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Resources and Services Overview and
Scrutiny Committee

13 March 2023

**MINUTES OF THE MEETING OF THE RESOURCES AND SERVICES OVERVIEW
AND SCRUTINY COMMITTEE,
HELD ON MONDAY, 13TH MARCH, 2023 AT 7.30 PM
IN THE COMMITTEE ROOM - TOWN HALL, STATION ROAD, CLACTON-ON-SEA,
CO15 1SE**

Present:	Councillors M Stephenson (Chairman), Scott (Vice-Chairman), Allen, Amos, Barry, Codling, Griffiths, Morrison and Skeels Jnr.
Also Present:	Councillor Baker
In Attendance:	Lisa Hastings (Deputy Chief Executive & Monitoring Officer) Gary Guiver (Assistant Director Planning) Keith Simmons (Head of Democratic Services and Elections) and Keith Durran (Committee Services Officer)

10. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

No apologies for absence were submitted on behalf of Councillors on this occasion.

11. MINUTES OF THE LAST MEETING

It was **RESOLVED** that the minutes of the meetings of the Committee held on 15 November 2022, 11 January 2023 and 1 February 2023, be approved as a correct record.

12. DECLARATIONS OF INTEREST

There were no declarations of interest by Councillors in relation to any item on the agenda for this meeting.

13. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

On this occasion no Councillor had submitted notice of a question.

14. A.1 REVIEW OF THE WORK PROGRAMME

The Committee heard an update on the Work Programme item from the Head of Democratic Services and Elections (Keith Simmons).

Work Programme

It was reported that there were only 2 outstanding items on the work programme. The first was Waste and Recycling and it was felt that a body of evidence had already been collected that could be put to the Committee for the next years' work programme, 2023/24.

The second was the Customer Service enquiry through its own Task and Finish group. The Chairman of that Task and Finish Group apologised for the absence of a final report and said he hoped to have it to the Committee for the new municipal year, 20223/24.

Monitoring Report

The Committee heard the Councillor Guglielmi, as Portfolio Holder for Corporate Finance and Governance, said that he would supply the answers raised at that budget scrutiny meeting held on Wednesday 11 January 2023, directly to the Committee at a later date.

The Committee thanked the Officer and **NOTED** the contents of the report.

15. A.2 COUNCIL PROCUREMENT AND CONTRACT MANAGEMENT

The report to the Committee detailed the outcome of the informal review of procurement and contract management at the Council ensuring it was functioning as it should and was fit for purpose.

The Members heard from Lisa Hastings, Deputy Chief Executive – Assistant Director for Governance and lead officer for the topic presenting the report. The report outlined that Informal meetings of this Committee were held on 17 October and 7 December 2022, where the Members received a range of information around the subject of Council Procurement and Contract Management, most of which was contained within the report to this meeting. Senior Officers across the Council, involved in the subject area and the specific contracts referred to within the scope supported the first informal meeting in October.

Members also heard that Full Council at its meeting on 12th July 2022 agreed (Minute 29) the Committee's Work Programme for the 2022-23 Municipal Year, for the Resources and Services Overview and Scrutiny Committee, that included:

Council procurement and Contract Management – using potential exemplars from:

- *“The housing maintenance contract awarded to Rapid, its delivery of work and the management of it.*
- *The management of the previous cremator maintenance contract, the need to stop the use of those cremators and the process for securing replacement cremators given the sensitivity around this service and the budgetary implications for the Council while these cremators are out of action.*
- *The Leisure Centre Investment – specifications, securing contractors and delivery of those works and maintenance of the equipment at the Centres”.*

It was reported to the Committee that the Procurement Team consisted of 2 FTE posts, both vacant (that was increased through the restructure in 2022 by 3 additional posts, all remained vacant – see below). The budget for those service consisted of salaries and £22,670 for computer software. At its meeting on 17th September 2021, Cabinet considered in Section 2 of its Financial Performance Update 2021/22 a small number of in-year budget adjustments to the Portfolio Holder's report, one of which reflected a proposed service level agreement being entered into with Essex County Council (ECC) to enable the Council to 'buy in' procurement services from them.

The report outlined that following the last vacancy, discussions commenced with ECC in terms of a shared service / collaborative approach as a way of providing a more comprehensive procurement service to the Councils internal departments. This approach would involve the Council purchasing a range of procurement services from ECC on a proposed 'hourly rate' basis via a service level agreement. Appendix B to the Cabinet Report set out a proposed adjustment, which would see budgets transferred from direct employee costs to 'contract' payments to ECC. That approach would also support the accelerated delivery programme where the Council would have access to specialist / expert advice along with additional procurement capacity e.g. supporting the procurement of replacement cremators. That arrangement would be kept under wider review as it may form part of a longer-term solution, where the Council could continue to have access to such advice as part of the future delivery of projects and activities along with 'usual' operational requirements expected of a procurement function / service.

The Committee heard that paragraph 2.3 of the Council's Procurement Procedure Rules set out in Part 5 of the Council's Constitution required alternative delivery options for whole or part of services to be achieved in accordance with the Council's Procurement Strategy. The Strategy expressly referred to 'Our Partners in Procurement' and that the Council sought to work with a number of partners to maximise any procurement opportunities and provide best practice. That included other public bodies and shared services. Because the in-house procurement service had 100% vacancies, there were no employment issues to address and the Public Contract Regulations 2015 permit public sector shared service and collaboration arrangements within certain criteria, which were observed in any Service Level Agreement arrangement. The Council's Procurement Procedure Rules were observed in any bids or tender exercises managed by ECC on behalf of TDC.

Subsequently, Cabinet agreed in September 2021 that:

“(2) That, in respect of the Council's Financial Performance for 2021/22, Cabinet:

(c) agrees an exemption to the Council's procurement rules in order to enable a Service Level Agreement to be entered into with Essex County Council to enable the Council to 'buy in' various procurement services from them to support its day-to-day operational activities and the delivery of one-off projects, as necessary; and

(d) authorises the Assistant Director (Finance and IT) and the Deputy Chief Executive to agree the terms of the Service Level Agreement, in consultation with the Portfolio Holder for Corporate Finance and Governance”.

It was reported to the Committee that following consultation with the Portfolio Holder for Corporate Finance and Governance, a Partnership Agreement was completed in August 2022; the services however commenced in October 2021 and would continue until October 2023 for an annual payment of £60,000. The agreement can be renewed annually for up to 5 years.

Both Councils had obligations and responsibilities. Schedule 1 to the Agreement had set out the Key Procurement Activities, split into three areas:

- Category Planning

- Market Management
- Sourcing

Procurement 2022 Deliverables had been identified within the Partnership Agreement. In December 2021 and May 2022, an Introduction to Procurement and the collaboration arrangements were presented to Council Officers as part of its Senior Managers Forum. The reasons why the Councils were working in partnership were covered:

- Increase resilience
- Increase expertise
- Enable collaborative savings
- Market influence
- Reduction of duplication
- Staff retention

Potential Category Areas had already been identified:

- Vehicles
- Facilities Management (inc. cleaning and security)
- Corporate spend for e.g. stationary

The Presentation Slides included a summary of the Procurement Process covering:

- Basics
 - The Regulations
 - Value for Money
 - Processes for different values of TOTAL spend
- Low Value Procurement - £10K to £50K
- Request for Quote Process - £10K to £50K
- Tender process - £50K +

Members heard that it was important to highlight that there were various elements to the overall procurement process, with responsibilities being split across the Council, some functions were devolved into services, with others being undertaken centrally by the procurement team:

- Project approval and budget allocation - services
- Specification – services
- Market analysis - central
- Identify suitable contract/framework – centrally with consideration by services
- Prepare procurement documentation – central in consultation with services
- Publication – central
- Collate tenders for evaluation – central
- Evaluation – services with central support if required
- Due diligence - centrally together with services
- Contract awards to suppliers – centrally together with services

PART 5 CONSTITUTION - PROCUREMENT PROCEDURE RULES

The report before the Committee explained that the Council's Procurement Procedure Rules stated the following:

"Before undertaking any procurement, Departments should satisfy themselves that:

- *The works, goods or services are required and a need can be demonstrated*
- *There are no reasonable alternatives e.g. sharing or utilising spare capacity/inventories elsewhere within the Council*
- *Where relevant, they have considered the requirements of the Public Services (Social Value) Act 2012 and have recorded/evidenced the outcomes against the associated requirements:-*
 - *how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area*
 - *how, in conducting the process of procurement, it might act with a view to securing that improvement.*

Use of Local Suppliers: All Procurement should be in line with the Council's Procurement Strategy, which includes the recognition of the use of local suppliers and providing a fair basis for them to compete for the provision of goods, works or services required by the Council".

CONTRACT MANAGEMENT

The Members of the Committee heard that contracts management was undertaken by the services and Key Personal and Contract Administrators and were named within the contract documentation and were added onto their individual and existing roles. In some projects, contract management was commissioned as part of the project. The Council had produced a standard TDC Contract for Services, which covered the terms and conditions for suppliers to adhere to when entering into a contract with the Council for values above £25,000. That must be used unless an exemption was sought. JCT and NEC suite of contracts were also used for construction works and engineering projects with widely recognised and accepted clauses within the industry, with differing options to be selected. Understanding the structure of those documents and arrangements was essential for contract management. Contract management required a commercial understanding, appropriate skills and capacity to be undertaken with maximum potential. Presently services were conducting contract management alongside their usual service delivery requirements, which could be extremely time consuming.

Within the agreed Scope, the Committee had requested certain information and are detailed below:

1. Confirmation of procurement and contract management requirements:

"These are contained within the following documents: Council's Procurement Strategy and under Part 5 of the Constitution Procurement Rules of Procedure, which set out the policy and rules, the Council has adopted to be followed".

2. The procurement project pipeline:

“Is an evolving piece of work and relies on the input of services to ensure that it is a useful exercise, in terms of allocating procurement resource and identifying budgets. The exercise will also benefit service areas in managing the process and subsequent contract management”.

After a brief discussion the Committee **RESOLVED** to give consideration and endorse those actions already identified as improvements and deliverables for the procurement and contract management framework, monitoring progress through a future work programme for the Committee.

The Committee also **RECOMMENDED** to **CABINET** that:

- a) the Council’s Contract Register is brought up to date as soon as possible, with services across the Council providing the necessary data on contracts held within their respective areas; and
- b) a Social Value Policy for Procurement Purposes be produced for consultation with the Resources and Services Overview and Scrutiny Committee at a future meeting.

16. **A.3 TASK AND FINISH GROUP - PLANNING ENFORCEMENT**

The Committee was reminded that its work programme included an enquiry into the Council’s Planning Enforcement function in relation to current powers, policies, procedures, data on the use of current enforcement powers, effectiveness of approach and assessment of how cases should be prioritised. This enquiry was conducted through a Task and Finish Group established by this Committee.

Members of the Committee heard that effective regulation and enforcement was one of the key priorities in the Council’s Corporate Plan 2020-2024, under the heading of ‘Delivering High Quality Services’. The decision to include Planning Enforcement as a subject for a Scrutiny review function came about following concerns being raised by a number of Councillors in different parts of the District about its effectiveness in responding to a range of different planning enforcement related matters. Having drawn on the key headings within the terms of reference for the Task & Finish Working Group, the aims and objectives of the inquiry were developed through discussion at the group’s inaugural meeting on Monday 3rd October 2022 and evolved as the inquiry proceeded.

The aims and objectives were summarised as follows:

Current Powers

- *“To review the full set of powers available to the Council for the carrying out of planning enforcement, having regard to the fact that any action is discretionary on the Council and is always expected to be proportionate and appropriate.*

- *To gain a better understanding of the range of tools available to the Council's enforcement team to resolve complaints – ranging from no action, negotiation or minor interventions, through to formal enforcement action and legal prosecution.*
- *To explore how the powers and tool available to the Council can be better communicated to those with an interest, including District Councillors, Town and Parish Councils and members of the public”.*

Policies

- *“To review the Council's Planning Enforcement Policy which sets out the available powers and the approach that the Council will take when receiving, investigating and, where appropriate, taking action against alleged breaches of planning control.*
- *To review the associated ‘harm risk assessment’ which is used by Officers to prioritise the investigation of cases and to inform decisions about appropriate levels of action going forward.*
- *To recommend improvements to the Planning Enforcement Policy and harm risk assessment as deemed necessary to improve the effectiveness of approach”.*

Procedures

- *“To review the full process of dealing with enforcement complaints including the initial receipt of a complaint, responding to the complainant, visiting the premises, identifying and establishing any breaches, carrying out harm risk assessment, choosing a course of action and formal processes thereafter.*
- *To review the approach to communication with complainants, those the subject of action and other interested parties; and how this might vary depending on the nature of the issue.*
- *To explore how third parties, such as Town and Parish Councils, might be able to assist the District Council by exchanging information at a local level.*
- *To recommend improvements to procedures with the aim of improving the effectiveness of approach”.*

Data

- *“To gain an understanding, through the interrogation of data, of the scale and nature of enforcement issues in Tendring, including number of complaints/cases received, resolved or outstanding and how they are recorded and monitored – both for internal purposes and for public reporting.*
- *To develop and recommend a framework for reporting enforcement data and performance to the Planning Committee”.*

Effectiveness of Approach

- *“To invite honest feedback from Councillors and other interested parties on the effectiveness of the planning enforcement function based on experiences and issues in their areas.*
- *To review the resources available to the planning enforcement team when set against the scale and nature of the task – particularly in relation to management structure, number of Officers and skills, knowledge and experience.*
- *To explore and identify areas where improvements can be made to the effectiveness of the approach and to consider alternative ways in which the enforcement function could be undertaken”.*

Prioritisation of Cases

- *“To review the approach to prioritising the inspection of alleged breaches of planning control and determining the level of action required thereafter – having regard to the harm risk assessment.*
- *To recommend improvements to the harm risk assessment and the approach the Council takes in determining priorities for action.*
- *Reviewing the decision-making process and the level within the Council that key decisions are taken”.*

After a detailed discussion the Committee **RECOMMENDED** to **CABINET** that:

- 1) To note that in recent months, following the establishment of the Working Group and the introduction of a new Planning Manager and a new Planning Enforcement Team Leader, and with the full cooperation of the Planning Portfolio Holder and key Officers, notable improvements in Council’s planning enforcement function have already been made in response to issues raised and suggestions put forward. These include:
 - the update and subsequent adoption of a new Planning Enforcement Policy and associated harm risk assessment to replace the previous version that had not been reviewed or updated since 2010;
 - an initial review, update and tidying of the Council’s database of live enforcement cases to remove cases that have been closed, incorrectly recorded or otherwise superseded by events in order to establish a more accurate baseline of information;
 - more positive engagement of Planning and Planning Enforcement Officers in the Council’s Corporate Enforcement and Operation Enforcement Groups to improve working across services on a wide range of enforcement matters;

- a notable improvement in the willingness of Officers to engage and communicate with Councillors, members of the public and other interested parties in recognition of the concerns raised previously;
 - a notable reduction in the Planning Enforcement Team's reliance on the Council's legal Officers for advice and assistance in carrying out planning enforcement duties; and
 - a concerted effort to recruit new Officers to the Planning Enforcement Team on a permanent basis and by utilising channels to attract ex Police and armed services personnel with relevant transferable skills.
- 2) For the Council to retain the planning enforcement function in-house and to support continued efforts to reduce the Council's reliance on temporary staff employed through agencies and to recruit permanent staff to the Planning Enforcement Team – utilising channels aimed at targeting ex Police and armed forces personnel with transferable skills and with the offer of on-the-job training and development;
 - 3) To require Officers to undertake a specific and immediate update to the Planning Enforcement Policy and associated harm risk assessment to incorporate changes, as detailed in Appendix 1 to this report, that are aimed at improving clarity, relevance and effectiveness and for the updated version to be reported to the Planning Committee for its consideration and approval at the earliest meeting practicable;
 - 4) To thereafter require Officers to undertake an automatic review of the Planning Enforcement Policy and associated risk harm assessment every four years for the Planning Committee's consideration and approval to ensure it is kept up to date and responds accordingly to changes in law, policy, circumstances and trends in enforcement-related activity – allowing for earlier reviews where necessary;
 - 5) To empower the Director of Planning, in consultation with the Chairman of the Planning Committee and the Monitoring Officer, to escalate and expedite (as appropriate) enforcement action where there are considered to be exceptional matters of public interest with implications for the reputation of the Council that are not necessarily identified through the standard scoring approach in the harm risk assessment;

- 6) For Officers to prepare quarterly reports on enforcement caseload and performance to go to the Planning Committee, for information, which will contain data on:
 - number of complaints received/registered in the quarter;
 - number of cases closed in the quarter;
 - number of live cases presented by category, electoral ward and time period since receipt; and
 - enforcement-related appeal decisions;
- 7) To support the continued work of the Council's internal Corporate Enforcement Group and Operational Enforcement Group in considering cross-service and cross-body enforcement matters;
- 8) For Officers to continue the process of reviewing cases recorded on the database system to remove closed/irrelevant cases and re-categorising them to provide an accurate baseline for case management and reporting of data going forward;
- 9) That Officers provide an annual training session, held in person, for all District Councillors covering the powers, policy and processes around planning enforcement together with case-study examples and exercises – with the first training session to be held within the two months following the May 2023 local elections (and following subsequent local elections);
- 10) That any Councillor who is a member of the Planning Committee (either as a permanent or designated substitute Member) to attend the planning enforcement training as a mandatory requirement;
- 11) That the Director of Planning be asked to offer or facilitate similar training sessions for Town & Parish Councils;
- 12) For Officers to incorporate within internal systems, reminders to automatically update complainants, interested Ward Councillors and other relevant parties (where appropriate) every 21 days with information on the progress of cases – even if it is to advise of no or limited progress – unless earlier or more frequent updates can be given or are required (these 21-day reminders will follow the initial 21-day notification currently in place following the receipt of a complaint);
- 13) For Officers to respond within 48 working hours, to emails from Councillors relating to planning enforcement matters so they can be suitably informed when advising members of the public;
- 14) To note that a significant proportion of live enforcement cases in the District relate to breaches of occupancy conditions at caravan and holiday parks, many

of which are complex, sensitive and long-standing with a variety of issues to be taken into account. To resolve these breaches in full and deal with the implications thereafter would require significant additional and dedicated resources. It is therefore recommended that the Planning Policy and Local Plan Committee is asked to consider developing a strategy or policy to guide a coordinated and long-term approach to the application and enforcement of occupancy conditions across the District having regard to matters such as impact on the tourism industry, flood risk, health and safety, quality of life, ecology, disability and homelessness;

- 15) That for site inspections, Officers;
 - i. must always use Council equipment for capturing photographs and other data;
 - ii. and are supplied with hi-visibility clothing (preferably labelled 'Tendring District Council Enforcement')
- 16) For Officers to pro-actively monitor compliance with planning conditions and obligations wherever practical and where resources allow – and work constructively with owners, developers and applicants to identify and resolve potential future compliance issues before they give rise to a breach of planning control and possible enforcement action;
- 17) For the Planning Service to consider incorporating standard advice into pre-application responses and validation requirements for applications setting out, and seeking agreement to, the Council's expectations for development to be carried out with the necessary consents and compliance thereafter with any planning conditions or obligations imposed;
- 18) For Officers to review and update the form on the Council's website for reporting enforcement complaints to make it more user-friendly and to allow complainants to provide as much information as they can to describe the issue they wish to report; and
- 19) For the Director of Planning to consider, on a case-by-case scenario and in liaison with the Council's Communications Manager, publicising successful enforcement outcomes to demonstrate the Council's commitment to planning enforcement.
- 20) That the Monitoring Officer be requested to consider the appropriate body to which individual recommendations are/should be directed and, where appropriate, refer those recommendations to those bodies. The outcome of this process shall be reported to Cabinet when it receives the reference report from this Committee on the outcome of this enquiry.

The meeting was declared closed at Time Not
Specified

Chairman