

REPORT ON WOKING FOOTBALL CLUB AND ASSOCIATED DEVELOPMENT – 15 DECEMBER 2020

1. INTRODUCTION

On 12 November 2020 I was appointed by Woking Borough Council (“WBC”) through the Local Government Association (“LGA”) to review and investigate the project relating to Woking Football Club and associated development.

Following my appointment, I started work on the matter on 13 November 2020.

2. FULL COUNCIL’S DECISION ON THE TERMS OF REFERENCE

At its meeting on 30 July 2020 Full Council resolved that:

“the LGA be requested to nominate a professional person or experienced organisation, independent of the Council, to investigate and review the processes and actions of the Council in respect of Woking Football Club and associated development and to make appropriate recommendations to the Council arising from the investigation and review”

3. THE RATIONALE FOR FULL COUNCIL’S DECISION AND THE APPOINTMENT OF AN EXTERNAL INDEPENDENT INVESTIGATOR

3.1 Full Council made its decision following consideration of a review report from the Overview and Scrutiny Committee (“O & S”) and the recommendations contained therein.

3.2 The history of this matter began on 21 October 2019 when the O & S met, and the Chairman informed the meeting that a task group would be set up to review the information regarding the items of scrutiny into the Westfield development.

3.3 Further discussions took place at O & S on 25 November 2019 regarding the setting up of the task group and they resolved that:

“the Woking Football Club and Associated Development Task Group be set up”

The membership of the task group comprised Councillors Chrystie, Bond, Whitehand, Rana, Hughes and Hussain.

3.4 The Woking Football Club and Associated Development Task Group (“the Task Group”) held its first meeting on 26 November 2019. They reviewed the work of the project over three months and at the O & S meeting on 15 June 2020, they agreed 15 recommendations for Full Council.

3.5 At their next meeting on 13 July 2020 O & S considered a report on the next steps regarding their recommendations and resolved that:

“the comments of the members of Overview and Scrutiny Committee be reported to Council”

3.6 The comments made by O & S at their meeting referenced the similarities between their review and the Independent Sheerwater Scrutiny Panel 2015/16 review, and they confirmed that this would be drawn to the attention of Full Council at their meeting on 30 July 2020.

3.7 On 30 July 2020 the Chairman of O & S presented the committee’s 9 recommendations to Full Council and they were all agreed. It was a detailed and well-presented report that covered their work, findings and recommendations.

4. HISTORY OF THE WOKING FOOTBALL CLUB AND ASSOCIATED DEVELOPMENT

4.1. The Chairman of Woking Football Club (“WFC”) outlined the Club’s history and informed me that WFC is over 100 years’ old and has been on the Westfield site for 98 years. The condition of the stadium has deteriorated over the years due to its age. Significant improvements are needed if WFC is to achieve its ambition of rising to Football League status. Furthermore, WFC needs to become financially secure and sustainable in the long term.

4.2 WBC’s Chief Executive has had the longest involvement in the aspirations of the Council to assist WFC through redevelopment of the stadium. The dialogue on this started in the 1990s.

4.3 On 11 July 1994 the Chief Executive of WBC, in his then role as Director of Central Services presented a report to the Policy and Resources Committee for consideration to be given to the redevelopment of WFC's stadium. If that ambition came to fruition, it would enable WFC to gain promotion to league status.

4.4 The Policy and Resources Committee's report referred to the Taylor report on the condition of the stadium. The aim at the time was to increase the ground capacity to 6,000 spectators with scope for a further increase to 10,000. Various options were considered before the following resolutions were passed:

- WBC affirmed its support for WFC
- Council officers and WFC would look at alternative sites which may be suitable for relocation
- WFC would undertake a feasibility study to look at staying at the current stadium with improvement made to it
- To look at the expansion of Woking Gymnastics Club and of Woking Snooker Club on its current site
- WFC should produce a business case for its proposals, and this would cover financial viability over a 3-year period, with projected costs and income if league status is achieved
- WFC would undertake full public consultation on any financial plans before making a planning application

4.5 The Council's objectives for sustaining WFC's future were clear. WBC recognised WFC's valuable contribution to the Borough through spectator sport, youth development and community activities. WBC further recognised the promotional advantages WFC had brought to the Borough whilst also mindful of the need to control the volume of supporters attending matches and the traffic in the area. They took into consideration the impact on residents living around the stadium and the neighbouring streets. Taking all these matters into consideration, WBC remained committed to assisting WFC to make essential improvements and increase their prospects of achieving league status.

4.6 The planned improvement works were to be phased. Heads of Terms were negotiated between WBC as landlord for the site, and WFC as tenant. To fund the

works, WBC offered WFC a loan, using its powers under section 19 of the Local Government (Miscellaneous Provisions) Act 1976.

4.7 Some improvements were made to parts of the stadium under the phased programme such as to the Leslie Gosden Stand and other safety works. Policy and Resources Committee met on 3 October 1995 and noted in a report that agreement had been reached between WBC and WFC for the Club to remain on the same site at Kingfield ground and to redevelop it.

4.8 The expected and planned extensive redevelopment of the stadium did not take place until the proposal was resurrected in 2017, when the Club's chairman stood down for personal reasons.

5. NEW PLANS FOR WOKING FOOTBALL CLUB FROM 2017

5.1 On 23 March 2017, a report was presented to the Executive which set out a brief history of the planned redevelopment of the stadium, and it informed councillors that land at Westfield Avenue and along Kingfield Road were critical to developing WFC. Approval was therefore sought to make land available on such terms as would enable development to proceed on the site.

5.2 The Executive, upon consideration of the report, resolved:

- To make Westfield Avenue and Kingfield Road available for WFC's redevelopment
- For WBC to secure fair value for the sites. Members noted that a previous valuation for Westfield Avenue was £3m, and it was assumed that the value for Kingfield Road would be between £1m and £2m

5.3 The initial plan at this stage was for the development to be privately financed.

5.4 WFC had tried unsuccessfully for many years to find a development partner, so it was decided to consider a joint venture with WBC and Kingfield Community Sports Centre ("KCSC") which owned the Kingfield Road site. WFC became acquainted with Mr Wayne Gold and introduced him to WBC. All three parties – WFC, WBC and Mr Gold - were interested in a joint arrangement to deliver WFC's ambitions. Mr Gold later established a Special Purpose Vehicle company to deliver the redevelopment programme ("SPV"). It was called GolDev Woking Ltd

("GolDev"). Mr Gold's initial intention was to be an enabler for the development but once he had established his company, he decided to take on the development himself together with other partners.

5.5 In 2018 several events took place involving the acquisition of KCSC by WBC with the Council's Director of Finance and the Director of Legal and Democratic Services becoming directors of KCSC. Mr Gold's company, GolDev, had been established and he had equal share with the directors of Dukelease, a company that he introduced to the partners in the redevelopment programme.

5.6 On 22 March 2018 a report was presented to the Executive with proposals for the following recommendations to be made to Full Council:

- To acquire Egley Road by 4 January 2019
- The stadium to have a seating capacity of 10,000 with 70% of it to be for general use
- The Council to acquire the stadium site for £2m
- Ground rent for residential units to be nominal
- The Council to provide a £250m Revolving Loan Facility to GolDev at a margin of 2% over the Council's borrowing cost
- To enter into a Development Agreement with GolDev
- To produce a detailed joint feasibility study to ensure financial viability
- To report to the Executive in June 2018

5.7 On 5 April 2018 Full Council held a special meeting where the following resolutions were passed:

- A Development Agreement was to be entered into with GolDev to secure the ambition in the Heads of Terms.
- To include a joint feasibility study for financial viability and report to the Executive in June 2018
- If the Council did not proceed it would finance 50% of the cost of the viability assessment up to £100K.

5.8 The Executive on 12 July 2018 considered a report detailing the viability assessment produced by BNP Paribas and resolved to recommend to Full Council as follows:

- The development was considered viable
- To acquire the Egley Road site for £11m subject to planning permission

5.9 Full Council met on 26 July 2018 and considered a Part II confidential report with recommendations from the Executive. Full Council specifically noted that the viability assessment showed that the proposed development was viable, and that the land at Egley Road should be purchased. Full Council also noted that GolDev had not been procured by WBC, and the risk to the Council was deemed to be small.

5.10 Full Council discussed affordable housing provision and the 10,000 capacity seating required by the Football League for league status to be achieved. Full Council agreed:

- That GolDev's development proposal was viable, and
- The land at Egley Road should be acquired by the Council for £11m

5.11 On 22 November 2018 a report was presented to the Executive with recommendations to Full Council:

- To purchase Egley Road site by 4 January 2019
- To have a 10,000 stadium seating capacity
- To acquire Kingfield Community stadium for £2m
- Ground rent for the residential dwellings to be nominal
- The Council to provide a £250m Revolving Loan Facility to GolDev at a margin of 2% over the Council's borrowing cost

5.12 Full Council at its meeting on 6 December 2018 agreed a supplementary report detailing the security arrangements for the Revolving Loan Agreement that involved a legal charge being placed on GolDev's interest in the property at Kingfield stadium and Egley Road, a Debenture over GolDev's assets, and a fixed final payment date, and for GolDev to be under an obligation to pay 90% of the sale price per residential property to WBC. Full Council also agreed the following recommendations from the Executive:

- To acquire Egley Road by 4 January 2019
- Create a 10,000 stadium seating capacity with 70% to be general use seats
- The Council to acquire KCSC

- Ground rents for the residential units to be nominal
- To provide a £250m Revolving Loan Agreement to GolDev at a margin of 2% over the Council's borrowing cost

The Council further resolved :

- That a Woking Football Club Oversight Panel be established to oversee the loan facility to GolDev

5.13 On 13 February 2019 Full Council received and considered a motion from Cllr M Ali relating to concerns over the partnership arrangements with GolDev, in particular over the loan agreement. It was referred to the Executive for consideration.

5.14 The Executive at its meeting on 28 March 2019 considered the motion referred from Full Council. The Executive noted that legal agreements had already been entered into with GolDev and any attempts to pause the arrangement would be a breach of contract.

5.15 Full Council considered Cllr Ali's motion at its 4 April 2019 meeting as a Part II confidential matter.

5.16 On 15 July 2019 Full Council considered, in a Part II confidential meeting, Cllr Ali's question on lack of transparency, and looked at two questions from other councillors.

5.17 Full Council met on 17 October 2019 and considered Cllr Ali's question regarding the loan agreement.

5.18 Both the Executive and Full Council received and responded to numerous questions from councillors and members of the public on the development.

6. OVERVIEW AND SCRUTINY COMMITTEE'S TASK GROUP

6.1 At its meeting on 2 December 2019 the Chairman for the Overview and Scrutiny Committee proposed a review of the Woking Football Club and associated development project. This was agreed by the Committee and a task group was set. Members of the Overview and Scrutiny Committee's Task Group

("Task Group") were Councillors Hughes (Chair), Chrystie, Hussain, Rana, Whitehead and Bond.

6.2 The Task Group met five times over a three-month period. The Overview and Scrutiny Committee agreed the Task Group's findings and recommendations on 15 June 2020.

6.3 The Overview and Scrutiny Committee met again on 13 July 2020 to approve its final report.

6.4 On 30 July 2020 the Chairman of the Overview and Scrutiny Committee presented their report with recommendations to Full Council which was received and approved.

7. PLANNING APPLICATION

7.1 WFC's redevelopment plans were submitted by its developer, GolDev, to the Planning Service at WBC on 4 December 2019. Prior to this submission they obtained pre-planning application advice from WBC's Planning Service.

7.2 The two applications submitted for developing Kingfield Road and Egley Road sites were both considered on 23 June 2020 and Decision Notices were issued on 2 July 2020 refusing both applications.

8. DOCUMENTS ON THE PROJECT

8.1 At the commencement of my work, I had anticipated that specific project related documents would be made available to me and as they had not been, I requested the following:

1. Business Plan
2. Project Plan
3. Risk Template
4. Legal advice on the project
5. The Council's Constitution
6. Codes of Conduct for Members and Officers
7. Decision-making reports

8. Minutes of project group meetings
9. Documents relating to the project
10. Community engagement strategy

8.2 In response to my request, the Director of Legal and Democratic Services, who led on the project said that as this was not considered to be a Council-led project, the documents listed in paragraphs 8.1.1 to 8.1.4, 8.1.8 and 8.1.10 did not exist.

8.3 The documents which I received or were provided on my request were:

- The Task Group's report and minutes of their meetings
- Policy and Resources Committee's report in 1995
- Some of the Executive and Full Council decisions including councillors' and the public's questions to Full Council.
- The Constitution
- Councillors' Code of Conduct contained in the Constitution
- The three agreements entered with GolDev: Agreement for Lease, Implementation Agreement and Loan Facility Agreement
- Company documents for KCSC

8.4 I obtained further documents from WBC's website relating to the planning application and its consideration by Planning Committee, the full Constitution, Freedom of Information arrangements and agenda and minutes of all Executive and Council meetings where the development was considered.

9. INTERVIEWS CONDUCTED

9.1 I conducted 15 interviews over the course of a week. I met with the following persons online:

1. Mrs Rosemary Johnson, Chairman of WFC
2. Mr Wayne Gold, Director of GolDev
3. Mr Andrew Caulfied – South Woking Action Group (SWAG)
4. Cllr Ayesha Azad, Leader of Woking Borough Council (Conservative Group)
5. Cllr David Bittleston, former Leader of the Council (Conservative Group)
6. Cllr Anne-Marie Barker, Minority Opposition Party Leader (Liberal Democrats Group)

7. Cllr Deborah Hughes, Chairman of the Overview and Scrutiny Committee, and Chair of the Task Group (Liberal Democrats Group)
8. Cllr Graham Chrystie, Chairman of Planning Committee and member of the Task Group (Liberal Democrats Group)
9. Cllr John Bond, Leader of the Independents Group
10. Mr Ray Morgan, Chief Executive
11. Mr Peter Bryant, Director of Legal and Democratic Services
12. Mrs Leigh Clarke, Director of Finance
13. Mrs Joanne McIntosh, Legal Services Manager
14. Mr Douglas Spinks, Deputy Chief Executive
15. Development Manager and Planning Officer

9.2 Cllr M Ali was also given the opportunity to be interviewed but I received no response. I received unsolicited correspondence from an external solicitor acting for a stakeholder in the project relating, to councillors' declarations of interests. They had provided an Opinion to their client on the issue of conflict of interests relating to councillors who were on the Task Group, and who were also members of Planning Committee.

10 – 26 FINDINGS AND RECOMMENDATIONS

10.1 Business Case, Project Plan and Risk Template

I had expected a business case, project plan and risk template to be available in a project of this magnitude. I was therefore surprised when I was informed that they did not exist as it was not deemed to be a Council initiated or led project, but a land transfer transaction.

10.2 The project commenced as a desire for WBC to support WFC to develop the stadium. The Council's objectives were clearly stated in its 1995 report. Even at that time, it was not a simple case of land transfer. Finance was a consideration as was the option of relocation.

10.3 With the introduction of Mr Gold into the discussions as an enabler, the aspirations grew exponentially. They went from possible redevelopment of Kingfield stadium to relocation of other businesses in Kingfield Road and Westfield Avenue to accommodate the expansion of the stadium capacity.

Residential dwellings were proposed and relocation of existing businesses on the site to Egley Road following its acquisition were added to the plans. The proposals also changed from private financing to a substantial Council loan. This became a major project but was not considered a Council project that required a business case, project plan and a risk template. This should have been treated as a major project and the Council's project management tools adopted.

Recommendation 1:

(i) All major development projects however initiated should be recognised as a project and the Council's project management tools such as Prince 2 should be adopted to manage the project.

(ii) Internal training on project management should be provided to the Corporate Management Team and their deputies.

11. Legal Advice

11.1 Local authorities carry out their functions by virtue of legal powers granted by statute. All actions taken by local authorities would have to be justified in law. I therefore expected to see in the reports presented to the Executive and Full Council on such a major project, legal advice to be relied upon to make the decisions. The legal commentary in reports provides the councillors, as decision makers, with the assurance that they had the legal power to make the decisions that they were invited to make. I would have expected such legal advice from the internal legal team or from an external solicitor or barrister covering the following matters:

- The Council's power to transfer land
- The consideration of the procurement rules under the OJEU, European procurement rules that was briefly alluded to in the 22 March 2019 report, but which was not then expanded on or clarified.
- Consideration of the rules on State Aid which prevents a public body granting an advantage through state resources to an organisation that distorts competition. That should have been addressed in the report in respect of the loan facility

11.2 It is unusual in my experience not to include legal advice or a legal implications commentary in the reports that were presented to the Executive and Full Council between 2017 and 2020. That contrasts with the legal advice contained in the initial 1995 report to Policy and Resources which included legal advice on the powers available to the Council to fulfil its objectives in relation to WFC. Regardless of the officers' confidence in the Council's ability to enter into the agreements, as decision makers the councillors were entitled to have all relevant facts including legal and financial advice and the options considered in the reports. There was financial advice given but no legal advice.

Recommendation 2:

(i) The report writing template for committees, the Executive and Full Council should be amended to include a legal implications comments section. All reports should have legal implications comments and when proposals in a report do not have any legal implications, the comment 'None' should be inserted to provide clarity.

(ii) If the WFC project proceeds to implementation, in the event of planning permission being obtained, an updated report should go to the Executive and Full Council and it should include confirmation of the legal powers on which the agreements were made.

12 Risk Management

12.1 It is imperative that major projects have a completed risk management template that identifies known or anticipated risks. The template should have contingency plans to ameliorate the risks. In this project there was no risk template produced because it was not deemed to be a WBC project. Nevertheless, WBC also face certain risks, not least in relation to its land under the Agreement for Lease and the Loan Facility Agreement.

Recommendation 3:

All major projects should have a completed risk management template that identifies all the relevant risks, and which should be supported with contingency plans for managing the risks.

13. Structured Project Meetings and Minutes

13.1 I requested copies of the minutes of project meetings but was informed that there were none because it was not a WBC project. It was explained that the work carried out to date on the proposed development was primarily drafting of legal documents and these were amended at meetings. No notes were taken as a result. I found this practice surprising as this was a major project, with detailed discussions between at least three partners, and numerous documents drafted including decision-making reports to the Executive and Full Council.

13.2 WBC is a public body and is accountable to the public. It is not a privately owned business where there may be discretion as to how the directors run the business. Local authorities are particularly vulnerable to legal challenge, not for the substantive decisions they make, but for procedural failures. It is important that records on important matters like the WFC project are retained for audit trail purposes.

13.3 The Law Society's Lexcel accreditation should be obtained by Legal Services to assist the lawyers in effective case management, including record keeping. Lexcel is a quality standard that many private sector legal firms and local authority legal services have obtained. It helps to keep focus on record keeping, especially with information management and case management practice guidance included.

Recommendation 4:

(i) Major development projects should have project groups with scheduled meetings and minutes taken

(ii) Legal Services should seek Lexcel accreditation from the Law Society of England and Wales.

14. Community Engagement

14.1 The Council's Vision states that:

'Our vision is towards tomorrow today is supported by value aims under three key areas: People, Place and Us.

People – A healthy inclusive and engaged community'

14.2 When developments are proposed which may impact on the community, it is good practice to inform the residents through effective engagement. In this project, once again, since it was deemed to be a private sector led project and not a WBC's project, there was no Council community engagement strategy, except for the Planning Service's statutory consultation upon receipt of the planning application. It was left entirely to GolDev to conduct community engagement as part of their planning application. Mr Caulfield, an active member of SWAG explained to me that residents became aware of the proposed development only around July 2019 when it was already well advanced and when GolDev held an exhibition for the public. It has now been recognised by both WBC and GolDev that more should have been done much sooner to ensure effective communication with affected residents through a joint comprehensive community engagement strategy.

14.3 WBC have a responsibility to keep their residents informed. In this project the total reliance on the developer to lead on community engagement was regrettable. WBC should have considered a joint arrangement for public engagement, particularly as they were better placed to understand their community and to give necessary guidance to GolDev as to how to approach such an important task.

Recommendation 5:

(i) WBC should be joint partners on community engagement in development projects in the borough. If necessary, a developer could be asked to fund any additional staff needed to support the community engagement task.

(ii) WBC should set up a Residents' Panel to facilitate regular consultation with residents, and to use the panel to commence wider community engagement on development projects.

15. Access to Information

15.1 Article 3.01 in WBC's Constitution acknowledged the citizens' rights. Under paragraph (iii) it states that '*Citizens have the right to see public reports and*

background papers and public records of decisions made by the Council, Executive and committees'

15.2 WBC states on their website in relation to the Freedom of Information Act 2000 that the Act:

'Is intended to promote a culture of openness and accountability amongst public authorities by giving people right of access to information held by public bodies'

15.3 A considerable number of the reports on this project were presented as Part II confidential items, and this meant the public and press were excluded from the meetings when the reports were considered. However, whilst negotiations were ongoing and draft agreements and reports containing commercially sensitive information were discussed, it was possible to present a significant part of the information in Part I public reports, with only minor confidential details provided in Part II reports. This would have enabled the public and press to be present when discussions took place on the Part I reports. By presenting most of the information in Part II confidential reports, the residents who were interested in the project felt they had been denied access to relevant information. This led to the Freedom of Information Act and Environmental Information Regulations requests from residents in order to achieve the transparency they desired.

Recommendation 6:

Part II confidential information in reports dealing with development projects should be limited to information that should not be in the public domain at that point in time and should not apply to the entire report.

16. Use of Ostensible Authority for Decision Making

16.1 The Constitution details the authority given to committees, the Executive, Officers and Full Council to make decisions and action them.

16.2 Officers' delegated authority is set out in Article 11 of the Constitution.

16.3 The Constitution also delegates authority to the Ostensible Authority Panel. Membership of the Panel comprises of the Chief Executive, Monitoring Officer,

Chief Finance Officer, Leader of the Council plus two councillors appointed by the Leader.

16.4 When an Officer makes a decision using the Ostensible Authority power, a report should be submitted at the next meeting of the Executive to enable the decision to be formally recorded.

16.5 In this project the use of Ostensible Authority by the Director of Legal and Democratic Services to reduce the capacity of seating in the stadium redevelopment plan from 10,000 to 9,026, was challenged by some councillors. Cllr Barker issued a Motion on this at a Full Council meeting on 25 July 2019. The Director confirmed using the Ostensible Authority with the Leader's agreement.

16.6 In view of the concerns expressed by some councillors who felt that the power is too broad, consideration should be given to reviewing the current arrangements so that non-urgent matters return to the Executive, relevant committee, or Full Council, as appropriate, for a decision. Urgent matters could then go through the urgency provisions in the Constitution. It is also possible, when considering a report, to delegate final decisions, actions or power to amend on a specific matter, to an officer in consultation with a named councillor. On this project, the Director explained that the reduction in the seating capacity was deemed to be a minor change to facilitate the playing of rugby in the new stadium.

Recommendation 7:

WBC to consider amending the Ostensible Authority arrangement and instead to delegate powers to Officers when considering reports and to stipulate the use of the delegated power in consultation with a named councillor.

17. Due Diligence

17.1 The issue of due diligence has been extensively addressed by the Task Group and numerous questions raised at the Executive and Full Council meetings.

17.2 Risk management involves conducting due diligence on a development partner to assess their ability to deliver the commitments that they contract to do. A risk template would have detailed the due diligence carried out on GolDev,

and graded it low, medium or high, the likelihood of failure occurring or not, and the impact on the project if it did occur. Presenting a risk matrix will give councillors the assurance that due diligence has been carefully considered, the identified risks, the likelihood of it occurring and the contingencies in place to manage those risks. Furthermore, the view which Officers expressed that the benefits far outweighed the risks would also have been set out in the template.

17.3 In the absence of a template, the information and assurance needed were limited. Officers working on the project, and who conducted the due diligence on GolDev, knew it was an SPV, (a common practice in the industry), and that it had only £100 assets, but they drew confidence in the project's deliverability from the actions that were proposed as security. These were placing a charge on the lease, a legal mortgage, debenture and structured draw down of the loan that would be dependent on certification by a quantity surveyor. They also saw great value in the planning consent, if granted, as WBC would retain step-in rights to complete the project in the event of failure by the developer. They saw great value in the development if it were successful, the outcome being a redeveloped stadium and mixed residential dwellings – private, shared ownership and affordable housing.

17.4 Ultimately it was a matter for the councillors to decide upon whether they were satisfied with the information provided and with the assurance given. I make a minor recommendation to assist WBC, and especially the councillors who remained concerned and who had the right to be because as decision makers, if they did not have full confidence in the proposals it would have been difficult for them to support the project.

Recommendation 8:

(i) In future development projects where a Special Purpose Vehicle company is set up to deliver a project, a risk template must be produced, and a presentation made to councillors, particularly addressing viability and identifiable risks to the project.

(ii) Consideration should be given to the SPV company providing a bond, insurance or a parent company guarantee, if there is a parent company. If none of these are realistic or achievable, other assurance and protection should be sought and put in place.

18. Viability

18.1 Viability was covered extensively in the BNP Paribas report. Though the risk was borne by the developer GolDev, it could impact on WBC if the project failed. It is therefore appropriate for WBC to seek assurance about the viability of the project. I am of the view that a presentation to councillors on viability, using the BNP Paribas report, at a pre-meeting, held an hour before Full Council meeting, could have provided them with the assurances needed.

19. Land Valuation

19.1 Concerns were raised about the purchase of land by Officers on behalf of WBC without conducting an initial valuation. Officers explained that the transaction was conducted on a willing seller and willing buyer basis. In other words, the seller named their price, and it was up to WBC to accept or reject it. It is correct that in contract law, a seller of goods would name their price, and a buyer would accept or reject it. However, as public funds were expended on purchasing the sites, WBC had a legal and financial duty to be prudent, and the Borough's valuer should have been asked to value the sites. This would have assisted the councillors in knowing what the land value was against the price stipulated. They would then have had the option of rejecting, negotiating or accepting the price as either reasonable or having greater value for the construction of much needed housing. The Officers' views were that the value in the residential dwelling and relocation of the David Lloyd Club far outweighed the price and made it a reasonable purchase.

Recommendation 9:

When purchasing land in the borough, an internal or external valuation should be sought to assist councillors in making a prudent decision on the purchase.

20. Declaration of Interests – Officers

20.1 From the information I have seen, this is an area of particular vulnerability for WBC which needs to be addressed as a matter of urgency. The involvement of councillors and officers in various aspects of this project when they had

declarable interests was like driving a coach and horses through the Nolan principles. It is unsurprising therefore that some councillors raised issues about Officers with declarable interests working on the project, and external stakeholders also raised concerns about councillors with declarable interests having an involvement in the project through conducting a review or determining the planning application.

20.2 Officers as directors of KCSC – The Director of Finance and the Director of Legal and Democratic Services have connection with WFC and they were also directors of KCSC. The Director of Finance declared an interest at meetings accordingly since her husband is a minor supporter shareholder of WFC, and she is a director of KCSC. The Director of Legal and Democratic Services declared an interest at meetings as he gives general assistance to WFC with the management of elections to their Board, is a member of the Cards Trust which is a supporters' club and is a director of KCSC.

20.3 The difficulties that arise when appointing officers as directors of Council owned or funded companies is the potential for a conflict of interest when performing their duties as employees of the Council. As directors of KCSC, both directors owe their primary loyalty to the company above the Council's interest. Yet they worked on the project on behalf of the Council. In company law they have a legal duty to safeguard the best interests of the company above those of the Council: they must ensure the success of the company so it remains solvent. The company owns and leases property from which it derives rental income. So, it trades.

20.4 The relationship between the directors of KCSC, WFC and WBC became triangular. The two officers were directors of KCSC, employees of WBC and they also had an association with WFC on whose behalf the proposed development project was worked on.

20.5 The Nolan principles are relevant to this project and as to how WBC conducted itself in relation to the project.

- **Integrity** – is one of the Nolan principles. Under this principle, it was important for the two directors not to place themselves in a situation

where their integrity may be questioned, and they should on all occasions avoid the appearance of such behaviour.

- **Leadership** – is another principle. It was important for WBC and the two directors to promote and support the Nolan principles by leadership and example, and to act in a way that secures or preserves public confidence.

20.6 When interviewing the Director of Finance and the Director of Legal and Democratic Services, there was no doubt in my mind as to their integrity, professionalism and a genuine desire to serve WBC and the residents to the best of their abilities. They spoke passionately about their integrity and professionalism and expressed the view that KCSC is a Council-owned company that was not trading, and that they were only interim directors pending its sale. Their commitment to act professionally in their management of the project was unquestionable. However, what WBC lost sight of in appointing two key statutory officers, a Section 151 Finance Officer and a Monitoring Officer to the role of directors of the company was the invidious position that they were placed in which resulted in them covering three roles: the company they were made directors of was a significant stakeholder in the project as property owner; they acted for WBC as employees overseeing the financial and legal aspects of the project whilst protecting the Council's interest; they also had an association with WFC.

20.7 The general rule with regards to declaration of interests is that, if a person has to regularly declare an interest at a particular meeting on a matter, they should not be associated with the meeting. The fact that the two directors had to declare interests throughout when reporting on the project was an indication that they had been placed in a difficult position. Furthermore, it raised the issue of predisposition and bias. Would the ordinary person outside and looking at the two officers' roles in the Council think they would be predisposed and biased towards supporting one or more of the three organisations they were associated with? Would Woking Borough residents believe that they were only interested in serving the best interests of WBC, or WFC and/or KCSC? That is the position the directors were placed in and they constantly had to defend their integrity when questions were asked.

Recommendation 10:

The Council should avoid appointing statutory officers, especially the Section 151 Finance Officer and the Monitoring Officer onto external companies or trusts with whom the Council has or is likely to have an association.

21. Declaration of interests – Councillors’ Code of Conduct

21.1 Similarly to Officers, some councillors were placed in an invidious position as members of the Task Group, Planning Committee and ward representatives.

21.2 Councillors represent the best interests of residents in their ward. When such a major development is proposed for a ward, the views of residents and ward councillors may well be divided. Some will support whilst others may object or remain neutral. Ward councillors may even have a pecuniary interest if the proposed development positively or adversely affects their own property.

21.3 Some ward councillors participated in the Task Group’s review. It is fortunate that their work focused on the processes that led to Full Council’s decisions on the project. They did not look at the importance or relevance of the project and whether it should be supported.

21.4 Nonetheless, based on the Nolan principles, and the fact that some councillors may have represented their own or their constituents’ views, or even have a property that is likely to be impacted by the proposed development, they would have best served the Council by giving evidence to the Task Group, and not by participating as a member of it. I take a purist view on such matters as expected under the Nolan principles, and the need to consider public perception as the material factor in the situation. The same issues regarding integrity and leadership applies to the councillors, and to the public perception about their role in serving multiple interests. The principles of bias and predisposition should always be considered in these situations.

Recommendation 11:

External training should be organised for Officers and councillors on the Code of Conduct, to include the Nolan principles and sitting on external bodies as directors of companies or trustees on trusts.

22. Planning Committee

22.1 There were four councillors on the Task Group who were also on Planning Committee. In appointing the members of the Task Group, consideration should have been given to those councillors' role on Planning Committee. It was clear from the outset that such a major development would require planning permission so it would have been going to Planning Committee at some stage. Members of Planning Committee must conduct themselves with caution and not allow their views on any application to be affected in any way that could lead to allegations of bias, predisposition or predetermination. This should have been at the forefront of the minds of the four councillors and Overview and Scrutiny Committee when selecting the four to sit on the Task Group. Planning committee members are duty bound to avoid giving the appearance of bias, predisposition or predetermination. Their objectivity in determining planning applications must be of the utmost priority. In response to my enquiry, I was informed by the Director of Legal and Democratic Services that he had spoken with three of the councillors concerned and was satisfied that they had not predetermined the matter prior to hearing the application at Planning Committee.

Recommendation 12:

(i) Members of Planning Committee should not participate in an Overview and Scrutiny Committee's review of a proposed development in which a planning application would be submitted.

(ii) Members of Planning Committee should not sit on an Overview and Scrutiny Committee or Task group meeting reviewing a development which had been determined by Planning Committee. They may give evidence at such meeting.

(iii) WBC should adopt the Local Government Association's guidance document 2019 called 'Probity in Planning' and arrange a presentation on it to Planning Committee members.

(iv) External training should be arranged for members of Planning Committee on the Code of Conduct, Nolan principles and the guidance called Probity in Planning.

23. Overview and Scrutiny Committee

23.1 It is common practice in some councils to resource the Overview and Scrutiny Committee with the allocation of a budget for conducting reviews, and the provision of a dedicated Scrutiny Officer with requisite policy and/or research skills. The Task Group performed expeditiously with admirable skill in reviewing this project. They identified important matters that needed attention. Their report was adopted by Full Council and it will assist with future improvements.

23.2 The Council invited the LGA to conduct a peer review. In response to the LGA's recommendation to WBC for greater involvement in conducting reviews, I would recommend that Overview and Scrutiny Committee should be allocated a budget if Council resources would allow. A budget to enable them to do research work or engage external experts and a dedicated policy staff for two days a week to help them develop their work programme and conduct reviews would enhance their work.

Recommendation 13:

(i) WBC should allocate a reasonable budget to Overview and Scrutiny Committee for their work.

(ii) WBC should allocate a part-time Scrutiny Officer post to Overview and Scrutiny Committee to assist with their work.

24. Improving relations in the Council

24.1 Whilst conducting the interviews, it became evident that councillors and Officers are proud to be part of Woking Borough Council. They worked together effectively with the same objectives to do their best and to serve the community.

24.2 Following the introduction of the project, there has been a strain on the good relationship between the Council and some residents, and between councillors and some Officers. Mrs Johnson, Chairman of WFC, also felt the way she was interviewed by the Task group, strained the previous good relationship she had with the Council, especially as a former councillor. With the

recommendations I have made about future community engagement, I am confident that the relationship with residents will improve quickly.

24.3. The relationship between councillors and Officers will need work to rebuild it. Scrutiny can be an uncomfortable experience for those being scrutinised. How scrutiny is conducted can also make a difference as to how it is received. It will be regrettable if the previous excellent working relationship in the Council is lost. I would suggest a facilitated meeting between councillors and Officers to discuss the Task Group's review, lessons learnt and how to go forward, including how future reviews will be managed by the reviewers, and accommodated by those reviewed. I would also suggest the Chairman of Scrutiny considers on behalf of the Task group how best to reassure Mrs Johnson in view of her comments about her experience with the Task Group.

Recommendation 14:

WBC should appoint an external facilitator to work with those involved in the project – Officers and the Executive, and the Task Group to rebuild the good working relationships that previously existed.

25. New Leaders Group

25.1 During the interviews it was drawn to my attention by a councillor that new arrangements have been put in place for a joint leaders group meeting to improve transparency and openness. I commend the Council for introducing this initiative. It will help to build trust, even where political views and affiliations differ. The view was expressed that it is a new experience and there is much to be learnt as to how the meetings would progress. A protocol is needed on the rules of engagement to bring clarity to the process. A protocol that sets out the 'dos and don'ts' would help everyone keep within the expected bounds of behaviour, engagement and especially confidentiality.

25.2 Independent councillors, without an established political party supporting them are in a unique position. Operating in a political environment can be daunting. WBC could lead as an exemplar in local government and provide a unique support package for Independent councillors. The support could involve monthly or quarterly meetings between the Leader of an Independent Group and

the Chief Executive, Monitoring Officer, Deputy Monitoring Officer or the Democratic Services Manager to receive guidance on governance, the Constitution and Code of Conduct matters. More information on how the Council works, decision making, access to information, conduct at meetings, how to engage with the community and simply being available to demystify local democracy could give Independent councillors a positive experience on the Council and build trust.

25.3 As an exemplar authority, WBC could arrange through the Local Government Association (“LGA”) mentoring for Independent councillors upon their election to office, from other experienced Independent councillors in other councils. A simple introduction to another Independent councillor via the LGA is all that would be needed.

25.4 The relevance of this section to the WFC review is the ability for Independent councillors to feel they have a role in contributing to decision making on such projects and on the conduct of subsequent reviews. Without the knowledge of how the Council works, they will somehow feel excluded from decision making, and this then erodes the trust and confidence that they have in the Council.

26. Summary of the recommendations:

Recommendation 1:

(i) All major development projects however initiated should be recognised as a project and the Council’s project management tools such as Prince 2 should be adopted to manage the project.

(ii) Internal training on project management should be provided to the Corporate Management team and their deputies.

Recommendation 2:

(i) The report writing template for committees, the Executive and Full Council should be amended to include legal implications comments section. All reports should have legal implications comments and when proposals in a report do not

have any legal implications, the comment 'None' should be inserted to provide clarity.

(ii) If the WFC project proceed to implementation in the event of planning permission being obtained, an updated report should go to the Executive and Full Council and it should include confirmation of the legal powers on which the agreements were made.

Recommendation 3:

All major projects should have a completed risk management template that identifies all the relevant risks, and which should be supported with contingency plans for managing risks.

Recommendation 4:

(i) Major development projects should have project groups with scheduled meetings and minutes taken.

(ii) Legal Services should seek Lexcel accreditation from the Law Society of England and Wales.

Recommendation 5:

(i) WBC should be joint partners on community engagement on development projects in the borough. If necessary, a developer could be asked to fund any additional staff needed to support the community engagement task.

(ii) WBC should set up a Residents' Panel to facilitate regular consultations with residents and to use the panel to commence wider community engagement on development projects.

Recommendation 6:

Part II confidential information in reports dealing with development projects should be limited to information that should not be in the public domain at the point in time and should not apply to the entire report.

Recommendation 7:

WBC to consider amending the Ostensible Authority arrangements and instead delegate powers to Officers when considering reports and to stipulate the use of the delegated power in consultation with a named councillor.

Recommendation 8:

(i) In future development projects where a Special Purpose Vehicle company is set up to deliver a project, a risk template must be produced, and a presentation made to councillors, particularly addressing viability and identified risks to the project.

(ii) Consideration should be given to SPV companies providing a bond, insurance or a parent company guarantee, if there is a parent company. If none of these are realistic or achievable, other assurance and protection should be sought and put in place.

Recommendation 9:

When purchasing land in the borough, an internal or external valuation should be sought to assist councillors in making a prudent decision on the purchase.

Recommendation 10:

The Council should avoid appointing statutory officers, especially the Section 151 Finance Officer and the Monitoring Officer onto external companies or trusts with whom the Council has or is likely to have an association.

Recommendation 11:

External training should be organised for Officers and councillors on the Code of Conduct, the Nolan principles and sitting on external bodies as directors of companies or trustees on trusts.

Recommendation 12:

(i) Members of Planning Committee should not participate in an Overview and Scrutiny Committee's review of a proposed development in which a planning application would be submitted.

(ii) Members of Planning Committee should not sit on an Overview and Scrutiny Committee or Task Group meeting reviewing a development which had been determined by Planning committee. They can only give evidence at such meeting.

(iii) WBC should adopt the Local Government Association's guidance document 2019 called 'probity in Planning' and arrange a presentation on it to Planning Committee members.

(iv) External training should be arranged for members of Planning Committee on the Code of Conduct, the Nolan principles and the guidance called Probity in Planning.

Recommendation 13:

(i) WBC should allocate a reasonable budget to Overview and Scrutiny Committee for their work.

(ii) WBC should allocate a part-time Scrutiny Officer post to Overview and Scrutiny Committee to assist with their work.

Recommendation 14:

WBC should appoint an external facilitator to work with those involved in the project – Officers and the Executive, and the Task Group to rebuild the good working relationships that previously existed.

27. Conclusions

27.1 This is a project that evolved over a period. There was a genuine desire to find the best option for redeveloping or relocating the stadium without it becoming a Council-led project. The Council already had multiple projects in progress, especially in the town centre, and many through Council-owned companies. Internal resources were stretched and taking on an additional development project like this one was unrealistic. In the Council's view, the option of a private developer taking on the project was the most favourable and realistic.

27.2 Lessons have been learnt about the governance process. The Task Group scrutinised the processes and made recommendations that have been adopted by Full Council. I was appointed to conduct a further review and investigation which I have conducted in a month. These are my findings and recommendations that I commend to the Council.

27.3 I would like to express my appreciation to all the councillors, Officers, Mrs Johnson, Mr Gold and Mr Caulfield who gave full cooperation during our meetings. My special thanks to Hanna Taylor, without whose excellent support in arranging meetings, responding to my queries and obtaining information requested, I could not have managed the process in the space of a month.

Dr Gifty Edila (Hon)

Barrister, Solicitor-Advocate, former Corporate Director of Legal, HR and Regulatory Services (Rtd). Currently LGA Associate, Mediator, School Governor, and Author.

FOOTNOTE:

I have brought to this review my experience of 41 years as a qualified barrister, solicitor-advocate, and as a mediator. I spent 28 years in local government, 22 of which were spent in head/director of service roles. I have extensive experience of regeneration work, having worked on regeneration of the Docklands and the construction of homes, community facilities and transport. I have worked on schools that were private finance initiatives, construction of the Excel Exhibition Centre, the Channel Tunnel Rail link through Stratford, Stratford station redevelopment, the Olympic stadium development, Holland Park School redevelopment, Chelsea Academy development, 3000 residential dwellings project in Woodberry Down (the largest in Europe) and other Olympic legacy community projects such as transport, housing, schools and culture and arts projects. I have set up numerous local authority companies.

I have worked on Code of Conduct matters since the 1990s and was part of one of three councils consulted by the Government before introducing the first Councillors' Code of Conduct in 2001. I have extensively trained councillors and Officers on the Code of Conduct, issued numerous guidance and given evidence to a House of Commons Select Committee in 2005 in my role as President of ACSeS, an association for Directors of Law in England and Wales, on the lessons learnt from using the Code of Conduct. I worked with civil servants on the Code of Conduct and supported them by being a speaker at a conference on the Code when it was first introduced to local government.

Finally, I previously managed a Planning Service as Director of Legal, HR and Regulatory Services so I understand the planning process

