



## OVERVIEW & SCRUTINY COMMITTEE

MINUTES of the Overview & Scrutiny Committee held on Monday 19 July 2010 at 8.30 pm at Town Hall, Peckham Road, London SE5 8UB

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**PRESENT:** Councillor Lisa Rajan (Chair)  
Councillor Andy Simmons (Vice-Chair)  
Councillor Toby Eckersley  
Councillor Gavin Edwards  
Councillor Dan Garfield (Reserve)  
Councillor Mark Gettleson (Reserve)  
Councillor Mark Glover  
Councillor David Hubber  
Councillor Helen Morrissey  
Councillor the Right Revd Emmanuel Oyewole  
Councillor Geoffrey Thornton (Reserve)

**OTHER MEMBERS PRESENT:** Councillor Fiona Colley  
Councillor Martin Seaton, East Walworth

**OFFICER SUPPORT:** Tom Branton, Regeneration & Neighbourhoods  
Shelley Burke, Head of Overview & Scrutiny  
Doreen Forrester-Brown, Legal Services  
Eleanor Kelly, Deputy Chief Executive  
Stephen Platts, Head of Property  
Jennifer Seeley, Deputy Finance Director  
Peter Roberts, Scrutiny Project Manager

### 1. APOLOGIES

- 1.1 Apologies for absence were received from Councillor Neil Coyle and from Councillors Tim McNally and Paul Noblet (Councillors McNally and Noblet were unable to attend due to a prejudicial interest).

### 2. NOTIFICATION OF ANY ITEMS OF BUSINESS WHICH THE CHAIR DEEMS URGENT

- 2.1 There were no urgent items of business.

### 3. DISCLOSURE OF INTERESTS AND DISPENSATIONS

- 3.1 Councillor Geoffrey Thornton declared a personal and non-prejudicial interest as a local resident and representative of one of the affected wards.

### 4. CALL-IN: ELEPHANT & CASTLE - REGENERATION AGREEMENT AND DISPOSAL OF ASSOCIATED LAND (CABINET 7 JULY 2010)

- 4.1 The committee moved into closed session in order to consider the call-in.
- 4.2 Councillor David Hubber introduced the grounds of the call-in request (paragraph 4 of the covering report).
- 4.3 In response, Councillor Fiona Colley, cabinet member for regeneration and corporate strategy, referred the committee to paragraphs 63 – 69 of the cabinet report and recommendation 2.1 which set out the intention to seek confirmation from the Department for Communities and Local Government (CLG) as to whether consent to the transfer of land would be necessary. She was confident that best consideration would be achieved (paragraph 4a of the covering report). In terms of the second ground, paragraph 4b, that the terms of disposal did not meet Lend Lease's best and final offer (BaFO), leaving the council open to legal challenge, the cabinet member referred the committee to the advice it had received from the strategic director of communities, law & governance at its meeting on 7 July 2010. The cabinet member disagreed that the level of affordable housing guaranteed by the regeneration agreement would necessarily have been achieved through the planning process (paragraph 4c). Finally, she explained that there was no cap on planning overage and that the cap applied to the parent company's guarantee (paragraph 4d).

#### *Failure to achieve best consideration for disposal of land on the Heygate Estate*

- 4.4 Members asked the cabinet member whether she was satisfied that she could defend the cabinet's decision to the district auditor. The cabinet member replied that the district auditor was coming in to discuss this later in the week. In response to further questions, the head of property explained that it was not the district auditor's function to take a view on best consideration but rather to ensure that appropriate processes had been followed. The council was acting appropriately in seeking advice from the CLG as to best consideration.
- 4.5 A member asked the cabinet member if the cabinet would be open to reconsidering its decision. The cabinet member's view was that this would further delay an already protracted process and that the actions to be taken in respect of best consideration were clearly set out at recommendations 2.1 and 2.2. The deputy chief executive added that consistent advice had been given by officers in respect of best consideration.
- 4.6 The committee noted that it would be expensive to go back to the beginning of the procurement process. Some members of the committee agreed with the cabinet member that the mandate at the election had been to resolve plans for

development at the Elephant & Castle.

*Failure to meet BaFO – rendering the council open to legal challenge*

- 4.7 Some members remained concerned that the risks had not been properly calibrated. The cabinet member reported that the cabinet had considered the officer advice at length and taken the view that the risk was manageable.
- 4.8 In response to questions about the delay in the timetable (the report to November's executive had specified signing of the regeneration agreement by March 2010), the deputy chief executive informed the committee that subsequent reports had been considered by the executive on 9 February and 23 March 2010 and progress had been noted.

*Sacrifice of 2023 priority return for 25% minimum guarantee on affordable housing*

- 4.9 Some members were of the opinion that a guaranteed minimum of 25% affordable housing was selling the council short when a figure of 29% was being achieved in most planning applications. These members questioned whether giving up the guarantee of priority return in 2023 in exchange for a guarantee on affordable housing was best value for the council tax payer. The cabinet member stressed that the guarantee of affordable housing in the regeneration agreement did not fetter the planning committee and that she believed that similar amounts of profit could still be achieved. She stated that regeneration was not just about the amount of profit but about realising a vision for the Elephant & Castle. The aim was to deliver more affordable housing than had previously been available.
- 4.9 Members queried the nature of the guarantee of affordable housing and whether it was a specific clause in the regeneration agreement. The head of property explained that it was covered in two areas of the of the regeneration agreement, within the "minimum development requirements" and in the section relating to the planning application.
- 4.14 Some members were concerned that Social Housing Grant may not be available from the Homes and Communities Agency (HCA).

*Capping the planning overage*

- 4.15 The head of property clarified that there was no cap on the planning overage. A cap and termination date existed in respect of the guarantees provided by Lend Lease Corporation. The committee was satisfied with these explanations and agreed that the grounds set out under paragraph 4d did not require further consideration.

*Recommendations*

- 4.17 The following motion was moved by Councillor David Hubber and seconded by Councillor Mark Gettleson:

That the cabinet:

- i) Renegotiate the terms of the regeneration agreement that enables the council to achieve a settlement that is closer to best consideration and that is less likely to be challenged by the district auditor;
- ii) Afford itself the opportunity to consider any views expressed by the district auditor in the next few days;
- ii) Renegotiate a deal with Lend Lease that enables the terms of the deal to better meet BaFO considerations and reduce the risk of challenge by other developers; and
- iv) Include in its recommendations the requisite detail on how the 25% minimum affordable housing guarantee will be achieved in practice, given the caveats in place on Lend Lease defaulting on the deal.

4.18 The motion was put to the vote and declared to be lost. The following members requested that their votes in favour be recorded in the minutes: Councillors Lisa Rajan, Toby Eckersley, David Hubber, Mark Gettleson and Geoffrey Thornton.

4.19 An alternative motion was moved by Councillor Andy Simmons and seconded by Councillor Mark Glover. The motion was put to the vote and declared carried:

**RESOLVED:**

- i) That the poor performance to date of the council in providing replacement social housing at the early housing sites at the Elephant & Castle be noted;
- ii) That the negative impact of the coalition government on the Homes and Communities Agency budget and thus the low probability of social housing grant being made available to the Elephant & Castle be noted;
- ii) That the committee agrees with the cabinet's commitment to ensure a minimum level of affordable housing of 25% for the first time, with a planning target of 35% affordable housing;
- iv) That the commitment to move forward with a new leisure centre at the Elephant & Castle be welcomed;
- v) That the positive discussions with St Modwen on the regeneration of the shopping centre be welcomed;
- vi) That the potential substantial capital receipts for the council if housing prices rise be noted;
- vii) That the cabinet member be asked to report back to a future meeting of the committee on how the minimum 25% level of affordable housing will be achieved in practice; and
- viii) That the decision is not referred back to the cabinet.

(Resolution vii was agreed unanimously. The following members requested that their votes against all other parts of the resolution be recorded in the minutes: Councillors Lisa Rajan, David Hubber, Mark Gettleson and Geoffrey Thornton. Councillor Toby Eckersley requested that his abstention be recorded.)

The meeting ended at 10.35 pm