

Cabinet

Monday, 2 December 2019

7.30 pm

Present:

Cllr John Burden (Chair)
Cllr Lee Croxton (Vice-Chair)

Councillors: Shane Mochrie-Cox
Lenny Rolles
Narinder Singh Thandi
Jenny Wallace

Note: Councillors Tony Rice, Leslie Hills, Les Hoskins, Dakota Dibben and Gary Harding were also in attendance.

David Hughes	Chief Executive
Stuart Bobby	Director (Corporate Services)
Nick Brown	Director (Housing and Operations)
Kevin Burbidge	Director (Planning and Development)
Melanie Norris	Director (Communities)
Sarah Parfitt	Assistant Director (Corporate Services)
Jan Guylar	Head of Legal Services, Medway Council
Faith Rivers	Lawyer – Medway Council
Andy Rayfield	Communications Manager
Ben Clarke	Committee & Scrutiny Assistant

50. Apologies

An apology of absence was received from Cllr Brian Sangha.

51. To sign the minutes of the previous meeting

The minutes of the meeting held on Monday, 11 November 2019 were signed by the Chair.

52. Declarations of Interest

Cllr John Burden declared a non-pecuniary interest in relation to item 7 'Elizabeth Huggins Cottages Charity Housing Association'. He is a Director on the Board of the Association and an appointed representative from the Council; he advised that he would leave the room for the duration of the discussion and decision making of the item.

53. Delegated Decisions - Cabinet Members

There were no decisions to report.

54. Proposal for a Local Authority Trading Company

The Cabinet were presented with a proposal for the establishment of a Local Authority Trading company (the Holding company). Their approval was sought:

- For the establishment of a Local Authority Trading company (with Subsidiaries to follow).
- In principle of the draft Business Case template, which will be used to seek approval for creation of future trading subsidiaries of the Holding company, and to outline the activities of those subsidiary companies.
- In principle to amend the Council's Constitution and Contract Procedure rules to ensure that the Council continues to have robust contract management arrangements in place.

The Director (Corporate Services) guided Members through the report explaining in depth each of the following sections:

- Financial Background to the establishment of the LATCo.
- The Council's key objectives and long-term ambitions for the LATCo.
- Governance Arrangements and Operating Model.
- Governance Operating Model (The Holding Company, Shareholder Group, Cabinet, Overview Scrutiny and Full Council).
- The Proposed Company Structure.
- An Overview of the Company's Articles of Association.
- Next Steps for the Formation of the LATCo.

Before opening up the item for questions, the Chair made the following points to Members:

- The recommendations outlined that Cabinet will only be making recommendations to Full Council rather than making any decisions itself; the item will be submitted to Full Council allowing all Members to have their voices heard in the decision making process. As a result of the decision being made by Full Council, it cannot be called into the Overview Scrutiny Committee.
- Shareholder Group, page 9 – It was the Chair's intention that the suggested Membership of the Shareholder Group will include a co-opted member from the Council's Workers Union. Additionally, although not a requirement, the Chair of the Overview Scrutiny Committee will be included as a non-voting Member of the group, subject to the views of Cabinet and Full Council.
- Paragraph 5.2, page 10 – The current Cabinet was set up in May 2019 in anticipation of the LATCo being formed with the aim being that Cllr Lenny Rolles, Cabinet Member for Commercial Services, will act as Chairman of the LATCo Parent Company Board. If any conflicts of interests between the Portfolio and the operations of the Board arose then the Leader would take on the Cabinet Members services in order to allow Cllr Rolles to concentrate on his independent position as Chairman of the Parent Company Board.
- Paragraph 6.2, page 11 – There was no legal requirement, but it was the Chair's intention to replicate political balance on the LATCo Board; the three available Member positions on the Board will be filled with two Labour Councillors and one Conservative Councillor so that there would be representation from the principal opposition group.

The Chief Executive added that Local Authority Trading Companies were well established throughout Local Government and explained to Members of instances where senior officers and Councillor's had fallen afoul of the Governance Arrangements resulting in the loss of their jobs. However, he reassured the Committee that the report was of an excellent standard with clearly set out Governance Arrangements and he was in total agreement with everything that was being proposed.

The Director (Corporate Services) and the Assistant Director (Corporate Services) fielded questions from the Cabinet and explained that:

- The difference between the Parent Holding Company and the subsidiary companies was that the Parent Holding Company owned all of the subsidiary companies and didn't carry out any delivering of the services. Whereas the subsidiary companies were all operational and delivered all of the services to fulfil their functions.
- The 'golden vote' was the power the Chair possessed to decide a matter of the Holding Company should the need ever arise.
- Referencing paragraph 6.1, Council officers were able to occupy those roles on the Board and fulfil the duties to the Council in their Council employed positions. The officers would have a duty to the Council first and would be deployed under secondment to that company structure. Any conflicts of interest would be managed if and when they occurred.
- The guidance stated that the Chairs of the subsidiary companies should be officers; as those subsidiary companies did not have the same level of power wielded by the Parent Company and were more operational in nature, the Council felt that it would be more beneficial to have officers as the Chairs to allow the companies to fulfil their commercial objectives. The Chairs won't have voting rights on the Parent Board otherwise that would dilute the balance on the Parent Company between Members and officers, but this could be reviewed in due course should the Council wish to.
- It has been agreed that the Company Secretary role will be filled by the Monitoring Officer, Perry Holmes.

The Head of Shared Legal Services and the Lawyer – Medway Council fielded questions and explained that:

- The indemnity cover only applied if the relevant parties had acted honestly and in good faith.
- The process for dismissal of Directors from the Parent Company Board was laid out in the shareholders agreement, the articles of association and elements of it were also captured in the Directors terms of engagement. As a result of such in depth guidance, it should not be a surprise to any of the Directors that the Leader was able to reserve the right to dismiss immediately in the right circumstances.
- A programme will be pre-set and continually monitored to ensure that no officers are required to have their employment transferred to the Company under TUPE.
- It was completely possible for multiple business structures to operate within the framework; a remit is set by the Parent Company that allows multi-functionality.

The Chief Executive elaborated further on the monitoring of officers working in the LATCo:

- The officers involved with the LATCo will provide their services which will amount to a relatively small proportion of time and that therefore raises less concern with TUPE.

- If however, the workload increased and took the officers further way from their Council work creating an unsustainable balance then a future option could be for the LATCo to potentially employ the officers required.

The Communications Manager explained to the Cabinet that he had held meetings with officers ahead of arranging a meeting with the Leader and Cllr Rolles to discuss a marketing plan for the LATCo once it had been adopted by Full Council.

The Leader and each of the Cabinet Members thanked the officers personally for all of their hard work in creating the report which was concise, detailed and of a very high standard.

Resolved that Cabinet recommended to Full Council:

1. The formation of the Local Authority Trading company (LATCo) Holding company as detailed in the report and recommend the report is considered by Full Council at its meeting on 17 December 2019.
2. That the Council reserves the right to be a shareholder of any LATCo subsidiary and this shall be included in any governance agreement between the Council and LATCo (through the Memorandum of Association (MOA)).
3. That delegated authority is given to the Chief Executive, in consultation with the Leader of the Executive, the Monitoring Officer and the Section 151 Officer to confirm and register the name of the company and take all necessary practical, legal and financial actions necessary in relation to the creation of the LATCo and development of the relevant governance framework in order to enable the effective operation of that company and associated subsidiaries and subject to any necessary amendments to the Council's Constitution being brought back to Full Council for approval.

55. Elizabeth Huggins Cottages Charity Housing Association

The Cabinet were advised of an approach to Gravesham Borough Council by Elizabeth Huggins Cottages Charity Housing Association (the Charity) seeking the potential for the Council to grant a long term loan to the Charity. Such a loan would provide the Charity with access to borrowing which would be used to fund development of housing at their site at Cross Lane West and provide a long term investment income stream to the Council. Additionally, their approval was sought to negotiate and agree the final terms of a long term loan with Elizabeth Huggins Cottages Charity Housing Association.

The Assistant Director (Corporate Services) guided Members through the report giving a summary of the arrangements under which any such loan facility may be made available to Elizabeth Huggins Cottages Charity Housing Association. The full conditions for the loan advancement to Elizabeth Huggins were listed at paragraph 4.8 of the report.

The Committee raised general concern over the Charity's ability to pay back the loan and what would happen to the loan if any Government policies changed how much was required to be paid.

The Assistant Director (Corporate Services) stated that if the Council were made aware of any changes in Government policies prior to the formal agreement of the loan then they would be considered as part of the loan agreement however the validity of the loan could

become an issue with any significant changes. If anything changed during the course of the loan agreement then the Council would engage with the Charity to address those loan conditions.

The Director (Corporate Services) admitted that it was a risk to the Council but they had approached the loan agreement in a similar manner to what was entered with the St Georges Centre redevelopment deal. Following the principles of an income strip deal, officers had mapped out how much the rental income will grow over the next 50 years using retail growth estimates with the principal repayments of borrowing to the Council increasing in line with the rental income growth. It was estimated that during that 50 year period the Charity will generate sufficient money to payback their loan as well as the accumulated interest. Additionally, the level of income the Charity should generate was of a high enough level that there was a safety buffer if there were any issues.

In response to further concern and questions, the Director (Corporate Services) and the Assistant Director (Corporate Services) explained that:

- Phase 1 of the loan agreement was self-contained and prior to release of the £2 million loan the Charity would need to secure the remaining funding from external sources. Cllr Pritchard was actively seeking additional grant funding from external sources to fund the rest of the payments required to complete the project. Originally the external funding was delayed as the organisations were reluctant to offer grant funding until there was a determination to bring the scheme forward. As a result of the Council agreeing to loan the £2 million to complete phase 1, the external companies that Cllr Pritchard approached had indicated a willingness to contribute towards the remaining payments needed.
- Cllr Pritchard had been liaising with the residents of Elizabeth Huggins scheme and they were supportive of the proposed developments expressing a wish for the work to start as soon as possible. Additionally, the Director (Corporate Services) advised that he had been approached by a resident at the Remembrance Parade who was keen to see the proposed scheme come forward.

The Chief Executive outlined a number of key points to the Cabinet:

- The risk was not the same as lending money in other ventures, both the Director (Corporate Services) and the Assistant Director (Corporate Services) had been very diligent in considering all financial aspects of the agreement and ultimately there was long term security against the assets. Further security conversations could be held in the future if needed.
- The proposed development will count towards the Councils housing stock which will help the targets for housing delivery in Gravesham.
- It was very pleasing to see the scheme moving forward as it was initially led by the late Cllr John Cubitt who worked very hard to achieve that outcome and actively secured the planning permission that was needed. Additionally, it was beneficial for other former Councillors such as Les & Sue Howes who were big supporters of the project.

Resolved that Cabinet:

1. Agreed in principle to the issuing of a long term loan to Elizabeth Huggins Cottages Charity Housing Association, subject to the conditions outlined within Section 4.8 of this Report.

2. Recommended to Full Council that delegated responsibility be given to the Director (Corporate Services)(in the role of S151 Officer), in consultation with the Deputy Leader, Lead Member for Housing, Chief Executive and Monitoring Officer to negotiate and agree the final terms of any loan and enter into the necessary associated legal agreements on behalf of the Council.
3. Recommended to Full Council that the Treasury Management Strategy Statement is updated to reflect that the Non-Specified Investments time duration for term deposits with unrated counterparties is increased to 50 years, to reflect the potential loan arrangement with the Charity.
4. Recommended to Full Council that an amount of £2m is added to the approved capital programme for 2019/20 for the purpose of providing long term funding up to that defined level to Elizabeth Huggins Cottages Charity Housing Association as a means of enabling the Charity to provide additional social housing in Gravesham.

Close of Meeting

The meeting ended at 8:37pm