

RENEWAL, RECREATION AND HOUSING POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Minutes of the meeting held at 8.30 am on 6 October 2020

Present:

Councillor Michael Rutherford (Chairman)
Councillor Suraj Sharma (Vice-Chairman)
Councillors Gareth Allatt, Julian Benington, Kim Botting FRSA,
Alexa Michael, Gary Stevens and Angela Wilkins

Also Present:

Councillors Vanessa Allen, Graham Arthur, Kathy Bance MBE,
Yvonne Bear, Ian Dunn, Peter Morgan and Kieran Terry

15 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

An apology for absence was received from Councillor Josh King; Councillor Angela Wilkins attended as substitute.

16 DECLARATIONS OF INTEREST

No declarations of interest were received.

17 QUESTIONS FROM COUNCILLORS AND MEMBERS OF THE PUBLIC ATTENDING THE MEETING

The Chairman thanked members of the public for the questions received. Normally, only two questions per person was permitted however, on this occasion, due to the importance of the subject to be discussed, the Portfolio Holder had responded to all.

A total of 140 questions were received and these, together with the Portfolio Holder's responses can be viewed via the following link:- [RRH PDS 6th Oct 2020 - Questions and Replies](#). The Chairman invited supplementary questions to be submitted for the Portfolio Holder's response.

The Portfolio Holder also made the following statement:-

'Chislehurst Library plays an important part in the overall library delivery strategy and it is envisaged that this will continue over the long term. The proposed redevelopment of the library has been known about for many years. Potential developers had previously held public meetings in December 2013 and Ward Members have updated the community via their own messaging and to the Chislehurst Society.'

The decision to originally dispose of the library was made by the Executive in September 2014 as a Part 2 Decision.

The Executive agreed at its meeting in September 2014 that Chislehurst Library, together with the adjoining pay and display car park, should be marketed, on the basis that a replacement library would have to be provided as part of the consideration for the site.

The current library is poorly laid out, leading to access issues. It is also significantly dated in its appearance. A development opportunity allows for the provision of a new library of equivalent size, but constructed with modern materials, which will reduce the Council's long-term maintenance and revenue running costs.

Experience elsewhere has shown that where libraries are renovated, and improved, use significantly increases and remains higher than prior to any improvement works.

Following that decision, the library was marketed, and a successful bidder was identified. However, whilst it would not be appropriate to discuss the commercial affairs of another party, it is safe to state that it was not possible to conclude a Development Agreement with that party due to a lack of clarity on fundamental parts of the agreement which would have left uncertainty as to funding, deliverability of the scheme and as to what the actual scheme was going to be as there was no clarity as to whom the commercial third party occupier would be.

The decision was therefore taken last year to re-market the site on the open market on the same basis but seeking clear information from bidders so that certainty could be provided to the Council on deliverability of any scheme. The recommendation based on the outcome of that marketing exercise is the subject of the Call In we are discussing today.

Let me be clear, the purpose of selling this building is to create a new library on the same site as part of a wider development. Therefore, the local community benefit from a new library at no cost to the Council. In addition, the community will benefit from a new medical facility.

In terms of the process, this is the same for all surplus property sold by the Council. A report is submitted to the relevant PDS committee and then to the Executive and if approved, the property is then marketed. The officers, their advisers and the relevant Portfolio Holder analyse the bids and usually after a second stage round a buyer/developer is selected and a further Part II report is submitted making a recommendation to proceed with one party. This is always within Part II as the bids made by different organisations are commercially confidential. This completely normal process has been followed in this case.'

Committee Member and Ward Member Councillor Sharma asked what the impact had been on other libraries following redevelopment. The Portfolio Holder reported that public use had increased at all redeveloped sites.

Councillor Sharma also asked what members of the public could expect to see during the consultation process. The Portfolio Holder stated that consultation would take place during the planning application process by way of public exhibitions in relation to the proposals. Information would also be made available on the Council's planning website. All questions received would be responded to.

The Portfolio Holder confirmed that following a review of the three bids shortlisted for consideration, only two of the proposals were deemed viable and from those, the highest bidder had been selected.

The Portfolio Holder also confirmed that the Development Agreement would provide appropriate guarantee mechanisms in the form of Collateral warranties and Step In rights in the unlikely event that the selected developer was unable to deliver the proposed scheme.

18 CALL-IN: REDEVELOPMENT OF CHISLEHURST LIBRARY

On 17 September 2020, the Leader published a statement of decision in respect of the Redevelopment of Chislehurst Library (and the disposal of Land at 36 Vinson Close, Orpington). The report (a part 2 document) had previously been scrutinised by this Committee at its meeting on 2 September 2020 and was available for scrutiny by Executive, Resources and Contracts PDS Committee on 10 September 2020. After pre-decision scrutiny and consultation with other members of the Executive, the Leader decided to approve the proposals as recommended in the report.

The decision on Chislehurst Library had been called in by Councillors Angela Wilkins, Ian Dunn, Vanessa Allen, Kathy Bance, Kevin Brooks and Josh King, and other members of the Labour Group. This Committee was requested to consider what action should be taken in response to the call-in of the decision; the options were to refer the decision back for re-consideration or to take no further action on the call-in, in which case the decision could be implemented without further delay.

Visiting Member Councillor Ian Dunn said the decision was called-in on the basis of lack of best value and lack of scrutiny and transparency. The Part 1 report named the developer and stated that the development would include a medical centre. There was no doubt that every word in the paper had been checked by the Council's lawyers. Councillor Dunn asked why the report had not been published before the meeting of the RR&H PDS Committee on 2 September as publication would have facilitated a well-informed public debate.

Discussion at the Executive Resources and Contracts PDS Committee meeting did not cover the merits of the proposal and the Minutes of that meeting contained nothing about supporting the proposal.

Councils had a transparent objective process for balancing price and quality when awarding contracts to give best value. This protected both sides with bidders having a level playing field and the Council getting assurance that it was obtaining best value. The Council sets out its requirements at the start and end of the process with the best value bid being appointed. While this process was not mandatory for selling land, it did represent best practice but was not followed in this case. There was no Committee paper setting out the Council's requirements and no objective method for balancing those requirements with the price obtained.

Councillor Dunn was under the impression that the scheme would involve a supermarket and flats. He was therefore surprised to learn that while two of the three bids related to a supermarket and flats, the third involved a medical centre and was the winning bid even though it was 30% below the highest bidder. Councillor Dunn asked where the idea of a medical centre came from and why only one bidder included a medical centre. The proper way to get best value was to ask all bidders to provide the same thing.

He asked if it was reasonable for the Council to subsidise the provision of GP services.

Councils had the legal power to accept a lower bid for the sale of land in specific circumstances but just because a decision was legal, it did not make it right and this was not the usual way Bromley Council dealt with money.

Councillor Dunn was due to attend a special meeting of the Environment Committee to scrutinise a proposal to cut staff in the Road Safety Team due to the interruption to TfL funding because of Covid. That meeting had now been postponed while negotiations continued but the threat of redundancy had not gone away. There was a massive inconsistency in the Council being prepared to make valuable Road Safety Staff redundant to save money while at the same time accepting a lower bid for a piece of land.

Recommendation 2.4 advised that the fit-out cost of the new Library was estimated at £1 million which was not much less than the sum to be obtained from the sale to Prime which led Councillor Dunn to question why the proposal was going ahead at all.

An informal public consultation carried out earlier in the year was reported on Facebook. It received 924 responses which proved that the Library was popular. Just under half the respondents thought the Library added to the Chislehurst street scene with less than a fifth believing it should be replaced with a brand new building.

Councillor Dunn considered the proposals to be somewhat risky and would not deliver best value to Bromley Council. He urged Members to refer the matter back to the Executive for reconsideration.

Visiting Member Councillor Allen had seconded the call-in by Members on the basis of lack of transparency, scrutiny and public consultation.

Councillor Allen stated that the original report was a Part 2 document considered at the RR&H PDS Committee meeting held on 2 September 2020. Although the decision was made during the Part 1 discussion, there was no mention of the named developer or the proposed use for the site.

The proposal to redevelop had previously been included in the RR&H Portfolio Plan and the Council's Forward Plan but was absent from both during the summer period.

With public decisions on redevelopment of the site being made several times, Councillor Allen questioned why those agreements had failed.

Councillor Allen stated that the current report should have been presented to the RR&H PDS Committee meeting on 2 September 2020. The fact that it was not could be interpreted as a deliberate attempt to conceal intentions. While it appeared that Ward Members were included in the consultations, they chose not to inform local residents.

The lack of transparency over the change of direction and the Council's decision to remarket the site was questioned. Councillor Allen also asked where the current proposal for a medical centre came from and why the CCG was not involved. The process had been murky at best and could be considered devious.

Councillor Allen considered that decisions had been taken without scrutiny and the Council appeared to have ignored its own rules and normal procedures. The lack of involvement by the CCG was regrettable and it appeared there was not a level playing field for tenderers. There was also a complete lack of consultation on the scheme. The Chislehurst Society survey provided some useful feedback and it was clear that the redevelopment of the library was a major local issue. By undertaking a public consultation, the Council would not bind itself to follow any of the conclusions. There had been no opportunity for local residents to see what was being proposed. If residents had not become agitated, the first they would have heard about the addition of a medical centre would have been when the press release was issued.

In summing up, Councillor Allen stated that transparency and scrutiny mattered and was important to the public. Suspicion would fester if questions remained unanswered and developers would not come forward if they

believed they would not be treated equally. Councillor Allen urged Members to refer the decision back to the Executive for further consideration.

Councillor Wilkins referred to the Covid-19 arrangements under which the Council currently operated which stated that the Executive would not meet except where high public interest warranted such a meeting. All Members, irrespective of Wards, owed a duty to do what was best for the Borough. In this instance, obtaining best value for the sale of a public asset was a priority.

Councillor Wilkins said the decision itself was made under questionable circumstances and processes. If implemented, the Council would be handing over a prime piece of land to a developer for hundreds of pounds less than the highest bid. The European Union guidance stated that a divergence of less than 5% between the highest and the winning bid was okay but here the gap was around 30% which suggested that it more than qualified as State Aid for prime developments.

Councillor Wilkins asked why the site was re-marketed for just slightly over one month when guidance suggested a period of at least three months. She also asked if the sale to Prime Developments complied with the legal duty to obtain best value. Councillor Allen was not comfortable with the Council's reasons for rejecting one of the bids on viability considering it had worked with the developer over the last five years.

Referring to the legal requirement on the Council to secure best value, Councillor Wilkins stated that the report referred to legal advice having been taken however, the report only contained inadequate generic statements as the Faraday case referred to in paragraphs 3.6 and 3.8 was entirely different to the matter currently being discussed.

Councillor Wilkins requested that the decision be referred back to a public meeting of the Executive to consider whether the correct procedure had been followed in relation to re-marketing and to ascertain if best value had been obtained.

In relation to legal procedure, the Director of Corporate Services stated that the sale of the site was a commercial transaction. Where a local authority sold land, it was usually a private law decision and was normally considered by Members in the Part 2 section of agendas. At the last RR&H PDS meeting, although the report was submitted under the Part 2 section, discussion did take place in the public section of the meeting. There had been no breach of the Council's rules in that the site was put forward as an open market advertisement with a general awareness of open possibilities for the site.

The Director of Corporate Services reported that there was no statutory duty to consult on cases of land disposal. Where libraries were involved, it was appropriate to consult in certain circumstances. This development retained a library of similar size with modern facilities on the same site and therefore the duty to consult was not engaged at that stage. However, should the scheme

proceed, then the duty to consult would be engaged to ensure members of the public had the opportunity to comment on the design of the library facility.

Section 123.2 of the Local Government Act 1972 stated that:- 'Except with the consent of the Secretary of State, a Council shall not dispose of land under this section other than by a short tenancy for a consideration less than the best that can reasonably be obtained.' In regard to 'best consideration', if there were material doubts as to whether a price would be achieved or if a development could be delivered, then it could not be considered the best consideration that could reasonably be obtained. In the matter being considered by Members, it was clear there was a higher bid but the view of the Council's professional advisers and the view of legal colleagues was that the higher bid was not deliverable and therefore it did not amount to consideration which was reasonably obtainable so the Council was entitled to consider the next bid which was deemed to be one which would deliver the consideration that it promised.

The Director of Corporate Services stated that even if the Council was wrong on this, then the beginning of section 123.2 should be looked at where it stated:- 'Except with the consent of the Secretary of State...'. The cases mentioned by Councillor Wilkins pre-dated the general consent. Before general consent, it was a slightly different regime, where the local authority could accept a lower bid where it was perceived there would be certain community benefit. This was streamlined by the general consent which indicated that local authorities could accept a bid at an undervalue where the consideration was up to £2m if they considered the economic, environmental or general community benefitted by doing so. The scheme proposed in the original report did deliver those benefits and it was not necessary to consider the Secretary of State's consent in any particular detail because the highest bidder did not deliver in respect of Section 123 in any event. However, even if it had, there was legal justification for the Council to apply the general consent in that respect. State Aid would often apply even where general consent was brought into play. One of the criteria to be considered before State Aid could be brought in was whether or not anything purporting to be aid would affect trade between Member States. The Commission would look at two important exceptions around this, the first being that public schemes were quite often excluded from State Aid criteria. In this case, Members were considering health and libraries which do not often come into play in State Aid. Schemes which had a purely local dimension were often also excluded from State Aid. This was a local library and a local health facility so they fell outside consideration for State Aid whereas something like retail would be non-public and would stretch across the whole of the European Union area. The accepted bid would deliver the best consideration that could reasonably be obtained; if this was not the case then the Council would have been entitled to rely on general consent and if the general consent had been relied upon, the operation of the State Aid regime as far as public and local facilities were concerned, meant that it would not have been a State Aid case in any event.

The Director of Corporate Services confirmed that while Britain had left the European Union, State Aid rules still applied.

Councillor Wilkins sought clarification on why the higher bid was perceived not to be deliverable. The Director of Corporate Services reported there was a lack of clarity on funding, general concerns around deliverability and the lack of a detailed scheme going forward. As such it gave the Council's advisers concerns as to whether or not the scheme was deliverable or not. If a scheme was deliverable then the Authority would need to obtain the maximum receipt it could.

The Assistant Director, Strategic Property, stated that the Council had a duty to ensure that bids were deliverable and in order to protect the Council's interests it was essential to ensure that funding was available and that the scheme could actually be delivered together with clarity on what the scheme was going to be. All of this would be captured in a Development Agreement and those key components were what a Development Agreement clarified.

The Assistant Director, Strategic Property reported that while certainty around what would be provided in proposed schemes was obtained from two of the bidders, the highest bidder said that once they had obtained the award of the deal they would go out to market for a third party occupier. If a third party occupier had yet to be identified, then how would the Council know what their requirements would be? While it was incredibly frustrating for that party, the Council had to make sure that the terms in the Development Agreement were absolutely clear.

The Prime bid was meeting the library specifications identified by the Council. It was clear that Prime had backing from the CCG in terms of the new medical facility which had been evidenced to the Council. The financial details provided showed that Prime had sufficient funding to undertake the development.

The Chairman sought clarification on the suggestion from Councillor Dunn that the accepted proposal included a medical centre while the others proposed retail services. He queried whether the Council should have gone back to the other parties to see if they could or would provide a medical centre. The Assistant Director, Strategic Property reported that the site was placed on the open market and developers were at liberty to submit any proposal. The site was not marketed for a specific facility such as a medical centre, housing or retail services.

The Portfolio Holder confirmed that the site was placed on the open market and developers were free to submit whatever proposals they wished. The inclusion of a medical centre was unexpected and the Council was pleased with the proposal. As it turned out, it was also the best deliverable bid and one which would benefit the local community.

The Assistant Director, Strategic Property confirmed that the CCG had provided a letter of support for the scheme when Prime submitted their bid. As part of the Council's due diligence, officers checked with the CCG that they were still committed and ascertained that they were.

The main reason that this matter had been omitted from the Forward Plan during the summer was because the marketing exercise was conducted toward the end of 2019 and with the emergence of the Covid-19 pandemic Council meetings were initially suspended. It was placed back on the Forward Plan following receipt of the final round of bids and evaluation. Until the second round bids were received, the Council did not know if it had any viable bids to report.

Visiting Ward Member Councillor Terry fully supported the scheme. The layout of the current library was awkward and not in line with modern needs. There was no disabled access and the interior was uninspiring and uninviting. Bromley had made great improvements to libraries elsewhere in the Borough i.e. Penge, Orpington and Biggin Hill. Councillor Terry was disappointed with much of the negative information posted on social media and other forums in relation to the development. He confirmed that the library would not be closed and a temporary library would be established during construction of the site. The medical facility would be the first investment in health care in Chislehurst for a generation and would be welcomed by many residents. It would offer more than just a combined surgery and would offer extended NHS healthcare services and benefits for the local community.

Councillor Terry encouraged Members to take no further action on the call-in. In relation to the length of time the site was marketed, Councillor Terry stated that many expressions of interest had been received and a wide range of proposals put forward. In terms of valuation, the process was guided by the Council's advisers.

Councillor Allen informed Members that the Labour Group was in no way opposed to the provision of a new library in Chislehurst. The matter to be considered was whether or not the process was undertaken properly and whether the Council was getting best value.

Councillor Allatt welcomed the explanation on the variation between the agreed selling price and the highest bid. While he respected Councillor Wilkins' concern around this, this particular outcome was by no means unusual. In relation to valuation, Councillor Allatt asked if the agreed selling price was in proportion to the assets value. The Assistant Director, Strategic Property reported that Montagu Evans had undertaken the last round of statutory valuations and in terms of book value, this was broadly where it should be.

Commenting on paragraph 3.1 of the report, the Chairman clarified that the words 'this Committee supported the proposals' referred to the RR&H PDS Committee.

Councillor Benington asked what the given timescale was for construction of the site in the event that planning permission was granted. He was informed by the Portfolio Holder that construction of the scheme would take 18 months to 2 years to complete.

The Portfolio Holder also confirmed the Council would seek to engage a public personality to open the new library.

In terms of valuation, the Portfolio Holder reported that valuers do their best to interpret the market to come up with a figure. At the end of the day, there was no better test than going to the market, offering something widely to see what was put forward.

The Portfolio Holder added that during construction of the site, a temporary library would be established in the car park behind the Post Office on the opposite side of the road and would accommodate the same number of books. It would do its best to perform all the normal functions that the present library does although some events may have to be held at other libraries such as Petts Wood and in other locations in the centre of Chislehurst.

Councillor Michael stated that the Council had done all it could and had accepted the highest feasible bid. The proposal was fit for 21st Century needs and Chislehurst would have a brand new library and medical centre which would stand it in good stead for generations to come.

Councillor Botting acknowledged that no legal rules had been broken and that referring the matter back to the Executive would prolong proceedings. Councillor Botting moved that no further action be taken on the call-in. The Chairman seconded the motion.

Members agreed that the vote be held in the Part 1 section of the agenda as it was important that members of public were able to hear the outcome.

RESOLVED that no further action be taken on the call-in.

19 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006, AND THE FREEDOM OF INFORMATION ACT 2000

The Chairman moved that the Press and public be excluded during consideration of the item of business listed below as it was likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**20 CALL IN: REDEVELOPMENT OF CHISLEHURST LIBRARY - PART
2 APPENDICES**

Members considered confidential information (appendices 5-7) relating to the Part 1 public report on the call-in of the decision on the redevelopment of Chislehurst Library.

RESOLVED that appendices 5-7 relating to the Part 1 public report be noted.

The meeting ended at 10.01 am

Chairman