

Minutes

Ordinary Council 23.10.2013

Membership/Attendance

- | | |
|--------------------|---------------------|
| * Cllr Aspinell | * Cllr Kerlake |
| * Cllr Baker | * Cllr Le-Surf |
| Cllr Mrs Beeston | Cllr Lloyd |
| * Cllr Braid | * Cllr McCheyne |
| * Cllr Carter | * Cllr Mrs McKinlay |
| * Cllr Chilvers | * Cllr Morrissey |
| * Cllr G Clark | * Cllr Mrs Murphy |
| * Cllr N Clarke | * Cllr Mynott |
| * Cllr Mrs Coe | * Cllr Dr Naylor |
| * Cllr Mrs Cohen | * Cllr Parker |
| * Cllr Mrs Cornell | * Cllr Mrs Pound |
| * Cllr Mrs Davies | * Cllr Quirk |
| * Cllr Ms Golding | * Cllr Reed |
| * Cllr Mrs Henwood | * Cllr Russell |
| * Cllr Hirst | * Cllr Sapwell |
| * Cllr Mrs Hones | * Cllr Sleep |
| * Cllr Hossack | * Cllr Sparling |
| * Cllr Keeble | * Cllr Tee |
| * Cllr Kendall | |

*present

Officers Present

Alison Crowe - Managing Director
Ashley Culverwell - Head of Borough Health, Safety and Localism
Chris Gill – Interim Strategic Asset Manager
Jo-Anne Ireland – Director of Strategy and Corporate Services
David Lawson – Monitoring Officer
Philip Ruck – Programme and Project Manager
Jean Sharp – Governance and Member Support Officer

204. Apologies for Absence

Apologies for absence were received from Cllrs Mrs Beeston and Lloyd.

205. Mayor's Announcements

All present stood for minute's silence in memory of former councillor Fred Chitty and Peter Warner – a long-serving BBC staff member.

The Mayor recounted some of the duties she had undertaken since May.

206. Variation in the Order of the Agenda

The Mayor acceded to Cllr Aspinell's request under Rule 8.1(3) that Members consider Item 14 - Notice of Motion – Chair of Overview and Scrutiny – before Item 9 – Notice of Motion – Fouling Under Railway Bridge, Shenfield was discussed.

207. Minutes of Ordinary Council 10.7.13 and Extraordinary Council 11.9.13

Resolved to approve as a true record the minutes of the Ordinary Council meeting held on 10.7.13 and Extraordinary Council held on 11.9.13.

208. Public Questions

Mrs Gearon-Simm had submitted two questions, details of which were before Members.

Responses to Mrs Gearon-Simm's questions were given by Cllr Kerslake and Cllr Mrs McKinlay.

Cllr Quirk requested circulation to Members of the minutes of the Town Hall Delivery Group meeting when the decision regarding the foodbank rent was made.

209. Exclusion of Public

The Managing Director considered that Item 16 on the agenda – William Hunter Way – contained exempt information under paragraph 3 of Schedule 12A of the Local Government Act 1972 and it had therefore been included in Part Two of the agenda.

The Monitoring Officer advised Members of the parts of the confidential report and appendices which were commercially sensitive and therefore needed to remain confidential.

Cllr Aspinell MOVED and Cllr Quirk SECONDED that the report be discussed in open session, ensuring the commercially sensitive information specified by the Monitoring Officer remained confidential.

A vote was taken on a show of hands and the Motion was LOST.

210. Memorials or petitions

None had been received.

211. Chairs Reports

Chairs' Reports were before Members.

212. Members' Questions to Committee Chairs

In accordance with Rule 7.4 of Council Procedure Rules, 7 written questions had been received from Members and details of these would be appended to the minutes.

Following the putting of these written questions to Chairs and receiving responses, oral questions were asked of Chairs and responses given. Details of the questions asked and the responses would be appended to the minutes.

213. Review of the Council's Constitution

The Council was required by Section 37 of the Local Government Act 2000 to keep its Constitution up to date.

The report before Members set out a number of proposals for revising the following Parts of the Constitution: Public Questions (Part 4.1); Access to Information Rules (Part 4.2); Budget and Policy Framework Rules (Part 4.3); Financial Regulations (Part 4.5); Staff Employment Procedure Rules (Part 4.7); Members Planning Code of Good Practice (Part 5.2) Staff Code of Conduct (Part 5.3) Member / Staff Relations Protocol (Part 5.4); Delegations to Staff General Principles to Appendix A) and Monitoring Officer (Article 12)

The cross-party Constitution Working Group was consulted on the proposed changes and the draft attached to the report before Members reflected the significant and detailed contribution of the Working Group's members.

Cllr Kerslake MOVED and Cllr Mrs Murphy SECONDED that the Council approved the changes to its Constitution as detailed in the revised documents appended to this report.

Following a full discussion a Member requisitioned pursuant to Rule 9.5 of Council Procedure rules that voting on the Motion be recorded.

FOR: Cllrs Braid, Mrs Coe, Mrs Cornell, Ms Golding, Mrs Henwood, Hirst, Mrs Hones, Hossack, Kerslake, McCheyne, Mrs McKinlay, Mrs Murphy, Dr Naylor, Parker; Mrs Pound, Reed, Russell, Sleep, Sparling and Tee (20)

AGAINST: Cllrs Aspinell, Baker, Carter, Chilvers, Clark, Clarke, Mrs Cohen, Mrs Davies, Keeble, Kendall, Le-Surf, Morrissey, Mynott, Quirk and Sapwell (15)

ABSTAIN: None (0)

The Motion was CARRIED and RESOLVED accordingly.

214. Notice of Motion - Chair of Overview and Scrutiny

Cllr Hirst had submitted the following motion:

"In the light of the current Chair's poor handling of the business of Overview and Scrutiny Committee at recent meetings it is proposed that Council proceeds forthwith with a vote to remove the current Chair of the Overview and Scrutiny Committee and immediately thereafter to appoint a new Chair of Overview and Scrutiny and at the same time that Rule 1.2 of Part 4.4 of the Constitution be amended to read, "The Overview and Scrutiny Committee shall be chaired by a Member appointed at Council" .

The Motion was SECONDED by Cllr Mrs Murphy.

Following a full discussion a Member requisitioned pursuant to Rule 9.5 of Council Procedure rules that voting on the Motion be recorded.

FOR: Cllrs Braid, Mrs Coe, Mrs Cornell, Ms Golding, Mrs Henwood, Hirst, Mrs Hones, Hossack, Kerslake, McCheyne, Mrs McKinlay, Mrs Murphy, Dr Naylor, Parker; Mrs Pound, Reed, Russell, Sleep, Sparling and Tee (20)

AGAINST: Cllrs Aspinell, Baker, Carter, Chilvers, Clark, Clarke, Mrs Cohen, Mrs Davies, Keeble, Kendall, Le-Surf, Morrissey, Mynott, Quirk and Sapwell (15)

ABSTAIN: None (0)

The Motion was CARRIED and RESOLVED accordingly.

Cllr Hirst MOVED under Para 8.1 (5) of Part 4 of the Council's Rules of Procedure (Motions which may moved without notice – to appoint a committee or member arising from an item on the agenda for the meeting) that "*Cllr Mrs Hones be appointed Chair of the Overview and Scrutiny Committee*".

Cllr Mrs McKinlay SECONDED the Motion.

Following a full discussion a Member requisitioned pursuant to Rule 9.5 of Council Procedure rules that voting on the Motion be recorded.

Cllrs Aspinell and Chilvers were not present for the vote.

FOR: Cllrs Braid, Mrs Coe, Mrs Cornell, Ms Golding, Mrs Henwood, Hirst, , Hossack, Kerslake, McCheyne, Mrs McKinlay, Mrs Murphy, Dr Naylor, Parker; Mrs Pound, Reed, Russell, Sleep, Sparling and Tee (19)

AGAINST: Cllrs Baker, Carter, Clark, Clarke, Mrs Cohen, Mrs Davies, Keeble, Kendall, Le-Surf, Morrissey, Mynott, Quirk and Sapwell (13)

ABSTAIN: Mrs Hones (1)

The Motion was CARRIED and RESOLVED accordingly.

215. Notice of Motion - Fouling Under Railway Bridge, Shenfield

Cllr Quirk had submitted a Motion but withdrew it as the action proposed was in process.

216. Notice Of Motion – Decisions On Senior Officer Salary

Cllr Quirk had submitted the following Motion:

'Government and this council talk much of openness, transparency and scrutiny. As such, as is the guidance of the coalition Government, the remuneration of the most senior public servants within our organisation must be decided in the most democratic and accountable way. For such decisions to ultimately be the gift of just one person is neither balanced nor democratic. This council therefore agrees that from here on the pay of the council's Managing Director and all staff that are set to receive a package that totals above £100,000 per annum in basic salary and bonus provision have their specific pay amount debated and decided by the full membership of this council in open forum before being formally agreed. This does not preclude the existence of a remuneration recommendation panel in this regard however the final decision will be made by council as a whole, not just the leader of the council'.

Cllr Baker SECONDED the Motion.

Following Cllr Hirst proposed an amendment to the Motion which was accepted by Cllr Quirk. The AMENDED Motion was as follows:

'Government and this council talk much of openness, transparency and scrutiny. As such, as is the guidance of the coalition Government, the remuneration of the most senior public servants within our organisation must be decided in the most democratic and accountable way. For such decisions to ultimately be the gift of just one person is neither balanced nor democratic. This council therefore agrees that from here on the pay of the council's Managing Director and all staff that are set to receive a package that totals above £100,000 per annum in basic salary and bonus provision have their specific pay amount debated and decided by the full membership of this council in open forum before being formally agreed. This does not preclude the existence of a remuneration recommendation panel in this regard however the final decision will be made by full council, not just the leader of the council'.

A vote was taken on a show of hands and RESOLVED ACCORDINGLY.

217. Notice of Motion - Licence for Trading Space

Cllr Baker had submitted the following motion:

"This council supports an entrepreneurial spirit and will encourage it amongst our local traders. However such initiatives must be within rules and guidelines. But of

course, those rules should also be flexible and have regard for common sense. On a daily basis in Brentwood's High Street, an ice cream van pitches outside of Marks and Spencer and receives parking tickets. It is my belief that instead of penalising something that seems to be a popular addition to the town, we should encourage it but within a regulatory framework. I therefore propose that officers investigate granting a pitch licence for this area, in conjunction with the Highways Authority if necessary, to enable all interested parties to bid for a trading space at this site in exchange for a licence fee payable to this council. This would allow an income to mitigate against the taxation burden on Brentwood council tax payers and ensure that local businesses could, if they wish, expand their trading activities within our bustling High Street space legitimately".

Following a discussion a vote was taken on a show of hands and the Motion was LOST.

218. Notice of Motion - The Introduction of Part Night Lighting to Brentwood

Cllr Kendall has submitted the following motion:

"Brentwood Borough Council has serious concerns about Essex County Council's plans to introduce part night street lighting in Brentwood in February 2014.

Members share residents concerns about potential increases in crime and anti social behaviour in the urban areas where the lights are going to be turned off.

Members are also very concerned about the number of urban roads that are not on the primary road network that are littered with potholes and footpaths that are in urgent need of repair across the Borough. These hazards will become even more of a danger for motorists and pedestrians when the lights are switched off.

This Council calls on Essex County Council to put on hold the roll out of the part night street lighting programme in Brentwood until the following issues have been properly addressed:

1) Brentwood Borough Council is given an assurance by the Cabinet member that there will be a full assessment and repair programme instigated as soon as possible to repair all the potholes and footpaths that are in urgent need of attention particularly on the urban roads across the Borough.

2) *Members would like the County Council to produce a detailed report that fully evaluates LED technology and the impact LED lighting would have on a community like Brentwood.*

3) *Members would like a forum established in Brentwood for key stakeholders from the community to discuss these proposals in detail and decide at the local level the best way forward.*

4) *If part night street lighting is introduced in Brentwood then members believe it should only be during the hours of 1am and 5am.*

Cllr Mrs Davies **SECONDED** the Motion.

Cllr Hossack proposed and Cllr Kendall accepted an **AMENDMENT** to proposal 3): that an existing working group, eg Brentwood Nightlife Action Group, would consider the proposals rather than establishing a separate forum for key stakeholders.

Following a full discussion a Member requisitioned pursuant to Rule 9.5 of Council Procedure rules that voting on the Motion be recorded.

FOR: Cllrs Aspinell, Carter, Clark, Clarke, Mrs Cohen, Mrs Davies, Hossack, Keeble, Kendall, Mynott, Sapwell and Tee(12)

AGAINST: Cllrs, Mrs Coe, Ms Golding, Hirst, Mrs Hones , Kerslake, McCheyne, Mrs McKinlay, Mrs Murphy, Dr Naylor, Parker; Mrs Pound, Reed, Russell, Sleep, Sparling (15)

ABSTAIN: Cllrs Baker, Braid, Mrs Cornell, Mrs Henwood, Le-Surf, Morrissey and Quirk (7)

The Motion was **LOST**.

219. Notice of Motion – Commercial Viability of Print Unit

Cllr Aspinell had submitted the following motion:

"The Council requests the Strategy and Policy Board to urgently investigate both the potential for and commercial viability of the Print Unit being reconfigured in order

to trade and generate an income. Furthermore, the Council requests that the Strategy and Policy Board prepare a report of its investigations into the viability of the proposal, to include a business case, for consideration by the next Strategy and Policy Board or the earliest available meeting of the Board" .

Cllr Clark SECONDED the Motion.

Following a discussion, Cllr Mrs McKinlay proposed an AMENDMENT which was accepted by Cllr Aspinell, as follows:

"As part of the review of back office services the Council requests the Strategy and Policy Board to urgently investigate both the potential for and commercial viability of the Print Unit being reconfigured in order to trade and generate an income. Furthermore, the Council requests that the Strategy and Policy Board prepare a report of its investigations into the viability of the proposal, to include a business case, before the end of the financial year."

A vote on the Motion was taken on a show of hands and it was RESOLVED UNANIMOUSLY ACCORDINGLY.

- 220. Urgent Business: Notice of Motion: Confidential Information** (The following item was considered by the Mayor to be urgent business pursuant to Section 100B(4)(b) of the Local Government Act (as amended) in order that Members could consider the matter without further delay).

Details from the Part Two item to be discussed at this meeting had been revealed to the press since publication of the supplementary report five days before the meeting. Reaffirmation of Members' commitment to comply with the law and an urgent review of the system for dealing with confidential reports was therefore requested to reduce the risk of a recurrence. The Mayor believed this could not wait until the next Full Council meeting due to the risk of a similar disclosure being made and subsequent damage to the Council's reputation.

Cllr Parker had submitted the following Motion:

"In light of the apparent recent leaks of confidential information, members of this Council reaffirm their commitment to comply with both the letter and spirit of the law when dealing with "pink" items.

As the current member procedure for accessing the information in a secure environment is not working, we call upon the Managing Director and Monitoring Officer to carry out a review with regards to amending the process."

Cllr Russell SECONDED the Motion.

Following a discussion a vote was taken on a show of hands and it was RESOLVED ACCORDINGLY.

221. Proposed adjournment of meeting

Cllr Aspinell MOVED and Cllr Clark SECONDED that the meeting be adjourned and reconvened on 28.10.2013 to consider the confidential item 16 on the agenda - William Hunter Way.

Members voted on a show of hands and the Motion was LOST.

222. Confidential item – William Hunter Way

Earlier in the meeting Members had resolved that the public be excluded for this item of business on the grounds that the disclosure of exempt information as defined in Schedule 12A of the Local Government Act 1972 was involved.

The report before Members provided an update on the status of the scheme to develop the William Hunter Way site following the Extraordinary Council meeting 11th September 2013.

Cllr Hirst MOVED and Cllr Parker SECONDED that the recommendations included in the report be approved and following a discussion Members voted with a show of hands and it was RESOLVED ACCORDINGLY.

(Cllr Mynott declared a pecuniary interest under the Council's Code of Conduct by virtue of living adjacent to the proposed development site. However, the Interim Monitoring Officer had granted a dispensation for Cllr Mynott to participate in the Extraordinary Council Meeting on the grounds that it was in the interests of persons living in the authority's area that he be able to put their views and concerns).

MEMBERS' WRITTEN QUESTIONS RECEIVED AND RESPONSES MADE AT ORDINARY COUNCIL 23.10.2013

Question 1) William Hunter Way Development Timescales - (Leader of the Council)

Please could the Leader confirm what she believes to be the start and finish dates for the William Hunter Way development?

Response: We have been advised by Stockland that they expect to be on site in July 2014 with a completion date of September 2015. Further details can be found in Appendix 7 of the report before the Ordinary Council Meeting 23rd Oct 2013.

Question 2) William Hunter Way Development - Compensation Arrangements (Leader of the Council)

Many Brentwood businesses and retailers are very concerned about the potential loss of income / business during the construction period for the William Hunter Way development and want to know who to contact and the format regarding potential claims for compensation. What support will the Borough Council and other agencies be providing in this respect?

Response: We have considered the potential for compensation claims but do not believe that there are grounds for statutory compensation.

Question 3) William Hunter Way Development - Financial Heads of Terms (Leader of the Council)

What are the revised financial heads of terms for the William Hunter Way development? How do these differ from what was previously agreed?

Response: There are no separate Financial Heads of Terms. The current proposal from Stockland is analysed within Appendix 1 of the report before the Ordinary Council Meeting 23rd Oct 2013. The changes proposed by the developer to the Development Agreement to support the current proposal from Stockland are provided in Appendix 4 of that report.

Question 4) William Hunter Way Development - Compensation for Residents - (Leader of the Council)

When the Sainsbury's store was built in William Hunter Way some compensation was offered to those local residents who had their quality of life adversely affected during the construction period. What compensation arrangements are going to be put in place for the local residents who are going to be directly affected by the Cinema / Retail construction works in William Hunter Way? Many of these residents are going to see their quality of life reduced and an obvious loss of amenity due to noise, air pollution and smells during the construction period.

Response: We have considered the potential for compensation claims but do not believe that there are grounds for statutory compensation

5) Following recent meetings with residents, local businesses and local authorities could members please be updated on the progress made in relation to the night time economy.

The Council has been very active in engaging with residents to ascertain their needs to ensure a vibrant attractive yet safe and enjoyable night time economy. Two public meetings have so far been held. The second took place last Monday. At this meeting the Police were pleased to report a 28% reduction in night time economy crime.

A Brentwood Nightlife Action Group (BNAG) has been formed with representatives from the alcohol and taxi trades, residents, Police, Street Pastors, cross party Members and relevant Council Officers.

The overall response has been positive with voluntary contributions already made towards a casing for a defibrillator due to be installed in Brentwood High Street.

The Group has established an action plan to address concerns raised at the public meetings and by BNAG itself.

At BNAG's second meeting on 10th October Council funding was agreed for the Street Pastors to acquire an additional Town Link Radio and thermal blankets. A radio link is also being provided between our CCTV control room and the Police.

One of the main concerns raised by residents has been that of urination in gardens and alleyways. Action is being considered to tackle this problem.

Additional CCTV deterrent has been provided and additional lighting is imminent in one hotspot area off Brentwood High Street.

Various methods to assist with Town Centre dispersal late at night have been considered and extending taxi ranks on the High street is being scoped out. Consideration is also being given to improve signage within the town particularly to promote the 20 mph speed limit down the High street to reduce the risk to pedestrians whilst they are enjoying the night life.

Proactive enforcement continues by licensing, environment, community safety and other officers within the Council, in partnership with the Police and recent initiatives have seen Council officers conducting high profile visits with the Police.

Shared intelligence from and within the community is vital. A new Council email address and night time economy website has been set up which are due to be promoted. Public leaflets will also be distributed to town centre residents to maintain engagement.

Question 6) - Could the chair of communities panel please update members on the progress of the Freedom Parks motion and when will the working group be formed?

Response: Officers have been doing some background work and looking at suitable sites, a meeting will take place in the coming weeks with Members to move forward on the project so that it is in place for next season'.

Question 7) Would the Chair of Performance and Resources please give details of the progress made so far on the Procurement Review relative to target. What hard cash savings have been identified for the current financial year and in what areas.

Response: A recent Procurement Review meeting has taken place and Procurement Savings of £198,320 from a target of £200,000 have been identified to date which means we are well on track to achieve the savings target as agreed in February 2013.

The document attached highlights that the savings have been identified in the following key areas:

- Renegotiated Contracts (£90,070) – this includes equipment leases and IT contracts with software providers
- Smarter Procurement (£41,250) – this includes greater use of the web and agreed terms for Job Adverts and Planning Notices
- Alternative Service Delivery (£67,000) – this includes grouping asset maintenance contracts

This excludes any savings arising from the New Ways of Working – Back Office Review which are currently forecast at £325,000 for 2013/14.

Redacted version of the Strictly Confidential Report considered at Ordinary Council – 23 October 2013

Item 16. William Hunter Way, Brentwood (Due to the commercial and sensitive nature of the information contained in this report some elements are considered as exempt information, under Paragraph 4 of Schedule 12A of the Local Government Act 1972)

Report of: Managing Director

Author: Philip Ruck

Telephone Number: Ext 2569

Email: philip.ruck@brentwood.gov.uk

1 Executive Summary

- 1.1 This report provides an update on the status of the scheme to develop the William Hunter Way site following the Extraordinary Council meeting 11th September 2013.
- 1.2 The Development Agreement (DA) is still in force and the Council is under a clear obligation to continue to satisfy the conditions of the DA and negotiate the best financial appraisal with Stockland until the longstop date (7th December 2013).
- 1.3 The report also updates Members on key developments and proposed changes to the Development Agreement in respect of the proposed development of William Hunter Way site with Stockland Halladale (UK) Limited (Stockland). Legal advice is being taken in connection with these developments and proposed changes .
- 1.4 Members will be aware that this report contains commercially sensitive information. As such the report is classified as exempt, under Paragraph 4 of Schedule 12A of the Local Government Act 1972 and thus certain section of the report will not be available for public viewing.

2 Recommendations

- 2.1 Members are asked to agree that the current financial appraisal and the changes to the DA proposed by Stockland in support of it do not meet the requirements of the Council. (For details of the analysis please see Appendix 1)
- 2.2 Members are asked to agree that officers instruct Stockland to:

- a. Provide a much improved financial appraisal
- b. Produce Stockland's funding proposals for the scheme
- c. Provide evidence of the terms of the preferred funder
- d. Provide evidence that the scheme is funded with details of the guarantor.



3 Background

- 3.1 In order to strengthen Brentwood's town centre retail and visitor offer, the Council has long held an aspiration to achieve the redevelopment of this surface car park for a high quality, mixed use scheme. The intention has been to provide a cinema, further large retail units and a new multi storey car park, supported by a strong pedestrian link between the new development and the High Street.
- 3.2 The Council entered a Development Agreement ("DA") with Stockland Halladale (UK) Limited (Stockland), in 2007 to develop the William Hunter Way car park site in Brentwood. The DA contains nine conditions precedent (CP's) which are to be satisfied by the longstop date of 7th December 2013. The responsibility for achieving the CP's is between the Council and Stockland.
- 3.3 This report includes:-
 1. The current status on each of the nine Conditions Precedent.
 2. Details of the current financial appraisal. See para (5) below
 3. A review of the current appraisal by CBRE. See para (6) below
 4. The District Valuer report on the proposed transaction for land owned by Barclays. See para (7) below
 5. A summary and detailed description of the variations proposed by Stockland to the Development Agreement. See para (8) below
 6. [Redacted]
 7. Legal observations on the current status of transactions. See para (10) below
 8. Timeline for Scheme Commencement

4 Conditions Precedent - current status

- 4.1 The DA was signed with the developer on 7th December 2007, fixing the principles of the scheme in a binding legal contract. The DA is conditional on the satisfaction of a number of matters which would need to be resolved before any development could commence. The inclusion of CP's is very common with major development schemes and provide both parties the security of a contractual relationship and a defined process against which to justify the time and expenditure (particularly by the developer) on taking forward the detailed planning and design work necessary for implementation.
- 4.2 The William Hunter Way agreement contains nine CP's. Stockland and the Council have endeavored to satisfy their respective CP's since 2007 and while some have been satisfied, others have not. Stockland estimates that it has spent over £2million so far on reaching this stage.
- 4.3 Under the terms of the DA the Council and Stockland are obliged to use all reasonable endeavors to satisfy the remaining CP's and carry out its responsibilities under the DA until the final Longstop Date of 7th December 2013.
- 4.4 Once all of the CP's have been met, the DA becomes unconditional and Stockland can commence development at the site, subject to compliance with the planning permission, the pre-commencement conditions contained in the Development Agreement and the Section 106 Agreement. The developer will need to satisfy all such agreements before any physical start on site can be made.
- 4.5 One of the pre-commencement conditions is that prior to start on site proposals must be finalised for temporary parking to replace the spaces lost at William Hunter Way to the satisfaction of the council and making payments to Essex County Council for transport/ highway works.
- 4.6 Set out below is an overview of the conditions and whether they have been resolved. Where unresolved, further update is provided in the following paragraphs.
- 4.7 Where in the following sections an item is marked as "Unresolved" it means that the Council is not in possession of evidence to verify any verbal statements from the developer or negotiations have yet to be concluded. Note this should not be interpreted that such evidence does not exist.

No:	Heading	Summary	Status
1	Title	<p>Council to secure ownership of the entire development site.</p> <p>See full update at paragraph [4.8]</p>	<p>Unresolved</p> <p>(Negotiations ongoing)</p>
		<p>Stockland to secure indemnity Insurance.</p> <p>See full update at paragraph [4.8]</p>	<p>Unresolved</p> <p>(Awaiting Evidence)</p>
2	Lettings	<p>Stockland to secure occupation lettings for a cinema, 55,000 square feet of retail space and a car park.</p> <p>See full update at paragraph [4.9]</p>	<p>Unresolved</p> <p>(Awaiting Evidence and confirmation of commitment to the scheme)</p>
3	Barclays	<p>Council to acquire land owned by Barclays Bank in the Development Site</p> <p>See full update at paragraph [4.10]</p>	<p>Unresolved</p> <p>(This is subject to ongoing discussions)</p>
4	Sainsbury's	<p>Council to secure a certificate from Sainsbury's regarding possible overage payments.</p> <p>See full update at paragraph [4.11]</p>	<p>Unresolved</p> <p>(This is subject to ongoing discussions)</p>
5	Planning	<p>Stockland to obtain satisfactory planning permission that must be extant at the time that the other conditions precedent are satisfied.</p>	<p>Satisfied – subject to S106 agreement</p>
6	Appropriation	<p>The Council to provide evidence of Appropriation and/or acquisition for a planning purpose. This can be waived by Stockland and is likely to be waived.</p> <p>See full update at paragraph [4.12]</p>	<p>Unresolved</p> <p>(Awaiting confirmation that Stockland intend to waive this condition)</p>
7	Developers Land	<p>Stockland to obtain freehold ownerships of the freehold land in the area. Stockland may waive this condition</p> <p>See full update at paragraph [4.13]</p>	<p>Unresolved</p> <p>(Awaiting confirmation that Stockland intend to waive this condition)</p>
8	Highways	<p>Stockland to obtain a stopping up order for land relevant to the scheme</p>	<p>Satisfied</p>

No:	Heading	Summary	Status
9	Site Investigation	Stockland to obtain satisfactory site investigation reports	Satisfied

4.8 The Title Condition

4.8.1 In order to satisfy this condition the Council must acquire title to the entire development site. The Council has already been successful in obtaining ownership to all but one parcel of land owned by Barclays (please see below at paragraph [4.10])

4.8.2 The outstanding points to satisfy this condition are as follows:

- a. Acquisition of the Barclays land
- b. Provision of a certificate by Essex County Council to confirm it does not wish to claim any right title or interest in the site given that a highway comprises part of the title.

4.8.3 A full update on the Barclays land is below at paragraph [4.10]

4.8.4 Essex County Council has agreed to sign a certificate and this is currently being signed by the Head of Assets and Property. This is expected imminently.

4.8.5 Stockland have a preliminary quote for indemnity insurance and have advised that this will be moved on in line with due process and do not see a difficulty in resolving this condition.

4.9 Letting Condition

4.9.1 In order to satisfy this condition Stockland must secure lettings for a cinema, 55,000 square feet of retail space and a Car Park operator. The present position is as follows:





4.10 Barclays Relocation Condition

- 4.10.1 In order to satisfy this condition, the Council must acquire land in the development site from Barclays.
- 4.10.2 Although unresolved, this CP is nearing completion. Heads of terms are agreed and legal documentation is being finalised between solicitors for Brentwood Borough Council and Barclays.
- 4.10.3 A District Valuer's report has confirmed that the arrangements with Barclays are satisfactory and can be found in Appendix 3. The receipt of the DV report satisfies the requirements of the Delegated Authority allowing the Managing Director to conclude this arrangement.
- 4.10.4 It should be emphasised that the comments contained in the report relate to the commercial transaction currently negotiated with Barclays in relation to the land owned by Barclays and as such the DV report can be viewed as being independent of the terms of DA with Stockland.

4.11 Sainsburys' Condition

- 4.11.1 In order to satisfy this CP, The Council must obtain a certificate from Sainsbury's in relation to the overage which affects the site.
- 4.11.2 When the Council acquired the site in 1990, the agreement contained overage provisions which entitle Sainsbury's to a top up payment, should the total consideration received for all transactions (not just the development under the DA) on the site exceed £7,000,000.
- 4.11.3 The Council are using all reasonable endeavors to progress this matter with Sainsbury's in order to satisfy this condition. Officers are contacting



Sainsbury's to brief them on the proposed transaction and ascertain details of Sainsbury's solicitors and the process and timescales to agree the relevant terms and documentation. Notwithstanding that details of the final terms and conditions for all lettings under the lettings condition need to be resolved.

4.12 Appropriation Condition

4.12.1 In order to satisfy this CP, if Stockland require, the Council must provide evidence that the development site has been appropriated for planning purposes.

4.12.2 This condition requires that the Council provide evidence of Appropriation and/or acquisition for a planning purpose within the meaning of section 232 Planning Act of the whole of the Property

4.12.3 Whilst this is unresolved, it is understood that Stockland are unlikely to require appropriation.

4.12.4 Stockland have been asked to confirm that they wish to exercise their right to waive this condition and the Council is waiting upon their response.

4.13 Developers Land Condition

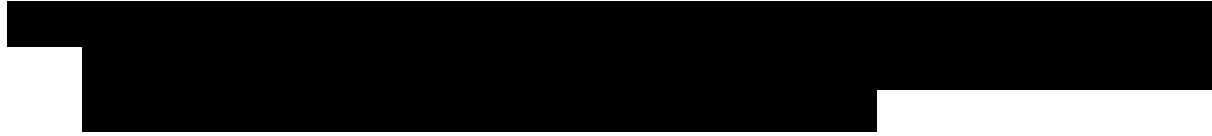
4.13.1 In order for the Developers Land Condition to be satisfied, Stockland must secure ownership of property in Brentwood. It is possible for Stockland to waive this condition and therefore it may not require resolution before the longstop date.

4.13.2 This condition requires the Developer to obtain freehold ownerships of the freehold land known as 73, 73a and 73b High Street, Brentwood and registered at the Land Registry with freehold title absolute with the Developer's Title Number

4.13.3 Stockland have been asked to confirm that they wish to exercise their right to waive this condition and the Council is waiting upon their response

5 Financial Appraisal

5.1 The Developer (Stockland) has updated their financial viability appraisal of the project. In producing this, they report that due to the current economic climate, there is a gap between the rental levels and capital values anticipated in 2007 as compared to those available in the current market. A revised financial package has been provided to the Council by Stockland. This includes a revised management option for the car park, referred to in section (4.9.1)

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5.3 The Council's consultants CBRE have provided their advice on the latest financial appraisal and revised financial package. Their recommendations, along with the recommendations of the parking consultants are contained in the supplementary reports to be brought before members.

5.4 Stockland have provided detailed and summary financial appraisals and compare their latest appraisal with the original appraisal. The detailed version is attached in Appendix 1.

5.5 This appraisal also incorporates the impact of the New Homes Bonus Grant and the Localisation of Business Rates.

6 Review of the current appraisal by CBRE

6.1 The full CBRE report can be found in Appendix 2. The summary of the CBRE report is included below:



7 District Valuer (DV) Report on the Barclays Transaction

7.1 The full report of the District Valuer which contains full details of the proposed transaction can be found in Appendix 3.

7.2 The District Valuer's report has confirmed that the arrangements with Barclays are satisfactory.

7.3 It should be emphasised that the comments contained in the report relate to the commercial transaction currently negotiated with Barclays in relation to the land owned by Barclays and as such the DV report can be viewed as being independent of the DA with Stockland. The DV did not raise any objections to the proposed transaction.

8 Summary of the variations proposed by Stockland to the Development Agreement

- 8.1 Stockland have prepared both a summary and a detailed statement of the proposed requirements in relation to the variation of the agreement. This is contained in Appendix 4.



10 Legal Review

- 10.1 As part of the due diligence being undertaken by the Council, legal views have been requested on key areas. This advice can be found in Appendix 6

11 Timeline for Scheme Commencement

- 11.1 The developer believes that it may be possible to achieve a start on site in July 2014 with completion of the project scheduled for September 2015.

- 11.2 The latest schedule provided by Stockland can be viewed as Appendix 7

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12 Conclusions

- 12.1 In light of the current economic and market conditions, Stockland are proposing a revised financial appraisal. CBRE suggest that this is a reasonable offer. However,

officers will continue to negotiate for an improved deal from Stockland. The variations to the DA requested by Stockland reflect the current proposed financial appraisal from Stockland.

- 12.2 The major risk for the Council relates to the ability of Stockland to fund the scheme and provide clear evidence that such funding has been secured and is backed by a strong guarantor. This is supported by the independent advice from CBRE (see Appendix 2) who recommend that the Council is to insist on seeing Stockland's funding proposals and evidence of the terms of the preferred funder before committing to revise the Development Agreement. This information has been requested from Stockland and we await their response.
- 12.3 Due to the information requested and the associated due diligence, some of these items will not become final until closer to the longstop date. Accordingly officers will continue their negotiations with Stockland up until the longstop date.
- 12.4 Members will be asked to consider the position of the DA at the next meeting of the Ordinary Council 11th December 2013.

13 Summary of Appendices

Appendix Number	Contains	Comment
1.	Latest Financial Appraisal	Exempt from public viewing. Contains Stockland advice and Council financial assessment
2.	Independent review of latest financial evaluation from Stockland by CBRE	Exempt from public viewing
3.	Report of the District Valuer on the proposed commercial transaction with Barclays	Exempt from public viewing
4.	Stockland proposed variations to the DA	Exempt from public viewing
5.	[REDACTED]	Exempt from public viewing
6.	Legal review	Exempt from public viewing
7.	Stockland proposed timeline	

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Stockland Proposed Timeline

