

Governance and Audit Committee

Tuesday, 21 January 2020

Attendees: Councillor Paul Dundas, Councillor Mark Goacher, Councillor Sam McCarthy, Councillor Chris Pearson, Councillor Dennis Willetts
Substitutes: Councillor Lewis Barber (for Councillor Barbara Wood)
Also Present:

190 Minutes of Previous Meeting

RESOLVED that the minutes of the meetings held on 29 October and 26 November 2019 be approved as correct records.

191 Have Your Say!

Sir Bob Russell addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(1) in respect of agenda item 7 relating to the annual report of Colchester Commercial Holdings Ltd, and in particular what he perceived was a lack of democratic accountability as to the operation of the company. Sir Bob accepted that in order to make a profit then business had to be done through the company, however, a particular issue that he wished to raise was the role of Amphora in the development of Queen Street bus station site. Of particular concern to Sir Bob was the fact that a restrictive covenant between Essex County Council and Colchester Borough Council in respect of the bus station was still in existence when Colchester Borough Council signed a lease of two hundred and fifty years on the sale of the site to a developer. Sir Bob pointed out that Essex County Council could refuse to remove the covenant if they wished, and he felt that it was very odd that the agreement had been entered into without this matter being resolved. A separate issue of further concern to Sir Bob, were the actions of Colchester Events Company in renting out the Town Hall to a group of budding ghost hunters on the previous Saturday, 18 February 2020. Sir Bob pointed out that there were spiritualist churches in Colchester who could be offended by this practice, and questioned whether it was appropriate to allow such groups to roam through the listed building, including areas to which the general public had no access.

Councillor Pearson responded, and explained that a written response would be sent in respect of the issue around the use of the Town Hall. In relation to the restrictive covenant held by Essex County Council, it was not possible to comment on what actions they may take in the future.

In response to the issues that had been raised, Adrian Pritchard, Chief Executive of Colchester Borough Council, explained that Amphora work on behalf of Colchester Borough Council, and that the project in question was entirely a Borough Council project and not an Amphora project. Specifically addressing the issue of the covenant, he explained that it was common to have such covenants and agreements were commonly made which were subject to a number of conditions. In this case, Colchester Borough Council had contracted to use their reasonable endeavours to lift the covenant and although a failure to achieve this would potentially stop the works going ahead, the same could be said of a failure to obtain a necessary planning permission. Sir Bob thanked Officers for their comments.

192 Annual Review of the Council's Wholly-Owned Companies' Business Plans

The Chairman explained that members of the Scrutiny Panel had been invited to join the Committee to take part in the discussions for this item only and accordingly Councillor Bourne joined the Committee prior to the presentation of the report.

The Committee were requested to review the Council's wholly-owned companies' business plans, and Andrew Tyrrell, Client and Business Manager, and Paul Smith, Group Commercial Director, Colchester Commercial Holdings Ltd (CCHL) attended to present the report and assist the Committee. Andrew Tyrrell explained that the companies had been formed in a context of government cuts which saw the funding provided to Colchester Borough Council reduce over the past decade, and the intention was to replace this lost revenue with new revenue generated by the dividend return to the Council. He explained that although the nature of the companies was commercial, one of the key elements of this arrangement was that running through all the companies was the public sector ethos which brought social benefits to their projects. The Committee heard that this ethos was reflected strongly in the composition of the Boards of Directors of the companies, which consisted of elected Members and Colchester Borough Council's own Chief Executive. It was explained that the companies were compliant with TECKAL regulations which meant services could be traded between the companies and the Council without having to go through a tendering process. It was explained that this report constituted the second update of commercial targets that had been presented to this Committee, and the business plans ran between 2018-2021 so that versions now presented had been the subject of a light update rather than a radical refresh. The business plan of (CCHL) was the overarching plan, a public document covering all the companies activities, whilst the three business plans relating to the Amphora companies provided more operational details but were exempt from publication as they contained information that was commercially sensitive as a result.

The Committee were advised on some of the key projects currently being carried out by the companies. The heat network currently being set up by the energy company was

one of only nine in the United Kingdom to have received external funding from BEIS as it was an innovative project, and the first in the United Kingdom of this scale. The Committee heard that the project would not be deliverable without the expertise contained within Colchester Amphora Energy Limited and was currently on time and on budget.

With regard to Colchester Amphora Homes Limited, it was explained that Colchester requires nine hundred and twenty new house each year to keep up with demand, and that Colchester Borough Council was using the housing company to show others the way forward in delivering significant numbers of affordable homes with 30% of the companies' new homes being affordable homes that the Council will own for use by people on the local housing needs register. The first new homes start construction soon.

The Committee heard that a particular highlight for Colchester Amphora Trading Limited (CATL) was the success of the Helpline service which had recorded six hundred and sixty new customers in the previous year and was the only helpline in North Essex that offered a lift service where staff attend people's houses to help people who had fallen. This activity alone offered significant cost savings to the National Health Service by avoiding ambulance call outs. It was further highlighted to the Committee the benefits that the town itself had received from the delivery of the Council's events programme by CATL with particular success being achieved by events in Castle Park, the Town Hall and Charter Hall.

Andrew Tyrrell explained that in general terms, the companies are all delivering effectively against the strategic plans and measures set out for them, and the Committee was invited to consider the proposed business plans.

Councillor Pearson was particularly impressed by the work being undertaken on the Northern Gateway heat network, as the largest in the East of England, and admitted that when the companies had been initially set up, he had been sceptical of their benefits. As time went on, he explained that his view of the companies had changed as the benefits of this way of operating had become more apparent, and the meetings that take place show that there is democratic accountability in their operation.

Councillor Willetts expressed his opinion that the companies were set up initially to better manage those services they provide, and in fact were set up not in response to central government cuts but in order to obtain the advantages of being able to operate with a degree of space from local government. He further contended that in fact funding is still available to Local Authorities, but just from different sources.

He enquired how sound the governance arrangements of the companies were, and how far their governance and audit procedures were compatible with Colchester Borough Council. Councillor Willetts noted that the companies were providing services to the Council and sought assurances that CCHL was compliant as a service provider. With

regard to the services that were provided, Councillor Willetts questioned whether these services could actually be obtained more cheaply from other providers. Councillor Willetts queried the long-term value of the work being carried out and pointed out that a long list of achievements did not necessarily mean that everything was operating as well as it could be. He questioned whether the way things are being done at the moment represented the best value for money, and wondered whether in the future it would be possible or practical to benchmark the Council-owned companies against the performance of a hypothetical Council service “competitor” in order to ensure that the companies were in fact delivering value for money.

The Committee discussed the difficulty in defining what actually represented ‘value for money’ and Andrew Tyrrell stated that the benefits of the companies were tangible, making particular reference to the expertise that the energy project had been able to attract by virtue of the fact that CAEL was a private company as opposed to a public body. And how the partnership structure between the Council and a company was allowing grant funding to be combined with renewable heat incentive payments, not available to one party on their own. Another example cited was the housing company that provide affordable homes, subsidised by private market sales.

Paul Smith addressed the Committee in relation to the issues that had been raised and explained to the Committee that as TECKAL companies, the companies have to be very inwardly focussed and compliant with the governance of the local authority which is the parent company. Paul Smith was happy to confirm that in terms of CCHL and the three subsidiary companies, there was excellent governance by Colchester Borough Council. The Committee heard that the commercial companies were operating well, and were on track to deliver a dividend of over £500,000 to Colchester Borough Council, as the shareholder, in year three of their operation. The way that the companies were structured enabled them to be self-funding and still have the ability to return this dividend to the shareholder. Paul Smith explained that the benefits of the companies would be long term and highlighted some of the key advantages including the capacity to deliver affordable homes in developments where these were not legally required, sustainable development and value for money, and the capacity to attract expert staff from the private sector who may not otherwise have joined a local authority. The success of the events company, not just in terms of the monetary value that was provided by successful events, but the added benefit of increased footfall in the town and the associated raising of the town’s profile, was highlighted. The public sector ethos of the companies was emphasised by the commitment of CAHL to provide 30% affordable housing in every development they were undertaking, and 100% affordable housing in the Military Road development they were managing for the Council.

Andrew Tyrrell explained that the Service Level Agreements (SLAs) that governed the provision of services were in place for three years and provided the benefits of stability and established practices for the companies on core services such as IT and HR, and that the SLAs were constantly monitored to ensure that the services delivered by the

Council were of a high enough standard, and the feeling was that the services provided were very good. Paul Smith confirmed that the SLA was working very well and confirmed that it made sense to preserve stability in the short-term and keep them under review to ensure the agreement remained efficient.

Councillor Dundas noted that by 2022/2023 the current projects being undertaken by CAHL would be winding down and sought assurances that there were future projects in the pipeline for the company in three or four years. He further sought tangible examples of what made the housing being provided high quality, in terms of delivering something which the commercial sector would not, in terms of quality of housing, green spaces or environmental issues.

Andrew Tyrrell explained the commitment of the companies to high quality housing. An example was given that proposed development on the Creffield Road site had initially been met with an objection from a local architect who had subsequently become a supporter of the scheme due to the improved quality of the proposal designs. Such an occurrence was exceedingly rare in planning terms, showing a genuine response to feedback by a developer, and demonstrated the quality of what was being achieved by the Council's company. With regard to the Mill Road site, the heat network providing heating for those homes could not have been accomplished without the close collaboration of the energy and housing companies in a complex project, with interrelated dependencies across the companies, and this, combined with other key project goals, would make this site a flagship for the achievements of the companies and the Council. Many of the Council's Strategic Plan priorities, such as climate change, housing delivery, health and well-being, were being displayed through such projects.

Councillor Barber was pleased to see the dividend being paid by the companies, and at the progress being made by Helpline. He noted that the budget was being voted on in February, and wondered whether or not any of the commercial companies would be requiring funding in the budget for any projects that may not fall part of the current business plans. Councillor Barber further noted the plans to upgrade the town's CCTV system, which he fully supported, but enquired as to the cost of the project.

Councillor Pearson, explained that budget issues were not within the remit of this Committee, and that these were matters that would be considered by full Council.

Andrew Tyrrell explained that projects that were Council projects, but were delivered by Amphora companies on behalf of the Council, would be reflected in the budget; whilst those projects which were solely Amphora projects would not be included in the Council's budget.

Councillor Goacher enquired whether or not CCTV would be provided in areas currently not covered by the system. He also raised an enquiry about what input Councillors had into leasing decisions made by the events company on Council property seeking clarity

on how Councillors would find out which acts had been booked, and he enquired who made the decisions in this regard.

Andrew Tyrrell explained that there was a comprehensive report on the CCTV provision going before Cabinet on 29 January, including the budget requirement, and that there were plans to expand the CCTV network to cover more trouble spots in town, to cover Leisure World and connect to the new Northern Gateway Sports Park. With regard to the enquiry about events, there is also a Cabinet paper being presented containing an updated Events Policy. This policy is a Colchester Borough Council policy, listing examples of acceptable and unacceptable events, as well as other matters, to guide the events at Council sites, as well as elsewhere. The Policy was revised in consultation with Council services and CATL using experience gained from the events that have been run in the past. There is no specific expectation that individual bookings would be scrutinised by the Council, as these are made in accordance with the approved policy, though opportunities or concerns are often discussed.

Councillor Pearson commented that the Governance and Audit Committee as the shareholder committee for the companies was entitled to review and recommend parameters that they think were appropriate for commercial activity, but accepted that the provision of events was still in the early days and if any improvements were needed, these would be made as time went on.

Councillor Bourne recognised the strategic importance of the companies in carrying forward the borough-wide improvements that the Council wanted to deliver for residents. Councillor Bourne commented that although much credit was rightly taken for the provision of affordable housing, the Council would also be developing sites for private housing, and she wondered whether a measure of the success of those developments could be taken by looking at the number of complaints received from new owners in relation to the construction quality of the properties, their maintenance and the provision and maintenance of public spaces within the developments. Councillor Bourne recognised the necessity of trading money and services between the Council and the commercial companies, but enquired whether there was a suitable checking device in place to ensure that services that were being traded in this way were providing the best possible value at all times. Councillor Bourne wondered whether there was any intention to expand the collection of companies in the future, and in particular companies that would provide additional social value to the community. She also stressed the need for effective scrutiny of company activity by its directors.

In relation to the issue raised about company scrutiny by directors, Andrew Tyrrell explained that very early on in the operation of the companies, Councillor Barlow had in fact identified that his role as a portfolio holder could cause a conflict of interest with his role as a company director, and had therefore stepped down from being a portfolio holder which indicated that the company directors took their roles seriously; also illustrating the active scrutiny that occurred as the companies evolved.

Paul Smith responded to Councillor Bourne and referenced particularly the planned boulevard in the Mill Road housing project which would create a beautiful feature that would enhance the community feeling and the openness of the development, and in addition to this, the energy centre would also be part of this development. In reference to the build quality of the homes that were being produced, the Committee heard that the quality assurance programme of proper inspections throughout the build process would be to a higher standard than the checks that were more normally undertaken and in addition to NHBC certification. With regard to expanding the companies in the future, it was explained that this would be a matter for full Council to consider as part of their ongoing strategic priorities. In relation to the governance of the companies, Paul Smith explained that he had extensive experience of senior management, and that there were frequent board meetings within the companies which were all minuted and at which the activities of the companies were rigorously scrutinised. Paul Smith emphasised again that in his opinion the governance of the companies was excellent, and as inward facing companies the governance of the Council was embraced and fed into the activities of the companies.

Councillor Pearson commented that it would be useful to have a further briefing for Members on the companies, and proposed recommending to Cabinet that such a session was held at the start of each new municipal year for the foreseeable future.

Councillor Willetts referred to the published financial plan and enquired whether there was a capital statement which showed transfer of capital monies. He also enquired whether there was an active dialogue between the Alternative Methods of Service Delivery Task and Finish Group and the companies, and whether the work of the Task and Finish Group was considered by company officers.

Andrew Tyrrell explained that such capital projects were set out in Cabinet papers, and the Committee requested that in the future capital figures should be included with revenue for Members to consider.

RESOLVED that

- (a) The refreshed draft Colchester Commercial (Holdings) Business Plans, including the subsidiary companies, be noted.
- (b) The ongoing governance arrangements and the achievements of the Council's companies in the first half of 2019/20 be noted.

RECOMMENDED TO CABINET that

- (a) A Member briefing session in respect of the Council's wholly-owned commercial companies be held at the start of each new municipal year for the foreseeable future.

(b) Future reports and documents relating to the Council's wholly-owned commercial companies include capital information together with revenue information.

193 Revised Code of Corporate Governance

The Committee was requested to review the revised Local Code of Corporate Governance. Hayley McGrath, Corporate Governance Manager, attended to assist the Committee and presented the report. It was explained that the draft Local Code of Corporate Governance had been considered by this Committee at its previous meeting in November 2019, and following discussions at that meeting, the wording of Principle Two of the proposed Code had been revisited and further revised. Members were advised that the Monitoring Officer had considered the proposed Code in the light of comments made by the Committee that the phrase "common purpose" may not accurately reflect political differences inherent in the Council's structure. The proposed wording of Principle Two of the Proposed Code had therefore been changed to link the phrase "common purpose" to the Council's Strategic Plan which had been unanimously approved at Full Council. The wording had therefore been amended to "Members and officers working together to deliver the objectives of the 2018-2021 Strategic Plan (the common purpose), with clearly defined functions and roles."

Councillor Pearson commented that this matter had been discussed at length in the previous meeting, and he proposed that the suggested amendments to the Code be approved and recommended to Full Council for inclusion in the Policy Framework.

RESOLVED that the revised wording of Core Principle 2 of the Code of Corporate Governance be approved and the Local Code of Corporate Governance be referred to Full Council.

RECOMMENDED TO COUNCIL that the Local Code of Corporate Governance be included in the Policy Framework.

194 Interim Review of the Annual Governance Statement Action Plan

The Committee was requested to consider the Interim Review of the Annual Governance Statement Action Plan. Hayley McGrath, Corporate Governance Manager, attended to assist the Committee and presented the report. Hayley McGrath explained that every year a review was carried out on the Council's Annual Governance Statement Action Plan, and that this report was in relation to an interim review which was undertaken to ensure that the Action Plan was being monitored and implemented through the year. It was explained that the Action Plan appended to the report set out the required actions, and managers had been requested to feed into the Action Plan the steps that had been

taken to progress it.

Councillor Willetts expressed his concern at the level of fines that had been levied by the Information Commissioners Office on companies who had committed sometimes relatively minor and accidental data breaches. Given that fines had the potential to reach millions of pounds, was the Council satisfied that enough work had been done to mount an adequate defence?

Dan Gascoyne, Chief Operating Officer and the Council's Senior Information Risk Officer, addressed the Committee and confirmed that data protection was one of the very high risks identified by the Council and considerable work would be done in the future. The Committee heard that the risks were being constantly monitored and that over the past twelve months there had been two or three cases of breaches internally that had been reported to the Information Commissioners Office (ICO). In respect of the breaches, feedback from the ICO had been largely positive thanks to the pro-active approach that had been adopted and the actions that had been taken.

Councillor Pearson suggested that it was very important that Members were reminded of their responsibilities in relation to these risks early on in the new municipal year.

RESOLVED that the Interim Review of the Annual Governance Action Plan be noted.

195 Mid-Year Internal Audit Assurance Report 2019/2020

The Committee was requested to consider the Mid-Year Internal Audit Assurance Report. Hayley McGrath, Corporate Governance Manager, attended to assist the Committee and presented the report. The Committee was informed that they were presented with two reports during the course of the year, and that this was the mid-year report. Most of the internal audit programme was weighted towards the end of the financial year, to tie in with year end activities. The Committee heard that the messages coming out of the work had been very positive and that there had been an effective service provided over this period. As well as continuing audit reports, the recommendations from previous reports were also being continuously monitored to ensure that they were being implemented. Colchester Borough Council also provides auditing services for Colchester Borough Homes, and no issues were identified with this company.

Councillor Pearson commented that the most pressing concerns to come out of the report were the limited assurance reports, particularly where issues appeared to be ongoing in areas such as waste.

Councillor Willetts expressed his concern that there were four priority one recommendations in respect of one service. Hayley McGrath explained to the Committee

that the internal audit programme was a five year programme and it was hard to predict how service areas would perform over length of time. There were limited numbers of audit days in any one year, and the allocation of these was kept under review so that if it became apparent that a service warranted an audit, then an audit scheduled in the future could be brought forward if need be. It was also explained to Members that some of the recommendations in a service area may have come about as the result of improvements to ways of working that had been made and which may have highlighted past issues.

Councillor Pearson expressed his thanks to the team for the continued sterling work that was done in this area.

RESOLVED that the contents of the Mid-Year Internal Audit Assurance Report be noted.

196 Risk Management Progress Report

The Committee was requested to consider the Risk Management Progress Report. Hayley McGrath, Corporate Governance Manager, attended to assist the Committee and presented the report. Hayley McGrath advised the Committee that they received two reports on Risk Management in a year, and that this report dealt with the work undertaken in the first six months of the year. The report set out the key strategic risks and the work that had been undertaken in the first six months of the year and following a meeting of this Committee in November 2019 the revised Risk Management Policy had been included in the Policy Framework. Part of the ongoing work was to review the risk management process and how risks were presented to Committee, and the plan was to construct a digital register to make it more available to Officers to review and update and interrogate. The digital register would be presented to this Committee at a future meeting. The Committee heard that there had been changes made to the register presented to them, in that risks had been taken out of their previous groupings and the register is now formatted so that it runs in the level of risk from the highest to the lowest. The risk tolerance levels had also been changed and an additional level added so that there were now four and not three, and Members were invited to note that the EU exit risk had dropped down from twenty to fifteen. Members were advised that the current highest risk identified was data protection, which had been separated from cyber risk as these were two separate issues. Hayley McGrath explained that she was in the process of meeting with all the Senior Management Team to review the risks and the wording to make them easier to measure and to be able to give Members the assurances that controls had been implemented.

Councillor Willetts praised the work that was being done in relation to revising the risk matrix, and the work that Councillor King had undertaken in this regard. He questioned whether the recording of some of the risks was accurate, commenting that our perception of risk could be skewed by thinking that important matters were automatically

high risks, and he wondered whether some of the risks registered as 'high risks' would really hurt the Council in practice.

Councillor King, Portfolio Holder for Business and Resources, confirmed that in his view the new risk rating system was a step forward, and he would continue to work with Officers to clarify and improve the system, with particular regard to introducing mitigation of risks into the register.

Dan Gascoyne welcomed the support of the Committee in shaping the new register, and agreed with Councillor King that re-scoring identified risks after mitigations had been put in place was a good idea. He drew the Committee's attention to the definition of the risk scores which formed part of the Strategic Risk Register, and which illuminated how the final ratings were arrived at.

Councillor Pearson commented that the risk register was necessarily an evolving document, and should be monitored and amended as circumstances changed in relation to the risks identified. Councillor Goacher requested that of risks were to be removed from the register as the result of mitigating activity, that they still be retained in the document but greyed out. Hayley McGrath confirmed that this could be done and would be considered with the adoption of the new system, together with incorporating mitigating actions into final assessments.

RESOLVED that the Governance and Audit Committee noted the progress and performance in managing risk and the current risk register.

197 Work Programme 2019-2020

Matthew Evans, Democratic Services Officer, introduced the Work Programme 2019-20. The committee noted that they had requested a review of the Polling District and Polling Station Places, and were pleased to note that this work had been concluded and a report had been added to the Work Programme for the meeting in March 2020.

Councillor Willetts noted that the Committee had carried out a thorough review of the Council's commercial companies, and queried whether the North Essex Garden Communities project should also be brought before this Committee for similar scrutiny in the near future. Of particular concern to him was the governance arrangements of the project, particularly in the light of the fact that Council had voted not to pay an additional sum of money into the project, only to find out that a substantial amount of this money had already been paid anyway.

Councillor King agreed with the sentiment that Councillor Willetts had expressed and thought it right that the project should be subject to scrutiny. He highlighted the practical difficulty that may be caused by the fact that the project was wholly owned by four Local Authorities and not just one. He cautioned that any look at this project had to be taken in

a very measured way given the unique position of this Authority in the project structure.

Councillor Pearson pointed out that North Essex Garden Communities were not on the agenda for this meeting, and suggested that the best way forward would be for him to speak further with the Chief Operating Officer to determine what this Committee's remit could be with regard to this project.

The Committee agreed that there was further work to be done with regard to establishing the role of the Committee in examining the North Essex Garden Communities project, and that future consultation with senior Council Officers was necessary.

RESOLVED that

- (a) The updated Work Programme for 2019-20 be noted.
- (b) Further consideration be given to the scope of the Committee to review the North Essex Garden Communities project.

198 Minutes - not for publication extract

- This report is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (financial / business affairs of a particular person, including the authority holding information).