CITY AND COUNTY OF SWANSEA

MINUTES OF THE SPECIAL SCRUTINY PROGRAMME COMMITTEE

HELD AT COMMITTEE ROOM 3, CIVIC CENTRE, SWANSEA ON MONDAY, 9 FEBRUARY 2015 AT 9.30 AM

PRESENT: Councillor R V Smith (Chair) Presided

Councillor(s)	**Councillor(s)**	**Councillor(s)**
R A Clay	J P Curtice	T J Hennegan
A C S Colburn	N J Davies	P M Meara
D W Cole	P Downing	G J Tanner
A M Cook	E W Fitzgerald	

Co-opted Members:

S Joiner

Officers:

T Meredith	-	Deputy Monitoring Officer
B Madahar	-	Scrutiny Co-ordinator
S Woon	-	Democratic Services Officer
J Rogers	-	Communications Officer

160 **APOLOGIES FOR ABSENCE.**

An apology for absence was received from Councillor A J Jones.

161 **DISCLOSURES OF PERSONAL & PREJUDICIAL INTEREST.**

In accordance with the Code of Conduct adopted by the City and County of Swansea, the following interests was declared:

Councillor R A Clay – personal – Minute no. 164 – Llansamlet Ward Councillor.

Councillor A M Cook - personal - Minute No. 164 - Ward Member from Cockett.

Councillor D W Cole - personal - Minute No. 164 - Ward Member from Penyrheol which abuts two of the five previously nominated sites.

Councillor J P Curtice - personal - Minute Nos. 164 - Ward Member from Penyrheol which abuts two of the five previously nominated sites.

Councillor T J Hennegan – personal - Minute No. 164 – One of the sites shortlisted was in Penderry Ward, I represent Penderry.

162 **PROHIBITION OF WHIPPED VOTES AND DECLARATION OF PARTY WHIPS.**

In accordance with the Local Government (Wales) Measure 2011, no declarations of Whipped Votes or Party Whips were declared.

163 **MINUTES:**

RESOLVED that the Minutes of the Special Scrutiny Programme Committee held on 28 January 2015 be accepted as a correct record.

164 **EVIDENCE SESSION: SCRUTINY OF GYPSY & TRAVELLER SITE SEARCH PROCESS:**

The Chair referred to the ninth evidence session which would enable the Committee to hear from the Chief Executive, Director of Place and Head of Legal, Democratic Services and Procurement.

The session commenced with the Chief Executive providing a statement (Appendix A).

The Chief Executive then answered questions from the Committee members as follows.

1. Impact of the 2009 Court Judgement / Clarity of Aims & Objectives of the Site Search Process:

a) There seems to be a lack of clarity regarding the rationale / purpose of the site search, and its relationship with the court judgment and its interpretation within the authority. With reference to the 2009 Court Judgment how would you summarise the key reasons for the council being refused the eviction order that it sought?

The Chief Executive stated that he had already described, in Section 1 of his statement, the range of issues that determine the need to make additional provision of which the 2009 judgment was only one. Furthermore, the Chief Executive reported that he had explained in Section 2 of his statement, what the scope of the review was as determined by Cabinet.

The key reason for the refusal in 2009 was that Councillor Hague had created a "reasonable expectation" and this had not been reported to Cabinet (the decision maker).

In response to a supplementary Member question regarding Officer/Cabinet Member responsibilities in reporting information to Cabinet regarding an alleged conversation between the former Councillor Hague and the Gypsy Traveller family, the Chief Executive stated that he could not comment on theories and opinions. In relation to responsibility to report matters, there was no difference between an Officer and Member, with no more burden on Officers than Members.

b) How did the authority balance meeting the council's legal obligations with addressing the specific Llansamlet problem and meeting the changing needs of the GT community – conflicting messages / advice about this emerged during the process? Could the authority not have just remedied the issues raised in the judgment (grounds for refusal) and then seek a further eviction order?

The Chief Executive stated that the Council could have sought to remedy the grounds for the refusal and then sought an eviction. However, as explained earlier this judgment was not the only issue faced and Cabinet decided to commence the site search process in 2010.

c) Why was there a change in thinking between March and August 2010 in terms of purpose of site search and role of the Task & Finish Group?

The Chief Executive stated that he was not directly involved and could no more put himself in the mind of those who were than anybody else. He stated that he could see no real significance here though. The written record shows that in March 2010 the focus was on the tolerated site, presumably as this was the immediate problem. By August 2010 the Task & Finish Group was focussed on the broader picture. The tolerated site was but one issue so the August position is correct.

In response to a supplementary Member question regarding the process starting with a specific matter and morphing into a process looking all over Swansea for an unspecified number of sites, the Chief Executive stated that there was a whole range of legal and other duties on the Council. He was a senior manager at that time with some knowledge of the issues, although not directly involved.

In response to a supplementary Member question regarding an apparent obsession with the family at the Park and Ride Site that dictated subsequent events the Chief Executive reiterated that it was a much wider issue and the Council had faced a succession of illegal encampments, including before the 2009 judgment, which had indicated a need for provision,

The Chief Executive also responded to a question on the need specifically for a transit site and challenged any assertion that this was the issue that needed the most attention.

d) What weighting was given to the views of the Gypsy & Traveller community? The committee seeks clarity on whether the Council would be able to evict families if they chose not to live on a new site. Is it correct that if a site was selected and then was not used because it was not where Gypsy & Traveller families wanted to be, we, as a Council would be deemed not to have fulfilled our legal obligations? How would this be balanced with the views of local communities?

The Chief Executive stated that it would be inappropriate to repeat all the views expressed on this issue.

The simple fact was that there was a clear requirement to take into account the Gypsy & Traveller view on site options. In a purely pragmatic sense this was

necessary if a new site was to be used and so alleviate the problems we are duty bound to resolve.

The question arises as to how much weight should be given to the Gypsy & Traveller view? This question has led to extremely strong opinions and some comparison to the weight to be given to other views.

The Chief Executive stated that he could not answer as to what precise weight should be given. The decision maker, Cabinet, would have to be make a number of judgements of this nature and balance a number of potentially conflicting matters.

Depending on the weight given to each judgement the risk of challenge would be impacted. There was no algorithm that could help with this, though his personal view was that unless significant weight was given to the Gypsy & Traveller view, successful challenge or continuing illegal encampment was more likely.

In response to a supplementary Member question regarding 2 of the 5 sites not being acceptable by Gypsy Traveller families for cultural reasons, the Chief Executive stated that these views were included in the Council report, but prior to this the position was not as clear. He suggested that any further questions about this would need to be directed to relevant officers involved in the consultation process.

In response to a supplementary Member question regarding the Courts involvement should a challenge come about in determining 'reasonableness' in relation to Gypsy Traveller Families refusing certain sites, the Chief Executive stated that the Council had a duty to make provision and take into account views of Gypsy Travellers. The Council must balance preferences of Gypsy Travellers with all other factors and come to a judgement. Whether that is considered to be reasonable will be determined in Court if challenged. There would need to be 'reasonable' weighting, or the Council faced the risk of being challenged in court.

In response to a supplementary Member question regarding the relatively short period of time between the 2012 local elections and the conclusion of the Task and Finish Group, the Chief Executive stated that the process had started in 2010 and despite the new administration and change of political leadership it was a single process which simply continued. Any further questions on this would be a matter for councillors to address.

In response to a supplementary Member question regarding the sifting process and examples of inconsistency (e.g. use of highway criteria) the Chief Executive referred to evidence previously submitted by the former Officer Reena Owen and Emyr Jones. He also referred to the work undertaken by the Task and Finish Group and stated that the sifting process was self evident.

In response to a supplementary Member question regarding former Officers, who have left the employment of the Authority, attending to give evidence, the Chief Executive stated that he would be prepared to approach former Officers if requested to do so by the Committee.

In response to a supplementary Member question regarding the consultation with Gypsy Travellers and confidential meeting which took place in September 2012 involving the Chair and Vice Chair of the Task and Finish Group, the Chief Executive stated that whilst he was aware of consultation being carried out generally he had no specific knowledge of this meeting and the purpose of the meeting was a matter for the Committee to take up with those who were present. However, he confirmed that the Council report mentioned more than one meeting with Gypsy Traveller families. Former Officers Reena Owen and Martin Saville were involved in the consultation with Gypsy Travellers and would have reported into the process.

In response to a supplementary Member question regarding conflicting views of the Gypsy Traveller community and complexities, the Chief Executive stated that all members of the Executive Board would have had some awareness irrespective of whether they were present at specific meetings.

e) Was the Chief Executive ever asked if he could suggest any alternative approaches to the process started in 2010?

The Chief Executive stated that he could not recall being asked to suggest any alternative approaches to the process started in 2010. All discussions have related to the completion of the approach chosen by Cabinet in 2010 and subsequently endorsed.

In response to a supplementary Member question regarding the position in May 2012 the Chief Executive stated that the process continued under the new administration and no formal review was called for.

2. <u>Member Led / Officer Led Process:</u>

a) Was the process member-led or officer-led? Who were the specific councillor leads, including lead cabinet member?

The Chief Executive stated that the whole process was overseen by Cabinet, the lead Cabinet member was originally Councillor J Hague and latterly Councillor N Bradley. Both Council Leaders inevitably took a keen interest.

In response to a supplementary Member question regarding portfolio holder responsibility, the Chief Executive stated that reports were submitted to Cabinet in the name of former Councillor Hague, Councillor Burtonshaw (originally) and Councillor Bradley. It was queried by the committee at what point did Councillor Burtonshaw cease to be the responsible Cabinet Member and whether this was recorded in cabinet minutes. The Chief Executive undertook to check and provide a response,

In response to a Member's comment of a lack of cabinet member focus and proper process shown by confusion about the responsible portfolio holder, the Chief Executive stated that Cabinet had collective responsibility and portfolios were simply for political convenience.

b) What specific work were officers tasked to do in relation to the site search process and by whom? To whom did officers report?

The Chief Executive stated that all work was done under the direction of and reported to Cabinet. Officers were tasked to apply the criteria set by Cabinet to the sites having identified all Council owned land.

3. <u>Gypsy & Traveller Site Task & Finish Group:</u>

a) What powers did the Gypsy & Traveller Site Task & Finish Group have, and what was the specific authority for these?

The Task & Finish Group was established by Cabinet on 11th March 2010 and had the authority to only do what Cabinet determined.

b) Around the time of the Task & Finish Group agreeing to exclude 2 sites but then being put back in – why was it denied that officers overruled the Task & Finish Group and re-instated the 2 sites?

The Chief Executive stated that Officers did not overrule the Task & Finish Group for the reasons detailed earlier.

In response to a supplementary Member question regarding the role of the Task and Finish Group prior to the 2012 Election and the information passed to the newly formed Task and Finish Group the Chief Executive stated that it was never a matter for the Officers to decide which sites should be dropped, it was a matter for Task & Finish Group and Cabinet. The Task and Finish Group was set up to perform a task specified by Cabinet with a stated criteria. If Task and Finish Group Members had refused to visit certain sites then that could have led to a challenge. He added that the Task & Finish Group would have needed to have had a dialogue with Cabinet in relation to their issues about the 2 sites, but that did not happen.

In response to a supplementary Member question regarding the Task and Finish Group's ability to amend their Terms of Reference, the Chief Executive stated that they were not empowered to change terms of reference.

In response to a question about continuity between the 2 Task & Finish Groups the Chief Executive stated that this was a matter for relevant members.

c) Why were some of the councillors involved in the Task & Finish Group threatened to be reported to the Standards Committee?

The Chief Executive stated that there was no threat to report to Standards Committee. There was correspondence with two Councillors where he observed that some public comments were "a matter that is reportable to the Ombudsman", but indicated a preference to resolve internally.

In response to a supplementary Member question regarding the publication of the 5 proposed sites to the Evening Post, denial and then subsequent confirmation by the then Leader, the Chief Executive stated nothing had been made public by Council Officers they were political statements for political purposes. The Task and Finish Group worked confidentially until it had concluded its work.

d) Having been given a task why was there no report produced by the Task & Finish Group to Cabinet or Executive Board, as eventual reports were officer reports?

The Chief Executive stated that, as is normal practice, Officers include advice in reports that they author and the Chair of the Task & Finish Group would sign off the report.

In response to a supplementary Member question regarding whether there is record of the Task and Finish Group reporting their final conclusions to Officers and whether they formally signed off any report to Cabinet, the Chief Executive stated that Officers would have reflected the views of the Task and Finish Group but he would check and report back.

[Note: Councillor A C S Colburn stated that he was a Member of both Task and Finish Groups (prior to and following the 2012 Election). 2 meetings had taken place following the election the first of which explained to all new Members what stage had been reached and process that had led to present position being reached, and detailed maps were on walls. The second meeting was inconclusive and Members were given the impression there would be a further meeting which had never taken place. Task and Finish Group Members were unaware of any meetings involving Councillors Bradley, Raynor, Officers and Gypsy representatives. Prior to that there were regular meetings and the matter was debated fully by the Officers and taken seriously by Members of Task and Finish Group]

4. <u>Short listing:</u>

a) Since the list of 5 sites had been publically acknowledged by the previous administration why was it then described as either non-existent or confidential under the subsequent administration?

The Chief Executive stated that he did not know and asked, with respect, that the Committee ask the Members of the Administration. From an Officer perspective the status remained the same throughout.

In response to a supplementary question regarding the confidential nature of the Task and Finish Group and disclosure of information around the 2012 elections the Head of Legal, Democratic Services and Procurement responded. He referred to the issue of confidentiality, and the use of red papers in public meetings under the exempt information regime. He stated that Council can go into closed session however decisions should be made in the public domain in order that the public have adequate notice. The Task and Finish Group was not a decision making body, and by its very nature its work was confidential, and Members would have been told that the final decision would be made by Cabinet. There were no public

meetings. Officers do not have authority to give Members orders just advice in good governance and probity. This was an on-going process, no decisions had been made and it was dangerous to give information out.

In response to a supplementary Member question regarding Councillors being told not to disclose information, the Head of Legal, Democratic Services and Procurement reiterated that Officers were not in a position to instruct Members. The Task and Finish Group had been given a task to complete by Cabinet which had not been finalised and no public decisions had been made. He stated that he could not comment on what any specific Task & Finish member was told. However, he stated that there must have been an element of confidentiality about the process. It was about the need to know and the right to information that they need.

In response to a supplementary Member question regarding a Member disclosing information and the involvement of the Ombudsman, the Head of Legal, Democratic Services and Procurement stated that the issue was of a Code of Conduct nature and Members should have due regard. However, he was not in a position to comment without being intimately involved.

In response to a supplementary Member question regarding why information released from a the Task and Finish Group would be 'dangerous', the Head of Legal, Democratic Services and Procurement stated that it was not best practice to give people false fears in relation to a situation and the information should have been confidential until Cabinet were due to consider the issue.

b) On which dates did each member of the Executive Board visit each of the shortlisted sites? Were visits undertaken collectively or individually?

The Chief Executive stated that he had visited all sites on 19th September 2013 with the lead Director. Other members of the Executive Board may have visited at various times or would have local knowledge based on their long service in the Council.

Following a supplementary question the Chief Executive stated that he was satisfied that the key officers had visited the sites, and with the role which Executive Board members played in the process.

c) Given the Executive Board has an overarching responsibility for the achievement of all policies and objectives did it consider the suggestion that both the sites it recommended to Council would be detrimental to the council's economic development plans?

The Chief Executive stated that at the time of the work of the Task & Finish Group the prevailing plan was the UDP. All UDP strategic employment sites were excluded. All sites have some potential for use in economic development terms.

All and any sites require the balancing of competing objectives. This is ultimately a matter for the decision maker, the Cabinet.

The Chief Executive added that all the relevant information was set out in the Council report.

d) Why was it never made clear during the process that Site 17 (Peniel Green Road) involved 2 alternative options with different advantages, disadvantages and costs?

The Chief Executive stated that as he understood it this was a single site, potentially accessed in two different ways and hence both were referred to in the Council report, but was challenged on this.

5. <u>Decision Making:</u>

a) What led the then Leader to (incorrectly) announce that the final decision in the process rested with the Council? What advice was given by the Chief Executive / Officers ahead of this misleading statement?

The Chief Executive stated that this was really a question for the former Leader. Officer advice had always been that this was a matter for Cabinet to decide. Council would be required to approve any policy changes, should any arise. A decision was made to consult Council.

In response to a supplementary Member question regarding the public being given the wrong impression regarding the decision making, the Chief Executive stated that he was more concerned that the right decision was made in the end. He stated that there may have been some confusion about decision making because any policy changes would of course need to be approved by Council.

b) What did the Chief Executive think when he heard that the then Leader regarded the process as deeply flawed? What was your understanding of the Leader's concerns?

The Chief Executive stated that he was unconcerned as he was (and still is) confident that the process established by Cabinet had been properly undertaken.

He sought, and received, assurance that the comments were in no way a criticism of officers or their actions.

He could therefore only assume that the former Leader had considered it flawed as it had produced an answer that was politically unacceptable or that there had been a lack of political oversight.

165 **<u>WORK PLAN: TO DETERMINE OUTSTANDING QUESTIONS AND ARRANGEMENTS FOR FURTHER EVIDENCE GATHERING.</u>**

The Chair stated that the committee had indicated that an evidence gathering session with councillors should be arranged before evidence gathering is concluded. He asked Members to confirm who this should involve. The committee also discussed whether any other information / evidence was necessary. The possibility

of the former Director of Environment being called back to the committee was discussed.

RESOLVED that:

a. Councillors Nick Bradley, June Burtonshaw and David Phillips be invited to attend a future meeting to assist the committee with its evidence gathering; and
b. In addition, committee members should consider whether there are any other outstanding questions remaining so that final consideration can be give to further evidence gathering from others is necessary.

The meeting ended at 11.35 am

CHAIR

Appendix A

Statement of Chief Executive

Scrutiny Panel Gypsy and Traveller Site Provision

1. Background

I am providing this statement to the panel in order to ensure that my advice is absolutely clear. After the meeting I will ensure Members have my statement in writing.

I will seek to address the key issues in the simplest possible terms in order to maximise clarity. The full detail on the various issues is of course available to the panel in Cabinet and Council reports, guidance, legislation etc. I will of course seek to assist the Committee by answering questions on this statement, but I am aware of theories and opinions about which I may be asked, but upon which I have no evidence and can offer no relevant view or opinion.

As the panel may be aware, my direct involvement in this matter follows my appointment as Chief Executive in 2011. I do have knowledge of some of the issues prior to 2011 but this is as a result of being a senior manager in the Authority rather than direct.

I would finally point out that Officers advise and Members decide, where I express an opinion in this note, as opposed to a fact, the fact that all do not share that opinion does not mean that my advice is in any way improper.

These are complex matters and it is quite possible that there can be more than one correct answer to some of the questions that arise. Advice is not always welcome but it is the duty of officers to provide it. I have been advised of a range of questions this panel wishes to put to me and my responses will be detailed in this statement and at Appendix A.

2. Why are we looking for additional site provision?

The matter is addressed in Section 1 of the Council Report of October 2013. There is no single reason. Over the last 30 years additional guidance, legislation and duties have come into play. During that time various interested parties have stressed varying elements of the issue but as we sit here today there are a range of factors that determine we must deal with this issue. These include:

- A long history of illegal encampments and a cycle of possession orders.
- The relatively recent emergence of the 'tolerated site' which in many ways is symptomatic of, and the same issue as, any illegal encampment.
- The requirements of the 2004 Housing Act which requires adequate provision for GT.
- The Equality Act 2010 which gives GT specific rights and us specific duties.
- In due course our Local Development Plan must make adequate provision for current and Future GT site needs.
- From March 2016 there will be a duty on Welsh councils to provide a suitable site if a need is identified (via a needs assessment). If a site is not

provided to meet the identified need, WG Ministers will have the power to compel LAs to provide a site (this comes into effect March 2016).

Whilst the size, scale and nature of proposals can be debated there is absolutely no doubt that this Council like all others has a clear duty to provide. Individual views as to whether this should be the case are irrelevant.

3. What exactly are we looking to do?

GT site provision can be met in a number of ways,

- Large sites/ small sites
- Dispersed sites/ concentrated sites
- Permanent/ transit/drop in

It has become a matter of contention as to whether what the Council was wishing to achieve was clear. The recent process was focused on 'additional Gypsy Traveller site provision' which can include all of the above. The 'search for a second site' is a phrase used by some but misrepresents the position. The intention of the site search was to provide Cabinet with as many viable options as possible and decisions on the exact nature of the provision can follow. This was the Cabinet's chosen route, the fact that it could have been done differently does not invalidate the exercise.

4. West Glamorgan Agreement

The independent legal advice has been published on this issue and I will not detail it here. I will however clarify officer advice which is,

- There is no evidence of a legally binding agreement.

- In any event the law and many other matters have changed in the last 30 years and no such agreement could bind the Council today.
- Clearly there was a debate in the late 1980's. I cannot say whether a 'political', 'gentleman's' or any other sort of agreement was made.

The clear advice is that there is no legally binding agreement nor could there be.

The decision maker, Cabinet, will have to make a number of judgements and deal with a range of relevant considerations. Only the decision maker can ultimately decide what weight, if any, should be given to this issue.

5. <u>Members of the Task and Finish Group 'deciding' to exclude two sites</u>

This issue has been contentious and debated in various forum, the matter, from my perspective, is straight forward.

- There is no doubt that members of the T&F group 'decided' to exclude sites at Penderry and Llansamlet.
- However the T&F group was established by Cabinet to apply the criteria to the sites.
- The group had the remit to do this and this alone.
- The reasons they wished to exclude the sites were due to the level of deprivation in Penderry and the existence of a site already in Llansamlet. These factors were not included in the criteria and therefore the group could not, in any administrative or remit sense, exclude the sites.

The T&F group could have reported back to Cabinet recommending the exclusion of the sites or asking that the criteria be changed, but that would be a decision for Cabinet. The group could only do what it was established by Cabinet to do.

6. Member led or Officer led?

Again this issue has been raised over time and in a number of ways. The position is quite clear, and evidenced in all of the formal reports; to Cabinet and latterly Council. Roles and responsibilities are clearly enshrined in the Council's Constitution. Officers advise, Members decide.

The whole process has been established by Cabinet, decisions have been made at Cabinet. The final decisions will be made by Cabinet. As always, Members must have due regard to Officer advice. In very rare circumstances officers have a duty to intervene if Members are acting or about to act illegally. I cannot envisage that ever happening in Swansea.

7. Significance of Gypsy Traveller views

It would be inappropriate to repeat all the views expressed on this issue.
The simple fact is that there is a clear requirement to take into account the GT view on site options. In a purely pragmatic sense this is necessary if a new site is to be used and so alleviate the problems we are duty bound to resolve.

The question arises as to how much weight should be given to the GT view? This question has led to extremely strong opinions and some comparison to the weight to be given to other views.

I cannot answer as to what precise weight should be given. The decision maker, Cabinet, will have to be make a number of judgements of this nature and balance a number of potentially conflicting matters.
Depending on the weight given to each judgement the risk of challenge will be impacted. There is no algorithm that can help with this, though my personal view is that unless significant weight is given to the GT view, successful challenge or continuing illegal encampment is more likely.

8. Advice of Professor Beddow

I have had sight of a report provided by Professor Beddow to all Councillors on the eve of the October Council meeting. I presume that his advice to this panel was in a similar vein. I comment on this advice directly only because the extent and detail of the advice creates a plausibility that may be attractive to Members.

I have attached a full response to the professor's paper at Appendix B for the panel's information.
In short:-

- I totally reject the algorithmic approach proposed as it hides judgements in pseudo-science and simply gives an appearance of exactitude. I am unaware of any other council using this approach for this issue.

- The approach is also fundamentally flawed given the range and nature of criteria determined by guidance in this particular case.
- The comments in relation to the law on consultation are simply wrong.

9. External Legal Advice

In the normal course of Council business it should not be necessary to take external advice except if very specialist matters are involved.
Given the nature of this issue I do not believe that specialist advice should have been required.

However, we are where we are. The advice given by the Head of Legal Services has been both criticised and questioned. This has led to the taking of Counsels advice on a number of occasions and the Head of Legal will no doubt brief the panel if necessary.

I do however want to highlight one piece of advice that I was jointly responsible for commissioning. Given the extent of controversy around this process, and its importance, I wanted to be absolutely sure that our advice to Council in October was sound. Counsel was consulted and the questions asked were very open. I would not have wished Council to proceed if the process was fundamentally flawed or indeed flawed in any aspect.

I will not quote the opinion in full as this meeting is in public but I will refer to the most important elements for this consideration.

1. The Council has acted rationally and lawfully throughout.

2. In particular:

    i) The consultation process has been sound and in accordance with the first 3 Gunning principles.

    ii) The Council was entitled to restrict consideration to land within its ownership.

    iii) The sifting process was based on transparent and objective criteria and was not opaque

    iv) The report to Monday's Council meeting is robust (as was the report to the meeting of Cabinet, the decision making body, on 23 July 2013) and

    v) The Council is duly operating in accordance with the fourth Gunning principle.

    Furthermore:-

    1) The Beddow critique is misconceived.

    2) The Council officers response to it is correct.

Chair, I will now answer directly the questions that you kindly supplied me with in advance of the meeting. I believe Members have a copy of these and I will take them in the order given.

Appendix B

Response of the Executive Board to the Travellers Consultation Process Critique

Preface

This document has been prepared in response to a critique of the process to identify additional Gypsy Traveller site provision by Professor Tony Beddow. At the outset it should be noted that this document is not intended to be a corporate justification, but rather arises from a desire to avoid a lack of response being interpreted as assent.

The starting point must be to set out a statement of the obvious that is that officers provide advice and politicians make decisions. The process has been agreed by Cabinet from the outset. It has been subjected to scrutiny by senior officers both from within the authority and on an independent basis. Mr James Goudie QC has also advised in relation to the process and, in particular, the authority's compliance with the Gunning Principles.

This is not intended to be a blow by blow refutation of comments made and opinions expressed by Professor Beddow. Furthermore, whilst Professor Beddow's credentials are not questioned, he has no standing – legal or otherwise - to seek to influence Council in this way. He is not geographically affected by any of the proposed sites.

Professor Beddow's Critique

Professor Beddow asserts that officers failed to advise Cabinet about his challenge to the process. This is not correct. It is not and has never been disputed that Professor Beddow provided a response which sought to challenge the process. Officers took the decision to go further than the law requires and publish all of the consultation responses online. As Professor Beddow points out, the response to his contribution is at pages 69-71 of Appendix B6.

Paragraph 1.6 of the report considered by Cabinet on the 23rd of July 2013 set out as follows:

"*Any of those responses that demonstrated a* ***fundamental flaw in the process*** *or a* ***serious consideration not previously thought of or consulted upon*** *would have been taken into consideration. None did." [Emphasis added]*

At no time have officers advised Cabinet that "*no such challenge to the process had been raised during the consultation*". Officers' views were that no fundamental flaw

in the process had been identified, not that a challenge had not been received. Therefore the comment made by Professor Beddow is untrue and misleading.

Professor Beddow proposes "*steps that Council should take steps to strengthen the process so that its outcome may withstand aggressive scrutiny*." It is unclear why Professor Beddow uses the term "aggressive scrutiny". The authority has to ensure that its decision would withstand judicial scrutiny in an administrative law sense, no more, no less. It is not accepted that the process needs strengthening and in any event Council has no legal ability to take the action proposed, this is a matter for Cabinet.

The Executive Board have distilled the arguments made by Professor Beddow into three issues that cause him concern:

a) That there should have been a ranking of sites – probably based on an algorithmic approach as set out in his note. He argues the methodology adopted is flawed.

b) The decision to consider Council owned sites

c) A suggestion that the authority did not make it clear what it was consulting upon, with a particular emphasis on how many or what type of sites it needs to provide.

The first point to make is that Professor Beddow has been alleging flaws in the process in correspondence with both the authority and the press for some time. He has received responses from officers throughout. Professor Beddow has asserted that he has not had answers to his questions. He is of course entitled to his opinion but officers are of the view that responses have been given. It is trite that just because Professor Beddow does not agree with the response this does not make the response wrong or insufficient / inadequate.

Professor Beddow is an interested member of the public and there is no legal requirement on officers to enter into detailed correspondence with him. Given the level of interaction with the consultation, detailed responses to each responder would not have been practical in any event.

Professor Beddow suggests that Cabinet agreed to rank sites in March 2010, but this is not correct. The report to Cabinet dated the 11th March 2010 set out proposed methodology in Paragraph 6.2. No terms of reference were set and the only reference to ranking was in Paragraph 6.1 which was commentary and did not form part of the decision. The minute from the meeting was as follows:

Cabinet approved:

1) *the criteria as set out in Appendix A to the report as the basis for determining sites;*
2) *the methodology as set out in Section 6.2 of the report;*
3) *that the Gypsy Traveller families be formally consulted as part of the process.*

For the avoidance of doubt, paragraph 6.2 stated as follows:

> *The methodology suggested for the assessment is the creation of a specific Member led Task and Finish Group supported by appropriate professional input from relevant officers from the Corporate Officer Working Group."*

The criteria set out in Appendix A and which was adopted has been affirmed and applied consistently throughout. The criteria are objective, clear, and transparent. They were based upon Welsh Government guidance.

The purpose of the report to Cabinet on the 26th August 2010 was to set out methodology on deciding membership, to agree terms of reference and the reporting mechanism. Cabinet decided:

> *(1) a Member Task and Finish Group be formed to examine potential sites for a permanent Gypsy Traveller site using the protocol set out in paragraph 2.1 of the report;*
>
> *(2) Option 2 for the terms of reference set out in paragraph 3 of the report be agreed;*
>
> *(3) The Task and Finish Group report back to Cabinet setting out options on potential sites.*

The terms of reference set out in Option 2 were as follows:

> *(a) Complete a review of all Council owned land and Council land allocated for housing.*
>
> *(b) Produce a report setting out options.*

The criteria having been adopted in March were unchanged. Cabinet asked the Task & Finish Group to produce a report for Cabinet setting out options.

In case the Council's officers are accused of semantics over the ranking argument, there has been in fact been a ranking, but rather by elimination than a descending rank order. This was how the Council got from 1006 to 19 to 5 to 2. This was achieved by a consistent application of the objective criteria contained and approved

by Cabinet in March and August of 2010 and July of 2012, as shown in Appendix A to those reports.

Officers have clearly set out how they arrived at their conclusions and recommendations. The suggested ranking methodology proposed by Professor Beddow is entirely subjective. He has also sought to resurrect arguments over whether there was a "West Glamorgan Agreement". This was dealt with some time ago. The Council took the unorthodox step of publishing the advice of James Goudie QC and the Head of Legal Services on the website which fully covered this issue.

Professor Beddow bases his concerns over the consultation process on his view that the authority has failed to comply with the Gunning Principles. He postulates that officers had not thought of this issue prior to him raising it. The fact that reference to Gunning Principles appeared in early 2013 was because questions were asked and responded to by officers. These principles form the basis of the adequacy of consultation and much like the Nolan Principles for example, are something that is taken as read by all senior local authority officers.

Professor Beddow suggests that it was not clear whether the authority was consulting upon selecting:

"*a) one permanent site only to meet predicted need for permanent residents*

b) one site only to host permanent, transit (and other) traveller needs to meet predicted need

c) sufficient sites to meet predicted need within current policies that advise on the size/ capacity of sites."

There is no alternative other than to say that Professor Beddow is missing the point. The consultation process was abundantly clear and on the basis that the Council has to identify further site provision. A "second site" has become shorthand for the process. Five potential sites were identified as candidates and consulted upon**.** The responses to the consultation were then taken into account and formed the basis of the report to Council on the 21st of October.

As a natural next step in the process Cabinet would have to consider its current statutory housing needs assessment and evaluate present and future need at the point of making a decision about site provision. The authority has closely followed the **WG Government Circular 30/2007 – Planning for Gypsy and Traveller Caravan Sites**. It was entirely feasible that the authority might have had to consider all five sites to comply with housing need, law and guidance.

Professor Beddow then hypothesises that "…*further, predicted need, though unclear or uncertain, appears to require at least two sites to be chosen*." Unfortunately, this is pure speculation. A housing needs assessment has been undertaken which provides the authority with as much clarity and certainty as is possible given that one cannot predict what families will do in the future with any precision. This is detailed in the report.

Professor Beddow is labouring under the misapprehension that there was a Cabinet decision to rank sites. This has been dealt with above and at the risk of repetition; a robust explicit methodology was achieved by the strict application of the criteria in Appendix A. Cabinet has never instructed officers to rank sites. The approved minutes clearly record what was actually decided.
His suggestion that the terms of reference were changed is not correct. Furthermore, the decision was made by Cabinet not officers.

Cabinet decided in August 2010 to consider sites within Council ownership. Professor Beddow suggests that …"*this is now defended on the grounds that widening the search to other publicly owned or private land would incur extra cost*." This implies that this reasoning has only recently been adopted which is simply untrue. It has always been the case that the authority – with a major property portfolio - should consider land within its ownership with a view to cost. The suggestion that the authority could use other publicly owned land is unlikely to be realistic or feasible. Consideration of the public purse in terms of shipping financial obligation as a whole is artificial.

Professor Beddow then provides his view as to what methodology should have been adopted by the Council. He argues that "…*in many consultations the options available are described and compared by a transparent methodology that exposes the issues under review and aids their consideration. A common methodology uses weighted criteria against which each option is tested and scored. This makes clear the value judgements being employed and the extent to which different options are thought to meet those criteria. Such a process enables consultees to offer views about the relevance of such criteria and their weighting, to suggest other criteria, and to contest any scoring by which options are measured against each criteria. This approach helps makes explicit and objective the assessment process which otherwise remains implicit and subjective*."

This analysis fails to recognise that the approach proposed by Professor Beddow is itself subjective in construct and application. Cabinet agreed the criteria to be adopted which were consistent with guidance, straight forward and capable of objective application. A pseudo-scientific or algorithmic approach was not and is not considered appropriate. It is also evident that Professor Beddow has been able to

easily discern the approach used which indicates that the process and report is clear.

Another aspect upon which Professor Beddow raises concern is that the authority has not been clear about its policy intent. Again, this is an unfortunate assumption which has no factual basis. From a policy perspective, the authority would need to consider the statutory Housing Needs Assessment, and the Welsh Government Guidance. This has always been explicit. The wishes of the Gypsy and Traveller families were not sought with regard to the size of site. The reference in the report is to the generic views of the Gypsy and Traveller community at large.

Professor Beddow then goes on to question the weight given to the views of Gypsies and Travellers in the report. He suggests that "…*the conclusions of the report appear to weight traveller wishes in respect of site location. For sites not favoured by travellers are not recommended to proceed for planning consent*." Officers would refer once again to the Welsh Government Guidance. There is little point in identifying and providing a site that the Gypsies and Travellers will not use. He then suggests that "…*If the preference of travellers on site location is indeed to be the dominant driver, then perhaps a lot of effort could have been saved by establishing their view as part of the sifting process*" And then that *"…paragraph 18.1. of the report appears to imply that, if council were to provide a site that isn't where travellers wish it to be - although it meets all the criteria for schools etc - if travellers chose not to use it, continuing illegal camps can be expected and will be tolerated*.

Paragraph 18.1 does not bear this interpretation on any analysis. The relevant section has been highlighted. At no point does it suggest that illegal encampments will be tolerated.

18.1 An important part of the process following Welsh Government Circular guidance was to establish the views of the Gypsy and Traveller community, which will be a relevant consideration in any decision as to where the site should be located. Discussions with the families have taken place to ascertain their preferences in terms of location. Whilst it is not being suggested that the Gypsy and Travellers dictate where a new site would be located, if it is to be successfully used to avoid ad hoc illegal encampments around the area, their views have to be factored into the considerations. Paragraph 18 of Welsh Government Circular 30/2007 highlights the fact that when identifying sites the local planning authority should work with the Gypsy and Traveller community. Similarly Paragraph 9.1 of the Welsh Government guidance Good Practice Guide in Designing Gypsy Traveller Sites in Wales highlights the fact that it is imperative that local authorities consult with Gypsies and Travellers and relevant representative organisations and individuals from the initiation of a proposal through to the completion stage. Local authorities should take into consideration the expectations and aspirations of Gypsies and Travellers, subject to due regard to the need to provide for the migratory way of life of Gypsies and Travellers in Wales.

It is then suggested by Professor Beddow that "*Councillors may wish to reflect on whether such an approach to respecting choice of location regarding pitches squares with the choices offered to others awaiting other forms of council- provided housing such as those on housing waiting lists wishing to live near to relatives*." One can only wonder whether he is suggesting that the authority is to ignore Welsh Government Guidance.

Professor Beddow suggested weighting and scoring would be pseudo-scientific and any weighting would be subjective as is demonstrated from his example. Using his analysis, why has he not scored 10 for the wishes of the Gypsy Travellers on site location for example? He also refers to the fact that two sites were removed from the process. This has been examined exhaustively. Had the authority allowed the Task & Finish Group to exclude two sites without good reason this would have been in breach of the strict approach based on clear criteria adopted and would have been open to challenge.

There is then further reference to the alleged "West Glamorgan Agreement" and Professor Beddow states that "*Thus, whatever a narrow legal interpretation of events might conclude (as in paragraph 2.4.of the report) the author feels that residents of Llansamlet have been given grounds to expect a second site would be located in another part of the City and County. Were these expectations to be dashed, it is possible that residual unhappiness would taint relationships with site users*."

With the greatest of respect the "feeling" of Professor Beddow on the matter is neither justified nor germane. Even if, which is not the case, there was an "agreement", it would not fetter the discretion of the authority nearly 30 years later. In any event, this is not a matter of narrow legal interpretation; it is a matter of fact, the record simply does not support this contention.

Professor Beddow then makes four recommendations:

- require officers to be explicit about the criteria they advise should be used in deciding the merits of different locations
- require officers to use a methodology at least as clear as that described in section 4 above
- be satisfied that it understands the likely extent of "need" for fixed and transient sites and the options for meeting such need
- clarify what extant policies already exist to guide action in this regard and identify any inchoate policy which, if quickly refined, would further assist progress.

The criteria utilised by officers have been agreed by Cabinet on no less than three occasions and has been consistently applied. The methodology similarly was

agreed by Cabinet. The needs of Gypsy and Travellers do vary from time to time but an up to date Housing Needs Assessment was undertaken just before the report was published. The policies applied are Welsh Government Circular 30/2007 and the Welsh Government Good Practice Guide in Designing Gypsy and Traveller sites Wales.

Executive Board
21st of October 2013