HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Community Services Scrutiny Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Monday 13 July 2009 at 10.30 am

Present: **Councillor TM James (Chairman)**
Councillor *KG Grumbley (Vice Chairman)

Councillors: DJ Benjamin, Churchill, GFM Dawe, BA Durkin, JHR Goodwin, DW Greenow, KS Guthrie, Mr PH Hands, MAF Hubbard, RH Smith, PJ Watts, Mr G. Woodman and JD Woodward

In attendance: **Councillors PA Andrews, WLS Bowen, Councillor H Bramer (Cabinet Member, Resources), Councillor JA Hyde (Cabinet Member, Children's Services), MD Lloyd-Hayes and Councillor PD Price (Cabinet Member, ICT, Education and Achievement)**

13. APOLOGIES FOR ABSENCE

Apologies were received from Councillors KG Grumbley, B Hunt and RV Stockton.

14. NAMED SUBSTITUTES

Councillor PJ Watts was present as a substitute for Councillor KG Grumbley; Councillor JD Woodward for Councillor B Hunt; Councillor JHR Goodwin for Councillor RV Stockton.

15. DECLARATIONS OF INTEREST

Name	Item	Interest
Cllr AJM Blackshaw	5	Personal - Board Member Hereford City Partnership
Cllr DJ Benjamin	5	Personal - Businessman in City Centre
Mr P Hands	5	Personal - Board Member Hereford City Partnership
Cllr MAF Hubbard	5	Personal - Board Member Hereford City Partnership
Cllr TM James	5	Personal - Board Member Hereford City Partnership
Cllr RH Smith	5	Personal – Board Member Courtyard Theatre
Mr G Woodman	5	Personal - Board Member Hereford City Partnership

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

No suggestions were received.

17. CALL IN OF THE CABINET DECISION ON THE EDGAR STREET GRID RETAIL QUARTER DEVELOPMENT AGREEMENT

The Committee considered Cabinet's decision to grant approval to enter into the Edgar Street Grid (ESG) Retail Quarter Development Agreement between Herefordshire Council, ESG Herefordshire Ltd, and Stanhope.

The decision had been called in by three Members of the Committee: Councillors DJ Benjamin, GFM Dawe and MAF Hubbard.

The stated reasons for the call-in were

- There being no previous indication that a 250 year lease was being considered, and insufficient explanation as to why this was necessary.
- The 'Masterplan' was negotiated before the start of the credit crunch and there has been no public re-negotiation of plans for the Retail Quarter since those events.
- With due regard to matters of commercial confidentiality, there is insufficient information about the structure of the financial arrangements in relation to the Retail Quarter itself, and also between the Retail Quarter and other parts of the ESG project.

The Chairman explained how he proposed to conduct the meeting. He emphasised that the focus of the meeting should be on the merits of the Cabinet decision of 25 June.

A Member proposed that Mr R Clay, a city resident, should be co-opted onto the Committee for the part of the meeting open to the public outlining his qualifications and the support he had provided to those initiating the call-in.

The Committee considered the matter and decided not to co-opt Mr Clay.

A statement was then made on behalf of those initiating the call-in. The principal points are summarised below:

- Too little information had been made available about a momentous decision for the City and the County.
- There were considerable unanswered concerns on the part of the business and related professional community in the City.
- The recent resignation of Clive Richards as Chair of the ESG Company was unexplained.
- That the scrutiny process was flawed.
- That the Community Services Scrutiny Committee had not previously conducted any in-depth or robust examination of the ESG project.
- A criticism of the role of the Chairman of the Committee and the appropriateness of his chairing the meeting.
- A concern that Cabinet had taken its decision on the ESG Retail Quarter Development Agreement before planning approval had been given to the new relocated Livestock Market which it was suggested raised the question of predetermination.
- Criticism that a number of people had not been invited to appear before the Committee as witnesses.
- That those initiating the call-in had not been granted their wish to have an advisor of their choice co-opted onto the committee to assist them. This made it difficult for them to challenge the professional representatives attending the meeting on behalf of the Council and ESG Board.
- That depending on the outcome of the meeting it was intended to pursue the matter including by holding a public meeting where the concerns of the citizens and its business community could be given a full airing.
- It was suggested that the way in which the call-in had been handled had impaired the attempt to hold the Executive to account and therefore might increase the prospect of legal challenge to the Council's decisions.

- That it was of major concern that the Development Agreement represented a new approach to the Development that had not been discussed in public and neither had the proposal to grant a 250 year lease. There had also been no discussion or reconsideration of the project since the credit crunch which had made a fundamental change to the national retail picture. The project needed to be revaluated to see if it were truly viable, or was unattainable in retail terms and would leave the City in debt.

- That the infrastructure for the project should be put in place first, concern being expressed that there was a lack of finance available for the development. There was also criticism of the way in which the Council presented the project, in particular the references to the provision of a new cinema as part of the development.

In conclusion it was stated that the reasons in support of the call-in reflected public feeling.

The Chairman refuted the criticism of his role, emphasising that he had ceased to be Leader of the Council before the decisions in relation to the Cattle Market and the Edgar Street Grid that were the subject of scrutiny had been taken.

The Cabinet Member (Economic Development and Community Services) then spoke in reply to the call-in. His principal comments are summarised below:

- In connection with the resignation of Mr Richards as Chairman of ESG Ltd, he emphasised that the Board was committed to the ESG Project.
- In respect of the three stated reasons for the Call-in he said:
    - A 250 year lease was an industry standard for a project of this size.
    - The project was for delivery after the recession. The master plan had not been changed but the phasing of the project would be consulted on.
    - That information on the proposed financial arrangements had been available at Cabinet.
- He questioned the motivation behind the call-in stating that cross-party working was needed to improve service delivery.
- That there were strengths to the Herefordshire economy which comprised a mix of sectors. However, Hereford City, the nucleus, faced many problems. The City was losing its retail and leisure market share and the position would worsen significantly without the ESG project.
- The recession would end. Investment in development was therefore appropriate. He highlighted the focus on the historical heart of the City and the streetscene proposals of architect, Ben Hamilton-Baillie stating that the development would benefit the City as a whole including the existing centre. The choice lay between decline and a dynamic, attractive regional city. The ESG project was an opportunity to be seized.

It was noted in reply that two of those initiating the call-in were city based Councillors who were reflecting the level of concern about the proposal within the City.

A question was asked about what would happen to the City Centre whilst proposals for the development were being pursued, giving as an example the failure of Wrexham City Centre. It was suggested that the key principles of Mr Hamilton-Baillie's approach were not being followed and the implications of the phasing of the project in the context of the UDP and connectivity were unclear.

The Cabinet Member concluded by saying that there would be an opportunity to comment on the phasing proposals.

Mr Jonathan Bretherton, Chief Executive of the ESG Company then gave a presentation on the Development Agreement that he had presented to Cabinet on 25 June, with some additions in response to issues raised by the call-in.

The principal points were:

- That this was a complex deal, but that it was based on a tried and tested structure within the industry.

- That there were three key elements to the structure of the deal
    - Development Agreement
    - Compulsory Purchase Indemnity Agreement
    - 250 Year Lease

- The initial 18 month period after the agreement was signed (which could be extended to 24 months under certain circumstances) would consist of consideration of the phasing of the project, determination of who the anchor tenants should be, and finalising funding for the infrastructure. A decision to relocate the Livestock Market would also have to be taken. The phasing had not been agreed, and was not part of this section of the agreement. The Tenants would be sought by Stanhope. During this period, either party would be able to walk away from the agreement with no penalties. If a satisfactory phasing arrangement could not be agreed, then the agreement would not progress.

- The three main Council preconditions that would have to be met during the initial stage of the agreement, a period of up to six years, were:
    1. that the livestock market should be moved
    2. that Planning and land assembly for link road was completed
    3. A construction contract for the road had been let.

  No waiver of any of these preconditions was allowed.

- There were seven Stanhope preconditions that would have to be met during the same period:

    1. Obtain planning consent
    2. Land acquisition
    3. Deals with tenants - cinema, department store and food store
    4. Obtain any consents or orders needed to allow the upgrading of Blueschool Street and Newmarket Street
    5. Obtain funding
    6. Environmental and ground conditions reports
    7. Affordable housing units deal with an approved RSL

  Of these preconditions, only the provision of affordable housing units could be waived.

In the ensuing discussion the following principal points were made:

- Asked if the Cabinet decision represented a point of no return, Mr Bretherton reiterated that the initial pre-conditions had to be satisfied within 18 months of signing the Development Agreement, 24 months at the outside (under certain conditions), with the main pre-conditions to have been satisfied within six years of the signing of the Development Agreement.

- Asked about the reasons for Mr Richards's resignation, Mr Bretherton replied that it was not a matter for him to comment upon. The Cabinet Member commented that Mr Richards had done an excellent job. The ESG Ltd Board was united in its determination the ESG project should be successful.

- A question was asked about the protection of the existing City Centre and restrictions that would be placed on Stanhope approaching existing retailers to coax them on to the ESG retail quarter. Mr Bretherton replied that he had previously said that certain existing City Centre retailers would move, but by far the majority of the ESG retailers would be new to the City.

- It was suggested that assurances had previously been given that relocation of existing retailers could be prevented. Mr Bretherton said that he had never said that no retailers would move. However, by far the majority would be excluded from doing so. The ESG site would be leased to Stanhope not sold freehold allowing the Council to exercise some control over tenancies. However, some retailers were determined to relocate. The Council had already had to defend a number of applications to relocate at planning inquiries. In response to a suggestion that this in effect meant any major company could relocate to the retail quarter, leaving small independent traders isolated, Mr Bretherton said this was not the case and he did not consider the existing City Centre would fail. Pressed further on the point he said he thought 2-3 retailers would move.

The Cabinet Member added that, if the ESG did not proceed, retailers, a number of whom were already seeking to move to the Holmer Road trading estate would have a stronger case.

The Director of Regeneration supported the comment that because the ESG site would be leased to Stanhope, not sold freehold, control could be exercised over movement of retailers.

- Asked about the proposed 250 year lease Mr Bretherton said that two of the three shortlisted developers had rejected the 125 year lease initially proposed. The offer of an extended lease was one of the consequences of the credit crunch and reflected the market. The one developer who had been willing to proceed on a 125 year lease had recently gone into administration.

- The Cabinet Member commented that the development represented a unique opportunity, making a visit to the city a leisure experience. The private sector was keen to invest in the development now and this interest would grow after the recession. Experts saw Hereford as a good investment opportunity.

The following further points were made:

- That further regular updates on the project would be welcomed by all Members.

- That, in accordance with one of the Committee's resolutions of October 2009 the project should be referred to as the extended city centre.

- A question was asked about the role of a company called Pendower Developments Ltd, described as a small company with two shares, in the Development Agreement, and its viability. Mr Bretherton said that the Development Agreement was with Stanhope. The two executives comprising Pendower Developments were experts named in the Development Agreement who worked with Stanhope. Stanhope could not sub-contract without the Council's approval. The relationship between Stanhope and Pendower was a matter for Stanhope.

- There was criticism of the grounds for the call-in, suggesting that each point had been addressed. The reason for the 250 year lease had been given; account had been taken of the credit crunch and it needed to be borne in mind that there would be more changes to address during the life of the project; and the relevant financial information had been available at the Cabinet meeting on 25 June.

- It was questioned whether the phasing of the project was consistent with the Unitary Development Plan, in particular the provision that any development extension of the city centre had to be complementary and, under PPG 6, within 300 yards of existing retail provision.

- Mr Bretherton said that negotiations on the phasing were in the early stages and could not be finalised until a number of variables had been resolved. The phasing process would be subject to further consultation. Phasing would not be able to proceed without agreement. The UDP designated the ESG retail quarter as being within the City Centre. The proposals were, therefore, consistent with PPG 6. Signing the Agreement committed the Council to a process. However, designs for schemes forming part of the Agreement would have to be consulted upon and would have to demonstrate a range of things including connectivity to the City Centre.

- A Member expressed concern at the degree to which the current proposal differed from the original and the perception that the Council was committing progressively more finance to the project and acting in haste.

- That city ward councillors had a considerable amount of concern about the potentially detrimental effect of the development on the existing City Centre.

- It was unfortunate that the conclusion of the 18 month period would coincide with Council elections, potentially leaving a new administration saddled with a project it did not support.

- It was suggested there would be pressure to ensure there were no void shops in the ESG, irrespective of however many shops were empty in the existing Centre and which should be given precedence.

Mr Bretherton replied that the master plan provided for approximately 35 new shops for the whole ESG development. The 18 month provision in the Development Agreement recognised the need to review the position as did the phased approach. A single development without phasing was too large in his professional opinion.

- It was questioned whether account had been taken of the fundamental change in the retail environment precipitated by the credit crunch and suggested that the project had been overtaken by events. There should therefore be a review of the policy, however politically unpalatable this might be given the commitment given to it to date, and a new approach considered, focusing on developing the existing City Centre using the capital receipt from the disposal of the Cattle market site.

The Cabinet Member reiterated that the regeneration of the Centre had to involve both enhancing the existing Centre and providing new development. There was insufficient space in the City Centre for stores needing a large footprint.

- Mr Bretherton stated that it was the ESG Board's intention to support the Football Ground remaining in its current location.

- In relation to the pace of Mr Hamilton-Baillie's work it was noted that the nature of the work meant it took time to produce. It was reiterated that consultation would take place on the content.

- A question was asked about Compulsory Purchase Orders and the relocation of existing businesses on the ESG. It was reported that there were 16 businesses on the Cattle Market site, one of which had so far relocated.

- In response to confirmation that the food hall proposed in the development on the Cattle Market site was a supermarket, reference was made to Hansard's record of the debate in the House of Lords on 14 May 2003 on the Hereford Markets Bill. It was said it was clear from that debate that the intention had been that there should not be a supermarket on that site. The Head of Legal Services replied that the Act itself was brief and dealt solely with the translocation of the Cattle Market

(The Committee adjourned between 12:25 and 12:30.)

The Chairman then invited comments from Members of the public present.

Mr Roy England, head lessee of Maylords Orchard Shopping Centre, Hereford, read a detailed statement to the Committee. The following is a summary of his principal comments:

- That it appeared that the Council lacked the appropriate level of professional input and opinion, in particular, the evidence of an independent external retail expert.
- He had opposed the ESG plans in 2007 because the issue of integrating the new development with the existing City Centre was not addressed. There was no linkage between the two areas, which were some 500 yards apart. People from outside the City would simply drive to the new development, park, shop and leave, without visiting the existing Centre.
- That part of the ESG originally identified as the civic quarter would have formed a better retail site as it would have facilitated a circular shopping route involving the existing centre and the new development.
- The ESG Master Plan had been developed prior to the credit crunch. He questioned whether the case for including a retail quarter remained valid. An up to date professional assessment was required. He noted that there were currently 50 empty shops in the City Centre and queried whether new owners could be found.
- Spending had been funded by credit. There was a need to adjust to the change in spending patterns that would prevail in future.
- There were a number of examples across the Country of retail closures including large chains.
- The poorer the integration of the new development with the existing centre, the greater the detrimental impact would be. There were many examples of Town Centres that were suffering: Northampton, Coventry, Gloucester, Tamworth, Wrexham, and Kidderminster.
- The Council was ignoring public opinion.
- There was a lack of detail about the funding and viability of the Scheme. The Council needed to take a step back and look at recent retail development schemes which had failed. He cited Wakefield as an example. A professional and pragmatic approach was required.

- The funding details, options, and penalties the Council might face should be published.
- That he did not consider the role of Pendower had been sufficiently answered.
- He asked why the Chairman of the ESG Board had resigned.
- The new intention to phase the development meant the scheme would lack impact.

In the following discussion the following principal points were made

- The Director of Regeneration commented that the Council had called on independent professional expertise. Advice had been sought to inform the UDP. A report from Drivers Jonas had been received in the last six months to inform the LDF process. He added that the UDP had redrawn the City Centre boundary and the ESG development now lay within the City Centre. The UDP, the Local Development Framework and regional spatial strategy and regional and sub-regional work also informed the Council's view.

- Mr Bretherton added that the ESG Board had separately commissioned a report on the retail position from the firm M Evans. The Board needed to satisfy itself as to the position and it was recognised that further work would need to be done.

- Mr England asked that the expert advice provided to the Council should be made public to provide an opportunity for people to assess it.

- The Director of Regeneration undertook to investigate what information could be made public.

- The extent of the recession meant people in Herefordshire, where incomes were low, would not have money to spend for some considerable time and the Scheme should be postponed.

- Mr Bretherton clarified that the proposal meant that the pre-conditions would have to be met within 6 years. He expected some development to take place, subject to planning permission by the end of 2011. He added that the application for planning permission would require a retail impact assessment to be carried out. There would be a lot of checks and balances and many opportunities to challenge the proposals.

Mr B Clay a City resident then made a statement to the Committee. The following is a summary of his principal comments:

- He praised the Councillors who had called in the Cabinet decision. He said that they represented the overwhelming view of the people of Hereford.
- It had been argued that the ESG Scheme would benefit the existing City Centre. This meant that Mr England's concerns about the scheme, from which he should presumably expect to benefit, deserved consideration.
- He deplored the fact that no independent witnesses, specialists in retail and planning, were appearing before the Committee.
- The public concern was that the Council had a poor deal and was seeking to rush into an agreement before the terms got worse.
- He also commented on the issue of independence and the vested interest he considered Cabinet and the ESG Board had in pursuing the scheme.

- He expressed concern about the finances of the Scheme noting that funding was now being sought from the Homes and Communities Agency. He was concerned that there was no clear statement of the total cost of the various elements of the project, both capital and revenue and the Council's total debt.
- He questioned whether the timetable for the development was realistic.
- The Council was wrong to highlight the proposal for a multi-screen cinema as part of the development in its press releases. If there was a market a developer would already have found a site.
- The provision of social housing in the development was insufficient and should be reconsidered.
- He agreed with the Cabinet Member that doing nothing was not an option. However, there was a clear alternative to retail development on the ESG. There should be an independent review of the way forward with proper scrutiny allowing Mr England and others a more structured input.

Peter Baines, a Herefordshire Resident, in summary, questioned the Cabinet Member's view that retail spend was being lost to other areas making the ESG development necessary. He referred to work by Hereford City Council and the former Hereford and Worcester County Council that had discounted the view that a major store would come to Hereford and said that that analysis had proved correct.

The Cabinet Member cited work by Drivers Jonas and CACI as evidence that the City was losing retail spend to other areas. The acid test was whether the private sector would invest in the ESG project and there was every indication that they would.

Kirsty Chadd, Managing Director of the former Chadd's Department store in the City said, in summary, that the large brands tended to move into an area as a group. It had proved difficult to attract big brands to the City in the past, and it was hard to see how they would be attracted in the future unless there was a significant new retail development. She added that independent traders in the City would struggle unless they worked together to market and promote their services and that without the large brands in the City centre their task was impossible.

A Member sought clarification on the financial contribution of AWM, given that Regional Development Agencies would be abolished before any final decision on whether or not to proceed with the ESG project was taken. It was essential that there was a guarantee that that element of the funding package, including any increase in the costs of that element, was met by Central Government. There were otherwise potentially serious implications for Herefordshire. A decision on whether or not to proceed should not be delegated to an officer. Councillors needed to have knowledge of the financial implications before a final decision was taken on whether or not to proceed.

The Cabinet Member said there was no certainty about the future of AWM. However, if that body ceased to exist there would have to be another body fulfilling that role. Once projects had been committed they would continue. Under the proposed Development Agreement the Council would have 18 months to assess the position.

It was agreed that Mr Bretherton's presentation would be sent to all Councillors.

The Director of Regeneration agreed to publish the professional opinion obtained by the Council on the retail assessment, if that were possible, or, if it were not, to put into the public domain what information could be made public on the issue.

RESOLVED: That the public and press be excluded from the meeting at this point during consideration of Appendices 3 and 4 to the report on the grounds that they disclosed information relating to the financial or business affairs of any particular person (including the authority holding that information).

Summary of Proceedings during which the public and press were excluded

The Committee considered a synopsis of the retail quarter development and a financial model of the retail quarter development and questioned aspects of both documents.

(The meeting was opened to the press and public again at 2.50 pm)

The following motion was moved:

We ask the Cabinet to reconsider its decision to start final negotiations on a development agreement with Stanhope plc, since there had been insufficient information and explanation in relation to the new circumstances and changes to the ESG Masterplan that have arisen since the credit crunch and in particular publicly published independent expert retail analysis of the current situation in Hereford and how that affects the ESG retail quarter.

We recommend the Cabinet to require a review of the project, involving a sufficient measure of independent assessment and consultation to re-assure the widespread and increasing concerns expressed by other Hereford City centre stakeholders and the wider public.

This was put to the vote and lost.

The following motion was then moved:

The Committee endorses and supports Cabinet decision no 2009. Cab. 036;

The Committee invites Cabinet to consider periodic update briefings for all Members on the project's programme and progress;

The Committee seeks Cabinet's assurance that Members will be given the opportunity to question and be satisfied as to the financial and operational viability of the project before irrevocable decisions were taken.

Some Members reiterated their wish for independent external retail advice to be secured and published.

A Member expressed the hope that the executive took independent advice on the Agreement as a whole and made this available to the Council as a whole before a final decision was taken on whether or not to proceed with the project.

Mr Bretherton, whilst acknowledging concerns about the difficulty of securing truly independent advice, stated that advice had been sought from two experts: Drivers Jonas and CACI and an overall view then agreed between them, reconciling their two separate perspectives. He added that he would be repeating this exercise. He would also be commissioning a report to the ESG Board on the Agreement as a whole before a final decision was taken on whether or not to proceed with the project.

The following amendment was moved:

That Cabinet look at how they might publish independent external retail analysis of the project as soon as possible.

The amendment was put to the vote and lost.

The motion was then put to the vote and carried.

RESOLVED:

That (a) Cabinet decision no 2009. Cab. 036 be endorsed and supported;

(b) Cabinet be invited to consider periodic update briefings for all Members on the project's programme and progress; and

(c) Cabinet's assurance be sought that Members will be given the opportunity to question and be satisfied as to the financial and operational viability of the project before irrevocable decisions were taken.

The meeting ended at 3.05 pm **CHAIRMAN**