Notice of Special Administration and Resources Overview and Scrutiny Panel Meeting

Thursday 16 January 2014 at 5.00 pm

Council Chamber, Town Hall, Bournemouth

Panel Members:

Councillor Christopher Wakefield – Chair
Councillor Derek Borthwick – Vice-Chair
Councillor Mark Battistini
Councillor Johann Edward
Councillor Barry Goldbart
Councillor David Kelsey
Councillor Susan Phillips
Councillor Theo Stratton
Councillor Roger West

All Members of the Panel are summoned to attend this special meeting to consider the items of business set out on the agenda at page 3 below.

The Public, press and any Councillor are welcome to attend this meeting.

For further information please contact: David Harrison, Principal Democratic Services Officer, Legal and Democratic, Town Hall, Bourne Avenue, Bournemouth BH2 6DY. Tel: 01202 451104 E-Mail: david.harrison@bournemouth.gov.uk
Public Involvement

The Administration and Resources Overview and Scrutiny Panel welcomes members of the public to contribute to the meeting

1. by asking to speak on an agenda item or a community issue as a ‘Deputation’; or

2. by asking a public question - any member of the public whose name appears on the Electoral Roll for Bournemouth - which includes a person under the age of 16 years living in Bournemouth and who is escorted by a qualifying adult; or

3. by presenting a petition in relation to items on the agenda.

A request to speak as a deputation, ask a question or present a petition must be sent in writing or email to David Harrison at the address shown above by no later than 5.00 p.m. on Wednesday 15 January 2014.

A loop system for hearing impairment is provided in the meeting room. There is disabled access to the building.

Councillors and visitors with particular needs should inform the Council before arriving at the meeting.

This agenda together with records of decisions and reports are available on the Council’s web site at http://www.bournemouth.gov.uk

A copy of this document may be available on request in alternative formats.

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Agenda

Items to be considered while the meeting is open to the public

1 Apologies

2 Substitute Members

The Democratic Services Officer will report on any changes in the membership of the Panel under Procedure Rule 89.

3 Declarations of interest

Members are asked to declare any disclosable pecuniary interests at the meeting, under Rule 5 as set out below:

Declarations of Interest by Members and Officers:

a. It is the responsibility of every Councillor to declare, at the relevant stage of a meeting, any disclosable pecuniary interest in any item under consideration as required by the Localism Act 2011 or in any event by the time the item of the business is reached.

Members are also asked to state fully the nature of the interest(s), which will be recorded in the record of decisions. If any member has a query on any particular matter, please contact the Democratic Services Officer in advance of the meeting.

4 Public items

a Public Questions

The Democratic Services Officer will report on any public questions received by the notice deadline.

b Deputations

The Democratic Services Officer will report on any deputation requests received by the notice deadline.

c Petitions

The Democratic Services Officer will report on any petitions received by the notice deadline.
5. **Call-In of Cabinet Member Decision – Pavilion Gardens Development**

The Service Director for Legal and Democratic will report that, under the Overview and Scrutiny Procedure Rules, notification has been received from 2 Overview and Scrutiny Members to call-in the decision made by the Leader of the Council on 3 January 2014 concerning the Pavilion Gardens Development.

The following documents are circulated with this agenda:

a. Call-In request circulated at ‘A’.

b. Decision of the Leader of the Council circulated at ‘B’.

c. Flow chart re. Call-In process circulated at ‘C’.

A briefing paper from the Service Director for Legal and Democratic will be circulated to the Panel in advance of the meeting.
Cabinet Decision ‘Call-in’ Request

We wish to register a request for the following decision to be called in for reconsideration prior to implementation. Our objection to the decision and evidence that the decision making body did not take the decision in accordance with the principles set out in Article 13 (Decision Making) of the Constitution is set out below.

Meeting/Decision Date: 2 January 2014

Decision Clause No: DECISION NOTICE BY LEADER OF COUNCIL

Decision Title: Pavilion Gardens Development, Bournemouth

The Objection and Evidence that the decision maker did not follow the principles set out in Article 13 (Decision Making) (continue on a separate sheet if necessary. 500 words maximum)

The Objection is:

The rescission of the Development Agreement with Osborne (Bournemouth) Ltd is unreasonable and unfair and will lead to the waste of substantial investment already made in the project, will be detrimental to the regeneration of the Pavilion and Westover Road and will lead to extensive and expensive litigation. For this reason, one should allow the Trevor Osborne Property Group Limited to present their concerns at a Panel Meeting with a view to allowing six months to fulfil their full planning permission.

The evidence that the decision making body did not take the decision in accordance with the principles set out in Article 13 (Decision Making) is:

In particular, the Decision does not follow the principles set out in Article 13 and, in particular, paragraph 13.1 (a), in that consideration did not take into account all relevant factors. Evidence is contained within the attached copy letter from the Trevor Osborne Property Group Limited to Mr Roger Ball, Service Director for Technical Services, dated 19 December 2013 enclosing copy letters from Jones Lang LaSalle and Land Securities and Chronology of Events pertaining to the Pavilion Gardens Development Agreement.

Name: Councillor Ronald Whittaker (please print) Signature: [Signature]

Councillor Carol Ainge Signature: [Signature]

Date: 10 January 2014

Please complete and return this form to the Democratic Services Manager, Town Hall, Bournemouth, BH2 6DY. Alternatively you may fax the form on (01202) 451001. Should you have any queries about completing the form please telephone (01202) 451104.
Mr Trevor Osborne
The Trevor Osborne Property Group
Rectory Lodge
Combe Hay
Bath BA2 7EG

2nd January 2014

Dear Mr Osborne,

Pavilion Gardens Development
Restated and Amended Development Agreement dated 29th June 2012
between Bournemouth Borough Council and Osborne (Bournemouth)
Limited

I refer to your letter of 19th December 2013, which I have now discussed fully
with colleagues and the Leader of the Council.

After due consideration of the points that you make, the Leader of the Council
has signed a Cabinet Member Decision Notice authorising Officers to rescind the
Restated and Amended Development Agreement relating to The Pavilion and
Land at Bath Road, North and Westover Garden, Bournemouth dated 29th June
2012. I attach a copy of this decision notice for your information.

This decision, which will be published later today, is subject to the Council’s
call-in procedures.

Yours sincerely

Roger Ball
Director, Environment & Regeneration Services
Dear Roger

I attach a formal letter which I expect you have been anticipating and which requires discussion between us. I have sent copies to the Leader and to the Chief Executive.

I hope your Christmas will be more peaceful and less harrowing than mine.

Kind regards.
Trevor

TREVOR OSBORNE
The Trevor Osborne Property Group
Rectory Lodge, Combe Hay, Bath BA2 7EG
Tel: 01225 832302

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19 December 2013

BY EMAIL AND BY POST

Mr Roger Ball
Service Director for Technical Services
Bournemouth Borough Council
Town Hall Annexe, St Stephen’s Road
Bournemouth
BH2 6EA

Dear Roger

Pavilion Gardens Development
Development Agreement (As Restated and Amended) dated 26 June 2012 between Osborne Bournemouth Ltd and Bournemouth Borough Council

The Development Agreement with Bournemouth Borough Council (BBC) states:

“The Council wishes to procure the development of part of the Lower Central Gardens and land adjoining the Pavilion at Bath Road North and Westover Gardens in accordance with this agreement.”

and requires OBL to arrange funding for the project. On 18 November 2013, we attended a meeting with John Beesley, the Leader of BBC, and yourself to report our progress in this respect. We were able to advise you that:

1. Odeon Cinemas continued to state that they would seek relocation from the existing Westover Road premises to whichever of the two competing sites is able to proceed and has the funding to do so.

2. On the basis that Odeon would relocate to Pavilion Gardens, we were able to confirm a strong demand from restaurateurs to lease space in the project at acceptable rental levels at a sufficient level of take-up to be satisfactory to a funder.

3. Our agents, Jones Lang LaSalle, had entered into discussions with a number of potential funders which included Land Securities REIT (LSR) which funding source had shown a strong interest in funding the project and we provided you with a copy of the appraisal upon which heads of terms were about to be agreed. It was explained, however, that LSR needed to be absolutely confident that only one leisure scheme with cinema and restaurant content would be undertaken at this time and, in this context, you and the Leader together met with LSR on 21 October. At that meeting, a Director of LSR confirmed the Fund’s enthusiasm to finance the project and sought to be convinced that BBC remained fully committed to the Pavilion
June 2013, BBC had resolved to acquire the Exeter Road site using compulsory purchase powers, should it prove to be necessary, to create a bus hub which is essential if the Bournemouth Vision is to be realised. Unfortunately, you were unable to give any indication of progress in the steps necessary to implement BBC's resolution, having only recently appointed consultants to prepare plans and costings for BBC's consideration. We have subsequently learnt that a report is to be submitted in February 2014 to BBC to seek consent to its five-year capital spending plans which includes the provision of the Exeter Road bus hub.

It is unfortunate that the lack of progress in implementing BBC's resolution to purchase the Exeter Road site and to do so using compulsory purchase powers has not been sufficiently advanced for LSR to be convinced of BBC's commitment and intent in relation to the compulsory purchase order. Alongside other interested parties, LSR have material concerns that BBC's approach to the compulsory purchase order is flawed and may prove to be unsuccessful. This has resulted in LSR withdrawing its support as a funder. A copy of the LSR letter is attached.

Intimations of this likely decision by LSR promoted discussions with two other funders with whom preliminary discussions had commenced before LSR had placed the site under conditional offer. Whilst feedback has been positive and the funds have expressed interest in the concept and the strength of the leisure market in the town, both of these parties have now identified that the lack of progress on the compulsory purchase order for the Exeter Road site prevents them from entering into funding arrangements until matters have been clarified. This position is made the more credible by the fact that we are advised that Legal & General (L&G), a strategic partner of BBC, has agreed to fund the Exeter Road site, having received advice that the CPO process is little advanced and probably flawed in any event. L&G's backing for the Exeter Road site is evidence that it and others consider BBC's resolution to acquire the site will not itself prevent the implementation of the extant planning consent on the site.

Consequent upon the decision by L&G and its concern about the safety of BBC's position in relation to the Exeter Road site, Odeon has decided to commit to lease the cinema proposed on that site. Jones Lang LaSalle, who have advised us in relation to the funding, have confirmed in the enclosed copy letter that, if BBC moves forward to achieve a confirmed Compulsory Purchase Order with evidence of its financial ability to purchase the site then the Odeon and the restaurant tenants would be enthusiastic to commit to the Pavilion Gardens site and there is sufficient evidence of investment interest to ensure the fundability of the project.

Over a long period of time, OBL has worked tenaciously to overcome planning difficulties, to obtain necessary licences, to refine the architecture, to obtain agreements to lettings, make changes responding to the several changes in BBC's leadership moving from casino to a cinema as the anchor tenant and has cooperated with the Pavilion operation in order to ensure that this project, if implemented, would make a significant contribution to the sustainable future of the Pavilion. At the meeting of the Planning Board on 16 December, several Members commented on the commitment shown by OBL over many years of difficulty. We enclose a chronology of some of the matters which have been relevant to the history of the site which brings us to the present day.

It remains within BBC's power to ensure that the project is undertaken. It is clear that, if BBC can obtain confirmation of a CPO and establish a credible programme for the creation of the bus hub, then the Pavilion Gardens project could proceed. You will appreciate that, although we are BBC's development partner, we have no control and cannot influence BBC's progress in relation to the CPO on the Exeter Road site and yet our attention has
been drawn on a number of occasions to the clause in the contract which permits BBC to serve a notice rescinding its agreement with OBL on short notice at any time after 31 December 2013. We respectfully remind you, however, that the agreement provides at clause 20 that:

"The parties will act fairly towards one another in the implementation of this agreement and each party shall owe to the others a duty to act at all times in the utmost good faith."

The service of a notice of rescission at this stage would not be compatible with that provision or with the objective of BBC on entering into the agreement as recited at the start of this letter.

The consequences of a rescission notice, aside from the undeserved financial damage which it would inflict on a company which acting in "the utmost good faith" has already invested over £3.5m to achieve BBC's objective, would be grossly unreasonable and unfair and the following undesirable outcomes would inevitably result:

(a) BBC would not be able to argue in pursuance of its CPO that the cinema and restaurants are to be provided on the Pavilion Gardens site thus advancing the Licet opposition with the result that the Exeter Road site will be developed with the funding provided by L&G and the opportunity to create the bus hub essential to BBC's Vision would be lost. The present unsatisfactory arrangements for bus transport within the Town would continue without resolution to the detriment of its residents and visitors;

(b) the poor architectural standard of the Exeter Road scheme will be detrimental to the Town providing a replacement for the much hated and now demolished IMAX building as the most disliked building in the Town. In its letter of support for the current application to amend a planning condition, Bournemouth Civic Society said:

"If eventually, the owners of the existing cinemas along Westover Road strongly desire to move into a multiplex, then the one offered by the Pavilion Gardens scheme will be fully buried underground and would in no way appear as a concrete block eyesore - a solution that has been proposed as part of the rival existing plans for the redevelopment of the Exeter Road car park site."

(c) the two cinemas in Westover Road will be vacated with consequent loss of footfall and an adverse impact upon the quality of the combined leisure offer of the Theatre and the Cinema, the presence of which supports the restaurants in this part of the Town. BBC would lose the opportunity to consolidate the leisure offer at the Pavilion, reducing the viability and possibility of retail development of the vacated cinemas in a manner complementary to the increased leisure offer which would be provided by the Pavilion Gardens project although Bournemouth Development Company's Business Plan includes:

"Restoration of Westover Road retail area as a boutique "Bond Street" destination, complementing the town's existing retail offer and arcade tradition, to re-establish Bournemouth as a prime shopping location for independent niche retail, which will redirect spend from competing centre."

(d) BBC would lose the only opportunity of which we are aware to create below-ground public car parking facilities invisible to visitors and the residents of the Town. A loss
of up-to-date covered car parking would be detrimental to the use and vitality of the Pavilion, the Pier and Pier Head;

(e) Bournemouth Civic society says:

"With the demolition of the Imax complex by Bournemouth Pier, the resort is at risk of being deficient in offering hospitality facilities in a most important part of the tourist area of Bournemouth – namely between Westover Road and the Pier Approach. In relation to the particular circumstances that surround this particular application, if it is not built fairly soon, nothing is likely to be constructed on this important site for a considerable time – to the continuing loss of renown and revenue to the town."

The Society is right to focus on the importance of achieving the Pavilion Gardens scheme which has strong public support.

(f) the loss of the Pavilion Gardens project would damage the achievements anticipated by the Bournemouth Development Company’s Business Plan in relation to adjoining sites and the Vision for leisure development on this site;

(g) BBC’s LABV has not made any provision for development of the Bath Road North site in its five year programme with the result that the site will probably remain a visual disgrace to the Town for some years and until the market demand for restaurant space recovers from the impact of 75,000 sq ft of restaurant take-up at Exeter Road and a further cinema or other anchor tenant is identified. One Planning Board Member reminded others that for over 20 years BBC had wished the site to be developed and the OBL scheme should not be lost.

On 16 December 2013, despite the contrary urging of a Cabinet Member, the Planning Board gave (all but one vote) unanimous and enthusiastic approval to amended plans which accord with the strong tenant requirements for space and for which a contractor, Galliford Try, has agreed a construction cost which is viable. The Planning Board Members all emphasised a strong wish to see the proposals implemented. The members were complementary about the architectural merit of the design and the long and strong personal commitment of myself.

I therefore ask that BBC should continue to work in partnership with OBL to secure the implementation of the scheme which is now only delayed by the lack of progress in confirming a CPO which would pave the way for the implementation of BBC’s adopted Transport Strategy whilst, at the same time, preventing the Licet scheme which is not preferred thus ensuring that the Pavilion Gardens project would be let, funded and built - a clear prospect which is evidenced by the letters from Jones Lang LaSalle and Land Securities REIT.

Having regard to the foregoing, I respectfully suggest that, if BBC were minded to serve a rescission notice, it could only be interpreted as a vexatious and misguided attempt to demand from OBL a substantial sum of £1.35m pushing the Company into administration and calling into doubt BBC’s commitment to the project under the Development Agreement and its expressed covenant to act “fairly” and “in the utmost good faith”. If Officers are of a contrary view, I would expect any decision on such a step to be taken by BBC’s Members in public session.
Because this letter is of considerable importance, it is copied to the Leader of the Council and to the Chief Executive. I would be obliged if a meeting could be convened to consider the content of this letter and to discuss BBC’s response to it.

Yours sincerely

Trevor Osborne

cc    Michael Bennett, Charles Russell Solicitors
       Rory Davis
5 December 2013

Dear Trevor

**Pavilion Gardens Development, Bournemouth - Funding**

Further to your instruction to seek funders for this forward funding opportunity in Bournemouth, we thought this would be a good point at which to bring you up to date formally on progress, or, rather, lack thereof, for reasons that you will be familiar to you. If nothing else, this may act as a helpful note when, as a result of recent events at Exeter Road, there may be little more we can do for the time being, unless or until the CPO is confirmed.

As you know, we started marketing this development funding back in May 2012. At that time planning was in place and there were agreements for leases over the car park and cinema, to Odeon Cinemas Limited. There had been little time to advance the restaurant lettings however, given the recent grant of planning permission and the very recent exchange of contracts with anchor tenant Odeon in February 2012.

We approached 12 funds and there was interest from a good few. At that time Legal & General (L&G), Crown Estate, Land Securities and USS showed the most appetite. However, in the end it was apparent that the scheme was not sufficiently pre-let to fit investor’s criteria. You may recall that I used the term ‘aversion to risk’ a fair bit at that time, when the UK economy was still struggling after the recession and the banking crisis that followed. As I recall it, you were also running into time pressures on the development agreement with the Council, which was another issue for funding at that time. Talk of competing schemes, where the Council was known to have land interests, was also not helpful. At one point, at least 3 of the largest UK surveying firms were involved with marketing leisure developments, at various stages of life, in Bournemouth.

More recently, you have instructed us to look for funding again, as you are no doubt required to do under your extended development agreement with the Council. We are in regular contact with the all the large institutions on a regular basis anyway, and Bournemouth was being monitored by one or two of these funds, as you would expect following a full marketing process. L&G with their specialist leisure fund was one of those funds and Land Securities was
another, following its acquisition of X-Leisure earlier this year it is now a major player in the leisure sector.

This time around the compulsory purchase at Exeter Road was the main obstacle to agreeing terms. Clearly, if a CPO at Exeter Road could be confirmed, Pavilion Gardens would be the only scheme in town. Initially, L&G showed the most interest but it soon became apparent that they were chasing Exeter Road harder than Pavilion Gardens. This is a puzzle given the CPO resolution, but L&G maintain the CPO is flawed and they are clearly feeling confident to say that.

Not long after this Land Securities approached us with a proposal to fund Pavilion Gardens on the basis that they thought the CPO at Exeter Road could go ahead if the Council followed the correct procedure, which they were not currently doing. After much negotiation, including attendance at a meeting with the Council, and reaching detailed draft heads of terms stage, they got cold feet over the CPO.

Following the breakdown in negotiations with Land Securities we have approached two more funds with enough scale and appetite to fund Pavilion Gardens. Both funds liked the scheme very much and are convinced by the investment case but are not prepared to proceed unless or until the CPO is confirmed.

Subsequently, Odeon has confirmed it has pulled out of Pavilion Gardens in favour of Exeter Road. Odeon have sited a flawed CPO process and the fact that Licet are funded whereas Pavilion Gardens is not as reasons to change destinations.

The potential loss of Odeon to Westover Road and the footfall it provides is a major blow for that area of Bournemouth and the Pavilion Gardens project in particular. It is accurate to say that the regeneration of the Pavilion and Pier approach will be set back many years by the loss of the two cinemas to Westover Road. The latest project proposals for Pavilion Gardens had been very well received by funders and occupiers alike. We can only hope that Licet is incorrect in its assessment of the CPO and that the Council will pursue the CPO with much vigour and purpose over the coming months.

Like yourselves, we have put much time and energy into this project over a protracted period with little to show for it so far. I sincerely hope the Council can see the sense in continuing to back TOPG in its continued endeavours to deliver this worthwhile project and the concentrated leisure quarter it will provide.
I hope this proves a helpful note on where we are on funding and do let us know if we can be of any further assistance. Let’s hope the CPO goes ahead and we do eventually get the positive result we all crave next year when the CPO is confirmed.

With kind regards,

Will Andrews
Director
Mr Trevor Osborne  
The Trevor Osborne Property Group  
Rectory Lodge  
Combe Hay  
Bath  
BA2 7EG  

3 December 2013  

Dear Mr Osborne  

The Pavilion Gardens Site – The Nautilus Project  

Further to our various discussions, I confirm that Land Securities have concluded after detailed consideration and long negotiations with you that it is unable to proceed with the funding of this project.

Our decision is taken reluctantly and has been made because we cannot be certain that the development of the West Central site with a similar content will not proceed. You have made us aware of the resolution of the Council to pursue the purchase of this site by means of a compulsory purchase in order to create a bus hub but the process is not sufficiently advanced for us to be confident of the outcome. Given these circumstances, it is our view that, whilst there is a healthy leisure demand in Bournemouth, there would be insufficient demand to absorb an over-supply of leisure space.

I am sorry to impart this decision to you, particularly at a late stage in our negotiation of heads of terms. You will, however, understand that, with the uncertainty surrounding the West Central site, it is difficult for us to commit to Nautilus at this time.

Yours sincerely  

Deepan Khirova  
Investment Director  
Leisure & South East  

depan.khirova@landsecurities.com  
D/L 020 7024 5436
Chronology of Events Pertaining to
Pavilion Gardens Development Agreement

2004
Osborne Bournemouth Ltd (OBL), part of the Trevor Osborne Property Group (TOPG), is appointed by Bournemouth Borough Council (BBC) as preferred bidder for a new development at Bournemouth Pavilion.

Richard Smith was Leader of BBC at this time.

2007
April - OBL is granted planning permission for a leisure scheme including a casino, restaurants and roof top gardens.

OBL and BBC agree terms leading to a development agreement being signed on 3 May 2007.

Stephen MacLoughlin takes over as Leader of BBC requiring design and content changes.

2008-9
February 2008 - Licet/NCP are granted planning permission at Exeter Road for erection of a building on five levels comprised of multiplex cinema, restaurants and car park, to be known as West Central.

In the third quarter of 2008, UK GDP falls -0.6%; by September, Lehman Brothers has collapsed and by the end 2008/beginning 2009, it is clear that the UK economy is in recession for the first time since 1991.

Commercial property values crash by circa 50% although it is difficult to determine the full extent due to lack of transactional evidence. This is unprecedented. A crisis in confidence and lending makes it virtually impossible to pre-let and fund commercial developments.

February 2009 - BBC acting as trustee appoints Lower Central Trust Board to negotiate a settlement with Meyrick Estate concerning the Gardens Charitable Land. It becomes evident that differences with the Meyrick Estate would prevent BBC being able to grant development leases over the Pavilion Gardens development site (ie BBC does not have full title to the development site at this point).

2010
April - BBC finally settles its long-term dispute with the Meyrick Estate such that ground leases can be granted to allow development to proceed. Up to that point, the scheme could not be funded or pre-let. TOPG funded legal fees to secure settlement with the Meyrick Estate.

OBL begins work on a revised design with input from Odeon on a cinema which leads to heads of terms being agreed with Odeon in June 2010.

July - Stephen MacLoughlin resigns as Leader of BBC and is replaced by Peter Charon. Further scheme changes are required.

October - BBC officers recommended to BBC Cabinet that Exeter Road site be purchased for a scheme to provide greater transport facilities than were
proposed by the NCP/Licet cinema scheme which was granted consent in 2008. The Officer’s report stated:

“One of the aspirations of the Vision is to facilitate the removal of bus parking from Gervis Place, Westover Road and Avenue Road.”

and:

“the site presents a unique opportunity for providing off-road facilities for buses in the centre of the Town.”

An in-principle decision to use CPO powers was also approved at this time as the site was considered vital to the Town Centre Master Vision.

2011

10 February - Licet/NCP, the developer of the cinema scheme at Exeter Road, extend its planning consent for a further three years and begin marketing the scheme again.

The marketing of two cinema schemes causes confusion in the lettings market adversely affecting progress at Pavilion Gardens. OBL urges BBC to desist from giving apparent support to West Central/Exeter Road by excluding some Council-owned land it had previously offered to sell under an option agreement thus disrupting progress at Pavilion Gardens.

April - OBL and BBC sign a conditional agreement to vary the 2007 development agreement to allow time to deliver the scheme delayed by the recession and the Meyrick settlement. Conditions include a planning consent acceptable to BBC. The long-stop date to meet conditions is 31 March 2012.

September - OBL/BBC are granted a new planning consent for a cinema scheme preferred by the new Leader, broadly based on the principles of the previous design, although the casino is omitted on the insistence of the new Leader.

Odeon relocating in Westover Road is seen as important to the footfall in that part of Bournemouth.

The scheme redesign includes input from BBC improving the rooftop gardens are located between the new leisure complex and the historic pavilion.

2012

January - Peter Charon resigns as Leader of BBC to be replaced by John Beesley the following month.

1 February - OBL sign Odeon as the cinema anchor tenant at Pavilion Gardens.

15 February - Cabinet finally agrees to an officer recommendation to inform Licet Holdings Ltd that BBC would only be willing to dispose of land in Exeter Road for a scheme that contributes to the improvement of public transport. This goes some way towards the retraction of Council-owned land that OBL has been seeking to happen for some time, because two cinema schemes in the market at the same time in Bournemouth is hampering lettings and funding at Pavilion Gardens, and the market is confused about where BBC’s loyalties lie. Licet continue to market its scheme, maintaining it does not need Council-owned land to continue with the cinema scheme.
February - a planning application is made in respect of a major new development scheme with a cinema at a site known as Winter Gardens. The scheme includes an 80,000 sq ft cinema as well as apartments, restaurants and two hotels. BBC has granted an option to developer over part of the Winter Gardens site.

There are now three cinema developments being actively marketed at the same time making letting negotiations with restaurants almost impossible at Pavilion Gardens. At this stage, Odeon is being heavily courted by competing developers. The Winter Gardens planning application is subsequently withdrawn to be reconsidered before re-submission.

March - OBL's focus turns to renegotiating its development agreement with BBC which has reached its long stop date for conditions to be met. The agreement is extended for three months to 29 June 2012 to allow more time for funding, all other conditions having been met.

To meet timescales in the development agreement for funding, OBL instruct Jones Lang LaSalle (JLL) to market the scheme to funding institutions. Over 10 funds are approached and several are interested but need to see restaurant lettings advanced beyond heads of terms stage and the development agreement extended (ie June 2012 unconditional date in the development agreement is adversely affecting lettings and funding).

2012

29 June - the development agreement is eventually amended and extended with all conditions to which the previous agreement was subject met with the exception of funding which became an obligation rather than a condition.

OBL was placed in a weak negotiating position because its entire investment was placed at risk if agreement was not reached.

Under the extended agreement, BBC extract concessions from OBL such as writing off some historic costs, an increased initial premium and a share of profits after the payment of the increased initial premium. This puts a strain on the development appraisal. BBC insist that OBL must pay the initial premium even if BBC choose to rescind the agreement after 31 December 2013. If OBL had not accepted the onerous provisions, the Company stood to lose its entire investment in the scheme.

Restaurant lettings continue to be badly affected by perceptions in the market about rival cinema schemes at Exeter Road and Winter Gardens, and the apparent backing of all three by BBC, where it has land interests in all three sites.

October - Licet amend its planning consent (as extended) to exclude the Council-owned land that was the subject of a now lapsed option agreement. The Licet marketing campaign gathers pace and they continue to court Odeon cinemas.

2013

April - the developer at Winter Gardens re-applies for planning permission, which includes a cinema and restaurants. The application is finally refused on 17 June 2013, despite a recommendation to grant from town planners. Talk of a third cinema scheme in Bournemouth fades. An option on the Winter Gardens site expires and BBC retains the option monies.
June - at a cabinet meeting on 26 June, a report by Terrance O'Rourke confirms that the bus hub scheme is financially viable for Exeter Road. BBC cabinet passes a resolution to acquire Exeter Road site by negotiation or to pursue purchase by compulsory purchase powers if necessary, something it has agreed in principle as far back as October 2010 when it was agreed there was no other site which could accommodate the bus hub.

Cabinet also authorises the submission of a planning application for the development of a surface level transport hub.

The resolution to seek CPO powers at Exeter Road if necessary, is expected to alleviate some market concerns about Exeter Road as a rival to Pavilion Gardens. However, most occupiers are unconvinced that the CPO will proceed.

Due to onerous conditions in the development agreement allowing BBC to rescind at any time after 31 December 2013, OBL has no choice but to return to the funding markets. With lettings on half the restaurants at an advanced stage, there is a good level of interest in the scheme but funders are deterred by the lack of progress in obtaining confirmation of the CPO. OBL is unable to provide adequate assurances. Funders believe that, if both schemes proceed simultaneously, then the overprovision of floor space would saturate the market. The Licet scheme has circa 75,000 sq ft and Pavilion Gardens circa 50,000 sq ft of relevant space.

October - Legal & General (L&G) make it known in the market that they will fund Exeter Road scheme. L&G are not convinced that BBC's CPO will proceed and have stated that BBC's position and its decision to make a CPO is flawed.

Land Securities (LS) make an approach to take Pavilion Gardens 'off the market' and detailed terms are negotiated.

Good progress is made on funding with LS but they need to be reassured that the CPO will be obtained without delay.

21 October - OBL arrange for LS to meet with BBC to seek assurances that the CPO at Exeter Road will proceed and that BBC are backing Pavilion Gardens. BBC maintain they are continuing to negotiate to buy Exeter Road site from NCP and to work-up a planning application for a bus hub for the site, with CPO powers as a back-up to negotiations. BBC mentions at the meeting that the resolution to use a CPO if necessary is recorded as a local land charge.

BBC confirm they have spoken to L&G Property (LGP) about the Exeter Road site but that there is no connection to a long term financing arrangement they are about to enter into with LGP.

OBL/BBC are refused planning consent for amendments to the design at Pavilion Gardens, despite a recommendation to grant from planners.

November - OBL meet with BBC to discuss planning, funding and CPO. OBL interested to know why a member of the Cabinet is objecting to amendments to the Pavilion Gardens scheme.
OBL confirmed at the meeting that heads of terms with LS were virtually agreed and would be provided to BBC.

With regard to the CPO, BBC able to confirm only that planning consultants are working-up a planning application for the proposed bus hub at Exeter Road, and that the scheme would be put before full Council in February 2014.

OBL request from BBC a timetable for CPO; BBC not prepared to discuss CPO programme.

BBC confirm that only one meeting with NCP, the Exeter Road site owner, has taken place and its further correspondence with the Company has not been responded to.

LS withdraw its offer to fund Pavilion Gardens as there is insufficient time to complete a funding agreement and LS is concerned that L&G have indicated publicly that they will finance Exeter Road because it considers that BBC will not be in a position to obtain a CPO to acquire the site, and, in any event, Licet intend, with L&G’s funding, to proceed quickly, making the CPO even more unlikely.

Negotiations are reopened with other funders approached under the first marketing exercise in 2012 and with a known appetite for a leisure funding. There is strong interest but other funders have the same concerns as LS.

**December** - Odeon announce it is switching its relocation choice to Exeter Road saying that Licet’s scheme is more “mass market” and has L&G funding. Licet/NCP state publicly that LGF are funders with an established relationship with BBC.

JLL write to OBL to say the scheme could be funded if the Exeter Road CPO is irrevocably confirmed. The JLL letter confirms that, if Odeon leave Westover Road, there would be a significant loss of footfall which would damage the location for a long time. This would seem to be the exact opposite of the intention of BBC which wishes to regenerate Westover Road and the Pavilion with a new leisure facility, with Odeon remaining at Westover Road.

**16 December** - OBL are finally granted planning consent for amendments to their extant planning consent.

The Town Centre Action Plan confirmed in September 2012 suggested that there may be other sites suitable for a bus hub although the Exeter Road site is the only site specifically referred to. Despite detailed search and consideration, no other site has been found confirming that Exeter Road is uniquely suitable.

**By 19 December 2013**, the CPO has not advanced beyond BBC’s resolution stage and BBC negotiations with NCP/Licet do not appear to be progressing as Exeter Road is apparently funded, with Odeon as its anchor tenant.

OBL state in a letter to BBC that the lack of progress with negotiations at Exeter Road has undoubtedly frustrated progress with funding at Pavilion Gardens. Rescinding the development agreement with OBL would surely be
unreasonable and not in the best interests of Bournemouth and the Vision for the Town, the Pavilion Gardens will be able to proceed when the CPO is confirmed in 2014. The development agreement needs to be allowed to continue to allow funding to occur when the CPO is confirmed.
CABINET MEMBER DECISION RECORD

This form should be used to record Executive decisions taken by Cabinet Members

Decision Ref. No:

Responsible Officer: Gary Platt, Head of Property

Subject: Pavilion Gardens Development

Decision taken: To rescind the Development Agreement with Osborne (Bournemouth) Ltd dated 29th June 2012.

Reasons for the decision: The developer's failure to comply with the timescales in the Development Agreement.

Call-in and Urgency: Subject to call-in.

Background: On 29th June 2012 the Council entered into a revised contract with Osborne (Bournemouth) Ltd for the development of a multi-screen cinema, restaurants, shops and a 350 space underground car park on land adjacent to the Pavilion. This contract can be rescinded if specified funding requirements are not met by 31st December 2013. Osborne (Bournemouth) Ltd has failed to satisfy these requirements.

Options - and reasons for rejection: Not to rescind the contract and allow the developer more time to secure funding for the development. The Council first entered into contractual arrangements with Osborne (Bournemouth) Ltd on 3rd May 2007 and, despite a series of extensions and revised contracts, the developer has been unable to bring forward development on the site. There is no guarantee that a further extension would result in a start on site and it would postpone the opportunity to consider alternative delivery options.

Consultations undertaken: none applicable

Finance/Resource Implications: under the terms of the contract, Osborne (Bournemouth) Ltd is obliged to pay the initial premium even if the contract is rescinded in these circumstances. Once the site is free from these contractual arrangements, the Council would be able to consider its options for releasing further development value from this site.

Name: FERISER TASDELEN Signature: (of Chief Finance Officer) Date: 2nd January 2014 DEPUTY S 1 ST OFFICER
Legal implications: Once formal notice is served, this will bring the contract to an end.

Name: Susan Turner
Date: 2nd January 2014
Signature: (of Monitoring Officer)

Risk assessment: a risk assessment shows this to be a high-risk scheme. Legal and financial advice has been sought to mitigate the risks associated with this decision.

Name: Gary Platt
Date: 2nd January 2014
Signature: (of Officer completing assessment)

Impact Assessments: There are no Environmental and Equality and Diversity Impacts arising from the rescission of this contract.

Information for publication: yes

Background papers:

- Cabinet Member Decision Notice published on 6th July 2012 entitled “Pavilion Leisure Quarter (Nautilus) Development”
- Cabinet Member Decision Notice published on 27th April 2012 entitled “Pavilion Leisure Quarter (Nautilus) Development”
- Cabinet Member Decision Notice published on 17th February 2012 entitled “Pavilion Leisure Quarter Development”
  CIB_GenericList_List_GoToPage=5
- Report to Cabinet on 1st February 2011 entitled, “Pavilion Gardens Development”
  http://archive.bournemouth.gov.uk/main/Minutes_Agendas/Cabinet.asp
- Report to Cabinet on 15th December 2010 entitled, “Pavilion Gardens Development”
  http://archive.bournemouth.gov.uk/main/Minutes_Agendas/Cabinet.asp
- Report to Cabinet on 8th September 2010 entitled, “Pavilion Gardens Development – Extension of Long Stop Date”
  http://archive.bournemouth.gov.uk/main/Minutes_Agendas/Cabinet.asp
- Report to Cabinet on 5th September 2007 entitled, “Development Proposals for the Pavilion theatre, Bath Road North and Westover Gardens”
  http://archive.bournemouth.gov.uk/main/Minutes_Agendas/Cabinet_Reports.asp
- Report to Cabinet on 29th March 2007 entitled, “Development Proposals for the Pavilion Theatre, Bath Road North and Westover Gardens”
  http://archive.bournemouth.gov.uk/main/Minutes_Agendas/Cabinet_Reports.asp
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<th>Nature of interest</th>
<th>Details of any dispensation granted by the Monitoring Officer</th>
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**Decision taken by:**

Councillor John Beesley
Leader of the Council

**Signed:**

**Date of decision:** 2\(^{nd}\) January 2014

**Date of publication of record of decision:** (to be inserted by Democratic Services) 3\(^{rd}\) January 2014

**Date decision effective** – that is 5 working days after the date of publication of the record of decision unless the decision is called-in for consideration by the relevant Overview and Scrutiny Panel:

5:00pm on Friday, 10\(^{th}\) January 2014
PROCEDURE IN DEALING WITH A CALL-IN

- Decision comes into force five working days after publication if no Call-In
- Any two Councillors of relevant Scrutiny Panel can call-in decision within five working days
- Democratic Services Section record the Call-In and advise parties
- Call-In referred to next Scrutiny Panel – If there is one within seven working days of Call-In, otherwise a special meeting must be arranged
- Scrutiny Panel discusses whether the Call-In is valid. If it is decided that the Call-in is valid, the following options are available
  - Refer to full Council
  - Refer back to Cabinet or Individual Cabinet Member as appropriate
  - Take no further action
  - Full Council debates Call-In
    - Refer back to Cabinet or individual Cabinet Member as appropriate
    - Decision taker confirms, amends or reverses decision
    - Take no further action
    - Decision comes into effect
  - Decision comes into effect