

SWT Scrutiny Committee - 17 July 2019

Present: Councillor Gwil Wren (Chair)

Councillors Ian Aldridge, Sue Buller, John Hassall, Dave Mansell, Phil Stone, Danny Wedderkopp, Simon Coles, Caroline Ellis, Ray Tully, Brenda Weston and Loretta Whetlor

Officers: Nick Bryant, Chris Hall and Amy Tregellas

Also Present: Councillors Marcus Kravis, Chris Booth, Peter Pilkington, Federica Smith-Roberts and Alan Wedderkopp

(The meeting commenced at 8.15 am)

15. Apologies

Apologies were received from Councillors Hunt, Ms Lisgo, Mrs Lees, Mrs Prior-Sankey, Thwaites and Wheatley.

16. Minutes of the previous meeting of the Scrutiny Committee

(Minutes of the meeting of the Scrutiny Committee held on 12 June 2019 circulated with the agenda)

Resolved that the minutes of the Scrutiny Committee held on 12 June 2019 be confirmed as a correct record.

17. Declarations of Interest

Members present at the meeting declared the following personal interests in their capacity as a Councillor or Clerk of a County, Town or Parish Council or any other Local Authority:-

Additional interests were declared by Councillor Whetlor as a Watchet Town Councillor in relation to Item 6 on the agenda and did not take part in the debate, and Councillor Coles as a Somerset County Councillor and a Member on the Devon and Somerset Fire Authority Board.

Name	Minute No.	Description of Interest	Reason	Action Taken
Cllr L Baker	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr M Barr	All Items	Wellington	Personal	Spoke and Voted
Cllr M Blaker	All Items	Wiveliscombe	Personal	Spoke and Voted
Cllr P Bolton	All Items	Minehead	Personal	Spoke and Voted
Cllr C Booth	All Items	Wellington	Personal	Spoke and Voted
Cllr N Cavill	All Items	West Monkton	Personal	Spoke and Voted
Cllr S Coles	All Items	SCC & Taunton	Personal	Spoke and Voted

		Charter Trustee		
Cllr H Davies	All Items	SCC	Personal	Spoke and Voted
Cllr C Ellis	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr A Govier	All Items	SCC & Wellington	Personal	Spoke and Voted
Cllr C Herbert	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr Mrs Hill	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr J Hunt	All Items	SCC	Personal	Spoke and Voted
Cllr R Lees	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr S Lees	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr L Lisgo	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr M Lithgow	All Items	Wellington	Personal	Spoke and Voted
Cllr J Lloyd	All Items	Wellington	Personal	Spoke and Voted
Cllr D Mansell	All Items	Wiveliscombe	Personal	Spoke and Voted
Cllr A Milne	All Items	Porlock	Personal	Spoke and Voted
Cllr C Morgan	All Items	Stogursey	Personal	Spoke and Voted
Cllr S Nicholls	All Items	Comeytrove	Personal	Spoke and Voted
Cllr C Palmer	All Items	Minehead	Personal	Spoke and Voted
Cllr M Peters	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr P Pilkington	All Items	Timberscombe	Personal	Spoke and Voted
Cllr H Prior-Sankey	All Items	SCC & Taunton Charter Trustee	Personal	Spoke and Voted
Cllr M Rigby	All Items	SCC & Bishops Lydeard	Personal	Spoke and Voted
Cllr F Smith	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr F Smith-Roberts	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr V Stock-Williams	All Items	Wellington	Personal	Spoke and Voted
Cllr R Tully	All Items	West Monkton	Personal	Spoke and Voted
Cllr T Venner	All Items	Minehead	Personal	Spoke and Voted
Cllr A Wedderkopp	All Items	SCC & Taunton Charter Trustee	Personal	Spoke and Voted
Cllr D Wedderkopp	All Items	SCC & Taunton Charter Trustee	Personal	Spoke and Voted
Cllr B Weston	All Items	Taunton Charter Trustee	Personal	Spoke and Voted
Cllr L Whetlor	All Items	Watchet	Personal	Spoke and Voted
Cllr G Wren	All Items	Clerk to	Personal	Spoke and Voted

18. Public Participation

Agenda Item 6 - Watchet Library Asset Transfer Negotiations.

Councillor John Irven made the following Statement:-

I am speaking about agenda item 6) Watchet Library Transfer and your officer's report. I won't repeat the information given when I spoke at last month's meeting, rather justifying our repeated request to transfer the library without overage and pre-emption clauses based on conclusions now drawn by your own report.

Your para 8.2 states that

"Previous advice supplied makes recommendations to include overage and pre-emption provisions within the Heads of Terms and documentation for the disposal, *although there is an acceptance that the commercial terms may not be necessary* where the transfer is to another public body bound by the same public accountability as SWaT. It is good to read that the use of a commercial overage clause is no longer considered necessary since WTC has identical accountability to SWaT and therefore overage can and should be removed.

Para 8.3 states that

Legal advice remains that the greatest level of protection for SWaT comes from at the very least a right of pre-emption in favour of SWaT. *Protection for the community can be provided by either public body, thus it must be a decision for the council to consider who is best placed to ensure the continuation of the benefit for the community, either as a library or any other use in the future.*

Why should you remove the pre-emption clause?

WLF and the Stoate family trust believe the Town Council through the additional protections we are proposing are best protecting the asset, both as a library and any potential future use for the trust's beneficial owners, the people of Watchet - not SW&T who have demonstrated governance over asset management which has not been fit for purpose and only belatedly begun to understand your duties as trustees. WLF and the Stoate family will speak to this suitability and additional protection after me.

There is nothing to prevent you and you should therefore remove pre-emption.

If you refuse, I believe there is a reputational risk to the new Council and the new administration. SW&T will be accused of not wanting to protect the asset for the beneficiaries, but for the prospect of retaining a future potential financial gain that will be used for SW&T's benefit, not that of the community.

We ask that scrutiny recommend to SW&T to support our request to transfer without overage and pre-emption.

Mr Peter Murphy as the Chairman of Watchet Library Friends made the following Statement:-

Thank you for listening to me at your last meeting and thank you for agreeing to consider the future of Watchet Library today.

I explained the background to the situation previously and this is captured in your minutes so I will not repeat it again. I am delighted to inform you that today we are joined by a descendant of the original benefactor, who will also be addressing you shortly.

Watchet Library Friends support the Town Council in entering a Community Library Partnership with Somerset County Council to enable a fully staffed library to continue to operate in Watchet thus fulfilling the terms of the original trust established by Leonard Laity Stoate. In doing so, the Town Council has raised precept funds and has taken responsibility for the library on behalf of the people of Watchet.

The District Council seeks to place overage clauses and a pre-emption clause on the transfer which we oppose. The Town Council has proposed clauses which it believes will protect the asset from arbitrary disposal. These are to place the building on the Community Asset Register and to consult the District Council, the Stoate Trust and the people of Watchet should the building, for whatever reason, cease to be considered suitable for a library in the future. I understand that Philip Stoate will be making further suggestions as to how the duty of trust may be carried out in the future and we support him in this.

Watchet Library Friends believe that in the spirit of Localism, the control and protection of community assets should take place at the lowest practical level of democratic control for the benefit of the people of Watchet. I urge you to recommend that Council transfer the building speedily to the Town Council as advised by the Stoate trust. Do the common sense thing!

Mr Phillip Stoate as descendant of the original benefactor, Leonard Laity Stoate made the following statement:-

We have seen the representations of Peter Murphy and Chris Hall for the Scrutiny Committee, but not the proposed transfer document itself. We are interested to ensure that the wishes of the benefactor recorded and accepted by the parties in the 1951 lease are honoured. We are both on record as supporting the proposed transfer, as we believe that Watchet Town Council is best placed to manage the property for the benefit of the inhabitants of the town.

However, it appears that the transfer is stated to be for the consideration of £1.00 subject to both an overage clause and a right of pre-emption in favour of Somerset West and Taunton Council.

We consider that any question of consideration for the transfer is wholly inappropriate. The property was given upon trusts which Somerset West and Taunton Council, as successor to West Somerset District Council, has now acknowledged. Although the word "charity" is not mentioned, there can be no doubt that those trusts – that the property be held in trust for the inhabitants of Watchet for use as a library – are charitable in nature, and thus fall to be regulated by the Charity Commission. Appended is a guide for councils acting as charity trustee prepared jointly by the Local Government Association and the Charity Commission.

This makes it clear that trust assets held by a Council must be accounted for entirely separately from those of the Council itself. We rather doubt this was ever done and in

our view Somerset West and Taunton Council is confusing the two roles. The reality is that Somerset West and Taunton Council is relinquishing its role as trustee of the property and appointing Watchet Town Council as trustee in its place, and the property transfer is ancillary to that appointment. No consideration is applicable to the transfer (even £1.00) as it is not a commercial transaction and market value is irrelevant; the value in the property belongs to and will remain with the trust and does not belong to the Council.

Somerset West and Taunton Council say that the provisions are sought to protect the asset for the people of Watchet. There is scant evidence of any such concern hitherto from the Council or its predecessors and talk of market value gets to the nub of it. If an individual trustee attempted to claw back value from a trust asset in the way that Somerset West and Taunton Council are seeking, he would be looking at sanction from the criminal as well civil law.

The guidance also makes clear the procedures involved in the event of a sale of the property, or if for any reason the original purpose of the trust becomes irrelevant. This is overseen by the Charity Commission, but the Town Council and its councillors will be responsible for the proper implementation of the trust.

To ensure that the terms of the trust are recorded, we strongly suggest that there are two documents. The first should be a Deed of Appointment of Trustee, which recites the terms of the trust, that the trusts are charitable and that they are subject to the guidance appended, that the trust assets comprise the library building, and appointing Watchet Town Council as trustee of those trusts in place of Somerset West and Taunton Council. This is a document that would be retained as evidence of the nature of the holding. The second document should be a straightforward transfer without consideration, or any overage or pre-emption conditions, and stated to be pursuant to the first.

In response Councillor Booth as Portfolio Holder for Community made the following statement:-

Following a successful meeting with representatives of Watchet Town Council, the Leader of Somerset West and Taunton and the CEO. The Executive have concluded that it is in the interest of the people of Watchet to ensure this asset is transferred to secure the continuation of the Library.

We look forward to finalising this agreement and supporting the continued delivery of the Community Library Partnership. A revised Executive decision will be published confirming that the Council will support the freehold transfer without the clauses of pre-emption or overage.

19. **Scrutiny Committee Forward Plan**

(Copy of the Scrutiny Committee Forward Plan, circulated with the agenda).

Councillors were reminded that if they had an item they wanted to add to the agenda, that they should send their requests to the Governance Team.

Requests were made around the following items:-

- The number of families using the Food Bank in Somerset West and Taunton.

- Post Offices and the ongoing plans in service delivery around the district.
- Public Transport and Transport across the district.
- Broadband coverage in rural areas.

Consideration of these requests would be given and passed to the relevant officers to report back.

Resolved that the Scrutiny Committee Forward Plan be noted.

20. **Watchet Library Asset Transfer Negotiations Report of the Localities Manager (attached).**

During the discussion the following points were made:-

- The update was welcomed and considered a positive result for the people of Watchet. Mr Stoate was commended by his detailed statement around the legal position.

Resolved that the Scrutiny Committee noted that the main obstacles had been overcome and were in favour of the transfer via the relevant legal mechanism.

21. **Climate Change Strategy - Joint Scrutiny Task and Finish Group. Report of the Strategy Specialist (attached).**

During the discussion, the following points were made:-

- The report was welcomed and the request was made that resources and provision was made to address the priority of climate change.
- To ensure the relevant expertise and knowledge were on the Climate Change Task and Finish Group Councillors requested that three representatives instead of two were selected from each councils.
- Greater emphasis relating to environmental impacts of diet and food production was requested in the strategy. The area and terms of reference of food and farming on the strategy was still to be determined.
- Clarification was given that the authorities involved in the strategy included Somerset County Council, Somerset West and Taunton, South Somerset, Mendip and Sedgemoor.
- The Governance of the Strategy had been established from the working group.
- Regular briefings would be provided to Councillors and to Full Council.
- Further emphasis was requested to address the Impact to low income households of adopting green initiatives. Those most adversely effected were often the elderly and those on low incomes.
- It was acknowledged that further work was required on engagement and communications.

Resolved that:-

1. That Scrutiny Committee note and endorse the scope, process, budget implications, governance arrangements and timescale associated with developing the joint Somerset-wide Climate Change Strategy, and related SWT-specific Carbon Neutrality and Climate Resilience Plan.
2. That Scrutiny Committee endorse the nomination of Councillor David Mansell and Councillor Loretta Whetlor to serve on the Joint Scrutiny Task and Finish Group, which

will oversee development of the joint Somerset-wide Climate Change Strategy.

3. Urge Executive to request the mechanism to increase the membership from two to three to encourage political inclusion and broadening expertise taking into account urban and rural areas and the capacity of the group to deliver.
4. The Committee note the lack of reference to farming systems and diet implications in respect of the climate change strategy, and expects that it is considered in the drafting of the strategy.

22. **SHAPE Legal End of Year Report - Year 4. Report of the Head of Performance and Governance (attached).**

During the discussion the following points were made:-

- Mendip District Council remained the host authority for the SHAPE partnership and staff were employed by them.
- The service was set up following an inter-authority partnership agreement.
- Staff numbers included eight qualified lawyers, four locums, one legal assistant and one administrator.
- The service sat under Councillor Henley Portfolio Holder for Resources.
- A quarterly meeting was undertaken with client officers to ensure the service was performing to the agreed measures and any issues addressed.
- Greater rationale was requested in how SHAPE would expand the business.
- Due to budget pressures expansion of the business to take on new clients was considered commercially proactive.
- External resources can be engaged in special instances where required.
- Savings of 10% at WSC and 15% at TDBC had been set out at the start of the contract had been delivered.
- There had been greater demands than anticipated from TDBC in years 1-3.
- It was acknowledged there had been delays in legal feedback after issues had been identified in section 106 agreements.
- Resources were being realigned to cater for Planning enforcement demand.
- Professional liability indemnity insurance was picked up by Mendip district Council but this was factored into the contribution for the service.
- It was recognised that with expansion of the service there was still the expectation of demand, but there were benefits in having a wider pool of lawyers along with increased income.

Resolved that:-

1. Noted the report and progress made to date
2. Endorses the development of growth and marketing plans that include promotional activities, identifying new clients and exploring opportunities for income generation at no additional cost to Somerset West and Taunton.
3. Noted that a review and recast of the partnership will take place before the end of the financial year to ensure that the partnership continues to support the strategic direction of the Council moving forward

23. **Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities. Report of The Head of Performance and Governance (attached).**

During the discussion the following points were made:-

- Clear rationale behind requests for items would need to be set out
- What the committee looks at and how priorities were assessed would be a priority for informal Scrutiny meetings along with building in Governance reporting arrangements.
- Requests for items to be considered would need to remain within the area of Corporate Aims.
- The Scrutiny process would consider policy updates and existing policy's being fit for purpose.

Resolved that:-

The Scrutiny Committee:

1. Work with the Executive to draft an Executive-Scrutiny protocol, which is then formally approved by the Scrutiny Committee and Executive and added to the Council's Constitution.
2. Resolve that the Chair and Vice Chair meet with the Executive to discuss the Scrutiny Committee work programme.
3. Develop a work programme for the remainder of the Municipal Year which can be amended if any new or emerging issues arise.

(The Meeting ended at 8.45 pm)