

**THE OVERVIEW AND SCRUTINY COMMITTEE**

**23 March 2015**

Attendance:

Councillors:

Cook (Chairman) (P)

Bodtger (P)  
Dibden  
Evans  
Gemmell (P)

Learney  
Pines (P)  
Power (P)  
Sanders (P)  
Wright (P)

Deputy Members:

Councillor Tod (Standing Deputy for Councillor Learney) and Councillor Hiscock (Standing Deputy for Councillor Evans)

Others in attendance who addressed the meeting:

Councillors Pearson (Leader), Byrnes (Portfolio Holder for Business Services), Godfrey (Portfolio Holder for Finance and Organisational Development), Thompson and Gottlieb

Others in attendance who did not address the meeting:

Councillors Miller (Portfolio Holder for Housing Services), Read (Portfolio Holder for Built Environment), Lipscomb and J Berry

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1. **APPOINTMENT OF VICE CHAIRMAN FOR THE REMAINDER OF THE 2014/15 MUNICIPAL YEAR**

RESOLVED:

That Councillor Bodtger be appointed Vice-Chairman for the remainder of the 2014/15 Municipal Year.

2. **DISCLOSURE OF INTERESTS**

Councillor Tod declared a disclosable pecuniary interest in respect of agenda item 7, 9 and 10 due to his role as a County Councillor. However, as there was no material conflict of interest, he remained in the room, spoke and voted under the dispensation granted on behalf of the Standards Committee to participate and vote in all matters which might have a County Council involvement.

Councillor Tod also declared a personal (but not prejudicial interest) in relation to Report OS121 – Outcome and Recommendations of the Homelessness Informal Scrutiny Group, as he was a member of Hampshire County Council Supporting People Review Group. He remained in the room, participated in the discussion thereon, and voted upon the recommendations in the Report.

3. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman announced that, following the Committee's support for the review of the Council's scrutiny processes, a series of visits would be arranged to nearby authorities. The Chairman advised that the outcome of these visits would be reported back to the Committee later in the year.

4. **MINUTES**

RESOLVED:

That the minutes of the previous meeting of the Committee (less exempt minute) held on 16 February 2015, be approved and adopted.

5. **PUBLIC PARTICIPATION**

Rose Burns addressed the Committee and spoke in her own capacity and also on behalf of Martin Wilson regarding the River Park Leisure Centre (RPLC) contract. Particular reference was made to the fact that the contract had not been put out to tender since 1992, together with issues of monitoring, suggesting that, in their opinion the Council had failed to act in diligence for the provision of the leisure facility resulting in the contract being mismanaged. She informed the meeting of their on-going wish, raised at previous meetings of the Committee, for an independent external review to be undertaken of the matter (and also on other major Council contracts), especially in response to the Silver Hill decision being ruled as unlawful by the High Court.

In response, the Chief Executive reiterated that the Committee had previously considered the matters raised by Rose Burns. He advised that external legal advice on the RPLC contract would be sought in light of the Silver Hill judgment, the outcome of which would be reported to Members.

Following questions raised by Councillor Wright, the Head of Legal and Democratic Services clarified the position should the Committee be required to go into exempt session with regard to matters related to the Silver Hill development.

6. **COMPLAINTS RECEIVED BY THE COUNCIL 2013/14**  
(Report OS122 refers)

Councillor Byrnes introduced the report which summarised complaints recorded on the Council complaint system during the year to March 2014. The report additionally referenced those received by the Local Government Ombudsman (LGO), together with the conclusions reached following the investigations by the Ombudsman.

The Committee noted that information specific to individual authorities, including the number of complaints referred to the Ombudsman and the publishing of the Ombudsman decision and decision statements could be located by category or authority via the LGO website [www.lgo.gov.uk](http://www.lgo.gov.uk)

The Committee were informed that complaints were down 2.8% on the previous year which was indicative of the Council's overall performance. However, there were sectors where an increase in complaints had been identified, specifically Environmental Health and Housing Services. These generally related to areas such as bin collection, garden waste and property repairs. The Head of Business Management reported that a new system of recording and monitoring complaints filtered actual complaints rather than customer enquiries. The next report to be produced for the Committee would utilise the more accurate information extracted from the new monitoring system and the Committee agreed that this should include a more detailed area breakdown of complaints for Environment and Housing as requested by Members.

As this was to be the last meeting before he left the Council, the Committee gave a vote of thanks to Paul Wood, Head of Business Management for his hard work, commitment and achievements throughout his years of employment at Winchester City Council, particularly in relation to the implementation of the Customer Service Centre and his contribution towards attaining the accreditation in Customer Service Excellence.

RESOLVED:

That the information in the report be noted.

7. **OUTCOME AND RECOMMENDATIONS OF THE HOMELESSNESS  
INFORMAL SCRUTINY GROUP**  
(Report OS121 refers)

The Chairman of the Homelessness Informal Scrutiny Group (ISG), Councillor Cook introduced the report and he highlighted the key issues facing the service. These included the challenges posed by changes to funding of supported housing from Hampshire County Council (HCC), the need for effective communication and coordination of work between agencies working in the

homelessness sector and the importance of retaining the existing front line housing provision.

The Committee referred to the Winchester Pathways Approach for homelessness which was circulated at the meeting and also gave consideration to each of the recommendations identified by the ISG.

The Committee discussed various aspects of the ISG's investigations and in summary, the Assistant Director (Chief Housing Officer) reported that a more collaborative approach to homelessness matters was to be reassessed. The Committee also welcomed the proposals for their to be a Member briefing on homelessness matters and that this training be an annual update event

RESOLVED:

That the following recommendations of the Homelessness Informal Scrutiny Group be endorsed and recommended to Cabinet for implementation;

- i. The Council makes formal representations regarding County Council proposals for the redistribution of Supporting People funding for excluded groups, highlighting the likely impact on the district;
- ii. A campaign be launched to raise awareness of rough sleepers in the parishes and rural areas;
- iii. Consideration be given to the re-launch/re-promotion of the 'alternative giving scheme' campaign within the town centre to reduce begging and street activity and raise awareness of actual rough sleeping;
- iv. A shared data base be established, funded from Homelessness Prevention Grant, to promote a 'no wrong door approach', ensuring all agencies supporting single homeless households can share data and outcomes of individual cases and all agencies being aware of written advice given and supporting the approach;
- v. That a report be brought to Cabinet (Housing) Committee as soon as possible reviewing the options for addressing the gaps in stage 2 and 3 accommodation within the district;
- vi. That the current level of frontline resources in the Housing Options team be retained by making the fixed term Housing Options Officer post permanent;

- vii. To continue to achieve the Gold Standard Local Challenges and to prepare a progress report for the Cabinet (Housing) Committee in October 2015; and
- viii To develop/improve liaison and protocols with all statutory agencies and to establish a district Homelessness Forum to provide opportunities for effective collaboration.

8. **LOCAL GOVERNMENT BOUNDARY COMMISSION FOR ENGLAND – DRAFT RECOMMENDATIONS FOR WINCHESTER**  
(Report CAB2668 refers)

The Committee noted that the report had been considered by Cabinet at its meeting held 18 March 2015. Members noted that Cabinet had made recommendations to full Council on further representations to be made to the Commission.

Councillor Godfrey introduced the Report and outlined that of the 16 points made in the Council's submission to the Commission on the suggested approach for devising new Ward boundaries (Appendix 1 of CL101 refers), 12 had been taken on board but four had not been. He highlighted each of these four points. It was suggested that The Overview and Scrutiny Committee might wish to consider recommending to Council that the Commission review each of these together with any further matters that it may wish the Council to raise.

The Committee noted that the deadline for comments to be submitted to the Commission was 6 April 2015 following the meeting of the Council on 1 April 2015.

Members expressed concerns regarding the size and scale of the proposed geographical areas of the new Ward boundaries, resulting in some particular Wards encompassing up to 17 parishes over a broader area, including large areas of open countryside. One Member felt that the ability of Ward Members to serve their residents, particularly in larger Wards, could be compromised.

The Committee raised further concern in relation to the splitting of communities where connections have been built and strengthened over many years and the amalgamation of different parishes combined to form the proposed new Wards. Members were of the opinion that smaller communities, such as those within the Winnall and Highcliffe area would not be heard amongst others contained within the Ward area.

**RECOMMENDED:**

**THAT THE VARIETY OF COMMENTS MADE BY MEMBERS BE NOTED, BUT NO SPECIFIC COMMENTS FROM THE OVERVIEW AND SCRUTINY COMMITTEE ON THE PROPOSAL BE MADE TO COUNCIL.**

9. **MINUTES OF WINCHESTER CITY COUNCIL/EAST HAMPSHIRE DISTRICT COUNCIL ENVIRONMENTAL SERVICES JOINT SCRUTINY COMMITTEE HELD 9 FEBRUARY 2015**

(Report OS123 refers)

At the invitation of the Chairman, Councillor Thompson (Chairman of the Joint Committee) introduced the Minutes.

During discussion, Councillor Thompson drew Member's attention to items for discussion at future meetings as set out at minute 6 on page 3. These included recycling rates achieved by the joint contract, which would include measures to measures to further improve rates and decrease instances of decontamination where this occurred.

The Committee referred to complaints received by the Council related to Environmental Services (Report OS122, elsewhere on the agenda, refers) and suggested that this may be a matter that could be additionally considered by the Joint Committee?

In response to further discussion, the Chief Executive drew attention that the Joint Committee scrutinised the performance of the joint contract. Should The Overview and Scrutiny Committee require representatives of the contractor (i.e. Biffa or The Landscape Group) to attend one of its meetings with regard to matters relating to the performance of specific areas of the contract relating to Winchester, then that was appropriate.

**RESOLVED:**

That the minutes of Winchester City Council/East Hampshire District Council Environmental Services Joint Scrutiny Committee held 9 February 2015 be noted.

10. **SILVER HILL – REVIEW OF PROJECT POSITION**

(Report CAB2675 refers)

The Committee noted that the report had been considered by Cabinet at its meeting held 18 March 2015.

At the invitation of the Chairman, Councillor Gottlieb addressed the Committee and his comments are summarised below. His comments had also been emailed to Members of the Committee in advance of the meeting.

Councillor Gottlieb suggested that Cabinet's decision to note the Report was flawed as this ignored the direction of the High Court judgment, prejudiced the Review the Council had just commissioned and was based on a fundamental falsehood. He stated that the High Court judgment was that the Council breached the procurement regulations in both 2004 and in 2014. Faced with such a ruling, the Council should be doing its utmost to ensure that its most important project was now offered to the whole market. The Council could achieve this objective by terminating the still conditional 2004 Development Agreement on 1 June 2015, in 10 weeks time.

In the meantime, the Council was under no obligation to take actions itself, or to assist Henderson with satisfying the remaining conditions. The Council was legally entitled to terminate the Agreement, and all notions that the Council and even individual Councillors being sued were completely unfounded.

If Henderson was allowed to make the 2004 Development Agreement unconditional, the one opportunity the Council had to properly procure the contract would be lost. The 2004 Agreement itself stemmed from an unlawful action, and there was no legal, commercial or moral obligation to continue to prefer Henderson to the exclusion of all other parties. It would be negligent and disdainful of the Court, for the Council to do this.

Councillor Gottlieb drew Members' attention that the Review being undertaken by Ms Claer Lloyd-Jones was to examine all these issues in detail. She might very well produce a number of recommendations as to how the Council should act going forwards. By just simply noting CAB2675, the Cabinet was allowing things to continue in such a way that might completely undermine the Review, and prevent any recommendations that she made being put into effect. He suggested that Cabinet ought to have put everything on hold until the Review was completed, and its recommendations, if any, acted upon. The Development Agreement did not automatically terminate on 1 June, so there was no reason at all why everything could not be frozen until after the Review was completed.

Councillor Gottlieb explained that the "falsehood" previously referred to was the premises underlying CAB2675, namely that Henderson now wanted to pursue the 2009 scheme. In June 2012, Henderson had submitted evidence to the CPO Inquiry saying that the 2009 scheme (including 100 affordable homes and a bus station) was financially viable and would be delivered. The Council submitted evidence saying the same. After the CPO was confirmed in March 2013, Henderson changed their position and then stated throughout 2014 that the 2009 scheme was not viable and could not be delivered. Despite losing the cost of the bus station and adding 60,000 square feet of retail space, the finances were apparently still so tight that Henderson persuaded the Planning

Committee to accept a reduction of over £5million in the affordable housing contribution which the Council should have sought.

He continued that the Council had accepted that the 2009 scheme was not financially viable and, in the evidence it had submitted to the Judicial Review hearing in January, had said that its professional advisors accepted this position too.

Councillor Gottlieb concluded his presentation by stating that he considered that for the Council to even entertain the idea of Henderson pursuing the 2009 scheme was extraordinary. He posed a series of questions to Members, asking why was the Council not properly investigating the circumstances now, but instead facilitating Henderson's intention to make the Development Agreement unconditional? He asked at what point would Henderson come back with requests for changes to the 2009 scheme, of a similar nature to those that led to the recent Court proceedings? The only viable action for the Council to take, which he suggested the Committee must impress upon Cabinet, was that the Council should use all commercial and legal means to end the exclusive relationship with Henderson, so that the Council could deal with the whole open market. If the Committee or Cabinet were unable to bring itself to do this, they should at the very least freeze the whole situation until after the Review was complete.

Lastly, Councillor Gottlieb reported that he had forwarded to Committee members by email a Legal Opinion that he had commissioned before the Cabinet meeting to help explain the Council's position as regards the termination of the 2004 contract.

The Chairman thanked Councillor Gottlieb for his comments. The Head of Legal and Democratic Services clarified that the Committee could review CAB2675 and also the matters raised by Councillor Gottlieb and make any comments to Cabinet accordingly.

Councillor Pearson introduced the report and summarised its content. In summary, he emphasised that CAB2675 gave an overview of the current position and the options available to the Council with regard to the Silver Hill proposals. He indicated that Henderson had been asked to arrange a public exhibition of the Silver Hill scheme that was approved in 2009.

The Chief Executive also clarified that CAB2676 was an information report that was setting the scene of the current position of the project and that no particular action had been recommended for either Cabinet or The Overview and Scrutiny Committee. He drew Members' attention to the crucial key date on which the current 'long stop' agreement with Henderson expired – 1 June 2015. He explained that after that time, either party could exercise their rights under the Development Agreement to terminate the Agreement. The Head of Legal and Democratic Services referred to the possibility that Henderson might wish to



proceed with implementing the scheme that had received planning permission in 2009. This was as described in the report at paragraph 3.2 on page 4. The Chief Executive reiterated that should this option be progressed, the Council would need to take extensive legal advice on the matter and he acknowledged that the Council would be presented with a complex set of decisions to make.

One Member suggested that the 2004 Agreement had been found to be unlawful, and therefore it could not be implemented.

Members discussed the situation should Henderson seek to progress a proposal based on the existing 2009 scheme. Concerns were raised that the Committee and the Council had previously only supported the 2014 variations to the Development Agreement on the understanding that the 2009 scheme was unviable. The Judicial Review had subsequently found the variations to be unlawful. A Member asked the Leader whether he would be supportive of proposals coming forward based along the lines of the 2009 planning permission.

In response, Councillor Pearson recognised that there may be some elements of the 2009 scheme which it might be desirable to change, although clearly changes to the extent proposed in the 2014 scheme would not be possible. Much would depend on how Henderson chose to progress the scheme.

During further discussion, a Member suggested that the Council should carefully consider whether it was able to work in partnership with a developer who had changed its position with regard to viability.

Further to questions, the Chief Executive reiterated that if Henderson were to suggest a scheme based on the 2009 approval that was viable, the Council would need to carefully scrutinise this and take appropriate external advice. It was noted that the proximity of the date of 1 June 2015 would mean extremely tight timescales for decisions to be made.

A Member was concerned that the Committee might not be able to give its opinion on the content of the Report without it first having been party to the matters contained in exempt Appendix 8 of CAB2665 – Silver Hill Judicial Review Decision. In response, the Chairman suggested that the Committee may choose to draw this particular matter to the attention of Cabinet.

In response to a question from a Member in respect of the timeline for the project in the event that it was decided to restart the whole regeneration process, as set out in Appendix 2 of the report, the Corporate Director accepted that some periods could be shortened, but others were outside the Council's control and could not therefore be reduced. Any restarting of the process could involve a reconsideration as to whether comprehensive redevelopment of the whole site should be required.

In response to discussion with regards to the impact of the Silver Hill development on the Council's retail requirement policies in Local Plan Part 2, the Chief Executive acknowledged that there could be risk of speculative planning applications for out of town retail being won on appeal. The Head of Estates also advised that Henderson, like any developer forced down a particular route, may be prepared to develop at a loss.

During further debate, attention was drawn to the need to ensure that the public were fully consulted with regard to any proposals going forward with regard to Silver Hill. Scrutiny should play a role in this and a Member also drew attention to the Council's capacity in general to deal with major projects. Concern was also raised of any potential that Henderson may try to 'force' the Council into supporting the 2009 scheme – especially when previously it was understood that this was unviable. If the 2009 Development Agreement became unconditional, the Council would be unable to influence the development going forward. One Member questioned whether there may have been a failure in process in assessing viability previously.

A Member suggested amendments to the 2009 scheme, which were likely to increase the potential for this to be viable. This should include a reduction in on-site affordable housing (with replacement provision being either provided off-site, or by a financial contribution) given the high land values in the town centre. It was suggested that there was potential to include new Council offices within the development site. The capital receipt taken for the existing City Offices site could be utilised to reduce any overall net loss.

At the conclusion of debate, the Committee were in agreement that the Council must consider all options and choices available to it before making any decision on how to proceed, also having regard to the outcomes of the Independent Review.

The Committee agreed that there were no matters that required consideration in exempt session.

RESOLVED:

That the Report be noted

11. **SCRUTINY WORK PROGRAMME AND APRIL 2015 FORWARD PLAN**

RESOLVED:

That the Scrutiny Work Programme and Forward Plan for April 2015 be noted.

12. **COUNCILLOR CHRIS PINES**

The Chairman drew attention that, as well as being the final meeting of the Committee on the Municipal year, it was also the final meeting that Councillor Pines would attend as a member of the Council. On behalf the Committee, he thanked Councillor Pines for his previous chairmanship and for his work as Councillor over the years. Members reciprocated with applause.

13. **EXEMPT BUSINESS**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100(I) and Schedule 12A to the Local Government Act 1972.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
##	Exempt Minutes of previous meeting held 16 February 2015:	) Information relating to the financial or business affairs of any particular person (including the authority holding that information). ) (Para 3 Schedule 12A refers)

14. **EXEMPT MINUTE**

RESOLVED:

That the exempt minute of the previous meeting of the Committee held on 16 February 2015, be approved and adopted.

The meeting commenced at 6.30pm and concluded at 9.10pm.

Chairman