Norfolk County Council
at your service

Cabinet Scrutiny Committee

Minutes of the Meeting Held on Tuesday 16 March 2010

Present:

Mr P Morse (Chair)

Mr T Adams
Dr A Boswell
Mr J Dobson
Mr P Duigan
Mr R Hanton
Mr D Harrison
Mrs D Irving
Mr C Jordan
Mr M Kiddle-Morris
Mr G Nobbs
Mr R Rockcliffe
Mr M Scutter
Mr J Shrimplin
Mr T White
Mr R Wright

Also Present:

Mr Bill Borrett	Cabinet Member for Corporate Affairs and Efficiency
Mr Paul Brittain	Head of Finance
Mr Mike Britch	Group Managing Director, NPS Property Consultants Ltd
Mr James Bullion	Assistant Director for Community Care, Adult Social Services
Mr Keith Cogdell	Scrutiny Support Manager
Mr Adrian French	Partnership and PFI Manager
Mr David Harwood	Cabinet Member for Adult Social Services
Mr Peter Hawes	Managing Director, Norse Commercial Services Ltd
Mrs Karen Haywood	Scrutiny Support Manager
Mr Steve Holland	Principal Consultant for Shared Services
Mrs Kristen Jones	Committee Officer
Mr Mark Langlands	Media & Public Affairs Manager
Ms Victoria McNeill	Head of Law and Monitoring Officer
Mr Chris Walton	Head of Democratic Services

1. Apologies and substitutions

Apologies were received from Mr Byrne (Mrs Irving substituting) and Mr Joyce (Mr Harrison substituting). Mr Tony Williams (NCC share holder for Norse), Mr Harold Bodmer (Director of Adult Social Services), and Mr Ian Mackie (Cabinet Member for Finance and Performance) offered their apologies in relation to items on the agenda. Mr James Bullion (Assistant Director for Community Care in Adult Social Services) was standing in for Mr Bodmer.

2. Declarations of Interests

Members declared the following interests:

• Dr Boswell	Items 5, 6, 7	Personal – Norse Shareholder Committee member
• Mr Morse	Item 6	Personal – Friend rents a small portion of land through the County Farms Estate
• Mr Hanton	Item 10	Personal – Employee of Norfolk Constabulary

3. Minutes

The minutes of the meeting held 9 February 2010 were confirmed as a correct record and signed by the Chair.

4. Items of Urgent Business

The Chair welcomed Kristen Jones, who had taken over responsibility for the committee administration of the Cabinet Scrutiny Committee.

5. Call-in Item(s) – Delivering the Strategic Model of Care (Care Homes) Agenda

5.1 Mr Joyce, Dr Boswell, and Mr Nobbs called in the decision taken by Cabinet on 1 March 2010 to approve the proposal to establish a delivery partner in the form of a new care company within the Norse Group of Companies.

5.2 Mr David Harwood (Cabinet Member for Adult Social Services), James Bullion (Assistant Director for Community Care, Adult Social Services), Paul Brittain (Head of Finance), Peter Hawes (Managing Director, Norse Commercial Services Ltd), Steve Holland (Principal Consultant for Shared Services), and Victoria McNeill (Head of Law and Monitoring Officer) attended to answer questions. As indicated above, Harold Bodmer (Director of Adult Social Service) and Tony Williams (NCC share holder for Norse) had given their apologies for absence.

5.3 The three Members who called in this decision started the questioning with Mr Scutter asking questions on behalf of Mr Joyce, who had offered his apologies for absence.

5.4 During the discussion the following points were noted:

- More information on the legal position of this decision was requested of the Head of Law. She responded by saying that legal advice had been sought from the beginning and at critical points throughout the process. The advice, however, had been given on a legally privileged basis and it was not appropriate to disclose it in a public meeting. She confirmed that issues around procurement and state aid had been considered and advice had been given on how risks could be overcome. As the next step, the business plan would be reviewed and advice would be given on the legal aspects.

- Members asked the Head of Law why it was not necessary for this contract to go out to competitive tender. The question was asked whether this decision could result in a legal challenge and, if so, what the costs of this were likely to be. She responded by saying that she and her team provided advice to ensure risk of legal challenge could be mitigated.

- Members asked the Cabinet Member for Adult Social Services why there was such limited Member involvement in this decision, specifically through the Adult Social Services Overview and Scrutiny Panel. This matter was considered by the Panel in September 2008 and September 2009 but there had been several meetings of the Project Board. Members asked why there was no Member involvement on the Project Board and, also, who had made the decision not to take a report to the Panel despite this being normal practice. The Cabinet Member for Adult Social Services responded by saying that there was not a conscious decision not to involve the Panel but at a late stage it had been realised that the Panel met the day after the Cabinet meeting. The omission was therefore an error which the Cabinet Member acknowledged. The decision was made not to withdraw the report but to include a caveat within the decision of Cabinet stating that the decision was subject to Cabinet's approval of a satisfactory business plan for the company, which the Director of Adult Social Services would develop for future Cabinet approval. He accepted that the report should have gone to the Panel before the Cabinet meeting. Members pointed out that within the report at 1.4 it said that "It was not considered necessary to take the Cabinet paper to Overview and Scrutiny Panel...".

- Members questioned the early option appraisal modelling carried out between May and September 2009 and whether the results changed over time. They asked when the final option appraisal was produced (as included in the Cabinet paper). The Assistant Director for Community Care confirmed that the early work carried out was a non-financial options appraisal and said that no formal options appraisal had been completed until the Cabinet paper was being drafted. The Project Director informed Members that the options appraisal was completed on 28 October 2009 and the Assistant Director had made some minor changes on 11 November 2009.

- Members asked what additional financial detail was required in relation to the proposal for a Care Company, as noted at the 6 January 2010 Project Board meeting. The Project Director replied that no financial details were available in September 2009. When he joined the project he focussed his efforts on identifying the type of partnership which would deliver on the strategic ambitions of the Council. To do this, he developed a number of objectives which needed to be achieved and then outlined the eight options which were scored as shown in the papers supplied to the Committee.

- The Project Director addressed Member questions about the NPS logo on the final page of the appraisal and said that NPS had created the appraisal document.

- Members asked if the project company proposed would comply with legal judgement established in the case of *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* [1999] ECR I-9121 and if the project company would execute less than 10% of its work for parties other than Norfolk County Council. In response the Head of Law explained that the company delivering the service would be a separate trading company set up to be the delivery partner. This company would not be carrying out additional business other than for this project and would be structured in a way so as to comply with the legal judgement.

5.5 A motion was put forward by Mr Dobson (seconded by Mr Duigan):

> "That Cabinet Scrutiny Committee asks Cabinet to reconsider the decision and to delay reconsideration until the Adult Social Services Overview and Scrutiny Panel had looked at the proposal and made its views known."

5.6 Dr Boswell moved an amendment to the original motion (seconded by Mr Nobbs), to add at the end of the motion:

> "That the minutes of the project board be brought to the Adult Social Services Overview and Scrutiny Panel."

5.7 Members debated the amendment and then voted four in favour and twelve against so the amendment was lost.

5.8 Mr Nobbs moved an amendment to the motion to add at the end:

> "That no further action be taken in pursuance of the original Cabinet decision until such time as scrutiny had been carried out."

5.9 The amendment was not seconded and therefore fell.

5.10 Members voted on the original motion, which passed unanimously.

RESOLVED:

5.11 That Cabinet Scrutiny Committee ask Cabinet to reconsider the decision and to delay reconsideration until the Adult Social Services Overview and Scrutiny Panel had looked at the proposal and made its views known.

6. Further Update on Progress Regarding the Recommended Changes to the Norfolk County Council County Farms Policy

6.1 Members received the annexed reports (6) by the Scrutiny Support

Manager and the Group Managing Director of NPS Property Consultants Ltd. The first report by the Scrutiny Support Manager detailed the background of the item and the suggested approach for the Committee. The second report by the Group Managing Director of NPS Property Consultants Ltd updated Members on progress being made with regard to implementation of the recommendations made by the Cabinet Scrutiny Working Group in September 2008 since the last update report in September 2009. The third report set out the new County Farms Policy as agreed by Cabinet on 1 March 2010.

6.2 The Group Managing Director of NPS Property Consultants Ltd and the Cabinet Member for Corporate Affairs and Efficiency were present to answer questions.

6.3 During the discussion the following points were noted:

- Members pointed out that some of the recommendations from the County Farms Working Group could not be implemented because the necessary situations had not arisen to date. Members asked for confirmation that if the opportunity to implement these recommendations did materialise, NPS would follow the recommendation of the Working Group. Recommendation 14, which stated that there should be an assumption that sitting tenants should always have first refusal and reasonable preferential treatment in such disposals, was cited as one example. The Cabinet Member for Corporate Affairs and Efficiency noted that the current County Farms policy was that which was outlined in the report to Cabinet on 1 March 2010.

- Members questioned the reasoning behind splitting the Estate into two parts, East and West, and why one part would go out for competitive tender and the other part be managed by NPS without an opportunity for any other contractors to manage this part. The Cabinet Member for Corporate Affairs and Efficiency replied that he felt this model of splitting the estate and NPS managing the East part and the West part, with its larger acreage and higher number of tenants, going out to competitive tender was a constructive way to encourage innovation and use best practice from both NPS and the private sector. The County Farms Estate naturally split into two parts and these two parts mirrored the two established groups of tenants. It was felt that this was a sensible way to encourage tenant involvement and minimise travelling for tenants to attend meetings. It was added that he hoped the procurement process would be in place for October 2010. The contract would be for five years but could be cancelled if the contractor failed to perform.

- In response to a Member question, the Cabinet Member for Corporate Affairs and Efficiency said that the promotion of rural allotments was taking place but it was proving difficult to create them as they needed to be within reasonable travelling distance from

- Members highlighted Recommendation 26, which said if a suitable tenancy became available the request from Norfolk Smallholders Training Group for "ten acres of land in central Norfolk for setting up a model smallholding" should be met. The point was made that some tenants in central Norfolk may be willing to give up ten acres of their land and the question was asked whether NPS had taken this issue forward. The Group Managing Director of NPS explained that the Tenants' Advisory Board would discuss this as soon as the management arrangements were in place.

- Members asked how tenants were responding to the news that the West part of the Estate was going out to tender and the East part would be managed by NPS. While the County Farms Working Group was active it met with numerous tenants and some were concerned with the way NPS managed the Estate. The Cabinet Member for Corporate Resources and Efficiency replied that the tenants' reaction was mixed and there was no unanimous view. He thought that this was not an unexpected reaction to change but said that he wanted to keep tenants involved in the process so that they were informed of the changes.

- The report outlined that within the management arrangements of the proposal approved by Cabinet, the Strategic Client and contract monitoring functions would be undertaken by the Director of Corporate Resources. The Chair welcomed the split between client and contractor roles but expressed concern that there could be a conflict of interest for the Director of Corporate Resources as he was also the Chair of the Norse Board of Directors.

- Members noted that the County Farms Policy had changed and had not been considered by Full Council. The Cabinet Member for Corporate Resources and Efficiency acknowledged this by saying it was not planned to take this policy back to Full Council unless he was advised to do so.

6.4 A motion was put forward by Mr Nobbs (seconded by Mr Harrison):

> "To recommend to Cabinet that Recommendation 33 be carried out and all parts of the Estate be put out to competitive tender."

6.5 Members were then asked to vote on the motion. The result was four in favour and twelve against so the motion was lost.

RESOLVED:

6.6 To agree that a further update be delivered to the committee in six months to review the outstanding areas discussed by the committee.

7. Private Finance Initiative (PFI)

7.1 Members received the annexed reports (7) by the Scrutiny Support Manager and the Head of Finance. The first report by the Scrutiny Support Manager detailed the background of the item, the issues to consider, and the suggested approach for Members to take. The second report by the Head of Finance covered the current PFI projects and indicated the benefits and disbenefits of PFI over the other procurement methods available to the Council. The report was primarily focussed on how PFI affects Norfolk and in answering specific questions raised by the committee.

7.2 During the discussion the following general points were noted:

- The Partnership and PFI Manager corrected a figure at 16.6 in the report. The figure of £124m should be £114m.

- Members questioned whether the Member involvement on the project board was cross party or politically proportionate. The Partnership and PFI Manager confirmed that Members of all parties were requested to attend, as was recommended by central Government departments.

- Members asked for clarification on the statement in the report that bidding for PFI Credits prior to starting procurement was at risk of failure while conventional funding was almost certain. The Partnership and PFI Manager responded that PFI Credits were limited by the Government sponsor so it was a common event for councils to compete for them in the submission of their business cases. Conventional funding was more certain in that there was less of a competitive element.

- Members suggested that a type of decision tree was drawn up around the risks and procurement process. The Partnership and PFI Manager explained that Cabinet was provided with the business case, a comprehensive document which detailed and costed the risks. This document did not start off with the premise that PFI was the best option but looked at the PFI option along with all the other options available. This document was required by funders and was analysed by the Project Review Group which oversees the approval process for local authority PFI projects that receive Government support, and also acted as gatekeeper for the delivery of PFI credit funding to the local authority PFI programme. Members questioned the point at which all of these things took place and called for a stronger framework.

- The Head of Finance informed Members that PFI assets would be logged on balance sheets in the future and PFI was not a method of removing this expenditure from records. He added that there had been evidence of a reduction of available funding for PFIs and this

- Members asked why it was harder to terminate an underperforming PFI contractor than a conventional contractor. The Partnership and PFI Manager replied that if it became necessary, it was possible to terminate the PFI contract using the termination clauses in the contract. Obviously, the contractor would resist this as it was likely to financially damage them or harm their reputation. With a conventional contract the contract period was far shorter and their investment less significant.

7.3 Turning to the Norwich Grouped Schools PFI Project, the following points were noted:

- Members questioned the costs of the replacement capital build scheme of £96.1m and how this figure was adjusted to £77.2m, to match the original PFI. The report stated that an estimate of the comparable capital cost was £77.2m. Starting with the overall cost, the Partnership and PFI Manager advised that the £96.1m was reduced by £10.5m to remove the cost of the additional work carried out over and above that included in the PFI. The resultant figure (£85.6m) was then adjusted to £77.2m (a difference of £8.4m) mainly to reflect the difference in the price base between April 2004 and August 2005, but also to include the appropriate level of professional fees.

- Members asked why the replacement project could be some £11m higher, as indicated in the report. The Partnership and PFI Manager said that NPS had recently advised that this was mainly due to the PFI bidder under pricing the project to a level that was unacceptable to potential construction contractors; hence their failure to reach an agreement. He said he had also consulted the person who was the Project Manager at the time. The ex-project manager advised that a full analysis of the PFI Bidder's costings had been carried out at the time by NCC's cost advisors (NPS) and that they advised that the PFI Bidders costs were "tight but reasonable". In the end it was important to recognise that the capital build was not required to execute the same work as the PFI and that it was obligated to start very quickly in order to support Norfolk's educational needs.

- The Partnership and PFI Manager explained that all bidders were taken through pre-qualification stage and were all suitably qualified to carry out the work. He added that the bidder in question was one of the most successful schools PFI bidders ever at the time and had signed approximately £400m of schools construction contracts. Considering this, the project team were at first surprised that they could not agree a contract with a construction subcontractor. Later, the reputational and financial impact of the Potter's Bar rail crash on their parent company made potential construction sub-contractors very wary of progressing, so the PFI project was eventually

- Members asked what the total additional cost would be for the capital build compared with that of the PFI. The Partnership and PFI Manager replied that it was impossible to produce figures to make a realistic comparison between the two procurement exercises. This was because the two projects took place at different times and involved different works and would, during the operational phase, have different maintenance regimes. He went on to explain that whilst the 25 year cost of the PFI was known, because that was stated in their bid, he understood that there was no obligation on Norse to produce a similar whole life cost for the capital build. However, he said it may be possible to create a rough starting line by comparing the cost of debt and the value of the support. In this respect the PFI debt was £70m less than the value of the support whilst the cost of the capital build debt was at least £30m more than the support. As a result it could be said that, at the starting line, there was a £100m difference between the two routes before the operation phase was taken into account. It was, however, important to remember that, at the time the decision was made, PFI was no longer an option.

RESOLVED:

7.4 To agree the report.

8. Corporate Area Assessment (CAA) Terms of Reference

8.1 Members received the annexed report (8) by the Scrutiny Support Manager. The report asked Members to agree the Terms of Reference for the Corporate Area Assessment (CAA) Working Group.

RESOLVED:

8.2 To agree the Terms of Reference for the Corporate Area Assessment (CAA) Working Group.

9. Forward Work Programme: Additional Scrutiny Issues

9.1 Members received the annexed report (9) by the Scrutiny Support Manager. The report contained the suggested approach for two additional scrutiny issues to the forward work programme: the ‘Common Assessment Framework (CAF)’ and ‘Young People aged 16-19 not in Education, Employment or Training (NEET)’.

9.2 During the discussion the following points were noted:

- In relation to the NEET scrutiny topic, it was suggested that an initial report be brought to this committee to address how the issues in the Terms of Reference would be taken forward.

- Also in relation to the NEET scrutiny topic, Members requested that young people who had contact with the Young Offenders Team (YOT) be separated from the NEET statistics.

- Members noted that a report would be received on the 'Common Assessment Framework (CAF)' in May 2010.

RESOLVED:

9.3 To amend the Purpose and Objectives for Scrutiny of the scrutiny topic 'Young People aged 16-19 not in Education, Employment of Training (NEET)' to read:

> "To examine how Norfolk County Council in conjunction with key partners can encourage the employability of young people, particularly those who have had involvement with the Norfolk Youth Offending Team."

10. Forward Work Programme

10.1 Members received the annexed report (10) by the Scrutiny Support Manager. The report contained the suggested approach for the Forward Work Programme.

10.2 During the discussion the following points were noted:

- It was suggested that only one report be taken from the two listed within the Forward Work Programme for April 2010 as the Director of Corporate Resources was the author of both. The other would be taken at a future meeting.

- The Chair informed Members that three topics had been raised by a member of the public, the first being 'Icelandic Banks'. He informed the Committee he had not yet read the second and third topics but if he judged these appropriate for Member consideration as possible issues for the Forward Work Programme, a report would be brought to the Committee.

- The Chair hoped to begin planning the meeting with Members of Parliament soon and bring a report to the next meeting in April.

RESOLVED:

10.3 To remove the 'Under 18 Conception Rate' topic from the list of Potential Future Topics for Consideration following the report of a dramatic drop in the rate of teenage pregnancies in Norfolk.

10.4 To receive the report by the Director of Corporate Resources about 'Contract Monitoring' in April and his report on 'Scrutiny of large project processes to establish best practice' in May 2010.

10.5 To discuss the planning of the meeting with Members of Parliament at the April 2010 meeting.

The meeting concluded at 12:10pm.

CHAIR

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