

CITY AND COUNTY OF SWANSEA

MINUTES OF THE SPECIAL SCRUTINY PROGRAMME COMMITTEE

HELD AT COMMITTEE ROOM 3A, GUILDHALL, SWANSEA ON
THURSDAY, 9 JULY 2015 AT 5.00 PM

PRESENT: Councillor R V Smith (Vice-Chair) Presided

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

Coopted Member:

D Anderson-Thomas

Also Present: Councillor David Phillips

Officers:

B Madahar - Scrutiny Co-ordinator
D Smith - Directorate Lawyer

204 **APOLOGIES FOR ABSENCE.**

Apologies for absence were received from Councillor G J Tanner and Mrs Sarah Joiner.

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

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

Councillor R A Clay – personal – Minute no. 208 – Ward Member for Llansamlet

Councillor D W Cole - personal – Minute no. 208 – Member of a Ward that abuts two of the original shortlisted sites.

Councillor A M Cook - personal – Minute no. 208 – Ward Member for Cockett.

Councillor J P Curtice - personal – Minute no. 208 – Member of a Ward which borders two of the five previously shortlisted sites.

Councillor T J Hennegan - personal – Minute no. 208 – Ward Member for Penderry which abuts one of the five previously shortlisted sites.

206 **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.

207 **MINUTES.**

RESOLVED that the minutes of the Special Scrutiny Programme Committee held on 2 April, 2015, be agreed as a correct record.

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

The Chair introduced the eleventh evidence session of this review and welcomed Councillor David Phillips to the meeting. The committee wished to hear from Councillor Phillips, who was Leader of the Council between May 2102 and September 2013 in order to:

- explore aspects of the site search / selection process
- better understand his role in the process and events between May 2012 and November 2013
- invite reflection on the process and learning points

Councillor Phillips was invited to make any opening remarks ahead of questions from the committee.

The committee proceeded to go through the questions that had been submitted to Councillor Phillips in advance, and then, following his response, took the opportunity to ask supplementary questions.

Questions:

1. **What were your responsibilities from May 2012 as Leader of the Council in respect of Gypsy & Traveller Site Provision, and what was your role in the process?**

Response provided:

This was an on-going legal process, properly set up by Council, for which there was an expectation that the process (the cross-party Task & Finish Group) would run its course. The terms of reference, roles and responsibilities of the Task & Finish Group were set by Council. Other than the generic overall responsibilities of a Council Leader, I had no specific role or responsibilities in the process. Even if I had, they would have been alongside the rest of my Cabinet colleagues and the Strategic Director.

Supplementary:

In response to a supplementary question Councillor Phillips stated that the process was ongoing and it was not his role to interfere or decide to alter things in May 2012. He maintained that the process was bound by Council and the administration was obliged to re-form the Task & Finish Group, unless

there was a valid professional reason to do anything different. Councillor Phillips was challenged on the decision-making history, that is, that process was carried out under the executive, and therefore could have chosen to review and change things.

2. How was the Cabinet / new administration briefed after the May 2012 elections to ensure awareness of progress and current position?

Response provided:

These would be in the public record.

Supplementary:

Councillors Phillips was asked about private meetings where briefings may have been delivered, and the inference was that there were no such private briefings.

3. What were the role / responsibilities of other Cabinet Members in the process? At some point during the process Cllr Burtonshaw declared an interest and ceased to be the responsible cabinet member - who provided the political leadership of the process after that point?

Response provided:

I think you/the Committee misunderstand. This was a process, the parameters of which were set in 2010 by the then coalition that was leading the Council. Members decide/officers enact. And as you will understand, that means there has to be a process to deliver that decision.

Such a process runs itself and has to be allowed to complete its job. It wasn't a matter of political leadership. Indeed, it would have been entirely wrong for there to have been any sort of political interference. The process had to be, and seen to be, robust, unchallengeable, transparent and fair. Any suggestion that there should be any sort of interference for party political advantage would have been entirely improper and immoral.

Some do think this was and should have considered as a political issue. However, I was determined that this would not be the case, that under my leadership there would be no suggestion that I or my colleagues had interfered to rig the outcome. As I say, that would have been improper and immoral.

Because some councillors chose to make this a political issue did not mean that the Council should follow suit. I repeat, this had to be seen to be robust, unchallengeable, transparent and fair.

Nonetheless, to ensure that this hadn't happened prior to my becoming Council Leader, via Cllr Bradley, I did ask the Task & Finish Group to consider whether the process had been subject to political and officer bias. However, I want to make it absolutely clear that I did not do this because I thought it had happened, I did not think that. Not least because I considered that had there been any attempt to do so, Mrs Reena Owen, the Strategic Director would have prevented it as would Martin Saville the Chief Officer. I merely wanted to rule it out. I was assured that the conclusions were in line with the criteria set.

That said I and my Group are on record between from 2004 onwards pressing the then administration to make progress.

Supplementary:

In response to a further question about political responsibility and the difference in views about leadership to that of the Chief Executive, Councillor Phillips stated that the process was in charge of itself, having been set up by Council, and had to be allowed to reach conclusion. Therefore the Task & Finish Group had to continue where things had been left off. There was no reason to deviate from the agreed process.

- 4. What were respective roles and responsibilities between the cabinet, the member task and finish group, and officers and inter-relationship? Did your involvement in the process include regular meetings with officers?**

Response provided:

As I said earlier the terms of reference, roles and responsibilities are all in the public record. I can assure you that the relationships between officers and members were entirely proper

I wasn't involved in the process.

- 5. Did any review of the process take place under the new administration between May and July 2012 – before it was agreed to re-establish a member task and finish group and continue where things were left off?**

Response provided:

This seems to refer back again to political interference.

There was no reason to have a review. Why would there be? The Task & Finish Group had not finished its work and so was reconvened in July 2012 to – as the question asks – pick up where things were left off. There was every reason to seek an early resolution of the matter and not allow it to continue to drag on.

6. **As Leader, what was your awareness / understanding of the “West Glamorgan agreement” and what implication did this have on the process?**

Response provided:

I was advised by Cllr Penny Matthews of something she had discovered in the West Glamorgan Archives, which came to be called the ‘West Glamorgan Agreement’. However, she only verbally reported that the West Glamorgan County Council had decided that there would not be another Gypsy & Traveller site in the Llansamlet ward. However, Cllr Matthews would not show me the actual documents she had found, but I had no reason to doubt her.

I made several requests to see the documents and finally, after the election, I insisted on seeing the documents and Cllr Matthews provided me with copies. I have not seen these for some time – and my copies are in storage – so I am relying on my memory.

Unfortunately, the documents clearly showed that there was no agreement. The documents are letters from the County Council to the City Council and minutes of the Finance & General Purposes Committee. The council, was subject to a High Court decision against it (very similar to the one against the current council now – namely that they could not gain possession because of lack of reasonable alternative provision). I recall that amongst the sites being considered two were in the then Llansamlet ward.

The documents record that the local members expressed the view that the people of the Llansamlet ward would accept one site, but which I recall was linked to the number of sites actually to be provided in the Swansea area (WG were I believe looking for 6 sites!)

Categorically however, the members’ views that only one site would ever be provided in Llansamlet was not recorded as a decision, it was not **“RESOLVED”**. The words ‘West Glamorgan Agreement’ do not appear. The Minutes of the meeting at which these Minutes were accepted as a correct record do not show any amendment to them incorporating and confirming the so-called ‘West Glamorgan Agreement’ or the principles of its terms.

I had to conclude that Cllr Matthews was mistaken. The local members had certainly clearly expressed what they said were the views of the Llansamlet people (and that would be something that along with other representation would have to be considered), but there was no formal decision/resolution imposing a condition and the members never asked for one. There **was no** resolution of West Glamorgan County Council that could be construed as an Agreement.

This was subsequently confirmed by legal Counsel, who went on to say that even if there had been an Agreement this would not be valid after the passage of time - 25/30 years – and that, additionally, the council could not 'fetter' itself.

Supplementary:

There was a question about references that have made in recent years to a 'West Glamorgan Agreement' for example in an election leaflet in 2012. Councillor Phillips clarified that the leaflet talked about the principles behind the 'agreement' and never claimed that there had been a formal decision. There was some further discussion about what was 'agreed' by members at the time in 1986, whether recorded as a decision or not; and what it implied which has subsequently led many people to believe that there was a deal made in respect of Llansamlet Ward – irrespective of whether any of this was legally binding. Councillor Phillips maintained that the description of an 'agreement' is misleading and that the actual decision made by the County Council is clear.

7. What is your understanding of the role and purpose of the 2 Member Task & Finish Groups (pre-May 2012 and post-May 2012)? How did they differ?*(any comment on the relatively short period between the 2012 local elections and the 'conclusion' of the 2nd Task & Finish Group?)*

Response provided:

As I said earlier this is in the public record. I have no comment on the part in italics, beyond repeating that I was anxious that Council got on with concluding the matter that had dragged on for very many years – being constantly & consistently kicked into the long grass.

This seems an appropriate point to remind Committee (or inform them if they didn't know already) that I required the recommendations of the Task & Finish Group and the process from which they derived to be subject to two peer reviews, again to ensure against the allegation of officer or member bias and that the process had been carried out fairly and the recommendations arrived at were robust transparent and fair.

The first peer review was carried out by another sufficiently senior officer of this authority, but from a different department and unconnected to the Gypsy & Traveller site process, and the second by an officer from another authority. Both these reviews found the process to be robust and the criteria to have been properly determined and fairly applied.

8. **Why was there no specific report 'setting out options' to Cabinet from the Task & Finish Group in accordance with cabinet decision on 5 July 2012, having spent almost 2 years on the short listing process. A report to Cabinet on 1 November 2012 only makes brief reference to the work of the Task & Finish Group. (was it left to officers?; there had been some issues regarding the exclusion of 2 sites by the Task & Finish Group prior to the 2012 election – were you made aware of this at the time, or subsequently after the 2012 election?)**

Response provided:

The reconvened Task & Finish Group of the 5 July had only been in existence for 4 months (not excessive). The two years referred to is the period before the election. There was a report to Cabinet on the 1st November 2012, which was the culmination of the work of the Task & Finish Group since its inception under the previous administration.

I do not understand the import of that part of the question about only making a brief reference to the Task & Finish Group. As it was a report of that Task & Finish Groups work, it would seem tautological to keep referring to it. As a matter of course, reports are written by officers. What the contribution of members was to its text I do not know and would suggest that you ask them.

I cannot remember when I first knew of the issue regarding the attempted exclusion of two sites – but it was common knowledge within the council and was I believe also reported in the Evening Post.

As I understand it, there was a misunderstanding by some members on the Task & Finish Group about their powers. They could not include or exclude sites other than by use of the council/Cabinet accepted criteria. To do otherwise was to risk being perceived as manipulating the so-called 'shortlist' for capricious political reasons.

I would also confirm my understanding that there was no shortlist – despite the press reports to the contrary. I would like to quote you from a letter to me from Cllr John Hague.

27 January 2012 – "The situation remains as set out in the written answer to the question at Council. No shortlist has been agreed until Cabinet has considered the report back from the task and finish group."

Given this it is somewhat surprising that Cllr Hague, who was on the first Task & Finish Group, was one of those who seemed to misunderstand powers.

Supplementary:

Councillor Phillips was asked about the conclusions of the Task and Finish Group. The committee highlighted the difference of opinion about this matter between Councillor Phillips and the Chief Executive, who acknowledged that there was no specific report from the Task & Finish Group to Cabinet on 1

November 2012. Councillor Phillip reiterated that a shortlist would only formally exist if it has been agreed and confirmed as such by Cabinet, irrespective of any information being gained by and printed in the local press. Councillor Phillips was asked whether he was aware of a 'dispute' between members of the Task & Finish Group and officers prior to the 2012 council election around excluding certain sites from the 'shortlist' of 5 that became known. This was ahead of a site visit that was to be held in April 2012. Councillor Phillips confirmed that he was not aware of any specific discussions but was aware that councillors sought to remove certain options from any shortlist and that the Corporate Director (Reena Owen) was clear that this couldn't happen as it would not be in accordance with agreed shortlisting criteria.

There was some discussion about members not being able to discuss / share information with the public. Councillor Phillips stated that he was not aware of any 'gagging'.

9. With regard to community engagement in the process can you confirm what work was carried out to maximise community cohesion, tolerance and avoidance of unnecessary conflict?

Response provided:

This is a question that should be directed towards the Strategic Director, Phil Roberts and his team.

These are fine principles. However, I would say that Gypsy Traveller families still suffer substantial discrimination and it behoves all of us to do our utmost to put these principles into practise.

I am particularly taken with reference to "the avoidance of unnecessary conflict". It is – to say the least – extremely unfortunate that some Councillors, in particular, chose to align themselves so closely with the Llansamlet against the Second Gypsy Traveller site campaign Group. A Group which by its very nature is promoting the message that "we have enough of these sort of people and we don't want anymore". This LA2GT campaign dramatically raised the temperature of the issue not just in Llansamlet but in other areas in the county and worked against the fine principles described in this question.

As a contrary example, I would refer you to the new Margam site proposed in Neath Port Talbot. There the local member welcomed the provision of extra facilities in his ward and noted the way that the Gypsy & Traveller families were part of the community. The whole matter proceeded without issue.

Sadly the way it has played out and continues to play out in Swansea and through this unreasonably extended scrutiny process, shows that a lot more needs to be done to challenge prejudice and bring communities together.

Supplementary:

Councillor Phillips stressed the need for the council to get on with this and find a solution soon. He argued that this was an issue of housing need but unfortunately some campaigns have been focused on being against the gypsy and traveller community and raised the temperature in Swansea about this ethnic group.

10. What is your understanding of the outcome of consultations with the Gypsy & Traveller families? Should the views of the families have been taken into account at an earlier stage in the process?

Response provided:

The question as to whether it should have been done earlier and whether that would have made any difference is not something I can answer - and indeed is something that should have been / be asked of the Gypsy Traveller Families themselves.

Supplementary:

There was a discussion about evidence previously heard that a shortlist was discussed with gypsy and traveller families at a confidential meeting in September 2012. At the time no shortlist had been reported to Cabinet or Executive Board. Councillor Phillips reminded the committee that a shortlist had already appeared in the press and was therefore in the public domain. There was also a discussion about the consultation process and concerns whether there was a clear, focussed and effective consultation strategy. Councillor Phillips agreed that consultation could have been done better and remarked about how councils have traditionally found it difficult to engage the public fully or deal with findings. Members commented in particular whether it was clear what people were being asked, or had enough information.

There was a discussion about the legal obligation to provide a gypsy and traveller site and the Housing Needs Assessment. Councillor Phillips referred to the Local Development Plan process (including a need for site) and High Court ruling regarding possession of unauthorised encampments. The committee recognised the previous discussions that have taken place regarding the purpose of the impact of the 2009 court judgement on the site search process, which moved from dealing with the immediate pressure to the broader context of gypsy and traveller needs. There have been arguments aired at committee about whether it needed to, or which issue remained predominant, given issues amongst certain gypsy and traveller families. Councillor Phillips' view was that the legal judgement meant that the council was unlikely to be granted possession orders and unauthorised encampments had an effect on local businesses therefore the council needed to identify further site provision; and it was morally the right thing to do.

11. What led you to announce that the final decision in the process would rest with the Council?

Response provided:

It was my belief that this was where the decision would be taken. I was wrong and I have said so. The decision was one – legally – that had to be taken by Cabinet. But, in any event, my error as to where the decision was taken was irrelevant and had no bearing on the outcome. It was led in part by my view that this was a decision of such widespread public interest (for whatever reason and whether I agreed with those reasons or not) that it would be plain wrong for Council not to be able to express a view. Cabinet only decisions may be more efficient (arguable) but they are not always properly democratic - in the wider sense of that word. Indeed, by definition, how can they be?

My view was, and remains, that the Cabinet (in reaching its decision) should have as one of its matters of consideration, the views of Council. Therefore I sought a means of enabling that to happen. And that was the Council meeting of October, where members of the public and Gypsy Travellers families amongst others were encouraged to give their views on the proposals. This was broadcast live on the web. This would not have happened if I had not made it happen. The approach to the council meeting was consistent with legal advice.

I would also remind you that at the meeting of Cabinet in November I moved the venue from a small committee room into the Council Chamber to allow for greater public attendance and participation, I moved public questions to the front of the agenda and extended the time for this session so that all questions could be asked and answered.

12. After the council meeting in October 2013 did cabinet at all consider proceeding to planning application stage despite council's view that the search should consider all land options, given various assurances that the process had been sound and the authority has acted rationally and lawfully throughout?

Response received:

I consider this question to be disingenuous – I believe most of the committee already know the answer. There is only one answer I can give.

The legal position is that Cabinet had to be seen to be considering all options before it. Cabinet members, all of whom had not taken part in the Council meeting, could not arrive at the Cabinet meeting pre-determined. Council had expressed a view, but this was a view that, as I said earlier was one matter that Cabinet had to take into account when arriving at its decision. For the avoidance of doubt, it had been made clear to Cabinet, that it was not bound by the Council view/recommendation and had to consider all matters before it, one of which was proceeding to planning application stage. It was open to

Cabinet to discount the views of Council and the members of the public in arriving at its decision and to do something entirely different.

However, and whilst I cannot speak to what was in the minds of my Cabinet colleagues, given that they had agreed with the special council meeting, it would be perverse for the views of Council not to have been given weight in their thinking and consideration on the matter.

I am not sure that Council has ever been assured that it has acted rationally. I am not sure that the use of this word is anything other than suggestively pejorative. Of course, the authority acted lawfully, it would not have been allowed to proceed if it had not.

Supplementary:

In response to a question about whether Cabinet should have pressed forward with this issue after October 2013 Council in order to not protract things Councillor Phillips stated that it was not within his gift to do so. He referred to the time that this issue has taken overall since before 2004, and maintained that things could not have moved any quicker since May 2012. He stated that there was nothing wrong with the process, it simply was unable to provide a conclusion to the issue. He felt that the work of the Task & Finish Group had to be allowed to reach a conclusion without interference and Cabinet had to consider the view of Council.

- 13. Finally, we would like you to consider your experience generally over the last few years dealing with this matter and invite reflections on the process and any learning points / improvements. Did you consider the process to have been deeply flawed? If so, could you elaborate on the problem(s)? Could this process have been done differently with better outcomes?**

Response provided:

It is quite clear that the council has a duty to provide at least a second site and has failed to do so over a considerable number of years. That is why – like West Glamorgan County Council before it – it is in legal difficulty. The delay is also potentially discriminatory. The provision of a second site is about providing for the proper housing needs of what, I would remind you, are human beings, not a convenient political football. We are talking about people, real families, and we should not be talking over the top of their heads, as if they were not here.

I would remind the committee that the existing site has had no complaints – not one – in its entire history.

Councillors aligning themselves with campaigns that have no meaning other than “No Gypsies” – I am sorry that should of course be “No more Gypsies” - is a shameful disgrace. This was not about preventing a second housing

development, Llansamlet and some of the other wards that objected have many of those that go forward without protest – this was wholly about the people that were to live in them.

And going forward on this issue – which Swansea Council will have to do – and sooner rather than later – it is that sort of callous, disgraceful, discreditable and shameful campaign that should be prevented.

Supplementary:

In response to a further question about whether he has called the process flawed Councillor Phillips stated that he was not prepared to discuss leaked private email correspondence. He added that it was written after he had read the Council report and was entirely to do with the report not the process, and that he had formed no opinion until then.

The Chair thanked Councillor David Phillips for his attendance.

209 **PLAN FOR THE CONCLUSION OF THE REVIEW.**

Having undertaken a range of evidence gathering to consider perspectives on the process the committee was asked to discuss a plan for the conclusion of the review and necessary steps, in order to report findings and possible recommendations.

The committee was provided with a summary of the evidence gathering sessions held to date.

The Chair stated that having completed evidence gathering it was now necessary to set aside time to reflect on the work carried out by the committee in order address the key question, and draw conclusions, identify learning points and make any recommendations. He stated that he would be reviewing the evidence gathered and would share his thoughts with the committee in due course for deliberation.

Arrangements for further special meetings to be advised.

The chair referred to a letter which he had received from Mr. Tony Beddow, who has previously submitted evidence to this review, and stated that it will be considered along with the other evidence collected by the committee.

210 **FOR INFORMATION - GYPSY & TRAVELLING COMMUNITY ACCOMMODATION NEEDS ASSESSMENT 2013.**

Further to earlier evidence session on Housing Needs Assessments the document requested by the committee, including questionnaire used, was provided to the committee. Extracts from this Needs Assessment were included in the 21 October 2013 Council report.

The meeting ended at 6.52 p.m.

CHAIR