

SCRUTINY PANEL

17 August 2020

Present: -

Councillor Barber, Councillor Bourne, Councillor Dundas, Councillor Hayter, Councillor Hogg, Councillor McCarthy, Councillor Whitehead.

Substitutions: -

Councillor Willetts for Councillor Bentley.

Also present: -

Councillor King, Councillor Julie Young.

274. North Essex Garden Communities Project and NEGC [North Essex Garden Communities] Ltd Update and Financial Information

Councillors King and Julie Young (by reason of being the Council-appointed director of NEGC Ltd and alternative Council-appointed director respectively) declared non-pecuniary interests in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (5).

Ian Vipond, Strategic Director, Policy and Place, (by reason of being a director of two subsidiaries of NEGC Ltd, for Braintree/Colchester Borders and Colchester/Tendring Borders) declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (5).

Councillor King, Portfolio Holder for Business and Resources, laid out the background of the NEGC project and the context to the formation of NEGC Ltd. This had been a multi-partner project, supported by Government with around £100 million of funding. The Portfolio Holder noted that representatives and officers from the other partners, being the County Council, District Councils and Central Government, had not been invited to attend. The Panel were asked to recognise the successes which had been achieved, including infrastructure commitments and funding from central governments.

The Panel were notified that the housing supply challenge had now nearly doubled, with a target now set by government of around 1,600 new homes per year for the Borough. The garden community expected to go ahead on the Colchester/Tendring border had the potential to provide up to a quarter of the decade's new housing for the Borough.

Ian Vipond, Strategic Director of Policy and Place, related the history of the NEGC project, from its instigation by Braintree District Council, Colchester Borough Council and Tendring District Council in 2013, to the formation of a shadow board, including Essex County Council, in 2015. The first government grant, of £640k, had been

received in 2015/16 and in January 2016, Colchester Borough Council had agreed to act as banker for the project. In late 2016 Cabinet agreed to approve the formation of NEGC Ltd and to start development vehicles to start looking at land acquisitions. In December 2016 this was noted and endorsed by full Council, with full Council approving funding.

It was explained that no funds went through the company until the managing director was appointed. NEGC Ltd had never held project funds as these were held by the Council as the project's banker.

Paul Cook, Head of Finance and Section 151 Officer, notified the Panel that, following agenda publication, it had been estimated that, with extra savings and income, including a return of funds that had been put into the Essex County Council pension scheme, the winding up of NEGC Ltd would leave a £400k surplus in funds held by Colchester Borough Council as banker for the NEGC project. The Head of Finance then explained the content of the appendices. The expenditure figures and partner funding were explained. More detail was offered regarding the costs of consultation exercises, and it was clarified that officer costs were lower in 2019/20 as the Planning and Programme Officers salaries had started to draw on existing reserves during the year. It was noted that additional carrying costs, outside the information requested, had been provided to give a full picture.

Councillor Julie Young, Portfolio Holder for Culture and Performance and Deputy Leader of the Council, welcomed the briefing and emphasised the support for the project by the local authority partners and central government. This included the £99m of government funding for infrastructure work for the Tendring/Colchester borders community, and the recent award of £272m for infrastructure improvements and works to the A12 to the West of Colchester, in preparation for the proposed Braintree/Colchester borders community. The Deputy Leader noted that this £272m had been confirmed too late to be considered by the Planning Inspector in his deliberations.

The Chairman confirmed that the other local authority partners had not been invited as the decision had been taken for the Panel to discuss this subject internally within the Council first, looking to learn lessons and any ways to improve decision making. A member of the Panel gave the counterview that an investigation of the decision making and the learning of lessons would be more effective if this was discussed with the partners. This was how the Crime and Disorder Committee and One Colchester Partnership operated.

The Panel welcomed the briefing on the NEGC project's history and asked why Colchester had been appointed to act as banker for the project. The Strategic Director explained that Colchester Borough Council had a reputation for effective financial management and that Colchester was the most central of the local authorities and involved with more of the proposed garden communities than the other partners.

A Panel member stressed the importance of learning lessons in order to improve operations, such as any project with Tendring District Council to proceed with the Tendring/Colchester borders garden community. The member posited that this was

not a conventional limited company and ventured that there had appeared to be much groupthink and a lack of contingency planning or consideration of what would happen if the project failed.

The approach to accounting for full Council's vote to reject payment of £350k to the project in 2019/20 was queried by one member, with an objection being made that this had then been left off both sides of the balance sheet, showing both a removal of the proposed payment and the removal of that amount from the carry costs. It was considered by the Panel member that it was inappropriate to record this as if the Council, as debtor, had written off the instalment of funding it owed to the NEGC project, and that the actual closedown figure should be shown as -£173k. The Head of Finance confirmed that he was content as to how the lack of £350k payment from Colchester Borough Council had been accounted for.

It was asked what advice was given by the Council to NEGC Ltd regarding the likelihood of receiving the £350k payment, after this had been removed from the Council's 2019/20 budget, and whether there had been any changes to the NEGC Ltd budget and expenditure following the Council's refusal to pay £350k into the project funds. The Head of Finance clarified that full Council had voted not to release the payment, rather than to refuse it absolutely. The Strategic Director, Policy and Place, clarified that the £350k was in the 2019/20 budget, with the release of it dependent on full Council, which then later refused this release.

It was queried whether the spending of £85k in 2019/20 on consultation and feedback exercises had been wasted, given the recent judgement given by the Planning Inspector assessing the NEGC project. A request was made for comment on the use of outside consultants relating to the hearings on the project held at the start of 2020 and as to whether this had been satisfactory. The Strategic Director of Policy and Place explained that there had been criticism regarding the perception of a lack of consultation and that the project partners felt that additional consultation would be of use. It was likely that elements of this consultation would still be of use. It was noted that officers providing planning evidence to the Planning Inspector had been impressed by the legal advice received from consultants, and that the Inspector had largely accepted this evidence; the Inspector's concerns were rather concerning the viability of the garden communities.

Responding to the questioning of consultation, the Deputy Leader explained that NEGC Ltd had acted to respond to criticisms and local needs that were raised and had carried out additional local consultation sessions. It was felt that the second round of hearings went better, with the team able to prepare.

Regarding the capacity funding bids, it was asked if the directors of NEGC Ltd had been presented with any budget variances or virements, altering spending from what had been stated in the bids, and asked to approve them. The Head of Finance explained that these funds were not ring-fenced grants and explained the processes involved, giving assurance that the grants made were fully expended. It was further explained that authority to decide on how grants were spent was delegated by the project partners (by Cabinet, in the Council's case) to a project steering group with representatives including Homes England, who represented central Government.

The Head of Finance was asked to confirm as to whether carry costs were being accrued from April on to the present. It was confirmed that full carrying costs were shown at Appendix D and that the allocation of any surplus would need to be agreed between the partner local authorities. The Panel discussed a member's suggested recommendation to Cabinet that the administration had no authority to write off any carry costs and that these are shown on any relevant financial documents or balance sheets. The Portfolio Holder for Business and Resources cautioned that the NEGC project accounts must be reconciled as part of the winding-up of NEGC Ltd. The Head of Finance emphasised that the accounts in question were held on behalf of all the partners, who would decide how to allocate their funds, and that it would be questioned how the Council could insist on a share of this, in the light of full Council refusing to allow the £350k 2019/20 contribution to the project to be made.

The Portfolio Holder for Business and Resources warned that the full Council decision to withhold the expected £350k payment to the project was likely to damage the Council's reputation with its partners and that not discharging a perceived duty would have an effect. It was noted that Tendring District Council had made it clear that it would hold Colchester Borough Council to account in the future, even though the shareholder agreement did not explicitly require the funding payments to be made. The Portfolio Holder noted that the full Council vote to withhold payment could be viewed as not being in line with the Council's shareholder duties.

A Panel member gave the view that the lack of cross-chamber support for setting up the project should be learned from and that future such decisions should be made so that broader support can be gathered for long term projects and make them resilient to changes in membership of the Council. The Portfolio Holder for Business and Resources ventured that the focus would need to be on how to engage with future partners effectively, noting that lessons had been learned in that future shareholder agreements would be less simplistic and more comprehensive.

The Panel discussed the projected £400k remaining in the project's funds, and what would happen to these. It was explained that this would be up to the partner authorities to decide, decided upon by their respective portfolio holders. It was expected that the authorities would expect their respective share of the reserves. Whilst around half of the project's funding had come from central government grants, it was shown that all such funding had been allocated and spent. A Panel member stated that it would have helped to have invited representatives of the other local authority partners, in order to gain wider views and benefit from the thoughts of others. It was queried what their views might be.

The Strategic Director of Policy and Place confirmed that all the local authority partners' officers had been ambitious and had wanted to ensure an approach which would guarantee necessary infrastructure and avoid poor-quality developments. The Portfolio Holder for Business and Resources further added that the politicians of the partner authorities likewise desired to improve local developments through this project. The ambition still remained, and the Portfolio Holder opined that it would be easier to find a consensus to agree the remaining single garden community which the Planning Inspector had judged could be viable. The Deputy Leader restated the expectation that Tendring District Council would require Colchester Borough Council

to sign up to a more watertight shareholder agreement, having stated that it was not possible to trust Colchester Borough Council.

A Panel member who had been on Cabinet during the early days of the project detailed its beginnings, the aims to manage growth in the area and assist Tendring District in attracting greater business whilst improving the relationships betwixt the partner authorities. This had led to greater collaborative work between the authorities. The importance of maintaining these relationships was stressed and members moved on to discuss the need for more rigorous shareholder agreements, and the need to lay out potential exit clauses, should political representation at the partner authorities change. This led to a querying as to whether there was an expectation that commitments be honoured, even when these were not codified in a formal agreement.

Another member of the Panel praised the current administration's approach to building consensus and informing members about the project, in contrast to the approach previously taken, and directed the Panel to focus on whether the project had achieved value for money, and whether decision-making had been carried out well. The member criticised the Panel as having not succeeded in achieving clarity regarding spending, decision-making, the project's risk matrix/register and value for money. Three areas of financial questioning were raised, relating to the commissioning of work towards the Local Plan, commissioning of work relating to the NEGC project, and regarding the role of the Council as project banker.

The 2016 commissioning, by Cabinet, of the Kerslake review of the Local Plan was raised by the Panel member, stating that this had questioned the viability of two of the garden communities and that the project had not followed the conclusions of the review. The member noted that there had been a series of planning and project management actions and costs which had been carried out, questioned what audit objectives had been set over these, and stated that the Scrutiny Panel would need to see the project plans and details of payments and costs, in order to assess value for money. Concern was raised that the perception was that the project had not been properly scrutinised, that spending was not properly programmed or justified, with a lack of transparency over decision making. In the Panel member's view, the terms of scrutiny at this meeting had been set too narrowly and that a full scrutiny of the NEGC project should be carried out by the Panel, or by external auditors, if the Panel was unwilling to do so. The Panel member proposed that Cabinet could be asked to request that all project partners agree to, and cooperate with, an independent audit of the project by the National Audit Office [NAO]. The Panel queried what an NAO audit would cost, fearing the cost would be considerable.

The cost of work to secure land deals, including £152k spending on legal support, was raised and it was noted that no land purchases had been carried out.

The Deputy Leader clarified that the overall funding figures on the project covered all contributions from each of the project partners, not just the Council's contributions. If the Panel wished to scrutinise all funding and spending then it should invite representatives from each of the partners, and including central government, to participate.

The Portfolio Holder for Business and Resources agreed that the value for money of any project should be scrutinised, but cautioned that this was not simple for complicated projects. There had been a process of publishing project plans and risk registers. Regarding value for money, the Portfolio Holder ventured that most tests related to decisions made and their outcomes. The project had produced a number of positive outcomes, including significant government investment in infrastructure and the go-ahead for one garden community, but lessons had also been learned through the project, especially at its end.

A Panel member disagreed with the view that the Panel had not scrutinised the NEGC project, noting that the Panel had held five sessions to scrutinise it in the last two municipal years. The scope had been set by the Chairman who had always been a member of the opposition. Recommendations had been made, both critical and in praise.

It was noted that there had been many additional Scrutiny Panel meetings already held in 2020-21 and that the real challenge for scrutinising such a project was that local authorities always faced difficulty in scrutinising complex projects, especially where government funding was involved. Experience amongst members could be limited and a Panel member recommended that workshops and briefings be held for members to increase knowledge, skills and confidence, as well as to identify what could and couldn't be effectively scrutinised and how to set the scope for successful scrutiny.

The Portfolio Holder for Business and Resources affirmed his support for the Scrutiny Panel and its role in improving governance. The administration remained democratically accountable and had answered all questions tabled within the scoping of this meeting, providing all requested information and ensuring officers were present to provide information.

The Portfolio Holder gave his priority as ensuring the practical winding up of NEGC Ltd and the successful setting up of future projects, and his fear that a large-scale external audit would derail future actions, due to the stretching of limited officer time in order to accommodate such an audit. The Chairman noted that the Local Plan and proposed developments were of huge importance and needed to be faced by councillors. This would include the central issue as to who future project shareholders would be.

The Panel requested confirmation as to what, if any, contractual necessity required the Council to make the contribution of £350k for 2019/20 which had been withheld. Clarity was asked as to who had ultimate decision-making regarding this, and about the duties owed to other partners. This was put forward as being of especial interest, given mixed views across the Council Chamber.

The Panel discussed the merits and drawbacks of engaging an external audit of the project. One view given was that limited outcomes from previous scrutiny sessions indicated that there was a need for external scrutiny, and that an independent audit could invite participation by partners and the Ministry of Housing, Communities and Local Government [MHCLG], and could seek answers to outstanding questions. It

was noted that councillors carried out scrutiny, but often had a lack of experience and faced limits to what they were able to do.

A Panel member suggested that an alternative route could be to seek an independent LGA [Local Government Association] peer review, as there were a number of local authorities in the East of England with experience of major projects. The County Council also had a dedicated major projects team. The methodology of an LGA peer review was explained, led by someone experienced in major projects and involving information gathering from the partners' executives, councillors, officers and central government. Previous peer reviews had been found to be rigorous and useful.

Dan Gascoyne, Chief Operating Officer, advised that the Panel should ensure that any recommendations had usefulness and the ability to be executed. It was cautioned that it would be difficult to obtain approval from the project partners and MHCLG. All would need to approve for the audit to be possible. It was likely that an NAO audit would cost around £100k and the Panel was informed that an LGA peer review had already been looked at regarding a different matter, albeit that this had been delayed by the Covid-19 outbreak. A Panel member stated that the Panel should be involved in setting the terms of reference for any review and this was discussed. The Portfolio Holder for Business and Resources suggested that any peer review should be focused on looking at what would help improve the setting-up and running of any future development vehicle, but feared that it would be difficult to obtain partner approval for any review or external audit. The Panel discussed the proposed wording for a recommendation on this matter, especially to reflect the Panel playing a role in setting audit/review terms of reference but recognising that other partners would want to have input on this, if they agreed to an audit/review. The Deputy Leader asked the Panel to work collaboratively with the administration to set any terms of reference.

RECOMMENDED to CABINET that: -

- (a) Following the setting of the 2019/2020 budget by Full Council on 20 February 2019 and subsequent votes in Full Council on 5 December 2019 and 15 July 2020, there is no authority to write-off or disregard any carried costs owed to CBC, and that any accounts or final budgetary position by NEGC should show those amounts as outstanding; and
- (b) Cabinet invite all North Essex Garden Communities [NEGC] Limited's shareholder local authorities and the Ministry of Housing, Communities and Local Government to take part in an independent external audit and/or a Local Government Peer Review of the NEGC Project, with terms of reference agreed with the Scrutiny Panel.