

PLEASURAMA SITE DEVELOPMENT REVIEW TASK & FINISH GROUP

Minutes of the meeting held on 31 October 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 Johnston and D Green

12. APOLOGIES FOR ABSENCE

There were no apologies for absence.

13. DECLARATION OF INTERESTS

There were no declarations received at the meeting.

14. MINUTES OF PREVIOUS MEETING

Councillor Campbell proposed, Councillor Marson seconded and Members agreed the minutes.

15. PLEASURAMA SITE DEVELOPMENT - ADDITIONAL INFORMATION

The Chairman introduced the item and asked Members to engage the CEx in following up on the written questions submitted by Members to the CEx to respond. Following up on his first Question, Councillor Driver asked whether officers had verified if the Natwest Bank offer letter which still had only two weeks before it expired was still valid by the time Council had agreed on the matter. In response, Sue McGonigal, CEx said that the offer letter was still valid. The developers were still trying to align all that was required to make a final decision.

In a follow-up question, Councillor Driver wanted to know which solicitors were used by the Council, the instructions given by the solicitors and the cost of the legal advice. The CEx said that Prettys Solicitors were used. The Council did not hold information regarding the cost of the legal advice as this was paid for by the developer. Councillor Driver said that Prettys Solicitors were also acting on behalf of the developer; they could therefore have given misleading information to Council. Mr Harvey Patterson, Corporate & Regulatory Services Manager said that a solicitor would breach his or her professional code of conduct if they made a statement or representation they knew to be untrue. Accordingly, Prettys would have been under a duty to act honestly. CEx said that the Council would have checked the evidence regarding the ability of the funder to provide the funding for the project.

Councillor Nicholson said that the letter from SFP Venture UK Ltd looked suspicious and should have been checked for validity. He said that the written responses given to his question was inadequate. In response the CEx said that the letter in question was not used as evidence. Instead the information used was the one provided by the solicitors which indicated that the funding was available. Eversheds Solicitors appointed by the Council confirmed this information with the developer's solicitors. Councillor Driver said that Cabinet and Council reports that were used in making decisions regarding this issue did not advise Members to disregard the letter in question as Members could have been influenced by all the documents in the report. CEx said that the letter was still valid and relevant in giving a complete picture of the situation.

Mr Patterson also advised that Council officers would not have been given access to the funding agreement which was why the Council's external solicitor was not given access either. However, the Council was entitled to rely on the honesty of the representations made by Prettys. Councillor Nicholson said that independent solicitors should have been used for the inspection of the documents that included financial documents. Members also acknowledged that members did not question the adequacy of the due diligence in 2009.

Councillor Binks acknowledged that in 2009 officers did not recommend the changes proposed to the Development Agreement. She also said that she personally did not think that Councillor Nicholson and Councillor Harrison were suitable to sit on the Task & Finish Group as they had been in the Cabinet that presided over the initial decision on the Pleasurama Site development. In response Councillor Harrison said that he was disappointed by the remarks regarding suitability of some Members on the Task & Finish Group. He said that the actual signing of the development agreement was done when a different Cabinet was in charge and if the original decision was not appropriate, that Cabinet should have corrected the situation.

Some Members expressed their concern that there were no records regarding the decision of the Council to select the developer as the preferred developer, The Chief Executive said that what she meant when she indicated that there were no records was that there were no records in addition to those which had already been disclosed to the Task & Finish Group. Councillor Harrison advised that the one of Cabinet Members then was Councillor Dennis Hart and not Councillor Clive Hart. Councillor Harrison said that there was a need for the Task & Finish Group to also look at the future regarding this issue under review. Councillor Driver said that the Audit Commission reports in 2003 and 2004 had expressed concern regarding the way the development project had been managed by the Council.

Mr Patterson indicated that officers were in a position to produce a set of documents which could be considered by the Sub-Group before referring it to the Overview & Scrutiny Panel. Some Members supported the proposal that that any new documents on the Pleasurama site be considered by the Sub-Group. They said that some important lessons should be learnt from the way the whole project had been managed thus far. Councillor Nicholson said that an officer report on the "Development Agreement and Leases" had been produced which was meant for Cabinet to consider at the November meeting. He said that Leader and Cabinet agreed that this report should not be considered by Cabinet. He said that the OSP Chairman had been approached for the Panel to consider the report and had rejected the suggestion.

Councillor Nicholson asked why the OSP Chairman had been approached with such an offer. In response Mr Patterson advised that the report in question was still in draft form and was a reflection of what had been presented during the on going negotiations with the developer. If the OSP had considered this report; their recommendations would have been forwarded to Cabinet. He said that officers had been asked by the Cabinet to approach the Overview & Scrutiny Panel Chairman with a view to the Panel considering the report when it was ready and making recommendations to the Cabinet.

Councillor Driver proposed that the report be considered by the Overview & Scrutiny Panel. He also proposed that the Sub-Group met as soon as was possible to consider the report and its related documents. Mr Patterson advised that the Sub-Group could make a recommendation that the Overview & Scrutiny Panel met to consider this report as part of a pre-decision scrutiny process.

Other Members said that they were reluctant to consider this report. They said that the current Cabinet had to consider that report first and if necessary the Panel could call-in the decision. Councillor Harrison seconded the proposal by Councillor Driver that the Sub-Group met again to consider the report on the new proposals from the developer

and check if the proposals could get the Council out of its current situation. Councillor Campbell stated that members needed to be provided with the promised external legal advice as that would help Members understand the Council's current legal position and future options. Mr Patterson confirmed that Council was awaiting that advice from Pinsent Masons solicitors. The Council had also instructed Pinsent Masons to advise in relation to the proposed changes to the development agreement.

Councillor Marson said that it was unreasonable for the Council to have relied on bankers and solicitors during the verification of due diligence documents. She also considered that the Cabinet had disregarded the substantial recommendations that were forwarded to them previously by the Overview & Scrutiny Panel.

The Chief Executive also explained that consultation with the relevant portfolio-holder and wider consultation with the cabinet is normal practice before draft reports are finalised and presented to cabinet for decision. In the course of consultation it could be expected that reports would be subject to modification and amendment and in some cases a report might be withdrawn altogether. The draft report in relation to the proposed changes to the development agreement was no different. As it was still in draft form it would not appear on the agenda for the November cabinet meeting and in the meantime would be subject to amendment and revision as necessary. Mr Patterson also advised that because the report was still in draft form it was not in the possession and control of the Cabinet meaning that the Task & Finish Group was not entitled to be provided with a copy of the report at this stage.

The Chairman thanked the CEx for her attendance at the meeting and providing further clarification to follow-up questions from Members. The Chairman summed up debate by indicating that the Sub-Group would receive a report back from the officers on the external legal advice and the next meeting date would be arranged as soon as the Council was in possession of that advice.

Meeting concluded: 8.25 pm