

COUNCIL

Tuesday 24 July 2018

Present:-

The Right Worshipful the Lord Mayor (Cllr Hannaford) (Lord Mayor)
Councillor Rachel Lyons (Deputy Lord Mayor)
Councillors Begley, Bialyk, Branston, Denham, Edwards, Foale, Foggin, Hannan, Harvey, Mrs Henson, Holland, Lamb, Leadbetter, Mitchell, Morse, Musgrave, Newby, Owen, Packham, Pattison, Pearson, Pierce, Prowse, Robson, Sheldon, Sills, Sutton, Thompson, Vizard M, Vizard N, Wardle, Warwick, Wood and Wright

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APOLOGIES

Apologies for absence were received from Councillors Gottschalk and D. Henson.

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MINUTES SILENCE - HONORARY ALDERMAN IAN MITCHELL AND HIS HONOUR JUDGE GEOFFREY MERCER

The Council observed a minutes silence in memory of Ian Mitchell, a former Mayor of the City, City Councillor and an Honorary Alderman and his His Honour Judge Geoffrey Mercer who was the Presiding Judge at Exeter Courts and the City Recorder, both having recently passed away.

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EXETER HINDU COMMUNITY

The Lord Mayor stated that as he was taking a multi-cultural and multi faith approach to his civic year, he had therefore invited representatives from the Exeter Hindu Community to attend the Council meeting this evening.

Mr Sival and Mr Sandhya addressed the Council.

The Lord Mayor presented Mr Sival and Mr Sandhya with a plaque of the Exeter City Council Crest.

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MINUTES

The minutes of the Annual Council Meeting held on 17 May 2018, Ordinary Meeting of the Council held on 24 April 2018 and the Extraordinary Meeting held on 13 June 2018 were moved by the Leader, seconded by Councillor Sutton, taken as read and signed as correct.

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OFFICIAL COMMUNICATIONS

The Lord Mayor congratulated the RAMM's shop which had won the best shop award in the National Museums and Heritage awards; Exeter College, for being awarded an AA College Rosette for its teaching restaurant (@34), together with a regional enthuse celebration award for excellence in teaching science, technology, engineering and maths. Finally, the Corn Exchange had been awarded the TripAdvisor certificate of excellence which recognised hospitality businesses that deliver constantly great service.

The Lord Mayor congratulated the Exeter Chiefs and Exeter City Football Club for reaching their respective sporting finals for the second year running, thanking both clubs for helping to keep Exeter on the national sporting map and he wished them well for their respective forthcoming seasons.

The Lord Mayor also congratulated Gina Awad on her well-deserved award of the British Empire Medal in Her Majesty's birthday honours list, for services to those with dementia.

The Lord Mayor advised of some of the events he had attended in his first few months ranging from the inspiring Shrouds of the Somme, The Trench installation in Northernhay Gardens, to Armed Forces Day where some 350 past, present and future members of the Armed Forces marched through the City Centre, and the wonderful Wyvern 18 at Wyvern Barracks. All reinforced the City's important links with the military community.

The Lord Mayor read out the reply he had received from their Royal Highnesses the Duke and Duchess of Sussex in response to his letter passing on the City's congratulations for their wedding, and to offer an open invitation for them to visit the City at their convenience.

The Lord Mayor also advised that he had the pleasure of attending Iftar to celebrate the end of Ramadan at Exeter Mosque; the opening of a new dementia unit attended by the Duchess of Gloucester; the launching of Refugee week; the Devon Development Education AGM and the judging of Britain in Bloom in the city.

The Lord Mayor then read out and circulated a letter he would be sending to Exeter Jewish Hebrew Congregation, Exeter Synagogue expressing his sadness on learning of the events on Saturday night, offering his support and suggesting a community service at the synagogue and a multi faith reception at the Guildhall.

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PLANNING COMMITTEE : 23 APRIL 2018

The minutes of the Planning Committee of 23 April 2018 were presented by the Chair, Councillor Sutton, and taken as read.

RESOLVED that the minutes of the Planning Committee held on 23 April 2018 be received.

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PLANNING COMMITTEE - 21 MAY 2018

The minutes of the Planning Committee of 21 May 2018 were presented by the Chair, Councillor Sutton, and taken as read.

RESOLVED that the minutes of the Planning Committee held on 21 May 2018 be received.

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PLANNING COMMITTEE - 25 JUNE 2018

The minutes of the Planning Committee of 29 June 2018 were presented by the Chair, Councillor Sutton, and taken as read.

Councillor Thompson declared a disclosable pecuniary interest and left the meeting for Minute Nos.142-146.

In respect of Minute No.143 (Planning Application No.18/0534 – Land West of Ringswell Avenue) and in response to a Member, the Chief Executive & Growth Director clarified that officer advice given at Planning Committee on issues of a technical matter were to ensure that Members had all the relevant evidence to enable them to make a decision.

The City Solicitor and Head of HR advised that as the Local Planning Authority, the Council had a duty to act responsibly with regards to technical advice given to Members at Planning Committee.

RESOLVED that the minutes of the Planning Committee held on 29 June 2018 be received.

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LICENSING COMMITTEE - 29 MAY 2018

The minutes of the Licensing Committee of 29 May 2018 were presented by the Chair, Councillor Owen, and taken as read.

RESOLVED that the minutes of the Licensing Committee held on 29 May 2018 be received.

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PEOPLE SCRUTINY COMMITTEE - 7 JUNE 2018

The minutes of the People Scrutiny Committee of 7 June 2018 were presented by the Chair, Councillor Wardle, and taken as read.

In respect of Minute No.26 (Implementation Plan and Impact of the Homelessness Reduction Act) and in response to a Member, the Portfolio Holder for People stated that monies had been allocated from the “new burdens funding” from Central Government towards the Safe Sleep initiative.

RESOLVED that the minutes of the People Scrutiny Committee held on 7 June 2018 be received.

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PLACE SCRUTINY COMMITTEE - 14 JUNE 2018

The minutes of the Place Scrutiny Committee of 14 June 2018 were presented by the Chair, Councillor Sills, and taken as read.

RESOLVED that the minutes of the Place Scrutiny Committee held on 14 June 2018 be received.

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CORPORATE SERVICES SCRUTINY COMMITTEE - 28 JUNE 2018

The minutes of the Corporate Services Scrutiny Committee of 28 June 2018 were presented by the Deputy Chair, Councillor Warwick, and taken as read.

RESOLVED that the minutes of the Corporate Services Scrutiny Committee held on 28 June 2018 be received.

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STRATA JOINT SCRUTINY COMMITTEE - 31 MAY 2018

The minutes of the Strata Joint Scrutiny Committee of 31 May 2018 were presented by Councillor Lyons and taken as read.

RESOLVED that the minutes of the Strata Joint Scrutiny Committee held on 31 May 2018 be received.

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STRATA JOINT EXECUTIVE COMMITTEE - 11 JUNE 2018

The minutes of the Strata Joint Executive Committee of 11 June 2018 were presented by Councillor Edwards, and taken as read.

RESOLVED that the minutes of the Strata Joint Executive Committee held on 11 June 2018 be received.

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EXECUTIVE - 12 JUNE 2018

The minutes of the Executive of 12 June 2018 were presented by the Leader, Councillor Edwards, and taken as read.

RESOLVED that with the exception of Minute. Nos. 56 and 61(The Build Sport and Leisure Facilities) and 59 (Transformational Budget - First tranche of proposed projects) which had been considered at the Extraordinary Council Meeting on 13 June 2018, the minutes of Executive held on 12 June 2018 be received and, where appropriate, adopted.

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EXECUTIVE - 10 JULY 2018

The minutes of the Executive of 10 July 2018 were presented by the Leader, Councillor Edwards, and taken as read.

In respect of Minute No.71 (Exeter City Group Ltd Business Case (August 2018 to March 2019), the Leader proposed the recommendation subject to an amendment to recommendation (7) to read: 'delegate authority to the Director (David Bartram) to agree any necessary amendments to the Management Agreement in consultation with the Leader of the Council, the Chief Finance Officer and the Portfolio Holders (currently the Portfolio Holder for Place and Commercialisation; the Portfolio Holder for People, and in addition the Chair or Deputy Chair, Corporate Services Scrutiny'. This was seconded by Councillor Sutton.

In accordance with Standing Order No.8, Councillor Thompson put the following questions to the Leader.

Question - Can the City Council ensure transparency in Council business if some of Council business is transacted through private companies?

The Leader replied that the City Council was able to ensure transparency by a number of internal and external controls. The City Council would be the sole shareholder of Exeter City Group Limited and Exeter City Group Limited would be the sole shareholder of Exeter City Living Property Company Limited, Exeter City Living Limited and Exeter City Homes Limited. Decisions taken by any of the Companies must be in accordance with the Articles of Association (which were public documents) and the Group Management Agreement, which sets out the relationship between the City Council and the Exeter City Group of Companies.

The Articles and the Group Management Agreement set out the decision making structure and the powers delegated to the Board of Directors. In particular, the Scheme of Delegation (Schedule 4 to the Group Management Agreement) sets out how and by whom different decisions could be made.

The Business Case and annual Business Plans must be approved by Full Council and there was limited scope for decisions to be taken by the Board of Directors outside of these approved documents.

When going through the City Council's committee process, there would be a presumption that the Business Case and Annual Business Plans would be subject to the same presumption in favour of being made publicly available, save for the same limited exceptions for Part II matters defined in the Local Government Act 1972. For example, sensitive financial modelling information or matters relating to specific tenants or employees may legitimately be withheld as Part II matters.

In addition to the requirements imposed by virtue of local government legislation, the Companies will be subject to the requirements of the Freedom of Information Act 2000, the Data Protection Act 2018, the General Data Protection Regulations 2018 and the Companies Act 2006, which included the transparency rules for limited liability partnerships and limited companies introduced in April 2016.

In short, the City Council exercises complete control over the Companies as the sole shareholder and the Companies were subject to a range of statutory reporting and disclosure requirements.

Councillor Thompson asked a supplementary question - in respect of the meeting with the Town & Country Planning Association held on 18 July asking who attended to contribute to the discussions and is it possible to have access to the papers?

The Leader stated that it was prudent that the Council had good legal advice. He would clarify the position and let Cllr Thompson know the outcome.

Question - If a Private Development Company for the City Council has residential sites in the City looking to be developed through the Company, will the City Council adhere to its minimum 35% affordable housing policy and possibly achieve a higher percentage above 35%?

The Leader responded that the Development Company had always stated that it would comply with Council policy on affordable housing and aimed to provide 35%. Due to lower profit expectations than a private developer it was in a better position to fulfil this commitment.

Councillor Thompson asked a supplementary question - if the private company use viability as a reason for not meeting the City Councils policy of 35% affordable housing will an appraisal be carried out by an independent assessor?

The Leader stated that only the first year's projects were in the Business Case and there would be need for the company to build up monies to invest in Social Housing in future years.

Question - Will the City Council resist any suggestions 35% affordable housing is not viable on residential sites being developed through the Company?

The Leader stated yes, challenging on the grounds of viability did not align with the Development Company's objectives and purpose. If the company could not deliver

a scheme with 35% affordable homes or the financial equivalent then it would not be a viable scheme to proceed. As a private company, its Directors had a responsibility to run the company in a financially prudent manner.

Councillor Thompson asked a supplementary question - would the Council by not adhering to its own policy to deliver 35% affordable housing and social rented homes appear as "don't do as I do but do as I say"?

The Leader replied that the company would undertake their own viability assessments and if sites were not viable then they would not be developed.

Question - How will the City Council ensure no conflict of interest with the Planning process if the entire Planning Committee needs to declare a possible pecuniary interest in any applications from the Private Company?

The Leader stated that it had been advised that the Members of the Planning Committee did not have a Disclosable Pecuniary Interest ("**DPI**") in any planning applications made by the Companies. At Appendix 1, the City Council's Code of Conduct (the "**Code**") sets out DPis which were those set out in the regulations. They did not apply to planning applications made by the Companies. Appendix 2 of the Code defines 'other interests' which again did not apply.

It was settled law that local planning authorities ("**LPA**") were required to, and do, routinely determine planning applications for developments in which they had a pecuniary interest, or even where they were themselves the applicant for planning permission. They had no choice, because they (and no other body) had the function of determining applications for planning permission for development in their area. The mere fact that the LPA which determined an application for planning permission had a pecuniary interest (whether as an owner of the land, as an applicant for planning permission, or a shareholder in a local authority company) did not in itself give rise to any issue of unlawful bias.

The Planning Advisory Service (part of the Local Government Association) had issued guidance, "Probity in Planning for Councillors and Officers", which advised simply that "*proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers*". This guidance was reflected in the Local Planning Code of Conduct which forms part of the City Council's Constitution.

Councillor Thompson asked a supplementary question - is there potential conflict with Compulsory Purchase Orders, Section 106 agreements and is this private company being set up to sidestep the Right to Buy scheme?

The Leader replied that the company intended to raise monies that would then be invested in building social and affordable housing in the city.

During discussion Members raised the following points:-

- this was the only way for the Council to deliver much needed social and affordable housing in the city
- cautiously supportive but had concerns regarding the Governance
- the first year's projects were critical to ensure capital funding for future investment in social and affordable housing
- the scheme proposed would be policy compliant
- the current housing market was broken, this proposal would be a way in which the Council could help to address the situation for its residents

- concerns regarding the financing of the start-up costs of the company and the implications for the Council.

The Leader stated that he welcomed a good debate on the proposals and that a lot of work had been undertaken by Members and Officers on this project. This Company was the way forward to start to build social and affordable homes for the city's residents. The Leader clarified that the Council would loan the company the start-up funding of £4.35 million, this would be borrowed at a rate of 2.7% and the Council would charge the company an interest rate of 4.86%, therefore making money for the Council. He asked all Members to vote for this proposal as amended.

RESOLVED that:-

- (1) the establishment of Exeter City Group Ltd and Exeter City Living Ltd be approved;
- (2) that whilst Exeter City Homes Ltd and Exeter City Living Property Ltd have already been registered at Companies House, no approval was being sought for the Companies' activities as their financial impact on the Council had not yet been assessed be noted;
- (3) the Year One Business Case at Appendix A of the report presented at the meeting be implemented by Exeter City Living Ltd for the period August 2018 to the end of March 2019;
- (4) a Registered Provider of Social Housing (RP) be developed to take ownership of any social housing created as a result of Exeter City Living Ltd works, subject to a satisfactory business case demonstrating the RP's viability being approved by the Council. The Registered Provider would be established and functional in advance of the availability of the social housing. The two work streams to be linked to ensure appropriate staging would coincide;
- (5) a loan of £4.35 million to Exeter City Living Ltd in order to implement and complete the year one Business Case set out in Appendix A of the report presented at the meeting be approved;
- (6) the Management Agreement set out in Appendix B of the report presented at the meeting be approved;
- (7) delegated authority be given to the Director (David Bartram) to agree any necessary amendments to the Management Agreement in consultation with the Leader of the Council, the Chief Finance Officer and the Portfolio Holders (currently the Portfolio Holder for Place and Commercialisation; the Portfolio Holder for People) and in addition the Chair or Deputy Chair Corporate Services Scrutiny;
- (8) the Articles of Association for Exeter City Group Ltd and its subsidiary companies as set out in Appendix C of the report presented at the meeting be approved;
- (9) delegated authority be given to the City Solicitor and Head of Human Resources in consultation with the City Surveyor to sell at open market value any council owned land identified in the Year One Business Case; and

- (10) delegated authority be given to the appropriate Director (currently David Bartram) to act in the role of Shareholder Representative and to undertake the activities and decisions as identified in the Shareholder Representative Delegated Powers Document (Appendix D, of the report presented at the meeting), including the ability to financially commit up to £499,999 funding for use by Exeter City Living Ltd for matters not in the Year One Business Case (August 2018 – end March 2019); and
- (11) that the Vaughan Road development identified for year two of the Development Company's operation be brought forward to year one, subject to the remaining assurance work being agreed. This is in order to ensure that the Housing Revenue Account is not disadvantaged and that the Development Company is able to deliver on Members' expectations on Affordable Housing.

RESOLVED that the minutes of Executive held on 10 July 2018 be received and, where appropriate, adopted.

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NOTICE OF MOTION BY COUNCILLOR MUSGRAVE UNDER STANDING ORDER NO. 6

Councillor Musgrave, seconded by Councillor Mitchell, moved a Notice of Motion in the following terms:-

Exeter City Council notes the varied successes of community land trust (CLTs). The council therefore resolves to:-

- (1) facilitate the integration of community land trusts with Exeter's existing housing policy;*
- (2) conduct an audit for the purpose of allocating a proportion of land to made available to CLTs;*
- (3) host a forum for self builders and residents wishing to start a CLT.*

The Leader in accordance with Standing Order 6 (5) referred this motion to Executive 11 September 2018 for consideration for legal and financial reasons. He confirmed that a representative of Exeter Community Land Trust together with the mover and seconder of the motion, would be invited to this meeting.

RESOLVED that this motion be referred to Executive and be brought back to Council in due course.

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QUESTIONS FROM MEMBERS OF THE COUNCIL UNDER STANDING ORDER NO. 8

In accordance with Standing Order No. 8, the following questions were put by Councillor Thompson to the Leader.

Question - If Exeter City Council sell the Clifton Hill Sports Centre site for residential development preventing use of purpose built student accommodation could this produce an 'undervalue' in accordance with the Local Government Act 1972 as amended by later provisions?

The Leader responded that selling any land with restrictions of this type had the potential to reduce the value.

Question - Could Community Strategy/Well Being be a justification for 'undervalue' if the City Council presents this argument for preventing the site to be used for purpose built student accommodation?

The Leader responded that the Council's policy on disposals of assets at less than best consideration was agreed at Executive on 7th October 2003. This policy provided that where the Council was minded to dispose of property at a value less than the best obtainable, then the Executive may decide to do so where such disposal would contribute to the promotion or improvement of the economic, social and environmental wellbeing of the area.

Put simply, any disposal of land at an undervalue of up of to £2 million would be decided by formal resolution of the Executive.

For any proposed sale where the undervalue exceeded £2 million, the Secretary of State's formal consent would be required.

Councillor Thompson asked a supplementary question - it states in the report by Professor Darren Smith, (of Loughborough University) commissioned by Exeter City Council, student accommodation is likely to increase with developers looking to build Purpose Built Student Accommodation (PBSA) in Exeter so how can the City Council guarantee no PBSA will be built on the Clifton Hill site when suitable sites are much in demand and a possible 4150 bed spaces in addition to those already planned could be needed in the near future?

The Leader replied that it was acknowledged that the city did need more purpose built student accommodation and that a small working group comprising of himself, the Portfolio Holder for City Transformation and the Chair of Planning Committee would be set up to look into this and to ensure the right balance of student accommodation in the city centre did not get saturated with PBSA. There was a need for family homes.

Question - If the City Planning Authority were prepared to allow a student block with potential for greater density than residential accommodation could this create a considerable difference in land value?

The Leader replied yes it could.

Councillor Thompson asked a supplementary question - with a PSBA already in the location near to Belmont Park would the Clifton Hill site attract student housing investors, which could make it difficult to justify an 'undervalue'?

The Leader replied that student accommodation would not be built on this site, nor the rest of the Bus Station site.

Question - If land value proved greater with high density purpose built student accommodation how would the City Council justify a substantial loss of capital receipts to the Community?

The Leader replied that this administration had been elected and indeed increased its majority on its manifesto. He continued that in the event that the sale of land with such restriction will reduce the market value, approval from the Executive would have to be sought on the basis that such sale at undervalue would contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area.

Councillor Thompson asked a supplementary question - how will the site be used if the City Council restrict PBSA from being built on the site?

The Leader responded that he had reiterated that purpose built student accommodation would not be built on this site.

Question - Is the City Council looking to guarantee to the Community a development on the site will not be used as student accommodation if the development is not considered purpose built student accommodation?

The Leader responded that the restrictive covenant was only aimed at preventing purpose built student accommodation. This restriction may not prevent students living in dwellings constructed on the site.

Councillor Thompson asked a supplementary question - will a Restrictive Covenant restricting the building of PBSA guarantee and prevent the site being used for student accommodation which is not purpose built?

The Leader replied that it would not be appropriate to stipulate who could occupy any potential dwellings and he would not want to prejudge any future planning applications.

(The meeting commenced at 6.05 pm and closed at 7.45 pm)

Chair