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TO: All Members of the Cabinet

Date: 14 February 2018
Our Ref:RH
Your Ref:

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Dear Councillor

CABINET - THURSDAY 15TH FEBRUARY, 2018

I refer to the agenda for the above meeting and now enclose the following minutes that were unavailable when the agenda was printed.

Agenda No.	Item
8.	Commercial Acquisition of the Strand Shopping Centre - Overview and Scrutiny Committee (Regeneration and Skills) Minutes (Pages 269 - 276) A copy of the Minutes of the meeting
10.	Commercial Acquisition of the Strand Shopping Centre - Overview and Scrutiny Committee (Regeneration and Skills) Minutes (Pages 277 - 280) A copy of the Minutes of the meeting

Yours sincerely,

J. COULE

Head of Regulation and Compliance

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THIS SET OF MINUTES IS NOT SUBJECT TO "CALL IN".

Overview
& Scrutiny



OVERVIEW AND SCRUTINY COMMITTEE (REGENERATION AND SKILLS)

MEETING HELD AT THE ASSEMBLY HALL, TOWN HALL, BOOTLE ON WEDNESDAY 31ST JANUARY, 2018

PRESENT: Councillor Sayers (in the Chair)
Councillor Michael O'Brien (Vice-Chair)
Councillors Carragher, Jamieson, Dan T. Lewis, Roche, Shaw, Weavers, Webster and Bill Welsh

ALSO PRESENT: Councillors Atkinson, Bennett, Booth, Linda Cluskey, Dawson, Dutton, Fairclough, Hardy, Lappin, Maher, Pugh Pullin and Lynne Thompson

39. WELCOME TO NEW COMMITTEE MEMBERS

The Chair, Councillor Sayers welcomed Councillors Jamieson and Shaw as new Members of the Committee and thanked Councillors Bliss and Pullin, the retiring Members of the Committee, for their support and contributions.

40. APOLOGIES FOR ABSENCE

No apologies for absence were received.

41. DECLARATIONS OF INTEREST

No declarations of interest were received.

42. STRAND SHOPPING CENTRE - COMMERCIAL ACQUISITION

Margaret Carney, Chief Executive, set out the strategic context of the Council's acquisition of the Strand Shopping Centre and indicated that by 2020 Sefton's budget would have reduced by 50% from the 2010 level; that operating in such a demanding environment of decreasing central government support coupled with an increasing demand on services, the Council had approved its Framework for Change and budget strategy in 2017; that during this process the Council had made it clear that it would need to generate new and improved income streams whilst ensuring it met its core purpose; and that indeed, the Council approved core purpose explicitly states that a key priority was to:-

"Generate income for social reinvestment": the Council will develop a commercial approach and look to what it can do either by itself or with others to generate income and resource that can be reinvested into delivering the councils key priorities

Further to Minute No. 65 (2) of the meeting of the Council held on 16 November 2017 the Committee then received a presentation from Sarah

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Kemp, Executive Director, on the commercial acquisition of the Strand Shopping Centre.

The presentation focussed on the following points:-

- Legal relationship pre-purchase
- Marketing of the Strand
- The Market Offer and the acquisition of entire share capital
- Powers to act/policy context
- QC advice and conclusions
- Treasury management
- Timeline of commercial events
- Critical decision-making factors
- Procurement of advisors
- How the diligence was applied
- Pre-bid diligence
- Timeline of events pre-bid
- Property key documentation pre-bid
- Financial key documentation pre-bid
- Legal key documentation pre-bid
- Corporate key documentation pre-bid
- Conclusions of pre-bid diligence relating to the bid report, property report, vendor pack, structures report, Commercial and Financial Analysis, key risks, legal report and counterfactual: no bid
- Process post-bid
- Financial key documentation – post-bid
- Sensitivity modelling
- Property Key Documentation – post-bid
- Legal and Corporate_- key documentation
- Building survey report conclusions
- The “Red Book” Valuation that assessed the market value of the long leasehold interest in the Strand
- Financial due diligence_- conclusions
- Legal/Corporate due diligence – conclusions
- Transactions approved by Cabinet
- Corporate Structure on Completion
- Process - post acquisition to hive-up
- Key documents – hive-up
- Corporate structure on hive-up
- Capital Investment Funds
- Tax implications - tax payable on operations
- HMRC taxes
- Management arrangements
- Asset management
- Property Services Manager
- Post-acquisition company decisions
- Current status quo
- Why Part 2 (exempt) Cabinet decision

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Members of the Committee commented/asked questions on the following issues:-

<p>The sensitivity modelling slide indicates a share capital purchase of £34 million but that the often reported purchase price was a lesser amount. What is the reason for this?</p>	<p>Following a process of full due diligence, final negotiations led to a reduction in the purchase price but the actual final price paid is subject to commercial confidentiality by contract.</p>
<p>Is the percentage return figure indicated in the presentation based on the £34 million or lower figure?</p>	<p>On the lower figure</p>
<p>Why did the previous successful bidder withdraw their offer in June 2016?</p>	<p>Due to uncertainty of market conditions following the Referendum result for the UK to leave the European Union. The previous bidder had made it clear that they would re-consider their position if the result was to leave the EU. The bid was an opportunity fund looking for short-term return and therefore certainty in the markets, so this was not a surprise.</p>
<p>The occupancy standing at 88% was queried</p>	<p>There is an ongoing vacancy rate and this was typical of any shopping centre reflecting tenant churn. However, a deliberate policy moves retailers to more fully occupied areas of the shopping centre. A void is often a deliberate strategy to, for example, enable later development of void space, reconfiguring a number of void spaces into one block, to create a more lettable space, for leisure purposes for example. Calculations were made on the basis of lettable (viable economic) space and we engage specialist agents to negotiate with national retailers</p>
<p>Concerns were expressed that the Council was not getting value for money regarding the management consultancy fee; and that there was an inability within the Council to adequately manage the shopping centre</p>	<p>The Council has employed an Asset Management Company, who are experts in retail management. In this regard due diligence was undertaken to satisfy the Council of the competence of the asset management company to manage</p>

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	the shopping centre - key performance indicators must be met by the Asset Manager
Was there a stamp duty liability associated with the purchase?	There was no Stamp Duty Liability Tax due. Nor was there a Land Transaction Tax liability and HMRC were very clear that SDLT was not due on this transaction
Were the figures given during the presentation for specialist advice the total sum?	Yes – this is the total sum paid directly by the Council
The presentation referred to a 10 year budget cost of repairs of £4.7 million. Would this figure be met through revenue streams or borrowing?	These costs are built into the business plan and will be funded by revenue and/or service charges
Information was sought on the hive up of shares	The commercial share deal saw the asset hived-up to the Council's balance sheet and return the asset to local ownership. This was a tax efficient option, compared to other structures. This was also in response to expressed Shareholder (Council) wishes with regards to the holding structure (the LuxCo), to hive up the asset to the Council and collapse the off-shore corporate structure
Clarification was sought on the clauses used in the undermentioned Finance Act 2003 regulations mentioned in the presentation.	It was not possible to recite all advice given to the Council at the meeting but that tax issues associated with the purchase had been verified by tax consultants.
Reference was made to the financial due diligence conclusions and in particular, the final of three options on possible structures that indicated:- "Council enters into a Joint Venture, and transfers the asset, there will be an Stamp Duty Land Tax charge". To be clear did the Council pay any stamp duty?	This option was examined as part of the early pre-bid financial due diligence process. All possible holding structures were assessed on their individual merits. The Council initially made a bid for the asset only. However, the vendor was only prepared to make a share deal i.e. sell the Luxembourg registered Company which owned the asset. This transaction did not attract SDLT – and therefore there

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	<p>was no HMRC requirement for the Council to pay SDLT.</p> <p>The shares have now been extinguished</p>
<p>Between 2010 and 2020 the Council will have lost 50% of government funding. What is the forecast benefit to the Council from the acquisition?</p>	<p>The Council will have control over the asset and a positive cash flow to the Council will be generated. Due to commercial confidentiality more information on this issue can be given in Part 2 of the meeting</p>
<p>The point regarding commercial confidentiality was challenged in respect of generated income and a question was asked why the information couldn't be given in Part 1 of the meeting?</p>	<p>It would constitute a breach of commercial confidentiality should the Council disclose individual tenant contract details, 70% of which are national retailers. The disclosure of this information would also undermine the Council's future negotiating position whereby the performance of the asset is a determining factor with regard to potential new tenants and lease renewals. This met the test of provisions contained in the Local Government Act 1972 for the Council to keep commercially sensitive information exempt. However, the Council budget will show the net contribution made by the asset to the Council's finances</p>
<p>If there was no joint venture where would the finance come from to maintain and invest in the asset?</p>	<p>The financial strategy and commercial performance of the Strand shopping centre was carefully looked at as part of the due diligence process. This included assessing the headroom the surplus generated which might support further Council borrowing. Until options for the redevelopment of the Strand have been fully explored, it is too early to say what mechanisms of investment might be required, although a joint venture might be an option the Council could consider.</p>
<p>Was regeneration the primary purpose of the purchase of the</p>	<p>The primary purpose was regeneration and the ability to</p>

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<p>asset?</p>	<p>generate a net income to the Council. The asset purchase was made under the Powers of Regeneration, but clearly there are many other benefits that the asset can bring to the Borough.</p>
<p>The market offer made was on the basis of current gross passing rent of £4.845 million and a net initial yield of 8.73%. What is gross passing rent?</p>	<p>It is the obligation/sum of money tenants must pay the Council. The sum of £4.85m is the gross passing rent set out in the original market offer based on the tenant schedules of contract. However, our due diligence led us to believe that the actual sum collected was £4.55m</p>
<p>A concern was expressed that the current income position and outgoings could be affected negatively if more voids occur due to dips in the retail market. What rough guideline percentage reduction could the Council withstand before the asset was not self-financing?</p>	<p>At present there is a comfortable 6.79% internal rate of return but if variables altered significantly then the situation could obviously change. Unfortunately an accurate answer can't be provided at the meeting because financial sensitivity models to calculate the impact of such occurrences were not to hand and again would be considered as commercially confidential. However, it must be stressed that this is the nature of the commercial market such that variables will by their nature, change and we need to factor these market risks to ensure adequate resilience in the face of all market risks.</p>
<p>A concern was then expressed that a precise answer could not be given. Was the Cabinet given a precise figure?</p>	<p>Cash flow modelling was fully disclosed to Cabinet as part of the business case for the purchase</p>
<p>There are lots of if, buts and maybes as part of the questioning here. Was the due diligence prepared by experts part of the decision making process adopted by Cabinet?</p>	<p>Yes. The expertise was provided and Cabinet challenged the credibility of the experts to ensure that their advice could be relied upon. The experts had advised many local authorities on similar acquisitions</p>

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Were worse and best case scenarios provided to the Cabinet?	Yes and the final judgement was taken on being aware of risk profiles and the determination of mechanisms to mitigate the risks. Having undertaken due diligence, the Council negotiated a further reduction in price.
A comment was made that the scrutiny of this issue was resented by Members; and that there were genuine concerns about the viability of the deal	The Chair, Councillor Sayers indicated that all questions had been answered openly by officers and that it was unfair to make such allegations and that he took exception to the comment and that the Councillor raising it should apologise.

RESOLVED: That

- (1) Sarah Kemp, Executive Director, be thanked for her comprehensive and informative presentation; and
- (2) Cabinet be made aware of the comments of the Committee on the commercial acquisition of the Strand Shopping Centre.

43. EXCLUSION OF PRESS AND PUBLIC

RESOLVED:

That, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Act. The Public Interest Test has been applied and favoured exclusion of the information from the press and public because:-

- The Heads of Terms and Sales Purchase Agreement are legal bound by confidentiality
- Cabinet agreed conditional permissions, whilst final negotiations were still live
- The Council as owner is fully exposed to market risk and therefore must protect and enhance the competitive position of this commercial asset

Jill Coule, Head of Regulation and Compliance indicated that it was very unusual to allow non-members of a decision making body into Part 2 of the meeting; reminded Members that they would be privy to commercially confidential information and that this information is being shared on the basis of non-disclosure to third parties; and that to do so would be a breach of the Members' Code of Conduct. Mrs. Coule concluded that the Council still had a contract in place and therefore is bound by what

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information can and cannot be made available in public; and highlighted the reputational damage that the leaking of confidential information could bring upon the Council and may deter future investment in the borough.

Mrs. Coule also reminded Members that in accordance with Rule 37 of Chapter 4 of the Council's Constitution the recording of proceedings of part 2 of the meeting is not allowed.

The following Members of the Committee were present during the following item:-

Councillor Sayers, Chair and Councillors Carragher, Dan T. Lewis, Jamieson, Michael O'Brien, Roche, Shaw, Webster and Bill Welsh.

The following non-Members of the Committee were present during the following item:-

Councillors Atkinson, Bennett, Booth, Dawson, Dutton Lappin, Maher and Pullin.

44. STRAND SHOPPING CENTRE - COMMERCIAL ACQUISITION

Further to Minute No. 65 (2) of the meeting of the Council held on 16 November 2017 the Committee received a presentation from Sarah Kemp, Executive Director, on the commercial acquisition of the Strand Shopping Centre.

The presentation focussed on the following points:-

Part 1 Pre-bid and Post-bid process
Part 2 Commercial and Financial Transaction

Members of the Committee commented/asked questions on the following issues:-

- The acquisition and its association with Sefton's 2030 Vision
- The surplus generated by the acquisition
- How the surplus could be used
- The procurement process for the next phases of development and refurbishment
- The use of experts in future redevelopment/regeneration proposals

RESOLVED: That

- (1) Sarah Kemp, Executive Director, be thanked for her comprehensive and informative presentation; and
- (2) Cabinet be made aware of the comments of the Committee on the commercial acquisition of the Strand Shopping Centre.

By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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