

Internal Audit Report

Tavistock Hotel Proposal

West Devon Borough Council

March 2019



Auditing for achievement

Devon Audit Partnership

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1 Introduction

1.1 The Devon Audit Partnership (DAP) was asked by the Chief Executive of West Devon Borough Council, to undertake a review on the basis of what lessons could be learnt following the rejection by Members to approve the funding for a proposal to develop the Abbey Rise Car Park site in Tavistock. An audit brief was agreed with the following objectives:

- An assessment of the effectiveness of the strategy, using the information and evidence that was considered as part of the business case for the Tavistock Hotel proposal and its robustness (in relation to the decision to proceed to the Hub Committee to recommend to Council for the funding to be set aside for the project as part of the Capital Programme Proposals for 2019-20) – to include outline consideration of car parking, the economy, the design and planning considerations;
- To detail the timetable of events for reports and meetings on the decision, prior to the Hub Committee recommendation on 29th January 2019;
- To determine the level of consultation which had taken place and with whom, including other local authorities, business organisations, consultants and voluntary/specialist organisations;
- An assessment of whether due process and the correct governance procedures were followed and adhered to as part of the decision making process;
- What were the factors that led to a number of recommendations from the Hub Committee on 29th January being overturned at Full Council on 12th February – not just by a majority of Councillors but by a unanimous vote;
- A high level review of the information and content on social media.

1.2 Our approach to this work and our findings are detailed in Section 2 below.

Background / Timeline

Due to ongoing reductions in central government grant funding, local authorities are increasingly reliant upon income generation. This has led many Councils to implement strategies to generate additional income, as a means to address funding challenges, to support ongoing service delivery.

Direct Property Investment is now commonly undertaken by Local Authorities as one way of generating income, acquiring assets both within and outside of their governance boundaries. Public Works Loan Board (PWLB) long term lending is at very preferential rates when compared to commercial investors. Property investment is capable of generating returns above PWLB rates, creating positive surplus income. This can be used to fund current services and mitigate the impact of ongoing cuts to council services, protecting those that would otherwise be at risk.

In line with this move by Local Authorities, West Devon Borough Council approved a commercial property investment strategy and the procurement of a property agent to work on behalf of the Council in relation to the strategy in April 2017.

In May 2018, CCD Properties, an independent consultancy firm appointed by the Council to identify investment opportunities, presented to Hub Committee Members, the Invest to Earn Group and the chairs of Development Management, Audit and Overview & Scrutiny Committees, a number of proposals across the Borough where council-owned assets could be developed as investment opportunities. Whilst some proposals were rejected, a report for Hub Committee was requested that would see some of the opportunities progressed. One of these opportunities was a proposal to develop an 80 bedroom, 5 floor hotel on the site of the existing Abbey Rise car park in Tavistock.

The subsequent report was presented at Hub Committee on 5th June 2018, as a Part II (Exempt from the public) "To Follow" paper. Outline details of three projects, two in Okehampton and the Tavistock Hotel proposal were described in the report, with financial projections, photos and plans of the sites, issues to be addressed and benefits provided in an Appendix. The Committee were asked to approve up to £90,000 from existing Council Earmarked Reserves and Capital Budgets in order to prepare detailed business cases and progress negotiations for each of the proposals.

Full Council in July 2018 considered the report as an "Unstarred" minute (HC4) and approved the recommendation although the report and appendix were not included with the meeting papers as is the current practice. It is noted, however, that Members could access the Hub Committee reports as they are stored online with the Committee agenda.

In September 2018, the Hub Committee received a report that put forward amendments to the existing Commercial Property Acquisition Strategy. The revised Strategy, entitled "Commercial Property Strategy" combined the ability to make property acquisitions with in-Borough asset developments whilst keeping the same delegated authorities in place i.e. "Delegated Authority to be given to the Head of Paid Service, in consultation with the S151 Officer, Leader of the Council and Chair of the "Invest to Earn" (or their deputy). Each receive one vote to proceed with purchase. In the event of a split decision, the S151 Officer has the casting vote"

The revised strategy also introduced the following requirement:

"Before a final decision to proceed with a development or acquisition is made, if applicable, local ward Members will be briefed and be able to share their views with the Invest to Earn Group"

Appendix C to the report provided illustrative borrowing requirements in the form of a list containing three commercial property acquisitions, five asset developments followed by other schemes or services with borrowing requirements. The five asset developments were identified as "Project 1", "Project 2" and so on, one of which was the Tavistock hotel proposal but this was not evident to the reader.

The Council's Invest to Earn Group met on 5th November 2018 to discuss a number of proposals, including the Tavistock Hotel and two Okehampton in-borough developments outlined in the June Hub Committee report. Following presentations by officers, which included business cases prepared by CCD Properties and a "Transaction Review Template" (the Council's Investment decision template) which had been completed by officers, the Group voted to recommend that the proposals proceed and they were subsequently approved under the delegated authority scheme as set out in the Commercial Property Strategy. There followed an informal Council meeting immediately after where those present received an update on the Group's decision.

At a further informal Council meeting on 7th January, Members that were present were informed that the Tavistock Hotel scheme was being pursued.

On 21st January 2019, the Council issued a press release regarding the Tavistock Hotel scheme which stated “Councillors at West Devon have already agreed a multi-million pound investment into the development.....The project will still be subject to planning permission and the funding needs to get a final stamp of approval from West Devon Borough Council’s Full Council in February”. Coverage in the local and even national press then followed including the publication of articles and letters of opposition from the public. In addition, the proposal became a big topic of “conversation” on social media.

On 29th January 2019, the Hub Committee met and considered a report entitled “Commercial Development Financing”. The report provided more detail on the Tavistock Hotel proposal including data to back up the potential benefits that the development would bring, as well as what the next stages of the process were, namely “to agree an agreement to lease in January 2019, prior to seeking planning permission” which was anticipated to be submitted in May 2019. The report sought approval for how the proposal would be funded through the pre-development, construction and initial letting period. The report’s recommendations set out a range of funding to allow the schemes to proceed and the Committee resolved that Full Council be recommended to approve the report.

Full Council met on 12th February 2019 where Members received the minutes of the latest Hub Committee and were asked to consider the adoption of the unstarred minutes that required approval, of which HC73, “Commercial Development Financing” was one. After some debate, Members voted unanimously to reject the recommendations from the Hub Committee on 29th January.

2 Methodology

2.1 The audit approach and methodology involved:

2.1.1 “Interviews” were held with the following:

- Leader of West Devon Borough Council;
- Members of the Invest to Earn Group;
- Six of the seven Members representing the three Tavistock wards, the seventh being abroad at the time of this review;
- Remaining two Members who signed a Scrutiny Proposal Form dated 18th February 2019;
- Chief Executive;
- Group Manager for Business Development;
- Group Manager for Strategic Finance (Section 151 Officer);
- Monitoring Officer;
- Head of Planning Practice.

2.1.2 A review of relevant documentation was undertaken, including Council and Committee agendas, reports and minutes, the Commercial Property Strategy, acquisition and development proposal papers, meeting notes and a selection of email communication between Members and Members and officers.

2.1.3 As well as the documentation above, reference has been made to the Scrutiny Proposal Form dated 18th February 2019 (requesting the setting up of a Task & Finish Group to review the procedures for proposing development funded by the Council) and the Council’s Constitution.

3 Findings

3.1 Commercial Property Strategy – In September 2018, the existing Commercial Property Acquisition Strategy was amended to include commercial development opportunities. When reading the Strategy, its wording continues to be focussed on acquisitions with occasional reference to developments. It can be argued that the process of acquiring property and other assets is different from the development of assets, the latter bringing a more complex, protracted process as well as a range of different risks. It is appreciated that when acquiring property there is a need to be able to move quickly when a compelling opportunity arises. It can be likened to purchasing a house, you view it today, sleep on it overnight, only to find it has been sold to someone else the next morning. When adopting an asset acquisition strategy, then it would need a clear and efficient decision making protocol, e.g. delegated authorities, approved criteria for selecting properties etc. Rapid decision making is important in this market.

In the case of commercial development, it can be argued that the timescales are not so pressing, development proposals take longer to come to fruition and involve a wider range of tasks and more consideration of issues and risks. That does not mean to say that the commercial world operates at the speed of the public sector and local authorities in particular and there is a need for Councils to be able to “fast track” the decision making process if necessary. Given the differences it could be argued that approval of development proposals, or at least those with significant impact, for example, above a specified value or having a high degree of risk, should be considered by the wider Council membership rather than decided through delegated authority. It is recognised that a balance has to be reached between the need for commercial confidentiality during the development of these schemes and the need to keep Members informed for decision making purposes and meeting the Council’s responsibilities for consulting stakeholders such as the public and businesses.

3.2 Delegated Authority – The review noted that the delegated authority that existed for the acquisition of commercial property was adopted for commercial development when the Strategy was amended in September 2018.

In addition, the review noted that the scheme of delegation laid down in the Commercial Property Strategy is separate from the Council’s overall Delegation Scheme that appears in the Part 3 of the Council’s Constitution and there is no indication in the overall scheme that the former exists.

3.3 Due Diligence Process – Whilst the Commercial Property Strategy sets out the objectives, desired outcomes, criteria and governance arrangements, it does not set out how “due diligence” should be carried out and the issues and risks that should be taken into consideration. The audit review found that there is a due diligence process in place to be followed for acquisitions and documentation that officers complete that forms part of the decision making process. That process is represented in a flowchart that identifies the various tasks and steps that need to be taken. A similar process flowchart does not exist for commercial development opportunities. Within the business case presented to the Invest to Earn Group, there is a “Preliminary Programme” in the form of a Gantt Chart (a project timetable). This lists a range of tasks and events against which timescales are set. Such charts are commonly used as part of project management. Examination of the tasks listed would indicate that they are geared towards the role of a developer and do not take into account tasks that the Council should carry out in its duty as a Local Authority, such as consultation with stakeholders and assessment of impact on issues such as car parking and local businesses. Similarly the business case includes a Risk Register which, on closer inspection identifies developer programme risks that concentrate on risks with i) the site and ii) financial risks which again centre on costs associated with site works. The risk register

does not identify risks that relate to issues the Council may face when fulfilling some of its strategic themes and priorities or risks such as the public or business reaction and more crucially the mitigating actions to minimise the risks, their likelihood and impact.

- 3.4 **Invest to Earn Group** – The Invest to Earn Group was established in early 2017 as a small group of three Members with support from officers, that reports to the Council’s Hub Committee. The Group’s remit is to:

“work in conjunction with officers on any project or initiative linked to income generation, investment strategy or efficiency improvement.”

In addition,

“Members will suggest, consider and evaluate proposals and help officers to shape these, agreeing parameters, criteria and ultimately assist with building credible business cases for presentation and approval at the appropriate Council committee”.

It is noted that

“the group themselves cannot determine whether an opportunity should proceed (or funds be expended) if such an opportunity needs delegated authority approval or Council Committee approval, in line with the Council’s constituted scheme of delegation”.

The Terms of Reference seen by the review also states that

“Members will provide input and engage/act as advocates with the wider membership” and “Group Members are responsible for reporting back on the activities of the group to their political group and the wider elected membership”.

It is evident that this engagement with Ward Members did not take place in respect of the Tavistock Hotel proposal and this process was not carried out by officers (whereby Tavistock Members were formally consulted). This is recognised by those involved as a failing in the process.

The review found no evidence that the Terms of Reference for the Group have been reviewed since it was established, despite it stating that a review will take place annually, commencing in January 2018. At the same time it is noted that the current Terms of Reference do not make specific reference to Council commercial development, despite this aspect being added to the Council’s Commercial Property Strategy in September 2018.

When speaking to those Members involved on the Invest to Earn Group, it appeared they had an interest and understanding of financial sustainability and investment. However, it is noted that the Group has received no formal training on the risks and merits of commercial property acquisition and development, the governance and independence considerations, the key questions/considerations in appraising an investment business case and how proposals fit with Council objectives.

At the meeting of the Invest to Earn Group in November 2018, Members were presented with the CCD Properties business plan and a Transaction Review sheet (the Council’s Investment decision template) completed by officers for consideration when discussing and subsequently voting on whether to approve the proposal.

The Investment decision template sets out the facts of the proposal in tabular form against the following criteria:

- a. Location;
- b. Property Condition;
- c. Credit Rating of Tenant(s);
- d. Length of Lease;
- e. Gross Yield;
- f. Net Yield;
- g. Management & Maintenance Costs;
- h. Conformity with MHCLG (Government) April 2018 Guidelines;
- i. Any Specific Problems Identified.

Each of these is given a “RAG” rating, Red, Amber, Green as a way of scoring each criteria where green denotes the least risk or issues, through to red which would indicate large risks and issues.

For the Tavistock hotel proposal, all criteria were given a green rating with the exception of net yield which was amber on the basis that the net yield figure was lower than the minimum 1% as set out in the Commercial Property Strategy.

Under “Any Specific Problems Identified” issues with the site location, with regard the Conservation Area and World Heritage Site, and impact on car parking were highlighted. As far as site location was concerned it stated that “therefore design will need to accommodate concerns over setting / scale”. As for car parking officers stated “Site used will result in loss of car parking for town. Other options to mitigate the impact on the town will need to be considered; however, benchmarking analysis shows that there is sufficient surplus capacity outside of peak times.”

The document (the Council’s Investment decision template) then continues by providing more detail as follows:

Property Details and Address
Owner
Tenant Details
Purchase Price
Probable Completion Date
Net Annual Rental Income
Amount to be Borrowed:
Gross Yield
Loan Period & Interest Rate:
Confirmation of Useful Life of the Building (for loan length purposes and MRP calculations)
How the property meets the Council’s multiple objectives under the Council’s strategy
Debt Proportionality considerations
Lease expiry details:
Tenant Strength details:
Exit Strategy
Option to Tax the property for VAT
Insurance - Date added to Council’s Insurance cover
Assets CoP Summary & Recommendation
S151 Summary & Recommendation

It is noted that as part of the above, both the Assets Head of Practice and the Section 151 Officer provided a summary of the facts covering their area of expertise and a recommendation on the proposal. In their comments, the Assets Head of Practice commented that:

“A hotel of this size would operate in a different market to existing providers and the users will then utilise the town’s facilities for dining & entertainment. Whilst the initial net yield is below 1%, it is felt that the economic benefits to the town, job creation and additional footfall will yield wider benefits” and “Discussion about re-provision of car parking to be continued. Consultation with public / local business to be part of planning process”.

The only record of discussions and decisions taken at Invest to Earn Group meetings are “notes” taken by the Business Development Group Manager, which represented minutes of the meeting. The notes for the meeting held in November 2018 show that the Tavistock Hotel proposal was one of a number of capital projects being considered at that meeting. The notes indicate that the issue of loss of car parking was identified by the group and that this may generate *“complaint from some local ward Members / Chamber / residents”*.

The notes go on to state:

“Car parking is emotive, understood that in order to bring employment and footfall and linked spend to town, there will need to be disruption. Public consultation through the planning application can tease out issues and as a result, solutions can be explored to limit the impact.”

The review could not find any formal recording of the Group’s evaluation of the proposal other than the notes above. The review of a proposal such as this could be completed in a similar way as the evaluation and moderation of a procurement tender submission where scores are recorded against each of the evaluation criteria and where a detailed narrative of the reasoning for the respective scores is provided.

3.5 Due Diligence on Planning Issues – The position of the Abbey Rise car park within a Conservation Area and adjacent to the World Heritage Site raises a number of risks with regard to obtaining planning permission for the scheme. As part of the due diligence process, the review has seen evidence that officers progressing the hotel proposal held a meeting with Council Planners, Conservation and Heritage officers to highlight any “red lines” and points that would need to be addressed with this and other schemes. The review has been informed that outline plans and “fly throughs” were presented. The feedback would suggest that a five storey building may not be acceptable but be in relation to Godolphin House next door. The scale/design of the building would need work to ensure it would be acceptable in planning terms and the loss of parking would need to be addressed. Topographical and Block drawings would be required showing the scale of the development in context to ensure the footprint and size was acceptable. In addition, the frontage would need to be bespoke. The meeting referred to a document entitled “Outline of Main Planning Considerations”, prepared by the Planning Department in May 2016. This was in connection with an earlier proposal to develop the car park for residential use. Whilst that proposal would not see the loss of car parking space the document did state

“Any redevelopment of the site that does not propose to retain the existing number of car parking spaces must demonstrate that there is

capacity in other town centre car parks that the loss of parking will not adversely impact on the vitality and viability of the town.”

With regard to the “Type and Scale of Development”, the Planning Department advised that

“if development is accepted on the site it is likely that a high density design solution may be appropriate”.

Reference was made to the adjoining site (Godolphin House) as a four storey building (albeit with one storey below road height) and

“it may be possible to develop this site to a similar scale”.

“this site”, referring to Abbey Rise Car Park. The document continued saying:

“A contemporary design is in principle acceptable but it should preserve and enhance the Conservation Area and the World Heritage Site” and “It is possible that uses other than residential may also be appropriate for this site, such as hotel, leisure and/or offices but these uses may bring greater demands for onsite parking.”

The document concluded by stating:

“The overriding site constraint is the site’s sensitive location within a Conservation Area and proximity to a World Heritage Site.....this will require a high quality design solution for the site. Also key is the need to ensure there is no loss of car parking unless it can be justified, and that adequate parking is provided to meet the needs of the new development.”

From speaking to officers and Members involved in moving the proposal forward, it appears that further discussions would be held with Planning, Conservation and Heritage Officers as part of a “pre-application” process. This would further examine issues that would be considered by the Planning Committee. Officers in the Planning Department have indicated to the review that the impact on car parking would be a material consideration and questions would be asked regarding the number of spaces being lost, are they being provided elsewhere and if so are they comparable. If there is an overall loss of some or all current parking provision in the town, the proposal would need to detail what the impact would be. Planning officers and Committee would be seeking factual evidence to back up statements made in the planning application. The use of the Town Benchmarking Report, dated January 2017, would be seen as one piece of evidence.

With regards to the impact on existing hotel and other overnight accommodation providers, Planners and the Planning Committee would see this as a material consideration and any planning application would need to provide evidence, for example impact assessments to back up statements in the application, preferably from an independent expert. The review has not found evidence of any studies or assessment taking place as part of the due diligence process prior the Invest to Earn Group meeting in November 2018 nor before the press release in January 2019. It is understood that this work would have been commissioned prior to the planning application being submitted.

- 3.6 **Members’ Responsibility to Stay Informed** – Whilst a number of those Members who took part in this review agreed that they have a duty/responsibility to find out and keep up to date on issues and events, they also pointed out that where reliance was placed on information being presented in Committee reports, the size of agendas and report packs meant that it

was difficult to read everything presented to them. It could be questioned whether there is too much of an expectation on Members to be fully informed in this way and that ways to assist Members should be explored for example, signposting those matters that are of greater significance or by reducing the size of reports. However, it is recognised that reports need to include as much information as possible and therefore can be lengthy.

- 3.7 Member Access to Information** – Views were expressed by a number of Members when interviewed that they did not have access to Hub Committee reports, which, if they had, would have informed them of the Tavistock hotel proposal. This is due to the relevant Hub Committee minute being “unstarred” when presented to Full Council, without any accompanying reports that had been considered by Hub. This review could not find any formal rules on how the “unstarred” minute process should operate and whether an “unstarred” minute warrants its appearance as a standalone agenda item, with all the relevant papers available to access. It is pointed out that Members can access Hub Committee papers through the ModGov system online, including Part II exempt “pink papers” using their logon details and that they are able to track down a report relating to an unstarred minute using the system. It is understood that the use of “unstarred” minutes and the process behind it is to be considered by the Political Structures Working Group.

Committee papers are now solely produced in electronic form and rely on a Member’s ability to access them using a suitable IT device. It has been made apparent to the review by some Members that they had issues with the reliability of the technology.

3.8 Communication – Briefing Local Ward Members

One amendment made to the Commercial Property Strategy in September 2018 was the inclusion of the following:

Before a final decision to proceed with a development or acquisition is made, if applicable, local ward members will be briefed and be able to share their views with the Invest to Earn Group.

The local ward members in Tavistock have stated that no such briefing took place. It is recognised by Members and officers involved in taking this proposal forward, that there was a failure to carry this out and that local ward Members indeed were not briefed prior to the Invest to Earn Group meeting on 5th November where the scheme was discussed and approved under delegated authority, nor afterwards. Although those Members in attendance were briefed on the proposals at two Informal Council meetings, if the Ward Members were not able to attend these meetings, they would not have had the verbal briefing that other Members received.

Where the Strategy refers to “if applicable”, the review has been told this applies where a scheme is “in Borough”. Therefore, if a scheme were outside the Borough then there is no need to brief local members.

The Strategy does not make it clear what constitutes “local ward members should be briefed”, whether this means a formal presentation of plans and documentation, as a group, individually, or whether reliance is on them to read papers that are presented to Committee or Council. Likewise the strategy does not make it clear how such Members can share their views with the Invest to Earn Group, whether this is by attendance at a formal meeting of the Group, an informal meeting of the Group or by submitting questions to the Group or its Members in writing/email.

It is noted that a number of Members representing Okehampton did receive a briefing from officers and a Member of the Hub Committee regarding the proposals being pursued in the town as well as the Tavistock hotel proposal.

3.9 **Communication – Press Release and Visibility of Process**

The press release issued to Members on 21st January 2019 uses language that would give the reader the impression that the proposal was in its final stages of approval and that it had the support of the majority, if not all Councillors. Whilst the press release does state that “the project will still be subject to planning permission and the funding needs to get a final stamp of approval from West Devon Borough Council’s Full Council in February”, the reader could interpret this as saying that the scheme would go ahead if approved at that Council meeting. This could be further enforced when it states “we have agreed Heads of Terms with a hotel chain and aim to sign an agreement for lease within the next month”. Whilst some readers may understand the implications of that statement, there could be many others who reading that the Council was aiming to “sign an agreement” took this to mean that the Council was about to commit itself to a deal that it couldn’t reverse.

In addition, there was an opportunity to outline to the public and press what actions had already taken place as part of the due diligence process and provide more detail about what tasks were still to be done especially those that focussed on the issues surrounding car parking, impact on local businesses, design and other planning issues. By doing so, it may have provided answers to some of the questions being raised, especially those being raised in the press and social media.

The impact of the press release and subsequent coverage was to create and galvanise opposition to the proposal without the full facts being provided, such that when the proposal was brought before Full Council on 12th February, the report on the financing of proposed commercial developments, that had been “approved” by the meeting of Hub Committee two weeks before, was seen as perhaps the last chance to stop the hotel proposal from going ahead. In fact the purpose of the report was to make provision for the funding of the various schemes under consideration in much the same way as one would arrange to have a mortgage in place when looking to purchase a house. Having a mortgage offer on the table is no guarantee that a particular house purchase will proceed to completion. This was the same scenario with the Hotel proposal.

The report brought before the Hub Committee and the subsequent Full Council in February was just one of several steps and approvals required as part of a process to move the scheme forward, ahead of the submission of a planning application, in much the same way as the decision made by the Invest to Earn Group in November 2018. The lack of visibility of the process being followed meant that many outside of the Council and those Members not involved in the process were not aware of the work already undertaken and the work that was planned to take place in the future. An opportunity was perhaps missed to inform those with an interest in the scheme and answer some of the questions that were being asked.

- 3.10 **Informal Council and Group Meetings** – These sessions act as a way of disseminating information and for topics to be discussed. Given their informal nature, there is no formal agenda or minutes taken that indicate what was discussed or who was in attendance. The audit review has not been able to confirm who was in attendance at any Informal Council meetings or what was discussed. From an audit viewpoint, it would be recommended that a formal agenda was issued and minutes taken but it would lead to a loss of “informality”. However, if there is reliance on both Hub and Members Group meetings being a way of keeping Members informed of current topics and issues, then perhaps more emphasis is placed on Members attending and consideration given to finding some method of letting Members who cannot attend, know of the topics raised, if not the discussions that took place,

rather than rely on those Members attempting to find out themselves. In this way the risk of inconsistent messages is minimised.

- 3.11 **The Rejection of Hub Committee Recommendations by Full Council** – From speaking with Members as part of this review, both those involved in progressing the Tavistock Hotel proposal and those outside of the process, it is evident that the majority of the local ward Members, once they were aware of the scheme, were opposed to it. In light of the reaction of the public, business and fellow Members and the issues that were being raised, other Members began to question whether the proposal was "achievable". Efforts were made to put forward an amendment to be put before Full Council that would delay a decision, to allow further due diligence work, for example on heritage issues. However, it was deemed unnecessary by Legal officers as the purpose of the report on financing of schemes being debated was merely to have the finances in place once all the steps, including the granting of planning permission had been completed. It was pointed out that a deferral to obtain further information was not necessary in order to ensure "the public purse is protected", the purpose of the report was to secure and allocate funds and not addressing the planning merits of the scheme(s) being put forward.

Prior to the meeting of the Full Council on 12th February, the Conservatives and Independent Members attended their respective group meetings. After debate, it became evident that the majority of the Conservative Group would enter Full Council with the intention to oppose the Hub recommendations. It appears that a number of the remaining Members of the Group then felt that the recommendations would not succeed and therefore chose to vote against it, in line with their colleagues. Some Independent Members appear to have entered the Full Council meeting thinking that the recommendations had the support of the majority of Members and were surprised to learn that this was not the case and despite being in favour of the scheme, they decided to reject the Hub Committee recommendations after listening to the debate. As a consequence, the recommendations were unanimously rejected.

- 3.12 **The Use of Social Media** – Following the press release and meetings with Tavistock Town Council and Chamber of Commerce, the Tavistock Hotel proposal generated large amounts of "discussion" on social media platforms such as Facebook.

The review was provided with examples of posts and responses/comments by users soon after the public were aware of the proposal in early February 2019 and whilst these have not been examined in detail by this review, it is noted that there was often a mixed response, not all negative, posts often contained incorrectly informed opinion and some put forward ideas that could be further explored. A number questioned the process or possible lack of process being followed and some posts, whilst not against a hotel, were against its location, the loss of car parking and that it appeared that it was to be built using Council Taxpayers money. There were instances where people's views on the ability to park their car differed, some saying there wasn't a problem whilst others argued that it was difficult to find a space. It should be noted that unless the "Facebook user" identified where they were from, those involved in the online conversation could come from any part of the UK or outside the UK.

From the examples provided, it is noted that some replies to posts were from Members, contributing to the "conversations", often to support posts that opposed the proposal and that could be seen as critical of the Council. This review has not considered whether Members' posts on Facebook were inappropriate or merely intended to be informative;

A review of the use of Social Media by Council officers and Members is included in the Internal Audit plan for 2019/20 that was recently agreed by the Council's Audit Committee.

4 Conclusions

The main conclusions from our review are as follows:

4.1 Effectiveness of the Commercial Property Strategy

The consequences of amending the existing Commercial Property Acquisition Strategy, with the inclusion of commercial development on Council land, particularly around the process of delegated authority, were not appreciated by the vast majority of Members at the time. The nature of commercial development when compared to acquisition is different, both in terms of timescales and the risks involved which perhaps is not reflected in the strategy. Given this, it could be questioned whether the delegated authority in place is appropriate for commercial development proposals, particularly those over a certain size or where it is judged they have a high level of risk associated with them. In these cases, it may be more appropriate for decisions to be taken at Full Council.

Evidence would suggest that the Council took the role as developer when proceeding with the proposal. The implementation plan and risk register contained in the business case focuses on development issues that a developer, in this case West Devon Borough Council, would face and does not address issues that would be faced by the Council in its role as the provider of public services. An important element of the Commercial approach is finding the right balance between public sector ethos, including the delivery of social value and commercial practices, ensuring that Council pledges are met, to improve the lives of West Devon residents, supporting local businesses, as well as increasing income and opportunity. It is important that those involved in commercial investment opportunities whether they are officers, Members or external experts who identify and negotiate deals, understand that they are not operating in a purely commercial environment and that the prime purpose of a local authority is to deliver statutory services to local residents.

4.2 Timetable of Events

The review has identified a sequence of meetings where it is either evident or alleged that the Tavistock Hotel proposal, along with other development proposals, were presented and/or discussed.

4.3 Level of Consultation

Whilst ward Members in Okehampton were briefed by officers on the two development schemes in the town whilst in their early stages, there was a failure on the part of officers and the Invest to Earn Group to ensure that local ward Members were briefed on the Tavistock Hotel proposal in advance of the Group's meeting on 5th November. It is fully recognised by all those involved in the proposal that there was a failure to inform and brief local Members in Tavistock.

It is noted that as part of their briefing, Okehampton Members were made aware of the Tavistock hotel development and this may be how other non-Tavistock Members became aware.

There are conflicting views as to whether local ward Members were aware of the Tavistock hotel proposal prior to the press release. This review has been unable to confirm whether the issue was discussed at meetings where evidence shows that those Members were in attendance. Where reports were presented at Committee, these were taken as "Part II" Exempt reports and the identity of the various schemes was not made public for commercially sensitive reasons (although this information was available to all West Devon Borough Council Members through their electronic login to the Committee agendas and

reports). In addition, Informal Council meetings are not minuted and attendance not recorded. Given the significance of the proposal, the fact that local ward Members had not raised concerns could lead one to feel that they, in fact, were unaware. It is understood that a review of the Council's Constitution is currently taking place and the running of Informal Council and other informal meetings of Committees could be taken into consideration as part of this exercise.

The review has seen evidence that initial contact had been made with Planning, Conservation and Heritage Officers to identify issues that Planners would take into consideration when presented with a planning application.

The Council had sought the services of property experts, in the form of CCD Properties to initially identify possible viable Council assets that could be developed and possible tenants. They were then asked to prepare a Business Plan that would be presented to the Invest to Earn Group for their consideration. In addition, external legal experts were engaged to pursue the drafting of legal agreements with prospective tenants.

4.4 Due Process / Governance Procedures / Decision Making Process

Whilst there is a process for acquiring an asset, which is documented by way of a flowchart, the process to be followed when developing an existing asset is not formally set out, in particular the due diligence process and the steps that need to be taken. It is accepted that the due diligence process followed by officers was similar to for acquiring an asset and there are extra steps in the due diligence process for a development e.g. consultation with Ward Members, which was not carried out formally. In terms of planning, the review has seen evidence that officers met with planners, conservation and heritage experts in order to highlight the planning issues that would need to be addressed in order to obtain planning permission. In addition to the comments made by planning officers at that meeting, some reliance has been placed on a document produced by the Planning Department two years earlier which outlined the main planning considerations for a residential development on the Abbey Rise car park site.

The press release that was issued gave the impression that a deal was about to be signed and failed to explain the true position of the proposal, the due diligence work that had been carried out up to that point and was to be undertaken before a planning application would be submitted and considered. Had there been more visibility of the due diligence process to Members, the press and the public, it may have answered a number of concerns in the minds of some that were being expressed.

The review would question the appropriateness of the scheme of delegation within the Commercial Property Strategy for commercial developments on council land (see comment above).

The Invest to Earn Group is a small group of Councillors that is not formally recognised in the Council's Constitution. Given its role as evaluator/moderator of proposals put before it and the levels of funding and risk involved, being a "closed" meeting leaves it open to questions over its transparency. There are examples elsewhere of similar gatherings being constituted as formal committees in an attempt to present a degree of openness. It is recognised that much of the business that would be handled by such a Committee would have to be heard under Part II conditions, which would restrict access by members of the public but it would afford Council Members the opportunity to attend and observe or at least be aware of proceedings.

In addition, apart from notes recorded by the Business Development Group Manager, the review found no formal recorded evidence of challenge and evaluation undertaken by those

Members on the Invest to Earn Group, for example “scoresheets” that give an indication of a participant’s judgement of a proposal and crucially a record of their reasoning behind their support or opposition to a proposal. Instead the process used was a ‘show of hands’ in a more traditional voting manner.

4.5 Factors Leading to Rejection of Scheme at Full Council on 12th February 2019

Following the reaction of local ward Members and the public to the press release in January 2019, a number of Members began to question whether the proposal was the best way forward. The language used both in the press release and at meetings with the business community gave the impression that the proposal was in the final stages of going ahead and therefore the meeting of Full Council in February was seen as perhaps the only opportunity to stop the scheme from going ahead rather than it being just a stepping stone that would see the funding arrangements being agreed. Efforts were made to table amendments to delay a decision on approving the Hub recommendations, to allow time for further due diligence that could, in part, mitigate some of the concerns raised by the public and allow a public meeting, to be held on 18th February. However, officers deemed that such an amendment was not relevant to the Finance minute that Council was being asked to approve. As the date of the Full Council meeting approached, opposition to the scheme amongst Members grew and whilst some Members entered the meeting either unaware of this or still prepared to approve the Hub recommendations, the weight of Member and public feeling led to all members voting against.

4.6 Social Media

Once word of the Tavistock Hotel proposal entered the public domain through the press release and subsequent meeting with local businesses, the public and some Members took to social media to voice their opposition and concerns over the scheme, although not all of the posts were negative, with some supporting the idea and the benefits it could bring to the town. From the examples of posts seen by the review, comments were sometimes misinformed and generated rumour and even hostility towards the Council. It is evident that the Council chose not to respond via this channel but to arrange for a question and answer open session for the public. However some Members did respond using social media, often in support of the arguments being put forward. It should be pointed out that this review has not examined whether the use of social media by Members or the Council has been appropriate in this particular case.

Whilst it is recognised that commercially sensitive information linked to some aspects of the work done by officers could not be released, the lack of information and transparency over other aspects of the work carried out by the Council up to that point, especially with regard to planning issues and car parking, the decision making process as well as the due diligence work still to be done prior to the submission of a planning application, meant that the full facts were not known at that time. In addition, the tone and words used in the press release fuelled opposition by giving the impression that the scheme was near to being given final approval and agreements being signed.

5 Recommendations

- 5.1 **Commercial Property Strategy** – The Council should consider having separate strategies for acquisitions and commercial development on Council owned land. In addition, consideration should be given as to whether the strategy should make a clear differentiation between acquisitions and development opportunities that are “In Borough” and “Out of Borough”.

If the current Strategy remains, then a review of its current wording should be carried out to ensure that where reference is made to acquisitions, that the implications on commercial development and the process to be followed are considered and clearly set out where they differ from acquisitions (e.g. consultation with ward Members).

5.2 **Scheme of Delegation**

The Head of Legal or other appropriate officer should identify and maintain a record of those schemes of delegation that are not referred to in the Council’s Constitution and have this “signposted” in the overall Scheme of Delegation within the Constitution so that they are more visible.

5.3 **Due Diligence Process**

The Council should consider formally documenting the due diligence process that is followed by officers and external advisors and experts when taking forward a proposal to develop an asset on Council owned land. This would have similarities to the due diligence process that is used for an acquisition, but with extra due diligence checks such as consultation with ward Members. The process should outline the steps that need to be taken, the risks and issues that need to be considered, the documentation/evidence that should be completed and held and the approvals that should be sought before an application is submitted to the Local Planning Authority.

5.4 **Access to Information**

Consideration should be given to providing hyperlinks to Committee reports as part of the Full Council agenda.

5.5 **“Unstarred Minutes”**

The current practice and process of “unstarred” minutes should be examined by the Political Structures Group. A possible solution could be the adoption of a process whereby, once Hub Committee minutes are published, a ‘Panel’ (to include the Chief Executive, S151 Officer and Monitoring Officer), in consultation with the Leader (as Chair of the Hub Committee) and the Mayor (as Chair of Council), decide whether any of the Unstarred Minutes are deemed so significant that they then warrant being a standalone agenda item at the next Council meeting.

5.6 **Role of Invest to Earn Group**

The Council should consider the following:

- a) A review of the Invest to Earn Group’s Terms of Reference to ensure that they are fit for purpose when dealing with commercial development proposals, especially those within the Borough, as well as commercial acquisitions.
- b) Establishing the Group as a formal Committee listed within the Council’s Constitution which is open to the public where possible, with formal agendas, papers and minutes

taken. It is noted that much of the content of these papers would be Exempt Part II papers where the public are not able to attend for reasons of commercial confidentiality.

- c) The introduction of a formal record showing the results of evaluation of either each Member of the Group or the Group as a whole, that provides commentary that outlines the reasoning behind the decision reached.
- d) The provision of training from commercial acquisition and development experts to Members of the Invest to Earn Group and the wider Council membership, to enable the Group to challenge investment business cases and make informed decisions on future investment proposals brought forward.

5.7 Briefing of Local Ward Members

The Council should ensure that it complies with the Commercial Property Strategy where it states that local ward Members will be briefed before a final decision to proceed with a development or acquisition is made.

It should be made clear how local ward Members are to be briefed and how they can share their views with the Invest to Earn Group.

5.8 Members Responsibility to Stay Informed

The Council should consider ways of assisting Members to stay informed where reliance is placed on Committee agendas and reports as the method of delivery of that information.

The Council should consider the provision of “refresher” training to existing Members following the forthcoming elections in May, including the use of the iPads for accessing Committee papers.

5.9 Informal Council

As part of the on-going review of the Council’s Constitution, the conclusions of this report should be taken into consideration as part of future review discussions, namely in connection with the running of Informal Council.

5.10 Use of Social Media

The Council should undertake a review of its use of Social Media by both officers and Members, including all relevant policies and procedures that currently exist. This could be carried out in conjunction with the intended review by Internal Audit that is included in the 2019/20 Audit Plan.

Dominic Measures
Audit Manager

Robert Hutchins
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