

Time commenced - 6.00 pm
Time finished - 7.20 pm

SCRUTINY MANAGEMENT COMMISSION 1 MARCH 2005

Present: Councillor Troup (in the Chair)
Councillors Ahern, Bayliss, Graves, Hussain, Jones, Lowe,
MacDonald, Redfern, Repton, Smalley and Travis.

73/04 Apologies for Absence

Apologies for absence were received from Councillors P Berry and Latham.

74/04 Late items introduced by the Chair

There were no late items.

75/04 Declarations of Interest

There were no declarations of interest.

76/04 Call-in – Riverlights – Revision to the Development Agreement

In accordance with Overview and Scrutiny procedure rule OS36, the monitoring officer called in for scrutiny a decision in respect of Riverlights – Revision to the Development Agreement made by Council Cabinet at their meeting held on 8 February 2005 (minute number 298/04).

The request for call-in had been made by Councillors Bayliss, Graves and Wynn. The Commission was provided with a copy of the letter requesting the call-in and the protocol on Call-in of Executive Decisions. This was attached to the initial report considered by Council Cabinet on 8 February 2005. The letter stated that Council Cabinet had failed to take the decision in accordance with Overview and Scrutiny rule OS33, (b) due consultation and the taking of professional advice from officers and (d) a presumption in favour of openness. In accordance with the procedure for Call-in Councillors Bayliss, Graves and Wynn were invited to present the case for the call-in. Councillor Hickson, Deputy Leader of the Council and Stuart Leslie, Chief Legal Officer, were present to answer questions relating to the Council Cabinet decision. Following a request by Councillor Graves it was resolved that two members of the public present at the meeting be allowed to ask questions relating to the call in.

Councillor Graves stated that he believed the decision should have been a key decision and therefore placed in the forward plan. As a direct consequence, Council members and particularly the Scrutiny Management Commission had had less than a

weeks notice to properly consider the complex issues. This had effectively denied them any opportunity for consultation. There were deficiencies within the Council Cabinet paper which inhibited due consultation.

Councillor Wynn said that there may be issues of confidentiality which may have been discussed by Council Cabinet which influenced the decision. He was concerned that the decision seemed to be of no benefit to the Council. He asked what the gain was to the Council and whether the actions justified the outcomes. He raised the issue of proportionality and stated there were advantages to the developer but adequate reasons were required for softening the Council's position. It was noted that this was not part of the call-in notification. Steve Dunning, Assistant Director Democratic Services, explained there was no provision in the Constitution or Call-in Protocol for introducing new material, not included within the notification letter.

Councillor Wynn continued by asking the following questions. In respect of 'due consultation', had there been consultation on the financial implications to the Council? What were the costs to the Council of administering the agreement? Why had the development period been extended from 24 to 36 months and had there been a contractual implications risk assessment carried out?

Councillor Bayliss said in relation to 'presumption in favour of openness', that the Cabinet reports had been inadequate and did not contain sufficient detail for judgements to be made. In Appendix 3 of the report, there was a reference to administration costs and a reduction in the timescale from three to two months. Had the aims and desired outcomes been fully considered or just the developers profitability?

Mr Dunn a member of the public was allowed to speak and said that there were details missing from the report he asked what would happen if the development commenced and then had to be stopped?

Mrs Woolley the second member of the public asked what would happen if the development commenced but those insufficient funds to complete it?

Councillor Hickson said There was pressure to start the scheme as soon as possible from the Cross Party Working Group and to achieve this, the early granting of the lease was required. He was aware of the need to protect the Council's position and the report set out how this would be achieved, including the requirement for the lease to be surrendered back if the preconditions were not fulfilled by the Long Stop Date of 30 June 2007. To make sure that everything was in order, independent legal advice had been given by Brown Jacobson's, an external firm of solicitors.

In respect of consultation; Councillor Hickson said Council Cabinet considered the report on 8 February 2005 but the same main issue had also been considered at Council Cabinet in September 2004. The consideration of an early granting of a lease had therefore been on the table for at least four months. Councillor Hickson said that it was worth noting that after publication of the February report, no member asked the leading officers for clarification or explanation at any point, nor at the February Cabinet meeting were any queries raised.

In respect of a presumption in favour of openness Councillor Hickson responded that the report could have legitimately been dealt with in closed session but it was a deliberate decision to put it in the open part of the agenda. The previous administration had considered such reports in closed sessions. There were no direct financial implications to the Council other than officer time and the only cost was that of the external legal advice to the Council from Browne Jacobson which would be paid for by the developer. There had been a suggestion by those calling in the decision that the Cabinet papers were vague and that an informal decision could not be made without sight of the actual agreement itself. However the Development Agreement was over 100 pages long and was particularly torturous and complex document. Nonetheless, any member was entirely free to ask for sight of the agreement, none had. He and ex-Councillor Leatherbarrow had looked at the agreement whilst in opposition but to Councillor Hickson's knowledge, no other Councillor had taken the opportunity to look at the documents.

In respect of clarity of aims and desired outcomes Councillor Hickson said the position was straightforward; the proposed changes to the Development Agreement would help bring the scheme to fruition sooner and benefit Derby and its citizens. There were risks to the Council but these were minimised by the safeguarding provisions referred to in the report. In view of the Council's external legal advisors, these risks were acceptable.

In respect of options considered – Councillor Hickson said the Council were mindful of the delay or adopting other options. On financial viability, he said the bankers had come forward and were willing to lend to make sure the scheme was financed. This type of funding was always envisaged and was itself evidence that the scheme was viable.

In respect of other relevant issues – Councillor Hickson said there was no effect on the land values to the Council. The cost of changes to the agreement other than officer time would be met by the developer. The concessions to the developer in Appendix 3 were not significant and were included for completeness they did not themselves require Cabinet approval. The position in respect of the use of the current bus station after the early grant of the lease was protected until the agreement became unconditional. Work could not start on site until the revised bond provisions were in place.

Councillor Hickson concluded that the documentation of the existing development agreement was complex and the balance had to be struck between giving members sufficient information to understand the main issues and overwhelming them with a mass of details. The interests of the Council were protected and the early lease proposal was vital to move the development forward. There was tenant interest in the development, which would be hampered if there were further delays.

The Chair asked if the Council Cabinet decision should have been a key decision. Stuart Leslie, Chief Legal Officer, gave an explanation of the definition of a key decision and stated that it was not applicable to this particular report as it was concerned with the implementation of a previous key decision. Councillor Graves said he thought this was a citywide scheme as it affected every ward in the city. Councillor Hickson said the decision was not a key decision. Councillor Graves said that if the

scheme failed then it would have a big impact on the whole city and therefore should have been a key decision. Councillor Hussain asked what the impact would be on the whole city if the scheme collapsed. Stuart Leslie said that if the whole scheme did collapse, then it could have a significant impact on the city however the scheme was already approved and this report merely related to changes to the Development Agreement. Councillor Repton said that he understood the legal advice but was still of the opinion that the decision was a key decision. Councillor Travis asked about the security by way of a charge over the lease for the banks. It was explained that this would allow the bank to step in to finish the work if the scheme was not completed by the developer but all this had been discussed during the original decision.

Councillor Wynn said that it was a key decision originally and the confusion was that whether this particular decision was a key decision. The reasons given for early release of a lease was to speed up the works. He asked why this was the case if in the first bullet point of Appendix 3 of the report was extending the scheme from 24 to 36 months? Councillor Hickson stated that the position was clear; to secure bank funding for the early lease. Councillors Williamson and Bolton had both been present at the Cross Party Working Group where this was discussed.

Councillor Wynn asked if the current bus station would remain operational until the deal became unconditional. Other circumstances could arise which could take the bus station out of use and a contingency was not covered. Councillor Hickson reported that planning consent was already in place for a temporary bus station. By the time work on the new bus station began, the temporary bus station would be in place.

Councillor Smalley said he thought the call in was curious and ill considered as the matter had been considered by Cabinet before and Councillor Williamson had attended those meetings and had not commented. Due consultation on the project was extensive. At the last Council meeting, Labour members had said Cabinet should be making its own decisions and when it does make its own decisions, they call them in. The Cabinet were bound by the constitution and this was clearly not a key decision.

Councillor Bayliss said that it was a coincidence that the call in was by the Alvaston councillors who happened to be Labour members but it was not a call-in by the Labour Group. He asked what the value of the land was worth to the developers. Stuart Leslie reported that the Council was not disposing of land as part of this decision as land disposals had already been dealt with. Councillor Hickson said that the development agreement had already been signed and this was a narrow issue and therefore not a key decision. Councillor Ahern said that in the interests of people in Derby the decision should be a key decision. Councillor Hickson reported that the key decisions had been taken at the proper time. Councillor Smalley stated that the key issue was that three members believed that this item should have been a key decision. There had been correct consultation and openness. The issue had been in the public domain and the media for five to six years and there was nothing contained in the report that would inherently alter the issue. Council Cabinet at its meeting on 8 February 2005 was attended by all parties and there was an opportunity for public attendance.

Councillor Wynn stated that this was not a party political issue and had been called in by three members, as their constitutional right. He felt that it would have been helpful if the members who had called it in had not been three Labour Alvaston councillors as

this was not a party political issue.

Summing up, Councillor Graves said that the debate was not what he had intended and he was not against Riverlights. Ordinary members of the Council had not had the opportunity to discuss the issues which had been discussed at this meeting.

This meeting had allowed a discussion and debate on the issues and the decision as to whether this was a key decision or not. Councillor Hickson stated that he was satisfied that the Cabinet decision was sound.

The Commission then considered whether Council Cabinet had complied with the principals of decision making set out in Overview and Scrutiny Rule OS33, when making the decision and reach the following conclusions:

OS33(a) – Proportionality. Not proven that there had been any contravention.

OS33(b) – Due consultation and the taking of professional advice from officers. Proven as the Commission believes the decision should have been a key decision and placed in the forward plan.

OS33(d) – The presumption in favour of openness. Proven as the Commission believes the decision should have been a key decision and placed in the forward plan.

Resolved

To agree that breaches of the principles of decision-making had occurred but to make no recommendation to Council Cabinet.

MINUTES END