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Minutes of the meeting of the **SCRUTINY (POLICY AND PERFORMANCE) COMMITTEE** held at the Council Offices, Whitfield on Tuesday, 13 September 2016 at 6.09 pm.

Present:

Chairman: Councillor K Mills

Councillors: T A Bond  
M I Cosin  
R J Frost  
B Gardner (as substitute for Councillor J M Heron)  
B J Glayzer  
M J Holloway  
S C Manion  
M Rose  
D A Sargent

Also Present: Ms K Reilly (Petition Organiser – Minute No. 47)

Officers: Director of Environment and Corporate Assets  
Planning Delivery Manager  
Team Leader – Democratic Support

## 40 APOLOGIES

An apology for absence was received from Councillor J M Heron.

## 41 APPOINTMENT OF SUBSTITUTE MEMBERS

It was noted that in accordance with Council Procedure Rule 4, Councillor B Gardner had been appointed as substitute member for Councillor J M Heron.

## 42 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

## 43 MINUTES

The Minutes of the meeting held on 5 July 2016 were approved as a correct record and signed by the Chairman.

## 44 PUBLIC SPEAKING

The Chairman, Councillor K Mills, advised that with the consent of the Committee he would permit members of the public present at the meeting to speak in respect of Minute No. 47.

No members of the public had registered to speak on items on the agenda to which the public speaking protocol applied.

## 45 DECISIONS OF THE CABINET RELATING TO RECOMMENDATIONS FROM THE SCRUTINY (POLICY AND PERFORMANCE) COMMITTEE

There were no decisions taken by the Cabinet at its meeting held on 5 September 2016 in respect of recommendations from the Scrutiny (Policy and Performance) Committee.

46 ISSUES REFERRED TO THE COMMITTEE BY COUNCIL, CABINET, SCRUTINY (COMMUNITY AND REGENERATION) COMMITTEE OR ANOTHER COMMITTEE

There were no items of business for consideration.

47 ITEMS CALLED-IN FOR SCRUTINY OR PLACED ON THE AGENDA BY A MEMBER OF THE COMMITTEE, ANY INDIVIDUAL NON-EXECUTIVE MEMBERS OR PUBLIC PETITION

(a) Public Petition – Reopen the Regent

The Chairman, Councillor K Mills, introduced the item and welcomed the members of the public in attendance at the meeting.

A representative for the Reopen the Regent group addressed the Committee on behalf of the petitioners and suggested that as a first step the Committee should consider holding an inquiry into the matter. The objectives of the petition were:

- To see the Regent building preserved and restored as soon as possible; and
- To see the restored Regent building leased to a 'bona fide' cinema operator and reopened as a cinema for the people of Deal and beyond.

The petitioners then asked a number of questions of the Committee in respect of the objectives of the petition.

The Director of Environment and Corporate Assets and the Planning Delivery Manager were present to provide answers concerning the sale of the Regent Cinema and planning enforcement matters.

Q1. Given that you sold this public asset to developers to turn into a cinema over five years ago, why hasn't this happened?

The lease for the Regent Bingo Hall had been handed back to the Council in 2009 and the Council marketed the Regent for disposal as a surplus asset. Although it had last been used as a cinema in 1963, the Cabinet had accepted recommendations from the Scrutiny (Policy and Performance) Committee and placed a restrictive covenant on the sale of the Regent limiting its use to a cinema. The Committee was advised that the covenant applied to the site and not just the Regent building.

Silver Screen Cinemas had been the highest bidder initially and after a survey of the building had been conducted the revised bid received from Silver Screen had still been higher than those of the other 5 bidders.

There had been a number of discussions with the owners of the Regent since then with the last taking place as recently as July 2016. The Council was keen to see the owners submit a planning application for the Regent and had provided pre-application advice (at a fee) to them as part of their development plans. The Council had also included the property on the published list as an Asset of Community

Value in November 2015 in accordance with the provisions of the Localism Act 2011 following a nomination from the Reopen the Regent group.

The confidentiality of the pre-application advice was controlled by those purchasing it rather than the Council but the Planning Delivery Manager believed that the advice that could be provided had now been exhausted.

Q2. What due diligence was undertaken to ensure 'Silver Screens' or those calling themselves this had the experience and wherewithal to make this happen? What guarantees were sought from 'Silver Screens'?

The disposal of the asset was conducted in accordance with the Council's policies and procedures and there was no requirement to undertake due diligence that the purchasers had experience of operating a cinema.

Q3. When the price was dropped, why weren't the other bidders notified? Isn't this a legal requirement?

There was no legal requirement to advise the other bidders when the revised offer was submitted and it was still higher than any of the other bids.

Q4. What covenants have been applied? Class D1 and D2 and Sui Generis Theatre within the Use Classes Order 1987 is documented but a 20-year clause which prohibits change of use has been mentioned in the press. Where is this documented?

The Director of Environment and Corporate Assets advised that the covenant was not time limited. The covenant applied to whole site and not just the Regent building and in the event that the Regent building was to be demolished it would still apply. In addition, the covenant would apply to future owners of the site in the event that the Regent was ever sold.

The importance of differentiating between the covenant and planning permission was raised by the Planning Delivery Manager. The two were separate processes and it was possible for planning permission to be granted for something that realistically could not be built due to the covenant.

While it was possible for the owners of a property to apply to buy themselves out of the covenant it was not expected that the Cabinet would agree to such a proposal in respect of the Regent given the strength of local feeling on the matter. Any plans for a mixed use development including a cinema would need to be considered by the Cabinet due to the existing covenant.

Q5. Why – when the building is deemed of historical interest and is in a conservation area – is it not being protected and preserved? What measures have DDC's heritage and conservation staff taken to date and what will they be taking in future? Does the Committee agree with DDC's CEO's opinion that it would be 'counter-productive to enforce the covenant. Clearly if we felt no effort was being made then the Council would look to take action'. At what point would DDC deem progress to be 'inaction'?

The Planning Delivery Manager advised that the Council had provided confidential pre-application advice to the owners in respect of their plans for the Regent. As part of these discussions the issue of the condition of the frontage of the Regent was raised and work was undertaken by the owners in respect of it.

The building was recognised as a heritage asset and if plans for the Regent were not forthcoming the Council would look to take s.251 enforcement action in respect of the buildings appearance.

In respect of a question from a member of the public it was stated that the owners of the Regent could park their vehicles in front of the building as long as it was on private property.

Q6. Why has the Council not used any of its widespread powers of enforcement to make the current owners:

- Maintain the fabric of the building
- Use the building appropriately
- Pay appropriate rates (does DDC believe that the current occupants of the Regent are paying business rates on the whole building?)
- Open the building as a cinema?

The Planning Delivery Manager advised that the Council had expected to see schemes undergoing public consultation by this point and that the owners were running out of time before enforcement action would be taken. The Council had a duty to investigate if the building was deteriorating and a deadline for enforcement action could be imposed if it was felt appropriate.

There was concern expressed by some of the members of the public present that the purchasers of the Regent had had no intention of turning the Regent into a cinema and were in fact using it as office space for a plumbing and heating company.

The Planning Delivery Manager advised that the Council had investigated this and was aware that the owners were in breach of the covenant for the buildings use and that they were aware of this. Rather than take enforcement action a decision had been taken to try to encourage the submission of a planning application for the site so that it could be brought back into use as the Council recognised the tourism potential of the Regent.

In respect of the issue of whether correct business rates were being paid, the Director of Environment and Corporate Assets advised that he did not have this information but it could be investigated if the Committee wished.

Q7. What further action could the Scrutiny Committee advise the Cabinet to take to move the matter forward?

The Chairman advised that the Committee would discuss the options open to it in respect of advising the Cabinet but it was his personal view that something had to be done.

#### Other Questions

The following responses were provided to questions from councillors and members of the public:

- That the current owners had spoken to the Council about purchasing small part of an adjoining car park for space for bin stores and fire escapes and the Council would consider such a sale if it helped deliver the development.
- That the Council had at no point advised the owners of the Regent that development couldn't proceed due to Kent County Council traffic consultations.
- That the Council had spent a considerable amount of time providing pre-application advice in the expectation that a planning application would be submitted and the plans shared with planning officers by the owners would have cost many £1,000s of pounds to draw up.
- That the Council needed to show that it had tried other options prior to undertaking enforcement action, which it was now in a position to do.
- That the Council didn't have deliverable plans or budget in place to deliver a Compulsory Purchase Order (CPO) at this time but the feasibility of undertaking a CPO could be investigated.
- That the Council would investigate claims that the Timeball Tower was being damaged due to the poor condition of the adjoining Regent building.
- That in enforcement terms, while the Council couldn't force the owners to make a planning application it could take action in respect of the appearance of the building and ensure that the fabric of the building was wind and water tight.
- That the Regent had been sold as a surplus asset because at the time the Council did not wish to operate a bingo hall or cinema. However, the best offer received had been for use as a cinema and a covenant had been put in place to that effect.
- That anyone could apply to Historic England for the Regent to be considered for listed building status. It was suggested by a member of the public that the links with the Royal Marine Barracks could be used as possible grounds for the importance of the building.
- That it was not expected that the cinema being built as part of the St James development in Dover would have any impact on the viability of a cinema in Deal.
- That the concerns raised over the condition of the building were shared by the Council.

There was a view expressed by Members that the process of trying to encourage the owners of the Regent to submit plans for a cinema development had gone on for too long without any meaningful outcome and that this now had to be brought to a conclusion.

It was proposed that a deadline be set for the Council to receive a full planning application and if this deadline was not met appropriate enforcement action should be undertaken. Members considered whether a deadline for an outline planning application to be received should be set and it was confirmed by the Planning Delivery Manager that the owners of the Regent were aware of what documentation would be required as part of any planning application.

Members debated what would in their opinion be a reasonable length of time for a planning application for a cinema on the Regent site to be submitted in light of the Council having exhausted the range of pre-application advice it could provide.

In response to concerns raised by members of the public that the Regent building could be at risk as a fire hazard, it was suggested that the local fire officer be invited to inspect the building.

The Team Leader – Democratic Support confirmed at the request of the Chairman that the earliest Cabinet meeting at which the recommendations of the Committee could be considered would be 3 October 2016.

RESOLVED: That it be recommended to the Cabinet:

- (a) That planning officers be instructed to immediately cease providing pre-application advice to the developers of the Regent Cinema.
- (b) That the developer be given 3 months to submit an outline planning application and 6 months to submit a full planning application for the Regent Cinema building and if these deadlines are not met the Council take enforcement action in respect of the building.
- (c) That officers be requested to investigate the heritage value of the Regent Cinema building.
- (d) That officers be requested to investigate applying for Listed Building status for the Regent Cinema building.
- (e) That an immediate inspection of the Regent Cinema building be undertaken by officers to look at whether a Section 215 notice can be issued and a report be provided to a future meeting of the Scrutiny (Policy and Performance) Committee outlining the action taken.
- (f) That immediate enforcement action be taken to ensure compliance with the Covenant on the permitted use of the Regent Cinema building.
- (g) That a local fire officer be requested to conduct an immediate inspection of the Regent Cinema building.
- (h) That the Director of Environment and Corporate Assets be requested as a matter of urgency to investigate if the condition of the Regent Cinema building is adversely affecting the Timeball Tower and take appropriate action.
- (i) That officers be asked to investigate whether the correct level of business rates has been paid on the Regent Cinema building for its actual use over the last six years and the findings, including any action taken as a result, be reported to a future meeting of the Scrutiny (Policy and Performance) Committee.
- (j) That a report be submitted to a future meeting of the Scrutiny (Policy and Performance) Committee on the feasibility of the Council undertaking a Compulsory Purchase Order in respect of the Regent Cinema building in the event the developer does not take the requested actions.

- (k) That the Regent Cinema be included as an item within the Scrutiny (Policy and Performance) Committee's rolling work programme.

48 NOTICE OF FORTHCOMING KEY DECISIONS

The Team Leader – Democratic Support presented the Notice of Forthcoming Key Decisions to the Committee for its consideration.

RESOLVED: That the Notice of Forthcoming Key Decisions be noted.

49 SCRUTINY WORK PROGRAMME

The Team Leader – Democratic Support presented the Scrutiny Work Programme to the Committee for its consideration.

Members were advised that the site visit to the Dover Town Investment Zone (DTIZ) originally scheduled for 29 September 2016 had been rescheduled and would now take place on a date to be confirmed in October 2016.

RESOLVED: That the work programme be noted.

50 PARKING STRATEGIES: DOVER, DEAL AND SANDWICH

The Director of Environment and Corporate Assets presented the report on Parking Strategies for Dover, Deal and Sandwich.

Members were informed that a total of 23 comments had been received to the consultation and the report set out the proposed response to each comment. The Cabinet at its meeting held on 5 September 2016 had agreed to adopt the proposed strategies for each of the towns.

The Committee was advised that each town had its own strategy as each had its own set of issues in respect of parking. In respect of Deal, this was partly due to the constraints of the built environment and the pressures of managing the needs of the local economy for parking.

Councillor B Gardner raised concerns over parking on double yellow lines as this was causing problems for buses operating in the town. He also highlighted the need for yellow lines to be properly maintained so that they could be enforced. The Director of Environment and Corporate Assets confirmed that £20,000 had been included in this year's budget to enable relining work to be undertaken to the district's yellow lines and this was being undertaken on a priority basis.

Councillor R J Frost cited the proposals in the book 'The High Cost of Free Parking' by Donald Shoup as a potential solution to the parking issues facing the district which included the use of smart technology and differential parking charges.

Councillor M I Cosin identified specific issues relating to a need for additional signage and enforcement in respect of the underutilisation of available parking at the Tesco store in Mill Hill in favour of unsuitable alternative street parking.

RESOLVED: That it be recommended to Cabinet that Decision CAB39 be endorsed as follows:

- (a) That agreement to the proposed actions with regard to the consultation responses be confirmed.
- (b) That the final draft parking strategies for Dover, Deal and Sandwich be approved.

The meeting ended at 9.05 pm.