

## NORTH YORKSHIRE COUNTY COUNCIL

### CORPORATE AND PARTNERSHIP OVERVIEW AND SCRUTINY COMMITTEE – CALL IN

Minutes of the Corporate and Partnerships Overview and Scrutiny Committee Call In held at County Hall, Northallerton on 12 August 2010.

#### PRESENT:-

County Councillors Liz Casling (Chairman), Val Arnold, Karl Arthur, Tony Hall (as Substitute for David Jeffels), Robert Heseltine (as Substitute for Phillip Barrett), Neville Huxtable, David Ireton, Andrew Lee, John McCartney, Steve Shaw, Peter Sowray (as Substitute for Bernard Bateman), and Geoff Webber.

#### Executive Members and Supporting Officers

County Councillors Carl Les and Clare Wood; together with the Corporate Director - Finance and Central Services, John Moore, the Assistant Chief Executive (Legal and Democratic Services), Carole Dunn and the Corporate Director - Business and Environmental Services, Dave Bowe.

#### Members Requesting Call In

County Councillors John Clark and John Savage.

#### Other Member in Attendance

County Councillor Keith Barnes.

#### Officers

Ray Busby (Scrutiny Support) and Steve Loach (Democratic Services).

#### Apologies

Apologies were received from County Councillor Philip Barrett, Bernard Bateman, David Jeffels and Brian Simpson.

There were seven members of the public in attendance.

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### **COPIES OF ALL DOCUMENTS CONSIDERED ARE IN THE MINUTE BOOK**

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#### **1. CHAIRMAN'S INTRODUCTION**

The Chairman welcomed everyone to the meeting and highlighted the purpose of the Call In, the opportunity for members of the public to speak and the order of business in relation to the substantive item on the agenda. She noted that members of the public were allowed to make general statements or ask general questions at item 2 on the agenda, which did not relate specifically to the substantive item.

She outlined how County Councillor Keith Barnes was in attendance at the meeting and would contribute where necessary, however, he was not attending as a Member of the Committee.

## **2. PUBLIC QUESTIONS OR STATEMENTS**

Mr Peter Maloney made a general statement to the Committee regarding the potential Waste PFI Scheme, and in particular the environmental implications of introducing that scheme. He made reference to the possible environmental impacts of incineration, the basis of the scheme being 60% related to environmental protection, the lack of a reference to the use of an incinerator on the County Council's website and the true cost of the waste facility. He asked whether the Working Group to be formed would determine the true costs of providing a waste incinerator, including necessary improvements to infrastructure, environmental considerations, etc and whether any of these comments would be taken into account when the final decision was made.

Mr Paul Whelan provided a definition of what due diligence meant and how that related to the process of opting for the Waste PFI Scheme. He noted that the scheme would now also be taking on commercial waste as well as domestic waste. He suggested that the figure of £320m should be checked to determine whether this would indeed be a saving to the County Council. He also asked whether the proceedings of the due diligence test undertaken would be made available before the decision as to whether to proceed with the proposal for the Waste PFI was taken by the County Council in October.

Mrs Nellie Trevelyan asked why municipal waste could not be burnt at existing facilities and whether the re-use and reduction campaigns could be developed further. She considered that conflicting waste disposal costs were being provided by the County Council. She asked how the balance of the judgement for the development of a Waste PFI Scheme had been achieved. She sought reassurance that a full promotion of local reuse has been effective and that there was not a reliance on road transport to bring in waste at a further cost to the environment. She requested that the public consultation be open and that transparency be given to the decision making process.

Mrs June Emerson referred to the problem with providing big solutions to issues and how the recent global economic crisis had proved that such solutions were vulnerable to damaging failure. She suggested that, in terms of waste disposal, there was a need to consider a number of different solutions. She outlined examples of practical solutions that could be easily implemented. She considered that there may be insufficient waste available in North Yorkshire in the future to keep the incinerator going and a long range commitment to produce unrecyclable waste in large quantities could have dangerous consequences for the environment. She considered that a Member of the Working Group should be approaching the decision from an informed environmental viewpoint.

The Chairman thanked members of the public for their questions, and asked that, where they had not already done so, the issues they raised be submitted in writing to enable a response to be provided. County Councillor Clare Wood, the appropriate Executive Member Portfolio Holder stated that she would ensure that answers were provided to the questions stated.

## **3. CALL IN OF DECISION TAKEN BY THE EXECUTIVE OF 27TH JULY 2010 RELATING TO THE MEMBERS WASTE PFI WORKING GROUP**

CONSIDERED –

The report of the Assistant Chief Executive (Legal and Democratic Services) enabling the Committee to consider whether or not it would wish to refer the decision relating to the creation of a Members Waste PFI Working Group back to the

Executive, or to the full Council, and, if so, the nature of its concerns about the decision.

The Call In Notice which had been submitted in accordance with the County Council's Constitution was outlined as follows:-

The signatories of the Call In believe that the decision to create a Members Waste PFI Working Group to conduct a due diligence check was correct. However there are various factors that will prevent the group from achieving its required aim:

- (i) There is no Councillor on the group from the Audit Committee who stated opposition to incineration of half of the municipal waste in North Yorkshire.
- (ii) There is no member of the group who supported the 'public debate' approach and thus community engagement.
- (iii) There is no member of the group who appears to approach matters from an environmental aspect as opposed to financial.
- (iv) There were no terms of reference published with the decision.

The signatories therefore object to the decision.

In line with the appropriate order of business, the Chairman invited the Decision Taker (the appropriate Executive Member and Portfolio Holder) to explain the circumstances and reasons for the decision. County Councillor Les explained that the decision to appoint the Working Group to undertake due diligence fell within his Portfolio and, therefore, he would be explaining the decision. He was supported by the Assistant Chief Executive (Legal and Democratic Services), the Corporate Director, Finance and Central Services, County Councillor Clare Wood (whose Portfolio includes waste management) and the Corporate Director, Business and Environmental Services.

County Councillor Les stated that the project would be one of the largest ever undertaken by North Yorkshire County Council and the decision taken to appoint the Members Waste PFI Working Group was for them to carry out a due diligence test on the procurement process as a matter of public interest. He noted that there had been extensive consultation on the waste strategy over several years involving Members of the County Council and he emphasised that a contract had not yet been entered into, with a decision to be made on that at the County Council meeting to be held in October 2010. All Members would be able to make a well informed decision following a series of seminars and workshops being held to provide them with an opportunity to debate and discuss the proposal.

The Executive would consider the matter before this was submitted to full Council and would make a recommendation, supported by the due diligence report from the Working Group, and all comments and correspondence, that had been provided from the extensive public consultation exercise that, would be talking place in the interim. He stated that it would be beneficial to the final decision to allow an in depth consideration of the procurement process to take place, and provide the details to Members in respect of that, through this Group.

He noted that the Working Group was a cross-party group of Members chaired by a Member of an opposition party and also included a non-County Councillor, who had been appointed as an Independent Member of the Audit Committee.

Members of the Sub-Committee had been chosen for their experience of dealing with such large scale matters and would be highly beneficial to the overall process.

The Chairman then invited the signatories of the Call In to explain their position and reasons for their request to the Scrutiny Committee to consider the issue.

County Councillor Savage outlined the following:-

- He had worked in the waste and food industry for over 40 years. He was therefore well informed of the various methods of waste processes that could be utilised and emphasised that he was not against incineration.
- He did consider, however, that there were a great deal of issues for the Working Group to take account of and he stated that he would like to see an expert in the field of environmental issues either on the group or working alongside that.
- He noted that other areas had adopted alternative methods of disposing of the non-recyclable waste, many adopting anaerobic methods.
- He considered that a number of the alternative disposal methods gave a better environmental/financial balance.
- He considered that there were a great deal of environmental matters to take into consideration alongside the financial issue and that the Working Group should be taken account of these.

County Councillor Clark outlined the following:-

- In terms of (i) of the issues outlined in the Call In, stated above, he suggested that there was a need to have some one on the group who held an opposite point of view to that of a need for the incinerator project. He acknowledged that the Members of the Group were well qualified in the financial aspect of the proposals and recognised the need for due diligence, but he considered that there was a need to look at the complexity of the issues of the proposed scheme, with representatives having experience of the various technologies that could be utilised and other possible methods. He considered that there was also a need to take into account the environmental aspect of the process as part of that due diligence, and, therefore, there was a need for an expert in those fields to be on the Working Group.
- In relation to (ii) he stated that the public engagement aspect of the proposals were being overlooked, and were not being addressed through the development of this Working Group. He noted that the terms of reference for the Group that had been circulated as a draft, had stated that meetings would be held in private and would require Members to conform to suitable non-disclosure agreements. He considered that meetings of the Group could take place, as meetings of the County Council do now, whereby exempt items are not discussed in public, and the remainder of the agenda would be a public meeting.
- He emphasised that he had not seen anything that would point to the appointment of a person who was well qualified in terms of questioning the environmental impact of the initiative, whether this

was the appropriate approach to take, whether alternative methods had been taken into account, etc.

- He stated that he would like to have seen details of the environmental qualifications, the job specification and experience for those appointed to the Working Group to ensure that an appropriately experienced person, giving appropriate consideration to the environmental aspects of the proposals, was appointed to that group.

The Chairman invited the decision taker to respond to the issues raised by the signatories and in doing so, noted that the terms of reference for the Working Group could only be drafted at this stage, as a decision to its appointment could not be made as this had been called in for the process of this Committee.

County Councillor Les in response stated that he was pleased to hear that the signatories had agreed with the need for due diligence on the proposals.

He refuted the issue outlined in (i), outlining how the panel had been chosen for their particular skills and not their views on this issue.

In terms of (ii) he suggested that this was irrelevant. He noted that a proposal had been put before County Council at its last meeting for a single consultation event in North Yorkshire on the Waste PFI Proposal. Members had voted for a series of public events at venues throughout the County, allowing all views to be accessed and put forward into the final report for consideration. This would include the details submitted by the Working Group. The final report would be submitted to County Council for Member decision in October, including all the issues raised at the various consultation events.

In respect of (iii) the Working Groups remit was to consider the procurement process and proposed contract for the PFI project to ensure that this had been carried out appropriately. Discussions on the merits of the proposals in all other terms would be undertaken through other events and, therefore, the issue was not relevant to the Working Group.

He noted that in respect of (iv) draft Terms of Reference had been circulated prior to this meeting and during consideration at the Executive meeting, which had been halted to allow Members time to study these. He noted that further consideration would be given to the Terms of Reference before they became finalised allowing the input of the two relevant Corporate Directors, the appropriate Executive Portfolio Holders and Members of the Working Group themselves.

County Councillor Keith Barnes, who had been nominated to serve as Chairman of the Working Group, outlined his environmental qualifications to the meeting, and emphasised that he was fully aware of the environmental aspects mentioned through his professional, public and personal life. He therefore refuted allegations that Members of the Working Group were not experienced in environmental matters.

The Chairman invited representatives of the public or interests/affected organisations to comment on the issue.

Mr David Gripton noted that as due diligence was to be undertaken on the proposal by the Working Group and that the scheme had been described by the contractor as 60% environmental and 40% financial, should that not be reflected in the process that was being undertaken by the Working Group.

In response to this issue County Councillor Les emphasised that the focus of the Working Group was to review the key principals and terms of the PFI contract and related issues to ensure that a proper process had been undertaken. The other matters, including the environmental issues would be the subject to debates and consideration elsewhere. The remit of the Working Group did not include the environmental issues and North Yorkshire County Council would do that as a whole.

Mr Gripton elaborated on his opening question, outlining the following issues:-

- The proposal was driven by the avoidance of landfill.
- Due diligence should take into account environmental matters.
- Issues considered should include saving energy, re-use and recycling.
- The proposals would have a negative impact on recycling.
- The scheme was contrary to the Government's approach to waste.
- A good understanding of the issues involved was required from those operating to ensure that problem materials were separated at source.
- He detailed the technical aspect of particles that could be produced in the atmosphere.
- He noted that it had been claimed that the area was already polluted due to large amounts of traffic, but emphasised that the two different air pollutants could not be compared.
- He emphasised the benefits of re-use and of composting. He considered the matter was an environmental issue and therefore due diligence was required on the environmental aspects of the proposal.

June Emmerson referred to the issues outlined in the NY Times and whether they were a true reflection of what was taking place. She suggested that the information was being used to attempt to justify the project and asked how the appropriate details were being provided. In response the Chairman emphasised that the issues raised by Mrs Emmerson were not relevant to the debate on the Call In issue and asked that she take those matters up elsewhere with the appropriate people.

The Chairman invited Members of the Committee to discuss the issues outlined in the Call In.

A Member asked how the Panel could operate if it was being led by an officer who had been included in the whole process from the outset. He asked whether any independent support would be provided to the Working Group.

In response the Corporate Director, Finance and Central Services acknowledged the concern raised, but emphasised that in such situations officers were expected to be objective. He noted that the wishes of the Executive were for the Group to undertake its due diligence in respect of a corporate responsibility to the Authority. He outlined that his role would be to ensure that the Working Group were provided with appropriate information for them to carry out the due diligence process, he would not be directly involved in the Group, but would act as a facilitator.

It was again asked whether an independent person would be involved in carrying out any work required by the Group. In response it was noted that the Group could interview whomever they required as part of the process, but would not be giving consideration to the strategy decision as their remit was to consider the procurement process undertaken, giving a comprehensive evaluation of that process to the Executive, to ensure that that had been carried out appropriately. It was emphasised that the business of the Working Group was not to discuss the environmental debate, but to ensure that all the information required in the procurement process was appropriately informed and taken account of. The remit of the Working Group was to determine that the chosen method had been obtained through fair process.

A Member asked the signatories to explain the reasons behind their Call in in particular:-

- In terms of (i) whether they knew of any Councillor who had stated their opposition to the incineration process.
- How (ii) could be justified in concluding that those who had not supported the public debate approach did not support public engagement.
- In terms of (iii) how could it be justified having Members of the Working Group considering items purely from an environmental aspect.

In response one of the signatories highlighted how in terms of (i) no Councillor of the Audit Committee had stated their opposition to the incineration process. He considered that if everyone had one thought process, there was unlikely to be a dissenting voice.

He was asked whether he knew of any Members of the Group that had stated a view one way or the other in terms of incineration.

In response he stated that no one had spoke out in opposition to incineration and he did not know if anyone was of that view point, however, he considered that it would be providing a better balance if someone on the Group had declared their opposition to the incineration scheme.

In terms of the public debate and community engagement the signatory outlined how very few members of the public were aware of the proposed Waste PFI Scheme, many were not aware of the implications of that and, therefore, public engagement to date had been low. He noted that full Council had debated the issue of holding a large public debate, but had decided to hold several smaller public debates as a result. He considered that there was a lack of knowledge in the public domain as to what was happening.

In respect of the issues raised on item (iii) the signatory stated that he had not seen any job descriptions or person specifications in relation to the background of people required for the Working Group. He was unaware that any of the Working Group Members had any appropriate environmental credentials, other than those described by County Councillor Barnes at this meeting, and he was unsure as to how up to date those were. He emphasised the need to have representation on the Working Group from someone who had a background knowledge of environmental concerns.

In respect of the responses provided to his question the Member stated that he found the reasons and information provided by the signatories to be contrived and inconsistent. He suggested that the Call In had been poorly thought out, particularly

as it appeared to be requesting that the Working Group be established from a biased point of view. He emphasised that he would prefer to see that remain neutral. He considered that the call for a Member of the Working Group to have an environmental background was without substance. He recommended, therefore, that no support be given to the Call In.

In seconding the proposal that no support be given to the Call In a Member stated that he was pleased to hear that Members of the Working Group would be allowed an input in to the draft terms of reference as they would gain benefit from being able to influence those when they first met. He emphasised that the remit of the Working Group was to look at the procurement process and note the other aspects.

A Member stated that he was satisfied that whoever was chosen to sit on the Working Group would provide an impartial judgement, as he had confidence in all his colleagues to act impartially in such situations.

It was asked what the background of the Independent Member of the Working Group was. It was noted that the Independent Member, Mr David Proudlock was an Independent Member of the Audit Committee who had been the subject of an appropriate recruitment procedure. Details of his professional background were provided.

A Member emphasised that it was correct that the County Council had a Call In process, enabling decisions to be held to account at appropriate times. He suggested that on this occasion, however, the signatories had found difficulty in supporting the need for the Call In and questioned whether this had been an efficient use of time and resources. He considered that there was nothing that had been put to the meeting that warranted the Call In.

A Member emphasised that it was important the Working Group worked effectively on considering the procurement process, as the County Council could be open to challenge if this had not been carried out appropriately. He emphasised that he would prefer to see professional, appropriate representatives on the Working Group to undertake this duty and was sure that, as part of that process the appropriate and relevant environmental questions would be raised.

The Chairman invited the signatories and the Executive Decision Taker to sum up their responses to the Call In.

On behalf of the signatories County Councillor John Clark noted that the Call In had been questioned by several Members of the Committee. He considered that the Call In related to a request for someone with a good environmental background to serve on the Working Group. He stated that he considered this appointment would give the group a better balance to carry out its duties appropriately. He acknowledged the experience, training and background of those considering issues from a financial aspect, but noted there would be no one highlighting matters that had not been considered. He suggested there were many issues involved in the process requiring many solutions, not just one. He considered what was being proposed was a complex and technological problem not a solution. He stated that although there was need to consider due diligence of the contract there was also a requirement to undertake due diligence in respect of the environmental debate. He felt the Working Group should take account of all aspects of the debate, ensuring that everything had been done appropriately. He noted that no job description had been circulated seeking the wider aspect of experience for the Working Group, with that being based purely on being well qualified in financial terms. He suggested that County Councillor Barnes would have a great deal of burden as he would have sole responsibility for giving consideration to the environmental issues. He concluded by stating that the



Call In was seeking to ensure that the environmental debate was also taken into consideration as part of the Working Group's remit.

County Councillor Les summed up the position as the Executive Decision Maker. He stated that he feared that the public were being given a misapprehension that the Working Group would be the only scrutiny process undertaken in respect of the Waste PFI. He emphasised that this was not the case and that it was a matter for the whole County Council to decide whether to support the proposal and not the Working Group's decision. Opportunities would also be provided for consideration and debate on the environmental aspects of the proposal. The views of the Working Group in respect of the procurement process, would also be included in the Executive report to County Council where the decision on the Waste PFI Project would be made. He emphasised that the Working Group was being put together to give consideration to the procurement process, giving due diligence to ensure that this had been undertaken appropriately. He noted that the signatories were requesting that an independent person be part of the Working Group and emphasised that Mr David Proudlock would provide the independence that they required.

He suggested that the Call In had not been appropriate, could be seen as diversionary tactic and had wasted time and resources.

**RESOLVED –**

That the Committee does not wish to refer the decision back to Executive for reconsideration, nor does it wish to refer the matter to the full Council.

SL/ALJ