

GROWTH & INFRASTRUCTURE SCRUTINY COMMITTEE

MINUTES of the meeting held on Monday, 9 August 2010 commencing at 10.00 am and finishing at 12.15 pm.

Present:

Voting Members: Councillor David Nimmo-Smith – in the Chair

Councillor Roger Belson
Councillor Pete Handley
Councillor Stewart Lilly (for Councillor Michael Gibbard)
Councillor Charles Mathew
Councillor Zoé Patrick (for Councillor David Turner)
Councillor Anne Purse
Councillor Keith Strangwood
Councillor John Tanner
Councillor Nicholas P. Turner (Deputy Chairman)

Other Members in Attendance: Councillor Ian Hudspeth, Cabinet member for Growth & Infrastructure (for agenda Item 4)
Councillor Larry Sanders (for Agenda Item 4)

Officers:

Whole of meeting Chief Executive,
Corporate Performance and Review Manager;
Assistant Head of Finance (Procurement)
A. Pau; F. Upton; R Finlayson (Environment & Economy)
External Consultants – A. Ferguson (Ernst & Young), J. Hawkins (Trowers & Hamlins
S. Whitehead (Chief Executives)

The Scrutiny 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 agreed as set out below. Copies of the agenda, reports and schedule are attached to the signed Minutes.

26/10 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

Apologies for absence were received on behalf of Councillors Michael Gibbard (Temporary appointment: Councillor Stewart Lilly) and David Turner (Temporary appointment Councillor Zoe Patrick).

27/10 SPEAKING TO OR PETITIONING THE COMMITTEE

(Agenda No. 3)

The following requests to address the meeting had been agreed:

Speaker	Item
John Kightley (Chair, Bucknell Parish Council) Hazel M Watt (Deputy Chair, Bucknell Parish Council) Mr Brian Wilson, Weston on the Green Dr Ian Groves, Ardley resident Mr Mark Ellis, Ardley resident Mr Jonothan O'Neill, Chairman, Ardley Against the Incinerator Councillor Larry Sanders	4. Call in of Decision of the cabinet – Oxfordshire Residual Waste Treatment Procurement – Award of Contract.

28/10 CALL IN OF DECISION BY THE CABINET - OXFORDSHIRE RESIDUAL WASTE TREATMENT PROCUREMENT - AWARD OF CONTRACT

(Agenda No. 4)

The Scrutiny Committee had before it the report of the Director for Environment & Economy and Assistant Chief Executive & Chief Finance Officer to Cabinet on 27 July 2010 together with the draft minutes of that meeting.

The Chairman before inviting the speakers to address the Committee referred to emails and letters that members had received that made representations on the agenda item. He noted that some issues relating to location, traffic problems and environmental concerns were the subject of separate planning and environmental processes. He explained the remit of the Committee today was to review the procurement decision taken by Cabinet.

Mr John Kightley, Chair, Bucknell Parish Council spoke in support of the decision being referred back to Cabinet for further consideration. Mr Kightley felt that the decision was based on a market led policy and was commercially based. There was no alternative plan should planning permission be refused and he commented that in Europe and the US the use of the technology was declining. He queried why consideration had not been given to alternatives and sited a development in Yorkshire that was less expensive but achieved significant levels of recycling. He believed that the decision showed that the County Council was not listening to government views concerning the detrimental link between recycling and waste treatment.

Hazel M Watt, Deputy Chair, Bucknell Parish Council spoke in support of the call in commenting that she had attended the recent Public Inquiry. Viridor had stated that Combined Heat & Power was a preferred solution. However this was not being delivered. She referred to the length of the contract period that could be up to 35

years. Should planning permission be granted she believed that the County Council would be liable to meet the costs of conditions imposed by the Public Inquiry process. She referred to a quote in the Cabinet report about the robust case put forward by Viridor at the Public Inquiry. However she noted that this report had been written before the Public Inquiry had been completed and she referred to comments from County Council officers in their summing up that were contrary to this view. In summary she believed that the decision should be reviewed so that good money was not thrown after bad, because the government was committed to transparency and cutbacks and because an incinerator tax was a possibility.

Ms Watt, responding to a question from Councillor Handley about the £3m in fines that the Council could face if they did nothing, accepted that that was a lot but that it could cost more if the decision went ahead now. She believed that at the very least the decision should be deferred.

Mr Brian Wilson, Weston on the Green spoke in support of the call in and submitted a statement to members. He commented that recycling was increasing and challenged the view that construction costs were rising. He highlighted concerns about the possibility of compensation payments and the possibility of a changed policy from the new government. He believed that it was unwise to sign a contract at this point and felt that a relatively small delay of 5 months to enable the planning decision to be known was the right way forward.

Mr Mark Ellis, an Ardley resident spoke in support of the call in referring to the danger to local children of increased traffic and to pollution concerns. He also referred to the visual impact of the chimney.

Dr Ian Groves, an Ardley resident, emphasised the pleasant and green environment of Ardley and the expectation of residents that this would be enhanced by the restoration of the land fill site in due course. He recognised and subscribed to the need to move waste up the waste hierarchy.

He was concerned that 9 months after the original planning application had been rejected there was no alternative. A smaller scale scheme would provide benefit to Oxfordshire but would be commercially unviable. He questioned whether the decision should be based primarily on the needs of local people, whose quality of life would deteriorate or on benefits to private business. On a point of clarification Councillor Mathew advised that Viridor was a publically quoted company. Mr Groves continued that a smaller facility could be designed having less impacts on the environment and the local communities. The current scheme was twice the size required and he felt that the Council had been blinkered to other proposals. Mr Groves referred to the financial implications if planning permission were refused or if it was allowed subject to conditions for which cost that the County Council would be liable. The Group considered that the decision should be held until the results of the planning application were known.

Mr Jonathan O'Neill, Chairman, Ardley Against the Incinerator spoke in support of the call in highlighting the overwhelming opposition in the local area. He referred to the planning and permit risks of entering into a contract now and commented that business lecturers he had spoken to had felt that the situation was frightening in its uncertainty. He commented that there was no back up plan should planning

permission not be granted. He referred to the financial penalties faced by the Council, once the contract was signed, if it did not go ahead or if the development was not completed in the set timescales. If the contract was based on need then it was reasonable to await the outcome of the planning application.

Councillor Larry Sanders spoke in support of the call in. He expressed opposition to the proposals that would pump carbon emissions into the atmosphere so that people would continue to suffer. He referred to other authorities who had changed their mind about going forward with an incinerator.

Councillor Sanders responding to a question from Councillor Tanner explained that he did not have the numbers relating to CO² emissions but that the question was whether the proposals were better or worse than a coal fired plant for generating electricity.

Councillor Tanner spoke in support of the call in drawing attention to the arguments put forward by members of the public. He felt that there was a great danger in a 25 year contract at a time when prices were falling. There was a grave danger that the County could become a 'waste dustbin' attracting waste from outside the County. The proposal was in the wrong location and he had environmental concerns that the large chimney that was supposed to disperse pollutants would not be effective. His view was that the technology was outdated and if there were any doubts at all then the Scrutiny Committee should ask the Cabinet to look at the matter again. Responding to a query from Councillor Handley Councillor Tanner confirmed that he would have sought a call in even had planning permission been in place.

Councillor Purse spoke in support of the call in. She expressed concern that there would not be sufficient residual waste in Oxfordshire to sustain the plant and that bringing in waste from elsewhere would have high environmental costs.

Councillor Patrick spoke in support of the call in. She was concerned that before the planning permission had been granted was not the right time to make the decision. She also had concerns over waste coming from elsewhere and possible health risks of the proposals.

Following a query from a member as to the relevance of the grounds for call in the following additional points were made:

1. Councillor Purse stated that Cabinet had not considered the issue of where waste would come from as recycling levels increased.
2. She referred to guidance that she thought indicated incinerators had to provide combined heat and power (CHP). This was not the case here so the proposal was outdated.
3. Councillor Tanner added that in the view of the signatories to the call in Cabinet had not given sufficient weight to the views as expressed this morning and had given too much weight to gate charges and fines over the next 25 years.

The Scrutiny Committee received a presentation from officers and external consultants (first given to Cabinet) that explained the context for the decision; the key

aspects of the contract and key risks; the financial deal and value for money assessment including risk sensitivities and the closing options. Officers commented that no decision was without risk and that Cabinet had been fully briefed on all aspects of the current decision and had considered the matter for 2 1/2 hours and had heard from many members of the public. The procurement process followed had been exacting and arduous and the contract still provided the most economic option.

At this point the Chairman invited the Cabinet Member for Growth & Infrastructure to the table. The Chairman indicated that he intended to take discussion through the main sections of the report.

During discussion the following points were made:

1. A member questioned how meaningful discussion on the cost of planning permission not being granted could be when it was based on percentage figures on information that the Scrutiny Committee did not have. A member sought assurance from the Cabinet Member for Growth and Infrastructure that he was satisfied with the exempt information that he had received.
2. Greater detail was requested on the hedge fund.
3. Given that the length of the contract seemed to be an issue a member queried whether Cabinet considered any aspect of reviews of charges throughout the length of the contract.
4. The Cabinet Member was asked what circumstances would arise where he was not willing to commend the decision.

In response the Cabinet Member for Growth and Infrastructure replied that he understood the frustration of members about the exempt information. He confirmed that he was satisfied that Cabinet had had all the relevant exempt information and that the decision had been based on that information. He believed that the decision was sound. The whole process was begun on a neutral technology process and he could not surmise what the outcome would have been if a different approach had been followed.

The Assistant Head of Finance (Procurement) added that there had been a detailed process with a competitive dialogue with the preferred bidder. If officers had been unable to clarify or confirm points to their own satisfaction then the process would have gone back a stage or even begun again. He confirmed that there were no breakage points in the contract. The County was committed to 25 years and that was why there was so much care taken over the financial robustness of the proposals. He stressed that there was no obligation to deliver a specific tonnage. Andrew Pau clarified that they would however provide annual advice to the company and that was about an early accurate annual estimate of residual waste. The Committee was advised that the foreign exchange rate had not been hedged.

There followed further discussions during which the following further points were made:

5. Technology was always being updated and Cabinet was charged with making the best decision based on the most recent information available at the time. The Committee was advised that one of the most recent deals at Bexley heath

was CHP enabled but the deal had not been closed specifically on that point. There were alternative technologies such as thermal treatment available but there was a question mark over their ability to deal with all waste that gave rise to funding issues.

6. Responding to a question about the possible costs after planning and the costs of looking at alternatives the Committee was advised that it would be several million pounds at least and would take a further couple of years. There was a £6m capped figure if planning permission failed.
7. There was some discussion of the relative costs of closing now or after the planning decision was known. The various risks were detailed. There was discussion of the risks associated with the foreign exchange rates and the Cabinet's position was outlined to the Committee. The Chief Executive emphasised that the Cabinet had spent some considerable time looking at the closing options. The Cabinet Member for Growth & Infrastructure confirmed that there had been considerable questions from Cabinet about the various options.
8. Following comments about the lack of CHP, Andrew Pau stated that the solution was not CHP. It allowed for retro fitting to offer better environmental and financial performance in the future. Stephen McHale added that CHP was an additional benefit to Energy from Waste that was being provided.
9. Responding to a question about what Viridor was likely to do if the contract was not signed, Andrew Pau indicated that that would be pure speculation. What he could say was that the contract was affordable and provided value for money in the market place.

Councillor Nicholas Turner stated that whilst the Committee had not seen all the financial information he accepted that it was commercially sensitive. He believed that Cabinet did have that information and that the decision was properly taken by them in the knowledge of that information. He therefore proposed that the decision taken by the Cabinet was made with relevant information and that the decision not be referred back to Cabinet for further consideration.

During discussion of the proposal members indicated their views as follows:

1. Councillor Tanner indicated that he would vote against the proposal. His main issue was with the 25 year contract in the light of changing circumstances. It would be tying people who were children now into a very unfavourable deal.
2. Councillor Patrick proposed that the matter be referred back to Cabinet.
3. Councillor Mathew expressed concerns over the contract and suggested strongly that planning permission should be paramount. He was also unhappy about the exempt information not being available and felt that it was inappropriate for Ms Watt who had attended the Public Inquiry to have more information than members of the Scrutiny Committee. If information had been discussed at the public Inquiry then it should be available. His views were supported by Councillor Lilley. However Councillor Mathew was convinced that the process of procurement had not been taken lightly.
4. Councillor Purse indicated that she would vote against the proposal as she felt it should be looked at again.

G13(b)

On a show of hands it was:

RESOLVED: (by 5 votes to 3) to agree that the Scrutiny Committee was satisfied that the decision taken by the Cabinet was made with relevant information and that the decision not be referred back to Cabinet for further consideration.

..... in the Chair

Date of signing