

Council

Minutes of Proceedings

At the **Extraordinary Meeting of the District Council of Ryedale** held in the **The Main Hall, Malton School, Middlecave Road, Malton, North Yorkshire. YO17 7NH** on **Wednesday 17 November 2010**

Present

Councillors Hemesley OBE (Chairman)
Andrews
Arnold
Mrs Arnold
Bailey
Mrs Burr MBE
Cottam
Mrs Cowan
Mrs Cowling
Cussons
Mrs De Wend Fenton
Mrs Frank
Mrs Hodgson
Hope
Mrs Keal
Keal
Knaggs
Legard
Maud
Mrs Shields
Spencer
Wainwright
Ms Warriner MBE
Mrs Wilford
Windress
Woodward

In Attendance

Paul Cresswell
Marie-Ann Jackson
Julian Rudd
Janet Waggott
Fiona Farnell (Secretary)
Anthony Winship

62 **Apologies for absence**

Apologies for absence were received from Councillors Acomb, Hawkins, Raper and Spencer.

63 **Public Question Time**

Question 1

The following question was submitted by Nicholas Brooksbank.

“The sale of Wentworth Street Car Park will provide short term financial benefits. Planning applications are to be made shortly for the livestock market and Showfield sites. Since planning considerations for all these sites affect the future of Malton and its neighbouring communities, will the Council make an unequivocal commitment to adopt a timetable which will allow for all three sites to be fully and impartially evaluated?”

The Chairman thanked Mr Brooksbank for his question and replied that:

“The Council is considering sale of the Wentworth Street site at this meeting only as owner of the land. In its separate role as Local Planning Authority it has a duty to consider and determine planning applications as and when they are received and validated. A Local Planning Authority cannot predict when applications for development will be received and it is not the role of the Local Planning Authority to insist that applications for development are submitted in a manner which would allow them to be considered simultaneously. The Council cannot make a commitment to a course of action that is beyond its ability to control and, therefore, cannot make an unequivocal commitment to adopt a timetable which would allow for all three of the sites to be fully and impartially evaluated.

All planning applications are determined on their own merits in accordance with the Development Plan unless material considerations indicate otherwise. National planning policy in PPS 4 will be applied and sequential and impact assessments will be required to accompany proposals.”

Question 2

The following question was raised by Mr R J G Bushell for Fitzwilliam Malton Estate

“Ryedale District Council has had a letter from Pinsent Masons relevant to this meeting. What is the answer to the questions Pinsent Masons have asked and if RDC are unable to provide an answer to the matters raised in Pinsent Masons’ letter then how can Ryedale District Council reasonably consider that it is capable of making a lawful decision in respect of this matter this evening?”

The Chairman thanked Mr Bushell for his question and replied that:

“Ryedale District Council received a letter on the afternoon of 15 November 2010 from Pinsent Masons acting on behalf of the Fitzwilliam (Malton) Estate who are significant landowners in the town centre of Malton.

Pinsent's letter raises issues which have already been considered during the current process and which will continue to be kept under review if it is decided to move forward with the recommendation. The Council are responding to Pinsents in writing in terms of the following:

Pinsent's correspondence suggests that the Council may be embarking on a decision making process for disposal of Wentworth Street car park which is in breach of Public Procurement Rules on the basis that the disposal is not a land sale but a public works contract.

They reference OGC Guidance which states that:-

“Contracting authorities should take care to avoid a situation where a general invitation becomes or turns into a requirement to the authority's specification. Moreover, a requirement derived from the land use planning regime would not be exempt from the application of Public Procurement Rules simply by virtue of its basis in a planning requirement, if it did in fact have the characteristics of a public contract.”

They suggest that if specific requirements are imposed regarding provision of public parking that this may have the potential to create a works contract. They also suggest a possibility that the negotiation process with bidders could be open to abuse.

Each of these issues have been considered (amongst others) in relation to the process being undertaken for disposal of the Wentworth Street car park. Council officers remain content that based upon the process to date that the transaction is appropriately categorised as a land sale disposal and not a public works contract. The Council is fully aware of their obligation to undertake a fair process and keep all relevant issues under continuous review throughout the process, and will continue to do so.

Pinsents have also raised the issue of the extent to which the local planning authority are able to consider an application where the Council may stand to benefit.

It is not unusual for a local planning authority to consider applications which may have some financial consequence for a Council and such circumstances are managed frequently in a way which ensures that they are addressed appropriately and fairly. The Council's local planning authority will be able to address any application which may be brought before them in an appropriate manner at the relevant time.

Question 3

The following question was raised by David Lloyd-Williams, Town Councillor for both Malton and Norton

“As the report presented to members and the public does not indicate the nature of the proposed development in any great detail, other than to perhaps indicate that a petrol station might be part of a future planning proposal, can the Officers/Chairman inform the meeting what percentage proposed use is indicated for Convenience Goods (food and those items related to a 'weekly shop') and what is for Comparison Goods (clothing, white electrical goods and related computer/TV items etc.). The reason for requesting the information is for both members and the general public to be able to determine the likely effect upon the existing retail mix within the Town Centre. Clearly, unless members can be assured that the mix will be a minimal percentage of

Comparison Goods, the effect and impact upon the viability of the Town and its community could be a total disaster without any ability to reverse the decision.

Members must have this information in order to make any sort of proper and informed decision. Otherwise they have a duty to the electorate to reject the proposal.”

The Chairman thanked Mr Lloyd-Williams for his question and replied as follows:

“The report describes (in section 8.3) the general nature of the development which the recommended purchaser intends to undertake. Full details will be contained in the purchaser’s subsequent application for planning consent, including sequential and retail assessments. The possible impact upon the town centre, including the likely effect upon the existing retail mix, will be one of the important matters that the Council in its separate and independent role as local planning authority will consider when it has received a planning application.”

Mr Lloyd-Williams asked the following supplementary question:

“How can Members reach a decision which is none reversible for the sale of an asset, when they do not know who the developer is or which supermarket it is to be?”

The Chief Executive answered as follows:

“It is incorrect to say that the decision is not reversible, the decision is reversible as the site still requires planning permission and if this is not granted then the decision would be reversible.”

Question 4

The following question was raised by Mike Skehan on behalf of Cllr Jason Fitzgerald-Smith, Mayor of Malton.

“The bids presented for the proposed development are scored 60% on price with a 30% weighting placed upon the viability of the proposal, a key consideration of which is the extent to which the proposal contributes to the vitality of the wider town centre via the encouragement of linked visits of supermarket users to retailers and services in Malton and Norton.

The Forum of Private Business, supported by the Competition Commission, has stated that large supermarkets consistently and significantly undercut prices in the High Street by selling products at a loss or at very low margins, for the ultimate purpose of securing to themselves the highest possible percentage of its customer’s spending power.

Over the last ten years the number of supermarkets operating in the UK has grown by a third. The All Party Small Shops Group reports that in that period small shops have closed at an average of 2000 per year. A recent survey by the Association of Retailers identified that 12000 shops, large medium and small, closed in the year 2009.

On behalf of Malton Town Council I ask the question: “What is it in the recommended bid, that gives the Ryedale District Council leadership confidence that the consistently adverse impact elsewhere will not be replicated in Malton, and that addresses, to its satisfaction, the existing deficiencies of the link between Wentworth Street car park and the existing retail and service centre of Malton?”

The Chairman thanked Mr Skehan for his question and answered as follows:

“A full assessment of the likely impact on Malton town centre would be undertaken as a key element of the planning process. The knowledge that there will be this process gives the Council confidence, as vendor of the site, that planning permission, and therefore the sale and development of this land, would only proceed if shown to be appropriate in the light of a full planning assessment of the impact and benefits of the proposal.

The assessment of any planning application for the site will also examine the vehicular and pedestrian access to the development proposals and identify any necessary improvements.”

Mr Skehan asked the following supplementary question:

“Your Chief Executive in a letter explained that an extraordinary meeting was being held which reflected the importance of the matter by the Council, however the Town Council are opposed to the proposal, can you take this opportunity to explain in detail the reasons why you are for the proposal when so many in the community are opposed to the proposal?”

The Chairman answered as follows:

“The question would be answered by Members asking questions and in the debate”.

Question 5

The following question was asked by Denys Townsend.

“The presentation of the Strategic Transport Assessment (Jacobs report) was delivered to the Malton and Norton Area Partnership at its Annual meeting in November 2009 and to Malton & Norton town councils in March 2010. The Town Councils wrote to RDC on 13th April and were told that their concerns would be reflected in a public consultation event on 22/23 May in the Green Man. This event was cancelled. Since then there has been no communication to any of these bodies from RDC on the subject of the STA, nor have Ryedale District Council Councillors been informed of the Town Councils’ comments.

When is the STA with the results of the town councils’ consultation due to be presented to Ryedale District Councillors?”

The Chairman thanked Mr Townsend for this question and answered as follows:

“The question confuses several different areas of work that are not directly related to this process. The Strategic Transport Assessment is a technical evidence document to inform the Local Development Framework. The main report was finalised in June 2010 and Addendum to the main report was finalised in October 2010. Both these reports are available on the LDF website. It was made clear at the 24 March 2010 meeting between Town, District and County Councillors that given its technical nature there would not be further consultation on the STA prior to its finalisation.

The proposed 22/23 May event was a public consultation on the design of the Brambling Fields junction improvement and complementary traffic management

measures plus proposals within North Yorkshire County Council's Service Centre Transportation Strategy. However this event was postponed to allow consideration of alternative measures together with traffic modelling and air quality assessments. It is now expected to take place early in 2011.

The November 2009 AGM of the Partnership considered a further separate piece of work – some preliminary designs by Jacobs for potential improvements to the public realm in Malton. This was reliant upon Yorkshire Forward funding and will not be progressed unless other sources of funding are identified.”

Mr Townsend asked the following supplementary question:

“What proper evidence came out of the STA and parking as a whole?, what supermarket plan has come forward? And when will be planning and transport strategy be available?”

The Head of Economy and Housing answered as follows:

“A detailed response on parking need is outlined in the annex attached to the report. There are two separate pieces of work – one is the STA carried out by Jacobs and the other is a management strategy looking at transport and infrastructure.”

Question 6

The following questions was asked by Paul Beanland.

“Gross receipts can be very misleading, whilst Net receipts, after deduction of all costs, can be expected to give a much more realistic indication of what the true value of a sale is worth. To arrive at Net receipts it would be necessary to allow for the capitalized loss of income (including car parking revenue) (existing and potential) from all parts of the sale area; the relocation costs of moving people off the site into other accommodation; payment of miscellaneous ‘Help’ costs; finance and professional fees incurred in the disposal and any extraordinary costs the Council may have to make to support the proposal.

By doing this, a more accurate picture of the true gain would be revealed, better informing Councillors, before they make a decision. In the meantime the decision could be deferred or the Council could make a decision on a figure below which they would not sell.

Given that the potential sale price of about £5m is described as the anticipated gross receipt what do the Council anticipate will be the net receipt after the deduction of all probable estimated costs?”

The Chairman answered as follows:

“The report states that the gross receipts will be **not less than** £5m. The bid offer is higher than this and also includes contingencies for costs which can only be estimated at this stage. A full ground conditions survey and a detailed development scheme will be undertaken by the successful bidder. The latter will be informed by requirements for any off site works and other costs which will only be finalised through the outcome of the planning process.

There are other costs which cannot be fully assessed until a decision to sell is finally made (these cover such items as cost of relocations where necessary, normal disposal costs such as legal and other professional costs, and changes to costs of ownership). It will not be possible to fully calculate these costs and thereby know the final net receipt until a decision to sell is made, the outcome is known of the planning application and relocation implications are finalised. The revenue implications of the sale which include car parking income, rates, maintenance costs and public conveniences provision will be managed through the Council's budget."

Mr Beanland asked the following supplementary question:

"The gross receipt could be much reduced and run into millions and therefore reducing the amount of revenue"

The Corporate Director (s151) answered the question as follows:

"The gross receipt will not be less than £5 million, the revenue from the car park last financial year was around £40k with £11k from long stay car parking which is being retained by the Council. In addition the issues of maintenance, rates toilet provision and the potential for increased demand for long stay parking if other areas are built on would need to be considered at the appropriate time. The impact is unlikely to be felt until the 2012/13 budget as building work would not start before then and those issues would be considered as part of that budget process which would be brought before Councillors."

64 **Declarations of Interest**

In accordance with the Members' Code of Conduct the following declarations of interest were received:

Councillor Mrs Shields declared a personal interest in the item as she had spoken publicly against the proposal.

Councillor Mrs Burr declared a personal interest in the item as she had expressed views in the paper and also owned property and businesses in Malton and Norton.

Councillor Andrews declared a personal interest in the item as he meets local businesses on a regular basis and expressed views in the paper.

Councillor Mrs Cowan declared a personal interest in the item as she had written a letter to the paper.

Councillor Clark declared a personal interest in the item as he had written an article and been lobbied.

Councillor Arnold declared a personal interest in the item as a member of CAB and Malton Scouts and as he had been lobbied.

Councillor Legard declared a personal interest in the item as he had property interests in the town.

Councillor Knaggs declared a personal interest in the item as he had had several meetings and discussions with people who would be affected by the decision and also been lobbied.

Councillor Cottam declared a personal interest in the item as he had been lobbied.

Councillor Wainwright declared a personal interest in the item as Council representative for RVA.

Councillor Mrs Arnold declared a personal interest in the item as a member of North Yorkshire County Council and Malton Scouts and also having been lobbied.

65 **Land at Wentworth Street, Malton**

The Head of Economy and Housing gave a detailed statement, which provided an overview of the report which had previously been circulated.

The Council Solicitor specifically advised Members of Council to note that the recommendations in the report before them are without prejudice to the consideration of the future use of Wentworth Street Car park through the LDF process or as a result of the submission and determination of a planning application.

The Council Solicitor advised Members of Council that in considering the report before them it was important to distinguish the following two separate and distinct statutory roles of Ryedale District Council:-

(i) The role of Ryedale District Council as the Local Planning Authority with the statutory responsibility to progress the Local Development Framework in accordance with the law and dealing with planning applications when received.

(ii) The role of Ryedale District Council as a land owner in relation to Wentworth Street Car Park, Malton. This was the subject of the report before Members that evening. Members were further advised that local authorities have a responsibility to ensure that assets held in public ownership benefit the Council taxpayers and local communities.

Accordingly in considering the report before it, the Council was not discharging the Council's role as a Local Planning Authority but it was discharging the role of the Council as a land owner of Wentworth Street Car park. The Council was not therefore making any Planning decisions.

It was moved by Councillor Knaggs and seconded by Councillor Wainwright that the following recommendation be approved:

That Council is recommended:

- i) to approve, subject to the grant of planning permission, the disposal of land at Wentworth Street, Malton (see Annex A);
- ii) to approve acceptance, subject to contract, of submission X, which includes the following key elements:
 - a. Anticipated gross receipt:

- Of not less than £5m (to be determined dependent upon final planning approval and taking into account such matters as size of store, developer contributions, off-site improvements) payable upon grant of an implementable planning consent and an overage sum of 50% of the development profit after deduction of a 12.5% developers priority return paid after completion of the development
- b. Development proposed:
 - A proposal which was adjudged as being capable of delivery to ensure a capital receipt and which includes those key elements as outlined at paragraph 8.3 and the approach outlined in 8.4 of this report. Members should be aware that the proposal is conditional upon revised car parking arrangements for the Council's retained upper-deck area which include free parking for the first 3 hours.
- c. Reasonable prospects of delivery to ensure capital receipt including:
 - Clear understanding and experience of the development process
 - Appropriate financial standing
 - Appropriate and realistic timetable
- iii) to approve as a reserve, in the event that legal documentation has not been concluded with that party in a reasonable time, acceptance, subject to contract and grant of planning permission, of submission Y;
- iv) to authorise the officers to negotiate and conclude the documentation required to implement the decision of the Council having considered this report;
- v) Members note that both capital and revenue costs will need to be incurred to aid relocation of non-commercial third party interests in the site;
- vi) that the capital receipt from the land sale be applied to the Council's capital programme to be invested in other projects; and
- vii) the net impact of the development on the Council's financial position in relation to Wentworth Street Car Park be managed through the 2011/12 and 2012/2013 budget strategy process.

Councillors then debated the motion.

Before making their speeches Councillors Knaggs and H Keal made it clear that they kept an open mind on the consideration of any future planning application relating to part of Wentworth Street Car Park Malton.

An amendment was moved by Councillor Andrews and seconded by Councillor Mrs Burr:

"In view of:

1. The likely future submission of planning applications for supermarkets on the Showfield and the Cattle Market;
2. The lack of detail in the officers' recommendations in regard to price, name of tenderer, name of supermarket operator, size of supermarket etc.

The matter be deferred to allow consultation to take place with the Malton and Norton Area Partnership and the Malton and Norton Town Councils on the way forward for Malton/Norton."

The amendment was then put to the vote. A recorded vote was asked for by Councillors Andrews, Mrs Cowan, Clark and Woodward.

For the Motion: Councillors Andrews, Mrs Burr, Clark, Cowan, Mrs De Wend Fenton, Maud and Woodward.

Against the Motion: Councillors Arnold, Mrs Arnonld, Bailey, Cottam, Mrs Cowling, Cussons, Mrs Frank, Mrs Hodgson, Hope, Mrs Keal, Keal, Wainwright, Mrs Warriner, Mrs Wilford and Windress.

Abstentions: Councillors, Hemesley, Legard and Mrs Shields.

The amendment was lost.

Councillor Wainwright moved and Councillor Cottam seconded that the question now be put. The vote was carried.

The motion was put to the vote. A recorded vote was asked for by Councillors Andrews, Mrs Cowan, Clark and Woodward.

For the Motion: Councillors Arnold, Mrs Arnonld, Bailey, Cottam, Mrs Cowling, Cussons, Mrs Frank, Hemesley, Mrs Hodgson, Hope, Mrs Keal, Keal, Knaggs Wainwright, Mrs Warriner, Mrs Wilford and Windress.

Against the Motion: Councillors Andrews, Mrs Burr, Clark, Cowan, Mrs De Wend Fenton, Legard, Maud, Shields and Woodward.

Abstentions: None.

The motion was carried.

Resolved:

- i) That the disposal of land at Wentworth Street, Malton identified edged black on the site plan attached to the report be approved subject to the grant of planning permission;
- ii) That acceptance of submission X be approved subject to contract, which included the following key elements:
 - a. Anticipated gross receipt:
 - Of not less than £5m (to be determined dependent upon final planning approval and taking into account such matters as size of store, developer contributions, off-site improvements) payable upon grant of an implementable planning consent and an overage sum of 50% of the development profit after deduction of a 12.5% developers priority return paid after completion of the development
 - b. Development proposed:
 - A proposal which was adjudged as being capable of delivery to ensure a capital receipt and which includes those key elements as outlined at paragraph 8.3 and the approach outlined in 8.4 of this report. Members should be aware that the proposal is conditional upon revised car parking arrangements for the Council's retained upper-deck area which include free parking for the first 3 hours.
 - c. Reasonable prospects of delivery to ensure capital receipt including:

- Clear understanding and experience of the development process
 - Appropriate financial standing
 - Appropriate and realistic timetable
- iii) That acceptance of submission Y subject to contract and grant of planning permission be approved as a reserve, in the event that legal documentation has not been concluded with submission X in a reasonable time;
- iv) That Officers be authorised to negotiate and conclude the documentation required to implement the decision of the Council having considered the report;
- v) Members noted that both capital and revenue costs will need to be incurred to aid relocation of non-commercial third party interests in the site;
- vi) That the capital receipt from the land sale be applied to the Council's capital programme to be invested in other projects; and
- vii) The net impact of the development of the council's financial position in relation to Wentworth Street Car Park be managed through the 2011/12 and 2012/13 budget strategy process.

The meeting closed at 10.40pm.