

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Corporate Scrutiny Committee**
held on Thursday, 26th August, 2010 at Council Chamber, Municipal
Buildings, Earle Street, Crewe CW1 2BJ

PRESENT

Councillor A Thwaite (Chairman)
Councillor J Narraway (Vice-Chairman)

Councillors A Arnold, G Barton, G Baxendale, D Brickhill, S Conquest,
J Crockatt, H Davenport, D Topping and S Wilkinson

Apologies

Councillors P Edwards

38 ALSO PRESENT

Councillor R Menlove Environmental Services Portfolio Holder
Councillor PH Mason Procurement Assets and Shared Services Portfolio Holder
Councillor D Stockton Cabinet Support Member

Councillor C Thorley
Councillor T Beard

39 OFFICERS PRESENT

Caroline Simpson Head of Regeneration
Clare Godbold HR Business Partner (Corporate Services & Places)
Moaz Khan Interim Project Manager
Mark Nedderman Senior Scrutiny Officer

40 DECLARATIONS OF INTEREST

Councillor David Brickhill declared a personal interest on the grounds that he was the former Environment Portfolio holder.

Councillor T Beard declared a personal interest on the grounds that a member of his immediate family was employed within Cheshire East Highway Services.

41 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present who wished to make a statement.

42 TRANSFORMATION OF HIGHWAYS SERVICES: HIGHWAYS MAINTENANCE TEAM

The Chairman read out the call-in notice signed by 8 Members of the Council relating to the following decision of the Transformation of Highways services sub-committee held on 15 July 2010:

“RESOLVED

For the reasons set out in the report: -

1. That approval be given to the strategic direction of the procurement by way of the Managing Agent Contractor model.
2. That the structures that are, and have been, put in place to support the procurement, and the significant resource implications, be noted.
3. That the advice concerning the appropriate procurement method, namely by competitive dialogue, be noted.
4. That the timetable shown in Appendix 1 of the report be agreed.”

On behalf of the Group of Members who had signed the call-in notice, Councillor C Thorley addressed the Committee and outlined the reasons for the call-in which stated:

‘The 8 listed councillors below have called in the decision of the Transforming Highways Sub Committee to Corporate Scrutiny on the grounds:

1. That because of the value of this contract it should be subject to scrutiny;
2. That Members have not been given the opportunity to scrutinise other options for the delivery of Highway services, for example, alliances with other authorities;
3. The impact on the employment of Highways Staff by the proposed outsourcing.’

Councillor Thorley added that:

- This was a matter of great concern for the public of Cheshire East and for the staff currently employed within Highways Services.
- There appeared to be an unnecessary rush to complete the procurement process, which was likely prejudice introducing arrangements to serve the whole of Cheshire.
- There were concerns about how any new arrangements would serve the development control process.

Councillor T Beard, on behalf of the Call-in group, referred to the fact that the existing the Highways Contract with Bam Nuttall contained a clause to allow the Council to extend the contract and that the Council should not at this stage, rule out the possibility of invoking that clause.

Councillor R Menlove Environment Portfolio Holder, outlined the basis of the decision of the Transformation of Highways Sub- Committee.

He explained that the Head of Regeneration had outlined in her response to the Call-in (which was appended to the agenda for this meeting) the reasons for the original decision of the Transformation of Highways Sub- committee, which were summarised as follows:

1. The transformation of the highways service is a key corporate priority and is one of the five work streams of Total Transport. The decision to progress the procurement of a new highways contract was taken by Cabinet in April and a Sub-Committee was established with delegated powers to make decisions relating to the project within the timelines agreed.
2. The procurement process is using a Competitive Dialogue process which will allow the Council to refine the scope of the new contract through the procurement process over the coming weeks and months.
3. In parallel to the procurement process, the highways service is being re-shaped to reflect the fact that big reductions in capital grant from Government is expected from April 2011. The re-shaping involves voluntary redundancy for some areas of the service. Reductions in future capital spend impacts directly on our revenue income and in simple terms the Council cannot sustain the current structures.
4. Member engagement during the procurement process will be key to shaping the future service. The Cabinet Sub-Committee has delegated authority to make decisions in relation to the new contract. An overview role from the scrutiny process to inform the Sub-Committee will be essential to ensure the new contract meets the needs of the Council from October 2011.

Councillor Menlove explained that, as the existing contract was coming to an end, it was prudent for the Council to consider as early as possible, arrangements for Highways Services from 2011 and beyond.

In response to questions from members of the committee, the Portfolio Holders for Environment and Procurement Assets and Shared Services, supported by the Head Regeneration stated that:

- It was common knowledge that the Government intended to reduce not only funding for the current financial year (in year savings) but also future budgets. The worst case scenario suggested that this could be as much as 40%. The likely impact of there being significant reductions in funds available for Highways projects would in turn lead to the Council having to review staffing levels. The Council was facing these financial pressures, irrespective of the outcome of the current procurement process.
- It was not possible to say at the moment what the impact on staff would be in terms of TUPE arrangements, however, the tendering process had a robust assessment relating to how the new contract would address TUPE and provide support to staff that transferred. TUPE protected the terms and conditions of employees transferred, although it was reported that

there was no time limit specified in the regulations as to the length of protection.

- There were currently 129 staff employed by Cheshire East affected by the Highways contract and approximately 130 employed by the existing contractor Bam Nuttall. The impact of any proposals on staff employed by Bam Nuttall in relation to TUPE was not yet clear, but much of the detail would be dealt with through the competitive dialogue process.
- No staff could be made compulsorily redundant at the point of transfer.
- The procurement of Highways services was one element of the Council's Total Transport Programme, which itself was part of the Council's Transformation programme, and although this particular element of that process had not been listed in the Forward Plan, the Transformation programme in total, had been.
- Cabinet had appointed a sub- committee to carry out the detailed work in relation to the procurement of Highways Services in April 2010 with delegated authority to approve the procurement process. The only formal meeting of the sub- committee had taken place on 15 July 2010. This meeting was open to the public and all papers relating to it were published in the usual manner and were in the public domain. The Sub- committee consisted of 3 Cabinet members only, Councillors R Menlove, P Mason and J Macrae, although at the meeting on 15 July, only Councillors Mason and Macrae were present. A lot of preliminary work had been undertaken by the sub- committee members supported by Councillor D Stockton - Cabinet Support Member. This work had included visits to other Local Authorities.
- Although Cabinet had agreed that the Cabinet sub – committee would keep the Environment and Prosperity Scrutiny committee apprised of the work of the Sub- committee, this had not been communicated to the sub- committee and it was conceded that consultation had not taken place.
- Any failings of the current contract could not be identified, however, the current contract which began with the former Cheshire County Council in 2004, was subject to different performance measures and costs than would be expected with any new contract, in that the Council was looking to improve performance and reduce costs. The changing landscape in connection with local authority funding also meant that the Council would be looking at different delivery models, which were likely to involve smaller capital programmes which in turn would suggest a need for a reduced design function. The Council was aware that the market for the provision of Highways Services was currently buoyant and the Council should realistically expect 5-10% efficiency savings in any new contract.
- The sub-committee had visited Stockport Metropolitan Borough Council, Bedfordshire and Gloucestershire County Councils and had also undertaken a site visit to the Council's current term contractor, Bam Nuttall. The other local authorities visited were considered to be comparable authorities to Cheshire East. Each Council operated a different model. Elsewhere in the country, there were currently 7 or 8 Local Authorities that utilised the delivery model favoured by the sub-

committee and this was similar to long standing arrangements operated by the Highways Agency.

- The Council had commissioned expert legal advice on risk, particularly as the Council was attempting to truncate the procurement process to achieve the introduction of a new contract within 15 months. In addition, the competitive dialogue process, which involved a defined model, would mitigate any risks exposed by the truncated 15 month timescale.
- The costs of extending the existing contract with Bam Nuttall was unknown at this stage, because this would depend on the amount of work required by the Council.
- Staff were briefed about the process on 16 June 2010
- There were a number of key stages in the process starting with dialogue with potential contactors in October/November 2010. The process to short list would take place in January /February 2010. This would be followed by a process to analyse the bids. It was suggested that Overview and Scrutiny Committees could play a role at each of these stages.
- The detailed options appraisals undertaken in relation to various contract models commonly used by Local Government, as referred to in the report to the Transformation of Highways Sub- committee, would be made available to the Corporate Scrutiny Committee.

Note: Having answered questions, Councillors R Menlove, PH Mason and D Stockton each declared a Personal and Prejudicial interest in this matter and withdrew from the meeting.

The Committee then considered the report of the Borough Solicitor enclosing the grounds of the call-in, the options available to the committee in respect of the call-in, together the original report of the Transformation of Highways services sub-committee held on 15 July 2010. The Committee also considered a formal response to the call-in prepared by the Head of regeneration.

RESOLVED –

(a) That in relation to Ground 1:

‘That because of the value of this Contract, it should be subject to Scrutiny’

The Transformation of Highways Sub-Committee be informed that the Committee offers no advice in respect of this matter, on the grounds that the criteria used to determine whether a matter should be subject to Overview and Scrutiny does not specify a monetary value.

(b) That in relation to Ground 2:

‘That Members have not been given the opportunity to scrutinise other options for the delivery of highway services, for example alliances with other authorities.’

The Portfolio Holders serving on the Transformation of Highways Sub-Committee be requested to open dialogue with immediate effect with this Committee and the

Environment and Prosperity Committee, with a view to consulting fully with both committees in relation to their respective interests in this matter, and the sub-committee be advised that the two Overview and Scrutiny committees may wish to be given an opportunity to scrutinise other options for the delivery of highway services, including alliances with other authorities.

Additionally, Cabinet be informed that this Committee believes there are lessons to be learned from inadequacies identified in the consultation arrangements in respect of the transformation of Highway Services and would therefore urge Cabinet to put in place measures to ensure that in future, Overview and Scrutiny committees are given an opportunity to be consulted on all matters that appear within the Forward plan in a timely fashion.

(c) That in respect of Ground 3:

'The impact on the employment of highways staff by the proposed outsourcing.'

The impact upon existing staff, both Cheshire East Council and Bam Nuttall, be considered as a very important aspect of any dialogue entered into and accordingly, should the transfer of highways services proceed, this Council should apply TUPE regulations in an exemplary manner.

The meeting commenced at 2.00 pm and concluded at 4.30 pm

Councillor A Thwaite (Chairman)