

CABINET

At a meeting held on Tuesday, 17 April 2018

Present:-

Councillor D J Bastiman (Chairman) in the Chair;
Councillors M J Cockerill, A Jenkinson, Mrs H F Mallory, J Nock, J Plant and
Mrs S Turner

1. DECLARATIONS OF INTEREST

No declarations of interests were received.

2. MINUTES

RESOLVED that the minutes of the meeting held on 13 March 2018 be approved as a correct record and signed by the Chairman.

3. PUBLIC QUESTION TIME

The Chairman reported that no public questions had been received.

4. FORWARD PLAN

The Cabinet considered the Forward Plan (Reference 18/84). Various matters were raised under the portfolios. In respect of the Whitby Market Review report scheduled to be considered on 12 June, the Chairman, in Councillor Chatt's absence, undertook to provide an update to Councillor Turner. In respect of the General Data Protection Regulation, the Portfolio Holder, Councillor Nock reported that all Members were required to complete the two online training modules by the deadline of 25 May. One Member had thus far refused to undertake the first training module, and if this refusal continued, then the Regulatory and Governance Manager added that steps could be taken to mitigate the risk this failure to obtain the necessary training posed to the Council.

RESOLVED that the Forward Plan be approved.

5. PROGRESS OF SCRUTINY OF EXECUTIVE DECISIONS

Members were advised that there had been no call-ins of executive decisions since the last meeting on 13 March. With the permission of the Chairman, the Chairman of the Overview and Scrutiny Board, Councillor Siddons addressed the meeting to respond to recent criticisms levelled at the authority because of the low number of call-ins of executive decisions. He commented that the call-in option was available to Members at any time, and his assumption was that since there had been no call-ins in recent months, that Members were satisfied with the operation of the scrutiny function. The Regulatory and Governance Manager added that the Overview and Scrutiny Board was undertaking more pre-decision scrutiny, contributing to the development of policy and ensuring wider Member buy-in before matters were considered by the Cabinet, thereby negating the need for the post-decision scrutiny of call-in. This was a positive development and recognised as such by the Government in its response to the recent select committee report on the effectiveness of local government scrutiny. Councillor Siddons suggested that perhaps this

standing item could be reworded with a less negative emphasis, since call-in was only a small part of scrutiny's role.

6. MERGER OF YORKSHIRE COAST HOMES AND COAST AND COUNTRY HOUSING ASSOCIATION LIMITED

The Cabinet considered a report by the Director (LD) (Reference 18/78) in respect of the proposed merger of Yorkshire Coast Homes and Coast and Country Housing Association Limited. With the permission of the Chairman, the Chairman of the Overview and Scrutiny Board, Councillor Siddons addressed the meeting to report on the findings and recommendations of the Board which had considered the matter in depth the previous day. Councillor Siddons thanked all those who had taken part in the scrutiny including the Chairs and Chief Executives of both registered providers. He noted that the Borough Council had no control over the proposed merger, but commended the work that had gone into the proposed Commitments Agreement which would ensure that the Borough Council and newly merged housing association continued to work closely together for the benefit of tenants and both organisations. However, he did express concern over the problems at Yorkshire Coast Homes identified by the interim Chief Executive, the Homes and Communities Agency, and the independent options appraisal, whilst recognising that the proposed merger was now the best way forward for the organisation. Councillor Siddons then related the following recommendations of the Overview and Scrutiny Board:

The Council to:

a. Provide in principle support for YCH to merge with CCH, noting that in doing so the Council gives up its right to nominate 24% of the Board Membership, and therefore:

- i Approve the Heads of Terms for inclusion within a 'Commitments Agreement' that aims to safeguard the interests of the Council and residents, and
- ii Delegate authority to Director (LD), in consultation with the relevant Portfolio Holder, to enter into the required legal contracts to facilitate the merge, on the basis of no financial detriment to the Council

b. In addition, approve:

- iii that an appropriate observer from Scarborough Borough Council be nominated to the new housing association board;
- iv that scrutiny of the new housing association be strengthened, by the Overview and Scrutiny Board inviting representatives of the new housing association to attend Board meetings to report on its activities at appropriate intervals;
- v that any programme for new home building and/or the refurbishment of existing properties be allocated proportionately between the Scarborough Borough Council and Redcar and Cleveland areas;

And note that

- vi following approval of the Heads of Terms in the Commitments Agreement as proposed in the report, there is still further work to do on the detail of the Agreement requiring ongoing discussions and partnership working between the Council and the new housing association.

The Chairman, Councillor Bastiman, thanked the Overview and Scrutiny Board for their in-depth consideration of this matter, proposing the following minor amendments to the Board's recommendations which were accepted by Councillor Siddons:

- iii that an appropriate observer from Scarborough Borough Council be nominated to the new housing association board **for a period of not less than three years to be reviewed thereafter;**
- and
- iv that scrutiny of the new housing association be strengthened, by the Overview and Scrutiny Board inviting representatives of the new housing association to attend Board meetings to report on its activities **on a twice yearly basis initially until such time as an annual basis is deemed sufficient by the O&S Board and the housing association;**

The Chairman also paid tribute to the interim Chief Executive of Yorkshire Coast Homes for his hard work, gave his full support to the merger which he believed was in the best interest of tenants, and wished the new housing association every success.

RESOLVED that the Council be recommended to:

- a. Provide in principle support for YCH to merge with CCH, noting that in doing so the Council gives up its right to nominate 24% of the Board Membership, and therefore:
 - i Approve the Heads of Terms for inclusion within a 'Commitments Agreement' that aims to safeguard the interests of the Council and residents, and
 - ii Delegate authority to Director (LD), in consultation with the relevant Portfolio Holder, to enter into the required legal contracts to facilitate the merge, on the basis of no financial detriment to the Council
- b. In addition, approve:
 - iii that an appropriate observer from Scarborough Borough Council be nominated to the new housing association board for a period of not less than three years to be reviewed thereafter;
 - iv that scrutiny of the new housing association be strengthened, by the Overview and Scrutiny Board inviting representatives of the new housing association to attend Board meetings to report on its activities on a twice yearly basis initially until such time as an annual basis is deemed sufficient by the O&S Board and the housing association;

- v that any programme for new home building and/or the refurbishment of existing properties be allocated proportionately between the Scarborough Borough Council and Redcar and Cleveland areas;

And note that

- vi following approval of the Heads of Terms in the Commitments Agreement as proposed in the report, there is still further work to do on the detail of the Agreement requiring ongoing discussions and partnership working between the Council and the new housing association.

Reasons

To retain a strong strategic partnership with the newly formed housing association in accordance with the Council's Housing Strategy and in the interests of residents.

7. COMMERCIAL STRATEGY

The Cabinet considered a report by the Director (RB) (Reference 18/86) in respect of a new Commercial Strategy. Members were advised that this strategy represented a clear framework to encompass a raft of diverse commercial activities, designed to achieve the necessary financial sustainability that would help safeguard the continued delivery of and investment in front line services. The strategy rested on four key inter-related activities which reflected how the Council operated internally and looked outward to the opportunities available in the market: income generation, corporate modernisation, economy and regeneration and the Commercial Property Investment Strategy to be considered next on the agenda. The strategy report set out in more detail each of these work streams together with an action plan for the current financial year. In compiling this strategy, significant research and benchmarking had been undertaken in terms of both the legal framework and by consulting with other local authorities to learn from best practice examples, some of which were set out as innovative case studies.

RESOLVED that Cabinet recommends to Council that the Commercial Strategy annexed at Appendix 2 to the report be approved and adopted.

Reasons

To ensure that the Council maintains a robust financial position to secure the continued sustainability of services, to support improved outcomes for residents, businesses and visitors, and to advance the delivery of corporate priorities.

8. COMMERCIAL PROPERTY INVESTMENT STRATEGY

The Cabinet considered a report by the Director (RB) (Reference 18/87) in respect of a new Commercial Property Investment Strategy. Members were advised that this new strategy was intended to generate net financial returns for the Council in order to help maintain valued service provision to the Borough's residents, businesses and visitors and to help create and support economic development activity that contributed to the growth of the Borough. Under the umbrella of the Commercial Strategy, this strategy again offered innovative and creative solutions as a means of narrowing the projected £5

million budget gap over the next three years as an alternative to simply making further budget cuts. In accordance with the proposed strategy, property investments would divide into two distinct streams of activity: traditional investment in prime and near to prime real estate that would provide a secure long term income stream to the Council, and the second stream, not only to generate a positive rate of return for the Council but also aimed at generating economic growth and development through, for example, unlocking public land and buildings for socio economic benefits within the wider economic partnership areas. The report also set out two distinct scoring matrices to assess the business case for proposals under the two work streams, and clear and robust governance arrangements for the implementation of the strategy comprising an officer level property selection team, a Property Investment Governance Board, and the Audit Committee which would consider the scoring matrix for Stream 2 schemes, and receive quarterly monitoring reports on the strategy. Members were assured that the report before them was based on extensive legal and financial advice. The report set out both the legal framework in which the strategy would operate and how the strategy was aligned to the Council's Financial Strategy, Capital Investment Strategy & Treasury Management Strategy. Updated Prudential Indicator information was contained within the report that detailed, amongst other indicators, how the strategy was to be financed and the revenue implications of the Council's Capital Investment Strategy Programme. The strategy report also responded to guidance recently issued by central Government on local government investments and the activity proposed by the strategy would ensure the Council took full regard of the recommendations contained within the updated guidance. Whilst the strategy report outlined proposals for investment purposes, just as important was the work being undertaken to challenge the Council's existing assets in order to maximise yields and rate of returns from the existing portfolio as well as to rationalise the portfolio where appropriate. Members were also advised of a correction in the report, namely, in the penultimate paragraph of the Governance Arrangements on page 108 of the report, rather than reading "acquisitions and development opportunities that do not meet the minimum criteria" should read "...that do not meet the minimum weighted score on the scoring matrix". The Chairman welcomed this report, and the significant progress it represented for the Council, and echoed the Director, Mr Bradley in thanking all those officers who had contributed to the development of the strategy. The Portfolio Holder, Councillor Cockerill similarly commended the new strategy, but proposed an amendment that the relevant Portfolio Holder with investment responsibilities, instead of the Deputy Leader of the Council, be a member of the Property Investment Governance Board. Councillor Cockerill also asked what safeguards were in place in the Constitution to prevent the Director with delegated powers to make property investment decisions, taking such decisions contrary to the advice of the PIGB. In response, Mr Bradley advised that in addition to the checks and balances outlined in the report, all decisions made by any part of the Council (including officer delegated decisions) were subject to the overarching principles of public law. These provided that decisions that were, for example, outside of the decision maker's power, or unreasonable, irrational, were unlawful and challengeable by Judicial Review. Further, the Council's Monitoring Officer

and s.151 Officer had statutory duties to ensure the legal and financial probity and propriety of decisions of the Council, the Monitoring Officer having the power to suspend unlawful decisions prior to their implementation. The Portfolio Holder, Councillor Mallory suggested that given the importance and complexity of the strategy, briefings should be provided for the benefit of councillors. She also encouraged Members to speak to the Director if they had any queries. With the permission of the Chairman, Councillor Cluer addressed the meeting, agreeing that a Member briefing would be beneficial before the Council considered the strategy next month, registering her concern at the large amount of borrowing inherent in the strategy, and calling for wider political representation on the PIGB.

RESOLVED that the Cabinet recommend that full Council:

- (i) approve the proposed Commercial Property Investment Strategy (the Strategy) described in this report and attached at Appendix A, together with the objectives, Prudential Indicators and limits, investment criteria and governance arrangements, and resolve that the Strategy be adopted;
- (ii) approve a capital fund of £30m funded from borrowing from the Public Works Loan Board and a revenue budget of £100k funded from the Council's Investment Fund, to facilitate the purchase of properties and to pursue development opportunities that meet the criteria contained within the Strategy;
- (iii) approve the changes required to the current approved and operational borrowing limits and associated Prudential Indicators as set out in Appendix B, in order to accommodate the increased prudential borrowing requirements set out in this report;
- (iv) amend Article 8.9 (ii) of the Constitution to alter the terms of reference of the Audit Committee to include
 - '(j) receive quarterly reports on the implementation of the Commercial Property Investment Strategy and make any recommendations to full Council'
- (v) delegate authority to the Audit Committee to approve the risk/ rate of return scoring matrix referred to at Appendix A.2.1
- (vi) delegate authority to the Director (LD) to make the necessary amendments to the Constitution arising out of this report

And subject to Council approval of the recommendations set out at 1 above, that the Cabinet approve:

- (i) the proposed governance arrangements for the Property Investment Governance Board (PIGB) and the Property Selection Team (PST) set out at paragraph 6 of this report and at Appendix A3 of the Strategy (*with the amendment that the relevant Portfolio Holder with*

investments responsibility sit on the PIGB instead of the Deputy Leader of the Council)

- (ii) the delegation of authority to the Commercial Director, following consultation with the PIGB, to approve expenditure and to acquire and/or dispose of such legal estates and interests in land and to make such property investments as are within the overall limit and criteria of the Strategy, subject to the Commercial Director preparing a business case and risk assessment in line with the Strategy, and to take any and all decisions necessary for the implementation of the Strategy, save for where authority is reserved to the Leader of the Council under the Strategy

Reasons

- To enable the Council to build a stronger commercial property portfolio through the purchase of prime or nearly prime investment property within the Borough and wider Local Enterprise Partnership regions that can generate income and financial returns to contribute towards the revenue shortfall identified in the Council's Financial Strategy and to stimulate economic growth
- To generate income and financial returns from development and regeneration projects throughout the Borough and wider Local Enterprise Partnership regions to both stimulate economic growth and to contribute towards the revenue shortfall identified in the Council's Financial Strategy;
- To establish governance arrangements and control measures to manage the risks associated with commercial property investments

9. REVIEW OF COUNCIL'S STATEMENT OF LICENSING POLICY - LICENSING ACT 2003

The Cabinet considered a report by the Director (LD) (Reference 18/72) in respect of a revised draft Licensing Policy.

RESOLVED that the Cabinet:

- a) Approve the Council's revised draft Licensing Policy attached as an Appendix to this report prior to going out to formal public consultation.
- b) Note the forthcoming changes in relation to the review periods for the Statement of Licensing Policy and Cumulative Impact Policy, and agree in principle to separating these two documents.

Reasons

In accordance with the Licensing Act 2003 the Licensing Authority is required to publish a statement of policy every successive five year period. The Policy is now due to be revised to cover the next period: November 2018 to November 2023.

10. REVIEW OF COUNCIL'S STATEMENT OF LICENSING POLICY - GAMBLING ACT 2005

The Cabinet considered a report by the Director (LD) (Reference 18/73) in respect of a revised draft Gambling Licensing Policy.

RESOLVED that Cabinet approve the Council's revised draft Gambling Licensing Policy attached as an Appendix to the report prior to going out to formal public consultation.

Reasons

In accordance with the Gambling Act 2005 the Licensing Authority is required to publish a statement of policy every successive three year period from the first appointed day which was 31 January 2007. The Policy is now due to be revised to cover the next successive 3 year period: January 2019 to January 2022.

11. EXCLUSION OF THE PUBLIC

The Chairman noted that the two remaining items on the agenda were of a private and confidential nature, which might necessitate moving into private session should Members wish to discuss the sensitive information therein. In the event, both items were considered in public.

12. WHITBY GOLF CLUB

The Cabinet considered a report by the Director (RB) (Reference 18/85) in respect of Whitby Golf Club. Members were advised that the proposals in the report reflected the Council's continued commitment to an 18 hole golf course in Whitby whilst improving the course's financial sustainability and freeing up land for housing development. In reply to a question about the Option Land (coloured blue), Members were advised that this option agreement enabled the Council to reserve its position on this parcel of land and draw it down in 25 years' time in accordance with a previous agreement. Such a decision would be for Members to make at that time.

RESOLVED that the Cabinet:

- (i) approve the grant of a 125 year lease of Whitby Golf course and the treatment of the adjacent owner of Whitby golf course, Yorkshire Ventures (Estates) Ltd (and its subsidiary Yorkshire Ventures (Real Estate) Ltd), as a special purchaser of the Whitby golf course on the terms outlined in Appendix 1;
- (ii) the in principle sale and marketing of the freehold interest of up to 9.6 acres of land formerly part of Whitby golf course as shown highlighted yellow in Appendix 2 and as further detailed in the report
- (iii) a marketing fee and disposal budget of 1% of the sale price for the 9.6 acres of land shown highlighted yellow in Appendix 2 to be funded from the capital development reserve.
- (iv) note that a further report will be presented to Cabinet for final approval of the freehold disposal following the conclusion of the marketing exercise

Reasons

- (i) To ensure a continued golf provision in Whitby.
- (ii) To approve the terms in respect of the proposed lease agreement.
- (iii) To treat the proposed lessee, Yorkshire Ventures (Estates) Ltd (and its subsidiary Yorkshire Ventures (Real Estate) Ltd, as a special purchaser.

- (iv) To achieve a capital receipt from the sale of the freehold interest in land to be used to assist the Council in meeting its corporate objectives.
- (v) To comply with the Council's Constitution.
- (vi) To facilitate development of housing land.
- (vii) To approve the disposal costs in order to conduct the marketing exercise.

13. RESTRICTED MINUTE - 13 MARCH 2018

The restricted minute of the meeting held on 13 March 2018 in respect of a land transaction at Whitby Business Park was agreed as a correct record and signed by the Chairman.

Chairman