

**BRIGHTON & HOVE CITY COUNCIL**  
**OVERVIEW & SCRUTINY COMMISSION**  
**4.00PM 3 MARCH 2009**  
**COUNCIL CHAMBER, HOVE TOWN HALL**  
**DRAFT MINUTES**

**Present:** Councillors Mitchell (Chairman); Alford, Bennett, Mrs Cobb, Elgood, Meadows, Pidgeon (Deputy Chairman), Smart, Randall and Wakefield-Jarrett

**PART ONE**

**80. PROCEDURAL BUSINESS**

**80A Declarations of Substitutes:**

Councillor Smart declared that he was attending as substitute for Councillor Older

**80B Declarations of Interest:**

Councillor Fallon-Khan declared a prejudicial interest as Cabinet Member for Central Services and a member of the Cabinet that made the original decision in relation to the disposal of the Ice Rink, Queen Square (12 February 2009).

**80C Declarations of Party Whip:**

There were none.

**80D Exclusion of Press & Public:**

Part 2, Appendix 6 to Item 91 comprises 4 annexes, of which 3 have since been released for publication.

**80E Chairman's Communications**

The Chairman welcomed members of the public to the meeting which had been called to determine whether or not to refer back the 12 February 2009 Cabinet decision on disposal of the Ice Rink, Queen Square.

Councillor Mitchell stated that proceedings were being webcast and explained the order of the agenda. Some papers had been marked as confidential, but it was intended that the meeting should be as open as possible, with members of the public not excluded unless absolutely

necessary. To this end, the informal planning guidance note on the Ice Rink site which had originally been published as a confidential (Part 2) annex to the call-in meeting papers had been brought into Part 1, the public part of the meeting.

Councillor Mitchell asked members to note that the extract from the 12 February Cabinet meeting proceedings (Appendix 2 of the call-in report) was in draft form and had not been agreed by the Cabinet as an accurate record of its 12 February 2009 meeting. Councillor Mitchell also noted that Appendix 6 of the call-in report (p31) was incorrectly titled 'Appendix 5' in the call-in papers.

The Council's lawyer was then asked to make some comments on what information could or could not be heard in public session. The lawyer explained that there should be a general presumption in favour of taking evidence in public, but that discussion likely to reveal the identity of an individual, information relating to the financial and business affairs of the Council or correspondence to and from members of the public might necessitate moving into closed session.

## **81. REQUEST FOR CALL-IN OF THE 12 FEBRUARY CABINET DECISION ON THE ICE RINK, QUEENS SQUARE**

### **Evidence from Councillor Pete West**

- 81.1 Councillor West thanked the Commission for establishing the call-in meeting and for giving interested parties the opportunity to address the committee. He then gave details of his call-in request (as set out in Appendix 1 to the call-in report).
- 81.2 Councillor West informed members that the matter of the disposal of the ice rink had first been brought to his attention when it was included in the Council's Forward Plan. Although there had been a subsequent exchange of e-mails with officers in Property & Design, and the 12 February 2009 Cabinet report had stated that ward councillors had been consulted, at no stage had the three ward councillors in fact been asked for their views on this issue.
- 81.3 Neither had interested parties been consulted on the development of the informal planning guidance note, a document which he had seen only 2 days before the Cabinet meeting. Councillor West felt that this approach to the disposal of a sensitive site had been unhelpful and was disrespectful of the roles of elected representatives.
- 81.4 Councillor West also pointed out that the informal planning guidance note drawn up in relation to the Ice Rink site had not been included with the Cabinet report papers. In his view some passages in the report were incorrect, other information was incomplete, and Cabinet had been asked to decide on the disposal on the basis of flawed information.
- 81.5 As Cabinet had been unable to make an impartial and informed decision, Councillor West believed that the matter should be re-considered with all the pertinent information made available.
- 81.6 In response to members' questions, Councillor West stated that he had initiated dialogue on the Ice Rink disposal with Property & Design; that he did not consider this

contact with the relevant council department to amount to 'consultation' on the issue; that he had not known of the existence of the informal planning guidance note until shortly before the Cabinet meeting; and he had not been involved in the report to Cabinet until it had been published in advance of the 12 February Cabinet meeting.

#### **Evidence from Mr Sean Kiddell, Chair of St Nicholas Green Spaces Association**

- 81.7 Mr Kiddell appraised members of his concerns with regard to the way in which the decision to dispose of the Ice Rink site had been made. He expressed particular concern that the informal planning guidance note had not been included in the 12 February Cabinet papers, and that the Cabinet decision had not been made with reference to details such as the proposed height and shading of any new build, the implications of proposed foot/cycleways and access to Churchill Square. Mr Kiddell argued that these considerations should have informed the disposal decision as well as forming part any subsequent planning decision.
- 81.8 In response to Members' questions, Mr Kiddell stated the report to Cabinet was the first information he had seen on the proposals. Local and national policy on protecting green spaces was not referred to in the Cabinet report. Given the Council's commitments under the Community Engagement Framework, Mr Kiddell would have expected his association, which is an official 'Friends of' group, to have been consulted prior to any decision on disposal. Relations with the council had been very positive thus far and the Association wanted to be a good neighbour.

#### **Evidence from Mr Fisher, Secretary of Wykeham Terrace Residents' Association**

- 81.9 Mr Fisher told members that he was concerned that he had known nothing in advance of the proposed disposal of the ice rink and that neither he nor his ward councillors had been consulted on the issue. He said that he had not seen the informal planning guidance note prior to this call-in meeting. Mr Fisher also told members that his association had received assurances in 2005 about consultation and on the maximum number of storeys and height of roofline to be permitted on the Ice Rink site.
- 81.10 Mr Fisher felt the Council had conflicting interests as both landowner and planning authority, and that a number of covenants affecting the area should be made known to the prospective purchaser.
- 81.11 Some Members commented that the report to Cabinet gave the impression that 5-6 floors was the preferred option for a development of the site.

#### **Evidence from Councillor Ayas Fallon-Khan, Cabinet Member for Central Services, and from Council officers**

- 81.12 Councillor Fallon-Khan asked for clarification on what information he could refer to without going into confidential session (Part 2). The lawyer stated that correspondence in general terms could be referred to, but commercial information and personal details should not be dealt with in open session.

- 81.13 Councillor Fallon-Khan pointed out that the Cabinet decision related only to the site disposal and not to the planning process which would be subsequent to any decision relating to disposal.
- 81.14 Councillor Fallon-Khan explained that, at the 12 February Cabinet meeting there had been some confusion over whether Councillor West had been consulted about the Ice Rink proposal, but that it was now evident that he had in fact been consulted. When Councillor Mary Mears had spoken at Cabinet she had not acknowledged that Councillor West was not consulted, but rather had said *if* Councillor West had not been consulted it would have been regrettable.
- 81.15 Addressing the concerns of Mr Kiddell and Mr Fisher about consultation, Councillor Fallon-Khan stated the developer, once selected, would be obliged to consult with the local community at level 2 of the property disposal procedure (i.e. the stage preceding an application for planning consent)
- 81.16 Councillor Fallon-Khan also informed members that ward councillors had been informed of the proposed property transaction and invited to query it. There was nothing more that Council officers ought to have done and the Council did nothing that ought not to have been done.
- 81.17 A member pointed out that one reason for the call-in was that: '*In compiling* the report presented at Cabinet and the informal planning guidance note, no consultation took place with ward councillors nor other affected parties' (see Appendix 1 to the call-in report). The Assistant Director of Property and Design responded, explaining the process of property disposals and setting out some of the general issues around shortlisting bidders. She stated that consultation with Ward Councillors had taken place and had included an e-mail sent on 16 January with the Ice Rink marketing brochure attached (this email also made reference to the informal planning guidance note).
- 81.18 Asked to elaborate on common law principles of consultation, the Council's lawyer noted there were three basic elements: a genuine invitation to the other party to give advice; adequate time for the consultee to tender advice; and proof that the consulting body had seriously considered any advice tendered.
- 81.19 Councillor Fallon-Khan told the committee that the ward councillors had been sent a good deal of information (as set out in e-mails reprinted in the confidential appendices to the call-in report). On 4 February, the date of its publication, the Part 1 report to Cabinet on the Ice Rink disposal was sent to all three Ward Councillors. Further phone calls, e-mails and a meeting followed and this information could have been shared with residents and interested parties. Officers also offered to go through the property evaluation and proposed scheme in detail with Councillor West.
- 81.20 In response to queries, Councillor Fallon-Khan told members that a draft report had not been ready before 4 February, but that Ward Councillors had been supplied with enough information to share with residents and interested parties.
- 81.21 Councillor Fallon-Khan also stated that proposed number of storeys of any build on the Ice Rink site was not pertinent to the Cabinet decision, but was rather a matter to be

debated upon application for planning consent. The Cabinet had been presented with all the information it required to make an informed disposal decision.

- 81.22 The Assistant Director and Case Surveyor gave the committee further details of the marketing and short-listing process in relation to disposal of the Ice Rink site, and answered members' queries. Members were informed that, in another city development where an informal planning guidance note had been drawn up, a ward member had been invited to comment on the brief. However, only the ward member with a long-standing and local concern in the site had been involved in this process; other ward members had not been invited to participate.
- 81.23 At this point Councillor Fallon-Khan left the room while the Commission considered the call-in request.

#### **Further discussion and questioning of officers**

- 81.24 Some Members stated they did not think that ward councillors had been properly consulted in this instance. Other members expressed the view that because the informal planning guidance note was not attached to the Cabinet report, Cabinet approved the site disposal without the benefit of full information. Members also discussed whether the Local Development Framework supported the development of approximately 85 hotel rooms in the city centre.
- 81.25 Other Members argued that Cabinet had all the information needed to decide on the disposal and that ward councillors had been adequately consulted.
- 81.26 The point was made by some Members that the business case by the developer was based on a 5/6 story hotel, not 4 stories as in the informal planning brief. Given that this information was in the public papers and central to the site disposal brought forward to Cabinet it was impossible to have an informed debate without discussing it.
- 81.27 The Planning Project Manager answered questions from the Commission on the Local Development Framework Document and the background study as noted by Councillor Kemble at Cabinet (minute 172.12 of the draft extract, refers).

#### **81.28 RESOLVED:**

81.28 (a) That the decision taken by Cabinet on 12 February 2009 in relation to the disposal of the Ice Rink, Queen Square, be noted

81.28 (b) That the subsequent call-in request be noted

81.28 (c) That the additional information supplied by the Interim Director of Finance and Resources be noted

#### **81.29 RESOLVED:**

81.29 (a) That the decision be referred back to Cabinet for reconsideration taking into account the following recommendations.

81.29 (b) That the Planning Department be requested to draw up a robust Planning Framework for this site that would include consultation with the local community before any subsequent decision is taken

81.29 (c) That this Planning Framework be appended to any future cabinet report pertaining to the disposal of this site

81.29 (d) That relevant extracts from the Hotel Futures Supplementary Planning Guidance be appended to any future Cabinet report if it is decided to pursue the option of an hotel for the site

**81.30 RESOLVED:**

81.30 (a) That Cabinet be asked to ensure that the Council consults properly with Ward Councillors

81.30 (b) That in consultations with Ward Councillors it is made clear that their views are being sought and that relevant information will be available to them to form a view. A reasonable timeframe for requesting further information and for replies to be made clearly indicated

The meeting concluded at 6.30pm

Signed

Chair

Dated this

day of