

WOKING FOOTBALL CLUB & ASSOCIATED DEVELOPMENTS TASK GROUP

Executive Summary

Over the past three months the Task Group has met five times to consider a wide range of information and evidence related to this proposed development.

This group has not considered or viewed the planning application which has been submitted to planning.

The Task Group has reviewed as per the agreed scope of the group, the processes behind the Council's involvement with the development going back to 2017, and to 1994 when the WBC policy pertaining to the redevelopment of the football stadium was agreed. It has undertaken a scrutiny function as appropriate under the umbrella of the Overview and Scrutiny Committee.

The Task Group's Report comprises two parts;

1. This Part I covers summary findings and recommendations are published below for consideration by the whole O&S committee with a view to progressing them to Council for agreement of implementation.

2. A separate supporting Part II report which summarises the evidence on which these findings and recommendations are based. As this contains much information which has still to be considered confidential to Council Members only. It is not currently a public document and will be submitted to the Overview and Scrutiny Committee and the Council under Part II conditions.

The Task Group is made up of lay Councillors and has had limited resources to review a great deal of complex detail within short timescales. It has conducted this investigation with the best of endeavours and these findings and recommendations are made in good faith and impartially.

Recommendations

The Committee is requested to:

RECOMMEND TO COUNCIL That

Transparency and a Clear Audit trail

- (i) WBC in its future business dealings maintains minutes and notes of all meetings in which development contracts and finance are discussed and decisions made.
- (ii) Decisions regarding disclosure of Part II items should be more transparent and under regular review.
- (iii) Officers not agree confidentiality clauses which prohibit the Council from public disclosure following the signing of contracts.
- (iv) Definition of what constitutes 'material' changes to be clarified. This would support Officers when using their delegated authority, and not open the Council to any challenge of changes which may be of a material standing.

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Clarity over some Officer roles

- (v) That Officers who hold various positions by virtue of their employment in the Council and its companies, are released from some actions in which they act in these multiple roles, especially where there are also personal declarations of interest and associated directorships. It is recommended this be referred to the Standards and Audit committee. Their consideration for a protocol by which Officers, by virtue of their appointment, can be guided on what is appropriate would be helpful. This would ensure that Officers are not put in positions where there can be a challenge of a conflict of interest.

Business Cases

- (vi) For all significant and complex developments or investments a business case should be submitted to Council at the out-set, to provide the context, the justification of the case for change and promote discussion on available options.
- (vii) Members should be more careful in accepting information without reasonable evidence, and unsubstantiated statements should be more rigorously tested prior to agreement of Council (Officer) recommendations.
- (viii) Elements of the future sustainability and self-sufficiency of WFC should be more fully tested for clarity and accuracy. As the prime rationale for the development is that of ensuring the on-going sustainability of the club. It would be prudent to ensure that this is achievable in all the various and on-going iterations of the proposals. Any changes of proposals should be brought back to the Council for consideration.

Due diligence

- (ix) In all projects the process of due diligence needs to be as full and broad as possible and not limited to the narrow scope of a Special Purpose Vehicle (SPV). WBC must adopt a similar comprehensive due diligence perspective as that of a lending bank.
- (x) A rigorous risk assessment is required on the whole scope of this development to protect the Council. The project risks and those associated with the loan facility should be regularly reviewed.
- (xi) Risk assessments should be undertaken for all future developments and investments.

Council as landowner and also Planning Authority

- (xii) In developments where WBC has dual roles and interests these need to be transparent, and any conflicts clearly identified.

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- (xiii) Consideration of Core Strategies and the Site Allocations DPD should be clearly distinct from any undue influence by an impending development.
- (xiv) Council purchase price of property and land should always be supported by at least one and preferably two valuations and survey reports.

Deferral of any planning application

- (xv) ~~It is recommended that any Planning Application is deferred and not heard by the Planning Committee until the Regulation 19 Consultation hearing outcome has been fully reported upon by the Secretary of State's Inspector. (Following legal advice this recommendation has been withdrawn. Having considered Leading Counsel's Opinion it is advised that the recommendation that the Planning Application is deferred and not heard by the Planning committee until the Regulation 19 consultation has been fully reported by the Secretary of State could amount to recommending that the Council takes steps that are unlawful. Legislation provides that the Local Planning Authority must determine Planning Applications and as confirmed by Leading Counsel none of these processes or targets are affected by the preparation of a development plan)~~

Further independent scrutiny review

- (xvi) Given the scale and gravity of findings within this report a further independent and fully resourced investigation into the processes behind this development should be commissioned.

The item(s) above will need to be dealt with by way of a recommendation to the Council.

Background Papers: None

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1.0 Introduction

Initiation

- 1.1 The task group was initiated at the Overview & Scrutiny (O&S) meeting on the 21st October 2019.
- 1.2 The terms of reference were submitted to the Committee and ratified on the 25th November 2019.

Rationale

- 1.3 The proposed developments at both Kingfield / Westfield and on the Egley Road are major projects which have been subject to many debates in the Council and in the Executive. They were also subject to a petition submitted by local residents to the Council. This Task Group seeks to assure the Overview and Scrutiny Committee (and therefore the Council and residents) that appropriate due process has been applied.

Timing

- 1.4 The task group was always set up to be a task and finish group providing in depth scrutiny into the processes around the decisions made by the Council and the Executive relating to the Westfield Football Club redevelopment and associated developments.

Membership

- 1.5 The task group was made up of members of the committee who volunteered to be involved. It was requested that these should be from across the political parties and this is largely the case (3x Conservatives; 2x Lib Dems and 1x Independent); Cllr Hussain; Cllr Chrystie; Cllr Whitehand (Vice Chair); Cllr Bond; Cllr Rana; Cllr Hughes (Chair).

Observers; Cllr Morales; Cllr Bittleston; Cllr Raja.

Meetings

- 1.6 The task group had 4 key meetings each of 3 hours and a shorter meeting with Cllr Azad held on the 28.2.20.

Guest attendance

- 1.7 The task group meetings were divided into consideration of the key elements of the Task Group scrutiny. Officers, external stakeholders and a Council Member were invited to participate;
 - Peter Bryant, Head of Democratic Services; Head of Legal Services & Monitoring Officer
 - Leigh Clarke, Director of Finance
 - Cllr Ayesha Azad, Portfolio Holder for finance
 - Rosemary Johnson, Chair of WFC
 - Neill Morrison, Board Director, WFC
 - Ray Morgan, CEO, WBC

Support

- 1.8 The Task Group was supported by Hanna Taylor, Democratic Services Officer, and the two Council Solicitors, Jacqui Hutton and Joanne McIntosh.

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- 1.9 Minutes were kept of each meeting and circulated to the Task Group members.

External Support

- 1.10 Access to expert external advice was requested but denied.
- 1.11 It should be noted that this is a report written from the discussions with the guests, and a wide range of paper, verbal and electronic evidence. It is written in good faith as representative of the submissions to, and views of the Task Group plus the additional evidence collated. The Task Group members agreed this report prior to it coming formally to the Overview and Scrutiny Committee for consideration.
- 1.12 The Task Group has had to operate quickly and with limited resources. This Report has therefore been written on a best endeavours basis recognising additional information and background not yet provided may be able to give greater information.

2.0 Key Findings, arising from the evidence provided to the Task Group

- 2.1 **The Council decision to support Woking Football Club (WFC) and the proposed development was given on unclear evidence regarding the financial state of the football club and a 25 year old 'policy' that had not been reviewed since.** A seat capacity of 10,000 the Council was informed was 'Policy'. Yet the WFC indicated in April 2019 that this was not their requirement, and that 8,000 overall capacity would be adequate. No initial option appraisal was conducted. A motion to look at a reduction in the numbers of seats was not considered by anyone other than the developers yet the Council had asked for a wider view. This policy was then superseded by an officer's delegated authority to adjust the capacity to just over 9,000.
- 2.2 **The due diligence appears wholly inadequate being conducted on a far too restricted basis** - a basic Special Purpose Vehicle basis only. No additional checks on the key people behind the development, their business history or any of the other aspects normally conducted by banks when considering a loan of this magnitude.
- 2.3 **There appears to be as little if any documentation to explain why the Council offered the Developer a £250m loan.** No evidence has been provided to the Council that the Developer had private finance agreed, or even explored, for this project. In July 2019 the Council had an understanding that private funding would, and must, be used. But by November 2019 a complete change had occurred when the Council offered the developers access to the loan of public funds.
- 2.4 **The fundamental business case for the development (a 'case for change') was not forthcoming at the outset** and despite requests was not submitted until the WFC business plan accompanied the Planning Application. A baseline business case would have been usual and useful to justify a case for change and picked up on many of the issues and concerns at an earlier stage.
- 2.5 **Changes were made, which could likely constitute a material change, without a clear definition of what is material.** These relate specifically to changes in the numbers of the seats and the changes in ratio of seats to standing; the numbers of properties that were proposed; the funding arrangements which were brought back to Council for consideration; and also the use of the stadium itself. A clear definition of 'materiality' would support Officers when using their delegated authority, and not open the Council to any challenge of changes which maybe of a material standing.
- 2.6 **There are a high number of documents which were held in confidence.** Until November of 2019 all documents apart from one paper in Part I in July 2018 were in Part II and so

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confidential. This was governed, it transpires, from a confidentiality clause within the contract in which the developers had controlled disclosure.

- 2.7 **Decisions appear to have been made under delegated authority which puts into question the authority of the key officer making them and his/her authority to so do.** Tight imposed timeframes and lack of clarity over what constituted material changes were said to be exacerbating factors. The Task Group heard changes were requested by the Football Club and Developers but due to the tight timeframes the Officer made the decision and then announced this to Council under delegated authority.
- 2.8 **The overall position of the Council in this development is opaque.** It has clearly supported the sustainability objective of the football club and its desire to build a new stadium. But the level of support that it has provided the developers seems to indicate a level of interest beyond what could have been reasonably expected e.g.
- The shared cost for the viability assessment would be more indicative of a shared venture
 - The NDA of the WFC business case when provided to two Officers and not released to anyone else despite requests,
 - The Council has purchased land and is facilitating the moves of the Gym Club and David Lloyd all prior to any successful planning consent
- 2.9 **There appear to have been no internal nor external valuations conducted on the two major land purchases** (the Kingfield and Egley Rd sites.)
- 2.10 **Information given to Councillors does not always appear to have been accurate.** Whilst Councillors acted in good faith and in a desire to support the club the veracity of key information supplied can be questioned e.g.
- The commercial aspects to support the ongoing viability of the Football Club were not clear and changed over time.
 - The developers stated 'there will be' e.g. a Medical Centre and Dentists before any relevant permissions and confirmation had been achieved.
- 2.11 Alternative pitch use for rugby we are now informed is a non -starter as no specific changing rooms in the proposed plans meet rugby's specification. **Elements of the future sustainability of WFC should be more fully tested for clarity and accuracy**, particularly definitive statements of what commercial and alternative uses are intended to be included in the new development. The documents that were viewed showed various iterations of this and conflicting information. The business case to support this was not presented until submission with the planning application.
- 2.12 **There were discrepancies in the discussions identified and misunderstandings as no minutes were kept of the over 50 meetings** which took place between the developers and Council Officers in the Council Offices alone. The absence of any such minutes in this whole development does not aid transparency and opens up the Council to unnecessary speculation.
- 2.13 **The proposed £250m revolving loan is unprecedented to an external developer and appears high risk** as no actual values have been attributed to the assets of GWL to cover the loan until such time as tangible assets have been built. No risk assessments were provided to the Task Group.

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- 2.14 **WBC does not appear to be insured against risks to itself as a result of this development** or its relationship with the developers. Questions are raised on what risks is WBC carrying and how are these assessed and mitigated? The apparent lack of a Risk Assessment is concerning, particularly so when the Council has purchased land ahead of planning consents; offered an unprecedented loan without a value on the security held by the developers; the onward sustainability for the WFC which is not proven. Do we have any insurance that covers any of the Council's liabilities in this development?
- 2.15 **There appears to remain the risk that even after all this support WFC may not be sustainable and self-sufficient** and that WBC will be asked / obliged to step in as it has done over the past 30 plus years. Risks exist to WFC sustainability until the Planning Consent has been granted and there appears to be no alternative plan. WBC could end up with shares in the Football Club with unclear implications for the Council. The implication of all these risks needs to be made clear to Members.
- 2.16 **Confusion exists in various documents regarding the development vehicle**, GoDev and GWL which are not all the same entity. Initial negotiations were with GoDev and Wayne Gold. GWL is a different entity. The two terms seem to be used interchangeably, and yet due diligence was not conducted on both.
- 2.17 **The land on which the new stadium and houses are proposed is still subject to the findings of the Secretary of States Inspector on the Regulation 19 consultation.** The final report is not due until later this year. However the interim report which was published on the 14th of February puts in doubt the assumptions under which the viability of the development has been conceived. The project is dependent upon the housing element as the funding 'enabler' for the development. Housing numbers are at odds with those in the Core Strategy 10 which the Inspector refers to as being a basis for the indicative number of homes suitable for this site. **The submission of any planning application prior to the Inspector's full report could be viewed as premature as it would pre-empt the outcome of the report** and not take into account his full findings. It is noted that the development sites were not originally in the Regulation 18 consultation and were only added afterwards. Hence residents have only had an opportunity to have their say in the Regulation 19 consultation. It raises questions over the standing of a planning application over the Inspector's awaited report.
- 2.18 **It appears that some Officers took action on behalf of WBC despite holding multiple roles, directorships and declared personal interests.**
- 2.19 Two Officers hold multiple roles and responsibilities which impact on this development, including directorships in KCS; declared conflicts of interest; have roles in WBC; roles with WFC and were signatories to some or all of the documents. One of these also was the key negotiator for the terms of the development agreement (and the other documents) and used Delegated Authority to amend a Council policy and held the decisions over what should remain in Part II. This leaves them vulnerable to questions of whether they are too involved at so many levels. It would have been wise to have sought external advice on the nature of their roles and involvement in this development.
- 2.20 Whilst the Council voted to support this development it has made several purchases which appear to pre-empt a planning decision, despite original plans for the purchase e.g. Egley Rd to be dependent upon a successful planning outcome. This was brought forward once the Site allocations were submitted.

3.0 Conclusions

- 3.1 The Task Group cannot assure the O&S Committee and therefore the Council and residents that appropriate due process has been applied.

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- 3.2 This report seeks to promote an invigorated open and transparent Council, via the implementation of the recommendations as listed above as a de facto improvement plan. Many of these are deemed to be good practice.
- 3.3 The long time scale over which this development has been considered means that there have been many changes in what the Council members originally agreed to, and there are significant variations in the details provided to members over this period. This raises the question of whether members are fully aware of what these proposals are, and the possible risks identified to the Council.
- 3.4 Given the scale and gravity of findings within this report a further independent and fully resourced investigation into the processes behind this development should be commissioned.

REPORT ENDS