

CABINET

Minutes of the meeting held on 5 March 2015 commencing at 7.00 pm

Present: Cllr. Fleming (Chairman)

Cllrs. Hogarth, Ms. Lowe, Piper and Ramsay

Cllrs. Edwards-Winser, Mrs. Hunter, Mrs. Parkin, Mrs. Sargeant, Scholey and Searles were also present.

79. Minutes

It was noted that the number of empty homes referred to in the last line of minute 77 (Adoption of the Allocations and Development Management Plan) should have been 300 rather than 300,000.

Resolved: That the minutes of the meeting of Cabinet held on 5 February 2015, as amended, be approved and signed as a correct record.

80. Declarations of interest

There were no additional declarations of interest.

81. Questions from Members

There were no questions from Members.

82. Matters referred from Council, Audit Committee, Scrutiny Committee or Cabinet Advisory Committees

- a) Referral from Economic & Community Development Advisory Committee – 12 February 2015 (Minute 28)

The Portfolio Holder for Economic and Community Development reported that the Advisory Committee had discussed the need for more lateral and creative thinking with regards to car parking fees and finding other sources of revenue and had decided to request that Cabinet consider a Council aspiration to move towards freezing parking fees where occasion allowed.

The Cabinet agreed that this would be looked at as part of the budget process for next year.

83. Authority to Establish a Local Authority Trading Company

The Portfolio Holder for Finance & Resources introduced the report and outlined the background to the proposals and the rationale for establishing a local authority trading company which would assist with the Council's future funding position.

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The Chairman welcomed the report, which was the culmination of nearly two years' work, and hoped that it might be possible to arrange a briefing for all Members before this was considered by the full Council on 31 March 2015.

The Chief Officer Communities & Business then took Members through each section of the report in detail. She explained that the proposal to set up a Trading Company, which would be a company limited by shares with the Council retaining a 100% shareholding as a single shareholder, would allow the Council to take advantage of the powers to trade for profit introduced under the Local Government Act 2003 and the Localism Act 2011, where opportunities arose in accordance with the Business Plan set out within the report. The Council had been advised by EC Harris Business Asset Consultancy throughout the process and the report reflected the consultants' recommendations building upon their skills and experience of this trading sector. It was stressed that in many cases it would still make sense for the Council to invest directly itself where this was more economically beneficial but that there were cases where the Council could not invest directly, such as for housing development, whereas a Local Authority trading company could do so. By establishing a trading company the Council would have greater flexibility in choosing its investment options and could either invest directly or through the trading company as appropriate. The Business Plan contained in the report established the need to set up a trading company to enhance economic development within the district as well as providing a valuable income stream.

EC Harris had identified key decisions to be taken by the shareholders as determining:

- the purpose and permitted activities of the company;
- the capital structure and how much finance to put into the company and on what terms;
- the distribution policy for trading profit, whether to return all profits to the shareholders or to retain them for future investment;
- to agree the composition of the Board and approve appointments; and
- to appoint auditors.

Once these decisions had been taken it was recommended that the Directors should develop and approve key matters such as:

- to develop an Annual and 5 year business plan, agreeing investment targets and associated budgets;
- specific investment transactions, including acquisitions, sales, borrowing and key transactions;
- to appoint service providers, lawyers, valuers, due diligence advisors, property managers and others; and
- reporting to Cabinet and Council committees.

Member involvement on the Board of Directors had been examined but it was felt that this could create a conflict of interest. It was therefore proposed that initially the Board of Directors would comprise of the following:

- Finance Director - The Council's Chief Finance Officer;

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- Managing Director - The Council's Head of Economic Development & Property;
- Director – A Council's Chief Officer to be recommended to Cabinet by the Chief Executive; and
- 2 Non Executive Directors - who will be approved by Cabinet and paid a small remuneration also to be approved by Cabinet.

It was also proposed that the Company Secretary, with no voting rights, should be the Council's Chief Officer Legal & Governance and that the Members' Communications Working Group be tasked with choosing the name of the Company. None of the Council Officers would receive additional payment for undertaking these duties and it was not anticipated that there would be any direct staffing implications for staff currently employed by the Council.

The report also detailed the governance arrangements for the new trading company and the many measures put in place to provide assurance to Members that the Council's position would be protected and that the company could be held to account by them as the shareholder. The Articles of Association would be produced in standard format and would be supplemented by a Shareholder Agreement and these could not be changed without the agreement of the shareholder. There was no requirement to include a business objects clause and this meant that the company would be able to make the same investments as any private individual, although initially the main activity would be property development.

The report also dealt with the tax liability of the new company and the need to ensure that there was no breach with the rules relating to "State Aid" and that the trading company was also mindful of its trading impact on the local economy. The report also asked for authority to make loans to the company to fund the Business Case(s). Where loans were made to the company this would come from the Property Investment Reserve and where loans were made in relation to property transactions the loans would be secured against company assets. However initial loans for working capital for setting up the company would be unsecured. EC Harris had also developed a Property Investment Strategy (PIS) and having examined past investment trends, the experiences of other trading companies, and the anticipated investment horizon, had concluded that the financial objective of the PIS to deliver a 6% return on investment was deliverable.

In response to questions from Members present it was confirmed that the shareholder was the Sevenoaks District Councillors rather than the Council as the body corporate, and the report confirmed that indemnity insurance would be in place for Members. It was noted that the report did not set out the capital and share structure at this stage and advice would be taken as to how capitalisation would work where there was a single shareholder. It was also re-iterated that no Councillor would be able to serve as a Non-Executive Director of the company as this could involve a conflict of interest.

A Member also questioned whether it might be more appropriate to express the investment return objective as "X% above the rate of inflation" rather than 6%. It was stressed that the 6% figure took into account the funding needs of the local authority against the background in the decline in Government funding and what was considered to be an achievable and realistic rate of return. It was stressed that the EC Harris recommendation of 6% took into account past and predicted returns on this type of investment. There might be some investments which would offer a higher rate of return

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but also occasions where the Council might wish to invest in projects with lower rates of return where this might benefit local residents. The trading company would have the flexibility to do this but it was felt that it could do so within a balanced approach which would deliver a 6% return. The production of an annual and 5 year business plan would allow for a view to be taken on the balance of property investments each year. Reporting arrangements for Non-Executive Director's pay was also discussed and it was noted that this would be reported and agreed by Cabinet. It was also felt to be unnecessary to specify whether an Executive or Non-Executive Director should be the company chairman, as the Executive Directors would still form the majority on the Board and this would allow the Board greater flexibility to operate.

The Portfolio Holder for Local Planning and Environment also asked whether the wording of paragraph 17 of the report, describing the content of the Shareholder Agreement could be strengthened, so that words such as "could" or "might" should be changed to "will" and "would". It was agreed that this should be included in the report for Council.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That

- a) the Chief Officer Legal and Governance be authorised to incorporate a company (the Company) wholly owned by the Council in consultation with the Chief Executive, Chief Financial Officer and Portfolio Holder for Finance so as to allow the Council to exercise the power to trade contained in the Local Government Act 2003 and the Localism Act 2011 and to settle the detailed arrangements for the establishment of the Company together with the Governance structure recommended by EC Harris Built Asset Consultancy (EC Harris);
- b) it be recommended to Council that the Chief Finance Officer be authorised to provide loan facilities to the Company in consultation with the Chief Executive, the Chief Officer Legal and Governance and Portfolio Holder for Finance and Resources in line with the rules set out in this report relating to State Aid;
- c) it be recommended to Council that a budget of £10,000 for set up costs of the Company be approved. This will be funded from Property Investment Reserve.
- d) the appointment of the initial Directors of the Company as set out in the report, be approved; and
- e) the Business Case for setting up the Company be approved.

84. Adoption of the Local Development Scheme (LDS) Timetable

The Portfolio Holder for Local Planning & Environment presented the report which sought approval of the latest Local Development Scheme (LDS) timetable. The LDS was a rolling

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project plan that set the work programme for the development of Local Plan (formerly Local Development Framework) documents. It no longer had to be submitted to the Secretary of State for approval but did need to be made available and published on the Council's website. The last version was agreed by Cabinet in March 2012 and was out of date and the report sought approval of the latest Local Development Scheme timetable.

This matter had been considered by the Local Planning & Environment Advisory Committee on 27 January 2015 who had recommended that the LDS timetable be agreed by the Cabinet.

The Chairman informed the Cabinet that he had just received an urgent communication from Brandon Lewis, Minister of State for Housing and Planning, about the allocation of land for "self-builders". The Chief Planning Officer confirmed that the Council had recently responded to a consultation on "self-build" objecting to the proposals but that he had not seen the Minister's communication. The Chairman said that he would forward the communication to him.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That the Local Development Scheme (LDS) timetable be agreed.

85. Westerham Conservation Area Management Plan

The Portfolio Holder for Local Planning & Environment presented the report which sought Members' support for the adoption of the updated Westerham Conservation Area Appraisal and Management Plan as a Supplementary Planning Document.

The report explained that the updated character appraisal and management plan for Westerham conservation area was considered to reflect the changing townscape in Westerham and would help local residents and other interested parties engage in the conservation and enhancement of the local historic environment and secure the long term preservation of the character of the area as an important heritage asset.

This matter had also been considered by the Local Planning & Environment Advisory Committee on 27 January 2015 which had recommended that the updated Character Appraisal and Management Plan for Westerham Conservation Area be adopted as Supplementary Planning Guidance. It was noted that the document had been updated since consideration by the Advisory Committee to reflect the Allocations and Development Management Plan (ADMP) and brought more up to date with corporate format.

The Chief Planning Officer informed Members that the version of the report contained in the agenda was slightly different to the final version of the report but that the difference was not material.

Public Sector Equality Duty

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Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That the updated Character Appraisal and Management Plan for Westerham Conservation Area be adopted as Supplementary Planning Guidance.

86. Local Enforcement Plan

The Portfolio Holder for Local Planning & Environment presented the report which introduced a Local Enforcement Plan which provided information to customers on how the Council would deal with enforcement and the powers available so that complainants and those subject to complaints would know what to expect from the service.

Members welcomed the enforcement powers described in the report, including the ability to serve section 215 notices requiring the improvement of untidy land or buildings and that fact that local Members would have more involvement and ownership of enforcement. Members also re-iterated that it was important that the serving of notices should be followed by action and received assurances from the Chief Planning Officer in this regard.

This matter had also been considered by the Local Planning & Environment Advisory Committee on 27 January 2015 which had recommended the adoption of the Local Enforcement Plan.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That the Local Enforcement Plan be adopted and published.

87. Community Infrastructure Levy (CIL) Governance

The Portfolio Holder for Local Planning & Environment presented the report which set out recommendations arising from the Member and Officer workshops for the structure of a new board, guidance on the information that would need to be supplied to support bids for funding and the factors that the Council would need to take into account in making a decision. It also recommended that the Council prepare an Infrastructure Plan, which would inform the allocation of funding to schemes that supported development planned in the Allocations and Development Management Plan. It was not anticipated that the Board would meet until after May 2015. It was also noted that there should be an extra recommendation to the report for preparation of the Infrastructure Plan.

The Chief Planning Officer felt that the proposed governance arrangements were sensible and would provide a good structure for the distribution of CIL monies, once these had been received. The CIL Schedule placed the Council in a better position and would secure the affordable housing element.

Members noted that Parish and Town Councils would benefit by receiving 25% of CIL revenue, although some Members felt that Parishes would come under additional

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pressure from their residents to meet their aspirations for local infrastructure if the District and County Council were not able to deliver these.

It was also noted that the strong recommendation arising from two CIL governance workshops with members of the Local Planning & Environment Advisory Committee was that all Members appointed to the CIL Spending Board must receive training before taking any decisions and that this was not covered in the report. It was agreed to add this to the recommendations.

This item had also been considered by the Local Planning & Environment Advisory Committee on 27 January 2015 which had supported the recommendations to the Cabinet.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That

- a) a Community Infrastructure Levy (CIL) Spending Board be established to recommend to Cabinet how CIL funding should be prioritised with Terms of Reference consistent with the body of the report;
- b) the CIL pro-forma attached at Appendix A to the report be published setting out the information that bidding organisations, including Sevenoaks District Council, would need to provide;
- c) the guidance on the CIL decision making process attached at Appendix B to the report be published;
- d) all members of the CIL Spending Board be mandated to receive training before sitting on the Board.

88. Changes to Government Guidance on Planning Obligations - implications on SDC's Affordable Housing Policies

The Portfolio Holder for Housing & Community Safety presented a report which advised that the Government had recently published changes to the National Planning Practice Guidance and that a written ministerial statement had been issued on planning obligations. In most areas, contributions to Affordable Housing would not now be sought from developments of 10-units or fewer. In designated rural areas, local authorities could choose to seek financial contributions on developments of 6-10 dwellings in designated rural areas. In addition, where developments involved the conversion or demolition of existing buildings the contribution would be proportionate to the net increase in floorspace. Therefore developments that did not increase the amount of floorspace on a site would not have to make an Affordable Housing contribution. These changes would have a significant impact on the Council's ability to secure the delivery of Affordable Housing. At present there was not considered to be any opportunities for the Council to 'work-around' these changes to national policy. As a result, it was considered that the Council should lobby the Government to rescind or amend these policy changes.

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This matter had also been considered by the Housing & Community Safety Advisory Committee on 10 February 2015, which had recommended lobbying against the policy changes.

The Chairman stated that he was happy to write a letter to the Government but doubted that it would have any chance of success given the Government's failure to deliver its housing targets and the fact that developers were seeking to blame local authorities' demands for financial contributions.

The Chief Planning Officer confirmed that the policy changes would make it very difficult to deliver the targets in the current Housing Strategy.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That

- a) the Council lobbies Government to rescind or amend recent changes to national policy on the use of planning obligations for securing affordable housing; and
- b) the Council seeks financial contributions to affordable housing consistent with the percentages applied in Core Strategy policy SP3 on developments of 6-10 units in designated rural areas in the District.

89. Citizens Advice Bureaux 3 Year Service Level Agreement 2015-2018

The Portfolio Holder for Economic & Community Development presented the report which outlined progress on the work of the Citizens' Advice Bureaux during the current year and sought approval for the Service Level Agreements for the next three financial years. It was noted that the current SLA was with Sevenoaks & Swanley and Edenbridge & Westerham Citizens' Advice Bureaux but that the Sevenoaks & Swanley CAB was likely to merge with the Gravesham and Tonbridge CABx imminently.

Meetings had been held with the merging CABx and they had been told that any new SLA with them would be conditional upon their business plans demonstrating that the merger would be successful and including protection for the residents of Sevenoaks. Specifically undertakings would be required that:

- the level of service provided to clients would remain as set out in paragraph 2.2 of the SLA for the term of the agreement;
- the new merged Sevenoaks/Swanley/Tonbridge & Malling/Gravesham Citizens' Advice Bureau would include a proportionate or better geographic representation from the Sevenoaks & Swanley area, including at least one (and no fewer than another local authorities') representative, who should be nominated by Sevenoaks District Council;

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- SDC's funding would be ring-fenced for the benefit of clients in the Sevenoaks District and the annual accounts would show spend in the Sevenoaks District separately from spend elsewhere; and
- the pool of volunteers supporting the Sevenoaks and Swanley Bureau would include a proportionate or better percentage of volunteers from the Sevenoaks District.

It was noted that the local authorities concerned all had slightly different imperatives on the proposed merger but that it was important to ensure that any service delivered by the merged CABx met clients' needs and included the necessary safeguards. It was important not to withhold funding which could cause the service to collapse but likewise it was important to link funding to appropriate service delivery. For this reason Members might consider it appropriate to provide a full year's funding to the Edenbridge & Westerham Citizens' Advice Bureaux which were unaffected by the merger but to restrict payment to the first quarter only for the Sevenoaks & Swanley CAB with further payments being made conditional on them meeting the Council's requirements for the merger by demonstrating significant progress. This approach was agreed by the Cabinet.

Members noted that this matter had been considered by the Economic & Community Development Advisory Committee on 12 February 2015 which had recommended the agreement of the draft Service Level Agreement subject to the Portfolio Holder being satisfied with the proposed merger arrangements.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That the draft Service Level Agreement for 2015/18 be agreed subject to the conditions set out in paragraph 12 of the report and the Chairman being satisfied with the proposed merger arrangements.

90. Grants to Voluntary Organisations 2015/16

The Portfolio Holder for Economic & Community Development introduced the report which set out information about the Community Grant Scheme and summarised applications received by the Council from voluntary organisations for funding during 2015/16. Applications received had been appraised according to the Council's Guidelines and those recommended for funding supported the aims of the scheme and represented value for money.

This matter had also been considered by the Economic & Community Development Advisory Committee on 12 February 2015 which supported the approval of the grants listed in the report.

The Cabinet commented that it had been unfortunate that some of the applicants had learnt that their applications were being recommended for refusal by being contacted by the local press, who had used the recommendations set out in the reports to contact them. Members said that there was a need to manage applicants' expectations.

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The Cabinet paid tribute to the invaluable work carried out by local voluntary organisations and volunteers who gave so freely of their time and energy to the enormous benefit of the communities within the District and beyond.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That the grants set out in Appendix C to the report be approved subject to the following conditions:

- i) that performance indicators as set out in the application forms are adhered to and monitored;
- ii) that appropriate Safeguarding policies and arrangements are in place, where necessary;
- iii) that appropriate recognition of this Council's funding contribution is made in all their publicity; and
- iv) where services are provided over a wider area than the District boundaries, organisations will be required to hold grant aid from this Council in a restricted fund for the benefit of Sevenoaks District residents.

IMPLEMENTATION OF DECISIONS

This notice was published on 9 March 2015. All of the decisions contained in these minutes take effect immediately with the exception of the decisions contained in minutes 83, 89 and 90 which take effect on 17 March 2015.

THE MEETING WAS CONCLUDED AT 8.23 PM

CHAIRMAN