

CABINET
13 JULY 2009

Present :- Councillor Anne Turrell (Chairman)
Councillors Lyn Barton, Tina Dopson, Martin Hunt,
Nigel Offen, Beverley Oxford, Paul Smith and
Tim Young

Also in Attendance :- Councillor Kevin Bentley
Councillor Beverly Davies
Councillor Wyn Foster
Councillor Mike Hardy
Councillor Pauline Hazell
Councillor Sonia Lewis
Councillor Dennis Willetts

Date draft minutes published: 14 July 2009

Date when decisions may be implemented if not called in: 21 July 2009

All decisions except urgent decisions and those recommended to Council may be subject to call in. Requests for scrutiny of decisions by the Strategic Overview and Scrutiny Panel must be signed by at least one Councillor and counter-signed by four other Councillors (or alternatively support may be indicated). All such requests must be delivered to the Proper Officer by no later than 5pm on: 21 July 2009

13. Minutes

The minutes of the meetings held on 20 May 2009 and 10 June 2009 were confirmed as a correct record.

14. Have Your Say!

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He contrasted the direct action taken by the "Human Shrub" with the lack of action taken by the Council on this issue, and expressed scepticism about the recent statements by the Council that it had planned to take further action before the "Human Shrub" intervened. He believed that the local group recently referred to in the Essex County Standard who met to ensure that Colchester was in bloom in the summer should now be revived. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy indicated that a written response would be sent.

Mr Mummery addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2) to express his concern that councillors had supported the Visual Arts Facility, even though they knew that this would deprive citizens of Colchester of the use of the bus station. False promises had been made about the provision of an improved bus station. No apology had been made for this. Few councillors used buses and councillors did not understand the needs of bus users. He invited Councillors to contribute their allowances towards the funding of a new bus station and to forego their parking spaces at the Town Hall. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy indicated that a written response would be sent. Councillor Hunt, Portfolio Holder for Communication, Customers and Leisure, and Councillor Oxford, Portfolio Holder for Neighbourhoods, also responded to indicate how they used public transport.

Mr Oxton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He reminded Councillors that they would be judged at the Borough elections in 2010 on how they had delivered on major projects. The bus station was particularly important to local people and no progress had been made so far. He believed that the administration may have an announcement to make about the future of the bus station and invited the Cabinet to provide details. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy indicated that a written response would be sent.

Mr Quince addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). Both the Liberal Democrat and the Labour groups had made manifesto promises to make Colchester greener. Why then were town centre planters not properly planted and maintained? Councillor Dopson, Portfolio Holder for Performance and Partnerships, and Councillor Hunt, Portfolio Holder for Communication, Customers and Leisure, responded that being green went far beyond the issue of plants in the town centre. For example, the administration had invested significant resources into improving recycling and reducing carbon emissions. Councillor Smith, Portfolio Holder for Resources and Business, indicated that these planters had been funded by the Town Centre Partnership and therefore were not empty as a result of budget cuts by the Council.

Peter Lynn addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). In view of the importance of the bus station to local residents and businesses he invited the Council to reaffirm its commitment to a high quality bus station in the town centre and to state that it was exploring all possibilities, including a variation to the legal agreement with Sir Thomas More. The Council should confirm the minimum criteria it would consider acceptable for the bus station. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy indicated that a written response

would be sent.

Paula Whitney addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). She urged action to implement the statements in the Strategic Plan Action Plan relating to cycling and bus travel. The importance of a car free High Street was stressed. The High Street needed to be kept open to public transport. The bus station was crucial to maintaining effective public transport. All buses from the east of the borough went through the bus station and it contained important facilities for passengers. If the legal agreement was changed the bus station could be retained on its current site. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy indicated that a written response would be sent.

In response to the comments made by the Have Your Say! Speakers on the bus station, Councillor Turrell indicated that the Council remained committed to a bus station in the town centre and was working hard to deliver this, together with Essex County Council. Initiatives such as super stops would be delivered in conjunction with the bus station, not in place of it. The possibility of the bus station remaining on the temporary site had been thoroughly investigated but this was not possible. Information about proposals for a new bus station would be made public as soon as the Council was in a position to do so.

Councillor Kevin Bentley (in respect of his membership of Essex County Council and as a Director of Colchester Town Partnership) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

15. Local Strategic Partnership, Colchester 2020 - Performance Management Framework

The Chief Executive submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix A to these minutes in the Minute Book.

Councillor Bentley attended and, with the consent of the Chairman, addressed the Cabinet. He welcomed the Performance Management Framework but asked how progress against the actions set out in the document would be measured.

Councillor Young, Portfolio Holder for Street and Waste Services, indicated that the Framework was an evolving document and that targets and measures would be introduced as it developed.

RESOLVED that: the Performance Management Framework attached to the Chief Executive's report be endorsed.

REASONS

At its meeting on 18 March 2009 the Cabinet endorsed the revised Sustainable Community Strategy for consideration by the Local Strategic Partnership Assembly Meeting on 26 March 2009. At that meeting the revised Sustainable Community Strategy was adopted. As a result of this adoption, it was clear that the Local Strategic Partnership, Colchester 2020 needed to introduce a revised Performance Management Framework to achieve the objectives set out as part of that Sustainable Community Strategy.

ALTERNATIVE OPTIONS

Not to have a Performance Management Framework but to work purely to the overall objectives within the Sustainable Community Strategy. This would make it much more difficult for the partnership to assess its performance and for other organisations and agencies to scrutinise the effectiveness of the Local Strategic Partnership. Therefore, no Performance Management Framework could be devised but this was not recommended.

Councillor Tim Young (in respect of his spouse being a member of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Lyn Barton and Councillor Anne Turrell (in respect of their membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

16. Strategic Plan Action Plan 2009/10

The Executive Director, Ann Wain, Head of submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix B to these minutes in the Minute Book.

RESOLVED that: the Strategic Plan Action Plan for 2009/20 be approved.

REASONS

In order to ensure delivery of the overall Strategic Plan annual action plans need to be approved to enable progress to be monitored.

ALTERNATIVE OPTIONS

Without an annual action plan the progress towards the overall plan cannot be monitored.

17. 2010/11 Budget Strategy and Timetable and Medium Term Financial Forecast

The Head of Resource Management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix C to these minutes in the Minute Book.

Councillor Willetts attended and, with the consent of the Chairman, addressed the Cabinet. In his capacity as Chairman of the Finance and Audit Scrutiny panel he noted the proposals in paragraph 12 of the Head of Resource Management's report, but asked for a formal response to the Panel in relation to the recommendation it made at its meeting on 6 April 2009.

In his capacity as Shadow Portfolio Holder for Resources and Business, he questioned some of the assumptions that had been used in the budget report, particularly the staff pay rise of 1% and a Council tax rise of 2.76%. He noted that even in the challenging circumstances of the previous financial year the Council had achieved a surplus of £272 000 and such a surplus was likely to be achieved this year. The Council should acknowledge the economic challenges faced by residents and agree now to a Council tax rise of no more than 1% and use this assumption to underpin the budget planning.

Councillor Offen, Portfolio Holder for Resources and Business, introduced the budget report and in response to Councillor Willetts comments, explained that the difficulties faced by residents were well understood. The 2.76% figure was just a working figure at this stage which would be adjusted as the budget process evolved. He stressed that he was aiming for the budget process to be as transparent as possible. In relation to the timetable, the budget would also be considered by the Strategic Overview and Scrutiny Panel at its meeting on 9 December 2009.

Councillor Smith, Portfolio Holder for Culture and Diversity, explained that the position of the Housing Revenue Account was improving due to more effective management of voids. In respect of the revenue budget he explained that the staff pay rise of 1% had already been agreed as part of a two year deal. This decision had not been called in at the time.

RESOLVED that:-

- (a) The pre-audit outturn position for the financial year 2009/10 be noted;
- (b) The budget forecast, approach and timetable for the preparation of the 2010/11 budget be noted, with the addition of a budget update at the meeting of the Strategic Overview and Scrutiny Panel meeting on 9 December 2009.
- (c) The updated Medium Term Financial Forecast for the period to 31 March 2012 as set out at Appendix A of the Head of Resource Management's report be noted.
- (d) The latest position in respect of the Capital Programme be noted and the proposed release of funding as set out at paragraph 7 of the Head of Resource management's report be agreed.

REASONS

The Council was required to approve a financial strategy and timetable in respect of the financial year 2010/11 and a Medium Term Financial Forecast for the two subsequent financial years.

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet.

18. Disposal of Land at Layer Road

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix D to these minutes in the Minute Book.

Councillor Hazell attended and, with the consent of the Cabinet addressed the Cabinet to indicate that contrary to the contents of paragraph 8.1 she had not been consulted. However, she supported the proposals in the report. Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy, apologised for this oversight and promised she would be kept informed in future.

Councilor Offen, Portfolio Holder for Resources and Business, explained that the Cabinet was being invited to agree to the proposals in the Head of Strategic Policy and Regeneration's report in principle. There remained considerable work to bring the proposals forward. Councillor Smith, Portfolio Holder for Culture and Diversity, and asked that the Council should seek to retain an interest in the land if at all possible, so that it could influence future use of the land if the proposed use were to cease .

RESOLVED that:-

- (a) The disposal of the land at Layer Road to a suitably experienced provider for the development of an extra-care housing scheme be agreed in principle.
- (b) The disposal of the land required for the extra-care scheme at nil value to the affordable housing provider in return of nomination rights to the scheme be agreed in principle.
- (c) Officers be authorised to explore options for the disposal of the remainder of the land that will not be required for the extra-care scheme.

REASONS

Disposal would release a key site for a residential based extra-care development and also assist the Council in meeting its strategic objectives, as set out in its Strategic Plan. It would also release the Council of the costs associated with securing the site. Sale of the site on the open market had not been successful. The state of the housing market impacted on the price at which land could be sold. Although the site was empty, it was still costing the Council to secure the site.

ALTERNATIVE OPTIONS

A task and finish group of officers and Portfolio Holders had considered alternative options for the site. These are outlined below, along with the reason why they were rejected:-

- Seek open market sale – The site had already been marketed twice without successful conclusion. From previous experience the process was likely to be drawn out. The Council's Agents expressed concern about the impact on the land value of increasing the affordable housing contribution from 25% to 35%. For these reasons this option was rejected.
- Pursue a "land swap" – No suitable sites could be identified and on this basis this option was rejected.
- Change planning use/engage public sector partners to develop site/mothball – these were rejected as they were either not deliverable or not desirable.
- Develop the site for 100% affordable housing – this was not considered to be as sustainable for a site of this size as the preferred option

Councillor Lyn Barton, Councillor Paul Smith and Councillor Tim Young (in respect of their membership of the Board of Colchester Borough Homes)

declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

19. Council Dwellings Rent Reduction 2009-10

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix E to these minutes in the Minute Book.

RESOLVED that the reduction in dwelling rents for Council tenants in 2009/10 which result in an average decrease of £2.00 per week in the current financial year be agreed.

REASONS

Financial Procedures required the Head of Strategic Policy and Regeneration to prepare detailed Housing Revenue Account estimates setting the new rent levels for the new financial year, for approval by the Cabinet.

ALTERNATIVE OPTIONS

Not to implement the proposed reduction in Council dwelling rents for 2009/10.

20. Colchester Allocation of 2009/10 Haven Gateway Growth Area Funding

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix F to these minutes in the Minute Book.

RESOLVED that the allocation of Growth Area Funding by the Haven Gateway Partnership for Colchester Regeneration Projects for the period April 2009 to March 2010 and the provisional funding allocation for 2010-2011 be noted.

REASONS

(a) Growth Area Funding was a key part of the external funding process which contributes substantially to delivery of key projects within the Council's Regeneration Programme.

(b) It was important to understand the funding mechanism behind the delivery of these key projects shown within the Council's Capital Programme.

ALTERNATIVE OPTIONS

(a) The allocation had already been approved by the Haven Gateway Partnership Board which had Colchester's Chief Executive and the Leader as representatives for the Council.

(b) Many projects had been affected by the lack of private sector funding due to current economic conditions therefore public funding through Haven Gateway was particularly important in supporting the delivery of key Colchester projects.

21. Performance Report 2008/09

The Executive Director, Ann Wain, submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix G to these minutes in the Minute Book.

Councillor Bentley attended, and with the consent of the Chairman, addressed the Cabinet to express his concern that the number of households in temporary accommodation was increasing and that the indicator relating to the payment of invoices on time had not been met.

Councillor Dopson, Portfolio Holder for Performance and Partnerships, stressed that the Cabinet were also concerned about the rise in the number of households in temporary accommodation. This was a consequence of the current economic climate and the Council was working aggressively to reduce the number as soon as possible. In respect of the indicator relating to invoices, Councillor Offen, Portfolio Holder for Resources and Business, explained that this had only missed by 0.3%. This was a consequence of introducing a policy of ensuring invoices from local suppliers were paid within 20 days, which caused a slight slippage on other invoices.

RESOLVED that performance against the key indicators be noted.

REASONS

The information represented the key areas of performance for the Council. In particular it covered the areas that were judged by the Audit Commission.

ALTERNATIVE OPTIONS

It was a requirement that the Council report this information to the Audit Commission and it would inform the areas that were judged by the Audit Commission.

22. Appointments to External Organisations and Council Groups

The Head of Corporate Management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix H to these minutes in the Minute Book.

RESOLVED that:-

(a) The representatives for the Municipal Year 2009/10 to the various external organisations and Council groups listed in Appendix A of the Head of Corporate Management's report be agreed, such appointments to cease if the representatives cease to be members of the Council during the year subject to the inclusion of the Council for Protect Rural Essex in Appendix A and for Councillor Blundell to appointed as the Council's representative.

(b) To confirm that those Councillors who are not members of the Council groups for the Municipal Year 2009/10 be confirmed as a pool of members able to act as substitute members on Council groups, in accordance with the normal requirements relating to substitute members set out in the Council's Constitution.

(c) The Leader of the Council be authorised to make a determination where a nomination was deemed to be in dispute.

REASONS

(a) It was important for the Council to continue to make formal appointments to certain organisations and council groups such as those with statutory functions, the Council's key strategic and community partners and groups with joint working arrangements. These groups were identified in Appendix A of the Head of Corporate Management's report.

(b) However, there were a number of groups and organisation whereby it would be more appropriate for links to be maintained through the Council lead officer or relevant Portfolio Holder, rather than by a formal appointment to the organisation. These Groups were identified in Appendix B of the Head of Corporate Management's report.

(c) At Appendix C of the Head of Corporate Management's report were those appointments which would cease as a consequence of the work of the group being completed or no longer being funded by the Council.

ALTERNATIVE OPTIONS

No alternative options were proposed other than to authorise the Leader of the Council to make a determination where a nomination was deemed to be in

dispute.

23. 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 and a copy of which appears as Appendix I to these minutes in the Minute Book.

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.

24. Visual Arts Facility: Recommencement of Works

The Executive Director, Ian Vipond, of submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix J to these minutes in the Minute Book.

Andy Hamilton addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). He expressed concern that £17 million had already been spent on the Visual Arts Facility and that it was now proposed to spend a further £6.7 million of public money. Most of this would not be spent on construction but would go to legal advisors and project managers. Concern was also expressed that the new project managers had been awarded the contract without competitive tender. The project had been a design disaster that was bound to fail. Opposition to the project would not stop even when the Visual Arts Facility was built. Firstsite would not be able to cope with managing the facility.

Councillor Smith, Portfolio Holder for Culture and Diversity, explained that the Council had no realistic alternative than to agree the proposal in the Executive Director's report. He also announced that the Council had received a pre-action letter from Banner Holdings. The Council had twenty-eight days to respond. The parties could either seek to resolve the situation or proceed to legal proceedings. No comment could be made at this stage on what course

the Council would seek to take or on potential outcomes.

RESOLVED that the procurement of the recommencement of works on the Visual Arts Facility be authorised and the commencement of spending of the further £2 million of capital allocated to the project within the Council's capital programme agreed by full Council on 3 December 2008 be authorised.

REASONS

A significant amount of work had been done to assess the recovery of this project since the decision was made to end the contract with the main contractor. Project costs had been reassessed and further work was being done by the new project managers (Mace) to assess the appropriate procurement of the remaining works. In order to maintain the option of using existing sub-contractors, where it was in the Council's interest to do so, then entering into re-negotiated or fresh contracts may be desirable and access to capital funding would be required. Initially this was likely to involve the £17.8m existing funding package that had previously been agreed and was in place, but at some stage the procurement would move to the point that access to the allocated additional funding was required.

ALTERNATIVE OPTIONS

Further work continued to be done to assess future procurement options and there was likely to be a further tendering process for a significant part of the remaining works. It could therefore have been an option to leave all decisions around recommencement to that point. However this could miss opportunities to recommence work quicker and through advantageous terms with some of the previous sub-contractors, both of which had the potential to reduce final project costs. Given that the current assessment of costs was that the project could be delivered within the revised budget, it was considered that the best value option is to allow negotiations to continue and, where appropriate, for contracts to be signed for the recommencement of works.

25. Visual Arts Facility: Legal and Associated Issues

The Cabinet 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 Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972.

The Executive Director submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix K to these minutes in the Minute Book.

Councillor Bentley attended, and with the consent of the Chairman, addressed the Cabinet to express the Conservative group's support for the proposals in the report and for the completion of the Visual Arts Facility.

RESOLVED that:-

(a) Legal proceedings be issued for the reasons stated against the third parties mentioned in the Executive Director's report.

(b) The revenue budgets be approved in relation to legal costs in relation to any legal proceedings against third parties for the reasons set out in the Executive Director's report and it be agreed that officers could incur the relevant expenditure.

(c) The specific delegation set out in paragraph 4.3 of the Executive Director's report be agreed.

REASONS

As set out in the Executive Director's report.

ALTERNATIVE OPTIONS

As set out in the Executive Director's report.