



## Borough of Douglas

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Town Hall,

Douglas,

12<sup>th</sup> August, 2015

At a MEETING of the COUNCIL of the BOROUGH OF DOUGLAS, duly convened and holden at 2.30 p.m. on WEDNESDAY, the 12<sup>th</sup> day of AUGUST, 2015, in the COUNCIL CHAMBER, within the TOWN HALL, at which Meeting the following Members were present, that is to say: -

The Mayor

**COUNCILLOR MRS SARA DAWN ANDREA HACKMAN, JP**

Councillor

Mrs C.A. Corlett

Mr S.R. Pitts

Mr D.J. Ashford

Mrs R. Chatel

Mr D.W. Christian, MBE, JP

Mr E.A. Joyce

Mrs C.E. Malarkey

Mr C.L.H. Cain (from 3.37pm)

Mr G.J. Faragher

Miss D.A.M. Pitts

Mr R.H. McNicholl

Mr J.E. Skinner

Ms K. Angela

Mr S.C. Cain, JP (from 2.55pm)

Mrs E.C. Quirk

Apologies for lateness were submitted on behalf of Mr Councillor C.L.H. Cain, and Mr Councillor S.C. Cain, JP.

The Chief Executive and Town Clerk, the Borough Treasurer and the Assistant Chief Officer (Housing and Property) were in attendance.

1. **Minutes – 8<sup>th</sup> July, 2015**

The minutes of the monthly Council meeting held on Wednesday, 8<sup>th</sup> July, 2015 were approved and signed.

2. **Standing Order 39 – Question Mr Councillor G.J. Faragher**

The following question addressed by Mr Councillor G.J. Faragher to the Leader of the Council, and the Leader's reply, were noted on the minutes:-

Question:

I understand the forthcoming Promenade Scheme has been discussed in a recent Executive Committee meeting. Would the Chairman not agree with me that an issue that was so widely discussed and debated plus has such an impact upon this Council should be decided upon by the whole Council rather than 5 members of a Committee?

Reply:

The Executive Committee at its meeting on 24<sup>th</sup> July considered the Promenade Scheme only in the context of the Motion submitted by Mr Councillor S.R. Pitts to the Council on 10<sup>th</sup> June, and upon which the Committee is required to report to the Council. There was no decision to be made in relation to the Scheme itself; the Motion referred only to the potential disposal of the horse tramway.

Previously the planning application for the Promenade Scheme had been considered by the Committee in June, and that minute was approved by the Council on 8<sup>th</sup> July.

Should any matter come forward in relation to the Promenade Scheme or any other major project affecting the Borough, and particularly if fundamental changes are proposed to the Promenade Scheme, that require decision by the Council, it will be brought forward in the appropriate way. That is likely to be by the Executive Committee considering the issue in the first instance in order to formulate a recommendation to the Council.

Supplementary Question:

Could you please confirm that should new or separate plans regarding the walkway / horse trams be submitted, this will be agreed by the Council? And; would the Leader also confirm whether he agrees that Central Government should submit a new planning application to the Council due to the changes?

Reply:

The Council will have to wait and see what comes forward from the Department, as it seems to have reacted to the concerns raised about the plans. If a complete new planning application is submitted then it will be considered by the Committee and the Council.

3. **Standing Order 39 – Question Mr Councillor S.R. Pitts**

The following question addressed by Mr Councillor S.R. Pitts to the Leader of the Council, and the Leader's reply, were noted on the minutes:-

Question:

In relation to Mr J. Joughin:

- (a) Why have I been refused a hard copy twice of the legal advice obtained?
- (b) How did the issue come to light?
- (c) Is there a policy for checking the electoral roll?
- (d) On what authority was the legal advice obtained and by whom?
- (e) When was the legal advice requested and obtained?
- (f) Who was it addressed to?
- (g) On whose behalf was it sought?
- (h) What were the queries put to the legal adviser?
- (i) What were the responses given?
- (j) What offences would be committed by Mr Joughin or Council, or the Chief Executive if no action was taken or what would be the outcome?

- (k) Have the DOI confirmed that it will take any action to enforce any offences committed?
- (l) Was the outcome of the legal advice conveyed to Mr Joughin verbally or in writing?
- (m) Was the decision to remove Mr Joughin notified to any councillor or committee before it was taken if not why not?
- (n) Who prepared and approved the press release on the subject? Was it referred to or approved by any council committee? If not on whose authority was it issued?
- (o) What is the cost to date of the legal advice obtained?

Reply:

In responding to the question I first express my deep disappointment at losing a very valuable Member of the Council in Mr Jonathan Joughin through the most unfortunate circumstances.

In response to the specific elements of the question:

- (a) The Chief Executive has decided that it is not appropriate to share the written legal advice further, which was obtained to support her in her role as Proper Officer for Electoral matters and is therefore protected by legal privilege;

The content of the legal advice was shared with Members in a letter and press release from the Chief Executive on 24<sup>th</sup> July, 2015;

However the Member was twice offered the opportunity to meet with the Chief Executive regarding it, which offer was not taken up;

- (b) The issue came to light when the electoral register was being checked to establish the validity of a nomination for a bye-election;
- (c) There is no policy for checking that Members' names are on the electoral roll; it is the responsibility of every individual elector, including Members of the Council, to ensure their own registration is valid; there is, however a requirement under Section 8(4) of the Registration of Electors Act 2006 for the local authority to notify the Registration Officer of every error and omission which it has discovered. Once the omission of Mr Joughin was discovered, the Council and the Chief Executive as the Proper Officer for Electoral matters were obliged to act in accordance with the law;
- (d) The Chief Executive, and Proper Officer for Electoral matters, exercised her prerogative as the Council's Chief Legal Officer to seek the legal advice;
- (e) The legal advice was sought by e-mail, as a matter of urgency, on Monday 20<sup>th</sup> July; it was received the following day, Tuesday 21<sup>st</sup> July;
- (f) It was addressed to the Assistant Town Clerk, who had asked for it;
- (g) It had been sought on behalf of the Chief Executive, acting as the Proper Officer for Electoral matters and the authority's Chief Legal Officer;
- (h) The query put to the Legal Adviser was

*"Does someone who is duly elected, being qualified at that time, cease to be a member when that qualification lapses?"*;

- (i) The response given confirmed that a local authority member whose qualification lapses ceases to be a member;
- (j) There is no question of "offences" being committed but once officers were aware of the cessation of Mr Joughin's qualification to be a Councillor, to have failed to bring it to attention would have left decisions made by the authority and the Committees of which he was a Member open to challenge. The officers themselves would also be open to accusations of failure in their duty to ensure that bodies making decisions are correctly constituted and to ensure that the Council abides by the relevant legislation;

- (k) The Department of Infrastructure has not to date stated any intention to take action in the matter other than to review the relevant legislation;
- (l) Mr Joughin attended the Chief Executive's office on Tuesday afternoon, 21<sup>st</sup> July, when the issue and the legal advice received was explained to him personally by the Chief Executive in the presence of the Assistant Town Clerk who had found the omission and brought it to the attention of the Chief Executive, in case Mr Joughin had any queries or questions he wanted to ask. Copies of the electoral register were available for him to see, and he was offered sight of the legal advice which he declined, saying if that was the legal position, so be it;
- (m) There was no decision to remove Mr Joughin; it is not a matter to be decided by the Council or by Officers, in spite of statements issued by the Minister for the Department of Infrastructure. It is a simple matter of fact, upheld by the legal advice, that once a member is no longer qualified, he cannot be a member;
- (n) The press statement was issued by the Chief Executive, in consultation with myself and the Worshipful the Mayor, under the authority of Standing Order 98;
- (o) The cost of legal advice to date has not been ascertained. No invoice has been received.

Supplementary Question:

Re: The letter from NJ Black, Chief Executive of the DoI, to Local Authorities

Would it not be the case to reappoint Mr Joughin as a non-voting member until 1<sup>st</sup> October, saving the ratepayers the cost of a bye-election and there are no meetings until mid-September?

Reply:

There is no provision with the Local Government Acts or the Local Elections Act to enable the Council to appoint a non-voting Member.

4. **Attendance**

During consideration of the following item, Mr Councillor S.C. Cain joined the meeting at 2.55pm and Mr Councillor C.L.H. Cain joined the meeting at 3.37pm.

5. **Executive Committee – 24<sup>th</sup> July, 2015 - Clause B14**

Motion moved by Mr Councillor D.W. Christian, seconded by Mr Councillor D.J. Ashford, "That the minutes of proceedings of the Executive Committee, as contained in Clause B14 of report of meeting held Friday, 24<sup>th</sup> July, 2015, be received, approved and adopted by the Council."

It was unanimously agreed that the Council move into Committee to debate the Motion.

On resumption of proceedings in Council; question put on the Motion and there voted **For:** Mr Councillors D.J. Ashford, Councillor Mrs R. Chatel, Mr Councillor D.W. Christian, Councillor Mrs C.E. Malarkey, Mr Councillor E.A. Joyce, Mr Councillor C.L.H. Cain, Councillor Miss D.A.M. Pitts, Mr Councillor J.E. Skinner, Councillor Mrs E.C. Quirk, Mr Councillor S.C. Cain, Councillor Ms K. Angela, the Mayor – **12**

**Against:** Councillor Mrs C.A. Corlett, Mr Councillor S.R. Pitts, Mr Councillor G.J. Faragher, Mr Councillor R.H. McNicholl – **4**

Motion carried.

6. **Executive Committee – 24<sup>th</sup> July, 2015 - Clause B15**

Motion moved by Mr Councillor D.W. Christian, seconded by Mr Councillor D.J. Ashford, "That the minutes of proceedings of the Executive Committee, as contained in Clause B15 of report of meeting held Friday, 24<sup>th</sup> July, 2015, be received, approved and adopted by the Council."

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

7. **Executive Committee – 24<sup>th</sup> July, 2015 - Clauses A1 – A13 inclusive**

Motion moved by Mr Councillor D.W. Christian, seconded by Mr Councillor D.J. Ashford, "That the minutes of proceedings of the Executive Committee, as contained in Clauses A1 to A13 inclusive of report of meeting held Friday, 24<sup>th</sup> July, 2015, be received by the Council."

Question put on Motion and there voted **For:** Councillor Mrs C.A. Corlett, Mr Councillor S.R. Pitts, Mr Councillor D.J. Ashford, Councillor Mrs R. Chatel, Mr Councillor D.W. Christian, Councillor Mrs C.E. Malarkey, Mr Councillor E.A. Joyce, Mr Councillor C.L.H. Cain, Councillor Miss D.A.M. Pitts, Mr Councillor J.E. Skinner, Councillor Mrs E.C. Quirk, Mr Councillor S.C. Cain, Councillor Ms K. Angela, the Mayor – **14**

**Against:** Mr Councillor G.J. Faragher, Mr Councillor R.H. McNicholl – 2

Motion carried.

8. **Standards Committee – 27<sup>th</sup> July, 2015**

Motion moved by Councillor Mrs R. Chatel, seconded by Councillor Miss D.A.M. Pitts, “That the minutes of proceedings of the Standards Committee, as contained in report of meeting held Monday, 27<sup>th</sup> July, 2015, be received by the Council.”

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

9. **Eastern District Civic Amenity Site Joint Committee – 13<sup>th</sup> July, 2015**

Motion moved by Mr Councillor R.H. McNicholl, seconded by Councillor Mrs E.C. Quirk, “That the minutes of proceedings of the Eastern District Civic Amenity Site Joint Committee as contained in report of meeting held Monday, 13<sup>th</sup> July, 2015 be received by the Council.”

Question put on Motion and there voted **For:** Councillor Mrs C.A. Corlett, Mr Councillor S.R. Pitts, Mr Councillors D.J. Ashford, Councillor Mrs R. Chatel, Mr Councillor D.W. Christian, Councillor Mrs C.E. Malarkey, Mr Councillor E.A. Joyce, Mr Councillor C.L.H. Cain, Mr Councillor G.J. Faragher, Councillor Miss D.A.M. Pitts, Mr Councillor R.H. McNicholl, Mr Councillor J.E. Skinner, Mr Councillor S.C. Cain, Councillor Ms K. Angela, the Mayor – 15

**Against:** Councillor Mrs E.C. Quirk – 1

Motion carried.

10. **Housing Committee – 15<sup>th</sup> July, 2015 – Clause C6**

Motion moved by Mr Councillor D.J. Ashford, seconded by Councillor Mrs C.E. Malarkey, “That the minutes of proceedings of the Housing Committee, as contained in Clause C6 of report of meeting held Wednesday, 15<sup>th</sup> July, 2015, be received, approved and adopted by the Council. In moving the Motion, Mr Councillor Ashford advised that the actual amount of the borrowing petition for which authorisation was sought was £1,627,993.10, which was lower than the maximum figure quoted in the minutes.”

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

11. **Housing Committee – 15<sup>th</sup> July, 2015 – Clauses A1 – A5 inclusive**

Motion moved by Mr Councillor D.J. Ashford, seconded by Councillor Mrs C.E. Malarkey, “That the minutes of proceedings of the Housing Committee, as contained in Clauses A1 to A5 inclusive of report of meeting held Wednesday, 15<sup>th</sup> July, 2015 be received by the Council.”

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

12. **Attendance**

Mr Councillor S.R. Pitts gave his apologies for the remainder of the meeting and left at 4.35pm prior to consideration of the following item.

13. **Regeneration and Community Committee – 14<sup>th</sup> July, 2015**

Motion moved by Mr Councillor J.E. Skinner, seconded by Mr Councillor G.J. Faragher, “That the minutes of proceedings of the Regeneration and Community Committee, as contained in report of meeting held Tuesday, 14<sup>th</sup> July, 2015, be received by the Council.”

Question put on Motion and there voted **For:** Councillor Mrs C.A. Corlett, Mr Councillors D.J. Ashford, Councillor Mrs R. Chatel, Mr Councillor D.W. Christian, Councillor Mrs C.E. Malarkey, Mr Councillor E.A. Joyce, Mr Councillor C.L.H. Cain, Mr Councillor G.J. Faragher, Councillor Miss D.A.M. Pitts, Mr Councillor R.H. McNicholl, Mr Councillor J.E. Skinner, Mr Councillor S.C. Cain, Councillor Ms K. Angela, the Mayor – 14

**Against:** Councillor Mrs E.C. Quirk – 1

Motion carried.

14. **Attendance**

Mr Councillor C.L.H. Cain gave his apologies for the remainder of the meeting and left at 5.05pm prior to consideration of the following item.

15. **Environmental Services Committee – Monday, 13<sup>th</sup> July, 2015**

Motion moved by Mr Councillor R.H. McNicholl, seconded by Councillor Mrs C.A. Corlett, “That the minutes of proceedings of the Environmental Services Committee, as contained in report of meeting held Monday, 13<sup>th</sup> July, 2015, be received by the Council.”

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

**16. Miscellaneous Business**

The Chief Executive reported to Council that a vacancy has arisen in Victoria Ward as a result of Mr Councillor Jonathon Joughin no longer being qualified as his name is not on the Electoral Register. She further reported that there continues to be a vacancy in Murrays Ward because no valid nominations were received at the close of nominations on the 20<sup>th</sup> July, 2015.

The vacancies in Victoria Ward and in Murrays Ward have been advertised with nominations closing in both cases on Monday, 17<sup>th</sup> August at 5.00pm; and polls, if required, to be held on Thursday, 10<sup>th</sup> September, 2015.

**17. Appointment of One Member to the Executive Committee**

Resolved unanimously; "That Mr Councillor S.R. Pitts be appointed to serve on the Executive Committee for the remainder of the 2015/2016 municipal year, to fill the vacancy caused by Mr Councillor J. Joughin not being qualified to act as a Councillor."

**18. Appointment of Chair of the Pensions Committee**

Resolved unanimously; "That Mr Councillor D.J. Ashford be appointed to serve as the Chair of the Pensions Committee for the remainder of the 2015/2016 municipal year, to fill the vacancy caused by Mr Councillor J. Joughin not being qualified to act as a Councillor."

**19. Appointment of One Member to the Pensions Committee**

Resolved unanimously; "That Mr Councillor J.E. Skinner be appointed to serve on the Pensions Committee for the remainder of the 2015/2016 municipal year, to fill the vacancy created by the appointment of an existing Member of the Committee, Mr Councillor D.J. Ashford, to serve as Chair."

**20. Adjournment and Resumption**

The meeting adjourned at 5.25pm and resumed at 5.45pm with the following Members present: Councillor Mrs C.A. Corlett, Mr Councillor D.J. Ashford, Councillor Mrs R. Chatel, Mr Councillor D.W. Christian, Councillor Mrs C.E. Malarkey, Mr Councillor G.J. Faragher, Councillor Miss D.A.M. Pitts, Councillor Mrs E.C. Quirk, Mr Councillor S.C. Cain, Councillor Ms K. Angela, the Mayor.

Mr. Councillor E.A. Joyce and Mr Councillor J.E. Skinner gave apologies for the remainder of the meeting.

The Chief Executive and Town Clerk, the Borough Treasurer, and the Assistant Chief Officer (Housing and Property) remained in attendance.

**IN PRIVATE**

**21. Executive Committee – 24<sup>th</sup> July, 2015**

Motion moved by Mr Councillor D.W. Christian, seconded by Mr Councillor D.J. Ashford, "That the minutes of proceedings of the Executive Committee, as contained in private report of meeting held Friday, 24<sup>th</sup> July, 2015, be received by the Council." In moving the Minutes, the Leader advised that in connection with the contract detailed in Clause A3, the company which had submitted the lowest tender had not successfully complied with the Competence and Resource Assessment. The company which had submitted the second lowest tender had complied with the Assessment and so was awarded the contract.

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

**22. Attendance**

Mr Councillor R.H. McNicholl re-joined the meeting at 5.52pm during consideration of the following item.

**23. Regeneration and Community Committee – 14<sup>th</sup> July, 2015**

Motion moved by Mr Councillor G.J. Faragher, and seconded by Councillor Mrs R. Chatel, "That the minutes of proceedings of the Regeneration and Community Committee, as contained in private report of meeting held Tuesday, 14<sup>th</sup> July, 2015, be received by the Council."

Question put on Motion; a vote was taken electronically, and the Motion was carried unanimously.

The Council rose at 6.03pm.



Town Clerk & Chief Executive