

CABINET

13 JULY 2011

Present :- Councillor Anne Turrell (the Leader of the Council)
(Chairman)
Councillors Nick Barlow, Lyn Barton, Tina Dopson,
Martin Hunt (Deputy Leader) , Beverley Oxford,
Paul Smith and Tim Young

Also in Attendance :- Councillor Kevin Bentley
Councillor Pauline Hazell
Councillor Sue Lissimore
Councillor Will Quince
Councillor Dennis Willetts

10. Minutes

The minutes of the meetings held on 18 May 2011 and 25 May 2011 were confirmed as a correct record.

11. Have Your Say!

Councillor Quince attended and addressed the Cabinet to express his concern about the decision to close Tymperleys and the way the decision had been taken. In particular, he was concerned about the impact this may have on tourism and town centre businesses. Potential proposed uses such as a bar or a bed and breakfast would not be in line with the wishes of the late Bernard Mason. He called on the Leader of the Council to:-

- Explain why no consultation or business impact assessment had been undertaken;
- Ensure that the late Bernard Mason's will was made available for councillors and members of the public to view;
- Rule out the use of Tymperleys as a bed and breakfast, restaurant or bar.

Councillor Turrell, Leader of the Council and the Portfolio Holder for Strategy and Performance, indicated that she would respond to these points at the Council meeting on 20 July.

Councillor Barton, Portfolio Holder for Renaissance, indicated that research had shown that the gardens at Tymperleys were the main attraction and these were now open to members of the public. Evidence showed that Bernard Mason did not consider that Tymperleys was a suitable home for the clock collection and wanted Tymperleys to be a living building. Tymperleys was important to the administration and it was looking at a number of options for the future of the building.

Councillor Kevin Bentley (in respect of his membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of

Meetings General Procedure Rule 7(3)

12. Colchester's Digital Strategy

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and received a presentation from Nigel Myers, Enterprise Manager.

John Gili-Ross addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He expressed his support for the Digital Strategy, which would be of real benefit to residents, particularly in rural areas and offered his support in delivering the strategy.

Councillor Willetts attended and addressed the Cabinet. He expressed support for the delivery of improved broadband speeds throughout the borough. However, he stressed that the strategy could make the biggest impact in rural areas but that improvements would be delivered to the town centre first, where broadband services were already reasonably good. The number of business operating in rural areas was stressed. The Council should adopt a dual strategy whereby broadband speeds of at least 2Mbps were delivered across the borough as soon as possible.

Councillor Bentley attended and addressed the Cabinet in support of the strategy. He urged the Council to ensure the provision of free wi-fi within the town centre. The Council should also ensure it worked in partnership with Essex County Council in the delivery of the strategy. The rural areas of the borough desperately needed improved broadband services, particularly those areas where a number of businesses were located.

Councillor Nick Barlow, Portfolio Holder for Commerce and Sustainability, thanked officers and partners, especially Essex University, for their hard work in formulating the strategy. He stressed that improved broadband would be delivered in rural areas at the same time as to other parts of the borough. Councillor Smith, Portfolio Holder for Resources and ICT, and Councillor Dopson, Portfolio Holder for Communities and Diversity, also indicated their support for the strategy, which they considered to be an excellent example of partnership working which would deliver innovative and exciting benefits to the borough.

RESOLVED that:-

(a) Commercial investment in the Town Centre CCTV network be enabled by providing access to Colchester Borough Council assets including street furniture, rooftops and ducting in order to build the infrastructure to deliver higher speed broadband (typically 40 – 50 Mbps) and 4th Generation wireless (11 Mbps) to residents, businesses and visitors and to realise an alternative revenue stream for the Council.

(b) To ratify the direction and actions being proposed by the Colchester Borough Council Digital Strategy to facilitate and enable private sector investment which will deliver improved fixed and mobile broadband services.

REASONS

(a) In order that Colchester Borough Council can obtain best value from its fixed assets and to provide a sustainable income stream for the Council.

(b) To bring forward the delivery of higher speed broadband to the whole Borough in order to realise benefits such as:

- To provide significantly higher speed broadband connectivity for residents, businesses and visitors
- To help drive down the cost of broadband and digital services to the end user
- To enable efficient and cost effective delivery and improved customer service in public and private sectors
- To support the growth of emerging employment sectors such as creative industries
- To address digital exclusion and the accompanying economic disadvantages
- To leverage significant private sector investment into building the digital infrastructure in Colchester
- To enable improved access to emerging technologies such as health telecare

ALTERNATIVE OPTIONS

The alternative would be not to bring this asset to market creating a missed opportunity to obtain best value for the Council's fixed assets and to realise the benefits outlined above.

13. firstsite Construction Related Legal Proceedings

The Executive Director submitted a report a copy of which had been circulated to each Member.

Councillor Bentley attended and addressed the Cabinet to indicate his support for the proposals in the Executive Director's report. Firstsite would bring business and investment into Colchester and its opening should be welcomed.

Councillor Smith, Portfolio Holder for Resources and ICT, and Councillor T. Young, Portfolio Holder for Housing and Community Safety, expressed their support for the proposals, which were aimed at recovering public funding

RECOMMENDED to COUNCIL that five hundred thousand pounds of additional revenue funding be released towards the legal costs of resolving legal disputes in relation to the construction of firstsite for the reasons set out in the Executive Director's report.

REASONS

(a) In July 2009 the Cabinet agreed that proceedings could be issued against Banner Holdings Ltd (BHL) and Turner and Townsend (T&T) and that actions be considered against other professional advisors. Since that time additional sums have been sought

to defend the Council's position and seek redress for the Council and the other funders loses. In total the Cabinet has authorised £1,465,000 which was also supplemented by a further £150,000 recovered from a construction performance Bond.

(b) In order to continue legal actions, with a view of recovering public funds, the legal advice is that a further £500,000 is now required.

ALTERNATIVE OPTIONS

(a) Given that the Council has already commenced legal proceedings and the legal advice is that there remain good prospects of recovering significant sums there is a clear case for the Council to continue to fund the litigation.

(b) In order for the Council to reach a decision not to proceed the Council would have to consider its public law duties relative to the risks associated with legal proceedings and the budgetary implications. The judgement would have to be weighed against (i) potential recovery for the Council of what could be significant sums, (ii) other potential risks associated with not progressing the claims in circumstances where the external advice is that there are good prospects for the recovery of significant sums and other funders have expended costs (iii) the prospect of losing such action and awards for costs being made against the Council.

14. 2012/2013 Budget Strategy, Medium Term Financial Forecast and Budget Timetable

The Head of Resource Management submitted a report a copy of which had been circulated to each Member.

Councillor Smith, Portfolio Holder for Resources and ICT, highlighted the proposed funding towards food waste trials, which was identified as a priority in the public consultation on budget options, and the investment in the castle walls, which demonstrated the administration's commitment to safeguarding Colchester's heritage. The risks set out in the Head of Resource Management's report were also emphasised.

RESOLVED that:-

(a) The pre-audit outturn position for the financial year 2010/11 be noted.

(b) *RECOMMENDED to COUNCIL* that £500,000 be released from balances in 2011/12 for Firstsite legal fees as set out in minute 13.

(c) The following releases be agreed:-

- £30,000 to support the Tour Series cycling event.
- £40,000 for customer service review
- £100,000 for planning appeals
- £200,000 in respect of a food waste trial

(d) £324,000 from the New Homes Bonus grant be added to balances with the remaining £400,000 held pending progress with delivery of in year budget savings.

(e) The budget forecast, approach and timetable for the preparation of the 2012/13 budget and updated position in respect of balances be noted.

(f) The updated Medium Term Financial Forecast for the period to 31 March 2014 as set out at Appendix A of the Head of Resource Management's report be noted.

(g) The latest position in respect of the Capital Programme be noted and *RECOMMENDED to COUNCIL* the inclusion in the Capital Programme of £200,000 in respect of Castle Walls

(h) The changes to the capital programme arising from the 2010/11 outturn reported to FASP resulting in a net saving be agreed and capital funding be released for the following schemes:-

- £200,000 in respect of Castle Walls (subject to approval by Council as shown at (g) above.)
- £157,000 in respect of Street Services Fundamental Service Review.

REASONS

(a) The Council is required to approve a financial strategy and timetable in respect of the financial year 2012/13 and a Medium Term Financial Forecast (MTFF) for the two subsequent financial years.

(b) The use of balances for legal fees requires approval of Full Council.

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet.

15. Capital Programme Projects

The Head of Resource Management submitted a report a copy of which had been circulated to each Member.

Councillor Willets attended and addressed the Cabinet to stress the importance of ensuring that if the Moot Hall organ were to be restored, that consideration was given to how its use would fit in with the Town Hall Business plan. For example, consideration should be given to ensuring the organ could be used by music students at the Institute and account needed to be taken of the impact of the organ being played on other uses. These issues needed to be resolved now to ensure that the organ could be used if restored.

Councillor Hunt, Deputy Leader of the Council and Portfolio Holder for Street and Waste Services, and Councillor Dopson, Portfolio Holder for Communities and

Diversity, supported Councillor Willetts comments. In making the bid to the Heritage Lottery Fund, the Friends of the Moot Hall organ would have to address the issue of usage and Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy and Performance, indicated she would ensure that the Friends of the Moot Hall Organ met the facilities team at the Town Hall to ensure these issues were resolved.

RECOMMENDED to COUNCIL that:-

(a) A bid be submitted to the Heritage Lottery Fund (HLF) in respect of the Moot Hall organ on behalf of the Friends of the Moot Hall Organ on the condition that the Council does not allocate funding for this project.

(b) The planned roof repairs to the Mercury Theatre be progressed and that this be included in the Capital Programme and funded from a combination of the funds held by the Trust and in the Mercury Reserve as part of the 2012/13 budget report to Cabinet.

REASONS

(a) The decision in respect of the Moot Hall organ concerns the proposal for the Council to submit a bid to the Heritage Lottery Fund (HLF) for funding on behalf of the Friends of the Moot Hall Organ.

(b) The decision in respect of the Mercury Theatre roof is to progress this scheme to determine the final scope of the project and procure a contractor. Sufficient funding for this scheme has been identified and final proposals for the use of the different sources will be reported to Cabinet as part of capital programme proposals for 2012/13.

ALTERNATIVE OPTIONS

(a) The Council could decide not to make the bid to the HLF, however, this is likely to reduce the prospect of securing external funding to support the Moot Hall organ scheme.

(b) The Council, as corporate trustee, of the New Theatre Trust has responsibilities to repair and keep the Mercury Theatre premises in good condition (i.e. the fabric of the building). Survey reports conclude that roof coverings are now in generally poor condition and that it has now exceeded its serviceable life.

16. Year End Performance Report including Strategic Plan Action Plan and Proposed Indicators, Targets and Actions for 2012

The Head of Corporate Management submitted a report a copy of which had been circulated to each Member.

RESOLVED that:-

(a) The Year End Performance Summary at Appendix 2 of the Head of Corporate Management's report be noted.

(b) The Table of Indicators for 2010/11 at Appendix 3 of the Head of Corporate Management's be noted and the Indicators for 2011/12 be agreed.

(c) The Year End Strategic Plan Action Plan at Appendix 4 of the Head of Corporate Management's report be noted.

(d) The proposed Strategic Plan actions at Appendix 5 of the Head of Corporate Management's report be agreed.

(e) The recommendations of the Strategic Overview and Scrutiny Panel at its meeting on 7 June 2011 be noted.

REASONS

The Council has agreed a number of key performance areas which it uses as part of its Performance Management Framework to help monitor progress and improvement. This report provides the year end position of our Organisational indicators and Strategic Plan Action Plan (SPAP). The report also provides information on the proposed targets and actions for 2011/12.

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet.

17. Progress of Responses to the Public

The Head of Corporate Management submitted a progress sheet a copy of which had been circulated to each Member.

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 alternative options were presented to the Cabinet.

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.

18. Colchester's Digital Strategy

The Head of Strategic Policy and Regeneration submitted an Appendix to the report on Colchester's Digital Strategy.

RESOLVED that the Appendix to the Head of Strategic Policy and Regeneration's report be noted.

REASONS

As set out in minute 12.

ALTERNATIVE OPTIONS

As set out in minute 12.