



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 1

From: Councillor Hiscock

To: The Leader

“What is the projected annual income to the Council from a completed development on Silver Hill using the 2009 Planning Approval?”

Reply

“Under the Development Agreement, the Council is to receive an annual rent geared to a percentage of the overall rental income of the scheme, with a minimum guaranteed annual rent of £250,000. This would be the minimum level of rent, and it is quite possible that the actual income may be around £400,000.”

Supplementary – from Councillor Gottlieb

“Can the Leader please confirm that in the 20 years since a comparable deal was made in respect the Brooks, the Council has received very little, if anything, above the minimum rent first agreed?”

Reply

“Past economic and market conditions will not necessarily be replicated into the future and whilst both schemes provide for a minimum rent, the basis of setting that minimum rent is different in each case. The performance of the Brooks scheme cannot therefore be used to judge the proposed arrangements for the Silver Hill scheme.”



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 3

From: Councillor Twelftree

To: The Leader

“Have you received any indication from Ms Lloyd-Jones's as to when her review will be completed and her report will be available to this Council?”

Reply

“The timing of the completion of the review is a matter for Ms Lloyd-Jones. The Council did not set a deadline, but agreed she should have the time she felt necessary to complete her work.

I understand she continues to receive submissions from Councillors, which I am sure she will wish to give careful consideration to. So I would suggest the completion of the report is not imminent.”

Supplementary – from Councillor Gottlieb

“Will the Leader please confirm that when Ms Lloyd-Jones's review is received by the Council it will be made public without redaction and, furthermore, will he confirm that any draft issued by Ms Lloyd-Jones will be made available to all contributors to it and not just 'checked over' by the Council?”

Reply

“This is an independent review, and it is a matter for Ms Lloyd-Jones as to how it will be released.

I will ensure that her final report is sent to all members, and is made public, as soon as possible after its release. I would not expect any of the report to be redacted save where considerations of commercial sensitivity or data protection may require that.”



Winchester
City Council

COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 6

From: Councillor Simon Cook

To: The Leader

“What is the estimated cost to the Council of the campaign by those opposed to the Silver Hill development, in terms of providing formal responses to critical submissions and the expenditure on professional advice?”

Reply

“Before agreeing to the 2014 Silver Hill scheme, the Council took legal advice which indicated that it was lawful to agree the proposed scheme.

As a result of the challenge being made, the Council had to engage consultants and advisors (including legal and surveying expertise) to defend the Council’s position. As well as these costs, the Council must also pay Councillor Gottlieb’s costs of bringing the challenge.

Following the judgment, further professional advice was needed on the various options open to the Council. When Henderson elected to pursue the 2009 scheme, legal and surveyor advice was required to review the submissions made by Henderson, and the costs of this were increased due to the Council’s decision to engage a second set of consultants to advise on the financial viability of the scheme.

Some costs (such as advice on the identity of the funder and social housing provider) would have been incurred in any event, whether the scheme being pursued was the 2014 scheme or the 2009 scheme. However, the costs attributable to defending the challenge and considering options after the judgment were only incurred as a result of the challenge.

I understand that the total extra costs incurred since the challenge is in excess of £500,000 excluding officer time.

Although a proportion of these costs will be reimbursed by the developer and included in the development account, the effect of this will be to reduce the overall profitability of the scheme, and potentially therefore reducing the profit share payable to the Council. Any costs which cannot be properly charged to the development account will have to be paid by the Council directly.”

Supplementary from Councillor Gottlieb

“The Leader's answer is akin to criticising the policeman for the cost of arresting the burglar. In the clear knowledge that the legal advice the Council had received regarding procurement was flawed, why did it not seek new legal advisors to consider whether or not it could put a complete cessation on further expenditure before it was properly understood why the Council had acted unlawfully? Furthermore, will the Leader not accept the fact that the Council has wasted a considerable amount of money and time entirely as a result of its own unlawful actions?”

Reply

“The decision of the Court of Appeal this week to grant permission for an appeal against the High Court judgment shows that the legal position is as not clear as is suggested. The Court agreed that there is an arguable case to be considered – if the Court of Appeal had thought that the judgment was correct and unarguable, it would have refused permission.

The Council will continue to seek advice from appropriate consultants to assist it in dealing with the Silver Hill scheme, and secure the regeneration of this site.”



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 8

From: Councillor Thompson

To: The Leader

“Could he confirm whether Hendersons have now met all the conditions in the Development Agreement for it to go unconditional. If not, when does he expect this to happen?”

Reply

“The position remains as reported to Cabinet on 21 October 2015. The outstanding conditions in the Development Agreement have not yet been met, but Hendersons are continuing to work towards finalising the agreements with the affordable housing provider and the funder to allow the Agreement to go unconditional.

In their letter to the Council of 13 October (CAB2736 Appendix 1), Hendersons indicated their intention to be in a position to start on site by the end of this year.”

Supplementary from Councillor Gottlieb

“Under the terms of the contract, as varied, Henderson had up until 1st June 2015 to satisfy conditions, which it had the previous decade to deal with. Despite the fact that 6 months ago Cabinet voted not to extend the long stop date, before which conditions had to be satisfied, to 31st October, that is exactly the position the Council has drifted into. Can the Leader please explain why the Council has failed to enforce the terms of the contract?”

Reply

“As has been previously made clear, the contract did not terminate on 1 June 2015 – after that date, the Council could serve notice to terminate it. In July, it decided not to do so, and instead to approve heads of terms and the identities of a social housing provider and a funder respectively, in order to secure the redevelopment of Silver Hill through the 2009 scheme and the existing

favourable terms of the development agreement. Work on securing agreements with those two parties has been ongoing, and a report will be made to Cabinet on 2 December 2015.”



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 16

From: Councillor Hutchison

To: The Leader

"Could the Leader please tell us who will be assessing the PQQs and shortlisting bidders in the Station Approach area design competition, will there be someone with design expertise and which stakeholders will be involved in the subsequent dialogue process?"

Reply

"An RIBA accredited adviser has been commissioned to provide technical and professional support and advice for the pre-qualification and short listing process. Relevant Council officers will also be involved in this process.

Hampshire County Council architectural support will be provided to assist with the Competitive dialogue. Other relevant stakeholders will be included such as Hampshire County Council transport and highways, Network Rail and train and bus operating companies as appropriate.

The Council will also commission external Cost Consultants and Valuers to support the dialogue process."

Supplementary from Councillor Hutchison

"Thank you for your reply to my question about assessing the PQQs and shortlisting bidders in the Station Approach area design competition. The inclusion of an RIBA accredited adviser, HCC and Network Rail is welcomed but can you please let me know who will be involved in the Bidders' Day and subsequent dialogue process and how are the needs, desires and local knowledge of users of the area to be reflected in the process of design development, will ward councillors and panel members be included in the Bidders' Day and dialogue process?"

Reply

“The Bidders day will include City Council officers from the relevant disciplines, a Cabinet Member and the appointed RIBA Advisor.

The Dialogue process will include City Council officers from the relevant disciplines and an architect from Hampshire County Council and the RIBA Advisor.

The Jury will include Members with local knowledge, The City of Winchester Trust and a different architect from Hampshire County Council. The Brief which informs the work has been developed through widespread consultation and input from local groups.”



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 16

From: Councillor Hutchison

To: The Leader

"Could the Leader please tell us who will be assessing the PQQs and shortlisting bidders in the Station Approach area design competition, will there be someone with design expertise and which stakeholders will be involved in the subsequent dialogue process?"

Reply

"An RIBA accredited adviser has been commissioned to provide technical and professional support and advice for the pre-qualification and short listing process. Relevant Council officers will also be involved in this process.

Hampshire County Council architectural support will be provided to assist with the Competitive dialogue. Other relevant stakeholders will be included such as Hampshire County Council transport and highways, Network Rail and train and bus operating companies as appropriate.

The Council will also commission external Cost Consultants and Valuers to support the dialogue process."

Supplementary from Councillor Gottlieb

"The Leader describes a very narrow and insular group of adjudicators and excludes the public from the process. Why?"

Reply

"There will be public representatives on the Jury in the form of a Ward Councillor and a representative of the City of Winchester Trust. There has also been active involvement by the public in shaping the Design Brief.

The legal advice which has been received and reported to Cabinet on 17th September 2015, identifies the element of risk in any public consultation

forming part of the formal evaluation criteria that the jury will work to, and therefore it was recommended that this should not form part of the process, as it may open the Council to the risk of legal challenge.

However, as agreed by Cabinet, the shortlisted design teams' final submissions will be exhibited in public for the public to view. The final decision for awarding the contract lies with Cabinet, and in deciding whether or not to proceed with the highest scoring scheme, they will obviously have regard to all material considerations including any representations which are made to Cabinet in its role as the decision maker.”



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 18

From: Councillor Gottlieb

To: The Leader

“At its meeting on 10th September 2014 Cabinet agreed to let Henderson acquire the Friarsgate surgery from itself.

When Henderson acquired its interest in 2010, it put the development contract in one company, SW1, and it put the surgery which Thornfield had acquired some years earlier in another company, SW2. Last year, when the Leader was P.H. Finance, the Council agreed to let SW1 ‘buy’ the Friarsgate surgery from SW2 for an amount significantly greater than Henderson/Thornfield originally paid for it.

In the context of normal development partnerships describing SW2 as “a third party”, as CAB2609 does, is misguided. Because Henderson has been allowed to improperly inflate their actual costs the amount the Council will potentially receive for its assets has been diminished.

Can the Leader please explain how this curious arrangement is meant to comply with Council’s statutory obligation to achieve best consideration?”

Reply

“The acquisition took place as part of the administration of the various Thornfield companies by the appointed administrator. This was by way of a sale of shares, and the Council’s involvement in the administration process was limited to dealing with consequential matters such as the guarantee arrangements under the Development Agreement which were needed to protect the Council’s interests. As explained in CAB2609, the terms of the acquisition by SW1 which were approved in 2014 were properly negotiated, and reviewed by the Head of Estates, who concluded that they should be approved, on the basis that the price to be paid was a fair and reasonable one.

The Council’s duty to obtain best consideration only arises on a disposal of land owned by the Council, not by a third party such as SW2.”

Supplementary from Councillor Gottlieb

“SW1 and SW2 may be separate companies but they are related parties, and in the context of the Development Agreement it is extraordinarily submissive and wholly inappropriate for the Council to have agreed to this arrangement. It plainly confirms that the Council has failed to attain best consideration. Will the Leader please ensure that the Council uses the negotiating strength it still has to reverse this arrangement so that only costs "properly incurred" as the Development Agreement stipulates, are charged to the development account?”

Reply

“The Council has acted in accordance with the terms of the agreements which it has with the developer, and advice received. There is therefore no justification to seek to reverse this arrangement. Only those costs which have been properly incurred will be permitted to be charged to the development account.“



Winchester
City Council

COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 19

From: Councillor Susan Cook

To: The Portfolio Holder for Service Delivery

“As I understand the way in which minutes of meetings are taken throughout ALL meetings is that we have a dedicated member of the Democratic Services Team take by hand the conversation that takes place in that particular meeting. Can you please tell me why we do not record the meeting or video the meeting so that in a case were there appears to be something said maybe in answer to a question or a statement which in the future needs to be referred to its not by notes where things can be missed or misunderstood when written by another Human?”

Reply

“The Council has previously considered webcasting council meetings, but this was not pursued due to the level of cost and issues such as management and operation of the necessary equipment.

The official record of any meeting is the minutes of the meeting, which are drafted by the Democratic Services Team, and subsequently approved at the following meeting. I see no reason to change the current practice for producing minutes.”

Supplementary from Councillor Gottlieb

“Can the Leader please explain why minutes of the Silver Hill Reference Group are published on the Council's website entitled "Commercial in Confidence", when they are meant to be private and assurances were given that they were meant no more than an informal record not for circulation?”

Reply

“The notes were published following a request from a member of the public. Publishing them demonstrates the Council's open and transparent approach.”



Winchester
City Council

COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 20

From: Councillor Twelftree

To: The Portfolio Holder for Environment, Health and Wellbeing

“What is the role of this Council in administering Traffic Regulation Orders and Stopping Up Orders on behalf of Hampshire County Council?”

Reply

“Winchester City Council carry out various Traffic Management functions on behalf of Hampshire County Council under a Traffic Management Agreement between the two Authorities.

The introduction of new Traffic Regulation Orders for waiting and parking restrictions is one of the functions included in the agreement.

Stopping Up Orders or other Orders whereby any road will cease to be available as a vehicular highway are reserve matters and are generally only carried out directly by HCC.”

Supplementary from Councillor Twelftree

“Could the Portfolio holder confirm that, in relation to the Barton Farm TRO for the diversion of the Andover Road through the new Barton Farm estate, part of the process will be a period of consultation and whether it will include members of the public and/or local Councillors.”

Reply

“Yes there will be a consultation process in relation to the TRO for Barton Farm which will provide an opportunity for members and the public to comment. In this case the TRO process will be undertaken by Hampshire County Council.”



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 23

From: Councillor Gottlieb

To: The Leader

“In the material that the Information Commissioner directed the Council to disclose, the total cost of construction estimated by Henderson’s own cost consultants, Gleeds, is £89,010,000. In the ‘High Level Summary Development Appraisal’ produced by Henderson, the “Construction Costs” are stated as being £75,960,176. Can the Leader please provide an explanation for the approximate £13,000,000 difference between the two figures?”

Reply

“The figure included in the high level appraisal produced by Henderson in July 2014 two months after the Gleeds document to which Cllr Gottlieb refers and was its most up to date assessment of what the total construction costs would actually be after value engineering and negotiations with a construction partner.”

Supplementary from Councillor Gottlieb

“At the time the so-called high level appraisal was submitted by Henderson, they had neither a structural engineer nor a M & E consultant appointed. There were no detailed drawings, no structural drawings, no services drawings and, as far as Members are aware, no detailed specification. All this material and much more is needed before any value engineering exercise can begin. Will the Leader please acknowledge that not only do the figures provided by the professional cost consultants confirm that Henderson are unable to satisfy the Financial Viability Condition, but that Henderson's reliance on aspirational cost savings cast considerable doubt over other constituent parts of the appraisal too?”

Reply

“The question relates to the 2014 scheme, not to the 2009 scheme which is currently being pursued by Henderson. In relation to both schemes,

independent assessments of viability have been carried out, taking into account all the elements included in the appraisals at the relevant time. The time to assess whether the Financial Viability Condition is met is when the other two conditions have been fulfilled, at which point a further independent assessment will be made.



COUNCIL MEETING – 4 November 2015

Question under Council Procedure Rule 14

QUESTION 25

From: Councillor Gottlieb

To: The Leader

“To save bothering the Information Commissioner again, can the Leader please kindly ensure that the same information he directed should be made public will be made immediately available in respect of the Silver Hill scheme consented in 2009?”

Reply

“As the information in respect of the 2009 scheme was supplied to the Council on a confidential basis, it would be necessary to consult Henderson before releasing any of this information. I have asked officers to consult Henderson accordingly, and (subject to any views Henderson may have), release the equivalent information to that directed to be disclosed by the Information Commissioner for the 2014 scheme.”

Supplementary from Councillor Gottlieb

“Henderson are in no position to direct how the Council responds to the instruction of the Information Commissioner. Can the Leader please ensure the immediate disclosure of all the information relating to the 2009 scheme as the Commissioner instructed in respect of the 2014 scheme?”

Reply

“The Council has complied with the Information Commissioner’s requirements. The Information did not (and indeed could not, as it was not before him) make any direction as far as information relating to the 2009 scheme.

As the information in question includes confidential material, it is entirely right and proper for Henderson to be consulted before any material is released.”