

STRATEGIC OVERVIEW AND SCRUTINY PANEL

28 JANUARY 2013

- Present :-* Councillor Kevin Bentley (Chairman)
Councillors Beverly Davies, Peter Higgins, Nigel Offen,
Gerard Oxford and Terry Sutton
- Substitute Members :-* Councillor Jo Hayes for Councillor Helen Chuah
Councillor Laura Sykes for Councillor Bill Frame
Councillor Mark Cable for Councillor Pauline Hazell
Councillor Julie Young for Councillor Kim Naish
- Also in Attendance :-* Councillor Nick Barlow
Councillor Mary Blandon
Councillor Martin Hunt
Councillor Beverley Oxford
Councillor Will Quince
Councillor Paul Smith
Councillor Colin Sykes
Councillor Anne Turrell
Councillor Dennis Willetts
Councillor Tim Young

23. Referred items under the Call in Procedure

The following Councillors declared non-pecuniary interests in the following item pursuant to the provisions of Meetings General Procedure Rule 7(5);

**Councillor Kevin Bentley in respect of being an Essex County Councillor
Councillor Beverly Davies in respect of being a Magistrate
Councillor Julie Young in respect of being the Chairman of the Waste
Prevention and Recycling Options Task and Finish Group**

Decision 'STW-008-12 Authorisation of use of enforcement powers'

The Panel was asked to consider the decision STW-008-12 Authorisation of use of enforcement powers under Section 46 of the Environmental Protection Act 1990 in relation to the presentation of household recycling and waste.

The decision had been called-in because Councillors believed the decision taker, in this case, Councillor Martin Hunt, Portfolio Holder for Street and Waste Services, did not take the decision in accordance with the Principles of decision making set out in Article 13.02.

Presentation of the Call in

Councillor Will Quince presented to the Panel the reasons for calling in the decision.

With regards to consideration of all the options available Councillor Quince said he believed that issuing fines to residents who did not recycle waste was a draconian

measure, finding the idea of employing 'Bin Police' repugnant.

Councillor Quince said an alternative option that should be considered was rewards for encouraging recycling and asked the Portfolio Holder to reconsider alternative options such as this rather than just have an alternative option of not endorsing the use of the additional powers.

In respect to having regard to due consultation, Councillor Quince said the Council's plans to issue Section 46 notices to all households alongside copies of the recycling calendar was circulated to Councillors and only four Councillors responded. He believed this was an insufficient number of responses from which to draw a conclusion. Councillor Quince also thought that since the consultation in January 2012, the whole subject of waste and recycling had moved on. Councillor Quince also felt the idea that Councillors become 'Bin Snoopers' as suggested in paragraph 7.2 of the report he also found repugnant. Bullying residents through fines for not recycling would create harm to residents and was not the correct way to address this issue.

Councillor Quince said that the aims and desired outcomes were not clear within the report and with a change in the relative legislation due shortly, he believed the decision should be referred back to the Portfolio Holder for reconsideration. Councillor Quince said in regards to a presumption for openness, and to support the decision taken, the report needed a business case that included the financial costs associated with the decision and not provided within the report's financial implications, e.g. the costs associated with new software for identifying residents, plus details of the level of income expected from fixed penalty notices.

Councillor Quince did not add any comment to the following reasons noted in the call in form, but reiterated that irrelevant material had been provided to support the decision, that no proper business case to support the decision had been produced and no indication of the impact on the Medium Term Financial Strategy was given.

In conclusion, Councillor Quince said the decision taken was done so with inadequate consultation responses to support the decision, no alternative options had been explored and the forthcoming new legislation had not been taken into account. Councillor Quince believed on this basis the decision was unnecessary and asked the Panel to refer the decision back to the Portfolio Holder for reconsideration.

Portfolio Holder Response

Councillor Martin Hunt, Portfolio Holder for Street and Waste Services addressed the Panel in response to Councillor Quince.

Councillor Hunt explained that any new software supplied by Anglian Water and installed in the new waste collection freighters would allow the vehicles to read water metres on behalf of Anglian Water and from which the Council will receive income through a reasonable business proposition. Councillor Hunt said in no way would the new software be used to measure the number of black sacks collected from each household.

Councillor Hunt said the purpose of making the decision now in advance of the new legislation coming into force meant residents will be informed of the pending decision in their 2013-14 Council Tax Demand and that this will save the Council from having to notify residents through a separate notice. Councillor Hunt agreed that enforcing residents to comply through fines did appear draconian, but fixed penalty notices will only be issued in extreme cases where regulations are breached.

Councillor Hunt said as part of the consultation process the report was circulated to all Councillors, with five Councillors responding, four by email and one verbally. Councillor Hunt said he thought that had the signatories to the call in thought there was something wrong with the decision they would have responded at the time of the consultation.

Councillor Hunt said the low level of response by Councillors only confirmed that Councillors' responses reflected those of the general public they represent.

Councillor Hunt said that he found offensive the remarks within the call in form that inferred the decision was made without being open with the suggestion of a hidden agenda. It implied he was completely dishonest and was doing something underhand, and added to this, the remarks implied the two officers working alongside the Portfolio Holder were involved in the conspiracy. Given the Budget will provide a year end underspend, Councillor Hunt disregarded the suggestion that any additional income will bolster a financially embarrassed Administration.

Councillor Hunt said the example of comparing Colchester residents with residents in Newcastle-under-Lyme (who impose nine separate recycling containers on households) who have to achieve a high level of perfection to avoid a fixed penalty notice was unreasonable given Colchester currently only uses three to four recycling containers per household, and Colchester residents will not in the future be expected to sort recycling waste into nine separate containers.

Councillor Quince said he did not wish members to think the suggestion of not being open with what appears to be a hidden agenda was meant to imply dishonesty, and withdrew reason 5, 'The presumption of Openness' from the debate.

General Discussion

Councillor Offen commented that not for the first time in recent months the lead signatory to the call in had not attended the meeting to present the case. Councillor Offen said given the considerable cost of organising and attending meetings he felt this was contemptuous. Councillor Offen said serious thought should be given to whether future call in hearings proceed when the lead signatory is not present.

Councillor Bentley said in this case there had been a lot of changes when organising the meeting in terms of which Panel would scrutinise the call-in and finding a suitable date within the prescribed time limits when a meeting room was available and all the relevant Councillors could attend. In this case it was not entirely the fault of Councillor Lissimore but agreed every effort should be made to enable all participating Councillors to attend.

In terms of what groups of people will be hit hardest by the new enforcement powers,

Councillor Quince responded to Councillor Sutton by saying in his view there was no question that those hit hardest will be those residents with poor recycling rates in the areas of the highest social deprivation. Councillor Quince said forty pound fines to these residents will be an enormous amount of money and it is these areas where a reward scheme for recycling will benefit the most. Councillor Hunt believed this was not obvious because in St Andrews Ward, a socially deprived area, recycling rates are comparable with all wards across the Borough. Councillor Hunt said Government research suggests 3-4% of residents will be actively aggressive towards being non-compliant and it was only these residents who were likely to receive fines.

Councillor Julie Young said the Waste Prevention and Recycling Options Task and Finish Group (TAFG) undertook consultation with Colchester residents and the TAFG discussed authorisation of use of enforcement powers, but could not recall at any time group members from Councillor Quince's Group raising any issues and wondered if this information was being fed back to the Group's representatives. Councillor Quince said information from the TAFG was fed back to members and the TAFG members had expressed their viewpoint, believing all members are entitled to their opinion. But in this case he and other signatories to the call in felt fining residents is a step too far, a draconian way forward.

Councillor Young said the TAFG also discussed reward schemes but came to the conclusion that such a scheme might benefit some, but in general it will not change the behaviour of those who will be actively aggressive towards not complying. Councillor Hunt said the problem with rewards is that if you reward those who have not recycled, those who have consistently recycled for many years will be up in arms. Councillor Hunt said consideration is being given to implementing a scheme similar to the issuing of Nectar points to all those residents who recycle but if this reward scheme is considered appropriate for implementation, this will happen in late 2013-14 at the earliest. Councillor Quince confirmed to Councillor Gerard Oxford that there are some authorities in England introducing recycling reward schemes, and given the Secretary of State had recently made positive comments on reward schemes, a scheme in Colchester should be considered. Councillor Hunt believed those who do not recycle at all do harm the Community, a point echoed by Councillor Oxford later in the debate, who said some residents are actively aggressive towards recycling and this causes demonstrable harm.

In response to Councillor Peter Higgins, Councillor Quince said whilst he did not think fines issued for not recycling waste was a practical or wise thing to do, it was a personal view, and though it was not listed in the reasons for calling in the decision it was worth consideration.

Councillor Quince did not agree with the views of others in regards to the legality of fines for residents not recycling. Whilst he believed those people caught illegally parking or allowing their dog to foul public spaces should be fined, he could not draw a parallel with residents being fined for not sorting their waste in the prescribed way. Councillor Hunt said under section 46 the Council was only obliged to collect refuse from those households who put out their refuse in the prescribed way, and if this did not happen the Council was able to take court proceedings against the offending residents.

Councillor Hunt confirmed to Councillor Davies that the intention is for staff to talk to all those residents who do not recycle to find out why they do not recycle. It was hoped through dialogue and education the need to issue fines will be minimal. Councillor Oxford said this approach in a hot-spot in his ward had improved the situation, reducing the number of black bags collected from a household without the need to fine. It confirmed this approach will work and minimise the need to issue fines. Councillor Hunt confirmed to Councillor Sutton that enforcement through fines will not commence until the required legislation is in place.

Councillor Quince responded to Councillor Bentley saying the report and decision had not outlined any alternative option for consideration other than not endorsing the use of the additional powers, and thought this was an opportunity lost.

Councillor Bentley said he felt the report and decision did not take account of the financial impact of the decision. The report did not provide detail on the tonnage of waste that could be recycled and had was not recycled and how this effects revenue streams, plus an estimate of how many fixed penalty notices will be issued and how much revenue this will generate, and how much it will cost to administer the scheme. Councillor Bentley said the decision needed to be supported by a business case that included the information he felt was lacking in the report.

Councillor Hunt said the precise amount of tonnage of waste not recycled but that should be recycled and the estimate of the number of fixed penalty notices likely to be issued was not known. Mr. Matthew Young, Head of Street Services said he felt it was unwise to guesstimate these figures and confirmed there will be no additional staff costs involved with the enforcement process, that the work will be taken up by Zone Wardens as part of their current duties. Councillor Bentley acknowledged this but expressed disappointment that there was no business case information available to make a judgement and did not buy the fact that there was no additional staff costs, that if staff are not issuing fixed penalty notices they are doing something else, so there has to be a cost or issuing notices, administering notices and any subsequent legal process. A business case was crucial to determining the costs involved, the revenue generated and the anticipated profits. This information was not available and Mr. Young said the new scheme will not be a revenue generating scheme, and whilst there will be some costs involved in administering the scheme this will be offset by benefits such as additional recycling credits and reduced landfill.

Councillor Hunt said the changes in legislation allowing additional enforcement procedures will be notified to residents through the Council Tax demand for 2013-14, and this would avoid the costly exercise of sending out a separate notice later in the year. Councillor Hunt accepted that there will be a cost involved with the overall enforcement process and that a business case could be drawn-up before the new process was implemented.

Closing Remarks

Both Councillor Quince and Hunt gave their closing remarks.

Councillor Quince reiterated his view that this was a wrong decision, that finding those

residents who fail to recycle and dealing with those residents could be done without the need to impose fixed penalty fines, that issuing fines was a result of a failure to find alternative options.

Councillor Hunt said this was a practical decision that gave officers the leverage needed to persuade residents to comply with the need to recycle. Whilst it will also enable officers to issue fixed penalty fines, this action would be as a last resort and if it was felt appropriate.

Conclusion

Having listened to the debate Councillor Sutton was of the view that the decision should be withdrawn so the points raised by members could be reconsidered.

Councillor Sutton proposed that the decision was withdrawn, pending a review of alternative options and inclusion of a business case, and in light of and using the amended legislation. The proposal was seconded by Councillor Davies.

Councillor Hunt said he would consider the comments of the Panel in the context of the decision taken and looking forward to the implementation stage, but would not consider withdrawing and delaying the decision taken.

Councillor Young said she would be against altering the decision taken as there would be the danger that having gone through the process again it would be called in for a second time. Councillor Young said she was quite content with the decision as it stands and proposed that the decision was confirmed. Councillor Offen seconded Councillor Young's proposal.

The Panel considered the proposal from Councillor Sutton that the decision was withdrawn, pending a review of alternative options and inclusion of a business case, and in light of and using the amended legislation. The Panel rejected this proposal (FOUR voted FOR and SIX voted AGAINST).

RESOLVED that the Panel confirmed the decision STW-008-12 Authorisation of use of enforcement powers (SIX voted FOR and FOUR voted AGAINST).