

Investigation into the Waterfront Development Project

Summary

Due to the concerns raised by Councillors and resident groups around the project-process and decision making the Council is seeking an in-depth investigation into the Waterfront Development Project.

Background

On the 4 May 2020 Spelthorne Borough Council announced that following a competitive tender process and the unanimous agreement of the Council's Cabinet, the Arora Group had been awarded the contract to develop Bridge Street Car Park and Hanover House in Staines-upon-Thames for a hotel-led mixed-use development.

This landmark development is set to provide an upscale (4 star) hotel with over 300 guest rooms, serviced apartments and residential units and represents a large inward investment for this Borough to boost economic footing and create many new local jobs for residents. It was quoted at contract award as being one of the largest deals of the type outside of London. The full press release that was issued at the time can be read here;

<https://www.spelthorne.gov.uk/article/19405/Waterfront-hotel-development-announced-for-Staines-upon-Thames-May-2020>

This Council recognises the significance of the development for Staines upon Thames and understand that there are some concerns from both some councillors and community groups regarding the decision-making processes which led to the contract award. In January 2021 a briefing session was held by officers for nominated representatives of the Riverside Residents (Staines) Coalition and local ward Councillors on the Waterfront scheme. The presentation, alongside a project timeline can be read on our website at;

<https://www.spelthorne.gov.uk/article/20011/Waterfront-scheme-residents-briefing-February-2021>

There has been a call to seek verifications of the project process and that due diligence was followed in the decision-making process. This Council is launching an independent investigation with an open remit to review all the steps taken throughout the process.

The structure of the Council

Until May 2021, the Council operated a Leader and Cabinet model of Governance, and with the 'strong leader' appointing the cabinet to discharge the executive functions of the Council. The constitution at this time can be located with the following link:

<https://democracy.spelthorne.gov.uk/ieListDocuments.aspx?CId=209&MId=3416&Ver=4&Info=1>

At the time of the Cabinet decision on this project the political composition of the Council was 23 Conservative, 8 Liberal Democrat, 4 Labour, 2 Green and 2 Independent. The

following month a number of Councillors including the then Council Leader left the Conservative party and following further group formations the Council now has a composition of 18 Conservative, 8 Liberal Democrat Green Group, 4 United Spelthorne Group, 2 Labour, 2 Independent Group, 2 Independent Spelthorne Group, 2 Independent Labour and 1 vacancy.

At the Annual Council Meeting on the 27 May 2021 the Council moved to a Committee System of Governance.

The Procurement Process

At the initial stages of the process it was considered by officers as to whether this was a land transaction or classified as a works contract under the Public Contracts Regulations 2015 (PCRs). In light of the decision in the Supreme Court case of Faraday v West Berkshire, due to the controls over the development envisaged within a development agreement, it was concluded that this is a public works contract.

With the number of routes to market under the regulations, discussions took place between officers and the Council's commercial and legal advisors on the best route to use to ensure getting a deal of the quality required to fulfil the brief. The market is just starting to get used to having to undertake public procurements as traditionally deals in this sector were based on negotiations. It was agreed that the Competitive Dialogue process would achieve these aims as it allowed for on-going dialogue with the bidders to enable them to submit a final tender and produce quality submissions. This was considered the most suited to this complex, high value procurement.

The Competitive Dialogue process started with a high level specification to enable the bidders to understand the aspirations of the Council. This was followed by a set dialogue sessions built around the quality criteria evaluation criteria which were issued at the time of the OJEU notice being published. During the dialogue sessions the bidders discussed how they would fulfil that brief, satisfy the quality criteria and make their commercial submissions on the terms with the legal documents which were presented to them.

To ensure that the Council's ambitions were realistic in the market professional hotel advisors were appointed to advise through every step of the process from the initial concept and the production of the high level specification through to the evaluation of the tenders in terms of the commercial offer. Specialist legal advice was obtained to draft and complete all the legal documentation including the Development Agreement and the Lease. Legal advice was obtained on the procurement side to ensure that the risk of challenge was mitigated along the way.

The contract structure

The contract has taken the form of a conditional development agreement which provides for the granting of a long leasehold interest(s) in the site. The development agreement, the lease(s) and associated documents were issued with the tender pack at the beginning of the process and formed part of the dialogue sessions.

The development agreement was drafted to be institutionally acceptable to ensure that the bidders could fund the project, but at the same time as providing the Council proper controls for the development.

The development agreement is only conditional on vacant possession and satisfactory planning. There are no viability conditions, which indicates that the developer is fully committed to a scheme.

Within the development agreement there are approval mechanisms for revisions to the concept design. If there is a major variation, then Council has the opportunity to state that it is non-compliant with the development agreement. All these measures are in place to ensure the Council's vision stemming from the market demand reports is delivered.

As part of the tender quality requirements the Council included social value and local employment criteria as this project is focused on regeneration and economic development of the borough.

Concerns raised over the development

A community group has been set up called Riverside Residents (Staines) Coalition, who have raised a number of concerns about the transaction. The principal complaint is the size and massing of the development. There are wider planning concerns around whether the scheme was in line with the local plan and the impact on the conservation area. These concerns have fed into calls for a moratorium on development on Staines upon Thames town centre.

They have also raised concerns regarding the transparency of the decision making, the lack of involvement of all Councillors in the decision-making process, the lack of Councillor involvement in the drafting/terms of the contract documentation and the lack of involvement of the Overview & Scrutiny Committee.

This is the link to their website for full details of the correspondence and newsletters that have been issued by the group. <https://www.riversideresidentsstaines.org.uk/>

The investigation requirements

The Council are seeking an in-depth and exhaustive investigation into the legality and reasonableness of the process and procedures used from project inception through to final decision making and there is an open remit for the investigator to consider all matters that he/she considers appropriate to address the concerns raised by the Councillors and resident's group.

Below is a list of issues that have been extracted from the concerns:

1. Was there effective decision making in terms of Leader/Cabinet decisions (including political group processes) and officer delegations, at appropriate stages, and in accordance with the Council's form of governance, including whether there should have been active participation of the Overview & Scrutiny Committee?

2. Was the provision of information from officers to Councillors and between Councillors appropriate in this commercial transaction with a cabinet form of governance all the circumstances?
3. Was an appropriate procurement route followed to ensure compliance with the PCRs?
4. Was there appropriate officer, consultant, and Councillor involvement in the development of the procurement documents including the contract documents for a transaction of this size and scale?
5. Was the evaluation methodology adopted and the evaluation processes (including appropriateness of the evaluation team) reasonable?
6. In terms of the quality evaluation questions and the contractual requirements is there reasoned separation of functions of the Council as landowner and the Council as Local Planning Authority to ensure the appropriateness of the development in this riverside site on the edge of the conservation area?
7. Was the officer recommendation within the report appropriate and the options open to the Cabinet clear to enable them to make a reasoned decision?
8. The decision to award the contract was taken at a remote Extraordinary Cabinet Meeting in April 2020, was this meeting called appropriately and was it reasonable to proceed?
9. Given the previous business relationship between the Council and Arora Group were all appropriate declarations of interest made?

All documentation held by the Council will be made available to the investigator to ensure that this is a fully transparent process. If interviews with relevant officers and Councillors are required this will be facilitated.