



Minutes

**Ordinary Council
Wednesday, 7th October, 2020**

Attendance

| | |
|--------------------------------|------------------|
| Cllr Ms Sanders (Deputy Mayor) | Cllr Keeble |
| Cllr Aspinell | Cllr Kendall |
| Cllr Barrett | Cllr Laplain |
| Cllr Dr Barrett | Cllr Lewis |
| Cllr Bridge | Cllr McCheyne |
| Cllr Chilvers | Cllr McLaren |
| Cllr J Cloke | Cllr Mynott |
| Cllr S Cloke | Cllr Naylor |
| Cllr Mrs Davies | Cllr Nolan |
| Cllr Mrs Fulcher | Cllr Parker |
| Cllr Fryd | Cllr Mrs Pearson |
| Cllr Haigh | Cllr Poppy |
| Cllr Mrs Hones | Cllr Mrs Pound |
| Cllr Hossack | Cllr Reed |
| Cllr Jakobsson | Cllr Tierney |

Apologies

| | |
|-------------------|----------------|
| Cllr Clarke | Cllr Morrissey |
| Cllr Hirst | Cllr Tanner |
| Cllr Kerslake | Cllr Tumbridge |
| Cllr Mrs McKinlay | |

Officers Present

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| Greg Campbell | - Director of Environment |
| Philip Drane | - Director of Planning and Economy |
| Amanda Julian | - Director of Law and Governance and Monitoring Officer |
| Tracey Lilley | - Director of Housing & Enforcement |
| Claire Mayhew | - Corporate and Democratic Services Manager |
| Jean Sharp | - Governance and Member Support Officer |
| Jonathan Stephenson | - Chief Executive |
| Steve Summers | - Chief Operating Officer |
| Jacqueline Van | - Director of Corporate Resources |
| Mellearts | |
| Richard Wilson | - Commercial Consultant |

520. Appointment of a Vice Chair

In accordance with Procedure Rule 4, 16.2, the Deputy Mayor - Cllr Miss Sanders - **MOVED**, Cllr Hossack **SECONDED** and it was **RESOLVED** that Cllr Nolan should act as Vice-chair for the duration of the meeting.

521. Variation in the order of the agenda

The Deputy Mayor **MOVED** and Cllr Nolan **SECONDED** and it was **RESOLVED** that there should be a variation in the order of the agenda so that Item 12 – Investment Proposal – would be considered before Item 11 – Brentwood Leisure Trust – due to possible technical difficulties in re-joining the meeting for Members needing to withdraw having declared an interest in Item 11. Also that Item 13 – Urgent Business – be considered before Item 12 so that the debate could be undertaken in the public domain if the motion to exclude the press and public (Item 10) was carried.

522. Apologies for Absence

Apologies for absence were received from Cllrs Clarke, Hirst, Kerslake, Mrs McKinlay, Morrissey, Tanner and Tumbridge.

523. Declarations of Interest

No declarations of interest were made at this stage.

524. Deputy Mayor's Announcements

The Deputy Mayor advised that £10,500 had been raised during Cllr Parker's Mayoral Year which would be divided equally between his two chosen charities – St Francis Hospice and Prostate Cancer UK. A formal presentation would be made to the charities at the 2021 Annual Council meeting.

She also advised that in light of the ongoing restrictions due to the pandemic there would be no Remembrance Day parade this year but the British Legion would lay a wreath at the war memorial on 8 November. A private service would be held at St Thomas' which would be live-streamed and wreaths from the service would be laid at the war memorial on 11 November to commemorate the fallen.

Virtual activities to mark Remembrance Day would be available on the Council's Facebook page and the Remembrance Day flag would be flown and the Town Hall building lit up in red to commemorate the week of remembrance.

The Council's Christmas event programme was to be delivered virtually this year and the Community Services team would pre-record some content to be broadcast on 28 November together with a virtual countdown of the switching on the Christmas lights. A Nutcracker trail would be set in Brentwood, Shenfield and Ingatestone for families to follow with a chance to win a Nintendo Switch. All the Nutcrackers had been sponsored by local businesses with the aim of encouraging footfall to the three High Streets.

525. Minutes of the previous meeting

The minutes of the Ordinary Council meeting held on 16 September 2020 were **RESOLVED** to be a true record.

526. Public Questions

No public questions had been received.

527. Memorials or Petitions

No memorials or petitions had been received.

528. Committee Chairs Reports and Members Questions

The Deputy Mayor advised that under rule 8.3.13 of the Constitution she **MOVED** and it was **RESOLVED** to defer Item 8 to the next Ordinary Council meeting as she believed that the items of business included in the agenda could not be accomplished satisfactorily in the time available (3 hours and 15 minutes stated at 10.1 of the Constitution).

529. Notices of Motion

Six Notices of Motion had been received, as detailed in the report, however, Motion No 5 was withdrawn by Cllr Hossack as it had come to his attention that the six-month rule in the Constitution applied (Procedure Rules, 3.13) and Motion No 6 was not heard as Cllr Tumbridge was not present.

1. Deferred from 16th September 2020 Ordinary Council meeting.

Cllr Lewis **MOVED** and Cllr Aspinell **SECONDED** the following motion:

In February 2020 the National Audit Office said "Local authorities face potential investment risks from buying commercial property, such as in the event of an economic recession or a downturn in a particular economic sector, particularly where authorities are dependent on their rental income to keep up with debt repayments or fund local services".

In the light of the National Audit Office concerns and the United Kingdom now being in severe economic recession, this Council resolves in order to understand the impact of the Council purchasing commercial property may have on the Council's finances moving forward that members of the Council call upon the officers to undertake a full review into the risks, rewards and relationship between Brentwood Borough Council and its wholly-owned subsidiary company SAIL. A full report must be submitted to the Policy Resources and Economic Development Committee within three months of today's date.

Cllr Hossack advised that a report was to be brought to the 21 October 2020 Policy, Resources and Economic Development Committee meeting to consider what was proposed in this motion.

Following a debate Members voted on the motion and it was **RESOLVED UNANIMOUSLY** accordingly.

2. Deferred from 16th September 2020 Ordinary Council meeting.

Cllr Mrs Davies **MOVED** and Cllr Aspinell **SECONDED** the following motion:

There has been an increasing and widespread problem with drug taking and dealing from council properties. This illegal behaviour causes suffering and distress to residents and is detrimental to neighbourhoods in general.

This council requests officers take firm action when tenants have been found guilty of drug related offences, enforcing their tenancy agreements and seek eviction orders where appropriate. Also this council adopts a zero tolerance and will not tolerate drug related anti-social behaviour within our council properties.

Following a debate Members voted on the motion and it was **RESOLVED** accordingly.

3. Deferred from 16th September 2020 Ordinary Council meeting.

Cllr Mynott **MOVED** and Cllr Aspinell **SECONDED** the following Motion:

As a non-partisan national organisation with the best interests of local government at heart, the Local Government Association recently joined with fifteen other organisations imploring the government to keep the Planning system in England local. As reported in First magazine, 'In an open letter to the Telegraph, the LGA and partners warned that taking Planning powers away from communities and councils will only deprive them of the ability to define the area they live in and know best, and risks giving developers the freedom to "ride roughshod" over local areas'. Conservative Cllr James Jamieson, LGA chair, said 'Planning powers must remain at local level, to

enable councils to deliver resilient, prosperous places that meet the needs of their communities'.

This Council resolves to ask that an official representation to central government, agreeing wholeheartedly with the LGA position, and expressing deep concern at (hence opposition to), threatened current moves to strip local authorities of their Planning powers be made by the appropriate officer(s) in consultation with the appropriate Councillors and Leader of this Council.

Following a debate Members voted on the motion and it was **RESOLVED** accordingly.

4. Cllr Poppy **MOVED** and Cllr Mrs Pearson **SECONDED** the following motion:
The Council are proposing to declare all existing Council owned allotment sites in the Borough as having statutory status, so they enjoy the legal protection provided by the Allotment Act 1925.
Following a debate Members voted on the motion and it was **RESOLVED UNANIMOUSLY** accordingly.

530. Urgent Business - Brentwood Test and Trace Payments Scheme

The Deputy Mayor had accepted this matter as urgent business due to the 12 October 2020 deadline for local authorities to have arrangements in place to administer payments.

Members were advised that the Government had set down the requirements for two payment schemes to be administered by the Council to help control the transmission of the Covid-19 virus.

1. The Test and Trace Payments Scheme, the standard scheme
2. The Test and Trace Discretionary Payments Scheme, the discretionary scheme

Members were being asked to delegate authority to the Director of Corporate Resources to finalise and implement the Brentwood Test & Trace Discretionary Payments Scheme.

Cllr Hossack **MOVED** and Cllr Parker **SECONDED** the recommendations in the report and following a debate it was **RESOLVED UNANIMOUSLY** that:

- 1 **The scheme as set out in Appendix A be approved**
- 2 **Authority be delegated to the Council's Director of Corporate Resources to finalise and implement the Brentwood Test & Trace Discretionary Payments Scheme and any requirement to amend the scheme in line with Government guidance.**

531. Exclusion of the Press and Public

The Deputy Mayor **MOVED**, Cllr Nolan **SECONDED** and it was **RESOLVED** that the press and public be excluded from the meeting as the next two items of business to be considered - Items 11 and 12 - included exempt information as defined in Schedule 12A of the local Government Act 1972.

532. Investment Proposal - EXEMPT

Members had been advised that under Part 4 of the Constitution there were no Procedure rules to enable questions to be put at the meeting relating to the confidential items 11 and 12.

Cllr Kendall **MOVED** and Cllr Mynott **SECONDED** and it was **RESOLVED UNANIMOUSLY** that under Procedure Rule 8 1.12 , rule 7 restricting the answering of questions to the Chair's Reports be suspended for the duration of the meeting enabling Members to ask questions on the reports.

Cllr Hossack **MOVED** and Cllr Parker **SECONDED** the recommendations in the report.

Cllr Kendall **MOVED** and Cllr Naylor **SECONDED** an **AMENDMENT** which Cllr Hossack **DID NOT ACCEPT** and Members debated the **AMENDMENT** which was **LOST**.

Returning to the substantive motion, following a full debate the **MOTION** was **CARRIED**.

Cllrs Mrs Davies, Aspinell, Kendall and Chilvers each declared a non-pecuniary interest by virtue of knowing Gavin Stollar.

Following consideration of this item of business, the Mayor proposed under Procedure Rule 8.3.11(g) that the meeting continue beyond three hours and fifteen minutes and for a specified period of time – ie 30 minutes.

533. Brentwood Leisure Centre - EXEMPT

Cllr Hossack **MOVED** and Cllr Poppy **SECONDED** the recommendations within the report and it was **RESOLVED UNANIMOUSLY** accordingly.

Cllr Reed declared a pecuniary interest by virtue of being employed by Brentwood Leisure Trust and withdrew from the meeting.

Cllr Parker advised that statements he had made which consisted of information available in the public domain had been reported in the local press and therefore he also withdrew from the meeting.

The meeting concluded at 10.45pm

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Written Summary of Report to Ordinary Council 7 October 2020.

Brentwood Leisure Trust

Pursuant to the Local Government Act 1972 s100C (2) the minutes of Ordinary Council held on the 7 October 2020 do not provide members of the public a reasonably fair and coherent record of the part of the proceedings that dealt with the Brentwood Leisure Trust. The Proper Officer shall make a written summary of the proceedings or the part which provides such a record without disclosing the exempt information.

Background

The Council in 2004 transferred its leisure provision to the Brentwood Leisure Trust (BLT). Since the transfer, the Council have on numerous occasions provided BLT with assistance both financial and non-financial, this assistance has had a “value” which has enabled BLT to continue. The service was by direct award.

The assistance provided by the Council since the transfer of services to BLT has included grants of circa £2.4 million, and two substantial loans. Despite this assistance, BLT approached the Council for further assistance.

As with all leisure facilities they have been affected by the current COVID-19 Pandemic. Many leisure providers are finding it difficult and have turned to Local Authorities for assistance. The Government issued procurement advice notes (PPN2) to encourage public bodies to where possible to continue to pay their suppliers and keep supply chains open, particularly where the supplier has been placed in financial difficulty or is “at risk” as a result of the COVID-19 Pandemic. This assistance is primarily focused on assisting businesses that were not in financial difficulty prior to December 2019. The European Commission has also provided a mechanism for public bodies to support chains by enabling State aid to be provided under a Temporary Framework, in certain circumstances, up to €800,000.

For services that have been secured through the appropriate procurement process, the above support measures will be more readily available. When reviewing the service provided for the purposes of PPN2 and State aid, it becomes apparent that the services would have to have been subject to a competitive tender exercise.

The Council have for some years provided BLT's auditors with a letter of comfort confirming that it will not call in the loans owed to the Council. This by their own admission is the only reason why BLT are not in administration

For the reasons given above and in the main body of the report the Council were informed that it could not lawfully continue to provide BLT with State aid. BLT and the Council will need to work on a planned handover of the services to another provider,

to ensure that the Council and any future provider of the service is aware of the liabilities that they may inherit, if BLT can no longer provide the service.

There is a four-stage test to determine if unlawful State aid has been provided to an economic entity. BLT, even though a charity, is an economic entity therefore the State Aid rules do apply, they are through the various arrangements required to improve the recreational, sport, leisure and other related social orientated services both in and outside the Borough. Through the running of the Brentwood Centre, including the events are in direct competition with other potential providers.

The four stages are:

- The use of tax-payers money.
- The entity has an unfair advantage.
- They would not be able to obtain the advantage on the open market.
- The effect of providing the aid has closed the market to competition.

The Council has a statutory duty to ensure that it always acts lawfully and reasonably. Further it is the duty of the s151 Officer to ensure that the financial affairs of the Council are properly administered.

The Monitoring officer appointed under s5 Local Government and Housing Act 1989 also has a statutory duty to report to elected members if it appears the authority were about to, or, have taken actions that contravene the law or could amount to maladministration.

BLT has provided a service for the Borough from 2004, it can be seen from the documents that the Council has effectively been its banker since arguably 2006. To continue to assist with providing financial and other support is for the reasons given above unlawful.

The Council resolved that even though could not provide financial or other support that would infringe State Aid principles it would work with the Trust to affect a smooth transition of services. Further that it would re-engage the Leisure Strategy Working Group to look at future provisions throughout the Borough.

Cllr Hossack **MOVED** and Cllr Poppy **SECONDED** the recommendations within the report and it was **RESOLVED UNANIMOUSLY** accordingly.