking in Ryedale. When sufficient evidence becomes available RDC can reconsider its policy.
- (ii) It therefore calls upon the Planning Committee to take this decision into account when making its recommendation to NYCC on the KM8 planning application."

The Council Solicitor and Monitoring Officer advised Members of Council that Members of the Planning Committee wishing to participate at a future meeting of the Planning Committee on the consultation response on the fracking planning application would need to keep an open mind and reserve their final decision on the issue of fracking until the Planning committee meeting when they have the Officer report and all the available facts.

Members of the Planning Committee were advised not to reach a final decision on the issue of fracking before they have received the officers report and all the facts available to Members of the Planning Committee meeting.

If Members of the Planning Committee were able to keep an open mind they would be able to participate at a future meeting of the Planning Committee on the consultation response on the fracking planning application.

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

### **Recorded Vote**

#### For

Councillors Acomb, Joy Andrews, Paul Andrews, Bailey, Burr, Clark, Jainu-Deen, Jowitt, Keal, Raper, Shields, Thornton and Wainwright.

#### Against

Councillors Steve Arnold, Val Arnold, Cowling, Frank, Gardiner, Ives and Oxley.

#### Abstentions

Councillors Cleary, Cussons, Duncan, Farnell, Goodrick, Hope, Maud and Sanderson.

### **Resolved**

- (i) On the present information available RDC calls for a 5 year moratorium on fracking in Ryedale. When sufficient evidence becomes available RDC can reconsider its policy.

- (ii) It therefore calls upon the Planning Committee to take this decision into account when making its recommendation to NYCC on the KM8 planning application.

52      **Any other business that the Chairman decides is urgent.**

There being no other business, the meeting closed at 11.02pm.

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## 8 October 2015 – Responses to Supplementary Questions

### Public Questions

From Simon Thackray:

*"This Council has recently approved major development in Malton that will have a significant impact on air quality - it's unquestionable - more houses, more cars, more pollution. Therefore will the Council now request that an air quality assessment be submitted to support the live GMI Wentworth Street car park planning application, so the Council can confirm to itself and to the residents of Malton that the cumulative impact of all new developments when combined with the impact of the new supermarket and filling station on Wentworth Street car park will not have a negative effect, a negative impact on air quality and endanger the health of the public?"*

Answer:

"The current position is that the GMI planning application is still live because the planning permission has been quashed on judicial review.

GMI have been requested to clarify if they wish the planning application to be reported back to the Planning Committee for re-determination and if they have any further supporting information for the planning application. Council Officers are expecting a response soon.

If GMI want the planning application to be reported back to the Planning Committee for re-determination there is a question of whether or not the Council will ask for an air quality assessment.

If GMI want the planning application to be reported back to the Planning Committee for re-determination then the advice from Environmental Health is that they should be asked to provide **either** an Air Quality Assessment **or** fresh justification for not providing one (having regard to the recently issued Institute of Air Quality Management/Environmental Protection UK guidance 'Land Use Planning and Development Control: Planning for Air Quality May 2015 (v1.1). The guidance document contains quite specific criteria (pages 18-19) to assist in deciding whether an air quality assessment would be appropriate.

If the Environmental Health Officer considers that a planning application to be re-determined by the Planning Committee was inadequate without an Air Quality Assessment there would be a recommendation of refusal on those grounds. Members of the Planning Committee would make a planning decision having due regard to the Planning Officers report and all material considerations including the recommendation of the Environmental Health Officer."

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