

Lib Dem questions at Full Council on TW Regeneration Company

20th July 2011

Q3

QUESTION: Councillor Chapelard

To: Councillor David Jukes, Portfolio Holder for Property and Major Projects

When will the Council make public the full shareholding agreement between TWBC and Laings which set up the Tunbridge Wells Regeneration Company?

REPLY: Councillor David Jukes, Portfolio Holder for Property and Major Projects

The shareholders agreement is simply that. A 400 page agreement between the shareholders of the regeneration company, ie TWBC and John Laing Developments. As we are a 50% shareholder, we are in discussion with John Laings to obtain their agreement to publishing the shareholders agreement on line with commercially sensitive items redacted from this document.

SUPPLEMENTARY QUESTION

Councillor Chapelard: If we're hiding behind commercial sensitivity could you tell us if there are any guarantees to John Laing Developers beyond the 50% shared profits?

REPLY

The Portfolio Holder for Property and Major Projects replied: The only guarantee we have given to John Laing at this time is the indemnity after the M&N report.

14th December 2011

Q6 from Councillor Chapelard

"Tunbridge Wells Borough Council's Cabinet first explored the process of setting up the Tunbridge Wells Regeneration Company (TWRC) on 11th January 2007. What is the total cost to TWBC since that date to set up and run the TWRC? Please include all items including consultant fees, legal fees, disbursements, any other expenses incurred including member and officer time so that we can have the total cost to date to this Council."

Q6 response from the Portfolio Holder for Property & Major Projects

"We don't, as a corporate body, take account of member or officer time. The Development Partner cost code K21 identifies expenditure of £471,442.27 spent on Regeneration Company activity from January 2008. This includes the widely circulated £330,000 costs of establishing the Regeneration Company.

Yet we have a ten year partnership with a potential development value of £400,000,000. Put this in context what we have spent to date on set up and running costs is less than 0.12 percent. This is hardly significant in the context of a major opportunity such as this.

I have spent a great deal of time on the project myself, but understand this is an exciting opportunity to take these forward over the next year."

Q6 supplementary question from Councillor Chapelard

"How did you arrive at the figure of £400,000,000?"

Q6 supplementary response from the Portfolio Holder for Property & Major Projects

“This figures is available on the website. I recommend that Councillor Chapelard looks at the website rather than asking questions in Full Council. He would see the turnout figure of £400,000,000 over 10 years.”

Q7 from Councillor Chapelard

“As a fifty percent shareholder of the Tunbridge Wells Regeneration Company (TWRC), how much will it cost Tunbridge Wells Borough Council to dissolve the TWRC?”

Q7 response from the Portfolio Holder for Property & Major Projects

“It depends on what scenario you have in mind. The Cabinet has Full Council approval for entering into the contract in the first place. The Council is seeking to develop the agreement, not terminate it. If Tunbridge Wells Borough Council sought to terminate the costs it could be high because Laing’s could sue the Council for breach of contract. On the other hand if they walk away the breakup would cost considerably less to us.”

Q10 from Councillor Rook

“How much did it cost to publish the TWRC shareholders’ agreement?”

Q10 response from the Portfolio Holder for Property & Major Projects

“£12,901.00. This was the cost of the legal advice we sought after request from your colleagues to publish the contract”.

Q11 from Councillor Rook

“How much compensation was paid to John Laing for not going to stage two of the Great Hall Car Park development?”

Q11 supplementary from Councillor Rook

“Do you anticipate any for the future?”

Q11 supplementary response from the Portfolio Holder for Property & Major Projects

“That answer would prejudice any future discussions with John Laing.”

Q12 from Councillor Rook

“How much compensation if any must be paid to John Laing for removal of an item from the TWRC’s asset register?”

Q12 response from the Portfolio Holder for Property & Major Projects

“The Council has undertaken detailed procurement for 38 of its assets. TWRC does not have an asset register and let me make it very clear, not one of our sites has transferred from the Council’s ownership to the Regeneration Company. We remain in full control of all our property linked to the Company.

“However the Company does have first option on the 38 assets. The Shareholders Agreement allows for the review of the Plans and Objectives and there are provisions which allow amendments to be made. In addition the Shareholders Agreement allows for the removal of sites from the TWRC and sets out the level of payment due (if any) to the Company as a result. Sites removed by mutual agreement would not have any financial liability.

“That said we are not proposing that any sites should be removed from the agreement therefore there is no cost to the Council.”

Q12 supplementary question from Councillor Rook

“With reference to the car park at Cranbrook, are you suggesting this cannot be transferred because of the agreement with the Regeneration Company?”

Q12 response from the Portfolio Holder for Property & Major Projects

“No. I believe it could be, with the agreement of Laing’s, transferred to the Parish Council. It could also be transferred on a short lease. The intention in the near future is to discuss the possible usage of some of these sites. Ongoing discussions are taking place and the Council will be informed of results.”

Accuracy of these answers was not changed at the next meeting on 22 Feb 2012

22nd February 2012

Q1 Question from Councillor Chapelard

I understand that under the Tunbridge Wells Regeneration Company shareholding agreement Laing has "first refusal" on the 38 council-owned sites. Please could you explain what would happen if another developer or a community group were to make a formal approach and proposal to TWBC for development of one or more of those 38 sites?

Q1 Response from the Leader of the Council

If we were approached by another developer or community group we would be under an obligation to consider their proposal. As we have already undertaken a lengthy and complex procurement process in order to enter into a ten year legal agreement with John Laing on these 38 sites, we would ask the Regeneration Company to discuss the proposal with the interested party. We would then consider whether the Regeneration Company could deliver the proposal in a more cost effective and appropriate manner. This would be part of the normal viability test process foreseen by the joint venture agreement.

I would point out to Cllr Chapelard that the opportunity exists for any elected member to review the Shareholders Agreement whenever they want. In order to save time at future Council meetings, perhaps it would be worth Councillor Chapelard sitting down with Councillor Jukes to discuss the Regeneration Company in detail, and I would openly invite him to do so.

Councillor Chapelard did not ask a supplementary question.

Q1A Question from Councillor Chapelard

In response to one of my questions at the last Full Council meeting, Councillor Jukes said that TWBC could be sued for possible loss of profit by Laing if TWBC decided to put an end to the Tunbridge Wells Regeneration Company.

Please could you outline what would happen in the following 2 scenarios, including costs to this Council, if TWBC remained in the agreement for the remainder of the 10-year period.

Scenario 1 would see none of the 38 sites developed by mutual consent.

Scenario 2 would see TWBC sit out the remainder of the 10-year period and effectively block all of Laing's proposals for development so that none of the 38 sites were developed.

Q1A Response from the Leader of the Council

In Scenario 1 essentially nothing would happen. However as both parties would be agreeing to suspend development on the 38 sites we would not be in a position to release those sites to any other developer, and the sites would remain undeveloped. There would be no financial implications other than the waste of time and cost involved in the set up of the Regeneration Company.

In scenario 2 the physical effect would be the same, but the Council might be subject to a claim from the Regeneration Company if it had blocked all development unreasonably.

I am unclear what objective Councillor Chapelard is trying to achieve? Is he suggesting, for example, that the former Cranbrook office site, now in stage 2 of the Regeneration Company’s processes, should remain vacant for the next seven years rather than being developed for the ultimate benefit of the community? I am not sure how the Parish Councillors and others who have worked hard with Cabinet members to find a way forward in that community would react to that. Not well, I suspect. I am sure that Councillor Chapelard is aware that the Asset Management Plan is part of the Council's Policy Framework supporting the Council in delivering its Corporate Priorities and seeking to achieve

maximum financial return across the entire property portfolio. The Regeneration Company is just one of the tools to be used in meeting those objectives.

I would be interested to know if Councillor Chapelard is proposing a different approach.

Councillor Chapelard did not have a supplementary question.

Accuracy of these answers was not changed at the next meeting on 25 April 2012

Q1 from Councillor Chapelard

When the Tunbridge Wells Regeneration Company was set up, John Laing and Gladedale were selected as TWBC's preferred partners by Cabinet on 20 November 2007. Gladedale subsequently pulled out from the negotiation process. Did TWBC inform John Laing of Gladedale's decision?

Q1 Response from Councillor Jukes

Thank you for the question. No, in 2008 we were looking to be in a joint venture with both John Laing and Gladedale who were partners. When they pulled out it was up to John Laing to notify Gladedale and not Tunbridge Wells Borough Council.

Councillor Chapelard did not ask a supplementary question.

Q2 from Councillor Chapelard

Please could you firstly confirm that that TWBC paid £15,000 to Laing for TWBC's decision to withdraw from stage 2 of the Great Hall Car Park. The original sum asked by Laing in the summer 2011 was £93,000. Secondly could you please explain how there came to be such a difference between the first "bill" and the final amount paid and what was the process to reduce this figure?

Q2 Response from Councillor Jukes

I can confirm that John Laing have been paid £15,000 for abortive costs on Great Hall car park. As a result of good negotiating skills I managed to reduce this figure down to £15,000 from the figure you quoted.

Q2 Supplementary from Councillor Chapelard

Can you provide a breakdown of the original cost of £93,000 and the actual £15,000 that was actually paid please?

Q2 Supplementary Response from Councillor Jukes

No.

Questions at Cabinet

28th July 2011

QUESTIONS FROM MEMBERS OF THE COUNCIL

CAB33/11

In accordance with Cabinet Procedure Rule 6.1, Councillor Ben Chapelard, submitted a question to the Property and Major Projects Portfolio Holder as follows:

“When will the Council/Regeneration Company publish the edited version of the shareholding agreement between TWBC and Laings?”

In response, Councillor Jukes stated:

“Thank you for your question Councillor Chapelard. Finalising and agreeing an edited version of the Tunbridge Wells Regeneration Company Shareholders Agreement has been a long process, with the need, to not only agree what is published, but also provide explanatory notes in respect of those sections which have not been published. In company law it is not standard practice to publish Shareholders Agreements, however, in the case of the Tunbridge Wells Regeneration Company, it is felt that it would be useful to the ongoing debate to do so generally, but also in the spirit of openness and transparency. The Council now has a final draft after taking into consideration comments from the Lawyers acting for each party. This has been sent to the Lawyers for a final check and we now hope to publish the edited version on the Council website on Friday 12 August 2011. In the meantime, it remains open to Councillor Chapelard and any other councillor to view the whole unedited document upon request.”

Councillor Chapelard asked a supplementary question: “Would residents be able to view the full version?”

In response, Councillor Jukes stated: “Your original question asked if the „edited“ version would be available and I have given you the answer.”

25th August 2011

In accordance with Cabinet Procedure Rule 6.1, Councillor Ben Chapelard submitted a question as set out below:

Following the publication of a redacted version of the Tunbridge Wells Regeneration Company shareholding agreement on 12th August 2011, when will the Council/Regeneration Company publish the remaining schedules - numbers 16 and 17 - of this redacted version?

In response the Leader advised that summaries of these schedules will be published on the website on 1 September 2011. The summaries were in draft but had not yet been agreed by John Laing. The Council had asked

John Laing to agree them by 31 August 2011 and if there was no response it would be presumed John Laing were in agreement and the summaries would be published as per the draft.
There was no supplementary question.