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## WEST DEVON COUNCIL - THURSDAY, 1ST MAY, 2014

Agenda, Reports and Minutes for the meeting

### Agenda No    Item

1.     **Summons Letter** (Pages 1 - 2)

2.     **Reports**

Reports to Council:

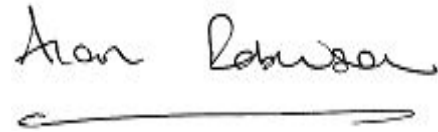
a)     Item 4 - EXEMPT - Application for a Judicial Review on the former Focus DIY site in Plymouth Road, Tavistock (Pages 3 - 14)

3.     **Minutes** (Pages 15 - 18)

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Dated this 22<sup>nd</sup> day of April 2014

A handwritten signature in cursive script that reads "Alan Robinson". Below the signature is a horizontal line that starts under the first letter and extends to the right, ending under the last letter.

Executive Director (Communities) & Head of Paid Service

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# Agenda Item 3

At the Special Meeting of the **WEST DEVON BOROUGH COUNCIL** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK** on **THURSDAY** the **1<sup>ST</sup>** day of **MAY 2014** at **2.00 pm** pursuant to Notice given and Summons duly served.

**Present** Cllr W G Cann OBE – The Mayor (In the Chair)

Cllr R E Baldwin	Cllr K Ball
Cllr M J R Benson	Cllr A Clish-Green
Cllr M V L Ewings	Cllr C Hall
Cllr T J Hill	Cllr L J G Hockridge
Cllr D M Horn	Cllr A F Leech
Cllr J R McInnes	Cllr J B Moody
Cllr N Morgan	Cllr M E Morse
Cllr D E Moyse	Cllr C R Musgrave
Cllr T G Pearce	Cllr P J Ridgers
Cllr R F D Sampson	Cllr P R Sanders
Cllr J Sheldon	Cllr D Whitcomb

Head of Paid Service  
Deputy Monitoring Officer  
Democratic Services Manager

## **CM 90 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs S C Bailey, Cllr D W Cloke, Cllr C M Marsh, R J Oxborough, L B Rose, Cllr D K A Sellis, Cllr E H Sherrell and D M Wilde.

## **CM 91 DECLARATION OF INTEREST**

The Mayor invited Members to declare any interests in the items of business to be considered during the course of the meeting, these were recorded as follows:-

On the advice of the Deputy Monitoring Officer, Cllr K Ball declared a personal interest in Item 4: 'Application for a Judicial Review on the Former Focus DIY Site in Plymouth Road, Tavistock' (Minute CM 93 below refers) by virtue of having previously worked for Cllr R J Oxborough and remained in the meeting during the debate and vote on this matter.

Having sought legal advice prior to the meeting, Cllr M J R Benson declared a personal interest in Item 4: 'Application for a Judicial Review on the Former Focus DIY Site in Plymouth Road, Tavistock' (Minute CM 93 below refers) by virtue of his name being on the Claimant's Statement of Facts and remained in the meeting during the debate and vote on this matter.

Cllr T G Pearce also declared a personal interest in Item 4: 'Application for a Judicial Review on the Former Focus DIY Site in Plymouth Road, Tavistock' (Minute CM 93 below refers) by virtue of him being involved in an email exchange with Cllr Oxborough in respect of the decision of the

Planning and Licensing Committee to grant planning permission for a food store on the former Focus site and remained in the meeting during the debate and vote on this matter.

Cllr M V L Ewings also declared a personal interest in Item 4: 'Application for a Judicial Review on the Former Focus DIY Site in Plymouth Road, Tavistock' (Minute CM 93 below refers) by virtue of having a conversation (in her capacity as Chairman of the Overview and Scrutiny Committee) with Cllr Oxborough regarding the decision taken by the Planning and Licensing Committee. The conversation specifically related to Council Procedure Rule 9(3)(ii) of the adopted Council Constitution and Cllr Ewings proceeded to remain in the meeting during the debate and vote on this matter.

At this point, a Member questioned whether those Members who were named on the Claimant's Statement of Facts should be required to declare a Disclosable Pecuniary Interest (DPI) in Item 4: 'Application for a Judicial Review on the Former Focus DIY Site in Plymouth Road, Tavistock' (Minute CM 93 below refers). In response, the Deputy Monitoring Officer advised that since the agenda item sought a Council decision regarding whether or not the claim should be defended, coupled with there being no significant factual dispute over the Statement, her advice was that these Members were not required to declare a DPI. This advice had also been endorsed by Counsel. Cllr P R Sanders confirmed that he had spoken at length to the Monitoring Officer, Deputy Monitoring Officer and Counsel on this matter and he was satisfied that he did not have a DPI.

Whilst not wishing to declare an interest, Cllr A Clish-Green asked for it to be recorded that she was the local ward Member for the former Focus DIY site in Plymouth Road, Tavistock.

**CM 92 BUSINESS BROUGHT FORWARD BY THE MAYOR**

The Mayor informed that a Special Council meeting date had now been scheduled to consider the outcome of the consultation phase of the Senior Management Review. It was noted that this meeting would take place on Tuesday, 24 June at 11.00am.

**CM 93 APPLICATION FOR A JUDICIAL REVIEW ON THE FORMER FOCUS DIY SITE IN PLYMOUTH ROAD, TAVISTOCK**

Before the Council considered this matter, the Mayor invited the Deputy Monitoring Officer to explain the reasons behind the timescales associated with convening this special meeting and why it was proposed that this matter be considered in Part 2.

With regard to the timescales, the Deputy Monitoring Officer confirmed that, as the Defendant, the Council had a statutory requirement to respond to the claim within 21 days (including non-working days). In light of the Easter period and May Day Bank Holiday, this required the claim to be responded to on or before Tuesday, 6 May 2014.

The Deputy Monitoring Officer also stated that it was her strong recommendation (and in the public interest) for this matter to be considered in Part 2 in light of legal advice being considered in response to the claim and the consequent financial implications.

It was moved by Cllr W G Cann OBE, seconded by Cllr M J R Benson and upon the motion being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the Meeting for the debate that took place on this item of business on the grounds that exempt information may be disclosed under Paragraph 3 – Information relating to the financial or business affairs of any particular person including the authority holding that information and Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings – from Part I of Schedule 12(A) to the Act.”

A report was then considered which advised of the application for Judicial Review of the Planning & Licensing Committee’s decision to grant planning permission for a food store on the former Focus site on the Tavistock Retail Park and to ask Members to make a decision on the way forward.

The following motion was then moved by Cllr R F D Sampson, seconded by Cllr A Clish-Green:

*‘That Members agree to fully and robustly defend the claim for Judicial Review of the Council’s decision to grant planning permission (reference 00601/2013) for the refurbishment of the existing retail unit 2-4 Tavistock Retail Park, Plymouth Road Industrial Estate, Tavistock, to allow use as a Class A1 food store.’*

In discussion, a number of Members expressed their deep sorrow that the Council was considering this matter.

Following a lengthy debate, and in accordance with Council Procedure Rule 19 Part 5, a recorded vote was called for and was recorded as follows:-

For the motion (23): Cllrs Baldwin, Ball, Benson, Cann, Clish-Green, Ewings, Hall, Hill, Hockridge, Horn, Leech, McInnes, Moody, Morgan, Morse, Moyse, Musgrave, Pearce, Ridgers, Sampson, Sanders, Sheldon and Whitcomb

Against the motion (0):

Abstentions (0):

Absent (8): Cllrs Bailey, Cloke, Marsh, Oxborough, Rose,  
Sellis, Sherrell and Wilde

and the vote was therefore declared **CARRIED**.

(The Meeting terminated at 3.00 pm)