

COMMERCIAL AND INVESTMENT COMMITTEE: MINUTES

Date: Friday 22nd June 2018

Venue: Room 128, Shire Hall, Cambridge

Time: 10.00–11.15am

Present: Councillors L Dupré, J Gowing (substituting for Cllr Bates), A Hay (Vice Chairman), L Jones, L Nethsingha, P Raynes, T Rogers, J Schumann (Chairman) and M Shellens (substituting for Cllr Jenkins)

Apologies: Councillors Bates (Cllr Gowing substituting) and Jenkins (Cllr Shellens substituting) and Wotherspoon.

122. DECLARATIONS OF INTEREST

There were no declarations of interest.

123. MINUTES AND ACTION LOG OF THE COMMERCIAL AND INVESTMENT COMMITTEE HELD 25TH MAY 2018

The Committee resolved to approve the minutes of the Committee meeting held on 25th May 2018, with the following correction:

Attendance list: Councillor Dupré should be listed as present; Councillor Jenkins was not present.

Members noted the following updates to the Action Log:

Item 83/Second valuation: A second valuation had been obtained, and although there was variance, officers were satisfied with the reasoning and that the Council was securing best value with the first valuation. The Committee agreed that it would be helpful to have a report back to a future meeting. **Action required.**

Items 119(1) and (2)/Changes to the Programme Highlight report, had been completed.

Item 118 - it was agreed that the updated flowchart would be circulated to Members. **Action required.**

Referring to the debate on the inspections of Council properties that were leased and maintained by other organisations, it was noted that of the 13

Listed buildings in the Council's ownership, two were leased out: one was the former Mill Road library, discussed at length at the last meeting, and the other was Wisbech Castle. Members agreed that it would be helpful to have a report to future meetings on a strategy for inspections, given the pressure on officer resources. **Action required.**

Item 120 – officers to check whether a response had been sent to Cllr Nethsingha regarding her query on the Property Services budget. **Action required.**

It was resolved to note the Action Log.

124. THIS LAND BOARD REPRESENTATION

A report was presented setting out options for the shareholders' representatives on the Board of This Land.

Members were reminded that at a recent meeting, the issue of the appointment of Non-Executive Directors had been raised, where their appointment to the Board was as a direct consequence of their employment with the Council. It had been agreed at that meeting that there needed to be an automatic process to deal with this eventuality. Subsequently, Quentin Baker, one of the Non-Executive Directors had left the employment of the Council, and had also been removed as a Director of This Land. Therefore there was a vacancy for a Non-Executive Director on the Board of This Land, which needed filling.

The This Land Board was in the process of recruiting a Chairman, and broadening the Board membership to include independent Non-Executive Directors. The only other Non-Executive Director at the moment was the Shareholder's representative, the Deputy Chief Executive, Chris Malyon. Whilst the report sets out options on how the vacancy created by Mr Baker's departure, it also explored how future recruitment to the Board could be carried out.

It was confirmed that the appendix to the report was an extract from the original Bevan Brittan LLP guidance, which was commissioned when the company was first set up two years ago. One of the key issues raised in that advice was that there should be very clear delineation between the Council and the company. There had been a number of options considered at that time, and the preferred option was a company limited by shares. The advice was that whilst an elected Member could be on the Board of directors, there were risks and potential conflicts, which had to be mitigated against.

A Member commented that the risks of having an elected Member on the Board were the same as for an officer –it just had to be acknowledged and mitigated against. The Deputy Chief Executive commented that the key difference was that he did not make decisions within the Committee process, but merely advised Council, and it was the elected Members that made decisions. The Member suggested that it was the Commercial & Investment Committee that made decisions, not individual Members, and the risk could be further mitigated if the representative selected was not a Member of the Committee.

It was noted that the Bevan Brittan LLP advice recommended that the majority of the Board should be independent directors. This was still the intention, but the Committee observed that although the governance structure had been discussed and agreed two years ago, the independent directors were still not in place. The Deputy Chief Executive explained that the company had been dormant initially, and since the appointment of the Managing Director, the priority had been to get the company up and running. The Managing Director had been clear that he did not want to start the process of recruiting to the Board until the first business plan was in place, which had taken some time. However, the Managing Director had a number of candidates in mind for the independent non-executive director post.

It was likely that a Special General Meeting of This Land would be held in July, considering a number of issues, including a set of redrafted Articles of Association following comments made by the Shareholder at the This Land Annual General Meeting in April.

It was confirmed that the Deputy Chief Executive had been exerting pressure on the This Land Board to hasten the process of appointing the Chairman and Director. In response to a Member suggestion that clear timescales should be put in place to appoint to key Board roles, another Member suggested that arbitrary timescales should not be imposed, as the focus should be on identifying the right individuals for the Board.

There was a discussion about the options put forward in the report. It was noted that the recommendations were predicated on the legal advice previously given by Bevan Brittan LLP, and that the options for the vacancy for Non-Executive Director created by the departure of Mr Baker were to appoint either (a) an officer, (b) a Member or (c) an independent person. It was confirmed that whilst there were two shareholder non-executive directors, there was an option to have another shareholder representative on the Board.

In discussion, Members:

- commented that the list of skills and attributes listed in the report was quite extensive;
- noted that it was the shareholders that appoint the Non-Executive Directors and Chairman;
- noted with concern the emphasis of current Directors identifying suitable individuals for vacant posts, suggesting that this approach was unlikely to satisfy equalities legislation, and it would be more appropriate to go out to a wide advertisement and shortlist from there. The Deputy Chief Executive advised that the Managing Director was using a Non-Executive Director consultancy network, and had shortlisted around six individuals who have the requisite skills, as part of the market testing process;
- noted that the focus of the report was about the replacement of one role i.e. that vacancy created by the departure of Mr Baker: a process for appointing Non-Executive Directors had previously been agreed, and whilst that could be challenged or revisited, it was not the decision before Members for consideration. However, if the Committee opted to appoint an independent person to the vacancy, how that appointment was made would be relevant;
- commented that some of the language in the report e.g. reference to *Chairman* should be revisited, and suggested that the term “political representative” should be replaced by “elected member”;
- one Member commented that given the variability of calibre of senior officers, he would definitely opt for an independent representative to fill that role;
- a number of Members suggested that every effort should be made to increase the diversity of the Board;
- one Member commented that any potential risks in appointing representatives to the Board were mitigated by the shareholder not having a majority on the Board or Committees, so any one individual could not exert undue influence on the Board;
- a Member cautioned against making decisions about the approach to future governance and recruitment “on the hoof”. He also supported the concept of an independent majority of the Board, and suggested

that in terms of sequencing, the Chairman should be appointed first, then the other independent Directors.

Councillor Nethsingha proposed that option (c) be pursued, amended as below:

“A short list of potential independent representatives be identified for the Committee to consider for the filling of this role, and that this was advertised within two weeks”

This was seconded by Councillor Dupré. On being put to the vote, proposal was lost.

The Chairman proposed that option (b) be progressed, amended as below:

“The Committee delegates to the Deputy Chief Executive, in consultation with the Chairman, the appointment of an elected member of this authority (not a Commercial & Investment Committee Member), to the vacant role.”

This was seconded by Councillor Hay. On being put to the vote, proposal was carried.

A Members suggested extending “*elected member*” to include recent past members. However, it was noted that those individuals could put themselves forward as independent candidates.

It was further noted that it was a principle of company law that directors’ should always act for the good of company, and this had precedence over political or any other motivations i.e. to act in political interest rather than for the good of the company was unlawful.

It was resolved, by a majority, to:

- (a) consider the contents of this report;
- (b) note the removal of Mr Quentin Baker as a Director of This Land;
- (c) delegate to the Deputy Chief Executive, in consultation with the Chairman, the appointment of an elected member of this authority (not a Commercial & Investment Committee Member) to the vacant role.

125. PROGRAMME HIGHLIGHT REPORT – PROGRESS OF SALES TO THIS LAND

The Committee considered the progress of sales to This Land. Members' attention was drawn to a table showing a detailed breakdown for each site. It was noted that an additional column had been included in the table, indicated whether planning consent was being pursued by This Land or the County Council. It was confirmed that a total of 13 sales had been completed on 13th April 2018.

For the GuildenMorden site, representations had to be made by 29/06/18, after which date the decision would take around six weeks. There were a number of sites that officers were working hard to complete, the next sales to This Land likely to be completed were Shepreth and Burwell.

There had been a successful appeal at Cottenham, and to date there had been no legal challenge: any application for judicial review would need to be made by 2nd July. There had been helpful meetings with the Parish Council Chairman and This Land about this site, and also with education colleagues, as there was potential for a new school in Cottenham to be located on this site.

It was confirmed that the SohamEastern Gateway site was likely to be for less than 600 units, and that was what was reflected in the latest Masterplan.

A Member asked for 'total' rows to be included on all tables. It was also suggested that the table could indicate actual progress at sites e.g. whether construction was underway. It was suggested that the quarterly performance report from This Land should include a progress report on the respective developments. It was noted that the existing building at Milton Road had been demolished and construction was due to start imminently. It was agreed that it would be interesting for the Committee to visit a site in the future. **Action required.**

There was a discussion about the East Barnwell site. It was noted that because of the arms-length nature of This Land, the Legal team had expressed concerns, as any leaseback of the library by the Council would appear to be a contracting arrangement. It was noted that this was already the case for Milton Road library, and having reflected on that, it was felt that the Council was leaving itself open to potential challenge on procurement regulations. In future, any leaseback would need to go through an open tender process. For the East Barnwell site, it was difficult for the scheme to provide the necessary profit margins for This Land without significant subsidy from the Council. It was noted that the Council when originally approved by the Council included a significant subsidy.

The options were outlined for development on the East Barnwell site, but it was confirmed that nothing was settled yet. The site had been allocated for housing and replacement of facilities in the City Council Local Plan. Officers were asked to ensure that the Local Member was kept informed. It was noted that if the community facilities were not required, there would be not be a procurement issue.

In response to a Member question, it was confirmed that the County Council could develop housing directly through a construction company, and sell properties to This Land or another body but the Council would not hold those properties.

In a discussion around Worts Causeway, a Member commented that Cambridge needed a decent level of affordable housing in any development. The Deputy Chief Executive advised that along with the This Land Managing Director, he had met with City Council colleagues, including a specific meeting regarding Worts Causeway. The City Council was seeking to maximise affordable housing. This Land had indicated that they would always be policy compliant, subject to viability.

Councillor Rogers advised that as Chairman of the Pensions Committee, he had been invited to attend a meeting of the Adults Committee Accommodation Strategy Member Reference Group. Members of that Group had been very interested in the potential conflict between the Council's interests and This Land. They were looking at the potential for care home development, not just on NHS land, but also Council land, and had asked Councillor Rogers if he would be prepared to act as the link between the Commercial & Investment Committee and that Group. Members agreed that this would be helpful.

In terms of progress on sites, it was noted that there would be a progress report from This Land considered quarterly, with the first report being presented to the July Committee. Members were also free to contact the company directly if they had any queries regarding progress on sites owned by This Land.

It was resolved unanimously to:

- a) note the content of the Programme Highlight Report.

126. COMMITTEE AGENDA PLAN, TRAINING PLAN AND APPOINTMENTS TO OUTSIDE BODIES

Members considered the forward agenda plan and training plan for Commercial & Investment Committee.

The following additional reports were agreed for future meetings:

- This Land quarterly progress report (July meeting);
- the inspection process for leased properties, especially Listed buildings;
- second valuations;
- issues arising from potential promotion agreements.

It was likely that the scheduled August meeting would be cancelled, providing no urgent business arose nearer the date.

It was resolved to:

- (i) note the Agenda Plan, including the updates provided orally at the meeting;
- (ii) note the training Plan;
- (iii) agree the appointment of Councillor Rogers to the Adults Committee Accommodation Strategy Member Reference Group.

Chairman