

FINANCE AND AUDIT SCRUTINY PANEL

16 OCTOBER 2012

- Present :-* Councillor Dennis Willetts (Chairman)
Councillors Glenn Granger, Scott Greenhill,
Theresa Higgins, Jon Manning and Gerard Oxford
- Substitute Members :-* Councillor Helen Chuah for Councillor Ray Gamble
Councillor Jackie Maclean for Councillor Marcus
Harrington
Councillor Nigel Offen for Councillor Julia Havis
Councillor Michael Lilley for Councillor Cyril Liddy
- Also in Attendance :-* Councillor Marcus Harrington
Councillor Lyn Barton
Councillor Annie Feltham
Councillor Paul Smith
Councillor Nick Barlow
Councillor Mary Blandon
Councillor Tina Bourne
Councillor Barrie Cook
Councillor Beverly Davies
Councillor Pauline Hazell
Councillor Sonia Lewis
Councillor Sue Lissimore
Councillor Will Quince
Councillor Colin Sykes
Councillor Laura Sykes
Councillor Anne Turrell

20. Minutes

The minutes of the meeting held on 21 August 2012 was confirmed as a correct record.

21. Referred items under the Call in Procedure

Have Your Say

Mr. Nick Chilvers

Mr. Chilvers addressed the Panel saying he was an occasional user of the Abbots Centre. There are a variety of age groups including some very elderly people who visit the centre and no-one expects exclusive use of the facilities.

Mr. Chilvers believed it was unrealistic to expect an organisation to manage the Abbots Centre without some level of funding.

Although Mr. Chilvers felt the details about the future use of the centre is very vague, the Council, as guardians to this service whether or not it is franchised out, should oversee the direction of travel, length of lease and ensure the managing company has safeguards in place for when the funding ceases.

Mrs. Sonia Lewis

Mrs. Lewis said the Abbots Centre was subject to a call-in hearing and discussions at an extra ordinary Council meeting in late 2011 when the decision 'Activity centre services for people aged 50 years or over' was considered, and the scrutiny panel's request that the Portfolio Holder for Communities and Diversity allow the panel to pre-scrutinise the future decision on the service level agreement and lease was agreed. Mrs. Lewis said this was not done and there remains a lot of issues to be considered.

Mrs. Lewis said she had the greatest regard for Colne Housing, but with the Council entering into a new tendering process in which Colne Housing had significant involvement in the process in the intervening nine months, they had a distinct advantage over any other potential bidders.

Mrs. Lewis it was still not clear about what the Council, rate payers and members of the Abbots Centre are getting out of this decision. The process had created a year of uncertainty for the elderly people who used the centre.

In response to Councillor Manning, Mrs. Lewis said by allowing Colne Housing to be participative in the process leading up to the tendering process put them in an advantageous position and it was no longer a level playing field.

Councillor Will Quince

Councillor Quince said he had a huge respect for Colne Housing as an organisation and for their work and this was a regrettable situation that created even greater uncertainty for the users of the centre.

Councillor Quince said the Portfolio Holder was skewing the process by allowing the one bidder to manage the centre, the very bidder who had announced it could not undertake the contract without Council funding, though blame should not solely rest with Colne Housing, with the Cabinet needing to take some responsibility. Councillor Quince could not understand the situation given the previous Portfolio Holder had given cast iron assurances that a full consultation would provide the evidence from which the Service Level Agreement and Lease Agreement would be determined,

Councillor Quince said it appeared that when Colne Housing originally pulled out of the bidding process, other bidders were not asked to resubmit their tenders, and nor was the tendering process restarted, but the process was moved forward, built around the terms requested by Colne Housing. Councillor Quince questioned the transparency of such actions given Colne Housing had a 9-12 month advantage over other potential bidders, and believed independent observers will detect a certain amount of bias toward Colne Housing.

Councillor Marcus Harrington

Councillor Harrington said he thought it was sad and tragic that a group of local residents have had uncertainty cast over their future, and asked at the call-in review last year for the centre to remain as it was in its present form.

Whilst appreciating the additional funding needed, Councillor Harrington asked whether retendering was the most suitable way forward.

Decision COM-003-12 “Proposed transfer of the Abbots Building”

The Panel was asked to consider the decision COM-003-12 “Proposed transfer of the Abbots Building”, authorised by Councillor Annie Feltham, Portfolio Holder for Communities and Leisure Services.

The decision was called-in by Councillor Will Quince, supported by four other Councillors, believing the decision had not taken account of the following principles, Consideration of all the options available, clarity of aims and desired outcomes and presumption for openness.

Presentation of the Call in

Councillor Beverly Davies addressed the Panel to explain the reasons for the call in.

Councillor Davies explained that the three principles which the portfolio holder had failed to address in the decision were consideration of all options, clarity of aims and presumption of openness.

Councillor Davies asked whether the three year grant being offered up to the value of £105k as part of the re-tendering exercise was necessary, when it could have been possible during the original process to re-invite expressions of interest from the remaining organisations, but only two alternative options were considered: Not to offer a grant with the facility transfer or to close the activity centre.

The report accompanying the decisions says that Colne Housing, as the successful bidder to provide services at Abbots, having now produced a business plan (which had not been done at the tender stage), had identified the need for start-up funding and the level of funding needed. Colne Housing will not be willing to agree a lease without the funding and CBC officers surmise that others would also be unable to agree a lease without the level of funding identified by Colne Housing Society.

On this basis, Councillor Davies suggested that there is a third option. Colne Housing Society has moved the goalposts, having won the tender before identifying the sustainability of the centre by completing a business plan. During the initial tender process, at least one other tender included a proper business plan which proved that the centre could be sustainable without needing start-up funding from Colchester Borough Council.

In the interests of clarity, openness and fairness Councillor Davies said this option must

now be explored, together with the other tenders received during the original process. The organisations that originally submitted expressions of interest should now be invited to confirm whether their tenders still stand and they should now be seriously considered.

If, after this process, it becomes clear that no other organisation that originally submitted a tender can go ahead without start-up funding from the borough council, Councillor Davies agreed that the opportunity should be re-advertised. It would be neither open or fair to simply re-advertise without considering this third option.

In regards to clarity of aims and desired outcomes, Councillor Davies said if, and only after having explored Option 3, it should become clear that funding is required from the borough council, the report and decision do not make it clear that the £105,000 inducement allowed for in the document is an absolute maximum. It is also not clear that, should the winning organisation subsequently withdraw from the process, or demand increased funding, any lease or agreement would be dissolved and the organisation would be responsible for costs of re-advertising and processing another round of expressions of interest.

Councillor Davies said this should be made explicit in any agreement. Had a similar clause been included in the original documentation, there would be no costs now to the Borough Council of re-advertising this contract and officer time in processing another round of expressions of interest.

In regards to the presumption of openness, Councillor Davies said she made clear that she had deliberately not named any member in this call in as she did not believe it is necessary, and she had received an assurance that, legally, the decision is above board. However, with any expression of interest or tender process there must always be a presumption of openness and it must be written into all tender processes undertaken by the Borough Council that all organisations participating in the process must declare any ethical conflict of interest. This is not a matter of standards, but is a matter of ethics. The constitution of Colchester Borough Council requires openness and ethical dilemmas should be recorded in decision notices. Where the portfolio holder knows of a potential conflict of interest, even though it may be cleared by the standards regime, an ethical conflict should be acknowledged. When considering the decision with regard to all the facts Councillor Davies said she believed that there should have been a disclosure.

In conclusion Councillor Davies said the options she had outlined will potentially have a quicker outcome than that offered by the portfolio holder decision notice and requested that they be given serious consideration by the Panel.

Portfolio Holder Response

Councillor Feltham, Portfolio Holder for Communities and Leisure Services addressed the Panel and responded to Councillor Davies.

Councillor Feltham explained that she did not see any reason to remove Colne Housing from the tender list and all the information that had been provided was done so in good

faith. Looking to see if bidders could proceed without a grant would have delayed the process.

In the case of Colne Housing, the start-up funding was required, so when this was known, this opportunity was offered to all interested parties thereby creating a level playing field.

All bidders expressed an interest with the three year grant with the amounts reducing year on year. If a bidder was/is able to manage the Abbots Centre without the funding, they would score highly within the tender process.

Voluntary organisations had been encouraged to participate in the bidding process. There was some acceptance of good will and contracts are legally drawn-up and agreed by both parties.

Councillor Feltham concluded by saying there had been no bias in taking this decision, and there was no preference for one organisation / group over any other. Councillor Feltham accepted there is different ways in which this process could proceed, but ultimately, the decision taken was supported by Cabinet members. Councillor Feltham was clear that she had made this decision without bias.

General discussion

In response to Councillor Willetts, Councillor Feltham said in regards to a level playing field for all participants in the bidding process, all interested parties would be provided with the same relevant information and it may be possible for a workshop to be organised to help potential bidders with the process. Councillor Feltham said officers will look at all suitable ways to brief interested parties and if a workshop is considered the appropriate way it would be done. Everything will be done to ensure a level playing field.

Councillor Feltham said it was the intention to offer an open process to any party that shows or had previously expressed an interest in the managing the Abbots Centre. On this basis all parties that had previously expressed an interest will be re-contacted.

Councillor Feltham confirmed that Councillor Tim Young had never been involved in the decision making process.

Councillor Willetts said in respect of the disclosure of interests, he accepted Councillor Feltham's explanation that Councillor Tim Young had never been involved in the decision making process.

Councillor Feltham confirmed to Councillor Manning that any bidder requiring zero funding would score 3 points in the scoring matrix in respect of question 15 on funding. Councillor Feltham also confirmed that whilst she was sympathetic to visitors to the centre and the bidders to the delays, some of the delayed process had been unavoidable.

Councillor Feltham was unable at present to give a timescale to complete the process, but said the Panel will be invited to pre-scrutinise the decision to award the contract.

Closing Remarks

In summary Councillor Davies asked the Panel to consider requesting the Portfolio Holder to go back to the original bidders to gauge if the bids without the offer of funding still stand. Councillor Davies said if the contract could be managed without the grant funding this would be in everybody's interest.

Councillor Feltham said she did not see the need to go back to the original bidders. Councillor Feltham had every confidence in officers to score-out where necessary within the assessment process, saying the funding needed to be justified.

Conclusion

Councillor Manning said having heard the responses from Councillor Feltham to the questions asked at the hearing he was of the opinion that the decision should be upheld. Councillor Manning proposed that the Panel confirm the decision taken.

Councillor Offen and Councillor T. Higgins seconded the proposal from Councillor Manning.

Councillor Willetts said because it was not clear within the documentation as to how a potential bidder would score if making a bid with a requirement of a 'zero' grant, it did put an element of doubt in his mind to the assessment process.

RESOLVED that the Panel confirmed the decision (SEVEN voted FOR, ONE abstained).

22. Referred items under the Call in Procedure

Have Your Say

Councillor Pauline Hazell

Given the traffic congestion and narrow streets in many parts of the Borough, Councillor Hazell believed a 20 mile per hour (mph) policy should be extended throughout the Borough.

Councillor Hazell said the 20 mph policy would provide a safer environment for pedestrians, cyclists and motorists.

Given what benefits a 20 mph speed limit would provide to local people, Councillor Hazell felt there should be a more forthright approach to the consultation response in respect of 20 mph speed limits.

Decision REN-001-12 "Setting Local Speed Limits", revised guidance consultation

The Panel was asked to consider the decision REN-001-12 “Setting Local Speed Limits” revised guidance consultation, authorised by Councillor Lyn Barton, Portfolio Holder for Renaissance on 12 September 2012.

The decision was called-in by Councillor Harrington, supported by four other Councillors, believing the decision had not taken account of the following principles, Consideration of all the options available, having regard to due consultation, clarity of aims and desired outcomes, having respect and regard for human rights and due weight to all material considerations.

Presentation of the Call in

Councillor Harrington addressed the Panel to explain the reasons for the call in.

Councillor Harrington said the introduction of 20 mile per hour (mph) speed limits in Colchester was vitally important, reducing the current number of motor accidents and a lesser impact will make serious injury less likely.

Councillor Harrington said the other important plus will be a more pleasant and safer environment for walking and cycling.

Whilst there is some 20 mph speed limit zones in the Borough, particularly in new build areas, Councillor Harrington said this policy needed to be expanded to many other areas, for example West Bergholt, where the village design statement says a 20 mph zone should be provided.

Councillor Harrington said the first reason for the call-in, the consideration of all options available was the principal reason for the call-in, and the benefits of such zones as previously mentioned led him to believe a stronger more forthright approach was needed within the Portfolio Holder’s response. The response needed to inject the sense of urgency needed in implementing the 20 mph zones

Councillor Harrington questioned the thoroughness of the consultation process that led to the response by the Portfolio Holder, and the report did not state who had been consulted. Councillor Harrington said the response was reliant on evidence that formed part of the 2009 Cabinet decision, and to wait three years to use this information in the response was too long for such an important matter. The response also did not appear to have any recent evidence from wards, parishes, and neighbourhood and community groups and contained no mention of the new initiative from Essex County Council under its new Portfolio Holder.

With regard to clarity of aims and desired outcomes, Councillor Harrington said the response did not explain why Colchester as the Local Planning Authority, did not implement supplementary planning guidance to facilitate and encourage the widespread implementation of 20 mph limits, that there needed to be strong support for a scheme where local communities which have a strong case for a 20 mph zone and support from their local councillors should be able to implement the zones easily and quickly.

With regards to health and safety, and in respect for human rights, Councillor Harrington said the response by the Portfolio Holder appeared to suggest that the matter of air quality may be a more important right than the safety of pedestrians and cyclists, adults and children alike. If this was the belief, Councillor Harrington said this point should then be argued in the response to avoid the Secretary of State believing air quality was a reason for Colchester not to implement 20 mph zones.

In conclusion, Councillor Harrington said in respect of due weight to all material considerations, that more evidence should be provided to support the success of Colchester schemes and used for the basis of the response.

Portfolio Holder Response

Councillor Barton, Portfolio Holder for Renaissance, addressed the Panel and responded to Councillor Harrington.

Councillor Barton explained that the response to the Department of Transport drew on previous reports considered by the Policy Review and Development Panel and Cabinet, briefed by the task and finish group who undertook a consultation to provide the evidence. This was a cross-party piece of work and in her opinion the information remained as relevant today as it did in late 2009.

Councillor Barton said the evidence from the task and finish group included consultation with a number of groups and organisations including Parish Councils and Neighbourhood Action Groups. Whilst the Council moves forward as it has done in the last three years, the evidence provided by the task and finish group was still relevant, a point reiterated to Councillors throughout the discussions.

Councillor Barton said she welcomed the fact that Essex County Council (Portfolio Holder - Councillor Louis) has agreed to a comprehensive review of the County's policy on speed limits, including 20 mph zones plus a change to the guidance provided by the Department of Transport, a positive move.

Councillor Barton felt that while air quality was an important factor it was not as important at this time as the safety of pedestrians and cyclists, adults and children alike, and did not see this as an issue.

General discussion

In response to Councillor Willetts, Councillor Harrington said he believed the range of consultation used in the response was in his opinion too narrow, that there are more groups who had a good case to be listened to, and should have been included in the process.

Councillor Barton, in response to Councillor Hazell and Councillor Willetts said the consultation documentation used within the 2009 Cabinet report was deemed to still be relevant to the current situation, and residents have the same opinions and want the same outcomes. In Councillor Barton's opinion the recommendations from 2009 still stand, though it was important to keep an open mind for the future. Councillor Barton was happy to have used details of the 2009 Cabinet report within the consultation

response, and this only reinforced the general shift in people's opinion with the consensus that '20 is Plenty'.

In response to Councillor Willetts, Councillor Barton said she welcomed the new initiatives by Councillor Louis at Essex County Council, but she did not become aware of this until after the Council's response was sent, so could not include the details. So given this was not relevant when drafting the response at that time, Councillor Barton did not see the need to redraft a response especially given we had gone well past the deadline date for receiving such responses. Mr. Paul Wilkinson, Transport Policy Manager said the portfolio report had referenced that the Council had previously engaged with Essex County Council and that report was also sent to the Department of Transport.

In response to Councillor Offen, Councillor Harrington said that whilst some may feel the changes suggested to the response are minimal, and it may have been possible to approach the Portfolio Holder to negotiate an amendment to the response, he was advised that the proper way forward was to follow governance protocol and call-in the decision.

Closing remarks and conclusion

Councillor Harrington and Councillor Barton in turn gave their closing remarks.

Councillor Willetts said whilst there remained some small differences in the some of the detail of the response, the main problem appeared to be with the style of the response, with Councillor Harrington wishing for a more vigorous approach with immediate action, and Councillor Barton wishing to take a more considered approach.

Councillor G. Oxford said it was very important that the as a result of this consultation more emphasis was given to safety of pedestrians and cyclists, adults and children alike, and welcomed that together with Essex County Council the highways authority, Colchester would move forward with purpose. Councillor Oxford proposed that the decision was confirmed.

Councillor Manning said he was not opposed to 20 mph zones across the borough and believed the Portfolio Holder's response was correct. Councillor Manning seconded the proposal.

Councillor T. Higgins said it was inevitable that more zones will at some stage be introduced across the borough, and already this was happening in new-build areas. Councillor Higgins considered the Portfolio Holder's response to be robust enough and also seconded the proposal.

RESOLVED that the Panel confirmed the decision REN-001-12 "Setting Local Speed Limits" revised guidance consultation (EIGHT voted FOR and ONE abstained).

23. Work Programme

Members considered the briefing note from Mr. Bob Penny in regards to the performance of the contractor responsible for Grounds Maintenance.

Members acknowledged that the contract has a break clause option effective from March 2013 with a requirement on both parties to give 12 months notice if the break clause was to be invoked therefore the deadline for invoking the contract had passed (Cabinet Members have already considered the external consultants report on the grounds maintenance contract and agreed for the contract to be continued to 31 March 2016). That said members still believed it would be a good idea to review the performance of the contractors believing there are some issues with regards to grounds maintenance in some wards. Councillors G. Oxford and Manning both agreed to support a future review of the contract.

Mr. Judd, Democratic Services Officer advised Councillor Granger that if he is unable to attend the meeting on 13 November when a review of the Waste Collection and Recycling Service is undertaken, he would be able to organise a substitute member for the meeting. Mr. Judd understood that it was Councillor Granger who had initially requested this review, but the review had already been put back one meeting due to the additional work of the Panel in respect of call-in hearings, and given the difficulty in rearranging meetings with Portfolio Holders and Senior Officers and the importance other members are putting on this review, it was important that the Panel kept to the work programme agreed.

RESOLVED that the Panel considered and noted the revised Work Programme.