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OVERVIEW AND SCRUTINY COMMISSION

2 AUGUST 2016

(7.15 pm - 10.29 pm)

PRESENT: Councillors Peter Southgate (in the Chair), Hamish Badenoch, Abigail Jones, Oonagh Moulton, David Williams, Mike Brunt, John Dehaney, Sally Kenny, Dennis Pearce and Imran Uddin

Co-opted Member Helen Forbes

ALSO PRESENT: Councillors Suzanne Grocott, David Dean, Nick Draper (Cabinet member for Community and Culture), Ross Garrod (Cabinet Member for Street Cleanliness and Parking), Daniel Holden and Najeeb Latif

Charles Baker (Waste Strategy and Commissioning Manager), James McGinlay (Head of Sustainable Communities), Doug Napier (Leisure and Culture Greenspaces Manager), Cormac Stokes (Head of Street Scene and Waste) and Annie Baker (SLWP Strategic Partnership Manager)

1 APOLOGIES FOR ABSENCE (Agenda Item 1)

Apologies were received from co-opted members Colin Powell and Geoffrey Newman.

2 DECLARATIONS OF PECUNIARY INTEREST (Agenda Item 2)

There were no declarations of pecuniary interest.

3 CALL IN: SOUTH LONDON WASTE PARTNERSHIP - PROCUREMENT OF WASTE COLLECTION AND RELATED ENVIRONMENTAL SERVICES (LOT 1 - WASTE COLLECTION) (Agenda Item 3)

The call-in was presented by the signatories.

Key points made by Councillor Holden:

- Concerned about the introduction of wheeled bins, fortnightly residual waste collections and the rush with which these are being introduced - will damage the local community notably Wimbledon;
- The administration has no mandate for the change as was not included in its 2014 manifesto;
- Task groups rejected wheeled bins in 2005 and 2011;
- The stated 10% saving to be achieved fails to account for the capital funding required for the rollout of wheeled bins and new bin lorries;

- There has been no consultation with residents and not enough done to consider the needs of disabled and elderly residents as well as staff and requirements around TUPE; and
- Cabinet needs to reconsider its decision based on providing residents with greater choice and consultation. The weekly residual waste collection should be retained and other savings considered.

Additional points made by Councillor Grocott:

- No evidence provided that the proposed waste collection solution will achieve the claimed changes in resident behaviour, increase the use of food caddies and/or lead to more recycling;
- Residents are not provided with any choice in the number and size of containers that will be needed for the proposed waste collection service. Advice is not provided on how these can be stored; and
- Residents will get half the service for a 10% saving.

Councillors Holden and Grocott answered questions from members:

- An additional £4m capital funding for vehicles and wheeled bins will be required which has not yet been approved;
- Requested to understand at what point the administration decided to change its policy and introduce wheeled bins;
- The focus on Wimbledon reflects the level of correspondence received from this part of the borough and the fact it has a large number of flats and smaller houses making wheeled bins difficult to accommodate;
- The focus on the shift to fortnightly residual waste collections reflects this that weekly collections are highly valued and the aspect of the current service most mentioned by residents; and
- The Lavender Fields pilot is considered inadequate because the waste collection service trialled was different from that now being proposed. It featured weekly residual waste collections, comingling of recycling and was based on a small and unrepresentative sample of Merton households.

The following additional comments were made:

- Councillor Southgate, as Chair of the Overview and Scrutiny Commission, agreed to look at the process of providing documents requested in the call-in form through the meeting agenda;
- Councillor Uddin noted new vehicles would have to be purchased in any event and are not necessitated by the LOT 1 contract. Also, that fewer replacement vehicles are needed because of the contract.

The Commission then heard from a series of requested witnesses and speakers.

Key points from Terry Downes, GMB representative:

- TUPE is not being applied during the competitive tendering process. This is open to legal challenge by the GMB;
- Nonsensical to outsource services if cost savings can be achieved by the in-house team;
- Outsourcing will lead to longer shifts and extended working hours;

- The specification still hasn't been provided making it impossible to compare on a like-for-like basis with the existing in-house service; and
- Wheeled bins did not reduce rates of staff sickness during the Lavender Fields pilot.

Key points Ruth Baber, trustee of Sustainable Merton:

- Wheeled bins are the wrong size; providing two of equal size potentially gives residents the message that it is okay to have as much residual rubbish as recycled paper and card. Spare capacity in both might lead to rubbish being placed in the wrong bin;
- Storage and access a problem for many not just disabled residents. Concern that many won't be able to cope with the complexity of the proposed solution;
- An education programme is needed to increase recycling and decrease use of landfill;
- Concerned about aesthetics; five containers will clutter streets; and
- Requested a street cleanliness performance measure.

In response to member questions, Ruth Barber added:

- Debatable if the Lavender Fields pilot showed the proposed solution will increase recycling because the bins used for this were smaller and recycling was comingled; and
- Consultation with residents needs to put further information in the public arena and give the reasons for recycling including how this decreases the costs of waste services.

Key points from Dan Goode, founder of Merton Matters:

- In 2010, Merton was named as the dirtiest borough in London with 49% of byways substandard. This should be tackled with a joined-up strategy;
- Wheeled bins are not the solution because the majority of street litter does not come from residual household waste. Typically this is alcohol and soft drink bottles, fast food packaging and cigarette waste;
- Litter breeds litter; cleanliness encourages the majority;
- A five container solution (some with no lids allowing spillage) will add to the clutter and disorder;
- Street litter bins are not being emptied regularly. Reported that Morden Hall Road has not been swept for five weeks but this was denied by the council when raised; and
- The proposed solution will not address the issue of street litter. Funding should be used to increase collections.

In response to member questions, Dan Goode added:

- Wheeled bins have not had an impact on street cleanliness in other boroughs because street litter is not the waste that goes into wheeled bins. This opinion is based on his own volunteering experience. This solution is not cost effective because it isn't treating the root cause. It is cheaper to work with residents. Cited the example of Sheffield Council working;
- Agreed some street waste comes from ripped bags due to foxes. However, this would be better addressed by use of food caddies; and

- Merton has an ingrained littering culture. This solution is taking money away from addressing the littering issue.

Key points from Paula Baily, operations manager, Age UK Merton:

- 95% of older residents she has spoken to over the last week don't know about the new waste scheme. Once explained, all objected. Highlighted the issues those with dementia and memory problems may have with the complexity of the scheme;
- 70% of those questioned don't want to participate in the new scheme. Consider the containers too large for their needs, irresponsible and an over provision;
- Aesthetics are important: no one wants all the containers in their front garden; and
- Containers are too difficult to move. This is informed by experience of the garden waste scheme which was much demanded but older residents have found the bin is too heavy to move. To put this into perspective there are 2,250 households in Merton with a resident aged 85+, 15,500 aged 65+ (of which 7,700 are single person households).

In response to member questions, Paula Bailey added:

- Consulted with approximately 40 older Merton residents to inform this evidence; and
- Not aware of the council's assisted collection scheme and does not know any individual using it.

Key points from Andrew Boyce, local resident:

- Proposed solution about saving money and not meeting needs;
- There has been no consultation across the borough and there is a lack of awareness of the scheme;
- Doesn't see how a five container solution can be more efficient; and
- Believes there will be difficulties collecting waste using wheeled bins because of parked cars.

In response to member questions, Andrew Boyce added:

- Has tried to address difficulties in getting his recycling collected by emailing the council and Councillors. Doesn't know why the collection hasn't happened.

Councillor Garrod, Cabinet Member for Cleanliness and Parking, responded to the call-in and evidence provided by witnesses and speakers by making the following key points:

- Most of the points raised have been addressed previously through pre-decision scrutiny and Full Council;
- Happy to provide reassurance to residents; providing an assisted collection service and the imposition of penalties on the contractor for scattered litter are explicitly part of the contract;
- Willing to extend direct dialogue to other groups including those speaking today;
- The information presented today has been skewed;
 - Food waste and recycling will be collected weekly;
 - Flats with Eurobins will have weekly collections and more frequently if necessary; and

- Flats over shops and others where impractical will not have wheeled bins. This includes any property with three or more steps.
- About to start a fine tuning exercise where issues will be addressed in detail;
- From the last resident survey, litter is the number one issue with 50% of all litter resulting from the existing waste service. This is the issue that the administration is acting to fix;
- Merton is one of the last remaining boroughs in London without wheeled bins;
- Residents have nothing to fear; Merton's streets will be cleaner, there will be a £2m saving and the capital spend on replacing bin lorries would be required whether or not the scheme was implemented;
- The contractor will be required to deliver a resident education programme including home visits with similar in Ealing resulting in requests for 7,000 additional food caddies; and
- This will bring Merton's waste services into the 21st century by using digital communication systems to make the service more efficient and allow workers to report faulty street lighting, the need for an assisted collection, fly tipping etc.

In response to member questions, Councillor Garrod added:

- Using a wheeled bin to collect and store paper and card will keep it dry and maintain its value for recycling;
- As only appointed to Cabinet during the last two weeks in May 2016, he cannot give the information requested about when Cabinet made the decision to support the adoption of wheeled bins;
- The pilot provided a sample of the borough and allowed information and knowledge to be developed;
- Flats were not included in the Lavender Fields pilot because such dwellings will not be getting wheeled bins under the scheme; and
- The pilot finding of 89% satisfaction with wheeled bins is relevant to the proposed scheme.

Cormac Stokes, the Head of Street Scene and Waste, added:

- The stated 10% saving cannot be guaranteed but is likely to be in excess of this;
- Conducted an open consultation with the market. The solution with the greatest saving is the also the most advantageous because it reduces the reliance on landfill whilst increasing recycling;
- All the costs of introducing the scheme have been factored in including the education programme and it is still geared to save £2m per annum after year 2. The capital spend will be £6m over the first eight years of the contract to buy wheeled bins and vehicles;
- Unsure of the number of residents benefitting from an assisted collection. However, only one person (0.1% of the sample) joined the scheme as a result of the Lavender Field pilot when assisted collections were heavily promoted. This indicates that the scheme is already well utilised;
- The contract stipulates that the application of the assisted collection scheme will be at a cost borne by the contractor even if this is subject to an increase in demand; and
- Additionally, the price of the contract cannot go up unless it has been based on false assumptions provided by the council. Highlighted that assumptions about

property types were made by the contractor and there is no risk to the council based on this variable.

The following additional comment was made:

Councillor Jones: the report on the Lavender Fields pilot came to the Sustainable Communities Overview and Scrutiny Panel. This noted that 89% of participants were happy with wheeled bins, 95% found them easier to use and 81% reported streets were cleaner than before the trial.

Members then discussed their response to the call-in:

- Councillor Moulton: not satisfied with the answers given to the main points of the call-in; no consultation, no proof of advantage, no evidence of proportionality or that equalities have been adequately addressed, there has been a lack of openness and there is no clarity on desired outcomes. Recommended referring the decision back to Cabinet;
- Councillor Williams: highlighted the lack of consultation. Stated he has no objection to wheeled bins but does have an objection to forcing these on uninformed residents. No clarity on when this decision was made. No information has been provided on the impact on the elderly. Requested an open and transparent consultation. Merit in asking Cabinet to look at this again and hold a better consultation;
- Councillor Badenoch: information needs to be provided on the impact of alternative approaches on savings. For example, what effect comingling of recycling will have on the savings so that a fully informed decision can be made; and
- Councillor Pearce; there is a duty on Councillors to safeguard the council's finances which is subject to ever more cuts. Recommended not referring back but moving forward as best as possible.

Councillor Williams seconded Councillor Moulton's recommendation to refer the decision back to Cabinet. A vote was taken by show of hands with three votes for and six against. The recommendation was not agreed.

Councillor Southgate suggested adding an informative to the decision which was agreed by members.

Councillors Uddin and Brunt applauded the work of Friends Groups and highlighted the need to work partnership to address littering in the longer term.

RESOLVED: Not refer the matter back to Cabinet meaning that Cabinet's decision on the LOT 1 of the South London Waste Partnership shall take effect immediately. Also to add the following informative:

- Cabinet to ensure all residents are informed of the forthcoming changes to waste services; and
- Cabinet continue to take appropriate steps to change the culture in Merton so all residents take pride in a litter free environment.

4 CALL IN: SOUTH LONDON WASTE PARTNERSHIP - PROCUREMENT OF WASTE COLLECTION AND RELATED ENVIRONMENTAL SERVICES (LOT 2 - PARKS MAINTENANCE) (Agenda Item 4)

The call-in was introduced by the signatories.

Key points made by Councillor Najeeb Latif:

- Does not believe contracting out is in the best interests of the staff, Merton's parks, Friends Groups or residents;
- There has been no consultation on the proposal;
- The experience of staff has failed to be considered as part of the new approach;
- Staff and Friends Groups will withdraw their good will as result of this new approach;
- Not possible to provide a better service than currently without diminishing the terms and conditions of staff; and
- Need for reassurances – that TUPE has and will continue to be applied, staff will be safeguarded and will be retained in posts in the longer term.

Councillor Dean asked the following questions:

- Why has there been no consultation with staff, Friends Groups and residents?
- Why was the Greenspaces staff team not allowed to bid?
- Why will the administration not guarantee the rights of staff?

The Commission then heard from a series of requested witnesses and speakers.

Key points from Terry Downes, GMB representative:

- The council has failed to observe and enforce TUPE. This could make any decision taken by the council irrelevant if legally challenged;
- Highlighted that the objectives of the contract could have been fulfilled in-house but that the in-house bid was ruled out of the bidding process on a technicality;
- The uncertainty means staff are already leaving (noted this applies to grave diggers and horticultural staff) with more departures anticipated;
- The desired economies of scale have not been defined – targets and cost savings are unknown; and
- The specification for the proposed service still hasn't been provided.

In response to member questions, Terry Downes added:

- Legal action could be taken on the basis that TUPE has not been adhered to during the competitive dialogue process. Under TUPE workers' terms and conditions should remain the same from the outset of this process until workers are transferred to the employment of the new provider under contract. The contractor then has a legal obligation to consult with workers on any proposed change to terms and conditions. The council's liability for not adhering to TUPE could be £1.1m.

Tina Picard, a Unison representative, asked for her key remarks to be made through the Chair. Tina highlighted that the TUPE process should be transparent and that there is concern about the stress this process is putting on staff.

Key points from Ruth Baber, trustee Sustainable Merton:

- Sustainable Merton and Friends Groups are unsure about the council's desire to develop a commercial environment for the management and oversight of green spaces – no information has been provided about how this will work;
- Merton has a lot of green spaces so a change in approach will have a big impact;
- There are lots of examples of how Friends Groups have worked in partnership with the council's Greenspaces team to benefit Merton's green spaces;
- Not sure that the value of the partnership with Friends Groups has been considered nor the feasibility of this continuing with a private, third party company running the service;
- One difficulty might be that many of these Friends Groups are informal and may not have insurance to work alongside this third party organisation;
- Raised the issue of having greater difficulty in engaging with a third party organisation on specific issues such as refraining from grass cutting if a meadow has been planted; and
- Worried that there will be a loss of internal expertise and questioned how the current standard in caring for Merton's green spaces will be maintained. Concern that mistakes made will be impossible to rectify.

In response to member questions, Ruth Baber added:

- Concerned that Merton's Friends Groups will have to begin again in building the relationship with the organisation managing the borough's green spaces; the existing relationship will be lost at a stroke.

Key points from Tony Burton, Independent Merton Green Spaces Forum representative:

- Difficult to exaggerate the fallout from this new approach to Merton's green spaces. These are important, loved and cared for with Friends Groups adding much value through their knowledge and practical support;
- However, Friends Groups have been left out in the cold. As a result, the Independent Merton Green Spaces Forum has been set-up to collectively ask questions on behalf of all groups;
- Have requested sight of the specification but this has been refused even when subject to a Freedom of Information request;
- Questioned what will happen to Friends Groups, how these will be involved under the new contract and what impact the inclusion of Mitcham Green has had on arrangements; and
- Highlighted that there is a real risk Friends Groups will withdraw their support for Merton's green spaces.

In response to member questions, Tony Burton added:

- The Independent Merton Greenspaces Forum has had two meetings with officers and the Cabinet Member but left these more confused; and
- Has made additional requests for sight of the specification but this hasn't been forthcoming and the rationale for declining access has changed.

Councillor Draper, Cabinet Member for Community and Culture and James McGinlay, Head of Sustainable Communities, responded to the call-in and evidence provided by witnesses and speakers. (During this part of the meeting, the Chair proposed and members agreed an extension by 15 minutes from 10:15pm to 10:30pm.)

Key points made by James McGinlay:

- TUPE has been adhered to with no negotiations about staff terms and conditions able to happen until the contract is approved. Existing employment rights will transfer at the outset of the contract. Staff will remain employed by Merton until 1 February 2017;
- The different views regarding the treatment of TUPE have resulted from a misunderstanding. The preferred contractor has put forward some suggestions but there has been no agreement from the council. This can only happen after the contract has been signed. These were simply propositions. The proposed savings are entirely based on retaining current staff terms and conditions. Savings will be made through reduction in management and procurement costs and by better use of buildings. The contract stipulates a guaranteed commercial income after which there is profit sharing agreement;
- There has been some modelling of changes to workforce arrangements based on the ages of current staff and the potential resulting turnover rates that allow for some changes in terms and conditions;
- Savings have been outlined as part of the budget setting process with the objective being to achieve at least as good a green spaces service compared to that currently provided with improvements where possible.
- The specification can be released when the preferred bidder is agreed. The call-in has delayed this process and is preventing the specification becoming available;
- A pause at this stage of the process will result in the council incurring a financial penalty as Sutton has incurred costs across LOTS 1 and 2; and
- In 2014, the Cabinet agreed that the target of a 10% + saving couldn't be achieved internally. However, the Greenspaces staff could have made a bid. This was anticipated but it didn't transpire. The pre-qualification questionnaire stage of the competitive tendering process was a completely open process allowing staff groups to participate. As a result of no bid being forthcoming, the council couldn't continue to provide further information to the staff group as this would have been a breach of procurement regulations.

Key points made by Councillor Draper:

- Desire to take a positive point of view of the contract;
- Confident that this is a good deal;
- Would have much preferred to have had more consultation with Friends Groups and meetings with the unions. However, the competitive dialogue process meant more meetings with Friends Groups would not have achieved anything given restrictions on the information that can be shared before the contract is agreed (based on legal advice);

- Sees staff as the parks professionals who love their jobs and who act as mentors to Friends Groups. Wants to see staff flourish and for the bond with Friends Groups to strengthen;
- Highlighted the example of Richmond Park where Friends Groups and other voluntary organisations are working alongside a third party;
- Called on Friends Groups to get involved and be part of the transformation of the management of Merton's green spaces;
- There is no advantage at this stage to holding up the process. Competitive dialogue prohibits the sharing of the specification until the contract is in place. Only moving forward will allow more information to be shared with Friends Groups; and
- The expected savings resulting from the contract are £640K in year 1 and £540K in year 2.

Members then discussed their response to the call-in:

- Councillor Williams: occasionally it is appropriate to pause. The decision needs to be returned to Cabinet for it to carry out an adequate consultation. There is also a need to adhere to TUPE and address the fact Croydon's staff have different terms and conditions. The preferred bidder is happy to allow other councils to opt-in after the commencement of the contract. Once the consultation is complete, Merton can then opt-in;
- Councillor Moulton: seconded the proposal from Councillor Williams;
- Councillor Brunt: highlighted that referring the decision back to Cabinet will prolong the uncertainty for staff and that the preferred bidder has a track record in engagement and delivery;
- Councillor Uddin: highlighted the financial implications of this decision and the need for the council to make savings. Encouraged a rational approach based on the company having both a track record and obligations through the contract. Residents will provide support to hold the contractor and the Cabinet Member to account. Encouraged optimism and opposed Councillor William's recommendation; and
- Councillor Pearce: highlighted that there is still time to refine the contract as only now entering the process of fine tuning.

A vote was taken by show of hands on the recommendation from Councillor Grocott with three votes for and six against. The recommendation was not agreed.

RESOLVED: Not to refer the matter back to Cabinet meaning that Cabinet's decision on the LOT 2 of the South London Waste Partnership shall take effect immediately.