



FARNHAM TOWN COUNCIL

A

Minutes Extraordinary Council

Time and date

7.00 pm on Tuesday 8th August, 2023

Place

Council Chamber - Farnham Town Hall

Councillors

Councillor Alan Earwaker (Mayor)
Councillor David Beaman
Councillor Mat Brown
Councillor George Hesse
Councillor Chris Jackman
Councillor Michaela Martin
Councillor Mark Merryweather
Councillor Kika Mirylees
Councillor George Murray
Councillor John Ward
Councillor Graham White
Councillor Tim Woodhouse

Councillor Sally Dickson was in attendance remotely via Zoom and took no part in the decision making.

Apologies for absence

Tony Fairclough, Andrew Laughton and Brodie Mauluka

Officers Present:

Iain Lynch (Town Clerk), Jenny de Quervain (Planning & Civic Administrator).
Also in Attendance: Steve Tilbury (Planning Advisor)

There were 5 members of the public and 1 member of the press in attendance.

C42/23 Apologies

Apologies were received from Cllrs Tony Fairclough, Andrew Laughton and Brodie Mauluka.

C43/23 Disclosures of Interest

There were no disclosures of interest.

C44/23 **Minutes**

The Minutes of the meeting held on 27th July were agreed.

C45/23 **Questions and Statements by the Public**

- 1 Zofia Lovell of the South Farnham Residents Association and had been involved with the Neighbourhood Plan since the start said the discussion on a statutory challenge was very important. Neighbourhood Plans were meant to give communities direct power and be able to choose where housing in Farnham should go. The Neighbourhood Plan was delivering in Farnham and it was important the community protected the fully Made Neighbourhood Plan.
- 2 Noel Moss, representing the Farnham Biodiversity Partnership had written to the Planning Inspector before the public Inquiry underlining the damage this application would cause to the environment and biodiversity in Farnham. Given climate change and the global threat, he felt there was a case and as the Chief Executive of Surrey Wildlife Trust said, the problems arising in Surrey are not in the future, but here and now. The likely damage to the fields, from the building work and making the SANG and the car park together with the increased movement after the houses were built would be an intolerable threat to wildlife. There were 1300 different species recorded in these fields. The development was a threat to fields and a threat to the wildlife corridor. The Bourne Stream corridor was vital in South Farnham connecting the Surrey Hills to Alice Holt and would be affected. These arguments seem to carry no weight with the Inspector who only mentioned biodiversity once in the report.

Cllr White responded by thanking the public for their support. He had made a note of their comments which would be referenced in the discussion in the report from Strategy & Resources. Cllr White said the decision had been shocking, was carried out in a cavalier way and was unacceptable.

C46/23 **Town Mayor's Announcements**

As it was an extraordinary meeting, the Town Mayor had no specific announcements for Council.

C47/23 **Consideration of a Legal Challenge to Planning Appeal
APP/R3650/W/22/3311941 L**

Cllr White introduced the report from Strategy & Finance attached at Appendix B to the agenda. The site was not included in the Farnham Neighbourhood Plan and was for a greenfield development on land that had been designated for an extension of the Surrey Hills AONB.

Council's decision was sought on whether or not there were sufficient grounds to make a legal challenge having weighed up the advice received on the prospects of success and the likely costs of a challenge.

Waverley officers initially advised that apart from grammatical errors in the decision letter which was badly phrased, there was no plan to make any challenge but FTC officers have been separately exploring all opportunities to see if there was any prospect of FTC challenging the decision separately. An initial meeting took place with Steve Tilbury, FTC's external planning advisor and discussions have taken place with the Director and Chair of the Surrey Hills AONB and its planning advisor.

Following the Council meeting on 27th July, FTC also commissioned a King's Counsel to check independently whether there were grounds for challenging, and if so, what would be the estimated likelihood of success on the grounds available. Ideally the commissioning of a legal opinion in terms of questions and costs would have been shared with Waverley, but the questions and answers were not shared and had only been summarised for FTC.

The most significant issue centred around the site allocations and environmental protections in the Neighbourhood Plan, and whether or not the Inspector gave sufficient consideration to Farnham Neighbourhood Plan Policies I4 and I0c. The South Farnham Residents' Association (SOFRA) had put in an enormous amount of work over several years in demonstrating the negative impact development would have, and the harm that would be made to the local environment which was designated as being of high landscape value and high sensitivity in the landscape study undertaken by HDA on behalf of the Town Council in preparing the Neighbourhood Plan.

Unfortunately, the Neighbourhood Plan no longer retained the 2 year protection for Made Neighbourhood Plans and the proposed NPPF changes (announced by Rt Hon Michael Gove in a Written Ministerial Statement in December 2022) extending this to 5 years had still not come into place. The Borough was short of its five-year land supply because approved sites were not being built out, which puts sites allocated in Neighbourhood Plans in a worse position than sites allocated in Local Plans. Cllr White said that effectively, this meant that communities are being held to ransom by developers.

In discussion, Cllr Wards said that if Farnham proceeded to get Leave to Appeal it would be acknowledged as having standards. He sought clarification on the likely costs and the Town Clerk advised this depended on whether Farnham could be a Rule 6 contributor (not applicable to Judicial Reviews) or whether the Aarhus Cap would apply. This principle limited the maximum payable by individuals or small organisations like parish councils.

Cllr Merryweather endorsed the comments from Zofia Lovell and Noel Moss. Farnham and the community had been failed. Everything asked of us had been done, he said, but we have been failed by the government, failed by the Planning Inspectorate and failed by the developers. Developers prefer to build on greenfield spaces as they were more profitable and were not building homes they had permission to build.

He hoped Waverley would give its support to Farnham as all Neighbourhood Plan areas were at stake.

Cllr Hesse felt there were completely inconsistent decisions coming out of the Planning Inspectorate and the candidate area for the AONB would be swept aside.

Cllr Martin said this was one of the most important decisions Farnham would take. The council needed to fight back and seek Leave to Appeal. Cllr Murray agreed saying this was a David and Goliath story. If Leave to Appeal were given, the Council could crowd fund for the costs.

Cllr Mirylees said there was need to have a balance between the need for housing and keeping the countryside for people's well-being.

Cllr Beaman said that it was really important that the appeal was supported by Waverley.

Cllr Ward underlined the need for Farnham to do the best it could for the people of Farnham. If Waverley went ahead with a challenge then Farnham should go with them. If

Waverley did not lead then Farnham should as the town expects the town council to take a stand, and the costs were comparable with the spend on Farnham in Bloom.

In response to a question by Cllr Hesse, Steve Tilbury confirmed that town and parish councils regularly undertook challenges. The chances of success were as good as the arguments put before the judge and some challenges succeed when no-one else thought the applicant would succeed.

He advised that this would not be the case of the court re-deciding the planning application, but determining if the process was carried out correctly and there was a proper interpretation of policy. The Planning Inspectorate would, if the challenge were successful, have to reconsider the application and it could make the same decision again. He reminded Council that Inspectors had a significant scope to make a judgement. People will differ in their interpretation of the judgement but did the Inspector provided adequate reasoning and understand the key points.

C48/23 **Date of Next Meeting**

The date of the next meeting was agreed as 14th September 2023 at 7pm.

C49/23 **Exclusion of the Press and Public**

In order to consider the legal opinions taken by Council, which were privileged information, the Mayor proposed, Seconded by Cllr Murray, that the Council move into confidential session. This was **RESOLVED unanimously** and the press and the public left the meeting.

C50/23 **Discussion on the Legal and professional advice provided to Farnham Town Council**

In confidential session, councillors reviewed the Counsel's opinion and the key matters that would form the case if a decision were made to progress with a Judicial Challenge and considered whether or not it wished to a) instigate a Judicial review on its own; b) support a Judicial Review led by Waverley Borough Council as a Rule 6 (or equivalent) supporter, and with a financial contribution; or c) not to pursue a further legal challenge having considered the potential prospects of success.

After further discussion, the preferred position was for Farnham Town Council to support a challenge by Waverley, but if Waverley were not to take the lead, then Farnham Town Council was prepared to take the lead.

Cllr Ward acknowledged the very clear and valuable advice given by officers and the Town Clerk on the risks of a challenge. The view of Council was that if there was a chink in the armour of the Inspector's arguments then this should be pursued and this was not just a fight for Farnham, it was a fight for all candidate areas for an AONB extension, and for all Neighbourhood Plans.

On putting the matter to a vote, it was **RESOLVED unanimously to support a Judicial Challenge on the Planning Inspector's decision on Planning Appeal APP/R3650/W/22/3311941 led by Waverley Borough Council, with Farnham Town Council as a Rule 6 supporter (or equivalent), and with a financial contribution.**

It was RESOLVED by 10 votes to 2 that Farnham Town Council should take the lead on the judicial challenge if Waverley did not do so.

It was RESOLVED unanimously to authorise the Town Clerk to negotiate the best way to progress decisions agreed by Council in consultation with the Co-Leaders and Mayor.

The Mayor closed the meeting at 9.15 pm

Chairman

Date