

THE OVERVIEW AND SCRUTINY COMMITTEE

18 January 2016

EXTRACT FROM MINUTES OF CABINET HELD 13 JANUARY 2016

REPORT OF HEAD OF LEGAL AND DEMOCRATIC SERVICES

Contact Officer: David Blakemore, 01962 848217, dblakemore@winchester.gov.uk

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report sets out extracts of the minutes of Cabinet held 13 January 2016, with regard to items referred to the Overview and Scrutiny Committee.

RECOMMENDATION:

That The Overview and Scrutiny Committee consider and make any necessary decisions on the matters contained in the minute extracts.

THE OVERVIEW AND SCRUTINY COMMITTEE

18 January 2016

EXTRACT FROM MINUTES OF CABINET HELD 13 JANUARY 2016

REPORT OF HEAD OF LEGAL AND DEMOCRATIC SERVICES

1. **PUBLIC PARTICIPATION**

Patrick Davies spoke regarding Report CAB2755 and, in summary, believed that his concerns expressed at the previous Cabinet meeting regarding the Silver Hill scheme had proved to be correct. There was uncertainty about whether the 2009 or 2014 scheme was now being proposed by SW1. He considered that if the Council had addressed fundamental issues six months previously it would have saved considerable time and expense. He also requested clarification regarding the intentions of Stagecoach regarding the bus station.

The Chairman agreed that the ongoing uncertainty over the scheme was not welcome but emphasised that the situation regarding the developers had changed since July 2015. The Council's position remained consistent in that it wished to achieve the regeneration of the area. With regard to Stagecoach, further information could be provided under the relevant agenda item, but the key point was that both Stagecoach and the Council remained committed to delivering a sustainable and effective bus service with access from the town centre.

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

(Report CAB2755 refers)

Cabinet noted that the Report 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 Overview and Scrutiny Committee and the Special Council Meeting on 28 January 2016.

The Chairman welcomed to the meeting Lesley-Anne Avis from BLP (the Council's legal advisors).

The Chairman outlined the background to the Report under consideration. SW1 had indicated in July 2015 that it would take 6-10 weeks for the agreements for the funding and social housing conditions to be signed and that work would have commenced on site in December 2015. This had not occurred. The Chairman highlighted 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. At the previous Cabinet he had

been asked to write to SW1 to indicate various areas of concern and this letter, together with the response from SW1, were contained as Appendices 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.

The Chairman stated that based on Council's decision of July 2015 and more recent discussions with the developer, the Council should still be aiming for the 2009 scheme to be progressed and advice 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 is funding in place for the costs of implementing the CPO.

The Chairman believed that the advice received by the Council suggested that it might be up to 18 months before the appeal against the Judicial Review decision was finally determined (having regard to possible further appeals to the Supreme Court from either party). In addition, the significant changes to the development that SW1 had indicated would be required (such as removal of the bus station and less affordable housing) could result in further delays of at least 18 months beyond that. The Chairman did not consider that Cabinet had a mandate from Council to allow such delays of three to four years, nor would this be appropriate for Winchester as a whole. Consequently, he suggested that Options A and B as outlined in the Report should not be supported.

Option C (termination of the Development Agreement but implement CPO by service of Notices to Treat) would require the Council to make 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.

In summary, the Chairman emphasised that there were significant levels of risk to the Council of any of the options outlined. 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. The Chairman 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 said that the Council had to consider the need for regeneration of the area and the legal risks associated with the various options. He reported that the previous day a letter had been sent by Hogan Lovells (SW1's legal advisors) to BLP. The contents of this letter would be discussed further during the exempt session of the meeting.

One Member suggested that another risk to be added to Appendix 3 of the Report was consequential delays to the Traffic Management Plan for Winchester and the impact on Air Quality.

In response to questions, the Corporate Director advised that information to discharge all of the planning conditions under the 2009 scheme had been received by the Council and it was expected that these could be approved before the expiry of the planning permission. With regard to the comments made by Mr Davies during the public participation session, the Corporate Director confirmed that if the 2009 scheme was implemented, this would include a bus station which Stagecoach would be obliged to take a lease of. If the scheme did not go ahead, it was not known what Stagecoach would propose to do with the land. It was also confirmed that Stagecoach had written to say they did not foresee an ongoing operational need for the bus station in its current form.

In response to questions, the Chief Finance Officer 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. She 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 widening future budget gap.

With regard to the impact on future plans for St Clements Surgery, the Chairman stated that if the scheme were not to go ahead, the Council would still seek to achieve a new surgery. However, there would be a number of challenges to this relating to the current doctors' positions which were outside of the Council's control.

In response to questions, the Head of Estates advised that a number of properties within the development area were in need of significant works during the course of the next five years, including the bus station. Friarsgate car park was likely to require partial demolition, whilst retaining some elements to protect remaining buildings. The Chairman stated that, depending on decisions taken in the next few weeks, he expected a report to Cabinet on 29 March 2016 to give further consideration of St Clement's Surgery and other properties within the area.

The Corporate Director advised that Local Plan Part 2 policies required the comprehensive development of the area and therefore any future proposals

for standalone development would not accord with current policy. If the Development Agreement (DA) was terminated and it was decided to start again, the planning policy position would have to be reviewed, and this would take a significant period of time. In response to questions, the Corporate Director confirmed that there was an increased risk of out of town retail development applications being successful in the absence of a scheme for Silver Hill. However this was mitigated by the shortage of potential sites out of town.

In response to questions, Lesley-Anne Avis (BLP) advised that she did not consider it was a good argument for SW1 to state that the Council would be in breach of good faith if it did not agree to an extension of the contract, as the Council would be exercising its rights under the contract. Further detail on this matter was provided in the legal advice given in Exempt Appendix 4 to the Report.

If the Council decided to implement the CPO itself without a DA, the Chairman queried how quickly would a detailed new plan for the area be required to avoid challenge under the CPO process? The Head of Legal and Democratic Services advised that the Government guidance was that those threatened by a CPO should be in that position for no longer than necessary, so there would be clear pressure to minimise delays. Further advice could be given in the exempt session of the meeting. Cabinet requested that further advice be sought from Counsel regarding the legal implications of the Council serving Notices to Treat.

At the invitation of the Chairman, Councillors Thompson, Laming and Burns addressed Cabinet and their comments are summarised below.

Councillor Thompson welcomed the questions raised by Cabinet during its discussion above. She believed that matters had reached a point where it was necessary to take critical decisions and it was important for Cabinet to give clear recommendations on a way forward for discussion at Council. She also considered that further financial analysis was required before a decision on the future of the CPO could be taken as there were potential benefits to the Council having control of key strategic sites. She also expressed concern that there might be insufficient capacity within the Planning Team to enable a decision on the planning conditions to be made by the 9 February deadline. In summary, she highlighted the previous assurances given by the developer that work would progress imminently which had proved to be incorrect and believed that the Council had no option now but to terminate the DA if there was little prospect of the scheme being built in the foreseeable future.

The Chairman responded that he intended to allow SW1 as much time as possible to bring forward the development and if a decision was taken to terminate the DA immediately, it might be considered they were not given all opportunities to do so. A report providing more financial information on the implications of Option C would be provided for Council on 28 January and Cabinet on 10 February. In addition, it was intended that an all-Member briefing would be arranged prior to Council.

Councillor Laming also believed that the Council required financial advice on implications of the cost of the CPO and impact on land price. In addition, he expressed concern that delay of the scheme would reduce housing supply and could impact on the pressure to develop other Winchester sites. He believed it would be possible to go out to tender on an alternative scheme quickly, should the need arise.

The Head of Estates advised that for compensation purposes, the date of valuation under the Notice to Treat process was the date that the Council formally entered onto the land in question. In the event that the Council terminated the Development Agreement, but sought to implement the CPO, there would be a risk that some parties would be entitled to seek higher compensation payments than were allowed for in the property cost estimate if the Council failed to identify new accommodation for them to relocate to. The Corporate Director emphasised that timing of any future procurement process was dependant upon the Council first deciding its requirements for any future comprehensive scheme.

Ms Avis (BLP) advised that although it was not impossible to take forward a CPO without a scheme, it was much more difficult to do so. In addition, because of the legal challenges taken by Councillor Gottlieb to date and his threats of further challenge against the Council, the risk to the Council of trying to implement the CPO itself were heightened.

Councillor Burns stated that the current scheme and design was outdated, included too much retail space and the Council could no longer rely upon SW1. This was because the developer had changed its position on whether the 2009 scheme was viable or unviable following the Judicial Review decision, and earlier changes in its position on its previous statements as to viability. In addition, she considered that their statements regarding work carried out necessary to achieve the Works Commencement Date were not credible. They had also not been able to satisfy required conditions regarding their housing provider partner and financial backer. As a consequence, she believed the Council should terminate the DA immediately before it ran out of the necessary time required to implement any of its own obligations and the CPO.

In response, the Chairman stated that the mere fact the current scheme was several years old did not make it outdated. In addition, the scheme viability had been reassessed in July 2015.

Cabinet then moved into closed session to discuss the Exempt Appendices to Report CAB2755 (detail in exempt minute).

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

Cabinet agreed to the following for the reasons set out above, in the exempt minute and as outlined in the Report.

RECOMMENDED:

THAT COUNCIL 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 SW1 be informed that Cabinet is minded (subject to consideration of the views of The Overview and Scrutiny Committee and full Council, and a further report back to Cabinet on 10 February 2016 for a final decision to be taken) to decide 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;

2. That a further report be brought to full Council on 28 January 2016, and thereafter to Cabinet, to consider the service of notices to treat by the Council on all owners and occupiers affected by the Winchester City Council (Silver Hill) Compulsory Purchase Order 2011.