

**CABINET**  
**9 SEPTEMBER 2009**

*Present :-* Councillor Anne Turrell (Chairman)  
Councillors Lyn Barton, Tina Dopson, Martin Hunt,  
Nigel Offen, Beverley Oxford, Paul Smith and  
Tim Young

*Also in Attendance :-* Councillor Dennis Willetts  
Councillor Mary Blandon  
Councillor Barrie Cook  
Councillor Elizabeth Blundell

Date draft minutes published: 10 September 2009

Date when decisions may be implemented if not called in: 5pm, 17  
September 2009

All decisions except urgent decisions and those recommended to Council may be subject to call in. Requests for scrutiny of decisions by the Strategic Overview and Scrutiny Panel must be signed by at least one Councillor and countersigned by four other Councillors (or alternatively support may be indicated). All such requests must be delivered to the Proper Officer by no later than 5pm on: 17 September 2009

## **26. Minutes**

The minutes of the meeting held on 13 July 2009 were confirmed as a correct record.

## **27. Have Your Say!**

Mr McKinney addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He expressed his disappointment with the Colchester carnival, which he considered had just been a fund-raising exercise for local organisations rather than a celebration of Colchester and a way of local businesses and organisations and residents thanking customers and residents. He also expressed concern about the state of the town centre, in particular the number of vacant shops and charity shops. The town centre was not vibrant, as had been claimed. Council policies which allowed out of town stores such as the new Waitrose store only exacerbated the problem.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy,

explained that the carnival was privately run. She believed that Colchester was a vibrant town and this was demonstrated by the fact that people continued to move to Colchester.

Paula Whitney addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). Whilst she was pleased that Colchester had pulled out of the PFI contract and was not supporting the Waste Strategy, she was concerned that Colchester remained in the waste partnership. Colchester should pull out of this also. The large incentives given by Essex County Council to other Councils to improve their recycling rates were noted. She also stressed the need for the question of the location of the bus station to be resolved. St Botolph's would not be a suitable location as it would only serve the eastern part of the borough effectively. The best solution would be for the legal agreement to be amended so the station could remain on the present site.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy responded in respect of the bus station to reiterate that it would not be feasible for the station to remain on the current site. The Council had investigated amending the legal agreement but this was not possible. Councillor Dopson, Portfolio Holder for Performance and Partnerships, responded in respect of the waste issues to stress that as the waste collection authority, it was important to maintain relations with the waste disposal authority. Therefore it was important that Colchester continued to be represented on the East Essex Waste Management Joint Committee, otherwise it would not receive relevant information on waste issues. However she had written to the Department of Environment, Food and Rural Affairs to reiterate the Council's position. In respect of the incentives, Colchester was being penalised for not signing up to the PFI contract, but despite this was delivering increased recycling.

Bob Russell MP addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He endorsed the comments made by Paula Whitney in respect of the bus station. He asked when the architect of the Visual Arts Facility (VAF), Rafael Vinoly, last visited Colchester to see the VAF for himself. He also enquired what his original fee had been, whether his fee increased as the budget for the project increased and how much had he actually been paid.

Councillor Smith, Portfolio Holder for Culture and Diversity, indicated that a written response would be sent.

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2) to state that he had not received a response to comments made at previous meetings about Colchester in bloom and the VAF.

In respect of the VAF he believed the Council should stop committing funds to the project. He believed that the contracts for the funding of the VAF could not be enforced if the Council defaulted and therefore the project should be abandoned. If the Council proceeded, a complaint would be made to the Ombudsman which, if upheld, would expose the position of the Chief Executive and would make Councillors personally liable for the expenditure.

Councillor Smith, Portfolio Holder for Culture and Diversity, responded that the legal advice the Council had received was that the contracts were valid and therefore if the Council breached them it would be liable to pay back £15 million to the other funders. Replies had been sent in respect of his previous comments and he would arrange for these to be resent.

## **28. 2010/2011 Revenue Budget and Capital Programme Update**

The Head of Resource Management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix A to these minutes in the Minute Book.

Councillor Willetts attended and addressed the Cabinet. He stressed that his comments were made in his capacity as a ward councilor and not as the Chairman of the Finance and Audit Scrutiny Panel. He believed the report put a very optimistic spin on a very difficult year for the administration. Costs pressures had increased by £75,000 in the two months since the last report. If this trend was maintained, then cost pressures would increase by a further £225,000 by the end of financial year. No reference was made to the Gershon savings which were built in to the budget. On current trends the Council would only save £100,00 of the projected £678,000. Also no mention was made of the impact of the recession on benefit payments, which he believed would be significantly overspent. Council tax would need to be increased to 6.7% to cover the anticipated budget gap. In respect of the capital programme there was no analysis of the impact of the cuts in Haven Gateway funding, in particular the impact on the A12 junction and the regeneration projects. An assurance was sought that CIF2 funds had been safeguarded.

Councillor Turrell, Leader of the Council and Portfolio for Strategy, Councillor Offen, Portfolio Holder for Resources and Business, Councillor Smith, Portfolio Holder for Culture and Diversity and Councillor T. Young, Portfolio Holder for Street and Waste Services, responded to his comments and made the following points:-

- Many of the comments related to the current year's finances rather than the

budget for 2010/11.

- The £75,000 increase in cost pressures was a one off due to particular circumstances which were explained in the report. It was not part of an ongoing trend.
- The Council had no control over pension contributions which was the most significant cost pressure.
- The budget gap was considerably less than that at many other Councils in Essex.
- The Cabinet was confident that a balanced budget would be delivered despite the challenging economic conditions.
- The administration had inherited a number of unfunded schemes on the capital programme. These would all have been allocated funding by 2010.
- Discussions with Haven Gateway on funding were ongoing. However funding for the A12 junction was already secure.

*RESOLVED* that:-

(a) The updated 2010/11 budget forecast as set out at paragraph 6.2 of the Head of Resource Management's report showing a current gap of £391,000 be noted..

(b) It be noted that officers were working towards delivering a balanced budget and that a plan had been agreed setting out the delivery of the budget strategy which included reallocation of funding to priorities (see section 9 of the Head of Resource Management's report).

(c) The cost pressures set out at paragraph 7.1 of the Head of Resource Management's report be included in the 2010/11 budget forecast.

(d) The growth items set out at paragraph 8.1 of the Head of Resource Management's report be included in the 2010/11 budget forecast.

(e) The provisional savings and grant assumptions set out at section 9 of the Head of Resource Management's report be included in the 2010/11 budget forecast.

(f) The potential 2010/11 budget forecast variables and risks set out in section 10 of the Head of Resource Management's report be noted.

(g) The current position on the capital programme be noted.

(h) The proposal to release funding for schemes as set out at paragraph 12.4 of the Head of Resource Management's report be agreed.

*REASONS*

The Council was required to approve a budget strategy and timetable in respect of the year 2010/11.

### *ALTERNATIVE OPTIONS*

There were different options that could be considered and as the budget progressed changes and further proposals would be made and considered by Cabinet and in turn Full Council.

## **29. 2008/2009 Year End Review of Risk Management**

The Head of Resource Management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix B to these minutes in the Minute Book.

Councillor Willetts attended and addressed the Cabinet. He noted that the analysis had shown that the most significant risk facing the Council was that it would not be able to effectively respond to changes in the Borough economy, both internally and externally. This was supported by the comments of the Audit Commission . In view of this, the Council needed a work programme to demonstrate how it could address the difficulties resulting from the recession.

Councillor Offen, Portfolio Holder for Resources and Business, responded by stating that the Strategic Plan fulfilled this function. He paid tribute to the work undertaken by Hayley McGrath, Risk and Resilience Manager, in championing and embedding risk management processes.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy and Tina Dopson, Portfolio Holder for Performance and Partnerships, stressed that the Audit Commission had congratulated the Council on its response to the recession. The Council was managing its resources well in a difficult time and working with partners to support frontline services.

*RESOLVED* that:-

- (a) The risk management work undertaken during 2008/09, including the quarter 4 Strategic Risk Register be noted.
- (b) The proposed risk management strategy for 2009/10 be approved.
- (c) The intended work plan for 2009/10 be noted.

*RECOMMENDED* to Council that the proposed risk management strategy for 2009-10 be included in the Policy Framework.

## *REASONS*

The Cabinet had overall ownership of the risk management process and was responsible for endorsing its strategic direction. Therefore the risk management strategy stated that Cabinet should receive an annual report on progress and should formally agree any amendments to the strategy itself.

During the year quarterly progress reports were presented to the Finance and Audit Scrutiny Panel (FASP) detailing work undertaken and current issues. This report was presented to FASP on 28 July 2009 where they approved it's referral to the Cabinet meeting.

The Risk Management Strategy was one of the Corporate Governance documents that supported the Constitution of the Council. Therefore any amendments needed to be approved by full Council.

## *ALTERNATIVE OPTIONS*

Not to approve the risk management strategy for 2009/10 and not to recommend to Council that it be included in the Policy Framework.

### **30. Queen Street Cultural Quarter - Approval of Amended Heads of Terms**

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix C to these minutes in the Minute Book together with a report from CB Richard Ellis a copy of which appears as Appendix H to these minutes in the Minute Book

Bob Russell MP addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He noted that the reference at paragraph 4.3 of the Head of Strategic Policy and Regeneration's report about the sale of 15 Queen Street to firstsite. Under the original proposals for the VAF, firstsite had wanted this building demolished. He enquired as to why firstsite now wanted the building, where the funding was coming from and when councillors were first made aware of the proposed sale.

Councillor Smith, Portfolio Holder for Culture and Diversity, explained that the Council would retain the freehold of 15 Queen Street which would ensure that it was consulted should any plans to demolish it be brought forward. However firstsite was looking to renovate and retain the building and use it for office space. Most of the funding was coming from outside bodies.

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He considered that it was unacceptable that

firstsite should be allowed to purchase 15 Queen Street. It would be better if a useful charity such as Mobility Scooters be allowed to use it.

Councillor Smith, Portfolio Holder for Culture and Diversity, explained that the Council had received no other offers for the purchase of 15 Queen Street. The terms of the sale would be beneficial to the Council. If an improved offer was made by a third party it would be considered.

Councillor Blundell attended and addressed the Cabinet. She stressed the need for care to be taken with the design of the buildings to ensure that they were sensitive and enhanced the area. The affordable housing was welcomed. The regeneration of the area would lead to increased footfall which emphasised the need for better transport links including a resolution of issues surrounding the location of the bus station

Councillor Barton, Portfolio Holder for Planning, Regeneration and Sustainability, and Councillor Hunt, Portfolio Holder for Communication and Customers, stressed the importance of the scheme to the regeneration of the area and praised the regeneration team for delivering such an important scheme in the difficult economic climate.

*RESOLVED* that:-

(a) The proposed revised Heads of Terms be approved in principle, which would form a basis for the Development Agreement to secure a new hotel, the beneficial redevelopment of Roman House and the beneficial refurbishment of St James House, within which accommodation would be provided on a rent free basis to the Council to provide a Creative Industries Hub together with additional lettable space.

(b) Authority be delegated to the Head of the Strategic Policy and Regeneration to conclude the Heads of Terms substantially in accordance with the approved draft and commence negotiations on the Development Agreement and associated documents.

*REASONS*

(a) Given the significant level of investment already made by the Council and the Cultural Quarter competition winners Garbe/Ash Sakula to the Cultural Quarter scheme and their strong belief that they could create a development which could work even in the current market, negotiations have continued in respect of this project. Viability issues and the lack of demand for residential sales have led to a phased approach to delivery. Negotiations since the Cabinet meeting in 2008 have therefore focused on Phase 1 of the Cultural Quarter which will deliver a new hotel, a creative industries hub and additional lettable space on the Roman House/St James House site and provide a

stimulus for which future regeneration can follow.

(b) Despite difficult economic circumstances the ability for this developer to bring forward a significant commercial development was a significant vote of confidence in Colchester. It would deliver a 90 bed hotel which together with accommodation proposals at Greyfriars and East Hill House would go towards addressing the shortfall of both the amount and range of such accommodation in the town centre recognised in recent studies. The construction and refurbishment work would generate jobs in a sector particularly hit by the recession and the future uses would then provide the opportunity not only for permanent jobs on site but, through the Creative industries incubator, the potential to 'grow' many more. It was hoped that the ground floor retail element would provide opportunities for small individual shops that reflect the Colchester special retail character while picking up on the creative aspect of the Quarter. Ash Sekula the architects, who received so much public and stakeholder praise for their winning scheme of the cultural Quarter design competition, were currently retained to work up the Hotel scheme as well as the rest of the project giving further confidence that the proposals were likely to deliver the quality of regeneration that Colchester wished to see.

(c) The proposed Heads of Terms form the basis of the Development Agreement which would be the legal contract between the Council and Garbe Real Estate Limited to build the Cultural Quarter scheme in St. Botolph's Quarter. In accordance with the existing Collaboration Agreement the approval of the Heads of Terms would enable each party to instruct legal representatives to commence the negotiations in respect of the Development Agreement.

### *ALTERNATIVE OPTIONS*

The Council could refuse to accept that the proposed revised Heads of Terms offer the Council the best overall consideration for its landholding taking into account the delivery of key non- financial objectives for the St. Botolph's Regeneration area and could sell it's landholding to the highest bidder on the open market for an alternative form of development. However an alternative form of development or use on the site would not necessarily meet the objectives of the wider regeneration of this area as set down in the St. Botolph's Masterplan, adopted by the Council in 2005.

**Councillor Paul Smith (in respect of his previous membership of the Board of Colchester Borough Homes) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)**



**Councillor Tim Young (in respect of in respect of his spouse's membership and his previous membership of the Board of Colchester Borough Homes) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)**

**31. Repairs and Maintenance for the Council's Housing Stock**

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix D to these minutes in the Minute Book.

Councillor B. Oxford, Portfolio for Neighbourhoods, endorsed the recommendations in the Head of Strategic Policy and Regeneration's report and praised the work of Colchester Borough Homes .

Councillor Smith, Portfolio Holder for Culture and Diversity, stressed that the contents of paragraph 4.4 of the Head of Strategic Policy and Regeneration's report. The lessons learnt from the decent homes contract would be implemented. He commended Colchester Borough Homes on improving customer satisfaction whilst making savings. It had demonstrated that it deserved a further opportunity to provide the responses repairs, voids and adaptations services.

*RESOLVED* that:-

(a) It be noted that procurement, via an EC compliant tender process, for gas/oil servicing & directly associated repairs and the external overview contract (external painting programme) had commenced in line with the Cabinet Decision dated 28 January 2009.

(b) The Cabinet decision of 28 January 2009 that the Council would be the contracting party in respect of the contracts entered into in relation to paragraph 1.1 relating to the maintenance of the Council's housing stock be ratified and it be noted that Colchester Borough Homes (CBH) would act in the role of Contract Administrator for the reasons set out in paragraph 4 of the Head of Strategic Policy and Regeneration's report

(c) Colchester Borough Homes should continue to provide the responsive repairs, voids and adaptation services to 2013, in line with the Management Agreement as set out in paragraph 3 of the Head of Strategic Policy and Regeneration's report.

*REASONS*

The detailed reasons for the decisions were set out in the Head of Strategic

Policy and Regeneration's report.

### *ALTERNATIVE OPTIONS*

In the earlier Cabinet report it was agreed that the Council would be the contracting party in respect of any significant contracts entered into in relation to the maintenance of the Council's housing stock. While CBH could be the contracting party in respect of contracts entered into the legal advice remains that with regard to significant contracts the roles should be separate and CBC should be the contracting party with CBH as Contract Administrator, which it was envisaged, would give it day to day operational control of the services.

The market may have a difficulty with CBH being the employer and Contract Administrator because the role of Contract Administrator is required to be independent in dealing with any issues that arise between employer and contractor. The market may also require direct warranties from the Council because CBH had no assets in the event of any contractual dispute. Further any risks in respect of any potential challenge or any contractual disputes were likely to remain with the Council even if CBH were to be the contracting party.

Therefore in respect to the proposed gas/oil servicing and the external overview contracts this was the proposed arrangement. However where the Council was not going out to market but allowing CBH to continue to directly provide the responsive repairs, voids and adaptation services then CBH would contract directly with 'sub-contractors' as required as the Council's contract was with CBH. .

It can be confirmed that the advice within the Peter Nourse report to FASP, with regard to the "lessons learnt from the previous contract" was being applied to these arrangements. Not least the market contracts would not be 'partnering' contracts but traditional works contracts. In addition both CBC and CBH have implemented actions to define roles and responsibilities and ensure robust performance management, including the benchmarking process, referred to above, is in place. The splitting of a number of different work streams into different contracts and providers met another recommendation as did the use of Ridge and Partners as specialists to manage the procurement process.

## **32. Payment Options for the Provision of New Cremators for Colchester Crematorium**

The Head of Environmental and Protective Services submitted a report a copy

of which had been circulated to each Member and a copy of which appears as Appendix E to these minutes in the Minute Book.

*RECOMMENDED* to Council that approval for the provision of new cremators be included in the Capital Programme.

*RESOLVED* that the payment method be as proposed in paragraph 5.2 of the Head of Environmental and Protective Services report.

#### *REASONS*

Legislation required crematoria to abate mercury emissions by 50% by 2012 and 100% by 2020. The current cremators were near the end of their lives and required replacement. It was proposed that the cremators were replaced with two new cremators with integral abatement equipment. This would enable the Council to abate 100% of the mercury emissions and would ensure the Council was able to comply with the legislative requirement in 2020 with no additional works. A decision was also required as to which payment method should be employed for the purchase of the cremators.

#### *ALTERNATIVE OPTIONS*

(a) Not to include the provision of new crematoria in the Capital Programme.

(b) Alternative payment options were set out in paragraph 5.2 of the Head of Environmental and Protective Services report.

### **33. Local Government Ombudsman Annual Review 2008/2009**

The Monitoring Officer submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix F to these minutes in the Minute Book.

*RESOLVED* that the contents of the Local Government Ombudsman's Annual Review for 2008/09 be noted.

#### *REASONS*

To inform the Cabinet of the number and type of decisions made by the Local Government Ombudsman during 2008/2009.

#### *ALTERNATIVE OPTIONS*

No alternative options were presented.

### **34. Progress of Responses to the Public**

The Head of Corporate Services submitted a progress sheet a copy of which had been circulated to each Member and a copy of which appears as Appendix G to these minutes in the Minute Book.

*RESOLVED* that the contents of the Progress Sheet be noted.

#### *REASONS*

The progress sheet was a mechanism by which the Cabinet could ensure that public statements and questions were responded to appropriately and promptly.

#### *ALTERNATIVE OPTIONS*

No other options were presented to the Cabinet for consideration.

**The Cabinet/Panel resolved under Section 100A(4) of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.**

### **35. Disposal of Part Plot 350 Severalls Business Park**

This minute is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information.)