

BIRMINGHAM CITY COUNCIL

RESOURCES O&S COMMITTEE – PUBLIC MEETING

1400 hours on Thursday 20th December 2018, Committee Room 6 and re-convened 1200 hours on Thursday 10th January 2019, Committee Room 2

Present:

Councillor Sir Albert Bore (Chair)

Councillors: Muhammad Afzal, Josh Jones, Zaheer Khan, Ewan Mackey and Paul Tilsley

Also Present:

Councillor Majid Mahmood, Cabinet Member for Clean Streets, Waste and Recycling

Councillor Brett O'Reilly, Cabinet Member for Finance and Resources

Darren Share, Acting Service Director, Waste Management

Jayne Power, Scrutiny Officer

Emma Williamson, Head of Scrutiny Services

1. NOTICE OF RECORDING/WEBCAST

The Chairman advised the meeting to note that this meeting will be webcast for live and subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2. APOLOGIES

Apologies were received from Councillor Meirion Jenkins.

3. DECLARATIONS OF INTERESTS

None.

4. REQUEST FOR CALL IN – WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT - PUBLIC

The Chair began by stating that at some point during the meeting there might be a need to go into private session to pick up matters contained within the private Cabinet report of 11th December.

He then went on to say that he had looked back at the scrutiny report of 2014, the tracking of that scrutiny report and its recommendations, and the report to Cabinet in 2016 which set out a strategy in terms of waste streams and energy issues, but also, very importantly, set a timeline. That timeline and the issues addressed in the

June 2016 report brought Cabinet back in line with the scrutiny recommendations of 2014 and the timeline in that report took forward in many respects the issues in the timeline of the scrutiny report. He had also looked back at the procurement strategy report which went to Cabinet in February 2018, which again takes forward many of the items flagged in the 2016 report.

The Chair said he believed that there had been an abrogation of duty by officers and a lack of proper political oversight which has led to a report going to Cabinet, first on 3rd December 2018 and then subsequently, with very little change, going back to Cabinet on 11th December. Matters which had been flagged in decisions taken by the Council had not been taken forward and, whatever the outcome of the request for call-in, he would be seeking a meeting with the Chief Executive to deal with this.

He further stated that Cabinet has now agreed a set of recommendations which put in place an extension to the current Veolia contract beyond the two year extension that was envisaged in the February report to Cabinet and at no point in the December report does the Cabinet rescind the recommendations and decisions that it took in February.

In the discussion which followed, the following points were made:

- Members expressed concern that as not all relevant officers were present at the meeting it would not be possible to get full answers to any questions raised and a suggestion was made to adjourn the meeting to a time when those officers were available;
- Councillor Mahmood explained that a number of officers were involved in a meeting with ACAS and had therefore not been able to attend this meeting. He also suggested the meeting be postponed until the right people could be brought in to answer Members' questions for effective consideration of the call-in;
- The Chair confirmed that the advice he had been given was that by calling today's meeting the Committee had complied with constitutional requirements and it would therefore be acceptable to postpone the meeting, with Cabinet Member agreement, until early January and that there would be no implementation of the Executive decision until after it has come back to this Committee;.
- It was therefore agreed both by members of the Committee and the Cabinet Members that to give proper consideration to the various issues the meeting would be adjourned and the date of Thursday 10th January was suggested and agreed.

RESOLVED:-

- That the meeting be formally adjourned to a time to be agreed on Thursday 10th January 2019. This formal adjournment was agreed both by members of the Committee and the Cabinet Members present.

5. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)

None.

6. OTHER URGENT BUSINESS

None.

7. AUTHORITY TO CHAIRMAN AND OFFICERS

Agreed.

The meeting ended at 1455 hours.

The meeting re-convened at 1200 hours on Thursday 10th January 2019:

Present:

Councillor Sir Albert Bore (Chair)

Councillors: Muhammad Afzal, Meirion Jenkins, Josh Jones and Paul Tilsley

Also Present:

Councillor Majid Mahmood, Cabinet Member for Clean Streets, Waste and Recycling

Councillor Brett O'Reilly, Cabinet Member for Finance and Resources

Councillor Lisa Trickett

Rob James, Acting Director, Place Directorate

Darren Share, Acting Service Director, Waste Management

Mike Smith, Acting Head of Commissioning and Procurement

Jayne Bowles, Scrutiny Officer

Emma Williamson, Head of Scrutiny Services

1. NOTICE OF RECORDING/WEBCAST

The Chairman advised the meeting to note that this meeting will be webcast for live and subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2. APOLOGIES

Apologies were received from Councillor Zaheer Khan and Ewan Mackey.

3. DECLARATIONS OF INTERESTS

In the interests of transparency, Councillor Lisa Trickett advised the Committee that she is currently contracted to undertake work with the University of Birmingham

looking at the East Birmingham inclusive growth corridor in terms of a low carbon future. She told Members she had in no way engaged with any waste contractor as part of this work and indeed had ruled that out as part of the contract.

4. REQUEST FOR CALL IN – WASTE DISPOSAL CONTRACT INTERIM ARRANGEMENT AGREEMENT - PUBLIC

The Chair began with a reminder that this was a re-convened meeting following the adjournment of the 20th December meeting and expanded on the background that had been provided at the beginning of that session.

Reference was made to the late circulation of the various documents which had been requested and the difficulty in accessing them. Also, some documents were missing, including one which had been referred to in the Cabinet report of 11th December, and this would be taken up after the meeting.

The Committee then heard evidence from Councillors Lisa Trickett, Majid Mahmood and Brett O'Reilly, Rob James, Acting Director for Place Directorate, Darren Share, Acting Service Director, Waste Management, and Mike Smith, Acting Head of Commissioning and Procurement.

In the course of the evidence gathering session, the following were among the main points raised:

- Councillor Trickett's view was that there were a number of issues, including the inability of the Council to learn lessons and respond to big concerns, loss of strategic capacity and capability and the inability to take advice and engage in a wider sphere;
- She went on to say that the Waste to Resources scrutiny report set a framework to do something different as an authority. The strategic fit of Veolia was key to support the move to a carbon free city. Best Value is also a key driver and the position we are now in is that we have not received best value or started the pathway to a carbon free future;
- It was unclear what had driven a five year overrun. When the workshop on the overrun agreement was held in January 2018 the policy and decision was to negotiate a two year extension; there was concern that this would be anti-competitive, however the feedback from the market was that there was not enough time to review the energy from waste plant and the community sector did not have time to develop processes;
- It was clear at that point that the two year overrun was important but that anything more than that would potentially give an unfair advantage to Veolia as the incumbent;
- With regard to securing benefits in terms of electricity, looking back at the historic output of the plant and current capacity, it is unlikely the Council would receive any profit share. Taking into account essential works undertaken by the contractor, unless we have built into the contract to drive up to 90% performance, no profit can be secured on general energy prices;
- There is a need to ensure in any contract we build in binding targets and investment schedules so as not to fetter outputs;
- It was questioned whether there was an obligation on the contractor to return the Tyseley plant to the City Council in good condition and Councillor

Trickett responded that Veolia had an obligation to return the plant in a good state of repair;

- The Chair pointed out that the briefing note Committee has makes clear the contract is silent on whether Veolia can be considered liable but there are associated leases that could put in place obligations to repair key assets prior to contract expiry; this is a matter which is being looked at by consultants but that was the position in January 2018;
- Councillor Jones pointed out that during the 2014 scrutiny review, Veolia stated publicly that they would not be putting any money into the asset unless they had a guarantee they would get the contract post-2019;
- Councillor Mahmood told Members that his position was that such long term contracts should be dealt with towards the end third of the contract, ie procurement should have commenced in 2010/11;
- That did not happen and, following on from the scrutiny report, a condition assessment was undertaken and the report was produced in February 2015;
- Councillor Mahmood took the Committee through the timeline. It was noted that there had been a high turnover of officers with responsibility for leading on the contract and reference was made to the lack of officer capacity within the Council to deal with procurement;
- In response to a question around the original contract with Veolia, the Chair referred to a meeting he and Councillor Jones had earlier with Legal officers who had made clear that the type of contract originally entered into is not a contract we would now enter into; there are clauses which should have been included but were not.

At this point it was agreed to go into private session to enable Members to ask questions which could not be answered in public.

The Chair formally moved that in view of the nature of the business to be transacted which includes exempt information as indicated the public be now excluded from the meeting.

This was agreed by the Committee and the Committee went into private session.

The meeting resumed in public session to hear evidence from Councillor Brett O'Reilly, Rob James, Acting Director, Place, Darren Share, Acting Service Director, Waste Management and Mike Smith, Acting Head of Commissioning and Procurement.

The following were among the main points raised:

- Councillor O'Reilly agreed that work should have started a long time ago and a long term plan should have been in place;
- Although new to this post, he was in Cabinet in previous years and recalls the discussions which took place. The first time he was aware a five year overrun was being considered was at a meeting he attended in July 2018 with Cllr Mahmood, Rob James, Darren Share and consultants;
- He had wanted to understand more about the risk and implications of any legal challenge to a five year overrun and on balance his opinion was, and is, that there are still risks with a two year overrun and that the best option was to go with the five year overrun to allow for essential works to take place so we would be ready to go to the market and get best value for the Council;

- The Chair expressed concern that the decision had been taken without proper oversight, with no report to Cabinet until December 2018. He made reference to the recently published independent report on the waste issue about decisions being taken at meetings that were not formal Cabinet meetings with all the legalities that requires, so there was no accountability and transparency;
- The view of Members was that Cabinet could have taken a decision earlier in the year looking at options for both a five year and two year overrun and the advantages and disadvantages of each option should have been stated;
- These concerns are compounded by the fact that scrutiny members take the view that publication of the VEAT notice on 18th December was unconstitutional as the decision could not be implemented until the call-in period had elapsed;
- Darren Share confirmed that the VEAT notice would have been required for either the two year or the five year overrun and the purpose of the notice was purely to see whether the market would put in any objection to the interim arrangement agreement;
- It was pointed out, however, that the notice did not refer to a two year extension, only to a five year overrun;
- Councillor Jones questioned whether the 11th December 2018 private Cabinet report was factually correct with regard to the amount of money that was included in the Budget Consultation 2019+ and that this was based on a five year overrun;
- Rob James confirmed that the budget figures referred to in the private report were correct, where there is confusion is that in the budget consultation 2019/20 it refers to a proposal to increase the waste collection budget; that is not the figure referred to in the private report;
- It was suggested that this should be discussed further in private session;
- Members asked when the five year option had first been mooted and were told that although Veolia had mentioned this earlier it had been dismissed; they did not put forward this option in any detail until the condition survey came out, at which point they started to specify timelines and monetary value. Up until that point the negotiations with Veolia were specifically on a two year overrun;
- The proposal to consider a five year overrun was put forward to officers and the Cabinet Member in July to give the Council better value for money in moving forward;
- The report to Cabinet was initially intended for November but was deferred by EMT in order to consider further legal implications of moving from a two year to five year extension;
- Members asked how long would have been needed for a re-procurement process and were advised this would normally be around two years although this is dependent on a number of things;
- Councillor Jones said that there must also have been another option – to take it in-house and TUPE staff over and this should remain an option, although it was pointed out that there are also risks with this option.

At this point it was agreed to go into private session to enable Members to ask further questions which could not be answered in public and to consider the request for call-in.

The Chair formally moved that in view of the nature of the business to be transacted which includes exempt information as indicated the public be now excluded from the meeting.

This was agreed by the Committee and the Committee went into private session.

The meeting resumed in public session.

The Chair stated that the Committee had concluded its deliberations and had decided to call-in the decision (five votes to zero). He further stated that the reasons would be set out in a report to the Executive with a suggestion that certain information be put forward to Cabinet in addition to that which is already in the public and private reports to enable Cabinet to review the decision with that additional information.

RESOLVED:-

- The Committee decided to call in the decision for reconsideration by Cabinet (five votes to zero).

5. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)

None.

6. OTHER URGENT BUSINESS

None.

The Chair formally moved that in view of the nature of the business to be transacted which includes exempt information as indicated the public be now excluded from the meeting.

This was agreed by the Committee and the Committee went into private session.