

SCRUTINY OF WASTE MANAGEMENT ISSUES - UPDATE

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Summary

This report provides members of the Panel with updated advice in respect of the scrutiny of waste management issues arising from the integrated waste management contract and in particular with regard to the proposed scrutiny event.

Recommendations

- A. That the Scrutiny Panel note the report and the independent legal advice provided by Wragge and Co. Solicitors

REPORT

1. Members of the Scrutiny Panel will recall that at the last meeting on 18 October 2007 the Corporate Director presented a report dealing with Scrutiny of Waste Management Issues
2. The report set out the County Council's role with regard to waste management issues, legal advice as to the Panel's ability to hold a scrutiny event to consider energy from waste technology and gave consideration to the future scrutiny of Shropshire Waste Partnership decisions.
3. At the meeting on 18 October 2007 members of the Scrutiny Panel will recall that there was a suggestion that a "second opinion" should be sought with regard to the legal advice as set out in the report and which was supplemented verbally at the meeting.
4. As a result, further legal advice has been sought from Wragge and Co Solicitors in Birmingham.
5. The advice from Stephen Sellers a Partner at Wragge and Co. Solicitors is as follows:-

" I agree with the advice which was given to the Economy and Environment Scrutiny panel at its meeting on 18 October about a potential scrutiny event to consider the energy from waste technology proposed for Battlefield Enterprise Park site in Shrewsbury.

My reasons for reaching this conclusion can be summarised as follows:

1. The scrutiny process

The principles of the scrutiny process are clearly set out in the overview and scrutiny procedure rules which form part of the Council's Constitution. They involve:

- The attendance of Cabinet members, the Chief Executive, other chief or senior officers at meetings of the panel who will provide explanations about decisions taken by Cabinet and how matters within the remit of the panel implement Council policy;*
- The ability to invite others to appear before the panel to discuss issues of local concern and/or answer questions;*
- Where the panel conducts investigations, for example with a view to policy development, it may also ask people to attend to give evidence;*
- Reports of the panel are considered in due course by Cabinet or full Council.*

There is no obligation on anyone other than a member or officer of the Council to attend meetings of the panel.

2. The scope of scrutiny and the waste management contract

Article 6 of the Council's constitution takes on board the requirements of section 21 of the Local Government Act 2000 for the appointment of overview and scrutiny committees (of which the Economy and Environment Scrutiny panel is one) to discharge the various scrutiny functions set out in the Act.

It is clear that the proposed scrutiny event here is not a review or scrutiny of the decisions already taken by the Council through the Shropshire Waste Partnership joint committee and otherwise in connection with the entering into by the Council of the waste management agreement dated 29 September 2007 with Veolia ES Shropshire Limited. This is a twenty-seven year contract providing for the design, construction, funding and operation of waste management facilities and the delivery of waste management services for the County Council and four of the five district and borough councils within Shropshire.

The contract includes specific obligations on the part of Veolia in relation to obtaining planning permission for a waste treatment facility and the County Council agrees to use reasonable endeavours to assist Veolia (without incurring costs) and agrees not to object as waste disposal authority to any planning application made in relation to such a facility.

The contract cannot pre-judge the County Council's consideration of a planning application for the construction of an energy recovery facility at Battlefield Enterprise Park and it expressly contemplates the consequences of a refusal of planning permission and in those circumstances the possibility of an appeal.

The proposed scrutiny event is planned against the background of Veolia undertaking a lengthy and detailed public consultation exercise about their proposals before submitting a planning application. The planning application will then follow in order that Veolia can perform its obligations to the County Council under the contract.

The scrutiny event that is proposed therefore has to be judged against its potential impact on the proposed planning application.

2. Scrutiny and the planning process

It is very clear that it is not the role of the scrutiny process to review individual decisions made by other committees of the Council, particularly decisions about planning applications. In October 2000 the Secretary of State published "Guidance : Local Government Act 2000 – Guidance to English Local Authorities and Modular Constitutions for English Local Authorities". This constitutes guidance for the purposes of Part 2 of the Local Government Act 2000 and local authorities must have regard to it. It includes the following provision (paragraph 3.16):

" Where an overview and scrutiny committee is reviewing the work of another committee of the local authority it should not normally scrutinise individual decisions made by such committees, particularly decisions in respect of development control, licensing, registration, consents and other permissions."

There are a number of reasons why this guidance is particularly applicable in this case:

- a) the planning committee and its members must approach each application without bias, that is they must not have a closed mind and must impartially consider all the relevant planning issues;*
- b) this is especially important in a case where the County Council in the exercise of its functions as a waste disposal authority has entered into a contract which contains detailed provisions about the making of that application, including assisting the applicant and not objecting to the application;*
- c) the scrutiny panel includes members of the planning committee. Any scrutiny event undertaken by the panel which includes members of the planning committee and relates to matters within a forthcoming planning application, will almost certainly prevent those members taking part in the consideration of the planning application itself;*
- d) the County Council, as the planning authority, will in due course be responsible for undertaking consultations and receiving representations from members of the public;*
- e) the overview and scrutiny procedure rules do not contemplate a scrutiny panel making a report to another committee of the County Council, such as the planning committee. This is presumably because of the guidance given by Government in October 2000. Any engagement with the public organised by the scrutiny panel would therefore have no end product and is likely to mislead the public into thinking that their representations will somehow be taken into account as part of the consideration of the planning application;*
- f) the scrutiny panel has no power to resolve to support or oppose any planning application;*

- g) *the scrutiny panel has no power to summon the attendance of officers of Veolia or its consultants to its meeting or review the pre-application consultations which Veolia are to undertake.*

In conclusion I think that the County Council should not embark on a scrutiny event of the kind which was the subject of the report to the panel on 18 October, nor scrutinise the way in which the County Council will itself consult the public once a planning application has been made to it."

6. Further to receipt of this advice Wragge and Co. Solicitors were asked to clarify whether the advice referred to both the scrutiny event that was the subject of the 18 October 2007 report i.e. a review of waste technologies and to that which was proposed at the meeting on the 18 October 2007 i.e. Veolia's proposed pre-application consultation.
7. Further advice was received as follows:-

"I do think that the pre application consultation plans of Veolia is properly outside the scrutiny remit.

The pre application process at the end of the day is a matter for Veolia. The scrutiny panel can only make recommendations to the County Council. In this case the planning committee has responsibility for pre application consultations within the County Council and the Government's guidance advises that individual decisions made by planning committees should not normally be scrutinised.

In fact the pre application policy of the Council as planning authority has already been scrutinised by a planning inspector. The County Council has adopted a statement of community involvement in accordance with its obligations under the Planning and Compulsory Purchase Act 2004 and this deals with pre application consultation in paragraphs 10.2-10.4. The SCI was the subject of an examination by an inspector who made a binding report with recommendations to the County Council in April 2006. No recommendations were made for alterations to these sections.

The County Council also has the possibility of entering into a planning performance agreement or planning delivery agreement about the application. The recent consultation paper on this topic describes their purpose as:

"a project plan framework through which the local planning authority and applicant manage suitable planning proposals. For a PPA to be successful, it is essential that the local planning authority and the applicant establish a collaborative relationship based on trust, with good communication and regular exchange of information."

This kind of agreement does not of course pre judge the application but can be a means of charging for pre application discussion time and can set out an agreed method of pre application consultation with the applicant. This again underlines the point that responsibility for influencing pre application consultations within the County Council is the business of the planning committee.

Whatever method is agreed the applicant is bound to argue in favour of its proposals and my letter points out that the County Council as waste disposal authority has agreed not to object to it and use its reasonable endeavours to assist in the obtaining of planning permission.

All this reinforces how the pre application process needs to be left with the planning committee. They will ensure that the application is properly scrutinised and Veolia equally recognise through the contract that the planning committee has this separate and independent role.”

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) “ Guidance : Local Government Act 2000 – Guidance to English Local Authorities and Modular Constitutions for English Local Authorities</p>
<p>Human Rights Act Appraisal There are no particular implications that arise from the recommendation and content of the report</p>
<p>Environmental Appraisal No implications as a result of the content of this report</p>
<p>Risk Management Appraisal The content of the report itself provides legal advice as regards the Panel's remit</p>
<p>Community / Consultations Appraisal None as far as this particular report is concerned.</p>
<p>Cabinet Member Councillor John Hurst-Knight</p>
<p>Local Member All</p>
<p>Appendices None</p>