

## **BATH AND NORTH EAST SOMERSET**

### **MINUTES OF CORPORATE POLICY DEVELOPMENT AND SCRUTINY PANEL MEETING**

Monday, 8th February, 2021

Present:- **Councillors** Paul Myers, Winston Duguid, Mark Elliott, Andrew Furse, Hal MacFie, Alastair Singleton, Shaun Hughes, Karen Warrington and Lucy Hodge

Also in attendance: Councillors Vic Pritchard (lead call-in Councillor) and Richard Samuel (Cabinet Member for Resources)

#### **65 WELCOME AND INTRODUCTIONS**

The Chairman welcomed everyone to the meeting.

He reminded the Panel that their remit today was to consider the following two bullet points of the call-in notice;

- *the decision to dispose of the asset at nearly half a million pounds below market value, and on a non-competitive basis, is contrary to the interests of Council Taxpayers in B&NES*
- *the case has not been made to justify the below market value disposal and so the asset should be listed on the open market, where it will fetch greater returns for the Council*

He explained that any other aspects of Council company governance were not within the scope of the meeting. The Chair further reminded the meeting that, whilst there were two decisions on the Council's Forward Plan relating to 117 Newbridge Hill, only the one made by the Cabinet Member, Cllr Samuel, is to be scrutinised today. The other decision taken by the Leader as Shareholder of a Council owned company, is outside the jurisdiction of this Panel. Michael Hewitt (Head of Legal & Democratic Services & Acting Monitoring Officer) confirmed this position.

#### **66 DECLARATIONS OF INTEREST**

There were none.

#### **67 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN**

There was none.

#### **68 ITEMS FROM THE PUBLIC OR COUNCILLORS - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS RELATING TO THE BUSINESS OF THIS MEETING**

The following statements were made by members of the public and Councillors.

Councillor Colin Blackburn addressed the Panel. He made reference to the fact that, although this was a Conservative led call-in, it had support from across the groups. This challenge expressed a fear that residents were being short changed. He explained his concern that the valuation figure was too low and reported a much higher offer he was aware of from a local developer. At a time when finances were so constrained, he considered this was unfair to residents and better value could be obtained.

Councillor Andy Furse asked if the offer Councillor Blackburn had received had been in writing and including the conditions regarding HMOs and holiday lets, to which Councillor Blackburn responded that it had been.

Councillor Winston Duguid followed this up to check that the valuation had been on a 5-bedroom detached house rather than the market which might serve the RUH. Councillor Blackburn replied that it was to re-develop into 6 apartments with a restriction against HMO or AirBnB type properties.

Bob Goodman addressed the Panel describing the concern, in his view, of commercial property irregularity. He explained that Aequus has been set up to ensure empty properties went back into residential use, but now activity was going way beyond that. He ran through some financial details which called this decision into question and proposed that this was only proceeding in this way to keep a failing development company going, at the expense of residents. He asked this be referred to Council to look into his concerns, including the company arrangements, with independent advice to hand.

Councillor Karen Warrington asked Bob for his view on the return if sold for student and holiday lets, to which Bob responded that he had not addressed that in his statement. It may well be the case that that would bring a higher return, but he recognised the social need and so had not made reference to that aspect.

Councillor Winston Duguid asked Bob if he was calling into question the competence of Knight Frank. Bob responded that, if that was the valuation they had produced, then he did consider it should be independently reviewed.

Councillor Mark Elliott asked Bob if he believed Cabinet Members should follow advice given to them, such as from professional valuers. Bob replied that the Cabinet Member should look at all the information available and if the Cabinet Member believes any advice is wrong, he should seek further advice.

David Stubbs addressed the Panel. He explained his background as a retired Chartered Valuation surveyor. He posited that the rationale behind the decision was flawed, as being justified by the imposition of voluntary conditions. He explained that, in his experience, any developer would be prepared to pay at or close to the unconditional value reported by Knight Frank. This transaction is predicated on the hope for future return, which is not enough, due to the element of risk. He suggested this was taking place as ADL were unable to go ahead without the discount. He would like to see this go to the private sector with the same conditions for a higher return.

Councillor Mark Elliott asked if David could comment on why he considered Knight Frank had come up with a flawed valuation. David responded that, unless he was able to see the instructions given to them and their methodology, he would not like to comment, but he could not see how the undervalue was warranted based on the known information.

Councillor Eleanor Jackson addressed the Panel. A full copy of her statement can be read via the link from the minutes. Councillor Jackson questioned the assumptions about the planning process made in this proposal and outlined the considerations the Planning Committee would consider. She queried why 3 valuations had not been sought, as was necessary for Parish Council negotiations. She asked the Panel to request the Cabinet Member ask for 2 more valuations and to ask for the evidence to justify the need for this accommodation.

Councillor Paul May addressed the Panel. He asked for clarity on 2 issues; firstly relating to the need, as he had not seen evidence of this and secondly, about the value. On breaking down the numbers and seeking advice from the Section 151 officer, he was advised that ADL is TECKAL exempt. CIPFA advises that TECKAL is complex and subject to challenge and so Councillor May wanted the Scrutiny Panel to check if this exemption was valid in proving value for money for Council Tax payers.

The Chair thanked all the speakers for their statements.

## **69 CALL IN OF DECISION E3229 - ASSET DISPOSAL: 117 NEWBRIDGE HILL, BATH**

Councillor Vic Pritchard, as lead call-in Councillor, addressed the Panel. He explained his view that there was no justification for this property to be sold at half a million pounds below the market value and it was irresponsible to do so. His objection could be summarised in 3 areas;

- The Council is only a temporary custodian of this public money and this asset belongs to the people so better value should be sought;
- This was setting a dangerous precedent to forego the financial benefit now for the uncertainty of a gamble on future income;
- Administrative mismanagement of the Council's property company to justify this decision.

Councillor Pritchard concluded by asking the Panel to take this opportunity to reconsider this decision before it is too late.

Councillor Richard Samuel then addressed the Panel as decision maker and Cabinet Member for Resources. He explained the recent history of this property and the decisions made by the previous Administration of the Council leading to their decision for its disposal to ADL at reduced value and creating a dividend. On becoming involved as Cabinet Member, he sought a business case and the required independent valuation as the Council was seeking to impose voluntary conditions. As Cabinet Member, Councillor Samuel explained that he could not ignore the independent professional advice received. He added that this valuation process was as set out in the procedures established by the previous Administration. Councillor

Samuel concluded by rejecting the basis of the call-in and supported this decision which generated a dividend, rather than it being lost to the private sector.

Councillor Shaun Hughes made reference to the voluntary conditions and restrictive covenants and asked how watertight they were, with regard to future landlords and their ability to change them. Councillor Samuel replied that they will be completely watertight, as they will be built into the covenants of sale. He added, with regard to comments about the valuation, that he was not an expert and so must rely on qualified advice from experienced professionals, endorsed by statutory officers of the Council. We should not be selective about only taking on board parts of advice that we like and ignore those parts we do not.

Councillor Winston Duguid made reference to the actual return to the Council being more than just the sale and asked Councillor Samuel to comment on that. Councillor Samuel agreed that the figures in the round needed to be looked at including Council tax receipts over the next 20 years. He explained there was also provision that ADL can retain an element of the profit so it can function as a company with working capital. The total gains are in excess of the open market value of simple disposal as it is recycling funds into the Council's finances to benefit residents.

Councillor Paul Myers asked if Councillor Samuel considered he had a right to question a valuation. Councillor Samuel responded that he did query the figures on 2 occasions and, as a result of that query, more information was provided on how the valuation had been derived. With regard to the legislative position, Councillor Samuel read a section of the Government advice which stated that the Council must use a RICS accredited independent valuer and can't ignore this advice. We are bound within audit and sound decision-making rules in this regard. In response to a further query from Councillor Myers about Councillor Samuel's view about the valuation now, having queried the figure, Councillor Samuel responded that he was neither happy nor unhappy, but he had to recognise that this was the professional advice received. Councillor Myers asked if Councillor Samuel continued to query the figure. Councillor Samuel replied that the valuation report sets out in considerable detail how the valuation is reached and beyond his level of competence, so he defers to officers to confirm the valuation advice is appropriate and correct for the circumstances.

Councillor Myers referred to Councillor Samuel's statement that he was adhering to processes set up by the previous Administration and asked if different financial circumstances now could warrant a different approach. Councillor Samuel replied that the principle behind it – retaining profits from development within the Council's finances rather than handing them to the private sector – was sound and had not changed. Sites are still being developed and dividends still feeding into the Council's coffers. Some small amendments have been clarified regarding working arrangements between the two organisations, but this Administration remained committed to make this work.

Councillor Mark Elliott asked why it was not the practice to get separate valuations as had been referred to in Councillor Jackson's statement. Councillor Samuel responded that we were only required to get one valuation from a professionally qualified organisation.

Councillor Winston Duguid referred to the social and environmental criteria and asked whether those factors had been considered in the decision making. Councillor Samuel replied that they had wanted the sale price to not be beyond the reach of local people, and for the energy efficiency elements to be in line with the Council's climate emergency targets. The impact of these restrictions does have an impact on the value.

Councillor Shaun Hughes asked who produced the brief for the valuation and whether ADL had had any input into that. Councillor Samuel replied that ADL would not have had input as that would have been totally inappropriate. The Council commissions its own advice through its officers.

Councillor Paul Myers asked whether it would not have been possible to achieve a higher value still with the required benefits, as had been suggested by some of the speakers. Councillor Samuel replied that he did not consider it so as, once the property had been disposed of, they had no further control over how it was developed.

Councillor Paul Myers asked if it was not a risk to pursue this option, as opposed to receiving a higher level of funds, in this constrained financial environment and a potential property recession. Councillor Samuel responded that there was always a risk with any development, but he felt reasonably confident that the information set out in the documents does mitigate the risk. ADL are not un-tried as a development partner and have produced significant developments that produce return, so the model is sound. In producing a business case, we need to form a view to the level of risk before the decision is made. If the figures indicated a small margin, or a high risk, it is unlikely we would proceed on that particular development.

Councillor Richard Samuel, in his closing statement, stated that this decision had been taken as part of a well-established policy, created by the previous Administration, to achieve a pipeline of schemes to create a viable local authority company and to benefit Council tax payers by recycling money that would otherwise have gone into the private sector. He urged the Panel to dismiss the call-in as it was within policy, and compliant with legal and financial considerations.

Councillor Vic Pritchard, in his closing statement, highlighted the lay perspective of this decision. He proposed that the public would not understand the intricacies of how it works, and public perception is important. He raised the point made by Councillor Jackson about the practice of seeking 3 valuations for any Town or Parish Council project and posited it was surely more prudent to seek 3 quotes in the interests of public benefit. He queried whether the process could be improved.

The Panel then moved into their debate.

Councillor Shaun Hughes raised a few concerns about the level of the undervalue, and about the viability of restrictions from covenants in the future.

Councillor Winston Duguid commented, with regard to the question of 3 valuations that, if that was the requirement, why was that not written into the policy when it was set up. He commented that there seemed to be a lack of understanding of the element of future profitability. He asked the Panel to look at ADL's track record and

mentioned successful projects at Terrace Walk and Westgate Buildings. He reminded the Panel that Knight Frank were professionals and within the best in the field. He invited the Panel to consider this holistically and look at the social and environmental aspects too.

Councillor Mark Elliott commented that he did not feel the call-in justification had been proven and that Councillor Samuel had followed guidance.

Councillor Karen Warrington raised some concerns. She was not sure that the policy specified how many valuations and it was not unreasonable to seek 3 as takes place at local Council level. On balance, in a time of huge turmoil, she queried if it was not better to sell now rather than take a risk for the longer term with the prospect of a fall in the housing market.

Councillor Mark Elliott responded to the above point about valuations, saying that valuation reports were expensive, it is not the same as a house valuation, and that Councillor Samuel had followed process and professional advice. With regard to the risk in the current climate, by selling to ADL, if the market values drop, the company can hold it and rent it if that is the best option at the time.

Councillor Shaun Hughes explained that he was not questioning the valuation itself, but without knowing the brief they were given, it is difficult for the Panel to truly scrutinise this.

Councillor Hal McFie agreed with the comments made by Councillor Elliott. Another valuation would be expensive, and he did not consider it would be warranted. Agreed procedures have been followed.

Councillor Karen Warrington clarified that she had not been calling into question Knight Frank's valuation, but just making the point that professionals can differ in their opinions.

Councillor Paul Myers expressed his concern about the public perception of this. In an unprecedented budget crisis, the financial return is needed now, and the public would expect the Council to look at this within the current situation and use common sense. It appears that the property company needs business. We need to consider this very carefully.

Councillor Mark Elliott responded to the above point stating that Councillor Samuel needed to work within the professional framework and not by using his common sense.

Councillor Alastair Singleton commented that professional advice had been taken and not to do so would have been ultra-vires. This decision has greater long-term financial, social and environmental benefits.

Councillor Hal McFie then moved, seconded by Councillor Elliott, that the Panel should dismiss the call-in.

At a request from Councillor Karen Warrington, and with the agreement of the Panel, a named vote was taken;

Councillor Duguid	-	For
Councillor Elliott	-	For
Councillor Furse	-	For
Councillor Hodge	-	Abstain
Councillor Hughes	-	Against
Councillor McFie	-	For
Councillor Singleton	-	For
Councillor Warrington	-	Against
Councillor Myers	-	Against

The resolution was carried with 5 in favour, 3 against and 1 abstention.

The Chair thanked all those involved.

The meeting ended at 5.56 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**

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I have consistently opposed the council administration selling off the family silver, but here we have a situation where the silver seems to be classed as silver gilt, and the value of the property on the one hand is distorted by assumptions about the planning process, and on the other by questionable methods of decision-taking.

Firstly, what I have to say should not be taken to prejudice in any way my view of whatever planning application may appear. Under the current planning regime, offices may be converted to flats, but is this an office block or a children's centre (change of use)? The word 'apartment' is used. That usually means there will be a management fee for garden maintenance, cleaning of common facilities and so on, and as any resident of private sheltered housing and so on can tell you, that can be far from 'affordable'. Leasehold properties also have drawbacks, which may discourage purchasers/tenants. But planning is not about the actual use beyond the question of amenities such as sufficient light to the dwelling, 'sustainability' and parking.

Looking at the track record of the Planning Committee since 2019, it cannot and should not be assumed that planning consent would be given for an HMO, or a hotel, or holiday accommodation. Yet until I read this paper, I had assumed that encouraging tourism and accommodating students was an essential part of policies for Bath and income generation for the council. This is not an area with HMO restrictions at present, but we have refused plans for Locksbrook Road, Newbridge Road and so on. We might (I stress *might*) consider six apartments 'overdevelopment of the site' or that the damage to a heritage building was unacceptable. The assumptions about planning made here clearly affect the valuation. Secondly, in my experience as a parish councillor, and, long ago, in connection with Sirona, three valuations are needed. Westfield Council is buying the Waterside fields – we have three quotations for every step of the way. I cannot believe a different rule applies here - this is hardly an emergency supply of PPE! Has the property been surveyed? Is there asbestos?

So today I would request the cabinet member to go back to the drawing board and get at least two more quotations, and while he is at it, produce the evidence of the need for this accommodation. Will Sandry did so in his 'graduate retention survey' in 2014, but times change. So while you are at it, produce evidence of need.  
Cllr Eleanor Jackson.

