



Please reply to:

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Date: 16 March 2021

Notice of meeting

Cabinet

Date: Wednesday, 24 March 2021

Time: 6.00 pm

Place: Video conference call

The members of the Cabinet	Cabinet member areas of responsibility
J.R. Boughtflower	Leader
J. McIlroy	Deputy Leader
M.M. Attewell	Deputy Leader and Portfolio Holder for Community Wellbeing and Housing
R.O. Barratt	Portfolio Holder for Compliance, Waste and Risk
S. Buttar	Portfolio Holder for Finance
R. Chandler	Portfolio Holder for Leisure Services and New Leisure Centre Development
A.J. Mitchell	Portfolio Holder for Planning and Economic Development
R.J. Noble	Portfolio Holder for Environment, Communications and Corporate Management

Councillors are reminded to notify Committee Services of any Gifts and Hospitality offered to you since the last Council meeting so that these may be entered in the Gifts and Hospitality Declaration book.

Spelthorne Borough Council, Council Offices, Knowle Green

Staines-upon-Thames TW18 1XB

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AGENDA

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- 1. Apologies for absence**
To receive any apologies for non-attendance.
- 2. Minutes** **5 - 18**
To confirm the minutes of the meeting held on 24 February 2021 as a correct record.
- 3. Disclosures of Interest**
To receive any disclosures of interest from councillors in accordance with the Council's Code of Conduct for members.
- 4. Leader's announcements**
To receive any announcements from the Leader.
- 5. Recommendation of the Audit Committee on Corporate Risk Management** **To Follow**
Councillor S. Buttar

To consider the recommendation of the Audit Committee following its review of the Corporate Risk Register.
- 6. Public Space Protection Orders - Unauthorised Mooring UPDATE** **19 - 22**
Councillor R. Barratt

To note the update on a potential unauthorised moorings PSPO.
- 7. Update on proposed injunction for unauthorised encampments** **23 - 26**
Councillor R. Barratt

To note the update on the proposed injunction for unauthorised encampments.
- 8. Urgent Actions** **27 - 28**
To note those urgent actions which have been taken by the Chief Executive in consultation with the Leader since the last Cabinet meeting on 24 February 2021.
- 9. Exempt Business**
To move the exclusion of the Press/Public for the following item, in view of the likely disclosure of exempt information within the meaning of Part 1 of Schedule 12A to the Local Government Act 1972, as amended by

the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006.

10. Exempt report - Transfer of properties from Spelthorne Borough Council to Knowle Green Estates Ltd. 29 - 40

Councillor S. Buttar

To consider the transfer of properties from Spelthorne Borough Council to Knowle Green Estates Ltd.

Reason for exemption

The appendices contain exempt information within the meaning of Part 1 of Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006 Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

11. Urgent items

To consider any items the Chairman considers as urgent.

12. Exempt report - Re-opening of Spelthorne Leisure Centres – request for funding - Key Decision 41 - 54

To consider an exempt report on a request for funding from Sports and Leisure Management to enable the re-opening of Spelthorne and Sunbury Leisure Centres.

Reason for Exemption

The report may be exempt from publication in accordance with Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006.

Paragraph 3: Information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in being transparent in transactions is outweighed by the financial affairs of the leisure operator being disclosed in discussions; this being financial information which is not publicly accessible. If the Council made this available to the public then it could impact the financial position of the operator as their competitors would have access to such information which in turn might affect the viability of the centres moving forward.

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Minutes of Cabinet

24 February 2021

Present:

Councillor J.R. Boughtflower, Leader
Councillor J. McIlroy, Deputy Leader
Councillor M.M. Attewell, Deputy Leader and Portfolio Holder for Community Wellbeing and Housing
Councillor R.O. Barratt, Portfolio Holder for Compliance, Waste and Risk
Councillor S. Buttar, Portfolio Holder for Finance
Councillor R. Chandler, Portfolio Holder for Leisure Services and New Leisure Centre Development
Councillor A.J. Mitchell, Portfolio Holder for Planning and Economic Development
Councillor R.J. Noble, Portfolio Holder for Environment, Communications and Corporate Management

Apologies:

None.

Councillors in attendance:

Councillor J.T.F. Doran
Councillor C. Bateson
Councillor R.D. Dunn
Councillor T. Fidler
Councillor K.M. Grant
Councillor V.J. Leighton
Councillor L. E. Nichols
Councillor D. Saliagopoulos
Councillor J.R. Sexton
Councillor R.W. Sider BEM
Councillor R.A. Smith-Ainsley

2817/21 Minutes

The minutes of the Cabinet meeting held on 27 January 2021 were agreed as a correct record.

2818/21 Disclosures of Interest

There were none.

2819/21 Leader's announcements

The following are the latest service updates from various Council departments.

- Spelthorne was praised in a recent Local Government Association (LGA) Corporate Peer Review report after inviting the LGA to conduct a financial peer review of the Council in late 2020. As part of the LGA's first ever

virtual review, a team of senior officers, an experienced Council Leader from another authority and government experts from across England undertook virtual interviews and focus groups with Spelthorne's staff, Councillors and stakeholders, spending over 300 hours developing its findings. The report was shared with all Councillors once it was received and published on our website with an accompanying press release on the 29 January.

- The Council has partnered with the Purple Angels to launch the 'Send a Smile' campaign which encourages young people to send positive messages and drawings to residents living with dementia.
- Work to build an extension at the Fordbridge Day Centre in Ashford has begun to allow more visitors.
- Our Support4Spelthorne Community Hub is still open for residents needing support during the pandemic. To get in touch, call 01784 446446 or email covid19welfare@spelthorne.gov.uk (Monday - Friday, 9am - 6pm).
- At the extraordinary Cabinet meeting on 25 January it was agreed that work on three proposed developments in Staines-upon-Thames would be placed on hold until the Annual Council Meeting in May to allow time for further analysis and consultation to take place. A planning application for a key worker housing development on Victory Close in Ashford has also been deferred until the March Planning Committee to enable improvements to be made to the scheme.
- The Deputy Leader, Councillor Jim McIlroy has written to the Secretary of State for Homes Communities and Local Government, Robert Jenrick MP, to express concern regarding the housing target which has been set by the Government for Spelthorne.
- Phase one of the redevelopment of Benwell House on Green Street in Sunbury is on target for completion in March and will provide 55 new homes, 27 of which will be affordable.
- Production of the Staines Development Framework, formerly known as the Masterplan, has reached the next stage as Spelthorne prepares to launch a public consultation this spring. Once adopted, the Framework will set a clear vision and strategy for the transformation and regeneration of the centre of Staines. It is anticipated that the consultation will run for six weeks from mid-April to late May 2021.
- The Council recently announced the purchase of former Marks & Spencer building in the heart of Staines-upon-Thames, which will support the Council's regeneration plans for the town centre.
- Following the presentation of new evidence at a Public Inquiry into the closure of the railway crossing at Moor Lane, Spelthorne Council has taken the decision to withdraw its objection to the closure.

- A consultation is underway to establish whether residents support the introduction of a Public Space Protection Order prohibiting the possession and use of 'legal highs' such as Nitrous Oxide. The consultation closes on Sunday 28 February.

2820/21 Recommendations from the Overview and Scrutiny Committee

Cabinet considered the recommendations contained in the report from the Overview and Scrutiny Committee on the Draft Capital Strategy 2021 to 2026 and Detailed Revenue Budget for 2021/22.

The Chairman of the Overview and Scrutiny Committee, Councillor Leighton, informed the Cabinet that the Committee had discussed both items in detail as reflected in the minutes of the meeting with the main points as follows.

The Draft Capital Strategy

Members of the Overview and Scrutiny Committee expressed the view that although it was a live document the Strategy was too long and that it needed to be stripped back and re-written.

The Overview and Scrutiny Committee acknowledged that there was not time for a complete re-write but that the historical appendices could be removed and some tweaks made.

The Chairman of the Overview and Scrutiny Committee acknowledged that officers had already made amendments to make the Strategy more concise.

Resolved that Cabinet agreed with the three recommendations of the Overview and Scrutiny Committee (noting that recommendations 2 and 3 had been implemented) as follows:

Recommendation 1: That in future the Strategy is more forward focused, and a tracked changes version is available for members to review to see how the Strategy has evolved.

Recommendation 2: That officers update the Strategy to make it more concise, replacing appendices with links where possible, prior to being presented to Cabinet on 24 February 2021.

Recommendation 3: That the information provided in paragraph 6.9 is updated to make it clear that the figures quoted are from the Strategic Land Availability Assessment and not any future planning application or any previous development scenarios members may have seen.

Detailed Revenue Budget

The Chairman of the Overview and Scrutiny Committee advised Cabinet that members of the Overview and Scrutiny Committee felt that they needed to have access to the budget earlier to enable them to be fully involved in the shaping of the budget.

The Overview and Scrutiny Committee were concerned over the adequacy of the monies set aside for green issues and climate change, which they believed undermines the pledge in the draft Capital Strategy that climate change is a Council priority.

Resolved that Cabinet agreed with the two recommendations of the Overview and Scrutiny Committee (noting that recommendation 1 had been implemented) as follows:

Recommendation 1: The Committee was concerned over the adequacy of the monies set aside for green issues and climate change, which undermines the pledge in the draft Capital Strategy that climate change is a priority and asks Cabinet to review this.

Recommendation 2: That next year the Overview and Scrutiny Committee (or Service Committees if the Council agrees to adopt the Committee System governance model at the Annual Council meeting in May) will have sight of the budget earlier in the process to enable them to be fully involved in the shaping of the final budget before it is presented to Council for approval.

2821/21 *Treasury Management Strategy Statement 2021/22

Cabinet considered the Treasury Management Strategy Statement 2021/22.

Cabinet noted that the Council had taken advice from its Treasury advisers, Arlingclose, to ensure a prudent and robust approach was taken in this strategy.

Resolved to:

1. **recommend** that Council approves the Treasury Management Strategy for 2021/22 as set out in the report, and
2. note the updated Treasury Management Practices (TMP) and Schedules.

Reason for decision:

The Council is required to approve a strategy before the start of the financial year and the Council had taken advice from its Treasury advisers, Arlingclose, to ensure a prudent and robust approach in this strategy.

2822/21 *Capital Strategy 2021 to 2026

Cabinet considered the Capital Strategy Report 2021 to 2026.

Cabinet noted that the Strategy for 2021 was very different to those that preceded it and that it puts 'front and centre' how the Council's new priorities of delivering affordable housing, achieving the regeneration of its town centres and ensuring a sustainable future in recognition of declaring a climate change emergency are to be delivered.

Members noted that over the past few years private developers had failed to provide sufficient affordable housing to meet the growing needs of the

Councils residents and that the Capital Strategy sets out how the Council will actively reverse this trend by directly intervening in the direct delivery of additional housing and affordable homes, and that there is a commitment that Council developments will deliver at least 50% affordable provision on its schemes.

Cabinet noted that Spelthorne Council had joined a growing number of domestic and international authorities in declaring a climate emergency and adopting a carbon-neutral target, that a Climate Change Task Group had been set up and that the Council had started assessing its own carbon footprint, along with developing a carbon trajectory to reach carbon neutrality, and that focus areas for capital investment in green measures included a new Spelthorne Leisure Centre to be the first fully compliant Passivhaus Leisure Centre in the country.

Resolved to recommend that Council approves the Capital Strategy for 2021 to 2026.

Reason for decision:

There has been a statutory requirement for every authority to have a Capital Strategy in place since April 2018 and it must be formally adopted by Council.

2823/21 *Capital programme 2021/22

Cabinet considered the Capital Programme and Strategy 2021/22 to 2024/25

Resolved to recommend that Council approves the proposed Capital Programme for 2021/22 to 2024/25 and Prudential Indicators for 2021/22 to 2024/25 as set out in the report.

Reason for Decision:

To enable the Authority to develop its Capital Investment Programme and agree the inclusion of the new Capital Bids within the Capital Programme

2824/21 Fees and Charges 2021/22

Councillor Buttar introduced the report and advised Cabinet that a record was missing from the list of charges and that this missing record (1243) was the Street Trading pre application Fee of £86.50.

Cabinet noted that the Council must perform a balancing act between maximising additional income that can be generated through fees and charges and setting fee levels which are sustainable whilst being mindful of the impact on residents and the local business community from any increases in fees and charges.

Resolved to approve the proposed fees and charges for 2021/22 as set out in Appendix A of the report.

Reason for Decision:

Fees and Charges are an important source of income for the authority each year and are a key importance in balancing the budget.

2825/21 Annual Grants 2021/22 - Key Decision

Cabinet considered the Annual Grant Awards 2021/22 report and noted that the Council had maintained its funding for voluntary organisations this year, making £209,600 available for allocation along with a carry forward of £34,650 from last year meaning a total of £244,250 was available to be allocated.

The Grants Panel met in December 2020 and January 2021 to assess the applications received and £228,200 was allocated and will be paid in April 2021. The surplus of £16,050 has been ring-fenced for projects which may arise during the year.

Alternative options considered and rejected by the Cabinet:

Not to award grants as recommended.

Resolved that:

1. the grants awards for 2021/22 be approved,
2. all other support to the voluntary/charity sector be noted,
3. £3k to be donated to the Mayor's charities from the grant fund, and
4. any unallocated Councillor's Better Neighbourhood Grant monies be transferred to the Grants Panel for allocation.

Reasons for decision:

1. Agreement of the award grants for 2021/22 will enable existing charities and voluntary organisations to continue to provide support, assistance and other essential service for Borough residents and new organisations to begin to provide such services.
2. Cabinet would like to support the Mayor's charities in a year when fundraising has been made difficult due to COVID-19.
3. Transferring unallocated Councillor's Better Neighbourhood Grants will allow this funding to be allocated to local organisations.

2826/21 *Pay Award 2021/22

Cabinet considered the Pay Award 2021/22 report noting that a number of consultation meetings had been held with UNISON and an agreement had been reached.

Cabinet agreed that to award less or no pay award would affect the motivation and retention of staff and if they did not remove scale points 8 and 9 from Scale 1 lower paid staff would receive a less meaningful incremental increase.

Resolved to recommend that Council approves the 2021/22 pay award and deletion of scale points as follows:

1. 0.75% to all scale points including personal salaries and apprentices;
2. An additional 0.25% for scales 1 to 3;
3. A one-off, non-consolidated payment of £100 (gross) to all staff (excluding casual workers), and
4. The deletion of scale points 8 and 9 from Scale 1

Reason for decision:

As a result of moving to local pay on 1 April 2019, the pay award for 2021/22 is to be decided by full Council.

The pay award is made to help attract and retain staff and is in recognition of their ongoing hard work and dedication in supporting the Council's services.

The one off payment of £100 was in recognition of the additional efforts staff had made to ensure services were delivered as usual during the pandemic.

The deletion of the scale points is to remove the discrepancy of a minor increment between scale points and to allow for a fair incremental increase between each point.

2827/21 *Pay Policy Statement 2021/22

Cabinet considered the Pay Policy Statement 2021/22.

Cabinet noted that the Discretions Policy (an appendix of the Pay Policy) had been reviewed to include the Exit Cap Regulations, which came into force on 4 November 2020, and to reflect the potential changes to the Discretions Policy should the Reforming Local Government Exit Pay and Local Government Pension Scheme (Restriction of Exit Payments) Regulations, currently in consultation, come into force in 2021

Resolved to recommend that Council approves the Pay Policy Statement.

Reason for decision:

The Pay Policy Statement must be agreed by full Council and be published by 31 March each year.

2828/21 *Detailed Revenue Budget for 2021/22

Cabinet considered the Revenue Budget for 2021/22.

Cabinet noted that the budget had considered the impact of COVID-19, but through sound financial management, the Council were able to propose a 0.0% increase in the Spelthorne Borough Council element of the Council Tax for 2021/22, to assist its residents during these challenging times.

Cabinet also noted that the Chief Finance Officer had taken on board the recommendations of the Overview and Scrutiny Committee and made an

additional £150,000 available for green initiatives enabling the Council to provide a total of £250,000 which would be in addition to the unused £900,000 Green Belt initiative which had been put into an earmarked reserve to be available to be called upon if required in the future, rather than returning the funds to the General Fund.

Resolved to recommend Council to agree

1. To approve a 0.00% increase on Band D for the Spelthorne Borough Council element of the Council Tax for 2021/22 and also that:
 - a) The revenue estimates as set out in Appendix 1 be approved
 - b) No money, as set out in the report will be appropriated from General Reserves in support of Spelthorne’s local Council Tax for 2021/22
 - c) The Council Tax base for the year 2021/22 is 39,016 Band D equivalent dwellings calculated in accordance with Regulation 3 of the Local Authorities (Calculation of Council Tax Base) Regulations 1992, as amended, made under Section 35(5) of the Local Government Finance Act 1992
2. To continue the Council’s Local Council Tax Support Scheme with the current rules and regulations.
3. To continue the complete disregard of war pension/armed forces pension income from benefit calculations.
4. To approve the growth and savings items as set out in the report’s appendices.
5. To note the Chief Finance Officer’s commentary in Section 4 of the report on the robustness of budget estimates and levels of reserves under Section 25 and 26 of the Local Government Act 2003.
6. To note that the Council Tax Base for the whole Council area for 2021/22 (Item T in the formula in Section 31b (3) of the Local Government Finance Act 1992, as amended (the ‘act’) should be 39,016 Band D equivalent dwellings and calculate that the Council Tax requirement for the Council’s own purpose for 2021/22 is £205.05 per Band D equivalent dwelling.

That the following sums now be calculated by the Council for the year 2020/21 in accordance with Section 31 to 36 of the Local Government Act 1992:

A	104,340,381	Being the aggregate of the amount which the council estimates for the items set out in Section 31A (2) of the Act taking into account all precepts
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		issued to it by Parish Councils
B	96,340,081	Being the aggregate of the amount which the Council estimates for the items set out in Section 31A (3) of the Act
C	8,000,300	Being the amount by which the aggregate at (A) above exceeds the aggregate at (B) above, calculated by the Council, in accordance with Section 31A (4) of the Act, as its Council Tax requirement for the year
D	205.05	Being the amount at (C) above divided by the amount at 5c (above), calculated by the Council in accordance with Section 31B (1) of the act, as the basic amount of its Council Tax for the year (including Parish precepts)
E	0	Being the aggregate amount of all special items (Parish precepts) referred to in Section 34(1) of the Act
F	205.05	Being the amount at (D) above less the result given by dividing the amount at (E) above by the amount at 5c (above), calculated by the Council, in accordance with Section 34(2) of the Act, as the basic

		amount of its Council Tax for the year for dwellings on those parts of its area to which no Parish precept relates
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That the following amounts be calculated for the year 2021/22 in accordance with Sections 31 to 36 of the Local Government Finance Act as amended by the Localism Act 2011:

A £	B £	C £	D £	E £	F £	G £	H £
136.70	159.48	182.27	205.05	250.62	296.18	341.75	410.10

Being the amounts given by multiplying the amount at (F) above by the number which in the proportion set out in Section 5(1) of the Act, is applicable to dwellings listed in a particular valuation band divided by the sum which in that proportion is applicable to dwellings listed in valuation band 'D', calculated by the Council, in accordance with Section 36(1) of the Act, as the amounts to be taken into account for the year in respect of categories of dwellings listed in different band.

That it be noted that for the year 2021/22 Surrey County Council and Surrey Police and Crime Commissioner have stated the following amounts (subject to ratification on 2 & 7 February) in precepts issued to Spelthorne Borough Council in accordance with Section 40 of the Local Government Finance Act 1992 for each of the categories of dwellings shown below:

	A £	B £	C £	D £	E £	F £	G £	H £
Surrey County Council	1,032.72	1,204.84	1,376.98	1549.08	1,893.32	2,237.56	2,581.80	3,098.16
Surrey Police & Crime Commissioner	190.38	222.11	253.84	285.57	349.03	412.49	475.95	571.14

That, having calculated the aggregate in each case above the Council in accordance with Sections 30 and 36 of the Local Government Finance Act 1992 as amended by the Localism Act 2011, hereby sets the amounts as the amounts of Council tax for the year 2021/22.

The Council has determined that its relevant basic amount of Council Tax for 2021/22 is not excessive in accordance with the principles approved under Section 52ZB Local Government Finance Act 1992.

As the billing authority, the council has not been notified by a major precepting authority that its relevant basic amount of Council Tax for 2021/22 is excessive and that the billing authority is not required to hold a referendum in accordance with Section 52ZK Local Government Finance Act 1992.

Reason for decision:

The Authority is required to set a balanced budget and a Council tax rate for the financial year 2021/22.

2829/21 Capital Monitoring Q3 (Oct-Dec)

Cabinet considered the Capital Monitoring Report 2020/21 as at 31 December 2020.

Resolved to note that the current level of actual spend, committed spend and projected underspend in capital expenditure in 2020/21 as at 31 December 2020.

2830/21 Revenue Monitoring Q3 (Oct - Dec)

Cabinet considered the Revenue Monitoring Report 2020/21 as at 31 December 2020.

Resolved to note that the forecast outturn for 2020/21 as at 31 December 2020.

2831/21 Managed Service for the Incubator

Cabinet considered the Management of Incubator report and noted the amendment to the recommendation that the contract term be for 3 years at a nominal rent noting that it is a concessions contract that can be terminated at any time with 1 months' notice and a possible extension after 3 years.

Cabinet noted that there were 28 businesses that opened the Request For Quote (RFQ) but only one tender for the contract was made from a company who already successfully manage two other incubators of a similar size in Surrey. Cabinet further noted that the lack of tenders was more than likely due to this being a niche market, and as a result not many businesses were equipped with the experience and skill set required to bid.

Alternative options considered and rejected by the Cabinet:

Not to enter into the contract and instead recruit a manager for the premises as a paid employee of the Council to run the incubator on behalf of the Council.

Not to enter into the contract and instead use existing staff from the Economic Development Team to run and manage the incubator.

Resolved to agree to enter into a contract to manage the Business Incubator with the tender specified in Appendix B to include the grant of a lease of the premises at the Summit Centre 33 Hanworth Road Sunbury on Thames for a term of 3 years at a nominal rent noting that it is a concessions contract that can be terminated at any time with 1 months' notice and a possible extension after 3 years.

Reason for Decision:

Under contract standing orders the appointment of a contractor for a contract of this value sits with Cabinet.

The tender achieved a very high score, so, although only one application was received, it was of a very high standard and strongly recommended for this contract.

2832/21 Transfer of properties from Spelthorne Borough Council to Knowle Green Estates Ltd.

Councillor McIlroy informed the Cabinet that he had asked officers to provide more information on the transfer before Cabinet consider the matter and requested that the item be deferred and considered by Cabinet at its next meeting on 24 March 2021.

Resolved to defer the item for consideration at the next Cabinet meeting on 24 March 2021.

2833/21 Urgent Actions

The Chief Executive advised Cabinet that since the publication of the agenda there had been an additional urgent action taken on 24 February 2021 to agree a new letting in the Charter Building.

Cabinet noted the three urgent actions taken by the Chief Executive in consultation with the Leader since the last Cabinet meeting in January 2021.

2834/21 Urgent items

There were none.

2835/21 Establishing a Programme Board

Cabinet considered the draft terms of reference for the Assets Programme Board published in the supplementary agenda.

Resolved to establish the Assets Programme Board (Investment and Development) as a Sub-Committee of Cabinet and agreed the terms of reference.

NOTES:-

- (1) *Members of the Overview and Scrutiny Committee are reminded that under Overview and Scrutiny Procedure Rule 16, the “call-in” procedure shall not apply to recommendations the Cabinet makes to the Council. The matters on which recommendations have been made to the Council, if any, are identified with an asterisk [*] in the above Minutes.***
- (2) *Members of the Overview and Scrutiny Committee are entitled to call in decisions taken by the Cabinet for scrutiny before they are***

implemented, other than any recommendations covered under (1) above.

- (3) Within five working days of the date on which a decision of the Cabinet or a Cabinet Member is published, not less than three members [one of whom must be the Chairman] of the Overview and Scrutiny Committee are able to "call in" a decision;***
- (4) To avoid delay in considering an item "called in", an extraordinary meeting of the Overview and Scrutiny Committee will be convened within seven days of a "call in" being received if an ordinary meeting is not scheduled in that period;***
- (5) When calling in a Cabinet decision for review the members doing so should in their notice of "call in":-***
 - Outline their reasons for requiring a review;***
 - Indicate any further information they consider the Overview and Scrutiny Committee needs to have before it in order to conduct a review in addition to the written report made by officers to the Cabinet;***
 - Indicate whether, where the decision was taken collectively by the Cabinet, they wish the Leader or his nominee (who should normally be the Cabinet Member) or where the decision was taken by a Cabinet Member, the member of the Cabinet making the decision, to attend the committee meeting; and***
 - Indicate whether the officer making the report to the Cabinet or the Cabinet Member taking the decision or his/her representative should attend the meeting.***
- (6) The deadline of five working days for "call in" by Members of the Overview and Scrutiny Committee in relation to the above decisions by the Cabinet is the close of business on 4 March 2021.***

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Cabinet

24 March 2021



Title	Update on potential moorings PSPO
Purpose of the report	To note
Report Author	Jackie Taylor Group Head of Neighbourhood Services
Cabinet Member	Councillor Richard Barratt
Confidential	No
Corporate Priority	Clean and Safe Environment
Recommendations	Cabinet is asked to note this report.
Reason for Recommendation	Not applicable

1. Key issues

- 1.1 For many years Spelthorne has encountered issues and problems with boats who overstay the 24 in 48 hour mooring by laws. Dealing with these overstayers is time consuming in that we are required to follow due process in terms of warnings & prosecutions.
- 1.2 In 2018 the River Thames Task Group was set up and one of the actions from this group was to deal with this overstaying and by law issue.
- 1.3 In July 2019 a report went to Cabinet and the recommendation from the report was for officers to engage with the community on a proposed change to enforcement on the River Thames and work on partnership with other councils to achieve a consistent approach to mooring enforcement in the area.
- 1.4 After a series joint of meetings between operational and legal officers it was agreed jointly by Elmbridge, Runnymede and Spelthorne to go out for public consultation on a potential mooring Public Space Protection Order (PSPO) and to undertake a review of moorings byelaws and managed moorings. Having also engaged with the Environment Agency (EA) it was also hoped that they would be willing to get involved.
- 1.5 The initial public consultation was published in August-September 2019 for 4 weeks. The survey created 53 responses, 32 of which were from Spelthorne residents, including local organisations. Almost all agreed that there was a need for enforcement of illegally moored boats.
- 1.6 Out of the 53 responses, 41 responders had been affected by antisocial behaviour (ASB), including drunken behaviour and obscene language (13),

lack of mooring spaces (12), unsightly nature of vessel (10) and concerns of pollution of Thames and unsafe navigation (6).

- 1.7 In addition, 2 formal written responses were received from the National Barge Traveller Association and the Birmingham Community Law Partnership. These both claimed that the consultation was flawed and failed to meet minimum standards required by law. There were also claims that consultation breached the legislation by not publishing a draft PSPO order, nor showing the detrimental effect on the community as required by law. There were also allegations of breaches of the Equalities Act 2010, because the Gypsy Romany traveller community (GRTC) have protected characteristics and as no assessment had been carried out this could raise alleged breaches of Articles 6 (fair trial) and 8 (right to a private life) of the Human Rights Act 1998.
- 1.8 It would be fair to say that neither were in favour of any of the options mooring PSPO, review of moorings byelaws or managed moorings. The only supported option was to do nothing. They further stated that they would appeal to the Courts if a PSPO was imposed, which is their right under s.66 ASB Crime and Policing Act 2014.
- 1.9 As a result of the consultation, Runnymede Council decided that as they had very few public moorings, they would do nothing. Elmbridge Council decided to opt for managed moorings and employed District Enforcement; similarly, the EA also engaged District Enforcement.
- 1.10 Research was carried out by Spelthorne Officers to ascertain whether there were grounds to pursue a PSPO. The period researched was between 2017-2020, during which time a total of 55 mooring complaints were received, of which 4 were complaints of ASB and the remainder were complaints relating to mooring overstaying. During the same period, a total of 225 overstayer warnings and 17 abandoned vessel notices were issued to boats moored on Spelthorne sites, and of those 4 were removed and disposed of by the Council. In relation to the allegations of ASB, these were all dealt with by the issuing of Community Protection Warnings and then the enforceable Community Protection Notices. All boats have since complied and no Fixed Penalty Notices were issued, or Court Proceedings taken.
- 1.11 The level of ASB complaints did not reach the standard that would allow a full consultation on a PSPO. Therefore, any imposition of such an order would likely be appealed and the Council would be in breach and subject to a Court sanction and costs order.
- 1.12 The officers also researched whether Moorings PSPO's had been successful in England and it appears that there are no successful PSPOs in place in the UK.
- 1.13 Two high-profile moorings PSPOs were proposed by Oxford City Council in 2016 and Reading Borough Council in 2018, but both were ultimately unsuccessful due to the intervention of the National Barge Travellers Association and the Community Law Partnership.

The criteria for a PSPO is as follows:-

- **Section 59 power to make orders.**
- **A local authority may make a Public Spaces Protection Order if satisfied on reasonable grounds that two conditions are met:**
- **The first condition is that—**
 - **activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or**
 - **it is likely that activities will be carried on in a public place within that area and that they will have such an effect.**
- **The second condition is that the effect, or likely effect, of the activities—**
 - **is, or is likely to be, of a persistent or continuing nature,**
 - **is, or is likely to be, such as to make the activities unreasonable, and**
 - **justifies the restrictions imposed by the notice.**

2. Options analysis and proposal

- 2.1 There are no options as Spelthorne officers are of the belief that currently we have insufficient grounds to go out for formal consultation and successfully obtain a Moorings PSPO.
- 2.2 Mooring enforcement will continue to be undertaken by the Joint Enforcement Team (JET) and any isolated cases of ASB will be dealt with by way of the issuing of community protection warning letters and notices.

3. Financial implications

- 3.1 At this stage there are no financial implications as all work is carried out by our own legal and JET officers.

4. Other considerations

- 4.1 If Spelthorne were to reconsider the potential for a PSPO a full Equality & Diversity analysis would need to be undertaken by officers as noted in 1.4 of this report.

5. Timetable for implementation

- 5.1 There is no timetable, as management and enforcement of the moorings will continue to be carried out by the JET officers as and when the need arises.

Background papers:

Appendices:

There are none

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Cabinet

24 March 2021



Title	Update on proposed injunction for unauthorised encampments
Purpose of the report	To note
Report Author	Jackie Taylor Group Head of Neighbourhood Services
Cabinet Member	Councillor Richard Barratt
Confidential	No
Corporate Priority	Clean and Safe Environment
Recommendations	Cabinet is asked to: Note the update provided in this report
Reason for Recommendation	Not applicable

1. Key issues

- 1.1 In July 2018 due to the increasing level of Unauthorised Encampments (UEs) in our parks and open spaces, a need was identified to apply for an injunction to protect all parks and open spaces within Spelthorne under s 222 Local Government Act 1972 and s 187B Town and Country Planning Act 1990.
- 1.2 A barrister was appointed by legal in early August 2018 and a full set of papers detailing all UE's back to 2015, including a full evidential statement outlining all events from start to finish, was provided.
- 1.3 We have had to overcome many hurdles in trying to get an injunction request through to the Court. The 1st was obtaining a full evidential statement from Surrey Police and full incident details of the UE's from their computer aided despatch messages. Plus vehicles on the UE sites, including the registered keepers of the vehicles. These details were necessary due to the nature of the injunction application, as we could not obtain an injunction solely against persons unknown. Any application put before the courts for an injunction requires named individuals and persons unknown.
- 1.4 After 9 months of trying to get the information, the Police stated that they could not release details of vehicles and keepers on UE sites due to GDPR rules. This decision was mainly based around the fact that Surrey Police do not own the data relating to the vehicles, as it belongs to the DVLA. Council Solicitors spent a considerable amount of time chasing the Police decision and then appealing the Police decision to no avail.
- 1.5 In light of this, Council officers approached the DVLA and explained the situation in detail and were able to apply directly to the DVLA in October 2019

for details of registered keepers of selected vehicles used in UE's from June 2017 to 2 October 2019 (normally DVLA policy only allows checks within the previous 6 months; this was waived due to the nature of the application).

- 1.6 Of the submitted checks, 60 returned current keepers, and all this information was submitted to the Barrister to enable the injunction application to list the named persons and then add persons unknown.
- 1.7 At the same time as this, several London Boroughs that had previously obtained injunctions through the judicial system were having these challenged in the High Court by lawyers representing the Gypsy, Romany, and Traveller Community (GRTC).
- 1.8 In January 2020, The Court of Appeal considered the appeal against the injunction granted to the London Borough of Bromley but at the same time widened the scope to look at all 38 Injunctions granted to other District and Borough Councils against unnamed persons. The appeal Judge decided that the injunction to restrain trespass on Council sites was disproportionate. The decisions behind this ruling were –
 - **The injunction was too wide and amounted to a boroughwide prohibition of encampment for entry/occupation for residential purposes in all accessible public spaces in Bromley.**
 - **The injunction was not aimed specifically at prohibiting antisocial or criminal behaviour, just entry and occupation.**
 - **There was a lack of alternative public sites in Bromley (transit sites).**
 - **The cumulative effect of such injunctions.**
 - **There had been no equality impact assessment or consideration given to Article 8 of the Human Rights Act 1998 (Right to a private life), rights of the gypsies or the best interest of the children.**
 - **There had been no engagement with the gypsy community.**
- 1.9 The Court of Appeal also accepted that that the ability to travel (and to stop on a temporary basis while travelling) was an integral part of the gypsy way of life and was also protected by Article 8 as above.
- 1.10 The Judge also commented on the absence of sufficient transit sites and the lack of any attempt to deal with the issue and without such sites unauthorised encampments would continue and these forms of injunction could well put local authorities in breach of both the Human Rights and the Equalities Act 2010, under which members of the GRTC have protected characteristics.
- 1.11 The Judge stated that any injunction application must include in evidence what other suitable and secure alternative housing or transit sites are reasonably available. If there is no alternative site, no proposal for such a site and no support for the provision of such a site, then that may weigh significantly against the proportionality of any injunction.
- 1.12 In relation to persons unknown on injunction applications, the court has also decided that they cannot litigate without more detail, so all unknown persons

must be fully described, and a final order can only be made against persons who have been identified and served with the relevant documentation.

- 1.13 As a result of the appeal decision in the case of the LB of Bromley v Persons unknown and the London Borough of Enfield injunction and the 38 other Borough and District Councils with injunctions, the Judge has invited that all of these be joined and that a directions hearing be listed for January 2021 to thrash out all the above issues.

2. Options analysis and proposal

- 2.1 There are no options as the judge has already made it known that any injunctions put before the courts at this time will be rejected until such time as the issues in the Bromley & Enfield injunctions have been resolved.

3. Financial implications

The cost of external Legal Advice to Spelthorne Council in relation to the injunction process to date currently stands at £9,900.

4. Other considerations

- 4.1 An equality impact assessment had been provided by Spelthorne officers as part of the court papers and this will need to be completely reviewed once the outcome of the January 2021 hearing is made publicly available.

5. Sustainability/Climate Change Implications

- 5.1 Not applicable

6. Timetable for implementation

- 6.1 The hearing date was set for January 2021, but at this stage there have been no reports on details of the hearing and the judge has given no indication as to when the outcome of the hearing will be made available. We would anticipate this to be the latter half of 2021.

Background papers:

Appendices:

There are none

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Urgent actions

Cabinet 24 March 2021

These are the urgent actions which have been taken since the last Cabinet meeting on 24 February 2021.

The following urgent actions were agreed by the Chief Executive in consultation with the Leader, on the following dates and for the reasons stated. These are not Key Decisions.

DATE	ACTION	REASON FOR URGENCY
26 February 2021	A new letting in 105 – 107 (Former M&S) Hight Street, Staines-upon-Thames.	To secure the transaction completion of the letting before the Cabinet or its Sub-Committee was next due to meet
15 March 2021	A new letting in the Elmsleigh Centre (unit 18), Staines-upon-Thames.	To secure the transaction completion of the letting before the Cabinet or its Sub-Committee was next due to meet

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