

COUNCIL

16 July 2014

EXTRACT FROM MINUTES OF THE OVERVIEW AND SCRUTINY COMMITTEE
REGARDING SILVER HILL (7 JULY 2014)

REPORT OF THE DEMOCRATIC SERVICES MANAGER

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Appendix A to this report sets out minute extracts from The Overview and Scrutiny Committee relating to Silver Hill for the consideration of Council.

RECOMMENDATION:

That Council considers the matters set out in the minute extracts.

**EXTRACT FROM MINUTES OF THE OVERVIEW AND SCRUTINY COMMITTEE –
7 July 2014**

1. **SILVER HILL REGENERATION (LESS EXEMPT APPENDICES)**

(Report CAB2603 refers)

SILVER HILL PROPOSALS – COUNCILLOR GOTTLIEB

(Report OS104 refers)

The Committee noted that both Reports had not been made available for publication within the statutory deadline. The Chairman agreed to accept the items onto the agenda as matters requiring urgent consideration, to enable the Committee to comment on their contents and make recommendations accordingly to Special Cabinet on 10 July and to Council on 16 July 2014.

The Committee also noted that Report OS104 had been included on the agenda under Overview and Scrutiny Procedure Rule 13 – Councillor Call for Action (CCfA). The Chairman announced that he would consider both reports together as the matters were inextricably linked. He would also allow Councillor Gottlieb to present his report and to respond to questions of the Committee and from officers present.

Responding to questions, the Chief Operating Officer explained that Exempt Appendix 6 to CAB2603 was recommended for consideration in exempt session due to it setting out details of Leading Counsel's legal advice. Exempt Appendix 7 contained a detailed report of the Council's advisors, Deloitte, on valuation matters and Exempt Appendix 3 set out improved revised financial terms for the Development Agreement following the negotiations upon the proposed inclusion of 153 High Street within the Scheme.

The Chief Executive also clarified that although Exempt Appendix 5 had not been made available to the Committee at this time, the Chief Finance Officer had been made aware of its draft content and would therefore brief the Committee on matters related to the Development Account in exempt session. The detail of the Appendix would be made available for the Special meeting of Cabinet on 10 July 2014.

In introducing the Report, in summary, Councillor Weston said that an important stage of the Silver Hill project had been reached whereby Cabinet's permission was being sought by Henderson to make improvements to the scheme compared to the existing 2009 planning consent for the redevelopment. There had been many design improvements and a decision by Cabinet would allow a planning application to be submitted – and the Planning Committee would make the final decision on those aspects. Independent advice on the financial, legal and estates aspects of the proposed scheme had also provided reassurances that the scheme represented a good deal for the Council and for Winchester. It was one that

would be unlikely to be available were the Council to re-enter the market today. Independent advice had also demonstrated that Silver Hill would reinforce the primary position of Winchester town centre and help the Council to avoid damaging out of town development. The proposals would therefore provide valuable space for retailers wishing to establish themselves in the town centre and also regenerate a run-down area of the town. Finally, Councillor Weston advised that Cabinet would welcome the comments of the Committee on the proposals, whilst having regard to the professional judgements and opinions received.

The Chief Executive reminded the Committee of the extensive work undertaken, including several stages of public consultation with much public debate, both in formulating the development brief and in advance of securing planning permission in 2009. Recession meant that funding was withdrawn from Thornfield but this provided opportunity to review the proposals in partnership with Henderson, following their acquisition of the Thornfield interests. A new public exhibition was to open in the Guildhall this week setting out the improvements, and this would be in addition to the requirements for extensive public consultation as part of the planning application in due course.

Cabinet was now required to make an informed judgement taking account of the external professional advice received by the Council. Members should also consider the recent representations that had been received from residents and other stakeholders.

The Corporate Director drew attention to various design improvements and modifications proposed to the 2009 consented scheme. Some of these had arisen from the opportunity arising from the changes to the Bus Station arrangements as well as from aspirations to improve design aspects of the scheme and were considered in detail by the Informal Policy Reference Group. In summary, there was to be greater articulation and variation in the scheme and the developer's architects had proposed a wider range of quality materials. There was a reduction in the number of residential units to 184. The IPG had also considered aspects related to significant improvements to the public realm, including linkages to the existing historic town centre. The Corporate Director also highlighted that Winchester town centre continued to be successful, but required additional modern retail space if it was to successfully compete with the risks from out of town development. This was supported by the retail assessment provided by NLP. The revised scheme provided the majority of the additional town centre retail floorspace envisaged by Local Plan Part 1.

The Head of Estates explained that Deloitte had produced a report which demonstrated that the scheme would provide best consideration for the Council under S233 Town and Country Planning Act 1990 and would enhance the overall value of the Council's estate. He reminded the Committee that the existing site and buildings were a poor reflection on Winchester, and were not able to sustain beneficial occupation over the long term. The poor condition of the Friarsgate multi storey car park would require its closure shortly.

The viability of the scheme was currently unable to contribute towards affordable housing. However, a formula could be included in the financial arrangements, so that if residential market conditions in Winchester continued to improve, a significant contribution was likely to be forthcoming to contribute to the Council's currently unfunded affordable housing schemes off site.

The Head of Legal and Democratic Services reported on various legal issues and obligations on both the Council and the developer. Various changes were proposed to the Development Agreement to ensure viability and a number of alterations were able to be approved by the Council. Section 4 of the Report explained where in considering changes the Council had 'absolute discretion', or where its discretion was subject to caveats. However, in exercising its discretion the Council needed to have regard to the commercial viability of the scheme and not act capriciously.

The Chief Finance Officer provided a detailed explanation of the complex financial issues related to the proposals. A review of the Development Account had been prepared, with factual findings of the various costs and this would be received in time for consideration at for the Special Cabinet meeting on 10 July 2014. The Development Agreement defined the proper costs which could be charged to the Account and their amount ultimately affects overage the Council would receive and the amount of profit that the developer was able to retain.

The Committee asked a number of detailed questions of officers, the answers to which are summarised below:

- i) Appendix 2 to the Report was a Retail Economic Study undertaken by the Council's advisors, Nathaniel Lichfield & Partners (NLP) and was not intended to include a transport assessment. A detailed Transport Assessment was a requirement for the planning application and this was in the early stage of development. There was no indication of increased traffic generation to the site, especially as changes to the consented scheme meant that there was no longer to be any office accommodation. Parking provision overall was to be greater than what was currently provided at Friarsgate Multi Storey. Additional capacity had also been provided at Park and Ride since the 2009 planning consent and this may be attractive to those visitors who wished to stay longer.
- ii) The comparator towns utilised by NLP in their assessment were seen to have similar demographics and aspirations as Winchester, although the comments of some Members that not all were not in direct retail competition with other centres (e.g. Winchester was in retail competition with Southampton and Basingstoke) were noted and would be raised with NLP, as would a Member query as to whether the growth projections were realistic.

- iii) There was discussion on how unsubstantiated costs in the Development Account would affect the Council's overage. It was explained that the Council retained discretion as to whether it would accept any unsubstantiated transactions if it considered they were reasonable.
- iv) In the event that any of the costs were not accepted the effect it was likely that the Council's position was only that it could be improved upon from that which would be outlined in the Deloitte's report on the review of the Development Appraisal.
- v) The Developer had demonstrated that a viable scheme was able to go forward without the number of public parking spaces previously consented, even though the retail element had increased. Sufficient capacity had been identified. There was to be additional parking for the residential units and additional Park and Ride capacity was now available since permission had been granted in 2009.
- vi) NLP had demonstrated that Silver Hill was able to absorb likely growth in retail expenditure, alleviating the threat of out of town shopping to meet demand. It would not compromise existing town centre shops. Representatives of the consultants would be available at the Cabinet meeting to respond to concerns of some Members of the potential impact from the redevelopment on peripheral areas of the town centre over the shorter and longer terms.
- vii) The Winchester BID and Chamber of Commerce had not formally raised any concern about the revised layout and design of the scheme and had indicated that they were keen for a redevelopment of the site to go forward. The City of Winchester Trust had also been generally positive.
- viii) The Head of Strategic Planning had indicated that he was satisfied that the reduction of residential units in the revised scheme would not place pressure on greenfield sites to meet any deficit in overall numbers, which could be developed elsewhere within the town area.
- ix) The consented scheme was to provide 20 social rented dwellings, and 80 of mixed affordable tenures. Shared equity units in a town centre site were likely to become unaffordable for many over time. Brownfield development sites were also more expensive to redevelop, and the Silver Hill scheme was inclusive of a number of other high costs, such as archaeology, flood risk measures - and the use of high quality materials as were proposed to be specified within the revised Development Agreement. Therefore, and as overall viability of the scheme was a factor, the use of an off-site contribution was likely to better meet the Council's needs to deliver affordable housing – probably by subsidising one of its own identified New Homes schemes that were currently unfunded. Because a new application would be a variation of an existing planning

permission and S106 agreement there would be legal discussion when the application was submitted as to whether the affordable housing policy would require affordable provision to be provided at 35% as under the consented scheme or 40% in accordance with current policy.

- x) The ability of the scheme to deliver an affordable housing contribution would depend upon the continued growth in housing values while the scheme was developed and a requirement for Henderson and the contractor to secure an appropriate rate of return on the project. Current policy guidance advised that developers would seek a return of 20%. Although paragraph 5.5 of the report suggested a review could be taken at the mid-point of the development, the Head of Estates advised that it would now be better if it were taken towards the end of the development, so that actual sale prices of the dwellings could be taken account of. If there was market growth then the Council would receive a significant contribution, although that could not be guaranteed. The current viability of the scheme would not allow for a minimum provision in the formula.
- xi) The Development Agreement was amended in 2009 to be realigned with Council Policy for off-site provision for affordable homes. It was expected that any Homes and Community Agency (HCA) funding to be attracted by the proposals was likely to be minimal as Winchester was not a priority area.
- xii) With regards to alternative proposals to the Bus Station at the site, a linear interchange was seen as the best solution and had been supported by Stagecoach. Although the existing Bus Station had facilities such as a café and waiting area, these were paid for by a commercial operator and therefore were not incorporated as part of the revised scheme. It was recognised that the capacity for buses in the town area may need to increase over the next 10 years to take account of new development and this had been incorporated in assessments.
- xiii) A Member asked whether Park and Ride bus routes could also serve residential areas in off-peak periods. It was explained that this had potential competition issues and would impact on the express nature of the service. It could be examined as a part of the future review of the service.
- xiv) It was reiterated that the only variance to the consented scheme with regard to the market, was for the removal of a store within the site. The importance of markets to the general vibrancy of the town centre was acknowledged and the scheme was likely to further build on this with additional market provision in The Broadway area.

- xv) In planning terms, it was considered that the revised scheme was not fundamentally different to the consented scheme. The variations to the consented scheme should not be taken in isolation as in their entirety they ensured that the scheme was viable. Henderson had suggested that the physical changes proposed were necessary and without them the scheme may be undeliverable. The existing CPO had a lifetime of three years from confirmation and so was due to expire in March 2016.
- xvi) Should Cabinet delay the decision whether to approve the variations to the Development Agreement, the consequential costs would need to be discussed with the developer.
- xvii) It was considered that the variations proposed would deliver what was originally intended by the Council as the outcome of the redevelopment. Further to this, they were necessary to ensure that the scheme was deliverable and viable.
- xviii) It was acknowledged that the Developer could be asked to consider that local contractors should be utilised as much as possible and provision be made for apprentices. However, as the mixed development of the site was specialist work combining retail and residential elements, rather than tendering for contractors, Henderson should be permitted to negotiate a partnering arrangement with a suitable residential developer.
- xix) The implications of the “Roanne” judgement and subsequent cases were that the scheme could no longer be classed as land transactions as opposed to public works. Advice had been sought from Leading Counsel clarifying that the variations to the Development Agreement would not represent a new contract and therefore requiring the Council to tender under EU procurement rules. The original Development Agreement pre dated the “Roanne” judgement. However, if the Council was to not progress the existing Agreement, then EU procurement rules would need to be met and factored into the process.
- xx) The Administration was consulting with both The Overview and Scrutiny Committee and full Council on the proposals, but it was ultimately a decision of the Cabinet whether to approve the revisions to the Development Agreement. Council on 16 July 2014 may raise further matters of a material nature and if it did so there would be a need for a further meeting of Cabinet to deliberate on points raised before making a final decision. Therefore Cabinet will have regard to the comments of The Overview and Scrutiny Committee in making its decision on 10 July and will, if necessary also consider any additional material matters raised at Council at a future Cabinet meeting.

At the invitation of the Chairman, Mr Davies addressed the Committee.

In summary Mr Davies advised that he was a member of the Council at the time when the original Broadway/Friarsgate Planning Brief of 2003 was drawn up, which he supported. The brief at that time specifically said that there would be a programme of continuing public consultation as part of the project's evolution and also that a new bus station was to be an "essential part of the new development" to encourage greater use of public transport and a reduction in car use. There was also a requirement that 35% of the dwellings should be affordable and that in this location, this was likely to be housing for social rent only. Therefore, the new proposals departed from the approved scheme, and therefore should not to be considered as an amendment to the approved scheme.

Mr Davies raised concerns that decisions made as the process moved forward towards amending the Development Agreement should have been made in public meetings and the decisions of Stagecoach a commercial entity should not influence the proposals. He was particularly concerned at the changes proposed to the housing mix at the site, and the lack of guarantees that there be any affordable housing generated by the scheme, including provision off-site by way of contribution. The Council should look to work closely with Housing Associations to achieve this.

Mr Davies suggested that the public should have been allowed to assess for itself the financial viability of the scheme as set out in Exempt Appendix 4 and the claims the funding social housing was not viable. The Council should be in a position to retain absolute discretion in the matter and Henderson would be unlikely to not wish to proceed if there was to be some requirement on-site.

In summary, Mr Davies urged that the redevelopment should be inclusive of a mixed housing community and that the Council should not show any 'weakness' at this time with regard to its policies, otherwise they would not be treated seriously by other developers.

The Chairman thanked Mr Davies for his comments and invited him to remain to respond to any questions arising in the Committee's subsequent discussion.

At the invitation of the Chairman, Councillor Gottlieb addressed the Committee, further to his report as set out in OS104. He assured members that he had no vested interests in the matter and was pursuing the issues in his capacity as a councillor.

In summary, Councillor Gottlieb raised concerns that processes followed in reaching the current position were lacking and standards expected had not been met. The integrity of the Council and of the process may be open to challenge, in his view. He raised specific concerns in the Leader, Deputy Leader and Chief Executive promoting the variances to the Development Agreement. As a consequence, the public were unlikely to be able to distinguish the roles of the Council as landowner, landlord and Planning

Authority. It was seemingly inevitable, in his view, that the Planning Committee would grant planning permission, and not give separate proper consideration to the planning application. The Council would be too tightly controlled by the Development Agreement, if it gave up its absolute discretion by Cabinet agreeing the variations, as there were no further stages in the Agreement which gave the Council such control over negotiation. He also suggested that the Council may have 'steered' its consultants to come to acceptable conclusions by carefully worded briefs.

Councillor Gottlieb did not consider that the Council had received best consideration but welcomed that cost matters within the Development Account were being scrutinised. However, it was appropriate that there should be a wider analysis undertaken of the finances related to the scheme in general.

Councillor Gottlieb questioned whether the proposed changes actually quantified a substantially new scheme and therefore the related plans and proposals required careful analysis before a decision was made and outside the close timeframe currently being followed. It was not timely for a decision to be made at this time and this should be a matter for full Council in due course.

Concerns were also raised with regard to the change in size of the retail element and potentially moving the retail focus of the town centre to Silver Hill, away from the High Street area; which was currently exhibiting some symptoms of 'stress'. He also queried the deletion of the market store elements of the existing Development Agreement and suggested that the requirements for the relocation of the market were also being changed. He also pointed out the changes to the residential aspects, bus station and removal of the office content had reduced the mixed content of the scheme from five different uses to two.

Councillor Gottlieb urged that a Quantity Surveyor be appointed for the project without delay. The statement that it was the viability of the scheme meant that no affordable housing could be provided on site was questioned, especially as the revised scheme now had substantially more retail space, and at earlier stages 35% affordable housing had been considered viable. He considered it would be attractive to a housing association.

Councillor Gottlieb suggested Cabinet should delay a decision and ask for an independent assessment of the Scheme e.g. by a person appointed by the Secretary of State.

Officers responded to the statements made by Mr Davies and Councillor Gottlieb and the Committee asked a number of questions of matters arising from their presentations.

The Chief Executive challenged Councillor Gottlieb regarding his comments about himself, the Leader and Deputy Leader. He also challenged the

suggestion by Councillor Gottlieb that the Planning Committee had been compromised.

A Member of the Committee indicated that she considered that it was inappropriate for Councillor Gottlieb to have made personal criticism of Members and Officers, including in his Report OS104. The arguments should rest on the merits of the case being made, not personal criticism of individuals.

The Corporate Director and the Head of Estates reiterated that the bus station was a commercial enterprise and that the Council would be unable to insist that a capital payment be made to contribute to facilities such as a waiting room and café. With regard to affordable housing; this was related to the overall financial viability of the redevelopment. The proposals to delete the market store were reflective of the significant changes to the market in Winchester since 2009, meaning that a store was no longer required at this location. The provisions relating to provision for the market in the High Street and The Broadway were not changing. With regards to the appointment of a Quantity Surveyor, Deloitte's cost consultants had examined the cost plan for the development and it was confirmed that a Quantity Surveyor would be appointed at an appropriate time. Finally, the Chief Executive drew attention that consultant briefs put forward were open for examination and were also replicated within their submissions to the Council.

Officers outlined the legal advice given with regard to the Council's Absolute Discretion.

Should the alterations to the scheme be not agreed and proper reasons were not forthcoming from the Council, as well as reputational damage, the Council may be subject to litigation. Other consequences included the prospect of not being able to progress any alternative scheme in the shorter term due to the requirements of EU procurement rules, which would result in it taking years rather than months for a new scheme to come forward.

If the Council required the developer to reconsider the number of affordable units proposed on site and car parking provision etc., it was likely that the overall scheme (and its viability) would be compromised. Any significant delay would raise concerns as the timetable as the Compulsory Purchase Order was running until March 2016. The benefits of the current proposal needed to be taken into account.

The Committee concluded its discussions in open session and summarised the main points that it wished to draw to Cabinet's attention which are set out as follows:

- i) In the absence of the exempt information in Appendix 5, Cabinet need to be assured that all appropriate charges have been made to the Development Account. Cabinet need to be assured that any unsubstantiated costs are genuine, otherwise it should ensure that the

necessary arbitration takes place to address this to the satisfaction of all parties.

- ii) Noting that although they had not formally raised any concerns, comments on the proposals from the Winchester Business Improvement District and Chambers of Commerce should be urgently sought and analysed.
- iii) The draft Transport and Parking Assessment (to be submitted as a supporting document to the planning application), should have regard to concerns raised by the Committee with regard to this matter.
- iv) A mechanism should be identified for 'capturing' profit from the scheme at an appropriate time so that affordable housing contributions can be ascertained. A minimum percentage contribution should be specified. The Council should also investigate the potential to work with other Register Social Landlords with regard to the possibility for some on-site delivery of affordable dwellings and the likelihood of any HCA funding.
- v) As part of compensation to the City of losing a traditional Bus Station, the possibility to provide those facilities currently located at the existing Bus Station (waiting room and café etc) elsewhere in the development should be considered.
- vi) Cabinet should seek assurances from representatives of Nathaniel Lichfield & Partners on the justification for the increased amount of retail in the development, and also their basis for using the comparator towns in the supporting evidence.
- vii) Having regard to the advice given to the Council on 'Best Consideration', Cabinet should be assured of the implications of Henderson acquiring Thornfield's interests in the scheme and that this remains beneficial to the Council.
- viii) The development should carefully integrate with the historic, existing town centre area of Winchester.
- ix) Will accessibility to the scheme be maintained for the wider community, i.e will retailers like Iceland and Poundland still be able to retain a presence in the City to meet the requirement of those looking for lower cost food and products.
- x) Cabinet should further examine the proposal for Henderson to appoint the construction contractor, rather than being selected by competitive tender process.
- xi) Cabinet should negotiate, where possible, on specific elements of revisions in the Development Agreement, as opposed to accepting or

rejecting en bloc and consider whether the Council has maximised its negotiating position at this critical point.

RESOLVED:

That Cabinet be asked to consider the points raised by The Overview and Scrutiny Committee, as set out above.

RECOMMENDED TO COUNCIL:

That Council takes account of the matters raised by The Overview and Scrutiny Committee in considering the proposals of Cabinet.

2. **SILVER HILL REGENERATION (EXEMPT APPENDICES)**
(Report CAB2603 refers)

The Committee noted that both Appendices 3 and 7 had not been made available for publication within the statutory deadline. The Chairman agreed to accept the items onto the agenda as matters requiring urgent consideration, as each contained important information to enable the Committee to comment on the overall proposals set out in CAB2603 and make recommendations accordingly to Special Cabinet on 10 July and to Council on 16 July 2014.

It was noted that Exempt Appendix 5 – Development Account assessment, would not be made available until the Special Cabinet meeting on 10 July 2014. However, officers were able to brief the Committee on its content and outcome conclusions.

The Committee referred to, and discussed and asked a number of detailed questions of the Exempt Appendices (detail in Exempt Minute).

The meeting commenced at 6.30pm and concluded at 12.30am.