

SOUTH HAMS OVERVIEW AND SCRUTINY PANEL



Minutes of a meeting of the **South Hams Overview and Scrutiny Panel** held on **Thursday, 20th July, 2017 at 9.00 am** at the **Cary Room - Follaton House**

Present: **Councillors:**

Chairman Cllr Saltern
Vice Chairman Cllr Smerdon

Cllr Baldry
Cllr Blackler
Cllr Hicks
Cllr May

Cllr Birch
Cllr Green
Cllr Huntley
Cllr Pennington

In attendance:

Councillors:

Cllr Bastone
Cllr Brazil
Cllr Cuthbert
Cllr Gilbert
Cllr Hopwood
Cllr Tucker

Cllr Bramble
Cllr Brown
Cllr Foss
Cllr Holway
Cllr Pearce
Cllr Wingate

Officers:

Darren Arulvasagam

Steve Jordan

Andrew Ogalo

Group Manager Business
Development
Executive Director Head of Paid
Service
Solicitor

23. **Declarations of Interest**

O&S.23/17

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting, but there were none made.

24. **Urgent Business**

O&S.24/17

The Chairman advised that he had no items of urgent business to be raised at this meeting.

25. **Commercial Property Acquisition Strategy**

O&S.25/17

The Panel was presented with a report that outlined the Council's draft Commercial Property Acquisition Strategy.

Prior to inviting discussion on this agenda item, the Chairman advised those in attendance that, in accordance with the Council Constitution, he had called this extraordinary meeting to enable the Panel the opportunity to consider (and make recommendations on) the draft Strategy before its presentation to the Executive.

At this point, Cllr Birch advised that he took exception to the published report suggesting that, as a Member of the Invest to Earn Working Group, he had contributed to its content. For absolute clarity, he asked for it to be recorded that he had taken no part in the production of this report and he proceeded to advise that he opposed adoption of the draft Strategy for reasons including:-

- his personal belief that the Council did not have the legal powers to pursue this Strategy as a course of action;
- the number of local authorities who were in the process of adopting (or had already implemented) similar strategies was artificially inflating the Commercial Property market. As a result, he was of the view that the market was already saturated and financial margins were therefore becoming slimmer; and
- the lack of reference in any reports to the potential political risk arising from any changes in national Government.

In stating that the draft Strategy constituted a high risk gamble, Cllr Birch then **PROPOSED** the following motion:-

*'That the Panel **RECOMMEND** that the Executive reject the draft Commercial Property Acquisition Strategy that is being presented to its meeting on 20 July 2017.'*

To instigate the debate, this motion was subsequently **SECONDED**.

In the ensuing discussion, reference was made to:-

- (a) the lack of any case law in this regard. The Specialist – Legal confirmed that there was no case law and the concerns that had been raised by the proposer were therefore untested in the court system. However, the advice received by Counsel had highlighted that Section

1 of the Localism Act 2011 had provided local authorities with far more legal powers than they previously had including the power to do *'anything that individuals generally may do'*;

In response, the proposer acknowledged these powers but advised that his concerns related to whether or not the Council actually had the power to borrow up to £75 million for commercial investment;

- (b) the experiences of other local authorities. To mitigate the legal concerns raised, a Member highlighted that, since a number of other councils had already adopted similar strategies, they each must have undertaken their own due diligence tests before implementation;
- (c) the market becoming saturated. To counter the concerns raised, officers advised that local authorities had, to date, invested £3 billion in commercial property, which represented only 5% of the total market;
- (d) the extent of the proposed borrowing. As an indication of the extent of the proposed borrowing, a Member advised that £75 million equated to approximately £2,000 for every Band D household in the South Hams;
- (e) the timing of the proposal. A Member advised that he supported the motion in light of the current levels of commercial uncertainty that existed within the country;
- (f) the role of the Invest to Earn Working Group. In the event of the Strategy being adopted, it was envisaged that the Working Group would be presented with a 'due diligence pack' of information for each potential property purchase. As part of this pack, officers gave assurances that information would be included that related to break clauses and an Exit Strategy.

When put to the vote, the motion was declared **LOST**.

The recommendation as outlined in the published agenda papers (page 1 refers) was then **PROPOSED** and **SECONDED** subject to inclusion of the following two additions:-

1. That the delegated authority for individual commercial property acquisition and disposal decisions be extended to include the lead Executive Member for Business Development; and
2. That, in the event of the Strategy being approved, the Panel be in receipt of quarterly update reports on the portfolio performance.

When put to the vote, this motion was then declared **CARRIED**.

It was then:

| **RECOMMENDED**

That the Executive **RECOMMEND** to Council that:

1. the proposed Commercial Property Acquisition Strategy (as detailed in Appendix A) be approved and implemented;
2. officers conclude an appropriate procurement process to commission property experts to work on behalf of the Council in relation to the proposed Commercial Property Acquisition Strategy;
3. individual commercial property portfolio acquisition decisions be delegated to the Head of Paid Service, in consultation with the Council's Section 151 Officer, the Leader of Council, the lead Executive Member for Business Development; and the appointed Chairman of the Invest to Earn Working Group;
4. funds be borrowed on fixed rate terms from the appropriate source in order to pursue this strategy. (NB. to fulfil the first tranche of the proposed Strategy, this would require borrowing of up to £26.75 million (£25 million plus acquisition costs of 7%)).

That the Panel **RESOLVE** that:

5. in the event of the Strategy being approved, and, as part of its annual work programme, the Panel receive quarterly update reports on progress and performance.

The Meeting concluded at 10.10 am

Signed by:

Chairman
