

## **FINANCE & AUDIT SCRUTINY PANEL**

### **25 NOVEMBER 2008**

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

**Councillor Kevin Bentley and Councillor Gerard Oxford (in respect of being season ticket holders to Colchester United Football Club) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (3)**

#### **44. Firstsite:newsite**

##### **Have Your Say**

Mr. Brian Jarvis, the former Portfolio Holder for Renaissance (2006) and Planning and Regeneration (2007) addressed the panel, saying he would like to correct some recent misleading comments concerning the new visual arts centre. As part of the Cabinet, he said the Administration was very much committed to the delivery of Firstsite:Newsite, and whilst understanding that some people were against the project, believed it would generate revenue and be the catalyst for the regeneration of the St Botolphs area. Mr. Jarvis said it was in October of 2007 that the first problems with the construction became apparent and from this, his knowledge of Colchester operating under a contract signed only by the Council, and not the building contractor, in effect, a de facto contract. Mr. Jarvis said up to this point, payment to the contractor was made in conjunction with the Purchase Order, and that up until February 2008 the project was on budget.

In response to Councillor Bentley, Mr. Jarvis said when he was first advised of an unsigned contract, he was concerned, and whilst accepting the advice from officers, remained concerned and requested the Monitoring Officer to review the contract and seek independent legal opinion, and provide an opportunity to produce a strategy for moving forward, and to unblock the impasse.

Mr. Richard Bourne addressed the panel saying he commiserated with Councillor Hunt, given the task to sort out the mess of the previous administration. Mr. Bourne said he always had doubts, and had previously expressed concern over the Council's ability to organise the risks associated with this project. Mr. Bourne said the Council takes all the risks on over-runs and has no levers to pull, to manage the risk. Mr. Bourne, whilst saying this evening's report was vaguely interesting, asked for a thorough independent external review of the project, to enable the Council to understand what has gone wrong, learn from this and move on.

In response to Councillor Willetts, Councillor Bourne said following two Gateway reviews, each review had never got to the bottom of the problem, and suggested any review should be undertaken by independent organisation or auditor that could provide the expertise needed to ensure a thorough review.

Mr. Nicolas Chilvers addressed the panel saying the partnership of funders was a partnership of amateurs and professionals who make things happen. Mr. Chilvers questioned the robustness of determining the original project cost and how it was tested, and asked whether sufficient slack had been built into the price for snares and faults, believing from the outset that £16,500,000 was never going to be sufficient funding. Mr. Chilvers asked whether the Council benchmarked the original costings and questioned whether the officers managing this project from the outset were out of their depth.

Mr. Chilvers concluded by saying one day this project would be completed, but don't expect universal applause. Once opened, Mr Chilvers said Firstsite better come up trumps, because anything negative would reflect on the Council.

Mr. Hamilton addressed the panel saying Firstsite was unfit to manage the new arts centre. The presentation given by Firstsite at a recent Strategic Overview and Scrutiny meeting was the worst he had ever heard, a presentation that spoke of a disastrous Jaywick project in Tendring. Mr. Hamilton said the current reports on Firstsite are flimsy, inaccurate and lack sufficient information, and questioned why anyone would want to use this facility, with no nearby parking arrangements or sufficient public transport or bus park terminal facilities. The Town Centre was already overflowing with cafes and bars and questioned the future viability of further catering outlets around the arts centre. Mr. Hamilton concluded by saying local tax payers would be lumbered with the future running costs of the building, and given the already large outlay on this project, suggested the project was mothballed, put on hold temporarily, to avoid being penalised by the repayment of grants.

### **Firstsite:Newsite**

Mr. Ian Vipond presented the report Firstsite:newsite, a review of the Council's capital arrangements for the Visual Art Facility project.

Mr. Vipond said the purpose of two reports was to get as much information onto the public report as was possible, with the confidential report largely focusing on negotiation tactics, which was not in the public interest to be disclosed before negotiations took place.

Mr. Vipond explained that he and Councillor Hunt, Portfolio Holder for Communications and ICT became involved in the project from June 2008, following the May 2008 elections.

Councillor Harris said he concurred with Mr. Bourne, that an independent external review of the project should be undertaken as soon as possible.

In response to questions from Councillor Harris, Mr. Vipond said all the funders to the Firstsite:newsite projects wish to see an independent review of the project, and whilst the Audit Commission is to undertake a review, the funders are keen for the review, but want it at the completion of the project. The Council are currently in consultation with a firm who will explore details of evidence including the funding agreement as soon as possible. Mr. Vipond said any decisions taken by this Council in regards to different

stages of the project, whether by the Portfolio Holder, Cabinet or Council, are public documents, open to scrutiny.

Mr. Vipond said in February of this year the advice given to the Council was that the risks identified in the project it was felt rested with the construction firm. That said, it was critical that operations were re-started to avoid contract costs rising as a result of construction delays, but knowing legal action might still need to be taken. It was clear at this stage that there would be a need for a full independent review.

Mr. Vipond confirmed the extra costs incurred as a result of the prolongation of the contract, was a greater proportion of the overall additional costs that included changes to the glazing and roof construction.

In response to Councillor Willetts, Mr. Vipond said the 'GC/Works/1 terms' contract was a standard off the shelf construction contract type used by local authorities, though the difficulty with it, it didn't have some key elements written into it that was relevant to the building, including an end date for completion, and didn't state the capped sum was the total sum for the completion of the work. Mr. Vipond said that during the construction phase there has been two legal issues, one, relating to the additional funding in 2007 for the 'deflection of the canopy', and two, the contractual issues from February 2008, about on what basis the Council could move the contract forward. Mr. Vipond confirmed he had not been party to the conversations or legal advice given during this period, though this information was available on file and could be included in any future independent review.

The Chairman requested that any documentation relating to the conversations of officers and Cabinet Members, and the legal advice given to the Council, should form part of any future independent reviews.

Mr. Vipond said the Council received legal advice on the 28 April 2008, but did not know whether this advice was specifically as a result of the request by the Portfolio Holder, when the request went to Counsel, and who saw the specific advice given. The detail within the report to the panel gives the consequences of the legal advice given.

Mr. Vipond said he could not give a total assurance that there is a record of all the conversations with the Portfolio Holder, though there was a record of the meetings of the 'Funders Board', and these together with all relevant emails and other documents would be available for any future independent review.

Given the remarks from panel members, the Chairman asked that any future independent reviews would include briefings with Mr. Jarvis, the former portfolio holder, who had not, under the constitutional restraints of this meeting been given the opportunity to fully explain his recollection of events.

In response to Councillor Offen, Mr. Vipond said he was not aware of conversations by Cabinet, outside of the usual public meeting discussions, that are minuted and on record. In regards to the role of Firstsite in this project, Mr. Vipond said the appointment of Firstsite was a major factor in receiving Arts Council funding, with Firstsite the appointed organisation to deliver the contemporary arts facility.

Councillor Offen said the panel would not be able to get to the whole truth on its own, and supported the view of Mr. Bourne, that an independent external review should be undertaken.

Mr. Vipond confirmed to Councillor Goss that there had never been a total cessation of building work, that whilst by January 2008 construction had stopped, there was always someone on site completing work to a limited degree. Mr. Vipond confirmed it would be possible to retrieve electronic documents of senior officers, to be available for an independent inquiry.

Councillor Bentley said the people needed to conduct any further scrutiny or future independent review were not present at this meeting. Councillor Bentley said this review could have moved forward had the Chief Executive and other former senior officers been present at the meeting, sadly this was not the case, and a request was made that at any future reviews these officers would be invited to attend.

Councillor Bentley said that he was fully supportive of an independent inquiry, but said the panel should also carry out a vigorous review to run in parallel with an inquiry, to ensure this issue is reviewed within the public domain, with invitations going to senior officers, the contractor and the cost management company.

Mr. Vipond confirmed that the role of Turner and Townsend was to administer the contract process, part of which was to help the Council to select the firms involved in the project.

Councillor Oxford expressed dismay that the Portfolio Holder for Planning and Regeneration did not receive the legal advice given and received by the Council in April 2008. Councillor Oxford said he understood some builders are still sceptical about whether the current building can be made watertight, and if this transpires to be the case, who would be liable?

Mr. Vipond said the current contractor would under the current agreement complete the build to make the whole building watertight and airtight, with the contract secured by warranties.

*RESOLVED* that;

- i) The panel noted the Council's capital arrangements for the Firstsite:newsite project.
- ii) The panel requested the Cabinet to instigate an independent external review of the Firstsite:newsite project.
- iii) The panel agreed that the Finance and Audit Scrutiny Panel would also undertake a review of the Firstsite:newsite project at a future meeting, the date to be decided, to enable a review to be heard in public. This review would scrutinise the information from the independent external review, and include within a report, a chronological time line of key decisions, briefings and minute records of pertinent meetings. It was further agreed that an invitation to attend the public review should go

to the funding partners and contractors.

#### 45. Exclusion of the public

**The following report and subsequent debate on Firstsite:newsite, and the detail in connection with some of the financial arrangements, contained exempt information (financial/business affairs of a particular person, including the authority holding information) as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.**

**All members of the public and press left the meeting room at this point.**

#### 46. Firstsite:newsite - Confidential Paper

Mr. Ian Vipond presented the report Firstsite:newsite – confidential paper, a paper providing more detail in connection with some of the financial arrangements of Firstsite:newsite.

Mr. Vipond and Councillor Hunt, Portfolio Holder for Communications and Customers responded to questions from the panel.

Councillor Hunt said his brief was to get the project completed as soon as possible, and though he was not a fan of the project, in some way, this was probably the best kind of person to oversee the project. Councillor Hunt explained the Council's legal position in respect of the contract with the construction company, whose work he had been reliably informed of, was of a very high standard.

Councillor Hunt gave his reasons as to why the contract had failed, and the choices the Council had to move forward and get the works completed. For now, Councillor Hunt said the important thing was to get the building watertight and airtight, and explained details of the negotiations with Banner Holdings Ltd to enable the contract to be restarted.

Councillor Hunt concurred with panel members for an inquiry into the whole process, not to be able to point blame, but to teach us how not to do things in the future, and was happy for a parallel review to be undertaken by the Finance and Audit Scrutiny Panel in a public meeting.

Councillor Smith, Portfolio Holder for Resources and Business addressed the panel to explain that the Cabinet are to propose to the Council an increase in the authorised borrowing limit of £2,000,000 to fund the completion of the Firstsite:newsite project.

Councillor Smith gave a brief resume to the panel of some of the previous pieces of scrutiny undertaken by the scrutiny panels in the last five years, and explained that the legal advice given to the Council had been during the time leading up to the May 2008 elections.

It was confirmed that any investigational work on the process to date, would be undertaken by Anthony Collins Solicitors.

Councillor Hunt and Mr. Vipond confirmed that penalty clauses were in place for the current contract which would kick in three weeks beyond the agreed completion date, with a clause enabling the Council to reclaim costs from the 22 May onwards.