

COUNCIL

15 July 2015

MINUTES OF CABINET HELD 13 JULY 2015 AND THE OVERVIEW AND
SCRUTINY COMMITTEE HELD 13 JULY 2015

REPORT OF THE DEMOCRATIC SERVICES MANAGER

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Appendix A to this report sets out the minutes from Cabinet held 13 July 2015 and The Overview and Scrutiny Committee held 13 July 2015 for the consideration of Council.

RECOMMENDATION:

That Council considers the matters set out in the attached minutes.

CABINET – SPECIAL MEETING**13 July 2015****Attendance:**

Councillor Godfrey -	<i>Leader (Chairman) (P)</i>
Councillor Weston -	<i>Deputy Leader and Portfolio Holder for Service Delivery (P)</i>
Councillor Read -	<i>Portfolio Holder for Built Environment (P)</i>
Councillor Byrnes -	<i>Portfolio Holder for Local Economy (P)</i>
Councillor Horrill -	<i>Portfolio Holder for Housing Services (P)</i>
Councillor Miller -	<i>Portfolio Holder for Estates (P)</i>
Councillor Pearson -	<i>Portfolio Holder for Environment, Health & Wellbeing (P)</i>

Others in attendance who addressed the meeting:

Councillors Burns, Gottlieb and Thompson

Others in attendance who did not address the meeting:

Councillors Achwal, J Berry, Simon Cook, Dibden, Evans, Izard, Johnston, Lipscomb, McLean, Sanders, Southgate and Twelftree.
Mr D Chafe – TACT

1. DISCLOSURE OF INTERESTS

Councillor Godfrey declared a disclosable pecuniary interest in respect of agenda items due to his role as a County Council employee. However, as there was no material conflict of interest, he remained in the room, spoke and voted under the dispensation granted on behalf of the Standards Committee to participate and vote in all matters which might have a County Council involvement.

Councillor Gottlieb declared a personal (but not prejudicial) interest as a member of the “Winchester Deserves Better” group. The Chief Operating Officer stated that the letter from Dentons Solicitors, Appendix 3A, indicated that Councillor Gottlieb might seek to take legal action against the Council and this could lead to a conflict of interest. Therefore, when the Committee was considering legal advice, Councillor Gottlieb might be asked to leave the room where that advice could relate to a challenge against the Council. However, this situation did not arise.

Councillor Gottlieb remained in the room and spoke regarding the item on Silver Hill (but left prior to the exempt discussions).

Councillor Gottlieb also declared a personal and prejudicial interest in respect of Report CAB2706 due to his involvement with the bid to acquire 153 High Street, Winchester. He clarified that as he was proposing that the property be acquired by a community trust, rather than by himself personally or on behalf of his own business, he did not consider it to be a disclosable pecuniary interest. He was not in the room during discussion of Report CAB2706 and made no comments thereon.

Councillor Burns declared a personal, but not prejudicial, interest in respect of Report CAB2700 due to her involvement with the “Winchester Deserves Better group”. She remained in the room and spoke regarding the item on Silver Hill (but left prior to the exempt discussions).

2. **PUBLIC PARTICIPATION**

Five members of the public/representatives from local interest groups spoke regarding Report CAB2700 and their comments are summarised under the relevant minute below.

3. **SILVER HILL – SUBMISSIONS BY SILVERHILL WINCHESTER NO 1 LTD AND COUNCIL’S RESPONSE (LESS EXEMPT APPENDICES)**

(Report CAB2700 refers)

Under the Council Constitution Access to Information Procedure Rules (Rule 15 General Exception and Rule 16.1 – Special Urgency), this was a key decision which was included as an additional item to that shown in the Forward Plan for July 2015, without specific meeting dates being set (dates since set for 13 and 15 July 2015). It was necessary to take it as an urgent item so that Cabinet can take any action it needs to fulfil the obligations on the Council under the Development Agreement.

The Chairman agreed to accept the item onto the agenda (and to accept the late report and appendices) as the matter required urgent consideration to enable Cabinet to consider and recommend on its contents prior to consideration of the Report by The Overview and Scrutiny Committee later that day and Council on 15 July 2015.

The Chairman of The Overview and Scrutiny Committee had agreed to the matter being considered at this meeting, and in exempt session as necessary.

The Chairman explained the procedure to be followed in consideration of the Report, with a period of discussions to take place during exempt session, prior to moving back into open session for the decision to be made. However, he emphasised that he had instructed officers to ensure as much information as possible was provided in the open sections of the Report.

Cabinet noted that Appendix 8 to the Report (Summary and Assessment of Submissions) would now be provided by way of a verbal update.

The Chief Operating Officer drew Cabinet's attention to Appendix 3A to the Report, circulated earlier that day, which contained a solicitor's letter from Dentons acting on behalf of Councillor Gottlieb, which in summary warned of potential further legal action against the Council.

Cabinet welcomed to the meeting the following advisors:

- Mr Achil Markanday – Berwin Leighton Paisner (BLP)
- Mr Chris Edwards – Deloitte (Corporate Finance Team)
- Mr Richard Owen and Ms Lindy Howard - Deloitte
- Mr Tim Hamilton-Miller and Mr Peter Barnard – Knight Frank
- Mr Matthew Timms - AECOM

The Head of Legal and Democratic Services advised that external legal advice on the three submissions received by Silverhill Winchester No 1 Limited (SW1) had been obtained from BLP and set out in Appendices to the Report. With regard to the Works Commencement Date (WCD), the latest advice was contained in Exempt Appendices 15C and 16 to the Report. However, further information had been submitted by SW1 as to what works had been carried out on site and further advice was being sought from Leading Counsel. This would be available prior to the meetings of Council and Special Cabinet on 15 July 2015.

The Head of Legal and Democratic Services emphasised that the Development Agreement (DA) set out specific time limits within which decisions must be made. A decision on the submissions by SW1 was therefore required by 16 July 2015 at the latest.

The Chief Finance Officer advised that the Council had engaged Deloitte LLP (Corporate Finance Team) as set out in Paragraph 5.5 of the Report to report on the financial covenants in relation to the Social Housing condition and the Funding condition. The detail of their advice was contained in Exempt Appendices to the Report. However, in summary, Chris Edwards (Deloitte) outlined the methodology used to review the financial covenants and stated that it was concluded that both the social housing and funding counter parties were deemed to have strong financial covenants and to be appropriate for the Council to engage with.

Mr Edwards explained that Deloitte had also, in conjunction with BLP, reviewed the funding heads of terms and, subject to clarification on a number of conditions which were required to be met, found these to be satisfactory.

Tim Hamilton-Miller (Knight Frank) explained that they had examined the affordable housing elements and summarised the methodology they had adopted. The conclusion was that the affordable housing offer was robust.

The Head of Estates explained that, as requested by Council, two independent reviews of the financial viability appraisal had been undertaken separately by Deloitte and Knight Frank (detailed Reports contained within Exempt Appendices 12 and 13).

On behalf of Deloitte, Richard Owen confirmed that the review had been undertaken completely separately from Knight Frank. Deloitte had concluded that a rate of profit on costs return was demonstrated over and above that required in the Development Agreement (DA). In addition, the way the appraisal had been undertaken by SW1 was in accordance with RICS guidance and accepted market practice.

On behalf of Knight Frank, Peter Barnard also confirmed that the review had been undertaken completely separately from Deloitte. Knight Frank had also concluded that the expected rate of profit on costs return was as required by the DA and the appraisal had been carried out in accordance with RICS guidance and industry norms.

Councillor Weston drew Members' attention to an email sent to all Councillors from Councillor Gottlieb that afternoon which he had asked to be treated as exempt which, inter alia, alleged that neither Deloitte nor Knight Frank had sufficient information to make a sound recommendation.

In response, Mr Owen confirmed that, in terms of the DA the financial viability appraisal was satisfactory and the Condition was met. He emphasised that the appraisal was necessarily a snap shot of the current situation as required by the DA and was not as detailed as, for example, if and when on-site development commenced. Mr Barnard reiterated his view that at the current time, the information provided offered a robust appraisal in accordance with the DA and the Condition was met.

In response to questions, Mr Hamilton-Miller stated that Knight Frank had liaised with Officers within the Council's Housing Team and the Portfolio Holder for Housing. Knight Frank was satisfied that the proposed affordable housing units would meet the required affordable housing need in line with the Section 106 agreement and based on local affordability requirements. With regard to the identity of the housing association, Mr Hamilton-Miller confirmed that they were considered to be a reputable and reliable partner.

In response to questions, Mr Edwards confirmed that the proposed Funder was well known to invest in property schemes and had a strong net worth as a counter party. With regard to the heads of terms, he reiterated that there were a number of points that Deloitte were seeking clarification and agreement to via BLP. This included a request for confirmation that the funder was committed to provide unlimited levels of funding to enable the development to proceed.

The Head of Estates confirmed that he was confident that the work undertaken by Deloitte and Knight Frank enabled the Council to make an informed decision with regard to the financial viability of the scheme. He emphasised that the two exercises had been carried out completely independently and neither firm had had sight of the others report until published. Although there had been differences of opinion in relation to some detail, the overall conclusion of both Deloitte and Knight Frank was the same.

In response to questions, Mr Markanday (BLP) advised that any termination of the DA would be a significant and serious step. In the light of the time and monies already invested by the developer in the scheme, his assessment was that the risk of litigation by SW1 was high. Any litigation was likely to take a considerable period of time and involve significant costs. Mr Markanday confirmed that the DA provided that approval of the Social Housing and Funding conditions should not be unreasonably withheld by the Council. The test for the Financial Viability Condition was also based on reasonableness. Reasonableness was open to interpretation, but in the circumstances where expert professional advice was sought it was reasonable to follow that advice (and by implication, unreasonable not to without other substantial evidence in justification).

Mr Markanday confirmed that further advice was being obtained on whether the Works Commencement Date had been complied with by 1 June 2015. Termination on any of the grounds in the DA was a significant and serious step. The Developer had its costs incurred to date and loss of potential profits to consider. Any litigation would be lengthy and costs would be significant. There was also the risk that the Developer may seek to make claims under other aspects of the DA that the Council was currently unaware of.

During public participation, five members of the public and/or representatives of local groups made representations as follows: Karen Barratt, Patrick Davies, Chris Gillham, Kate Macintosh and Una Stevens. Their comment, together with the responses made by Cabinet and Officers, are summarised below.

Karen Barratt stated that although she welcomed the reinstatement of the bus station and social housing, she did not trust the developer and believed the Council should start again with a new developer for the scheme. In particular, how was it possible for the 2009 scheme to now be considered viable, when earlier in the year the exact opposite was advised. She expressed concern that much of the information within the Report was exempt. In addition, she was concerned about the impact on social housing provision of recent Government announcements. Finally, she highlighted that the Independent Report commissioned following the Judicial Review decision was not yet available and believed the Council should not make any decision before this was considered by Council.

The Chairman stated that the Independent Report was due to be published in September 2015 but he had spoken to the Independent Person, Ms Claer Lloyd-Jones, who advised that in her opinion there was no reason for any decision to be delayed.

The Head of New Homes Delivery advised that no details were yet available of the Government's proposals to extend the "right to buy" to housing associations. However, he emphasised that housing association tenants already had a right to acquire. The Corporate Director reported that further details were also awaited on the Government's recent announcements

regarding proposed changes to planning policy in relation to brownfield sites. With regard to the change in viability of the scheme, the Head of Estates advised that markets did alter over time and in Winchester both the residential and commercial markets had changed for the positive.

Patrick Davies concurred with many of the comments made by Karen Barratt and had particular concerns with regard to the process being used by the Council to make decisions. He objected to the use of private briefing sessions for Councillors, together with the amount of exempt information and late papers, as he believed this made it very difficult for informed members of the public to form an opinion. He also queried how the scheme could now be regarded as financially viable when only recently it was considered not to be. He also requested that the communications from Stagecoach regarding the bus station be made public.

The Chairman stated that Stagecoach's position had been reported at the previous meeting, during the open session. He agreed that the Council must seek to make as much information available in public as possible but the terms of the Development Agreement prevented the release of certain information. The Head of Legal and Democratic Services emphasised that negotiations between various parties could be jeopardised if certain confidential information was released. All information had been supplied to all Members, as decision-makers. It was possible that, depending on events, some information could be made public in the future.

Kate Macintosh (WinACC) welcomed the re-inclusion of social housing, but not the retention of the 2009 scheme design for this element. She also welcomed improved facilities for bus passengers but asked that this must include public toilets, a café and seating away from bus fumes. She requested that the development should be flexible enough to include environmental initiatives, such as Combined Heat and Power. The 2014 scheme was also preferable in terms of improved permeability for pedestrians. WinACC did not want any additional car parking to be included within the Silver Hill development and suggested that removing one level of parking would also address some people's concerns regarding the height of the development.

The Head of Legal and Democratic Services emphasised that Cabinet must have regard to the 2009 scheme as presented, without any amendments. If future changes were to be considered, a cautious approach should be adopted in the light of the recent Judicial Review decision.

Chris Gillham (Winchester Friends of the Earth) drew Cabinet's attention to the ongoing complaint to the European Union regarding the Council's failure to meet the required air quality standards in Winchester town centre. He emphasised that further parking provision would need to be removed to meet the required standards, but was concerned that the Silver Hill development would increase parking provision.

The Chairman stated that with the closure of Friarsgate Multi-storey car park and other proposed changes to parking provision in Upper Brook Street, the

Silver Hill development would only replace approximately the same amount of parking spaces and would deliver the Parking Strategy. He also highlighted that the Council were currently working on a number of measures to address pollution levels.

Una Stevens believed that the Council should not make decisions based on a fear of possible legal action. She highlighted that the Council had already had a High Court judge find against it when it had acted on legal advice and queried how it could be assured the current legal advice would not result in the same outcome. She alleged that the Council had neglected the upkeep of the Friarsgate car park and St Clements Surgery. Finally, she urged Councillors to reject the proposed scheme as she believed it would destroy the city centre.

The Head of Legal and Democratic Services stated that the Council had obtained the best legal advice it could reasonably do so, including instructing a leading firm of London lawyers and Leading Counsel. It was not possible to guarantee the Council could successfully defend any future legal challenge as this depended upon the decision of a Court.

The Head of Estates advised that the Council had undertaken regular maintenance of Friarsgate car park but a decision had been taken that it had reached the end of its economic life and it was not appropriate to spend further public monies on repair. The Council did not own St Clements Surgery and were therefore not responsible for its maintenance.

At the invitation of the Chairman, Councillors Gottlieb, Burns and Thompson addressed Cabinet. Their comments, together with the response of Cabinet and Officers, are summarised below.

Councillor Gottlieb stated that the matter of terminating the contract was completely separate to that under consideration today and he might pursue this on another occasion. With regard to whether SW1 had satisfied the conditions required to make the scheme unconditional, Councillor Gottlieb did not consider it was possible to definitively say this was the case for any of the three conditions. He alleged that the Council had received incomplete and misleading advice and the financial figures quoted were vulnerable to early and significant change. Consequentially, he believed the only sensible course of action for the Council was to delay a decision and ensure work was carried out properly. He asked whether now the 2014 scheme had been abandoned by Hendersons, the proposed affordable housing details could be released.

The Chairman requested that Councillor Gottlieb provide further detail of his allegation regarding misleading advice. Councillor Gottlieb declined to do so in open session but said he would provide additional information in exempt session (NB, subsequently Councillor Gottlieb did not remain for the exempt session and did not provide any additional information at the meeting).

The Chairman highlighted that the 2014 scheme could not proceed following the High Court decision and the matter currently under consideration was the 2009 scheme.

The Head of Legal and Democratic Services reiterated advice that it was not possible to delay the decision as the timetable was set out in the DA, and the Council had already taken advantage of the extension allowed.

Councillor Burns reminded Members about the wording of the High Court judgment in February 2015 that the Council had breached procurement requirements for the second time in the lifetime of the development contract. The failure to follow an open and competitive contract cast doubt over whether the scheme offered best value. She believed any decision to proceed with the 2009 scheme would go against the spirit and legality of the DA.

In response to questions, Councillor Burns stated that the original DA was unlawful but it was too late to be subject to legal challenge. She believed it was completely unreasonable for the Council to progress the DA, that any decision to proceed was not in the spirit of the Judicial Review High Court judgment and the Council should decide to terminate the scheme. In addition, she believed the CPO was also based on an unlawful Development Agreement.

The Head of Legal and Democratic Services advised that the Development Agreement was procured in 2004 and the Council's legal advice was that it was correct for the Council to proceed as recommended in the Report as it needed to consider the Developer's submissions. One of the Leading Counsel's opinions addressed the point regarding the CPO and again, it was the view that it was possible for the Council to proceed.

The Leader pointed out that it was also relevant for the Council to consider the benefits of the scheme proceeding.

Councillor Thompson stated that from consideration of the Report, it did appear that SW1 had satisfied the necessary conditions. However, she believed this likely outcome had been known for some time and consequently there was no real prospect of terminating the contract after 1 June 2015 and the public should have been informed of this. She expressed regret about the amount of information contained within the exempt appendices as it gave the impression the Council was not being open and transparent in its decision-making. She asked whether the exempt restrictions could be reconsidered prior to consideration at Council on 15 July 2015. Councillor Thompson considered that Cabinet should give Council clear guidance on the financial implications of their decision and if the 2009 scheme was accepted, further improvements should be sought.

In response to questions, Councillor Thompson gave recent examples of where other local authorities were required to make confidential information available and suggested some currently exempt appendices could be redacted to ensure information was made public as far as possible.

The Head of Estates confirmed that all the figures in the viability appraisals were commercially sensitive and could not be made available, otherwise there

was the risk of funding being withdrawn. With regard to the examples given by Councillor Thompson, the Head of Legal and Democratic Services emphasised that these were all fact and time specific. The Chief Operating Officer noted that a Freedom of Information request had been received from Denton Solicitors, on behalf of Councillor Gottlieb and this would be considered .

With regard to the financial implications, the Chief Finance Officer advised that details of not proceeding with the scheme had been included within previous Reports. These included the loss of receipts from S106 Agreement, not obtaining £5m for the transfer of certain interests in Kings Walk, the cost of maintaining and managing existing assets within the Silver Hill area and the cost of possible future litigation (including possible damages).

Cabinet then moved into closed session to discuss the Exempt Appendices to Report CAB2700 (detail in exempt minute).

Cabinet then returned to open session for debate and to make the resolution outlined below.

Having regard to the discussion above and during the exempt session, all Cabinet Members agreed that they were content with the identity of the housing association. However, one Councillor requested that further information be provided with regard to the heads of terms for the provision of affordable housing to enable a decision to be reached at the Special Cabinet meeting following full Council on 15 July 2015. All Cabinet Members confirmed they also approved the identity of the Fund, but that further information was required prior to 15 July before the heads of terms for the provision of finance for the development could be approved. Cabinet also agreed that based on information presented to them, the Development was financially viable (noting that this was at this particular point in time).

With regard to Recommendation 7 of the Report, the Chief Executive advised that this should be amended to grant authority, in consultation with the Leader. This was agreed.

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

RECOMMENDED:

- 1. THAT COUNCIL SUPPORTS THE APPROACH TAKEN BY CABINET, INCLUDING:**
 - (i) (IN CONNECTION WITH THE SOCIAL HOUSING CONDITION) THE IDENTITY OF THE HOUSING ASSOCIATION BE APPROVED AND THE HEADS OF TERMS FOR THE PROVISION OF AFFORDABLE HOUSING BE APPROVED SUBJECT TO THE RECEIPT OF FURTHER CLARIFICATION DETAILED IN THE EXEMPT MINUTE;**

(ii) **(IN CONNECTION WITH THE FUNDING CONDITION) THE IDENTITY OF THE FUND BE APPROVED AND THE HEADS OF TERMS FOR THE PROVISION OF FINANCE FOR THE DEVELOPMENT BE APPROVED SUBJECT TO THE RECEIPT OF FURTHER CLARIFICATION DETAILED IN THE EXEMPT MINUTE;**

(iii) **(IN CONNECTION WITH THE FINANCIAL VIABILITY CONDITION) THE DEVELOPMENT BE CONSIDERED TO BE FINANCIALLY VIABLE AT THIS POINT IN TIME;**

2. THAT THE POSITION IN RESPECT OF THE WORKS COMMENCEMENT DATE BE CONSIDERED BY FULL COUNCIL ON 15 JULY 2015 SO IT HAS THE OPPORTUNITY TO MAKE ANY COMMENTS TO CABINET, IN THE LIGHT OF THE INFORMATION SET OUT IN THE REPORT AND ANY FURTHER EXTERNAL LEGAL ADVICE TO BE RECEIVED.

RESOLVED:

Subject to consideration of any comments raised by The Overview and Scrutiny Committee on 13 July and full Council on 15 July 2015:

1. That having considered the information submitted by Silverhill Winchester No. 1 Limited (SW1), the contents of this report and the advice from external consultants in respect thereof, and subject to Recommendations 2 and 3 below:-

(iv) (in connection with the Social Housing Condition) the identity of the housing association be approved and the heads of terms for the provision of affordable housing be approved subject to the receipt of further clarification detailed in the exempt minute;

(v) (in connection with the Funding Condition) the identity of the Fund be approved and the heads of terms for the provision of finance for the development be approved subject to the receipt of further clarification detailed in the exempt minute;

(vi) (in connection with the Financial Viability Condition) the Development be considered to be financially viable at this point in time;

as defined and set out in the Silver Hill Development Agreement, as amended.

2. That consideration of the submissions on the Financial Viability Condition, and the Social Housing and Funding Conditions, be undertaken by Full Council on 15 July 2015 so it has the opportunity to

make any comments to Cabinet, before a final decision is taken by Cabinet on how to proceed;

3. That final decisions and approvals in respect of the Financial Viability, Social Housing and Viability Conditions be taken at a meeting of Cabinet immediately following full Council on 15 July 2015, to allow full Council to have an opportunity to make any comments to Cabinet on the matter.

4. That the position in respect of the Works Commencement Date be considered by Full Council on 15 July 2015 so it has the opportunity to make any comments to Cabinet, in the light of the information set out in the report and any further external legal advice to be received.

5. That subject to Cabinet approving the matters above, in respect of the Winchester City Council (Silver Hill) Compulsory Purchase Order 2011 (the Order):-

(i) the Head of Legal and Democratic Services be authorised to execute General Vesting Declarations or, at his discretion, to serve Notices to Treat and where necessary Notices of Entry under Sections 5 and 11 of the Compulsory Purchase Act 1965 in respect of land included in that Order;

(ii) the Head of Estates be authorised to negotiate and agree terms with interested parties for the purchase by agreement or payment of compensation for any of the interests or rights included in the Order and where appropriate to agree relocations;

(iii) the Head of Estates be authorised to take all necessary steps in relation to compensation issues which are referred to the Upper Tribunal (Lands Chamber), including advising on the appropriate uses and compensation payable and in issuing any appropriate certificate and be further authorised to appoint chartered surveyors jointly with Silver Hill Winchester No. 1 Limited to assist and advise in this regard.

6. That the decision of Cabinet of 21 May 2015 (CAB2695 refers) to appropriate for planning purposes within the meaning of Part IX of the Town and Country Planning Act 1990 such land as is within the Council's ownership within the area shown coloured pink on the plan at Appendix 2 to that report be re-affirmed.

7. That subject to the Cabinet approving the matters set out above, the Chief Executive in consultation with the Leader be authorised to determine and confirm (if required) on behalf of the Council (following the entering into of any necessary agreements by SW1) that the Social Housing Condition, the Funding Condition, and the Financial Viability Condition have been satisfied, as set out in paragraph 7.1 of the report.

4. **153 HIGH STREET, WINCHESTER**
(Report CAB2706 refers)

With regard to the declarations of interest detailed above, Cabinet noted that Councillor Gottlieb was not present in the room for this item.

The Chairman stated that the Report's recommendations were subject to approval by Council on 15 July 2015 of the proposals in Report CAB2700 for Silver Hill to proceed.

The Head of Estates emphasised that if the Silver Hill development was to go ahead, there was likely to be an increase in footfall at the lower end of the High Street with a consequential positive impact on the value of retail premises. As detailed in the Report's appendices, an offer had been received for 153 High Street of £750,000 from Councillor Gottlieb based on a community trust. However, there was no detail as to how this would be funded and he believed Cabinet should also have regard to whether it was appropriate for an asset to be transferred to a public trust when it was already in public ownership. Therefore the Report recommended that the offer from Councillor Gottlieb be rejected as it was considered both to be inappropriate and below full value.

The Head of Estates advised that the proposals set out in the Report involved redeveloping the property to improve its attractiveness to retailers and also to widen the Cross Keys Passageway slightly to improve access to the Silver Hill development. This would require planning permission to be granted.

In response to questions, the Head of Estates confirmed that the property might continue to be let to Oxfam should they wish, at the appropriate market value.

RECOMMENDED:

THAT THE PROPOSALS FOR THE DEVELOPMENT OF A NEW PROPERTY ON THE SITE, AND A SUPPLEMENTARY CAPITAL ESTIMATE OF £400,000 (THE ANTICIPATED CAPITAL COSTS OF THE SCHEME) BE APPROVED, SUBJECT TO A DETAILED BUSINESS CASE BEING REPORTED TO CABINET SUBSEQUENTLY AND APPROVED IN ACCORDANCE WITH FINANCIAL PROCEDURE RULE 6.4.

RESOLVED:

Subject to consideration of any comments raised by The Overview and Scrutiny Committee on 13 July or Full Council on 15 July 2015:

1. That the principle of redeveloping 153 High Street in a similar way, but in an improved form, to that which was approved by Planning Committee in December 2014 be approved.

2. That the Head of Estates be authorised to seek competitive quotes from architects to develop a design for a replacement shop unit to include a potential flat or office above.

3. That the Head of Estates be authorised to submit planning and other applications for works requiring statutory consent.

4. That the Head of Estates be authorised to appoint cost and other consultants necessary to prepare a full business case for the development of a new property on the site.

5. That a budget of £35,000 be approved for the works necessary to develop the business case from the Asset Management Plan budget.

6. That the offer from Cllr Gottlieb to purchase the freehold of the property on behalf of a community trust in the sum of £750,000 be rejected.

5. **EXEMPT BUSINESS**

As it had not been possible to give 28 days notice of the meeting, Cabinet noted that the Chairman of The Overview and Scrutiny Committee had been informed and has confirmed his agreement to part of the meeting being held in private.

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 – Exempt Appendices 9, 10, 11, 12, 13, 14, 15A, 15B, 15C, 16 & 17) 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)

6. **SILVER HILL – SUBMISSIONS BY SILVERHILL WINCHESTER NO 1 LTD
AND COUNCIL’S RESPONSE (EXEMPT APPENDICES)**
(Report CAB2700 refers)

Cabinet considered the contents of the exempt appendices (detail in exempt minute).

The meeting commenced at 2.00pm and concluded at 6.30pm

THE OVERVIEW AND SCRUTINY COMMITTEE - SPECIAL MEETING

13 July 2015

Attendance:

Councillors:

Cook (Chairman) (P)

J Berry (P)
Gemmell (P)
Hiscock
Humby
Sanders (P)

Stallard
Tod (P)
Thacker (P)
Wright (P)

Deputy Members:

Councillor McLean (Standing Deputy for Councillor Humby)
Councillor Thompson (Standing Deputy for Councillor Hiscock)

Others in attendance who addressed the meeting:

Councillors Godfrey (Leader of the Council) and Gottlieb

Others in attendance who did not address the meeting:

Councillors Achwal, Burns, Byrnes, Evans and Weston,

1. DISCLOSURE OF INTERESTS

Councillors Tod declared a disclosable pecuniary interest in respect of agenda item CAB2700, due to his role as a County Councillor. However, as there was no material conflict of interest, he remained in the room, spoke and voted under the dispensation granted on behalf of the Standards Committee to participate and vote in all matters which might have a County Council involvement.

Councillor Gottlieb declared a personal (but not prejudicial interest) in respect of Item 4 below, due to his role in the "Winchester Deserves Better" campaign. The Chief Operating Officer stated that the letter from Dentons Solicitors, Appendix 3A, indicated that Councillor Gottlieb might seek to take legal action against the Council and this could lead to a conflict of interest. Therefore, when the Committee was considering legal advice, Councillor Gottlieb might be asked to leave the room where that advice could relate to a challenge against the Council. However, this situation did not arise.

2. **CHAIRMAN'S ANNOUNCEMENT**

The Chairman welcomed to the meeting approximately 15 members of the public and local interest groups as well as the Council Advisors. He explained the procedure that would be followed. Public participation would be allowed at the start of the meeting, followed by the Officer presentation of the Report and questions from Members. Following consideration of the contents of the information contained within the exempt appendices to CAB2700, The Overview and Scrutiny Committee would return to open session for consideration of the recommendations as set out in Report.

3. **PUBLIC PARTICIPATION**

Mr. P Davies stated that he had spoken at Cabinet and had commented on the large proportion of confidential reports that related to item 4 and the large extent to which the item had not been considered in public. He added that in his view it was not sensible or effective for The Overview and Scrutiny Committee to consider an item, when Cabinet had only just concluded consideration of it and where items of legal advice still required clarification.

Mrs U Stevens stated that she had spoken at Cabinet as she was passionate about the future of the Silver Hill site and appealed to the Council to adopt a just and right way forward. The Council might be at risk of legal challenge, but it might not be, and it should face up to the fear of a legal battle. She added that in a democratic society there should be transparency and openness and there was a need to be assured that the legal advice was sufficiently robust. There had been a delay in commencement of the meeting and the appendices to the report had been hastily prepared, which raised concerns over the openness of the meeting. She requested Councillors to be brave and to take their time to reach a correct decision.

Ms P Stewart acknowledged that Silver Hill was a difficult decision for the Council and she urged the Council not to go forward with the present scheme and to fundamentally reconsider its proposed course of action.

Councillor Gottlieb stated in summary that he reiterated the comments made by Mr. Davies on the ability of the Committee to scrutinise a decision that had only just been made. Decisions needed to be made on robust information, which was not the case at this meeting. He did not accept that a decision could not be delayed due to the fear of a claim of damages and in his view the process should take as long as was required, as at present there was too much uncertainty and vulnerability.

3. **SILVER HILL: SUBMISSIONS BY SILVERHILL WINCHESTER NO 1 LTD AND COUNCIL'S RESPONSE (LESS EXEMPT APPENDICES)**
(Report CAB2700 refers)

Note: Councillor Gottlieb attended the meeting for the initial open session and for some questions in the exempt session. He then left the meeting during

further consideration of this item in exempt business and prior to the conclusion of the debate.

The Overview and Scrutiny Committee noted that CAB2700 and appendices had not been published for inclusion on the agenda within the statutory deadline. The Chairman agreed to accept these items onto the agenda as a matter requiring urgent consideration to enable their contents to be considered prior to Council and Cabinet on 15 July 2015.

The Committee noted that the report had been considered at length by Cabinet at its meeting held earlier in the day and that it would refer to Cabinet's decisions which were outlined by the Leader below.

The Chief Executive outlined the procedure that the Committee would follow during the consideration of the report in its open public and exempt private sessions. It was anticipated that as much of the debate would be taken in open public session as possible.

The Chief Executive reminded the meeting that it was for Cabinet to reach a decision (following consideration by Council) and that the comments made by this Committee would be taken into account by the Leader in Cabinet's decisions. The procedure for the meeting was outlined, which was to first consider in open session the topics as set out in the report, then to give further consideration of the topics under exempt business, and in conclusion to make the final decision in open session.

In reply to a number of Members' comments, the Chairman acknowledged the difficulty of the Committee to scrutinise papers that had been submitted shortly before the meeting and the Chief Operating Officer explained the legal position for the Council to make decisions at short notice in cases of urgency. The Head of Legal and Democratic Services also explained the timetable for consideration and explained that a definitive response was required by 16 July 2015, otherwise the Council would be in breach of its obligations under the Development Agreement.

The Leader summarised the conclusions of the Cabinet meeting which had been held immediately prior to the meeting of The Overview and Scrutiny Committee. He stated that the identity of an affordable housing provider and funder had been agreed, but some matters on the Heads of Terms required further clarification. It was hoped that this clarification could be concluded for the Council meeting and Cabinet on Wednesday, 15 July. There had been agreement that the financial viability condition had been met and the six other recommendations had been agreed subject to consideration by this Committee and Council before a final decision was taken.

The Committee proceeded to ask questions on each of the five areas within the report.

Obligations under the Development Agreement and Denton's letter:

The Head of Legal and Democratic Services informed the meeting that the letter from Denton solicitors acting for Councillor Gottlieb could be dealt with in exempt session.

In reply to Members' questions, the following points were clarified:

That although the name and ownership of the developer (Silverhill Winchester (No. 1) Limited, SW1) had changed, the developer remained the same entity with whom the Council had entered into the Development Agreement in 2004. Exempt Appendix 15 A set out the conditions that needed to be met.

SW1 had submitted the planning application for the Silver Hill Scheme, not the Council, and therefore the application was not an application under Regulation 3 of the Town and Country Planning General Regulations 1992. Accordingly, it was permissible to deal with the matters in exempt session, as paragraph 9 of Schedule 12A to the Local Government Act 1972 did not apply.

The risk of financial harm to the City Council from litigation against it (e.g. for breach of contract) could include the sums expended by SW1 up to this stage in the development, as well as potential future profits. There would also be other financial impacts on the City Council, for example the non receipt of the £700,000 from the Section 106 agreement and the need to incur expenditure to maintain assets that had not been budgeted for. The City Council had financial reserves that it could use if required, but to do so would have a significant impact on the capital budget and the Council's other plans.

If the Council terminated the Development Agreement on the basis that the Development Agreement had not gone unconditional by 1 June 2015, then SW1 would have 20 days to meet the outstanding conditions, in which case the Agreement would not terminate. However, there was a risk that SW1 would opt to issue court proceedings against the Council, seeking damages for breach of contract.

Mr. Markanday of Berwin Leighton Paisner stated that if the Council terminated the Development Agreement, then any ensuing litigation could last between 12 months and 24 months (possibly longer). Further, any new developer coming in to carry out the development in place of SW1 following termination might also be sued by SW1.

There was a limited opportunity to change the 2009 scheme. The Development Agreement set out minimum requirements for the scheme, and any changes to the scheme would have to be in compliance with the terms of the Development Agreement, or constitute a lawful variation of the Agreement. In addition, planning requirements would have to be met. The High Court decision limited the scope for variation, but it was possible that small, non-material changes and variations might be considered, although the Council was not able to require SW1 to make changes to the approved scheme.

Funding condition.

The Chief Finance Officer introduced Mr. C. Edwards from Deloitte, the Council's financial advisers, to the meeting.

Mr. Edwards confirmed that Deloitte had looked at the financial strength of the proposed affordable housing provider and funder, using published sources of information, and was satisfied that they were acceptable. Furthermore, subject to some further clarification, the Funding Heads of Terms were also acceptable.

Social housing condition.

The Head of New Homes Delivery introduced Mr. T Hamilton-Miller from Knight Frank, who had been appointed to advise on the financial viability of the scheme, as well as affordable housing issues. It was explained that Knight Frank had considered in detail the affordable housing Heads of Terms in the light of the requirements of the Section 106 agreement and had concluded that the offer made by the proposed affordable housing provider was reasonable, and that the affordability test criteria would be met.

Knight Frank explained that there was likely to be a strong demand for both the social rented and the shared ownership units. In the unlikely event that any share ownership units remained unsold, it would be possible to consider other forms of tenure for these, or a commuted payment.

It was explained that the Social Housing Condition would be met when an agreement between SW1 and the affordable housing provider was entered into, following approval of the provider and Heads of Terms by the Council.

Financial Viability Condition.

The Head of Estates introduced Mr. Peter Barnard from Knight Frank and Mr. Richard Owen from Deloitte to the meeting. The Head of Estates explained that two separate opinions on the financial viability of the scheme had been commissioned to give an independent opinion on the development appraisal submitted by SW1.

It was explained that each firm had worked independently, and assessed the submitted appraisal, together with a considerable amount of additional information which had been provided by SW1. The work had been carried out in accordance with industry best practice and the guidance provided by the Royal Institution of Chartered Surveyors. Whilst there were some variations between the two assessments, as would be expected, both firms concluded that the figures included in the financial appraisal were reasonable, and showed that the minimum profit on cost return requirement was achieved. Therefore, the advisers were satisfied that the Financial Viability Condition had been met.

An assessment of the changes in viability which had occurred with the scheme between from 2013 to 2015 were explained in a second Deloitte report, Exempt Appendix 17 refers. On the evidence submitted, the scheme was viable and deliverable at the present time. Should the situation change in the

future, various mechanisms in the Development Agreement would provide security to the Council to ensure that the scheme would be carried forward through to completion.

The Chief Finance Officer reported that the detail of the development account (which was reviewed against the requirements of the Development Agreement) was exempt information due to the commercial sensitivity of the information within it. The position of the development account was kept under review by officers, and had been last reported to Members in May 2015.

Works Commencement Date.

The Head of Legal and Democratic Services explained that Appendix 8 (Summary of Submissions and Assessment of Submissions) had not been issued, and an oral update would be given instead.

He explained that the Council had a right to terminate the Development Agreement if certain defined works had not been carried out by 1 June 2015. Further legal advice on this issue would be given under Exempt Business.

Debate.

Prior to considering the item under Exempt Business, the Committee debated the issues raised to date.

A Member expressed concern that the viability had changed over time and that the Council was now considering a dated 2009 scheme, as ideas on design had changed between then and 2015.

There was also comment on the limitations imposed on decision-making due to the time constraints and the confidentiality of some of the information which prevented it being discussed in open session with the public present. It was suggested that an Informal Scrutiny Group could consider best practice in openness on viability assessments, such as the methods used by some London Boroughs.

A number of Members were supportive of the scheme proceeding and there was an ambition to improve the scheme from that under consideration and a further recommendation was suggested to have a clear commitment to search for possible improvements to the scheme, provided these were consistent with the Compulsory Purchase Order and with the Development Agreement and its associated legal constraints.

Another Member warned of the dangers if the Council made the wrong decision, and noted that the financial viability appraisal had had two positive reports from the Council's advisers. The development would provide much-needed affordable housing. However, the figures in the financial appraisal should be regularly monitored.

It was noted that the risks associated with the scheme were set out in Appendix 7.

The Committee then moved into closed session to discuss the Exempt Appendices to Report CAB2700 and returned to open session to make the resolution outlined below.

In conclusion, the Committee made recommendations and resolutions as set out below. The Committee agreed that the scheme would benefit from regular up to date monitoring of the key factors. The Head of Estates commented that the Council would have access to development appraisals and monitoring information could be provided throughout the development phase of the project. In addition, the Committee asked that a redacted copy of the AECOM report be circulated to all Members to give added reassurance.

The Committee also supported Cabinet in seeking further clarification to the Heads of Terms for the Affordable Housing and Funding conditions.

During further discussion a Member suggested that The Overview and Scrutiny Committee give future consideration to the establishment of an Informal Scrutiny Group to consider the Council's processes for handling viability calculations, particularly in planning matters, in an open and transparent way – taking account of the latest developments in other authorities such as Southwark, Islington, Greenwich and Westminster – and the latest rulings by the Information Commissioner.

RECOMMENDED:

That the following matters be raised with Cabinet and Council.

- 1. That The Overview and Scrutiny Committee supports the position taken by Cabinet in seeking further clarification of the heads of terms on funding and affordable housing.**
- 2. That Cabinet should continue to seek improvements to the scheme that are:**
 - (i) Consistent with the Development Agreement and associated legal constraints,**
 - (ii) Consistent with the Compulsory Purchase Order,**
 - (iii) Consistent with viability.**
- 3. That Cabinet and The Overview and Scrutiny Committee should commit to regular monitoring of key factors for the scheme.**
- 4. That Cabinet should appoint a dedicated implementation officer to the Silver Hill project with suitable experience, skills and training to manage the Council's contribution to the scheme.**

RESOLVED:

1. That the Leader consider providing Members with a redacted copy of the AECOM cost review ahead of Full Council.

4. **153 HIGH STREET, WINCHESTER**
(Report CAB2706 refers)

The Overview and Scrutiny Committee noted that CAB2706 had not been published for inclusion of the agenda within the statutory deadline. The Chairman agreed to accept the item onto the agenda as a matter requiring urgent consideration to enable its contents to be considered prior to Council on 15 July 2015.

The Committee noted that the report had been considered by Cabinet at its meeting held earlier in the day and that it would refer to Cabinet's decisions which were outlined by the Leader.

The Leader stated that Cabinet had supported the recommendation, as the redevelopment of the property and increased footfall through the widened Cross Keys Passage would increase its rental value.

Following debate the Committee agreed not to call-in the matter.

RECOMMENDED:

THAT THE PROPOSED SUPPLEMENTARY ESTIMATE OF £400,000 BE NOT CALLED IN AND NO MATTERS BE RAISED WITH THE LEADER, CABINET AND COUNCIL.

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 100(l) and Schedule 12A to the Local Government Act 1972.

Minute Item
Number

Description of
Exempt Information

