

TRANSFORMATION AND RESOURCES OVERVIEW AND SCRUTINY COMMITTEE

Wednesday, 25th July, 2012

Present:- Councillor Mrs Elizabeth Shenton – in the Chair

Councillors Mrs Burgess, Clarke, Fear, Hambleton, Mrs Hambleton, Mrs Heames, Howells, Lawton, Mrs Peers, Stringer, Waring and White

1. DECLARATIONS OF INTEREST

Councillor White declared an interest with regard to agenda item 5. Councillor White had signed the call-in form and therefore could not participate nor vote during agenda item 5.

2. APOLOGIES

There were no apologies received.

3. MINUTES OF PREVIOUS MEETINGS

The minutes of the meeting held on 12 June 2012 were agreed as a correct record.

Members were informed by the Chair that the Budget training requested at the last committee meeting had been scheduled for 13 September 2012. Members were asked to note this date.

There was a brief update on Performance Management by the Council's Head of Business Improvements and Partnerships. The Committee were informed that a report went to Cabinet on 18 July 2012 and the new performance framework had been approved. The Budget Performance Monitoring Report for 2012/13 First Quarter would be received by the committee in September and would be a new style report based on the new framework.

RESOLVED: (a) That the information be received.

(b) That the minutes of the meeting held on 12 June 2012 be agreed as a correct record.

4. URGENT BUSINESS - CALL IN REGARDING SURPLUS LAND - PROPOSED NEWCASTLE DEVELOPMENT PROGRAMME AND SITE ALLOCATIONS AND POLICIES DEVELOPMENT PLAN DOCUMENT - DRAFT ISSUES AND OPTIONS CONSULTATION PAPER

Urgent business had been called to consider a call-in request submitted on Monday 23rd July 2012 to review the decisions of Cabinet made at its meeting on 18th July 2012, in relation to the proposed Newcastle Development Programme Disposals and the Site Allocations and Policies Development Plan Document (agenda items 6 and 7).

The Chair clarified the procedure for the consideration of the call-in at the meeting, as set out in section 1 of the report on the agenda. It was clarified to the Committee that there were three options they could consider:

- (a) Reject the call-in and note the original decision. The decision would take effect on the date of the Overview and Scrutiny Committee.
- (b) Accept the proposal set out in the call-in form and refer back to Cabinet with any comments they wished to make. The Cabinet would then reconsider at the next scheduled Cabinet meeting, amending the decision or not before adopting the final decision.
- (c) Accept the proposal set out on the call-in form and refer the matter to Full Council if the decision was deemed to be outside the budget and policy framework.

The lead call-in member gave their explanation of the reasons for the call-in and justification for the proposal set out on the call-in form. A hand-out with excerpts from various sources was distributed, which was referred to by the lead call-in member. It was asserted that the call-in members were not saying the seven sites in question should be developed and nor did the Newcastle Development Programme conclude that the seven sites should not be developed. There was a local need due to local population growth. It was felt that the process was flawed at the beginning and the decision itself was undemocratic. There would be unfair pressure on other sites if the seven sites were excluded now. There had already been representations from Madeley and Audley opposing the Cabinet's decision.

The Portfolio Holder for Regeneration, Planning and Town Centres Development was unable to attend and sent their apologies. The Leader of the Council gave their explanation of the decision taken and their views on the alternative. The six call-in members were thanked for the robust scrutiny the call-in had created. It was felt that the decision was democratic and this had been part of the party manifesto. There had been a number of recommendations from the NDP Scrutiny Task and Finish Group, of which recommendation no. 10 regarding consultation could be misleading by referring to 'all' development sites. Not 'all' development sites would be considered, only those that were suitable for housing development. The consultation process for the Site Allocations and Policies Local Plan would not prohibit comment on the seven sites. With regard to being open and transparent, the seven sites had been the most scrutinised pieces of land that the Council owned and the scrutiny for these sites had been one of the most robust scrutiny processes ever conducted at the Council. Sites could be added for consideration as a result of the consultation. It was not a one-way process and other available sites were being looked at. The Cabinet had delivered on a commitment but it did not mean the Council were more likely to develop on land elsewhere. The commitment to the Cabinet decision remained. The Leader of the Council called for the call-in to be rejected.

The Committee Members questioned the call-in member and the Cabinet decision. Members questioned what the Leader had meant by the assertion that there was no substantive difference to the final recommendations to Cabinet. The Leader considered that the original NDP scrutiny recommendations had not been copied verbatim into the Cabinet report and in particular recommendations 6 and 10 on the hand-out from the lead call-in member were not the same as on the Cabinet report. The lead call-in member confirmed that the recommendations on the said hand-out had been taken from the scrutiny review report; the wording was from the Committee. They had not been aware that Cabinet had produced a report with slightly different wording. The key point however, was what scrutiny had recommended, not Cabinet.

Members questioned the Council's Head of Central Services as to whether the Cabinet decision could be open to legal challenge and if so, on what grounds. It was considered that if the review had only been a partial review it might fall foul of section 13.1.5 of the constitution pertaining to HR and Equalities. The possibility of a successful challenge could not be excluded. Land owned by the Council was dealt with under private ownership law and local authorities were treated like other land owners. However, this Council was clearly a public authority. It was not felt that a challenge would be successful, although challenges were becoming more popular.

Members questioned that if an inspector was approving the plan and considered that only a partial survey had been conducted, would there be grounds for the inspector to view the survey as unsound. In assessing the soundness of the document an inspector would address the nature of the consultation arrangements and would want to be satisfied that the consultation was a genuine consultation. If there was a challenge at this stage due to the seven sites being excluded, but with a possibility of the sites being included again, a decision at that stage would not render the document unsound. If a private landowner indicated that sites were not available for development this would not be seen as unsound, as a landowner is entitled to do this. It would be unrealistic to include land if there was no prospect of it being developed in the future. Furthermore, if an inspector thought there were sites included in the plan that were not developable, then this could be considered as unsound.

Confirmation was sought of the Leader that the decision taken by Cabinet on 18 July 2012 was for the complete exclusion of these sites. There was a concern that the Cabinet decision could look iniquitous to the general public. It was confirmed by the Leader that the seven sites would permanently be excluded from development for as long as the current administration were in office. There was concern from Members that if an inspector deemed the list to be open in order for other sites to be added, then the permanent exclusion of the seven sites could possibly bring the Council into difficulties with the Planning Inspectorate due to a lack of a broad, totally inclusive consultation. If a consultation was to be undertaken then the results of this consultation must be considered. If the Council receives representations promoting the seven sites, then the Council must legally consider these representations. However, the views of the Council as the landowner must also be taken into account. The Local Planning Authority obligations are separate from the Council obligations as a private landowner.

Members sought the Leader's views on the perceived contradiction of removing the seven sites. It was felt that all land should be dealt with in a coherent, same-way process and the removal of the seven sites could undermine this process. It was felt that the process had not been undermined; the sites deemed developable had been included in the Site Allocations and Policies Local Plan and Cabinet had deemed that they would like these sites to be developed.

It could appear that the first tranche of sites had received special scrutiny and the rest of the sites would not be scrutinised in such a way. Members questioned whether an inspector would deem the first tranche as good scrutiny and consultation policy as an inspector would need to be satisfied with the scrutiny of the land disposal programme. The scrutiny had largely been targeted at residents in the vicinity of the seven sites, but did highlight the process to the wider community. There was a risk that an inspector would take the view that the consultation was not a holistic Borough wide consultation. It would be unlikely to be successful if that consultation was taken into account.

Members pointed out that in the last Site Allocations Report in December 2011 it had been stated that the Council had a surplus of land. However, it was now the view that there was a very limited land supply and Members questioned this change. The Council's Head of Planning Services confirmed the Council was showing a deficiency and this was because the sites included in the SHLAA had been reviewed and scrutinised. Some sites had been removed as it was unlikely they would meet the criteria to be considered developable and a more realistic approach was being taken.

In summing up, the lead call-in member considered the Cabinet decision undemocratic, with different rules applying to different sites. This would present difficulties for the Council due to being an inequitable way of dealing with matters. The task and finish group concluded that a decision at the stage the Council were at should not be made. There had been no further development since the task and finish group had made this conclusion. The Council was still at the same stage and a decision should not be made. Furthermore, decisions should not be made for particular groups of people but for the 'common good'. The Cabinet decision needed to be reconsidered and a true and fair consultation process undertaken.

The Leader of the Council highlighted there were two issues with regard to the seven sites: the Council as a landowner and the council as a planning authority. It was felt that the call-in had been a good process. The leader advised that the committee should opt for option A and reject the call-in. The consultation should be allowed to continue.

There was a vote on the options, with a move to choose option A which was seconded. There was a vote with 7 Members for option A and 4 Members against option A. The call-in proposal was therefore rejected.

The Chair thanked the lead call-in member and the Leader of the Council.

5. STAFFING COMMITTEE

The Committee considered a report regarding the Staffing Committee that had been agreed in principle by Full Council on 11 July 2012. The report sought the views of the Committee in order to inform the Leader and the Chair of Transformation and Resources to finalise the details of the Committee.

It was felt that as accountable Members, Members should be making decisions. It was not intended to take away day-to-day functions from officers. The Employees Consultative Committee would remain unchanged except that reports would be received by the Staffing Committee and not the Executive Management Team.

The functions of the Committee were listed under section 2.6.1 of the report. This list was not exhaustive and it was felt that members of the Committee had the expertise to embellish the list. The list under section 2.6.1 stressed the range of policies to be reviewed.

Some Members did not agree with the decision to have a Staffing Committee and questioned the lack of scrutiny on the matter.

Members questioned whether the Staffing Committee would convene after training had been undertaken, how long this training would take, who would conduct the training and in what form the training would be. It was questioned whether the Council could be open to a legal challenge if the Staffing Committee was set up and operational without training. This question related in particular to section 2.6.3 of the

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report. If policies were to be amended then this would be quasi-judicial and training would be required. It was confirmed that there would always be a solicitor present at meetings and that training could be provided by West Midlands Councils which already provided training at councils with Staffing Committees. It was confirmed that this training would be free of charge through the annual subscription the Council paid to West Midlands Councils.

Members questioned point 9.1 of the report that 'it is intended to meet the needs of this Committee out of existing resources'. They questioned whether there was risk associated with this and if a formal risk assessment was required. It was still considered that the Staffing Committee's needs would be met from existing resources but the point regarding a risk assessment would be taken on board.

The Chair asked the Committee for further comments with regard to the in principle decision to have six Members on the Staffing Committee and questioned what the frequency of the meetings should be. The Leader confirmed that they would be happy to look at the number of Members on the Committee and there could be negotiation as it was an in principle decision. With regard to the frequency of the Committee meetings, these are set down in the constitution, but had not been agreed for the new committee and would be discussed by the Transformation and Resources Scrutiny Committee. Members questioned what the frequency of the Employees Consultative Committee was. It was confirmed the Committee met quarterly and Members felt it would be appropriate for the Staffing Committee to mirror the ECC and meet quarterly too.

Some Members made clear that they had no view as they disagreed with the decision made at Full Council.

RESOLVED: That the Chair of Transformation and Resources Overview and Scrutiny Committee and the Leader of the Council confirm membership and meeting frequency of the Staffing Committee.

COUNCILLOR MRS ELIZABETH SHENTON
Chair