

MINUTES of the meeting of Cabinet held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Wednesday 31 October 2012 at 10.00 am

Present: Councillor JG Jarvis (Chairman)

Councillors: H Bramer, RB Hamilton, AW Johnson, GJ Powell and PD Price

In attendance: Councillors: AM Atkinson, JA Hyde, MAF Hubbard, TM James, RI Matthews, A Seldon, PA Andrews, PGH Cutter, J Hardwick, EPJ Harvey, JLV Kenyon and C Nicholls

38. APOLOGIES FOR ABSENCE

Apologies were received from Councillor PM Morgan (Cabinet Member Health & Wellbeing) and Councillor RJ Phillips (Cabinet Member Enterprise & Culture).

39. DECLARATIONS OF INTEREST

There were no declarations of interest made.

40. VARIATION OF RETAIL QUARTER (OLD LIVESTOCK MARKET) DEVELOPMENT AGREEMENT

Further to its decision on 5 April 2012, approval was sought from Cabinet to revisit the decision made on 5 April (effective 13 April 2012) regarding the Retail Quarter Development Agreement and the funding agreement between Stanhope Plc. and British Land Plc.

The Leader of the Council explained that in accordance with the Local Government Act 1972 Cabinet needed to treat the item as urgent because this was a major commercial transaction which had been the subject of negotiation for some time and resolution was required today by all parties.

Mr J Bretherton (Hereford Futures Ltd) reported that additional variations, as set out in the agenda report, were sought by Stanhope Plc. and British Land Plc. in order to allow the development to proceed. The variations sought, and the reasoning for them, were set out at paragraph 7 in the agenda report. He also corrected the figure 6.5% in section 1, column 2 of Appendix 2 which should read 6.3% and that 6.3% in the 3rd column should read 6.5%.

The Leader of the Council emphasised the need for urgency and the major implications that would arise if an agreement was not concluded today.

The Cabinet Member Education & Infrastructure spoke in support of the proposal and highlighted that this was a major contract and it should be no surprise that negotiations would be on going; that the finances being debated were capital and not revenue and outlined what impact this may have in terms of the Council's treasury management.

Other Cabinet Members also spoke in support of the proposal and highlighted the benefits to the City and County in progressing with the development.

The Assistant Director Law, Governance & Resilience referred to the external legal advice from Pinsent Mason, both in the agenda and circulated at the meeting and both dated 30

October 2012, which related to the public procurement process; questions concerning State aid, and risk associated from legal challenge.

A Member in attendance questioned the reduction of conditional pre-lets from 6 to 5. Cabinet were informed that the 5 pre-let figure had now been achieved.

Responding to whether the revised arrangements still represented value for money the Chief Officer Finance & Commercial responded that as the Council's Section 151 Officer he had given careful consideration to this point, principally on behalf of the council tax payer. Given that this was a complex contract he had commissioned Montagu Evans and their report was included in the agenda. Based on this advice and his own view he concluded that it still represented the best consideration that could reasonably be obtained and value for money.

A Member in attendance suggested that based on the advice given by Pinsent Mason the Council's position could still be legally challenged.

On questioning the emergency status of holding the meeting and suggesting that Council should have the chance to debate the implications of these variations the Assistant Director Law, Governance & Resilience referred to the earlier statement by the Leader of the Council concerning urgency.

In view of the economic down turn it was questioned whether now was the right time to continue with this development. It was suggested that if Stanhope Plc. had confidence in the project then they should be willing to absorb the extra costs.

Clarification was sought concerning references to the midnight deadline for the decision where upon the Leader of the Council and Mr Bretherton clarified the Director of Places and Communities had been acting under the authority granted to him on 5 April 2012 by Cabinet but that agreement regarding the funding arrangements between Stanhope Plc. and British Land Plc. had to be concluded by the end of October 2012.

Clarification was also sought in relation to the reference to 28 December in paragraphs 1.3.1 and 1.3.2 of Appendix 3 of the report. Mr Bretherton explained that this was the longstop date set by the Council by when the other parties must implement the variations contained within the April 2012 Cabinet Approval delegated to the Director for Places and Communities whereas the other parties were now working to the much tighter deadline of the end of October.

RESOLVED:

THAT

- a) **The revised funding arrangements between Stanhope Plc. and British Land Plc. be approved; and**
- b) **Authority be delegated to the Director for Places and Communities to finalise the necessary documentation required to address the issues raised in the report.**