

Council – 22 October 2020

Item 7c. General Questions submitted to Council on 30 July 2020

1. First question from Councillor R.W. Sider, BEM

“At the meeting of the full Council on the 18th of July 2019 I placed the following Motion before the Council. It was, ‘That Officers investigate whether it is feasible to enter into a reciprocal agreement with Surrey County Council for Spelthorne Borough Council to act on their behalf to remove Travellers encamped when on the highway and append such charges involved to Surrey’. It was seconded by Cllr Barnard. The motion was debated and the Leader of the Council said - quote - ‘I think it is something that we can ask officers to explore and then report back to the portfolio holder. On that basis I will support your motion and ask members to do likewise. **The Motion was carried and it was Resolved ‘That officers investigate whether it is feasible to enter into a reciprocal agreement with Surrey County Council for Spelthorne Borough Council to act on their behalf to remove Traveller encampments when on the highway, and append such charges involved to Surrey County Council.’**”

My question is ‘It is now one calendar year since the foregoing resolution was debated and carried, and again Travellers have encamped in Old Charlton Lane, Shepperton, requiring officers from Surrey to deliver the relevant documentation to secure their removal. Can the Leader of the Council inform me what discussions with Surrey have taken place as required by the Motion of the 18th of July 2019, and what progress has been made in carrying out the requirements of the said resolution.”

Response from Councillor R. Barratt:

“Thank you for your question, Councillor Sider. Old Charlton Lane has been the subject of four unauthorised encampments in the last two years. The first was dealt with by the Police under a section 61 Notice pursuant to the Criminal Justice and Public Order Act 1994. The next two were dealt with by Surrey County Council under section 78 Notices.

The last encampment occurred on 7 July. Notices under section 77 of the Act were served by Surrey County Council Officers on 13 July, and a hearing at the Magistrates’ Court took place on 21 July.

Enquiries of officers at Surrey County Council have not been fruitful to date. Offers of an agency type arrangement have been made but we have been advised that Surrey County Council wishes to retain control of enforcement of this area, which is County Council highway land. Surrey’s officers will continue to work in close cooperation with Spelthorne Officers to ensure that any adverse impacts are minimised.”

2. Second question from Councillor R.W. Sider, BEM

“After a further invasion and encampment of Travellers in the borough in mid-summer last year, I requested that officers pursued through the legal means and through the Courts, an injunction along the lines that had been secured by our neighbouring borough, which would prevent them entering Spelthorne on any occasion. After one year, can the Leader inform me of the progress that has been made by officers to secure such an injunction?”

Response from Councillor R. Barratt:

“Since this was last discussed the Court of Appeal has handed down guidance in relation to injunctions which seek to prevent unauthorised encampments across boroughs. A number of issues were considered in the case of Bromley. The judgement was handed down on 21 January 2020. In that case the court was considering a number of issues in relation to an injunction which was refused by the High Court to grant a de facto borough-wide prohibition of encampment in relation to accessible public places, except cemeteries and highways.

The guidance set out by Lord Justice Coulson is as follows;

- There is a tension between the Article 8 rights of the Gypsy and Traveller community and the common law of trespass. The obvious solution according to the Judge is the provision of more transit sites.
- The guidance relating to the use of the statutory enforcement powers in relation to the Criminal Justice and Public Order Act 1994 does not suggest that a wide injunction is a satisfactory solution to the issues.
- Local authorities must engage with the Gypsy and Traveller community; this is a way of introducing negotiated stopping.
- If a local authority is considering such an injunction, then it will have to demonstrate proper engagement including welfare checks and an up to date Equalities Impact Assessment.

The Court of Appeal went on to comment that injunctions against persons unknown are exceptional as they may not be proportionate within the meaning of the Human Rights Act. The protected status will be given weight, and any council will have to show that they have complied with their general obligations to provide sufficient accommodation and transit sites. Councils are also required to have regard to the cumulative effect of other injunctions. The Court stated that borough-wide injunctions are inherently problematic.

On 10 July, Harlow District Council had to withdraw their application to renew a borough-wide injunction, in the light of this decision.

Wolverhampton Council is going through a similar process on 20 July in the High Court, although the facts are somewhat different as a transit site has been identified, and they were targeting specific sites, rather than a blanket approach. They have also estimated their costs would be in the region of £250,000 to £300,000 per annum.

In addition to this judgement, the effects of COVID -19 must also be taken into account. The Minister for Communities wrote to all councils in April about mitigating impacts on Gypsy and Traveller Communities during the COVID-19 pandemic. Any pursuit of a borough-wide injunction at this time could be seen as conflicting with this request and further reduce the likelihood of success.

Taking this into account, together with the recent Court of Appeal decisions and guidance given to Councils, it is highly unlikely that this authority would be successful in obtaining a borough-wide injunction in the current circumstances. Although our officers have been preparing for such an injunction, to continue to pursue this at this time could be costly for the authority and ultimately fruitless. Our officers will, however, continue to keep this under review in the event of any developments or changes in the law. In the meantime, the issue of a Surrey-wide approach to transit sites may need further consideration.”

3. Question from Councillor J. Sexton

“At the Cabinet meeting on 15th July the Leader stated at the very beginning ‘Can I remind everyone that mobile phones should be switched off or set to silent mode’. When Cllr. Attewell was reading one of her reports regarding homelessness she stopped and said ‘Sorry I’m reading this from my phone and someone just tried to call me’. This was followed shortly after by another interruption with Cllr Attewell saying ‘Oh gosh I’m never doing this again, I am reading this from my phone and people keep ringing me’.

Over 86 subscribers have now accessed the recording and it does not make the Spelthorne Council Cabinet look very professional. Will the Leader now ensure that Cabinet meetings are video recorded, as are the Planning committee meetings, in order to ensure that Cabinet members can be seen to be giving the role they are undertaking the attention that it deserves.”

Response from Councillor M. Attewell

“Thank you for your question Councillor Sexton. I am sure you will appreciate that we are in unusual times with meetings being held virtually. This presents difficulties for all of us when participating in such meetings and of course it is important to do whatever we can to prevent distractions.

In this instance I was not distracted by my phone; it was on silent mode and I was using it as a tool to assist my participation in the meeting. As you have brought this to the attention of our residents, I feel I must explain the reasons for my comments at the time. As I had been unable to access my notes from my laptop, I was therefore reading them from my phone. As I was doing so a call came up on my screen, this then happened a second time when they called a second time to leave a message. If the meeting had been on video, you would have seen that I was ‘giving my role the attention it deserves’, as would always be the case, and residents that know me would have no doubt about this.

It is, of course, essential that we all remain focused on the really important issues at this difficult time.

I can advise you that officers have already been discussing improvements to our webcasting facilities and this includes looking at video streaming of all Council, Cabinet and Committee meetings.”

4. Question from Councillor K. Grant

“Given the importance of the Environment portfolio to our Council Priorities and the general wellbeing of Spelthorne and its residents, can the Leader please explain why this position has not been filled in the new Cabinet? Can he begin to lay out his greener credentials that he expressed in his acceptance speech when elected Leader?”

Response from the Leader, Councillor J.R. Boughtflower

“Thank you for your questions Councillor Grant. I hope you feel I answered these to your satisfaction during my Leader’s announcements at the Council meeting on 30 July 2020.

I announced that Cllr Bob Noble was taking the role of Portfolio Holder for Climate & Environment. He is an advocate of climate change and has appointed members to the Climate Change Task Group.

The new administration takes protection of the environment for this, and future generations, seriously. Whilst the previous Administration’s approach aligned closely with delivering the Government’s target of net zero carbon emissions by 2050, we want to take steps to enable us as a Council to meet this target much sooner, so that we can pass on a better legacy to future generations of Spelthorne Residents.

To this end we recently declared a Climate Emergency and I have asked the Climate Change Task Group to make recommendations with more challenging targets and actions for the Council, which will help deliver zero net carbon emissions for this authority much sooner than the target set by the previous administration.”

5. Question from Councillor S. Dunn

“The Leader of Surrey County Council has announced that he intends to make the whole of Surrey one Unitary Authority. Can the Leader please advise us what communication or meetings have taken place to inform Spelthorne of these plans?”

Response from the Leader, Councillor J.R. Boughtflower

“Thank you for your question Councillor Mrs Dunn. I hope you feel I answered this to your satisfaction during my Leader’s announcements at the meeting held on 30 July 2020.

On 21st July 2020, Surrey County Council’s Cabinet decided to promote the concept of a Surrey-wide Unitary Authority covering the whole County. This led to the dispatch of a letter from the County Council’s Leader to the Secretary of State, outlining this intention.

Surrey Leaders, at their meeting on 17th July, expressed their disappointment at not being consulted ahead of the County's decision to push ahead with these actions.

I joined other Borough and District Leaders across Surrey in signing a letter to the Secretary of State registering that a Surrey-wide Unitary is not the optimum solution and that we are committed to exploring what would be."

I instructed the Chief Executive to urgently investigate alternative forms of Unitary Authorities and the timing of any such reorganisation that may be more advantageous to Spelthorne and its Residents, including any opportunities to collaborate with neighbouring authorities on this issue, and an extraordinary Council was held on 24 September to discuss these."

6. Question from Councillor B. Spoor

"When is Spelthorne Council going to lead the way and put 40-50% of their planned accommodation as affordable, which will provide the impetus for developers to increase their share of affordable housing in their submissions?

And in this context, will the Council also reconsider the Thameside House development, where no affordable housing is proposed?"

Response from the Leader, Councillor J.R. Boughtflower

"The Council has made the decision to embark on a journey to deliver much needed housing (of all types and tenures) as a result of the failure of the private housing market to build what is needed for our residents. To date there are 396 units either under construction or going through the planning process. As an authority, we are already committed to delivering 185 of these at affordable rent. This will mean almost 47% of the stock will be affordable rented – meeting the 40 to 50% range which Cllr Spoor has mentioned.

To date affordable housing has been delivered up front, which no private developer would do (for example the West Wing at Knowle Green will be 100% affordable). As a major landholder we can do what a house builder cannot – apply a portfolio-wide approach rather than looking at schemes on an individual basis. This enables us to maximise the affordable provision where it is most needed.

Notwithstanding the above, a commitment was made by myself and the Deputy Leader at the ECM on 25 June that there would be a review of key decisions, policies and actions. I can confirm that this includes the Council's approach on how we can best maximise affordable housing and ensure it is secured for the long term.

Clearly this is a critically important decision and we need to ensure that everyone is clear about what we want to achieve and how best to do this. Getting this right for the future of the borough and our residents is more important than setting an artificial deadline.

However, I can promise that any policy change will be subject to debate at the Overview and Scrutiny Committee, and Cabinet will make its final recommendations to Council so that the final decision is made by all councillors to ensure consensus and buy-in for the new direction of travel.

This will then set the framework for how the Council decides to put forward planning applications in the future, regardless of what the policies might say in the finally adopted Local Plan or as a result of a viability assessment.

I previously dealt with Cllr Spoor's question about the Council leading the way on affordable housing in my Leader's Announcements at the 30 July Council meeting, when I stated that as a Council, we have already started to deliver essential affordable units for our Residents. The new administration strongly supports this approach, but we want to go further. We believe we now have a real opportunity to increase the number of affordable units we deliver from our development schemes, which will align with the Council's policies and set an example to private developers, who unfortunately continue to fail to deliver the number and types of affordable units this Borough so badly needs.

In respect of the current application at Thameside House, as members are aware, the Council are treated no differently to any other applicant when a scheme is considered by the Local Planning Authority. Our schemes have to follow the same well-established viability regime that is applied and accepted nationally as part of the planning process.

As the Thameside House viability process is still ongoing it would not be prudent to comment or pre-empt its outcome. Once this has been concluded, the Council will then be in a position to establish whether additional voluntary housing at affordable rents can and will be made available. I would encourage you to judge this application on what ultimately ends up in front of our Planning Committee."

7. Questions from Councillor I.T.E. Harvey

1. Does the Leader still regard the Council's finances to be "in meltdown"?
2. Does the Leader agree that our Property Investment Strategy has made a profound contribution to our finances and our ability to provide and protect services to residents without financial constraints, as exemplified by our unconstrained response to the COVID19 crisis?
3. Can the Leader please explain why the following reports to cabinet have been withdrawn / postponed, and advise what meetings have been cancelled or postponed during his leadership?
 - Asset Management Plan (this was originally scheduled to go to Overview and Scrutiny before Cabinet)
 - Annual Asset Investment Report
 - Community Asset Policy

Response from the Leader, Councillor J.R. Boughtflower:

“I have no recollection of ever having made such a comment. However, having said that I can highlight that currently, as the Chief Finance Officer reported at the 30 July meeting, the financial impact of COVID-19 on the current financial year’s Revenue Budget is looking less adverse than was the case at the time of the 21st May 2020 Council meeting, when Cllr Harvey was Leader. The recent clarification of the Government’s further significant financial support for Councils, particularly the income-loss support package, has helped improve the position.

Following the recent support announcements, it looks likely that the additional reserves usage approved on 21st May by Council will be more than sufficient to cover COVID-19 financial impacts in 2020-21. We are therefore facing a healthier position now than we were. I do also recognise that currently our commercial assets are delivering £10m per annum to support the delivery of services for our residents. However, we will face very significant financial challenges for the next few years as a result of the broader ongoing economic impacts of COVID-19. For this reason, a focus on economic recovery will be a key priority for the Council, particularly with respect to Heathrow airport, aviation, logistics and retail sectors.

The Council holds a weekly detailed monitoring meeting to review the performance of the Investment Portfolio which I, the Deputy Leader and the Finance Portfolio Holder attend. We are actively involved in reviewing the robustness of our £20m of sinking funds balances at each of these meetings. Current work is indicating that our sinking Funds are more than sufficient to protect the Council’s Revenue Budget and council tax payers for the next ten years from potential temporary reductions in rental income.

As I have previously stated, my Administration are in the process of reviewing the Capital Strategy, the Asset Management Plan and other policies before we confirm how we move forward. It is for this reason that I have set up the Leader’s Working Group reviewing Property Investments.

In recognition of the concerns of residents and interest in the Council’s property activity, I am pleased to confirm that my Administration is inviting the Local Government Association (LGA) to undertake, next month, an independent Peer Review, or ‘health check’, into our corporate finances and property activity. Such Peer Reviews are regularly used by councils to obtain a constructive and independent perspective to recognise good practice and identify opportunities for improvements.

Given the level of scrutiny the Council is currently under with respect to our assets related activity and the concerns of residents, as reflected in some of the questions previously debated by Councillors, it is appropriate for the new Cabinet and Administration to ensure it fully understands asset related policies before they are put forward for consideration and approval by councillors. On 29 September 2020, as part of our emphasis on transparency

and cross chamber working, we provided Overview and Scrutiny Committee with the opportunity to review the Asset Management Plan.”

8. Questions from Councillor J. Doerfel

- How many applications for rent deferrals/rent remittals by commercial tenants has the Council received this year?
- How many of these have been granted and how many of these have been refused? How many are still outstanding for decision?
- Please provide us with information of the length of the rent periods for which rent will now not be paid by the companies in question (per company if the periods vary).
- How much is the total Council income that will now not be received by the Council during the length of those periods (i.e. the periods during which rent will not be received) and that would otherwise have been due under the pre-COVID 19 rental contracts?

Response from the Deputy Leader, Councillor J. McIlroy

“Thank you for your questions, Councillor Doerfel. I can confirm that during the calendar year (i.e. from 1 January 2020) the Council has received 17 applications for rent concessions. These include requests for rent holidays, rent deferrals or significant changes to the lease structure (e.g. moving from a fixed rent to a turnover rent mechanism).

To date, agreements have been reached with 12 tenants. Two applications have been refused by the Council, two are awaiting a decision and one is due to be submitted for recommendation imminently. Of the 12 agreements that have been reached, four have led to improved terms to the council, by way of extended lease term and/or net rental. This is a positive outcome bearing in mind the COVID-19 situation within which we are currently operating.

Where we have agreed rent deferments, the agreements have largely required tenants to pay 50% of the rent and full service charge for the quarter, with the outstanding 50% rent for the quarter repaid over periods of between six and 12 months. In all cases the full rent will ultimately be repaid. In terms of the individual tenants the following agreements have been reached:

- Tenant 1 – 50% rent for the March quarter repaid over six months
- Tenant 2 – 50% rent for the March quarter repaid over six months
- Tenant 3 – monthly payment plan, i.e. no overall delay in quarterly payment
- Tenant 4 – monthly payment plan
- Tenant 5 – monthly payment plan
- Tenant 6 – 50% rent for the March quarter repaid over 12 months, plus 50% rent for June quarter repaid over 9 months
- Tenant 7 – 50% rent for the March quarter repaid over 9 months

Tenant 8 – monthly payment plan

In the following three cases where leases have been extended, the rent free periods have varied between 7.5 months and 18 months depending on the additional lease commitment and are generally in keeping with market terms:

Tenant 9 – 5 year extension, 18 months' rent free on a phased basis covering four financial years. Value £4,456,755

Tenant 10 – 3 year extension, 15 months at half rent (i.e. 7.5 months' rent free). Value £25,000

Tenant 11 – 3 year extension, 8 months at half rent (i.e. 4 months' rent free) – It should be noted that this was agreed with the tenant pre-COVID. Value £240,619.

Finally, there is only one tenant where a rent deferment has been agreed in addition to extending their lease:

Tenant 12 - 50% rent for the March and June quarters repaid over 12 months and a 3 year extension, 24 months at half rent (i.e. 12 months' rent free). Value £1,029,516

The overall value of rent deferments agreed to date (i.e. where rent is not collected in the relevant quarter) is £921,475. Of this, £345,053 will be outstanding by the end of March 2021 reflecting 0.7% of the portfolio rent. This sum will have been repaid by the end of 2021.

The total value of rent free granted for lease extension deals is £5,751,890 (12.24% of the annual rent income) however the value of additional income secured in return is in the order of £19,992,000.”