

KENT COUNTY COUNCIL

SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Wednesday, 21 September 2016.

PRESENT: Mr R J Parry (Chairman), Mr J E Scholes (Vice-Chairman), Mr G Cowan, Mr D L Brazier (Substitute for Mr A J King, MBE), Mr J A Davies (Substitute for Mr L B Ridings, MBE), Mrs T Dean, MBE, Mr E E C Hotson, Mr R A Latchford, OBE, Mrs P A V Stockell, Mr A Terry (Substitute for Mr H Birkby) and Mr R Truelove

ALSO PRESENT: Mr M A C Balfour and Mr M C Dance

IN ATTENDANCE: Mrs B Cooper (Corporate Director of Growth, Environment and Transport), Mr D Smith (Director of Economic Development), Mr B Watts (General Counsel (Interim)), Mrs L Whitaker (Democratic Services Manager (Executive)), Mr P Sass (Head of Democratic Services) and Mrs A Taylor (Scrutiny Research Officer)

UNRESTRICTED ITEMS

107. Minutes of the meeting held on 9 June 2016 *(Item A4)*

RESOLVED that the minutes of the meeting held on 9 June 106 were an accurate record and that they be signed by the Chairman.

Suspension of Procedure Rules

The Chairman read a statement as follows:

“The constitution states that Members of a Cabinet Committee may serve as ordinary or substitute members of the Scrutiny Committee, UNLESS the Scrutiny Committee is dealing with an item that has been considered by the Cabinet Committee on which they serve. In these circumstances, they should take no part in the debate or vote on the item. *(Appendix 4 Part 4: Additional Rules applying to the Scrutiny Committee and Select Committees, para 4.1(2))*

Both Mrs Dean and Mr Latchford are members of the Policy and Resources Cabinet Committee which has previously considered the consultation protocol.

Similarly Mr Brazier (who is substituting for Mr King) and Mr Truelove are members of the Growth Economic Development and Communities Cabinet Committee which has previously received reports on the Regional Growth Fund schemes

The Scrutiny Committee has the power to suspend procedure rules, as set out in *Appendix 4, Part 2, para 2.13: Suspension of Procedure Rules*

And thus the Scrutiny Committee is asked to agree to suspend the procedure rule as set out in Appendix 4, Part 4, para 4.1(2) for items C1 & C2 to enable Mr Brazier,

Mrs Dean, Mr Latchford and Mr Truelove to take part in the debate and, if necessary, vote on the items.”

This was agreed.

RESOLVED that the Committee agree to suspend the procedure rule as set out in Appendix 4, Part 4, para 4.1(2) for items C1 & C2 to enable Mr Brazier, Mrs Dean, Mr Latchford and Mr Truelove to take part in the debate and, if necessary, vote on the items.

Thanks to Peter Sass

The Chairman announced that it would be the last formal meeting at Kent County Council (KCC) for Peter Sass, Head of Democratic Services. He had been an excellent and very helpful officer. The Committee wished to formally record its strong thanks to Mr Sass for all the positive things he had done for Scrutiny and during his time at KCC, the Committee wished Mr Sass every success in his new role at Wandsworth Council.

108. KCC's Consultation Protocol (response to consultations received), clarification of the requirement to inform Local Members, following KCC's response to planning application OL/TH/16/0550 (Stone Hill Park - Manston) (Item C1)

1. Mr Latchford introduced this item explaining that in July 2015 KCC unanimously supported the Manston site remaining as an airfield and a motion was agreed to keep an open mind on the future of Manston. However on 30 August 2016 a letter was written from Kent County Council to Thanet District Council (TDC) 'strongly supporting' the Stone Hill Planning application. Mr Latchford asked on who's authority was the letter sent. It was Mr Latchford's understanding that elected Members decided on policy and officers supported that policy. Mr Latchford also confirmed that he had not been consulted, advised or informed before the letter was sent and this was in breach of the constitution.
2. A Member confirmed that the Consultation Protocol had previously been considered by the Policy and Resources Cabinet Committee and that the Cabinet Committee had accepted generally that the local member should have been involved and that the protocol should include such a reference to local member involvement.
3. There was support for Mr Latchford that the letter sent was ill-advised and that it should have been constructed advising that KCC would strongly support any application which would bring about regeneration in Thanet and that Members all wanted the best for the site, however the letter had been badly worded.
4. Mr Balfour confirmed that there had been discussions around the use of the site and there had been a resolution at County Council to support a viable use for the land at Manston. The Cabinet Member apologised for not keeping the local members informed of progress, it was not general practice to ask the opinion of local members on the response to planning applications. KCC was a consultee on planning applications and this differed from being consulted on planning matters – where members were consulted. The Cabinet Member did not

consider it appropriate for members to tell officers how to respond to planning applications, however in the past discussions had been held between members to ensure certain points were taken into consideration in responses.

5. Mrs Cooper explained that the Council dealt with many planning applications, this was a delegation to officers within the council. On planning application responses officers had not previously consulted members, largely members had approached officers if there were issues to raise. Mrs Cooper apologised as this was not in line with the consultation protocol, however she had been consistent with how this had been dealt with. Mrs Cooper did not accept that this was a policy decision, but it was written in accordance with the motion agreed at County Council in July 2015. At a previous meeting with the Scrutiny Chairman and Spokespeople they had requested that Mrs Cooper send a follow up letter to TDC outlining that the 30 August letter did not indicate a preference for the development outlined in the planning application. This letter was sent to TDC on 21 September and a letter would be circulated to Scrutiny Committee Members.
6. Mr Latchford confirmed that not only did he not know that the 30 August letter had been sent to TDC, but many conservative members were not aware of it. Mr Latchford made the Committee aware of a letter written by Mr Balfour, on behalf of the Leader, to Sir Roger Gale which stated that the letter sent was based on the professional judgement of officers. Mr Latchford asked whether officers were empowered to support policy which had not been agreed by elected members.
7. Mr Watts, KCC's interim General Counsel with monitoring officer responsibilities, explained that he was relatively new in post and had dealt with a number of issues relating to local member engagement in recent months, it was necessary that members and officers were clear on their responsibilities and obligations, and that members had timely access to the information that they required to enable them to carry out their jobs. The consultation protocol aimed to regularise member engagement elements set out within the constitution to ensure clarity for members and officers and, with the experience of recent issues, this would be looked at again. Mr Watts would be speaking to the opposition group leaders to ensure that the protocol more accurately reflected the views of the council with the flow of information between members and officers. Mr Watts would also be undertaking some training with Corporate Management Team around the responsibilities and obligations within the constitution which would give officers an opportunity to share their concerns.
8. The Chairman asked Mr Watts to confirm as soon as possible with the Corporate Directors that if in doubt it was better to inform than not.
9. In response to Mr Latchford's query about the creation of policy in the response to the planning application Mr Watts expressed his view that the letter in response to the planning application was not a policy decision, but a response which was consistent with the broad council decision in 2015 which stated the following:

“RESOLVED that we the elected members of KCC wish it to be known that we fully support the continued regeneration of Manston and East Kent and will keep an open mind on whether that should be a business park or an airport, depending upon the viability of such plans and their ability to deliver significant economic growth and job opportunity.”

10. In response to a query from the Vice Chairman Mr Watts confirmed that he would, through members desk, seek information from Members and gain from their experience.
11. Mr Balfour clarified the wording within his letter dated 20 September 2016 and read paragraphs from the letter confirming that the response to the planning application sent to TDC on 30 August was based on the professional judgement of officers and was largely technical in content. It did not form any position on the use of the Manston Airport site for aviation purposes as it was specifically a response to this particular application.
12. A Member clarified that the 'strongly supports' phrase had largely been mitigated by the second letter to TDC clarifying that KCC was not expressing a preference towards this application. There was concern that the response to the planning application was too enthusiastic.
13. Mrs Cooper confirmed that the mitigating letter had been sent to the officer dealing with the planning application to ensure that they would be considered side by side. KCC had had meetings, as requested, with airport promoters and had not acted in any preferential way.
14. The crucial issue was how elected members of the council were consulted in future and to ensure that local members were aware of what was happening in their area. Mr Watts confirmed that he would discuss this with members to ensure that the provisions within the constitution were understood by officers within the council.
15. A Member queried whether, if an aviation planning application had arrived, it would have been strongly supported. The Member also praised a recent briefing on the Maidstone Local Plan – this had been an excellent, non-statutory exercise, and lessons could be learnt from the way in which it was held.
16. A Member commented on the meeting held between the Cabinet Member, Corporate Director, Scrutiny Chairman and Opposition Group Leaders and following a discussion the Cabinet Member and Corporate Director accepted that an error had been made and apologised for it. Some common sense was needed in the way that Members were made aware of issues affecting their area and it was thought that had KCC had an application from an aviation company it would have responded in the same way, this was supported by other scrutiny committee members.
17. The Cabinet Member suggested that he would write to each planning authority in Kent to ensure that, in future, Members receive every planning application which had been validated in their electoral area.
18. In response to a question from a member Ms Cooper confirmed that she was responsible for the words 'strongly support' within the letter dated 30 August. She explained that the mitigating letter sent to TDC had been sent at the first opportunity following officer leave over the summer.

19. It was confirmed, by members, that County Council Members representing electoral divisions in the Thanet had not been contacted by TDC about this application.
20. Further to the Cabinet Members comment about consulting Members about every planning application validated within their electoral division a Member confirmed that he would not want this to result in a large amount of duplicated work.
21. The Chairman suggested that Members make any comments they have on the consultation protocol directly to Mr Watts. It was also important to note that Mr Watts had received positive experiences from Members.
22. Mr Watts confirmed that he now had a period of time to consult with Members and Officers. He undertook to write to all Members after Corporate Management Team on 13 October 2016. A working draft of the consultation protocol would be submitted to Scrutiny Committee Members before it was considered by the Policy and Resources Cabinet Committee and Cabinet.

RESOLVED that the Scrutiny Committee

23. Thank Mr Balfour, Mrs Cooper, Mr Watts and Mrs Whitaker for attending the meeting for answering Members' questions,
24. Welcome the consultation protocol and reminds the officers of the need to inform and consult members and allow them to express their views which should be carefully considered before officers arrive at their decision.
25. Ask Mr Watts to ensure that the spirit of the intended changes be incorporated into the modus operandi of the County Council at the earliest opportunity.
26. Consider that there is no need to use the wording 'strongly support' in a consultation response of this kind.

Motion to Exclude the Press and Public

RESOLVED that under Section 100A of the Local Government Act 1972 the press and public be excluded from the meeting for the following business on grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

109. Regional Growth Fund Schemes - to follow *(Item C2)*

1. The Chairman welcomed Mr Mark Dance, Cabinet Member for Economic Development, Mrs Barbara Cooper, Corporate Director and Mr David Smith, Director, Economic Development.
2. Mr Dance briefly outlined the Regional Growth Schemes and, along with his officers answered questions from the Scrutiny Committee Members.

RESOLVED that the Scrutiny Committee:

3. Thank Mr Dance, Mrs Cooper and Mr Smith for attending the meeting and answering Members questions on this item.
4. Request a report back at their meeting in November 2016 on one of the “Phoenix” companies, and Officers to produce a list of three ‘red’ companies for members to review one more company.