

Agenda Item 7

Overview & Scrutiny Committee – Service
Delivery/Performance

13 January 2010

KH



Ward Member Involvement and Communication

Summary

This report sets out a detailed complaint from Exmouth Ward Members regarding the handling of a specific issue, namely, the erecting of signs to prevent kiting activities at the Imperial Recreation Ground. The correspondence between the members and officers is set out in a comprehensive manner. The purpose of presenting the issue is for the Overview and Scrutiny Committee to consider the wider issues raised by the ward members regarding communication and ward member involvement.

Recommendation

That members consider the issues raised by the ward members regarding the involvement of ward councillors in matters that are of concern to them specifically;

- **the practice and convention of communicating by e-mail**
- **the length of time given for comments to be made**
- **the appropriateness of inviting ward members to meetings convened by third parties**
- **the appropriateness of relying on press statements to inform councillors**

a) **Reasons for Recommendation**

The ward councillors maintain that the issues raised in this complaint raise concerns held cross party, that members are being over looked when meetings are arranged and decisions are being made. They have asked that a procedure be established regarding member involvement.

b) **Alternative Options**

Not applicable

c) **Risk Considerations**

A change to the practice of communicating and involvement of ward members could have resource implications as well as a potential impact on the timeliness of decisions. The purpose of the report is to allow members to explore these issues to assess the risks in the round.

d) **Policy and Budgetary Considerations**

An Inspiring Council that is customer focused requires a clear focus on member engagement and communication.

e) **Date for Review of Decision**

N/A

Introduction

Members are asked to consider the content of a formal complaint that was made by Exmouth Town Ward Members regarding the handling of the erection of signs to prevent kiting activity at Imperial Recreation Ground. The issues are set out in some detail and no attempt has been made to edit the material. The complaint is being reported for the purpose of allowing members' to consider the appropriateness of the practice and convention surrounding ward member involvement.

The key questions raised by the complaints are:

- When should ward members be involved?
- Is it acceptable that ward councillors receive an e-mail giving them a maximum amount of time to respond and should the convention be two weeks, i.e. ten working days?
- Is a telephone call to a ward councillor a less than satisfactory means of communication?
- If members do not respond within a set time is the working assumption that silence is consent?
- When third parties request or set up a meeting to which an officer is invited, should the presumption be that ward members be notified; members are asked to reflect on the volume of meetings taking place on all manner of subjects that currently members are not informed about and the possible implications that could follow. It could be unworkable for officers to inform all ward members every time they hold a meeting with a third party that may affect a ward. However, members may wish to be informed on particular types of uses and where there is a genuine public interest dimension.
- Is a press statement an acceptable means of keeping members involved on issues?

Complaints Re. Imperial Recreation Ground, kiting activities

Background to complaints in the words of the complainants

The complaints relate to the procedures which were activated following the erection of signs which banned certain kiting activities at Imperial Recreation Ground, Exmouth, by EDDC.

Following the appearance of these signs, many hours were spent in addressing enquiries & concerns from kite-surfers by the Ward Members, who had previously not responded to 2 messages from the Beach Safety Officer at EDDC.

This [non response by Members] was as the result of time constraints & no notification in one instance.

Following a press statement, which stated that signs were put up after consultation with Exmouth Town Council (ETC) & the Ward Members, Members were asked why we had not objected. Clearly, from the statement, members of the public believed that we were in agreement with the signage, which is misleading & is certainly not the case.

There has not been an item agenda-ed at ETC & it has not been discussed there. We were unaware that the signs were being placed at the Ground.

There was a meeting with a Ward Member & the kite-surfers on Sunday July 19 & Cllr. Eileen Wragg spoke with the Head of Service on July 21, when he informed her that he was arranging a meeting with the Chamber of Trade & Commerce (CTC).

Cllr. Wragg was also told by the Chamber of Trade & Commerce on July 24 that they had been unaware of the issue until just 3 days before & that there was to be a meeting that day with the kite-surfers & wind-surfers.

The Ward Members were not invited to this meeting, & despite being actively involved in trying to resolve the matter, were side-lined.

Although it will probably be said that the Chamber called the meeting, the fact that the Head of Service attended, & told 2 EDDC Members that he was arranging a meeting with CTC clearly shows that EDDC were involved.

It has also become clear that Edge Water Sports has a concession to operate on Imperial Recreation Ground. Again, at no time have any of the Ward Members been consulted.

It is now 11 days since the kite/wind-surfers/CTC/EDDC meeting was held & we still have not been informed of any outcomes, apart from what is in the press.

The issues raised by the Ward Members' are:

1. There was insufficient time to respond with our observations to the consultation (2 working weeks).
2. There were 2 columns on the attached form for consultation with S & L headings, with nothing to indicate what these letters meant.
3. There had been 2 alleged complaints, one of which was from a wind-surfing business operator. The Ward Members had had no complaints whatsoever.
4. No consultation had been sought with the Ward Members or Town Council prior to the granting of a concession to use Imperial Recreation Ground by Edge.
5. No consultation with the user groups, other than the complainant.
6. Involvement of EDDC in convening a meeting with the Chamber to the exclusion of Ward Members.
7. No outcomes of that meeting have been conveyed to inform Ward Members what progress/action has been or is to be made.
8. We are answerable to the public for decisions which are being taken by Officers. This, in our view, & those of others, is disturbing & undemocratic. There has been a lack of communication, culminating in an outside body agreeing to try to retrieve a situation which should never have arisen.
9. We understand the safety implications which can arise from most sporting activities, & that EDDC has to consider these when allowing its land to be used. However, the manner in which this situation was handled is regrettable, & the discourtesy shown to Members borders on contempt.
10. We seek an assurance that measures will be put in place to ensure that there will be no similar recurrence of these events.

The officers' comments on these complaints are as follows:

The signs did not constitute a new departure that required a formal consultation process. The Imperial Recreation Ground, among several others in the area, is governed by byelaws relating to Pleasure Grounds that have been in place since August 1996. The new signs were merely put up to remind people of the existing rules, which already prohibit this kind of activity.

It is clear from this statement that the complainants acknowledge that they did receive an invitation from the Beach Safety Officer to comment on the proposed signage. Unfortunately, the campaign raised by Edge Watersports resulted in the public being misinformed about the true situation and this was why Members were contacted by constituents.

An email audit trail shows that the Beach Safety Officer wrote to Members and to the Town Clerk at 10.10 a.m. on 6 May, informing them of his intentions and asking for comments. Two Members replied within 24 hours.

It is reasonable to expect Ward Members to respond when asked to comment on a proposal. It is common practice when consulting with interested parties to assume that no comment means the respondent accepts the proposal. The press statement was an accurate reflection of what had happened.

This is an issue that Members should take up with the Town Clerk, who was notified of the signage proposal in the same email as that to Members on 6 May, when the Beach Safety Officer's intentions were made perfectly clear.

The Head of Service did not say he was arranging a meeting with the Chamber; he said he was attending a meeting that had been arranged by the Chamber and to which he had been invited by them.

There is no reason why the Chamber of Commerce should have been involved in the initial stages of this signage. This is not an issue on which EDDC officers can comment. Since the meeting was arranged by the Chamber, this is clearly a matter for them. At no time did EDDC officers wish to, or try to, sideline Members.

The Head of Service did not arrange the meeting and he did not tell Members he was arranging it. It was no secret that EDDC was involved, as the Head of Service stated that he would be attending. It is common practice for officers to attend meetings arranged by third parties as necessary in the course of their duties.

Edge Watersports do not have any such concession. Indeed, it is because they have a concession for the Foreshore but were also straying onto the Recreation Ground when not authorised to do so that the issue arose in the first place.

The outcome of the meeting is not yet clear. There have been several proposals, which the Head of Service has agreed to progress if certain conditions are met. EDDC is waiting to see if these conditions are met. In the meantime, the Chamber has issued a press release summarising progress so far, as is their prerogative as hosts of the meeting. Members will be informed once EDDC has a firm outcome to report.

Comments on the specific complaints:

1. It is incorrect to say that consultation was limited to two weeks. The Beach Safety Officer said in his email that he wished to put up the proposed signs before the start of the summer holidays [in July] and preferably before the end of May. At the very least, this gave three weeks for a response – the normal time given for many planning applications. In the event, the signs were not put up until 6 July – a full 8 weeks after the email to Members – and ample time for anyone wishing to comment to do so. In fact two Members did respond to the Beach Safety Officer's 6 May request – one the same day and another the following day.
2. We believe Members are confusing two issues here. In addition to the email sent on 6 May with regard to kite-boarding on the Imperial Recreation Ground, an email on a different, though related, matter was sent on 10 June, followed up on 23 June. This was informing Members of a proposed area on the beach to be set aside for kite-boarding [and to which several Members have responded]. For the record, the letters S and L are standard risk-assessment terminology, referring to Severity and Likelihood, two values that are used to calculate risk. However, this proposal has not yet been implemented and the June correspondence should not be associated with the separate email about the proposed signage on the Recreation Ground.
3. Within a 12-month period 2008-09, when the Beach Safety Officer considered putting up signs, there were 9 complaints specifically concerned with kite-boarders at the Imperial Recreation Ground. This was up from just 3 in the period 2004-07.
4. No concession was or has been granted for Edge to use the Imperial Recreation Ground. Their use of this site was unauthorised and, had there been an accident, their insurance cover might well have been invalid.
5. No such consultation was necessary, since EDDC was merely enforcing existing byelaws.
6. EDDC did not convene the meeting. An EDDC officer was invited to attend the meeting, which was convened by the Chamber of Commerce.

7. The issues are still ongoing and Members will be updated as soon as any firm outcome has been reached.
8. The problem is not a lack of communication on the part of EDDC officers with Members. Rather, it is a result of a (continuing) publicity campaign by Edge Watersports against a legitimate attempt to enforce existing byelaws and to protect the public from potential harm. Had this action not been taken and had there been an accident, officers and Members could have found themselves in an extremely embarrassing situation, not to mention the possible injury caused to an innocent member of the public lawfully using the recreation ground in good faith.
9. No discourtesy has been meant or shown to Members and this accusation is strongly refuted by officers, who feel they have acted properly at all times. EDDC did not allow its land to be used – so any use that did take place was unauthorised. This is why the signs were necessary.
10. If any material change to the usage of the Imperial Recreation Ground is proposed, Members can rest assured that it will be subject to due process, including full consultation and a report to Executive Board, plus reference to all Council Members, before being adopted as policy in the usual way. So far, all that has been done is to enforce existing policy. Officers fully understand the need to keep Members informed or to consult on proposed changes – which is why the email was sent on 6 May to inform Members and invite their comments. However, no material change has been made in this case and the issue seems to have been blown out of all proportion due to the publicity it has received as a result of a locally driven campaign.

Members' further comments on the officer's response

As a matter of information & courtesy, Ward Members have in the past, been consulted on matters related to their Wards. The erection of the signs was a significant move which confused the public leading to many representations from all sectors, not just those involved in sporting activities.

The fact that the signs were to be removed signifies that mistakes were made.

Two of the Ward Members received emails dated 10 June & 23 June which amounted to 2 working weeks. The other Ward Member says that she had not had any information. The closing date was June 26, giving insufficient time to investigate the issues raised, in our view.

We have no record of this letter/email. Cllr. Chamberlain received a message & he responded by telephone to what he says seemed a 'casual' enquiry. Cllr. Wragg has also accessed her EDDC email, which she does not normally do, preferring to use her DCC address, & there are no emails in the EDDC inbox for May. Usually these are automatically forwarded, however, it is possible that the password had expired & nothing was then forwarded.

Cllr. Graham had problems with the EDDC emails in May with messages not getting through. The Town Clerk has now forwarded the email from the Beach Safety Officer dated 6 May & our names are in the address bar, but none of us can recall receiving it. Cllr Hardy does not access email & hard copies of correspondence are sent by post & she does not remember having seen a copy.

This is a presumption on the part of officers. The press statement was misleading in saying that the signs were erected after consultation with Ward Members, giving the impression that they had approved, which is clearly not the case.

The Town Clerk has written to us today & said that he had already spoken with Andy Phillips prior to the email being sent on 6 May & told him that the signs would be controversial, but that if he (AP) thought that there were over-riding safety concerns, there was nothing that the Town Clerk could do, as it was an EDDC matter.

The Head of Service certainly said that a meeting was being arranged with the Chamber, although whether or not 'by' the Chamber was unclear. It is extraordinary that after so much time & effort had been made by the Ward Members on both ETC & EDDC that they were not invited to the meeting, particularly as it concerned EDDC owned land.

This unelected body assumed the responsibilities of elected Councillors, in our view. The Chairman asked Cllr. Wragg, immediately prior to the meeting, for background information on the problems which had arisen.

Officers should have ensured that Ward Members were present. Elected Members are the face of the Council, which is why they are contacted by the public in the first instance.

A recent letter to a Ward Member asked that residents should be advised to contact Streetscene directly regarding some problems. Elected Members must be aware of any issues which concern the public, in order to take decisions & to form future policy.

We understand that meetings take place between officers & third parties, & that is what they are, third parties.

Because of the substantial interest & concern surrounding the action which had been taken by officers, there should have been a Councillor presence.

Your statement is incorrect. The wording in the Licence states that the Licensee was authorised 'to use that part of Imperial Recreation Ground & foreshore at Exmouth & which for the purposes of identification only shown coloured green on the plan annexed hereto (hereinafter called "the land")'.

The Ward Members were not consulted prior to this agreement being signed & do not have the plan to refer to.

We repeat, there should have been Member involvement. Interestingly, you state that Members will be involved once EDDC has a firm outcome to report. We understood that elected Members form the Council & that all staff are employees.

We re-state, Ward Members received an email June 10, followed by another dated June 23 which notified them that the closing date for responses was June 26. This was 13 working days.

The signs referred to in the Beach Safety Officer's email related to those intended for Exmouth Beach not for the Imperial Recreation Ground. We were unaware that signs were to be erected there. Other references to signs were for existing signage.

Many Councillors were also involved in the European & County Council elections & in addition to responding to their constituents, the demands on their time were considerable. This factor should have been realised by officers.

We did not receive the email alleged to have been sent May 6, so only had the 2 later ones to refer to. We are not confused.

We were concerned that the complaint had been made by a windsurfing operator & that one with a reference to a complaint made on the River Exe by the Exeter City Council Harbourmaster were the only 2 referred to in the Beach Safety Officer's email. We repeat, Ward Members have received no complaints whatsoever & this has since been reinforced by dog walkers & other members of the public who say that they have always been treated with consideration & courtesy by kitesurfers.

This is incorrect & we refer you to a licence which was granted on 27 March 2009, as stated at the top of page 4 of this paper.

We disagree. This appears to have been based upon the acceptance, by officers, of the word of a water based business operator. As the complaint was against another water based business operator, there clearly should have been consultation with him & Ward Members. Proof & probity should have been initiated.

As the public invariably contact their elected representatives, as in this instance, Ward Members should have been invited, particularly as the meeting was held in an EDDC owned building. To hide behind the excuse that the Chamber had called the meeting is unacceptable. If we were to agree with this principle, perhaps when our constituents contact us with the various problems relating to housing, planning, waste collection etc., would the Chamber be expected to resolve these as well?

It is totally unacceptable, in our view, that we are informed only through the press statements which appear in the newspapers. There should be far better communication with elected representatives who should be involved in any decision making, instead of being notified of those being taken by officers & others. This is not how democracy should work.

It appears that after shifting the emphasis from the Chamber for calling the meeting, a campaign by Edge Watersports is now being blamed for all the publicity. We well understand the implications of an accident, & public safety is paramount. You refer to 'this action being taken', presumably meaning the signage, which EDDC latterly considered removing.

Embarrassment is not what concerns us. What does concern us is that apart from the 2 complainants named in the Beach Safety Officer's report, one of whom has a vested interest, the other responsible for activities on the Exe; we have been totally unaware of any other complainants. Yet if there had been allegedly 9 complaints in 2008-9, why were Ward Members not informed that there were problems before June 10 (or even May 6)?

It would have been entirely appropriate for the officers to have asked for Ward Members to have been invited. Why was this not done?

Again, we have not been consulted on the Licence Agreement, which you appear to be unaware of, & we do not know which part of the land Edge had permission to use.

What this whole issue has raised is one of communication & procedure.

We were informed on June 10 of two complainants & it was only from your response to our complaint that there appears to have been more. Earlier member involvement should have been sought, especially when public safety is presumed to be at risk.

There are growing concerns, cross-party, that Members are being overlooked when some decisions are made & meetings held. One recent example is of the decision by a Portfolio Holder not to grant a temporary permission for a refreshment facility in the Manor Gardens, Exmouth. There are others.

We were not told that signs were to be erected at Imperial Recreation Ground.

We receive our information via the Communications Officer at EDDC, who has refused to retract misleading press statements.

Where another body is given permission to hold a meeting with EDDC officers in a matter which has actively involved Ward Members, particularly in an EDDC owned building, those Members should be included, as they probably have other information which could well prove useful.

Our complaint has not been resolved, & we require that an established procedure regarding Member involvement be implemented.

Legal Implications

Extract from Protocol for relationship between East Devon members and officers (Constitution).

78. To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. Senior officers must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision-making process and develop their representative role.

79. This requirement is particularly important:

- during the formative stages of policy development, where practicable,
- in relation to significant or sensitive operational matters,
- whenever any form of public consultation exercise is undertaken, and
- during an overview and scrutiny investigation.

80. Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.

81. Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
82. If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant officer. Provided the meeting has not been arranged on a party political basis:
 - an officer may attend but is not obliged to do so, and
 - the meeting may be held in Council-owned premises.
83. No such meetings should be arranged or held in the immediate run-up to Council elections.
84. Whilst support for members' ward work is legitimate, care should be taken if staff are asked to accompany members to ward surgeries. In such circumstances:
 - the surgeries must be open to the general public, and
 - officers should not be requested to accompany members to surgeries held in the offices or premises of political parties.
85. Officers must never be asked to attend ward or constituency political party meetings.
86. It is acknowledged that some Council staff (for example, those providing dedicated support to Executive members) may receive and handle messages for members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.
87. In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timescale, and may need to seek instructions from their managers.

Financial Implications

There are no identified financial implications.

Consultation on Reports to the Executive

None

Background Papers