

Minutes of the meeting of the EXECUTIVE SCRUTINY COMMITTEE held on WEDNESDAY 15 NOVEMBER 2015 at 6.30 pm

**Present:** Councillor Eastman (Chair),  
Councillors Alexander, Bint, Jenkins (Substitute for Councillor A Geary), Morris, Petchey, Wales, Walker and K Wilson (substitute for Councillor Miles)

**Officers:** D Sharkey (Corporate Director Place), S Bridglalsingh (Service Director [Legal and Democratic Services]), E Palmieri (Interim Head of Property) and S Heap (Committee Services and Scrutiny Manager)

**Apologies:** Councillors Clifton, A Geary and Miles

**Also Present:** Councillors Marland and Gifford (Cabinet member for Place) and 12 members of the public.

**ES03 MINUTES OF PREVIOUS MEETING**

**RESOLVED -**

That the Minutes of the meeting of the Executive Scrutiny Committee held on 2 December 2015 and be agreed and signed as a correct record.

**ES04 DISCLOSURES OF INTEREST**

Councillor Bint informed the meeting that he had been a member of the Development Control Committee when it had determined the planning application for development of the Agora Site at Wolverton.

**ES05 CALL-IN OF DELEGATED DECISION 25 OCTOBER 2016: APPROVAL TO THE DISPOSAL OF THE COUNCIL CAR PARK AT THE AGORA SHOPPING CENTRE WOLVERTON.**

The Committee considered the decision made by Councillor Gifford (Cabinet member for Place), acting under delegated powers, on 25 October 2016 relating to the disposal of the Council owned car park close to the Agora Shopping Centre in Wolverton.

It was noted that on 25 October 2016 that Councillor Gifford had decided that:

- “1. That the Council dispose of its freehold interest in the Council Car Park (0.60 Ha) to Brickhill Estates (MK) Limited (the Purchaser), who it is understood benefits from the option to buy the Agora shopping centre, subject to the terms and conditions outlined, so as to facilitate redevelopment of the Agora Shopping Centre and the Council Car Park in accordance with planning consent.

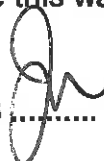
2. That the Council dispose of the Car Park to the Purchaser by entering into a freehold sale and leaseback, including granting a building lease, with the freehold being disposed of in the following way:
- (a) The Council transfers its freehold interest to the Purchaser for £100,000, at the same time as the Purchaser takes an assignment of the 99-year Car Park lease from the current owner of the lease;
  - (b) The Purchaser simultaneously grants a leaseback (the headlease) to the Council for 71 years, which is the residue of the current lease;
  - (c) The Council grants to the Purchaser a licence or sublease (building lease) out of the leaseback, for one week less than the 71-year lease referred to in 2(b) above, which licence or sublease provides for the Purchaser to build out the planning consented scheme, restricting the use of the Council Car Park to car parking as currently, or in accordance with the planning consented scheme.
  - (d) The Council's 71-year lease referred to in 2(b) above, ends when the Council is satisfied that the planning consented scheme has been practically completed;
  - (e) The Purchaser covenants not to seek any other planning consent, or any material variation to the planning consented scheme; and
  - (f) The Purchaser also covenants not to alter the site, other than so as to implement the planning consented scheme, and not to assign the headlease.
3. That the following conditions be applied to the disposal:
- (a) That the Purchaser will, within 12 months of this decision, substantially and diligently commence construction in accordance with said planning consent, and complete the scheme within 48 months after commencement, in accordance with the planning consent;
  - (b) That if the Purchaser has not commenced construction within the 12-month period specified in 3(a) above, or if the Purchaser does not complete the scheme within 48 months after commencement, the Council has the option to buy back the freehold interest in the Car Park for the consideration paid to it, less reasonable costs incurred in the disposal and buyback (in which case the headlease and building lease end);
  - (c) That the Purchaser is to show on or before 31 January 2017 proof of ownership, or binding option for the

purchase of the Agora Shopping Centre, and proof of commitment to funding for the total development costs, including payment of the s.106 contributions, before the Council enters into a contract to dispose of the Car Park to the Purchaser. This will demonstrate, to the Council's satisfaction, that the Purchaser has an unconditional finance agreement in place with a reputable funder to cover all development costs of the consented scheme, and that the Purchaser's funder has based its decision to fund the development scheme under that finance agreement, on a financial appraisal acceptable to the Council;and

- (d) That the Purchaser can certify that it has not within its group of companies received State aid under the de minimis rules in this or the two previous financial years which in combination with amount of the discount provided by this disposal exceeds the €200,000 limit.
4. That the Acting Head of Property may agree variations to the terms of disposal outlined in this report in consultation with the Corporate Director - Place, as reasonably necessary in order to secure the Council's objectives of disposing of the Car Park so as to facilitate regeneration of the Agora Shopping Centre and Council Car Park, whilst also complying with the Council's statutory duties.
5. That, within the planning consented scheme, the area of car parking is to be made available as a public car park without restrictions on use and times, and with zero charging, unless (in any such case) otherwise agreed by the Council."

It was reported that the decision had been called-in by Mr M Galloway and Mr P Sedgewick on behalf of 20 or more residents for the following reasons:

- "1. This is a complex and crucial decision for the future of Wolverton and also has wide ranging policy implications for Milton Keynes Council relating to the disposal of publicly owned assets and the level of public subsidy to private companies which is justifiable to deliver regeneration. Such complex decisions need the scrutiny of more than one Councillor.
2. From the reports, given as part of the briefing for this decision, we now know as fact something that we advised the Council of prior to planning permission being made - that the developers over paid for the purchase of the Agora. We also know that they have offered £2.15m for the Agora building, a value considered to be unviable by both independent surveyors, commissioned by Milton Keynes Council. This should not be any surprise to members of the Development Control Committee since this was one of the arguments we



made when the development was granted planning permission, but which the Committee were advised to ignore after assurances, from officers, that the development was viable.

It is apparent, from all the evidence now made available, that for the scheme to be viable (and indeed for it to be built at all) Milton Keynes Council are being forced into a position of selling the car park land at very much less than what it is actually worth, either as development land in its own right or as part of a package of land which includes the Agora building.

The area of the development site covered by the Agora site is less than half the site - 49% with the area of land owned by the Council representing 51% of the site. Thus, it is a reasonable assumption that the development value of both pieces of land should be roughly equal as well. However, Milton Keynes Council are proposing to sell their land at £100,000 and the developers are proposing to pay £2.15m for the Agora site, a ratio of over 20:1. Even with exceptional circumstances, such a disproportion between the value given to land in private ownership and the value given to adjacent land in public ownership cannot be justified.

Despite this very significant imbalance, Milton Keynes Council has decided to justify their decision on the grounds that the regeneration of the area will be achieved by the proposed development.

However, the development was described as "far from ideal" by the planning officer and fails to meet some of the key requirements of the community driven Wolverton Town Centre Neighbourhood Plan. Its value as a regeneration scheme was also called into question by reports from the Transport Officer, the Conservation Officer and the Tree Officer.

Milton Keynes Council are now implying that this is the only possible development for the area and yet this situation only exists because they chose to ignore advice presented, by the community at Development Control, that the viability of this scheme was very doubtful. It is not acceptable for any Local Authority to use its own decisions in one quarter to justify an unacceptable decision in another.

The effect of the decision to sell the car park land at so much less than market value is to subsidise a developer, by the backdoor, and, in the process of doing this, provide a large profit for the Agora landowner who bought the Agora out of receivership for £1m five years ago. A profit of 100% in five years paid for by the taxpayer is an unacceptable use of public funds.



3. The final reason for calling in this decision is that it actively favours one private developer over others, in effect giving a public subsidy to them which has not been offered to others. This is despite the fact that, at the meeting where the decision was taken, it was stated that Brickhill Estates may not have a sole option to purchase the site, and that there is other current, active interest in the site.

Over the past 4 years, there has been significant developer interest in the Agora site, the majority of which failed to proceed due to viability issues. These were sensible and prudent developers who understood, in a way that the proposed developers seem not to (as demonstrated by the two valuation reports), that viability is central to any development. Had these other developers known, at the time the Agora site was offered for sale, that a public subsidy, of about half its sale value, was to be attached to the deal then their decisions about whether to proceed to planning might have been very different."

The Committee heard from Mr M Galloway and Ms M Osborne who presented the call-in, together with a response from Councillor Gifford (the responsible Cabinet Member). The Committee also heard from two witnesses called by Mr M Galloway and Ms M Osborne and officers of the Council advising the responsible Cabinet member.

In addition to the reasons submitted as part of the call-in request, Mr Galloway and Ms Osborne also suggested:

- (a) the Council's procedures were not sufficiently robust and, in any case had not been followed;
- (b) that the land in question was being incorrectly referred to as the Agora Car Park, which was a different area of land in the ownership of the Agora;
- (c) that all relevant information had not been made available to the decision maker in advance of the decision including:
  - (i) The current option for the preferred developer to purchase the Agora had expired;
  - (ii) That there was an alternative developer interested in the site; and
- (d) the current scheme was not in the best interests of Wolverton.

Councillor Gifford and Council officers outlined:

- (a) the lease arrangements for the Council's Car Park, the limitations on its disposal and the impact on the potential value of the site, together with the legal position in respect of the disposal;



- (b) that part of the site would be retained as public car parking after disposal;
- (c) that the planning permission was not exclusive to the preferred developer;
- (d) that the preferred developer would have to provide proof of having an option to purchase the Agora Site by 31 January 2017 if the disposal was to proceed;
- (e) the letter from an alternative developer was only received immediately prior to the decision on 25 October 2016; and
- (f) the Council's prime aim was to facilitate the regeneration of the centre of Wolverton.

The Committee received confirmation:

- (a) as to the land in the ownership of the Council and the land owned by Leyland Holding Company Limited;
- (b) that the relevant Council Procedures had been followed;
- (c) that the Council's Car Park was a public car park and not for the exclusive use of the Agora;
- (d) that the persons representing the call-in believed it would be possible to deliver a better scheme and the selection of any scheme and the developer should have community input;
- (e) that the development of the Agora was dependent on the Council disposing of the car park;
- (f) that the design of the development was a matter for the developer;
- (g) of the wording of the Council Plan with regard to the regeneration of Wolverton;
- (h) that as it had not been possible to confirm the option to purchase with the preferred developer a condition was to be imposed on the sale requiring the developer to provide proof;
- (i) that because of the lease conditions any value achieved by the sale of the Council's land without the Agora site would be severely restricted and well below the market value and below the current offer;
- (j) that both Wolverton Town council and Ward Councillors had been consulted on the disposal; and
- (k) that the Leader had delegated authority to Councillor Gifford to take the decision.

Councillor Wilson moved following motion which was seconded by Councillor Wales:

"That the Executive Scrutiny Committee resolves not to refer the matter back to the Cabinet member for a further decision."



On being put to the vote the motion was declared lost with 3 councillors voting in favour, 4 councillors voting against and 2 councillors abstaining from voting.

Councillor Bint moved the following motion, which was seconded by Councillor Morris:

- "1. That the decision be referred back to Councillor Gifford, as the decision taker, in order that she may review the decision having regard to the Committee's view that the decision would be more sound if there was clarity as to the reasons underpinning the decision not to market the site, or evidence of an attempt to find out if anyone else wanted to negotiate to get a better price.
3. That in advance of any further decision the Cabinet member be encouraged to ensure that:
  - (a) an investigation is held into who holds the option before deciding to dispose of the land to Brickhill Properties Limited; and
  - (b) any report makes it clear that the planning permission is for the benefit of the land.
3. That having investigated the option to purchase the Agora Site, any decision brought forward should be based on the knowledge of who has the option, if anyone, which could result in either no decision needing to be made, or a generic decision that the Council's land can be sold on the open market recognising that anyone could build out the planning permission."

On being put to the vote the motion was declared carried with 5 councillors voting in favour, 3 councillors voting against and 1 councillor abstaining from voting.

The Committee heard from Councillor Marland and eight members of the public during consideration of the item.

RESOLVED -

1. That the public and press be excluded from the meeting by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 in respect of a letter from a developer with an interest in developing the Agora Site.
2. That the decision be referred back to Councillor Gifford, as the decision taker, in order that she may review the decision having regard to the Committee's view that the decision would be more sound if there was clarity as to the reasons underpinning the decision not to market the site, or evidence of an attempt to find out if anyone else wanted to negotiate to get a better price.



3. That in advance of any further decision the Cabinet member be encouraged to ensure that:
  - (a) an investigation is held into who holds the option before deciding to dispose of the land to Brickhill Properties Limited; and
  - (b) any report makes it clear that the planning permission is for the benefit of the land.
4. That having investigated the option to purchase the Agora Site, any decision brought forward should be based on the knowledge of who has the option, if anyone, which could result in either no decision needing to be made, or a generic decision that the Council's land can be sold on the open market recognising that anyone could build out the planning permission.

THE CHAIR CLOSED THE MEETING AT 9.48 PM

