

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Audit and Governance Committee**
held on Thursday, 14th June, 2012 at The Mclroy Suite, Macclesfield Town
Football Club, London Road, Macclesfield SK11 7SP

PRESENT

Councillor J Hammond (Chairman)
Councillor L Brown (Vice-Chairman)

Councillors S Corcoran, K Edwards (for Cllr Hogben), R Fletcher, M Hardy,
A Kolker, D Marren, L Roberts and M J Simon

Councillors in attendance

Councillors H Davenport, P Hoyland, J Jackson, M Jones, F Keegan,
R Menlove, B Moran, H Murray, D Neilson, D Newton, P Nurse and P Raynes

Officers

Lorraine Butcher, Strategic Director Children, Families and Adults
Jon Robinson, Internal Audit Manager
Brian Reed, Democratic and Registration Services Manager
Julie Openshaw, Deputy Monitoring Officer
Paul Bradshaw, Head of HR and Organisational Development
Chris Mann, Finance Manager
Paul Mountford, Democratic Services Officer

Audit Commission

Judith Tench
Andrea Castling

Apologies

Councillor S Hogben

1 DECLARATIONS OF INTEREST

There were no declarations of interest.

2 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting of 27th March 2012 be approved as a correct record.

3 PUBLIC SPEAKING TIME/OPEN SESSION

The Chairman welcomed everyone to the special meeting of the Audit and Governance Committee which was being held in the Lyme Green area to demonstrate the Council's commitment to dealing with the matter in an open

and transparent way and to enable local people to attend and address the meeting. All of the papers for consideration by Members had been made available as public documents. Before inviting members of the public to speak, the Chairman emphasised that it was not the role of the Committee to consider the planning merits of the Lyme Green site, nor to consider any disciplinary issues. These matters would be dealt with by other bodies as appropriate. The Committee's role was to consider whether the Council's controls, procedures or policies had been compromised and, if so, what action was required to prevent a recurrence.

Mr Peter Yates addressed the Committee on behalf of the Lyme Green Residents' Group. He commented that the report to be considered by the Committee relating to a waste transfer site at Lyme Green dealt with processes whereas it was the individual officers associated with the scheme who were at fault. He quoted from the report instances where he said that officers took decisions and actions without having regard to the relevant procedures or required authorisations, stating that such actions were taken deliberately in full knowledge that relevant procedural requirements were not being met. On behalf of the Residents' Group, Mr Yates sought assurances that the site at Lyme Green would not be developed as a waste transfer site. He went on to express surprise that no one had raised the matter under the Council's whistle-blowing policy and concluded that officers had been afraid to act.

Mrs Christine Eyre, parish councillor for the Lyme Green ward of Sutton Parish Council and speaking on behalf of the Parish Council, welcomed the content of the Audit Report which she said supported and justified the representations made against perceived inappropriate, possibly illegal, practices associated with the provision of a Waste Transfer Station at Lyme Green Highway Depot. She went on to say that the serious failings by senior officers identified in the Internal Audit report were not system or procedure-orientated but appeared to represent a culture of blatant abuse of office and irresponsibility within Cheshire East Council executed in a deliberate calculated manner to fast track a project. She felt that strengthening administrative systems and procedures would not address the perceived cavalier approach demonstrated by officers. Mrs Eyre went on to say that there were two areas of concern which did not appear to have been addressed within the report, namely, the process by which identification and viability appraisal of alternative sites was undertaken; and the failure of the Planning Department to institute enforcement action when the initial representations were made by Sutton Parish Council. She urged the Committee to make recommendations in this regard. She also urged that any review of staff conduct be undertaken urgently.

The officers were asked to respond to the Parish Council accordingly.

At the conclusion of public speaking time, the Chairman invited visiting Members to address the Committee.

Councillor P Hoyland commented that the Council needed to address the culture which gave rise to such abuses of procedure.

Councillor D Neilson commented that the findings of the review represented a 'monumental failing' of the Cabinet system at Cheshire East Council and that there had been a 'forcing of the issue' all along.

Councillor H Murray commented that the Council's Constitution gave too much power to officers. He also felt that there had been cultural and leadership failings, and he stressed the need for closer links between policy and delivery.

Councillor P Nurse referred to the absence of any reference in the report to the involvement of Cabinet members, making it a partial document.

4 **LYME GREEN**

The Audit and Governance Committee on 31st January 2012 had resolved that:

"a thorough and robust investigation of all issues surrounding the expenditure incurred on the proposed waste transfer station at Lyme Green be added to the work plan; in particular to identify any governance issues and whether all financial and contractual regulations have been complied with."

At its meeting on 27th March, 2012 the Committee had further resolved that a special meeting be held to consider the outcome of the investigation.

Lorraine Butcher, Strategic Director for Children, Families and Adults, had been appointed in March to complete a review, commissioned by the Chief Executive and Leader, of the Council's proposal to build a waste transfer station at Lyme Green Depot, Macclesfield. The Committee had before it the report of the Strategic Director, together with a detailed Internal Audit report.

The Strategic Director's report began by setting out what had happened, and was supported by detailed timelines and the analysis undertaken by Internal Audit. From the analysis it was evident that a project group had been tasked with providing a new waste transfer site at Lyme Green and that towards the end of 2011, while risks were being identified, and even though the timetable involved was compressed, the development commenced without planning permission. Work ceased following objections and complaints from local residents and the local ward Member. The approved capital budget for the scheme had been £650,000, although the value of the works based on feasibility costs was approximately £1,500,000. As at mid-May 2012, total anticipated spend for the Lyme Green Scheme stood at approximately £810,000.

The Internal Audit report considered management's compliance with established policies, procedures, laws and regulations, particularly with regard to the use of assets and resources entrusted to it. The review had

aimed to establish whether controls, procedures or policies had been compromised and to identify the steps that needed to be taken to prevent a recurrence.

The key findings of the review as set out in the report were that:

1. development work had commenced on the project in advance of the appropriate planning permissions;
2. on the face of the evidence, the Council had not complied with EU procurement Regulations;
3. despite the cost of the project rising significantly above the budget approved by Council, a revised Business Case had never been submitted to the Capital Asset Group and expenditure had been committed without a virement or supplementary capital estimate being approved by Cabinet; and
4. Management had breached Finance and Contract Procedure Rules relating to Managing Expenditure and Capital Monitoring and Amendments to the Capital Programme. Capital expenditure had been approved without fully understanding whether building a Waste Service Transfer Station was the most suitable option, or whether the proposed scheme was viable, affordable and achievable.

The detailed findings and recommended actions arising from the review were set out in Appendix 2 to the Internal Audit report. It was evident that a number of key processes would need to be strengthened and organisational structures reviewed as detailed in the Appendix.

During the course of the debate, a number of Members made reference to the terms of reference for the review and questioned whether they were sufficiently widely drawn. The Strategic Director confirmed that the terms of reference had been drawn up by the Chief Executive and former Leader and were focussed specifically on the actions of management and compliance with Council procedures. Other matters may well arise as a result of any subsequent review of the conduct of officers involved.

Having considered the report, its findings and recommendations, Members agreed a number of additional proposals to the ones identified in the report with a view to increasing the level of Member involvement in decision-making. Members felt that the Council's decision-making processes needed to be more robust and that major capital projects in particular should be tabled through Scrutiny regardless of whether or not they were to be taken by delegated decision. Members also felt strongly that the review of officer conduct should be undertaken immediately.

RESOLVED

That

- (1) the findings and recommendations of the Internal Audit investigation as set out in Appendix 1 to the report, and the agreed Action Plan at Appendix 2 to the report, be noted and endorsed;
- (2) progress reports against the identified actions in the Action Plan be submitted to the Committee on a quarterly basis;
- (3) it be noted that with regard to the Council's planning functions, a further review is recommended to consider whether the current organisational structure compromises the delivery of the Council's often conflicting demands of planning enforcement, service delivery and development;
- (4) the Council, in accordance with its staffing policies, instigate an immediate independent review of the conduct of staff mentioned in the report and consider whether there is a case for appropriate disciplinary or other action to be pursued, the review to include consideration of whether the public or any Members were misled;
- (5) the failings of the Council in dealing with this matter be acknowledged;
- (6) the Council's Contract Procedure Rules and Officer Scheme of Delegation be submitted to the next meeting of the Constitution Committee for further review with a view to increasing the level of Member involvement in decision-making;
- (7) all of the minutes of the Corporate Management Team and the Places Directorate Management Team for 2011 and 2012 be made available to the Leader of the Council and to the person charged with undertaking the review of the conduct of staff mentioned in the report;
- (8) any panel convened to hear any disciplinary hearings that arise from the review of staff conduct be supported by an HR adviser external to the authority;
- (9) it be recognised that the Council should not breach the law, even if adverse consequences are considered unlikely;
- (10) in future, there should be greater Member involvement with the development of major capital projects;
- (11) the Environment and Prosperity Scrutiny Committee be asked to consider the specific issue of the waste strategy for the north of the Borough;
- (12) it be noted that the officers will seek independent advice on the process for drafting the terms of reference for the independent review of officer conduct.

At the conclusion of the Committee's consideration of the matter, the Chairman thanked everyone for attending and declared the meeting closed.

The meeting commenced at 2.00 pm and concluded at 5.53 pm
Councillor J Hammond (Chairman)