

BRECKLAND COUNCIL

At a Meeting of the

COUNCIL

**Held on Tuesday, 7 July 2009 at 10.30 am in the
The Gallery Bar, Watton Sports Centre, Dereham Road, Watton**

PRESENT

Mr S. Askew	Mr C.R. Jordan
Mr G.P. Balaam	Mr R. Kemp
Mrs J. Ball	Mr M.A. Kiddle-Morris
Mr S.G. Bambridge	Mr R.G. Kybird
Mr W.P. Borrett	Mr J.P. Labouchere
Councillor Claire Bowes	Mr K. Martin
Mr A.J. Byrne	Mrs S.M. Matthews
Mrs M.P. Chapman-Allen	Mrs K. Millbank
Mr R.P. Childerhouse	Mr I.A.C. Monson
Mr P.D. Claussen	Mr D.G. Mortimer
Mr J.P. Cowen	Mr D.S. Myers
Mr P.J. Duigan	Mr J.W. Nunn
Lady Fisher	Mr J.D. Rogers (Chairman)
Mr P.S. Francis	Mr S. J. P. Rogers
Mr K.S. Gilbert	Mr B. Rose
Mr R.F. Goreham	Mr F.J. Sharpe
Councillor E. Gould	Mr I. Sherwood
Mr M.J. Griffin	Mr W.H.C. Smith
Mrs T. Hewett	Mrs P.A. Spencer
Mrs D.K.R. Irving	Mr A.C. Stasiak
Mr A.P. Joel	Mr N.C. Wilkin

Also Present

Joan Jenkins Chairman – Standards Committee

In Attendance

Sheila Cresswell	- Member Services Officer
Phil Daines	- Development Services Manager
Annalisa Graziano	- Member Development Officer
Lisa Hilton	- Senior Marketing and Communications Officer
Stephen James	- Policy and Performance Manager
Tim Leader	- Deputy Chief Executive
Stephen McGrath	- Member Development Team Leader
Mark Stokes	- Strategic Director (Services)
Ian Vargeson	- Member Services Manager

NEW MEMBER

The Chairman opened the meeting by welcoming Simon Rogers to his first full Council meeting.

LIGHT DRAGOONS

The Council then rose to observe a Minute's silence in tribute to the Light Dragoons who had recently lost their lives in Afghanistan.

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It was agreed that the Chairman should write to convey the Council's condolences, as well as its admiration and gratitude for the high quality of service and conduct shown by all those engaged in the campaign. The Chairman also agreed to write on the Council's behalf to the Mayor of Wootton Bassett in Wiltshire, in appreciation of the town's role in respectfully marking the repatriation of casualties on their journey from RAF Lyneham.

Furthermore, it was agreed that some sort of token would be sent to the regiment on its return to barracks to assure them that they are, and would remain, a valued part of the Breckland community.

RESOLVED that

- (1) the Chairman send a letter of condolence and support to the Regiment at Swanton Morley, on behalf of the whole Council; and
- (2) a letter of support and thanks also be sent to the Mayor of Wootton Bassett.

70/09 MINUTES (AGENDA ITEM 1)

The Member Services Manager drew attention to the Resolution at Minute number 59/09 (b) (Councillor Call for Action), which needed to be ratified.

RESOLVED that the Council's Constitution be amended as per the recommendation.

The minutes of the meeting held on 28 May 2009 were then agreed as a correct record and signed by the Chairman.

71/09 APOLOGIES (AGENDA ITEM 2)

Apologies for absence were received from Mr S Chapman-Allen, Mr M Fanthorpe, Mr J Gretton, Mr P Hewett, Mrs L Monument, Mrs P Quadling, Mr M Spencer, Mrs A Steward, Mrs L Turner and Mr D Williams JP.

72/09 DECLARATIONS OF INTEREST (AGENDA ITEM 3)

The following declarations of interest were noted:

Lady K Fisher	Personal interest in item 57/09 (p.9);
	Personal & Prejudicial interest on item 100/09(d) (p.36) (Kilverston Park/football pitches);
	Personal & Prejudicial interest on item 6/09 (p.85) (Private water supplies);
	Personal and Prejudicial interest on any reference relating to the Thetford Growth Point.

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Mr J Labouchere Personal and Prejudicial interest on any LDF matters concerning North Elmham, by virtue of being a landowner; and

Personal interest on any LDF matters regarding Hermitage Ward.

73/09 CHAIRMAN'S ANNOUNCEMENTS (AGENDA ITEM 4)

The Chairman drew particular attention to the events at the Sports Park, which he was delighted to have supported.

Engagements List – Chairman
28th May, 2009 – 8th July, 2009

Date	Event	Host
6 th June, 2009	Baseball Summer Barbecue	The Vice-Commander, Third Air Force, and Mrs. Mark Z. Zamzow
8 th June, 2009	Dinner	Tom Paine 200 Celebrations Committee
14 th June, 2009	Mayor's Civic Service	Mayor of Thetford, Councillor Mrs. Pamela Spencer
18 th June, 2009	Active Norfolk Youth Games 2009 – Opening Ceremony - Athletics	Active Norfolk Games Committee
22 nd June, 2009	Presentation ceremony to receive Her Majesty's Armed Forces Veterans' Badge and flag raising ceremony	Breckland Council
22 nd June, 2009	Private view and celebration with GCSE students in the Art and Design Studios	Dereham Neatherd High School
26 th June, 2009	Active Norfolk Youth Games 2009 – Opening Ceremony - Swimming	Active Norfolk Games Committee
26 th June, 2009	Civic Reception	Mayor of Thetford and Consort, Councillor Pam Spencer and Mr. Mike Spencer

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27 th June, 2009	Presentation ceremony to receive Her Majesty's Armed Forces Veterans' Badge	The Lord-Lieutenant of Norfolk and the Chairman of Norfolk County Council
5 th July, 2009	Annual Civic Service	His Worship the Mayor and Madam Mayoress of Great Yarmouth, Councillor Tony and Mrs Sara Smith
7 th July, 2009	Buckingham Palace	

Engagements List – Vice-Chairman
28th May, 2009 – 8th July, 2009

Date	Event	Host
8 th June, 2009	Dinner	Tom Paine 200 Celebrations Committee
21 st June, 2009	Annual Civic Service	Lord Mayor Designate, Councillor Evelyn Collishaw, and Sheriff Designate, Professor Tim O'Riordan
26 th June, 2009	Civic Reception	The Mayor of Dereham, Councillor Ann Bowyer
5 th July, 2009	Civic Service	The Mayor and Mayoress of Swaffham, Councillor David and Mrs. Harman

74/09 CABINET MINUTES - 23 JUNE 2009 (AGENDA ITEM 5)

- (a) Chairman's Announcements (Min No. 56/09) : It was pointed out that Mr Johnson's surname was missing at Agenda item 56/09.
- (b) Governance and Performance Report – Quarter 4 (Min No. 60/09) :

RESOLVED that the Recommendation under the Governance & Performance Report – Quarter 4 (Minute Item 60/09) be approved.

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(c) Adoption

RESOLVED that the unconfirmed minutes of the Cabinet meeting held on 23 June 2009 be adopted.

75/09 OVERVIEW AND SCRUTINY COMMISSION - 18 JUNE 2009 (AGENDA ITEM 6)

(a) Planning Protocol for Members (Minute 55/09)

The Chairman of the Overview & Scrutiny Commission drew Members' attention to the fact that there had been robust discussion about the proposed new Planning Protocol.

The intention had been to place the onus on Development Control Members, not to restrict other Members in their representative roles.

RESOLVED that

(1) the grants from the awarding bodies as detailed in the report be accepted;

(2) the budget for both the grant income and expenditure that the Council would incur in meeting the grant conditions be approved; and

(3) the revenue projects as detailed in the report be carried over and moved into the Organisational Development Reserve to draw upon in 2009/10.

(b) Adoption

RESOLVED that the unconfirmed minutes of the Overview & Scrutiny Commission held on 18 June 2009 be adopted.

76/09 DEVELOPMENT CONTROL COMMITTEE - 1 JUNE 2009 (AGENDA ITEM 7)

RESOLVED that the confirmed minutes of the Development Control Committee meeting held on 1 June 2009 be adopted.

77/09 DEVELOPMENT CONTROL COMMITTEE - 22 JUNE 2009 (AGENDA ITEM 8)

RESOLVED that the unconfirmed minutes of the Development Control Committee meeting held on 22 June 2009 be adopted.

78/09 GENERAL PURPOSES COMMITTEE - 24 JUNE 2009 (AGENDA ITEM 9)

RESOLVED that the unconfirmed minutes of the General Purposes Committee meeting held on 24 June 2009 be adopted.

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79/09 APPEALS COMMITTEE - 17 JUNE 2009 (AGENDA ITEM 10)

It was pointed out that the words "driving licence" needed to be replaced by "Hackney Carriage/Private Hire driving licence" in the Resolution at Minute No. 24/09. Subject to this, it was

RESOLVED that the unconfirmed minutes of the Appeals Committee meeting held on 17 June 2009 be adopted.

80/09 LICENSING COMMITTEE - 27 MAY 2009 (AGENDA ITEM 11)

RESOLVED that the unconfirmed minutes of the Licensing Committee meeting held on 27 May 2009 be adopted.

81/09 STANDARDS COMMITTEE - 23 JUNE 2009 (AGENDA ITEM 12)

Mrs J Jenkins, Chair of the Standards Committee, was in attendance to present the Minutes.

RESOLVED that the unconfirmed minutes of the Standards Committee meeting held on 23 June 2009 be adopted.

82/09 AUDIT COMMITTEE - 12 JUNE 2009 (AGENDA ITEM 13)

RESOLVED that the confirmed minutes of the Audit Committee meeting held on 12 June 2009 be adopted.

83/09 ANNUAL REPORT OF THE AUDIT COMMITTEE (AGENDA ITEM 13(A))

RESOLVED that the Annual Report of the Audit Committee adopted.

84/09 AUDIT COMMITTEE - 25 JUNE 2009 (AGENDA ITEM 14)

RESOLVED that the unconfirmed minutes of the Audit Committee meeting held on 25 2009 be adopted.

85/09 GREEN AGENDA DEVELOPMENT PANEL - 17 JUNE 2009 (AGENDA ITEM 15)

(a) Terms of Reference (Minute No. 4/09)

RESOLVED that the recommendation at (a) be adopted as stated, with the note that in view of item (3), future Minutes of this Panel should be presented to the Overview and Scrutiny Commission.

(b) Adoption

RESOLVED that the unconfirmed minutes of the Green Agenda Development Panel meeting held on 17 June 2009 be adopted.

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86/09 NOMINATIONS FOR COMMITTEE AND OTHER SEATS (AGENDA ITEM 16)

RESOLVED that Mr S. Rogers be appointed to serve on the Development Control Committee and the Member Development Panel.

87/09 YOUTH COUNCIL MINUTES - 11 MAY 2009 (FOR INFORMATION) (AGENDA ITEM 17)

The unconfirmed minutes of the Youth Council meeting held on 11 May 2009 were noted.

88/09 FURTHER BUDGETARY PROVISION FOR LOCAL GOVERNMENT REVIEW IN NORFOLK (AGENDA ITEM 18)

The Deputy Chief Executive presented a report which requested the Council's approval of a further budget of £100,000 to fund a second judicial review of the Boundary Committee's and Secretary of State's review of local government in Norfolk, and to advance the case for retaining a county and district Councils system.

He began by reminding Members about the background and highlighted a comment by the Chairman of the Boundary Committee that "it seems inconceivable that there would be no way at all of producing a unitary solution for Norfolk". It was considered unlikely, therefore, that the Boundary Committee would consent to a status quo.

The three original options ("Wedge"/"Doughnut"/"County Unitary") had effectively been narrowed down to the latter two, with agreement that Lowestoft would no longer be incorporated into the county of Norfolk under any new arrangement.

The Boundary Committee would be submitting its advice to the Secretary of State on 15 July 2009.

According to the latest letter received from the Secretary of State's office, it had been made clear that if all Councils affected by the new proposals were to make representations, then the Secretary of State would proceed to lay the matter before Parliament at the turn of the year in the form of a "draft Structural Change Order" to abolish the existing two-tier system of local government in Norfolk. This Order would run its course through both Houses of Parliament and it would mean the inevitable creation of a new Authority or Authorities, which would have to come into effect in April 2011. Early in the New Year, therefore, either an interim Authority would need to be set up, or else lead officers would need to work together to start work on the creation of the new Authority/Authorities. It would also be necessary to take account of electoral issues in terms of where, and how, Members would be distributed under any new arrangement.

The Deputy Chief Executive pointed out that if Members decided to do nothing at this juncture, then it was likely that the above scenario would take place. The impact of a General Election was likely to be predictable in terms of moving fast forwards on this if Labour were to

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continue as the governing party. It was less clear at this stage exactly what a Conservative Government approach would be.

He argued that if Members wished to retain some sort of control over their future and the future of local government in Norfolk, then serious consideration should be given to the next steps in this process. Any challenge to the Boundary Committee might well need to be followed by one to the Secretary of State which would, at the very least, drive the timetable backwards.

No reputable Barrister would advise such a challenge unless they felt unequivocally positive in terms of there being "good grounds" and a "reasonable chance of success".

Current legal advice was that the Boundary Committee had misinterpreted and failed to apply the law correctly, ignoring representations from Local Authorities. Consequently there was a strong local case that the Committee's approach to the Review was unlawful (as set out on page 79 of the Agenda) and it could be argued that there was a robust case to further probe and test the Committee's proposals.

The Deputy Chief Executive then clarified the key financial implications and risks of any decision to continue with a legal challenge.

- (1) Costs are not automatically recovered from litigation cases, even if the case was won, since these come under the Judge's personal jurisdiction.

It would therefore be sensible to assume that costs would be incurred. These could amount to as much as £150,000.

- (2) Costs from the previous legal challenge had been shared among three parties. There was a possibility that any future challenge could be shared among **four** Local Authorities (including, at this stage, King's Lynn and West Norfolk). This could potentially bring exposure down to about £40,000 per Local Authority involved. However, he stressed that at this stage two other likely parties had not yet formally confirmed that they would share such responsibility.
- (3) If a legal challenge were lost, then it was highly likely that the Boundary Committee would ask for, and be granted, legal costs. These could amount to £200,000.
- (4) Additionally, there could be further expense if a Boundary Committee challenge were to be followed by one to the Secretary of State.

Challenge costs could potentially therefore reach the region of £400,000 (plus our own of about £150,000, as outlined at (1) above).

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Having set out the risks, however, he then went on to add that there would be no way that the Council would be permitted to proceed to litigation unless it had received the strongest indication that it would have a chance of success. Initial costs (marked at the £100,000 currently requested) would be under continuous review, and legal procedures could be halted at any time - certainly before matters were at the point of being taken to Court, i.e. when expenses would start to escalate very quickly.

If Members gave authority for a further legal challenge to proceed, then the next stage would be for the Boundary Committee/Secretary of State to produce their defence. This would be the paperwork upon which Counsel would make their judgement and recommendations about any further action.

He therefore proposed that:

- a) £100,000 should be made available as “working capital” for a second legal challenge to the Boundary Committee.
- b) Authority be given to the Chief Executive, in consultation with the Leader of the Council, to release funds for initial legal activity. (Such release to be contingent upon Breckland’s three co-claimants formally agreeing to cover a share of any costs.)
- c) Any litigation activity would be dependant upon clear legal advice that the case had a “reasonable prospect of success”.
- d) The whole process to be kept under continued and close review, with Members being regularly updated once the initial defence had been lodged.
- e) Members would be given adequate time to reflect before any further commitments were made.

There was concern that the Secretary of State might, at a later date, make a completely new proposal. However, the Deputy Chief Executive said that that could not happen: if it went ahead at all, any LGR would need to do so either as originally tabled (i.e. the Unitary model), or as modified by the Boundary Committee. If any decision went as far as the Court of Appeal, it would, effectively, be timed-out. The whole process would then need to start from scratch again - if there were the political will to do so at that stage.

The Leader of the Labour Group challenged the assertions that the District Council would be lost if the current government were to be followed by another Labour one, or that a Unitary Council would be “imposed” on Norfolk, regardless of local opinion. He also believed that the public were largely disengaged from the whole [political] process of the LGR: their concerns remained “best value for money” in terms of the public services and amenities provided by local government. He felt it would be morally indefensible to spend tax payers’ money defending what he believed to be an ideological argument. He felt that the chief winners in such a case would be the

lawyers.

Other Members argued strongly in favour of proceeding with a further challenge, saying that many people across the county had expressed real concern about the likelihood of only about 80 Councillors being expected to cover such a potentially wide area. It was felt that there was indeed a moral argument in favour of proceeding, at least initially: people wanted to see and have access to their Councillors. Additionally, Breckland currently had a reputation for the lowest Council tax in Norfolk, and indeed the country. The likelihood was that any changes proposed would result in dramatic year-on-year increases (Band D was cited as an example, and would have a £106 basic annual increase). There were also serious concerns about how good services could realistically be delivered at the "local" level if local government were to be run on a much larger scale. Finally, it was pointed out that people had not actually been asking for a LGR: it was felt that central government was wasting time and money trying to impose something that was not wanted.

RESOLVED

- (1) to proceed with the proposal to release a further budget of £100,000 to fund a judicial review of the Boundary Committee and the Secretary of State's Review of Local Government in Norfolk, and to advance the case for retaining a county and district councils system.
- (2) release to be contingent upon co-claimants' commitments;
- (3) authority to release funds to be delegated to the Chief Executive in consultation with the Leader;
- (4) contribution to be dependent upon continued advice of reasonable prospects of success; and
- (5) prospects to be kept under review by the Council.

Mr Goreham and Mr Gilbert voted against this proposal.

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The meeting closed at 11:30 a.m.

CHAIRMAN