

- * Cllr Denise Le Gal (Mayor)
- * Cllr Mary Foryszewski (Deputy Mayor)

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| * Cllr Brian Adams | * Cllr Anna James |
| * Cllr Mike Band | * Cllr Carole King |
| * Cllr David Beaman | * Cllr Robert Knowles |
| * Cllr Andrew Bolton | Cllr Martin Lear |
| * Cllr Maurice Byham | * Cllr Denis Leigh |
| * Cllr Carole Cockburn | * Cllr Andy MacLeod |
| * Cllr Kevin Deanus | * Cllr Peter Martin |
| * Cllr Jim Edwards | * Cllr Tom Martin |
| * Cllr Patricia Ellis | * Cllr Kika Mirylees |
| * Cllr David Else | * Cllr Stephen Mulliner |
| Cllr Jenny Else | * Cllr Nabeel Nasir |
| * Cllr Paul Follows | * Cllr Libby Piper |
| * Cllr John Fraser | * Cllr Julia Potts |
| * Cllr Pat Frost | Cllr Sam Pritchard |
| * Cllr Michael Goodridge | Cllr Wyatt Ramsdale |
| * Cllr Tony Gordon-Smith | Cllr Stefan Reynolds |
| * Cllr John Gray | Cllr David Round |
| * Cllr Ged Hall | * Cllr Richard Seaborne |
| Cllr Jill Hargreaves | Cllr Jeanette Stennett |
| Cllr Val Henry | Cllr Stewart Stennett |
| Cllr Christiaan Hesse | * Cllr Chris Storey |
| * Cllr Stephen Hill | * Cllr Liz Townsend |
| * Cllr Mike Hodge | * Cllr Bob Upton |
| * Cllr Nicholas Holder | Cllr John Ward |
| * Cllr David Hunter | Cllr Ross Welland |
| * Cllr Jerry Hyman | Cllr Liz Wheatley |
| * Cllr Simon Inchbald | * Cllr Nick Williams |
| * Cllr Peter Isherwood | |

*Present

Apologies

Cllr Jenny Else, Cllr Jill Hargreaves, Cllr Val Henry, Cllr Martin Lear, Cllr Sam Pritchard, Cllr Wyatt Ramsdale, Cllr Stefan Reynolds, Cllr David Round, Cllr Jeanette Stennett, Cllr Stewart Stennett, Cllr John Ward, Cllr Ross Welland and Cllr Liz Wheatley

CNL36/18 APOLOGIES FOR ABSENCE (Agenda item 1.)

Apologies for absence were received from Cllrs Jenny Else, Jill Hargreaves, Val Henry, Martin Lear, Sam Pritchard, Wyatt Ramsdale, Stefan Reynolds, David Round, Jeanette Stennett, Stewart Stennett, John Ward, Ross Welland, and Liz Wheatley.

CNL37/18 DECLARATIONS OF INTEREST (Agenda item 2.)

There were no interests declared under this heading.

CNL38/18 MINUTES OF THE SPECIAL EXECUTIVE MEETING - 31 OCTOBER 2018
(Agenda item 3.)

1. It was moved by the Leader of the Council, duly seconded and

RESOLVED that the Minutes of the Special Meeting of the Executive held on 31 October 2018 be received and noted.

The Leader reported that that there were two items under Part 1 for consideration by the Council:

2. Community Infrastructure Levy – Adoption of Charging Schedule (Minute EXE 44/18)

2.1 The Leader welcomed the report of the examiner and the finding that the CIL rates were supported by sound evidence. Implementation of CIL would enable the Council to start collecting contributions towards infrastructure to support development.

2.2 Cllr Follows agreed that it was exciting to finally be in a position to adopt CIL, but he had significant concerns that the expected windfall would be largely hypothetical: since the adoption of Local Plan Part 1 the Joint Planning Committee had determined many planning applications which had all avoided payment of CIL. More recently, there had been a number of developers who had tried to avoid providing affordable housing for viability reasons, and he was sceptical that the Council would see any affordable housing offered once CIL was implemented.

2.3 Cllr Adams was very pleased to see that the proposed CIL rates had been accepted. He did not accept that the high CIL rates would impact on delivery of affordable housing as the viability of the rates had been thoroughly evidenced. Whilst it was true that a lot of planning applications had already been submitted, the Local Plan period was through to 2032. He congratulated officers on their work to bring the CIL Charging Schedule to Council for adoption.

2.4 Cllr Hyman reported that Environment Overview & Scrutiny Committee had reviewed the Examiner's report and noted that he recommended a review of the CIL rates in 3 years. While Cllr Hyman shared the concerns of Cllr Follows, he hoped that the Council would be robust in negotiations with developers over delivery of affordable housing.

- 2.5 Cllr Storey, as Planning Portfolio Holder, thanked the Planning Policy team for their work in developing the CIL Charging Schedule and getting it through the examination. He emphasised that the adoption of CIL would provide certainty to developers about their liabilities, rather than having to guess the financial impact of a S106 agreement, and calculation of viability had been standardised so there would not be an opportunity to dispute the outcome.
- 2.6 Cllr MacLeod relayed the concerns that had been expressed at a recent meeting of the Farnham Society, when residents had noted the impact of CIL on the cost of building a relatively small house. Developers already blamed Waverley at planning appeals for housing not being built, and CIL was a further barrier to delivering housing numbers.
- 2.7 In conclusion, the Leader emphasised that the viability of the CIL rates had been thoroughly tested at examination, and found to be sound. Councillors' concerns about deliverability of affordable housing were noted, and it was important that Planning Officers were given clear direction to remain firm on affordable housing.

2.8 It was moved by the Leader, duly seconded, and

RESOLVED that:

1. the Community Infrastructure Levy (CIL) Charging Schedule and supporting documents, including the Regulation 123 List, policies on instalments, phasing and payment in kind, be adopted;
2. the CIL Charging Schedule and supporting documents be implemented and become effective on 1 March 2019; and,
3. delegated authority be given to the Head of Planning Services in consultation with the Portfolio Holder for Planning for future changes to the Regulation 123 List.

(Minute reference CNL 38.1/18)

- 3. Sweetman Judgement and the requirement for a Supplementary Note on the Thames Basin Heaths and Hindhead Avoidance Strategies (Minute EXE 48/18)**
- 3.1 The Leader introduced the procedural amendment to the Avoidance Strategies that was proposed to address the requirements of the Sweetman Judgement, and moved the recommendation to adopt the proposed Supplementary Note.
- 3.2 Cllr Hyman advised that the proposals had been reviewed by the Environment Overview & Scrutiny Committee, but not debated in depth. He had asked to see the Counsel's advice referred to in the report, but had been advised that this was verbal advice. He had been through the Sweetman Judgement in some detail and in order to provide clarity to developers he proposed an amendment in order to add to the Supplementary Note the wording from paragraphs 36 and 38 of the ruling:

“For affected developments within the visitor catchment areas of the Thames Basin Heaths SPA and the Wealden Heaths SPA, “a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not a the screening stage, but specifically at the stage of the appropriate assessment” and the assessment “ may not have *lacunae* and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned”, in accordance with paragraphs 36 and 38 of the POW-Sweetman Ruling (Case C-323/17).”

- 3.3 The amendment was seconded by Cllr Paul Follows, who explained that there had been repeated discussions at Joint Planning Committee and Environment Overview & Scrutiny on the impact of the Sweetman Ruling and felt it would be helpful to have the clarity of the actual wording from the Ruling in the Council’s own SPA Strategies.
- 3.4 Cllrs Frost, Goodridge and Cockburn all spoke against the amendment, on the basis that the inclusion of the text was an unnecessary over-elaboration, and the full text of the Ruling was easily available for developers to read.
- 3.5 At the request of the Mayor, the Council’s legal adviser confirmed that the text of the proposed amendment was from paragraphs 36 and 38 of the Sweetman Ruling. However, he advised that it was not necessary to include them in the Supplementary Note in order to meet the requirement that mitigation be considered at the Appropriate Assessment stage.
- 3.6 Cllr Hyman expressed his objection to the advice and the opposition to his amendment, and re-stated his case that the Ruling meant that the previous interpretation of the law by Natural England, Waverley, and others, had been wrong and that it was not sufficient to address this by the proposed minor amendments without explaining what was required in an appropriate assessment.
- 3.7 Cllr Hyman proposed a recorded vote on the amendment but there was not the required 5 members in support.
- 3.8 At 7.40pm, the Mayor put the amendment to the vote:

In favour	6
Against	37
Abstentions	0

The amendment therefore was lost.

- 3.9 Returning to the original recommendation, to adopt the Supplementary Note to the Avoidance Strategies, Cllr Beaman cautioned councillors about putting too much reliance on the ability of Natural England to adequately complete the number of appropriate assessments that would now be required. He suggested that it was almost impossible to prove conclusively one way or another whether the Avoidance Strategies had the desired impact, but emphasised the importance of Natural England being adequately funded so

that they could provide sound advice to local authorities that could be relied upon.

- 3.10 Cllr Goodridge proposed a minor amendment to the wording of the Supplementary Note, to replace “AA” with “Appropriate Assessment”. The amendment was seconded by Cllr Gray.
- 3.11 Cllr Hyman suggested that it was perverse for Council to be debating such a minor amendment, whilst it was, in his view, ignoring the law. On a point of order, Cllr Goodridge stated his resentment at the allegation that he or any other Member of Council was disobeying the law. Cllr Hyman responded with a point of personal explanation, and reiterated his allegation that the Sweetman Judgement meant that Council had been ignoring the law for the past 11 years.
- 3.12 The Mayor asked Cllr Hyman to withdraw his allegation that the Council was acting unlawfully, which Cllr Hyman refused to do. After consulting with the Chief Executive and Monitoring Officer, the Mayor again asked Cllr Hyman to withdraw his allegation. Cllr Hyman again refused to do so, stating that the fact that the Avoidance Strategies were now being amended was because the Council accepted it had not been addressing the law correctly.
- 3.13 The Mayor noted that Cllr Hyman had refused to withdraw his allegation, and that this would be recorded formally in the Minutes of the meeting. However, she wished to carry on with the business on the agenda. The Mayor put Cllr Goodridge’s proposed amendment to the vote, and this was passed by general assent.
- 3.14 Returning to the original recommendation, as amended, Cllr Follows echoed Cllr Beaman and urged caution in putting too much weight on the opinion of Natural England on the acceptability of proposed mitigation for development.
- 3.15 At 7.50pm, it was

RESOLVED that the changes proposed in paragraphs 2 and 3 of the agenda report, as set out below (including the agreed amendment), be agreed to ensure compliance with the Sweetman Judgement. **(Minute reference CNL 38.2/18)**

Thames Basin Heaths Avoidance Strategy

Para 2.4 Bullet point 2 to be amended as follows:

- ‘Development can provide, or make a contribution to, measures to ensure that they have no likely significant effect on the SPA. In doing so, residential development will not have to undergo an ~~Appropriate Assessment (AA)~~. The option remains for developers to undertake a Habitats Regulations screening assessment and, where necessary, a full **Appropriate Assessment** to demonstrate that a proposal will not adversely affect the integrity of the SPA.

Para 7.4. Contributions made in line with the Strategy are deemed to **avoid and** mitigate the effect on the SPA ~~and~~, **however**, development proposals will **still** ~~therefore not~~ be required to undertake an Appropriate Assessment’.

[struck through text is to be deleted, text in bold is to be added]

Hindhead Avoidance Strategy

Paragraph 5.6 to be amended as follows:

‘In terms of addressing the significant impact on the SPA, there are two options open to developers for meeting avoidance requirements:

- Buy into provision of avoidance measures assembled by the local authority (the Avoidance Strategy)
- Provide avoidance measures, including alternative sites and/or walking routes, themselves that the Local Authority, in consultation with Natural England, considers are sufficient to avoid development having a significant effect on the SPA.

In either case, there is a requirement for an Appropriate Assessment at the planning application stage’.

[struck through text is to be deleted, text in bold is to be added]

3.16 Cllr Beaman and Cllr Bolton had registered to speak on the Part II matter, Minute EXE46/18, Procurement of Waste, Recycling and Street Cleaning Contract, and both commended officers and the Environment Overview & Scrutiny Committee for their work in bringing the procurement exercise to a successful conclusion.

3.17 The Leader concluded the presentation of the Minutes of the Special Executive of 31 October 2018.

CNL39/18 COMMITTEE MEMBERSHIPS (Agenda item 4.)

The Council noted that:

- Cllr Sam Pritchard had resigned from the Audit Committee; and
- Under the Scheme of Delegation to the Head of Policy & Governance, and the with the agreement of the Leader of the Conservative Group, Cllr Robert Knowles has been appointed to fill the vacancy with effect from Monday 22 October 2018.

The meeting concluded at 7.55 pm