

THE OVERVIEW AND SCRUTINY COMMITTEE – SPECIAL MEETING

10 February 2016

Attendance:

Councillors:

Simon Cook (Chairman) (P)

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

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

Deputy Members:

Councillor Bodtger (Standing Deputy for Councillor Sanders)

Members of the Audit Committee also present:

Councillors Cutler, Power, Burns, Hiscock, Huxstep, Stallard and Weir

Others in attendance who addressed the meeting:

Councillors Gottlieb, Laming, Thompson,

Others in attendance who did not address the meeting:

Councillors Godfrey (Leader), E Berry, Johnston, Lipscomb, Mather, Scott, Southgate, Twelftree, Warwick

1. **DISCLOSURE OF INTERESTS**

Councillors Stallard and Tod each declared a disclosable pecuniary interest in respect of agenda items due to their role as County Councillor. Councillor Thacker, whose husband was a County Councillor, also made a similar declaration. However, as there was no material conflict of interest, they remained in the room, spoke and voted under the dispensation granted on behalf of the Standards Committee to participate and vote on all matters which might have a County Council involvement.

Councillor Gottlieb declared a personal, but not prejudicial interest in the substantive item on business on the agenda that related to the Silver Hill development proposals due to his links with the Winchester Deserves Better campaign group.

2. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman welcomed approximately 100 members of the public to the meeting together with members of the Audit Committee, who had been invited to attend. The Chairman also welcomed Ms Claer Lloyd-Jones, the author of the Independent Review Report.

The Chairman reminded those present of procedure for this meeting:

- (i) Ms Lloyd-Jones would present her report to the Committee
- (ii) Questions from Members of The Overview and Scrutiny Committee and Audit Committee to Ms Lloyd-Jones
- (iii) Public Participation – to receive questions asked and statements made from members of the public or Councillors who are not members of The Overview and Scrutiny or Audit Committee.
- (iv) The Overview and Scrutiny Committee would debate matters arising following presentations, public participation and questions asked of Ms Lloyd-Jones.

Finally, the Chairman advised that the Audit Committee was to meet separately after the conclusion of The Overview and Scrutiny Committee meeting to debate and discuss their recommendations, taking into account the presentations and public participation made at this meeting.

3. **SILVER HILL: INDEPENDENT REVIEW**

(Report OS139 refers)

The Committee 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.

Ms Lloyd Jones read out a statement to the meeting that was in response to the Chief Executive's comments in Report OS139, which is set out in full in Appendix A to these minutes, and summarised as follows.

Ms Lloyd Jones advised that she stood by her report.

She commented that the proposed changes to the Development Agreement took place against the background of unforeseeable economic collapse, which necessitated a change in Developer if the Silver Hill project had any chance of continuing. None of what had happened could be said to have been the Council's fault.

Ms Lloyd Jones said she was independent and had acted with the advantage of objectivity and being 'a fresh pair of eyes'. She was able to be clear and honest with the Council about the lessons to be learned as an "expert" outsider, but obviously operating with the benefit of hindsight. It was a measure of the Council's determination to serve the people of Winchester to the best of their ability that she was brought in to undertake the review. It had

not been her intention to bring forward direct or deliberate criticism of the Council by herself, and there was a consequent danger of “shooting the messenger”. The purpose of her recommendations were to set out some good, forward-looking aspirations for the new Council around which everyone should be able to unite. Ms Lloyd-Jones highlighted her experience across all sectors and that she had conducted a number of similar, sensitive investigations. It was regrettable to note that this was the first time that her professional integrity seemed to have been called into question. Every finding of fact within the report had relied upon the evidence given to her in confidence during her investigation. She emphatically rejected that the report was unbalanced. Evidence given to her in the form of oral evidence was valuable and could be accepted as such irrespective of whether supported by documentary proof. She noted that apart from Paul Nicholls QC, nobody had been given any opportunity to comment upon her report who had given evidence and expressed concern that this may have undermined the whole process and rendered the report unfair.

Finally, Ms Lloyd-Jones set out how a careful reading of her report demonstrated that the five specific criticisms of her report might be without substance. These were with regard to the Paul Nicholls QC advice, the difference between his advice and that previously obtained, the skills and experience of officers (although she clarified that the point made had been raised by others and she made no general point about officer skills), the role of the Reference Group, and observations made without context or support.

Ms Lloyd Jones then presented her report as set out as Annex 2 to the Report in summary form, chapter by chapter, by way of a powerpoint presentation to the meeting. In summary, the following matters were highlighted:

Executive Summary

- i) The speedy development of European Law which would prevail over UK Law.
- ii) The unanticipated economic recession which had altered viability and the slowness of the development.
- iii) Late and different Legal Advice obtained in 2014, compared to earlier advice around variations in 2008 and 2010.
- iv) Political leadership uncertainties – i.e. there had been 10 Council Leaders since the start of the project.
- v) The effect of annual elections, the lack of continuity this produced and deflecting attention away from the Council business in the months before each election.
- vi) Over-reliance on Officers. The long term nature of the project led to different staff being involved during the project.
- vii) Members query whether the Council was a ‘Member led authority’.
- viii) Lack of internal challenge. There was reliance on cross party support to the scheme – who, therefore, was to ask the difficult questions? There were no independent scrutiny officers.
- ix) A Councillor was willing to bring a Judicial Review against the Council.

- x) Lessons learned and recommendations for the future. There is a need to have assurance mechanisms in place.

Brief

- i) Appendix 1 to the report referred to her request that the public write to her with their own submissions. 65 were received in response to this.

Methodology

- i) Appendix 3 sets out all the evidence she considered.
- ii) All those interviewed were asked to suggest others. This led to a number of additional interviews.
- iii) There was an undertaking of confidentiality to all those interviewed.
- iv) The Chief Executive was invited to point out any issues with regard to aspects of factual accuracy in her report.

Background and context

- i) This was a substantial section of the report, with a chronology of events in Appendix 2.
- ii) The lengthy period of the project was highlighted, i.e. 1996 – 2015.
- iii) Appendix 4 set out the legal advice obtained including that with regard to the variations to the Development Agreement. She also said that legal advice on the proposed variations should have been obtained earlier to inform the Reference Group.
- iv) The judgment resulting from the Judicial Review challenge was received with shock amongst Councillors. Details were set out on pages 24 and 25.
- v) The legal challenges brought forward by Councillor Kim Gottlieb were referred to on pages 26 – 27. A challenge brought by a councillor against his own authority was rare, particularly where there was a clear difference of views between the councillor and the council. It was surprising that in these circumstances, there was no political consequences to his action.
- vi) Some aspects of the report with regard to matters since the judicial ruling have now been overtaken by events, including the discussions at the Cabinet meeting held earlier today, when Cabinet agreed that the Development Agreement should be terminated.

Key findings

- i) The site needs to be redeveloped.
- ii) There has not been a clear vision for Silver Hill. The 2003 Brief was a good document, but subsequently departed from.
- iii) It has now been settled in law that the Development Agreement should have been publically procured.
- iv) It was originally anticipated that the redevelopment would have been finished by 2012.

- v) The slowness in progressing the project caused the need for variations to meet changing economic and market conditions, more retail, less affordable housing.
- vi) There was growing public concern about the scheme, as highlighted by the Winchester Deserves Better campaign.
- vii) One of the JR findings was that legal advice had not given sufficient weight to European Law, the variation clause needed to be more transparent.

Recommendations

- i) These were set out in detail on pages 37-39
- ii) There needs to be a definite idea/vision for the development and a project group as guardian of that vision.
- iii) The Council must have the necessary professional and commercial skills to deliver.
- iv) Is the Council hostile to competition, and if so, why?
- v) External advisors should not be procured without involving internal specialists and Councillors.
- vi) A register of external advice obtained should be available.
- vii) Other Council projects should be re-visited to check whether there may be similar risks.
- viii) The Council's public engagement strategy on projects should be revisited. This is a substantial issue; for example, viability evidence should be placed in the public domain (as done by London Borough of Greenwich, for example).
- ix) The LGA Peer Review and 4 P's recommendations must all be implemented.
- x) New strategies on press, PR, project management and risk management are necessary. The latter should comprise of a transparent corporate risk register.
- xi) Communications in general should be improved, including navigation of the Council's website.
- xii) A governance and constitution review should be undertaken as soon as possible. Issues to consider were raised – roles and responsibilities of Members and Officers, a protocol on Committee reports, annual elections, role of the Opposition, develop overview and scrutiny, improve the gifts and hospitality register, consider conflicts of interests and appropriate control and assurance mechanisms. There must be training for Members on the new constitution.

Conclusions

- i) Reputational damage was caused as a result of the judicial review ruling.
- ii) Councillors believed they were safe. The risk of losing the Judicial Review was high and could have been mitigated.
- iii) The project was slow and there was little external information.
- iv) Councillors need adequate assurance systems.

The Chairman thanked Ms Lloyd-Jones for her presentation. Members of both Committees asked a number of detailed questions of Ms Lloyd-Jones, the comments raised and answers to which are summarised below.

- i) 'Closed' recommendations in Committee reports could be said to be indicative of a function of one author wanting a particular outcome. Options should be presented, and specific inputs on matters such as legal, finance and risk set out in separate sections. Many interviewees had said that the Council was "Member-led", but a governance review should look at the roles of both Councillors and officers, and how they work together.
- ii) A Member suggested that there had been consistent Member challenge throughout the process (including to the planning brief) and that their comments raised had led to some changes. The Member referred to a Cabinet minute relating to revisions to the development brief from 11 June 2003, and asked Ms Lloyd-Jones why she had not seen this. She advised that she would look at this separately as she had not been aware previously of the details and she undertook to respond to the Councillor.
- iii) Despite various challenges to the proposals from the main opposition group (which had varied over time), the scheme in general relied on cross party support.
- iv) A Member referred to the local plan policies regarding the Silver Hill development (together with supporting text) and considered that this set out the vision for the area. Ms Lloyd-Jones considered that this focussed on the planning aspects of the scheme and was not sufficiently detailed as to the type of development which Council was looking for. A more general vision for the proposals was less easy to distinguish in recent years, and this was especially important as the Council was landlord.
- v) Although residents' opinion of Silver Hill and related ongoing matters may be different in the rural areas of the District, the time and money spent on the proposals going forward was a matter for the Council's leadership. Ms Lloyd-Jones was reviewing matters that had occurred to date.
- vi) The terms of reference of her review had not included investigating any potential 'democratic deficit' in the unparished town area.
- vii) With regard to the risks associated with the scheme, Ms Lloyd-Jones considered that the corporate risk register had not properly assessed these.
- viii) There had been many comments with regard to the Silver Hill Reference Group. It had been viewed as an informal working group of Cabinet. However, it also contained other leading Councillors from other parties and representatives of scrutiny. It was not a decision making body, but had drawn together all relevant parties towards making changes to the Development Agreement. There was a degree of resentment that the group's minutes had not been available to other Councillors.
- ix) There needs to be a willingness to undertake a Member-led governance review, with terms of reference stating which Committee

would lead it, and including clear deadlines for completion of the review and be Member-led. The necessary officer skills to support the process would also need to be involved.

- x) Members should have the strategic overview of the Council's work. Officers should own the detail in order to deliver. There is a risk of confusion of roles if Members needed to look at the detail.
- xi) Many Councillors were shocked that the legal advice obtained had turned out to be incorrect. The recommendations in the report for an improved Risk Register and a reporting structure that referenced all previous advice would assist with this in future.
- xii) It was explained that barristers within the same legal chambers work independently and do not have access to each others' papers. There might be individual and differing opinions within the same legal chambers. There needed to be confidence in those who interpret legal advice obtained. The advice from Paul Nicholls QC did not follow from earlier advice from Nigel Giffin QC, and underestimated the effect of European Law on the variation clause.
- xiii) With regard to a Member's concern that the Reference Group led the Council towards a significant policy change without any reference to other Councillors or Committees, Ms Lloyd-Jones recognised that this was a governance issue in respect of the role of the Group and she drew Members' attention to her recommendations.
- xiv) A Member suggested that a number of the recommendations at 6.1.9, 6.1.10 and 6.1.11 had already been wholly or partially implemented. Ms Lloyd-Jones said that she had expected to be informed of any factual errors.
- xv) Ms Lloyd-Jones responded to a Member's concern that matters that were not in the public domain, should have been. In her view, everything should be in the public domain unless there was a good reason to do otherwise.
- xvi) Although there was a Vision for Winchester document in place as a consequence of public debate at the Town Forum, in addition to the outcomes of the Blueprint exercise, in her view there was no detail in a vision for Silver Hill related to (for example) the affordable housing, retail and other specifics.
- xvii) Ms Lloyd Jones was not convinced that the Reference Group had clear terms of reference, and where it would eventually report to. She advised that those she had spoken with had shared the concerns of a Member that that any proposed changes to the planning brief should have firstly been consulted with residents – with regard to any changes that they may have been likely to have supported.
- xviii) Paul Nicholls QC had not in her view dealt with the variation point and she was not surprised that he did not agree when he had been asked to comment on her report. However, his advice on EU law was for interpretation by the Council's internal lawyers as she could not give the Council legal advice.
- xix) Ms Lloyd Jones clarified that she had not arranged any of her interviews. As a result, she may have been unaware of certain individuals who had not been interviewed, but who may have been able to provide relevant evidence.

- xx) A judgement needed to be made by the Council as to whether officers had sufficient skills or whether capacity was an issue. If additional support was required, this could be done by e.g. using shared services.
- xxi) Positive comments were made within her report as to how to make the scrutiny function sharper and stronger.
- xxii) In Ms Lloyd-Jones' view, it was perfectly proper for officer groups (such as project office meetings) to move forward under Member direction, and without minutes being published.
- xxiii) Legal instructions drawn up should be clear and have Councillor input. Ms Lloyd-Jones observed that the Instructions that she had seen with regard to the Paul Nicholls advice were very good and not at fault at all.

The Chairman thanked Ms Lloyd-Jones once again for the report and for her responses to questions from Members.

The following comments and questions, as summarised below, were made during public participation:

Councillor Gottlieb advised that he had submitted his own paper on 8 February on the matter which he had asked that the Chairman consider alongside that of Ms Lloyd-Jones. He had just received an initial response from the Chief Executive and would not be commenting further at this meeting. Councillor Gottlieb suggested that the committees should not fully deal with the issues without their consideration of the outcome of the further correspondence.

Councillor Gottlieb said that an independent inquiry was never necessary, as all that was needed was contained in the judicial review judgment. The Council seemingly had hoped that the independent inquiry would conclude that the 'wrong judgement had been made on the wrong day'. He referred to the Chief Executive's and the Leader's comments made on the report. He said that they should not have made comments before considering the presentation and explanations given at this meeting. Various aspects of the Silver Hill project had been not credible such as the changes in position on viability matters and the works undertaken to satisfy the works commencement date. He questioned whether the legal advice had been interpreted correctly. Hendersons should not have been retained as the Council's development partner and the Development Agreement terminated earlier. The independent review had done a service for the Council by bringing about a wind of change with regard to its governance and decision making processes, including managing those projects where it had an interest. Silver Hill was still a good opportunity, but responsibility must be taken by those responsible for the matters that had led to the judgement.

With regard to a comment in the report about his own potential conflict of interest, he was unaware as to who may have raised this or what had been referred to; but it was likely to have been done to undermine him and the campaign. Councillor Gottlieb said that it was wholly untrue to suggest that he had any conflict of interest.

Councillor Laming advised that he was dismayed that the Chief Executive and Leader had criticised the report which he considered was sound. Councillor Laming highlighted a number of important points raised in the report and suggested that the Committee system may be better than the Cabinet system of governance, which he suggested was 'broken'. He supported the majority of the report's recommendations. He was concerned about the legal advice given to the Council with regard to the provisions in the Development Agreement relating to termination and a 20 day period within those provisions. He suggested that the Council had only sought the advice that suited its desired outcome.

Martin Wilson referred to the report's recommendations which raised a number of very important questions for the Council to consider. He also referred to the River Park Leisure Centre contract which had not been put out to tender for many years. He pointed out that the shortlist of architects for the Station Approach project had been drawn up by officers before the Jury had been formally appointed. Mr Wilson referred to the effectiveness of the scrutiny function and suggested that steps should be taken to develop this as part of the recommended governance review. He also suggested that the skills of both senior officers and Members needed to be reviewed, as well as their roles. Mr Wilson was very concerned about the existing declarations regime and how the Council had dealt with potential issues of maladministration he had raised in relation to River Park Leisure Centre. The Council had disagreed with his interpretation and both Internal and External Audit had not taken up his points.

Robin Atkins advised that he was an experienced chartered accountant and he thanked Ms Lloyd-Jones for her report. He suggested that the review of the Council as set out in her recommendations must be done with the full involvement of the public. The public owed much gratitude to both Councillor Gottlieb and to Ms Lloyd-Jones for highlighting important matters. Mr Atkins believed that The Overview and Scrutiny Committee was the most important committee across the District and that it must be properly resourced to its job – if it had been, it may have saved the Council millions of pounds. It needed integrity and independence and should be radical.

Una Stevens thanked Ms Lloyd-Jones for her report and said that when it was first published it was not easy to locate on the Council's website and this demonstrated a communications issue. The report highlighted a catalogue of errors and indicated that officers had difficulty in understanding their roles in large projects. No apologies had been made to date. There was strong reluctance of willingness to accept the report's recommendations. Ms Stevens was concerned about an inward looking Council looking at costly mistakes. To enable a line to be drawn under the matters, there was a need to involve a group of people who relished Winchester as a unique city, and its future. This could be a Steering Group of independent and committed people. Finally, Ms Stevens suggested that those who had failed the people should take responsibility and resign. The seriousness of the number of recommendations reflected the importance of the matter.

Karen Barratt advised that she had also addressed Cabinet earlier in the day with her concerns. In summary, she was concerned about the Leader's criticisms of the independent review, as doing so meant that there was little confidence that the Council would learn much or make necessary improvements as recommended. She referred to the significant expertise within the Winchester Deserves Better Campaign and that the Council must listen and pay attention to the public. Mrs Barratt referred to insidious problems within the Council with regard to 'cosiness' and arrogance.

Councillor Thompson also advised that she had also spoken at Cabinet. In summary, she welcomed the report, which was a damning indictment on the Council. The Council must now review how it does its business, how it engages with the public and how scrutiny functions. It must do this to regain the public's trust. Councillor Thompson referred to the Chairman of The Overview and Scrutiny Committee's report on potential improvements – which had been rejected by the Administration. She also referred to the Administration's changes to the Development Agreement and a lack of transparency as part of this, notably the reference group established to consider this. Finally, Councillor Thompson wished for there to be a new vision for the site after a period of reflection. This should be an outcome of an unrushed process which must be inclusive of the public. There should also be a timeline to respond to each of the report's recommendations and a recognition that the Council needed time to manage its other major projects.

Mike Caldwell referred to the campaign march on 29 November 2014. Of those who took part many were opposed to the proposals for the Silver Hill, but were also others who were disaffected with Winchester City Council. The Council should serve, not 'rule'. The Independent Review report reflected many of the concerns of those who had taken part in the protest. Mr Caldwell highlighted that the report went further by highlighting its various recommendations to make changes. Finally, he suggested that the report was very damning and there must firstly be an apology and a change from the top of the organisation.

Patrick Davies referred to the Reference Group and justification that this was an informal policy group of the Cabinet. He was concerned that there were too many informal private meetings that dealt with major issues. The Council should disband all informal private groups and meet in public unless there was good reason not to do so.

The Chairman thanked those who had addressed the Committee and advised that their comments and questions would be referred to during the subsequent debate of the Committee and later, by the Audit Committee.

During the Committee's subsequent debate the Chief Executive advised that a report had been issued to the Cabinet meeting on 18 February 2016 which set out details of an initial proposed response to the recommendations of the Independent Review. He suggested that Cabinet would wish to consider this report alongside the outcomes of tonight's meetings.

The Committee referred to recommendation 6.1.2 and suggested that this should be further strengthened with regard to the aspiration that there must be public engagement throughout the process of considering future proposals for the Silver Hill site. Furthermore, all discussion should be non political and realistic as to what could be achieved e.g. on affordable housing. The Chief Executive suggested that the existing Cabinet (Major Projects) Committee could be specifically charged as a vehicle to explore the future of the site. However a Member queried whether the Committee could manage this along with the Council's other major and distinctive projects.

A Member suggested that Cabinet should not consider its response to the Review report recommendations until such time as this Committee had time to undertake a detailed pre-scrutiny of the proposals. This was not supported by the Committee. However, the Chairman suggested that the principle of wider use of pre-scrutiny should be a topic considered in the governance review.

The Committee considered whether it could give unqualified support to the recommendations of the Review report at this stage. A Member questioned whether all the recommendations were directly linked with the issues identified in the report and pointed out that some of the recommendations were similar to other reviews undertaken by the Council, which had already been partly implemented. Another Member suggested that while generally supporting the recommendations, some aspects of the wording might need clarification.

The Committee then supported a proposal that the Committee should at this stage note the recommendations of the Independent Review and in light of the presentation of Ms Lloyd-Jones and public participation, Members should be allowed time to take stock and to review each of the recommendations and make any proposals for subsequent changes or additions. These detailed responses would be reported to a future meeting of the Committee and recommended to Cabinet and Council accordingly.

RESOLVED:

That the Committee note the recommendations arising from the Independent Review of Silver Hill and in light of the presentation of Ms Lloyd-Jones and public participation, Members be allowed time to take stock and to review the recommendations and make any proposals for subsequent changes or additions. These detailed responses would be reported to a future meeting of the Committee and recommended to Cabinet and Council accordingly.

The meeting commenced at 6.00pm and concluded at 9.10pm.

Chairman

Response to Chief Executive's comments on "A Perfect Storm"- Investigation report on Silver Hill

I stand by my report.

I was engaged by the former Leader, Cllr Pearson, on behalf of Members to provide an independent review:

"specifically, ... to consider the changes to elements of the scheme and the way in which advice taken on the impact of those changes informed Members' decision making'.

It must be remembered that the proposed changes to the Development Agreement took place against the backdrop of unforeseen and unforeseeable economic collapse, which necessitated a change in the developer if the Silver Hill project had any chance of continuing.

None of what followed can be said to have been the Council's fault.

For the purpose of meeting my brief, I interviewed 57 people, including a mixture of people from all walks of life in Winchester, and reviewed literally 1000s of pages of documents. This was a long and careful exercise.

A particular and persistent concern expressed to me was the need to avoid Council Officers or Members determining the direction of the report or influencing its conclusions in any way.

I have respected that need for independence. I am independent and have maintained that. This has given me the advantage of objectivity and being a 'fresh pair of eyes'. I have not worked in Winchester before and know about it and the events relating to Silver Hill only by what you have told me. I am an 'expert' outsider who can be clear and honest with the Council about the lessons that need to be learned, but obviously operating with the benefit of hindsight.

It is a measure of the Council's determination to serve the people of Winchester to the best of their ability that I was brought in.

My report has clear recommendations for the future and I owe it to you as a client to help you get to a place where you can withstand similar storms in the future.

I am sorry if anything I have written has been misinterpreted as direct or deliberate criticism of the Council by me. I hope you accept that this has not been my intention. There is a consequent danger of shooting the messenger.

The purpose of my recommendations is to set out some good, forward looking, aspirations for the new Council around which everyone should be able to unite.

The reports draws on my expertise as a senior lawyer gained over 38 years, predominantly in local government, but I have worked in all sectors. I am the former Chairman of the Greater London Authority Standards Committee, the former Chief Executive of the Social Housing Regulator, the Tenant Services Authority, a former Director of Law and Corporate Governance at Hackney, and City Solicitor at Brighton & Hove. I have conducted a number of similar, sensitive investigations. It is regrettable to note that this is the very first time my professional integrity seems to have been called into question.

To maintain the integrity of my investigation I have given undertakings to all who I interviewed that what they told me and our discussions would remain confidential. I have therefore been able to obtain some very candid information about what happened in Winchester. It goes without question that every finding of fact I make relies upon evidence given to me in confidence. I emphatically reject the suggestion that my report is unbalanced. I have interviewed people from amongst Members, Officers and individuals outside the Council, within the Community, and have received many cogent, detailed and compelling accounts of the procedure the Council undertook. Evidence given to me in the form of oral evidence is valuable and can be accepted as such irrespective of whether it is directly supported by documentary proof.

Whether such evidence 'sets unintended hares running through comments which are hearsay or otherwise unsubstantiated' calls into question whether the position is understood.

As to the suggestion that the Council is given a further opportunity to comment on the report, this is not an opportunity given to anyone else (apart from Paul Nicholls QC) who gave me evidence. I am worried that such a selective approach undermines the whole process and renders my report unfair. Unless everyone else is given the same opportunity, this obvious defect is open to challenge as a matter of public law.

Comments on the Chief Executive's Report

Mr Eden makes five specific criticisms. However, a careful reading of my report demonstrates that these criticisms may be without substance.

- a) The Paul Nicholls QC advice.
A large number of individuals drew attention to the somewhat unusual circumstances in which Mr Nicholls came to be instructed. Paragraphs 1.5.f), 1.5.g) and 4.7 refer.
- b) The difference between The Paul Nichols QC advice and earlier advice.
Mr Nicholls advice seems to be out of line with earlier advice. Paragraph 4.7 refers. In addition the variation clause can be challenged as not being transparent in EU law. This has been highlighted from 2008 in case law.
- c) Skills and experience of Council Officers.
I make no general point about Officer skills. That is a matter for the Council to assess. In 5.21 I make the point, raised with me by many commentators, of the difficulty the Council would have found itself in. I am happy to start the last sentence on page 32 with the words "It has been suggested to me that.." if that would be clearer, and not result in any further misunderstanding.
- d) The role of the Reference Group.
Delaying seeking further advice from Nigel Giffin QC meant that he was not available to advise the Council when the matter had become urgent. More generally the Reference Group was observed by many to have operated 'behind closed doors'. I believe its minutes are still not available.
- e) Observations made without context or support.
I believe that I have answered this point fully above. I have conscientiously undertaken a long and careful report which is amply supported by evidence.