

WALLINGFORD TOWN COUNCIL

MINUTES

of the

Extraordinary meeting of Full Council held in the Town Hall, Wallingford on
Monday 15th April 2019

PRESENT

The Mayor, Councillor Lee Upcraft

Councillors Beatty, Cripps, Dolton, Hughes, Kidley, Lester, Lloyd, McGregor, Norton,
Titchener, Whelan and Wilder

The Town Clerk, Mrs Paula Lopez
Officer in Attendance: Tracey Collins (Minute Taker)

652. APOLOGIES

Apologies for absence were received from Councillors Baroni.

653. ADMISSION OF THE PUBLIC

There were no admissions of the public.

654. DECLARATION OF INTERESTS

A Councillor with voting rights who has a disclosable pecuniary interest or another interest as set out in our Council's Standing Orders Code of Conduct (Item 13) in a matter being considered at a meeting is subject to statutory limitations or restrictions under code of conduct and his right to participate and vote on the matter (guidelines are available at the meeting and all Councillors have received a copy prior to the meeting) Information for each Member was available at the meeting.

There were no declaration of interests.

655. PUBLIC PARTICIPATION – NOTIFIED AND IMPROMPTU (Total 15 Minutes)

None

656. TO DISCUSS AND RESOLVE IF NECESSARY, THE FOLLOWING

The Town Council are being asked to contract with the architects, ADP and associated consultants namely, CBG Consultants Ltd (Mechanical Electrical & Public Health Engineers), Peter Dann Ltd (Civil & Structural Engineers), MLM Group (Acoustics), Atelier Ten Ltd (Fire Engineer) & Verte Ltd (BREEAM) separately to take the Regal project to RIBA3. The Town Clerk and Cllr Lloyd have concerns in doing so.

i) Councillor Upcraft explained that Council would need to contract formally with each of the sub-contractors. It had been hoped initially to be able to contract with a single contractor on the design and build.

Councillor Steve Beatty arrived 7.08pm

Councillor Upcraft continued to explain the initial design costs of £80,000 had hoped to be recovered from the S106 monies but the Town Clerk has explored this and found that this is not possible. Although there is £85,000 being held by SODC for the Regal build, only 5% can be claimed for consultancy fees the rest has to be used for the capital build, only being claimed once building starts. Therefore the design will need to come from Council reserves. Councillor Upcraft asked Council if they were happy with that or should the project be put on hold.

Councillor Lloyd felt the project should not be stopped in case it does not get started again. Subject to agreeing the contract the Council should continue with the design. This view was supported by other Councillors.

It was Proposed by Councillor Lloyd, Seconded by Councillor Beatty and

RESOLVED: THAT the Town Council proceed subject to clarification of contractual issues, proceed to RIBA stage 3 drawing from the reserves, subject to resolutions of the contractual issues.
All in favour.

Councillor Upcraft thanked the Town Clerk for her work on discussions with the District Council.

ii) Councillor Upcraft explained that the Council had hoped that we would get a design and build contract so that a consultant and architect would then handle the subcontracting as necessary, unfortunately this is not the case. We have a Project Manager who has sourced an architect and various associated consultants, consultancy, mechanical, structural, electrical, fire, acoustic, and bream. Each one would need to be contracted separately. Councillor Lloyd gave some background on this :- When public sector bodies don't have the staff and expertise to supervise a project like this you obtain an Engineer Procure Construct (EPC) contract, so that the public sector body contracts with a single entity, the single entity

then sub-contracts the architecture etc. it means that if something goes wrong the council is not compromised, it is the principal contractor. By having 5 different contracts it creates in legal terms a lacuna (a gap), so if something doesn't work then each could blame the other. It means that you can go round in circles and don't protect the Council's interest. It was thought that this problem had been covered and that the individual sub-contractors would contract with Watts which proved not to be the case. The Architects were then asked if they would take responsibility for the contractors, initially they said yes then they said no so we have no clear path to mitigate risk. To try to mitigate Council risk JCT Contract performers could be used, these have been developed by the construction industry for small contracts (in the scheme of things this a small contract, although big for us.) Watts are proposing that we ask all the small contractors to sign up for the JCT contract and we should then attempt to get joint and several liability so that in the event that something doesn't work each and every one of the consultants has a responsibility. Currently Councillor Lloyd doesn't have confidence that what is proposed adequately protects us from risk and has contacted a firm of Solicitors Bevan and Britan who are prepared to look over the offers that have been made by the individual sub-contractors and the JCT Contract which they are very familiar and advise us on the way forward. They weren't willing to give a firm price because they haven't seen any firm documents but thought they could produce an opinion for about £3-4000.

Councillor Lloyd asked that the Town Clerk be given approval to seek further advice or that, alternatively Council consider whether we proceed on the basis of the individual contracts. Once RIBA stage 3 is reached and planning permission is granted further procurement can take place for a contractor to build the Regal Centre replacement. Councillor Lloyd went on to say that there is a risk of paying for the same work twice if the new contractor decides to use the designs but formulates them themselves.

Councillor Stead asked "what is the reason for Watts not accepting a JCT"? Councillor Upcraft explained that it's not that Watts are not accepting a JCT in their view the invitation to tender did not specify it should be a JCT and their understanding of our procurement rules meant that we wanted three quotes for each of the sub contracts that we wanted a detailed understanding of the breakdown of costs. We could have asked for the design and build which we thought we were getting and that would give us a figure of £2.7m to £3.2 million, there would not have been an understanding of breakdown of costs and whether we were getting value for money.

Councillor Norton asked what Watts are being paid for at this current time if they are not doing any of this work? Councillor Upcraft confirmed that Watts are doing some of the work for us and when pushed they are preparing each of the consultant contracts under the JCT terms, it was disappointing that they needed to be pressed on this.

Councillor Lloyd, in answer to Councillor Norton's question, if we had realised 6 months ago what we know now, that OCC hadn't written the tender the way we thought they

were going to write it, it might now be different story. I don't believe this is money wasted, whatever happens we need to get planning permission and get to RIBA stage 3.

We can move forward with the 5 separate contracts get to RIBA stage 3 obtain planning permission and then look for a construction contractor who will take it on an EPC (engineer, procure, construct). An alternative is to terminate Watts contract then look at other contractors as an EPC contractor to take us through to stage 3 using the architects selected.

Councillor Upcraft stated there was a third alternative, Watts have explained that ADP could appoint a whole team through an associated company ADPAK Ltd this will have cost implication a % added to each fee in order to take on responsibility for liability for the other consultants, a cost breakdown had been requested from Watts. This confirms that with a JCT contract there is no guarantee you can make these consultants jointly responsible.

Councillor Beatty, presumably everyone will be talking to everyone so any issues can be sorted out early. It is Council's responsibility to get this right. The Town Clerk stated that this is why this has been raised as a possible problem to try to mitigate risk where possible at this early stage.

Councillor Upcraft asked for clarity as to whether Council is asking Watts to prepare the 6 contracts under JCT terms or that the Town Clerk take further legal advice.

The Town Clerk suggested waiting until the figures are received for taking the ADPAK Ltd route and if the costs are deemed to be too high then we go back to exploring the JCT contract option.

Councillor Upcraft confirmed that we continue with Watts to prepare the JCT terms and we ask for a quote for the ADPAK option and then both will come back to Council and to be clear we are not going to pay for legal advice on the JCT contracts at this stage.

It was Proposed by Councillor Upcraft, Seconded by Councillor Lester and

RESOLVED: THAT Wallingford Town Council instruct Watts to prepare all draft contracts to JCT terms and to simultaneously seek a quote for the ADPAK option to be brought back to the Council at the next meeting 20th May to select one of these options.

All in favour.

657. DEMOLITION OF THE REGAL BUILDING. TO DISCUSS AND RESOLVE AS NECESSARY THE FOLLOWING

Watts have obtained quotations for a contractor to carry out an asbestos survey of the Regal building prior to demolition and have recommended that Council accept the

quotation from Envirochem Analytical Laboratories Ltd in the sum of £ 1,750.00 excl VAT

It was Proposed by Councillor Upcraft, Seconded by Councillor Lloyd and

RESOLVED: THAT Wallingford Town Council accept the quotation from Envirochem Analytical Laboratories to carry out the asbestos survey.

All in favour.

Town Clerk reported that there would be a delay before the survey could be carried out as there were many items in the building that would need to be removed as the survey was somewhat destructive.

Meeting Closed at 8.11pm