

Executive

Excerpt of the minutes of the meeting held on Wednesday 31 October 2018 at the Town Hall, Royal Leamington Spa, at 6.00 pm.

Present: Councillors Mobbs (Leader), Butler, Coker, Grainger, Phillips, Rhead, Thompson and Whiting.

Also present: Councillors; Boad (Liberal Democrat Group Observer), Naimo (Chairman of Overview & Scrutiny Committee); Quinney (Chair of Finance & Audit Scrutiny Committee); and Wright (Conservative Observer).

75. **Declarations of Interest**

Minute 77 –Kenilworth School Loan and Land Purchase

Councillor Whiting declared an interest because his wife was a governor of the school. He therefore left the room whilst the item was discussed.

76. **Minutes**

The minutes of the meetings held on 4 January, 7 February, 27 June, 25 July, 30 August and 26 September 2018 were taken as read and signed by the Chairman as a correct record.

Part 1

(Items upon which a decision by the Council was required)

77. **Kenilworth School Loan and Land Purchase**

The Executive considered a report from Deputy Chief Executive (AJ) regarding Kenilworth School Loan and Land Purchase. The report asked Members to agree a loan to Kenilworth School and the purchase of land at Rouncil Lane in Kenilworth, thereby helping to facilitate the relocation of Kenilworth School and Sixth Form and providing an opportunity for the Council to develop a house-building programme.

Since the Executive considered a report on this matter at its meeting of 31 May 2018, not all elements of the relocation project had progressed as smoothly as would have been hoped: Whereas parts of the planning application work had progressed and Warwick District Council officers had developed a sound case for the purchase of the School's land at Rouncil Lane and the advancing of a loan to enable the School to continue with its planning application preparation, the landowner at South Crest Farm had not agreed a sale price with the School for their land and so the purchase had not been completed. Consequently, officers had to instruct Counsel to provide Compulsory Purchase Order (CPO) advice in the hope of convincing the landowner to reach an agreement.

Officers and the landowner met at the Council's offices late last month, accompanied by relevant professional advisors, and it was hoped that a negotiated settlement could be reached. Should this not have been successful, officers would have no alternative but to begin formal CPO

proceedings which would involve a report to this Committee to seek agreement to the CPO process. The consequence of this was that the School's aspiration of being on its new site for the September 2021 academic year was at risk. Although Counsel's advice was that the Council had a strong case for a CPO, if the landowner decided to argue the matter, the length of the process was difficult to determine as an Inquiry would need to take place.

Notwithstanding the aforementioned, the School Governors' position was that they wished to push ahead with the relocation project recognising the risk but in the belief that it was not "if" relocation would take place but "when".

Executive had agreed that Officers could enter into negotiations with the School's representatives for the in-principle purchase of the land allocated in the Local Plan for housing at Rouncil Lane (currently the School's Sixth Form site and defined as allocation H12 in the Plan). Officers duly instructed the Council's valuers Bruton Knowles (BK) to provide valuation advice in respect of the site and that advice could be seen at Appendix One in the private and confidential (p&c) report relating to this matter. Based on this advice, an offer had been made to the School and this offer had been accepted. The amount offered was detailed in the confidential report (Executive Item 15) along with a commentary to support the level of offer. Members were asked to agree the Heads of Terms (HoT) for the purchase of this land at Appendix Two to the confidential report. It would be noted that the HoT was constructed in such a way that the option to purchase part or the entire Rouncil Lane site existed. The former option was in case the School was ultimately thwarted in its planned move, for whatever reason.

In tandem with negotiations around purchasing Rouncil Lane, Executive had asked officers to explore whether it would be possible to advance a loan of circa £1m to the School to enable it to proceed with its planning application and assist with funding the upfront capital costs of the scheme. That work had confirmed that a loan of that amount could be secured by taking a charge on part of the land at Rouncil Lane which could be developed even with the School still in situ.

Appendix A to the public report included a site plan of the School's land at Rouncil Lane. It was considered that the hatched green area of the site could be developed even if the school remained in situ. Officers had taken advice from a Highway consultant regarding access (Appendix B to the public report) and the Council's solicitors had advised that there would be no impediment to gaining access as a consequence of land title. Officers had therefore instructed the Council's solicitors to draft a Loan Agreement to which the School had agreed. The key element of the agreement from the Council's perspective was security for the loan. This would be achieved by way of a land charge on the site which would be placed on the part of the land that could be developed even with the School in situ. An option agreement would be entered into for this part of the land contemporaneously with the execution of the loan Agreement. Members were asked to note the draft Loan Agreement, as currently proposed at Appendix Three to the confidential report and agree that the final document was agreed under delegated authority, in consultation with the Leader.

Whether the Council ultimately would end up owning the entire site with the potential for 130 dwellings (Local Plan allocation number) or just part with the potential for 70 dwellings, the Council would be afforded the opportunity to begin a house building programme. Members were aware that a report entitled 'Bid for Local Authority Housing Programme' was agreed at the August Executive which sought approval for increasing the Council's borrowing headroom to bring forward such housing schemes. Whilst the financing of the purchase(s) proposed in this report was not dependent on the bid, a successful outcome would give the Council greater capacity to explore further opportunities.

As an alternative option, the Council could decide to play a less active role in the project, however, the likely consequence of this was that the relocation of the School would be delayed and the Council would miss the opportunity to develop a Council house-building programme. For those reasons, the option was rejected.

The Finance & Audit Scrutiny Committee supported the recommendations in the report and noted the confidential appendix.

Councillor Mobbs proposed the report and stated that the Council were pleased to be able to help Kenilworth School in this move.

The Executive, therefore,

Recommended that

- (1) the latest position as it relates to Kenilworth School and Sixth Form's decision to relocate to land at South Crest Farm, Kenilworth, which has been allocated in the Warwick District Local Plan for educational uses, is noted;
- (2) the latest position in respect of the negotiations and discussions between officers and the School in respect of advancing a loan and purchasing the School land at Rouncil Lane, is noted;
- (3) the Heads of Terms for the purchase of the School land at Rouncil Lane at Appendix Two to the private & confidential report on this matter, having noted both the Council's valuation advice at Appendix One and offer price at paragraph 3.2 of the report, are agreed;
- (4) the release of the necessary funding from the Housing Revenue Account Capital Investment Reserve is agreed;

- (5) the draft Loan Agreement at Appendix Three to the private & confidential report is noted; and
- (6) a final document is agreed by the Deputy Chief Executive (AJ) and Head of Finance in consultation with the Leader and recommends to Council that the precise source of funding of the loan is agreed by the Head of Finance and included within the updated Capital Budget, is agreed.
- (7) A final document is agreed by the Deputy Chief Executive (AJ) and Head of Finance in consultation with the Leader and the precise source of funding of the loan is agreed by the Head of Finance and included within the updated Capital Budget.

(The Portfolio Holders for this item were Councillors Mobbs, Coker, Rhead and Phillips)

Forward Plan Reference 972

78. Code of Procurement Practice

The Executive considered a report from Finance regarding proposed amendments to the Code of Procurement Practice.

The Council's Code of Procurement Practice was last formally reviewed and amended in 2016. It was recognised good practice to keep this document under review and make amendments as necessary to meet the changing environment in which the authority, its services and its finances operated.

The revisions to the Code of Procurement Practice had been developed by Warwickshire County Council's Head of Procurement, as the Council's Strategic Procurement Partner. The proposals had been considered at length by the Procurement Board (Senior Management Team), and the Procurement Champions.

The needs of councils were changing and councils needed to be innovative, flexible and agile in order to be able to respond quickly and efficiently in order to maximise opportunities as and when they arise. Councils therefore needed to have in place a procurement framework which supported innovation, agility and flexibility but at the same time provided the appropriate level of control, safeguarding and scrutiny that would be expected in an organisation spending public money. This was the context within which the review had been undertaken and a revised Code proposed.

The current Procurement Code of Practice (the Code) generally included the elements that would be expected to be seen in a document of this type. However, because the Code had been built up over time, some elements had become confused, overly complex and in some places contradictory.

The level of detail contained in the Code also varied significantly between sections. Some sections were light touch focusing on the more strategic procurement principles that the Council was seeking to achieve, whereas other sections went into great detail about the actual processes that officers needed to follow to satisfy both statutory and local procurement requirements. This mixed level of detail coupled with the confused, complex and in some places contradictory elements made it difficult for officers to comply with their obligations. The revised code was therefore seeking to:

- Focus on what needed to happen in relation to procurement rather than how procurement was done. The 'How' would be covered in procurement guidance issued by WDC Procurement via the Intranet. This approach had the benefit of allowing the 'how' to be more flexible and more easily amended to reflect experience, good practice and legislation as it would not be formally part of the Code and therefore not part of the Council's Constitution. The Code did, however, have the teeth to force officers to follow any procurement guidance issued.
- Ensure that the Council's statutory obligations in relation to procurement were satisfied through the Code with local policy and practice requirements communicated to officers through supporting procurement guidance.
- Provide a structure for the document that was more aligned to how the procurement process happened and therefore the Code should be easier for officers to follow and comply with.
- Provide the necessary information in a clear concise way that was detailed enough for officers to know their obligations but short enough as to be manageable. As a consequence of the review, the proposed Code was much shorter than the current version – down from 43 pages to 25 pages.

It was clear from the review undertaken that awareness of the Code was high and Officers were familiar with the general look and feel of the Code. However, the revised Code contained some new/different requirements and therefore, once agreed, the new Code would need to be formally re-launched. In support of this, the Council had already reviewed its procurement training offer to incorporate the changes proposed in the revised Code. The intention was that once the revised Code had been formally adopted by Council, training content could be finalised and training delivery could commence.

There were a number of specific Proposed Changes to note within the proposed Code regarding: Minimum Requirements; Legal Compliance; Scope of the Revised Code; Roles & Responsibilities; Collaboration; The Gateway Process; Local Supply; Constructionline; Social Value (SV); Role of the Executive; E Procurement; and Types of Contract. Where it was proposed in the new Code to remove prior agreement from Members for lower level decisions, these decisions would still be reported retrospectively to members as they were currently. It was considered that this approach coupled with more clarity around roles, responsibilities and accountabilities would enable Members to focus on the more significant procurement issues impacting on the Council.

In terms of alternative options, Members may wish to retain the existing Code of Procurement Practice or propose alternative changes. However, as explained in Section 3, the proposals were intended to present a sound foundation under which to progress good procurement across the Council.

The Finance & Audit Scrutiny Committee supported the recommendations in the report with a number of modifications as agreed with officers. An addendum was circulated prior to the meeting in order to answer questions from the Scrutiny Committee.

The Overview & Scrutiny Committee noted the report and thanked Mr White, Procurement Officer from Warwickshire County Council, for attending their meeting and answering questions

The Portfolio Holder for Finance agreed the amendments as proposed by Councillor Rhead and advised that a revised wording would be issued prior to submission at Council.

The Executive therefore,

Recommended that Council adopts the updated Code of Procurement Practice as detailed in Appendix One to the minute, subject to an amendment to page 13 of the report, to bullet point four to read "*the exemption must be agreed by the Head of Finance and Executive, prior to any **contract** being **entered into***". These changes will be made prior to submission to Council.

(The Portfolio Holder for this item was Councillor Whiting)
Forward Plan Reference 960