

Addendum to the report of an investigation by VWV LLP appointed by the Monitoring Officer for Guildford Borough Council relating to the Garden Village at the former Wisley Airfield.

May 2021

NOTE: This is a revised version of the report, produced by VWV at the request of the Council with the names of Council officers removed / redacted.

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1 Introduction

- 1.1 Following on from the report that we produced in July 2020, " The report of an investigation by VWV LLP appointed by the Monitoring Officer for Guildford Borough Council relating to the Garden Village at the former Wisley Airfield", (the "First Report"), we were asked to look into additional matters by Guildford Borough Council ("the Council") for the Overview and Scrutiny Committee.
- 1.2 These issues again related to the former Wisley airfield development and the bid to Government submitted jointly by the Council and the private sector partners.
- 1.3 This further investigation was carried out by Mark Heath who is a consultant with Veale Wasbrough Vizards (VWV). VWV is a full service commercial law firm, with 82 Partners and over 350 lawyers, working across offices in Watford, London, Bristol and Birmingham. VWV have been providing legal advice to local authorities for over twenty years and have a national reputation for public sector property work, acting for both central and local government clients.
- 1.4 Mark Heath is a solicitor with over 30 years of service within the public sector. He was until December 2016 working at Southampton City Council where he was Solicitor to the Council and Monitoring Officer for 20 years. Subsequent to that he held the positions of Director of Place and subsequently Chief Operating Officer at Southampton. He is highly experienced in all aspects of local government law, particularly standards and all aspects of local authority governance and decision making.
- 1.5 This report (the "Second Report") contains our findings in relation to these further matters.

2 Scope of Further Investigation

2.1 We were asked to investigate two further matters, namely:

2.1.1 *"Circumstances and process around the bid and an explanation of what happened, e.g., how did a letter from a developer get passed between Cllrs to become a submission from SCC? Why was a Savills document passed off as a GBC document? What was the discussion between officers about this and why wasn't it discussed with Cllrs? Why was the Bid submitted so late in the day, where was the awareness of the bid deadline? "*

2.1.2 *"The late notice to the O&S Chair of the Bid and the avoidance of scrutiny/waiving of call-in to meet the bid deadline and the late addition of the item to the Executive meeting agenda. What is the learning from this episode?"*

2.2 In addressing these matters in this Report, we have split them into two categories, namely "Further Bid Issues" and "Call-in Issues"

3 Decision making - Roles & Responsibilities

- 3.1 Of fundamental significance to this matter is the status, nature of and effect of the Executive's decision relating to the bid / submission by the Council and partners to MHCLG for Garden Village status.
- 3.2 In August 2018 , the relevant Government Department, the Ministry of Housing, Communities and Local Government ("MHCLG") issued a Prospectus:
- https://www.guildford.gov.uk/media/28911/MHCLG-Garden-Communities-Prospectus/pdf/MHCLG_Garden_Communities_Prospectus.pdf?m=63677636258767000
- 3.3 In summary, this sought proposals for Garden Communities. Those that were successful in making those would receive a bespoke package of Government assistance to deliver their proposal should those proposals subsequently receive planning permission, local plan approval etc.
- 3.4 The Garden Village bidding process was entirely separate from the planning process and any planning decisions. Making a bid for Garden Village status meant nothing when it came to the planning decisions. Any perception that making or being successful with the bid reflected a pre-determination of the planning decision, shortened the process or made the approval more likely was incorrect. No planning Inspector would take into account the existence of the additional resources through the Garden Village bid process as a material or relevant planning consideration.
- 3.5 In terms of decision making, decisions on the bid are clearly executive functions. Planning decisions are non-executive (planning committee / Full Council).
- 3.6 Council's that bid for extra capacity / support still had to make planning decisions through their planning committee / Full Council as to the merits of the matter.
- 3.7 Some councils made successful bids for support through the Garden Village bidding process to MHCLG but the proposal did not get approval through the due planning processes at those Councils. [e.g. Dissington in Northumberland].
- 3.8 Put simply, there was no legal / decision making link between the Garden Village bid process which fell to the executive and any planning decision made or to be made by the non-executive decision makers of the Council.
- 3.9 There was no relationship between making the bid and the decision(s) on planning. Making the bid gave no advantage to the planning decision, nor did it predetermine it in any way.
- 3.10 Whether this conflation of the two decisions/issues is a misunderstanding or a deliberate attempt to suggest issues where there are none, this lies at the heart of the issues raised over this matter.

4 **Further Evidence Gathered**

- 4.1 In respect our further investigatory work, we interviewed ex Cllr Reeves and we also spoke to planning officers and sought further documentation from them.

5 Assessment and Analysis

5.1 We were asked to investigate two further matters, namely:

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5.1.2 *"The late notice to the O&S Chair of the Bid and the avoidance of scrutiny/waiving of call-in to meet the bid deadline and the late addition of the item to the Executive meeting agenda. What is the learning from this episode?"*

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5.3 Further Bid Issues

5.3.1 In Section 5 of our First Report we addressed in detail the circumstances and process behind and underpinning the bid. We have also discussed at length in the same section of our First Report the chronology, status of the document, control by the Council of that document and branding of the Bid.

5.3.2 The reference to the letter being circulated was a letter drafted by Savills seeking support for the bid from the LEP and from Surrey County Council. This support was expressly necessary as set out in the prospectus issued by MHCLG.

5.3.3 The prospectus says at para 11:

(a) *All proposals should have the backing of the local authorities in which they are situated, including the county council in two-tier areas. We are particularly interested in proposals which demonstrate collaboration across local authority boundaries.*

(b) *To ensure that the potential local growth benefits have been considered, it will be desirable for proposals to have the support of the Local Enterprise Partnership, where the area has one.*

5.3.4 The drafting of the letter by Savills was in no way unusual. Bodies working in partnership with or for Councils and indeed other parties prepare draft letters or other documents for their partners / clients every day. The clients will then review and determine if they are happy with the content / style. They may or may not amend them. They may or may not send them. If they use such a draft, amended or not, it is then their letter.

5.3.5 It is also understood that the then Deputy Leader at the Council took the draft letter to Surrey CC where they were also a councillor. We can see nothing wrong in that at all either. The carriage of a draft letter by a member of the Council from the Council to another Council of which they were a member raises no issues. Dual-hatted members are common place and not an issue. Bodies working in partnership or for Councils and indeed other parties prepare draft letter or other documents for their partners / clients every day. Although a draft letter was supplied it was a matter for Surrey CC to

decide whether to support or not and if so whether to send it amended or not. It was ultimately Surrey's letter.

- 5.3.6 In terms of the timeframe and late submission, as our First Report noted, there was a very short period of time to make the bid. At the same time, there was consultation on the Local Plan which made it a very busy period for the planning dept. There were undoubtedly significant resource pressures on the officers to deliver the bid and as such this resulted in a report being submitted to the decision makers later than perhaps might have been ideal. This is not however unusual, and there are processes for dealing with such matters. Capacity in the Corporate Programmes team at the Council has since been significantly bolstered and they have, and will continue to, submit bids on behalf of the Council – most recently a successful bid to pilot the Government's proposals for Local Design Codes.

5.4 Call In Issues

- 5.4.1 The report that went to the Executive on 30 October states:

<http://www2.guildford.gov.uk/councilmeetings/documents/b2985/Item%20of%20Urgent%20Business%2030th-Oct-2018%2019.00%20Executive.pdf?T=9>

"7.2 In accordance with Overview and Scrutiny Procedure Rule 16 (h), the Managing Director has designated this matter to be urgent and, subject to the formal agreement of the Executive and the Chairman of the Overview and Scrutiny Committee, shall not be subject to the call-in procedure. The Chairman of the Overview and Scrutiny Committee has already given her formal agreement.

7.3 This means that, subject to the Executive's agreement, the decision can be implemented immediately."

- 5.4.2 Although Councillor Reeves had already given her formal agreement on the day before this meeting (29th October), she indicated at the meeting that she had felt that she had been put in an invidious position bearing in mind that the Prospectus had been published by MHCLG on 15 August 2018 and this matter had been only been published as an item of urgent business on the day before the meeting.
- 5.4.3 Councillor Reeves indicated that she had a number of questions in respect of the circumstances surrounding the consideration of this matter which, in the interests of openness and transparency, ought to be considered at the next meeting of the Corporate Governance and Standards Committee.

- 5.4.4 The minute states:

<http://www2.guildford.gov.uk/councilmeetings/documents/g747/Printed%20minutes%2030th-Oct-2018%2019.00%20Executive.pdf?T=1>

"Having considered the report, the Executive RESOLVED:

(1) That the preparation and submission of a Garden Village Bid for Wisley Airfield to the Ministry of Housing, Communities and Local Government be endorsed.

(2) That the Director of Planning and Regeneration be authorised to finalise and submit the bid following consultation with the Leader of the Council and the Director of Finance.

(3) That, in accordance with Overview and Scrutiny Procedure Rule 16 (h), the call-in procedure in respect of this decision, be waived.

Reasons:

A successful bid could secure important capacity funding and cross government support allowing the delivery of the Wisley Airfield allocation and wider Council infrastructure and sustainable transport proposals.

The waiving of the call-in procedure will enable the decision to be implemented immediately to ensure that any bid may be submitted by the 9 November 2018 deadline

Note: *By reason of the special circumstances described below, the chairman considered that this item should be dealt with at this meeting as a matter of urgency pursuant to Section 100B 4 (b) of the Local Government Act 1972.*

Special Circumstances: *This matter required a decision by the Executive to enable a bid to be submitted by the deadline of 9 November 2018."*

- 5.4.5 The process by which the Council undertakes and manages call ins , as set out in the Constitution is lawful and reflects general practice across councils.
- 5.4.6 Ex-Cllr Caroline Reeves at the material time was a GBC Cllr, the Leader of the Liberal-Democrat Group and Chair of the Overview and Scrutiny Committee.
- 5.4.7 Ex-Cllr Reeve stressed the background to us, namely that the decision related to a bid to central government (MHCLG) and in bidding, Councils and their private sector partners were invited to come forward and tell Government how they could support the bidders in delivering their vision for new garden communities.
- 5.4.8 The whole rationale underpinning the basis for the executive decision to make the bid was to increase the quality of the development. If successful, the funding would benefit the Council to assist with things such as early delivery of infrastructure and in gaining professional design help.
- 5.4.9 Crucially, making the submission / bid to MHCLG did not mean that successful bidders would get planning consent. A number of successful MHCLG bid sites failed during the local plan process or application stage.
- 5.4.10 Ex-Cllr Reeve further explained that what the Executive were doing was bidding for extra resources / capacity / expertise to assist the Council's hard pressed planning dept with the delivery of the Garden Village to the highest standards, to increase the quality of the development BUT it was not a decision about approving etc that the development went ahead. That was separate. This did not pre-empt it, it did not predetermine it in anyway and as history has shown there were many who successfully submitted similar bids but who did not progress their garden village proposals as the necessary /appropriate planning decisions whether at local plan or application stage failed to gain support.
- 5.4.11 So in conclusion ex-Cllr Reeve told us that the decision she was presented with was - did the Council seek to bring in extra capacity, skills and expertise so that if the garden village did proceed, the Council had the very best resources they could have to deliver the best development they could - or not. And it was on that basis that ex-Cllr Reeve decided not to call the matter in.

- 5.4.12 It should be noted that on 29 October, the day that she made her decision to waive call-in, ex-Cllr Reeve also wrote to [a Democratic Services Officer] recording her decision in the following terms:

"My difficulty with this particular situation is that it's a very contentious site which doesn't have borough wide support. There will be those who wish to challenge and would like a call-in.

But reading the document again it says clearly that it doesn't guarantee planning permission and in theory the extra funding could produce a better quality site which overcomes the difficulties with access and transport. And the Inspector left it in the Local Plan, much to the irritation of some.

On that basis I am happy to waive call-in"

- 5.4.13 As already stated, ex-Cllr Caroline Reeves indicated that she had a number of questions in respect of the circumstances surrounding the consideration of this matter. She submitted these questions in an email dated 4 November 2018 to the Managing Director, the Chairman of this Committee, the Leader of the Council, and the Monitoring Officer. A response to the questions was circulated by the Managing Director in an email to all councillors dated 21 November 2018. Those questions and the answers given are set out below:

"Questions raised by Councillor Caroline Reeves:

1: When did the Executive and Council officers know the matter would go to the Executive for decision? Why wasn't it on the Forward Plan - which 'sets out details of the various decisions that the Executive and full Council are likely to take over the next 12 months in so far as they are known at the time of publication.'

The Director of Planning and Regeneration confirms that her attention was first drawn to the MHCLG Garden Communities Prospectus on 17 August 2018. She sent an email to the Leader of the Council, Councillor Paul Spooner on the same day asking whether he would support the submission of a bid from Guildford in respect of Wisley Airfield. Councillor Paul Spooner responded by email on 20 August 2018 giving his support.

During the period up to 11 September 2018, the Planning Policy team were busy preparing for the consultation on the proposed Main Modifications to the Submission Local Plan. In the period leading up to and during the consultation period, key members of the Planning Policy team, who had spent significant time in the preceding months preparing for the local plan examination, attending and responding to points raised during the inquiry, preparing the main modifications to the plan and the consultation arrangements, finally took the opportunity of taking two weeks' annual leave. This meant that work on the preparation of the bid and seeking authority for its submission was not given the priority which it would otherwise have received.

The Forward Plan setting out key decisions and other decisions to be taken by the Executive is published monthly. The Forward Plan setting out details of the decisions to be taken by the Executive on 30 October 2018 was published on 25 September 2018.

In the normal course of events, any decision to submit a bid for funding to external organisations would be taken by the relevant Lead Councillor in accordance with the General Delegation to all Lead Councillors set out in Part 3 of the Council's Constitution (Responsibilities of the Leader and Lead Councillors).

Instead of a lead councillor decision on whether to submit a bid, the Leader of the Council indicated on 19 October 2018 that he would like to have an open public debate on the matter and so decided that the matter should be referred to the Executive for decision at its next scheduled meeting on 30 October 2018.

The Managing Director, and the Director of Planning and Regeneration, have both apologised publicly, and in a meeting with relevant councillors, for the short time period in preparing the original report and also for not involving ward councillors at an earlier date.

2: All key decisions [those likely to result in expenditure or savings of £200,000 or have a significant impact on 2 or more wards] are required to be publicised in the Forward Plan at least 28 days before the relevant Executive decision. Again, why was this requirement not met? Is it not a key decision?

As explained at the Executive meeting, the Council Solicitor and Monitoring Officer and the Democratic Services Manager considered that a decision to submit a bid, of itself, could not be construed as being a "key decision", as defined in the Council's Constitution and referred to in the question. Consequently, there was no requirement to publish via the Forward Plan notice of intention to take the decision at least 28 days before the decision was scheduled to be taken.

This differs from a substantive decision, which might follow and involve a host of possible interventions - including local development vehicles, supplementary planning documents, joint ventures, and statutory development corporations to promote a Garden Village, any one of which is likely to be a key decision.

3: Section 32 of the Garden Communities Prospectus states : 'We expect the submission of a proposal to have been preceded by a period of engagement with the Department [MHCLG] and Homes England, and encourage initial contact to be made as early as possible.' When did the Council first contact the Ministry of Housing, Communities and Local Government about a Bid?

The Planning Policy Team first spoke with MHCLG specifically about the Wisley Garden Village bid on 5 November 2018."

5.4.14 The minute of that meeting was as follows:

"The Committee noted that its terms of reference included the review of any corporate governance issue referred to it by the Managing Director, a Director, the Leader/Executive, or any other committee of the Council.

Following receipt of a number of corporate governance related questions from the Chairman of the Overview and Scrutiny Committee, Councillor Caroline Reeves, regarding the decision taken by the Executive on 30 October 2018 to submit a Garden Village Bid for Wisley Airfield, the Managing Director had referred the issue to this Committee for consideration.

A copy of an email from the Managing Director to Councillor Reeves setting out the questions, together with a response, was attached to the agenda for the meeting.

In considering the matter, the Committee made the following points:

- Whether it would be appropriate for this Committee to review the operation of the Forward Plan. The Corporate Management Team had acknowledged that the Forward Plan was in need of a review to ensure that decisions to be taken*

by the Executive were programmed for consideration by the Executive at an early stage to ensure that all councillors were aware.

- As the local ward councillor was not informed of the Executive's intention to consider this matter, this case had highlighted the need to ensure that local ward councillors were consulted, or at least notified, of events or matters directly affecting their wards. Similarly, parish councils should also be consulted/notified of matters affecting the parished areas. The Committee was informed that this issue had been raised during the governance review in 2015-16, and the Council had agreed to require report authors to routinely inform and/or consult with and record the comments of local ward councillors, where appropriate. In addition, the scheme of delegation to officers had been reviewed to require consultation with, or notification to, local ward councillors in appropriate cases. It was noted that the Managing Director had apologised for not having consulted the local member in this case.*
- As it was a requirement for councils in two tier areas to secure the support of the relevant county council in respect of the garden village bids, whether Surrey County Council, in giving its support, had observed their relevant governance processes. Although Surrey County Council had formally supported the Bid, it was not known whether all of their processes had been followed.*

The Committee therefore

RESOLVED: That the Managing Director's response to the questions raised by Councillor Caroline Reeves in connection with the Wisley Garden Village Bid be noted, together with the comments raised by the Committee referred to above."

- 5.4.15 We consider that the decision taken by ex-Clr Reeve was the correct one and that the actions she then took to raise the matters that she did was also appropriate as were the responses from the Managing Director.
- 5.4.16 That exchange captured the learning points. The Committee may care to ensure that those points have been learnt and applied.

6 Other Points

- 6.1 In our First Report, we noted that given the nature of the information that we have set out in this report, we do feel that much of this could have been made public if not immediately, certainly later as and when concerns were raised.
- 6.2 Doing so may well have removed the (albeit misconceived) perception that there were substantive issues underpinning the production of the bid document arising from an inappropriate relationship between the Council and the promoters of the Wisley Garden Village.
- 6.3 We were invited to identify learning points from the call-in issue and suggest that the points raised by ex-CLlr Reeve and responded to by the Managing Director captured the learning points from that incident. The Committee may care to ensure that those points have been learnt and applied.