



EAST
CAMBRIDGESHIRE
DISTRICT COUNCIL

AGENDA ITEM NO.

SHAREHOLDER COMMITTEE

Minutes of the meeting of the Shareholder Committee held in the Council Chamber, The Grange, Nutholt Lane, Ely on Thursday 28th June 2018 commencing at 4:00pm.

PRESENT

Councillor Mike Bradley (Chairman)
Councillor David Chaplin
Councillor Steve Cheetham
Councillor Lorna Dupré
Councillor Lis Every (as Substitute)
Councillor Chris Morris (as Substitute)
Councillor Alan Sharp

ALSO PRESENT

Maggie Camp – Legal Services Manager and Monitoring Officer
John Hill – Chief Executive & Managing Director, East Cambs Trading Company & East Cambs Street Scene
Adrian Scaites-Stokes – Democratic Services Officer
Ian Smith – Finance Manager
Paul Remington – Chairman, East Cambs Trading Company & East Cambs Street Scene
Jo Brooks – Director Operations, East Cambs Street Scene Limited
Emma Grima – Commercial Director & Company Secretary, East Cambs Trading Company
Phil Rose – Director, Property Services, East Cambs Trading Company

3. **PUBLIC QUESTION TIME**

The Democratic Services Officer advised the Committee that a set of questions had been received prior to the meeting, which had allowed officers to prepare answers. The Monitoring Officer then read out the questions answers:

Questions received from Soames Springthorpe

- Q 1. Is it correct that only 1 company was asked by ECDC to value the piece of land subsequently sold to and used for the Kings Row housing by the ECTC. (I) Why was that? and (ii) who is/was that company ? Please explain fully.
- A1. Residentially Chartered Surveyors are experienced valuers with a sound knowledge of the local market. It is normal practice to seek one valuation.

- Q2. Why was said piece of land not offered for sale on the open market to achieve best/maximum bid price for the rate payers of ECDC? Please explain.
- A2. The land at Barton Road was identified as property that would be developed by ECTC in the first company business plan that was approved by Council on 7 January 2016.
- Q3. How can the rate-payers of ECDC be absolutely sure that the price ECTC paid, some £715,000 was the best price achievable without doubt? Please explain.
- A3. The price paid for the land was based on an independent valuation (as 1 above) and by selling the land to ECTC the Council was able to retain developer profit which otherwise would have been lost to the Council.
- Q4. The idea that ECDC, LATC and ECTC are one and the same entity is plain wrong, they are not and never will be. ECDC (rate-payers) do not pay tax on proceeds derived from the sale or disposal of assets. However, as a commercial concern, if ECTC buys 'cheap' land and maximises profit, it will pay tax at some point in the future. Therefore the ratepayers lose out twice don't they? Please clarify.
- A4. ECDC is the sole shareholder of ECTC and as such is the only body capable of receiving a dividend. ECDC is not able to develop housing for profit and as such any profit, even after tax, is money that would not otherwise have been realised and of benefit to the Council.
- Q5. I am also lead to believe that ECDC has not yet been paid in full for the land...only a mere £25k deposit has been paid, is this correct? Meaning that the rate-payers of ECDC are owed some £690,000, and according to the minutes of your board meeting on 25th September 2017 this outstanding monies would be paid in full by March 2018....has this been done? Please explain all aspects of this question fully.
- A5. The loan agreement between ECDC and ECTC allows for payments for land acquired from ECDC to be deferred until sale receipts for completed new properties are received by ECTC. The deferred land payment for Barton Road is now scheduled to be made to ECDC in September 2018.
- Q6. If the balance of £690k owed has not been paid in full by March 2018, have the rate-payers of ECDC been enjoying a return on this short-term unsecured commercial loan; such as, B of E BR + 5% as one would expect to pay if the ECTC was being ran as a bonafide commercial concern and if not, please explain why the rate payers are missing out?

- A6. Under the terms of the loan agreement, any deferred land payments will attract interest at 5.22% per annum applied from the date of the transfer to the date of the payment.
- Q7. Given that ECDC's aim was/is to achieve 30% affordable housing for CLT projects, why does Kings Row fall woefully short? 2 out of 11 = approx. 18.5% affordable houses....I think? Please explain why you fell so short.
- A7. The project at Barton Road could have been designed for 10 units (rather than 11) which would have avoided the requirement for affordable housing altogether. However, prior to submission of the planning application, a decision was taken to ensure that the full policy requirement should be provided by the project. The section 106 agreement for the project at Barton Road stipulates that 2 of the 3 affordable homes required will be delivered on-site, and a financial contribution (£67,423) will be paid to ECDC for provision of a 3rd affordable homes elsewhere in the District.
- Q8. Why does the ECTC not produce monthly management accounts and publish them?
- A8. This would focus minds and ensure all rate-payers and employees could monitor the performance of the ECTC in an open and transparent manner and hold the board accountable. Please explain your thinking.
Monthly accounts are produced by ECTC, but in line with most other private sector companies, these are not released into the public domain for commercial reasons. The Shareholder Committee receives budget updates.
- Q9. If reports are to be believed, the ECTC's budget will soon be some £45m.
How can the board convince rate-payers that the ECTC has the commercial and financial skills to manage effectively a budget of this size given that they can't even hold regular board meetings. Please explain.
- A9. Board meetings are held monthly. ECTC currently manages a turnover of £9.5m. ECTC has adequate skills in place to undertake its activities.
- Q10. Why did the ECTC see fit not to make all the 11 house CLT properties? This way, the ratepayers would have retained the assets, which could have been sold at an greater price, in the future if needs be. Whilst enjoying a continual income stream albeit through this ECTC.(a far better commercial proposition) Call it 'build to let'Please explain your reasoning.
- A10 The development of residential property to hold as an investment was not part of the business strategy for Barton Road. ECTC may well retain build for rent in the future on other sites.

The Chairman thanked Mr Springthorpe for his questions and for sending them in writing. Public questions should be encouraged, as this would help the public understand the need for the Council to have a trading arm to enable the securing of maximum profit for the benefit of the rate payers.

4. **APOLOGIES AND SUBSTITUTIONS**

Apologies were received from Councillors David Brown and Richard Hobbs. Councillors Lis Every and Chris Morris acted as Substitute Members for this meeting.

5. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

6. **MINUTES**

It was resolved:

That the minutes of the Shareholder Committee meetings held on 8th February 2018 and 24th May 2018 be confirmed as correct records and be signed by the Chairman.

7. **CHAIRMAN'S ANNOUNCEMENTS**

There were no announcements.

8. **FUTURE ROLE OF THE SHAREHOLDER COMMITTEE**

The Committee considered a report, reference T40, previously circulated, that detailed proposed revisions to the roles and terms of reference of the Shareholder Committee.

The Chief Executive advised the Committee that the intention of the report was to obtain a recommendation from the Committee to full Council. The role the Shareholder Committee had changed for a number of reasons. The Trading Company had been established in 2016, but since then there had been some significant developments, including its own operation and the subsequent establishment of another company. This had been needed to ensure a teckal compliant company could take on the waste service, as the work of the Trading Company had expanded. This had been more than expected, particularly the work related to Community Land Trusts (CLTs). The Council needed to be flexible to take advantage of commercial opportunities. It was looking for loans to enable its work to take place, with wider loans from the Cambridgeshire and Peterborough Combined Authority part of its plan. The Trading Company's work delivering key schemes had started to attract interest, both from within the district and beyond.

It was fair to say that the current arrangements with the Committee were not entirely satisfactory. This was not a surprise, given the new Committee and the fast moving agenda. Consideration would be given on how relevant information

could be presented to the Committee. The current arrangements were overly prescriptive, did not allow for a focus on the work being done nor the strategic risks and were not fit-for-purpose. This placed constraints on the companies where flexibility to operate was essential.

Therefore there was a requirement to revise the Committee's terms of reference and Appendix 1 set out proposals for that. The Shareholder Agreements also needed updating and this were set out in Appendix 2. Thanks were offered to the Legal Services Manager for her assistance in drawing up those documents.

For the first time a Modus Operandi was proposed, as set out in Appendix 3, to make clear the principles of how the arrangements would work. An amendment to Appendix 3 was recommended, to highlight that lessons learnt from completed projects and appropriate recommendations could be made for the future.

Councillor Mike Bradley thought it appropriate that a review be considered as the Committee was a year old. Some Members had been unhappy with how the Committee was working. The recommendations would allow the Committee to act more like an overview and scrutiny committee. As the Combined Authority had lent some money for the Haddenham CLT, but some Combined Authority Members had concerns about that funding. These are issues that the Committee should look at before the event and therefore become more pro-active. This would result in the Committee being able to go to Council with relevant recommendations. Appendix 3 set out the principles of how the Committee would work.

Councillor Bradley asked that there be some consistency with the documents when using acronyms of the companies involved.

Councillor Alan Sharp thought that the Committee had focussed too much on operational matters in the past, but should be considering risk managements and be a 'critical friend'. The Committee had to fill two roles on behalf of Council, by looking in detail and putting forward helpful suggestions plus it was also important to review projects.

Councillor Lorna Dupré was hearing different descriptions of the Committee and stated it was not an overview and scrutiny committee, as it could not call in any decision made by the companies. If it was a project team then it was not clear how the Committee was that way involved. It was also not the role of the Committee to champion the Trading Company. Therefore Appendix 3 did not give a clear indication what the Committee's role should be.

Councillor David Chaplin reckoned that the Committee's two roles were to represent and protect the Council and also to act as a critical friend to the companies. These two responsibilities had to be kept separate, which would be difficult. The Committee should not have to delve into details but needed to know the processes in place and how matters were dealt with. The Committee's work principles needed to be looked at and any potential conflict dealt with.

There was no surety that the report could be recommended to Council as it stood. For example, there were concerns relating to section 6.1.18 in reference to borrowing powers. This was a challenge for the Committee as both its roles were crucial. He also proposed a rewording of Appendix 3.

The Chief Executive acknowledged that Members had expressed fundamental changes to Appendix 3. All Members would have a chance to look at this again when it was presented to full Council. The other two recommendations could be made and exclude Appendix 3. An alternative could be drafted, in consultation with the Committee Chairman, and brought to Council. The Committee were content with that suggestion.

Councillor Lorna Dupré expressed concern that it appeared clear that the role of the Committee was being closed down. It appeared odd that the Shareholder Committee could sign off the business plan but not for any amendments to it. The proposed terms of reference withdrew whole areas of discussion including review of future service developments, entering outside business arrangements or loans. The proposed annual shareholder meeting gave no information on the information that would be provided or any suggestion on what business would be discussed by full Council. It seemed that only risk assessments would be discussed. It was assumed that members of the companies' boards would be excluded from that meeting, due to a conflict of interest.

The Chief Executive explained that the annual meeting was intended to reflect how the commercial operation of the companies was working. All Members would be given details of the business operations and would allow them to be fully briefed. It would also assist Members to appreciate the risk assessments. The annual meeting would provide relevant information and more details could be presented to this Committee if required.

Councillor Mike Bradley thought the annual meeting could allow consideration of business opportunities and set out what the companies aimed to achieve. Information would also be given to Members on what was happening.

Councillor David Chaplin considered it nonsense that the Committee could veto proposed business plans but not any amendments to them. Steps should be in place to ensure that the Shareholder Agreements were adhered to. The Agreements were the mechanism the Committee used to carry out its work. There was also a duplication in work, as the Constitution should not copy the information of the Agreements.

The Chief Executive stated that he had been over-cautious and acknowledged that it did replicate the Shareholder Agreements. This could be changed in accordance with Councillor Chaplin's suggestion.

Councillor Alan Sharp asked how Members could delve into the accounts, as only a summary would be provided. Could this be accomplished during a Committee meeting or could information be set out afterwards? The companies completed their accounts on a monthly basis, so they should be presented to the Committee quarterly. The Committee was not there to

manage the finances of the companies but should be given quarterly information.

Councillor Mike Bradley did not believe that this would limit what the Committee could do, as it could look at the accounts. The Committee was reminded that it received copies of the Boards' minutes, so nothing was hidden. The Committee should not get lost in the details but Members could raise issues.

In response to Councillor Lorna Dupré's queries, the Legal Services Manager confirmed that the Boards could not make any decisions on matters reserved for full Council but the removal of certain matters meant that the Boards make decisions on those issues. Councillor Dupré thought that consequently the Committee had no right to discuss some matters but would only be given information on progress against the business plan and a summary of accounts. Seeking to investigate these matters further would be ultra vires, as the decisions were entirely the responsibility of the Boards.

The Chief Executive reminded the Committee that it would still receive reports and the proposed Agreements were much wider ranging. Paragraph 3.3 allowed the Committee to bring the companies to account, as set out in the Agreements.

Councillor Lorna Dupré, in reference to the Agreements paragraph 2.2, questioned the wording "in line with the coming financial year" relating to the circulation of the companies' business plans. The document needed to be more specific and give a reasonable timescale. Paragraph 3.4, did the reference to the Shareholder Committee Members mean corporately or individually? The words "Members of" should be removed to clarify the intention. Paragraph 5.7, it was noted that the requirement to supply board agendas and papers had been deleted. Councillor Dupré could not recall ever having received such papers. There was some surprised that this had been taken out and this should be re-instated, to give the Committee a view of what was going on. The Committee had a clear right to access these and needed to know when the board meetings were being held.

The Chief Executive stated that the circulation of the business plans happened at the end of December, whereas the new proposal meant that they could be provided at any time, which gave some flexibility. The reference to discussing matters meant corporately rather than individual Members.

Councillor Mike Bradley agreed that the request of board papers was reasonable but regular documents were received regularly. Extra information could be obtained if wanted.

The Chief Executive acknowledged that the terms of reference needed looking at again, to simplify them. The remit of the Shareholder Committee was wide and there had been no intention to reduce the information available to it. The aim would be to provide information on strategy risks prior to implementation, which the companies had to provide.

Councillor Mike Bradley stated that there was no intention of not providing information but had to accept that it would not be exhaustive. If Members

wanted specific information this could be obtained. However, he did not wish for Members to receive lots of information that they did not need, or want, to see. The right information had to go to the right people.

Councillor David Chaplin put a request in for information to be sent electronically. He had no wish to see monthly board papers and would be happy with a quarterly report. It was not the job of this Committee to run the companies and any attempt to so do would be a distraction for the boards. Other members could receive additional papers if they so requested. There had to be some awareness should any joint venture with an outside body agreed by the trading company be a problem for the Council.

Councillor Lorna Dupré then requested to see all monthly papers and promised not to bombard the boards with queries. The Committee Members should resume the right to exercise due diligence. The Committee should focus on and scrutinise the bigger issues. However, some of these could come from smaller issues.

The Chief Executive agreed to add the wording “on request” to paragraph 5.7. The purpose of that clause was to focus more on risk assessments. This would be a new way of working and it would have to be seen how it worked out. The Committee was reminded that the Chairman could call an extraordinary meeting should any major concerns arise. This would also allow the board to approach the Chairman for the same reason. It would be entirely appropriate for Members to raise issues should any joint ventures cause concerns.

The Chief Executive agreed to revise the terms of reference and agreements in line with comments and suggestions raised by the Committee. He amended the recommendations by including “Amended in consultation with the Chairman of the Shareholder Committee” and removing the word “endorse” from paragraph 2.1 (iii). This was duly proposed and seconded and, when put to the vote, was declared carried.

It was resolved to RECOMMEND TO FULL COUNCIL:

As amended in consultation with the Chairman of the Shareholder Committee:

- (i) The revision to the terms of reference of the Shareholder Committee detailed in Appendix 1;
- (ii) The revisions to the Shareholder Agreements detailed in Appendix 2;
- (iii) The ‘modus operandi’ detailed in Appendix 3.

9. **EXCLUSION OF THE PUBLIC INCLUDING REPRESENTATIVES OF THE PRESS**

It was resolved:

That the press and public be excluded during the consideration of item 8 because it is likely, in view of the nature of the business to be transacted

or the nature of the proceedings, that if members of the public were present during the item(s) there would be disclosure to them of exempt information of Categories 1, 2 and 3 of Part I Schedule 12A to the Local Government Act 1972 (as amended).

10. **EAST CAMBRIDGESHIRE TRADING COMPANY BOARD MINUTES**

(a) 12th APRIL 2018

(b) 17th May 2018

The Committee considered Exempt sets of minutes, previously circulated, of the East Cambridgeshire Trading Company Board meetings held on 12th April 2018 and 17th May 2018.

Councillor Lorna Dupré, with reference to the minutes of 17th May, asked a number of questions relating to Community Land Trusts and requested copies of the relevant papers. Responses were given by the Chairman of the Trading Company and Company Secretary.

The Committee noted the exempt minutes.

The meeting concluded at 5:30pm.