

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 2
Brighton & Hove City Council

BRIGHTON & HOVE CITY COUNCIL

CENTRAL SERVICES CABINET MEMBER MEETING

4.30pm, 23 FEBRUARY 2009

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillor Fallon-Khan (Cabinet Member)

Other Members present: Councillors Harmer-Strange and Young

PART ONE

43. PROCEDURAL BUSINESS

43a Declarations of Interest

43.1 There were none.

43b Exclusion of Press and Public

43.2 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Cabinet Member for Central Services considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

43.3 **RESOLVED** – That the press and public be not excluded from the meeting.

44. MINUTES OF THE PREVIOUS MEETING

44.1 **RESOLVED** – That the minutes of the meeting held on 13 October 2008 be approved and signed by the Cabinet Member as a correct record.

45. CABINET MEMBER'S COMMUNICATIONS

45.1 There were none.

46. ITEMS RESERVED FOR DISCUSSION

46.1 The Cabinet Member reserved the items as per agenda.

47. PETITIONS

47.1 There were none.

48. PUBLIC QUESTIONS

48.1 There were none.

49. DEPUTATIONS

49.1 There were none.

50. LETTERS FROM COUNCILLORS

50.1 There were none.

51. WRITTEN QUESTIONS FROM COUNCILLORS

51.1 There were none.

52. NOTICES OF MOTIONS

52.1 There were none.

53. CELLULAR PHONE MAST NEAR 3 BRANGWYN WAY, PATCHAM

53.1 The Cabinet Member considered a report of the Director of Finance & Resources, which advised about the history and the issues surrounding the cellular mast near 3 Brangwyn Way which had been the subject of questions and complaints from local residents and ward Councillors since 2004 (for copy see minute book).

53.2 The Cabinet Member welcomed everyone to the meeting, in particular Mr B McDowell, Mr M Longhurst and Mr D. J. Lothian, who attended to represent the residents' views.

53.3 The Cabinet Member appreciated that this matter had been ongoing for sometime. He explained that, in view of this, he had decided to bring the item to his Cabinet Member meeting in order to discuss and exhaust any points of clarification and uncertainty which still remained in relation to it.

53.4 The Cabinet Member also acknowledged the amount of work that officers had put into this process. He thanked all those involved with it.

53.5 The item was discussed at length between officers and residents, and the points considered covered a variety of issues, such as the consideration on the pursuit of legal action against T-Mobile and/or any alternative actions that could be taken; the

clarification on the matter of land ownership; and the agreement of a detailed action plan to take the process forward in a positive and reasonable way.

- 53.6 The Anti-Social Behaviour and Senior Housing & Litigation Solicitor explained that the legislation ruling the area of telecommunications dated back to 1984 and 2003, the Telecommunications Act and the modern Telecommunications Industry respectively.
- 53.7 He explained that the rationale behind those pieces of legislation was that it was felt to be important that every member of the public should have access to telecommunications. He explained that, because the legislation was heavily in favour of telecommunications, it proved difficult for the council to oppose, challenge or resist it if taken into Court procedures.
- 53.8 The Estates Manager further explained that the concerns that residents had raised about health issues was not one that had been substantiated so far. He explained that studies and enquiries were still taking place in relation to this matter and, therefore, it was still unknown what the health implications really were where telecommunications masts and the population's health are concerned.
- 53.9 The Representatives counter-argued, indicating that previous parliamentary committees had advised that the issue of health should be taken on board when considering mobile phones masts and the public. On this basis, the Representatives defended that the precaution principle was an important one to be considered. They referred to the Stewart report (2005) as being the most comprehensive one drafted in relation to this matter, which advised that perceived health risk must be considered.
- 53.10 Officers accepted the arguments. They indicated, however, that, where Courts were concerned, the matter of evidence prevailed over matters of precautionary measures and, thus far, evidence had not yet been provided under health grounds to support a decision against telecommunications masts. Officers further explained that though they accepted the arguments put forward by residents, their remit was to advise the Local Authority about what can and cannot be achieved in Court.
- 53.11 The Representatives enquired whether the council had considered taking legal action on Planning grounds. The Representatives thought this would prove less costly in terms of expenses, estimated in the region of £40,000 as opposed to going to Court on health grounds. They explained that perceived fear of risk, in addition to the issues of public amenity, could be a Planning factor which could warrant refusal for a planning application. They stated that a precedent had already been created in this area and referred to a Court case considered in 1997.
- 53.12 The Estates Manager clarified that the costs estimated in terms of a Court action, which were detailed in the report, were based on health grounds previously introduced by the residents and not on planning grounds. He noted, however, that the mast being considered was now a post-planning application and, therefore, the above proposal could not apply. He acknowledged, however, that it could be a matter for consideration in future planning applications.
- 53.13 The residents indicated that this could still apply due to the fact that a revised application was submitted as the T-Mobile was still adding to the original plan.

Notwithstanding that, the Representatives also emphasised the importance given under Article 8 to the European Convention on the perceived fear of risk and wished this factor was taken into consideration.

- 53.14 The Head of Law clarified that in terms of the Law, there were *relevant* and *conclusive* grounds to be taken into account. He explained that perceived fears would fall under the category of relevant and not conclusive grounds.
- 53.15 The Head of Law further explained that the referred Article 8 of the European Convention was not an *absolute right* but a *qualified right*, which, in view of its 'qualified' nature, was subject to the rules of any sovereign country or national Government.
- 53.16 The Representatives argued further that Human Rights were still the responsibility of any public authority/body when dealing with the community. Therefore, the mobile company was required to exercise those rights. The Head of Law noted that T-Mobile was considered a private company and not a public authority.
- 53.17 Councillor Young enquired whether the Representatives had come across any examples of when a mast had been erected and subsequently removed.
- 53.18 The Representatives indicated that they had not come across such cases. However, and further to the case in 1997 mentioned above, they were aware there had been leave to appeal, but did not have information on the outcome.
- 53.19 The Cabinet Member and the Representatives sought clarification about who owned the land where the mast was positioned and what could be done in relation to requesting that the mast be removed from the land.
- 53.20 The Estates Manager explained that, when the application was first made, it was thought that the land belonged to the Highways. Since then and following permission, it had been established that the land in question is owned by the Council.
- 53.21 The Estates Manager also explained that whilst the Local Authority could order of removal of the mast from its land, it could not dictate where the company replaces it. He argued that the operator might choose to move it two or three yards into the Highways land.
- 53.22 The Anti-Social Behaviour and Senior Housing & Litigation Solicitor also explained that even if the mast were to be moved, then the sting in the tail was that the Court might order that Brighton & Hove City Council might have to pay for it.
- 53.23 The Representatives noted that, if the company were to replace the mast on to the Highways grounds, then health and safety issues would come into play, because the company would be causing obstruction on the highway.
- 53.24 The Cabinet Member recorded his disappointment at T-Mobile's approach to deal with this matter by not engaging in communication with the council and the residents to try to address it and resolve it in a positive way. The Cabinet Member enquired whether the Courts would give any weight to a moral decision based on T-Mobile's behaviour.

- 53.25 The Anti-Social Behaviour and Senior Housing & Litigation Solicitor indicated that questions would be asked as to how critical their behaviour was for the network system. He explained that, in the end, the telecommunications would take precedent for the reasons already explained about the requirement of maximum coverage for the maximum number of people.
- 53.26 In terms of the planning consideration, it was explained that the procedure was usually initiated by serving a notice, which the council had done. T-Mobile could then counter notice, which had also been done. The subsequent step would be to pursue legal action. However, and as detailed in the report, the council's legal team had advised that, on balance, this course of action was not feasible.
- 53.27 The Representatives reported that T-Mobile had commenced new works at the end of 2008, which the council had not yet formally objected to. They stated that, according to Section 17 of the Telecommunications Code, there was the opportunity to approach this matter in a new way, i.e., by objecting to the new works that were currently being carried out.
- 53.28 The Representatives also explained that the mentioned Section 17 stated that objections should be made within 3 months of the completion of the installation of any work. They indicated that the notice for the new works, which included a new structure on the base of the mast and an extension, was put out in December 2008.
- 53.29 The Cabinet Member requested that the Representatives put forward the main concerns raised by residents in terms of their general objections to the mast.
- 53.30 The Representatives explained that the grounds of health were a major issue. One Representative reported that his daughter had contracted leukaemia two years after the mast had been installed. He highlighted the changes not only in her health but also in her personality. The Representatives reiterated the issue discussed previously of the perceived fear of risks.
- 53.31 It was also explained that a further concern was based upon the visual factor and the impact the mast would have on the Brangwyn green lands and recreation grounds. The Representatives expressed their pride in the area they live in and their wish to preserve it as the structure and the fabric of the city. They also feared that, if allowed to continue, the positioning of this mast would open a precedent across the city.
- 53.32 The Residents also expressed their disappointment in the fact that no consideration had been given by T-Mobile to the public opinion, which also included Councillors and officers of the council.
- 53.33 The Representatives acknowledged all the co-operation they encountered from officers of the council throughout this process, and thanked officers for engaging with them in order to try to reach a positive outcome for all.
- 53.34 The Cabinet Member noted all the concerns raised. He thanked Mr McDowell, Mr Longhurst and Mr Lothian for attending the meeting to express the residents' concerns over this matter. He requested that the residents continued to investigate any such

case-laws in terms of health and court cases and provided him with any relevant information.

- 53.35 The Cabinet Member reiterated his wish to understand how far the council could pursue this matter. He indicated that he was still hopeful to get T-Mobile on the table in order to explain to them the opposition encountered to their proposal to keep the mast in that area.
- 53.36 The Cabinet Member further indicated that the council is willing to explore the objection route to the extra furniture and would support the Brangwyn area residents as much as possible. He explained, however, that the council had to balance the needs of those residents against the needs of all the residents in the city where incurring in expenses was concerned. In view of this, he also requested the residents' understanding where no more could be made to take the matter forward.
- 53.37 In terms of the plan of action into the next stage, the Cabinet Member requested that the relevant officers re-issued a letter to T-Mobile indicating the following information:
- To explain that a Cabinet Member meeting had taken place to consider this matter and to inform the operator that residents were unhappy with the current situation and the lack of communication from the company;
 - To make it clear that unless T-Mobile agrees to a meeting with the council, there was a risk of adverse publicity to their company.
 - To give a timeframe of 4 weeks within which the meeting is to take place between the two parties;
 - And request an indication of when the completion works were due to finish.
- 53.38 The Cabinet Member reassured residents that he would ask whether T-Mobile would remove the mast. If an agreement failed to be reached on this matter, the Cabinet Member indicated that the next step would be to serve a notice on them for the extra furniture that had been installed.
- 53.39 The Cabinet Member reiterated that the council would do everything that was reasonable to move this process forward. He advised, however, that, if required, the council would take one step at a time after serving the notice and it was not guaranteed that the process would be taken to Court.
- 53.40 The Representatives indicated that the residents would also be writing to T-Mobile separately. They thanked the Cabinet Member and all officers involved for all the support they encountered during this process.
- 53.41 The Cabinet Member thanked everyone for attending the meeting. He indicated that he would contact the residents in due course to organise further meetings to plan how to proceed, following the action points agreed at today's meeting.

53.42 **RESOLVED** – That, having considered the information and the reasons set out in the report, the Cabinet Member accepted the following recommendations:

- (1) That the position as set out in the report surrounding the cellular mast near 3 Brangwyn Way be noted.
- (2) That it be agreed that the council seeks to re-open dialogue with T-Mobile.
- (3) That local residents be advised of the limitations faced by the council under the telecommunications legislation

The meeting concluded at 6.45pm

Signed

Chairman

Dated this

day of

2009

