

COUNCIL

28 January 2016

EXTRACT OF MINUTES OF THE OVERVIEW AND SCRUTINY COMMITTEE  
HELD 18 JANUARY 2016

REPORT OF THE DEMOCRATIC SERVICES MANAGER

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

Appendix A to this report sets out extracts from the minutes of The Overview and Scrutiny Committee held 18 January 2016 for the consideration of Council.

RECOMMENDATION:

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

## Appendix A

### The Overview and Scrutiny Committee Minute Extract – 18 January 2016

1. **SILVER HILL REGENERATION – STATUS REPORT (LESS EXEMPT APPENDIX)**

(Report CAB2755 refers)

**SILVER HILL REGENERATION – STATUS REPORT – ADDENDUM**

(Report OS137 refers)

**EXTRACT FROM MINUTES OF CABINET HELD 13 JANUARY 2016 (LESS EXEMPT MINUTE)**

(Report OS138 refers)

The Committee noted that Reports CAB2755, OS137 and OS138 had not been notified for inclusion on the agenda within the statutory deadline. The Chairman agreed to accept the items onto the agenda as matters requiring urgent consideration to enable the Report to be considered prior to the Special Council Meeting on 28 January 2016.

Councillor Godfrey outlined the background to the Report that had previously been considered by Cabinet at its meeting on 13 January 2016. In summary, he advised that in July 2015 the Council and Cabinet had agreed to SW1's proposals to build the 2009 scheme with the funder and housing provider nominated by them. It had been indicated by SW1 that the Development Agreement would go unconditional in 6-10 weeks, but this had not occurred by the end of September. It was noted that the Council had then met with representatives of SW1, who assured the Council that good progress had been made and they expected the Development Agreement to become unconditional and work to commence on site by Christmas 2015. These assurances had not occurred. At this stage Councillor Godfrey referred to the two significant dates: the planning deadline of 9 February 2016 and the date of expiry of the Compulsory Purchase Order (CPO) on 19 March 2016.

Following a request from Cabinet on 2 December 2015, Councillor Godfrey had been asked to write to SW1 to indicate various areas of concern. This letter, together with the response from SW1, are set out in Appendices 1 and 2 respectively to the Report. The letter from SW1 (dated 22 December 2015) gave a clear indication that some changes to the 2009 scheme were essential in order to comply with building regulations, but (in its view) the restrictions from the judicial review judgment meant even these were difficult, if not impossible, to achieve. The letter, therefore, requested that the Council agree not to terminate the Development Agreement before the end of a period of at least nine months after the appeal proceedings were concluded.

Councillor Godfrey stated that, based on Council's decision of July 2015, more recent discussions with the developer and the decision of Cabinet taken on 13 January 2016, the Council should still be aiming for the 2009 scheme to be progressed and the advice from Counsel was that this could be achieved with acceptable minor updates. If the scheme did not go unconditional, it was

not possible to retain the CPO beyond the expiry date of 19 March 2016 unless there was funding in place for the costs of implementing the CPO.

Councillor Godfrey made reference to the potential length of the appeal process. The appeal date of 24 May 2016, followed by the outcome, (which may not be announced for a further number of weeks) and then with the possibility of progression to the Supreme Court by either party, meant that the final decision of the appeal against the Judicial Review decision could take at least 18 months to be determined, based on legal advice. Following this process, with the significant changes to the development indicated by SW1 (such as the removal of the bus station and reductions to the level of affordable housing provision), together with the submission and process of further planning applications, could result in a delay of at least three to four years.

Councillor Godfrey expressed strong concerns regarding the ongoing levels of uncertainty that would inevitably occur with waiting for a development which would be dependent on the results of an appeal process and would require variations to a Development Agreement that had been in place for the last 12 years. Councillor Godfrey considered that any further delay of three to four years would not constitute a good position for the Council or the residents of the Winchester District and he stressed the need for greater certainty in this development going forward. Consequently, he outlined the Options available to the Council and suggested that Options A and B, as outlined in the Report should not be supported.

Councillor Godfrey also drew to the Committee's attention that Option C (termination of the Development Agreement but implement CPO by service of Notices to Treat) would require the Council to make budget provision for full purchase of the properties at a cost of approximately £35 million. A full financial assessment of the impact of this decision was not yet available, but indications were that it might prevent the Council from achieving other schemes in its capital programme, such as Station Approach or a new Leisure Centre. However, implementing the CPO in this way would enable the Council to retain control over the area. A Member Briefing would take place on Monday, 25 January 2016, where financial advice and information would be made available for Members to better assess financial impact of the options and a further report would be issued before the Special Council meeting.

In conclusion, Councillor Godfrey emphasised that there were significant levels of risk to the Council from any of the options outlined. However, a decision was required within the next few weeks and it was proposed that the matter be debated at a Special meeting of Council on 28 January 2016, with a final decision to be made at Cabinet on 10 February 2016. Councillor Godfrey proposed that SW1 should be advised that it should look to making the 2009 scheme unconditional and that Cabinet should consider termination at its meeting on 10 February if the Development Agreement had not become unconditional at that point.

The Chief Executive considered that the Member Briefing on 25 January 2016 and the Special meeting of Council on 28 January 2016 would provide further opportunities for questions on the legal risks associated with the complicated options the Council faced, and the financial implications. A further report on these aspects was being prepared for Special Council.

The Committee's attention was drawn to Report OS137, and the Appendices as set out in the Report which contained a copy of the Resolution of Cabinet held 13 January 2016, a letter dated 12 January 2016 that had been sent by Hogan Lovells (SW1's legal advisors) to BLP (the Council's legal advisors), the response from BLP dated 15 January 2016 to Hogan Lovells' letter and a letter from the Leader to SW1 dated 15 January 2016. The extract of the full minute of Cabinet held 13 January 2016 was also considered by the Committee, as set out in Report OS138. The content of the exempt minute of Cabinet held on 13 January 2016 would be discussed further during the exempt session of the meeting.

One Member queried whether termination of the Development Agreement and any possible legal challenge following this would result in difficulty securing a partner going forward? In response, it was noted that this could prove challenging but that as land at the Silver Hill site would in effect be owned by three main entities; Winchester City Council, SW2 and Stagecoach another option would be that any future development of this area could be made separately or in tandem, which might negate the need to secure a development partner for comprehensive redevelopment. However, this would require a review of planning policies which required comprehensive redevelopment.

Councillor Godfrey indicated that the Council would continue to investigate what it could do to help with the relocation of the St Clements Surgery, whether or not the CPO was implemented. This would require agreement of terms with the landowners and surgery and continued support from the NHS to the rent of new premises.

Councillor Godfrey referred to items in the base budget which would be affected if the Development Agreement was terminated. These included the £5m capital receipt for the Kings Walk properties (subject to any decision made by the Council on the put option); the £700,000 receipt towards the CCTV relocation costs the Council had already incurred; and the licence fee during the development period of £240,000 per annum.

Councillor Godfrey advised the Committee that the Council could retain the Compulsory Purchase Order (CPO) beyond 19 March 2016 deadline, either with the Development Agreement still in place, or for its own use. In response to questions on this matter, the Chief Executive advised that the Council currently had useable reserves of just below £30 million with spending plans against these. Consequently, if Option C was chosen the Council would have to borrow significant levels and/or change its spending proposals under the Asset Management Plan. He confirmed that any borrowing would have to be prudent, affordable and sustainable and that £35 million would result in

interest costs in excess of £1 million per annum. It would be necessary to consider if this could be met, in terms of future income streams, asset sales, and any need for further savings on the Revenue Budget, in addition to identifying savings to cover the forecast of a widening future budget gap. Further detail on the financial aspects of borrowing in this respect would be made available to Members for the briefing meeting scheduled to take place on 25 January 2016 and Special Council on 28 January 2016.

Councillor Godfrey suggested that SW1 should be allowed to bring forward the development within the timeframe outlined by the Cabinet decision on 13 January 2016 and if a decision was taken to terminate the Development Agreement immediately, it might be claimed they were not given every possible opportunity to do so. He outlined that once notice had been issued, SW1 would still have a further 20 working days to make the scheme unconditional. If SW1 did not achieve this within this timescale, the Development Agreement would cease. However, if the scheme did go unconditional during that period, the Development Agreement would continue in force.

In response to questions regarding land value and fluctuations due to the down turn in economy, the Head of Estates reported that compensation values are at the right level and were in accordance with the compensation code

The Committee then moved into closed session to discuss the Exempt Appendices to Report CAB2755 and the Exempt Minute of Cabinet held 13 January 2016 (detail in exempt minute).

The Committee then returned to open session for debate, during which Councillor Thompson stated that she wished for it be commented to Special Council at its meeting on 28 January 2016, that she was of the opinion that termination of the Development Agreement should occur sooner rather than later and that she did not feel that it was necessary to wait until 10 February 2016 for Cabinet to determine the matter. An earlier Cabinet meeting should be arranged.

At the conclusion of debate, the Committee agreed to make the resolution outlined below, for the reasons set out above, in the exempt minute and as outlined in the Reports and related appendices.

**RECOMMENDED:**

**THAT NO PARTICULAR POINTS BE RAISED BY THE OVERVIEW AND SCRUTINY COMMITTEE FOR THE ATTENTION OF COUNCIL BEFORE IT CONSIDERS WHETHER IT SUPPORTS THE PROPOSED APPROACH OF CABINET (SET OUT BELOW) TO THE FUTURE OF THE DEVELOPMENT AGREEMENT AND THE CPO.**

**RESOLVED:**

1. That the decision of Cabinet (that SW1 be informed that unless the Unconditional Date (as defined in the Development Agreement dated 22 December 2004) has occurred by 9 February 2016, the Council will serve notice to terminate the Agreement pursuant to Clause 24.1 on the grounds that the Development Agreement had not gone Unconditional by 1 June 2015) be noted; and

2. That the information contained in Reports OS137 and OS138 (less exempt minute), and the issues raised by Members at the meeting, be noted.

2. **SILVER HILL REGENERATION – STATUS REPORT (EXEMPT APPENDICES)**

(Report CAB2755 refers)

**EXEMPT MINUTES OF CABINET HELD 13 JANUARY 2016**

(Report OS138 refers)

The Committee noted that Report CAB2755 and OS138 had not been notified for inclusion on the agenda within the statutory deadline. The Chairman agreed to accept the item onto the agenda as a matter requiring urgent consideration to enable the Report to be considered prior to the Special Council Meeting on 28 January 2016.

The Committee considered the content of the exempt appendices which provided further legal advice of the implications of the various options available to the Council and the exempt minute of Cabinet held 13 January 2016 (detail in exempt minute).

**RESOLVED:**

1. That the content of the exempt appendices be noted; and

2. That the exempt minute of Cabinet held on 13 January 2016 be noted.