

EXECUTIVE – 16 JANUARY 2020

## **[NOTE: DECLARATIONS OF INTEREST**

In accordance with the Officer Employment Procedure Rules, the Finance Director, Leigh Clarke, has declared a disclosable personal interest (non-pecuniary) in Questions 2 to 7 arising from (i) her husband having a small shareholding in Woking Football Club and (ii) being a Council appointed director of Kingfield Community Sports Centre Limited. The interest does not prevent Mrs Clarke from advising on this matter.

In accordance with the Officer Employment Procedure Rules, the Head of Democratic and Legal Services, Peter Bryant, has declared a disclosable personal interest (non-pecuniary) in Questions 2 to 7 arising from (i) him being a member of the Cards Trust (the supporters' club for Woking Football Club), (ii) providing occasional unpaid assistance to Woking Football Club, e.g. acting as returning officer at the election of directors and (iii) being a Council-appointed director of Kingfield Community Sports Centre Limited. The interest does not prevent Mr Bryant from advising on this matter.

In accordance with the Officer Employment Procedure Rules, the Chief Executive, Ray Morgan, the Deputy Chief Executive, Douglas Spinks, the Head of Democratic and Legal Services, Peter Bryant, the Finance Director, Leigh Clarke, and the Head of Housing, Louise Strongitharm, have declared a disclosable personal interest (non-pecuniary) in Question 8 arising from their positions as members of Corporate Management Group. The interest does not prevent Mr Morgan, Mr Spinks, Mr Bryant, Mrs Clarke and Mrs Strongitharm from advising on this matter.]

## **QUESTIONS**

### **Executive Summary**

The following questions have been received under Section 3 of the Executive Procedure Rules. The replies by the Portfolio Holder are set out below.

1. Question from Mr Lorin Adams

“Per capita, Woking Borough Council is the single most indebted Council in the United Kingdom. 16 times the national average. Overall, our debt is the 8th largest in the UK. Can the Executive explain the contingency plans in place to protect residents should any of the investments fail to deliver?”

Reply by Councillor A Azad

“The Council's debt is all asset backed with almost all of the assets being within Woking. This reflects the Council's strategy of investing in improving the infrastructure, facilities and housing assets within the Borough, and creating a sustainable place to live and work. Borrowing for investment in assets in some cases is repaid by Council tax over time. For other investment the assets acquired or constructed generate income, or reduce costs, which cover the financing and repayment of debt. It is possible that income generated may not meet expectations in the short or long term. In the short term the Council has funds set aside in reserve which are available to meet fluctuations in income. In the longer term it may be necessary to revisit the business case and consider alternative use of the assets. The annual budget makes allowance for both forecast interest costs and repayment of borrowing.”

2. Question from Mr Lorin Adams

“Full Council explicitly passed a motion for a stadium with a capacity of 10,000, with “some 70%” seated. According to the Executive Question on 21st November 2019, the Officer’s decision accept a capacity of 9,026 with 48% seated was made “in accordance with powers delegated to him”. Can the Executive state the documented source of the delegated authority that specifically allows for an unelected Officer to overrule the mandate of the Council’s democratic chamber? And could you explain how this is justified, considering the explicit responsibilities of Full Council to “Adopt new policy and new strategy” and “Approve material departures from policy”? Surely this material departure from policy was, in essence, the creation of new policy. If this were the case, would our Full Council not be redundant?”

Reply by Councillor A Azad

“On 6 December 2018, Council resolved (amongst other things) that the contract with GolDev should provide for a stadium with a capacity of 10,000 of which some 70% should be general use seats. The Agreements entered into with GolDev on 30 January 2019 incorporated this provision.

The Agreements also provided for a planning application to be prepared by GolDev and approved by the Council (as landowner) before submission to the local planning authority. As has previously been stated, the draft planning application showed a stadium with a capacity of 9,026, of which 4,366 are seats. This was approved by the Head of Democratic and Legal Services (Peter Bryant), on behalf of the Council as landowner, under powers delegated to him.

The Council’s Constitution contains the Scheme of Delegations. Paragraph 1.3 of the Scheme evidences the existence of Officers’ ostensible authority, i.e. delegated authority that vests in Officers as a result of their position with the Council. The source of Mr Bryant’s authority was this ostensible authority. In addition, the decision made by Mr Bryant to approve the draft planning application was a necessary consequence of the Council’s decision to enter into the Agreements with GolDev.

It is correct that Full Council is responsible for (i) adopting new policy and new strategy and (ii) approving material departures from policy. However, this does not prevent Officers from exercising delegated authority in respect of such matters. The restriction on Officers is that they may not, under the Budget and Policy Framework Procedure Rules, take a decision that is contrary to the Council’s “policy framework”. This term is defined, in Article 4 of the Constitution) as meaning:-

- (i) Plans and strategies which, by law, have to be approved by Full Council, and
- (ii) Plans and strategies which the Council has decided should be approved by Full Council.

The capacity of the stadium does not fall within this definition, so this was not a matter that could not be approved by Mr Bryant.

Finally, I do not agree that a reduction in capacity from 10,000 to 9,026 is “material” in the context of the Council’s Constitution, i.e. it is not, in the context of the overall development and applying a dictionary definition of the word, “of great import or consequence”.

3. Question from Ms Judy Adams

“The Executive has repeatedly claimed that some information is held back from residents in line with “standard commercial practice”. Do you therefore consider the Council a “standard commercial” entity?”

Reply by Councillor A Azad

“I do not consider the Council to be a “standard commercial” entity. The Council is a local authority which, on occasions, enters into commercial arrangements with third parties. Such arrangements are generally dealt with in accordance with standard commercial practice. This includes the occasions when it is necessary to keep information confidential. Being an open organisation, we seek to minimise the amount of confidential information, releasing it as soon as is appropriate.”

4. Question from Ms Judy Adams

“The 20th May 2019 saw the claim that only a “small amount of detailed information” is withheld from the residents. Does the Executive consider up to £250,000,000 of residents’ money being put at risk over a private football club just a small detail?”

Reply by Councillor A Azad

“I do not agree that the decision to provide a revolving loan facility has put £250m at risk. As has been explained previously, the security arrangements provided for in the loan facility agreement protect the Council’s interests. In particular, the Council will have:-

- (i) a legal charge over GolDev’s property interests in the Kingfield Stadium and Egley Road sites, and
- (ii) a debenture over GolDev’s assets.

In addition, GolDev is obliged to pay to the Council 90% of the sale proceeds of each residential property, when it is sold.”

5. Question from Ms Judy Adams

“Can the Executive explain why their Accounts, Green Book, and some other documents - such as the Part II release - are not published in machine readable formats? Can the Council release these documents in a machine readable format, to fall in line with other Surrey councils, and your aim for transparency?”

Reply by Councillor A Azad

“The format of the documents is due to the way the reports are compiled. For the Green Book and Statement of Accounts the data is compiled from a number of different sources in several different working documents. At the moment it is not possible to convert the final reports to a machine readable format, but options to do so will be considered to see whether a solution could be found in the future. It is assumed that ‘the Part II release’ refers to the information published on the Laithwaite Community Stadium development plans. These are scanned documents to protect the redacted information and are therefore not in a machine readable format.”

6. Question from Mr Reece Adams

“Please could you confirm the securities that were placed on the revolving loan facility totaling up to £250,000,000 (around one fifth of the Council's debt) of residents' money. My understanding is that these securities were:

- a. A charge placed on the land that the Council already owns;
- b. The assets of a company which, at the time of signing the agreement, totaled £100.”

Reply by Councillor A Azad

“Under the revolving loan facility agreement, the Council will have:-

- (i) a legal charge over GolDev's property interests in the Kingfield Stadium and Egley Road sites, and
- (ii) a debenture over GolDev's assets.

In addition, GolDev is obliged to pay to the Council 90% of the sale proceeds of each residential property, when it is sold.

Loan finance can only be drawn down once a number of pre-conditions have been satisfied. At this time, GolDev will have 260 years' leasehold interests in the two sites, and considerably more assets than it currently has. As such, there is “value” in the security arrangements.”

7. Question from Mr Reece Adams

“The document pack released from Part II includes the Questions to Council from 25th July 2019. In the response it was stated that the Monitoring Officer and Finance Director undertook a risk assessment regarding Woking Football Club. Could the Council comment on the suitability of the two Officers responsible for due diligence, and advising the Council on the matter? Especially considering they are the two Officers with conflicts of interest in the development. These interests suggest a personal connection to the Club which may unconsciously influence advice given.”

Reply by Councillor A Azad

“Mr Bryant and Mrs Clarke have properly declared their respective interests when Woking Football Club matters have come before the Council. As Statutory Officers of the Council, they are aware of their responsibilities to act appropriately at all times. I am confident that they would not involve themselves in any matter if they considered their interests might affect their judgment, either consciously or unconsciously.”

8. Question from Mr Reece Adams

“The Chief Executive has been quoted as saying "I do not have to stand for election by the way", but he is directly accountable to the Council according to the Constitution. A petition was brought for to "ask" for Ray Morgan to step down. This was refused based on the fact that it is not a function of the Council, and should be dealt with under employment law. The Leader himself called for his resignation in 2016. Would the Executive agree that, considering the Constitution, it is the function of Council to hold the Executive to account, including regarding dismissals. Additionally, it is entirely within the public's expectations to be able to petition the the council to request a member of the CMG steps down from their role. If this is not the case, should this be looked into due the implications of accountability in an unelected public office.”

Reply by Councillor A Azad

“The Chief Executive is accountable to the Council. The Council, subject to necessary statutory processes, can dismiss the Chief Executive if it has grounds to do so. The Council did not, and would not, approve a petition being placed on its online system in respect of an employee or an employment matter. I do not consider it appropriate to change the Constitution in that regard.”

- Background Papers:** None.
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- Date Published:** 16 January 2020

