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24 January 2019

Dear Dr Priest,

**Re Notice of Intention to hold a Cabinet meeting and Overview and Scrutiny Committee meeting (or parts thereof) in private – meetings 12 and 13 February 2019**

We act for the Save Princes Parade community group and have been asked to write to you in relation to the notice issued by you on 17 December 2018 in relation to the part of the forthcoming Cabinet Committee meeting (originally planned for 30<sup>th</sup> January 2019 but now on 13 February 2019) which concerns the business case for the Princes Parade Planning Application.

We also understand that a report relating to the business case for the Princes Parade Planning Application will be considered by the Overview and Scrutiny committee on Tuesday 12 February 2019.

## **The Cabinet Meeting**

In respect of the cabinet meeting, the notice dated 17 December 2018 says:

**NOTICE IS GIVEN THAT:**

***The Cabinet of Folkestone and Hythe District Council intends to hold a meeting (or parts thereof), on the date shown above, in private.***

***The following exempt issues will be considered:-***

***Princes Parade Business Plan - Part exempt***

***Consideration of the business case for the Princes Parade development comprising the construction of a new leisure centre, up to 150 new homes and public open space***

***It is proposed to exclude the public from this item of business on the grounds that it is likely to disclose exempt information, as defined in the following paragraph of Part 1 of Schedule 12A to the Local Government Act 1972:***

***3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information). 'Financial or business affairs' includes contemplated as well as current activities.***

The Notice has been published pursuant to the Local Authorities (Executive Arrangements) Meetings and Access to Information) (England) Regulations 2012.

Section 4 of these regulations states:

***(1) A meeting of a decision-making body must be open to the public except to the extent that the public are excluded under paragraph (2).***

***(2) The public must be excluded from a meeting during an item of business whenever—***

***(a) it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence;***

***(b) the decision-making body concerned passes a resolution to exclude the public during that item where it is likely, in view of the nature of the item of business, that if members of the public were present during that item, exempt information would be disclosed to them; or***

***(c) a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.***

***(3) A resolution under paragraph (2)(b) must—***

***(a) identify the proceedings, or the part of the proceedings to which it applies, and***

***(b) state, by reference to the descriptions in Schedule 12A to the 1972 Act (access to information: exempt information), the description of exempt information giving rise to the exclusion of the public.***

***(4) The public may only be excluded under sub-paragraph (a) or (b) of paragraph (2) for the part or parts of the meeting during which it is likely that confidential information or exempt information would be disclosed.***

Section 2 explains that:

***"exempt information" has the meaning given by section 100I of the Local Government Act 1972 (exempt information and power to vary Schedule 12A);***

Section 100I of the Local Government Act 1972 as amended states:

*In relation to principal councils in England, the descriptions of information which are, for the purposes of this Part, exempt information are those for the time being specified in Part I of Schedule 12A to this Act, but subject to any qualifications contained in Part II of that Schedule; and Part III has effect for the interpretation of Parts 1 to 3 of that Schedule.*

Schedule 12A part 1 includes:

*(3) Information relating to the financial or business affairs of any particular person (including the authority holding that information)*

This type of information is therefore potentially exempt and this is the section that the notice relies upon.

However Part 2 says:

*(9) Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.*

The Council is the determining Authority and therefore the information contained in the Business Case is not exempt.

We note that these statutory requirements are mirrored in s.6.4 (9) of the council's constitution.

The notice of 17 December refers to the business case for the Princes Parade development comprising the construction of a new leisure centre, up to 150 new homes and public open space. The Princes Parade Development is the subject of an application for planning permission by Folkestone and Hythe District Council (reference Y17/1042/SH).

The information therefore:

*"relates to proposed development for which the local planning authority may grant itself planning permission".*

It therefore falls within Schedule 12A Part 2 paragraph (9) and, as a result, it is not exempt and there is no basis for the meeting to be held in private.

We note that you have made the following points in an email to Mrs Whybrow dated 11 January 2019:

*"The Council does not agree with your interpretation of para 9 of Schedule 12A of the Local Government Act 1972. The Council is of the opinion that the exemption can still apply. This is because the restriction on exemptions at paragraph 9 of Schedule 12A relates to*

*information concerning the planning process, rather than the Business Case.*

*As you are aware, the Cabinet meeting on 30 January will be considering the Business Case and will not be considering planning issues. Officers consider the details of the Business Case to be commercially sensitive. It should also be noted that the information being considered during the Cabinet meeting will not be part of the consideration as to whether planning permission should be granted.*

*It is, of course, for the members of the Cabinet to decide whether or not to exclude the public from the meeting. Objections to the exclusion will be placed before Councillors so they can take them into account. The public interest will also be considered prior to any decision on whether or not to consider the matter in private."*

We have already set out the exemption at paragraph 9 above. Paragraph 9 does not say that the information is not exempt information if it (your wording):

*"relates to information concerning the planning process"*

Instead paragraph 9 says that the information is not exempt information if it:

*"relates to proposed development for which the local planning authority may grant itself planning permission."*

The "Princes Parade Business Plan" clearly falls within this definition

Similarly, paragraph 9 is not confined to planning meetings as you suggest. It applies to categories of information rather than types of meeting. The "business case for the Princes Parade development comprising the construction of a new leisure centre, up to 150 new homes and public open space" clearly:

*"relates to proposed development for which the local planning authority may grant itself planning permission."*

Whether or not the meeting will be considering planning issues is irrelevant. The meeting must be in public unless one of the exceptions applies. In this case the purported exemption does not apply and so the meeting must be in public. Any attempt to restrict the public would be unlawful. These points apply whether the meeting takes place on 13th February or at any later date.

We would be grateful if you would confirm that the notice will be withdrawn and that the meeting will be open to the public. We would also be grateful if you would provide us with copies of the papers relating to the Princes Parade Development at least 5 clear working days prior to the meeting.

In the event that the notice is not withdrawn, in accordance with the Council's constitution Part 6.4 Rule 14.1b), we request that you post a notice of our representations at the Council offices and on the website at least 5 working days prior to the meeting.

## **The Overview and Scrutiny Committee meeting**

The situation in respect of the Overview and Scrutiny Committee meeting is the same. The committee is covered by the Local Government Act 2000. Section 21 (11) states that:

*An overview and scrutiny committee of a local authority, or a sub-committee of such a committee, is to be treated—*

*(a) as a committee or sub-committee of a principal council for the purposes of Part VA of the Local Government Act 1972 (access to meetings and documents of certain authorities, committees and sub-committees)*

Part VA of the Local Government Act 1972 starts with s.100A: Admission to meetings of principal councils.

- (1) A meeting of a principal council shall be open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under subsection (2) below or by resolution under subsection (4) below.*
- (2) The public shall be excluded from a meeting of a principal council during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence; and nothing in this Part shall be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.*
- (3) ...*
- (4) A principal council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I below.*

According to s.100E, Application to committees and sub-committees.

- (1) Sections 100A to 100D above shall apply in relation to a committee or sub-committee of a principal council as they apply in relation to a principal council.*

In short, the same rules under s.100E apply to the Overview and Scrutiny Committee. The public can only be excluded if there is exempt information. For the reasons set out above, the exemption does not apply in this case because the information:

*"relates to proposed development for which the local planning authority may grant itself planning permission."*

We note that these statutory requirements are mirrored in s.7.4 (9) of the council's constitution.

We would be grateful if you would confirm that the Overview and Scrutiny Committee meeting will be open to the public. We would also be grateful if you would provide us with copies of the report and any other papers relating to the Princes Parade Development at least 5 clear working days prior to the meeting.

In the event that this is not agreed, we request that you provide the members of the committee with a copy of this letter so that they are aware of our client's objections.

Yours faithfully

A black rectangular redaction box covering the signature of the sender.

Richard Buxton Solicitors  
Environmental, Planning and Public Law