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15 March 2016

Dear Member

Scrutiny Committee – 21 March 2016

I am now able to enclose, for consideration at the next meeting of the **Scrutiny Committee**, the following reports that were unavailable when the agenda was printed.

4 **MINUTES OF THE PREVIOUS MEETING** (*Pages 3 - 10*)

To approve as a correct record the Minutes of the last meeting of this Committee (to follow).

9 **POLICY FOR THE REMOVAL OF GYPSIES AND TRAVELLERS FROM LAND** (*Pages 11 - 14*)

At the request of the Committee, to receive a briefing paper from the Head of Housing and Property Services, regarding the removal of gypsies and travellers from land (to follow).

Yours sincerely

Julia Stuckey
Member Services Officer

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MID DEVON DISTRICT COUNCIL

MINUTES of a **MEETING** of the **SCRUTINY COMMITTEE** held on 11 March 2016 at 4.00 pm

Present

Councillors

F J Rosamond (Chairman)
Mrs H Bainbridge, Mrs A R Berry,
Mrs J B Binks, R M Deed, Mrs G Doe,
T G Hughes, Mrs J Roach, T W Snow and
N A Way

Apologies

Councillor(s)

Mrs C P Daw

Also Present

Councillor(s)

D R Coren, J M Downes, C J Eginton, F W Letch,
Mrs M E Squires and R Wright

Also Present

Officer(s):

Stephen Walford (Chief Executive), Jill May (Head of HR and Development), Liz Reeves (Head of Customer Services) and Julia Stuckey (Member Services Officer)

136 **APOLOGIES AND SUBSTITUTE MEMBERS**

Apologies were received from Councillor Mrs C P Daw.

137 **MINUTES OF THE PREVIOUS MEETING**

The minutes of the last meeting were approved as a correct record and **SIGNED** by the Chairman.

138 **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman had no announcements to make.

139 **MR JOHN FINN - CLINICAL COMMISSIONING GROUP**

The Chairman welcomed Mr John Finn, Managing Director of the Eastern Locality Northern Eastern and Western Devon Clinical Commissioning Group (CCG) to the meeting.

Councillor Mrs J Roach asked Mr Finn who made decisions regarding what could be prescribed in terms of gluten free bread and cakes? She asked was it possible to review this in the light of the fact that gluten free food was now readily available in supermarkets and health food shops?

Mr Finn replied that decisions regarding prescriptions were down to the individual GP. He stated that the CCG supported GP's to make the most effective use when prescribing but there were currently no formal guidelines for what they could

describe, although items were mainly staple items and not luxuries such as cakes and biscuits. Consideration was being given to guidance and he offered to provide an update at a future meeting.

Cllr Mrs Roach said that many people she knew had drugs on prescription which were available over the counter; they had them on prescription because the over the counter drugs were sold in relatively small packets. Most would be willing to pay for the drug. Was there any non-bureaucratic way of addressing this issue, thus freeing up money for cancer drugs etc?

Mr Finn replied that when possible, in small doses, people should be encouraged to buy their own items, such as paracetamol. However, he explained that limits on the number that could be purchased had been introduced to limit suicides and this had proved successful. He explained that a leaflet regarding medicines for self-care was being produced for instances where a pharmacist could help a patient to self-medicate.

Cllr Snow asked why medication was cheaper abroad than in this country to which Mr Finn explained that he was not aware of a price differential but that there had been a period of time when European companies were buying up stock and therefore pushing up prices, he considered that this practice had now ceased.

Cllr Mrs Roach then asked a question regarding bed blocking. She said that despite denials from many that bed blocking was a problem in Devon, she had seen at first hand the number of beds that were blocked on one ward by older people who were waiting for transfers from the RD&E. She asked who kept records of bed blocking and which organisation considered the impact of bed blocking on other agencies such as the ambulance service?

Mr Finn explained that records regarding bed blocking were kept by the provider and reported nationally on a monthly basis through the Better Care Fund. He considered that one provider for acute and primary care could help the situation (as in North Devon) and that he had aspirations that this would be the case when the Royal Devon and Exeter (RDE) took over in this area.

Cllr Mrs Roach then said that despite reassurances that Social Services and the NHS were able to provide care for people in their own homes, she had evidence that there were insufficient carers to meet the needs of people who required care at home. In one case it took thirteen months to find the care needed to enable someone to return home from a nursing home. Who was responsible for the overall planning and who was the named person who had that responsibility?

Mr Finn stated that transfer to a community hospital was not always the best course of action and that getting a patient back home was a main aim, with an appropriate care scheme in place. Commissioning of Social Care was the responsibility of the local authority (DCC). He had been advised that DCC had revised its procurement arrangements for social care by providing a number of accountable providers and he considered this to be a good step forward. Mr Finn offered to attend a future meeting of the Committee with DCC Officers in attendance so that they could each answer questions regarding their own areas of responsibility.

Cllr Mrs J B Binks asked Mr Finn how he viewed the value of IT and specifically tele-health and tele-care, given the huge problems of delivering health care in a large, sparse and rural county.

Mr Finn responded by saying that it was important to embrace IT but evidence was weak at the moment and its benefits needed to be proven by evidence based trials. He explained that some trials had been successful, including remote monitoring of prostate cancer patients. It was hoped that this could be rolled out into further areas, in particular for patient follow up and that with budgets being stretched this needed to be embraced. Mr Finn stressed however that these methods would only be used when they had been tested and it was proven safe to do so.

Cllr Mrs J Binks also asked for more specific details about the use of Crediton Community Hospital as a health hub following the recent decision to close inpatient beds. The people of Crediton and its rural catchment deserved facts not flummery on the exact services which were to be put in place to replace the inpatient beds facility, together with the rationale behind the thinking. Given the difficulties of rural transport and the lack of decent digital infrastructure in the rural surrounds, how were these services going to be accessed by all patients? Further, the question of ownership of property at Crediton Hospital, much of which was provided by the Crediton Hospital League of Friends for the benefit of inpatients and their friends and families, needed to be addressed transparently and speedily if recent actions like the withdrawal of support from LoF in Moretonhampstead were to be averted. How are you going to resolve the issue of property ownership here?

Mr Finn explained that the question of ownership was a national issue and that the CCG had been proactive in challenging this. National policy would not allow community ownership and the property still remained part of the NHS. Mr Finn explained that a single officer had been appointed to work with the local population regarding this; Charlotte Ives would be responsible for Development Hubs.

Cllr F J Rosamond asked with financial resources under strain, what mechanism would be adopted if rationing or a reduction in service provision was required?

Mr Finn stated that it was not a matter of rationing, but a matter of efficient use of health resources to provide care. He said that there were opportunities to free up resources and that for example the spend on elective surgery in this region was higher than elsewhere in the country. This needed to be investigated to find out why in order that resources could be used appropriately. He agreed that an aging population could be more prone to problems such as loneliness and depression and that funds diverted from elective surgery could be reinvested in these areas. The Hubs would also be proactive in this area.

Cllr Rosamond also said that he had heard that when consultants practiced at Tiverton Hospital, they could be limited in scope by the absence of key piece of equipment causing elderly people to travel to Exeter. What could be done to improve facilities within Tiverton Hospital?

Mr Finn explained that he hoped the forthcoming change of provider would help with this situation and then there would be a full review of services. It may be that they

would look to specialise in different areas. He also suggested that the League of Friends had a role to play in this.

Cllr Mrs R Berry informed Mr Finn that she had noticed a display stand regarding prostate cancer at the RDE which provided dietary advice which she considered to be inappropriate.

Mr Finn responded that this was an area where the CCG and local authorities providing public health and social services needed to work together. He reiterated his offer to attend a future meeting of the Committee along with colleagues from public health and social care at Devon County Council, in order to more fully answer such points.

The Chairman thanked Mr Finn for his time and for his offer to attend a future meeting.

Note: - Cllr Mrs J B Binks declared a personal interest as she was a member of the Crediton League of Friends.

140 **PUBLIC QUESTION TIME (1.01.48)**

Mr M Brett, referring to agenda item 6, said that the beneficial effect on the vitality and well-being of rural economies provided by good internet connectivity was well established. Despite all the positive spin applied to the successful provision of faster broadband, the 10% of the Devon Population deemed to be least cost effective to reach were still largely unserved. They currently suffer not only from unreliable and slow broadband, but also from a complete lack of meaningful data from anyone about what they might end up with, and when. The longer provision under the government's scheme takes, the less suitable the performance capabilities of that service become. Many observers regard the superfast broadband currently being installed by the monopoly supplier as already technically obsolete, and certainly not well suited for the sorts of digital involvement that government, local councils and medical agencies (amongst others) are hoping to develop in order to improve services and save money in the long term.

The campaign group "Broadband for Rural Crediton" (which I am representing today) has been created in Sandford and Creedy Ward in an attempt to counteract the 'spin' and increase public awareness of the true facts (both good and bad) surrounding this complex topic. We are even exploring the feasibility of a community led scheme to install high performance fibre to the home ourselves.

A meeting was held with Mr Knuckey and Ms Denton of CDS during which there was an indication of "possible assistance" available to a suitable community scheme to accelerate their adoption of Superfast Broadband via fibre to the home. We have recently been advised that a further meeting is planned for March 18th. Please could Mr Stride ensure that during discussion (which I'm sure will range over bigger things than our campaigns initially planned scope) that clarification of this possible assistance is actually covered, and not forgotten?

Prompt clarification would help us to decide how best to assist this seemingly neglected section of the population to help itself. We would be happy to attend to provide direct input at any stage.

Mr Mel Stride MP replied saying that he would be attending the meeting scheduled for 18th March and that he was in support of community groups. He considered that in rural areas where the costs were high the community could reduce costs by helping with infrastructure. He was aware of the problem with broadband speeds in the area, but the cost of installing was exceeding the budget and this was where local communities could have a real impact. He had not been widely enthusiastic regarding Phase One and had let this be known. Phase Two was more interesting with more suppliers and different solutions such as Airband which was being implemented on Dartmoor. The work of the community group was really important and he would be doing what he could to support them and help work towards solutions.

141 MEL STRIDE MP

The Chairman welcomed Mr Stride to the meeting.

Cllr Mrs J Roach asked the following question regarding the relaxation of planning controls and raise concerns regarding the following:

With regard to permitted development, the legislation for conversion of agricultural buildings to housing is weakly written, particularly with regard to interpretation of the word "structure" and this has led to marked variation in decisions. Also because it is permitted development, it only has to meet certain criteria and permission is automatically given. Neighbours and other interested parties have no right to object. An additional danger is that a modern barn is converted and sold. The farm is sold and the new owner has inadequate storage. He/she then applies for a new barn under a formal planning application, is given permission and so the cycle continues. This only benefits the land owner, has a minimal impact on housing needs and destroys the countryside.

Regarding barn conversions Mr Stride clarified that there was no carte blanche blanket ability for anyone that owned a barn to do what they wished with it, there could still be restrictions that the local authority considered it appropriate to apply for example, the guidance stated that development is permitted subject to before the conversion taking place the applicant must apply for planning, with regard to transport, contamination, flood risk and other areas, a whole group of tools and caveats that the local authority may apply when they didn't feel in respect to those matters that the proposal was appropriate. He offered to approach DCLG if there were any angles that Mrs Roach wanted him to look into the matter further.

Local people should have a strong say in the decision. The future of local services (shops, schools and GP surgeries) is important in the decision.

Mr Stride responded that the Local Plan and Neighbourhood Plans were the tools by which the authority could ensure that areas, such as the infrastructure, were in place. Decision making should be taken at the lowest level possible. He suggested that the local community should become involved early in the process when consultation was taking place. He informed Cllr Mrs Roach that if there were specific cases to be looked into he would be happy to do so.

Guidance on back garden development was unclear resulting in decisions which do not appear to be consistent.

With regard to back garden development the MP said that he would look into this for Cllr Roach. He understood that there had been a significant number of back garden developments prior to 2008 but that this had been stopped.

Cllr Mrs Roach stated that she was aware that the Charity Commission had severe difficulties responding to queries. Whilst I thank you for your successful intervention in our case, I am concerned that the delays are causing significant problems to people who are trying to help their communities. The Charity Commission stated in a letter to me that their inability to respond to queries was due to 'cuts' -would you please raise this problem at Government level? Mrs Roach explained the difficulties that she had encountered with delays in finding information.

Mr Stride explained that with regard to 'Room 4 U' there had been some missing information which added to the delay. He had sympathy with Cllr Roach for the time delay and had a meeting with the Minister for Charities and his response was that he believed the situation was going to improve due to investments in the systems used. He considered that empowerment of local people must be encouraged and that he saw his role as MP to feed this sort of information back to Ministers.

Cllr Roach gave further examples of the difficulties in getting through to the Charity Commission on the telephone and the language that was used when they required information was difficult to follow. Mr Stride asked for the telephone number that had caused this problem so that he could report this back to the Minister.

Cllr Mrs Roach stated that the 2012 Executive arrangements give the Cabinet the power to meet in secret if the meeting is disrupted by disorderly conduct. She stated that her view was that this conflicted with the openness and transparency agenda. If someone behaves in a disorderly way there was already an ability to suspend the meeting and evict that person or people involved. It should not be an excuse to then hold the rest of the meeting in a closed session. In her opinion that was clearly wrong as there may well be well behaved people who would like to listen to the debate.

Mr Stride stated that the guidance in 2012 stated that the default position was that Cabinet meetings should be held in open and public but gave provision that in the case of disorder to either remove the individual or close the meeting down, perhaps in the case of persistent disruption. But there was no requirement for a Cabinet to do this. He quoted legislation that clarified this.

The Leader of the Council pointed out that no meeting has been closed to the public in the five years that he had been in the Cabinet.

The Chairman pointed out that the Head of Communities and Governance had spoken to the DCLG and found that the Constitution was correct regarding this matter.

As a point of interest Mr Stride pointed out that the House of Commons itself could sit in private if it wanted.

Cllr Mrs Roach informed Mr Stride that people on low wages are having severe difficulties in getting on the housing ladder. Despite many schemes there are few opportunities for people in rural villages to access affordable housing. Enabling housing associations to sell off their homes will have a serious knock on effect in relation to exception sites. How many landowners will sell land at a reduced price for social housing only to discover at a later date that it has been sold and will eventually become a house that is subject to the market?

Mr Stride did not think that this was a decisive argument because he considered that with right to buy the government's position was that for each property sold another would be built and that this should be driving house building rather than restricting. He thought that home ownership was a great thing and would like people to have the opportunity to own their own home. He stated that the local plan included a provision for affordable homes. Mr Stride agreed that the proportion of young people able to afford their own home had declined over recent years and that this was something the government was working hard to reverse. The strategy was to drive the number up through schemes like right to buy, ISA's; ways of helping young people to get onto the ladder. Community Land Trusts could be used to ensure that local people can afford local homes.

Mr Stride offered to provide contacts so that authorities could share good practice regarding the use of Community Land Trusts.

Cllr T W Snow raised a matter regarding infrastructure. Mr Stride stated that his priorities were based around the resilience of the South West such as the rail line and the A303, the arteries into the peninsular.

Cllr F J Rosamond asked Mr Stride his view regarding the loss of A levels in Tiverton. He said that we see the failure of a competitive market coupled with declining resources and asked what could be done to correct this serious omission of educational opportunity in Tiverton?

Mr Stride explained that Tiverton was not within his Constitution but suggested that Mr Neil Parish MP could be approached regarding this. He added that there were opportunities for Free Schools in the area.

Cllr Rosamond further stated that there was a real fear that the introduction of the Transatlantic Trade and Investment Partnership would damage the National Health Service. Leading barrister Michael Bowsher QC, an authority on EU law states that TTIP poses a "real and serious risk" to the NHS. If the deal went ahead as currently drafted, it could force irreversible privatisation of our national health service. He asked if Mr Stride was aware of this legal advice and its implications.

Mr Stride replied that he thought trade agreements and free trade were one of the elements that helped society to grow and develop and create jobs and create successful business and an economy that can then in turn provide the public services that we quite rightly as a civilised society expect to be able to provide. We cannot do one without the other so trade agreements are important. We do not want trade agreements that are onerous and could lead to full scale privatisation. Mr Stride did not believe that these agreements would lead to wholesale privatisation. He quoted

from a letter from the European Commissioner for trade which stated what was required of these agreements and he considered this information showed that these agreements safe. He also pointed out that privatisation of the NHS did not mean that the user would have to pay, the NHS was free at the point of use and based on need rather than ability to pay. However, providing these services had to be as efficient as possible. The private sector provided around 6% of health services in the UK. Mr Stride offered to share the letter from the European Commissioner with the Committee.

Cllr Rosamond asked if we could please have the same amount of transparency with private organisations such as Virgin or G4S that provided a service to the public funded by taxpayer's money as public organisations themselves, such as local government bodies that rightly are fully exposed to transparency requirements.

Mr Stride explained that the FOI process was so onerous that it would not be practical to expect private companies to comply at the same level. However, during the procurement process it was within the remit of public sector organisations to insist on certain levels of transparency in the contracts that they put in place.

Cllr N A Way had asked now that the in-patient beds had been removed from Crediton Hospital, a major problem and a key factor in trying to develop a Community Health Hub on the site was the issue concerning the possibility of adapting and improving the site? Until there was clarity on this general and important matter from the health authority and government planning a way forward for our local health professionals and community representatives was difficult.

This matter had already been discussed at agenda item 5 but Mr Stride added that he had recently visited Crediton Hospital and had been impressed by the level of activity taking place. He felt heartened by what was going on there and considered that there would be a clearer picture when the transfer to the RDE was complete.

Cllr Way had also asked how did you and the other Devon Members of Parliament vote in the recent Local Government Finance Settlement debate?

Mr Stride replied that he thought the settlement for Devon was a good one in the circumstances and had supported it, as did all other Devon MP's with the exception of Ben Bradshaw in Exeter.

Cllr Mrs J B Binks and Cllr Mrs M Squires presented Mr Stride with a petition regarding broadband, which they asked him to pass to Ed Vaizey, Minister of State for Culture and the Digital Economy.

The Chairman thanked Mr Stride for attending the meeting

(The meeting ended at 6.03 pm)

CHAIRMAN

Briefing on Gypsies and Travellers: Advice for Landowners

Scrutiny Committee 21 March 2016

Introduction

The purpose of this briefing paper is to inform members of the processes and responsibilities for the eviction of Gypsies and Travellers from private land where permission from the owners has not given.

Responsibilities – Police and Local Authority

The Council recognises and accepts the rights of travellers/gypsies and also those people on whose land unauthorised camping takes place.

Gypsies and travellers are protected from discrimination by the Equality Act 2010 and the Human Rights Act 1998, together with all ethnic groups who have a particular culture, language or values.

There is a past history and tradition for gypsies and travellers to live in caravans or move around the country. However, encamping on someone's land without their consent is unlawful and in certain circumstances, it is not just a breach of civil law, but also criminal law.

Does the Council or Police have a duty to move gypsies/travellers when they are camped without the landowner's permission?

No. The powers given to local authorities and the police are discretionary and can only be used when certain conditions exist it is therefore usually the landowner's responsibility.

The duty of the Police is to preserve the peace and prevent crime. Trespass on land itself is not a crime – it is a civil matter. Prevention of trespass is therefore the responsibility of the landowner, not the Council or the Police.

As highlighted above and in certain circumstances the Police may activate their powers under section 61-62 of the Criminal Justice and Public Order Act 1994 to require gypsies/travellers to leave. However, the Police are only able to activate these powers where they are satisfied that two or more people are trespassing on the land, and the landowner has taken reasonable steps to make them leave (and they failed to do so). In addition, one of the following has to apply:

- Damage has been caused to land or property, or
- Threatening / abusive / insulting behaviour has been used against the occupier, his family or agent, or
- The trespassers have six or more vehicles

However, the police are bound by the Human Rights Act and may be constrained to avoid using Section 61 in circumstances where it would preclude welfare considerations from being applied by the civil courts. Also any enforcement of section 61 by the Police would

require considerable resourcing and consideration would have to be given to having sufficient police officers available etc.

If gypsies/ travellers are camped on Council land, the Council can recover possession of their land by using a County Court Order, if it is being occupied without consent. The Council may also be able to use the powers in section 77-78 of the Criminal Justice and Public Order Act 1994 to direct the occupants to leave. Using this method the occupiers will commit a criminal offence if they do not leave with their vehicle(s) as soon as "practicable" after receiving the direction. This may not be enough however to encourage unlawful occupiers to move. In such a case the Council can apply to the Magistrates Court for an Order for "Removal of Persons and Vehicles." This will involve a Court hearing and the summons for such a hearing will have to be personally served on the occupiers. At the first court hearing if the case is disputed the matter will be set down for a trial and it could take some time for the court to arrange a trial date. If an order is made the Council can enforce it usually by instructing private bailiffs, which can be at considerable cost running into thousands of pounds.

It should be noted prior to issuing any direction the Council will need to carry out welfare assessments of the occupiers including liaising with the NHS and Education Authorities.

This is a cumbersome and time consuming process to the Council. Because of this and the considerable expense of using private bailiffs to enforce the order it is usually not appropriate to use this process for unlawful occupation on private land

Powers of the private landowner to remove unauthorised occupiers

If a landowner discovers unofficial encampment on their property and want to evict they could;

- try to reach an agreement with occupiers for them to move on or
- use the legal system or
- use common law powers of eviction.

If the land is privately owned as previously detailed it is not the local authority's responsibility to end the occupation of the land by gypsies and travellers, it is the landowners. There are a number of steps that can be taken in doing so which are detailed below:

- It is often best for the landowner to initially speak to the travellers to find out how long they intend to occupy the land for and if possible, try to reach an agreement for when they will move on.
- The landowner could contact the local authority for advice. Although the council can only apply for court order if it owns the land. However it may be able to offer advice on preventative measures or occasionally find space on permanent sites if the Council has any.
- A private landowner can issue a claim for possession against the occupiers of an unauthorised encampment on their land in the County Court using the procedure laid down in the Civil Procedure Rules 1998/3132 Pt 55. At least 2 clear days' notice of

the hearing must be given to the Gypsies or Travellers concerned. There will be a charge for the service of papers, legal and court fees which is a cost to the landowner. The cost of any clean-up and disposal of any rubbish on the site is also the landowner's responsibility.

- Common Law Powers of Eviction: There are common law powers of eviction which private landowners can use to remove trespassers from land. These powers involve the use of no more force than is "reasonably necessary" and can be applied even without a court order.

Prepared by;

Nick Sanderson

Head of Housing and Property

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