

BIRMINGHAM CITY COUNCIL

SUSTAINABILITY AND TRANSPORT O&S COMMITTEE

1000 hours on Thursday 18 May 2023, Committee Room 6, Council House

Present:

Councillor Chaman Lal (Chair)

Councillors: Alex Aitken, David Barker, Colin Green, Timothy Huxtable and Richard Parkin

Also Present:

Councillor Majid Mahmood, Cabinet Member for Environment

Councillor Ewan Mackey

Councillor Roger Harmer

Councillor Julien Pritchard

Michelle Climer, Contracts Manager

Meena Chuhan, Interim Procurement Manager (online)

Michael Wareing, Lead Consultant, Fichtner Consulting Engineers Limited

Rajesh Parmer, Senior Solicitor

Baseema Begum, Scrutiny Officer

Amelia Wiltshire, Overview and Scrutiny Manager

The meeting started at 10:01 hours

1. NOTICE OF RECORDING/WEBCAST

The Chair advised that this meeting would be webcast for live or subsequent broadcast via the Council's meeting and that members of the press/public may record and take photographs except where there were confidential or exempt items.

2. APOLOGIES

Apologies were received from Councillors Saima Ahmed and Martin Brooks.

3. DECLARATIONS OF INTERESTS

None.

4. REQUEST FOR CALL-IN: CONTRACT AWARD FOR THE OPERATION AND MAINTENANCE OF TYSELEY ERF, WASTE TRANSFER STATIONS AND HOUSEHOLD WASTE RECYCLING CENTRES

(See document No. 1)

The Chair was notified of apologies given on behalf of Councillor Rob Grant and Darren Share, Assistant Director, Street Scene.

Councillor Majid Mahmood, Cabinet Member for Environment, Councillor Ewan Mackey, Councillor Roger Harmer, Councillor Julien Pritchard, Michelle Climer, Contracts Manager, Meena Chuhan, Interim Procurement Manager (online), Michael Wareing, Lead Consultant, Fichtner Consulting Engineers Limited and Rajesh Parmer, Senior Solicitor, were in attendance for this item.

The Chair advised that the purpose of the item was to discuss whether the Committee should, or should not exercise its power of call-in, and outlined the process to be followed at the meeting. Members were advised that an exempt report was included in their agenda pack and should they wish to discuss any element of this the meeting would need to go into private session. It was confirmed by the members who made the request that they were not proposing to discuss any element of information in the exempt report.

The Chair invited Cllrs. Mackey, Harmer, and Pritchard to explain the reasons for their request for this decision to be called-in using the set criteria and in doing so the following were amongst the main points made:

Criteria 2: the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees

- The decision was inconsistent with the Council's policies on clean air and climate change. It was highlighted that the Council had declared a climate emergency in 2019 that had received cross-party support. Further to this the ambition to reach net zero carbon by 2030 or as close to this date as possible was also a Council priority. However, it was felt that this was in direct conflict with the decision to continue with a contract to dispose of waste by use of an incinerator that would see a rise in CO₂ emissions. Concern was shown that the contract fell outside of the target to reach net zero carbon by 2030 as the contract meant that waste would still be incinerated up to 2034 at the earliest and therefore was incompatible with the Council's aims.
- There was not enough evidence in the cabinet report demonstrating that other options had been considered with the Council looking at trying something different.
- There was concern held that data from 2016/17 had been used for the options appraisal however the decision was being made years later in 2023 so the decisions were being made on out-of-date information. In addition, the

Council's Executive did not revisit the decision made in 2016 through the options appraisal following the Council declaring a climate emergency in 2019 where there was a clear change of aims and objectives. It was felt therefore that there should have been a re-assessment of those plans following the climate emergency declaration and there had been no evidence of this.

Criteria 3: the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive)

- Previous Scrutiny inquiries have noted in their recommendations the need to consider procurement options in a timelier fashion to ensure that all possible options are considered. However, the most recent example of a failure to do this is the current contract whereby an extension was applied for at the last minute in 2019 (the original contract was signed in 1994 for a period of 25 years) for the authority to prepare for a full procurement process by the end of the current contract in 2024. It was noted that the decision made in 2019 was also 'called-in' and the response from the Executive was that lessons had been learnt and the forthcoming procurement process would involve looking at alternatives. There was concern that the Council had found itself in the same position in 2023 with an extension been applied for again for the same contract. It therefore was noted that previous recommendations and processes had not been noted.

Criteria 4: the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision

- It was highlighted that progress being made in respect of the procurement process before the final decision was made was not shared with the Scrutiny Committee despite previous commitments made in 2016 for Members to be involved earlier in the process.

Criteria 5: the Executive appears to have overlooked some relevant consideration in arriving at its decision

- It was stated that the Council had not considered all the available options and little analysis has been made of other considerations. Members had been told that the contract must be of a minimum length of 10 years for the industry to consider it worthwhile as alternatives with a shorter lifespan would be deemed to be a non-viable option. Cllr Pritchard explained that with the contract being extended with the same provider a set up period would not be required, and this would eliminate the need for a longer contract period.
- It was highlighted in the report that the incinerator is an old and out of date asset and the belief was that the Council was paying over the odds for its use. In addition, it requires a lot of investment to maintain and that is the justification being made for the Council to be tied into a long contract. It was felt that the amount of investment to maintain it was not being considered carefully and that no comparison work had been carried out to demonstrate the effect of reducing the amount of waste going into the incinerator. A comparison of the cost of sending waste to landfill or full consideration given to other alternative disposal methods would have been helpful and worthwhile

to see. Furthermore, there was an assumption being made that recycling rates will not improve in the future to justify the use of the incinerator for waste disposal.

- There is a need to make a serious commitment to reducing the amount of waste being sent to the incinerator and increasing the amount of waste being recycled. Looking at other ways to reduce waste that would require less use of the incinerator and consideration being given to whether an incinerator was required if waste being produced was halved. Therefore, analysis of other options such as the transfer of a smaller amount of total waste to another location would cost the authority less although the travel involved may be further.
- Consideration needs to be given to alternative methods of disposal including looking at what neighbouring/other council's do. The impact of burning more waste on the environment in light of the Council's commitment to reducing CO2 emissions and air pollution.

Criteria 6: the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of O&S Committees, it is likely so to do

- There has been significant opposition to the extension of this contract. There was concern that the Council's commitments and policies were not being adhered to in specific reference to the declaration of a climate emergency in 2019 and to reach net zero carbon by 2030 (or as soon as possible after). It was clear from the Council's waste strategy and the decision on the contract that these commitments cannot be met and this observation had been made by Councillors across the political divide.
- The management of waste is key and a cause of concern with the authority recycling the same amount of waste as it did 4 years ago. Birmingham is still one of the worse reporting Council's sitting at 330 out of 333 in a table showing local authorities waste recycling levels. It was noted that mobile household recycling centres (HRCs) reduce the amount of recycling compared to static HRCs and less than 5% of waste is recycled by the mobile trucks.
- There has been media and press coverage highlighting the dissatisfaction from a range of Councillors noting that this is the first call-in that has been submitted on a cross-party basis. Furthermore, the same item has been called-in twice. This demonstrates the need for a detailed action plan to address the need to reduce the use of the incinerator and increase the levels of recycling.

Criteria 8: the decision appears to give rise to significant legal, financial, governance or property issue

- Concerns over the age and nature of delegations relied upon. It was noted that appraisals undertaken in 2016 and agreed in 2018 but being implemented in 2023 were out of date. Therefore, it should be noted if actions taken are in line with the approved strategy as is a requirement of those delegations.
- The cross-party group set up to be involved in the decision-making process has not met for 4-5 years.

- The city needs to improve its recycling level and currently this is being masked by using the incinerator. There is a need to look at greener technology to help improve recycling levels.

The Cabinet Member and officers responded to the issues raised and in further discussion with Members, the following were amongst the main points raised:

- Cllr Mahmood set out the timeline that led to the procurement process and explained that following the 5-year contract extension awarded in 2019 the first steps in the procurement exercise took place in 2020. Several organisations showed interest in bidding for the contract, and in 2021 a competitive dialogue started. The procurement process was completed in early 2023 with the award of the contract subject to a report to Cabinet seeking authorisation.
- The Council has set a very ambitious target to reach net zero carbon by 2030 (or as closely after) in comparison with others. It was noted that the West Midlands Combined Authority aims to reach the same goal by 2041. The Government has set the target for 2050.
- The contract award is very cost effective and the Tyseley ERF meets all compliance legislation. The Council has declared a climate emergency with the aim of a just transition to alternative and greener methods for dealing with air pollution and waste disposal so that the most disadvantaged in the city are not adversely affected. It was noted that a study undertaken in 2019 showed no negative impact on residents in the area. The interim contract awarded of 10 years allows for a period of transition.
- There is flexibility in the contract for amendments to be made as required for example to include the disposal of food waste without any financial penalty. The Cabinet Member confirmed that this was an area of work that could be brought back to the scrutiny committee for input and discussion.
- It was explained that the Council has a statutory duty to fulfil as a waste disposal authority and through its climate emergency declaration and work to make the city cleaner and green it has set itself two competing priorities. Work is happening in all these respective areas, and it was noted in response to poor recycling rates in the city that an educational programme was being set up to help residents to understand what can and can't be recycled. It was felt that this was key in improving the city's recycling levels.
- In response to the possibility of transporting waste outside of the city the Cabinet Member said that this was in effect moving and creating a problem elsewhere. It was highlighted that the current fleet of waste vehicles are non-polluting and compliant with the Clean Air Zone therefore not adding to pollution levels within the A4040 ring road.
- Members noted that the previous waste disposal contract ended in 2019 after a period of 25 years. An extension was granted for an interim period of 5 years to allow the Council to complete a full procurement process. However, a transitional contract has now been agreed for a further 10 years with a possibility of this being extended for another 5 years meaning that the current

contract could run to 2039. Concerns were raised that even though new technologies were being referred to throughout the process there was no resolution or solution found resulting in the current contract being extended. Members noted that in a previous report to Cabinet it had been stated that the Tyseley ERF was past its natural life expectancy. With this being noted it was felt that the Council was receiving reputational damage by extending this contract yet again.

- Only limited information could be shared with Members for example the timeline and stages of awarding the contract at public committee meetings due to commercial sensitivity. The Council had to ensure that contractual information is kept confidential otherwise it would be open to legal challenge. The Scrutiny Committee had received updates on the procurement process at their request.
- It was noted that the opportunity for a meeting to discuss the award of the contract was shared with Members at very short notice and meant that there was no opportunity to have a discussion prior to the report being presented for approval at Cabinet. However, the Cabinet Member confirmed information could only be shared once the decision had been scheduled for an upcoming Cabinet meeting based on advice received by Legal Services. Therefore, an offer for an informal briefing of Members was shared however this was at short notice and this was acknowledged.
- Members asked that the Cabinet Member for Environment notes all future meetings of the Committee in his diary so that he can attend if he has information to share and likewise if the Committee request a discussion on sustainability issues.

Cllr Mahmood and supporting officers left the meeting.

Members then held a discussion on the issues raised and the merits of the request for call-in noting that issues and concerns raised covered several criteria and that this should be noted. The Chair then moved to a vote and the Committee agreed unanimously for the decision to be called-in.

RESOLVED:

1. That the decision was called in.

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

None.

6. OTHER URGENT BUSINESS

None.

7. AUTHORITY TO CHAIR AND OFFICERS

RESOLVED:

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting ended at 12:03 hours.