

OVERVIEW & SCRUTINY PANEL

Minutes of the meeting held on 17 November 2015 at 7.00 pm in Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Present: Councillor David Saunders (Chairman); Councillors G Coleman-Cooke, Bayford, Campbell, Connor, Curran, Dellar, Dennis, Dexter, Elenor, Falcon, Jaye-Jones, Partington and Potts

In Attendance: Councillors: L Fairbrass, Wells, Ashbee, Brimm, Edwards, Evans, J Fairbrass, Game, Grove, Leys, Martin, Rogers, M Saunders, Shonk, Tomlinson and Townend

23. APOLOGIES FOR ABSENCE

Apologies were received from the following Members:

Councillor Dixon, substituted by Councillor Dellar;
Councillor Bambridge, substituted by Councillor Partington;
Councillor Parsons, substituted by Councillor Bayford.

Councillor Jaye-Jones was present to occupy the UKIP seat made vacant due to recent changes in political membership.

24. DECLARATIONS OF INTEREST

There were no declarations of interest.

25. OVERVIEW & SCRUTINY PANEL CALL-IN OF A CABINET DECISION ON MANSTON AIRPORT

The Chairman advised the meeting that a request for public speaking by Ms Jennifer Maidman, representative of the Save Manston Airport (SMA) had been granted. Councillor David Saunders reminded the meeting that the purpose of the call-in was to review the procedure that was used by Cabinet to make the decision on 29 October 2015.

One Member requested that a RiverOak representative be allowed to speak at the meeting. Mr Tim Howes, Director of Corporate Governance & Monitoring Officer advised the meeting that he had reservation about allowing RiverOak representatives to speak at the Panel meeting. This was because RiverOak were intending to enter into a commercial contract with Thanet District Council (TDC). It followed therefore that RiverOak had an interest in the outcome of the Panel meeting. This meant in his view that it was therefore inappropriate to let the RiverOak representative speak at the meeting. Tim Howes indicated that there were other appropriate processes and methods that RiverOak could use to communicate their views to TDC.

Another Member said that they fundamentally disagreed with the view to disallow RiverOak representative to speak at the meeting and that the Panel could invite anyone they so wished to come and speak at the meeting. The Chairman said he was minded to allow RiverOak representative to speak at the meeting. Tim Howes requested that it be noted that the decision by the Chairman to allow RiverOak to speak at the Panel meeting was contrary to advice given by the Monitoring Officer. Madeline Homer, CEx said that the decision to allow RiverOak to speak could have implications at a judicial review (if there was to be one). The Chairman assured the meeting that he would keep the public speaking to points that related to the Cabinet decision under review.

The Chairman said the reason for the call-in was on the basis of 'a presumption in favour of openness;' that although the report was well presented, in the opinion of a significant number of Members, the report may be read as being loaded to achieve the outcome. He reminded Members that the purpose of the meeting was to review the decision making process, highlighting the flaws and then making recommendations. The Chairman advised the Panel that in addition to the options highlighted in the covering report, Members could refer the issue to Full Council. He then asked if Members of the Panel had been 'whipped' for the purposes of this extraordinary meeting and he received no positive response.

The Chairman called upon Ms Maidman representing the Supporters of Manston Airport to speak. She said that the information provided to the extraordinary Cabinet meeting had been made contrary to the access to information rules, (the five clear working day rule).

The Chairman then invited Claire Fielding, RiverOak representative to speak. She said that RiverOak had circulated a report to the Overview and Scrutiny Panel members (outside a meeting), stating their position and said that RiverOak was a credible real estate investor. RiverOak had provided an upfront deposit of £2 million and there was limited upfront investment that could be secured at this stage of a process for identifying a compulsory purchase order (CPO) indemnity partner. The business plan could be worked out in partnership between TDC and RiverOak. Tim Howes said that he had not received the report that was circulated by RiverOak to Panel members.

Speaking under Council Procedure Rule 24.1, some Members said that they were concerned that the Cabinet report for the 29 October 2015 meeting had been issued late and outside the five clear working day rule. In view of that observation they then queried the validity of the Cabinet decision therefrom. Tim Howes said that the item had been on the published agenda as was required by law.

Some Members suggested that RiverOak should have been given the opportunity to respond to the comments made at the Cabinet meeting on 29 October. The Chairman reminded Members that the Panel could consider the option which was to refer the matter to Full Council. One Member said that what would be useful would be for the Panel to debate the issue first before determining whether to refer it to Full Council or not. Tim Howes advised Members that the Panel could delegate the scrutiny function to Full Council or debate the matter at the meeting, as debating it twice (first at the Panel and then at Council) would be inappropriate.

When put to vote, Members unanimously agreed to debate the matter at the Panel and not refer it to Full Council.

One Panel member was disappointed that the Cabinet Member who voted against the decision at Cabinet was not at the Panel meeting. Some Members said that it was not correct to assert that RiverOak did not have the financial resources to go through the CPO process, because they had managed to secured and deposited £2 million in an ESCROW account for the CPO process. Another Member advised that it was important for the Panel to be aware that if the airport issue went to inquiry, the Inspector would question whether TDC and its CPO partner had the financial resources to purchase the airport outright if the airport owners were willing to sell.

In response Councillor Wells, Leader of Council said that the best practice would be to try to buy the airport first before engaging a CPO process. He said that TDC had no financial resources to purchase the airport and had made that known from the start. The Leader of Council said that no evidence had been presented to Cabinet by RiverOak to indicate that they had the funds for the CPO process. In response to a Member question, Tim Howes said that three bids had been considered by TDC for the appointment of a firm of

solicitors through the corporate procurement process leading to the appointment of Sharpe Pritchard Solicitors.

The meeting was informed by some Members that initially RiverOak had attempted to purchase the airport but the owners were not willing to sell, which was why RiverOak had approached TDC to engage in a CPO process. They said that RiverOak had provided convincing information regarding their credibility as an investor. In response to another Member question, Tim Howes reminded Members that issues relating to due diligence had been dealt with at a Full Council meeting on 11 December 2014 and were not the focus of debate at Cabinet on 29 October 2015.

Councillor Brimm, Cabinet Member for Operational Services said that she had made the decision at the October meeting based on the information that had been presented to her and other Cabinet colleagues by officers. She said that it was a difficult decision to make but in her view the correct one. Councillor Townend, Cabinet Member for Financial Services and Estates said that it was important for TDC to listen to advice from Council appointed Counsel before taking a decision. Council had taken advice from Counsel on three separate occasions and robust discussions had taken place between Cabinet Members and senior officers.

Some Members were concerned that they had been advised against attending a meeting arranged by RiverOak. In response Tim Howes said that the officer advice was appropriate because RiverOak were trying to get into a commercial contract with TDC and the executive was making sure that the Council's anti-corruption rules were not breached during that process.

One Member asked what the way forward was after the October Cabinet decision. The Leader of Council said that once the call-in process had been completed, Cabinet would consider engaging the organisations that had since expressed initial interest in Manston Airport. A soft market testing process would be re-opened to ascertain the level of interest by the four organisations that have come forward.

In concluding the debate on the matter, the Chairman put the following two options for Members to vote on; that:

1. After having reviewed all the evidence that was presented to Cabinet on 29 October 2015, the Panel may wish to make recommendations for further consideration by Cabinet;
or
2. Members could decide to take no further action, in which case the Cabinet decision on Manston Airport shall be deemed implementable from the date of this Extraordinary Overview & Scrutiny Panel.

When put to vote, Members agreed to take no further action, in which case the Cabinet decision on Manston Airport became implementable henceforth.

Meeting concluded: 8.30 pm