

Draft Overview & Scrutiny Committee Minute 19 March 2024

OS51 Option Agreement with Blackwell Park Limited in respect of Purchase Of Council-Owned Land - Call In of proposed decision taken by the Strategic Director: Place

The Chairman advised the Committee of the scope of the meeting and possible outcomes. He indicated that the role of the Committee was to review the 29 February 2024 decision of the Strategic Director – Place. The Chairman stated the review would include whether the decision accorded with the Council’s Principles of Decision-Making, the timeline and urgency of the decision, and whether the decision was of such importance and sensitivity that it would have been expected to have been taken by the Executive rather than an officer.

The Chairman indicated the role of the Committee was not to explore or review those wider areas of Council policy outside the decision taken by the Strategic Director – Place. The Chairman reminded the meeting of the powers and options available to the Committee as detailed within the report submitted to the Committee.

The Chairman welcomed the five Councillors who had requested the call-in, together with other Councillors at the meeting and online. He thanked the Strategic Director – Place, the Strategic Director of Legal and Democratic Services, the Senior Legal Specialist (Corporate, Commercial, and Property), and Mr Tyldesley (a consultant to the Council’s Regeneration and Corporate Programmes and the Blackwell Park Development Lead) for attending to help the Committee’s review.

Next, the Chairman invited the Councillors who had called-in the decision to explain their reasons for doing so. Councillor Owen made a statement giving the reasons for calling-in the decision of the Strategic Director – Place. He began by reminding the meeting that the Council’s stated values included, ‘We will listen to the views of residents and be open and accountable in our decision-making’ and he then highlighted sections of the Council’s Constitution to reinforce his point. This included reference to the importance of holding decision-makers to public account, a presumption in favour of openness in respect of the Council’s business, and the Council’s definition of a key decision. Councillor Owen suggested that the significance and sensitivities of the decision taken by the Strategic Director – Place on 29 February were such that the matter should have been determined by the Executive. He suggested that the

officer decision on 29 February lacked an opportunity for the public or non-Executive Councillors to engage in the decision-making process.

In addition, Councillor Oven questioned whether all facts relevant to the decision had been taken into account and assessed properly by the decision-maker; he suggested that the site might be within an extended AONB/National Landscape.

With reference to the Council's Access to Information Procedure Rules, Councillor Oven suggested that the importance and sensitivities of the option agreement with Blackwell Park Limited (BPL) meant that the decision on it should have been taken by the Executive rather than an officer. He suggested that the option agreement was neither minor nor routine in nature and would be of interest to many members of the public.

Another signatory to the call-in, Councillor Young, questioned why Councillors had not received a briefing on the Blackwell Park ransom strip and suggested that the potential financial gain to the Council from the option agreement meant it merited decision by the Executive rather than an officer. Councillor Young suggested the Committee request details of the agreement, including its terms and conditions, and the valuation of the Council land. She suggested the progression of the Blackwell Park Development by the disposal of the Council land warranted consideration by the Executive or perhaps full Council.

The three other Councillors who had requested the call-in indicated they did not wish to add to the reasons put forward by Councillors Oven and Young.

The Chairman invited the Strategic Director – Place to respond to the statements from the Councillors who had requested the call-in. The Strategic Director – Place advised the Committee of the source of authority within the Constitution's Officer Scheme of Delegation to take the decision on the Blackwell Park Development – Option Agreement. She indicated that powers delegated to her included the sale of land up to 0.2 hectares in area, subject to the Council receiving the best consideration reasonably obtainable and undertaking consultation about the decision with the appropriate lead councillor, the Chief Financial Officer, and ward councillors. She stated that the Council land was a small strip of land that varied in width from 30 cm to 1 metre and totalled an area of no more than 0.192 hectares and perhaps only 0.086 hectares.

The Strategic Director – Place indicated that the Council's strip of land had no use other than as a ransom strip. She advised that Council policy was to dispose of such surplus land. The Strategic Director – Place stated that the development of the land by BPL and concerns about the Local Plan or the

AONB were not relevant to her decision on the option agreement. She indicated that the Blackwell Park site was allocated for residential development in the Local Plan.

The Strategic Director – Place stated that she did not consider the option agreement to be so significant that a member of the public would reasonably expect the decision to be taken by a member of the Executive. She advised the meeting that the Executive had received numerous briefings on negotiations over the ransom strip and at no time had the Executive indicated the decision significant enough to warrant the Executive itself taking the decision.

The Strategic Director – Place advised the Committee that an independent valuation of the land had been undertaken to ensure that the negotiated deal represented best value for the Council in accordance with section 123 of the Local Government Act 1972. In addition, the Strategic Director – Place stated that public consultation had occurred as the disposal of the land had been advertised in a local newspaper for two weeks, which resulted in one request for information and no objections.

The Strategic Director – Place advised the Committee of the reasons for not giving the required 28 days' notice of the key decision on the Council's Forward Plan. She stated that a request to complete the transaction with BPL had been received in February 2024, prompted by the retirement of the Chief Executive Officer of BPL at the end of February and a concern that this change might lead to a re-opening of negotiations. The Strategic Director – Place advised the meeting that the Chairman of Overview and Scrutiny was informed that the decision would be made under the general exception provisions as it was not possible to give 28 days' notice and that he did not request the decision be taken by the Executive. She indicated that the ward councillors consulted about the deal were those who would be impacted by any future development of the Blackwell Park site.

The Strategic Director – Place outlined the alternative options considered and rejected: not selling the land to BPL; selling the land to someone else; waiting until planning permission had been granted for a development on the Blackwell Park site before selling the land; and selling the land now to BPL.

The Senior Legal Specialist (Corporate, Commercial, and Property) indicated that when the Strategic Director – Place made her decision on 29 February she was aware of all the issues within the Constitution that had been put forward earlier in the meeting by Councillor Owen and any other factors that surrounded the decision. The Senior Legal Specialist (Corporate, Commercial, and Property) suggested that the option agreement was a routine matter covered by the delegated powers given to the Strategic Director – Place and

was unrelated to issues such as the AONB because the option agreement had no impact on other decisions to be made.

The Chairman invited Committee members to question the Strategic Director – Place about the decision called-in.

A member of the Committee queried the characterisation of the ransom strip as a small piece of land and suggested the land had long been viewed as an asset to the Council and one that gave the Council involvement with a major development site in the Borough. He queried the lack of a plan to show the Council-owned land when the decision of the Strategic Director – Place was published. In addition, he suggested the importance of the land sale merited decision by the Executive, rather than through delegated authority.

In response to a question from a Committee member, the Strategic Director – Place stated the size of the Council's land was 0.086 hectares. The Strategic Director – Place stated that the sale of the ransom strip did not affect or impact proposals for a solar farm at Blackwell Park and the solar farm was not relevant to the Committee's review.

In reply to a question about the importance of the sale, Councillor Oven suggested that the ransom strip was key to the development of the Blackwell Farm site.

A member of the Committee indicated that the importance of the ransom strip did not relate to its total area, but to its location and how essential it was to the development of the Blackwell Park site. Another member of the Committee suggested the width and overall area of the ransom strip were neither central to the Committee's debate nor indicative of the land's importance or value.

In response to comments from a Committee member, the Senior Legal Specialist (Corporate, Commercial, and Property) advised the Committee that the Council's financial gain from the future development of the Blackwell Park site and the Council's role as the Local Planning Authority tasked with considering proposals for development of the site were separate processes and that there was no conflict of interest. The Lead Councillor for Regeneration informed the meeting that such potential conflicts of interest were dealt with regularly and future planning decisions for the site would not be influenced by the financial gain its development would bring to the Council.

In response to a request from a member of the Committee, the Senior Legal Specialist (Corporate, Commercial, and Property) showed the title plan of the ransom strip land at the meeting.

A member of the Committee questioned why the Committee's review could not include discussion of the development of the site by Blackwell Park given that the 29 February notice of the decision by the Strategic Director – Place had included the sale of the land to BPL to allow the company to proceed with the development of a strategic site as a reason for her decision. In response, the Strategic Director – Place indicated that the Council worked with all strategic sites owners to help bring forward such Local Plan strategic sites.

A member of the Committee suggested that the call-in might have been unnecessary if the briefing for Councillors on the ransom strip had taken place as scheduled the previous week. In reply, the Strategic Director – Place stated that the 12 March briefing on the ransom strip was cancelled due to the decision being called-in on 7 March and, in part, the need for officers to prepare for the Committee's call-in meeting. The Strategic Director – Place stated that the details of the option agreement were commercially sensitive and unable to be shared in public.

A member of the Committee indicated she felt the provision within the Council's scheme of officer delegation that gave the Strategic Director – Place the power to decide land sales within a size-threshold was in conflict with other provisions within the Constitution that suggested the importance and sensitivities of an executive decision inform whether an officer should exercise their power to take it. In response, the Strategic Director of Legal and Democratic Services indicated that different provisions within the Constitution needed to be weighed up by officers in concluding whether to exercise their delegated authority.

A member of the Committee asked what the risk would be in taking the matter to a meeting of the Executive for decision. In response, the Senior Legal Specialist (Corporate, Commercial, and Property) advised that the Executive had been kept fully briefed on the decision and had not indicated a wish to take the decision. She advised the Committee that it had not been necessary to take the matter to the Executive. The Lead Councillor for Regeneration indicated that because BPL had requested the progression of the option agreement by the end of February then a decision under delegated authority seemed most appropriate. The Chairman noted that Executive briefings lacked public transparency.

In response to a question, the Strategic Director – Place confirmed that the option agreement had not been signed by the Council and advised that the financial details could not be disclosed at that time. The Senior Legal Specialist (Corporate, Commercial, and Property) advised that the land sale was handled

in accordance with the Council's asset disposal policy and had not been put out to tender.

In reply to a query about the possible financial consequences of delaying implementation of the decision, the Strategic Director – Place indicated that BPL would not apply for planning permission to develop their site before an option agreement was in place. She indicated that Blackwell Park was an important site for approximately 1800 new homes, forty percent of which should be affordable housing. The Strategic Director – Place suggested the value of obtaining the capital receipt from the agreement option and that time was of the essence.

In answer to a question about consultation with non-Executive councillors, the Strategic Director – Place stated that ward councillors were consulted about the decision and had a site visit.

A member of the Committee questioned the merit in referring the decision back to the decision-maker and indicated she felt that the decision-making process had been followed correctly. In response, Committee members suggested the value in the decision being taken in a public forum with input from all Councillors and the public. Other Councillors indicated a belief that the decision-making process had not been followed in its entirety and suggested the decision should have been made in a different way, with information shared with all Councillors.

In response to a question from a Councillor, the Chairman indicated that questions about the possible use of the ransom strip land in relation to Blackwell solar farm were not relevant to the Committee's discussion.

With reference to the Council's Constitution, the Strategic Director of Legal and Democratic Services reminded the meeting of the purpose of the Committee. She recapped the reasons for the call-in and the need for the Committee to avoid consideration of facts irrelevant to the decision.

The Strategic Director of Legal and Democratic Services indicated that the Committee had been informed of consultation undertaken by the Strategic Director – Place with the Lead Councillor for Regeneration, the entire Executive, ward councillors and, through publication of a Section 123 notice, with the public. In addition, the Committee was advised that the Senior Legal Specialist (Corporate, Commercial, and Property) had advised the Strategic Director – Place and the Lead Councillor for Regeneration on the appropriateness of the option agreement decision being taken using delegated authority. The Strategic Director of Legal and Democratic Services indicated

that the Strategic Director – Place had justified the decision taken from the options available.

With reference to the Council's scheme of delegation, the Committee was informed by the Strategic Director of Legal and Democratic Services that officers were empowered to make key decisions. Furthermore, the Committee was reminded that the Council had delegated power to the Strategic Director – Place to decide sales of land or buildings up to 0.2 hectares in size and that the Council had chosen to put no limitations on this power other than the consultation provisions that had been complied with. The Strategic Director of Legal and Democratic Services advised the meeting that the Executive had given no indication at any time of wanting to retain the decision for themselves and that this would have encouraged the Strategic Director – Place to believe it appropriate to exercise her delegation. The Committee was advised by the Strategic Director of Legal and Democratic Services that the meeting had heard evidence that the option agreement decision by the Strategic Director – Place promoted the Council's visions and values.

The Strategic Director of Legal and Democratic Services stated that there was significant evidence to show that the Strategic Director – Place was both within her powers and acting appropriately when she exercised her delegation. The meeting was reminded of the special urgency provisions relating to key decisions and transparency and openness. The meeting was informed that the 14 day period between the addition of the key decision to the Forward Plan and the decision being taken by the Strategic Director – Place constituted public consultation and satisfied the need for openness.

The Strategic Director of Legal and Democratic Services advised the Committee that while an all-councillor briefing on the ransom strip would have been good practice and helpful it was not a requirement of an officer exercising a decision-making function.

In response to a point raised by Councillor Owen concerning the Council's Access to Information Procedure Rules, the Strategic Director of Legal and Democratic Services indicated that the option agreement decision was not minor or routine in nature and the decision would not have been taken by the Strategic Director – Place if it was. The Senior Legal Specialist (Corporate, Commercial, and Property) indicated that officers considering a decision in connection with an executive function should have regard to the principles stated within Access to Information Procedure Rule 22.3 but that wider aspects such as the officer scheme of delegation and the decision matter itself should also be considered.

In response to a proposal from the Chairman, the Strategic Director of Legal and Democratic Services informed the Committee that the Joint Constitution Review Group was due to receive a revised officer scheme of delegation and would then make recommendations on the subject to the Council's Corporate Governance and Standards Committee.

In reply to a question about the Chairman not taking questions or comments in the meeting from non-Committee members, the Chairman indicated this was at his discretion.

The Committee held two votes: on whether to endorse the option agreement with BPL decision of the Strategic Director – Place, or whether to not refer the matter back to the decision-maker.

RESOLVED: That the decision taken by the Strategic Director – Place on 29 February 2024, in respect of the Option Agreement with Blackwell Park Limited providing for the purchase of Council-owned land, be endorsed.