

Time commenced – 4.03pm
Time adjourned – 5:24pm
Time reconvened – 5:30pm
Time finished – 6.48pm

Executive Scrutiny Board

1 March 2023

Present: Councillor Repton (Chair)
Councillors Care, Carr, Dhindsa, Martin, Pattison, Potter,
Prosser, Roulstone and Whitby

In attendance: Councillors Barker, J Khan, Peatfield, Poulter, Shanker and
Smale
Rachael Andrews – Project Manager (Derbyshire County
Council)
Emily Feenan – Director of Legal, Procurement and
Democratic Services and Monitoring Officer
Alex Hough – Head of Democracy
Kara Macfadyen – Head of Communications and Marketing
Michael Mousdale – Partner (Browne Jacobson LLP)
Rachel North – Strategic Director of Communities and Place
Simon Riley – Strategic Director of Corporate Resources

79/22 Apologies for Absence

Apologies were received from Councillor Jennings.

80/22 Late Items

There were none.

81/22 Declarations of Interest

There were none.

82/22 Exclusion of Press and Public

Signatories to the call-in notice questioned officers as to why the press and public should be excluded from the meeting.

The Head of Democracy advised councillors that as the original Cabinet report and decision that was the subject to call-in had been exempt from publication, a call-in hearing relating to that decision would also likely lead to the disclosure of confidential information. It was the opinion of the Monitoring Officer that information contained within the report was commercially sensitive and would likely harm the council's commercial bargaining power in relation to the future procurement of waste services.

Some members expressed their concern that no part of the proceedings could be discussed in public. A resolution to exclude the press and public was put to the vote and carried.

The Board resolved that under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting during discussion of the following item on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

83/22 Call-In of Council Cabinet decision 161-22 (Long Term Waste Management Project – Update)

The Chair noted that an extraordinary meeting of the Executive Scrutiny Board had been convened following the call-in of Council Cabinet decision 161-22, relating to the Long Term Waste Management Project.

The Chair welcomed those in attendance and invited the Head of Democracy to address the meeting to explain the call-in procedure. It was reported that the powers of Overview and Scrutiny members to call-in a Key Decision were derived from Section 9 of the Local Government Act 2000 and provided a mechanism for members to intervene when they felt that a decision made by the Executive needed to be revisited or possibly changed. It was noted that a call-in hearing represented the final check and balance in the Strong Leader and Cabinet governance system and was regarded as a measure only to be used in exceptional circumstances.

The Head of Democracy advised councillors that the purpose of the hearing was to establish whether the decision-making principles set-out in Article 13 of the Council Constitution had been breached. The signatories to the call-in (Councillors J Khan, Peatfield and Shanker) contested that in the decisions made by the Council Cabinet on 2 February 2023, they failed to follow each of the six principles. Councillors were encouraged to hear the evidence presented from the signatories and the Leader of the Council and to apply a high burden of proof before voting to uphold a call-in on any of the grounds listed in the notice.

The Chair invited the signatories of the call-in notice to address the meeting. Councillor Shanker gave reasons as to why they felt that the action taken by the Cabinet was not proportionate to the desired outcome. Councillor Shanker alleged that the report did not provide clarity of its aims and desired outcomes, with particular regard to the ongoing contractual relationship between Derby City and Derbyshire County Councils.

In addition, Councillor Shanker contested that the decision to proceed with the recommendations contained in the report did not show respect for Human Rights, specifically the rights to life, personal liberty and the right of residents not to be treated in an inhumane way.

Councillors Peatfield and J Khan explained why they felt that the decision had been made without due consultation, particularly in relation to consultation with residents living near to the waste treatment facility in Sinfin.

The signatories contested that the decisions had been made without a presumption in favour of openness; they felt that despite commercial sensitivities relating to the project, some elements of the Council Cabinet report could be disclosed to the public.

Councillor Shanker stated that the record of options provided in the report and subsequently reflected in the minutes of the meeting were not an accurate summary of analysis contained within ancillary documents relating to the project. Moreover, they contested that the relevant issues had not been considered, particularly in relation to the revenue and capital costs associated with the options presented in the report.

Finally, Councillor Peatfield stated that the decision should have been deferred until after the forthcoming local elections.

Members of the Executive Scrutiny Board asked questions of the signatories in relation to the evidence they had presented. Councillors questioned the signatories in relation to assertions made about the future operation of the plant and the benefit of a further round of public consultation at this stage of the project. The signatories contested that the prior lived experience of residents was relevant and required further consultation.

The Leader of the Council was invited to respond to the evidence presented by the signatories. The Leader argued that decisions relating to the Waste Management Project had been made on the basis of technical and professional expertise. The Leader noted the well-documented concerns of residents living near the Sinfin plant and noted that work would take place to rectify environmental issues.

The Leader invited the Monitoring Officer to address the meeting in relation to proportionality and to clarify details of the contractual relationship between Derby City and Derbyshire County Councils. The Leader noted that the aim and outcome of the decision was to commence a procurement exercise and assess market conditions for the future operation of the plant. In this context, it was suggested that concerns relating to respect for human rights were not relevant and that consultation would be undertaken at a later stage, at the point a contract was to be awarded. It was stated that a procurement exercise required technical and professional input and that a further round of public consultation would offer no tangible benefit at this stage.

The Leader suggested that successive administrations had followed the advice of officers in relation to the requirement to maintain commercial confidentiality. The Strategic Director of Communities and Place noted that disclosure may prejudice the Council's ability to get best value from the market.

The Leader invited the Strategic Director of Corporate Resources to address the meeting and explain the split between revenue and capital funding for the

project. The Strategic Director noted that the capital cost of the project was detailed in the report and also explained the circumstances in which revenue costs would be incurred.

The Leader contested that it would be negligent to defer further work on the project, given that the Councils were continuing to incur costs on the upkeep and maintenance of the plant pending identification of its future use and stated that a delay was not in the public interest.

Members of the Board questioned the Leader of the Council in relation to the timing of the decision and the requirement to undertake a public consultation. Councillors also raised questions about the status of the plant if the option not to fix and operate the plant was pursued.

The Chair invited Councillor Shanker to sum-up on behalf of the signatories to the call-in notice. Councillor Shanker re-iterated the points raised earlier in the meeting and stated that Cabinet had failed to follow every aspect of the Council's decision-making principles. The Leader was invited to respond and contested that the call-in notice was subverting an appropriate and proportionate executive decision.

Members of the Board were given an opportunity to make any final comments and reflect on the evidence heard from both the signatories and the Leader. Councillors offered contrasting opinions as to the extent that the decision-making principles had been breached.

The Chair invited the Head of Democracy to proceed to the vote on each of the decision-making principles listed in the call-in notice. The voting was as follows:

- Proportionality

The Board found that there had been a breach of this decision-making principle.

- Due consultation and taking professional advice from officers

The Board found that there had been a breach of this decision-making principle.

- Respect for human rights

The Board found that there had been a breach of this decision-making principle.

- A presumption in favour of openness

The Board found that there had been a breach of this decision-making principle.

- Clarity of aims and desired outcomes

The Board found that there had been no breach of this decision-making principle.

- Record of options considered and relevant issues not taken into consideration

The Board found that there had been a breach of this decision-making principle.

The Executive Scrutiny Board resolved:

1. To uphold the call-in of Council Cabinet decision 161-22 on the following grounds:

- **Proportionality**
 - **Due consultation and taking professional advice from officers**
 - **Respect for human rights**
 - **A presumption in favour of openness**
 - **A record of what options were considered and giving reasons for the decision and that relevant issues did not appear to have been taken into account.**
- 2. To refer Council Cabinet decision 161-22 to Council Cabinet for reconsideration.**

MINUTES END