

"I hereby give notice that I wish to call-in the decision 'Whitchurch Playing Fields', taken by Cabinet on 22nd November 2012.

The reasons for this call-in are as follows:

Inadequate consultation with stakeholders prior to the decision

The Council claims that consultation with residents has been adequate, pointing to a 'fun day' organised by the Whitchurch Consortium in May, a widely-attended public meeting in March, and a petition also organised by the Consortium.

However, the petition's accuracy is questioned by the Abchurch and Cannons Park Residents' Associations, who state that a resident petition obtained 97% of signatures against the development in its immediate vicinity. These associations have also expressed concern that a number of the residents who attending the 'fun day' were not from the local area, and many had been 'bussed in'. Regarding the public meeting in March, the current Leader of the Council and Major Contracts portfolio holder said shortly afterwards:

"I was not impressed with the Whitchurch Consortium's presentation and, in fairness, the Consortium's representatives have told me that they did not manage the consultation event in an effective or appropriate way."

In addition, the Corporate Director of Place Shaping took a month to respond to a letter from the Chairmen of Abchurch and Cannons Park Residents' Associations, stating that: "Assuming that the Development Agreement is completed, I would be happy to arrange a meeting to discuss your concerns and to ensure that engagement with the local community is effective in the future".

This decision has been a live issue for many months now, yet significant resident concerns remain. There remains a lack of clarity regarding the level of local support for the proposals, and the Leader of the Council has expressed his own concerns regarding the most significant consultation event held. Further, in response to a letter from residents expressing concerns about the process and genuineness of the Whitchurch Consortium's engagement with them, the Chief Executive directed the Corporate Director of Place-Shaping to meet with them; unfortunately, the Corporate Director of Place Shaping would not offer a date to meet the residents until after the decision was made - and on the condition that it was. There is a pattern of poor consultation that is yet to be addressed to the satisfaction of local residents.

The absence of adequate evidence on which to base the decision

The history of the report and tendering processes relating to this decision began in November 2008 and January 2009 respectively. The Cabinet reports on this decision from November 2011 onwards, when the Whitchurch Consortium was selected as the preferred bidder, are characterised by a complete absence of evidence that the impact of the passage of nearly 4 years and the changed economic circumstances have been properly considered. Given the passage of time between these exercises and the decision date, a re-tendering exercise should have at the very least been seriously considered – if not conducted.

In addition, it also appears that no further efforts were made since this tendering process was resumed to find additional bidders who may have provided more attractive options. This is particularly relevant in light of comments in the report regarding the length of the lease. Originally tendered as a 30-year lease, the decision instead grants a 99-year lease to the Whitchurch Consortium. The November 2012 Cabinet report states:

*"The Consortium have made clear that it requires a long term lease of at least 99 years to justify the considerable initial capital expenditure of the development estimated at £3 million. **Any shorter lease term is unacceptable to the Consortium.** The other shortlisted bidder had also previously submitted their offer on the basis of a long lease term (in excess of 99 years) and it is **officers' clear view that the council would be unable to secure a comparable level of investment to that now offered on the basis of the 30 year term originally suggested in the informal tender specification.**"*

If the Council's – and, indeed, the apparent industry - view is that 30 years was insufficient a length of time to propose a lease, it would have been logical to re-run the tendering exercise encompassing a longer length of lease. This would have given other potential developers the opportunity to look again at what was being offered before submitting proposals. This decision is being made on the basis of a 4-year old tendering exercise, which presented options which appear to have been unattractive to developers. This has given the one developer which came forward the opportunity to effectively dictate a number of its own terms. This works against the notion of there being adequate evidence on which to base this decision.

Insufficient consideration of legal and financial advice

There is concern over whether an actual contract between the Whitchurch Consortium and the Council exists, due to information that only came to light after Cabinet had made the decision. The Cabinet report states that the rent being charged to the Consortium is 'a peppercorn'. The Deputy Leader of the Opposition requested clarification on how much rent is being charged on 19th November, to which Corporate Director for Place Shaping responded on 22nd November: *'The Lease states that the rent agreed through officer negotiation is 'A peppercorn'*. After additional clarification was sought on the cash amount involved, the Corporate Director responded *'Cash value of the rental payment is nil'*.

This leads to concerns as to whether a valid consideration in exchange for the 99-year lease is being provided by the Whitchurch Consortium - and whether a valid contract can be said to exist. Specifically, the Council is giving the Consortium the rights to develop and run the Playing Fields development over the course of a 99-year lease, but is not receiving anything of value in direct return. Even the obligations set out in the Cabinet report are of benefit to schools and voluntary organisations, but are not inherently beneficial to the Council as an entity of itself. It is unclear therefore what the Council is due to receive in exchange for a century-long lease of its asset.

It emerged at the November Cabinet meeting that local residents had applied under the Commons Act 2006 to register the Whitchurch land as an official Open Space. This has the capacity to delay any development of the land for as long as this application takes. The legal position presented at the meeting was far from clear, and it was not made apparent what the consequences of this application would have on any development. It cannot be argued that verbal legal positions thrashed out at a public meeting constitute sufficient consideration of financial and legal advice.

Due to both the clarification needed on the validity of the Council's contract with the Whitchurch Consortium, as well as the Commons Act application, it is vital that legal advice which Cabinet did not have an opportunity to consider is formally presented to them before this decision is approved.”

Notices submitted by the following Councillors on 30 November 2012:

Kam Chana

Barry Macleod-Cullinane

Chris Mote

Janet Mote

John Nickolay

Joyce Nickolay

Lynda Seymour

Simon Williams

Stephen Wright