

**MINUTES OF A MEETING OF THE
SUSTAINABLE GROWTH AND ENVIRONMENT CAPITAL SCRUTINY COMMITTEE
HELD IN THE
COUNCIL CHAMBER - TOWN HALL
ON 12 MARCH 2014**

Present: Councillors N Arculus (Chairman), L Serluca (Vice Chairman),
J Peach, D Over, JA Fox, K Khan, N Thulbourn

Also Present: Cllr Harrington
Cllr Sanders
Cllr Murphy
Cllr Seaton Cabinet Member for Resources

Officers Present: Simon Machen, Director of Growth and Regeneration
Lee Collins, Planning Manager, Strategic Resources
Steven Pilsworth, Head of Corporate Services
Phil McCourt, Head of Legal and Governance
Paulina Ford, Senior Governance Officer

1. Apologies for Absence

Apologies were received from Councillor Maqbool and Councillor Over attended as substitute.

2. Declarations of Interest and Whipping Declarations

There were no declarations of interest or whipping declarations.

3. Call in of any Cabinet, Cabinet Member or Key Officer Decisions

The purpose of the meeting was to consider the Call-In request that had been made in relation to the decision made by Cabinet on 24 February 2014 in respect of the Update on Proposed Ground Mounted and Wind Developments at Newborough, Morris Fen and America Farm – FEB14/CAB/16.

The request to Call-In this decision was made on 26 February 2014 by Councillor Harrington and supported by Councillor Sanders and Councillor Murphy. The decision for Call-In was based on the following grounds:

- (ii) The decision does not follow the principles of good decision making set out in Article 12 of the Council's Constitution specifically that the decision maker did not:
 - (a) Realistically consider all alternatives and, where reasonably possible, consider the views of the public.
 - (c) Take account of all relevant matters, both in general and specific, and ignore any irrelevant matters.
 - (f) Follow procedures correctly and be fair.

The reasons put forward by the Councillors were:

1. There has been a significant change to the financial projections between consideration of the financial position in December at Scrutiny and the Cabinet report of 24 February. There was no explanation for that change and more importantly; no opportunity for the Wind and Solar working group, and therefore the public, to explore that change or to be given an opportunity to consider all alternatives (Article 11 (2) (a)).
2. By failure to refer consideration of the financial position to the Wind and Solar Working Group prior to the Cabinet meeting; the Cabinet has failed to follow procedures correctly and be fair (Article 11 (2) (a)).

There is a serious concern about the grid connection at America Farm and £3million has been set aside to meet any contingency arising but no explanation has been given about whether this is an appropriate amount for the risks around the grid connection. There is no justification for this figure and no opportunity has been given to the working group to examine this.

3. There has been a significant change to the quality of the land as set out in the Cabinet report (from grade 1 and 2 to 3a)). The public, in particular the tenant farmers, were not told of this until the report was issued. This has the potential to impact the tenant farmers and the Council's own freehold interests and no consideration was given as to the commercial impact that this information could have; i.e. developing the land. The Cabinet has therefore failed to take into account all relevant matters before making their decision (Article 11 (2) (c)).

Outcome:

Before any final decision is made by the Executive, the matter should be referred to the Scrutiny Committee and / or the Wind and Solar working group for an in-depth consideration of these issues with appropriate public involvement.

After considering the request to call-in and all relevant advice, the Committee were required to decide either to:

- (a) not agree to the request to call-in, when the decision shall take effect;
- (b) refer the decision back to the decision maker for reconsideration, setting out its concerns; or
- (c) refer the matter to full Council.

The Chairman read out the procedure for the meeting. The Cabinet Member for Resources interrupted the Chairman and pointed out that the call-in request had asked for the following outcome:

"Before any final decision is made by the Executive, the matter should be referred to the Scrutiny Committee and / or the Wind and Solar working group for an in-depth consideration of these issues with appropriate public involvement."

The Cabinet Member advised that he had advised the Councillors calling in the decision that he was happy for their concerns to be referred to the Wind and Solar working group before making the decision but they had declined. The Cabinet Member sought clarification as to whether the meeting should still proceed as he had complied with their requested outcome.

The Chairman then finished reading out the procedure and thanked the Cabinet Member for advising him of the action he had taken but said that it was up to the Committee to decide whether the call-in should continue after hearing the Councillors statements.

In support of the request to call-in the decision Councillors Harrington, Sanders and Murphy made the following points:

Councillor Harrington

- There had been no opportunity for revised figures to be scrutinised before being approved by Cabinet. They had changed significantly regarding profit, installation costs and maintenance costs and in some respects had been halved or doubled.
- The land at America Farm had been downgraded from Grade 1 to Grade 3A, which devalues the land asset, affecting future sale or rental. No report had been issued to substantiate this.
- The figures for America Farm are now forecast at being £5.9M over 25 years which was a substantial increase since reported to scrutiny in December at £1.4M.
- There were concerns as to how revised figures relating to costs had been arrived at.
- It was appreciated that the Cabinet Member had offered for the figures to go to the cross party working group but it was important for Members to publicly scrutinise the revised figures to ensure openness and transparency. The offer from the Cabinet Member had therefore been declined.

Councillor Sanders

- Councillor Sanders concurred with Councillor Harrington's submission.
- There was a substantial amount of taxpayer's money at stake and the figures needed to be scrutinised in public.
- There was a duty to make sure that the figures were correct and they had been altered substantially over the years, there was therefore a lack of consistency.
- Scrutiny had so far been insufficient and there was a need to have proper scrutiny before this decision was implemented.
- There had been no report made available to either the Rural Scrutiny Commission or the Sustainable Growth and Environment Capital Scrutiny Committee regarding the downgrade of the land.
- Referred to page 11 of the report, paragraph 4.3.3. Which stated that "*The land could be grassed down and grazed by sheep*" but there had been no costings submitted for this.
- It had been brought to Councillor Sander's attention from members of the public that insufficient consultation had taken place.

Members of the Committee sought clarification regarding what would happen after the working group had considered the requested information. The Chairman responded that the working group would report to Cabinet unless the Committee made recommendations otherwise at this meeting.

Councillor Murphy

- The views of the rural part of Peterborough had not been given adequate weight.
- Page 8 of the report, paragraph 4.1.3 was referred to which stated:
"The following table shows that the net income to the Council can now be forecast as £5.9m over the 25 years compared to the prudent position previously shown of only £1.3m – an increase of £4.6m" Page 9 of the table referred to showed a net benefit to Peterborough City Council of £5.924M.
- No arithmetic had been done on the £10.23M capital invested by the Council. There was a concern that the figures did not add-up. The presentation of the figures were confusing.
- The decision did not follow the principles of good decision making.
- There had been inadequate consideration of the views of people in the rural areas in favour of benefiting the authority as a whole.

- Using agricultural land for environmental aims was not in line with any environmental strategy. Food was more important and sustainable than production of electricity.
- The risks of the project not working and possibly bringing the Council into bankruptcy were high and not well-enough considered.
- There was concern that Members on the Planning Committee in the future may have a predetermination with regard to this application.

The Head of Legal and Governance provided the Committee with clarity regarding predetermination of Members on the Planning Committee.

Predetermination. If a Member was sitting on a decision making body and received evidence to enable them to come to a decision – if they approach that decision with a closed mind and were looking for evidence to support the decision they had already made then that is a sham and the courts would rule that as invalid.

In terms of the Cabinet itself there could be a risk of Predetermination and the Cabinet Members would need to show when it has its meeting that whatever information comes back from other Member bodies including Scrutiny that it has taken it into account.

When the application goes before Planning Committee this would be in effect the council applying to itself for planning permission. This in effect was reasonable because there were procedures for that and things were separated. Those Cabinet Members who would be involved in this project and campaigning for it would not be permitted to sit as part of that Planning Committee. Equally those campaigning against the project would not sit on the Planning Committee.

Councillor Serluca and Councillor Harrington were in attendance and were Members of the Planning Committee. The Head of Legal and Governance advised that the process of the Scrutiny Committee was to examine the process and the Councils role as a private law function, land owner and developer and whether the consultative process was being conducted properly. This role was very different to that of the Planning Committee. Therefore any business conducted through the Committee at this meeting would not affect the role of Members on the Planning Committee.

Questions and Comments from Members of the Committee in response to the Councillors statements:

- Members asked the Councillors if they were against the wind and solar panels or if they would be prepared to accept one and not the other. *Councillor Murphy responded that the decision concerned tonight did not exclude or include wind as this was an ongoing discussion. Councillor Harrington responded that the main focus of the call-in was meant to address solar but there was nonetheless concern that the combined decision of wind and solar would still present a risk to the council.*
- Members asked the Councillors' view on the Director for Resources statement that no devaluation of the land had taken place. *Councillor Harrington responded that the degrading of the land would mean devaluation of the land in the future which was a concern. Councillor Sanders responded that it was self-evident that the land would be devalued but expressed concern that there was no reports on valuations.*
- Members clarified that the Director of Resources statement referred only to America Farm and not to the rest of the estate. *Councillor Harrington responded that the devaluation of the land raised issues for all farms affected by the development.*
- Members noted that the Call-in form had specified the following outcome that “*the matter be referred to the Scrutiny Committee and / or the Wind and Solar working group for an in-depth consideration of the issues with appropriate public involvement*” and sought clarification on whether the Councillors would prefer the decision not to go exclusively to the Wind and Solar working group. *Councillor Sanders responded that it was imperative that the decision be heard in public at a scrutiny committee rather than a working party.*

Councillor Harrington responded that there was a high level of mistrust regarding this decision and it was beneficial to the council itself for this to be publicly scrutinised in an open and transparent way. Councillor Murphy responded that the Wind and Solar working group had not properly considered the financial aspect of the decision yet.

- Members asked if the downgrading of the land was an assessment which could be relied upon. *The Cabinet Member for Resources responded that the downgrading of the land to Grade 3A was a suggestion made by the report but the land was still officially listed at Grade 1.*

The Cabinet Member for Resources made a statement in answer to the Call-In request which included the following:

- In response to the statement made by Councillor Harrington that there was no opportunity for the figures to be scrutinised prior to going to Cabinet, it was noted that the Scrutiny Commission for Rural Issues had asked for the report to go direct to Cabinet.
- Regarding the grading of the land, a report was emailed to Councillor Harrington and Councillor Sanders on 27th February.
- The number inconsistency was to be expected as work progressed from initial costings to a final plan.
- Councillor Harrington had declined a Working Group and yet the Call-In request had specifically requested that the final decision be referred to the Wind and Solar working group.
- Councillor Sanders had stated that a working party would be inappropriate. Elements of the financial information would be commercially confidential and therefore a cross-party working group would be a typical way to address the issue.
- Concerns regarding agricultural land were not a reason for call-in.
- Members of the Planning Committee would not be pressurised on the issue.
- There was arithmetic regarding the capital investment contained within the report.
- There were five year and 25 year figures because they represented different projections. The five year figures were profit and loss figures the 25 year figures were net present value figures.
- The dual use report went to the Scrutiny Commission for Rural Issues in December 2013.
- Concerns that the land would be of no use was supposition. *A point of accuracy was raised by Councillor Harrington that the point had been made at a meeting of the Joint Scrutiny Committees by the Legal Officer in attendance that the land would be of minimal worth for agricultural use.*
- Changes to financial projections were fully explained in the report as having been arrived at through consultation with financial partners. The Cabinet Member reminded the Councillors that the Scrutiny Commission for Rural Issues at the extraordinary meeting on 16 December 2013 had requested that the financial information go straight to Cabinet.
- The Cabinet Member confirmed that he had offered to work with the Wind and Solar Working Group but the offer had been rejected by the Councillors who had called in the decision.
- The estimated cost to the grid connection of £3M was based on professional advice. The report discussed at Cabinet recognised the risk to the financial viability on America Farm. At Cabinet, the Cabinet Member for Resources had raised this issue.
- Regarding the land grade at America's Farm – the Grade 1 assessment was quite old and all parties were aware that the land was to be reassessed. Grade 3A land was still of good quality. The degradation of the land only impacted America's Farm and it was unlikely that this would impact other investments. The current tenant was retiring and any new tenant would commission their own soil report and the council would conduct negotiations based on that.

- The cross-party working group was appropriate and the Cabinet Member hoped that it would meet before any decision to implement was made.

Questions and Comments from Members of the Committee in response to the Cabinet Members statement included the following:

- Members expressed concern at the inaccuracy of the figures and asked the Cabinet Member if all the figures would be submitted to the working group. *The Cabinet Member responded that the figures were not inaccurate but instead reflected a developing complex project. The working group would have full access to the figures.*
- Members asked how the risk of borrowing such a large amount of money could be justified given the uncertainty surrounding energy in the coming years and asked if there was a fall-back or Plan B if things went seriously wrong. *The Cabinet Member responded that there was a risk to the Council's budget however there was a potential for the project to be extremely lucrative and given the savings required to be made by the council not going ahead with the project would mean having to find additional savings of £5M from elsewhere. A Plan B that had been looked at was to work with a Community Enterprise Company and look at Solar on sites that were not owned by the council. The problem with this was that if the council did not own the asset it would mean that the money would go into a community fund. This would mean that everyone involved in the project would have the opportunity to say where the money would go. In terms of mitigation of risk, bonds requiring a certain level of performance for instance could be put in place to ensure that the risk was mitigated. Ensuring financial backing to mitigate problems with installation would further mitigate risk around the project.*
- Members were concerned that the other options which had been mentioned by the Cabinet Member had not been listed along with any risks or benefits. It was therefore unclear from the report what other options Cabinet had considered. *The Cabinet Member responded that Cabinet had discussed other alternatives involving the Community Interest Company, however a non-disclosure agreement had been signed with the Community Interest Company and any announcements had to be agreed with that Company. Furthermore, Community Interest Companies were not providing the same sort of benefits to cities of a similar size as the proposed project was.*
- Members felt that any alternatives that had been considered should have been included in the report.
- Members asked why the figures had changed so radically and expressed disbelief that the land could be downgraded to such a degree. *The Cabinet Member responded that the numbers changing was not a reason for call-in. The reasons for the change in numbers had been outlined and reviewed with the officers. With regard to the downgrading of the land, the last grading was done in 1983. Land could erode over time as much as 3-4cm per year. The land had 70cm of soil under which was clay and the land was changing all the time.*
- A Member quoted from a letter from the Government Minister, Gregory Barker who had expressed concern at large scale solar panels in the countryside "*Such inappropriately sited solar photovoltaics (PV) is something that I take extremely seriously and am determined to crack down on,*" and expressed a preference for a "*focus of growth to be firmly on domestic and commercial roof space and previously-used land.*" Members wanted to know if it was therefore an appropriate risk worth taking to go ahead with the proposed project especially as the government subsidy would be eliminated over the next few years and there would be an increase in the subsidy for offshore wind farms. *The Cabinet Member responded with regard to the Government Minister's comments advising Members that rooftop solar and other options were being looked at but they were unlikely to close the budget gap. If the Government Minister intervened and disallowed the project then there would be no more solar projects on farm land. The letter was however only advisory at the moment.*
- Members asked the Director of Growth and Regeneration why the grade of the land was an issue for planning consideration for the project when it did not appear to be considered as part of other planning applications. *The Director responded that the loss of*

agricultural land was a material planning consideration. However, as with all planning applications there was a need to balance a number of interests and a duty to provide land for houses and factories for instance. There was not sufficient brown field land to meet development needs across the country or indeed in Peterborough. In this case, the issue of agricultural land loss had been highlighted through opposition to the schemes.

- Members followed up asking why the grade of the land was such an issue in this call-in. *The Head of Legal and Governance responded that part of the debate was not necessarily about planning but was about the fact that the council owned the site and there was a feeling that the council had a moral duty in the council's stewardship of the land to consider the role the land played in the wider agricultural economy.*
- Members asked if there had been any consideration of wind power from the River Nene. *The Cabinet Member responded that an 'Archimedes Screw' had been considered but the flow of the River Nene might not have enough power to make this viable.*

Debate was conducted by Members of the Committee in which the following points were raised:

- The working group could work on a more detailed basis than a scrutiny committee. Once the work of the working group had been completed it could make a submission to scrutiny for comment before going to Cabinet.
- Within the three options there was scope for the committee to take the Cabinet Member at his word when he says he would not implement the decision until the working group had concluded.
- The working group should also be permitted to examine the financial aspects of the decision.
- There should be greater explanation of what alternatives were considered and this should be backed up by explanations as to why alternatives were not gone with for the sake of transparency.

As there was no further debate the Committee took a vote to decide on whether they should:

- (a) not agree to the request to call-in, when the decision shall take effect;
- (b) refer the decision back to the decision maker for reconsideration, setting out its concerns;
or
- (c) refer the matter to full Council.

Councillor Thulbourn seconded by Cllr Fox proposed the following recommendation:

That the call-in be upheld and that Cabinet should not act on the decision until the Wind and Solar Member Working Group consider the Cabinet's decision when it meets on the 18 March. The working group to discuss the issues raised in the Call-in and alternative options and that Cabinet shall not act upon the decision made on 24 February 2014 until it has received a report from the Wind and Solar Member Working Group and comments from the Sustainable Growth and Environment Capital Scrutiny Committee on that report.

The Committee voted unanimously in favour of the recommendation.

The Chair suggested that an extraordinary meeting of the Committee could be arranged to consider the report from the Wind and Solar member working group before submission to Cabinet.

ACTION AGREED

The request for Call-in of the decision made by you on 24 February 2014, regarding the Update on Proposed Ground Mounted and Wind Developments at Newborough, Morris Fen and America Farm was considered by the Sustainable Growth and Environment Capital Scrutiny Committee. Following discussion and questions raised on the reasons stated on the

request for call-in, the Committee **agreed to call-in** the decision and to refer it back Cabinet to re-consider within ten working days, by 26 March 2014 .

The decision is to be referred back to the Cabinet with the following recommendation

1. That the Wind and Solar Member Working Group consider the Cabinet's decision when it meets on the 18th March 2014 and shall report on that decision and the issues raised by the Call-In and discussed at this meeting of the Scrutiny Committee, including alternative options; and
2. That the Cabinet shall not act on the decision made by it on 24th February 2014 until it has received and considered the report of the Wind and Solar Member Working Group and the comments of the Sustainable Growth and Environment Capital Scrutiny Committee on that report.
3. There will be an extraordinary meeting of the Committee, if necessary, so as to receive the Working Groups report as soon as is reasonably practicable.

Under the Overview and Scrutiny Procedure Rules in the Council's Constitution (Part 4, Section 8, and paragraph 13), implementation of this decision remains suspended until further notice.

The meeting began at 7.00pm and ended at 9.00pm

CHAIRMAN