



## Lewes District Council

### Cabinet

**Minutes** of a Special Meeting of the **Cabinet** held in the **Ditchling Room, Southover House, Southover Road, Lewes** on **Wednesday, 17 February 2016** at 10.00am

#### **Present:**

Councillor A Smith (Chair)

Councillors P Franklin, T Jones, R Maskell, E Merry and T Nicholson

#### **In Attendance:**

Councillor M Chartier (Chair of the Audit and Standards Committee)

Councillor P Gardiner (Chair of the Scrutiny Committee)

Councillor S Osborne (Leader of the Liberal Democrat Group)

Ms D Twitchen (Tenants' Representative)

#### **Apologies received:**

Councillor B Giles

Ms D Tideswell (Tenants' Representative)

### Minutes

#### **63 Declarations of Interest**

Councillors Chartier and Gardiner declared their personal, non-prejudicial interests in Agenda Item 6.1 (New Homes Project Contractual Matters).

#### **64 Public Question Time**

A written question had been submitted to the Leader of the Council, Councillor Smith, by Mr Peter Calliafas on the following subject, copies of which were

#### Action

circulated to Councillors at the meeting and made available to the public attending the meeting (a copy of which is contained in the Minute Book). An oral reply to the question was given at the meeting by Councillor Smith.

Questioner

Question Concerning

Mr Peter Calliafas

In light of the details set out in Report No 30/16 relating to the New Homes Project Contractual Matters, the previous concerns that had been expressed by the local community and the wider issues that subsequently arose therefrom, what lessons would the Leader of the Council take away from today's Special Meeting of the Cabinet to ensure that there was not a repeat similar occurrence in the future?

**65 New Homes Project Contractual Matters**

The Cabinet considered Report No 30/16 which provided an update in respect of the contractual position relating to the New Homes Project with Karis Developments Limited and Southern Housing Group Limited. Furthermore, it invited Cabinet to determine whether, on the basis of the non-satisfaction of the title and ground conditions on key sites, the Conditional Sale Agreement and the Profit Share and Project Management Agreement should be terminated.

The key purpose of the Project was to raise sufficient funds to allow the Council to build in excess of 150 Council homes across the District. It was also to bring regenerative benefit to sites such as Robinson Road, Newhaven and, potentially, the Buckle, Seaford.

The intention was to gain residential planning permission on all sites and to sell the highest value sites to Southern Housing Group for 100% private market housing (Phase 1a sites) and to sell the smaller sites on the open market for 100% private market housing (Phase 2 sites). That would maximise the capital receipt and allow the Council to build out 100% affordable council homes on a third group of sites which the Council would retain (Phase 1b).

Prior to entering into binding Agreements, the Council had prepared high level Reports on Title on each site and had shared these with the other parties. They had identified the existence of covenants and other restrictions on sites. The parties had not been prepared to undertake the work and expense of carrying out ground condition surveys and detailed title investigations until such time as a binding agreement was in place.

Formal contracts had been signed with Karis Developments Limited and Southern Housing Group Limited in July 2015. The contractual arrangements recognised that there was an amount of due diligence to be undertaken before the parties could properly work up and submit planning applications. The contractual arrangements therefore gave all parties a period of five months from the date of signing, (ie until 30 December 2015), to satisfy themselves as to the ground conditions of, and the title relating to, each individual site.

The contract documents had identified two particular sites namely, the Buckle and Normansal Park Avenue, as being “key” sites within the Project because they would yield the highest capital receipts. Karis Developments Limited had maintained that whilst the Project would remain financially viable if one or other of those sites failed for whatever reason, the Project would not remain viable if both of the sites had failed.

The sites had been packaged into two “Waves” within the contract documents, in order to reflect the two different planning authorities which would determine each bundle of planning applications. The first Wave had included the Buckle whilst the second Wave had included Normansal. The contract provided that, in the event that the Buckle failed for whatever reason, any party could, by notice, terminate the Project insofar as it related to Wave 1; if Normansal failed any party could do the same for Wave 2. If both the Buckle and Normansal failed then any party could, by notice, terminate the Agreements and thereby the whole Project.

The Agreements had imposed a duty on all parties to serve notice on their partners by no later than 30 December 2015 stating whether or not they were satisfied as to the ground condition and title on each site. Paragraphs 12 and 13 of the Report set out details relating to the investigations that had been undertaken by the Council in respect of the title difficulties on the Buckle in that there was a covenant that restricted building height which, independent barristers had advised, was robust and likely to be uninsurable.

The Council’s due diligence, that was backed by a barrister’s report which had been shared with the other parties, showed there to be similar difficulties with restrictions on the Normansal title. Whilst it was possible for the Council to seek to resolve such issues, it would take time and expense, and there was no obligation on the Council to seek to do so.

The Council’s Director of Service Delivery explained that in light of the title difficulties on the Buckle and Normansal sites the Council had considered whether it was able to provide any substitute site or sites for those properties but that examination of its landholdings showed that there were no suitable alternative sites.

In accordance with the requirements of the Conditional Sale Agreement, the Council had served notice on Southern Housing Group Limited and Karis Developments Limited on 22 December 2015 stating that neither the title condition nor the ground condition were satisfied in relation to the Buckle or Normansal. That notice had also set out the title and ground condition position on all other sites as at that date, further details of which were set out in Appendix 1 to Report No 30/16. Service of the notices did not terminate the Agreements but gave the Council the right to serve further notices after 30 December 2015, the effect of which would be to terminate the Agreements.

Discussions had taken place between the Council and its contractual partners. Southern Housing Group was in agreement with the Council’s view on the current position and understood and accepted that the work undertaken by it to date was at its own risk. It believed that the best course was to terminate the current contractual arrangement. Karis Developments Limited has proposed that the parties should vary the Agreements so that the parties continued without the sale and development of the two key sites and instead pursued the

sale, with planning permission, of the smaller Phase 2 sites. However, that was a significant change and would not allow the Council to receive the level of capital it had expected to invest in Council homes.

To achieve the maximum number of affordable homes, the Council needed to reconsider its options afresh, further details of which were set out in paragraphs 19 to 23 of the Report. Furthermore, given the changing legislative landscape, the Council needed to think carefully about what the impact of the Housing and Planning Bill might be, and as such, officers would report back on the most viable option for pursuing the site at Robinson Road as quickly as possible.

In response to questions at the meeting, the Director of Service Delivery explained the amount and nature of costs spent to date by the Council on this project and the availability of grant funding.

Resolved:

- 65.1** That the Conditional Sale Agreement and the Profit Share and Project Management Agreement dated 30 July 2015 which are in place between the Council, Karis Developments Limited and Southern Housing Group Limited, be terminated in accordance with the provisions set out in paragraphs 3.4.3 and 4.3.3 of the Conditional Sale Agreement.

DSD

Reason for the Decision:

The contractual arrangement entered into by the Council with Karis Developments Limited and Southern Housing Group Limited cannot continue as originally intended because of the non-satisfaction of the title and ground conditions on key sites, which became apparent during the course of due diligence. The Council therefore needs to re-evaluate its position and determine the way in which it wants to proceed. The position in which the parties now find themselves is one which was envisaged, at least as a possibility, by the Conditional Sale Agreement. In the current circumstances the Agreement permits any of the parties to serve notice on the others terminating both the Conditional Sale Agreement and the Profit Share and Project Management Agreement. The consequence of such termination is that each of the parties must walk away from the Agreements bearing their own costs to date.

*(Note: Councillors Chartier and Gardiner declared their personal, non-prejudicial interests in this item as they were Members of the New Homes Project Working Group which had been established in order to review and learn any lessons from the management of the New Homes Project. However, they were not voting Members of the Cabinet).*

**66 Appointments to Serve on Outside Bodies**

The Cabinet considered the proposed appointment of some Member representatives to serve on some Outside Bodies.

Resolved:

- 66.1** That the appointment of the following member representatives to serve on the following Outside Bodies be confirmed:

ADCS/  
HDS

iESE Transformation Ltd – Councillor E Merry to be appointed as a substitute representative (Councillor A Smith remains as a representative in his capacity as Leader of the Council);

Community Safety Partnership – Councillor T Nicholson to act as Chair (instead of Councillor E Merry who is currently appointed as Chair. Councillor Merry remains as a representative alongside Councillor Nicholson);

Team East Sussex – Councillor A Smith to be appointed as representative (this is a new body which Councillor Smith attends in his capacity as Leader of the Council);

Coast to Capital – Councillor A Smith to be appointed as representative (this is a new body which Councillor Smith attends in his capacity as Leader of the Council); and

Supporting People Strategic Forum – Councillor R Maskell to be appointed as representative (this is a new body which Councillor Maskell attends in his capacity as Cabinet Member for Housing).

The meeting ended at 10.28am.

A Smith  
Chair