

CALL-IN SUB-COMMITTEE MINUTES

6 DECEMBER 2012

Chairman: Councillor Jerry Miles

Councillors: * Nana Asante (1) Ann Gate
* Tony Ferrari (2) Susan Hall

In attendance: Thaya Idaikkadar Minute 32
(Councillors)

* Denotes Member present
(1) and (2) Denote category of Reserve Members

28. Attendance by Reserve Members

RESOLVED: To note the attendance of the following duly constituted Reserve Members:

Ordinary Member

Councillor Sue Anderson
Councillor Paul Osborn

Reserve Member

Councillor Nana Asante
Councillor Tony Ferrari

29. Declarations of Interest

RESOLVED: That the following interests were declared:

Item 5 – Call-In of Cabinet decision (22 November 2012)
Whitchurch Playing Fields

Councillor Nana Asante declared a non-pecuniary interest in that she was a member of Stanmore Baptist Church, which was an organisation likely to be affected by the outcome of the decision. She would remain in the room while the matter was considered and voted upon.

Councillor Tony Ferrari declared a non-pecuniary interest in that he had been a Member of Cabinet when the matter had first been taken forward for decision. He would remain in the room while the matter was considered and voted upon.

RESOLVED ITEMS

30. Minutes

RESOLVED: That the minutes of the meeting held on 1 October 2012 be taken as read and signed as a correct record.

31. Protocol for the Operation of the Call-In Sub-Committee

The Chair drew attention to the document 'Protocol for the Operation of the Call-In Sub-Committee and outlined the procedure to be followed at the meeting. He explained that, in accordance with Committee Procedure Rule 46.5, a notice seeking to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:-

- (a) inadequate consultation with stakeholders prior to the decision;
- (b) the absence of adequate evidence on which to base a decision;
- (c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
- (d) the action is not proportionate to the desired outcome;
- (e) a potential human rights challenge;
- (f) insufficient consideration of legal and financial advice.

He informed the Sub-Committee that grounds (a), (b) and (f) had been cited and had been deemed to be valid for the purposes of Call-In.

RESOLVED: That the Call-In would be determined on the basis of the following grounds:

- (a) inadequate consultation with stakeholders prior to the decision;
- (b) the absence of adequate evidence on which to base a decision;
- (f) insufficient consideration of legal and financial advice.

32. Call-In of Cabinet Decision (22 November 2012) - Whitchurch Playing Fields

The Sub-Committee received papers in respect of a call-in notice, served by nine Members of the Council, and accepted background papers on a

supplemental agenda, which had previously been circulated to all Members of the Council.

The Chairman invited the Member representative of the Councillor signatories to present their reasons for call-in to the Committee.

A Member asked for clarification on a point of order concerning the presence of Cabinet Members, and was advised that this was permitted.

The Member representative addressed each of the grounds for call-in separately.

Ground a) – inadequate consultation with stakeholders prior to the decision

The Member representative outlined the following issues, and asked for clarification on the points raised:

- the vast majority of residents living adjacent to the proposed development had not been consulted with by the Council;
- consultation was being undertaken by the developer, who had a vested interest in the outcomes and could not be considered to be independent;
- consultation by the developer was largely a box-ticking exercise by the consortium, which did not promote active engagement with residents and stakeholders;
- a consultation event held last March had been poorly organised and run, and this was a view held by Members across parties;
- the Corporate Director of Place Shaping had not responded to enquiries or correspondence from residents and resident organisations in a timely fashion.

He asked whether the pastor of Stanmore Baptist Church was supportive of the proposal and concluded that the Council could not demonstrate that it had properly consulted with residents and key stakeholders.

Ground b) – the absence of adequate evidence on which to base a decision

The Member representative reminded the Sub-Committee that the proposals had first come to Cabinet for decision in 2008, but had been deferred. The original lease had been set at 30 years, but the proposal now was for a 99 year lease, which represented an entirely new business proposition. He asked why officers had seen fit to 'dust down a proposal from the archive', and why, in view of the material difference in terms, a re-tendering exercise had not been considered. This change in terms was likely to have broader or greater appeal to potential developers, and could have secured greater financial benefit to the Council. He asked if the Council was conducting itself correctly in failing to do so.

Ground f) – insufficient consideration of legal and financial advice

The Member representative queried whether a contract did in fact exist, as the sum payable was defined as ‘a peppercorn’. He also asked if schools could continue to avail of the planned facilities if they converted to academies. Finally, he stated that an application had been made to register the site as an ‘open space’, and asked if this would affect the proposed development.

He noted that, at the 22 November Cabinet meeting, only the Leader had received legal advice during consideration of the item prior to decision, which had not been made available to remaining members of Cabinet, verbally or in writing.

The Portfolio Holder addressed the points made by the Member representative. In respect of ground a), he explained that the decision taken related solely to the commercial terms agreed with Whitchurch consortium, and that the agreement in principle had been taken at the Cabinet meeting on 20 June 2012, for which a full report had been provided on consultation and engagement. He agreed that it would still be necessary to undertake further consultation, but this would be carried out as part of the Planning and Licensing processes, to which the proposal would be subject.

In respect of ground b), he stated that following a decision on the development in November 2008, a tendering exercise had begun in January 09; of 12 responses, only 2 were considered suitable to take forward. Both of these bidders had agreed to the postponement of the project, and had confirmed their willingness to continue when the project had been reactivated. In November 2011 the proposals had been considered in detail and Whitchurch Consortium had been selected as the preferred bidder. Had the Council formally cancelled the tender exercise there would have been a risk of losing both bidders and being liable for compensation. No further bidders had expressed an interest during this interim period.

The decision had been taken to split the decision into three parts to allow for greater transparency and thus decisions had been taken separately: on the selection of the preferred bidder, on consultation and engagement, and on the commercial details. The change to the length of the lease had been approved to secure greater benefits and the long term future of the facilities.

In respect of ground f), he stated that a legal contract did exist which would realise £3m of inward investment to improve facilities, and maintain them at no cost to the Council, providing a considerable benefit to the community. The ‘open space’ application was subject to an entirely separate process, and if successful, would halt delivery of the development project.

In conclusion the Portfolio Holder stated that Cabinet had been legally empowered to take the decision.

The Portfolio Holder and Member representative discussed specific consultation matters, in which it was claimed Whitchurch Consortium had failed to address concerns raised by residents and resident groups.

The Corporate Director for Place Shaping reminded the sub-committee that the decision taken in November 2011 enabled the Consortium to undertake engagement and consultation with the community. The prime objective was to deliver excellent sport and community facilities at no cost to the Council, and there had been no need for further consultation until the business decision had been taken.

The Member representative and the Corporate Director for Place Shaping discussed specific instances of correspondence. The Corporate Director added that over 1200 residents had signed a petition in support of the development, which had been presented to Overview and Scrutiny Committee.

In response to a question about community support for the development, the Corporate Director for Place Shaping stated he had received an email from the pastor of Stanmore Baptist Church outlining their use of the facility. In response to questions about academy school status, and the 'open space' application, he confirmed that academies would have to pay a charge for use of the facility, and he explained that a successful application would halt the project, as would any failure to meet the provisions of planning or licensing requirements.

Members discussed whether potential bidders had been deterred by the selection of a preferred bidder, or disadvantaged by the lack of information about the change in duration of the lease, and whether the possible cost to the Council, if liable for compensation as a result of going back to the market, countered these arguments. An officer commented that a re-tendering exercise could take 12 to 18 months and involve further costs, in addition to the running costs of the site which were currently £48k per annum, or £72k for an 18 month period.

Members reiterated their view that consultation had not been independent and stated their concerns with the view that no further consultation was necessary at this stage. The Corporate Director for Place Shaping acknowledged that those residents closest to the site had registered their concerns, but that there was strong support from the wider community and major issues would be dealt with during the planning and licensing processes.

In response to Members queries about how community use would be decided and managed, officers explained that existing users would be protected at the outset, but in order to remain open to developments and change, they did not want to place limitations on use.

(The Sub-Committee then adjourned from 9.25 pm – 9.55 pm to receive legal advice).

Having re-convened, a Member, prior to the announcement of the decision, gave her view that consultation had been inadequate and flawed, by virtue of it being undertaken by the preferred bidder who had a pecuniary interest and was not a disinterested party, and by a failure to address the concerns of those residents living closest to the development site.

She repeated her concern that the extension of the lease had not been explored further, and had not been re-offered to the market, before agreeing to the terms of the contract.

The Chair then announced the decision of the Sub-Committee, and it was

RESOLVED: (by a majority decision) That

- (1) the call-in on ground (a) – inadequate consultation with stakeholders prior to the decision not be upheld;
- (2) the call-in on ground (b) – the absence of adequate evidence on which to base a decision – not be upheld;

and (unanimously) that

- (3) the call-in on ground (f) – insufficient consideration of legal and financial advice not be upheld.

(Note: The meeting, having commenced at 7.30 pm, closed at 10.00 pm).

(Signed) COUNCILLOR JERRY MILES
Chairman