

GROWTH & INFRASTRUCTURE SCRUTINY COMMITTEE

MINUTES of the meeting held on Wednesday, 16 September 2009 commencing at 10.00 am and finishing at Time Not Specified

Present:

Voting Members: Councillor Patrick Greene – in the Chair
Councillor Mrs Anda Fitzgerald-O'Connor
Councillor Lorraine Lindsay-Gale
Councillor John Goddard
Councillor Charles Mathew
Councillor David Nimmo-Smith (Deputy Chairman)
Councillor Anne Purse
Councillor Lawrie Stratford
Councillor John Tanner
Councillor Melinda Tilley

Officers:

Whole of meeting:

Alexandra Bailey, Sue Whitehead (Corporate Core),
Director of Environment & Economy

Part of meeting:

Agenda Item	Officer Attending
5. Call in of Decision by the Cabinet – Oxfordshire Residual Waste Treatment Procurement – Selection of a Preferred Bidder	N. Hyde, A. Pau; F. Upton; (Environment & Economy) Head of Communications, Marketing & Public Affairs, N. Graham, and P. Smith (Corporate Core)
5. Access Science Vale UK	John Disley (Environment & Economy)
6. Work Programme	C. Brodie-Levinsohn (Corporate Core)

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with a schedule of addenda tabled at the meeting, and decided as set out below. Except insofar as otherwise specified, the reasons for the decisions are contained in the agenda, reports and schedule, copies of which are attached to the signed Minutes.

4/09 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS
(Agenda No. 1)

Apologies for absence and temporary appointments were received as follows:

Apology from	Temporary Appointment
Councillor Strangwood	Councillor Stratford
Councillor Nicholas P. Turner	Councillor Tilley
Councillor Gibbard	Councillor Fitzgerald-O'Connor
Councillor D Turner	Councillor Goddard

5/09 DECLARATIONS OF INTEREST - SEE GUIDANCE NOTE ON THE BACK PAGE
(Agenda No. 2)

Councillors Nimmo-Smith, Lindsay-Gale and Anda Fitzgerald-O'Connor declared a personal interest during discussion of agenda item 4 on the 'Call in of 'Decision by the Cabinet – Oxfordshire Residual Waste Treatment Procurement – Selection of a Preferred Bidder' by reason of their membership of the Planning & Regulation Committee.

Councillors Greene and Mathew declared a personal interest during discussion of agenda item 4 on the 'Call in of 'Decision by the Cabinet – Oxfordshire Residual Waste Treatment Procurement – Selection of a Preferred Bidder' by reason of their substitute membership of the Planning & Regulation Committee.

Councillor Tanner declared a personal interest during discussion of agenda item 4 on the 'Call in of 'Decision by the Cabinet – Oxfordshire Residual Waste Treatment Procurement – Selection of a Preferred Bidder' as Chairman of the Oxfordshire Waste Partnership.

6/09 MINUTES
(Agenda No. 3)

The minutes of the meeting of the Growth & Infrastructure Scrutiny Committee (CG3) held on 22 July 2009 were approved and signed subject to the following:

Date to be corrected to read 22 July 2009.

Name of Chairman to be corrected to read Councillor Patrick Greene and Councillor David Nimmo-Smith and the Director of Environment & Economy to be added to the list of those present.

7/09 PETITIONS AND PUBLIC ADDRESS

(Agenda No.)

The following requests to address the Committee had been agreed.

4. Call in of Decision by the Cabinet – Oxfordshire Residual Waste Treatment Procurement – Selection of a Preferred Bidder	Mr B. Steventon, Ardley with Fewcott Parish Council
	Mr C Owen, Sutton Courtenay Against the Incinerator
	Mr P. Gibbs
	Mr M. Gammond, Chair of Bucknell Parish Council
	Ms H. Marshall Watt
	Mr J. Kightly

8/09 CALL IN OF A DECISION BY THE CABINET - OXFORDSHIRE RESIDUAL WASTE TREATMENT PROCUREMENT - SELECTION OF A PREFERRED BIDDER

(Agenda No. 4)

The Chairman invited Councillor Hudspeth to the table as Cabinet Member for Growth & Infrastructure.

The Chairman stressed that the Scrutiny Committee could only consider those grounds set out in the call documents to see if there was justification to ask Cabinet to review. He set out the process to be followed

Mr Steventon referred to item 1 in the grounds for call in supporting the view that the meeting had been poorly publicised and querying if the Cabinet meeting had been legally convened. He also supported a review on financial grounds.

Mr Owen supported the call in as he felt that the procurement decision was premature in being made prior to the determination of the planning applications and the environment agency permits.

Mr Gibbs asked the Committee to examine the mistakes that he felt Cabinet had made and to suggest an independent review. He referred in particular to decisions to make the process technology neutral that worked against the environmental targets set by the County Council; problems with public engagement and the existence of alternative technology.

Mr Gammond drew attention to a joint letter of objection, signed by 19 parish councils questioning the process. He felt that the Cabinet decision had raised more questions and that the mechanism for determination was totally flawed.

He queried the decision being taken before the planning applications were considered and raised concerns over what he saw as the preferred bidders' lack of experience

Ms Watt expressed the view that the notification of the Cabinet meeting was inappropriate given the importance of the decision to be taken. She expressed concern that one of the preferred bidder was not roofing over the bottom ash storage as was proposed in the other bid. She queried whether the bid represented true value for money and queried whether any of the financial information would be made available.

Mr Kightly expressed concern over the environmental impact. He was also concerned at the apparent lack of a break clause. He felt that the decision would work against recycling and innovation and that alternative solutions using newer technologies should be sought.

Councillor Mrs Catherine Fulljames, speaking as a local member noted the preferred bidder site was adjacent to one of the proposed eco-town sites. She complained that despite making a formal approach as a local member she had not been allowed to see the papers containing exempt information. She stated that the public did not see that it was the correct course of action to decide the procurement before the planning decisions had been taken. She noted the length of the contract and felt that this had been a big decision to take without knowing who the bidders were. She asked why a site closer to Oxford could not be found.

Councillor Stewart Lilly, speaking as a local member noted that a time of financial cuts the contract proposed was a very expensive contract over 25 years. He queried whether there was certainty that this was the correct way forward. He referred to sites that he was aware of that were experiencing problems in terms of their environmental impact and reliability. He also referred to decisions of other authorities moving away from the idea of an incinerator. He referred to the ongoing increase in recycling and enquired in to the viability and capability of the Council of supplying sufficient materials. He also expressed concern that he had not seen the Annexes containing exempt information.

Responding to the point on exempt papers the Director of Environment & Economy stated that Councillor Mrs Catherine Fulljames had made a formal request and had now received an acknowledgement of her need to see the restricted papers. A set had been sent to her. He added that the question of restricted papers was set out in the constitution but was not clear cut. Members needed to demonstrate a need to know. The papers related to commercial details of negotiation and there were issues of commercial confidentiality. Nick Graham confirmed that the Director was correct and that the constitution reflected legal principles and set out the process including a right to appeal a decision not to make papers available.

Councillors Tanner stated that he did not find this satisfactory and requested that he receive a copy of the papers.

Call In A

Point 1 – *The meeting was poorly publicised* - Councillor Purse spoke in support of point 1 stating that the meeting was poorly advertised and not visible in the meetings calendar on the web site on 4 September. It was also the only instance she was aware of Cabinet meeting on a Monday. She felt that the meeting took most people by surprise.

In response the Head of Communications, Marketing & Public Affairs detailed the efforts made to publicise the meeting including giving a detailed briefing to the media on 28 August. The item was carried on local radio and television and local newspapers carried pieces on the decision to be taken. The Director of Environment & Economy added that the meeting itself had been properly notified and the steps outlined had been to ensure that external publicity had been maximised. The web site was one medium of publicity and there had been a problem that had since been rectified.

Responding to further concerns that the lack of web site information was not in the spirit of the law relating to publicising meetings the Director of Environment & Economy refuted such claims. The web site was a passive medium and they had taken the view that there needed to be complex and comprehensive active publicity involving a multi media approach.

Point 2 – *Decisions on the planning applications should have been made before the procurement decision* - Councillor Goddard stated that although aware of the legal arguments that procurement and planning were separate decisions everyone was liable to influence despite our determination to be impartial. That being the case he felt that it was better to take the planning decision before the procurement decision.

It was noted that call In B made a similar point and Councillor Tanner also spoke in support. He noted that if the planning application failed then the whole process would fall apart.

During discussion the view was expressed that in respect of the process it would be the same which ever decision came first and that the Planning & Regulation Committee had a difficult decision either way round.

The point was made that planning was a quasi judicial function within a planning framework. The decision there was made on planning merits. The procurement decision was not and it was queried why it could not then be constrained by following the planning application.

With reference to slides the Committee was advised that in putting the procurement decision first the Council had followed standard government guidance. It was noted that planning applications could be put forward independently of any procurement process.

Point 3 – *The decision was made on financial grounds rather than environmental grounds* - Councillor Goddard expressed the view that environmental grounds had been given insufficient weight in the procurement process in disregard of European standards and the Council's own framework. Although the aim had been a technology neutral process he felt that this was not the outcome. Only one process was considered and other technologies had been ignored. Incineration could be the wrong route as other ways had not been considered. He felt that if the argument in response was that it was too late to turn back he was not convinced.

The Director for Environment & Economy replied that the decision was the end point of a nearly three year process. There were points along the way where other processes were considered. The Committee was further advised that following detailed assessment both bids had passed the technology and environmental thresholds and they noted the tender evaluation criteria and weightings.

Point 4 – *There is no specific "break clause" proposed for the contract* - Councillor Purse queried whether the Council could be confident in 25 years time that this was the technology we would want to be using. There were new technologies and they only required time to become established.

In response the Committee was advised that there was no specific break clause but there was a right to voluntarily terminate and to terminate for breach of contract. The reasons for the length of the contract were explained. The right to voluntarily terminate would be expensive without due cause.

During discussion Members queried what would constitute due reason and Councillor Tanner expressed the view that a break clause meant the right to break the contract without undue compensation.

Point 5 – *There was confusion about the mandatory elements of the tendering process* - Councillor Purse explained that the question under point 5 had come up at Cabinet and queried how a bid could come forward that referred to a specified amount of material.

In response the Committee was advised that the question had been answered at Cabinet and there had been no doubt that both bids were fully compliant. The desire for exclusivity was a preference and not a contractual requirement. The process was designed to get the best bid from each tenderer. The Council knew from early on that one tender would not propose exclusivity and it was not unusual to get exclusivity. The Cabinet Member for Growth & Infrastructure confirmed that there had been discussion on this matter at Cabinet and that following an explanation from officers Cabinet Members had been clear that the bids were contractually compliant.

Point 6 – *There was no report on the performance and track record of the two companies, so that element was not properly considered* - Councillor Purse speaking in support of point 6 referred to earlier comments from a local member regarding the performance of one of the tenderers at an

existing site. She queried whether proper checks including site visits had been carried out.

In response the Committee was advised that the decision being made at Cabinet was the end of a long procurement process that had followed standing orders, with a Board, member involvement and site visits being part of it. It was confirmed that site visits had continued right up to the last month.

Point 7 – There was inadequate consideration of capacity in the context of Oxfordshire's needs and no consideration of the environmental impact of importing waste - Councillor Purse highlighted two issues. Firstly that she felt that the facility was larger than was needed and would need to be fed with waste from other Counties and this element had not formed part of the environmental impact assessment. Secondly not so much residual waste was being made as recycling levels increased. It was possible that there would be only very low levels of residual waste attracting landfill tax.

It was noted that call in B made a similar point and Councillor Tanner also spoke in support. He referred to the need to divorce planning and procurement considerations. He had doubts about how the plant would be fed and queried whether waste would be shipped in from elsewhere and what impact it would have.

The Director of Environment & Economy explained that the size of the facility was a commercial decision and that for the Council the question was whether it was sufficient for current and future needs. He explained the Waste Strategy that had been developed with the Oxfordshire Waste Partnership and felt that with the decision that had been taken the County had the ability to maximise this waste strategy to deliver waste minimisation, recycling and to then deal with residual waste.

It was noted that the question of transporting waste was a matter that would be considered by the Planning & Regulation Committee.

During discussion the position in relation to commercial and industrial waste was explored.

Call in B

The following reasons were given for the request:

that this is not the best method of dealing with residual waste, that sufficient waste to feed the incinerator may not be available from within Oxfordshire and that planning permission for the Ardley site has not yet been considered.

Councillor Tanner stated that two of the points had already been dealt with. He stressed that in his view it was not the best method of dealing with residual waste. He was proud of the work of the Oxfordshire waste partnership in increasing the recycling levels and reducing waste. His major concern was that whilst incineration was better than landfill it was not the

best available method. Other systems should have been investigated such as mechanical biological treatment. It was important to look again at all the technologies available and he feared that the choice had not been thorough.

The Director of Environment & Economy replied that there had been a review two years ago and that the procurement process had itself taken three years.

Andrew Pau, explained how the technologies had been looked at in the context of national policies and national concerns. With regard to global warming potential the bids had been assessed using a Government standard assessment tool. The tender offers provided very good environmental benefit on a par with other technologies.

During discussion of the potential for heat from combined heat and power the Committee was advised that heat could be piped several miles and that in future there might be development opportunities that could make use of the availability of CHP.

The Chairman thanked the public speakers for their comments and members of the Committee for their views. He noted that he had attended the cabinet meeting as an observer. Having listened very carefully to all the arguments at today's meeting he proposed that no further action be taken because the Committee was satisfied that the decision was properly made.

During discussion the following were amongst the points made:

- 1) Councillor Melinda Tilley stressed that her decision would be made on the process followed and not on a review of the decision taken.
- 2) Councillor Tanner stated that he would be voting against the recommendation from the Chairman as he was not convinced by the answers he had received. He felt that there was doubt about the best way to proceed and felt that the right thing would be to examine again and that failure to do so would be a dereliction of duty.
- 3) Councillor Purse highlighted that there was still an issue that the public did not feel that they had been informed.
- 4) Some other members felt assured by the information they had heard at the meeting and were convinced that the Council was taking the right course of action following a lengthy process.
- 5) Some further concern was raised that members had not been allowed access to the restricted papers.

RESOLVED: (on a motion from Councillor Patrick Greene, seconded by Councillor David Nimmo-Smith and carried by 7 votes to 3) to take no further action because the Committee was satisfied that the decision was properly made.

9/09 ACCESS SCIENCE VALE UK (SCOTS)

(Agenda No. 5)

The Committee received a presentation on the Study that had been considered at Cabinet on 15 September. It was agreed that all committee members receive a copy of the presentation including A3 copies of the maps.

Councillor Lilly speaking as a local member indicated that local parish councils welcomed the work undertaken so far. The initial draft appeared to address the concerns they had. They were anxious that the local dialogue be maintained and he formally requested that this contact be maintained with himself and the parish councils.

During discussion members raised the following points:

- 1) There was growing local concern over the pressure on river crossings.
- 2) The importance of liaising with neighbouring authorities.
- 3) That it was key to keep local members informed. The Chairman thanked officers who had come out recently to a local meeting with residents.
- 4) The Chairman noted that there would be a short report from the working group to the next meeting.
- 5) Members raised a number of individual issues relating to particular roads and issues.

Responding to comments John Disley advised that there was a balancing act to be achieved between the timescales of the LDF and the LTP3. However they were used to dealing with processes having differing timescales. There were no proposal in the foreseeable future to upgrade the A34. With regard to the proposals for a reservoir these were at a very early stage and could not be taken into account very much.

RESOLVED: to note the presentation.

10/09 WORK PROGRAMME

(Agenda No. 7)

The Committee considered a paper (GI6) summarising existing work and proposals for future work based on earlier discussions by the committee future commitments. Councillor Mathew noted that there was no mention in the minutes of the last meeting relating to CPZs. It was suggested that their operation in Oxford could be a future select committee to see assess their impact.

It was agreed that committee members receive a copy of the current archaeological policy before the next meeting.

RESOLVED: to prioritise:

- question & answer sessions on biodiversity, the Council's policy on archaeological remains in respect of planning applications and park and ride;
- a select committee on the Council's approach to reducing its carbon footprint as set out in Annex A to the report.

11/09 FORWARD PLAN

(Agenda No.)

The Committee considered whether there were any items from the current Forward Plan on which it might wish to have an opportunity to offer advice to the Cabinet before any decision was taken.

No additional topics were identified at this stage.

12/09 SERVICE & RESOURCE PLANNING 20010/11 TO 2014/15

(Agenda No. 8)

RESOLVED: to hold an informal budget briefing

13/09 INFORMATION SHARE

(Agenda No.)

The Committee noted the following:

Subject Matter	Document
Finmere Quarry	Update from Councillor Michael Gibbard
Environment & Economy Seminar – 14 October 2009, County hall	Members' attention was drawn to the seminar to be held in October

..... in the Chair

Date of signing 2009

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