



**MINUTES OF A MEETING OF THE SUSTAINABLE GROWTH AND ENVIRONMENT
CAPITAL SCRUTINY COMMITTEE
HELD AT THE BOURGES/ VIERSEN ROOM - TOWN HALL
ON 16 FEBRUARY 2015**

Present: Councillors Y Maqbool (Chairman), J Peach, S Allen, R Brown, JA Fox, R Herdman, N Thulbourn

Also Present: Cllr Sandford, Group Leader, Liberal Democrats
Cllr Harrington, Group Leader, Peterborough Independent Forum
Cllr JR Fox, Group Leader, Werrington First
Cllr Hiller, Cabinet Member for Planning and Housing Services and Rural Communities
Cllr Murphy

Officers Present: Simon Machen, Director for Growth and Regeneration
Andy Tatt, Head of Peterborough Highways
Gurdeep Sembhi, Legal Adviser
Paulina Ford, Senior Democratic Services Officer

1. Apologies for Absence

Apologies for absence were received from Councillor Arculus, Councillor Iqbal and Councillor Fletcher. Councillor Allen, Councillor Peach and Councillor Herdman were in attendance as substitutes.

2. Declarations of Interest and Whipping Declarations

No declarations of interest or whipping declarations were received.

The Chairman read out the procedure for the meeting.

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 2 February 2015 regarding the Junction 17 - 2 Fletton Parkway Widening, Contamination and Drainage Issues, JAN15/CAB/11.

The request to Call-In this decision was made on 5 February 2015 by Councillor Harrington and supported by Councillors Murphy and Sharp. The decision for Call-In was based on the following grounds:

Criteria 2. Decision contrary or not wholly consistent with the budget?

Criteria 4. The decision does not follow the principles of good decision making set out in Article 11 of the Council's Constitution specifically that the decision maker did not:

- (c) Take account of all relevant matters, both in general and specific, and ignore any irrelevant matters.
- (d) Act for a proper purpose and in the interests of the public.
- (h) Be responsible for their decisions and be prepared to give reasons for them.

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.

In support of the request to Call-in Councillors Harrington and Murphy made the following points:

Councillor Harrington

- The purpose of the Call-In was not to question the need for the scheme and not to stop the project. It was to gain a clear understanding of the procedure and timeline of the scheme and why and when the events had occurred.
- The need for future growth was accepted however it appeared that the council were focusing on getting the scheme in place without looking at the risks involved.
- There were two options for the contract: Fixed Contract and Target Cost Contract (preferred option). The Fixed Contract was deemed to be more complex.
- The report had not clearly demonstrated that the council knew what its obligations were when undertaking a Target Cost Contract. This should be clearly identified.
- No clear timeline was given as to when and how the events occurred.
- Were appropriate surveys undertaken to reflect what was needed? It was not clear if contamination for Phase 2 was found at the same time as the initial contamination was found. It was the landfill operator who asked for more tests to be undertaken.
- It is unclear when the problems occurred and when they began to escalate.
- The council need to demonstrate they did all they could so that it does not happen again.
- The additional cost of £4M was contrary to the council's budget. The budget was set by council and any virement should have been dealt with through the proper process.
- No records were held by the council for when the Fletton Parkway was constructed.

Questions and Comments from Members of the Committee:

- Members referred to point 2 of the Call-In request form which stated that "*It is well known that this section of land was used as landfill*". The response to the Call-In had stated that "*Neither the Council nor the Environment Agency hold any evidence that this area of land was used for landfill*".
- Members referred to point 5 of the Call-In request form which stated "The repeated drainage problems on this site should have indicated that there was an issue with underlying drainage that needed investigation". The response to the Call-in had stated that "*There was no evidence of repeated drainage problems nor of localised flooding on this section of Fletton parkway*".
- Members asked the councillors what they thought the options should have been when the issues arose. *Councillors responded that the Executive should have been fully informed as the events arose. The council should have been aware that contamination was present before the landfill operator had identified it.*
- Members asked the Councillors what outcome they were expecting from the Call-In. *The Councillors responded that they would like to see an investigation into what happened. This would ensure that if the Council entered into a similar contract in the future there would be clear timelines and it would be clear what the council's obligations would be and what would happen should the council come up against any contingencies.*

There being no further questions from the Committee Councillor Hiller, Cabinet Member for Planning and Housing Services and Rural Communities was invited to respond in answer to the Call-In request:

Councillor Hiller and Simon Machen, Director for Growth and Regeneration made the following points:

- Due diligence had been shown at every single stage of the project by officers.
- None of the contamination found on site originated from a kiln or brickworks.
- There had been no historic drainage issues on this part of the road.
- The Director of Growth and Regeneration read out an email from the Head of Strategic Finance in answer to the points made regarding the budget and the £4M virement being required to go before Full Council for approval. It stated that all budget virements in excess of £500,000 required Cabinet approval and therefore did not need approval of Full Council.
- Any historical records that the council held on the highways had come from Cambridgeshire County Council who was previously the Highway Authority prior to Peterborough becoming a Unitary Authority. The records received had been limited.

Questions and Comments from Members of the Committee:

- Would further costs be incurred if the scheme were to be delayed? *Members were informed that additional costs estimated at £50K to £55K could be incurred.*
- Members were informed that the issues that had arisen on the scheme were very unusual.
- Members wanted to know if there was an expectation that the part of Fletton Parkway scheme being discussed would have a high volume of traffic. *Members were advised that the section of road would receive high volumes of traffic.*
- Why were no bore holes drilled to test for contamination prior to the scheme commencing. *The Director explained in detail the three distinct phases to implementing a major civil engineering scheme referring to the Fletton Parkway scheme.*
- Members asked the Head of Peterborough Highways who was also in attendance with the Cabinet Member if in his experience the issue of finding contamination in this way was extremely unusual or had he come across anything similar in the past. *Members were advised that previous major highways schemes had not uncovered any contamination and it was highly unusual.*
- Could the council apply to the Government for funding to cover the costs involved in addressing the issue of contamination found? *Members were informed that the Director of Growth and Regeneration and Head of Peterborough Highways had met with the Department of Transport and submitted a bid for extra funding. The outcome of this should be known in June.*
- In view of the issues that had arisen with regard to this Highways scheme did officers feel that a different kind of contract should have been in place for this scheme? *Members were informed that Target Cost Contracts offered the most cost effective solution and were used all of the time and the current situation had never happened before. The contract identified the actual cost.*
- If additional funding was received from the Department of Transport how would this change the dynamics of funding. *Members were informed that the proposed three ways that the additional cost of the scheme would be funded was:*
 - *£2.1M of capital corporate funding originally allocated to phase 1 of the Bourges Boulevard public realm improvement scheme.*
 - *£1.072M of capital corporate growth funding for 2014/2015 which had been held back as a contingency.*
 - *£1.33M of corporate public realm capital funding for 2014/2015 which had been held back as a contingency.*
- If a similar contract came up again would the council go through the same contractual process and take the same risk. *Members were informed that the contract was a standard industry contract. It would cost the council more to change to a Fixed Term Contract. There was nothing that could have been done differently under the circumstances.*

- Members were concerned that money diverted from contingency funds for the scheme would then not be available for other contingencies and were concerned that money would then be short for the Bourges Boulevard scheme. *Members were advised that money had not actually been taken out off the Bourges Boulevard budget and that a £2.1M grant had been secured through the Local Enterprise Partnership to cover the cost of that scheme.*
- What schemes would have been funded if the contingency money had not been used for the overspend. *Members were advised that there were no named schemes assigned to the contingency money. The money was in the budget this financial year to spend on projects but the projects had not yet been identified.*

Following a short debate the Chair asked the Committee for a recommendation. Following discussion Councillor Allen, seconded by Councillor Thulbourn put forward a recommendation that the Committee should not uphold the Call-In request.

The Committee voted in favour of (a) not agree to the request to call-in the decision (6 in favour, 1 abstention)

Councillor Allen, seconded by Councillor Thulbourn then put forward a recommendation that a report is brought back to the Committee at the beginning of the next municipal year which provides a full review of the Fletton Parkway Scheme to include the following information:

1. The different procurement options for highway contracts including fixed price and target cost contracts.
2. Details of the different stages of delivery of major highway schemes, using the Fletton Parkway Junction 17-2 scheme as an example.

The Committee voted unanimously in favour of the recommendation.

ACTION

The request for Call-in of the decision made by Cabinet on 2 February 2015, regarding the Junction 17 - 2 Fletton Parkway Widening, Contamination and Drainage Issues, was considered by the Sustainable Growth and Environment Capital Scrutiny Committee. Following discussion and questions raised on each of the reasons stated on the request for call-in, the Committee did **not** agree to the call-in of this decision on any of the reasons stated.

It was therefore recommended that under the Overview and Scrutiny Procedure Rules in the Council's Constitution (Part 4, Section 8, and paragraph 13), implementation of the decision would take immediate effect.

RECOMMENDATION

The Committee recommends that a report be brought back to the Committee at the beginning of the next municipal year which provides a full review of the Fletton Parkway Scheme to include the following information:

- a) The different procurement options for highway contracts including fixed price and target cost contracts.
- b) Details of the different stages of delivery of major highway schemes, using the Fletton Parkway Junction 17-2 scheme as an example.

The meeting began at 7.00pm and ended at 8.40pm

CHAIRMAN