

PLEASURAMA SITE DEVELOPMENT REVIEW TASK & FINISH GROUP

Minutes of the meeting held on 29 August 2013 at 7.00 pm in the Council Chamber,
Council Offices, Cecil Street, Margate, Kent.

Present: Councillor Neil Hornus (Chairman); Councillors Binks, Campbell,
Driver, Harrison, Marson and Nicholson

In Attendance: Councillors King and D Green

5. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor Worrow.

6. DECLARATION OF INTERESTS

There were no declarations of interests.

7. MINUTES OF PREVIOUS MEETING

It was **AGREED** that the minutes of the meeting of the Group held on 18 July 2013 be approved and signed by the Chairman as a correct record.

ORDER OF BUSINESS

It was **AGREED** that the Work Programme (Agenda Item 4, Minute no.11 refers) be considered after "Review of Documentation" (Agenda Item 5) and "Due Diligence" (Agenda item 6).

8. EXCLUSION OF PUBLIC AND PRESS

In speaking under Council Procedure Rule 24.1, Councillor D Green requested, on behalf of residents and in the interests of transparency, that the press and public be not excluded for consideration of "Due Diligence" (Agenda Item No. 6 and Minute No. 9 refers).

Harvey Patterson, Corporate & Regulatory Services Manager, advised that the advice note on due diligence should be taken as a public document. However, the advice note referred to exhibited exempt reports and appendices that had been considered by the Cabinet and the Council in 2009 in private session. Consequently, officers did not have the authority to change their status. In contrast, the Task and Finish Group as a properly constituted Sub Committee of Overview & Scrutiny Panel did have the power to decline to resolve to exclude the press and public during the consideration of the exempt reports and appendices, thereby bringing them into the public domain. Nevertheless, the Task & Finish Group should be reluctant to take irreversible decisions binding on the Council as a whole. In response to Members' queries, he stated that he did not consider that an open discussion of the documentation at this meeting would prejudice the Council's legal position in relation to the Development Agreement – with the exception of the 2009 Deposit Agreement which was and remained a confidential document.

On the proposal of Councillor Nicholson, seconded by Councillor Harrison, it was **AGREED** to consider all the information relating to the item on "Due Diligence" (as appended to the private agenda) in open session.

Due Diligence was then considered by the Group.

9. **DUE DILIGENCE**

In answer to Members' queries, Harvey Patterson, Corporate & Regulatory Services Manager, agreed to try to locate and produce to the Group:

- i. The original of the document from National Westminster Bank plc dated 1 August 2007 in relation to a loan to SFP Ventures (UK) Limited;
- ii. Any correspondence to the Council from Wetmore Investments confirming that Wetmore would make available £5m funding for the Pleasurama development, it being noted that whilst the letter from S F P Ventures (UK) Ltd and the draft letter from SBP Banque referred to funding from Wetmore, there was no confirmatory letter from Wetmore itself;
- iii. Any other papers of relevance to the Group's investigation, including any other advice from Eversheds, whether on the Regeneration Services' files or otherwise.

In relation to the draft letter from SBP Banque, concern was expressed by a Member at reference to "Triple Star Rating", this being an unknown banking term. In addition, the draft letter did not refer to the available funds having been "blocked" by the Bank so that they could only be used for the purpose of the Pleasurama development.

The Group also asked the Corporate & Regulatory Services Manager to find out:

- i. Whether the draft letter from SBP Banque had ever been received as a final version.
- ii. Who wrote the document relating to the funding status and appraisal of the development, at Annex 1 to the report to Council on 23 July 2009.
- iii. The approximate date when Annex 4 – "Commentary from TDC Officers on the content of Annex 1" - was written.

Observations were made by Group Members as follows:

- i. The correspondence attached at Annex 1 was not contemporaneous, the document from National Westminster Bank being dated 1 August 2007, two years before the date of the Deed of Variation, and the letter from SBP Banque being dated 16 September 2008, nine months before the Deed of Variation.
- ii. Even where risk associated with a development is largely borne by the developer, the Council had a responsibility to carry out due diligence on the developer and any of its funders;
- iii. The Group had no evidence that due diligence had been carried out in a meaningful way.

It was AGREED that, under agenda item 4 – "To Agree a Work Programme for 2013-2014" (minute no. 11 refers) consideration be given to inviting the S.151 Officer to a future meeting of the Group for the purpose of giving evidence.

ADJOURNMENT OF MEETING

The meeting adjourned for 5 minutes.

THE MEETING THEN RESUMED

10. REVIEW OF DOCUMENTATION

During discussion, reference was made to:

- a) Paragraph 7 of the officers' commentary, stating that:

"The Council will have the right to terminate the site leases for breach of the Development Agreement which SFP fails to remedy ...".

- b) Paragraph 7 of the summary report, dated 19 October 2006, by Eversheds, setting out provisions relating to the termination of the Development Agreement.

The Corporate and Regulatory Services Manager, stated that in his view the opinion contained in the summary report from Eversheds concerning the ability of the Council to terminate the site leases was unaffected by the 2009 variations to the Development Agreement as these did not directly affect the site leases. He then summarised the 2009 variations to the 2006 Development Agreement as:-

- the Developer being able to provide a £1 million cash deposit instead of the £5m Performance Bond;
- the Developer no longer being required to build the hotel first; and
- the Council extending the time for completion of the development to 28 February 2014 (with the discretion to extend time for completion for a further three years).

- c) Paragraph 1.10 of the report to Cabinet on 7 May 2009 which inferred that the site leases did not have the same protection as the freehold.

The Corporate & Regulatory Services Manager stated that if the Development Agreement was terminated the developer would lose the right to further develop the site thus rendering the site leases unmarketable. In addition the Council was no longer proposing to transfer the freehold to the developer in advance of completion of the development. However, it was always the case under the 2006 Development Agreement and remained the case following the 2009 variations that so long as the developer completed the development and paid the Council all outstanding overage, the freehold of the site would be transferred to the developer.

- d) Paragraph 19.1 of the Deed of Variation dated 3 September 2009, in particular sub-paragraph number 2 thereof, which stated that:

"The Developer shall procure that ... Practical Completion of the whole of the Development Works takes place by not later than 28 February 2014, provided that where the Council in its absolute discretion determines that due to a severe market downturn it would be reasonable for the Developer to be permitted an extension of time ...".

It was proposed by Councillor Driver, seconded by Councillor Marson:

1. THAT the Corporate and Regulatory Services Manager requests the Leader of the Council as quickly as possible for an executive decision authorising him to seek external legal advice;
2. THAT the Group recommends to Cabinet that no further negotiations take place with the Developer until that external legal advice has been obtained."

Amendment to motion

An amendment to that motion was proposed by Councillor Campbell and seconded by Councillor Marson, as follows:

“THAT part (2) be replaced with the following:

“THAT the Group recommends to Cabinet that no executive decision be taken in relation to further varying the Development Agreement, but that any recommendation in that regard be made to Council for final decision.”

On being put to the meeting, the amendment was agreed.

Adoption of substantive motion

The substantive motion:

- “1. THAT the Corporate and Regulatory Services Manager requests the Leader of the Council as quickly as possible for an executive decision, authorising him to seek external legal advice;
2. THAT the Group recommends to Cabinet that no executive decision be taken in relation to further varying the Development Agreement, but that any recommendation in that regard be made to Council for final decision”;

was, upon being put to the meeting, declared CARRIED.

11. TO AGREE A WORK PROGRAMME FOR 2013-2014

It was AGREED:

1. THAT the S. 151 Officer be invited to attend the next meeting of the Group in order to answer questions;
2. THAT that meeting takes place in 4 to 5 weeks' time;
3. THAT the Chairman emails Group Members as soon as possible, requesting that questions to be put to the S.151 Officer be submitted to him within 2 weeks of the date of his email;
4. THAT, when responding to the Chairman's email, Group Members select,“Reply All”;
5. THAT the Chairman collates all Members' questions and forwards them to the S.151 Officer as soon as possible after the 2-week period has expired.
6. THAT assurance be given at the next meeting of the Group that legal advice is under way.
7. THAT the Group considers inviting evidence in private session from a representative of the Friends of Ramsgate Seafront;
8. THAT the Group considers seeking evidence from Members of Cabinet at the time the Development Agreement and Deed of Variation were entered into and also the former Director of Regeneration Services;
9. THAT the Group consults with residents on any future options for the Pleasurama site.

Meeting concluded : 9.00 pm