

CABINET – 10 SEPTEMBER 2020

REFERENCE FROM THE SPECIAL OVERVIEW AND SCRUTINY COMMITTEE – 1 SEPTEMBER 2020

124. Harrow Strategic Development Partnership - Appointment of Preferred Bidder

The Committee received a report of the Corporate Director of Community which was to be considered by Cabinet at its meeting scheduled to be held on 10 September 2020 for decision. The report advised Members of the outcome of the Competitive Dialogue stage of the procurement process. The report sought Cabinet's approval of the appointment of Bidder B as the Preferred Bidder with whom the Council would seek to establish the Harrow Strategic Development Partnership (HSDP). Cabinet's approval was also being sought to proceed to the Preferred Bidder Stage in order to allow the proposals to be clarified, specified and optimised so that the structure of the vehicle could be formalised, legal documents finalised and the HSDP Business Plan concluded.

The report was before the Overview and Scrutiny Committee due to its role as a scrutinising body and Members were invited to comment on the report and the proposals therein prior to its consideration by Cabinet.

The Portfolio Holder for Regeneration, Planning and Employment introduced the report and referred to the key priorities of the Council for the Core Sites. The Core Sites were Poets Corner, Peel Road and Byron Quarter for which the priorities included:

- re-provide the Civic Centre;
- provide the Civic Centre at no cost to the Council's General Fund, utilising the receipts received through the period of the partnership;
- maximising affordable housing across the three sites.

The Portfolio Holder informed the Committee that whilst key Members of the Executive were briefed on a weekly basis, they had not participated in any deliberations during the procurement process and in officers arriving at the recommendations before Cabinet. He added that once Cabinet had appointed a Preferred Bidder, a further report would be submitted in the New Year with a view to approving a Business Plan which would include an outline of the sites proposed for development. There would also be a report in the autumn finalising the Council's Accommodation Strategy.

The Chair invited questions from Members under the following topics:

Governance, Legal and Accountability

Q1: Why was the LLP (Limited Liability Partnership) considered to be the best vehicle and the right option for the HSDP (Harrow Strategic Development Partnership)?

What does tax efficient mean?

What rates of taxation would apply?

An officer, the Council's external legal advisor and the Council's Commercial Advisor stated that a corporate vehicle was required for the HSDP and current local authority practice was often to use a LLP for these types of joint venture where this was possible. The LLP structure provided an opportunity to have a jointly owned vehicle capable of being structured for this transaction with limited liability which would allow each party to have an equal share, provide flexibility in terms of governance, decision making and its operational aspects.

One benefit of an LLP was due to the tax status. Although taxes such as VAT and SDLT applied, as opposed to companies which pay corporation tax, an LLP was not taxed on its own behalf, each partner was taxed on receipts in their own right. Local Authorities did not pay corporation tax.

Q2: It was envisaged that the Partnership would be governed by a Board with possibly 3 representatives from each partner serving on the Board. How would the Council's representatives be selected and how would they be accountable?

Members will make decisions on the course adopted, including on the developments. How would the Council hold these Members to account?

In response, an officer reported that this matter would be for Council to determine, probably at its meeting in November 2020 and before the company was established. The nominations would be within the Council's gift.

The duties of Members would be akin to those of their counterparts in companies. It would be a matter for the Council to decide on how to hold Members to account. Some decisions, such as the HSDP Business Plan, would require full Council approval. The Council's Scrutiny Committees would also have a role to play in holding the Partnership to account.

Q3: What decisions would be delegated to the Partnership Board and what decision would fall within the remit of the Council?

Would the Partnership be subject to FOI (Freedom of Information) requests?

An officer explained that matters such as the Business Plan and closing down of the Partnership would be a matter for the Council. The critical and fundamental decisions in relation to this venture would fall within the Council's remit.

The Partnership itself would be an independent entity and would not be subject to FOI requests. However, communications with the Council would be subject to FOI.

The Portfolio Holder informed the Committee that, initially, the Board would run the Partnership which, although not yet determined, might consist of a Member, an Officer and an Independent Person. The Independent Person would be selected following an advertisement.

He added that, owing to a conflict of interest, the Member on the Board could not be a member of the Cabinet responsible for Planning and Regeneration.

Q4: What processes would be in place to allow Councillors to hold the Partnership to account? How frequent would this be? Would any limits be placed? Would Councillors be provided with training to allow them all to understand all aspects of the functions of the Partnership?

An officer informed the Committee that the holding of the Partnership to account would be a matter for the Council but it ought to be recognised that the Partnership had a 'job' to carry out and a balanced approach to reporting requirements should be taken.

The Partnership would be subject to its own audit regime and the Council's involvement therein would also be subject to audit.

In terms of training, the HSDP concept was complicated and the officer acknowledged the need for training in order to increase the knowledge base of Members. Members of the Board would also need to be trained so that they were on a level playing field with their partners. The Corporate Director of Community advised that it was important that members received the training needed to both understand and scrutinise how the Partnership would operate.

A Member of the Committee, who was also a Member of the Council's Member Development Working Group, suggested that this Group should initiate and set up a series of programmes to help scrutinise the Partnership.

With respect to accountability, mechanisms would be set out in the relevant legal documents. The officer advised that if Members were of the view that the Board was not adhering to its agreed role, they could revert to the options and take action. Additionally, the Council did not have to approve the Business Plan if they were not satisfied with it and could stop the Vehicle and dismantle it. However, these were drastic solutions and he encouraged members to seek an earlier and more effective resolution before going down these final routes.

Financial Matters

Q5: Why was the Council putting cash into the Partnership when it would be providing a significant amount of land?

There were two financial streams but it was not clear what the time frame would be for recouping £16m of land investment?

In response, the Council's external commercial advisor explained how the various developments would be funded and cited an example. He added that equity was key and cash injection by the Council would ensure that the partnership was equal.

The Director of Finance informed Members that the land drawdown would come down at an agreed period during the development. Further details would be provided to Members.

Q6: Cost neutrality - What costs would be/had been included? If some staff were moved to the Depot from the Civic Centre, would this result in a cost to the Council?

The Director of Finance reported that cost neutrality had been included for procurement purposes and would include costs such as construction costs. Costs of decanting or future use of the Depot had not been included. The specification for the new Civic Centre was based on requirements but the Council was exploring the use of other sites due to the requirements of Covid-19. The exact size of the new Civic Centre would be determined at a later date by the Council.

The Council's Commercial Advisor stated that if the Council was moving to a smaller Civic Centre, then there would be a potential cost saving in terms of build costs by building a smaller Civic and that saving could be utilised to offset costs incurred at the Depot.

Q7: Cost profitability – In the context of the Partnership, why could the Council not make a profit to pay off its debts?

The Director of Finance replied that the land and equity could be paid back from the investments. It was important to note that the Council would be gaining a new Civic Centre and affordable housing. Therefore, it was receiving profit with no impact on the General Fund. The Council's Commercial Advisor added that, in addition, a surplus would be generated and the Council would be making a financial return.

Q8: Had due diligence been carried out on the Bidders?

What form of diligence had been conducted and were any reports available in light of the changing financial markets?

An officer informed Members that the Council continued to monitor the company position of the two bidders and it continued to receive advice from the Council's Commercial Advisor. The message coming through was that both the bidders continued to have a solid foundation and were considered to be reputable. There was no evidence of any cause for alarm.

Members were informed that once the Preferred Bidder was appointed, it would allow for such discussions. There were no guarantees in any financial

venture but officers were certain that, at present, there appeared to be no warning signs, including in the financial markets. The financial strength of both the bidders was being monitored and would continue to be so.

The Council's Commercial Advisor stated that high benchmarks had been set in respect of the financial strengths of both the bidders and both had exceeded the benchmark. Both companies had continued to operate and to drive other developments forward.

An officer added that both companies would and had been monitored on an ongoing basis and he would inform Members of the date when the last monitoring exercise had been undertaken.

Q9: Cost neutrality – The Council would be moving from a large Civic Centre to a small one. Therefore, why was it not possible to make a profit to fund local services or reduce the Council Tax? Why did the Council not believe that it could make a substantial profit from the deal?

An officer stated that the Council would be getting a new Civic Centre, Public Realm and 40% Affordable Housing and some other financial returns. He added that all benefits needed to be taken into account.

The Council's Commercial Advisor drew attention to the Council's objective which was to optimise value from existing and new assets. She added that it would not be in the interest of those involved in the LLP not to maximise returns.

Affordable Housing and Community Engagement

Q10: Affordable Housing - The Mayor of London would require a 50% element of affordable housing and the Council had requested 40%. What did affordable housing mean to an average person because it remained unaffordable to them?

The Committee was informed that affordable housing would be let at the London affordable rent level. The next stage of the process would be to hold discussions with the GLA (Greater London Authority) in order to discuss the optimum level of affordable housing and to perhaps increase it to 50%. Further discussions would ensue in this regard.

The Chair was of the view that the Council ought to be working towards achieving at least 50% affordable housing and, as a public authority, set high standards. In response, an officer stated that the Council was also seeking an improved Public Realm and a new Civic Centre and, inevitably, there would have to be a trade-off. The Council's Commercial Advisor stated that the provision of affordable housing would not give the Council any financial return and a minimum requirement should be set. However, the Council as a partner could push for more units. The Chair hoped that the Cabinet would go down this route.

Q11: Affordable Housing – Could the Council buy back the properties?

An officer reported that the affordability element would remain and was not dependant on who owned the affordable housing. However, it was the Council's ambition to own it and it would have the first option to buy. In any case, ownership of the affordable housing would not detract from the affordability factor.

The Chair urged the Council to buy the affordable housing element and he hoped that any future administration in power would exercise this option.

The Portfolio Holder agreed with the sentiments of the Chair but noted that the process had some way to go and it would be dependant on the market conditions at that time. He also explained how the parameters set in a modelling exercise had shown that, in order to make additional profit, the affordable housing element would need to be reduced.

Q12: Community Engagement – What engagement had been carried out?

The Portfolio Holder informed the Committee that consultations on the Byron Quarter had been carried out four times and comments received had been taken into account and changes made. A similar exercise had been carried out for the Poets Corner site. A statutory consultation exercise would be undertaken in respect of the new Civic Centre. The Regeneration Residents' Panel had met 26 times and consisted of 15 members. Online consultations would continue, including other types of consultations, and more would take place in due course. He did not see the necessity for consultations to be extended to families and family groups.

An officer reported that both the bidders had been required to comment on the subject of engagement and, in their submissions, they had indicated a range of mechanisms that they would put in place such as the use of social media and engaging with young people. Wide ranging consultations were expected and these would be undertaken by the Preferred Bidder.

Q13: Community Engagement - reflective and ongoing consultation with communities and stakeholders was welcomed. However, what types of alterations would they be able to suggest/make and what aspects would not be within their remit?

The Corporate Director reported that the HSDP was a 12-15 year programme with a view to making an investment in the local communities and neighbourhoods. Relationships would develop and evolve through out this period and consultations would continue. Communities would have considerable influence over a wide range of matters involved in the schemes.

Risk Management and Planning Strategy

Q14: Given the current economic climate, implications on construction costs and the uncertainty due to the Covid-19 pandemic, what additional

risks were being placed on the Council in moving forward with the HSDP?

In response, an officer stated that all options had been considered and reviews undertaken before making recommendations to the Cabinet. If the Council were to discontinue at this stage, it would have to restart the entire process again when it was ready to proceed. Also, market conditions would vary over a number of years, and there was no guarantee at any point of achieving 'market certainty'. There was 'strength' in having a Preferred Bidder as it would allow the Council to have discussions with the developer on the matters raised. The Council would not be 'locked-in' until a contract had been signed and this would not happen until the New Year.

The Council's Commercial Advisor stated that any long term development process would be subjected to different market conditions/cycles. All developers had been asked to provide a sensitivity analysis and all showed that the sites were viable and deliverable at a neutral cost. There would always be variables and in this scenario they were linked to the affordable housing element. Risk management and monitoring would be fundamental.

Additionally, the LLP route was the best option irrespective of market conditions and would withstand different cycles.

The Portfolio Holder stressed that risks were associated with any form of development. The three main risks were:

- cost of construction
- value of the project
- economic position of the country.

As a result, mechanisms would need to be put in place to manage and mitigate the risks.

Q15: In terms of risks (with reference to pages 25 and 26 of the agenda), intricate sequencing of financial returns enabled a reduction in borrowing. What risks were present if receipts did not materialise in order to fit in with the strategy? If sequencing was not right, interest payments would 'balloon'/inflate.

The Director Finance informed Members that the timings would be based on capital receipts and, yes, there might be a delay. The risks would need to be managed and any initial returns ought to be held for any future delays encountered in order to minimise the impact on the Council.

Q16: A great deal was dependant on the value of the land. Was there a risk of the Council selling the land at a lower value?

The Council's Commercial Advisor informed Members that the value of the land would be based on the Business Plan and established finally at the point of land draw down. The Council would have some control over when the new Civic Centre was built and would have the ability to delay projects in order to

help mitigate risk. As the partner, the Council would have some control over the pace of delivery whilst continuing to monitor the markets.

An officer advised that no alterations would remove risks and it was suggested that should issues arise, the development of some flats could be delayed, although at any point in time a range of options would be available. The Chair was of the view that should property prices drop, it would be prudent to continue building and accommodate people on the housing waiting list and reduce costs.

The Committee was advised that the Council would not be committing to a price at this juncture. This would be done when drawdown conditions were achieved which would be in a couple of years' time.

Covid-19 and Equality

Q17: Besides the timelines, had Covid-19 pandemic had any other impact on the HSDP?

An officer replied that, in terms of the decision that Cabinet was being asked to take, there were no specific equality implications to consider at present. However, equality implications would be brought to the Committee in due course when each of the sites were considered in detail and the overall business plan and contract close was to be considered. Covid-19 had had an impact on the procurement process which had been delayed as a result. Much of the evaluation had been conducted virtually and the majority of the final negotiations and discussions could be concluded in a similar manner. In terms of the proposals Bidder B had submitted social value activities which may benefit from reshaping to reflect the needs of the community post Covid-19 and he anticipated that the preferred bidder would welcome discussions on this.

Q18: There was a need to establish face to face communications in certain of the Council's functions. How would the facilities at the Depot in Forward Drive help with this aspect?

The Corporate Director of Community reported that the Council was looking at existing networks to allow for face to face conversations, particularly in relation to the work carried out by Children's Services, and due to the increase in the number of children in care. Additionally, the design and layout of the new Civic Centre would take such aspects into account.

Q19: The bid documents would have been submitted in March 2020 and prior to Covid-19 pandemic. To what extent were these bids out of date, including the scores given?

The Committee was advised that the bids were not out of date as they were procurement documents but that they would need some clarification as allowed under the regulations.. This was another illustration of the need to appoint a Preferred Bidder so that such discussions could ensue.

The Council's Commercial Advisor informed Members that costs and values would be the main points for discussions with the Preferred Bidder, including what additional measures would be required on building sites due to Covid-19 and Brexit. Both would have implications and would form the basis of any agreement. It was expected that schemes would be amended as the project progressed. There was little data available on housing from March – June 2020 and the housing market had been propped up by the government's stamp duty holiday. Discussions were also required on non-residential space (office and retail) in light of Covid-19.

Q20: At what stage of the HSDP would the provisions for car parking be made available?

An officer replied that a draft strategy would be made available and that it would contribute to the Business Plan. This would of course take as its starting point the current Planning Policy.

A Member stated that there was a significant need for family size homes in the borough. It was confirmed that the submissions had been based and would continue to be based on the Council's analysis of its housing requirements.

At the conclusion of the questions, the Committee moved into a private session (Minute 126 refers).

125. Exclusion of the Press Public

RESOLVED:

That the press and public, including co-opted members of Overview and Scrutiny Committee and the Harrow Youth Parliament representative, be excluded from the meeting for the following item of business, on the grounds that it involved the likely disclosure of confidential information in breach of an obligation of confidence, or of exempt information as defined in Part I of Schedule 12A to the Local Government Act 1972:

Agenda Item No	Title	Description of Exempt Information
6.	Harrow Strategic Development Partnership - Appointment of Preferred Bidder - Appendices E, F and G	Information relating to the financial or business affairs of any particular person (including the authority holding that information) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

126. Harrow Strategic Development Partnership - Appointment of Preferred Bidder

Members of the Committee discussed the confidential appendices E, F and G in detail and asked questions of both officers and external advisers present during the private session of the meeting. Questions from Members related to the following:

- land value and the timing of how this would be recouped;
- disparity in tenders in relation to management fee charges;
- robustness of the bidders. Members sought details of the 'minor concerns' mentioned in the report;
- whether any of the minor errors in the model had a material effect;
- margins;
- viability of the bidders.

An advisor undertook to provide additional information in relation to the question on the timing of the recouping of the land value. Another advisor explained the levels of controls the Council would be able to exercise in its role as a planning authority, including checks and balances that would be required in order to ensure value for money. The question relating to the 'minor concerns' was explained and Members were assured that these would not have any material impact on the proposals.

Members questions were responded to and details of the two bidders were shared with them. The Committee was reminded that these details were confidential until released formally following the Cabinet decision. Members noted that additional reports would be submitted to future meetings of the Committee as the project progressed.

In summing up, the Chair stated that, whilst he would argue for additional affordable housing to be provided on the sites, he would support the appointment of Bidder B. He thanked all for their work in bringing this project to fruition.

RESOLVED: That the comments of the Committee be submitted to the Cabinet.

FOR CONSIDERATION

Background Documents:

Agenda of the special Overview and Scrutiny Committee – 1 September 2020: Report on HSDP – Appointment of Preferred Bidder
Draft Minutes of the special Overview & Scrutiny Committee – 1 September 2020

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