

CABINET

24 November 2010

Attendance:

Councillor Learney -	<i>Leader and Portfolio Holder for Transformation and Resources (Chairman) (P)</i>
Councillor Bell -	<i>Portfolio Holder for High Quality Environment</i>
Councillor Collin -	<i>Portfolio Holder for Winchester and Surrounds (P)</i>
Councillor Evans -	<i>Deputy Leader and Portfolio Holder for Rural Areas and Market Towns (P)</i>
Councillor Hiscock -	<i>Portfolio Holder for Economic Prosperity (P)</i>
Councillor Thompson	<i>Portfolio Holder for Communities (P)</i>

Others in attendance who addressed the meeting:

Councillors Beckett, Tait and Wood

1. **PUBLIC PARTICIPATION**

There were no questions asked/statements made.

2. **LEADER AND PORTFOLIO HOLDER ANNOUNCEMENTS**

Councillor Learney advised that a special Cabinet meeting had been scheduled for Wednesday 22 December at 2.00pm in the Walton Suite, Guildhall, Winchester. This meeting would consider a report on Housing Responsive Repairs & Voids Service – Contracts Award which was listed in the Forward Plan as a decision due to be taken at Cabinet on 8 December.

3. **SILVER HILL REGENERATION PROJECT – LATEST DEVELOPMENTS (LESS EXEMPT APPENDIX – LEGAL ADVICE)**

(Report [CAB2085](#) refers)

The Corporate Director (Operations) explained that Henderson UK Property Fund had indicated that it proposed to acquire the shares of Thornfield Properties (Winchester) Ltd and Thornfield Properties (Winchester) No.2 Ltd with a view to progressing the Silver Hill scheme. He emphasised that the Council was not in a position to agree or disagree any such acquisition, but had been asked to give a response to certain questions, four of which were set out in Paragraph 3 of the Report, with the fifth examined in the exempt appendices.

The Corporate Director (Governance) advised that the Report had been considered by Principal Scrutiny Committee at its meeting on 22 November 2010 and minute extracts from this meeting were distributed to attendees at

the Cabinet meeting. Cabinet noted that the Committee had supported the recommendations as set out in the Report, but raised a number of issues for Cabinet to have regard to (discussed below).

The Corporate Director (Governance) also referred Cabinet to two emails that had been received from the development agent of London & Henley (Winchester) Ltd on 23 November 2010. These emails were also distributed to attendees at the Cabinet meeting. A letter had also been received on the same day from the legal advisors to London & Henley (SNR Denton) and its contents would be discussed during the exempt session of the meeting.

The Corporate Director (Operations) highlighted that the Upper Brook Street site had been the subject of a separate agreement with Thornfield Properties (Winchester) No. 1 Ltd. The Corporate Director (Governance) advised that it was proposed that Recommendation 5 of the Report be amended by the inclusion of the following additional words at the end: "...other than as set out in Paragraph 6.3 of the Report." In addition, for clarification, all references in the recommendations should be changed to Henderson *UK* Property Fund (Henderson), as opposed to "*United Kingdom*".

At the invitation of the Chairman, Councillors Wood, Tait and Beckett addressed Cabinet and their comments are summarised below.

Councillor Wood expressed concern that the Report in his view did not fully consider all the options open to the Council and in particular, the option to abandon the scheme. He believed there was a risk that Henderson would acquire the shares, but not seek to progress the scheme and the agreement not to use the Long Stop provisions prior to 31 August 2014 would exacerbate this. He believed that Thornfield had not made good progress during their time in control of the Development Agreement. Finally, he queried whether the Council had sought professional business/commercial advice prior to putting forward the Report's proposals?

Councillor Tait queried what was the purchase price for the acquisition by Henderson for the Development Agreement and the assets of Thornfield Properties (Winchester) No.2 Ltd. He supported the need for a comprehensive redevelopment of the Silver Hill area and requested that if the Report was agreed, a meeting be arranged with Councillors and the public for Henderson to outline their plans.

Councillor Beckett advised that, on balance, he supported the proposals outlined in the Report and for the Council to continue to support the comprehensive redevelopment of the Silver Hill area. However, he commented that although he considered that the Council was not in a strong negotiating position, he would like reassurance that officers had been robust in their discussions with Henderson.

The Corporate Director (Operations) advised that the Report recommended that the Council should remain in favour of comprehensive development of the Silver Hill area, rather than the alternative option of a piecemeal approach to

development. Given this approach, the proposals contained in the Report would enable the funding of the scheme to continue. However, if the Council wished to abandon the scheme, then a negative response at this stage could lead to that outcome. He also highlighted that Thornfield had made significant progress, particularly in obtaining planning consent for the scheme. This had involved the company in several million pounds of expenditure.

The Corporate Director (Operations) emphasised that the Council were not being asked to make a commercial judgement as to whether the transfer of shares took place.

The Corporate Director (Operations) confirmed that it was possible that Henderson would sell on their acquisition in the future. However, in meetings with their representatives, the company had indicated their serious intention to proceed with the Development Agreement. In addition, the Council had recognised the possibility of ownership transfer and the Development Agreement included various safeguards.

The Corporate Director (Operations) advised that if the Report was approved, it was anticipated the Henderson would acquire the shares as soon as possible. It would then be possible for them to arrange meetings with the public and Councillors to explain their intentions in more detail.

The Corporate Director (Operations) confirmed that negotiations had taken place with Henderson which had resulted in the inclusion of 'milestones' to show progress between now and 2014. In addition, the Council's position with regard to CCTV facilities had been protected (further detail in exempt).

The Chairman referred Members to the two emails received from the agent of London & Henley (Winchester) Ltd referred to above and Cabinet addressed the various queries raised within these communications, as summarised below.

The Corporate Director (Governance) advised that the Council had appointed Thornfield without going through the European Union procurement process as it was the understanding in the UK property sector that this was not required at the time the appointment was made. Case law had developed since that time which would indicate that if the Council was to start a new procurement now, then EU procedures should be used.

The Corporate Director (Operations) advised that the minimum required elements of the scheme were fixed as part of the Development Agreement. The Council, as party to the Development Agreement, was required to agree before the Developer could seek any amendments to the existing planning consent or minimum requirements of the Development Agreement. Changes to significant elements, such as number of dwellings, would require an amendment to the Development Agreement. More minor changes, such as to building materials/finishes might be acceptable, subject to any necessary planning consent being granted.

The Chief Executive reported that the Council remained committed to the comprehensive redevelopment of the Silver Hill site as it was not considered there were viable alternatives available, within a reasonable timeframe. Specifically, piecemeal development was not favoured by the Council.

The Chairman supported the comments made by the Chief Executive that the Council would remain committed to achieving comprehensive redevelopment of the whole site, and highlighted that there had also been public support for this approach.

The Chairman referred Members to the matters raised for Cabinet's consideration by Principal Scrutiny Committee. The Corporate Director (Operations) explained that various 'milestones' would be agreed in order to monitor progress by Henderson in the period until 31 August 2014 (the proposed deadline before which both parties agree not to use the additional right to terminate created by the Long Stop date).

Cabinet supported the proposals outlined in the 'open' section of the Report and in particular welcomed the opportunity for the regeneration of the Silver Hill area to be progressed as soon as possible, especially having regard to the deteriorating nature of some parts of the site. The proposals were supported in principle, subject to any issues raised in the exempt session of the meeting.

(NB: Following consideration of the issues raised in the exempt session the recommendations were agreed as set out below.)

Cabinet agreed to the following for the reasons set out above and outlined in the Report.

RESOLVED:

1. That the proposed acquisition of the shares of Thornfield Properties (Winchester) Ltd by Henderson UK Property Fund be noted.
2. That the Corporate Director (Governance) be authorised to enter into the necessary transactions to give effect to the following:
 - (i) the substitution of Henderson UK Property Fund as the effective Guarantor for the Development Agreement and the power for Henderson UK Property Fund to substitute a different guarantor of equal or greater covenant with the Council's consent (not to be unreasonably withheld);
 - (ii) a period ending on 31 August 2014 when both parties agree not to use the additional right to terminate created by the Long Stop date in the Development Agreement subject to the inclusion of such milestones as the Corporate Director (Governance) considers reasonable;

- (iii) the changes to the form of lease in respect of an authorised guarantee agreement as set out in paragraph 3.6 of the Report;
- (iv) agreement to the response proposed on a legal point in the exempt Appendix to a further point raised by Henderson UK Property Fund.

3. That in principle it be agreed to make a new Compulsory Purchase Order resolution, if that is considered necessary and justified by the information provided in a subsequent Cabinet report.

4. That the Corporate Director (Governance) be authorised to accept a surrender of the Upper Brook Street agreement.

5. That the Corporate Director (Governance) be authorised to include in any subsequent transaction in relation to the Upper Brook Street site a restrictive covenant or other appropriate form of restriction to prevent the provision on the site of a pharmacy during the period of development of the Silver Hill scheme or until the termination of the Development Agreement, other than as set out in Paragraph 6.3 of the Report.

4. **EXEMPT BUSINESS**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
##	Silver Hill Regeneration Project – Latest Developments (Exempt Appendix – Legal Advice)) Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Para 3 Schedule 12A refers))) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. (Para 5 Schedule 12A refers)

5. **SILVER HILL REGENERATION PROJECT – LATEST DEVELOPMENTS**
(EXEMPT APPENDIX – LEGAL ADVICE)
(Report CAB2085 refers)

The Head of Legal Services outlined to Cabinet the legal advice contained in the exempt appendices to the Report. Cabinet also received the exempt minutes of the Principal Scrutiny Committee held 22 November 2010 in relation to this report.

Cabinet discussed the queries raised in the letter from the legal advisors to London and Henley referred to above and the Corporate Director (Governance), Corporate Director (Operations) and Head of Legal Services responded to questions (detail in exempt minute). Copies of this letter had been passed to all Cabinet Members and other Members present at the meeting.

Cabinet agreed a response to the fifth question raised by Henderson. It also made provision for the Council's position with regard to CCTV facilities to be protected (detail in exempt minute).

The meeting commenced at 9.30am and concluded at 12.05pm