

Public Document Pack



SCRUTINY & PETITIONS COMMITTEE THURSDAY, 21 MARCH 2024

A MEETING of the SCRUTINY & PETITIONS COMMITTEE will be held on THURSDAY, 21 MARCH 2024 at 10.00 am.

All Attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days.

N. MCKINLAY,
Director Corporate Governance,

14 March 2024

BUSINESS		
1.	Apologies for Absence	
2.	Order of Business	
3.	Declarations of Interest	
4.	Petition: Planning Procedures in respect of S36	30 mins
	(a) Petition Procedure Copy attached.	(Pages 3 - 6)
	(b) Petition Redacted copy of Petition attached.	(Pages 7 - 14)
	(c) Response to Petition	(Pages 15 - 20)
5.	Minute (Pages 21 - 24) Consider Minute of 7 December 2023. (Copy attached.)	
6.	Date of Next Meeting The next meeting of the Scrutiny & Petitions Committee was scheduled for 23 May 2024.	

NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

Membership of Committee:- Councillors E. Thornton-Nicol (Chair), N. Richards (Vice-Chair), J. Anderson, J. Cox, M. Douglas, J. PatonDay, E. Robson, S. Scott and F. Sinclair

Please direct any enquiries to Lynne Cuerden, Democratic Services Officer
Tel: 01835 826527 Email: lynne.cuerden@scotborders.gov.uk



**Scottish Borders Council
Scrutiny & Petitions Committee Petitions Procedure**

Part of the remit of the Scrutiny & Petitions Committee is to consider petitions submitted to the Council in accordance with the Council's approved petitions procedure, outlined below, and to determine the appropriate action to be taken within the terms of the procedure.

Petitions

1. Petitions should raise issues which relate to matters within the responsibility of Scottish Borders Council or the general well-being of the residents of the Scottish Borders. Petitioners should be able to demonstrate that there is a public interest in the issue that they are raising.
2. A petition should be on a standard form, titled and should include a clear statement (no more than 250 words) which covers the main subject. Any further information, for example, about measures already taken or approaches made to other bodies, should be included but limited to no more than 4 sides of A4 paper.
3. Petitions should be accompanied by at least 10 signatures in total, from persons aged 16 and over, resident in the Scottish Borders. The signatures must be from a minimum of 3 separate addresses. The principal petitioner should be on the Register of Electors for the Scottish Borders Council area.
4. Petitions from local businesses shall be accepted where there is support from at least 5 businesses on the Valuation Roll for Scottish Borders Council.
5. Elected Members may not be a signatory on a petition and no petition will be accepted from a political party.
6. Where there are already regulatory procedures in place or the matter relates to individuals, then it would not be appropriate to accept such petitions, therefore petitions shall not be accepted:
 - (i) about planning, licensing, or other matters where there are already regulatory procedures in place;
 - (ii) about personal or business issues;
 - (iii) about commercially sensitive or confidential material;

- (iv) about individual Councillors, members of Council staff, or other individuals who may easily be identified;
 - (v) about employees' terms and conditions of employment;
 - (vi) about information which is protected by an interdict or court order;
 - (vii) about an allegation that someone has broken the law;
 - (viii) which contain language which is defamatory, offensive, provocative or otherwise inappropriate;
 - (ix) which relate to a complaint or grievance (which should be handled through the Council's complaints procedure);
 - (x) which relate to a decision made by the Council or a committee during the preceding six months; and
 - (xi) which are identical or similar to other petitions made within the preceding twelve months.
7. The Clerk to the Council, or her representative, shall ensure petitions keep to procedures and are admissible. All valid petitions, with accompanying information if any, shall be passed to the next scheduled meeting of the Scrutiny & Petitions Committee. Petitions which are the same, or substantially similar, shall be considered together.
 8. A summary report shall be prepared for the Committee by the Clerk to the Council about any petitions received during the period that are considered inadmissible for any of the reasons listed in paragraph 6 above. The Committee will make the final decision as to whether these are valid.

Meetings of the Scrutiny & Petitions Committee

9. When hearing a petition the relevant Director(s), Executive Member(s) and Community Planning Partner representative(s) shall be invited to attend the meeting to provide further information, as appropriate.
10. The principal petitioner should indicate on the form whether or not he/she, or a named deputy, wish to have the opportunity to make a statement at the meeting of the Scrutiny & Petitions Committee where their petition is being considered. It would be normal practice to allow the principal petitioner or a deputy to speak, but this is at the discretion of the Chair of the Committee.
11. No deputation to the Meeting of the Scrutiny & Petitions Committee shall exceed 10 in number and, at the discretion of the Chair, only one speaker shall be heard by the Committee. The time allowed to present the petition shall not exceed 10 minutes, except at the discretion of the Chair. The speaker should also be prepared to answer questions.

12. Notice of petitions scheduled to be considered by the Scrutiny & Petitions Committee will be through the usual on-line public access facility to committee papers, with a link from the petitions "page" on the Council website. Those signing petitions should be made aware that the detail of the petition, with their name and address (but not signature), will be published on the Council website as part of the agenda pack for the meeting of the Scrutiny & Petitions Committee.
13. For the moment, no "e-petitions" will be facilitated, or comments from the public accepted on petitions scheduled for consideration by the Scrutiny & Petitions Committee.
14. The procedure at the meeting, for each petition considered, shall be as follows:
 - (i) the meeting shall be in public unless the subject matter of the petition would be deemed to be confidential under the terms of Section 7A of the Local Government (Scotland) Act 1973;
 - (ii) the principal petitioner, or named deputy, shall give a statement in explanation of the petition;
 - (iii) there will be an opportunity for Members of the Committee to ask questions of the petitioner or their named deputy;
 - (iv) there will be an opportunity for any Director(s), Executive Member(s) and Community Planning Partner representative(s) present to ask questions of the petitioner or their named deputy;
 - (v) a response to the petition may be heard from a Director, Executive Member and/or Community Planning Partner representative present at the meeting;
 - (vi) there will be an opportunity for Members of the Committee to ask questions of any Director, Executive Member(s) and Community Planning Partner representative(s) present at the meeting;
 - (vii) there will be an opportunity for the petitioner or their named deputy to ask questions of any Elected Member, Director or Community Planning Partner representative present at the meeting;
 - (viii) Members of the Committee shall then discuss the information available and consider their findings. The Committee may defer a decision should further information be required.

Note: any contribution on behalf of the petition from a second or other speaker(s) shall be at the discretion of the Chair. The public will not be allowed to speak at the meeting unless invited to do so by the Chair.
15. The Scrutiny & Petitions Committee shall agree to one of the following:-

- (i) refer the petition to another Committee or Director, with or without a recommendation or comment. That Committee or Director shall then make the final decision which could include taking no further action;
 - (ii) refer the petition to the relevant Community Planning Partner, with or without a recommendation or comment, if appropriate;
 - (iii) that the issue(s) raised do not merit or do not require further action.
16. The decision of the Scrutiny & Petitions Committee, and any reason for that decision, shall be recorded in the Minute of the Meeting and a copy of the Minute shall be sent to the principal petitioner by Democratic Services staff. Where the petition is referred to a Director or another body, the responsibility for communicating the final outcome of the petition is also referred. Updates on these outcomes will be provided to the Scrutiny & Petitions Committee.
17. There will be no right of appeal in response to a final decision made in response to a petition.
18. The usage and effectiveness of the petitions procedure shall be reviewed on an annual basis.

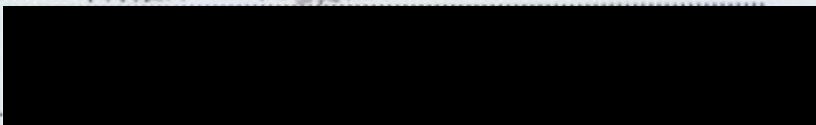
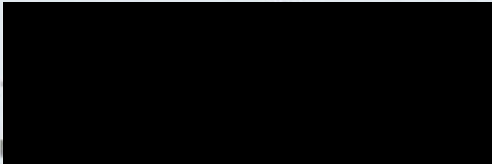
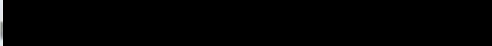
Reference (official use)



Petitions – submission form

If you wish to submit a petition for consideration by the Scrutiny & Petitions Committee, please complete the form below. You are advised to refer to the Guidance Questions and Answer sheet provided.



Details of Principal Petitioner	
Please enter the name and contact details of the person raising the petition. <i>The Principal Petitioner must be on the Register of Electors for the Scottish Borders Council area.</i>	
Name:	JOHN CAMPBELL
Address:	[REDACTED]
	DUNS
Postcode:	[REDACTED]
Telephone no:	[REDACTED]
Email:	[REDACTED]
Title of Petition and Petition Statement	
Please enter the title of the Petition and a statement to cover the main subject of the Petition or the action you would like the Council to take.	
Title:	PLANNING PROCEDURES IN RESPECT OF S36 APPLICATIONS


Name of deputy PHILIP KERR.
 Contact details .. 
 Signature of deputy..... 
 * please delete as app 

Signature of Principal Petitioner.
 If you are satisfied your petition meets all the requirements as stated in the Guidance Questions and Answers please add your signature and date below.

Signature of Principal Petitioner.....
 Date.....

Accompanying signatures.
 Your petition must be accompanied by at least 10 signatures in total, from persons aged 16 and over, resident in the Scottish Borders. The signatures must be from a minimum of 3 separate addresses.
Please be aware that if the petition is on the agenda for a meeting of the Scrutiny & Petitions Committee the names and addresses, but not signatures, of all signatories will be published on the Council website.

	Name	Address	Signature
1	GAVIN WHITTAKER (SECRETARY, HERIOT CC)		
2	JOHN WILLIAMS CHAIRMAN HERIOT CC		
3	JENNY MUSHLIN SECRETARY PARISH OF STOW CC		
4	JONATHAN MUSHLIN		

5	MICHAEL WILCOX	
6	STUART BELL	
7	CHRISTOPHER WHITMORE	
8	SUSAN MEIKLE	
9	JOHN PATERSON	
10	PETER WALLER	

Attach additional sheets of signatures if you wish.

Please submit this form and any additional sheets to:-

Clerk to the Council, Scottish Borders Council, Council Headquarters, Newtown
St Boswells, Melrose, TD6 0SA,
or email to:

committeepapers@scotborders.gov.uk

11	WESLEY THORNTON	
12	PHILIP KERR	
13	GORDON HUGHES	
8		<u>As deputy</u>
9		
10		

Attach additional sheets of signatures if you wish.

Please submit this form and any additional sheets to:-
 Clerk to the Council, Scottish Borders Council, Council Headquarters, Newtown
 St Boswells, Melrose, TD6 0SA,
 or email to:
committeepapers@scotborders.gov.uk

Name of deputy PURVIS KERR

Contact details

Signature of deputy

* please delete

Signature of Principal Petitioner.
 If you are satisfied your petition meets all the requirements as stated in the Guidance Questions and Answers please sign and date below.

Signature of Principal Petitioner.....

Date 13.1.24.....

Accompanying signatures.
 Your petition must be accompanied by at least 10 signatures in total, from persons aged 16 and over, resident in the Scottish Borders. The signatures must be from a minimum of 3 separate addresses.
Please be aware that if the petition is on the agenda for a meeting of the Scrutiny & Petitions Committee the names and addresses, but not signatures, of all signatories will be published on the Council website.

	Name	Address	Signature
1			
2			
3			
4			

Petition to Scottish Borders Council

Statement

We ask that the Planning & Building Standards Committee of Scottish Borders Council review the procedures currently operated by Planning Officers in preparing documentation (including that posted on the Council's website), and their procedural advice given to Councillors when the Committee are considering and coming to their decisions on Wind Farm Planning Applications where the final decision will be made by Scottish Ministers guided by the Energy Consents Unit under the terms of Section 36 the Electricity Act 1989.

We particularly ask that the Committee instructs Officers to include in their Report to Committee representative comments and responses from Community Council formally consulted by the Energy Consents Unit, and also local residents clearly affected by the application, in line with the procedures of other local authorities.

Further Information

A number of signatories to this petition have independently raised our concerns directly with Council Planning Officers, and always met with the polite response that officers will not change the current practice. This current practice is in effect a procedural policy which is operate by Officers, but policy is the responsibility of Councillors in Committee, not the responsibility of officials acting independently. As far as we can establish this current practice in the handling of S36 Applications has not been the subject of agreement by the Planning Committee.

Also, the current practice was the subject of a Public Question to Council asked on 26th October in the following terms:-

"Notwithstanding an overwhelming workload on our planning staff:-

Whilst wind-farm applications decided under the Electricity Act S36 are administered by the Energy Consents Unit [ECU], the relevant Planning Authority is a significant consultee.

As normal practice, other Planning Authorities report on all known external consultee responses, including from members of the public; helping Councillors decide based on best evidence.

SBC don't put public representations to such applications on the SBC website — indeed officers on occasion asserted that "*.. third party representations are submitted direct to the ECU and it is for them to account for these matters. You will be aware that we have received a number of representations in relation to this application and I would remind members not to allow these representations to influence your decision making today.*"

By not taking into account important external consultee responses, our Councillors are potentially not appraised of the full picture of the representations; an approach that is certainly not "best practice" compared with other Planning Authorities. When will Scottish Borders Council adopt best practice in respect of S36 applications?"

In answer to this question Councillor Mountford, Planning Convener, misrepresented – to Council – the current situation when he stated in reply that he did not know which other Planning Authorities report on all known external consulted responses. It may well be the case that the Planning Convener was unaware; but Council Officers have been specifically told (for example in correspondence to Mr John Hayward dated 21 Sept 23 – Re Planning

Application 23/00031/S36) of Highland Council's different practice. The Planning Convener in answering a public question was speaking on behalf of the Council - not on his own behalf and his response should have taken cognisance of Officers knowledge, not just his own.

The Highland Council's practice is also documented in the Raeshaw Farms Limited 'Further Objection' in respect of SBC application 21/01134/S36; dated May 2023 that:-

"a 3.2 – it is the normal practice with other Relevant Planning Authorities (for example Highland Council) to report on all known external consultee responses, including responses (both for and against) from interested members of the public, on an application. Indeed, some Reports of Handling actually assess and respond to the summarised representations by the members of the public. This is so that Councillors can make their critical procedural decisions on the best evidence. The approach of SBC Officers, basically not taking into account these important sets of external consulted responses, means that the Councillors do not know the full picture of the representations in respect of the application." [the quoted text is from the ECU website, reference ECU00003288].

The Raeshaw Farms representation clearly elaborates our underlying concerns about SBC's current procedure. That good decision-making must be based on the best evidence.

In effect we are asking.. can a Planning Committee member truly, exercising due care and attention as an informed, elected member of a Council, say what a Council's opinion is on an application under S36 if he, or she, doesn't know what their Community Council's and constituents think?

Direct representation to Council Planning Officers and a Public Question to Council on this subject have both effectively been stone walled, arguably in the case of the Question denying that there is an issue. Policy is the responsibility of Council or its Committees, it is not the sole responsibility of either Officers, or of the relevant Convener. We ask that the currently operated SBC procedure in respect of the handling of S36 Applications is discussed with and agreed by the SBC Planning Committee.

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**PETITION: PUBLIC REPRESENTATION ON "SECTION 36"
WIND ENERGY PROPOSALS**

Briefing Note

PETITIONS COMMITTEE

21 March 2024

1.0 BACKGROUND

- 1.1 This paper relates to the consideration and determination of proposals for large scale wind farm development, specifically those dealt with through what is generally known as the "Section 36" process. To understand this process, it is important to start with some legislative context.
- 1.2 In this case, "Section 36" means Section 36 of the Electricity Act 1989. In its opening paragraph, Section 36 states:
- "...a generating station shall not be constructed ... extended or operated except in accordance with a consent granted by the Secretary of State."*
- 1.3 That explicitly makes the Government the decision maker. This provision is qualified further into the Section by reference to the requirement that it is only proposals where the generating capacity exceeds 50MW.
- 1.4 This is important because, unlike other development proposals, the controlling legislation is not the Town and Country Planning (Scotland) Act 1997 and, crucially, it is the Scottish Government, and not the Council, that is the determining authority. It is not a planning application. That, in turn, is important because whereas planning legislation and regulations are very prescriptive about the need for the Council to undertake public consultation and the manner in which it should conduct that, the Electricity Act places no such responsibility on the Council.
- 1.5 Schedule 8 of the Act sets out the procedure for applications to be made and includes the provision for the "relevant" planning authority (i.e. the Council) to be notified when an application is made (to the Government). It goes on to say that, if the planning authority were to object and not withdraw that objection, a public inquiry would be triggered. The convention is that the planning authority would then be required to appear to present evidence to that inquiry.
- 1.6 In its definition of "relevant planning authority", the Act simply states that, in Scotland, that means a general planning authority or a district

planning authority. It makes no further statement as to how the planning authority should prescribe that duty internally, including on to whom that responsibility falls within the organisation. It is silent on all other aspects of the process and the expected role of the planning authority.

1.7 It does go on, in paragraph 3, make separate provision for “objections by other persons”.

1.8 It states that:

“Where in the case of an application for consent under section 36 or 37 of this Act—

(a) the Secretary of State is not required by virtue of paragraph 2(2) above to cause a public inquiry to be held; but

(b) objections or copies of objections (by third parties) have been sent to the Secretary of State in pursuance of regulations made under this paragraph,

the Secretary of State shall consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application and, if he thinks it appropriate to do so, shall cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.”

The legislation therefore squarely places the duty of considering third party representations upon the Government in its capacity as determining authority. Furthermore, regulations direct that those 3rd party representations are made directly to Government.

2.0 TERMS OF PETITION

2.1 The issue being raised in the Petition being raised before Members is focussed upon the petitioners’ argument that their view should be taken into consideration as part of the Council’s input in to the Government’s decision. In their view, that should allow for third party representations to be included within the officer’s report to the Planning and Building Standards Committee and, in turn to allow verbal representations to be made to support those written views.

3.0 CURRENT COUNCIL POSITION

3.1 As the legislation referred to above confirms, there *is* a mechanism for communities and individuals to make representations, both to the decision-maker and, at the pre-application stage, to the developer, but it is correct to say that it is not through this Council.

3.2 As already noted, the Council is not the decision-maker nor is this a “planning decision” in the sense that it is a planning application determined through that statutory process. Applications made under Section 36 of the Electricity Act, as any proposal with an electricity generating capacity of 50MW or more must, is made to the Scottish

Government's Energy Consents Unit (ECU), acting on behalf of the Scottish Government, for determination. As a result, and as part of that the application process, Scottish Borders Council is only "notified" of the proposal.

- 3.3 The ECU are the determining authority for Section 36 applications and it is their responsibility to ensure that the application is publicised and to consider third party representations.
- 3.4 When an application is submitted to the ECU, if a view is sought by them from this Council, it is in its capacity as planning authority. The view being sought is that of the Council, not of anyone communicating with the Council, who have their own direct line of communication and will have their comments taken into consideration upon determination, in exactly the same way as will this Council's.
- 3.5 All other third party representations must be made directly to the ECU for their consideration, because they are the determining authority. It is purposely not the responsibility of the Council to communicate the views of others as part of that process, precisely because the ECU will receive them directly and address them accordingly as decision-makers.
- 3.6 The Council's remit is therefore to assess the planning implications of the proposal; in other words, to assess the proposal against development plan policies and make any technical assessments that it has responsibility for, such as landscape and visual impacts, access, noise and the effect of these on residential amenity. Like Community Councils (and anyone else with an interest), the Council then also submits its view to the ECU. The Council's responsibility in these cases, as far as it is defined, is to offer its own view on the proposal; it is a commonly held misconception that it is "taking sides" in its assessment merely because it has formed a view in support or opposition. Its view must, as it should, be an independent one based upon the merits of the proposal.
- 3.7 The ECU publish all of the information associated with the application on their own website. In every sense, therefore, the information *is* freely available and is where the community's view is – and should be – heard. As the ECU is the determining authority, that is entirely the correct location. It is not for the Council to duplicate that effort or that responsibility.
- 3.8 All decisions on S36 notification responses are made the Planning & Building Standards Committee before they are issued on behalf of the Council. Although a recommendation is made to them in an accompanying report by officers, they are entitled to arrive at a different view. It is not therefore correct to say that it is solely a decision of officers.
- 3.9 In making their decision, should Councillors wish to view any community or individual comments about the application, they are able to do so by checking the ECU website, something they are actively encouraged to do within the report on the proposal that goes to the Planning & Building Standards Committee. A link to the representations is provided for

Members within the body of the report, giving them unrestricted access, not just to the representations but to all of the documentation being considered. They are thus able to gauge the level of opposition (or support) and the reasons for it. In the context of the limited statutory role of the Council, that is considered to be a reasonable and proportionate response.

- 3.10 The Public Speaking protocol at the Planning & Building Standards Committee was introduced, at the request of Members, to enable verbal representations to be made, specifically in relation to planning applications. It relates only to the determination of planning applications, because the Council is the body that makes the decision.
- 3.11 It is incorrect to suggest that Councillors have no influence over procedure. Any Councillor can raise the question over the need for change to process or, as happened in the case of public speaking, an entirely new process. Any decision is one that would be made by Members themselves.
- 3.12 The arrangements for S36 applications have existed for some years and no Member of the Committee has sought a change. Indeed, as the petitioner notes, a public question was recently raised on this very issue and, in his response to the question, the Chairman and Portfolio Holder made clear his justification for continuing with current practice. There was no alternative view proposed by any Member present, suggesting that Councillors are content with the current arrangements.

4.0 Risks and Implications

- 4.1 The Petitions Committee is being asked to “instruct” officers to include community representations in its reports to the Planning & Building Standards Committee. There is no statutory requirement for such an instruction. The justification appears to be based upon what the petitioners have described as “best practice”, citing Highland Council as its only example.
- 4.2 The reality is that, nationwide, there are a range of differing practices and Highland has been highlighted because it has adopted an approach that the petitioners favour. It is neither right nor wrong, nor good or bad practice in the eyes of the law, because the law is silent on roles and procedure. Scottish Borders Council’s approach is not wrong because it differs from the Highland approach. It is equally compliant. Read literally, the Electricity Act does not actually *require* the Council to respond or indeed take any action at all once it has been notified. It could decide not to offer a view at all and still be compliant with the law.
- 4.3 On the specific point of referencing objectors’ views, there is a very specific risk: If the Council is to properly reflect the views of all those wishing to make views, it would need to undertake its own consultation to invite representations to be made directly to the Council. That is an unnecessary risk, given that it is not the Council’s responsibility to either invite comment or, more importantly, to make the decision. There is no statutory basis for it to undertake any of those actions.

- 4.4 The primary rationale for the current practice is as set out in the preceding paragraphs but if the approach being advocated by the petitioner were to be accepted, there are some further implications to be considered: Firstly, the Council will need to dedicate additional resources to administer the process being suggested. There are additional costs in neighbour notifying residents and administering the process, which it has no statutory obligation to do. Additionally, if the Council does adopt these non statutory process, it then places itself at risk of legal challenge if it fails to follow those procedures, even though there is no legal requirement for them to be adopted. This would seem to be creating an unnecessary additional legal risk.
- 4.5 It is fully accepted that the determination of proposals under the terms of the Electricity Act is not without flaws and the respective roles of this Council and of the ECU are not helped by that. It is nevertheless the legislation that we must work with and it is officers' view – both from a planning and legal standpoint – that the current approach adopted by this Council is entirely proportionate and consistent with that legislation. If the legislation is found wanting – or needs to be clarified – then an approach to the Scottish Government to invite them to review *their* processes would seem the more appropriate course of action.

Author(s)

Name	Designation and Contact Number
John Hayward	Planning & Development Standards Manager (01835) 825068

Background Papers: Petitions Procedure

Previous Minute Reference: Item 11, Scottish Borders Council, 26 October 2023

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**SCOTTISH BORDERS COUNCIL
SCRUTINY & PETITIONS COMMITTEE**

MINUTES of Meeting of the SCRUTINY &
PETITIONS COMMITTEE held via Microsoft
Teams on Thursday, 7 December 2023 at
10.30 am

- Present:- Councillor E. Thornton-Nicol (Chair), J. Anderson, J. Cox, M. Douglas, J. PatonDay, N. Richards, E. Robson and F. Sinclair
- Apologies:- Councillor S. Scott
- In Attendance:- Director Infrastructure & Environment, G. Lennox, D. Bogdanovic, J. Higgins, G. Knox, and Democratic Services Officer (L. Cuerden)

1. **ORDER OF BUSINESS.**

The Chair varied the order of business as shown on the agenda and the Minute reflects the order in which the items were considered at the meeting.

2. **MINUTE**

Copies of the Minute of Meeting held on 19 October 2023 had been circulated.

DECISION

APPROVED the Minute for signature by the Chair.

3. **PRIVATE SECTOR HOUSING GRANTS AND ASSESSMENT PROCESS**

- 3.1 There had been circulated copies of a report from the Head of Adult Social Care Gwyneth Lennox which outlined the origins and processes around the Scheme of Assistance (SoA), introduced by the Housing (Scotland) Act 2006 to provide support with repairing, improving or adapting a home. The Act separated disabled people's applications for assistance from those with repairs and included a general duty to provide assistance in making a house suitable for a disabled person. The SoA provided information and advice to help private homeowners and private tenants to keep their homes in good condition and suitable to meet their needs. The Scheme was operated by SBC in conjunction with Community Care and the Health and Social Care Joint Integration Board, to which major adaptations had been delegated. Mr Knox gave a presentation to inform Members of the processes associated with major adaptations of clients' homes. A single shared assessment process was followed to ensure a coordinated approach and to maximise services available to clients. An assessment of need was conducted and recommendations made for adaptations, additional equipment or support and indicated the urgency of the recommendations. A grant was available to fund adaptations for which homeowners, tenants and part owners were eligible. A grant was awarded if an adaptation was essential to a disabled person and covered 80-100% of the approved expense. SBC had commissioned a Care & Repair Service through Eildon Housing Association with the aim to assist older and disabled residents in the private sector in the repair, improvement or adaptation of their homes in accordance with Scottish National Care and Repair standards. A table of performance data 2017-2023 was shared with Members that detailed the number of major adaptations (social and private) and handyperson jobs carried out. The spend for the same period totalled £2.334m for major adaptations by RSLs (social), and £1.257m under the Scheme of Assistance (private). A

summary of next steps and future reviews was provided and included the streamlining of pathways for provision of equipment and adaptations; effective adoption of new models of health and social care; effective interface with relevant partners and an ongoing review and monitoring of the LHS.

- 3.2 In response to a question about the role of the Health & Social Care IJB, it was confirmed that while the IJB carried out the assessment of need, SBC maintained oversight of the work and delivered the wider assessments by Occupational Therapy and subsequent adaptive work under the Scheme of Assistance. In response to a question about the funding of RSLs, it was confirmed that their funding came directly from Scottish Government. Funding sources for adaptations to households was dependant on who owned the property. The issue of adaptations to shared access to communal areas was raised; permission from other occupants was necessary with legislation to prevent them from refusing permission unreasonably. In relation to the handyman provision delivered through the Care & Repair service, it was confirmed that any profits were to be directed back into the service with the estimate that any income generated from its provision was not sufficient to meet the cost of doing so. Mr Knox agreed to obtain these figures for Members and distribute via email. The importance of Occupational Therapists (OT) communicating effectively with clients was highlighted to avoid incorrect or non-use of equipment. Also highlighted was the impact on other household members/carers in coping with their situation and the role of OTs in recognising and supporting where necessary. The holistic approach of OTs was discussed along with the framework for identifying additional training needs. The importance of open communication between OTs, managers and clients was also highlighted. Ms Lennox reported that the service was keen to promote a self-evaluation process across adult social work and occupational therapy services during 2024. There was also to be a review of allied health professionals starting in Spring 2024. Furthermore, a report was to be brought to the Health & Social Care IJB in 2024 following a review of the approach to adaptations in response to the latest Scottish Government guidance.
- 3.3 The Chair thanked the team for today's presentation and the wider work of the department in their delivery of services and response to referrals.

DECISION

NOTED the presentation and AGREED that Mr Knox obtain figures on income and costs associated with the handyman service for Members and distribute via email.

4. PUBLIC TOILET PROVISION IN THE SCOTTISH BORDERS

- 4.1 There had been circulated copies of a presentation by John Curry, Director Infrastructure & Environment, the purpose of which was to inform Members of the assessment of public toilet provision in the Scottish Borders, and results from the consultation exercise. There were currently 27 public toilets open for use and 14 which had remained closed following the pandemic and were not to reopen. A summary of key principles was provided and included: a need to enhance the condition of the operational facilities for which surveys and capital investment was required; a phased approach to upgrading payment operated locking facilities and contactless payment facilities; maintained access for RADAR users; an appropriate cleaning and inspection regime; and SBC to maintain the operational estate and provide one facility per each major existing settlement. The results of a mapping exercise was shared with Members which showed those facilities open, closed, disabled provision and areas where provision was needed. Stow was highlighted as lacking provision. A summary table of facility condition and suitability was provided with grading as follows: A (good); B (satisfactory); C (poor) and D (bad). A condition survey in November 2023 of all SBC facilities resulted in 3 graded as A, 22 graded as B and 1 graded as C.
- 4.2 On the matter of payment operating locking facilities, SBC charged for access to 17 of the 27 sites. Any income generated was offset by the increasing burden of repairs and operating

costs and several considerations were highlighted: frequent breakdown of coin collection units; delayed opening times; expensive repairs to locking mechanism and to doors vandalised to gain entry (6 this year to date at £2k per call out); and multiple instances of locks failing while toilet was occupied. There had been a trial of removing charges from six sites in Melrose, Coldingham, Kelso (Shedden Park & Horsemarket), Innerleithen and Duns. There had been no direct increase in vandalism levels or complaints. Two options were presented to Members: Option 1 – to invest in estate wide contactless collection; and Option 2 – to remove charging from most facilities. It was highlighted that 50% of the revenue from toilets was spent on collecting that income. Once the trial had concluded, its findings were to be brought back to Council in May 2024. In terms of identifying opportunities, gaps and key priorities for the service, SBC officers were developing in-house mapping and were to engage in early 2024 with Community Planning Partners, Live Borders and Third and private sector partners. Officers had also worked with community groups interested in community-led operations and a summary of these was shared with Members. A further framework model – the Comfort Scheme – was being explored by which a grant was to be awarded to meet operational costs incurred by an organisation or company interested in participation. Highland Council already had a comprehensive Comfort Scheme in place. A summary of cleaning standards, presentation and complaints (of which there were 3 in 2023) was provided. Regarding disposals, the lease on St Mary's Loch facilities was in the process of termination, a community asset transfer process had begun on School Brae, Peebles and several other enquiries had been received for facilities in Galashiels and Hawick.

- 4.3 There followed a discussion on matters arising from the presentation. With regards to provision in Burnmouth, a containerised solution was under consideration, at a cost of around £35k for two toilets, for which there was no provision in the current capital and revenue allocations. Alternative funding sources were to be investigated. Regarding the lack of provision in Stow, a comfort scheme was the preferred route with enquiries to begin in early 2024 along with the use of the football pavilion and the railway station. There was acknowledgement that consistency was required with regards to the opening of disabled facilities that had been earmarked for closure. There was a suggestion that signage be installed in toilets with an SBC contact number in the event of a person being locked in, with the caveat that someone would be available to answer the call. Incorrect signage in Newtown St Boswells was highlighted, along with a request that members of the public be redirected to HQ toilet facilities.

DECISION

NOTED the presentation.

5. DATE OF NEXT MEETING

The next scheduled meeting of the Scrutiny & Petitions Committee was due to be held on 21 March 2024 at 10 am.

The meeting concluded at 12:00pm

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