



Scrutiny Committee

16:30 to 19:25

7 December 2023

Present: Councillors Ackroyd (chair), Thomas (Va) (vice-chair), Carrington, Calvert (substitute for Francis), Champion, Driver, Fox, Fulton-McAlister, Galvin, Osborn, Padda, Prinsley, Sands (M) and (Thomas (Vi)).

Apologies: Councillor Francis

Also Present: Councillor Giles (all items) Councillors Davis, Hampton, Jones, Kendrick, Stonard and Stutely (item 4 on).

The chair commenced the meeting by advising members that Councillor Champion was now a permanent member of the committee in place of Councillor Haynes and that Councillor Sands (M) had joined the committee too and she welcomed them both.

1. Declarations of interest

There were no declarations of interest.

2. Minutes

RESOLVED to agree the accuracy of the minutes of the meeting held on 23 November 2023.

3. Equality Information Report 2024

Councillor Giles the cabinet member for communities and social inclusion introduced the report and gave a presentation available [here](#), he then took member questions.

A member noted that it was good that the Equality, Diversity and Inclusion (EDI) Strategy highlighted how the council delivered above what the law required. He advised that the Equality Act initially included social classes and he would like to see this incorporated into the EDI Strategy and Equality Information Report (EIR) going forward. He raised a concern that the protected characteristics as listed on agenda page 68 of the report were not accurate. Further, he noted that the proportion of ethnic and disabled employees within the council's workforce was not representative of the wider community and that this should be addressed via recruitment. In response Councillor Giles agreed it was important to improve the diversity of the council's

workforce. He noted that significant improvements had been made in this regard but there was still work to do. The Strategy Manager confirmed that the council's recruitment process included 'blind' applications in that information in relation to race and disability were removed before applications were considered.

A member commended the work progressed to date and referred to the growing body of research in relation to EDI which indicated that the protected characteristics of a workforce should be captured. She asked how the work around EDI would be monitored and evaluated going forward. Councillor Giles advised that under the EDI Strategy sat the EDI Policy which would create specific and measurable equalities objectives which would be monitored and reported back on. Further an EDI Action Plan would be developed again this would be monitored and reported back on.

In response to a member question Councillor Giles advised that the former leader of the Council and Chief Executive had signed the Unison anti-racism charter. In terms of work the council undertook in relation to assisting people experiencing mental health difficulties to access services, Councillor Giles highlighted the work of the council's interact team. The interact programme was a multi-disciplinary service bringing together practitioners from local authorities, NHS and voluntary organisations to support vulnerable residents to improve their housing situation. The Senior Financial Inclusion Officer advised that interact built on the work undertaken by REST (a service provided by MIND working with those experiencing mental health challenges) and the wellbeing service and were hoping to link in with NSFT (Norfolk and Suffolk Foundation Trust) going forward. She noted there was work ongoing within the Health and Wellbeing Partnership too with specific themes in relation to mental health, social mobility and food poverty being addressed.

A member asked a question in relation to RITAs (Reducing Inequalities Target Areas), how were the areas selected, what data was looked at and how was that data going to feed into council decisions. The Strategy Manager advised that the original purpose of the RITAs was to maximise the opportunities of residents, to reduce inequalities using locality-based solutions. Inequalities were assessed on a granular level to enable the effectiveness of work undertaken to be considered.

A member referred to an issue he had encountered in relation to physical barriers on housing and parks and open spaces land. He noted that the barriers were designed to deter motorcycles and mopeds from accessing footpaths but the corollary affect was that they prevented access to some disabled people too. He advised that he had received an excellent response from the council's housing department who had removed barriers. However, he considered that the parks and open spaces team were reluctant to consider removing barriers and asked how this could be addressed. Councillor Giles advised that the future Parks and Open Spaces Strategy would include an audit of accessibility of parks and open spaces and this would be addressed at this time.

A member asked a question in relation to Equality Impact Assessments (EQIAs) and asked how it was assessed when to conduct these and what was the legal basis for assessment. The Strategy Manager advised that any project which impacted positively or negatively on members of the community would require an EQIA to be undertaken. In terms of the legal basis for assessment he did not have that information to hand and would provide it outside of the meeting.

A member asked how much the report cost to make, if the council were getting value for money and what residents got out of it. Councillor Giles highlighted that there was a legal obligation to produce an EIR in order for the council to be compliant with its public sector equality duty. The Strategy Manager advised that the work to collate the data from other teams and produce the report took about 10 hours of officer time. He noted monitoring across the organisation to assess the impact and effectiveness of equalities measures was good business practice. Councillor Giles emphasised that it had developed to include infographics with the aim of being more accessible. A conscious decision was made not to include sources of advice for residents within the document as it was acknowledged that better tools already existed.

A member referred to the council's response to the war in Ukraine and asked if the same response would be afforded to people from other countries facing war situations. Councillor Giles responded that in terms of awarding honorary freedom of the city this would need to be considered in consultation with colleagues across the council.

A member referred to the Customer and Digital Strategy and noted that when the digital channel switch happened, customer satisfaction went down. She emphasised that it was difficult to get in contact with the council and considered that when residents did get in contact their issues should be resolved at first contact. However, this was not the experience of residents within her ward and asked what could be done to improve upon this. The Head of Customers, IT and Digital confirmed that there was a desire to resolve issues at first contact and this was often achieved. There were challenges in relation to this where enquires required referring to a service and customers did phone up to progress chase which was not ideal and measures were being considered to address this.

In terms of the feedback to the consultation on the Customer and Digital Strategy it was clear that customers wanted a digital service. Whatever channel a customer chose to contact the council on they should receive a good service. She confirmed that those who were digitally excluded could still phone into the council and between 600 and 800 calls were received daily. In a follow up question the member asked how customer satisfaction was judged and if every customer was asked. The Head of Customers, IT and Digital advised a survey was undertaken quarterly over the period of a week where customers were contacted for their views the next day.

The Head of Legal and Procurement referred members to the recommendations they had made when considering the item on welcoming asylum seekers and refugees to Norwich and that they had included a number in relation to customer contact and how vulnerable residents could be supported.

A member referred to the report which advised that the council would seek to address inequalities arising from the climate and biodiversity emergencies and asked how this was being progressed. Councillor Giles advised that this was a workstream that the Norwich Climate Commission were undertaking. The Head of Strategy, Engagement and Culture advised that work undertaken as part of the development of the Environmental Programme included equality as a key aspect within it. Actions taken to address and mitigate the impacts of climate change could not be done in an unequal way but would recognise the inequality in society. The work was underway to identify measures and actions to mitigate the impacts of climate change and this was one of the key objectives it sought to achieve.

In response to a member question Councillor Giles advised that in terms of supporting residents to access welfare benefits the council funded the Financial Inclusion Consortium and subscribed to the Norfolk Community Advice Network. The Senior Financial Inclusion Officer advised that this was addressed through cross service work and there was a joined up approach across the council. If a resident was identified as having a debt or energy issue for example holistic support would be offered and where relevant they could be referred for additional support. The council could make applications to the Household Support Fund or Norfolk Assistance Scheme on behalf of residents struggling with the cost of living crisis. The member referred to the fact that £11million of benefits went unclaimed yearly and asked how the council were countering this. The Senior Financial Inclusion Officer advised that the council were working proactively and taking the message out into the community and referred to a project being delivered in conjunction with Age UK called 'wellness on wheels'.

RESOLVED:

- 1) That scrutiny committee consider the inclusion of a review of the equality action plan as part of its future work programme.

To request that cabinet:

- 2) Include information on the performance of the RITAs against outcomes in the next EIR report;
- 3) Explore the potential of reporting the volume of customer contact resolved at the first point of contact; and
- 4) Investigate a process for evaluating the equality compliance of parks and outdoor spaces.

(A short break was taken at this point)

4. Consideration of Cabinet decision to award Exceptional Circumstances Relief (ECR) from the payment of the Community Infrastructure Levy (CIL) in respect of phases 1 and 2 of the redevelopment proposals at Anglia Square which received planning permission on 18 July 2023.

The chair explained the order of the meeting and the Head of Legal and Procurement summarised the options available to members; they could choose to endorse the original cabinet decision in which case the decision would be effective immediately, the committee could decide to refer the matter back to cabinet for reconsideration, or they could request that cabinet consider more evidence in which case cabinet would meet to decide if it agreed or not with that recommendation.

Councillor Osborn explained his reasons for asking for a call in. He considered the decision to grant ECR on CIL for the development at Anglia Square would have a huge impact on the city and the wider area. The ECR represented £2.3m of CIL which would provide a 60% increase in pooled CIL to the Greater Norwich Growth Board (GNGB) than was spent this year. The neighbourhood CIL contribution would be £345,000 which was more CIL than was spent across the city in the whole of the year. This could be used to fund neighbourhood priorities such as providing good connections to Marriotts Way and Mousehold Heath from Anglia Square,

improvements to green infrastructure, improved street lighting and the regeneration of schools. It appeared that none of these options had been considered by cabinet.

He noted that at the cabinet meeting Councillor Stonard had referred to the neighbourhood CIL (NCIL) element of 15% of the overall CIL contribution as being insignificant. However, the total NCIL available to the city this year was £275,000 which was less than the £345,000 which could have been garnered from Anglia Square. At a time when the council was facing a stretched budget the decision by cabinet to grant ECR was, in his opinion, a bizarre one.

He continued with his concerns regarding the process of decision making, he referred to the Homes England (HE) contract in relation to Housing Infrastructure Funding (HIF) and the clause stating the granting of £15m of HIF was dependant on ECR being granted on CIL. A deed of variation to the contract was required. He was unclear if cabinet made the decision relying on verbal confirmation from HE that they were happy to vary the contract or on an outdated contract. There were risks associated with CIL ECR as identified in the council's corporate risk register as risk 15, the failure to drawdown £15m of HIF funding. It was not clear how these risks were considered by cabinet.

Councillor Osborn continued that no precedents of ECR being granted at other councils were considered, this maybe that there were no precedents but indicated that the decision should have been taken with greater care. He considered that the decision had been rushed through, there had been no consultation with the GNGB which could damage our relationship with neighbouring councils. The decision should be paused to allow consideration of the issues with HE contract, to provide assurance that the council was not putting itself at legal risk. The pause would allow consultation with partners, residents and neighbourhood representatives. He recognised that consultation was not a requirement of granting ECR but noted that the decision was to be originally considered by Planning Applications Committee (PAC) in part to enable public engagement in the decision.

Lastly, he turned to the financial position of Weston Homes and noted that cabinet was able to consider any matter it saw fit to. Weston Homes had made £20m profit in the last two years and were seeking a tax break at a time when the council's budget was stretched to breaking point. In his view the financial position of Weston Homes was relevant and should be considered.

Summarising his points he emphasised that there were strong grounds to pause the decision at least until the HIF contract was resolved and the council were assured it was not at risk of legal challenge. Further the pause would provide an opportunity to consult with partners and residents.

Councillor Davis explained her reasons for calling in the decision, she considered the clause in the HE contract stating £15m HIF contribution was dependent on ECR CIL being granted fettered member's discretion. The decision to grant ECR on CIL should be made as a standalone decision but it was clearly bound to the HIF as funding would not be granted if ECR was not awarded. The contract should have been amended before the decision was taken.

She referred to the legal advice taken in relation to the contract and that if the legal advice said the contract was fine then it was true that member's discretion was fettered. If the advice was that it was not fine why was the contract not amended before the meeting. Ultimately, in her view the decision should not have been taken until the contract was updated by a deed of variation. Only when the contract was updated and HIF was not dependent on ECR could the decision be considered to be unfettered.

She noted that officers had provided reassurance to cabinet that they had sought verbal confirmation from HE that the contract would be amended in order that HIF was not contingent on the grant of CIL ECR. She asked in what other context would this be allowed to happen; the council would not award a tender to a company based on a verbal assurance they would amend a contract.

She asked if scrutiny and cabinet could see the full ownership, management, structure and control of the company and parent companies applying for CIL ECR. Were cabinet aware that one of the shell companies was dormant and non-trading according to data held at Companies House. The question of who owned Anglia Square was unclear; according to Weston Homes' website they now owned Anglia Square having taken over ownership from Columbia Threadneedle. The last annual report of Sackville Properties UK for year ending December 2022 stated that the company was dormant for the year in review and likely to remain so. It was important that there was scrutiny of cabinet decisions including the structure of the companies of the applicant.

She turned to the lack of consultation with the GNGB and referred to officer comments that this had caused no issues in relationships with the other councils in the GNGB. She noted that at a meeting of South Norfolk District Council's (SNDC) Scrutiny Committee held in January 2019 comments were made which indicated otherwise, and relayed these to the Committee and indicated it would have been helpful to formally consult with partners, especially in light of the fact that SNDC had been contributing significantly more CIL to the pooled pot.

She noted that an Equalities Impact Assessment (EQIA) had not been completed before the cabinet decision was made and was surprised that this was the case. An assessment had now been completed as requested as part of the call in. However, the call in had asked how CIL might have been used to provide greenspace of benefit to health and community facilities. The reply provided focussed on health facilities which she was aware were not funded by CIL but was not the question which had been asked and remained unanswered.

She noted that at the cabinet meeting reference had been made by officers to the fact that if the development did not proceed then no CIL would be realised. She considered that only when the decision on CIL ECR was unshackled from the HE HIF contract and cabinet were to reconsider the decision in light of the new contract was there any opportunity for CIL to be realised.

She asked members of the scrutiny committee to refer the decision back to cabinet for reconsideration, requesting to see evidence of the HE contract in place when cabinet made its decision, the updated HE contract and evidence of the CIL ECR applicant's companies structures, management and controls which remain unclear. She also recommended that the leader of the council contact members of the GNGB to give

them an opportunity to consider and contribute to the assessment of the wider regeneration benefits and exceptional circumstances which is required in the policy.

Councillor Stutely addressed the committee and referred to the report considered by cabinet on 14 November 2018 which considered the introduction of a CIL ECR policy. Cabinet agreed to recommend to council the introduction of the policy and that the constitution be amended to enable PAC to determine such applications. He asked if officers could explain how it was determined subsequently that the decision could not go to PAC and provide the legal evidence which informed that decision.

Councillor Stutely referred to members being assured that the decision would be made by PAC and not the leader, cabinet or by delegation to officers and it was on this basis that members approved the introduction of the policy. He considered that the ECR CIL policy should be rewritten and returned to council to exclude the reference to decisions being made by PAC and if passed by council the cabinet decision should then be informed by PAC in an advisory role.

He raised concern that the decision to award CIL relief could set a precedent for other landowners. He felt that the decision gave undue leniency to the developer, had been rushed in the face of public objection and risked damaging the relationship with GNGB partners.

He continued that if the decision went ahead then it would have legal, financial and political repercussions for many years and felt the decision should be paused and a transparent process fully followed, including amendment of the HIF contract. PAC should then inform cabinet's decision in an advisory capacity.

Councillor Stonard, the leader of the council and the cabinet member for inclusive and sustainable development addressed the committee. He advised that cabinet were attending the meeting to hear the concerns raised as part of the call in and the considerations of the scrutiny committee and the reasoning behind any recommendations it determined.

He emphasised that the cabinet decision had followed all the correct processes and legal advice had been taken to ensure this was the case. The reasons why cabinet made the decision to grant ECR on CIL were set out in detail during the meeting, great care was taken with the meeting running for over two hours. Cabinet had not been whipped and this was evidenced in the voting on the decision.

He advised that Weston Homes' profits over the last few years were not relevant what was considered was the viability of the scheme and every scheme was required to be judged on its own merits.

Turning to the question of CIL lost to the local area, there was no guarantee that the NCIL element would go to Anglia Square. When CIL was received, 85% was pooled with the GNGB and 15% went to the neighbourhood area, this area was much larger than Anglia Square. Further, it was not the case that the money had been lost as there would be no CIL if the scheme did not go ahead and the scheme was not viable.

In terms of the relations with the GNGB, he had recent constructive discussions with some of the leaders of the other partner councils and they understood why the decision

was taken. The benefits of the development included the provision of homes, jobs, the regeneration of the area and the removal of buildings which blighted the landscape.

The Head of Planning and Regulatory Services referred to the fact that detailed responses to the grounds for call in were included in the report and advised she was happy to respond to any member questions. She provided an update in relation to the clause in the HE HIF contract. The council had received written confirmation that HE were minded to agree an amendment to the wording of the contract as detailed in paragraph 55 of the original cabinet report and included on agenda page 85. The new accepted wording would read 'The Local Authority shall confirm that a determination has been made in respect of CIL ECR on the Works prior to any drawdown'.

The Head of Legal and Procurement addressed the legal points raised by Councillors Osborn and Stutely. In relation to the requirement for consultation, legal advice received indicated this was not required as there was no statutory duty and the Council had not set a precedent requiring consultation.

In relation to the second point on the decision-making process, she referred to a document which had been circulated to members considering the legal authority to make the decision. She set out the robust process for obtaining advice on this point. The legal advisors had considered the decisions made by cabinet and concluded these were sound.

The chair advised one public question had been received from Mr Hugo Malik. Mr Malik asked the following question:

"The overall CIL exemption Weston Homes will be looking at applying for over the course of the Anglia Square development will amount to approx. £7mil. I believe this is more than Norwich has contributed to the pooled CIL arrangements with Broadland and South Norfolk since its introduction in 2013, in which time Norwich has done very well from substantial CIL contributions from South Norfolk in particular. With their unilateral decision to grant CIL relief for Anglia Square, have officers and Cabinet members weighed up the future implications for joint financing, particularly around transport for Norwich and the DEVO deal? And due to Planning being more or less locked down over the last two years due to nutrient neutrality, isn't it true the CIL pot has dried up, with very little to spend over the next five years, and the Anglia Square decision could not come at a worse time?"

The Head of Planning and Regulatory Services responded:

"Whilst the overall CIL liability over the lifetime of the development is estimated to be £8,921,023 (and this can only be estimated at this time due to the hybrid nature of the application), the decision before cabinet which is being scrutinised today, relates only to phases 1 and 2 which seeks CIL relief for £2,816,769.92. It was explained at Cabinet that each application has to be considered on its own merits and the decision to award CIL exemption on phases 1 and 2 does not fetter Cabinet's discretion either way on future applications.

It was set out in the presentation to Cabinet how much CIL would have gone into the pooled CIL arrangements with the Greater Norwich Authorities. This was £1,729,702.00. At the point where CIL is collected following the grant of any planning application, the CIL monies go into a general infrastructure pool, and it is not known where it would be spent within the CIL charging area.

The published Five Year Infrastructure Investment Plan (which is programmed to go to Cabinet in January 2024) proposes committing £928,000 to new projects which will commence delivery from April 2024. It also suggests that just over £7m of noncommitted funds will remain within the fund at the end of 24/25.

Individual authority contributions are not reported by the GNGB. The purpose of the partnership pooling arrangements is to reinvest the CIL monies collected where the highest strategic need is, the district boundaries are deliberately removed when it comes to allocation of funds.

It is accepted that the nutrient neutrality issue has had an impact on the pooled CIL fund. Whilst payments of CIL have been delayed, they will, once nutrient neutrality is overcome, be made as permissions are released and developments commence so the pooled arrangements will see this money realised, albeit at a later date.

To reiterate, Norwich City Council is both a CIL charging and CIL collecting authority. As such, the CIL Regulations enable us to make decisions on CIL ECR applications in accordance with the legislation and our own policy requirements.”

In response to Mr Malik’s supplementary question regarding the timeline for legal advice the Head of Legal and Procurement advised it was standard practice to review decisions as they were coming forward. As part of that process in consultation with officers she requested advice on the authority to make the decision be sought and the advice was received in the autumn.

In response to Councillor Osborn’s question the Head of Planning and Regulatory Services advised that in hindsight the wording of the cabinet report could have been clearer. Officers had updated their response to read ‘Members are not bound to agree the relief but should be mindful of the consequences of refusing the applications’. The Head of Legal and Procurement noted that the cabinet report highlighted that the clause in the HE contract presented a risk. The cabinet report advised that officers were working with HE to manage that risk and that HE had verbally indicated that they were minded to amend the clause in the contract. The cabinet decision was made in the context of the contract as it stood taking account of the fact that HE had advised they were minded to amend the contract.

In response to a member question the Head of Planning and Regulatory Services advised that the HIF had to be drawn down by June 2025. The developers had always been clear that they needed 18 months on site before they could draw down the funding. A delay to the beginnings of the work could mean the developer was starting work under risk.

In response to a member question the Head of Planning and Regulatory Services advised that when a planning application was granted it was not clear where the CIL would be spent. She set out the range of potential benefits that would be realised through development of the scheme.

The Head of Planning and Regulatory Services confirmed that the HIF funding and ECR were being sought due to the exceptional costs associated with the development of the Anglia Square site. It was a complicated site which would require significant demolition, on contaminated land with archaeological interest.

In response to a member question the Head of Planning and Regulatory Services confirmed that the EQIA for the CIL ECR had been completed on 29 November, after the cabinet report was written in response to questions raised by members. She acknowledged in hindsight it would have been better if the EQIA had been included in the cabinet report.

The Head of Legal and Procurement noted that the legal team had reviewed the whole cabinet report including the element related to the EQIA. The initial assessment before cabinet was that there was no prejudicial impact and an EQIA is not necessarily required. Taking account of the comments made in the scrutiny call in an EQIA was completed, and potential impacts considered either way. Scrutiny committee could consider whether this warranted endorsement or referral of cabinet's decision.

In response to a member question the Head of Planning and Regulatory Services confirmed that a contract existed between the council and HE and a deed of variation to the contract was being sought.

The Head of Planning and Regulatory Services explained that the process for applying for CIL ECR was set out in law in the CIL regulations. As part of the application an independent viability assessment for each phase of the development must be submitted. As Weston Homes was the engaged developer and because CIL decisions were only valid for 12 months their viability costs were submitted alongside the more generic assessment provided by Columbia Threadneedle.

The Development Strategy Manager highlighted the viability that was being assessed was each phase of the chargeable development and not the financial viability of the company. The initial generic viability costs presented by the company indicated significant loss to the scheme.

In response to a member question Councillor Stonard, the leader of the council advised that there was no formal political agreement in place in relation to the CIL ECR application within the GNGB. He had spoken with partners who had expressed their understanding as to why the decision had been taken. The scheme was not viable without ECR which was understood by partners.

The Executive Director of Development and City Services confirmed that there was a legal agreement in place in relation to pooling CIL in the GNGB. Within the partnership each authority was still its own sovereign authority, the city council was both the charging and collecting CIL body. The city council were legally able to apply its policy of ECR to CIL and exempt a scheme. It was only collected CIL which was required to

be pooled. In response to a member question he advised that it was possible for an authority to leave the GNGB but none had indicated their intention to do so.

Debate ensued and one member noted that it was disappointing the application had not been heard by PAC but the question was whether the correct process had been followed and he considered that it had.

Councillor Driver moved and Councillor Sands (M) seconded a procedural motion to move to the vote without further debate and with the majority voting in favour it was:

RESOLVED to move to the vote.

Councillor Driver moved and Councillor Sands (M) seconded a motion to support cabinet's decision and on being put to the vote it was:

RESOLVED on the chair's casting vote, with 7 members voting in favour and 7 members against to support the cabinet decision to award Exceptional Circumstances Relief (ECR) from the payment of the Community Infrastructure Levy (CIL) in respect of phases 1 and 2 of the redevelopment proposals at Anglia Square which received planning permission on 18 July 2023.

CHAIR