

WEST LINDSEY DISTRICT COUNCIL

MINUTES of a Special Meeting of the Governance and Audit Committee held in the Council Chamber at the Guildhall, Gainsborough on Tuesday 22 October 2013 commencing at 6.30 pm.

Present:

Councillor Sue Rawlins (Chairman)
Councillor Giles McNeill (Vice-Chairman)

Councillor Gillian Bardsley
Councillor Ken Bridger
Councillor Jackie Brockway
Councillor David Dobbie
Councillor Malcolm Leaning
Councillor Roger Patterson
Councillor Anne Welburn
Councillor Geoff Wiseman

Steve Wallace (Independent Co-opted Member)
Alison Adams (Independent Co-opted Member)

In Attendance:

Manjeet Gill
Jeanette McGarry
Mark Sturgess
Alan Robinson

Chief Executive
Interim Director
Director of Planning and Regeneration
Monitoring Officer and Head of Revenues, Benefits and Central Services

Alex Reeks
Russell Stone
Katie Coughlan

Assistant Chief Executive
Section 151 Officer and Head of Financial Services
Governance and Civic Officer

Also in attendance :

Lucy Pledge
Rachel Abbott
John Sketchley
Paula Longden
Tony Crawley

Internal Audit (Lincolnshire County Council)
Internal Audit (Lincolnshire County Council)
Internal Audit (Lincolnshire County Council)
External Audit (KPMG)
External Audit (KPMG)

Also Present :

Councillor Ian Fleetwood
Councillor Paul Howitt-Cowan
Councillor Burt Keimach
Councillor Stuart Kinch
Councillor Lesley Rollings
Councillor Reg Shore
Councillor Jeff Summers

Apologies: Councillor Di Rodgers

Membership: Councillor Geoff Wiseman substituting for
Councillor Di Rodgers

33 CHAIRMAN'S ANNOUNCEMENT AND MINUTE SILENCE

The Chairman welcomed all present to the meeting, and following the sad announcement of Councillor Chris Underwood Frost's death, requested that all Members and Officers stand and join her in a minute's silence, as a tribute to him.

34 MEMBERS' DECLARATIONS OF INTEREST

Councillor Roger Patterson declared a personal interest in report GA.21 13/14 (Internal Audit Report – Elswitha Development), in light of the recommendation contained therein and the future role of the Challenge and Improvement Committee, on which he also served.

35 INTERNAL AUDIT REPORT – ELSWITHA QUARTER DEVELOPMENT (GA.21 13/14)

Members gave consideration to a report which enabled them to consider the outcome of an Internal Audit Review undertaken on the Elswitha Quarter Development.

The review had focussed on how the project was managed, from its inception in September 2010 through to the rejection of the Judicial Review in January 2013, with an aim of: -

- Enabling the Council to look openly and critically at processes and decisions made to see whether the Elswitha Quarter development indicates that changes could and should be made to policies and practice;
- Identifying how these changes will be brought about;
- Identifying examples of good practice that can be built upon going forward; and
- Identifying areas where the Council's governance arrangements may need to be strengthened.

The Internal Auditor addressed the Committee and provided the following background and context to the report:-

(a) Why the Internal Audit review was commissioned?

A judicial review was lodged against the Council at the end of December 2012 around the lawfulness of the Council's decision making process. Whilst this was rejected by the High Court on a number of grounds, the Council wanted to identify how it might strengthen its governance arrangements and commissioned an Internal Audit Review.

(b) The Terms of Reference for the Review

These being, to look openly and critically at processes and decisions made to see whether the Elswitha Quarter development indicated that changes could and should be made to policies and practice; and to identify:

- how these changes would be brought about;
- examples of good practice that could be built upon going forward; and
- areas where the Council's governance arrangements may need to be strengthened.

(c) The Scope of the Internal Audit

These being, the decision making process; the level of Member engagement; due diligence on procurement approach; competencies, training and management accountability; consideration and compliance with Council constitution, policies and procedures; risk management; project management; working relationships; and the Council's response to the Judicial Review.

The Internal Auditor then addressed the Committee, setting out an Executive summary of the key findings, which had been made, during which Members noted the following points: -

Regarding the Selection of a Potential Development Partner: -

- The process to secure the successful outcomes for the development were not fully thought through at the initial stages of the project.
- The Council did not act unlawfully or breach its contract regulations but the initial chosen process restricted options in the later stages of the development.
- Obtaining specialist advice too late in the process could have had more serious ramifications.
- The process followed during July – December 2011 could have caused compliance issues with both the Council's contract procedure rules & EU procurement regulations.
- The evaluation model process needs to be strengthened
 - Due diligence / attention to detail
 - We found significant variation in one person's scoring - it is our view that in this case moderation of the scores would have led to a more robust evaluation and increased confidence in the outcome.
- Officers did make positive efforts to achieve the Council's objectives, find a way forward, and not lose the interest shown in the development when it was realised that there were risks and the options available had become limited.

Regarding Project Management / Member Engagement

- The Council's project management process was not applied during the initial stages of the project.
- The role of the steering group was not fully understood.
- Both Members and Officers could have made more of an effort to ensure the steering group worked effectively.
- Member representatives on the Steering Group failed to effectively keep other members informed.

Regarding Decision Making

- It is normal practice to provide Chair and Vice Chair of Committees with more detailed briefings, however, more consideration should have been given to other Committee members' information requirements.
- Committees should have been presented with more detailed information on the proposals – which in our view – would have ensured a stronger level of scrutiny and support a robust informed decision.
- Members need to understand the risks and impact associated with a decision.
- The decision to engage with a single 'potential development partner' caused some confusion and it was not clear to some Members where the Council was in the process.
- Members rely on Officers following proper processes and presenting accurate information when they are asked to make a decision. Whilst the errors found in the evaluation did not change the result of the 'winning' proposal – officers should have drawn these differences to the Committees attention.
- Members of the Committees could have asked for a deferral or more information, and needed to offer more robust challenge, particularly at the February 2012 meetings
- Although it is acknowledged that the lack of information contributed to this.

Regarding Whitton Gardens

- We have confirmed that Whitton Gardens can be used for development
- It is our view that the wording around Whitton Garden in the development brief was ambiguous and its precise role and availability could have been made clearer at a number of stages.
- The valuation from the Council's agent is considered robust and complied with Section 123 requirements. However given the circumstances of this development it is our view that it would have been prudent to have obtained at least one more valuation from another valuer.

Regarding Contact with Developers

- Contact with developers during a procurement / expressions of interest exercise in regeneration projects process should be controlled. This will ensure the risk of developers not receiving the same information is minimised.
- Officers had legitimate concerns about contact with Developer 3 during the threat of a Judicial Review and took appropriate action.

- Some members did not fully consider their role as a Councillor to protect the interests of the Council – when making contact with the litigant and when there was a threat of a Judicial Review. Those members shouldn't have had contact with the developer.

Regarding Some of the Good Practice

- The Draft Commercial Strategy is a good document which sets out the importance of:
 - Clear management standards and guidance.
 - Marketing and business development.
 - Due diligence and business information to support investment decisions.
 - Having the right team to deliver.This is due to be approved in November 2013.
- The fact that this Internal Audit Review was commissioned is an example of the good governance principle of openness and transparency and a willingness to learn.

The Committee noted that during the review process and the interviews which had been given, a number of assertions had been made, however a number of these could not be proven and thus were not included within the report, which was evidence based only.

Finally, the Internal Auditor indicated that Management had responded to the findings / conclusions of the report and had accepted the recommendations contained therein.

The Director of Planning and Regeneration then addressed the Committee, providing background information around the project and the importance of the audit review to the Council, acknowledging that the report contained important learning for the Council around the handling of large investment projects.

The Director of Planning and Regeneration then set out the Management's response to the audit findings during which Members noted the following information: -

- Management welcomes the report.
- Practices highlighted in the report have already changed as a result of learning already taken on board.
- The learning from the report will be embedded in the work of the Council and has been since late 2011.
- This will be monitored by the Governance and Audit Committee to ensure that it happens.
- The report has shown that the overriding desire in pursuing this project was to further the wellbeing of Gainsborough.
- A primary objection was achieved – the demolition of the former Guildhall.

Regarding Project Management and Initiation

- The Council's approach has changed since early 2012.

- All projects are now fully scoped at initiation stage.
- Training has been undertaken and further work is focussing on embedding culture.
- Project Management techniques are now an integral part of project development and implementation.
- Specialist advice is obtained at the project initiation and other key decision making stages.

Regarding Contacts with Potential Developers

- All Officer contact with developers is now documented.
- Development and guidance will be undertaken with Members around the governance of projects and appropriate contacts and communication with developers.

Regarding Clarity of Published Information

- In respect of the developers' submissions, the status of Whitton's Gardens was clear, published information, where appropriate, should be tested to ensure it contains no ambiguities.

Regarding Stakeholder Engagement

- Project planning should more explicitly identify the objectives and opportunities for stakeholder engagement in all relevant committee reports

Response from Statutory Officers to the Findings of the Review

- **Section 151 Officer**

"The report clearly demonstrates a need to follow a robust process that supports the delivery of the expected outcomes. In my view suitable financial evaluation was carried out; however I take on board the audit's findings about including this within the final committee reports"

- **Monitoring Officer**

"It is clear that colleagues from internal audit have carried out a comprehensive review of the project. I do not believe that there are any legal issues around the work carried out on the project. That said there are two key issues that the report raises in respect of the relationships and behaviours of both Officers and Members. The first learning point is Officers need to provide sufficient information to allow Members to make a fully informed decision. Secondly it is a concern that a number of Members contacted a litigant prior to and during a legal process. As Monitoring Officer I would propose that a more proactive approach with Members when dealing with a project of this size and nature."

In conclusion the Director of Planning and Regeneration stated his conclusions during which it was noted: -

- The report was welcomed and would assist the quality and implementation of projects at the Council
- It had recognised good practice
- A number of the actions outlined in the report have been implemented

- The implementation of the remaining of the actions would be overseen by the Governance and Audit Committee.

Lengthy debate ensued and Members asked a number of questions of Officers and sought assurance on several aspects. Members expressed the frustrations they had felt during the period.

In responding to questions, the internal auditor, confirmed that the management response did cover all of the issues raised through the report.

Some members referred to Officer / Member relations during this period and considered there had been a high level of mistrust. All present acknowledged the importance of good Member / Officer relations and the need for these to be based on trust. Councillors indicated they relied on Officers to give them accurate and timely information and needed confidence going forward that this would be the case. Members expressed frustration they had felt around this project, with some indicating that this had led Members to take any actions they considered appropriate as they were of the view that the public interest was the overriding factor, in absence of receiving clear and accurate information from Officers.

Furthermore, some members commented on the lack of process which had been applied and the difficulties this had undoubtedly caused as the project moved forward. Processes had not been fit for purpose and Members had been left confused, leaving them little opportunity or ability to challenge. Again they sought assurance and guarantees, which were duly given, that going forward all processes would be in place and adhered to.

Some Members sought indication of the sign off process which had been applied to the report, and indicated they were of the belief this had gone to Officers in the first instance. Assurance was sought and received that the content had not been amended in any way which affected the review's findings, during this process, and that the usual sign off process had been applied.

Some Members were of the belief that lessons had not been learnt. Members stressed to Officers the Council did not work under Executive arrangements and thus all Members needed to be aware of all relevant information in order to perform their duties. A number of Members indicated their confidence had been rocked as a result and there was a need for this to now be re-built.

One Member sought indication as to whether the internal auditor was of the view that any Members or Officers should have an investigation into their conduct or whether any had been reprimanded as a result of their involvement in the development. Confirmation was given that the scope of the audit did not include conduct of individual's behaviour / involvement. However the Chief Executive indicated that a Director had since left the organisation and the Monitoring Officer confirmed that issues around Member conduct had been raised with him and would be looked into. At present there were no live investigations on-going.

Clarification concerning the calling of the Extraordinary Council Meeting was sought. Comments were made that both the grounds for calling the meeting and calling the Judicial Review were identical in nature. This was disputed by a minority of Members but Officers re-iterated the proven grounds as to why the request could not be approved when first received.

Members welcomed the proposed training and development and indicated all Members should receive this as part of the induction process, particularly training around their role, remit and limitations. Members further indicated that a simple list of do's and don'ts would be welcome in order that all fully understand "where the line was" and what would happen if this was crossed. In responding Officers outlined at length the planned programme of development, including workshops with open dialogue around preferred methods of communication; level of information and detail to be included in committee reports; the role of Chairman and how to handle commercially sensitive information. There was an intention to also work with the Monitoring Officer from the London Borough of Lambeth and a number of Peer Members to assist Members and Officers understanding of good governance and ethical conduct.

At the request of the Chairman, Officers re-iterated the changes which had been implemented to-date in respect of due diligence, highlighting the role of the Commercial Board, the commercial training Officers had undertaken and the fact the legal and procurement advice was now taken at the inception of all projects.

Finally Members commented on Stakeholder engagement and the significant lack of it around this project, particularly considering its scale and potential impact to the residents of Gainsborough. Some Members of the Committee were also Town Councillors and placed on record the Town Council's willingness to be fully engaged in this project and the need for real consultation going forward and complete fresh look at the site. It was accepted the Town Council had been in disarray during the project and for this reason Members warned against the difficulties an organisation can face, and the impact on an organisation's effectiveness when trust, confidence and relations are damaged.

By way of reassurance the internal auditor indicated that all her recommendations had been accepted by management and this included training and development for Members and Officers; as well as Member and Stakeholder engagement.

Moving to the recommendations, Members sought indication as to whether the Challenge and Improvement Committee would require specialist advice / training to undertake the task and were advised that they would need to be fully aware of all the issues but would receive support from Officers.

It was suggested that recommendation 2 (c) be brought in line with 2 (b) and on that basis it was

RESOLVED that: -

- (a) the content of the report and the recommendations on the Council's Governance, Risk and Internal Control environment be considered and noted;
- (b) the internal audit report be **REFERRED** to the Challenge and Improvement Committee in order to: -
 - (i) establish a Cross- Party Working Group to develop a smart action plan to address the recommendations set out in the report and those of the Governance Audit Committee, as expressed throughout the course of the debate;
 - (ii) monitor the delivery of the action plan by receiving quarterly reports on the implementation of its actions;
 - (iii) obtain assurance and evidence that the Governance framework, systems and processes for developments and key projects has been strengthened;
 - (iv) obtain assurance and evidence that these have been complied with on current developments and key projects; and
- (c) a report be received back from the Challenge and Improvement Committee in the future on progress with regard to the actions set out in recommendation (b) (i) – (iv) above.

The meeting concluded at 8.55 pm.

Chairman