

THE OVERVIEW AND SCRUTINY COMMITTEE - SPECIAL MEETING

21 May 2015

Attendance:

Councillors:

Cook (Chairman) (P)

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

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

Deputy Members:

Councillor McLean (Standing Deputy for Councillor Humby)

Others in attendance who addressed the meeting:

Councillors Burns, Godfrey (Leader of the Council) and Gottlieb

Others in attendance who did not address the meeting:

Councillors Byrnes (Portfolio Holder for Local Economy), Hutchison, Laming, Read (Portfolio Holder for Built Environment) and Warwick

1. **APPOINTMENT OF VICE CHAIRMAN FOR THE 2015/16 MUNICIPAL YEAR**

The Committee noted that, in accordance with the Council's Constitution, in the absence of Councillor Cook, Councillor Stallard would be unable to assume the Chair as she was a member of the party which currently formed the Council's Cabinet. Therefore, if Councillor Cook was unable to attend a future meeting, the Committee agreed that it would appoint a new, temporary, Chairman for that meeting only.

RESOLVED:

That Councillor Stallard be appointed Vice-Chairman for the 2015/16 Municipal Year.

2. **DISCLOSURE OF INTERESTS**

Councillors Stallard and Tod declared a disclosable pecuniary interest in respect of agenda item CAB2695, due to their roles as County Councillors and Councillor Tod's position as chairperson for Public Health England. However, as there was no material conflict of interest, both 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 3 below, due to his role in the "Winchester Deserves Better" campaign. In respect of Councillor Gottlieb's declaration of interest, the Chief Operating Officer advised the Committee that there may also be another conflict of interest arising during the course of the meeting, which would be explained accordingly should the need arise.

3. **SILVER HILL UPDATE: SUBMISSION BY DEVELOPER (LESS EXEMPT APPENDICES)**

(Report CAB2695 refers)

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 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.

The Committee welcomed Tessa Kimber and Rosalind Nuttall of Berwin Leighton Paisner LLP Solicitors (BLP) to the meeting, in their capacity as the Council's external legal advisors.

At the invitation of the Chairman, Councillors Gottlieb and Burns addressed the Committee and their comments are summarised below.

Councillor Gottlieb commended the approach taken by Cabinet in reaching the decision made at its meeting earlier in the day. He asked that full disclosure of the original source documents on the viability submission be made to all Members. He felt Winchester City Council remained a highly respected authority and that other developers would be interested in working with the Council in future in respect of this site. Lastly, he was of the opinion, in his capacity as a professional surveyor, that the viability of the 2009 scheme could not have changed as much as suggested from January to April. He also suggested that this cast doubt on the viability of the 2014 scheme.

Councillor Burns urged the Committee to obtain full disclosure of the viability assessment, together with the previous viability assessment in the period 2007 to 2008. This was necessary to give a considered approach to the 2004 Development Agreement for the approved 2009 scheme. She was concerned that, in her opinion, the Council was not receiving adequate advice on viability from its own advisors. Councillor Burns made reference to the 2012 Compulsory Purchase Order (CPO) Inquiry, whereby Mr JAF Gillington (on behalf of London & Henley) had stated that the scheme was not viable. He also gave evidence to the High Court as part of the Judicial Review and confirmed that, in his view, both the 2009 scheme and the 2014 scheme were unviable. Councillor Burns made reference to the Council's on-going duties in terms of the provision of best value to its residents and questioned how this could be met in the absence of other tenders.

Councillor Godfrey introduced the Report, less exempt appendices. He provided an update on the current position following the recent submission of three documents by Henderson seeking to demonstrate that conditions had been addressed in relation to the affordable housing provision and the affordable housing agreement, the Funder and the terms of agreement with that Funder and the viability assessments, based on the 2009 planning permission previously granted by the Council. He answered Members questions thereon.

He reported that the Council must now assess the documents received and determine if the conditions had been satisfactorily met. The timetable for this process was contained within the report. The role of the Committee in this process was to ensure the procedure for the assessment was carried out accurately so questions could be answered to reach the best decision and ensure the right advice was sought at the right time.

It was noted that an offer had been received by Henderson for an extension of the long stop date to enable the Council to respond, at a later stage, at the conclusion of the Independent Review by Claer Lloyd-Jones. The offer, as set out in the report, sought an extension to the long stop date to 1 October 2015. At Cabinet the Head of Legal and Democratic Services reported a revised extension to the offer by Silver Hill Winchester No.1 (SHW1) to extend the long stop date to 31 October 2015, to allow SHW1 additional time to document the agreements necessary to satisfy the Development Agreement.

Delegated responsibility would be given to Cabinet to determine the conditions on the affordable housing provider and funder, with the viability position to be taken to full Council for consideration before Cabinet took a final decision. Councillor Godfrey highlighted the options available to the Council and stressed the importance of giving all options careful consideration. If the timetable within the Development Agreement permitted, he would also take the affordable housing and funding issues to full Council.

It was noted that a meeting of full Council would take place in due course to consider viability information. Following the meeting of Cabinet held earlier in the day, the retention of two independent surveyors firms to advise the Council on the submitted viability data had been decided, in order to establish whether the 2009 scheme was viable.

At the conclusion of his introduction, Councillor Godfrey advised the Committee that Cabinet had been satisfied with the processes put in place to obtain viability and legal advice.

However, in terms of the possible extension to the long stop date, there had been considerable discussion. The motion approved at Council on 1 April 2015 indicated that the Council expected no material changes to the Development Agreement, until after the Independent Review had been delivered. Due to the level and scope of the review being undertaken by Claer Lloyd-Jones, it was envisaged that the final report would not be available until later in the year than initially envisaged, which, in effect indicated that any extension to the long stop date would result in no change to the Council's current position. It would need to make decisions under the Development Agreement before the Review report was available. The Review was also about process rather than the merits of the scheme itself. Cabinet's decision had been that it did not have the mandate from Council to extend the long stop date.

The Chief Executive reminded the Committee that it would be the Council's responsibility to ensure compliance with requirements of the Development Agreement and not to make any significant variation. He outlined that when the Independent Review had been commissioned, there had been no timetable set by the Council and due to the scale and content of the Review and because some Members had advocated that Officers should have no involvement in setting either the scope or timetable., it was considered that it could take the Council time to assimilate the Review document following the completion of the process.

The Chief Executive reported that a letter had been received by Dentons, Solicitors on behalf of Councillor Gottlieb, which would be made available to Members during the exempt session.

The Head of Legal and Democratic Services outlined the background of the Silver Hill development following the result of the Judicial Review in February 2015. He reminded the Committee that this had quashed the decision made by the Council late last year to approve a variation to the Development Agreement to permit the 2014 scheme. The Council was now dealing with the 2004 Development Agreement, with variations approved in 2009/10, in the form of the 2009 approved scheme. This was being progressed by Henderson with the three conditions to be fulfilled, as previously outlined by Councillor Godfrey. The timescales that the Council has in terms of responding to the material relating to

fulfilment of the conditions submitted by Henderson and on future submissions by Henderson were explained.

The Committee asked questions regarding the 15 working day window the Council had in order to respond to Henderson's submissions to either approve their submission, or to request further information to that already submitted to ensure the Council was satisfied on the fulfilment of the three conditions. It was noted that, in terms of the contract, should the Council require more information regarding the three conditions, this would be sought by a further submission from Henderson to address the matters raised and the Council would have a further 15 days to respond. Either party could then refer to a dispute resolution process, but a breach of contract claim could be made without using that process.

A Member asked whether the appeal by Henderson against the Judicial Review judgement would impact on the 2009 scheme. Ms Nuttall explained that an oral hearing for permission to proceed with an appeal was expected in November. If granted, the full hearing would take place some months later. The Head of Legal and Democratic Services said that the scope for any change to the 2009 scheme was very restricted unless the appeal was successful.

The Committee were advised that a large amount of information was essential to meet viability assessment requirements and concern had been raised that matters related to viability required to be examined thoroughly in a separate forum, outside of the Committee process. The Chief Executive explained that assessment of the detailed documentation was a matter for the two independent advisors. The Committee would receive a report upon that assessment and have the opportunity to question the advisors.

Members asked that it be clarified as to why there had been changes in the position of Henderson on viability of the scheme since 2009.

Several Members expressed concern regarding affordable housing provision and whether this had been tested to ensure it was to meet the needs of residents, including its affordability. Would there be sufficient interest in the number of shared equity units proposed? A Member queried how the 2009 scheme could be viable when it had 50% less retail content than the 2014 scheme.

Members referred to matters related to risk management as set out in the report and raised concerns about the planning risk of out of town retail development which may attract visitors away from the City Centre.

A Member raised questions in relation to the funder and any potential risk to the Council with regard to the 2009 scheme. In particular, reference was made to the Council's option to purchase the car park and how this affected the financial appraisal.

A Member raised concerns that if the Council did not proceed with the scheme then future options would need to consider how to avoid a derelict site existing for a further 20 years.

It was reported that further details related to analysis of risk would be brought forward in the next report.

In response to questions raised by Councillor Wright, the Head of Legal and Democratic Services clarified the position regarding matters related to the development being dealt with in exempt session.

The Committee then moved into closed session to discuss the Exempt Appendices to Report CAB2695 and returned to open session to make the resolution outlined below.

RESOLVED:

1. That the Committee support the approach of Cabinet in not extending the Long Stop Date;
2. That The Overview and Scrutiny Committee also meet to consider the information on the affordable housing and funding conditions, as well as the viability condition, when the reports are available to Cabinet and that the Leader be advised that full Council should also be consulted on all three conditions if practicable; and
- 3 That the Leader be advised that the report on the financial viability condition should obtain sufficient information from the developer to make it clear how and why assumptions had changed from previous viability calculations.

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

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
##	Silver Hill Update – Submission by Developer – CAB2695 (exempt appendices)) Information relating to the) financial or business affairs) of any particular person) (including the authority) holding that information).) (Para 3 Schedule 12A refers))) Information in respect of) which a claim to legal) professional privilege could) be maintained in legal) proceedings (Para 5) Schedule 12A refers)

5. **SILVER HILL UPDATE: SUBMISSION BY DEVELOPERS (EXEMPT APPENDICES)**

(Report CAB2695 refers)

Councillors Gottlieb and Burns asked that it be recorded in the minutes that they left the meeting before it went into exempt session.

The Committee considered the exempt Appendices 3 and 4 to the Report, together with the letter that had been received from solicitors on behalf of Councillor Gottlieb which all contained exempt information, including legal advice on contract and also commercially sensitive financial information (detail in exempt minutes).

The Committee considered the contents of the exempt appendices and made further recommendations thereon (detail in exempt minute).

RESOLVED:

1. That the advice now given and the exempt information contained in the appendices be noted; and
2. That the decision taken by the Chief Executive under emergency powers to obtain a second independent valuer to act on behalf of the Council in respect of the viability condition be noted and supported.

The meeting commenced at 6.30pm and concluded at 9.30pm.