

**FINANCE AND AUDIT SCRUTINY PANEL
28 APRIL 2009**

Present :- Councillor Sue Lissimore (Chairman)
Councillors John Bouckley, Martin Goss,
Dave Harris, Jackie Maclean, Jon Manning,
Gerard Oxford, Laura Sykes and Dennis Willetts

Substitute Members :- Councillor Sonia Lewis
for Councillor Kevin Bentley
Councillor Chris Hall for Councillor Nigel Offen

75. Minutes

The minute of the meeting of the 24 March 2009 was confirmed as a correct record.

The minute of the meeting of the 6 April 2009 was confirmed as a correct record, subject to the amendments to the following paragraphs.

The paragraph commencing "Councillor Goss commented that the behaviour of some panel members was frankly wrong,", to read "Councillor Goss commented that the general hubbub at the meeting was frankly wrong,"

The last sentence of the paragraph commencing "Mr. Penny confirmed to Councillor Goss that many of the roses and shrubs that were scheduled to be removed" to read "Mr. Penny also accepted that officers had not recognised the impact of this work to Councillors or members of the public, given that they had received only three to four initial enquiries on this work, one of these under the Freedom of Information Act", and agreed to review the operational policy on major roads such as the Northern Approach Road".

76. Have Your Say!

Mr. Andy Hamilton addressed the panel saying that it was unfortunate, due to the action of Councillors that controversial decisions had become subject to a high profile in the local and national press. Mr. Hamilton said Councillors had not made appropriate use of the Council's communication officer(s), for instance, the removal of trolleys from the town centre Bus Park became a high profile issue because there was no dialogue with J Sainsbury, and the ignoring of the Colchester in Bloom Group in regards to the removal of shrub and rose borders. Mr. Hamilton said alternative arrangements had subsequently provided a border at Norman Way, Lexden with spring flowering bulbs and summer planting.

Mr. Hamilton also commented about the discussions at the recent Full Council meeting, with thirty minutes spent debating the issue of the Portfolio Holder for Resources and Business and whether he had been suspended or sacked, and issue not resolved on the night, an consequently a waste of public and member time.

In response to Councillor Hall, Mr. Hamilton said whilst noting that Councillor Tim Young had tried unsuccessfully to resolve the issue of the shopping trolleys, the issue should have been resolved through dialogue and an act of goodwill from the Council.

Councillor Chris Hall (in respect of being a former board member of Firstsite) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

77. Colchester Visual Arts Facility

Have Your Say

Mr. Hamilton addressed the panel saying the Visual Arts Facility had become an issue now been spoken about through the national press. Mr. Hamilton felt that the building designer Rafael Viñoly was a menace to London, Leicester and Colchester where buildings have been the subject of his design. Mr. Hamilton said the public do not know the facts concerning this building because the Council still refuses to answer the questions being asked. The request for a referendum on this building was refused and the fundraising had failed, and together with this report that in parts made no sense, the conclusion of this project is being met with ludicrous optimism. Mr. Hamilton concluded by saying the project has been a huge mistake, squandering large sums of public money, resulting in what will be years of financial misery until the building is demolished.

Councillor Davidson addressed the panel, welcoming this report that he considered was one piece of the overall jigsaw, with all parts needing future review. Councillor Davidson said that as the Leader of the previous Administration, he was party to many of the decisions made and to which he and the portfolio holders acted on the professional advice given, and that the current Administration was being advised by the same team of advisors.

Councillor Davidson said this was a fantastic project for Colchester in the long term, and that whilst it had been dogged by problems these will be overcome. This was a prestigious building for the region, and we must not give up on it now. Councillor Davidson concluded by saying he endorsed the interim report

by the Audit Commission.

In response to Councillor Willetts, Councillor Davidson gave a resounding yes to the question that in hindsight, would he have done things differently.

Councillor Smith addressed the panel saying he felt that the poorly worded contract, together with unclear responsibilities and a lack of financial controls had resulted in a need for an additional £5,000,000 funding, a similar amount needed to complete the Decent Homes Contract. Councillor Smith said that at the meeting of the Finance and Audit Scrutiny Panel in March 2008 members were not told of some of the misgivings concerning the contractual arrangements, resulting in a short period from July 2008 onwards where the shortfall in the overall building cost rose from nothing, to £2,000,000 and then finally to £7,600,000. Councillor Smith felt the independent investigation to be undertaken once the project is complete should be done immediately. Councillor Smith posed the question was it the other funding partners who did not wish an independent investigation to be undertaken now! Councillor Smith also asked how much is it going to cost to employ an external firm of solicitors to undertake such an investigation and questioned the openness of reporting at scrutiny meetings. Councillor Smith concluded by saying this project had cost the Council a great deal of money and would like to see a thorough enquiry now.

In response to Councillor Goss, Councillor Smith said at the March 2008 Finance and Audit Scrutiny Panel meeting there was no suggestion of legal disputes or spiraling costs, which increased from £300,000 to £7,600,000 at the outset of the new Administration.

Colchester Visual Arts Facility

Mr. Paul King and Mr. Geoff Bemrose from the Audit Commission, attended the meeting for this item, and Mr. King introduced Mr. Bemrose, author of the report Colchester Visual Arts Facility, to the panel.

Mr. King, in response to a previous speaker, said he was happy to attend this and other scrutiny panel meetings to present Audit Commission reports, would stand by the contents of the report(s) and would respond factually to any questions asked.

Mr. King said the report was a snapshot in time, and things had happened during the intervening period of time that had not been addressed in the report.

Mr. Bemrose introduced the report Colchester Visual Arts Facility. Mr.

Bemrose said that the contents of the report was evidenced through interviews with officers, members of all political parties, funding agencies and contract and project managers, though he apologised to Councillor Oxford for not having any dialogue with the Independent Group.

Councillor Oxford said that even though this project had been subject to rigorous scrutiny there was still scepticism over the accuracy of the reports or information given. Councillor Oxford said people will take a personal view on whether the scrutiny panel had been misled or whether or not all the information was available at the time. Councillor Oxford said the report implied that a project manager was employed on this project from the outset, which is questionable, and that the Finance and Audit Scrutiny Panel was constantly reassured that the project was o.k. and on track.

Mr. Bemrose said that during his investigation he did not receive any evidence to suggest that anyone was trying to mislead members. Mr. Bemrose said it would be good practice to ensure that from the point of a contract of this nature being signed that a project manager would be in place.

In response to Councillor Goss, Mr. Bemrose confirmed he had seen the document seeking legal advice from a third party but did not recollect the date of the correspondence. Mr. Bemrose also said that there was, with this type of contract, an ongoing need to ensure agreement on the roles and responsibilities of all key officers.

Councillor Hunt, Portfolio Holder for Communications and Customers, with responsibility for this project within his portfolio, addressed the panel saying the discussions around an unsigned contract were misleading, that the contract had been signed by the builders, but the documents had been amended, and with so many additional comments written it was not possible for the Council to sign the contract.

In response to Councillor Manning, Mr. Bemrose confirmed that a range of minutes from various meetings had been considered in the review, but could not comment on whether he considered the project had provided value for money.

In response to Councillor Hall, Mr. Bemrose confirmed that a GCI Works Contract was in place from the outset of the first phase of the project, and the subsequent failings of this contract were addressed within the following supplementary contract.

In view of Mr. Bemrose's comment that the Audit Commission's scope for this project contract review did not include a review of the project risk register, Councillor Harris proposed that the panel should receive regular updates on the projects risk register through to the completion of the project. Mr.

Bemrose also confirmed to Councillor Sykes that he had not seen any information to support any comments made about there being insufficient funds to complete the project.

In response to Councillor Willetts and Lissimore concerning the recommendation that the funding partners have sufficient capacity to act as an intelligent client throughout the final phase of the contract, Mr. Bemrose said there needs to be an assurance for the decision takers that they have the expertise needed to make a sound judgement based on sufficient technical and professional knowledge, and an assurance that the advice is what is best for the project. What was now required was a clear plan with clear targets and triggers, and linked to risks and mitigation, with Cabinet and scrutiny setting the parameters of what information they want to know. Mr. Bemrose said that whilst the project from the outset had a quantity surveyor and project manager, this had provided a range of technical advice, but had proven not to be effective for the needs at that time.

The Chairman thanked Mr. King and Mr. Bemrose for attending the meeting, presenting the report and responding to questions from the panel.

Mr. Adrian Pritchard, Chief Executive of Colchester Borough Council addressed the panel.

In response to Councillor Lissimore, Mr. Pritchard explained the reasons why he advised against an independent review of the project and the project business plan at this time. Mr. Pritchard said at present the Council did not have a contractor(s) in place to complete the building and therefore did not have an end date for the completion of works. Mr. Pritchard said he advised that once these were known then a review of the Firstsite business plan could be undertaken between six to nine months before the building was due to be completed. Mr. Pritchard said he further advised that a review of the grants given by the Council to Firstsite, The Mercury and the Arts Centre, what the Council gets in terms of cultural activities and the relationships between these organisations, was appropriate to scrutinise, and this review would be scheduled as soon as possible during the 2009/10.

Councillor Hunt said he felt that an independent review should be undertaken as soon as possible, but understood that if it was done too soon it would become a review of only historic events and would not include a review of any new contract(s). Councillor Hunt said the other funders to this project did not want a review until the project was complete, though any review by the scrutiny panel would be undertaken in public, with as much information as legally possible being made available for this review.

Mr. Ian Vipond, Executive Director, addressed the panel to explain that due to

the Council currently taking legal advice on the contract with the builders, simultaneously carrying out an independent review of the project at this stage would cause further issues and problems.

Mr. Pritchard gave a timeline of events of the project as far as he remembered given he did not have this information to hand. In 2005/2006 the appointments of the Architect, Engineers and Landscape Architects etc were made, to agree the design and the specification to which the contractor would complete the build. At this time the Council appointed a Project Manager reporting directly to the client, rather than the project managers being appointed as part of the Architects Team. Building work commenced in 2007 on a two stage contract. The first stage of the contract was completed, giving savings on cost, and was followed by the commencement of second stage of the contract. At the commencement of the second stage works in August 2007 the contract had not, as previously mentioned, been signed, though following discussions with the builders, the builders signed the contract in September 2007 but with added changes and amendments that the Council found unacceptable and therefore could not add their signature to an engrossed contract. Whilst the Council did try unsuccessfully, through lawyers, to get a contract signed by all parties in the ensuing two months, in December of 2007 the contractor decided to stop work.

In March 2008 the Finance and Audit Scrutiny panel received a report (later confirmed as a review of Renaissance in Colchester at the Strategic Overview and Scrutiny Panel meeting on 11 March 2008) and that at this time officers still believed a contract was in place for a fixed cost of £12.736 million, but with a potential £300,000 overspend and a £2,000,000 risk. This was based on project and cost managers reports being provided monthly to the client, Colchester Borough Council. Mr. Pritchard later, and in response to Councillor Manning said there was a significant set of briefings undertaken between March and May of 2008, which took in the pre-election period, an added dimension to the process.

Mr. Pritchard said that in April 2008 the lawyer's legal advice was that if the Council sacked the contractor, it would put the Council at significant risk with possible damages. Mr. Pritchard said it would be down to an independent investigation to determine the appropriateness of the actions taken by officers up to this time.

In terms of continuing the build, Mr. Pritchard said there was now a need to negotiate a supplementary agreement to the contract to have the building made watertight, bringing the overall cost of build to £14,220,000, with a further £7,600,000 needed to complete the build.

In response to Councillor Manning, Mr. Vipond explained that Turner and

Townsend will continue to fulfil their role until the end of the life of the contract with the builder. New advisors will then be appointed through the proper procurement process. It was also confirmed to Councillor Manning that one of the areas to be investigated in detail in any future review was what information was actually reported to the Executive by Turner and Townsend and whether or not the implications of any risks identified by Turner and Townsend was given to the Executive.

Mr. Vipond confirmed that the bulk of the increased costs has been due to the extra costs incurred by the delay in the build, and Mr. Pritchard, in response to Councillor Oxford said he could not give a guarantee that all the details of any future investigation could be heard in public, because like the Decent Homes Contract, the Council would be bound by any future legal actions and the subsequent best case for the Council in regards to settlement, though officers would try to be as open as possible.

In response to Councillor Hunt, who could not understand why the Financial arrangements were reported as o.k. at the March 2008 Finance and Audit Scrutiny Panel meeting, Mr. Pritchard said this was due to the timing of the financial information being reported by the cost managers on a monthly cycle, though Mr. Vipond added that the advice being given up to March 2008 was for the Council to enforce the contract, advice that changed in April 2008. Understanding that the Council was at this time in a pre-election period, Mr. Pritchard said that at no time were requests from portfolio holders denied.

Mr. Pritchard confirmed to Councillor Harris that Firstsite and the University of Essex were charged with fundraising £1,500,000 and £1,000,000 respectively and both were confident from the outset. Whilst there were some significant initial donations made this did not continue and only £800,000 was raised by Firstsite, while the University of Essex made their own internal arrangements to fund their contribution. Councillor Hunt said in answer to Councillor Harris's comment that this was now an unpopular project, that it was better to judge the prestige and reputation of the Council once the building was complete, and that would hopefully bring confidence back to the local public.

Councillor Davidson addressed the panel saying that he believed there was an election embargo made on Councillor Jarvis in April 2008, and that information requested by Councillor Jarvis was not offered to him, and for this reason felt this process needed to be examined for the future. Mr. Pritchard said that the local elections are by thirds, that business does continue, and that in this situation there were other Portfolio Holders available to consider new information.

In response to Councillor Willets, Mr. Pritchard confirmed that the

recommendations of the Audit Commission would all be considered and acted upon at the appropriate time.

Councillor Hunt said he believed as the Portfolio Holder responsible for this project, that the way forward was now much clearer, and that working with greater openness was vitally important, and the more people involved in future discussions the greater the transparency.

RESOLVED that the panel;

- i) Noted the Audit Commission report Visual Arts Facility.
- ii) Requested the Head of Strategic Policy and Regeneration to provide a regular update on the Visual Arts Facility Risk Register (FIVE voted FOR, NONE voted AGAINST).