

SUPPLEMENTARY AGENDA

10. Questions from Members of the Council (Pages 1 - 8)

Answers to questions from Members of the Council pursuant to Standing Order 17.



QUESTIONS TO CABINET MEMBERS AND CHAIR'S OF COMMITTEES

Thursday 5 December 2024

1. QUESTION FROM COUNCILLOR HAWKINS Re: Warfleet Road Closure

It is now nearly 12 months since Warfleet road was closed due to a wall collapse.

This is a very important road connecting Dartmouth with the Warfleet area and Dartmouth Castle.

I ask Officers on a regular basis, but are told each time that it is with DCC Legal Officers. This is not acceptable, we need this road open and the patience of my residents has run short.

We need action not words.

REPLY BY COUNCILLOR HUGHES

From the initial collapse the County Council has had strong evidence that maintenance of the wall is the responsibility of the landowners. There have been various attempts to contact with mixed responses, and mixed levels of engagement. The delays are due to the missed responses and external factors for example one landowner has instructed a surveyor through their insurers and they have their own lead times. The legal team have now been asked to advise on the enforcement options ranging from issuing notices under the Highway Act, to considering prosecution.

It is unfortunate that we have been forced to start the legal process. We will now be pressing for an intended course of action and a completion date as quickly as possible.

Unfortunately, we have had to close the road because it is not safe to use in its current state, and we have had to temporarily install bollards because the barriers we were using before kept being moved. I appreciate that this is frustrating for local road users.

2. QUESTION FROM COUNCILLOR CONNETT Re: Broadband cuts impact for Exminster and Haldon

Following the Newsletter from Cllr Gilbert on the cut backs in Broadband rollout through the Connecting Devon and Somerset contract, will he set out in detail the impacts for communities within the Exminster & Haldon County division.

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From Cllr Gilbert's newsletter and the attached maps it was difficult to see what the situation is, especially for Powderham, Dunchideock and the route from Ide.

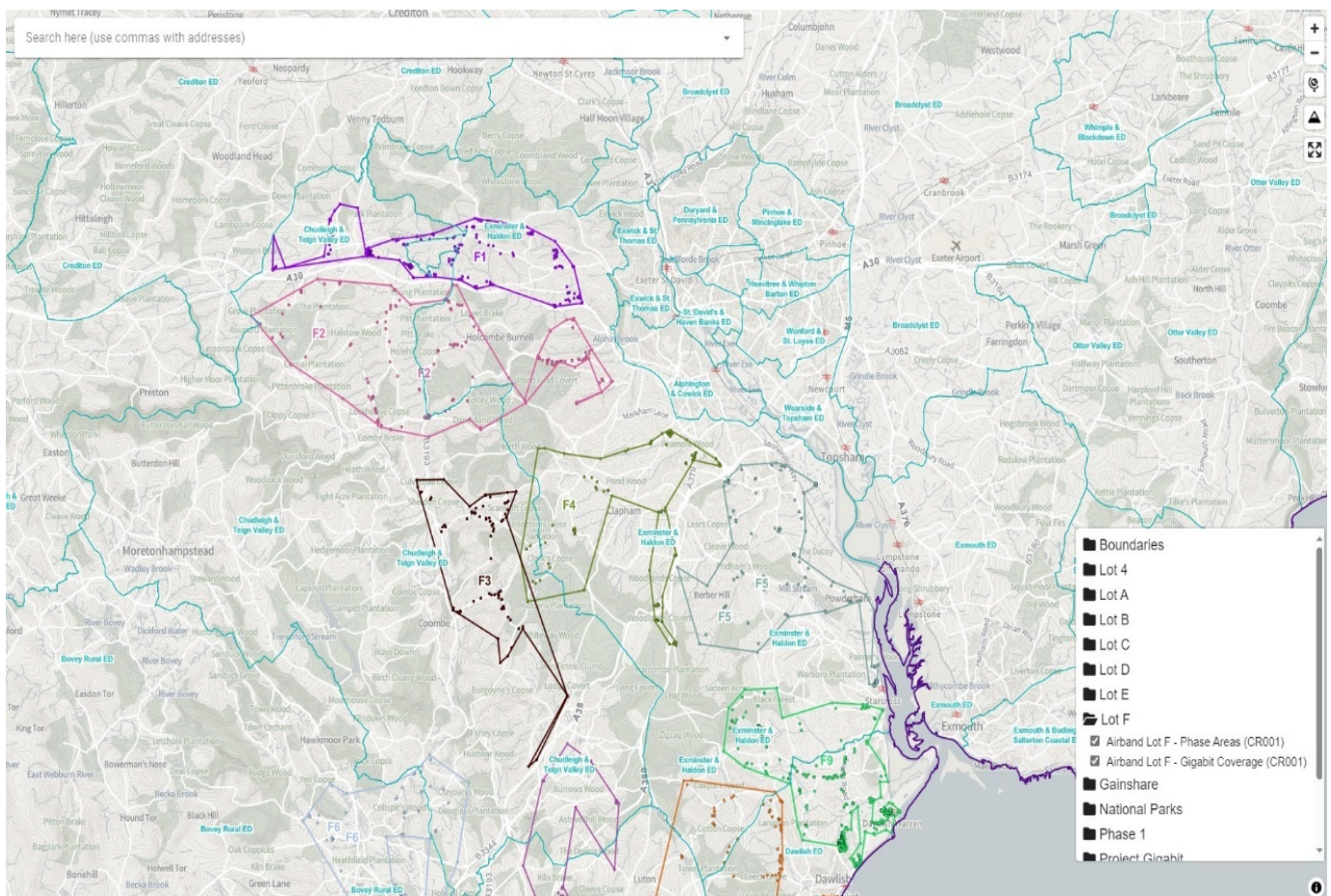
REPLY BY COUNCILLOR GILBERT

The Exminster and Haldon Division is covered by the Lot F contract held by CDS with Airband. All contracts are divided into smaller network "clusters". Exminster and Haldon is wholly or partially covered by 5 such clusters, shown on the attached map. These comprise F1 and F2 to the North of the Division, F4 and F5 in the centre and F9 to the South.

Clusters F1, F2 and F4 will now be descoped from the Airband contracts. Cluster F5 is now all but completed (with only some 12 premises remaining on the Powderham Estate, awaiting some complex build work resulting from the particular heritage of the estate). F9 will now go ahead to build under the revised agreed contractual build.

In terms of premise numbers, the removal of F1, F2 and F4 will result in a reduction in coverage of 641 premises, F5 has 178 live premises and the completion of F9 will deliver a further 843 premises in the divisions it covers. A higher detail map is provided for illustrative purposes.

As offered at CIRS Scrutiny we can offer 1-2-1 sessions with Elected Members to further explain and detail the changes at a premises level resulting from the revised Airband Contracts.



3. QUESTION FROM COUNCILLOR DEWHIRST
Re: Retaining wall on the A379 Torquay Road at Shaldon

Nearly a year ago a major retaining wall on the A379 Torquay Road at Shaldon collapsed. The wall is still collapsed and is in an even more dangerous state after eleventh months. The adjacent road has temporary (now semi-permanent) traffic lights with consequent congestion, inconvenience and pollution for local residents. The adjoining landowner denies the wall belongs to him (his deeds clearly indicate that his boundary is next to the wall) and the Highway Officers say they “think” the Council does not own the wall but have offered no evidence to back up this claim.

Can the Cabinet Member for Highway Management explain what the problems are, how the residents can expect a resolution to this problem and when this might happen, please?

REPLY BY COUNCILLOR HUGHES

Devon County Council have maintained from the outset that the wall is in private ownership, and is not our responsibility to maintain. We are in dispute with the landowners about this.

Devon County Council have put up signing and guarding to protect the travelling public, but this is not an admission of liability. Teignbridge District Council Building Control have been alerted to the issue, but as of yet, no action has been taken.

Devon County Council is considering their position regarding enforcement whether that be issuing the appropriate notices under the Highway Act or considering prosecution.

At the moment we are not able to give a timescale for the resolution of this issue as it depends on the landowner and the timetable for any legal process.

4. QUESTION FROM COUNCILLOR ADAMS
Re: Roads with schools

How many school streets are there in Devon?

REPLY BY COUNCILLOR HUGHES

In total there are 5 school streets in Devon.

5. QUESTION FROM COUNCILLOR LEAVER
Re: Reassurance on community safety

One of the priorities of the Council’s Strategic Plan is to “Help Communities be safe, connected and resilient”. To support this strategic aim the Cabinet Member for Public Health, Communities and Equality has been appointed to the Police and Crime Panel, which supports and challenges the Police and Crime Commissioner’s role in ensuring delivery of an effective and efficient police

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service. Can the Cabinet Member provide Council with reassurance that the people of Devon are safe in the light of the Commissioner's appointment then suspension of two Chief Constables?

REPLY BY COUNCILLOR CROAD

As a result of the Police Reform & Social Responsibility Act 2011, directly elected Police & Crime Commissioners came into being November 2012. The old Police Authorities were abolished, being replaced by Police & Crime Panels and the Devon & Cornwall Police & Crime Panel held its inaugural meeting 22 October 2012. The Panel consists of representatives from 13 local authorities with 2 wholly independent members. Among the 'Special Functions' of the Panel are 1. To review and make a report or recommendation on the draft Police & Crime Plan, or any draft variation, given to the Panel by the PCC; 2. To hold a confirmation hearing and review, make a report and/or recommendations (as necessary) in respect of proposed senior appointments made by the PCC; 3. To review and make a report and/or recommendation/s (as necessary) (and if necessary veto) on the proposed level of precept; 4. To review and make a report on (and if necessary veto) the proposed appointment of the Chief Constable and 5. Review and report on the PCC's proposal to remove a Chief Constable.

In respect of 'Special Function 4 above, after the stepping down of CC Sean Sawyer in 2022, in February 2023 the PCC proposed the appointment of CC Will Kerr – the Police & Crime Panel duly approved (unanimously as I recall) the proposed appointment. In July 2023, the IOPC (not the Commissioner) suspended CC Will Kerr on allegations brought by a previous Force appointment. The Commissioner then appointed as Acting CC Jim Colwill who is temporarily suspended, pending investigation.

It is not within my remit as Portfolio Holder within this Council to make comments on the acting appointments made by the PCC, or regarding any ongoing investigations or processes involving police officers.

Data outlines that Devon is, and remains, one of the safest places to live within the United Kingdom.

6. QUESTION FROM COUNCILLOR DEWHIRST Re: Recycling of carbon intensive products

Over the past few years the recycling company Terracycle, has enabled small local, village recycling operations to take distinct waste streams not covered by Waste Collection Authorities to be recycled. Items covered by these schemes include crisp packets (Walkers, part of Pepsico produce over 2.8 billion packets a year), cheese wrappers, toothpaste tubes and tooth brushes, medicine blister packs (150 million annually), biscuit wrappers, Pringles cans, writing instruments and make up packaging. All of these would normally end up in the Residual waste stream and be incinerated in our EFW plants in Devon.

Recycling these products has enabled local recycling groups to make a very small income to cover their costs and donate small sums to charity.

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Sadly, Terracycle and their participating sponsors have, over the past year, restricted or discontinued these schemes to the extent that local small scale recycling is no longer able to find reprocessors for these waste streams.

Will the Cabinet Member for Climate Change, Environment and Transport commit to writing to the relevant Secretary of State to press for assistance to enable local recycling of carbon intensive products and to urge the recycling industry to enable local communities to operate small scale recycling schemes?

REPLY BY COUNCILLOR CROAD

Plastic bottles, pots, tubs and trays collected by Waste Collection Authorities (WCAs) from householders currently have markets where the plastics are reprocessed into new products. It is likely that Terracycle have ceased to collect 'hard to recycle' plastics as they are struggling to find markets. Under the Collection & Packaging Reforms introduced by government and in particular 'Simpler Recycling' it will be a statutory requirement for all WCAs to collect flexible plastics from 31st March 2027 from all of the properties that they serve (including any trade waste collections). This is likely to include those 'hard to recycle' plastics such as crisp packets. Hence it is anticipated that this statutory requirement will help to generate viable sustainable markets for these materials. In addition Extended Producer Responsibility for Packaging is being introduced from April 2025 which will mean that producers should be covering the full net costs of managing their packaging as well as meeting high recycling targets for specific waste streams. This will involve producers paying set fees for each type of packaging that they place onto the market and the level of these fees will be modulated such that packaging which can be easily recycled will attract a lower fee than those that are more difficult to recycle. This will help to encourage producers to review the materials that they use when designing packaging as well as minimising the amount of packaging.

Producers will be working with Waste Collection Authorities to support collection of packaging from households. They may also be interested in working directly with community groups as they will be wanting to maximise recycling of their packaging to help them meet their targets. However it has yet to be determined what community schemes if any they may choose to put in place. Consequently whilst a letter can be sent to the Secretary of State outlining the role that community schemes can play in helping producers meet their targets, ultimately it will be the producers who will decide what level of support they may be prepared to give.

7. QUESTION FROM COUNCILLOR ADAMS Re: Schools and 20mph zones

How many schools in Devon have 20mph zones outside their schools and how many do not?

REPLY BY COUNCILLOR HUGHES

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We have 357 schools in Devon, including primary schools, secondary schools and sixth form colleges. 103 of these have a 20mph speed limit or zone outside them.

A further 10 have advisory 20mph speed limits outside them; these cannot be enforced but do communicate a road safety message to drivers

In other areas schools might be in areas where speeds are expected to be low and a reduced speed limit is therefore unnecessary, for example where schools are in new developments where the estate layout has been designed to keep traffic to 20mph.

8. **QUESTION FROM COUNCILLOR CONNETT** **Re: Judgement on Lower Hare Farm**

Judgement has recently been received in the case where Whitestone Parish Council were seeking a Judicial Review of Devon County Council's granting of Conditional Approval in the case of Planning Application DCC/4293/2022 for a landfill at Lower Hare Farm Whitestone.

The Court found that Condition 15 of the Approval, which states that only "inert waste soils" can be brought onto the site applied to all materials however they were then used. Does the Council accept the Court's judgement?

In view of the fact that the applicant has stated that its intention is to import materials other than inert waste soils, how does the Council intend to ensure that this judgement is respected?

REPLY BY COUNCILLOR BROOK

The question is misconstrued as the High Court has not issued a judgement. Instead, the Court has issued a decision refusing to allow the Parish Council's claim for judicial review to proceed to a hearing as there is no arguable case. Unlike a judgement following a hearing at which a judge would hear reasoned arguments by all parties, the decision that was recently issued is not a detailed consideration of the merits of the claim.

Confirmation has been received from the Court that, as no request to reconsider the decision at a hearing has been lodged by the Claimant within the prescribed time period, the Court has closed this matter. As such, there will be no further consideration of the matter by the Court which has ruled the claim unarguable.

It remains the case that Condition 15 of the planning permission requires that "The types of waste disposed of at the site shall be limited to inert waste soils" and it does not prevent the importation of other materials such as hardcore for purposes other than disposal, for example in the construction of the haul road.

The applicant has been clear that the materials to be disposed of will be limited to inert waste soils, including those elements of the landraising operation described as 'engineering fill', 'geological barrier' or 'restoration soils'.

The proposed development includes construction of a temporary haul road to enable plant and vehicles to access the landraising area as it develops. As required by Condition 6 of the planning permission, the applicant has submitted –

and received approval for – a scheme for the internal haul road which confirms that the road will be constructed using recycled aggregate including brick and concrete and that, on completion of the landraising, these materials will be removed from the site. As these materials for the construction of the haul road are not proposed to be disposed of at the site, they fall outside the scope of Condition 15 and the applicant is entitled to import them to the site.

In the event that the site operator were to import materials for disposal other than inert soils, it would be open to the County Council to enforce Condition 15 if considered expedient to do so.

9. QUESTION FROM COUNCILLOR DEWHIRST
Re: Payments to AP providers

From the beginning of January 2025 Alternative Provision (AP) providers will have to charge the County Council VAT at 20%.

In the light of Devon County Council's massive reduction in Reserves, its continued dependence on using the remaining Reserves, continued overspend on SEND provision and the almost £15 million additional overspend on the SEND overspend of approx £170million will the Cabinet Member for Finance reassure the Council that our finances are resilient and that payment to our AP Providers, many of whom are charities with a small turnover, will be prompt and on time to enable them to continue their good work for the young people of Devon?

REPLY BY COUNCILLOR TWISS

The 20% VAT charge for Education services covers both the Independent Special School Sector and Alternative Provision (who are the smaller providers). Providers can be reassured that we do not expect to see any interruption or delay in our payment arrangements because of these VAT changes.

The Council recovers VAT paid out through a monthly VAT Return to His Majesty's Revenues and Customs (HMRC), and this is factored into our cash flow forecasting. Any temporary cash flow requirements related to this new VAT cost will be managed through our normal daily treasury management activities and in line with the Strategy approved by Council. The impact on the Council's cash flow costs is not expected to be material.

Our general and earmarked reserves were £117 million at the start of this financial year, and we have set a balanced budget for 2024/25 without using reserves to balance day to day spend. Within the Budget Report approved by Council in February, our Director of Finance and Public Value provides her assurance regarding the robustness of the budget and the adequacy of reserves.

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10. QUESTION FROM COUNCILLOR CONNETT Re: Planning application at Lower Hare Farm

Planning Application DCC/4293/2022 sought an s73 variation to a prior planning approval (DCC/4101/2018) for a landfill at Lower Hare Farm, Whitestone. This is an EIA development. The S73 application also introduced multiple additional features under the guise of permitted development.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (specifically Article 3 Paragraph 10 and 11) explicitly states that Permitted Development Rights are withdrawn for EIA developments.

Where an Environmental Impact Assessment was required, permitted development rights are withdrawn and a new planning application must be submitted and must be accompanied by an Environmental Statement. Devon County Council appears therefore to have granted planning permission contrary to UK Statutory Planning Legislation.

Was the Council aware that this action had been taken on their behalf? Now that the council is aware, how will it rectify this situation?

REPLY BY COUNCILLOR BROOK

The question is based on a misinterpretation of planning legislation. While works that fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 may not be permitted through the General Permitted Development Order, the works in question at Lower Hare Farm (a site compound and access track improvements) do not amount to Schedule 1 or 2 development and, therefore, do benefit from the relevant permitted development rights. It follows that it is incorrect to suggest that a new planning application was required or that the Council has granted planning permission contrary to UK Statutory Planning Legislation.

The potential environmental impacts of these permitted development works were, however, addressed through consideration of the Operational Traffic and Environmental Management Plan that was required through a condition of the planning permission.