
EXTRA-ORDINARY SCRUTINY COMMITTEE

MINUTES of the virtual Extra-ordinary Scrutiny Committee Meeting held via Skype on Wednesday, 20 May 2020 from 7.00pm - 9.55pm.

PRESENT: Councillors Cameron Beart (substitute for Councillor Pete Neal), Lloyd Bowen (Chairman), Richard Darby, Steve Davey, Mike Dendor (Vice-Chairman), Tim Gibson, Alastair Gould, Carole Jackson, Elliott Jayes, Denise Knights, Lee McCall and Ken Pugh.

OFFICERS PRESENT: Martyn Cassell, David Clifford, Janet Dart, Jay Jenkins, Kellie MacKenzie, Jo Millard and Bob Pullen.

ALSO IN ATTENDANCE: Councillors Monique Bonney, Roger Clark, Simon Clark, Simon Fowle, Angela Harrison, Alan Horton, James Hunt, Ken Ingleton, Peter Marchington, Ben J Martin, Richard Palmer Hannah Perkin, Ken Rowles, Eddie Thomas, Tim Valentine, Ghlin Whelan and Mike Whiting.

APOLOGIES: Councillors James Hall and Pete Neal.

668 INTRODUCTION

The Chairman explained that the meeting would be conducted in accordance with the Local Authorities and Police and Crime Panel (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No 392.

In welcoming all Members, the Chairman explained which Swale Borough Council officers were in attendance.

669 DECLARATIONS OF INTEREST

No interests were declared.

670 CALL-IN MINSTER LEAS MODULAR TOILET CONTRACT AWARD

The Chairman explained that the purpose of the meeting was the call-in of the Cabinet decision to agree the tender contract, including the location, of the Minster Leas Modular toilet scheme. The Chairman referred to the three reasons for making the call-in and invited the Cabinet Member for Environment to speak.

The Cabinet Member for Environment responded to the reasons for the call-in by saying that as the building would be built under Permitted Development, a public consultation was not required but officers had attended Minster Parish Council and had spoken to ward members about the project. He accepted that the Parish Council's views were not included in the report but explained that ward members and other members had made their views known at the extra-ordinary Cabinet meeting held on Wednesday 22 April 2020. The Cabinet Member for Environment said that location A was the most economically viable location option.

The Head of Commissioning, Environment and Leisure outlined the tender process and highlighted the transparent mechanism. He said that the Council were not duty bound to award the lowest price as both quality and price were taken into consideration.

In response, Members made points which included:

- A proper consultation should have been carried out, despite the building being Permitted Development;
- Minster Parish Council were not provided with full information;
- location B was more acceptable;
- the proposed site was less convenient, further away from the beach and within the visual field of Minster bay;
- why had the more convenient location adjacent to the car park above the drainage level or other options not been considered by Cabinet?; and
- at what point had alternative locations been taken out of consideration?

The Chairman went through the reasons for the call-in.

Reason 1 – Inadequate consultation relating to the decision

Members raised several questions and points including:

- As there was no consultation, the public only became aware of the proposals from the media;
- the proposal was on public land and it was courtesy to consult the public;
- consultation was key when spending public money;
- the location and specification chosen were not supported by the public;
- whilst there was no legal obligation to consult the public, the Council should do the right thing;
- a public consultation for cars parking on The Leas was carried out by the previous administration, despite the Council not being legally obliged;
- the views of ward members, Minster Parish Council and residents had been dismissed;
- not all ward members were consulted; and
- late public comments were not tabled at the Cabinet meeting.

In response, the Cabinet Member for Environment drew attention to the location map on page 68 of the report and said that the location was chosen carefully, not opposite any properties. He said it would be difficult to run a consultation for visitor facilities, whilst explaining the engineering difficulties within different locations. The Cabinet Member for Environment said that all original locations and views were considered. The Head of Commissioning, Environment and Leisure apologised to a ward member for not consulting him on the project but advised that he had been in communication with other Members and had sent out a summary document of the options to Minster Parish Council, some of whom were ward members. The Chairman said that ward members would have attended the Parish Council in their capacity as Parish Councillors.

Councillor Ken Pugh proposed that:

The correspondence and views of Ward Councillors and the Parish Council should be referred back to Cabinet for their reconsideration.

The proposal was seconded by Councillor Mike Dendor.

Councillor Cameron Beart proposed that:

Cabinet carry out a formal consultation with the public to consider all location options.

The proposal was seconded by Councillor Mike Dendor.

Reason 2 - Relevant information not considered

The Head of Commissioning, Environment and Leisure said he had received and acknowledged a copy of the minutes from Minster Parish Council and apologised that this had been omitted from the report. He said that he had spoken to residents whilst at the site and views on the preferred location were split. He said that technical issues of the scheme would probably need to override the visual amenity.

In the debate that followed Members raised points including:

- Support for officers but Cabinet Member for Environment should take responsibility for his own report;
- information that the decision was technically driven was not explained in the report but was discussed at the Cabinet meeting;
- Cabinet Members did not have the correct or full information to enable them to make a decision;
- Cabinet were only given 1 option in the report;
- there should have been more background information in the report on what was viable or not, on all site options;
- highlighted paragraph 2.5 on page 67 on the report which referred to 3 options;
- residents' understanding of engineering operations should not be underestimated;
- the company that offered the same cost for option A and B, despite the technical differences, should have been accepted once they confirmed they understood the projects;
- Cabinet Member had already made up their mind on option A; and
- clarification on delays if public consultation was now carried out.

In response, the Head of Commissioning, Environment and Leisure explained that a range of locations were considered, including the car park site, which was removed as an option due its poor pedestrian access, its position up a hill and the car park surface. He added that all companies had agreed to hold their submitted prices for options A and B until after the next Cabinet meeting and a further delay would likely mean cancelling the tender completely. The Cabinet Member for Environment said it was not reasonable to tender for 5 different locations.

The Chairman asked whether baby change facilities could be incorporated into the male, female and disabled toilet? The Head of Commissioning, Environment and Leisure said that the modular buildings were off the peg and the final specification could include this facility via a retrofit.

The Head of Commissioning, Environment and Leisure advised that additional facilities such as shower and footwash had been considered but were not feasible as part of the building tender. A water foundation and footwash/shower facilities would be added separately.

There was a discussion on whether the toilet cubicle should be unisex or separate and the Cabinet Member for Environment advised that separate facilities had been suggested at the Cabinet meeting.

Councillor Cameron Beart proposed that:

Cabinet to retender again, based on the outcome of the public consultation as not all location options were considered by Cabinet

The proposal was seconded by Councillor Mike Dendor.

The Chairman submitted the following proposal which was seconded by Councillor Mike Dendor:

That the eventual design of toilets must incorporate baby change facilities and shower and footwash facilities in both female and male toilets.

The Monitoring Officer reminded the Scrutiny Committee to address their concerns about the Cabinet decision and the Chairman withdrew the proposal.

Reason 3 - Justification for the decision open to challenge on the basis of the evidence considered

A Member drew attention that the tender required companies to price for both options A and B, but the awarded company had only priced for one location. He questioned whether this was compliant? The Head of Commissioning, Environment and Leisure said that legal advice had been sought and it would be difficult to make a company tender for a location they did not feel was feasible.

In response to a question on whether macerators and pumps were included as part of the tender, the Head of Commissioning, Environment and Leisure explained that companies had to design solutions to facilitate the projects and different design solutions were required in option B.

There was a discussion on the content of the tender and the Cabinet Member for Environment said that there was a reliance on professional officers' judgement of the tenders. The Head of Commissioning, Environment and Leisure explained that tenders were evaluated by a panel including a qualified building surveyor and that, in accordance with the Constitution, and Contract Standing Orders, there was no Member involvement.

In response to a Member's comment that the design of the project should ensure that there was no sewerage spillage as part of option B, the Head of Commissioning, Environment and Leisure explained that its position up hill would mean reliance on a possibly unreliable system and officers were not convinced this was a suitable location.

The Cabinet Member for Environment confirmed that he was responsible for the tender being carried out but was not allowed to read the tender documentation as per the Constitution.

A Member criticised the lack of information in the report and said that Members of the Committee needed better quality reports in order to base their decisions.

The Chairman thanked Members and officers.

Resolved:

That the Scrutiny Committee requests Cabinet to reconsider this decision in view of the concerns expressed on the call-in form. Given these concerns, the Scrutiny Committee recommends that:

- (1) The correspondence and views of Ward Councillors and Minster Parish Council should be referred back to Cabinet for their reconsideration.***
- (2) Cabinet carry out a formal consultation with the public to consider all location options.***
- (3) Cabinet to retender again, based on the outcome of the public consultation as not all location options were considered by Cabinet.***

671 ADJOURNMENT

The meeting was adjourned from 8pm to 8.05pm and from 9.12pm to 9.24pm.

Chairman

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All Minutes are draft until agreed at the next meeting of the Committee/Panel