

C1/2014/2726

Neutral Citation Number: [2015] EWCA Civ 885
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION, ADMINISTRATIVE COURT
(MR JUSTICE HICKINBOTTOM)

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 8 July 2015

B e f o r e:

LORD JUSTICE RYDER

LORD JUSTICE BRIGGS

Between:

SKY BLUE SPORTS & ORS_

Appellant

v

COVENTRY CITY COUNCIL & ORS_

Respondent

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(Official Shorthand Writers to the Court)

Mr R Thompson QC and Mr N Gibson (instructed by Brown Rudnick LLP) appeared on behalf of the **Appellant**

Mr J Goudie QC appeared on behalf of the **Respondent**

J U D G M E N T
(Approved by Ryder LJ)

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1. LORD JUSTICE RYDER: On 30 June 2014 Hickinbottom J refused the Claimants' applications to review the decision of Coventry City Council made on 15 January 2013 to lend £14.4 million sterling to ACL, the leaseholder of the Ricoh Arena in Coventry. Both grounds upon which permission had been given were refused and the judge also refused permission to pursue a third ground that was before the court.
2. This is the Claimants' application for permission to appeal. The Claimants are all members of the SISU group of companies who owned Coventry City Football Club. The Council owns the freehold of the arena and was the ultimate owner of 50 per cent of ACL.
3. The claim challenged the legality of the Council's decision on the grounds that, first, it was contrary to EU law, that the loan amounted to state aid which had not been notified to the European Commission in accordance with Article 1083 TFEU and, second, it was contrary to domestic law because of procedural irregularity and/or irrationality.
4. The hearing of the claims involved the consideration of issues of precedent fact that underlay the judge's evaluation of whether the transaction fell within the scope of state aid. The judge identified the question he had to determine as being whether the recipient, ACL, would manifestly have been unable to obtain comparable facilities from a private creditor in the same situation. That is whether the transaction would not have been entered into on such terms as the Council did by any rational private market operator in the circumstances of the case.
5. The domestic law claims focussed on whether the Council had failed to take into account material considerations and whether in domestic law their decision was otherwise irrational.
6. The judge summarised his findings in respect of the precedent facts which went to the question of whether the loan was state aid at paragraph 78 of the judgment. It is convenient to set out that summary in full:

"i) The Football Club had been seriously mismanaged. By April 2012, it was in a truly parlous state. CCFC was balance sheet insolvent, incurring regular substantial annual losses, and a loss of £5m on the annual turnover of £10m in 2011-12. The contractual rent and licence fee for the Arena of £1.3m per year was significant, but less than 10% of total expenditure. Relegation to League Division One and the introduction of the Financial Fair Play rules compounded these difficulties.

ii) CCFC/SISU had no strategy for maintaining a sustainable football club, except one which involved (i) the purchase, at a knock down price, of at least a 50% share in ACL and thus the Arena, and (ii) the purchase from the Bank, at a knockdown price, of the ACL loan. SISU considered that there was no commercial rationale for purchasing the Bank loan without having a stake in the Arena revenues, by having a share in ACL. By the end of August 2012, that strategy had failed, because the

negotiations for purchasing the Higgs Charity's share in ACL had broken down over differences between the parties that were irreconcilable. There was no plan B: CCFC/SISU had no alternative strategy for maintaining a sustainable football club at the Arena.

iii) SISU distressed the financial position of ACL by refusing to pay ACL any rent or licence fee. That made ACL commercially vulnerable, because it could not service its Bank loan. It also had the effect of reducing the value of the share in ACL that SISU coveted. SISU imposed more commercial pressure on ACL by indicating that they were prepared to see CCFC put into administration or liquidation, which (SISU believed) would have a cataclysmic effect on ACL because of ACL's inability to service its loan without revenue from the Football Club. SISU's strategy of distressing ACL's financial position in these ways was quite deliberate. They considered this strategy was necessary if they were to recover their investment in the Football Club.

iv) The Council was increasingly concerned to protect its interest in ACL. It considered that that interest had some long-term value. ACL had been profitable until the rent strike. The rent strike by CCFC inevitably resulted in ACL being unable to service its loan with the Bank, with the inevitable consequence that the Bank began taking enforcement procedures against ACL; which placed the Council's interest in ACL in jeopardy, notably that the Bank (or anyone else to whom the Bank transferred the loan) would use their step-in rights to take over the Arena lease.

v) ACL and the Council were concerned about SISU's long-term commitment to the Football Club. The Football Club had been badly managed. ACL (and, as 50% shareholder in ACL, the Council) was persistently looking for a plan from CCFC under which the Club could sustainably compete, first in the Championship and, following relegation in 2012, in Division One. Such a plan was not forthcoming.

vi) The Council was increasingly concerned that SISU wished to buy into ACL and thus the Arena, effectively at the expense of the long-term interests of ACL shareholders including the Council itself. The Council also considered that SISU may attempt to purchase the Bank loan for themselves, which would have put them (SISU) into a very strong position to purchase a share or the whole of ACL. SISU deny that this was ever their intention: but, given SISU's strategy in relation to ACL, the Council was understandably and reasonably concerned.

vii) Some of these concerns, at least, with the benefit of hindsight, were not warranted; because (i) SISU's attempt to buy the Higgs Charity share in ACL had failed by the end of August 2012, and (ii) SISU were not prepared to buy the Bank debt at a price anything like the price for which the Bank was prepared to sell it. The Bank considered that ACL could

service the full £15.5m loan, restructured. However, at the time and without the benefit of hindsight, the Council's concerns about SISU were reasonable: the only way in which SISU were likely to obtain a return on their substantial investment was to obtain a share in the Arena, and cheaply. That was an essential part of their plan.

viii) The Council lacked faith in CCFC/SISU's ability to run the Football Club sustainably. The Council – and, notably, some particular councillors who made their views clear – did not trust SISU. SISU deny that they adopted an aggressive strategy for buying into the Arena cheaply; but it is undoubtedly the case that their strategy was dependent upon buying into the Arena cheaply. The Council's lack of faith and trust were at least reasonably held.

ix) The Council was driven by the need to protect its commercial interest in ACL. It saw that interest as long-term. It reasonably considered that SISU posed a commercial threat to that interest."

Inssofar as it may be relevant to the way he exercised his evaluative judgment, the judge went on to summarise the Council's objectives at paragraph 79 of the judgment.

7. The complaint made about the judge's findings of fact can be ascertained from the way the claim was put by the Claimants in the court below. At paragraph 90 of the judgment, the judge records the key five submissions:

"i) No rational private investor would have advanced £14.4m to ACL in January 2013 on any terms, given the value of ACL, which was less than half of that sum. The valuation of the company was further diminished by the fact that, since April 2012, ACL faced the imminent significant risk of becoming insolvent.

ii) Given the valuation of ACL, the security for the loan was hopelessly inadequate.

iii) The term of the loan (about 41 years) was very substantially longer than any term which a private investor would have countenanced.

iv) The interest rate and rate of return inadequately reflected the commercial risk taken by the Council in making the loan.

v) There was no commercial justification for the loan. In making its decision to make the loan, the Council took into account policy objectives. Furthermore, a rational market operator would have taken into account and pursued one of the commercial alternatives to a loan which created no value in its shareholding in ACL, namely (a) pursuing SISU's plan to purchase and then write off the Bank loan in return for a shareholding in ACL and thus the Arena, (b) restructuring the Bank loan or (c) the insolvency of ACL."

8. In his written skeleton for this court, Mr Rhodri Thompson QC submits as follows:

"The judgment is systematically confused in its application of the law to the facts. The substantial discrepancy between the size of the loan and the value of ACL at the date of the decision, the lack of any effective or additional security for the loan and the extension of the term of the loan to the full extending term of the lease were all aspects of the loan that would not have been acceptable to a rational commercial lender in the position of the Council and considering the commercial situation objectively."

"Contrary to principles and guidance... the Council did not have any proper independent advice available to it in deciding whether or not to make the loan. The report to the Council was deliberately fashioned to support the decision... the independent advice... that was available to the Council's officers from September 2012 onwards clearly did not support a conclusion that the MEOP was satisfied."

"As such, the loan was a state aid that should have been notified to the Commission, which has exclusive jurisdiction to rule on any issues of public policy that in reality underlay the decision."

9. Without prejudice to any re-examination of these questions by the full court, I am happy for today's purposes to take the judge's distinction between a rational private economic operator who is an external investor and one who is already a shareholder and the ultimate freeholder of the stadium. I am also prepared for today's purposes to accept that the financial risk analysis is capable of evaluation so that it can be said that under the findings made the loan represented a financial advantage to the Council, not just to a public policy advantage.
10. That said, I am troubled by the judge's overview of the financial situation. The judgment does not, it seems to me, give adequate recognition to the role of the bank as a economic operator in its own right, nor does it evaluate the role of the Council as the ultimate freeholder of the stadium.
11. If one looks at the ultimate position of the Council in the circumstance that it did nothing and ACL defaulted, there is an arguable case that the end result would have been no worse and potentially better, but without the financial risk that the loan entailed. Likewise, the financial basis for the decision is clouded in valuations and financial projections that were produced for different purposes and may not be a sufficient basis for the assumptions that were relied upon by the judge. In particular, the anchor rent of £400,000 and the bracket of valuation of between £10.8 million and £14.4 million do not appear to be well grounded.
12. I am also troubled by the appropriateness of the advice upon which the Council purported to rely. Did it really touch on the essential questions that they and the court had to answer about whether the proposed decision was state aid? At the end of the day, in colloquial terms, there is a real argument that this looks like and feels like state

aid. The submissions made to this court are sufficient to raise arguable grounds of appeal both as to the underlying factors and the application of the law to them.

13. The Respondent's response to the Appellants' advocate's statement sets out the clear basis upon which the appeal would be strongly opposed, namely that the judge's conclusions are essentially factual and cannot be described as perverse and his evaluations are in the context of what is effectively an agreed legal position so that it cannot be said that he has exceeded the generous ambit within which reasonable disagreement is possible. I have taken those points into account and they will be good points on the appeal, but they do not in themselves satisfy me that the permission test is not satisfied.
14. In the response, Mr Goudie QC informs the court that on 13 May 2015 the Council's loan to ACL was repaid in full, thereby, he submits, rendering academic that part of the remedy in issue in the proceedings, namely an order for recovery of the full amount of the loan. Furthermore, it is submitted the Council is no longer a 50 per cent shareholder in ACL in that that interest was sold for a commercial return on 8 October 2014 or thereabouts. The question inevitably arises, therefore, whether there is any purpose in these proceedings.
15. Mr Thompson has very kindly provided a note on subsequent events for the benefit of this court, which he has enlarged upon in oral submissions before us. I need not set out the detail of that note, which will no doubt be before the full court in due course, but the effective material is that information has been obtained from the "London Wasps" prospectus dated October 2014 to this effect:
16. (A) London Wasps acquired ACL by paying £2.78 million to each 50 per cent shareholder. (B) As part of the transactions, Wasps Holdings paid an additional £1 million and obtained a significant extension to the lease. (C) London Wasps apparently paid a further £1 million to reduce the outstanding loan from the Council. (D) The total consideration paid, including equity and debt acquired, that is the remainder of the outstanding loan, was said to have been £19.9 million.
17. The consequence of that appears to be that a second judicial review challenge has been issued, which is stayed pending this appeal.
18. In response to this court's questions about the relief that remains available to the Claimants in the first judicial review, Mr Thompson highlights the fact that a 2-year 4-month advantage was obtained in respect of the loan provided by the Council and that the lost interest, having regard to the terms of that loan, remains an issue in the proceedings, as does the fact that the Claimants were severely prejudiced by the events that took place, on their case, and therefore there is a damages claim reflecting that prejudice, including the loss of points in the league that the Football Club itself sustained.
19. Given these additional issues, it seems to me not only that permission should be given, but there is a real prospect of relief being obtained should the appeal be successful, and I would grant permission without limit.

20. Having heard Mr Thompson in respect of the interplay between the various proceedings, I would make directions that there be two days of reading provided to each member of the full court, upon which days there shall be no other matters listed. The full hearing shall take place before a constitution of three Lord or Lady Justices, one of whom should be a specialist in European Union commercial matters. The matter to be set down for an estimated length of hearing of some two days, to be expedited on the first available date after the beginning of term in October 2015, such that the appeal can be completed within the next football season.
21. LORD JUSTICE BRIGGS: I agree that permission should be given in this case and with the directions proposed by my Lord.
22. I am satisfied that the relatively low threshold of the real, i.e. more than fanciful, prospect of success is disclosed. I propose to express no view one way or the other upon the merits beyond saying that that threshold is passed.
23. I would also be minded, if my Lord agrees, to pass on the indication from Mr Thompson that it would be of assistance to the timely case management of the second judicial review proceedings if the hearing of the appeal could be expedited.

LORD JUSTICE RYDER: I agree.



Interview with John Mutton Leader of the Council, Coventry City Council 7.26am 13th
March 2013 BBC CWR Breakfast Show

Shane O'Connor:

What do you think then where do we stand today that was different from where we stood yesterday morning anywhere do you think?

John Mutton:

Only as much as I think that the real facts are about to come out into the public domain and I welcome that.. for a government minister to make comments like a disastrous way to run a sports club and for members of Parliament to describe SISU as a predator with greed running through it's DNA speak volumes.

Shane O'Connor:

I understand that that is behind the veil of parliamentary privilege isn't it?

John Mutton:

I presume it is

Shane O'Connor:

I don't know whether Bob Ainsworth would come out in public and say that...

John Mutton:

Maybe not... but I would because I think it is absolutely true, I don't know whether binding arbitration will solve the problem because so far all the giving's seem to have been done by ACL reducing rent from 1.3 million to 400,000 and offering 250,000 worth of the profits from food and beverage. So far the owners of the football club SISU have given absolutely nothing. This all started if you remember Shane with SISU saying they couldn't afford to pay the rent – the last interview that Tim Fisher gave he said never mind the rent that's immaterial this is all about revenue streams.

Shane O'Connor:

I don't know if you watched this... it was possibly the longest half hour of my life... watched the whole thing yesterday on You Tube, I mean I think the people of Coventry have this sense of emasculation you realise how little power we have when you have 3 of our MPs there all lined up and not one of them could persuade the sports minister to do anything despite the fact he said I will do anything that I can... I think he was asked twice then... and he declined on both occasions it gives you some idea of the inability to bring SISU to account.

John Mutton:

And perhaps people realise now just how frustrated both the council and the board members of ACL have felt over the last 12 months while this has been rumbling on...

Shane O'Connor:

I mean he did – the Sports Minister said have you tried the football league – I am not sure that was tongue in cheek or supposed to be helpful or not really I mean as I say the whole thing you are wound up no further forward but where does the solution come from then I mean if you are saying that perhaps binding arbitration isn't the way forward there certainly doesn't seem to be desire from what people seem to be saying from the SISU perspective to have that – if you have got somebody like Doctor John Beech involved to do that you still don't have confidence that that will make a difference.

John Mutton:

I can't speak for ACL Shane I can only speak for the Council. We would like to get this resolved we want to make certain that Coventry City Football Club continues for the next 100 years in respect of who actually owns it but there doesn't seem to be any desire by the owners of the football club to get a deal concluded. Last time so I am told when discussions took place and at the end of the meeting a statement was made of along the lines of 'thank you gentlemen we can now move forward' it was reneged on the next day. If SISU want some of the profits from the running of the arena they should have continued their negotiations with the Higgs charity bought the 50% shares in the Ricoh that the Higgs Charity own and they would have been entitled to 50% of the profits that the Ricoh makes. For the last year just over £1 million. But they reneged on those arrangements as well so no one knows what they are really trying to do but they certainly don't seem to want to come to any form of agreement with anyone.

Shane O'Connor:

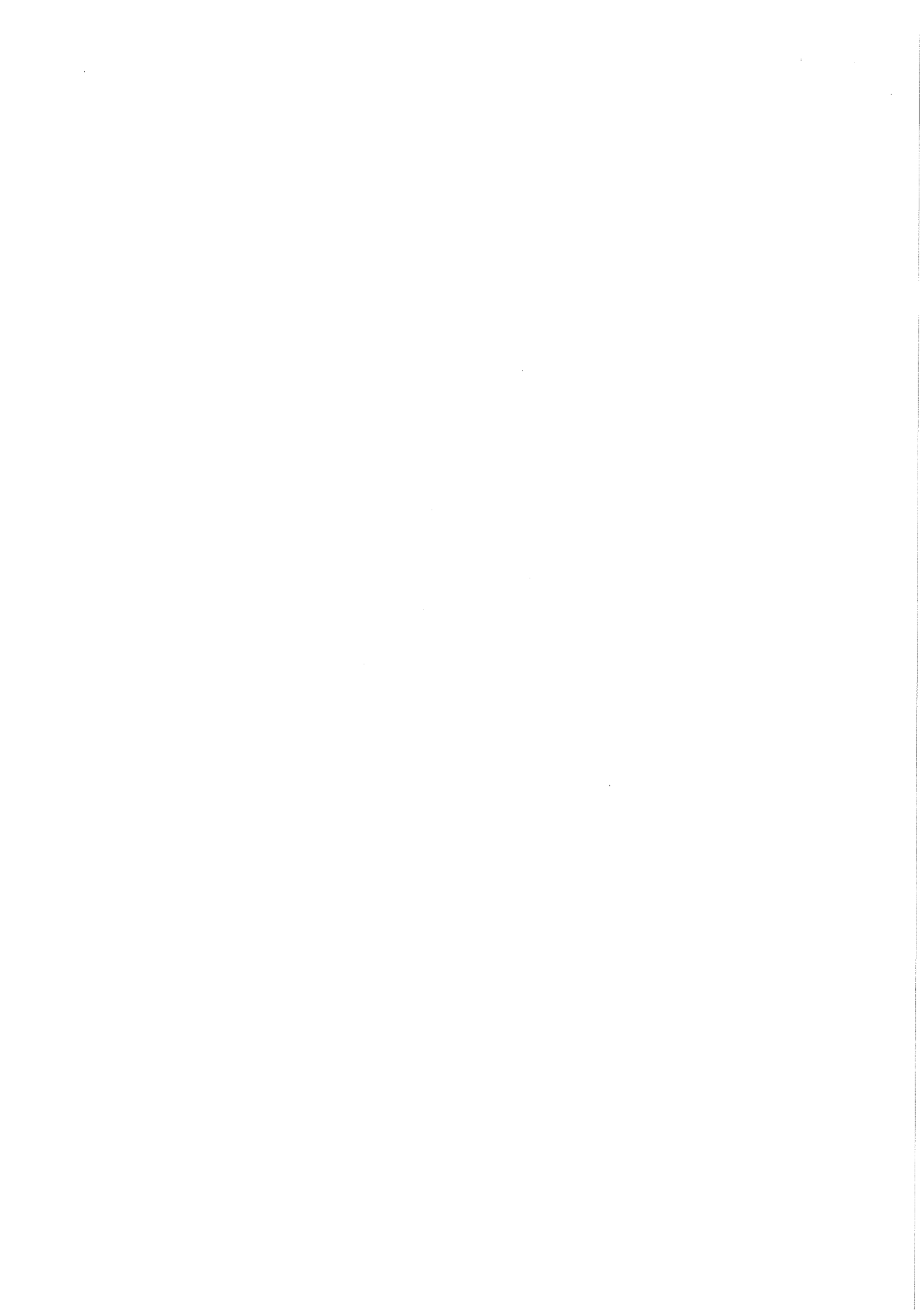
Doctor John Beech on this radio station yesterday was saying it has now reached a critical phase would you agree with that?

John Mutton:

Yes I would because I think the board of ACL have now just about reached the end of their tether and they have already taken legal action in the past and they won that legal action. SISU have not paid any of the money outstanding and I wouldn't be at all surprised if further legal action isn't taken in the near future unless an arrangement can be reached.

Shane O'Connor:

Thanks to John Mutton leader of the Council there... the co-owners of the Ricoh Arena so obviously they are concerned... he's right and I must admit following this for half an hour yesterday watching this I did really have an understanding of the frustration that is involved in all this...



Document 3: 16 October Documents

-----Original Message-----

From: Paul Barber [<mailto:paulbarber777@yahoo.com>]

Sent: 24 April 2012 14:49

To: Tim Fisher; tim.fisher@calimere.com; Laura Deering

Subject: Coventry City Council

Hi Tim and Laura

Chris West has just called me back on behalf of Martin Reeves to debrief on the ACL board meeting.

These are my notes of the conversation we just had:

- ACL not prepared to engage YB at this point or consent to Sisu doing the same
- according to Chris, YB (presumably unofficially) remain "happy" with the loan and the ongoing stability of ACL's business
- YB has "no room" for a discussion regarding the acquisition by Sisu or anyone of a distressed debt situation
- Council / ACL do not want to "rock the boat" by starting discussions with YB as there seems to be little or nothing in it for them to do so
- Chris reiterated that the Council haven't seen a business plan for League One and no plan for how Higgs Charity would be taken out (price, buy out terms etc)
- in Chris' words the "building blocks are just not in place"
- he went on to say that Council / ACL's advice is that the liquidation threat is hollow as there would be little or no value
- he contends that administration - with Sisu or "someone else" funding it is the best route to value recovery

- as usual, he pushed the idea that IP's had "lists" of potential investors but they could only release the names once they were engaged in the process (of course...)

- bizarrely, Chris seemed quite proud of the Leader's behavior at the last match - leading the "Sisu out" cries and when I challenged this as being irresponsible he described it as what he "would expect from an elected official representing the people". I'm flabbergasted.

- Chris was at pains to point out that the Council remained "open" to further discussions, ideas and options to move forward.

- I reminded Chris - and he accepted - that Joy still had the option to approach YB directly and would probably do so sooner rather later in light of this feedback

- Chris went on to say how much Sisu were hated by all fans and people in Coventry and, whilst he accepted that a huge amount of investment had been made, it had (in his opinion) been largely wasted and consequently the club was in a perilous state.

- I reminded Chris that Joy had acknowledged management errors from the past and that what was done was done; the key was the future.

- I thanked Chris for the direct feedback, said I would brief the key people and that one of us would be back in touch

I haven't copied Joy or Leonard at this point, so would it be helpful to have a call in a short while?

Regards, Paul

Sent from my iPhone

COUNCIL OF THE CITY OF COVENTRY

15th January 2013

PRESENT

Lord Mayor (Councillor Sawdon)

Deputy Lord Mayor (Councillor Crookes)

Councillor Mrs Abbott	Councillor Lakha
Councillor Akhtar	Councillor Lancaster
Councillor Ali	Councillor Mrs Lepoidevin
Councillor Andrews	Councillor Mrs Lucas
Councillor Auluck	Councillor McNicholas
Councillor Bains	Councillor Maton
Councillor Mrs Bigham	Councillor Mrs Miks
Councillor Blundell	Councillor Mulhall
Councillor Caan	Councillor J. Mutton
Councillor Chater	Councillor Mrs M. Mutton
Councillor Clifford	Councillor Noonan
Councillor Duggins	Councillor O'Boyle
Councillor Mrs Fletcher	Councillor Sandy
Councillor Foster	Councillor Sehmi
Councillor Galliers	Councillor Singh
Councillor Gannon	Councillor Skinner
Councillor Gingell	Councillor Skipper
Councillor Hammon	Councillor Mrs Sweet
Councillor Harvard	Councillor Taylor
Councillor Howells	Councillor Thay
Councillor Hetherton	Councillor Thomas
Councillor Innes	Councillor Townshend
Councillor Kelly	Councillor Walsh
Councillor Kershaw	Councillor Welsh
Councillor T. Khan	

Honorary

Alderman Present: J. Gazey
T. Webb
J. Wright

Apologies: Councillor A Khan
Councillor Ruane
Councillor Williams

Public Business

108. Minutes

The minutes of the meeting held on 4th December 2012 were signed as a true record.

109. Exclusion of Press and Public

RESOLVED that under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the items of business indicated below on the grounds that they involve the likely disclosure of information defined in the specified Paragraph(s) of Schedule 12A of the Act as they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) and that in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Minute No.	Subject	Relevant Paragraphs(s) of Part 1 of Schedule 12A
113	Capital Refinancing	3
128	Shelton Square – Investment Acquisition	3

110. Coventry Good Citizen Award – Reg Kimber

On behalf of the Council, the Lord Mayor and his Honour, Judge Griffith-Jones, Honorary Recorder, presented Mr Reg Kimber with the Coventry Good Citizen Award. His citation read:

“Reg Kimber has for many years played a key role in the Whitley Local History Group and in the wider Whitley community. He is consistently encouraging other members of the Group to pursue their interest in local history and is regularly found at fairs and open days sharing his enthusiasm for the history of the area with younger generations.

Reg has lived in Whitley for many years and is a veteran of the Armed Forces, having served in the RAF. He has devoted his retirement to working on and campaigning for a range of local issues in the Whitley area, in particular the memorial to the bomb disposal crew that were killed on Whitley Common in 1940.

For many years the story of this crew had been known in the Whitley area, but no research had been done to piece together the facts around it – so Reg turned detective and researched the background of the brave men and managed to piece together a number of stories from pieces of information that had been left behind. Whilst it was well known that the men had died on Whitley Common, the location had not been previously identified and no memorial existed to commemorate the sacrifice that was made. Reg saw it as a personal crusade to ensure this was rectified and that a fitting tribute was made to those who had lost their lives.

Reg Kimber is a modest man who never ‘blows his own trumpet’ and only looks for the reward of improving the lives of the people around him. He fully deserves to be recognised as a Good Citizen of Coventry.”

111. Motion Without Notice

In accordance with Paragraph 4.1.35.3 of the City Council’s Constitution, a Motion without Notice was moved by Councillor Gannon and seconded by Councillor Hetheron to re-order the Agenda so that Agenda Items 5 (Correspondence and Announcements of the Lord Mayor) and 6 (Petitions) be

moved down the agenda to be taken before item 8, and that Item 19 (Capital Refinancing) be considered, in private, after Item 7 (Declarations of Interest).

112. Declarations of Interest

The following Members declared Disclosable Pecuniary Interests in the items indicated below. The Members withdrew from the meeting during consideration of those items.

- (a) Petitions (Minute 117 refers)
Councillor Mrs Bigham
Councillor T. Khan
Councillor Maton
Councillor Skinner

- (b) Technical Changes to Council Tax (Supplementary) (Minute 123 refers)
Councillor Mrs Bigham
Councillor T. Khan
Councillor Maton
Councillor Skinner

(NB: At this point in the proceedings, the Chief Executive withdrew from the meeting. The Director of Customer and Workforce Services represented the Chief Executive for the remainder of the meeting).

Private Business

113. Capital Refinancing

Further to Minute 116/12 of the Cabinet, the City Council considered a private report of the Assistant Director for Financial Management, which contained information relating to the financial or business affairs of any particular person (including the authority holding that information) in respect of capital refinancing.

RESOLVED that the City Council approve the Recommendations from Cabinet.

Public Business

114. New Year Honours

The Lord Mayor congratulated Coventry Fireman Rick Stanton, based at Canley Fire Station, who had been awarded an MBE in the New Year Honours list for services to Local Government, particularly the fire and rescue service.

Members noted that the Lord Mayor had written to Mr Stanton, expressing the Council's congratulations.

115. Death of Former Lord Mayor, Alex Boyd

The Lord Mayor referred to the recent death of former Lord Mayor, Alex Boyd last month. Alex had been a Councillor for 22 years representing Holbrooks Ward before retiring in April 2000. He was Lord Mayor in 1993.

Members paid tribute to the work undertaken by Alex and noted that a letter expressing the Council's sincere condolences had been sent to his family.

116. Death of Sarah Ferguson

The Lord Mayor referred to the recent death of Sarah Ferguson. Sarah had been an employee of the City Council since 1999 and was best known to many as a long standing Trade Union representative.

Members paid tribute to the work undertaken by Sarah and noted that a letter expressing the Council's sincere condolences had been sent to her family.

117. Petitions

RESOLVED that the following petition be referred to the appropriate City Council body or external organisation:

- (a) Request for refusal of sale of land on Castle Street/Adelaide Street/Harnall Lane East to Whitefriars Housing Group – 39 signatures – presented by Councillor Welsh.**

(Note: Councillors Mrs Bigham, T. Khan, Maton and Skinner withdrew from the meeting during consideration of this item).

118. Medium Term Financial Strategy

Further to Minute 84/12 of the Cabinet, the City Council considered a report of the Director of Finance and Legal Services presenting a Medium Term Financial Strategy (MTFS) for 2013-2016 for adoption by the City Council. The previous strategy was approved in October 2011. The Strategy underpinned the medium term policy and financial planning process that was fundamental to setting our revenue and capital budgets.

The context in which the City Council developed its MTFS continued to be one of unprecedented financial pressures. The recent recession and the sovereign debt crises that developed out of the 2008 banking crisis meant that economic growth was forecast to be subdued for the foreseeable future. Significant reductions in spending levels would be required up to 2020. In practice, the process of reducing spend has only just started. Although the 2010 government spending review covers the period to 2014/15, the spending totals for 2013/14 onwards would almost certainly be revised downwards.

In addition, the last year had seen a review of the entire Local Government Finance system, with the localisation of 50% of business rates being the headline change. This created significant uncertainty, both in forecasting the level of resources that will be available, but also at a policy level.

Whilst resources fall, the demand for services increases, in particular due to demographic changes, with a greater number of both the very young and older people.

The "perfect storm" of reducing resources, low economic growth, increased demand and government reform makes it crucial that local authorities consider their role and how they need to radically reshape their services, in order to protect the most vulnerable within an environment of scarce resources. Significant national developments impacting on local authorities were detailed in the report.

The City Council's starting financial position prior to the 2013/14 budget setting as detailed in the report showed a major funding gap increasing to nearly £60m in 2015/16.

The City Council's strategic approach to the demands that it faces included:

- The need to radically reshape services and make significant savings through the extension of the Council's abc Transformational Review Programme. The emphasis of abc (A Bolder Coventry) would move towards asking fundamental questions about what things the Council needs to consider stopping doing or doing in partnership with others, in particular in high spend areas. Central to this will be the need to actively manage the demand for services.
- The drive for economic growth, working with partner organisations to achieve this. The maximisation of capital investment either by the City Council, funded from borrowing or capital receipts, or via local partners will be fundamental to facilitating growth.
- The development of a City Deal bid for the sub region, as a way of unlocking major projects and initiatives that would stimulate growth;

RESOLVED that, after due consideration of the options and proposals contained in the report and matters referred to at the meeting, the Council approve the Strategy as the basis of its medium term financial planning process.

119. Sexual Entertainment Venues Policy – Consultation Results

Further to Minute 100/12 of the Cabinet, the City Council considered a report of the Director of Community Services, which set out the results of a city-wide consultation in respect of a new Sexual Entertainment Venues Policy and proposed a final Policy for adoption.

On 16th November 2011, the Cabinet Member (Community Safety and Equalities) considered the outcome of consultation on the Council's draft Sexual Entertainment Venue Policy and approved an 'Interim Policy' for a maximum period of 12 months. The Interim Policy contained a guidance upper limit on the number of Sexual Entertainment Venues which it considered appropriate within the Council's administrative area. For the City Centre (defined as within the ring-road), it was proposed that up to a maximum of two Sexual Entertainment Venues be permitted and for the outer City (determined as the remainder of the City outside the City Centre), it was proposed that there be no Sexual Entertainment Venues.

On 14th August 2012, Cabinet approved the extension of this Interim Policy to 31st

March 2013 and a public consultation on a nil policy as a preferred option (Minute 29/12 refers). A twelve week period of consultation therefore took place from 20th August to 11th November 2012.

504 survey responses were received along with a further 13 responses in the form of emails and letters to the Licensing Team. Findings from the consultation were reviewed and categorised for the purposes of analysis. In summary, 53.3% of respondents strongly agreed that Coventry should have a nil policy, 29.8% felt strongly felt that a nil policy was not appropriate and would like to see some provision in the City, and the remaining did not have a strong opinion either way. Full details of the responses received were provided within the report submitted.

As a result of the consultation, it was proposed that a nil policy be established for the City. It was acknowledged that there was an established Sexual Entertainment Venue, which had traded within the City for a long period of time without significant concern and, accordingly, the nil policy would not apply to that venue. In addition, any further application from this existing venue would be judged on its own merits and without reference to the nil policy.

The Streets and Neighbourhoods Scrutiny Board (4) had considered the report at their meeting on 7th December 2012, and a briefing note detailing their recommendations was appended to the report. In particular, the Board recommended that training should be given to Licensing and Regulatory Committee members on dealing with Sexual Entertainment Venue applications, which should include guidance on the proper application of the nil policy and the correct approach that should be taken to consider any exemptions to that Policy, including the need for giving sound reason for any decision. This recommendation had been supported by the Cabinet.

RESOLVED that, having considered the outcome of the public consultation and the Recommendation from the Streets and Neighbourhoods Scrutiny Board (4) the City Council approve the following:

- (a) **Having regard to the responses to the consultation and other relevant factors, the Interim Policy be confirmed as the final statement of policy going forward subject to Paragraphs 10.2 and 10.3 being replaced with:**
 - i) **"The Council has conducted a widespread public consultation on a proposed nil policy for the City. The majority of respondents agreed that there is no locality in Coventry of which it can be said that Sexual Entertainment Venues are appropriate. These considerations among others set out in the policy, have let the Council to the clear opinion that there are no localities in Coventry in which it is appropriate to license a Sexual Entertainment Venue. This does not prevent individuals from applying for a Sexual Entertainment Venue Licence and each application being considered on its merits by the Licensing and Regulatory Committee.**
 - ii) **However the Council recognises that there is an established Sexual Entertainment Venue which has traded in the City for a long period of time without significant concern. Accordingly, the nil policy will not apply to the said Sexual Entertainment Venue.**

Rather, any application in respect of the said Sexual Entertainment Venue will be judged on its own merits and without reference to the nil policy.

- (a) That training should be given to Licensing and Regulatory Committee members on dealing with Sexual Entertainment Venue applications, which should include guidance on the proper application of the nil policy and the correct approach that should be taken to consider any exemptions to that Policy, including the need for giving sound reason for any decision.

120. Coventry Tenancy Strategy 2013-18

Further to Minute 101/12 of the Cabinet, the City Council considered a report of the Director of Community Services, which sought approval of the Tenancy Strategy 2013-18.

The Localism Act 2011 created a statutory requirement for local authorities to develop a Tenancy Strategy by 15th January 2013, setting out the Council's approach to tenancies in light of recent changes to social housing introduced by the Government. Changes have been made to the types of tenancies that Registered Providers of social housing, usually Housing Associations can offer, the rents they can charge and the way that the Council can meet its duties towards homeless households. The report provided detail of the changes made, particularly in respect of fixed term tenancies, affordable rent and homelessness duties.

In their Strategy, local authorities must set out the matters to which Registered Providers were to 'have regard' when developing their own Tenancy Policies. There was no requirement for Providers to 'comply' with the Council's Tenancy Strategy.

Public consultation on the options for the Tenancy Strategy was carried out for a period of eight weeks. 44 responses were received to the consultation, which included 11 responses where respondents identified themselves as representing an organisation or group. The report outlined in detail the responses to the consultation and, in summary indicated that 74% of respondents were of the view that the Council should support the use of fixed term tenancies and 72% supported the use of the private rented sector to discharge the main homelessness duty, without requiring the consent of the applicant. In addition, respondents identified several factors which should be considered when setting the level of affordable rent and were of the view that types of properties which should not be let at affordable rents should include supported/sheltered properties, large family homes, and specially adapted properties.

Following the consultation, a Tenancy Strategy for Coventry had been developed and was appended to the report submitted.

RESOLVED that the City Council approve the Coventry Tenancy Strategy 2013-18 attached as Appendix 1 of the report submitted.

121. Caludon Castle School – Proposed Academy Conversion

Further to Minute 102/12 of the Cabinet, the City Council considered a report of the Director of Children, Learning and Young People, which set out the position agreed with Caludon Castle School in relation to the treatment of risks and liabilities under the PFI

Project Agreement following conversion to an Academy and sought approval to the legal agreements necessary for the conversion to take place.

In December 2004, the Council entered a PFI contract to design, build and operate a new Caludon Castle Secondary School. The contract was awarded to Coventry Education Partnership (CEP). The new school opened in September 2006 and provided places for 1,500 students aged 11-18+ and also housed the Wyken Community Library. Day to day facilities management was provided by Integral UK Ltd and, outside of school our, extended services were managed by Active Leisure Management (ALM). Facilities available to the local community as part of the floodlit tennis courts, sports hall, dance studio and a large theatre style main hall.

The PFI Contract and Governing Body Agreement, by which the school agreed to financially contribute towards the annual payments, were written assuming that the school would continue to be part of the local authority.

In the summer term 2010, the school was invited to convert to an Academy status by the Secretary of State for Education, because they were rated by OFSTED as an 'outstanding' school. Between June and December 2010, the benefits of Academy status were discussed at full Governors meetings and, at their meeting on the 2nd February 2011, the Governing Body formally resolved to apply for Academy status. Following consultation meetings with parents, the Secretary of State issued an Academy Order on 30th March 2011 which would enable the school to convert to an Academy on an agreed date.

The Local Authority was expected to co-operate with schools seeking to convert and, in addition to the formal agreements, the authority would effectively at its own expense have to agree closure of accounts and financial transfers, and provision of HR support and information (including staff transfer, TUPE and pension data).

The Cabinet noted that the recently completed Wyken Extended Learning Centre built on the Caludon Castle School site did not constitute part of the existing PFI contractual arrangements or conversion proposal and therefore would remain unaffected. The area to the south of the River Sowe, which formerly constituted part of the school playing fields also remained under the control of the City Council and was unaffected.

Under Schedule 1 of The Academies Act 2010 therefore, the Authority was required to grant to the Academy a 125 year lease at a peppercorn rental for land wholly or mainly used by the school in the preceding 8 years. Failure to agree a lease for the playing fields may result in the Secretary of State using a discretionary power under Schedule 1 of the 2010 Act to step in and make a transfer scheme. The Authority was expected by the DfE to agree an Asset Transfer Agreement with the Academy. In the event that the conversion proceeded without the agreement being in place the Council may be exposed to potential liabilities in respect of assets and contracts post-conversion which would have been assumed by the Academy under the model agreement prepared by the DfE.

In addition, given that Caludon Castle School was funded under the Private Finance Initiative, the Authority would also need to enter into a School Agreement. This was, in effect, the new Governing Body Agreement covering the Academy contribution to the Unitary charge payment that the Authority pays to CEP. In the event that the Authority did not enter into a School Agreement with the Academy the worst case scenario for the Local Authority was that the DfE allowed the conversion to take place, the current Governing Body Agreement ceased and the Council would lose the school contribution which would

leave it with a significant affordability gap on the scheme. There was no national precedent for this and the official DfE line was that they would prefer the City Council and school to resolve issues locally. It was unclear as to when/if the DfE would be likely to 'step in' and force a resolution. A number of other legal Agreements would also need to be agreed as part of the conversion and these were detailed within the report.

Negotiations had taken place with the school over the treatment of risks post conversion and the final agreed position was set out within the report submitted. In summary, whilst the Council had looked to ensure that as much risk as possible would be the responsibility of the School, there were some risks that the school were unable to accept and would remain with the Council, in particular indexation.

Through the negotiations, the school had also agreed to continue its work in supporting educational improvement across the City and a Memorandum of Understanding had been prepared which was to be included within the School Agreement. It was estimated that the Council could benefit from the Academy and its expected Teaching School Status to the value of £105k per annum.

RESOLVED that the City Council:

- 1) Agree to enter into the following legal agreements in respect of the proposed Academy conversion of Caludon Castle School, as set out in Appendices 3 to 8 of the report submitted:**
 - **125 year Lease Agreement at a peppercorn rental;**
 - **Asset Transfer Agreement**
 - **School Agreement**
 - **Principal Agreement**
 - **The Deed of Amendment for PFI Project Agreement**
- 2) Authorise the authorised signatory within Finance and Legal Services to issue the Certificate under the Local Government (Contracts) Act 1997 to confirm the Council's power to enter into the Deed of Amendment to the PFI Project Agreement and grant an indemnity from the Council to the authorised signatory against any claim arising from signature of the certificate.**
- 3) Delegate authority to the Cabinet Member (Strategic Finance and Resources), Cabinet Member (Education), Director of Children, Learning and Young People and Director of Finance and Legal Services to agree any minor amendments to the documents in 1) above arising from further consideration by Coventry Education Partnership, Sumitomo Mitsui Banking Corporation, Department for Education and Caludon Castle School.**

122. Approval of Community Support Grants Policy

Further to Minute 104/12 of the Cabinet, the City Council considered a report of the Director of Finance and Legal Services, which sought approval of a Community Support Grants Policy.

The Government set out reform plans for the Social Fund in December 2010 in the

White Paper "Universal Credit: Welfare that Works". The changes would result in abolition of the current system of discretionary payments. The Government proposed that there would be a combination of new locally based provision that would replace Community Care Grants and Crisis Loans for general living expenses and a new nationally administered advance of benefit facility that would replace alignment Crisis Loans and Budgeting Loans. The locally based service would be devolved to Local Authorities in England and to devolved administrations in Scotland and Wales, and would come into effect from 1st April 2013.

The Social Fund was established under the Social Security Act 1986 as part of a wider range of reforms to the social security system. It was currently administered by Jobcentre Plus, providing interest free loans, grants and payments through both a regulated scheme and a cash limited discretionary scheme. Crisis Loans were interest free loans available to anyone (whether on benefit or not) who could not meet their immediate short-term needs in an emergency or as a consequence of a disaster. Repayments were made directly from benefit where possible although separate arrangements were made for people not on benefits.

In 2011/12 there were 15,140 Crisis Loans awarded in Coventry, at a cost of £939,300. The average award was £62 and were granted for one of four reasons; items or services; rent in advance, general living expenses; and alignment payments to cover living expenses up to the first payment of benefit or wages. The Cabinet noted that it was the general living expenses element that was being localised and this equated to 11,240 applications, 8,390 awards and a total spend of £446,400. .

The report indicated that from April 2013 Crisis Loan Alignment Payments were to be replaced by a new national scheme and Budgeting Loans would be replaced by Budgeting Advances. Both of these schemes would be administered by the Department for Work and Pensions (DWP).

Community Care Grants were non-repayable grants awarded for a range of expenses including household equipment. They were intended to support vulnerable people to return or remain in the community or to ease exceptional pressure on families. Eligibility was conditional upon receipt or imminent receipt of an income related benefit. In 2011/12, 1,600 Community Care Grants were awarded within the City at a cost of £813,300, with the average award being £500.

From April 2013 the Council would provide Crisis Grants to support those in crisis situations. Support Grants would be provided for those in receipt of certain benefits who require financial support in order to meet exceptional costs which would support the applicant to live more independently and/or to prevent unnecessary intervention from social services.

The Council has significant flexibility in designing a local policy of discretionary assistance and this presented an opportunity to rationalise existing funding streams and establish a single corporate approach to the assessment of clients needs. There was also the opportunity to explore collaborative working arrangements with partners in the third sector.

The creation of the Council's local policy took account of the need to have a functional provision in place from 1st April 2013 which had the resilience to meet expected demand. The Council could then focus more confidently on years two and beyond to

establish a more sophisticated delivery model which fully utilised collaborative working.

Although there was no statutory duty for local authorities to make any provision, given the demand levels for financial assistance, it would be irresponsible not to provide some form of provision. Having considered the reasons cited by the DWP for changing existing provision, it was not considered appropriate to replicate the existing DWP system. It was therefore proposed that funding be used to support vulnerable residents by establishing a local Community Support Grants Scheme delivered within the Council's Benefit Service. The scheme would offer two forms of support; Crisis Grants and Support Grants. These would be based on customer need, avoiding cash where at all possible. Non-cash alternatives for goods or services would be provided in order to prevent abuse or misuse of the system and to ensure that awards were spent in the way that they were intended. Applicants would be residents of Coventry to prevent people claiming fraudulently across the country, although consideration would be given to those fleeing domestic violence or resettling to the City. During the first year, the scheme would be constantly evaluated in order to form a longer term model that could be implemented from the second year.

The report had also been considered by the Health, Social Care and Welfare Reform Scrutiny Board (5), at their meeting on 12th December 2012, and a briefing note detailing their comments was appended to the report submitted. In particular, the Scrutiny Board requested that the Cabinet note that the Policy should be kept under review following its implementation and that the Scrutiny Board's Welfare Reform Sub-Group would continue to work with employees and other key stakeholders around the wider implications of the Welfare Reform changes to the City and the local response to them. The Cabinet welcomed and concurred with the comments made by the Scrutiny Board.

RESOLVED that the City Council note the consultation responses, Equality and Consultation Analysis and other information in this report; approve the proposed Community Support Grant Scheme Policy as set out in Appendix A of the report; and delegate authority to the Director of Finance and Legal Services to make final detailed changes to the Scheme and to implement the scheme from 1 April 2013.

123. Technical Changes to Council Tax (Supplementary)

Further to Minute 105/12 of the Cabinet, the City Council considered a report of the Director of Finance and Legal Services, which sought approval to implement technical changes to Council Tax for second homes and empty properties from April 2013.

The Local Government Finance Bill 2012 received Royal Assent on 31st October 2012 and made provision for a number of technical changes to Council Tax to take effect from 1st April 2013.

On 10th July 2012, whilst the Bill was still in draft form, the Cabinet had approved a number of recommendations in respect of these technical changes, including the application of an immediate 100 per cent council tax charge for unfurnished empty properties (Minute 13/12 refers). This change was projected to increase Council revenue by up to £1.5 million per annum.

As the period between lettings is frequently short, applying a full charge immediately would generate additional council tax bills, often for relatively small amounts,

which would increase the cost of collection and potentially impact on collection rates. To address these issues the Government has confirmed that Billing Authorities would have complete discretion over the level of discount to apply to empty homes and the period for which the discount should apply.

It was proposed that a 100 per cent discount for a period of up to two weeks for empty properties to allow landlords a short period to arrange new tenancies and reduce administration costs to the Council. This would reduce the projected additional revenue to the Council by approximately £120,000.

RESOLVED that the City Council:

- 1) Approve the implementation of technical changes to Council Tax for second homes and empty properties from April 2013, as approved by Cabinet on 10th July 2012.**
- 2) Approve the adoption of a 100 per cent discount for a period of up to two weeks prior to the levy of a full Council Tax charge on unfurnished empty properties.**

(Note: Councillors Mrs Bigham, T. Khan, Maton and Skinner withdrew from the meeting during consideration of this item).

124. Shelton Square – Investment Acquisition

Further to Minute 107/12 of the Cabinet, the City Council considered a report of the Director of City Services and Development, which sought approval for the acquisition of property at Shelton Square and the City Arcade.

A corresponding private report detailing financially confidential aspects of the proposals was also submitted to the meeting (Minute 128 below refers).

In 2009 and 2010 Cabinet agreed that the location for future retail development in the city centre would be focused on the City Centre South area culminating in an outline planning consent for a development being obtained in 2012. An opportunity had now been presented to the Council to make a strategic property acquisition in this area.

The seven adjoining retail investment properties predominantly front onto the southern side of Shelton Square, with two of the retail units having frontages onto City Arcade. The City Centre South outline planning consent shows the retail units are located within the area identified for a future anchor store and were therefore a key site required in the current scheme.

The properties were being sold by a liquidator on behalf of a property company in administration and a quick decision regarding the purchase was required if the Council wished to secure them. The Cabinet noted that former directors of the property company in liquidation were also in negotiations with the liquidator with a view to buying back the asset.

The retail investment properties comprised ground floor sales area with first floor ancillary storage. Betfred bookmakers occupied two adjoining units with the five other tenants having single units. The other tenants were Greggs Plc, H&T Pawnbrokers,

Warren James jewellers and two local traders Pawelek Polish Delicatessen and Alan Tyndall trading as Antics a model shop. The signing of new leases to both Greggs and Alan Tyndall would be a condition of the purchase.

The acquisition of these properties would secure the control of the asset, reduce the development risk and increase the deliverability of the city centre development area at a cost which would be less than if it had to be acquired using Compulsory Purchase Orders in the future. In addition, the Council would also benefit from a short term income from the properties.

RESOLVED that the City Council:

- 1) Approve the acquisition of the leasehold interest in 1-11 Shelton Square and 1a City Arcade.**
- 2) Delegate authority to the Director of City Services and Development and the Director of Finance and Legal Services, in consultation with the Cabinet Member (City Development) to complete all the necessary legal documents in connection with the purchase.**

125. Appointment to Outside Body – Local Enterprise Partnership: Local Transport Body

The City Council considered a report of the Director of Customer and Workforce Services which sought approval for the appointment of a deputy representative to the City Council's Lead Member, Councillor Kelly, on the Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body.

The Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body has been established to deal with devolved Government funding for the 2015-2019 period for Major Transport Schemes. Membership proposals for the Body require that an Elected Member from Coventry City Council be appointed to represent it on the Local Transport Body. It was also necessary to identify a deputy in the event that the representative cannot attend meetings of the Body.

At the meeting of the Council on 4th December 2012, Councillor Kelly was appointed as the City Council's Lead representative. The Council was now required to appoint a deputy representative to the Lead Member.

RESOLVED that the City Council appoint Councillor J. Mutton as the deputy representative of the City Council on the Coventry and Warwickshire Local Enterprise Partnership: Local Transport Body.

126. Question Time

There were no written questions.

The following Members answered oral questions put to them by other Members as set out below, together with supplementary questions on the same matters:

No	Question Asked By	Question Put To	Subject Matter
1	Councillor Blundell	Councillor Mrs Bigham	Future location of Godiva Festival
2	Councillor Crookes	Councillor Mc Nicholas	HS2
3	Councillor Taylor	Councillor Townshend	War Memorial Park Green Flag Assessment
4	Councillor Hammon	Councillor Townshend	War Memorial Park Car Park
5	Councillor Hammon	Councillor Kelly	Future use of Drapers Hall

127. Statement by the Leader

There was no statement.

Private Business

128. Shelton Square – Investment Acquisition

Further to Minute 124 above, the City Council considered a private report of the Director of City Services and Development, which contained details of financially confidential information in respect of the proposed investment acquisition at Shelton Square and City Arcade.

RESOLVED that the City Council

- 1) Approve the acquisition of the leasehold interest in 1-11 Shelton Square and 1a City Arcade.**
- 2) Delegate authority to the Director of City Services and Development and the Director of Finance and Legal Services, in consultation with the Cabinet Member (City Development) to complete all the necessary legal documents in connection with the purchase.**

(Meeting closed at 4.30 pm)

1 their signatures to it. The charity was asked if it
2 would like to join, and hence I wrote to the trustees,
3 asking them whether they wished to. My qualification,
4 of course, was that if it was to be a broad coalition --
5 as it says here, it needs to be broad.

6 I think that the sequence then goes on to show that
7 there was a discussion about it, there were suggestions
8 within ACL, and the correspondence that follows after

9 that first e-mail to the trustees is, I think, all
10 between ACL and its advisers and its staff and
11 the council and so on, and not with the trustees. And
12 in the event, the letter was not published.

13 MR THOMPSON: Mr Knatchbull-Hugessen, this is by no means an
14 isolated incident. We don't want to go to it lot of it,
15 but for example at tab 55 there's a discussion,
16 evidenced between yourself and Mr Martin Reeves, the
17 chief executive of the council, and Webber Shandwick in
18 a conference call on Friday 26 October. The passage
19 I was going to take you to, that was simply to show that
20 this is not the only time, as it were, that you were
21 dealing with such people.

22 Can I ask you to turn to -- there's a small grey
23 file next to you on your right.

24 A. Is there nothing on 755?

25 Q. No, I simply wanted to point to the fact that you, on

1 755, were talking to Webber Shandwick back in October.

2 That's correct, isn't it?

3 A. My Lord, this may happen again. I have a distinct role
4 as a director of ACL. ACL had engaged Webber Shandwick,
5 and it is natural that I would be in conversation with
6 fellow directors about stuff that was happening with the
7 company that ACL had engaged. Sorry, this isn't -- this
8 is not a trustee-related or charity-related letter.

9 Q. I misunderstood you. I think what mislead me was when
10 it said:

11 "I thought it might be sensible to write extensively
12 in order to ... (reading to the words)... knowledge and
13 authority."

14 A. I haven't had chance to read. I thought we were
15 following the Webber Shandwick. I'm sorry.

16 My Lord, may I have a chance to read this and see
17 where we're at?

18 MR JUSTICE LEGGATT: Yes.

19 MR THOMPSON: It's quite a long letter, I wasn't proposing
20 to get into it now. Obviously you can read it if you
21 want to.

22 MR JUSTICE LEGGATT: If you read enough to see what it's
23 about, anyway.

24 A. Thank you, my Lord. What it is is, apart from the first
25 line of a reference to Webber Shandwick, which is dating

1 it, further to a telephone conversation, I thought it
2 sensible to write. But the text is actually
3 observations on the performance and otherwise of ACL,
4 various members of staff and the chairman and so on.

5 MR THOMPSON: Yes.

6 A. It's not part of a PR campaign.

7 Q. I'm sorry, it may assist you if you turn to tab 53.

8 A. Yes.

9 Q. This may cast light.

10 A. Okay.

11 Q. There's minutes of a trustees' meeting held on
12 12 September.

13 A. Yes, I am familiar with that.

14 Q. Mrs Knatchbull-Hugessen was present and you were in
15 attendance.

16 A. Mm-hm.

17 Q. If you turn to 750, at the bottom of the section headed
18 "Arena Coventry Limited", it says:

19 "The trustees have similarly been invited to join
20 the City Council and ACL in the instruction of Webber
21 Shandwick to handle the public relations interests of
22 all three parties at no cost to the charity."

23 That's what happened, isn't it?

24 A. Absolutely, that was the invitation that was made.

25 Q. Can we now look at two documents that are actually quite

DRAFT

Minutes of the Trustees' meeting held at the Ricoh Arena, 12 September 2012

Present:

M.F.Knatchbull-Hugessen
P.M.Harris

Apologies:

R.T.E.Higgs

In attendance:

E.L.Barlow
P.W.Knatchbull-Hugessen, Clerk
For Item 3 R.Miller, Dafferns, L.Beadle, HPM.

1. The minutes of the meeting held on 17 July 2012 were approved.
2. A Deed of Appointment was entered into by Emily Barlow. It was agreed that she should become a Director of Hope Property Managements Ltd and of The AEHC's Company Limited. She would become a signatory on both bank accounts. She was welcomed as a Trustee. The Deed would be completed by Rowley Higgs and returned by post.
3. Hope Property Managements Ltd

The draft accounts were presented. A sum of £48,218 would be gift aided to the Charity. The Directors agreed that although they approved the accounts they would sign them when they were able to approve the Charity's accounts in December 2012. The representation letter was agreed and signed but would be held and dated at the time of the signing of the accounts.

4. Arena Coventry Ltd

The Trustees reviewed the period since their last meeting and agreed that the briefing notes contained the developing situation which in summary is:

Sisu have made no further contact with the Charity and the period of exclusivity had ended.

The City Council was now intending to agree to lend the shareholders of ACL sufficient funds for them to purchase ACL's debt from the Yorkshire Bank. The terms of the City Council loan would extend the term and reduce the rate of interest. This would give ACL space to develop the business to return to profitability notwithstanding the performance of the principal tenant, CCFC.

Any increase in the value of ACL would only be as a result of growth in business and profitability or a major reduction in the value of the loan. It was acknowledged that there were a variety of scenarios that might emerge following the restructuring of ACL's debt. It was agreed that emergency meetings might be required to meet these challenges.

The Trustees have no reason to believe that their relationship with the City Council is anything other than positive and that the support of the City Council is wholly beneficial to the interests of the Charity.

The Trustees had been invited by the City Council to join them in instructing PwC to act for the shareholders and ACL jointly, at no cost to the Charity, and the Order for Services was signed.

The Trustees have similarly been invited to join the City Council and ACL in the instruction of Weber Shandwick to handle the public relations interests of all three parties at no cost to the Charity.

5. Drapers' Hall

A headline paper was circulated which proposed the establishment of a company limited by guarantee with the members being Coventry City Council, Coventry University and the Charity (acting through the AEHC's Company Limited). The first directors would be Prof Atkins, Dr Reeves and the Chairman. Their alternates would be Nick Stokes, Barry

Butterworth and the Clerk. The Company would undertake a feasibility study and make proposals for the re-use of Draper's Hall as Music Coventry.

Music Coventry would provide performance and practice space for Coventry schoolchildren and students together with an instrument loan scheme. It was also intended to establish a collection of sheet music concentrating on popular music, primarily of the last 250 years.

It was decided to undertake this as proposed with an understanding that such a feasibility study could cost as much as £50,000.

6. The Derek Higgs Start a Heart Appeal

Payment had been made for the defibrillators to be placed in schools. There remained £317 in the Appeal account. The training was expected to cost in the region of £750. The Trustees agreed to meet the cost of the training and then to close the account and the Appeal.

7. Coventry Mysteries Company

It was hoped to be able to appoint a Festival Director and Events Officer in the near future. The post of Events Officer would be advertised through both universities. The contribution to be made by each partner towards the core costs of the Coventry Mysteries Company would be £15,500. It was understood that the other three partners would be providing funds for the commissioning of works and that the Charity would make grants towards projects in schools and the community which meet the normal objectives and criteria of the Charity whilst being participant in the Festival.

The Trustees agreed to make a grant of £15,500.

The Trustees further agreed to join the City Council in a letter of comfort to enable the festival director to make early bookings and commissions prior to the receipt of funds.

8. Alan Higgs Centre Trust

Purchase orders have been placed for the fitness equipment and the loan of £155,000 would be taken up within the next month.

9. Bank position

At the Yorkshire Bank, The Ricoh Arena, Coventry 11 July 2012

Hope Property Managements Limited

£167,647

Alan Edward Higgs Charity

£926,425

The Trustees agreed to keep under review whether they would continue banking with the Yorkshire Bank.

10. Applications to the Trustees

Strategic grants

COVENTRY UNIVERSITY

To fund a Saturday School for young people from Coventry Schools

10,000

Priority area applications

CRUSADER FOUNDATION

To set up 'Doorstep Sports Clubs' in Oatley and Tile Hill.

1,700

DOMESTIC ABUSE COUNSELLING SERVICE

To provide subsidised counselling sessions to victims of domestic abuse and violence in Warwickshire.

1,000

GIRLGUIDING COVENTRY SOUTH DIVISION

Towards the refurbishment of the Fillongley campsite.

3000

One off applications

DAVENTRY AREA COMMUNITY TRANSPORT

Towards the purchase and running costs of a minibus.

2,000

ENTRAIDE (MUTUAL AID)

To provide welfare and debt advice to refugees in North Coventry.

nil

HAPPY DAYS CHILDREN'S CHARITY

To provide holidays for children with disabilities or victims of abuse

3,556

LISTENING BOOKS	
To subsidise ten young people's membership for a year.	dejar
MDF THE BIPOLAR ORGANISATION	
To support a self-management course in Coventry for local sufferers.	2,000
NATIONAL YOUTH ADVOCACY SERVICE	
To provide additional support to looked after children in Solihull.	4,100
SHINE CHARITY	
To assist with the cost of an area advisor to work with disabled children and young adults in the Coventry area.	1,000
SOIL ASSOCIATION	
To set up Schools' Famous' Markets in Central Warwickshire	nil
SOLIHULL AGE UK	
To assist with funding the Enquiries Service which gives free advice over the telephone to older people in Solihull	nil

Year to date	
Strategic grant applications	45,500
Priority area grant applications	17,750
On off grants applications	12,836
	53,536

The Trustees agreed to make a payment of £7050 to the Performing Arts Service who had failed to present their grant cheques within six months.
The grant to the Coventry Mysteryes Company of £15,500 is recorded as a Strategic Grant.

The next meeting of the Trustees was agreed to be held on 14 November (sign off accounts)

Dates for meetings in 2013 all to be held at the Ricoh Arena at 10:00am

16 January
20 March (last meeting of year)
15 May



Document 3: Second Extract of Trial Transcript

- 1 A. Yes.
- 2 Q. And I think that's something that hadn't been picked up
3 in your previous e-mail. I think it's clause 4.5 of the
4 agreement, but I don't think we need to be worried about
5 that.
- 6 A. Okay.
- 7 Q. So that was a meeting of all the trustees --
- 8 A. Mm-hm.
- 9 Q. ~~-- on 14 January, which was the day before the council~~
10 decision of 15 January --
- 11 A. Yes.
- 12 Q. -- and it was a legally necessary step for the loan to
13 ACL from the council to go ahead; is that right?
- 14 A. Yes.
- 15 Q. So just to wrap up: first of all, the trustees, you'd
16 accept, were fully informed of Mr West's plan
17 from August 2012 onwards?
- 18 A. They certainly were, yes.
- 19 Q. And I would put it to you that they were viewed as
20 a critical element of that plan from the start. That's
21 clear from Mr West's own memos and from your response.
- 22 A. Partners in ACL, yes.
- 23 Q. Your adviser, Pricewaterhouse, played a central role
24 in the negotiations with the bank; would you accept
25 that?

- 1 A. With the obvious caveat that at the time they were not
2 our advisers.
- 3 Q. The trustees maintained secrecy in relation to SISU
4 until January 2013 and they participated in the PR
5 campaign against SISU in January 2013?
- 6 A. I'm not sure how the trustees participated if there was
7 a PR campaign.
-
- 8 Q. ~~You were certainly notified of it. Are you saying you~~
9 didn't actually consent to it?
- 10 A. The trustees ... I'm sorry, I'm struggling with PR
11 campaign. There was -- ACL had PR advisers, Webber
12 Shandwick. The offer was made to the trustees that
13 Webber Shandwick could act for them. Webber Shandwick
14 prepared papers, prepared scenarios, prepared all sorts
15 of things. I certainly recall taking advice directly
16 from Webber Shandwick on one occasion, maybe two
17 occasions, as the charity. But more than that, no.
- 18 Q. Then finally, the trustees' role was crucial, in a legal
19 sense, in that you had an effective veto right under the
20 joint venture agreement to the entire council plan;
21 is that correct?
- 22 A. The trustees need not have agreed to the amendment of
23 the joint venture agreement.
- 24 Q. Overall, our submission would be that you clearly acted
25 wholly inconsistently with the indicative term sheet

Other Issues - CCFC

- Continued failure to withhold rent but pay all else is potentially unlawful
- New manager impressive, results improving slowly
- SISU have restructured their finances, more stable, more saleable
- We understand CCFC have paid the November payroll and HMRC
- Realistically cannot afford much rent in League



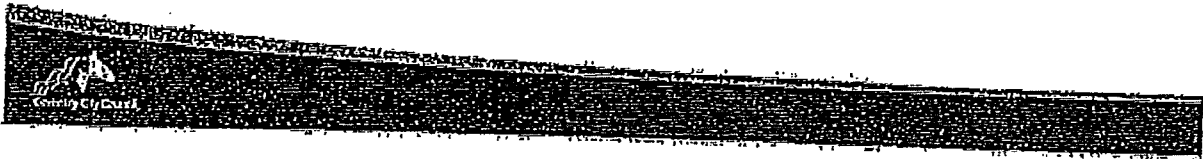
PR and Comms Issues

- ACL have appointed Weber Shandwick – a leading PR agency to manage and coordinate comms for ACL and shareholders
- Extensive training for Directors and managers in ACL
- Pre prepared statements covering most eventualities
- Strong team of industry experts fully up to speed
- Monitoring and feeding into social media
- Council/Higgs/ACL clearly winning the media war
- Detailed meeting with the Leader
- Clear distinction between ACL and Council communications so far protecting Council's reputation



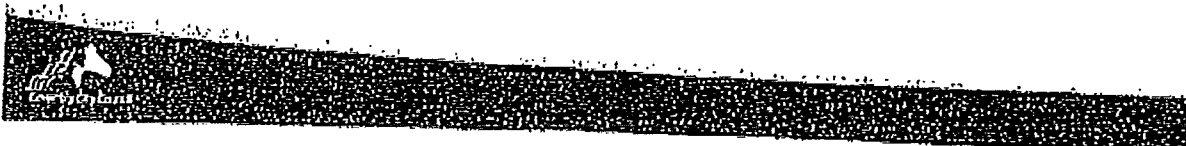
Progress

- We have started due diligence on legal and financial data available
- Drafting a Cabinet/Council Report
- Slot fixed with Cllr Kelly to look at scenarios (this pm)
- Liaising with PR consultants and awaiting detailed CCC strategy



Higgs Charity

- Strong relationship with Paul Harris on preparing for Bank meeting
- Frosty exchanges with Peter K-H – wants all sorts of promises and assurances from us we won't agree to
- Caught between clinging to unrealistic values and realising how precarious their position is



**Arena Coventry Limited
Minutes of Board of Directors Meeting**

Wednesday 29th August 2012

Minutes/Action Points

Present: Nicholas Carter (Chairman)
Daniel Gidney
Petor Knatchbull-Hugessen
Chris West
Paul Harris
Martin Reeves

In Attendance: John Street

Apologies:

1. Welcome

The Chairman welcomed everyone to the meeting held to discuss the previously circulated paper from CW on a proposed ACL strategy for the next 6 weeks to 2 months.

2. Yorkshire Bank

The Board acknowledged receipt of the paper prepared by Chris West as well as the paper prepared and circulated by DG yesterday evening.

CW summarised his proposed ACL strategy and stated that, in his opinion, one of three things may happen:

1. The original deal with SISU, where CCFC buy the ABHC shares in ACL, is completed, although this seems increasingly more unlikely;
2. Another investor offers to buy the ABHC shares in ACL;
3. CCC purchases the YB loan to protect their investment in ACL.

CW advised that SISU have been told ACL would not allow SISU to purchase the YB loan. CW also confirmed that SISU remain focused on the transaction which includes the purchase of the Higgs shares in ACL, the discharge of the YB loan, an extended head lease to 125 years and a plan for exponential growth in ACL.

However, SISU have still to provide a business plan to CCC, any investment proposition and their view of how the acquisition of the shares would benefit ACL.

3

4

reword to SISU not have charge of assets.

CW confirmed that in the event of any transaction being completed with SISU, CCC would not release any security and would have the first charge over any assets.

MR informed the Board that he is to brief the CCC Labour Councillors on Monday 3 September to seek full agreement to proceed, when the time is right, to go to YB for CCC to refinance the ACL loan up to an agreed value.

The Board discussed the risk of a scheduled bank meeting being leaked and the possible reaction to this news by SISU which included CCC being put into liquidation and SISU making a direct approach to buy the YB loan.

DG advised, that in April, the Yorkshire Bank were provided with a cash flow mitigation plan based on the assumption of no CCFC rent from 1 April 2012. The mitigation assumptions used then are similar to those provided in the Executive summary provided to the Board yesterday.

The Chairman advised the Board that he written to Mr. Geoffrey Robinson and Mr. Mike McGinnity explaining the outstanding rent due from CCFC and that now the Escrow account had been depleted ACL would have to pursue the personal guarantees. The Chairman confirmed that no response to the letters had been received.

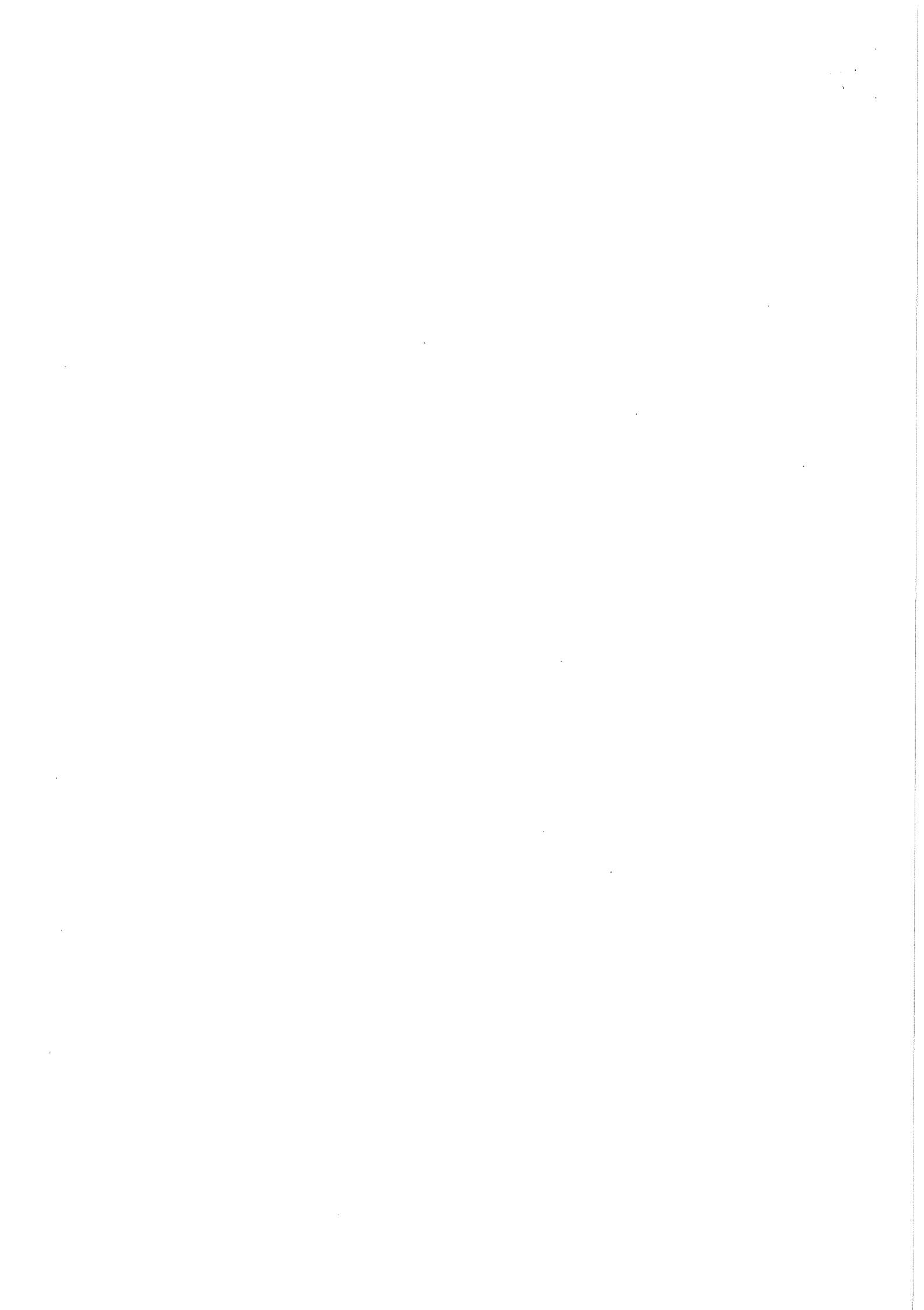
The Chairman advised that Tim Fisher had still not confirmed a date to progress the discussions on a future rent deal between ACL and CCFC. The Board acknowledged that a rent deal would not support the proposed approach to purchase the debt at a discount from YB. CW would contact SISU and confirm a delay in any further rent negotiations.

The Board approved MR to commission a national PR agency to develop a coherent communication strategy to jointly protect stakeholder reputation.

After a further discussion the following decisions were agreed:

1. The Board agreed to support the proposal that The Higgs Charity and the Council jointly approach the Yorkshire Bank with a view to the Council paying off the loan at a discount and refinancing a new secured loan to ACL at that discounted amount, on the basis that CCC do not sell the security to a third party. *to take full security out of CCC.*
2. The Board agreed that CCC would commission a report on ACL to the Bank and that the preference was to use Andrew Skinner of PWC.
3. The Board agreed to work on a business plan to understand how ACL survive in the worst case scenario with a refinanced loan.

4. The Board agreed to release further information to SISU via their advisors as required so that the original deal with SISU can be continue to progress.
5. The Board agreed to extend the deadline for CCFC to perform on rent to 10 October 2012 from the previous date of 12 September 2012.



Document 7: 28 October Documents

27th December 2012 – ACL and CCFC Urgent Issues and Timeline

Urgent Issues – Council

- Sort presentation for Labour Group aging to way forward

ACTION: Chris

- Get Item added to Council Agenda for 15th January, as a private only Item? Normal agenda goes out on 7th. We are unlikely to have report ready by then, Need to consider late Item?

ACTION: Christine to Lead

-
- Dig out latest draft report and get finalised.
 - Need to sort out detail of transaction (CCC to YB? CCC to ACL to YB?) (Do we need CNR to be involved?) I've lost track of where we are on this in detail.
 - Need to agree amount we refinance. Could be just £14m or £14m plus the £0.4m December payments by ACL to YB? This will help ACL cashflow, but may impact on option for doing transaction (the £0.4m must be between CCC and ACL) and tax??
 - Because there is a discount there is a tax implication albeit small c £250k tax payable, and presumably only if ACL make a profit? We need to agree an approach with ACL. Easily swallowable within ACL's shelter, so not as big an issue as once thought?

ACTION: Lisa, Chris to raise issues with ACL as below.

- Need to agree technical details of loan – term, interest, break clause, security, options to repay early, and any pre conditions – IV variation, business plan approval, security arrangements etc. This need to be in a written up offer for ACL Board to agree to.
- What do we need to conclude due diligence on ACL – detailed business plan of costs cutting measures plus future business growth

ACTION: Lisa and Michael Rennie to lead.

- Brief the Opposition – Chris/Martin to lead.

- Brief Key Stakeholders:

Sky Blue Trust - Chris

Compass – Jacky or Nicholas Carter

Joe Elliott/Gary Hoffman + Chris

Cov Telegraph/CWR – Martin or Chris with Fran

Ricoch + Jacky

Other Sponsors – Jacky or Liz

- Brief and share draft report with CCC external auditors

ACTION – Chris, Barry, Lisa (any 2+ of 3)

- Need to get IVA changed to allow a shareholder to also hold debt. Do we want to beef up veto clauses at the same time or consider relying on loan conditions if its means issues arising with Higgs eg no share disposal without lender's consent?

Formatted: Not Highlight

ACTION: Christine

ACL Issues.

- Need a Board report of loan offer for formal approval – especially in relation to security.
- Need to agree sum - £14m or £14m plus Dec payments? (c£0.4m)
- Need to consider tax issues and strategies to minimise tax liability arising from refinancing.
- Need a revised budget and plan that shows how ACL can survive post refinancing
- Need to brief ACL's auditors and sign off accounts asap after deal
- Need to consider future banking arrangements? In particular security for YB going forward
- Need to agree major cost cutting/revenue growth strategy

Document 8: 28 October Documents

www.coventry.gov.uk

On 15 Jan 2013, at 13:05, "Hogwood, Chris (LDN-WSW)"
<CHogwood@webershandvlok.com> wrote:

Thanks Martin.

That's really appreciated!

Just to check – who will be available for interview from the council and when?

Fran mentioned last night that Alun was relaxed about councillors appearing on radio/TV as long as he gets story first. I'm assuming council press office will be under siege for more than AGL/Higgs as it's fundamentally your story.

— Stephen and I are at Ricoh with Jacky and Liz. I believe Peter is going to be with us soon too.

I've always said local government is exciting. From the Lyons Review through to the Barnett Formula. Never a dull moment. Big fan of the Housing Revenue Account too. And don't get me started on business rate retention...

Chris Hogwood

T +44 (0)20 7067 0430 M +44 (0)7824 377 636

From: Reaves, Martin (<mailto:Martin.Reaves@coventry.gov.uk>)
Sent: 15 January 2013 12:56
To: West, Chris; Hogwood, Chris (LDN-WSW); 'P.W. Knatchbull-Hugessen' (clerk@higgscharlly.org.uk); 'Harris, Paul (CTTO)'

(Paul.Harris2@virginmedia.co.uk) (Paul.Harris2@virginmedia.co.uk)
(Paul.Harris2@virginmedia.co.uk); Collingham, Fran; 'Liz Cooper';
'jacky.isaac@ricoharena.com'; 'ncatormin@gmail.com'
Cc: Finch, Stephen (MAN-WSW); Clayton, Rod (LDN-WSW); Deane, Alex (LDN-WSW)
Subject: RE: Statements and timeline

I have just had the final pre-Council briefing with the Lord Mayor and he is comfortable for me to remain away from the Chamber to support the media and stakeholder briefings and one of my Director colleagues will sub for me.

So Chris H – I know that you have got used to getting on with stuff without me – but I will be able to make calls and deliver the actions once we have the transaction confirmed.

Everything else is in order with process. We expect a unanimous decision before 3pm.

Please wait for the green light from us and then we get going.

I had another extremely constructive and honest discussion with the Editor of the CT this morning – so all good!

Fran/Chris W – can we convene in my office immediately post-decision so we can agree actions from our side?

Speak soon.

Marlin