

**MINUTES of the meeting of General Overview & Scrutiny Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday 9 November 2012 at 10.00 am**

**Present:** Councillor A Seldon (Chairman)  
Councillor EPJ Harvey (Vice Chairman)

Councillors: AM Atkinson, EMK Chave, BA Durkin, DW Greenow, JW Hope MBE, TM James, Brig P Jones CBE, JW Millar, R Preece, J Stone and GR Swinford

**In attendance:** Councillors PGH Cutter, RB Hamilton, J Hardwick, MAF Hubbard, JG Jarvis, JLV Kenyon, RI Matthews, PJ McCaull, C Nicholls, AJW Powers, PD Price and SJ Robertson

**Officers:** D Taylor, Acting Chief Executive; G Hughes, Director for Places and Communities; D Powell, Chief Officer Finance & Commercial; C Chapman, Assistant Director Law, Governance and Resilience; P James, Democratic Services Officer.

**1. APOLOGIES FOR ABSENCE**

Apologies were received from Councillors: RC Hunt; G Lucas; DB Wilcox, and Mr P Sell.

**2. NAMED SUBSTITUTES**

Councillor J Stone substituted for Councillor RC Hunt  
Councillor AM Atkinson substituted for Councillor G Lucas  
Councillor JW Millar substituted for Councillor DB Wilcox.

**3. DECLARATIONS OF INTEREST**

7. Urgent Agenda Item - Call-in of Cabinet Decision Concerning the Variation to the Retail Quarter (Old Livestock Market) Development Agreement.  
Councillor JG Jarvis, declared a personal non-pecuniary interest as a member of the Hereford Futures Board.

**4. MINUTES**

**RESOLVED:** That the Minutes of the meetings held 3 October and 12 October 2012 be confirmed as a correct record and signed by the Chairman.

**5. SUGGESTIONS FROM MEMBERS OF THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY**

No suggestions for future scrutiny were made.

**6. QUESTIONS FROM THE PUBLIC**

The Committee received a number of questions in relation to the urgent agenda item – Call-in of Cabinet Decision Concerning the Variation to the Retail Quarter (Old Livestock Market) Development Agreement. The full questions, and responses currently available, were circulated at the meeting. Written responses would be forwarded to the Members and contributors.

The Chairman thanked the contributors for submitting their questions.

**7. URGENT AGENDA ITEM - CALL-IN OF CABINET DECISION CONCERNING THE VARIATION TO THE RETAIL QUARTER (OLD LIVESTOCK MARKET) DEVELOPMENT AGREEMENT (Pages 7 - 10)**

The Chairman considered that for reasons of special circumstances set out below, the item should be considered at the meeting as a matter of urgency.

The Chairman explained that Cabinet had treated the matter as urgent because this was a major commercial transaction which had been subject to negotiation for some time and had required a resolution by 31 October 2012. It was appropriate therefore to treat this business as urgent today.

The Committee reviewed the decision 2012.CAB.084 (Variation of Retail Quarter (Old Livestock Market) Development Agreement, made by Cabinet on the 31 October 2012. The Decision Notice and the report to Cabinet with its appendices had been made available as a supplement to the agenda for this Committee.

Councillor JG Jarvis, Leader of the Council, declared a personal non-pecuniary interest as a member of the Hereford Futures Board.

The Chairman commented that members of the public had submitted questions before the meeting and answers in writing would be made available as soon as possible. Questions and responses currently available were circulated at the meeting. A copy has been appended to these minutes.

The three signatories to the call-in (Cllrs: A Seldon; EPJ Harvey & GR Swinford) elaborated upon the reasons for the call-in as set out in the agenda report at paragraph 3. An additional comment was made that this decision should have been considered as a stand-alone decision and not as a follow on from the decision taken in April 2012.

The Chairman reminded Members of the Committee's recommendations made 13 April 2012, copies of which had been circulated, when the Committee had called-in a previous Cabinet decision concerning variations to the development agreement.

The Assistant Director Law, Governance and Resilience explained why the matter was not a key decision and circulated a note setting out his reasoning.

The Leader of the Council commented in relation to the previous Cabinet decision on 5 April 2012 and how the two decisions interrelated. He assured the Committee that Cabinet Members had been fully briefed on the risks and mitigation measures prior to the Cabinet meeting 31 October. The key decision question had been made clear in relation to urgency. He also commented that he had been convinced that there had been a significant risk that the deal was likely to fall through should the decision not be made by Cabinet on 31 October. He had only known the latest position concerning the financial negotiations on the Friday before Cabinet.

In overall terms the variations (£500,000 reduction in the capital receipt and amendment to the required number of pre-lets) were of a minor nature in the overall scheme considering the economic and other long term benefits that would be accrued from the development.

The Chairman made reference to requests for minutes of Hereford Futures and referred to recent comments made by M Hodge MP and N Raynsford MP concerning the need for accounting records of public companies delivering public services to be open, so that

the tax payer can see that proper value for money was being obtained rather than hide behind commercial confidentiality.

The Vice Chairman referred to the Notice of Motion raised in July 2012 warning about the financial situation concerning the contract and questioned what action had been taken since then to protect the Council from financial risk. Councillor Hubbard elaborated upon the issues raised in the Notice of Motion and also referred to subsequent correspondence with the Monitoring Officer which he suggested that the administration were already aware of issues regarding whether Stanhope and British Land were secure in going forward.

The Leader of the Council confirmed that since the Notice of Motion a conversation had taken place with Cllr Hubbard, concerning the issues raised, however, no evidence supporting the assertions had been brought forward.

In wishing to call an urgent Cabinet meeting the Leader commented that he had consulted with the Chairman of this committee concerning his reasons for wishing to deal with this as an urgent exempt item and acknowledged that the Chairman had expressed a different view. He had proceeded with the urgent non-exempt meeting as he had been convinced that the agreement could fall through if not proceeded with.

Responding to various questions, Mr Bretherton commented that a tough negotiating stance had been taken. However, this position needed to be understood in the current economic climate. The contract position had been slightly complicated in being a tri-partite agreement but this was not unprecedented. Also it was not unusual for the different parties to the funding agreement and contract to take different stances and Hereford Futures had on occasions acted as brokers during difficult negotiations. He also confirmed that it was not unknown in major deals of this nature for rumours, counter-rumours and other speculation to be in the public domain.

A member questioned any legal implications arising from the decision, including Paragraph 2.4 of the Pinsent Masons advice which had been circulated at Cabinet. If a judicial review of the agreement were initiated, he questioned whether the Council was vulnerable. He also suggested that, if Stanhope and British Land walked away from the deal, the Council would have to pick up the full costs. He also made the point that the public were fed up with secrecy concerning this development.

A member also suggested that the Council should be open and transparent, but it was important that any allegations made were fully substantiated.

A member acknowledged that there may be risks in proceeding, but also questioned what risks there were in not proceeding. He also questioned whether there would be further opportunities for Stanhope/British Land to seek any further financial contributions. He questioned whether there was any foundation to the rumour that the Council had paid for the site demolition.

The Leader of the Council stated that Stanhope had financed the demolition at the site. He further confirmed that the current state of the contract now meant that only the Council could allow negotiations to re-open should the financial position change.

Mr Bretherton clarified various deadline dates in the contract.

The Leader of the Council responded to the earlier question concerning the risk of not proceeding, commenting that amongst other things the county would lose out on 1,000 jobs, car park, cinema, new stores, Newmarket Street improvement, capital receipts and income from council car parks. Phase 2, when it proceeded, would bring further benefits.

The Committee questioned whether the scheme was still value for money. In response the Chief Officer Finance & Commercial commented that he had sought advice from Montagu Evans and their assessment that this remained value for money had been included in the report to Cabinet on 31 October. He also briefly commented concerning the Government's recent changes to the business rate scheme and the effect this would have on income from the development.

Responding to various questions concerning the change to the pre-let policy, Mr Bretherton confirmed that no change had been made to the Letting Displacement Policy previously approved. He commented that the reduction from six pre-lets to five pre-lets would now enable British Land/Stanhope to continue the funding arrangements. It would also put negotiators in a stronger position when talking to potential tenants.

The Assistant Director Law, Governance and Resilience reported that Pinsent Masons had led on the legal advice. In relation to the potential for judicial review they had expressed views on the likely hood of any successful challenge. He emphasised that any council decision could in theory be the subject of litigation. However were the courts to disagree with the decisions taken, there was nothing to prevent the authority from subsequently perfecting its decision making.

Mr Bretherton explained that the legal view was that the variation should be dealt with under a separate contract to that from the main contract, thereby divorcing one from the other should it be legally challenged.

The Director for Places & Communities commented that if the deal did not proceed he could not rule out the possibility that Stanhope may request a financial contribution from the Council for the cost of the demolition works though there was no obligation for the Council to agree or even consider this.

Questions were again asked whether risks had been tracked and were understandable. It was appreciated that specialist solicitors were undertaking the legal work, but the point was made that the Council needed to clearly understand the risk position. It was suggested that Appendix 2 to the report to Cabinet had not reflected the true position, as amongst other things it had not indicated the risks to the Council if the variations had not been agreed.

A member suggested that if Stanhope and British Land had been given a three month window in which to further the legal arrangements, it was unfair that the Council had only been given 24 hours' notice to make the decision concerning the variations.

Responding to questions Mr Bretherton clarified the various terminologies within the lettings policy. Mr Bretherton commented that the letting strategy within the agreement was unusual, in that it did provide a high degree of protection to the city centre as 30 businesses were not allowed to be approached by Stanhope.

A Member in attendance suggested that it would be many years before the Council would receive an actual return on its investment, bearing in mind how much time and money had been spent so far. He also questioned why, if British Land and Stanhope had confidence in the scheme, they had not been prepared to finance the shortfall in full and suggested that the current economic climate may mean the project was not as attractive as it had been.

Mr Bretherton assured the Committee that it was normal for large developments to take time and create a degree of frustration. This deal had not been helped by the down turn in the economic climate and the range of terms within the agreement. He acknowledged that British Land and Stanhope had responsibilities to their shareholders, yet it was clear

that both companies still wished to invest in Hereford, as there was no lack of confidence.

The Chairman sought clarification concerning how the 0.2% change equated to the £3m and the cost. Mr Bretherton responded that this related to a number of factors but in summary, the effect of this yield reduction when applied to a projected rent roll of approximately £5.7M for the completed development led to the £3m reduction in capital value.

The Leader of the Council restated that Cabinet Members had received briefings by officers and Mr Bretherton prior to the Cabinet meeting. He also commented that the Council was due to receive £1.5m, now reduced to £1m in accordance with the variation, on signature of the agreement next week. He also confirmed he would be happy to go through the figures with Cllr James and Cllr Matthews at a later date.

Questions were asked why the Cabinet Member (Enterprise & Culture) had not attended Cabinet or this meeting. The Leader of the Council confirmed that Councillor Phillips was out of the county on Council business, but would be attending Cabinet on Monday.

Responding to a request for clarity over the financing of the project, the Leader of the Council confirmed that a fact sheet could be provided to Members at an appropriate stage.

It was questioned why the risk identified in paragraph 2.4 of Pinsent Mason report hadn't been registered on the risk register (Appendix 2). The Assistant Director Law, Governance and Resilience confirmed that the risks were addressed in the external advice received.

Mr Bretherton commented that the risk mentioned in Pinsent Mason report rested with Stanhope, and not the Council. He reiterated that isolating this part of the agreement from the main contract provided a degree of protection. The commercial risk to Stanhope was they believed negligible and Stanhope had to take a commercial view.

Members considered that Cabinet needed to be clear about the risks involved and suggested the risks be categorised against each party in the agreement and list the mitigation being put in place.

A Member in attendance made the point that if these variations are to be dealt with by a standalone agreement, then this would infer that these variations are a separate decision to that taken earlier. It should be a key decision as it would now meet the criteria for being so. The Assistant Director Law, Governance and Resilience clarified that there was a distinction between the structure of the legal agreements and the totality of the decision constituting a key decision.

The Vice Chairman referred to amendments to the Constitution made by Council concerning definition of a key decision and also suggested that this Cabinet decision clearly met the definition.

Following questions about the various contract deadlines, Mr Bretherton explained how the various deadlines related to key points in the agreement and how they related to decisions made by Cabinet.

Comment was made about the appropriateness of Members text messaging during the meeting.

**RECOMMENDATION:**  
**That Cabinet**

- a) **Undertake further due diligence to demonstrate that value for money can be shown;**
- b) **Ensure that steps have been taken to safeguard the Council's position under the European procurement rules;**
- c) **Ensure that the risks reasonably inherent in this decision be recorded and segregated as between this Council and Stanhope;**
- d) **Make a detailed examination of paragraph 2.4 of the report by Pinsent Masons entitled Public Procurement Advice and produced to Cabinet on 31 October;**
- e) **Ensure that the issue of commercial confidentiality be considered extremely carefully as a reason for withholding papers from this Committee;**

The meeting ended at 12.12 pm

**CHAIRMAN**

## **General Overview & Scrutiny Committee**

### **Held at 10.00am Friday 9 November 2012**

Agenda Item 6 – Questions from the Public.

Agenda Item 6 invited the public to submit questions for consideration at the meeting so long as the question is directly related to an item on the agenda.

The Following questions have been received. Officers have provided written response.

**From: Mrs Wegg-Prosser**

I understand the Cabinet recommendation regarding the ESG Retail Quarter Development Scheme has been called in for Scrutiny. On the assumption that this matter will appear on the Agenda for the next General Overview and Scrutiny Committee Meeting to be held on 9th November 2012, I should be grateful if you could submit the following question and let me have the answer as soon as possible:- What has happened to the commitment to provide affordable housing and a civic quarter within the ESG development scheme?

Signed Victoria Wegg-Prosser, Hereford.

**Response - The question in relation to the provision of affordable housing in the civic quarter on the ESG scheme is not relevant to the Call-in but a written response will be provided separately to Mrs Wegg-Prosser on this matter.**

**From: Mr N Jones**

Uncorroborated reports suggest that the costs of the demolition of the old cattle market buildings (which has been going on since early October) together with the cost of the site's perimeter hoarding, have so far been borne by Herefordshire Council.

If true, this is highly irregular. In effect, public funds are being diverted to start work on a private property consortium's commercial development, before that development had been authorised by Herefordshire Council.

On 31 October 2012, Hereford Future's Chief Executive Jonathan Bretherton told the Emergency Cabinet Meeting that "the deal" (ie: the required Variation to the Retail Quarter (Old Livestock Market) Development Agreement) had to be signed by midnight that day. Yet Councillors were not informed that for at least three weeks Herefordshire Council had effectively been "underwriting" this demolition work in expectation of Cabinet approval.

The chairman of the meeting made no reference to this highly unusual circumstance; neither did the Acting Chief Executive nor the Director of Places & Communities, both of whom were in attendance. It would appear that due process was not followed.

**Q:** Can the Scrutiny Committee:-

- i) Ascertain whether Herefordshire Council has been “underwriting” the site demolition costs since early October?
- ii) If so, what is the total expenditure up to 31 October 2012?
- iii) Who authorised such an arrangement?
- iv) Why was the Emergency Cabinet Meeting not informed, since it might well have affected the decision taken?

In my view, all of the four elements of the above question relate to the Cabinet decision of 31 October 2012.

Submitted by:

Mr N Jones  
Hereford

**Response - These questions are not directly relevant to the Call-In, a separate written response will be provided which will confirm that there has been no underwriting of the demolition costs by Herefordshire Council.**

**From: Mrs E Morawiecka**

**Question 1**

Six months ago I requested information regarding the calculation of the business rate income at the 13th April meeting of Overview & scrutiny. The questions and answers provided were:-

"5.2. What has been the loss to date of business rates on the sites in Widemarsh Street, Station Approach, the Cattle Market site, etc since businesses were required to relocate for the “Link Road” to support the Grid Development?

**This is not relevant to the call-in but we will provide a written response to this question at a future date. It should be noted that the national business rates pool picks up any reduction in income and not the council.**

5.3 What is the expected annual loss in business rates arising from the anticipated city centre attrition rate of retail businesses arising from the revised terms from businesses closing or relocating as a result of the new ESG development competing with the existing City Centre, including business rates that will be lost on the existing Odeon cinema site?

**See answer to 5.2 above"**

1a) As this information would surely be required for the senior officer to calculate value for money for the local taxpayer, what is the answer to these questions, now that officers have had 6 months to prepare?

**Response - This question is not relevant to the current call-in, a written response has now been provided.**

1b) Montague Evans were apparently being prudent estimating that the retail development would generate business rates of £2.5million. I understand that the latest estimate for



business rates will now be just £1.25million. How prudent are Montague Evans being 6 months later with this estimate and what is the risk attached to their latest detailed calculation, bearing in mind the level of error before?

Response - This question is not relevant to the call-in but a written response will be provided at a future date.

## **Question 2.**

The minutes of the Gateway Committee, which includes Cllr Jarvis, Cllr R Phillips, the Chief Executive of Herefordshire Council and Mr Geoff Hughes, of 18th July 2012, states under 5. Old Market Site/Stanhope:-

"5.2 The committee was made aware of Stanhope's proposals regarding project funding.

5.3 "redacted"

5.4 The Committee discussed the final steps required to conclude the agreed contracts. Geoff Hughes had delegated authority to proceed".

2a) What were Stanhope's proposals regarding project funding in July?

Response - Stanhope made the proposal that they would put in place the project funding with British land PLC based upon the cabinet approval from April. They enquired as to the likely timescale regarding putting the delegated officer approval in place.

Stanhope also mentioned contingency plans in the event that they failed to secure satisfactory agreement with British land and how they were considering approaching the investment market in future.

2b) What were the final steps agreed by this committee for Mr Geoff Hughes to conclude the agreed contracts under delegated authority?

Response - The Gateway Committee agreed no final steps, the delegated authority referred to was the delegated authority given to Mr Hughes at the cabinet decision meeting in April.

The gateway committee have no executive authority to make decisions, this was purely a reference to the delegated authority given by cabinet.

All that was discussed was the timetable for completed that work as agreed by cabinet.

## **Question 3.**

There is still considerable potential for the Old Livestock Market site to compliment the historic city centre of Hereford and to provide much needed housing; educational resources; etc. Now that the future income/capital receipts on this deal have fallen as a result of :-

i) the estimate of business rates dropping from £2.5million to £1.25million p.a.in the last 6 months;

ii) the future capital receipt has fallen from £1.5m to £1million;

iii) Herefordshire Council has already overspent by £1.5 million on purchasing land for the link road to support the Stanhope Development;

at what point does the deal with Stanhope/British Land cease to be value for money for the local taxpayer?

**Response - The council has taken independent advice from Montagu Evans about the revision to the development agreement and has received assurance that this remains value for money for the local taxpayer.**

3b) Please confirm the net present value and the return on investment local taxpayers can expect on their money being invested in the Old Livestock Market retail scheme, showing the calculation and total costs incurred by way of legal and professional fees; capital costs of the Link Road; the New Livestock Market; etc to date, and clearly identifying the current estimated capital and income receipts this project will deliver.

**Response - This is not relevant to the call-in, but a written response will be provided at a future date.**

Yours sincerely,

Mrs E Morawiecka