

Council 26 July 2017: Questions submitted from Members of the Public

Question No.	Question from	Question:	Question to:	Responsible Officer:
1.	Mr John Greenhill	<p>“With reference to this Council’s unlawful exclusion of the Public from the Scrutiny Committee Meeting on 29 November 2016 the Local Government Ombudsman has found in his decision in relation to Complaint 16 016 836 that this Council “...was at fault in not allowing members of the public to attend the meeting” and that: “The Council was at fault in not allowing any public attendees”. Further, in a covering letter sent with his decision, the Ombudsman states: “The Council was wrong to have excluded the public from the first part of the meeting”. These are findings from a quite independent official who has no affiliation with this Council.</p> <p>There was also the statement of the then Chairman of the Scrutiny Committee as reported in the Sittingbourne News Extra (7 Dec. 2016) that: “The judgement made was to hold people in reception until such point a decision had been made to hear in public or closed session. I made the decision”. That statement does not appear to have been retracted or redacted; it still stands and was made well in advance of the leader’s responses.</p> <p>In the light of these facts, is the leader of this Council now prepared to consider again, reflect on and justify the accuracy of (1) his written response to my question in this Chamber on 14 Dec. 2016 when he stated: “It is not correct to suggest that members of the public were refused admission to the meeting” and (2) his response in writing by letter dated 20 Dec. 2016 to my supplementary question that : “There is no evidence that there was any attempt or decision to not allow</p>	The Leader	Chief Executive

	<p>the public in, whether because the Chairman of the Scrutiny Committee was clear that he expected that the Committee would resolve to hold the meeting in private session or for any other reason”? His statements appear to me, at least, to be in conflict with what his own Chairman said at the relevant time and the Ombudsman’s subsequent findings of fact.”</p>		
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Response:

Mr Greenhill is referring to a Local Government Ombudsman (LGO) decision referring to Mr O that has yet to be formally published, however, it has been received by the Council. To give the widest context to the question I will refer also to a published complaint from Mr M. Mr O complained that the Council excluded him from a meeting of the Council’s Scrutiny Committee and he says that the Council unlawfully excluded the public from the meeting. Mr M also complained that the Council excluded him and others from a meeting of the Council’s Scrutiny Committee.

In Mr O’s case the LGO stated it is clear, whatever the reason, the Council was at fault in not allowing members of the public to attend the meeting. It has acknowledged this fault. The LGO then considered whether there was any injustice caused to Mr O as a result and concluded that whilst the Council was at fault any injustice to Mr O did not justify an investigation. In Mr M’s case the LGO also concluded that they would not investigate the complaint as although the Council was at fault any personal injustice to Mr M was not enough to justify an investigation.

So let me be clear we have acknowledged that we were at fault in not having prepared for any members of the public to attend and I have given an assurance that were we to be faced with such exceptional circumstances in future then members of the public would be admitted even if it is to hear matters of essentially an administrative nature. The Chief Executive has also given his personal assurance to the two complainants

The LGO has stated in the public decision notices that the Chairman of the meeting decided as all the public could see would be declarations of interest by members and a vote to go into closed session, and this would take only a couple of minutes, the public should not be admitted to the meeting. This confirms the statement attributed to the Chairman of Scrutiny in Mr Greenhill’s question. In my response to a previous question from Mr Greenhill I gave an explanation of the events on 29 November 2016 and set out that had the decision been made to conduct the meeting in public then arrangements would have been immediately put in place to allow admission and I have nothing to add to that explanation, particularly as there was no injustice to the public. I attempted to clarify the position in the fullest terms in my letter dated 20 December and, whilst I understand the point being made, my response reflected the whole circumstances on the evening and the solution arrived at by the then Chief Executive in responding to not being prepared for any members of the public to attend.

It has been confirmed by the Council in March 2017 that it has accepted that due to some confusion in communication members of the public were not enabled to attend the first part of the Extraordinary Scrutiny meeting on November 29 2016. That remains my position and as I have said above it is acknowledged that lessons needed to be and have been learnt. The Chief Executive has already instigated procedures to ensure that in similar circumstances members of the public would be admitted.”

2.	Mr Kane Blackwell	<p>Following the recent announcement by Chris Grayling MP that £1bn will be earmarked by the government for local council’s to tackle traffic gridlock, and the planning inspectors findings in the local plan regarding local traffic concerns which were raised by KCC and Highways England, could the Leader please ensure that the council does what it can to investigate ways in which Swale could benefit from these additional funds?</p> <p>With this additional funding schemes such as the Northern and Southern Relief Roads may be possible, which will alleviate traffic in Sittingbourne Town Centre as well as helping with the capacity of the local road network.</p>	Leader	Kieren Mansfield and Gill Harris
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Response:

The new funding announced is for improved transport networks, associated with unlocking new development opportunities, as well as dealing with existing problems. Swale Borough Council has every intention to pursue available funding streams to support the delivery of new road infrastructure that is required to address congestion and to support local growth. We are currently seeking to establish the way in which the funding announced will be allocated and then will pursue local priorities vigorously.

As well as the new Local Plan, our discussions and approach will also be informed by the Local Plan Review which begins immediately. This will be looking to develop the most effective future development strategy for the Borough, with deliverable supporting transport infrastructure. Work is already in hand on transport modelling the whole Borough to inform this and any bidding for public funding which may be appropriate.

3.	Dorothy Greenhill	Bearing in mind that the Monitoring Officer had to have regard to the level of Public Funds that was required to investigate an allegation of breach of the Councillors’ Code of Conduct against	Leader	Mark Radford
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		Cllr Baldock (Item 14 on the Agenda) would you not consider that the sum involved - £5700-00 for the investigating officer alone – was disproportionate to the allegation particularly at a time of cut backs to services that are being experienced by council tax payers?”		
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Response:

Where a complaint is received by the Monitoring Officer they have a duty to consider, in consultation with the Independent Person, whether or not the conduct complained of amounts to a potential breach of the code and whether it is in the public interest to take the matter forward. Under the Localism Act an authority must also have in place arrangements to investigate such breaches and the Monitoring Officer followed the procedure as set by this Council. Before appointing an Investigating Officer informal resolution is always considered, although in some cases, such as the one referred to, this is not possible or appropriate. It could be argued that given the level of sanctions that can be imposed it would be disproportionate to investigate any complaint of misconduct, however, it is essential that elected members are held to account in order to promote the high standards of conduct expected by the electorate. Where it is deemed necessary to investigate it is accepted that there will always be a cost in doing so and where possible and where capacity allows these are dealt with in-house to minimise costs. The cost involved should not prohibit the Monitoring Officer from carrying out their duties appropriately to ensure that there is a high standard of conduct from elected members of the Council and the surrounding parishes. The changes that were brought in by the Localism Act have resulted in fewer matters being referred to committee which means the cost associated with the running of the standards regime overall has reduced. Since the new regime was implemented in 2012 only six complaints against four councillors (including both parish and borough) have been referred for investigation as the Monitoring Officer has been able to deal with matters by way of informal resolution and has been able to filter out those complaints that do not amount to a potential breach of the Code at the initial stage without referral to committee.

4.	Tony Winckless	How are the plans progressing to upgrade our children’s play areas?	Cllr David Simmons	Martyn Cassell
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Response:

The consultants Knight Kavanagh and Page have completed all of their inspections of open space and play facilities. An assessment report holds all of the technical information relating to their findings and will form the basis of future decisions. A draft Open Spaces and Play Strategy is now being worked on by our Leisure and Planning officers. The strategy will set out our intentions for Open space and Play facilities over the next five years. It will set standards of provision based on quantity, quality and location and the action plan will identify the target areas for our leisure officers to focus on. The planning department will also use it as the key evidence base for deciding what is required from new developments.

We intend to bring the draft strategy to Cabinet at the earliest opportunity this year which will then be followed by a set of consultations with Ward members and the public prior to being formally adopted.

In the meantime we have recently completed upgrades to play facilities in Iwade, Woodpecker Drive and a new nature trail and recently completed and opened the £180,000 new playground at Thistle Hill.

5.	Helen Martins	I understand the number of households in temporary accommodation is 153. How does the proposed local plan attempt to address this growing local problem?	Cllr Ken Pugh/Cllr Gerry Lewin	Amber Christou/James Freeman
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Response:

The Local Plan is only part of the solution here. It firstly, addresses the issue in terms of making the land available to meet all housing needs and in setting the policy framework for trying to achieve levels of affordable housing.

When adopted, the Local Plan will make land available to meet the total of its housing needs to 2031. – over 13,100 dwellings In arriving at that target for housing, the Local Plan takes full account of all elements of housing need across the plan period.

Having made this provision, the Local Plan itself cannot directly ensure that those in temporary accommodation receive new housing – that is a matter for a range of parties – but Local Plan policies do seek to ensure that a proportion of all new dwellings provided are affordable. However, viability and other constraints on social housing providers, present considerable challenges.

The Council is committed to working with the full range of partners to ensure that all those in housing need can have those needs met, and indeed resources are still, and will continue to be targeted at the prevention of homelessness and the use of temporary accommodation. The Housing Options team have always operated a ‘prevention first’ service to ensure they do everything they can to alleviate the need for temporary accommodation, and prevented 229 families from becoming homeless during 2016/17. We fully appreciate the distress that homelessness causes to families and will continue to work hard to prevent this from happening wherever possible.

6.	Julian Herrington	Do individual Planning Committee Councillors and other Councillors in their various important roles – taking account of the planned 95% increase in housing at Faversham (western Swale) in future years and reflecting on the lack of discussion of air quality from Perry Court at the Planning meeting on 31 March 2016 (the Chairman banned any debate) – believe that Swale is proactively detecting and mitigating pollution linked to a robust and credible measurement strategy. Can this strategy	Cllr Gerry Lewin	James Freeman
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		<p>effectively evaluate existing and future air quality levels so as to protect the Faversham population (particularly at Ospringe Street) as traffic increases, from the growing and increasingly dangerous pollutants – especially the minutest toxic particles – in line with the World Health Organisation Standards. Does this evaluation fulfil the UK Government’s requirement set out in the December 2015 DEFRA report “Improving air quality in the UK” and also given that Swale have not formulated an air quality plan as required. In particular I would draw your attention to the forthright re-focussing of the NPPF at para 232, Annex 2, Section 7.1.1:</p> <p><i>2. The National Policy Planning framework is clear that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing or being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution. New development must be appropriate to its location taking proper account of the effects of pollution on people’s health.</i></p> <p>Specifically does the Council wholeheartedly consider that it has been proven beyond doubt that the planned expansion for housing around Faversham will not make Air Quality worse, particularly at the AQMA at Ospringe Street?</p>		
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Response:

The Local Plan Inspector considered the question of air quality at para 118 of her report. She notes there that the matter has been properly considered through the Sustainability Appraisal process evaluating each stage of the local plan process. She further notes that whilst this matter is of particular relevance where development is allocated at or close to AQMAs, it has not been found to be a reason for preventing allocation for any of the proposed sites. However, mitigation and management of air quality through the development management process is of utmost importance and Policy DM6 of the Local Plan has been strengthened to ensure that the cumulative effects on air quality are taken into account in assessing planning applications.

We have an Air Quality Planning Technical Guidance document that explains the approach followed and this document has been agreed by all the Kent and Medway Authorities. We will be taking this process further and are currently working on an Air Quality Strategy where these factors will be formally written in a document that can be used as a standard.

Reference is made to Particulate matter (PM₁₀) in the question and these are already measured at the Ospringe Street monitoring station, though not at present, due to the imminent construction of a new residential dwelling. The results show levels well below that of an exceedance. The finest particulate matter (PM_{2.5}) referred to in the question is not measured at this locality, or anywhere else in Kent by a Local Authority, due mostly to its prohibitive costs. Currently these readings are carried out in Chatham as part of the DEFRA AURN (Automatic Urban and Rural Network) survey and results modelled for other parts of Kent.

The 2015 DEFRA Report referred to in the question has been succeeded by later documents in which they have outlined how they intend to tackle the problem of Nitrogen Dioxide, which is the major air pollutant in the UK. The latest consultation for this strategy was only completed in June 2017. It remains to be seen how successful this approach will be.

Swale BC carries out its statutory duties regarding Air Quality under the Environment Act 1995 and has identified 5 AQMAs so far – each AQMA has an action plan (AQAP) attached to it. The plan is currently being updated and is to be sent to DEFRA for approval soon. Swale has more monitoring facilities than any other council in Kent.

There has been no evidence submitted so far that indicates development in and around Faversham will worsen Air Quality in the Ospringe Street AQMA.

7.	Gaynor Aspin	In light of the continuing fatalities along the A249/M2 corridor and in particular J5 and J7 of the M2, will Swale Council confirm it is in agreement with the recent statement from the Minister of State for Communities and Local Government, Sajid Javid, that infrastructure should be completed BEFORE houses are built, and will the Council therefore give its electorate categoric assurance that no more house building which will have a direct negative affect along the A249/M2 corridor and in particular J5 will be approved until the public consultation referred to in the Inside Swale Publication has been completed and until the government improvements to J5 have been agreed and until, as per the Government Inspector's report, a strategic transport infrastructure plan has been put in place by Swale Council?	Cllr Gerry Lewin	James Freeman
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Response:

The recent Local Plan Examination was supported by a Statement of Common Ground between the Council, Highways England and Kent County Council Highways (EIP document Ref. SBC/PS/121). This clearly states the acceptance by all parties that whilst mitigation will be required, some development will need to proceed ahead of it and may in fact be needed to facilitate it. The Local Plan Inspector considered these matters with further advice from both Kent County Council and Highways England at the hearings and her report is clear. She concluded that further work on the nature of mitigation on the A249/M2 corridor will be needed, but both highways authorities are confident that this can be done. At para 101 she noted that the KCCH have confirmed that no alternative development options or sites will overcome the issues. She further concluded (para 102 of her report) that it is the period after 2022 where details of necessary highway infrastructure needed to support development will need to be resolved. A commitment to early review of the Local Plan has therefore been incorporated into Policy ST2 at the Inspector's recommendation. This will be accompanied by an updated Swale Transport Strategy to be co-produced with Kent County Council. In the interim, development will therefore proceed in accordance with the new local plan and any planning applications will be required to be supported by Transport Assessment and appropriate mitigation measures to the satisfaction of the highway authorities. Highways England remain committed to Junction 5 improvements with public consultation on the preferred option in early autumn and a 2020 start date for the scheme.

8.	Nicola Butlin	Given the recent announcement in the press this week that the London Road Medical Centre has been put into special measures - a Centre which services the majority of Borden residents - plus the inevitable additional strain this will put on Swale Borough Council's legal obligation to provide health services for its residents within Swale which is already at breaking point, can Councillor Bowles give categoric assurance that no more houses will be built in and around Borden village especially as the CCG (Clinical Commissioning Group) confirmed at the Inspector's hearings that it is unable to fulfil the health service capacity requirements for a further 500+ houses in Wises Lane and this was BEFORE the London Medical Centre was put into special measures?	Leader	James Freeman
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Response:

It is of course part of the Council's planning functions to ensure that Local Plans identify the infrastructure needs arising from their proposals.

In recognition that this new growth will give rise to the need for new future primary care services, the Council worked closely with both

Swale CCGs to identify the needs arising and this was fully considered by the LP Inspector in the light of all the representations made, including the CCG. These are set out in the Council's LP Implementation and Delivery Schedule which sits alongside the LP. It identifies the future health needs to meet growth, where these are envisaged as being met and the contributions that qualifying development will be expected to make. In the case of development at SW Sittingbourne, Borden, this is currently envisaged as being expected to contribute toward extensions of health provision at the existing Meads Health Centre. However, this will need to be confirmed by the CCG during the course of planning applications.

Whilst the timing of development relative to the provision of new services is a relevant planning consideration, I am not in a position to give the assurance to the questioner that no development will be permitted until improvements are made. That is a judgement that can only be made at the planning application stage in the light of all the considerations. However, I can give my assurance that this will be examined very closely at the planning application stage to ensure that all developer contributions to all community needs are made in as timely a fashion as possible.

9.	Richard Palmer	Given the uncertainty of data from the Air Quality measurement instruments / tube in Newington. Does the Cabinet Member not think that new equipment to get accurate recordings should be installed before planning permission in the area is given?	Cllr David Simmons	Tracey Beattie
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Response:

The air quality monitoring equipment sited in Newington is producing reliable and accurate data. The continuous analyser is subject to rigorous quality control procedures, including a fortnightly calibration as well as an external annual audit. Data from the analyser can be seen and checked on the Kent Air website; in 2016 it produced a 99% data capture rate. The siting of the continuous monitoring station is a result of the limitations of the High Street and willingness of the site owners to host the unit. The data used in the annual status report

The Newington AQMA has 8 diffusion tubes in addition to the continuous monitoring station. The tubes are part of a large batch delivered to all Kent Authorities each month, produced from the same laboratory at the same time to eliminate inter-tube variations. There are three diffusion tubes co-located with the continuous analyser at Newington for quality control assessment between the two data capture processes.

Given our excellent data capture record and the verification measures we undertake to nationally accepted standards, I am satisfied that there is no necessity to obtain new equipment for this this location.