

CABINET MEMBER FOR PLANNING, REGENERATION & ECONOMIC DEVELOPMENT

RECORD OF DECISIONS taken by the Cabinet Member for Planning, Regeneration & Economic Development, Councillor Luke Stubbs, at his meeting held on Wednesday, 18 March 2015 at 1.00 pm at the The Executive Meeting Room - Third Floor, The Guildhall

Present

Councillor Luke Stubbs (in the chair)

Councillor Steve Hastings

Officers Present

Robert Parkin, Corporate, Commercial, and Regeneration Team (Manager), Legal Services
Tom Southall, Corporate Asset Manager
Paddy May, Corporate Strategy Manager
Alan Guy-Spratt, Senior Solicitor, Property and Commercial Property
Nick Haverly, Finance Manager
Anne Cains, Senior Valuation Surveyor

12. Apologies for Absence (AI 1)

Apologies for absence were given on behalf of Councillor Ben Dowling, Liberal Democrat Group Spokesperson

13. Declarations of Members' Interests (AI 2)

There were no declarations of members' interests.

The Chair welcomed everyone to the meeting and said he would be happy to receive deputations from members of the public attending in the public gallery without any notice being given.

14. Lease of the Camber to Ben Ainslie Racing Limited (AI 3)

(TAKE IN REPORT)

The Chair invited officers to provide an update concerning the Site Plan attached to the report.

Mr Southall advised that the plan shown was the planning permission plan and indicative of demise to be granted. Site 1 would be smaller than shown, respecting rights of access and would not extend to the quay wall.

Site 2 (the parking area) shown on the map will be managed under agreement by Portsmouth City Council and public parking would be provided outside BAR operation hours.

The Cabinet Member for PRED advised that two deputation requests had been received.

He first requested that the deputation from Mr Feltham be read out and that after each question was put, asked officers to provide an answer.

*S 3.1 - Ben Ainslie Racing Ltd....."to use their **best endeavours** to host the subsequent race in the UK, based in Portsmouth"*

*S 3.4 ss (13) - If BAR wins the America's Cup..."it shall use **all reasonable endeavours** to nominate Portsmouth as the host city ..."*

The comment "to use their best endeavours" and "it shall use all reasonable endeavours" contradict each other and have different legal precedent. My question is which statement is correct?

Regardless of the answer to the question above, the tax payers of Portsmouth should realise that even if BAR win the next America's Cup there is no guarantee that Portsmouth will host the next America's Cup."

The question was answered by Tom Southall who explained that:-

The terms 'best endeavours' and 'reasonable endeavours' are used in different contexts within the report. The terms are used in the context of 'to host' and 'to nominate' which under the governance arrangements of the Americas cup mean different things. Given this arrangement we are content that this gives the City the best possible chance of hosting the event

Question 2

"Have PCC officers satisfied cabinet members that PCC cannot be forced to host the America's Cup event if in fact it is not economic for the city to do so?"

This question was answered by the Cabinet Member for PRED, Councillor Stubbs who said he was aware that the terms of the lease do not commit the Council to host the event.

Question 3

"S 3.4 ss (3) - ".....and the rent for surfaced industrial land will become payable with immediate effect"

This is ambiguous in relation to S3.4 ss (2). Will the rent of £110,000 become payable if BAR ceases its ambition in the first 10 years or will the value of the rent paid be decided on market value at that time, and then become £110,000 once the 10 year period has elapsed ?"

This was answered by Tom Southall who explained that if a cessation event occurs within the first ten years then the rent payable will be equate to the rent for surfaced industrial land. It is only after ten years that the rent passing will be the greater of £110,000 or the rent payable for surfaced industrial land.

Question 4

"S4.2 How has the economic impact been measured? What, that is tangible, is PCC receiving from July's event? ie ticket money etc? Bearing in mind the cost to PCC for general disruption for additional policing, road closures, rubbish collection etc. It must be remembered that the weekend of July 25th/26th would be a busy time for tourists in Portsmouth regardless of BAR."

This was answered by Robert Parkin who advised that Economic impact has been measured by the Council's cultural services department. They note that no revenues are directly received by the Council but that, based on Plymouth's experience in hosting the Americas Cup World Series event, that over £4m of additional secondary/auxiliary spend was made during the event.

This, from the perspective of the Council as landowner, promotes inward investment, which - for a corporate asset holder of the size of the Council - will generally increase the value of its property portfolio.

Question 5

"Has PCC ensured that the deal with regards to the lease to BAR has been valued independently? and if not, why not?"

This was answered by Tom Southall who said that the value has not been assessed by a third party. The deal has been assessed by the Council's valuation department whose individuals are elected members of the Royal Institution of Chartered Surveyors (and Registered Valuers) and are therefore regulated and controlled by this professional body.

Question 6

"6.2 European Commission's State Aid rules. Have the Officers given written assurance to cabinet members that this lease satisfies EC State Aid Rules ? Bearing in mind that central government have gifted £7.5million to the construction of the BAR building and that PCC have paid £1million plus to move previous leaseholders 20 metres. It should also be noted that S3.4 ss (11) (b) " Ben Ainslie Racing will be allowed to charge The Property both in favour of any of its individual Founding Investors and HSBC Bank Plc (or similar bank)." ie to borrow funds against its building. Can these raised funds be used for any purpose regardless of whether they are associated with the America's Cup or not ?"

The first part of this question regarding state aid rules was answered by Robert Parkin who explained that on the basis that the Council's valuer advises that the transaction is on commercial terms for the Council, that is, that the terms are "best consideration in the circumstances" (the requirement under section 123 of the Local Government Act 1972), then there is no state aid to BAR. This relates to the deal itself - not the wider economic impact.

Separately, he explained that on the second question regarding the possibility that the leaseholders could raise a mortgage against the leasehold demise,

this is correct. This is a normal feature of such transactions. Clearly, whether this is financially viable is a matter of risk/benefit for those parties to proceed on the basis of, noting the risks of default/ceasing to trade.

The Cabinet Member then invited Mr Bailey to make his deputation which he did.

Mr Bailey expressed surprise that no mention had been made in the terms of reference about a public right of way across the site. He said that an application had been made on 27 November 2014 for the right of way to be added to the definitive map and wanted the Cabinet Member to confirm he was aware of that and that the lease had been let in full knowledge of the right of way.

Robert Parkin confirmed that ultimately this was a risk for BAR who take the lease subject to any pre-existing rights.

Councillor Stubbs confirmed he was aware of the right of way issue, but that it was not for him to decide on at this meeting.

Robert Parkin explained that the right of way issue would be dealt with in accordance with statutory timeframes against the statutory test.

Councillor Stubbs said that he recognised that this matter was controversial but that the higher of £110,000 or open market rent for surfaced industrial land after ten years would result in an increase in rental income from the site overall compared with the status quo.

DECISION:

That the Cabinet Member agrees:

- (1) The principal terms for the lease to Ben Ainslie Racing Ltd (BAR) as set out in this report**
- (2) The City Solicitor and the Director of Property be authorised to complete all legal documentation in order to give effect to the above recommendation.**

15. Preparations for Developing a UTC (University Technical College) in Portsmouth (AI 4)

(TAKE IN REPORT)

Mr Paddy May introduced the report which sought approval for the disposal of the land where the Hilsea Club is currently sited to facilitate the building of the new University Technical College (UTC) for Portsmouth. He advised that the land will be disposed of via either a freehold transfer for no consideration or a 125 year lease at a peppercorn rent.

In response to a query, it was confirmed that discussions have started with the existing users of Hilsea Youth Club to help ensure that they can access alternative provision.

DECISION:

That the Cabinet Member for Planning, Regeneration and Economic Development agrees

(1) That delegated approval be given to the Director of Property and City Solicitor to conclude either a freehold transfer or the grant of a long lease of the land currently forming Hilsea Youth Club shown cross hatched in black on the plan in Appendix 1 ("the Property") to help facilitate the building of the new UTC for Portsmouth.

(2) That the disposal be to either the Salterns Academy Trust or the UTC Trust as outlined in the report.

That the City Solicitor be given delegated approval to complete the necessary documentation, subject to being satisfied as to terms and any relevant legal requirement.

The meeting concluded at 1.30pm

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Councillor Luke Stubbs
Cabinet Member for Planning, Regeneration & Economic
Development