

Confirmed



Minutes of a Meeting of the **Scrutiny Committee** held in the Conference Room, Riverside,
Lowestoft on **Thursday 26 September 2019 at 6:30 pm**

Members of the Committee present:

Councillor Stuart Bird, Councillor Judy Cloke, Councillor Linda Coulam, Councillor Mike Deacon, Councillor Andree Gee, Councillor Louise Gooch, Councillor Tracey Green, Councillor Geoff Lynch, Councillor Mark Newton, Councillor Keith Robinson

Other Members present:

Councillor Janet Craig, Councillor Graham Elliott, Councillor Richard Kerry, Councillor David Ritchie, Councillor Ed Thompson

Officers present:

Katherine Abbott (Democratic Services Officer), Martin Clarke (Housing Projects Lawyer), Cairistine Foster-Cannan (Head of Housing), Mark Harvey (Building Control Manager), Teresa Howarth (Principal Environmental Health Officer), David Howson (Housing Strategy Manager), Andy Jarvis (Strategic Director), Gary Mortishire (Housing Officer, Tenant Services), Jack O'Sullivan (Housing Enabling Officer), Mark Seaman (Environmental Protection Officer).

1 Apologies for Absence and Substitutions

Apologies for absence were received from Councillor D Beavan and Councillor C Topping. Councillor G Elliott and Councillor E Thompson acted as their respective substitutes.

2 Declarations of Interest

There were no Declarations of Interest.

3 Minutes

RESOLVED

That the Minutes of the Meeting held on 25 July 2019 be confirmed as a correct record.

4 Community Energy Saving Programme 2011

The Scrutiny Committee received report **ES/0132** by the Cabinet Members with responsibility for Housing and Planning and Coastal Management, respectively.

Councillor D Ritchie, Cabinet Member for Planning and Coastal Management, introduced the report. He stated that the item was before the Committee as a result of a Notice of Motion submitted by Councillor Janet Craig at the January 2019 meeting of the previous Waveney District Council's Full Council. The Full Council had agreed the matter be referred to the Scrutiny Committee of the new Council in due course and was added to its work programme accordingly. The Committee was advised the report provided information about the Community Energy Saving Programme, the impact on local residents in Lowestoft and the role of the former Waveney District Council in this regard.

Councillor D Ritchie stated that the Programme was created as part of central Government's response to concerns around the costs of home energy consumption. As part of the resulting scheme, certain areas of the country with high levels of deprivation, including Harbour Ward in Lowestoft, had been eligible for the funding provided by Energy Supply Companies from surcharges payable by all customers. In the Harbour Ward, the funding was provided by NPower and the main contractor which undertook the works was Climate Energy Ltd., with Mitie as its sub-contractor. Bright Green has provided community support and the Yard Project had delivered loft and cavity wall insulation. The former Waveney District Council had supported the works and allowed Bright Green to use its logo. The former Council had sought to endorse the benefits of improvements through enhanced energy efficiency but it had not procured the contractors nor had any direct involvement with the Energy Supply Companies who had provided the funding; therefore, it had not been possible for the Council to have formally intervened and it had not been culpable. Councillor Craig advised that Preston City Council had successfully lobbied OFGEN for retribution at no cost to the tax payer. She concluded that residents were not able to pursue Mitie in the courts because they did not have private contracts with the company.

Councillor D Ritchie continued that various installations had been carried out including some external wall insulation installations carried out by Mitie; subsequently, some of these installations had been found to be defective. The Building Control team was contacted by concerned residents and had repeatedly tried to engage with Mitie with limited success; Climate Energy Ltd had not resolved the defects and had subsequently gone into receivership in Autumn 2015. Waveney District Council had supported affected residents, as had Mr Peter Aldous MP, and had communicated with Npower and Mitie.

Councillor D Ritchie clarified that the Council had no contractual or legal responsibility to resolve the defects and that this rested with Mitie; however, the Building Control team had continued to work with Mr Aldous to engage with Npower and Mitie. In conclusion of his summary introduction, Councillor D Ritchie stated that all subsequent energy efficiency programmes had been conducted via a different model and under the control of the Suffolk Climate Change Partnership/Suffolk Energy Action Link. This had brought the appointment of contractors and the quality of work under the Council's control and, therefore, it was unlikely that a similar situation would occur.

At this point, the Chairman advised that Mr Aldous MP had hoped to be at the meeting but the recall of Parliament had meant this had not been possible.

At the invitation of the Chairman, the Building Control Manager outlined how he had met with affected residents to ensure positive communications and support was provided. The Chairman asked how many properties had been affected by defective installations. The Building Control Manager explained that it had been very difficult to obtain accurate data from Mitie and, when this had been received, it had been difficult to correlate. He advised that the number of properties quoted by Mitie was 126 whilst the Building Control Manager's total figure was 152. He continued to explain that a significant number of the properties, around 80, had no building application approval against the original scheme and, therefore, outstanding Building Control fees applied. The Building Control Manager outlined how he had reached his differing total figure and the evidence he had submitted to Mitie; the company had not responded. Mr Aldous MP continued to seek engagement with Mitie in order that every property could be appraised against the Building Control Manager's data and a survey of the work carried out.

The Chairman invited questions from the Committee.

The Chairman asked for a timescale of how long the Council and Mr Aldous MP had been working to try and resolve this matter. The Building Control Manager said, in total, he had personally been involved for seven years and, over the last 18 months or so, a significant amount of resources had been devoted to this issue including multiple meetings with residents.

The Vice Chairman asked for an indication of the types of defective installations and to what degree the installations had been unauthorised. The Building Control Manager said the defects included the incorrect use of expanding polystyrene beads, cracked boards, and generally poor competency and consistency of work. He added that he had been unable to fully ascertain which installations had been correctly authorised.

A member of the Committee asked about the legal responsibility for the competency and regulatory compliance of the installations. The Building Control Manager said he would not be prepared to issue a completion certificate for any of the installations unless he had seen it constructed or it had been subject to an appraisal survey. If the installations were to be retrospectively inspected he estimated this would take three months if there were unlimited resources in terms of surveyors and enforcement officers, which was not the case. He added that unauthorised installations would result in difficulties for the owners of the properties when they were sold or insured. Councillor Ritchie reiterated that the Council had no contractual or legal responsibility to rectify the defects and that this sat with Mitie and that the Council had no direct powers to formally intervene. The member of the Committee further asked how Mitie might be held to account, legally. The Head of Housing said this was a matter for central Government as it had undertaken the original tender and awarded the contract to Mitie.

The Chairman asked if the affected properties were private dwellings and therefore the owners should have been invited to enter an individual contract with Mitie. The Principal Environmental Health Officer (Housing) confirmed that was the case but had not occurred.

Another member of the Committee asked if the local MP might be able to seek central Government action. The Head of Housing said the Building Control Manager was in close and regular contact with Mitie, at director level, and it was hoped to maintain this dialogue. The Strategic Director advised that Mr Aldous MP was liaising with other MPs, in similarly affected areas, to explore how this matter might best be pursued. The member asked if the issues with Mitie had been unique to the initiative supported by the former Waveney District Council. The Building Control Manager said he had undertaken some research and there were other areas, nationally, which had experienced issues with schemes linked to other construction roles, including insulation products.

A member of the Committee thanked residents Mr and Mrs P Smith for bringing the defective installations to the attention of the Council and also wished to record thanks to the Officers for their extensive work to date. She asked if there was a professional body or ombudsman which could seek to investigate the matter. The Building Control Manager said this was, perhaps, beyond his role and remit as it would be linked to contract discussions.

At the invitation of the Chairman, Councillor J Craig, Ward Member for Harbour and Normanston, and who had raised the original Motion at Waveney District Council's Full Council, addressed the Committee. Councillor Craig said she had first been approached by a resident in 2013 regarding a problem with an installation and that she had thought this to be an isolated case; however, it had soon become clear there were numerous properties which had had defective installations. She added that, initially, Climate Energy had been involved in the resolution of problems but, as more cases were uncovered it seemed, to her, that Climate Energy was less keen to be involved and, in 2015, it had gone into receivership. Councillor J Craig said she had encouraged residents to contact their MP.

Councillor J Craig said the original ambition of the scheme had been to target areas of high deprivation to assist with energy efficiency matters but, sadly, issues at the properties had, in some instances been worsened because of the sub-standard work. She referred to damp created by faulty seals and related health issues, that no surveys had been undertaken prior to installations, that the information on-line had stated the products were not suitable for solid walls and yet had been used, that residents had been told by Mitie that the installations were guaranteed for 25 years yet no written certificates of guarantee had been issued, and that any such guarantee would be invalid as the installers had not been correctly or adequately trained. In addition, residents had not been informed that the seals needed to be regularly checked or how to do this, and the installations could not therefore be signed-off by Building Control and so residents were potentially unable to sell their properties. Councillor Craig added that residents had not received comprehensive documentation nor clarity about the legal status of the "partnership" which was inaccurately perceived to have included Waveney District Council. Councillor Craig advised that Preston City Council had successfully lobbied OFGEN for restitution at no cost to the tax payers.

The Principal Environmental Health Officer (Housing) said it was not uncommon for schemes that promote benefits to residential properties to be supported by a Council's logo. It was acknowledged that use of words like "endorsed" in the scheme's broad description of a central Government initiative had, regrettably, given the impression

that Waveney District Council's role was more than it was in reality. She added that the fact that individual house-holders were not asked to provide signed permission to undertake the works was a further legal abnormality.

A member of the Committee asked if Waveney District Council had received remuneration for the use of its logo; it was confirmed that this had not happened. The member added that Npower would have a specific team that would deal with enquiries from MPs. In terms of the present and future issuing of contracts, the member asked if the Council, having issued a contract, was advised if sub-contractors were then appointed. The Strategic Director replied that some contracts would explicitly state that no sub-contractors could be used, other contracts sought to be advised if sub-contractors were appointed, whilst others did not; what was and was not required was largely dictated by the type of contract and the service being procured.

Another member of the Committee, with reference to section 4.1 of the report, considered it important to recognise that many residents would have proceeded with the scheme because they perceived it to be endorsed by the Council due to the use of its logo.

The Chairman asked the Committee if it was content that Waveney District Council had exhibited all due diligence before publically indicating its support of the scheme through the inclusion of its logo. The Strategic Director said it was important for him to clarify that the Council had supported the scheme - not the company per se - because of its intended benefits of insulating energy-poor homes. He also wished to stress that the Officers before the Committee were not employed by the Council at the time of the scheme (2011). Councillor Ritchie suggested that, going forward, the Council should only promote schemes it was in full control of and not the work of other companies.

In response to a further query about who might be able to pursue Mitie for restitution, the Head of Housing reiterated that the Council did not have the authority or legal standing to do this as it had not been a signatory to the scheme awarded to a national contractor. Another member asked if it was possible to pursue the matter in the same way as Preston City Council. The Building Control Manager advised that Preston had achieved this through its MP and that Mr Aldous MP was already actively involved in seeking a resolution.

The Chairman stated that he considered the actions of the Council's Officers, to date, to have been praiseworthy and laudable. He suggested that additional wording for the recommendation be considered regarding the Council's support to Mr Aldous MP in his efforts, but was mindful of the Officer resources involved. The Vice Chairman supported the suggested additional wording and considered it important to support the local residents who had incorrectly assumed the scheme was endorsed by the former Waveney District Council. In response to a query by a member of the Committee regarding the Council potentially paying for legal advice to be provided to residents; the Housing Projects Lawyer said the issue had arisen seven years ago and so, potentially, was outside the legal limitation period.

There being no further questions or matters raised for debate, the Chairman moved to the recommendation within the report and also to the suggested additional wording in this regard; these were proposed, seconded and by a unanimous vote it was

RESOLVED

That, having received and considered report **ES/0132**, the Scrutiny Committee recommended to the Cabinet Member for Planning and Coastal Management that the Council's Officers continue to support Mr Peter Aldous MP in his endeavours to bring the matter to as successful a conclusion as possible for the affected residents of Harbour and Normanston Ward.

6 Exempt/Confidential Items

RESOLVED

That, under Section 100(a) of the Local Government Act 1972 (as amended) the public be excluded from the Meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Act.

7 Council Housing Development in Southwold

- Information relating to the financial or business affairs of any particular person (including the authority holding that information).

5 Scrutiny Committee's Forward Work Programme

This item was moved to the end of the Agenda by the Chairman.

The Scrutiny Committee received and reviewed its current forward work programme, the Council's Forward Plan of Key and Exempt Decisions, as well as three scoping forms submitted by members of the Committee.

The Scrutiny Committee identified several items for its future review:

- *Cabinet Member updates* would be received at regular intervals. The Guidelines for these items were also agreed by the Committee. The Leader of the Council to be invited to attend the January 2020 meeting of the Committee.
- Scoping form: *Littering and poor recycling practice in Waveney - An analysis of Council communication and public education*. It was agreed that the situation described within the form had changed considerably since its original submission and, therefore, a scrutiny review was not required. However, it was agreed that the form be submitted to the Cabinet Member for the Environment for consideration and potential discussion at the new Environment Task Group.
- Scoping form: *Review of postal voting and count arrangements at the District and European Elections in 2019*. It was agreed that this review would be undertaken at the March 2020 meeting of the Committee.
- Scoping form: *Review of how road closure permits were managed*. It was noted that the County Council's Scrutiny Committee had reviewed this area and that the responsibility for the permits lay with that Council. However, the impact of uncoordinated road closures on East Suffolk communities was a concern. It was agreed that a presentation on the process for managing road closure permits

would be arranged for the Committee on a date to be advised; the Council's Cabinet Member for Transport would also be invited.

The meeting concluded at 9:05 PM

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Chairman