

**MINUTES of the meeting of General Overview & Scrutiny Committee held at The Council Chamber, Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Wednesday 18 February 2015 at 10.00 am**

**Present:** Councillor WLS Bowen (Chairman)  
Councillor BA Durkin (Vice-Chairman)

**Councillors:** ACR Chappell, JW Hope MBE, MAF Hubbard, JA Hyde, TM James, JG Jarvis, JLV Kenyon, MD Lloyd-Hayes and DB Wilcox

**In attendance:** Councillors H Bramer (Cabinet Member), AW Johnson (Leader), JF Knipe and NP Nenadich

**Officers:** B Baugh (Democratic Services Officer), D Burgess (Deputy Solicitor to the Council, Property and Commercial), A Featherstone (Head of Corporate Asset Management), G Hughes (Director for Economy, Communities and Corporate), and B Norman (Assistant Director, Governance).

**47. APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Councillors AJM Blackshaw, DW Greenow, EPJ Harvey, RL Mayo, AJW Powers, and A Seldon. Apologies had also been received from Miss E Lowenstein, an education co-optee.

**48. NAMED SUBSTITUTES**

The following substitutions were made, Councillors: JW Hope MBE for AJM Blackshaw; MAF Hubbard for EPJ Harvey; JA Hyde for RL Mayo; MD Lloyd-Hayes for AJW Powers; and JLV Kenyon for A Seldon.

**49. DECLARATIONS OF INTEREST**

Review of Lease Restructuring with Hereford United (1939) Ltd

Councillor JLV Kenyon, Non-Pecuniary, member of Hereford United Supporters' Trust.

Councillor NP Nenadich, Non-Pecuniary, former director of Hereford United and current Chairman of United in the Community Trust.

**50. MINUTES**

The minutes of previous meetings were received.

**RESOLVED:** That the minutes of the meetings held on 24 November 2014, 2 December 2014, and 14 January 2015 be approved as correct records.

**51. SUGGESTIONS FROM THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY**

No suggestions from the public were received.

## **52. QUESTIONS FROM THE PUBLIC**

It was noted that Supplement 1 to the agenda contained ten questions received in relation to the item 'Review of Lease Restructuring with Hereford United (1939) Ltd', together with officer responses to those questions considered relevant to the report.

## **53. REVIEW OF LEASE RESTRUCTURING WITH HEREFORD UNITED (1939) LTD**

The Chairman explained that the purpose of this item was to consider lessons learned and ways to improve any future leases for the benefit of citizens and football in the county.

The Director for Economy, Communities and Corporate gave an overview of the report and appendices, drawing attention to:

- a. Appendix 1 (agenda page 33) was a scoping document for the review, focusing on: what happened in the lease restructure in 2013/14 and to identify any lessons; and the relationship between Hereford United Football Club (1939) Ltd [HUFC] and Herefordshire Council and its predecessors.
- b. Appendix 2 (page 35) was a briefing report prepared by officers in response to the scoping document.
- c. Full copies of the leases had been published as background papers to this item on the council's website.
- d. Appendix 3 comprised plans of the ground indicating the extent of the leases under the original Hereford City Council leases, 2014 leases, and proposed 2015 lease.
- e. The scoping document posed a number of key questions (page 34) and the briefing report responded to those questions in turn (pages 38 to 40).
- f. Paragraphs within the briefing report relating to current status (page 35) were read out.
- g. The briefing report (pages 36 to 38) summarised the key terms of the former Hereford City Council negotiated leases, the reasons for the move to new leases in 2014, and the key terms of the 2014 leases.
- h. The Director said that HUFC had been very open about its financial situation at the time of the lease restructuring. He emphasised that the development agreement was not a way to generate funds for the club, it was a means for the club and the council jointly to generate income for investment into facilities for the benefit of football.
- i. The Director said that the leases had been proven to be robust and effective, as demonstrated by the fact that the council had received all of the monies owed to it and the ground had been secured.
- j. It was acknowledged that the inclusion of a clause allowing the council to consider the termination of the arrangements upon a change of ownership could have been considered.
- k. The Director said that the council had not had the capacity to lead on the development of the surplus land at that time. He added that, with the benefit of hindsight, he would not recommend that development rights be assigned to tenants of the ground in the future.

Initial points made by some committee members included: a clause to enable the council to veto a change of ownership might have avoided some of the problems; supporters should be praised for their efforts; and previous experiences, particularly those of Hereford City Council, should have led the authority to seek further advice.

The Director reported that:

- i. The council had taken independent advice through the process.
- ii. The club had been transparent about its financial position and, mindful of this, the council had evaluated whether to sign the new leases or to continue to operate under the old leases. There had been clear advice that the new leases provided greater protection than the old leases.
- iii. Pinsent Masons had drafted modern commercial leases to replace the out-dated leases and had provided support to the council in negotiating with the club.
- iv. It was emphasised that the final decisions were informed by the council's own legal team at the time.

The local ward member commented that: the council should reflect on lessons learned from the experience of negotiating with an ostensibly friendly tenant that was subsequently subject to what some might perceive to be an hostile takeover; and the assets involved were significant both in terms of value and social use and the council should perhaps retain control of the development rights in the future. The Director reiterated the learning points in respect of development rights.

Committee members discussed issues around shareholding and the degree of control around ownership that the authority could have in future leases.

A committee member questioned whether the length of the interim lease of the ground might discourage some potential interested parties. In response, the Cabinet Member for Contracts and Assets said that the authority was in the middle of a negotiation process and it was not appropriate to explore this matter further at this meeting.

A committee member questioned how assurances provided by officers, in response to concerns from the local ward member and himself, had been reflected in the instructions to solicitors and in how the new leases had been prepared. The Assistant Director, Governance said that: there was no suggestion that Pinsent Masons or the council's legal team did anything that had resulted in the council suffering any loss; the authority had not been dealing with an empty ground and a new tenant at that time; the intention of the leases was to protect the council's position, whilst giving the club the opportunity to bring investment into the ground through possible development opportunities; and the new leases performed admirably when put to the test, with possession of the ground gained swiftly and effectively. The committee member noted that professional football was not being played at the ground at present.

The Leader said that: it was the considered view at the time that the new leases would help football to continue at the ground; the club had made the financial pressures clear and had asked the council if it could do anything to help; as the authority could not give the club money, it was considered that the new leases could have helped to produce additional income for the benefit of football at the ground; the subsequent sale of the former Chairman's shares did not form any part of the discussions; the authority had nothing to do with the commercial decisions of the tenant; and those parts of the lease that mattered to the council had worked well.

In response to a comment from a member about terms in earlier leases, the Chairman noted that the tenant could be encouraged to play football but could not be forced. The Director said that the council had done all it could but it could not guarantee the success of a private company. It was the council's responsibility to seek a new tenant to promote the benefits of football and it was in the process of doing this.

Committee members discussed potential mechanisms to prevent unsuitable people from obtaining control of companies. The Deputy Solicitor to the Council, Property and Commercial said that it would be unusual to include a break clause within a commercial lease in relation to a change of ownership but parties could agree to whatever terms they considered suitable. It was confirmed that the new leases included this provision but it would be for the potential tenants to consider whether they would wish to proceed on that basis. The Leader said that, with hindsight, consideration should have been given to this type of clause during the lease restructuring and would be considered going forward. However, it had to be recognised that this was also likely to bring limitations.

A committee member commented on the importance of retaining control over the ground, the need to protect the interests of the public, and the value of football to young people in the county. In response to a question, the Chairman reminded the committee of the remit of this meeting and that longer term options would need to be considered during the next administration.

The local ward member commented on the potential value of the asset, that a profitable club was not likely to be a viable proposition in the near future, and historical use of the site for football was an important community consideration. He felt that a break clause in relation to a change in ownership was reasonable and that a short-term lease was a good proposition in the current circumstances.

A committee member suggested that, for clarity, there should be a consistent end date if there was more than one lease in the future.

The Chairman invited David Keyte, former Chairman of HUFC at the time of lease restructure, to address the committee. Mr. Keyte spoke on various matters, the principal points included:

1. The revised leases had provided the opportunity for the club to secure investment through development possibilities; albeit the negotiations had taken a long time and perhaps this was another learning point for the council.
2. The debate had been informed by hindsight but he doubted that a break clause of the nature being discussed would have been acceptable to the club at the time; as it would have given the landlord - the council - greater control of the private limited company and this could have impacted upon the lawful buying and selling of shares.
3. Football was an emotive subject but he considered that pressure through social media had contributed towards Graham Turner leaving the club.
4. In May 2012, the club were relegated with a playing budget of £1.2 million.
5. Herefordshire was considered to be in the backwaters of sport and was unlikely to reach a national level given the demographics of the county.
6. The youth system was fully funded whilst in the football league but this tailed off following relegation. The board of directors put in £32k during the previous year but, faced with a £60k cost, had to decide whether to continue to support the youth

system. The club had publicly approached local businesses as sponsors but nobody came forward.

7. The club had approached the council for support, as authorities had supported other clubs in the country, but the Leader had made it clear that the council could not put public money into the club.
8. He did not consider that other businesses that were tenants of the council would want the authority to be involved in commercial and ownership issues.

The local ward member suggested that profits from potential future development at the ground could be reinvested in the sustainability of youth football in the county, with community facilities to support a bottom up approach to the sport.

Mr. Keyte commented that youth development had changed significantly in recent years, particularly through the Elite Player Performance Plan, enabling Premier League clubs to attract players from much wider areas. It was considered that this undermined opportunities for smaller clubs to develop talent and generate income from subsequent transfers.

The Chairman and the Leader re-iterated the purpose of this item and that there would be opportunities to consider options going forward.

The Chairman invited Councillor NP Nenadich, a former director of HUFC, to address the committee. Councillor Nenadich commented on a number of matters, including:

- a) Various accusations and insinuations had been made about him on social media but he wished it to be noted that: he had declared his association with HUFC in the Register of Members' Interests; he purposefully never attended or had conversations with officers about the leases; he had been a director for eighteen months and had made significant donations and considerable loans to the club and was never remunerated; and although it had been personally expensive, he had derived pleasure from being associated with such an important community asset.
- b) The club had been involved with many community and charitable organisations and groups.
- c) He had been a trustee of Close House and The Courtyard but no negative comments had been made about his support and interactions with these bodies.
- d) United in the Community Trust [UITC] continued to support youth team development in the county and had significant success against a number of league clubs during the current season. The council had helped UITC with office accommodation and access to practice and match pitches.
- e) He considered that there had always been a genuine willingness within the council to support football in the right and proper capacity.

A committee member noted that the remit of the item limited the nature of the questions, particularly around decisions made by the club. However, Mr. Keyte said that he was very willing to answer such questions and commented on the following:

- i) In January 2014, the club had been open about the need for £300k of investment in order to survive that football season. Funding went from £725k in the league to £47k in the conference.

- ii) The board of directors had been transparent that they were not prepared to fund the club in the order that they had done so in previous years. Mr. Keyte acknowledged that it was not a large board and that might have been one of the problems, as the club had not been financially strong enough to overcome any downturns.
- iii) The club had approached various local people but they were not willing to get involved, particularly given negative comments being made within social media.
- iv) Wider interest was sought and two groups came forward, one led by Mr. Agombar and the other being Hereford United Supporters' Trust [HUST]. An amicable meeting was held with representatives of HUST in early May 2014 and they were asked to respond on a number of points that had been raised, such as confidentiality clauses and proof of funding, but HUST did not come back with the required answers.

Councillor Nenadich commented that, whilst it was disappointing that more substantial support for the club had not come forward, a number of businesses and HUST were actively supporting UITC in modest ways in terms of travel and equipment costs.

The Chairman invited Martin Watson, Vice-Chairman of HUST, to address the committee. The points made by Mr. Watson included:

- 1) HUST had around 1700 members and supported not just UITC but other youth football groups throughout the county.
- 2) The Herefordshire Football Association was asking for further pitches and facilities and the council could help with this to support improvements to the youth structure.
- 3) A large number of documents had been released on the council's website and questions were asked about the interactions between Pinsent Masons and the council in relation to the winding up petition. It was also noted that a large number of people had been involved in the lease negotiations.

In response to point 2) above, the Head of Corporate Asset Management reported that: the council was to meet with representatives of various governing bodies on 9 March 2015 in relation to the council's playing pitch strategy and how this would feed into the Local Development Framework; there had been constant dialogue with the Herefordshire Football Association about the provision of new or improved playing pitches; the council's Community and Development Team had helped county football clubs to gain in excess of £100k worth of funding to support their programmes in the last year; it was anticipated that further facilities could come forward through planning obligations; and work continued with local, regional and national bodies.

In response to point 3) above, the Director advised that: email exchanges were only part of the picture, there were also face-to-face meetings and the club had been clear about the financial position; and it was acknowledged that there had been a large number of people involved, partly due to the length of time the lease negotiations had taken, but there were single points of contact on both sides to coordinate the final position. The Deputy Solicitor to the Council, Property and Commercial added that the winding up petition was not enough in itself to trigger forfeiture of the leases. The Director reiterated that the council acted upon its own legal advice, it was not entirely reliant on Pinsent Masons.

The Chairman asked the Democratic Services Officer to update the committee on correspondence from the Football Association [the FA]. It was reported that, although a request had been made in early February, regrettably the FA had not been able to send

a representative to the meeting or to issue a formal statement for publication with the agenda papers. At very short notice, the Herefordshire Football Association had also been invited to attend but again could not send a representative to the meeting. However, the FA had drawn attention to its National Ground Grading requirements and an appropriate link had been included in Supplement 1 to the agenda. It was also reported that correspondence had been received from the FA immediately prior to the meeting and the contents were paraphrased.

A member in attendance commented on a number of matters, including: his experience as a chartered accountant; he had not been assured that the council could deal with private limited companies effectively; he commented on correspondence with the Leader, prior to the signing of the restructured leases, about the need for appropriate due diligence and the risks of assets falling into unsuitable ownership; the significant resources spent on professional fees and the amount of officer time taken up during the entire process; and he offered to share his knowledge and experience with members and officers.

In response, the Leader reminded the committee of the circumstances under which the discussions and decisions took place.

Mr. Keyte made a number of further points, including:

- a - The decisions of the board of directors had been informed by the club's solicitors and auditors, as well as a firm of administrators. It had been considered at the time that, whilst tight, the club had taken actions that suggested it could overcome the trading losses. The club was open about the situation but it had not been declared insolvent as a trading company.
- b - An overview was given on the historical levels of debt at the club and it was noted that, as with many football clubs throughout the country, it was not unusual to be running with debt on the balance sheet. An overview was also given on the club's efforts to obtain the leases back from an investment company.
- c - The purpose of the lease restructuring was re-iterated.
- d - The difficulties experienced by clubs relegated from the league were outlined, especially for those in similar geographical areas to Hereford.
- e - He considered that the negative comments of some local people had an impact on the viability of the club, adding that the debt position was not dissimilar to previous years and the club had possession of the leases.
- f - The length of time taken on the lease negotiations had been frustrating, particularly as a number of development opportunities could not be progressed.
- g - He considered that the leases had been written so tightly, for the good of football, that there was never an opportunity for anyone to exploit them for personal gain.

In response to questions from some committee members, the Deputy Solicitor to the Council, Property and Commercial advised that there were no specific restrictive covenants on the freehold title for the council's properties; restrictions on ground use would only be imposed by the council itself through the lease mechanism. Mr. Watson provided some historical context to the issue and considered that any new leases should reinstate restrictions contained within earlier leases. A committee member said that some confusion had arisen in that a legacy had been granted for a specific purpose but he did not believe that there were any covenants in terms of the ground.

The local ward member had to leave the meeting early but invited the committee to consider five possible recommendations to the Executive in respect of: any profit from any development of the ground being reinvested into supporting football and sporting facilities in the county; the interim lease should only be for the ground itself and for access to the facilities, enabling the council to pursue any development separately; the leases should take the legal status of the recipient into account, with safeguards to prevent a hostile takeover of that recipient; the lease should put in place protection to ensure that sporting use was continued at the ground; and to encourage the Executive to look at not-for-profit organisations, with community sport links, to partner with over the asset.

A member in attendance commented that football was an expensive game, particularly in terms of pitch standards and stadium safety, so there needed to be the potential for profit in order to meet on-going and future costs. Mr. Keyte added that the council might wish to consider an all-weather pitch, as this could provide options for enhanced community use going forward. The Chairman noted that the future of the ground was a matter for subsequent discussions.

Committee members debated potential recommendations, particularly in terms of safeguards around ownership and the enhancement of sporting facilities in the county.

A committee member felt that the proposed lease should not be so restrictive that it prevented future flexibility and suggested that contact be made with other public bodies to identify other useful clauses that could be included. Mr. Watson commented that the FA had recently undertaken a review of the leases of clubs within their control and this might be helpful to the council.

The Leader commented that appropriate safeguards should be taken into consideration and emphasised that the ground was a valuable asset for the county as a whole. He also cautioned against binding the next administration to any particular course of action in the longer term.

The Chairman read out other possible variations on recommendations that could be considered in terms of: proper assessment of whether it would be beneficial, in any future leases, for the council to retain a right to exercise a break clause in the event of a change of ownership / control; the need for compelling and exceptional justification to be required to persuade the council to relinquish development rights; the need for assurance to be provided that any new long term tenant would be subject to full and proper due diligence; the need to ensure that any leases relating to football meet FA requirements; and, in advance of any longer term decisions, the scrutiny committee should be invited to consider future arrangements as part of its work programme for 2015/16

A committee member felt that recommendations from the committee should concentrate on football. However, other committee members considered that the wording of the proposed lease should not be too exclusive, as this could limit the opportunities for other sports and for income to be generated from other activities to support continued use of the ground.

The Chairman adjourned the meeting to enable recommendations to be refined. Informed by the suggestions identified by committee members during the debate, the Assistant Director, Governance prepared a list of possible recommendations during the adjournment and this was circulated to attendees at the meeting.

Upon recommencement of the meeting, each recommendation was read out by the Chairman, discussed and amended by the committee where necessary, and voted upon in turn.



A recommendation that 'The Executive should consider favourably any proposals from not-for-profit organisations in relation to the future occupancy and use of the football ground' was not supported, principally because this could restrict the options available and it might not comply with FA requirements. Therefore, this was deleted from the recommendations.

The final recommendations agreed by the committee are reproduced below.

**RESOLVED: That the following be recommended to the Executive:**

1. That there should be proper assessment of whether it would be beneficial, in any future leases, for the council to retain a right to exercise a break clause in the event of (1) a change of ownership / change of control; and/or (2) professional football ceases to be played at the ground. And that any lease should include appropriate safeguards in the event of a hostile takeover of a corporate tenant.
2. That the primary objective when considering proposals for the football ground should be to secure the continuation of professional football.
3. That compelling and exceptional justification should be required to persuade the council to relinquish development rights and that the new lease should only extend to the football pitch with use of the stands and other facilities.
4. That any profits generated by the development of the ground (whether by the council or another) should be invested for the benefit of the county and, in particular, to support football and sport in the county.
5. That assurance be provided that any new long term tenant would be subject to full and proper due diligence.
6. That the Executive ensures that any leases relating to football meet Football Association requirements.
7. That the Executive look favourably on proposals that include for the provision of education and training for young people.
8. That if more than one lease is to be granted that consideration should be given to them all having a consistent end date.
9. That in advance of any longer term decisions, the scrutiny committee be invited to consider future arrangements as part of its work programme for 2015/16.

**54. DRAFT WORK PROGRAMME**

The committee's work programme was received.

**RESOLVED: That the work programme be noted.**

**55. DATE OF NEXT MEETING**

Tuesday 10 March 2015 at 10.00 am

The meeting ended at 12.40 pm

**CHAIRMAN**