

MINUTES of the meeting of Cabinet held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Monday 12 November 2012 at 10.00 am

Present: Councillor JG Jarvis (Chairman)

Councillors: RB Hamilton, RJ Phillips, GJ Powell and PD Price

In attendance: Councillors AM Atkinson, NP Nenadich, P Rone, MAF Hubbard, RI Matthews, A Seldon, ACR Chappell, J Hardwick and AJW Powers

Cabinet stood for a minutes silence in remembrance of Councillor Gordon Lucas.

41. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors: H Bramer, Cabinet Member Major Projects, AW Johnson, Cabinet Member Financial Management, PM Morgan, Cabinet Member Health and Wellbeing and JA Hyde, Cabinet Support Children's Services.

42. DECLARATIONS OF INTEREST

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3 Variation of Retail Quarter (Old Livestock Market) Development Agreement.
Councillor JG Jarvis, Personal, Board Member of Hereford Futures.

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

The Leader of the Council presented the report of the Director for Places and Communities and invited the Chairman of the General Overview and Scrutiny Committee to address Cabinet.

The Chairman of the General Overview and Scrutiny Committee presented the recommendations of the Committee and stated that in referring to recommendation a) value for money: retail was in decline and therefore Cabinet needed to be confident that the deal before Cabinet represented good value for money. Recommendation b) procurement rules: assurance was sought as to whether the variation constituted a new contract or a variation on the previous contract and therefore complied with European procurement rules. Recommendation c) risk: a clearer strategy was needed in order that risks were clearly understood and who it was that was taking the risk. Recommendation d) paragraph 2.4 Pinsent Mason report – public procurement advice – it was felt this was not clear and that clarification was needed on this point. Recommendation e) commercial confidentiality: where public money was concerned, reasons for confidentiality of documents for the General Overview and Scrutiny Committee must be used carefully and not as a means to not disclose how public money is used.

In response to the comments of the Chairman of the General Overview and Scrutiny Committee the following points were made:

- It was stated Cabinet accepted the comments made in recommendation e) to be as open as possible, however, it was important to be consistent with other local authorities.
- The Director for Places and Communities provided Members with an updated appendix to the report which outlined the risks and where responsibility for the risk lay.
- In referring to value for money, the Chief Officer Finance and Commercial stated that further tests on value for money had been carried out, which indicated that the Council was getting value for money. Further testing was carried out which included the cost of relocating the cattle market, issues around compensation and factoring in a reduced business rate. The indication was for a positive return, therefore due diligence had been carried out.
- In referring to the livestock market it was stated that it was now flourishing and expanding and therefore satisfied that it represented a good return, which represented value for money and could not be bettered.
- In response to a question on the financial impact to the Council if Stanhope walked away from the deal, it was noted that Cabinet would be left with an empty site. Cabinet was also advised that a significant penalty clause to the Council if the cattle market had not been relocated had now fallen away.
- In referring to the Deed of Variation and the £500k the representative from Pinsent Mason stated there was a requirement to be satisfied this was not a grant of state aid, as if this was seen to be the case it would require to be repaid.
- In response to a question if Stanhope had to repay the £500k was there a risk to the Council. The Pinsent Mason representative advised that negotiations had not commenced on the Deed of Variation although the general principles had been and Stanhope had agreed that if the Deed of Variation was challenged there would be no risk to the Council as Stanhope would repay.
- A response to a comment that a legal challenge had been lodged the Leader advised that he was not aware of any challenge being made. It was added that successful challenges to an agreement such as this were extremely rare.
- The Deputy Leader stated he felt it was an acceptable risk to go ahead based on the legal advice provided.
- In response to a question on the second variation and the validity of the contract under European Contract Rules it was stated that the new document sets out the legal and commercial risks in clear a table, which will be regularly revised and updated.

The Leader sought Cabinets assurance that they were satisfied with the advice provided to make a decision. Cabinet confirmed its agreement.

RESOLVED

THAT:

- a) Cabinet, having considered the recommendations made by the General Overview and Scrutiny Committee as set out in this report of Cabinet ratifies its decision taken on 31 October (Ref No.2012.CAB.084) concerning the variation of the Retail Quarter (Old Livestock Market) Development Agreement; and,**
- b) Asks the Monitoring Officer to review the issues of disclosure of commercial confidentiality and report back further.**

The meeting ended at 10.55 am

CHAIRMAN