

COUNCIL

TUESDAY 25 JULY 2023

At 7.00 pm

in the

COUNCIL CHAMBER - TOWN HALL - MAIDENHEAD,

SUPPLEMENTARY AGENDA

PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
5.	<p><u>PUBLIC QUESTIONS</u></p> <p>a) Thomas Wigley of Clewer East ward will ask the following question of Councillor K Davies, Lead member for Climate Change, Biodiversity and Windsor Town Council</p> <p>At the Council meeting on 22nd November last year RBWM promised to install three new air pollution monitors. Please can you provide a status update regarding their implementation and RBWM's current views regarding their intended physical location.</p> <p>b) Following legal advice this question has been removed from the agenda</p> <p>c) Tina Quadrino of Pinkneys Green will ask the following question of Councillor Werner, Leader of the Council and Lead member for Community Partnerships, Public Protection and Maidenhead</p> <p>When you took office in May, you committed to a review of the Borough Local Plan. Please can you tell us what form this review will take and when we will hear the outcome of it?</p> <p>d) Andrew Hill of Boyn Hill ward will ask the following question of Councillor Bermange, Lead member for Planning, Legal and Asset Management</p> <p>Given that the Planning Inspectorate found clearly that RBWM breached the Human Rights Act in the Nicholson CPO process, failing to treat legitimate concerns with even basic "respect", why did Council officers try to excuse this</p>	5 - 8

outrageous behaviour until the last minute, and how much do you expect the settlement of both avoidable judicial reviews to cost taxpayers?

e) Andrew Hill of Boyn Hill ward will ask the following question of Councillor Bermange, Lead member for Planning, Legal and Asset Management

Does RBWM accept that members of the public should never be criticised by Councillors or officers, expressly or implicitly, for exerting their annual rights to submit questions and objections under the Local Audit & Accountability Act 2014?

The Council will set aside a period of 30 minutes to deal with public questions, which may be extended at the discretion of the Mayor in exceptional circumstances. The Member who provides the initial response will do so in writing. The written response will be published as a supplement to the agenda by 5pm one working day before the meeting. The questioner shall be allowed up to one minute to put a supplementary question at the meeting. The supplementary question must arise directly out of the reply provided and shall not have the effect of introducing any new subject matter. A Member responding to a supplementary question will have two minutes to respond).

9. COUNCILLORS' QUESTIONS

9 - 12

a) Councillor Larcombe will ask the following question of Councillor Coe, Lead member for Environmental Services

It is twenty years since the 2003 flood event and nearly ten years since the two 2014 flood events. Datchet, Horton, Wraysbury and Old Windsor still have no flood alleviation scheme after Channel One was removed from the River Thames Scheme in July 2020. Why is my area knowingly left at ever-increasing risk of flooding?

b) Councillor Larcombe will ask the following question of Councillor Coe, Lead member for Environmental Services

The former administration passed a motion on 27/9/2022 to request that the Environment Agency resumes dredging of the River Thames within the boundaries of RBWM. Another year has passed. What progress has been made please?

(The Council will set aside a period of 30 minutes to deal with Member questions, which may be extended at the discretion of the Mayor in exceptional circumstances. The Member who provides the initial response will do so in writing. The written response will be published as a supplement to the agenda by 5pm one working day before the meeting. The questioner shall be allowed up to one minute to put a supplementary question at the meeting. The supplementary question must arise directly out of the reply provided and shall not have the effect of introducing any new subject matter. A Member responding to a supplementary question will have two minutes to respond).

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Responses to Public Questions for Council on 25 July 2023

a) Thomas Wigley of Clewer East ward will ask the following question of Councillor K Davies, Lead member for Climate Change, Biodiversity and Windsor Town Council

At the Council meeting on 22nd November last year RBWM promised to install three new air pollution monitors. Please can you provide a status update regarding their implementation and RBWM's current views regarding their intended physical location.

Thank you very much for asking for an update on this important issue, which is a priority for the new administration. The Borough proposes to implement the additional particulates monitoring stations in two stages. For the first stage, it will install an additional five relatively low-cost units to sample air quality at locations across RBWM for a one-year period. The Borough has engaged a specialist service company, which is undertaking some basic modelling to determine the best site locations for the stage one monitoring process and will also provide the low-definition monitoring and data management. This means that data can begin to be collected relatively quickly. The data gathered will then inform the second stage, which is the targeted installation of more expensive and sensitive sensors to gather more precise data. I will be very happy to provide more updates as the work progresses.

b) Following legal advice this has been removed from the agenda

c) Tina Quadrino of Pinkneys Green will ask the following question of Councillor Werner, Leader of the Council and Lead member for Community Partnerships, Public Protection and Maidenhead

When you took office in May, you committed to a review of the Borough Local Plan. Please can you tell us what form this review will take and when we will hear the outcome of it?

As many of the residents know, we opposed the current local plan in every part of the process, but were outvoted by the Conservative majority each time. We are now left with a Borough Local Plan designed for developers profits not for residents. A Borough Local Plan which has sacrificed precious green belt land adjoining Maidenhead, Windsor, Cookham and Cox Green.

The Borough Local Plan is now a straight jacket – a cage in which we have to operate – preventing us from achieving many of the things we would like to do.

Opportunities were missed by the previous administration to reduce housing numbers which they failed to take advantage of.

The problem is that we are where we are and that opportunity is no longer on the table.

Were we to submit a new Local Plan under the current rules, changes in the national methods for calculating the housing targets would actually leave us having to find even more land to deliver more homes in the plan period.

However, we are expecting central government to publish a new National Planning Policy Framework in the autumn, which we hope will give us more flexibility when it comes to

housing numbers, so when this is published and we have the details we will of course review what would be best to do with the Borough Local Plan.

d) Andrew Hill of Boyn Hill ward will ask the following question of Councillor Bermange, Lead member for Planning, Legal and Asset Management

Given that the Planning Inspectorate found clearly that RBWM breached the Human Rights Act in the Nicholson CPO process, failing to treat legitimate concerns with even basic "respect", why did Council officers try to excuse this outrageous behaviour until the last minute, and how much do you expect the settlement of both avoidable judicial reviews to cost taxpayers?

The decision to authorise the use of Compulsory Purchase Order powers in order to facilitate the Nicholson's regeneration scheme was taken by the previous administration.

Subsequently, the decision by the Planning Inspectorate to decline to confirm the CPO was challenged judicially by the Council and the separate but related matter of the decision to grant planning permission to the Nicholson's Quarter scheme was challenged judicially by the Page family as owners of Smokeys nightclub; both these legal proceedings were initiated prior to May 2023.

It is quite proper that the power to prosecute and defend legal proceedings, in accordance with Section 222 of the Local Government Act 1972, is delegated to officers, specifically the Monitoring Officer. I have therefore been briefed on the status of these legal matters and I summarise this below.

Before Sir John Dove, sitting as a Judge of the High Court, both the Settlement Agreement and Consent Order were given both the seal of the High Court and judicial approval. The terms of the Settlement Agreement largely covered the claim brought by this Council in relation to the proposed CPO required for the redevelopment. The Consent Order was drafted largely in relation to the Judicial Review of the planning decision brought against the Council. Within the Settlement Agreement and Order there are tightly drawn and binding confidentiality clauses. They restrict all parties. That includes the issues around costs. The Council is bound by the confidentiality clauses.

Without prejudice, in his concluding remarks of his decision letter regarding the CPO, the Inspector said;

"...despite the proposed development's acknowledged public benefits, it has not been demonstrated that those benefits could not equally be gained without the likely need for Smokeys to close, and without the consequential adverse impacts for both the objectors and the town. In these circumstances, the interference with [the owners'] human rights would be disproportionate."

However, as a matter of fact and for the avoidance of doubt, the Planning Inspectorate did not allege any breaches of the Human Rights Act, nor have any such matters been adjudicated on by the superior courts.

e) Andrew Hill of Boyn Hill ward will ask the following question of Councillor Bermange, Lead member for Planning, Legal and Asset Management

Does RBWM accept that members of the public should never be criticised by Councillors or officers, expressly or implicitly, for exerting their annual rights to submit questions and objections under the Local Audit & Accountability Act 2014?

Response from Councillor L Jones, Deputy Leader of the Council and lead member for Finance

This administration is keen to encourage public engagement in all aspects of the Council's work. We believe in accountability and transparency. Residents have the statutory right to submit questions and objections in relation to items in the annual accounts, and this right should not be impugned. With regards to objections submitted, Section 27(4) of the Local Audit & Accountability Act 2014 contains provisions to ensure that the auditor only considers those objections that, among other things, are not frivolous, vexatious nor disproportionately costly to investigate.

Having applied this filter to a series of objections submitted to items in the 2019/20 accounts, the Council's auditor, Deloitte, charged £90,228 for their costs incurred in performing the investigation of those remaining objections. None of the investigated objections led the auditor to conclude that any items of account should be declared unlawful or that a statutory public interest report was required. They did, however, make several 'control observations' regarding the relevant areas, with some resultant recommendations.

I would hope that, moving forward, the Council and residents could resolve issues satisfactorily and transparently, wherever possible, before reaching the stage where auditors are called upon to conduct costly and lengthy investigations. To that end, I am keen to work with the Audit and Governance Committee, our internal auditors, our finance officers, and other stakeholders to find a mechanism for achieving this.

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Responses to Councillor Questions for Council on 25 July 2023

a) Councillor Larcombe will ask the following question of Councillor Coe, Lead member for Environmental Services

It is twenty years since the 2003 flood event and nearly ten years since the two 2014 flood events. Datchet, Horton, Wraysbury and Old Windsor still have no flood alleviation scheme after Channel One was removed from the River Thames Scheme in July 2020. Why is my area knowingly left at ever-increasing risk of flooding?

Like you, I have vivid memories of the two more recent major flooding incidents in 2003 and 2014. In 2003 I was working and living in Old Windsor and remember well some of the properties nearer the river and some of the children in my class being flooded. In 2014 I was working in Egham and remember colleagues at work watching their homes in and around Spelthorne going under water on television whilst they were unable to get home.

The blame for the failure to deliver the Thames Scheme Channel 1 rests firstly with the decision of national government in 2011 to abandon national funding of flood alleviation schemes and to move to partnership funding of flood schemes with local authorities and the subsequent decision of the former administration of the Royal Borough of Windsor & Maidenhead not to fund their share of the partnership funding, despite partnership funding being their own government's policy.

This cut to national funding of flood schemes and abdication of responsibility by central government for adapting to and protecting local communities from the consequences of global warming was galling as it sought to secure match funding from local councils, at the very same time as central government was also cutting funding to local councils.

The former administration's failure to allocate the funds required of them by their own government to fund flood defences for Datchet, Horton, Wraysbury and Old Windsor, has meant the four villages have been deprived a once in a generation opportunity to be properly protected from Thames flooding.

During the same period the previous administration found many £millions to fund projects they were interested in, but which were of less consequence to the lives of local residents.

There was also at the time nothing stopping national government from funding the scheme, other than lack of will to do so.

The Royal Borough's failure to fund its share of Channel 1 meant that River Thames Scheme Sponsorship Group decided in July 2020 to proceed without Channel 1. With a new scheme having to be started, the project process the Environment Agency must use to develop a project and achieve funding from the Treasury requires multiple business cases. This new project required this process to start again, with the first of the business cases, the Strategic Outline Case, going through the EA assurance process earlier this year. The project is now moving forward to Outline Business Case which is forecast to take approximately 2 years.

The £10million which was allocated by the former administration remains available and ringfenced and the Council and Environment Agency are now looking at an Alternative Scheme, the Datchet to Hythe End flood improvement measures.

This much more modest project is a very poor substitute for the originally proposed scheme. The government and previous administration's failure to fund Channel 1 is a missed once in a generation opportunity to protect Datchet, Horton, Wraysbury and Old Windsor from the consequences of climate change.

Further information on the Datchet to Hythe End flood improvement measures can be found at Gov.uk webpage for this project: <https://www.gov.uk/government/publications/datchet-to-hythe-end-flood-improvement-measures/datchet-to-hythe-end-flood-improvement-measures>

b) Councillor Larcombe will ask the following question of Councillor Coe, Lead member for Environmental Services

The former administration passed a motion on 27/9/2022 to request that the Environment Agency resumes dredging of the River Thames within the boundaries of RBWM. Another year has passed. What progress has been made please?

I do not believe this motion was passed with any serious expectation of it achieving anything. It is my belief the motion was a political window dressing intended to convey action and distract from the failure to fund the Royal Borough's "match funding" contribution to the proper "Channel 1" proposal.

The council followed up the motion with a request to the Environment Agency to recommence dredging of the River Thames, within the Borough boundary, which had been abandoned some time ago. Whilst it is the case that dredging can increase the channel cross section and hence capacity to carry water, within its banks, any relief is short lived, as the river can redistribute silt at some pace. Consequently, for dredging to be effective it must be sustained on an ongoing basis.

I believe the former administration will have known the Environment Agency's view, namely that dredging was uneconomic and unproductive, before they passed their motion and consequently will have known that the Environment Agency's response would be the one the council did in due course receive.

If the former administration had truly intended to achieve progress on this issue more serious engagement with the Environment Agency over a much longer period would have been required. I can only assume the motion was intended for purposes other than securing dredging.

To answer your question succinctly, no progress has been made with regard to the specific issue of dredging the Thames. Any such progress would require a change of national policy by the Environment Agency and that would be a matter for the Borough's two members of parliament, to pursue with the relevant Secretary of State.

A response to the motion about dredging of the River Thames was provided to the Royal Borough by the Environment Agency in January 2023. This response is below:

Requests that the Environment Agency resumes dredging of the River Thames within the boundaries of RBWM (especially the undefended reach between Black Potts and Bells Weir) to both ease navigation and increase the rivers capacity to hold water and therefore alleviate flood risk to our riverside communities.

Response –

"We continue to carry out dredging or river reprofiling where it is financially and technically feasible and is required to maintain the right of navigation on the river.

River reprofiling consists of redistributing shoals of sediment from the higher parts of the riverbed to lower parts of the riverbed.

Our maintenance of watercourses does provide flood risk benefits, although this will vary depending upon local geography and other factors. We maintain locks, weirs and other assets along the River Thames to support navigation and amenity which cannot be removed to increase conveyance. We operate these assets during times of flooding to increase the flow of water. These weirs are opened before Flood Alerts are issued, before the River Thames flows out of banks and into the flood plain.

The River Thames was dredged for 50 years following the 1947 floods, historically for navigation and for flood risk purposes. We stopped the widespread use of this practice over 15 years ago because it was not financially and economically feasible; it causes significant ecological damage; and in some cases, increased flood risk elsewhere. We carry out surveys of the riverbed and flood modelling to inform our management of the river and navigation. The latest bathymetric survey is dated 2021. These surveys have shown that historically, dredging could only increase channel capacity temporarily as the River Thames quickly redistributes sediment to replace any that is removed. Recent surveys and the current modelling indicate that the cessation of dredging has resulted in no clear net erosion or deposition to date, including the section between Black Potts and Bell Weir. Due to the volumes of water conveyed during floods dredging does not provide sufficient extra capacity to reduce flood flows or reduce flood risk to properties and businesses.

We removed a large shoal from the tail of Bell Weir lock as part of the shoal removal project. We are aware of shallow water marked on the inside of two river bends in Boveney and Romney reaches. These are clearly identified with green buoys. We are also aware of several areas of shallow water at lock cuts or areas close to the main channel.

We have checked with colleagues and do not believe there is currently a problem with navigation. These locations will be considered for inclusion when planning further river reprofiling. If the council is aware of any navigational issues, please would you report them to the Environment Agency incident hotline so that we can investigate and take any appropriate action, if you have any concerns feel free to contact myself in future directly.

You can find more information in this [blog](#) which explains in more detail the Environment Agency's overall approach to dredging."

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