

DISCLAIMER

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Bristol City Council

**Minutes of a meeting of the
Call In Sub-Committee of the
Overview and Scrutiny Management Board
held on 14 May 2014 at 6pm**

P Councillor Bailey
P Councillor Goulandris
P Councillor Kent
P Councillor Pickup (in the Chair)
P Colin Smith

Also in attendance:

Councillor Negus – Caller In
George Ferguson – Mayor
Councillor Gollop – Deputy Mayor
Robert Orrett – Service Director – Property
Barra Mac Ruairi – Strategic Director Place
Shahzia Daya – Service Manager – Legal Services

OSM

108.5/14 Apologies for absence, substitutions and introductions

Apologies were received from Councillor Hopkins, one of the Call-In Councillors. The Chair asked that it be minuted that the Sub-Committee extended its sincere sympathy to Councillor Hopkins at the sudden loss of his wife.

OSM

109.5/14

Public Forum.

Public Forum Statements were received from:

- **Alison Devonshire – BS10 Parks and Planning Group;**
- **Alderman Royston Griffey;**
- **David Redgewell**

Public Forum Questions were received from:

- **Alderman Royston Griffey.**

The submissions were included in the Minute Book. It was noted that Alderman Griffey, David Redgewell and Alison Devonshire were not in attendance. Julie Boston, FOSBR spoke to Alison Devonshire's statement. The Sub-Committee noted all statements and questions with responses.

OSM
110.5/14

Declarations of interest.

Declarations were made by Councillor Kent on behalf of the Liberal Democrats who had accepted a £2000 donation from the Port Authority for the Mayoral Campaign.

Councillor Goulandris noted that the Port and its Directors often donated to political parties.

The Mayor reported that he had turned down a £2000 donation from the Port for his Mayoral Campaign.

Councillor Negus reported that his party group sat on the Port Board.

Colin Smith stated that it was likely that the Labour Party Mayoral candidate might have also received a similar donation from the Port but he was unaware if this was the case.

OSM
111.5/14

Whipping

There was no whipping.

OSM
112.5/14

Call in of the Mayor's decision (taken at the 1 April Cabinet meeting) on the Port of Bristol – Freehold property.

The Chair reported that the Mayor would need to leave the meeting at 7.30 as he had a prior commitment to attend. Councillor Negus would therefore speak for himself and Councillor Hopkins. The Mayor and officers would respond to the Call in Statement.

Councillor Negus spoke to a statement he had prepared which is attached to these minutes as an Appendix.

The Mayor responded as follows:-

- The Cabinet report's recommendations was to progress negotiations subject to formal external evaluation. Progress was vital and the report had been made confidential as it was not possible to conduct property negotiations in public as they would be surely compromised;
- Advice taken was that the land was worth no more than £500,000 on the open market. There was no income from the land and there would be no return until 2141. It was not possible to know the value of the land in 2141;
- The last thing the Port would want is a residential development on the edge of their operation as it would impede the use of the Port;
- The highest offer for the freehold previously was £3.85m in 2012 and this was rejected by the City Council;

- The current offer of £10m more than fully reflected the potential development value and a recent external evaluation had come in at £6m;
- The Port's rationale to pay over the odds was a commercial one as it was not possible to borrow through sovereign funds without the freehold;
- The prosperity of the Port was key to the City Council as it had a 10% share in the Port and enhancing the Port's prospects would benefit Bristol;
- During discussions, the City Council was not given the option of increasing its share in the Port;
- The Mayor stated that Councillor Negus was incorrect to state that the funds generated for any potential sell were earmarked for Mayoral projects. The money was 'the family silver' and would therefore be invested wisely to regenerate the City by unlocking schemes it had longed to do;
- The Cabinet report had brought about proper Cabinet discussion including the Deputy Mayor and the Cabinet had received proper professional advice. It was felt that the previous officer advice had been wrong;
- The proposals would have made no difference to the budget debate at Full Council as it was capital income and not revenue;
- There was no hidden agenda – the only agenda was how best to use the value.

The following points reflect the debate :-

- Colin Smith asked whether an increase in the shareholding of the Port was ever an option. The Mayor informed him that it had come up in discussion but was not seen as an option by the Port;
- Councillor Bailey believed it was wrong of the City Council to simply accept the Port's view on shareholding and serious negotiations should include this consideration;
- Councillor Bailey expressed concern as to why the decision had been codewarded on the Forward Plan and when he had asked an officer for an explanation he had been told that it was confidential and he could not divulge the information. He added that the Port belonged to the people of Bristol and he therefore did not expect matters about it to be cloaked in secrecy from members who had been elected to protect the public's interest. The Mayor replied that the confidential ban had been lifted when the report had come to Cabinet;
- The Service Director – Property stated that it had been vital to protect the level of price from the open market when transacting with a single party. The 2012 offer of £3.5m had been rejected. The advice at the time was that an offer of £10m would change the context and become worthy of consideration;
- It was noted that owning the freehold did not ensure that the Port would be kept open;
- The Mayor reported that £10m invested today would be worth £5bn in 2141;
- Councillor Goulandris asked officers to confirm what professional advice had been sought on the value and was informed that in 2004

and 2006 Gerald Eve had provided a marriage value of £3m, in 2012 Deloitte had valued the Port at £3.5m and in 2014 Jones Lang LaSalle had valued it at £6m. Valuers had regard to whatever indicators they could find and advice received was that £10m represented a strong offer;

- Councillor Gollop, Deputy Mayor, stated that it was important to understand the circumstances the Port was in back in 1991 when the Council purchased the freehold as there was a risk of losing the Port and therefore many jobs. The Council had therefore stepped in so jobs could be created. It was important to look at the Port commercially as the sell would provide income and create jobs in Avonmouth. The asset was not currently generating income or gave the Council power as there were no voting rights;
- The Service Director – Property, in response to a question, replied that there was no formal letter headed valuation of the Port at £10m. He confirmed that the valuation of £3.5m by Deloitte had been a professional evaluation;
- Councillor Kent referred to Section 15 of the original report regarding increased shareholding and noted that the officer response to call in on this point suggested that this was possible. The Service Director – Property replied that currently no deal had been contracted so anything was possible. Negotiations would be comprehensive and nothing would be excluded;
- The Mayor reiterated that the Cabinet decision was to progress negotiations and was not a 'fait accompli';
- it was noted that the 'blue' land outside of the Port had general commercial use but the powers in the lease to stop development fell away with the Harbour Provisional Order. The Council therefore had no powers on this land other than as Planning Authority;
- Councillor Negus stated that a supermarket had previously been keen to buy a large piece of this land;
- Colin Smith stated that the main issue was whether due process in relation to democracy and transparency had been followed. He suggested that it was not possible to ever regard a decision as good or bad when it was based on a future that one could not be clear on. The sell could become bad at some point in the future but it was important to make decisions based on the current facts. Every decision was based on risk taking. He referred to the Council's share in any uplift of land from future development and in particular to the Morrison's planning application for Avonmouth on land leased by the Port. The Mayor reported that likely planning prospects had already been factored in to the valuation. The Service Director – Property stated that such a sell would benefit the City Council by 50% of the uplift value. However, this would only apply to blue land and would be subject to the market and being successful in Development Control Committee. A giant supermarket in an area where no one lived was unlikely to be successful at such a Committee;
- Colin Smith stated that selling the Port for £10m and the Port subsequently inviting a supermarket to build on its land would equate to the Council selling off its heritage and someone else making a lot of money at the Council's expense. The Mayor responded that this would be the last thing the Port would want to do. He had taken a great deal

of advice and all remote possibilities of uplifts in value the Council would have benefited from had been factored in to the valuation. He was convinced that process had been strictly followed and given the maximum consideration;

- Councillor Gollop added that any future uplift would benefit the Council as it would increase the dividend on Council owned shares;
- Councillor Bailey asked what would stop the Port putting the land into a separate company. The Service Director – Property, replied that this had been acknowledged in discussions and it was necessary to ensure due diligence to confirm that any sale would not affect the Council's shareholding in the Port;
- Councillor Bailey suggested that the Port's management had offered £10m as they thought it was a good deal. The Mayor reiterated that his external advice was that this was a really good deal. It was a family company as the sons were part of its management and it was therefore not just a calculated business deal as they had their hearts in Bristol's success and wanted to invest in Bristol as much as possible. It was important not to make a decision based on suspicion but to be alert and shrewd. Councillor Gollop acknowledged that there was risk in the decision but the Council had previously been very good at not taking decisions. He emphasised that all clauses would need to be clarified before any sell;
- Councillor Bailey asked how the Council could protect itself when it had minority shares and was informed by the Service Director – Property, that it would be necessary to undertake an enormous amount of work on due diligence and report back further.

At this point the Mayor left the meeting.

- Councillor Gollop was asked why he believed this was a good deal for Bristol and replied that the Port was an asset that was not working for the City and was tied up for 127 years with no income. The sell would permit the money to work for the City now through investment in infrastructure. An above market value in addition to a shareholding and uplift in value indicated that this was a very good deal. There were many needs for Capital and it seemed commercially and financially the right thing to do. A £10m investment would bring about a huge increase in value for Bristol. He was convinced this was a very good and positive decision;
- Councillor Negus, in response, felt it was a bad decision as it was based on now and the Council had a duty to make decisions which provided for the future and the potential use of the land. He believed the Council needed to be part of the future of the Port and not dispose of it for a small sum.

The Chair, being content that all issues had been fully debated, summed up the issues covered in the debate and reminded the Sub-Committee of their options.

Councillor Kent moved that the Cabinet decision be referred to Full Council to debate the sell. He was not against the sell but had concerns regarding consultation and some of the professional advice. He believed that the

codeworded confidential report was an unnecessary precaution especially when the Council's democratic process was underpinned by a presumption in favour of openness.

Councillor Bailey seconded the motion and on being put to the vote was lost 2:3.

Colin Smith moved that no further action be taken as the decision was to enter into negotiations only. These negotiations might or might not be successful.

This was seconded by Councillor Goulandris who stated that due process had been followed. On being put to the vote, this was carried 3:2.

RESOLVED:

That no further action be taken and therefore the Mayor's decision be implemented without further delay.

(The meeting ended at 7:45pm)

Chair

Appendix to 14.5.14 Mins.

Introduction

This city has a creditable record of investing for its future. Over many years it has created the floating Harbour, then the outer dock and port facilities and finally Bristol airport which was sold off. Since 1991 when this council finally acknowledged that it could no longer run its port successfully a buy-out was arranged in which the new private Port Company leased all the land and Bristol City Council retained the freehold for 150 years of which 127 remain. There was a lot of detail, some of which I will refer to later.

The Port company made a presentation to an informal meeting of the Liberal Democrat Cabinet in 2012 with regard to acquiring the freehold interest in the land. This was discussed collegiately and with the advice of a number of long-serving senior officers. As presented, it was considered to offer little advantage to the City in the long-term and was not pursued. I understand that similar approaches had been made to the previous administration, presumably with the same outcome.

I want to show how the way that the current decision has been reached is prejudicial to wise decision-making and the long-term interests of this city and its citizens.

1. Secrecy and Timing: I acknowledge and respect the need for secrecy in such financial discussions and indeed these regularly form part of exempt documentation in committee and other meetings. What is surprising is that in this case a code word "Victoria" was adopted for this scheme, with Cabinet members and officers sworn to secrecy about even the subject. I have been involved in a number of deals in this council involving substantially greater sums of money that have not felt the need to be so concealed. We should consider why this degree of secrecy was maintained until after the budget process was concluded. Would it not have been more appropriate, more trusting, for councillors making difficult decisions on the mayor's budget which substantially cut services and jobs to have been aware that a major property deal was in the offing which would have changed the character of that difficult budget. This is even more true for members of the public (of land held in

trust for them) who took part in the budget consultation process that the mayor has lauded.

2. Budget freedom: Instead, the mayor debated with me on Radio Bristol after it became clear that our port land was for sale. He said what the sale price was to be, and that he intended the proceeds to be used for his High Street/Castle Park project. He thus pre-empted the so-called Cabinet debate, which was concerned with negotiation, and made it clear that he felt free to use money from city assets to fund projects he favoured outside the scope of the overall budget. I might remind you all at this point that the City has a very large property portfolio and the mayor has opted to be the Executive Member responsible for it.

3. "Cabinet": as is common at these events, the mayor answered all the questions and made all of the decisions. Yet we still refer to such outcomes as Cabinet decisions and not mayoral decisions. Unlike the leader of a party grouping the mayor does not have the benefit of critical friends to test decisions. He has to depend more than previous administrations on officers. Further he is supported generally by new officers with little longer term commitment to the city. We have already seen how this close support seriously taints documents such as the mayor's vision statement that should be very important. Nevertheless, the reports in the Cabinet papers were very short, not enthusiastic and presented no options. There was no recommendation for an independent legal and commercial appraisal so no acknowledgement of the reported recent change of heart by some officers that might have triggered a third opinion. There was no appearance of Cabinet challenge and no public or Council debate on the subject prior to the statement 'on air' of what the deal would broadly comprise. Unchallenged decisions are much more likely to be poor decisions. This is a high price to pay for less argumentative Full Council meetings.

4. Better investment: Bristol is a thriving city with another thousand years life in prospect. It is bursting at the seams with its largest landholding being the Port of Bristol land. It would be hard to predict what pressures and prospects were realisable on that 2000 acres in 127 year's time. The city will still be here then and hopefully able to take advantage of this resource. There is a lot of documentation missing from the file of which I have had sight, including a Buy-Back Agreement. Indeed the way that the lease arrangement was written allows the city now to take advantage of development because it can be awarded 50% of the overage (additional value) of development that is not port related.

From time to time developers enquire about other opportunities – one occurred while I was the responsible Cabinet member – which would in only a very small number of instances have more than covered the sale price of the whole 2000 acres proposed. Yet the mayor is proposing to sell not just the land but this opportunity to be a controlling player in the future of this major port and job creator. Simply leaving the investment where it is would be a better prospect than trying to kickstart a difficult pet property deal in the centre of the city and I know because I spent many months trying. This is a poor deal for the city. Value is defined differently by public owners and private wealth creators. Where a city valuer may consider what something can it be sold for, an entrepreneur thinks what its potential value may be. We have bowed to a market price rather than bravely, and with vision, looked to the medium and particularly the long term regeneration value. We have sold our future for short-term cash when potential owners, with some tenacity, could make a massive windfall. Why liquidate an asset of potentially high-value and come away with small-change to re-invest? This sort of firesale would only be considered if there was a pressing short-term need.

5. Previous administrations: have taken a “City Fathers” 150 year long-term view of the city’s assets NOT that of a 2-year political timescale.

6. Planning control: In simple terms, with the leasehold comes the agreement by the City Council that planning control will be given to the Port company under the harbour revision order so long as the use is for port related facilities and infrastructure. Should alternative uses be proposed then these would have to be agreed in the normal way with Bristol City Council and the uplift on land value shared between the council and the company. It is not clear how this might be transferred in the event of the freehold interest being sold but it is not inconceivable that the Port Company, or future purchasers of their massively-enhanced interest would factor in a time delay and legal cost for working round this inconvenience.

It should not be overlooked that although this deal is with the present owners with long local connections, they might need to sell all or a major part of their interest to secure funding for a major deepwater or other facility or they might just want to sell anyway. There are potentially

massive gains to be made from using parts of this land for supermarkets, waste incinerators, housing and much more. The increased value thus gained – all of which would pass to the new landowner – would underwrite investment in anti-flooding measures to further increase its investment value. Some of this represents advantages to this city but its benefits and so increased value will not pass to its citizens.

7. Why now? Was the original leasehold sale poorly put together? What has suddenly changed from the neutral advice given by experienced officers, civil servants, up to 2012? Despite the verbal advice given by today's recently appointed and temporary officers why are the officers' reports in the Cabinet Report so slight? For such a significant decision, so much bigger than the £10m sale price, this alone would have been cause for a Call-in.

8. The need for Scrutiny: has now been conceded by the Mayor, I understand, but this will be long after the decision has already been made. Scrutiny should have been reinforced at the outset in this council with a mayoral system – even the Westminster mayoral zealots agree on this – to bolster that lack of collegiate decision-making lost with the mayoral dominance of his Cabinet. Instead it is being run down. There are no checks and no balance.

9. Regeneration: It is right that this city council should not be blocking growth at the Port. Its contribution should be measured on potential rather than current market value. If we sell each city asset on the open market it will attract only its immediate price. If instead we got smart we could cooperate with sympathetic and creative developers to drive out higher returns and to reap long-term rewards from regeneration. There is no sign of this option – or any other - in the Cabinet report. 'There is no alternative' is a rightly-derided political mantra.

10. Energy: Cardiff Bay and the Severn estuary are the source of the next potential legacy project for this city. The previous administration realised the value of an energy company making use of the wind power in this area and other potential sources. Far greater opportunities exist for development of tidal energy and this of course requires shore-based support, research facilities and a landfall for powerlines to supply energy for our city and beyond, – an adjacent base for Bristol's next long-term legacy project. We need to retain our ability to be a major player in

sustaining our future. The previous administration was a great supporter of local tidal energy and played its part in scotching the environmentally unfriendly barrage but there is no recognition of this abandoning of another key opportunity in the Cabinet report.

11. Share in process not money: If we cannot change the mayor's decision to give up our heritage – and that's how this undemocratic system has been devised – we must at least be able to impress another way of ensuring that we hold on to some control and some of the profits that will be made by our letting this massive public asset go over wholly and for ever to the private sector. The mayor's decision makes no provision for this. I would want this City to be a partner with a private organisation, each with access to sources of funding, to retain joint control of the inevitable great increase in the profitability and land value from this ownership. A much less attractive option would be to take an increased share of the port company. There could also be some final value/reversion at the end of the original leasehold period which would clearly make the present sale less attractive, but would mean that the City eventually gets its land back.

These are all poor alternatives to selling off city assets for private benefit.

In summary, I argue that the negotiation, the lack of vision, the secrecy, the poor advice, the decision process and the inadequate justification and options in the Cabinet Report are each individually grounds for a review of process.

I see no value in sending this back to Cabinet and so ask that the Panel give due consideration to taking this decision back to full council so that it can be properly appraised before the present stage is endorsed and further negotiations are undertaken.

Thank you.

