

WAVERLEY BOROUGH COUNCIL

MINUTES OF THE OVERVIEW & SCRUTINY COMMITTEE - VALUE FOR MONEY &
CUSTOMER SERVICE - 9 SEPTEMBER 2020

(To be read in conjunction with the Agenda for the Meeting)

Present

Cllr Peter Martin (Chairman)
Cllr Joan Heagin (Vice Chairman)
Cllr Roger Blishen
Cllr Jerome Davidson

Cllr Jerry Hyman
Cllr Peter Marriott
Cllr Stephen Mulliner
Cllr Julia Potts

Cllr Richard Cole (Substitute)

Apologies

Cllr Peter Nicholson

Also Present

Councillor Simon Dear, Councillor John Gray, Councillor David Beaman, Councillor Steve Cosser, Councillor Jenny Else, Councillor Paul Follows, Councillor Michael Goodridge MBE, Councillor Peter Isherwood, Councillor Andy MacLeod, Councillor Penny Marriott, Councillor Mark Merryweather, Councillor Anne-Marie Rosoman, Councillor Trevor Sadler, Councillor Liz Townsend, Councillor John Ward and Councillor Steve Williams

11. APOLOGIES FOR ABSENCE AND SUBSTITUTES (Agenda item 1.)

Apologies for absence were received from Cllr Peter Nicholson; Cllr Richard Cole attended as a Substitute.

12. WELCOME AND INTRODUCTIONS (Agenda item)

12.1 The Chairman welcomed Members and members of the public watching to the meeting, and advised that due to the nature of the business to be discussed it was likely that the meeting would need to move into exempt session.

12.2 The Chairman confirmed the members of the Committee present, and the purpose of the meeting which was to consider the call-in of an Executive decision in relation to the lease arrangements with Broadwater Golf Club by Cllrs Julia Potts, Stephen Mulliner, John Gray and Simon Dear. As substitute members of the Committee, Cllrs Gray and Dear would be able to speak in relation to the call-in item, but not vote on the decision.

12.3 In addition, there were a number of other Members present, including Cllr Mark Merryweather, Executive Portfolio Holder for Finance, Assets and Commercial Services, and Cllr Michael Goodridge, who had registered to speak. The Chairman also introduced officers present, and in particular thanked Yasmine Makin, the Scrutiny Officer who would be moving on to a new post shortly, for all her work in supporting the Overview and Scrutiny committees over recent years.

13. DECLARATIONS OF INTERESTS (Agenda item 2.)

Cllr Joan Heagin declared a non-pecuniary interest as Waverley representative on Sport Godalming. Cllr Heagin had engaged in correspondence with Sport Godalming regarding the non-renewal of the Broadwater Golf Club lease and alerted them to the fact that the Executive would be considering the future of the site on 8 July 2020.

14. BROADWATER PARK GOLF COURSE - OPTIONS APPRAISAL: CALL IN
(Agenda item 3.)

Introductory remarks

- 14.1 The Chairman introduced the item, which concerned the call-in of two decision by the Executive at the meeting on 8 July: to use £50,000 of the Investment Advisory Board Reserve to commission the council's external property advisors Montagu Evans to undertake a detailed options appraisal of the Broadwater Golf Course site in Godalming; and to spend £20,000 to cover legal fees associated with the lease arrangements with Broadwater Park Golf Club.
- 14.2 The call-in had sought to consider the wider question of the reversal of the December 2018 decision of the then Executive to grant an extended lease to Broadwater Park Golf Club. This had been deemed outside the scope of the call-in arrangements, but the process would be considered at the next meeting of the Standards Committee.
- 14.3 The Chairman referred to the Exempt papers included in the agenda, and the significant amount of background and contextual information provided to Committee members by the Borough Solicitor which were also exempt and confidential to the council. He reminded Committee members that the focus of the call-in was the decision relating to the two expenditure items. Whilst the contextual position had some bearing on this, care would be needed in referring to the exempt papers and he would be advised by officers on the appropriate point at which to move the meeting to exempt session.
- 14.4 The Chairman advised that he would invite Peter Vickers, the Head of Finance and Property, to introduce the call-in report; and then ask Cllr Julia Potts to explain the reasons for the call-in; followed by the Executive Portfolio Holder, Cllr Mark Merryweather, to present the decision of the Executive. He would then open the matter up for debate before reaching a conclusion and decision on next steps, noting the suggested recommendations set out in the agenda.

Head of Finance and Property

- 14.5 Peter Vickers advised that as Head of Finance and Property he was authorised under the council's scheme of delegation to undertake all actions in relation to the administration of the council's estate and the property portfolio and its interest in land and property. Granting and renewal of leases in excess of 25 years was an exception to this authority, which was why the

authority to proceed with granting a new lease to Broadwater Park Golf Club in December 2018 required Executive approval.

- 14.6 The Executive decision to authorise officers to grant a lease did not mean that the Head of Finance and Property was obliged to do so, and following negotiations with the leaseholder it became apparent that it would not be in the council's interest to do so. The decision was taken by the Head of Finance and Property in consultation with the Portfolio Holder to not renew the lease. The decision not to renew the lease and to terminate the existing arrangements was within the delegated authority of the Head of Finance and Property and did not require an approval from the Executive.
- 14.7 The background to the decision not to renew the lease and to terminate the existing arrangements, and to engage Montagu Evans to provide an options appraisal was set out in the Exempt report at Annexe 3 to the report.

Councillor Julia Potts

- 14.8 Cllr Julia Potts, the lead member for the call-in, outlined the reason for calling in the Executive decision for scrutiny which was that the council may have made an unsound business decision by deciding to stop discussions with the Broadwater Park Golf Club and end their tenancy and look for an alternative use for the site. As a consequence of this decision Waverley was proposing to spend £50,000 pounds on a range of feasibility studies and £20,000 on potential legal fees at a time when the council's finances were severely challenged. In addition, the council could well incur additional costs due to contested litigation, tenant compensation and physically securing the site.
- 14.9 If, after proper scrutiny, it was agreed that decision should be reconsidered then this expenditure could become unnecessary. It was also understood that Waverley and the tenant were now considering alternative dispute resolution. If this process led to an agreed solution that involved the tenant actually remaining in full or majority occupation of the site then again much or all of the proposed expenditure could be unnecessary.
- 14.10 Cllr Potts outlined the history of the site as a covered landfill site dating back to the 1980s, for which Waverley was responsible as the freehold owner. The site had deteriorated over time and officers had been pleased when the tenant offered to remediate the site at no cost to Waverley. The exempt report provided important contextual information that helped with understanding how the decision was reached in April 2020 to serve a section 25 notice on the tenant on 6 May 2020, under the 1954 Landlord and Tenant Act without prior warning.
- 14.11 Whilst there were questions that would need to be asked in exempt session, Cllr Potts noted that the planning constraints affecting the site in the Green Belt did not appear to have featured in the internal discussions leading to the decision to serve the section 25 notice. There was no evidence of correspondence with the Planning service, which was significant in relation to intention to redevelop the site for the council's own use. Instructions to Counsel dated 27 July indicated Waverley had reduced its ambitions for redevelopment of the site to educational and community uses but did not

refer to the extent of the site which might be used, which could be significant as the adjudicator could potentially refuse non-renewal of the lease if only a small part of the premises are affected by the proposed redevelopment or own business use.

- 14.12 In concluding, Cllr Potts noted that in the latest correspondence from the tenant's solicitor dated 27 August they had proposed virtual mediation and she felt that the council should agree to this in order to reach an amicable agreement and secure value for money for Waverley and its residents.

Executive Portfolio Holder for Finance, Assets and Commercial Services

- 14.13 Cllr Mark Merryweather advised that his comments would relate directly to parts 1(a) and 1(b) of the call-in form, which were the focus of the meeting. With regard to 1(a), the decision to use up to £50k of the Investment Advisory Board Reserve to commission an options appraisal for the golf club site, he was concerned that Members may have formed an opinion that the site's alternative value for money potential was so low that the cost of a professional options appraisal was disproportionate. No evidence had been presented to support that view and so issue was that the view expressed by the call-in Members differed with the recommendation of officers, which was itself based on Montagu Evans' initial preliminary independent professional analysis which clearly indicated otherwise. That evidence was also assessed by the Property Investment Advisory Board which supported the officer recommendation to the July 2020 Executive. In relation to 1(b), the draw down of £20k to cover legal costs, this represented a contingent but necessary provision that might not be fully spent, and was based on independent professional advice.
- 14.14 Turning to section 2 of the call-in form, Cllr Merryweather advised that there had been no 'overturn' of the original decision and he disagreed with the view that a due diligence appraisal conflicted with the due process that was approved in 2018. The decision to refuse a new lease had been handled by officers under delegated authority, and as Portfolio Holder he had been consulted on the outcome and Members of the Executive were also briefed on that outcome and engaged on the consequential matters and options, which included the decisions on the next phase appraisal and legal costs now being discussed.
- 14.15 The assertion that the decisions required a Supplementary Estimate were incorrect. With regard to consultation and engagement with Members, residents and the tenants, the council's primary consideration was to respect the legal process and confidentiality but there had been engagement with relevant ward councillors at town, borough and county level.
- 14.16 In concluding his comments, Cllr Merryweather commended officers for their effort in supporting the call-in process through the provision of background and contextual information to Members, but highlighted the delay in the next phase appraisal work approved in July caused by the call-in of relatively straightforward matters that were consequential to an officer decision made under delegated authority.

Discussion

Before moving into Exempt session, the Chairman invited Members to make any comments that felt would not breach the confidentiality of proceedings.

- 14.17 Cllr Joan Heagin stated that having looked at the call-in request relating to the two decisions to be scrutinised, she was interested that so much reference had been made to material that post-dated those decisions. She had struggled to identify the reasons listed in the call-in that were specific to those two decisions, as opposed to providing evidence of an all-pervasive dissatisfaction with the outcome of the 2018 executive decision not resulting in the expected final position.
- 14.18 Cllr Heagin referred to the reasons for the call-in listed in the bulleted list in part 2 of the call-in form, specifically the 4th, 5th, 6th and 8th bullets; and also the final three bullet points: she did not feel that there was a need for consultation prior to the decisions of 8 July, although there could be at a later stage once the options appraisal had been received; if there was a fully developed scheme, this would be included in the options appraisal and considered against other options; and, the final bullet reinforced the need for the decisive action taken by the Executive on 8 July and since delayed by the call-in process.
- 14.19 Returning to what she felt were the relevant reasons for the call-in of the decisions of 8 July, relating to sufficiency of information to make a decision, proportionality of the decision, and the need for a Supplementary Estimate, Cllr Heagin noted that:
- the Executive had relied on the judgement and recommendation of the Property Investment Advisory Board of which Cllr Martin had been a member and had not suggested at the time that there was insufficient information to proceed with an options appraisal;
 - in the context of the potential value of this very large site, she did not feel that £50k for the options appraisal was disproportionate; and, the extent of the contextual material provided demonstrated that this was a complex matter and so £20k for legal fees also seemed proportionate;
 - the requirement for a Supplementary Estimate would only arise if there was an existing budget and the purpose of the Investment Advisory Board Reserve was to provide for investment opportunities as they came along.
- 14.20 In concluding, Cllr Heagin advised that having considered the three reasons identified in the call-in as relating to the 8 July decisions, she did not see any evidence that called these into question.
- 14.21 Cllr Jerry Hyman noted that he had spoken at the Executive meeting on 8 July to express some concerns about the level of information provided to support the decision of public spending. Whilst not wanting to constrain progress on any legal proceedings to protect the council's position, he wondered whether the decision to proceed with a feasibility study should await further legal advice.
- 14.22 Cllr John Gray spoke in relation to the question of the Supplementary Estimate and noted that £11k had been spent in the process of negotiating a lease and further costs were an extension to that and in his view fell within the Supplementary Estimate process in the Financial Regulations including

an opinion of the Section 151 Officer. He was also concerned about the adequacy of the amount provided for legal fees, especially now that there might be alternative dispute resolution that could be costly.

- 14.23 Cllr Gray continued that he was unclear whether the options appraisal was being done to support the potential legal action or whether the council was exploring the options and viability for the site as part of the value for money exercise. If it was the latter, the decision appeared to have come after the decision to take ownership of this site based on the benefits to the council of developing the site. It did not appear that any of the learning from past experience with the Cranleigh Brick and Tile site had been considered, and there was a lack of detail on what the expected outcomes of the appraisal and the issues to be addressed. It appeared that the decision of 8 July was to find out information the Executive should have had when they made that decision.
- 14.24 Cllr Stephen Mulliner advised that his substantive questions and comments would need to be made in exempt session, but the fundamental issue was that by the time of the Executive decision on 8 July, Waverley had taken the decision to terminate a lease protected by the 1954 Landlord and Tenant Act. That gave the tenant right which they can exercise if they choose to; it also gives landlords rights too, but it was not uncommon for these things to come into opposition. Waverley's approach had set a course of action that had implications for spend and the value for money aspects were important, and the scrutiny of the decision was to make sure Waverley was not making an unsound business decision.
- 14.25 At 6.55pm, on the recommendation of the Chairman, the Committee **RESOLVED** that pursuant to Procedure Rule 20 and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the items, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified in paragraph 3 of the revised Part 1 of Schedule 12A to the Act, namely: information relating to the financial or business affairs of any particular person (including the authority holding that information).

At 8.45pm the meeting resumed in open session.

Cllr Joan Heagin moved the recommendation that the Committee resolve not to refer the Executive decisions of 8 July back to the Executive. The recommendation was seconded by Cllr Roger Blishen.

The Chairman carried out the vote by roll call, with the result being 5 in favour, 3 against, and 1 abstention.

The Committee therefore RESOLVED not to refer the decisions to spend £50,000 and £20,000 respectively back to the Executive.

The meeting commenced at 6.00 pm and concluded at 8.50 pm

Chairman