

MINUTES of the meeting of General Overview & Scrutiny Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 3 September 2013 at 5.00 pm

Present: Councillor A Seldon (Chairman)
Councillor EPJ Harvey (Vice-Chairman)

Councillors: EMK Chave, BA Durkin, DW Greenow, JW Hope MBE, Brig P Jones CBE, RL Mayo, R Preece, P Rone and GR Swinford

In attendance: Councillors WLS Bowen, H Bramer (Cabinet Member Major Contracts), J Hardwick, AW Johnson, MD Lloyd-Hayes, FM Norman and AJW Powers

Officers: B Baugh (Democratic Services Officer), G Dean (Scrutiny Officer), G Hughes (Director for Environment, Communities and Corporate), W Norman (Solicitor to the Council), D Powell (Chief Officer Finance and Commercial), J Rushgrove (Accountant - Capital and VAT Services), A Tector (Head of Special Projects), K Vigus (Waste Disposal Team Leader), and R Wood (Head of Environment and Waste Services).

21. APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillors TM James and DB Wilcox. Apologies for absence had also been received from Mr P Sell.

22. NAMED SUBSTITUTES (IF ANY)

Councillor P Rone substituted for Councillor DB Wilcox.

23. DECLARATIONS OF INTEREST

No declarations of interest were made.

24. MINUTES

The minutes of the last meeting were received.

RESOLVED: That the minutes of the meeting held on 16 July 2013 be approved as a correct record and be signed by the Chairman.

25. SUGGESTIONS FROM MEMBERS OF THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY

It was reported that Mrs E Morawiecka had submitted two further questions about questions originally asked at the 4 July 2012 meeting of the Overview and Scrutiny Committee, principally relating to Destination Hereford. Responses to the questions had been provided by the Head of Transportation and Access and were circulated at the meeting; see the document appended to these minutes. The Committee was advised that Mrs Morawiecka had suggested that Destination Hereford should feature as part of the work programme.

The Chairman invited suggestions from members of the public in attendance at the meeting. Mrs Morawiecka made a number of comments, including:

- at the 18 June 2013 meeting of the Committee, the Monitoring Officer had agreed to provide a report on Hereford Futures, specifically in relation to queries she had raised about possible inaccuracies and inconsistencies in public information in relation to the company;
- concern was expressed about the period of time that had elapsed since she had first raised the issues and the fact that she had not had a response from the Monitoring Officer or the Chief Executive in recent months;
- it was claimed that the Committee had been misled about certain information relating to Hereford Futures;
- the matter should come back to the Committee and to the Audit and Governance Committee; and
- the issues should be viewed in the wider context of other contracts and joint ventures the Council was involved with which may involve liabilities, such as pensions, even though the Council might not be receiving sets of accounts.

The Chairman said that the matters raised would be queried with the relevant officers.

26. QUESTIONS FROM THE PUBLIC

No questions had been received in relation to items on the agenda for this meeting.

27. WASTE MANAGEMENT CONTRACT

The Director for Environment, Communities and Corporate introduced the report, with the following comments: it had been anticipated that a detailed report on the options in terms of delivering an Energy from Waste (EfW) facility would have been presented to the Cabinets of Herefordshire Council and Worcestershire County Council during September 2013; this timetable had subsequently slipped, with the Cabinets now due to meet on 4 October 2013; and there might be an opportunity for Committee Members to look at the detailed Cabinet report once published.

The Head of Special Projects provided an overview of the current position, the principal points included:

1. Cabinet, on 13 December 2012, had agreed to find alternative methods of finance for the EfW plant proposal.
2. Herefordshire and Worcestershire were in the process of negotiating with Mercia Waste Management (MWM) and the Cabinet report would be brought forward with a number of options.
3. The councils were in conversation with central government, particularly DEFRA, and clarifications had been sought on a number of issues.
4. There was more work to be done in response to DEFRA and there was sensitivity analysis being undertaken on the options on behalf of the two partner authorities. Additionally, Herefordshire Council had engaged KPMG to provide independent advice on value for money of the options for Herefordshire alone.
5. Referring to an example in Wakefield, it was commented that the timescale for the delivery of this project was not unusual.

6. It was reported that MWM had been granted planning permission for an EfW facility at Hartlebury in 2012. Following this, MWM had undertaken competitive tendering to secure an engineering, procurement and construction (EPC) contract for the plant and had identified a preferred contractor. In parallel, the councils were in negotiation with MWM on the terms of the variation to the Integrated Waste Management Contract.
7. Going forward, work would be finalised on the options with due diligence undertaken by financial, legal and technical advisors. The options would be presented to Cabinet with an assessment of the ability to meet the parameters identified in the 13 December 2012 report.
8. It was intended that the Cabinet report would be available during the week commencing 23 September 2013. On 4 October 2013, a joint presentation would be made in Worcester to both Cabinets, with the opportunity for Cabinet Members to question the advisors; this session would be open to the public but would not include public participation. Herefordshire Council's Cabinet would return to Hereford, with each authority making its own decision independently and concurrently during that afternoon; the KPMG report would inform Herefordshire's deliberations.
9. Subject to approval of the variation by the Cabinet, it was anticipated that financial close would be at the end of the calendar year.

The Head of Special Projects advised that work was still being undertaken on the figures associated with the options but he did report that the termination of the contract would result in the loss of PFI credits worth £1.4 million per annum to Herefordshire Council. In terms of the remaining life of the contract, there could be a potential loss of £55 million to the two authorities. Additionally, the contractual position on termination would require the capital balances of MWM to be paid off. The Cabinet report would provide detailed consideration of the financial implications. In response to a question from the Chairman, the Head of Special Projects advised that there were contractor, council and no fault clauses within the contract.

The Chairman invited representatives of the Herefordshire and Worcestershire Action Group (HWAG) to give a presentation to the Committee; the speakers were Jane Green, Louise Brookes, Paul Mitchell, Peter Townley, and Rob Wilden. Some of the issues raised are summarised below.

- a. Consideration should be given to higher levels of recycling, including food waste collections.
- b. Concerns were expressed about the viability and affordability of the EfW plant, especially given the financial constraints for the councils. It was difficult to assess value for money and to compare alternatives without the costs being made public. Nevertheless, information from other schemes, government and industry sources indicated that there were cheaper solutions that were also better for the environment.
- c. The waste market had developed in recent years and could provide a wide range of solutions, including recycling and incineration.
- d. Reference was made to a report from the Local Government Association, *Wealth from Waste* (June 2013), which advised local authorities to consider waste as a valuable commodity and stated that 'Every other method of waste disposal creates a net cost, whilst dry recycling, after collection costs, can offer a net income because the product has a market value'.

- e. HWAG estimated the costs per tonne associated with the EfW to be around £130, whereas recycling could generate income.
- f. The longer term risks and liabilities associated with the EfW were questioned.
- g. Current reuse and recycling was around 40%, whereas Wales and Scotland had targets of 70%.
- h. The EfW scheme was based on 68% organic waste and this could be treated at a third of the cost of burning it.
- i. Waste treatment costs could be cheaper when tendered out on the open waste market.
- j. The councils should investigate mechanisms to review the PFI contract, particularly given that it was due to finish in 2023.
- k. The councils were currently paying expensive recycling and composting supplements and it was questioned whether the loss of PFI credits was a significant issue given the potential savings that could be made.
- l. A study by Wychavon District Council found that some of the highest recycling councils had some of the cheapest costs, as those councils were paid for their recycling.
- m. Anaerobic digestion was estimated to cost around £40 per tonne and there was capacity available.
- n. Contamination at the Hartlebury site could add to construction costs.
- o. Carbon emissions from the EfW could have financial implications under any future carbon taxes.
- p. It was felt that decisions had not been based on value for money and insufficient consideration had been given to the alternatives, with no grading of the options against the waste hierarchy.
- q. Attention was drawn to the principles of the Joint Municipal Waste Management Strategy. It was noted that the household recycling rate had increased from around 25% to 40% since 2005.
- r. HWAG estimated future residual waste as being less than 200,000 tonnes per annum and the separation of organic waste could remove up to 90,000 tonnes from the residual waste stream. Additionally, commercial and industrial waste was going down, with recycling rates going up, and exports of EfW waste increasing.
- s. HWAG provided projections of increasing Unitary Payment, cumulative costs, and costs per tonne.
- t. Herefordshire received no income from recycling, whereas other authorities were getting costs back.
- u. Although there was no minimum tonnage with the current contract, the baseline payment was banded, with less waste resulting in higher costs per tonne.

- v. An example was provided of the options scoring criteria used by Entec, supported by analyses of costs, and it was questioned why the two authorities had not used a similar approach.
- w. The EfW would generate hazardous waste and increase carbon emissions, with the net Global Warming Potential CO₂ equivalent of 126,000 tonnes per year.
- x. Attention was drawn to a statement in the *Government Review of Waste Policy in England 2011* that 'We are aiming to get the most energy out of the residual waste, rather than to get the most waste into energy recovery'.
- y. The suitability of the ERM report, *Residual Options Appraisal July 2009*, to reach conclusions was questioned as the report itself stated that 'These options are not intended to be prescriptive, and are not directly related to any site specific proposal. The purpose of this report therefore is not to identify 'the best option' ...'. Additionally, the appraisal assessed each of the options against fourteen criteria which were not weighted; cost was one category and it was not felt that all relevant costs and benefits had been considered.
- z. Jesse Norman MP had commented that, as an early contract, the PFI was likely to be a costly one.
- aa. Referring to the briefing note provided in the supplement to the agenda, it was commented that a graph showing Herefordshire Waste Performance 1999 to 2013 was misleading.
- bb. It was commented that the heat generated by the EfW plant could not be used given its location and questions remained about how the electricity would be used.
- cc. Copies of the presentation and supporting materials had been prepared for Committee Members and would be distributed after the meeting.

The Chairman thanked the representatives of HWAG for their presentation and anticipated that some of the points would be picked up by the KPMG report or in subsequent discussions.

In response to a question from the Vice-Chairman about matters that HWAG would wish to see covered or clarified in the Cabinet report, it was commented that the authorities had not looked at all the options available, consequently it was questioned how value for money could be determined. Concerns were also expressed about inflexibility, particularly given the revolution that was occurring in waste processing, and about the risks associated with changing legislation, including the implications of the Waste Framework Directive.

The Chairman invited Dr. David Slater to address the Committee. Dr. Slater made a number of comments, including:

- i. Dr. Slater's background was as a chemical engineer and he had held positions as Chief Inspector of Her Majesty's Inspectorate of Pollution and Director of Environmental Protection at the Environment Agency. He was currently associated with Sustainable Energy Enterprises Ltd. A presentation had been prepared but Dr. Slater decided to highlight key points instead.
- ii. He said that the Council needed sympathy because of the nature of the contract, the difficult economic climate and the major challenges it faced. He commented that it was easy to adopt a negative mind-set and perceive waste as a problem but

he urged the authority to consider other options and the concept of 'wealth from waste'.

- iii. Sustainable Energy Enterprises Ltd proposed to build a biomass plant at the Rotherwas Enterprise Zone (EZ). He emphasised that this was a commercial proposition with technology supplier options and offers of funding.
- iv. Incinerators were considered to be out of date and not the best available technology, they were expensive to run and there was already over capacity. Recycling was to be encouraged but it was not a long-term solution for all waste streams. Anaerobic digestion and composting also had advantages but something had to be done with the digested end product. The EZ proposal would use pyrolysis and gasification technology to produce electricity for the grid and provide district heating.
- v. It was suggested that the authority should view waste as a valuable resource and, as such, should consider the best ways to use it for the benefit of taxpayers.

In response to questions from Members of the Committee, Dr. Slater advised that:

- Copies of the presentation would be made available.
- The current proposal was to take biomass from the area within 30 miles of Rotherwas but it was a modular plan that could be extended. He anticipated that it would take around two years to become operational.
- The proposal would not cost the Council anything; a gate fee for the waste would be applied, as was currently the case for landfill.
- It was explained that incinerators produced a wide range of pollutants, as high temperatures were generated very quickly but there was also rapid cooling, whereas controlled pyrolysis produced less emissions.

Councillors in attendance made a number of points, including:

1. Comments about 'wealth from waste' were welcomed and this concept should be explored further.
2. With reference to the statement in the report that 'At this stage because the full costings of the options to be presented to the two Cabinets has not been completed it is not yet possible to provide definitive view of the financial implications.', it was commented that the absence of details would make it difficult for the authority to make an informed choice. It was also commented that there were alternatives that needed to be assessed, including Dr. Slater's proposal.
3. It was noted that the Council was new in 1998 and it was commented that mistakes might have been made with some early PFI contracts.
4. It was suggested that, given the scale of the project and the associated costs, Full Council should be given an opportunity to debate the options.
5. The authority should be aiming for a zero waste policy but at the same time should recognise that some waste had considerable value, which the County was not currently benefitting from.
6. Flexibility within the existing contract was questioned. Reference made to a proposal to set up an anaerobic digestion facility in Leominster to take food waste,

where advice had been received that this would not be possible due to the terms of the contract.

In response to point 4., the Chairman said that an all Members' seminar could be arranged on the subject or a further meeting of this Committee held prior to Cabinet to make further recommendations.

In response to point 6., the Head of Special Projects said that he was not aware of the details of the example quoted but he did comment that the EnviroAbility project in Ross-on-Wye had been accommodated with the full knowledge and agreement of the contractors. The Chairman suggested that the Head of Special Projects meet with the Councillor after the meeting. He felt that there should be flexibility within both the waste collection and waste disposal contracts.

In response to questions from Committee Members:

- a. The Head of Special Projects clarified that paragraph 8.1 of the briefing note should refer to current performance being around 60% landfilled and 40% recycled.
- b. The Chairman advised that the Waste Management Contract was a Cabinet decision under the Council's Constitution and the Committee could not insist that it went to Full Council, although this would be a preferable route for a number of Members; it was noted that any changes to the budget would be a matter for Full Council.
- c. The Cabinet Member Major Contracts said that he was still awaiting various pieces of information and he had been advised that the details would be made available for the Cabinet meeting on 4 October 2013. The Chairman added that the Cabinet agenda would need to be published by 27 September 2013 and he was concerned that Cabinet should have enough time to consider all of the information.
- d. The Head of Special Projects outlined the position with anaerobic digestion in the original contract.
- e. The Chairman expressed concern about inflexibility to alter arrangements as time went forward and felt that it would be unacceptable for there to be penalties for not producing enough waste to fuel the EfW.
- f. The Head of Special Projects clarified that the contract was signed in 1998, for a 25-year term ending in December 2023. There was the potential to extend this by another 5 years but, at this stage, there was no proposal to turn it into a 30-year term.

The Vice-Chairman noted that it would be expensive to terminate the contract now and re-contract but there would also be 'balloon payment' costs if the contract continued to 2023. Therefore, it was questioned how the Executive was judging the merits of the potential penalty costs. The Head of Special Projects advised that the Cabinet report would need to identify some clear options about how matters would be dealt with up to and beyond 2023. In response to other questions from the Vice-Chairman, the Head of Special Projects advised that:

- i. Although the headline figure had always been recycling, the Waste Strategy also emphasised waste minimisation and the authorities had been successful at minimising waste in comparison to the rest of the West Midlands. He added that the free collection of garden waste by other authorities could artificially distort

recycling figures, therefore tonnage differences and waste minimisation were also important measures of effectiveness.

- ii. The waste was owned by MWM once it was received at their premises.
- iii. Currently, Herefordshire Council did not receive anything through the net excess profit share scheme, as this had been constructed to commence once there was an EfW plant. It was commented that an interim arrangement was currently under discussion.
- iv. The energy from the EfW plant would go into the grid, via a sub-station, and would result in an income stream. If the power exceeded what was in the financial model, the authorities would get a share of the net excess profits.
- v. MWM and its sub-contractors would build the EfW plant on land leased from Worcestershire and the plant would go back to the authorities upon termination.
- vi. Issues around water supply for the EfW had been covered in the planning application and subsequent Planning Inquiry.
- vii. KPMG would provide an assessment of the options available to Herefordshire. It was noted that the KPMG team were specialists with experience in the waste sector.

Points made by Members of the Committee and Councillors in attendance included:

- Concerns were expressed about the financial implications of carbon tax and the possibility that the incineration of certain types of waste might not be permitted in the near future.
- It was felt that an assurance was needed about how lessons learned from PFI contracts were going to be applied in the future.
- It was commented that there was an urgent need for the full modelling of a wider range of options, including an analysis of the financial implications of terminating the contract and the potential benefits of alternative solutions.
- An assurance was sought that full consideration would be given to all the options before any reports were presented to, and decisions made by, Cabinet.
- It was felt that a further meeting was needed in order to receive explanations of contract permutations and possibilities and a proper evaluation of the alternatives.
- It was commented that the biomass plant proposal was a potential 'gift horse for Herefordshire', with the possibility of generating 13 Mw electricity and heat for Rotherwas with comparatively low transport costs; with the use of the railway line, waste could also be imported.
- It was suggested that this was an important decision and should be debated and made by all Councillors, not just the Cabinet.

The Committee discussed and agreed the recommendations detailed in the resolution below.

Further points made included: the Head of Special Projects clarified that MWM was an independent company, of which FCC was a shareholder; a Committee Member commented on the need to simplify contracts to ensure that they were monitored and

controlled; and a Committee Member requested that Dr. Slater's presentation be circulated to all Councillors.

The Chairman thanked the representatives of HWAG, Dr. Slater, and Members for their interesting contributions.

RESOLVED: That

1. To enable Committee Members to explore the full implications of the report before it is considered by Cabinet, a meeting be convened during the week of the Cabinet meeting, to be open to all Members of the Council.
2. The authority should not perceive waste as a problem but should see it as an asset and should seek to maximise the return from that asset, rather than disposing of it in landfill.
3. The KPMG report on value for money for Herefordshire needs to be made available as soon as possible and Cabinet must have sufficient time to consider the implications.
4. The alternative disposal of the County's green and biodegradable waste, both currently produced and future potential, be considered alongside the flexibility of the current contract to allow alternative handling of this waste stream should other schemes allow.
5. The Cabinet report includes information on projected waste production, informed by housing growth and future recycling rates.
6. The Cabinet report contains clear comment on the benefits and disadvantages relating to the coordination of the re-contracting of waste collection and waste disposal contracts.
7. The Cabinet report explains the relationships between the various companies involved.
8. Assurance be sought from Cabinet that all the evidence that has been presented to the Committee, including possible alternative solutions, is given full and proper consideration as part of the process leading to the Cabinet report.
9. The Cabinet report clearly identifies the potential termination costs of the contract under different scenarios; including 'no fault', 'council fault' and 'contractor fault'.
10. The Cabinet report addresses the matters recorded in the Cabinet minutes of 13 December 2012, particularly that 'In response to a question by the Chairman of the General Overview and Scrutiny Committee with regards to the breakdown of scores and ranking as outlined on page 43 of the report, Cabinet was advised that these would be provided when Cabinet comes to make its final decision' (minute 53, To Consider Future Options for Waste Contract, refers).

28. COMMITTEE WORK PROGRAMME

The Chairman noted the need to populate the work programme and suggested the following:

- A short-term Task and Finish Group on the Cultural Services review, to include museums and libraries.
- A longer-term Task and Finish Group on the future of Planning Services; it was noted that restructuring of the service was currently being consulted upon.
- There was work to be finalised on Frameworki and Agresso, with more research to be undertaken on the role of Hoople.

A Committee Member suggested that the Committee consider new organisational priorities.

In response to a question, the Chairman advised that the dedicated Scrutiny Officer role had been retained but Governance Services had made reductions in the numbers of Democratic Services Officers, therefore the frequency of meetings might not be sustainable going forward and the Committee needed to be focused. It was noted that General Overview and Scrutiny Committee meetings would become bi-monthly, alternating with the Health and Social Care Overview and Scrutiny Committee.

The Vice-Chairman reported that a draft scoping statement had been prepared, and would be circulated shortly, for the Task and Finish Group on the Digital Strategy; this would include consideration of technology solutions to offset the impacts of cuts to services and to enable people to access the Council in new ways. Expressions of interest in serving on the group were sought from Members.

The Vice-Chairman also reported that the Assistant Director Economic, Environment and Cultural Services was preparing a timetable for the next phase of work in relation to the Task and Finish Group on the Community Infrastructure Levy.

A Committee Member suggested that consideration be given to the governance and management of joint ventures and partnership arrangements, particularly given earlier comments about Hereford Futures and recent issues with the Marches LEP.

The Committee also discussed whether work should be undertaken in respect of public conveniences but, on balance, it was concluded that enough had been added to the work programme.

The Chairman reminded Committee Members that a scrutiny training event was to be held on Monday 16 September 2013.

The meeting ended at 7.00 pm

CHAIRMAN