



Scrutiny Committee

Minutes of a meeting of the **Scrutiny Committee** held in the **Ditchling Room, Southover House, Southover Road, Lewes**, on **Thursday, 9 November 2017** at 10:00am

Members Present:

Councillors P Gardiner (Chair), S Adeniji (Minutes 1 – 5), L Boorman, B Bovington, J Carter, N Enever, V Ient, R O’Keeffe (MBE), S Osborne (Minutes 1 - 7), J Sheppard

Officers Present:

B Bix, Committee Services Lead (Minutes 1 – 7)

J Harper, Head of Business Planning and Performance

N Hussain, Director of Regeneration and Planning (Minutes 1 - 4)

S Jump, Head of Finance (Minutes 1 - 4)

M McDevitt, Performance and Programmes Lead (Minutes 1 - 5)

M Reynard, Senior Lawyer, Corporate Services (Minutes 1 - 4)

P Taylor, Strategy and Partnerships Lead for Thriving Communities (Minutes 5 - 7)

H Williams, Policy & Engagement Coordinator (Minutes 1 – 6)

J Victory, Scrutiny Officer

In Attendance:

J Knight, Chief Financial Officer, MAS REI (Minutes 1 - 4)

Councillor S Catlin, Lewes District Council

Councillor E Merry, Lewes District Council

Also Present:

5 members of the public (Minutes 1 – 4)

Minutes**Action****10 Minutes**

The minutes of the meeting held on 14 September 2017 were approved as a correct record and signed by the Chair.

11 Apologies for Absence/Declaration of Substitute Members

Apologies for absence had been received from Councillors J Harrison-Hicks, J Peterson and C Sugarman.

Councillor L Boorman declared that she was acting as substitute for Councillor C Sugarman for the duration of the meeting.

Councillor J Sheppard declared that he was acting as substitute for Councillor J Peterson for the duration of the meeting.

12 North Street Quarter Due Diligence Report - Written QuestionsQuestioner Question/Response

Councillor
Carter

Question 1a:

How Lewes District Council justified considering Artisan-Rei given:

- a) Their link to fraudulent schemes and the former director Lukas Nakos' alleged involvement in financial mismanagement?

Response by M Reynard:

Legal opinion was sought in the context of a contract with a corporate entity, and therefore covered the relevant legal issues. The opinion was therefore related to the corporate entity itself (MAS REI), and not the individual directors and officers of the company. This was because any contract would be entered into with the corporate entity, rather than individual directors and officers.

Response by J Knight:

MAS REI announced on 17 October 2017 that Lukas Nakos would stand down as a director and CEO of the business on 31 December 2017.

MAS REI and Artisan REI were now separate entities, with separate executive teams. Lukas Nakos and Malcolm Levy were directors of a management company called Salt Properties Limited, which had sold all of its shares in Artisan REI Limited prior to 1 July 2017.

The alleged actions which were the subject of the proceedings in the Isle of Man, all took place prior to Lukas Nakos' involvement with Artisan REI and MAS REI, and that Lukas was instrumental in raising concerns with the Isle of Man authorities as a "whistle-blower".

Supplementary Question by Councillor Carter:

Could the witnesses provide further reassurance that Lukas Nakos would have no involvement with Artisan REI or MAS REI?

Response by J Knight:

Councillors could be assured that Lukas Nakos would have no continuing involvement with the management of either business.

Councillor
Carter

Question 1b:

How would Lewes District Council justify considering Artisan REI given:

- b) Their lack of experience on residential/domestic developments?

Response by M Reynard:

MAS REI is an investor and landowner; it was funded and facilitated through obtaining planning consents for various developments in the UK, such as: New Waverley, Edinburgh,

Langley Park, Chippenham and North Street Quarter, Lewes.

Mixed-use developments were a specialist activity, and as such MAS REI, as the landowner, in conjunction with Lewes District Council, would seek to bring on board a developer to build out sequentially the three phases at North Street Quarter. Construction work had started at the related Malling Brooks site, to facilitate the relocation of some commercial occupiers from the North Street Quarter site. This was a light industrial development and was undertaken directly by MAS REI.

The development at New Waverley, Edinburgh was owned and funded by MAS REI and had been developed by Artisan REI under a development management agreement. This was a highly successful development, which had delivered financial return alongside the regeneration of a run-down city centre plot, and the retention of several important historical building elements, which included: the Cannon Ventures listed building and the listed façade of the new Adagio hotel. The retention of these features had involved considerable cost and professional skills to incorporate them into a wider successful project which formed part of a UNESCO World Heritage Site. The New Waverley Scheme had won 4 major property awards in the last 18 months, the most recent of which was awarded on 2 November 2017 by the Royal Institution of Chartered Surveyors, for being the UK's Best Regeneration Project in 2017 – these awards reflected the level of work and consideration that was given to incorporating a profitable scheme within a very closely controlled and sensitive part of Edinburgh City Centre.

New Waverley was a mixed-use scheme, but there was no light industrial accommodation, as implied in the question. Three hotels had already been completed and were operating. 28 retail units had also been completed and in excess of 20 were occupied. 190,000 sq. feet of offices had been pre-let to the UK Government and construction had started on site. The wider scheme also involved 40 affordable homes, which were delivered in 2015 and the construction of up to 153 residential apartments, which were likely to start during the first half of 2018.

The New Waverley project was comparable to the North Street Quarter project in terms of the challenges of delivering a development in a sensitive and historical location.

Councillor
Carter

Question 2:

Why did it state in MAS REI's 2017 Annual Report that the North Street Quarter Site would be disposed of in 2018?

Response by J Knight:

MAS REI divided its investment portfolio into three categories; income generating, development and landbank.

MAS REI was a landowner and enabler, rather than a direct developer for this type of mixed-use project. The reference to a disposal by MAS REI in 2018 of North Street Quarter referred to a disposal of phase 1 of North Street Quarter out of the "landbank", and either into the "development" category within MAS REI, or to a third party developer – both with the intention of starting to deliver the North Street Quarter project in 2018.

There was no intention to dispose of the whole site in 2018. It was MAS REI's view, as landowners, that the best outcome for all stakeholders would be a phased development. Those plans involved appointing a developer for phase 1 to unlock the site, progressing this through 2018 and gaining clarity on a disposal strategy for the rest of the site once development of phase 1 had progressed.

Councillor
Carter

Question 3:

How confident were Lewes District Council, that MAS REI could raise the anticipated finances for the construction and development of phase 1?

Response by N Hussain:

The developer would be responsible for raising the finances to deliver phase 1 (and all phases) not MAS REI. MAS REI was the joint landowner, along with Lewes District Council. MAS REI would appoint, on terms agreed by the Council, a developer to deliver the North Street Quarter scheme. It would be the developer's responsibility to raise the finances.

The landowners, Lewes District Council and MAS REI, were reviewing the cost plan for the development as part of finalising

the Land Collaboration Agreement (LCA). They would need to reach an agreed position on what they expected to achieve in terms of the costs and benefits of the scheme, before they entered into an agreement with a developer.

It would be commercially inappropriate to make a cost plan publicly available. This was because the developer would be expected to provide its own cost plan as part of its proposal to deliver the scheme. The landowners would then assess this against their own expectations of costs / benefits, in order to understand if the scheme was commercially viable for them to progress.

The Council were aware that future changes in the market could impact upon the costs and financial returns of the North Street Quarter development. Lewes District Council continued to retain specialist financial and commercial advice on the North Street Quarter scheme. This informed our ongoing discussions / negotiations with our landowner partner MAS REI.

Supplementary Question by Councillor Carter:

Could it be further explained why Report No 128/17 that went to Cabinet on 27 September 2017, mentioned the potential future decisions of Lewes District Council with regard to the lending of construction finance for the North Street Quarter project?

Response by N Hussain:

The Council had commissioned its own independent cost appraisal of the NSQ scheme. This would inform its decisions about which assets it will seek to retain from the NSQ scheme in order to generate a recurring revenue stream.

Councillor
Carter

Question 4:

What justification could Lewes District Council give for avoiding the public sector requirement to go out to tender?

Response by M Reynard:

The Council was not avoiding a public sector requirement to go out to tender.

The Council was using the “exclusive rights” exemption under regulation 32(2)(b) of the Public Contracts Regulations 2015 and article 32(2)(b) of EU Directive 2014/24/EU. Under this exemption the Council could use the negotiated procedure without advertisement, to award a works contract. A direct award of contract could be made to North Street Quarter Ltd without issuing an Official Journal of the European Union notice and running a tender process.

Advice on the use of the “exclusive rights” exemption was set out in the report to Cabinet on 7 January 2016. This included the recommendation that the Council publish a Voluntary Ex Ante Transparency Notice in OJEU setting out its intention to use the exclusive rights exemption, such notice to be published before completing the joint venture agreement. Cabinet agreed to the publication of a Voluntary Ex Ante Transparency Notice.

Supplementary Question by Councillor Carter:

Would the Council not be offering Best Value to residents by going out to tender?

Response by N Hussain:

The majority landowner was MAS REI, and therefore the Council could not go out to tender without their agreement. The Council would act in accordance with Section 123 of the Local Government Act 1972.

Councillor
Carter

Question 5:

Why was the deadline date that North Street Quarter Ltd must supply the due diligence information on Artisan REI Ltd, exactly the same date that Artisan REI Ltd must be appointed by - i.e. 31 December 2017?

Response by N Hussain:

The timeline set out in Appendix 1 was the timeline that was reported to Cabinet on 27 September 2017 – as a draft.

This draft timeline was driven by the planning permission for the scheme which would expire in May 2019. The deadlines / dates were flexible and would change as work to finalise the

Land Collaboration Agreement progressed.

The dates provided meant 'by' - so the 31 December date on the diagram meant the date by which officers would aim to make a decision.

The Council would need to receive and consider the due diligence information on Artisan REI in advance of making any decision to appoint them as phase 1 developer.

Councillor
Carter

Question 6:

Paragraph 18 mentioned that "North Street Quarter Ltd owned a major part of the site and would not agree to anyone else carrying out the development" - did the Land Collaboration Agreement overrule that statement?

Response by M Reynard:

Paragraph 18 of the Report explained that, in public procurement terms, the "exclusive right" to undertake the development could fall to North Street Quarter Ltd. In order for rights as a landowner to constitute exclusive rights, it is necessary that the landowner would not agree to anyone else constructing the development. North Street Quarter Ltd had confirmed that it would not allow anyone else appointed through a public sector procurement process to construct the development, thus satisfying the lack of agreement element of the exclusive rights test. This did not stop North Street Quarter Ltd from appointing a development partner to construct the development.

The Land Collaboration Agreement would set out the framework within which the two partners would work together to deliver the North Street Quarter development. It would not overrule North Street Quarter Ltd's right not to agree to anyone else constructing the development. If it did take away that right, the resulting direct award of contract to North Street Quarter would be in breach of public sector procurement rules.

Councillor
Carter

Question 7:

Why were there no witnesses from Artisan REI Ltd or from North Street Quarter Ltd?

Response by N Hussain:

North Street Quarter Ltd was a subsidiary of MAS REI, and therefore Jonathan Knight was the appropriate person to answer questions on behalf of the landowner.

As Appendix 1 set out, the proposed route would look to appoint Artisan REI for the delivery of phase 1 of the scheme. This was subject to the Council, and indeed both landowners, being satisfied that Artisan REI was able to carry out the development in line with the planning permissions and had the financial resources to do so. Appendix 4 (Clause 8) set out a comprehensive list of matters that would need to be satisfied to ensure that Artisan REI could be appointed. Furthermore, the Council would undertake additional due diligence on Artisan REI prior to appointment.

Therefore, it was not appropriate for a representative of Artisan REI to be present at the Scrutiny Committee meeting, as the landowners had not yet appointed Artisan as the developer. As the Cabinet report set out, officers would report back and consult the North Street Quarter Member Oversight Board before the appointment of Artisan REI. If Artisan REI was not appointed, the alternative delivery route indicated that the landowners would take the site to the open market to appoint a developer.

Councillor
Carter

Question 8:

The alternative delivery route said that the deadline to select a preferred alternative bidder was 31 April 2018. But it would only be known by 31 March 2018 if the original delivery route had failed to meet the agreed deadlines. Could this timeline be verified?

Response by N Hussain:

The draft timeline at Appendix 1 anticipated that the landowners would know whether they would appoint Artisan REI as developer for phase 1 by 31 December 2017. At this point they would know if they would go to the market for an alternative bidder. The landowners anticipated that they would be in a position to select a preferred bidder by 31 April 2018,

but further consideration would be given to this timeline nearer the time.

Councillor
Carter

Question 9:

In the event of the alternative delivery route being taken, could Lewes District Council reassure Members that there would be opportunities for proper democratic oversight of this process?

Response by N Hussain:

There would be no 'loss of control' in terms of the market route. Lewes District Council would require that the scheme was delivered in accordance with the planning permission that had been granted, and that it would meet the Council's agreed objectives (as agreed by Cabinet on 24 April 2014) which were:

1. Achievement of the policy target of 40% affordable housing as far as possible in partnership with a Registered Provider
2. Maximisation of a return through a recurring revenue stream
3. Up to 40,000 sq. ft of commercial floor space including cultural quarter, retail and a health facility
4. Extra care housing; and
5. Improved public realm and improved connectivity with the town

Officers would continue to update Members throughout the North Street Quarter project, through Cabinet reports and the North Street Member Oversight Board as appropriate. The Cabinet Report of 27 September 2017 set out the proposed and alternative delivery routes that would be followed. Officers would report back to Cabinet on the results of the joint marketing of the site.

13 North Street Quarter Due Diligence Report

Upon the conclusion of the Written Questions, the Scrutiny Committee considered Report No 158/17, to review the North Street Quarter (NSQ) due diligence undertaken by the Council to date. Members noted that some questions were not able to be answered as they were of a commercially sensitive nature.

Members' discussion included:

- Whether precautions were in place, should the North Street Quarter project be deemed not commercially viable in the future, and at what

point would the Council become aware of any such issues.

- That there may have not been enough information provided to be able to effectively carry out thorough democratic oversight of the due diligence process.

Officers responded that:

- Members were reminded of the alternative delivery route set out at Appendix 1 of the Report. In addition to that, both landowners had professional advisors who would offer assurance that the provisions of Section 123 of the Local Government Act 1972 would be discharged, and inform officers of any such issues should they arise.
- As an additional way for Members to carry out democratic oversight of the due diligence, the Director of Regeneration and Planning would look into the possibility that the conclusions of the North Street Quarter Oversight Board be sent confidentially to all Councillors.

DoRP

The Chair moved and Councillor lent seconded, and upon a show of hands, the Committee

Resolved:

- 13.1** That the Scrutiny Committee be satisfied with the due diligence undertaken to date on the North Street Quarter Development Partner; and that the Director of Planning and Regeneration, in consultation with the North Street Quarter Members Oversight Board, note the views of the Committee prior to making the decision to appoint the Development Partner.

Reason:

To discharge Cabinet resolution 22.2 of 27 September 2017, that the Scrutiny Committee be invited to conduct a review of the due diligence to date of the North Street Quarter Development Partner.

14 Portfolio Progress and Performance Report 2017/18 – Quarter 2 – (July – September 2017)

The Scrutiny Committee considered Report No 159/17 which set out details of the Council's progress and performance in respect of key projects and targets for the second quarter of 2017/2018.

Members' discussion included:

- Whether the Head of Housing could attend a future meeting of the

HoH

Scrutiny Committee and provide an update to Members with regard to:

- The increase in homelessness
 - How the incorporation of Lewes Housing Investment Company Ltd would benefit the community
 - An estimated completion date for remedial works at the flats on Pelham Road
- Whether there was any indication of a link between 'The average working days lost due to sickness per FTE equivalent staff' and the Joint Transformation Project.
 - Clarification regarding the Joint Venture target project completion date of April 2037. PPL
 - Clarification regarding the Newhaven Enterprise Zone target project completion date of March 2042. PPL
 - If it would benefit the Council to release a statement concerning recent problems relating to other local green waste service providers.

Officers responded that:

- The Head of Housing would be invited to attend the next meeting of the Scrutiny Committee on 18 January 2018. HoH
- There had been no increase in stress related sicknesses reported. Members were also reminded that the Assistant Director of Human Resources and Organisational Development would be presenting a report at the next Scrutiny Committee meeting on 18 January 2018 to address those matters further. Assis. Direc HR & OD
- With regard to the end dates of some of the projects in the Report, the Performance and Programmes Lead would respond to Members directly. PPL
- With regard to other garden waste collection services operating locally, officers stated that they would respond to Members directly. DSD

Resolved:

- 14.1** That Report No 159/17 be noted.

Reason:

To demonstrate the discharge of the Scrutiny Committee function to monitor all aspects of performance management activities as required by Part 3 section 2.2 (7) of the Constitution of the Council.

15 Annual Lewes District Community Safety Partnership Report

The Committee considered Report No 160/17, which:

- Enabled the Committee to scrutinise the current performance of the Lewes District Community Safety Partnership (LDCSP)
- Outlined future issues that may impact crime and anti-social behaviour (ASB) performance
- Enabled the Committee to scrutinise the proposed Community Safety Plan for 2018/19
- Enabled the Committee to endorse the formal merger of the Eastbourne and Lewes District Community Safety Partnership, subject to consultation with partners and approval from the Police and Crime Commissioner

Members' discussion included:

- Whether the reduction in visible Police Community Support Officers had an impact on Lewes' crime statistics.
- A request for clarification regarding the £21,900 per annum funding which Lewes District Community Safety Partnership had received from the Police and Crime Commissioner over the last five years, as Members recalled a 'reserve' of money which was available to various schemes throughout the year.
- A request for whom to contact with regard to reporting various issues in the community, such as; finding needles, rough sleepers and the reporting of general anti-social behaviour.

Officers responded that:

- Officers indicated that it would not be possible to say what effect the changes in neighbourhood policing would make on crime levels. Officers noted that the new Neighbourhood First teams to be set up in Lewes in the New Year would provide a visible presence that may assist with community reassurance, in addition to the role played by the police.
- Aside from the £21,900 per annum, Lewes District Council had a small reserve of funds which could be used for additional funding.
- Details of whom to contact with regard to the community safety issues would be circulated to all Councillors as requested after the meeting.

Resolved:

- 15.1** That the achievements and activities of the Lewes District Community Safety Partnership during 2016/2017, as well as the future risks/opportunities to performance, be noted.
- 15.2** That subject to the inclusion of reference to stakeholders, the Committee endorses, and recommends to Cabinet, the Community Safety Action Plan for 2018/2019.
- 15.3** That the completion of the Eastbourne and Lewes District Community Safety Partnership 'Soft Merger' and endorsed the full merger of the two Partnerships, be noted.

Reason:

For the Scrutiny Committee to fulfil its duties to review decisions and actions by responsible authorities in connection with the Council's crime and disorder function, as required under the Police and Justice Act 2006.

16 Equality and Fairness Report

The Committee considered Report No 161/17, which set out the proposed Equality and Fairness Policy, and joint governance procedures with Eastbourne Borough Council.

Members' discussion included:

- Since the 'Equality and Fairness Policy was the responsibility of all Councillors' – it would be beneficial for Councillors to have some involvement in the analysis before the policy was finalised.
- A request for clarification with regard to how Lewes District Council ensures that contractors/partners comply with the Council's Equality and Fairness Policy.
- Appreciation that, in Lewes District, the Equality and Fairness Policy included socio-economic status as a category for consideration, although not a protected characteristic in law.

Officers responded that:

- The reason for this Report was to provide Members of the Scrutiny Committee with the opportunity to have input in the policy before it went to Cabinet.

PEC

- A standard letter was sent to all contractors/partners, prior to the signing of any contracts, which set out the Council's Equality and Fairness Policy and indicated the need to comply.

Resolved:

- 16.1** That the Committee endorse the proposed shared Equality and Fairness Policy proposals for a Steering Group to review and validate the Equality and Fairness Analysis, which would be presented to Cabinet on 13 November 2017.
- 16.2** That the Committee endorse the proposal to extend the Council's current Equality Objectives pending the development and consultation on new objectives shared with Eastbourne Borough Council.
- 16.3** That the Committee endorse the proposed joint governance and procedures for overseeing the Council's delivery of its public sector Equality Duties to be shared with Eastbourne Borough Council.

Reason:

For the Scrutiny Committee to fulfil its duties to review decisions and actions by responsible authorities, as required under the Equality Act 2010.

17 Scrutiny Work Programme 2017/18

The Committee considered Report No 162/17, which set out in-year variations to the Annual Scrutiny Work Programme for the forthcoming year.

Resolved:

- | | | |
|-------------|--|--------------|
| 17.1 | That Councillor lent, along with any other members of the Scrutiny Transport Panel that wished to, liaise with officers directly to determine a realistic and effective scope for the Transport Panel. Members of the Transport Panel would then report back to the Scrutiny Committee at its next meeting on 18 January 2018. | All to note. |
| 17.2 | That the appointments to the Affordable Workspace Panel, be Councillors Adeniji, Carter, lent and O'Keeffe MBE. The first meeting date would be confirmed after consultation with the Panel. | SO |
| 17.3 | That the Full Council motion regarding the Uckfield to Lewes railway line be deferred for consideration until the next Scrutiny Committee on 18 January 2018. | SO |

Reason:

To enable the Scrutiny Committee to vary its Work Programme, in accordance

with Part 4 Rule 7 (c) of the Constitution of the Council.

18 Forward Plan of Decisions – 1 November 2017 – 28 February 2018

The Committee received the Forward Plan for the period from 1 November 2017 – 28 February 2018.

Resolved:

- 18.1** That the Forward Plan for the period from 1 November 2017 – 28 February 2018, be noted.

Reason:

To demonstrate the discharge of the Scrutiny Procedure Rule 9 (d) to have regard to the Forward Plan of Decisions.

19 Date of Next Meeting

Resolved:

- 19.1** That the next meeting of the Scrutiny Committee scheduled to be held on Thursday, 18 January 2018 in the Ditchling Room, Southover House, Southover Road, Lewes, commencing at 10:00am, be noted.

All to note.

The meeting ended at 12:40pm.

P Gardiner
Chair