

# NORTHAMPTON BOROUGH COUNCIL

## OVERVIEW AND SCRUTINY COMMITTEE 3 - IMPROVEMENT, PERFORMANCE AND FINANCE

Tuesday, 5<sup>th</sup> January 2010

### PRESENT

**Committee:** Councillor Jamie Lane (Chair); Councillors Scott Collins, Keith Davies, Brendan Glynane, Matthew Golby, Jane Hollis, Marianne Taylor and Pam Varnserry (substitute for Councillor David Garlick)

### Call-in Authors

Councillors Tony Clarke and Jean Hawkins

### Internal Witnesses

Councillor David Perkins	Portfolio Holder (Finance)
Councillor Brian Hoare	Leader of the Council
Isabell Procter	Director of Finance and Support
Simon Dougall	Asset Manager

### Observing

Councillor Paul Varnserry Portfolio Holder – Community Engagement  
Councillor Trini Crake Portfolio Holder - Environment  
Councillor Dennis Meredith

### Member of the public

Dr Tom Welsh Local History Research

### Officers

Francis Fernandes	Borough Solicitor
Tracy Tiff	Scrutiny Officer

### Public Addresses

Dr Tom Welsh, University of Northampton.

At this point Francis Fernandes, Borough Solicitor, advised that Executive Members present must declare a personal and prejudicial interest in the substantive agenda item – Call In of Cabinet Decision of 16 December 2009 – item 8 – Future of Archway Cottages, Abington Park. This is in accordance with the Model Code of Conduct. Cabinet Members can present evidence but must leave the room when the Committee has its deliberations and forms its conclusions and recommendations.

Councillor Jamie Lane, Chair, Overview and Scrutiny Committee, advised that the reasons for this Call In referred to the decision, which was made in April 2008. The decision made at the December 16th meeting of Cabinet had asked for reconfirmation of the earlier (April 2008) decision. The Chair commented that bearing this fact in mind, the Committee would need to make a decision whether this Call-In proceeds further.

Following the address from the Chair, Councillor Keith Davies commented that there was a need for the Committee to have background papers in relation to the decision of Cabinet of 7 April 2008 – i.e. the report and minute of that meeting. Francis Fernandes, Borough Solicitor, advised that the Call In is challenging the decision of Cabinet of 16 December 2009 and not that of 7 April 2008. The earlier decision of 7<sup>th</sup> April 2008 cannot be called-in, however, he acknowledged that the Call In is relevant to the earlier decision (7<sup>th</sup> April 2008).

Councillor Pam Varnsvery commented that there had been a period of twenty months for potential options to be put forward, therefore the originally decision cannot be looked at. She added that this Call In appears to be 'raised through the back door.' In response, Francis Fernandes confirmed that legally this Call In stands; it is for the Committee to decide, in governance terms, whether this should have been raised at the time or "whether it is being raised through the back door". This is not the only option.

At this point, Councillor Brendan Glynane confirmed that he was a Member of Cabinet when the original decision of 7 April 2008 was taken. Francis Fernandes advised that he should declare a personal and prejudicial interest and emphasised that Members have a responsibility to know their obligations under the Model Code of Conduct.

It was then proposed by Councillor Hollis and seconded by Councillor Pam Varnsvery that this meeting adjourn and convene at a later date, when the Committee has been furnished with the requested background papers and Councillor Brendan Glynane is able to provide the correct notification for a substitute for the reconvened meeting.

Upon a vote, it was resolved that: -

This meeting adjourn and convene at a later date, when the Committee has been furnished with the requested background papers and Councillor Brendan Glynane is able to provide the correct notification for a substitute for the reconvened meeting.

Francis Fernandes, Borough Solicitor, advised that by adjourning the Call In Hearing it was preventing the Executive to exercise its powers and Officers are unable to implement the decision. The Call In Hearing must in exceptional cases be held within 21 working days of receipt of the call in request, as required by the constitution.

At 6.30pm the Chair called a short adjournment following which he confirmed that the Call In Hearing would adjourn and would reconvene at 7.15pm on Wednesday, 13<sup>th</sup> January 2010. The same agenda would apply.

The meeting adjourned at 6.50pm to reconvene at 7.15pm on Wednesday 13<sup>th</sup> January 2010.

The meeting reconvened on Wednesday, 13<sup>th</sup> January 2010

## **PRESENT**

**Committee:** Councillor Jamie Lane (Chair); Councillors Scott Collins, Keith Davies, Matthew Golby, Jane Hollis, Marianne Taylor, Dennis Meredith (substituting for Councillor Brendan Glynane) and Pam Varnsvery (substitute for Councillor David Garlick)

## **Call-in Authors**

Councillors Tony Clarke and Jean Hawkins

## **Internal Evidence**

Councillor David Perkins	Portfolio Holder (Finance)
Councillor Brian Hoare	Leader of the Council
Councillor Malcolm Mildren	Portfolio Holder (Finance) for the term 2007-2009
Isabell Procter	Director of Finance and Support
Simon Dougall	Asset Manager

## **Officers**

Francis Fernandes	Borough Solicitor
Tracy Tiff	Scrutiny Officer

## **Observing**

Councillor Paul Varnsvery  
Councillor Brendan Glynane  
Councillor John Yates

## **Public Addresses**

Mr Stevens, Friends of Abington Park

## **Public Attendees (Observing)**

Beverley Mennell  
Martin de Rosario

### **1. APOLOGIES**

Apologies for absence were received from Councillors David Garlick, Tim Hadland and Brendan Glynane.

### **2. DEPUTATIONS/PUBLIC ADDRESSES**

Mr Stevens, representing Friends of Abington Park and Abington Conservation Society, addressed the Committee on agenda item –4 - Call-In of Cabinet decision of 16 December 2009 – Item 8 – Future of Archway Cottages, Abington Park.

### **3. DECLARATIONS OF INTEREST (INCLUDING WHIPPING)**

In accordance with the advice provided by Francis Fernandes, Borough Solicitor, Executive Members present, Councillors Brian Hoare and David Perkins, declared a personal and prejudicial interest in the substantive agenda item – Call In of Cabinet Decision of 16 December 2009 – item 8 – Future of Archway Cottages, Abington Park. They provide witness evidence but left the meeting when the Call In Hearing went in deliberation session, taking no part in the debate.

Councillors Malcolm Mildren declared a personal and prejudicial interest, as a member of the Cabinet when the decision of 7<sup>th</sup> April 2008, in the substantive agenda item, – Call In of Cabinet Decision of 16 December 2009 – item 8 – Future of Archway Cottages, Abington Park. He provided witness evidence but left the meeting when the Call In Hearing went in deliberation session.

Councillor Brendan Glynane declared a personal and prejudicial interest, as a member of the Cabinet when the decision of 7<sup>th</sup> April 2008 was taken in the substantive agenda item – Call In of Cabinet Decision of 16 December 2009 – item 8 – Future of Archway Cottages, Abington Park. He observed the meeting but left when the Call In Hearing went in deliberation session.

Councillor Jean Hawkins, Call-In Author, declared a personal and non-prejudicial interest, in her capacity as Heritage Champion, her Councillor link with English Heritage, a Trustee of Delapre Preservation Trust and a member of the Liberal Democrat Party, in the substantive agenda item – Call In of Cabinet Decision of 16 December 2009 – item 8 – Future of Archway Cottages, Abington Park.

#### **4. CALL-IN OF CABINET DECISION OF CABINET DECISION OF 16 DECEMBER 2009 – ITEM 8 – FUTURE OF ARCHWAY COTTAGES, ABINGTON PARK**

The Chair advised that upon the advice of the Borough Solicitor and Monitoring Officer, this Call-In request had been through the appropriate channels and it is confirmed that the correct procedure had been followed. The Chair, with advice from the Borough Solicitor, advised the Call-In Authors of the need to explain to the Committee their reasons for leaving it so late to call-in the decision.

The Chair then advised the Call-in Hearing of the procedure that would be followed.

The public addressee was invited to speak to the Committee.

Mr Stevens, representing Friends of Abington Park and Abington Conservation Society, addressed the Call-In Hearing commenting that he considered the decision made on 7<sup>th</sup> April 2008 to dispose Archway Cottages indicated a lack of thinking, as in his opinion, they could be converted for community use. Not enough information had been provided about the alternative options for the future of Archway Cottages. He went on to explain how he felt the Cottages could be restored. He added that the Council is responsible to all citizens of the town and this should not be purely a decision based on finance. The Cottages are beautiful and an asset to Abington Park. Mr Stevens concluded his address by commenting that Northampton was a lovely town with wonderful history and its assets should be preserved.

The Committee put questions to Mr Stevens and heard:

- Friends of Abington Park is a voluntary society made up of individuals, not professionals

- Friends of Abington Park could support and contribute to the upkeep of Archway Cottages by completing applications for funding from national bodies, acting on behalf of Northampton Borough Council. It was confirmed that the Friends of Abington Park did not have its own funds
- Mr Stevens was not aware that the Council had a Heritage Champion
- Regarding a query about disabled access, Mr Stevens commented that this was an engineering problem but he felt that it was not impossible

Mr Stevens was thanked for his address.

The Chair then invited the Call-In Authors to expand upon their reasons for concern, following which the Overview and Scrutiny Committee questioned the Call-In Authors. Councillor Jean Hawkins, Call-in Author, referred to the reasons for call-in: -

*Alternative options were not developed by the Council, resulting in Cabinet Members being unable to make a proper informed decision*

Councillor Hawkins advised that she was confused why the issue of the decision taken on 7<sup>th</sup> April 2008 had been raised. She went on to confirm that she had not, in her capacity as Heritage Champion, been formally consulted at any stage prior to the decision being made. However, she had submitted a Freedom of Information request for background information, which had made reference to Estates Officers having knowledge of her role as the Council's Heritage Champion.

Councillor Hawkins referred to the decision of Cabinet taken on 16<sup>th</sup> December 2009, commenting that the rules of Call-In permitted herself and Councillor Clarke to call-in this decision. She advised that she was unable to provide too much detail regarding the decision taken on 7<sup>th</sup> April 2008 as she had not been present at that meeting and had not been consulted. She thought it likely that she had been away, it being the Easter holiday time. If the decision had been taken by Cabinet earlier than 16<sup>th</sup> December 2009. Councillor Hawkins confirmed that she would have still called-in the decision.

Councillor Hawkins confirmed that she was Heritage Champion in April 2008 and was aware that this item was due to be on the agenda of the Cabinet meeting of 7<sup>th</sup> April 2008. She confirmed that at this time the majority of her energies, as Heritage Champion, were directed towards Delapre Abbey.

In the autumn 2008, Cllr Hawkins had evidence that Councillor Brian Hoare had made communication that it would be helpful if these properties were treated as planning and conservation assets rather than that of housing. Archway Cottages were dealt with as housing assets. She added that Archway Cottages were not in Councillor Brian Hoare's ward and that he was no longer the chair of Friends of Abington Park, however, she confirmed that members of the Friends of Abington Park, had assured her that both Councillor Brian Hoare and Councillor Irene Markham had discussed aspirations for planning of Archway Cottages and Abington Park. Cllr David Garlick is currently a committee member of Friends of Abington Park.

Councillor Hawkins went on to refer to the decision of 16<sup>th</sup> December 2009, emphasising that one of the decisions was to consider any objections, which were listed in paragraph 3.2 of the report. She confirmed that these issues also prompted her to call-in this decision. Councillor Hawkins had addressed Cabinet at its meeting of 16<sup>th</sup> December 2009, her comments had been largely in relation to the view that these Cottages were an essential part of historical landscape. Mr Stevens of Friends of Abington Park's address to Cabinet had prompted her to do something. The decision made at Cabinet on 16<sup>th</sup> December 2009 was

'in principle' and in Councillor Hawkins' opinion was therefore a strategy that should be explored. She added that there were two further reasons that had prompted this call-in. This is historic landscape, which involves looking at parkland as a whole. In the 16<sup>th</sup> Century it was a well-established medieval village that was turned into a 'lost' village by enclosure and the Cottages are the remains of this medieval village. Archway Cottages were built in the 19<sup>th</sup> Century on 17<sup>th</sup> Century foundations.

Based on the above, Councillor Hawkins felt that Archway Cottages should not be classed as housing stock but as a heritage asset. Abington Park has high heritage asset value. A quote from an English Partnership document 'English Heritage' was given to the Call-In Hearing - "*The Local Authority has responsibility to manage its heritage assets*". If these cottages were treated as heritage assets they would be looked at within the entire heritage of the town.

Councillor Hawkins reiterated that these properties have high heritage value and she would expect there to be close working with the community. Councillor Hawkins emphasised that she would not expect Friends of Abington Park to lead on the management of the future of Archway Cottages, but that they should be involved in the process. She suggested an organisation that should also be involved to provide advise and funding for such properties – *Archaeological Heritage Fund*.

Councillor Hawkins added that she should have shown more concern about the further of Archway Cottages but her attention was only alerted when she read that the Cottages were classed as housing stock and a risk to the Council was that there could be a loss of freehold and that they could be subject to right to buy legislation.

Councillor Hawkins concluded her address by commenting that the Council is in a good position now to apply a management strategy and options appraisal to its heritage assets, and felt that funding could be found for Archway Cottages. Archway Cottages belong to the whole landscape, in particular Abington Park. Inter-departmental links should be explored regarding the management of the Cottages.

The Committee put questions to Councillor Hawkins:

**Question (Q) As Heritage Champion are you aware of how many properties in Delapre have been dealt with in this manner successfully?**

**Response: (R):** I am aware of considerable difficulties when an estate is fragmented in this way. When you have piecemeal freehold loss there can be difficulties. This landscape is peppered by properties outside the management of the Council.

**Q: Would you agree that to do nothing and let the Cottages deteriorate is acceptable?**

**R:** I am not suggesting doing nothing; a full options appraisal for the future of the cottages and funding opportunities is required. There is a danger that if one part of Abington Park is sold, other parts could be sold too.

**Q: Do you agree that Archway Cottages have always intended to be homes?**

**R:** Yes, but I acknowledge the problem of these properties being modernised for housing, such as access. English Heritage is very aware of the difficulties. It would be difficult for a Developer to market the Cottages, without any reconfiguration of access. It is possible that if a Developer takes on the lease of the properties they may allow them to fall into neglect if the repair task becomes too complicated by Conservation regulations.

**Q: The Cottages are run down with the windows secured. It would cost thousands to restore the Cottages and there are restraints on Local Government finance. Can you provide a suggestion how the Council could fund the regeneration of Archway Cottages?**

**R:** It would cost around £290, 000 to restore the cottages, £5,000 has already been spent to board them up and make them secure. I am not able to make any suggestions at this present time but this would be part of the options appraisal that needs to be carried out. For example a Trust could be set up to safeguard the cottages. Councillor Hawkins referred to a report that is on the Forward Plan for Cabinet in February 2010 regarding Delapre Abbey. This was commissioned on behalf of NBC to draw up professional historic landscape experts' advice to provide an options appraisal. Disposal is not the only option and if a long-term lease is offered, the Council is likely to lose the freehold in the long term.

**Q: You were Heritage Champion at the time of the 7<sup>th</sup> April 2008 decision but you advised that you were not aware of the report to Cabinet at that time and that you were not consulted. There was at the time wide press coverage of the issue. Why is it only recently that you have contacted Friends of Abington Park?**

**R:** My immediate reaction was that of guilt, I should have become involved earlier. I assumed that other, more senior Councillors had the interest at heart and the matter in hand.

The Call-In Hearing adjourned at 8.15pm and reconvened at 8.22pm

Councillor Clarke was invited to add further points to Councillor Hawkins' address.

Councillor Clarke opened his address by advising of the reasons why Councillor Hawkins and himself had not called-in the decision of April 2008. In support of his verbal evidence, written documentation was circulated to the Call-In Hearing, which in his view showed that the decision made on 16<sup>th</sup> December 2009 was a new decision. There had been a gap of 18 months between the two Cabinet meetings and during this time a lot had taken place, therefore the two decisions were different. Additional legal advice, in particular regarding the long-term contract over the future of Archway Cottages, was detailed in the report to Cabinet of 16<sup>th</sup> December 2009 meeting. It is therefore deemed a separate decision to that of 7<sup>th</sup> April 2008. Therefore, the decision was not to reaffirm the decision of 7<sup>th</sup> April 2008 but to receive new evidence. Councillor Clarke emphasised that this was a valid point.

Councillor Clarke advised that Councillor Hawkins had identified the heritage value of the Cottages. He went on to advise that he felt that various guidance, in particular *'Managing Local Authority Heritage Assets'*, had not been taken into consideration. The Council has a duty of care to put the Cottages back to a fit state. He added that a short-term decision cannot be taken based on a short-term budget decision; there is an option to borrow finance over a 200-year period to restore the cottages. Councillor Clarke added that the Council has not adhered to guidance. He went on to comment that the Portfolio Holder for Finance had previously advised that the Friends of Abington Park should have forwarded options for the future of the cottages. This Council is charged with coming up with solutions. There were options that were not considered. A report of this nature should have been authorised by several department heads. The Cottages were treated as financial assets.

Councillor Clarke advised that in his opinion this Council has failed to manage its long-term assets. The decision taken by Cabinet on 16<sup>th</sup> December 2009 was prejudiced and pre-determined. The Portfolio Holder for Finance had just one option for consideration. At this point Councillor Clarke circulated further written evidence (copies of email correspondence) in support of this comment. Councillor Clarke highlighted the Portfolio Holder for Finance's response in the email correspondence, stated that the sale of capital receipt was required for

managing the Council's organisation change programme. Other options were therefore not considered, the whole life of the buildings was not investigated and an Asset Register had not been produced.

Councillor Clarke acknowledged that Archway Cottages are currently relatively secure. There had been some problem with the boarding up of the windows, which had caused some damage. He queried whether the cottages were watertight. He felt that there was a period of 5-10 years to find a solution to ensure that Lady Wantage's gift of the Cottages could be used for the purpose that she intended.

Councillor Clarke concluded his address by asking the Committee to uphold the Call-In and asked it to consider whether the Council had operated in accordance with national guidance.

The Committee put questions to Councillor Clarke:

**Q: Have you visited the Cottages and been inside?**

**R:** I have not been permitted to go inside the Cottages, however I have visited the park and the cottages previously. Councillor Clarke added the English Heritage applauded and welcomed the use of the buildings for other purposes, as long as their heritage was protected. Councillor Clarke could see the future of Archway Cottages as social use. He went on to suggest that staff that work in this field, who are currently based at Cliftonville House, could perhaps be relocated to Archway Cottages.

**Q With reference to your claims that the Cottages have been damaged when the windows were boarded up, but you have not visited of late, what evidence do you have?**

**Additionally, you commented that the Cottages could be left for five years and then funding applied for, what evidence can you supply to demonstrate that funding would be granted and would the Cottages not deteriorate over five years?**

**R:** Councillor Clarke confirmed that he had visited the Cottages recently. He referred to the Freedom of Information request that had been submitted by Councillor Jean Hawkins; one internal message in particular had stated that that the Cottages needed to be protected. Steel panels should be cut to size; the required fixings do not need plugs therefore damage would not be created to the stonework. Other estimates were obtained for boarding up such as sandwich boards to the windows; this required the windows to be 'smashed' through to secure the boards. Councillor Clarke added that the decision had been taken to use the 'cheaper option' of securing the Cottages.

An application for funding could be submitted but there was no guarantee that it would be successful. The Council does not have a Lottery Officer to work with Local Groups. There was no intention for the Cottages to be for community use.

**Q: The Cabinet meeting of 16<sup>th</sup> December 2009 asks for consideration of objections, it does not refer to the options**

**R:** The report clearly states 'That Cabinet confirms its 'in principle' decision made on 7 April 2008 to dispose of the Property by the grant of 125 years lease, on terms that lead to the restoration of the properties in accordance with listed building requirements.'

The Call-In is in respect of the decision of Cabinet taken on 16<sup>th</sup> December 2009.

**Q: How do you know the windows were smashed and not taken out?**

**R:** Councillor Clarke confirmed that he had supporting evidence. The windows were 'put through' to secure the boards

**Q: Is it your contention that Cabinet made an ill-informed choice?**

**R:** It is clear that the information that was put to Cabinet on 7<sup>th</sup> April 2008 was incomplete; none of the viable options would ensure NBC taking control of these assets. Additional legal advice was detailed in the report to Cabinet of 16<sup>th</sup> December 2009 meeting; it is therefore deemed a separate decision to that of 7<sup>th</sup> April 2008.

The Cottages could remain boarded up until the Council receives a grant.

The Chair thanked the Call-in Authors for their address.

The Chair invited Councillor Mildren; Portfolio Holder for Finance, when the original decision dated 7 April 2008 was made, to add any further evidence. Councillor Mildren felt that the decision taken on 7 April 2008 was 'in principle' and was a holding decision, he pointed out that the affirmation on 16 December 2009 of the original "in principle" decision of 7 April 2008 was less prescriptive than the original, in that there were no references to a developer with proven experience in dealing with listed and historic buildings.

At that time the Council could not move forward on this decision as it was dealing with the objectives and consultation. Quite a period of time elapsed before the advert regarding Archway Cottages was published. Since the decision of 7<sup>th</sup> April 2008, a lot has taken place, such as the Council securing funding for regeneration projects. Councillor Mildren queried whether this option had been investigated for the future of Archway Cottages.

Councillor Mildren commented that in order to achieve linguistic precision, it was necessary to compare the paragraphs numbered 2.2 in the reports to Cabinet of 7 April 2008 and 16 December 2009, he pointed out that the wording of 2.2 in the original report to Cabinet on 7 April 2008 was;

*"The Cabinet should approve in principle, the disposal of the four properties by way of the grant of a single 125 year lease of the whole, to a developer with proven experience in dealing sympathetically with listed and historic buildings (on terms which will simultaneously ensure that the properties are properly restored and appropriate capital value is obtained for the Council)."*

Whereas, wording of the paragraph 2.2 in the decisive report to Cabinet on 16 December read:

*"That Cabinet confirms its "in principle" decision made on 7 April 2008 to dispose of the property by the grant of a 125 years lease, on terms that lead to the restoration of the properties in accordance with listed building requirements"*

The Committee had no questions for Councillor Mildren. Councillor Mildren was thanked for his address.

The Chair invited Councillors David Perkins, Portfolio Holder for Finance, Councillor Brian Hoare, Leader of the Council, Isabell Proctor, Director of Finance and Support, and Simon Dougall, Asset Manager, to the table.

The Committee put questions to Councillor Brian Hoare, Leader of the Council:

**Q: Why was this decision made?**

**R:** The decisions made on 7 April 2008 and 16 December 2009 were taken based on professional officer advice. It was the best way forward for this Council and these properties.

**Q: Did you read the report in full prior to making the decision?**

**R:** Yes, all parts of the report.

**Q Councillor Clarke referred to the budget as a `war chest`, i.e. selling off assets to prop up the budget, do you support this suggestion?**

**R:** No, the Administration has to look at the immediate financial situation of the Council and make decisions around the best way forward with good use of the Council's assets.

**Q Were you aware of the emails that referred to the budget as a `war chest`?**

**R:** No.

**Q Were you aware of Officers' advice and in following this advice, none of the options ensured that NBC would retain a long-term lease?**

**R:** This question could be interpreted in a number of ways.

**Q: As Leader, you should expect to receive this information, I have concerns that you are not being provided with sufficient briefings and advice.**

**R:** Advice is available as set out in the report. I am able to question this advice.

**Q What is the effect of `Right to Buy`?**

**R:** Should the Cottages be renovated by this Council and we were in the position to offer them as part of the Council's housing stock, normal rent would be attracted, (this is detailed in the report to Cabinet on 16<sup>th</sup> December 2009), in doing this, the Cottages would be subject to right to buy. The Council could make an investment into these Cottages and then they could be subject to right to buy.

**Q Councillor Clarke suggested that the Cottages could be left for five years and then an application for funding be put to English Heritage, has Cabinet taken part of any discussions of this nature?**

**R:** It can always be said `whenever funds come available'. Cabinet looked at these properties with all costs associated to bringing them back to habitable use. Cost burdens need to be looked at.

Councillor Hoare was thanked for his address.

The Chair invited Councillors David Perkins, Portfolio Holder for Finance, Councillor Brian Hoare, Leader of the Council, Isabell Proctor, Director of Finance and Support, and Simon Dougall, Asset Manager, to the table.

Councillor David Perkins, Portfolio Holder for Finance, addressed the Committee. He commented that Councillor Clarke had been selective in his evidence regarding the email that he had referred the Call-In Hearing to. Councillor Perkins confirmed that the report to Cabinet of 16<sup>th</sup> December 2009 was in draft format at the time that he sent this email. The original report that was presented to Cabinet at its meeting on 7<sup>th</sup> April 2008 had contained details of all the viable options for the future of Archway Cottages. Non-viable options were not included.

The Council has to make decisions about capital assets and funds. It is proposed that the Cottages are returned to domestic use, to ask a Developer to renovate them and return to domestic use and in so doing relieve the council of the estimated £290,000 liability.

Councillor Perkins went on to refer to Councillor Clarke's address to the Call-In Hearing, commenting that the Council has a responsibility to utilise its resources in accordance with its priorities. Expenditure of £290,000 on the renovation of Archway Cottages could not be justified in a period of recession when it was more important to use available resources for the benefit of the most vulnerable in society e.g. Disabled Facilities Grants. A sale to the private sector, under the terms of the lease, together with the planning regulations relating to Grade II listed properties, would protect the heritage of the properties and ensure that the cottages were renovated to the appropriate standard and realise a capital sum for the Council. He confirmed that the decision to dispose of the cottages was consistent with the guidance contained within the English Heritage Report "Managing Local Authority Heritage Assets" and quoted the following passage from the report "Government guidance urges local authorities only to continue to hold property assets if they meet the current requirements of the authority in terms of enabling it to meet its objectives, including financial. Otherwise, assets should be disposed of in order to encourage alternative use."

Councillor Perkins confirmed that if the Cottages were sold, the Highways Authority would not permit a new access to the Cottages.

The ward Councillors were consulted and made no objections.

The Committee put questions to Councillor Perkins:

**Q: If the properties were left sealed up, what would be the cost implications?**

**R:** It would be a 'waste of an asset'. The longer properties are left empty, the more it would cost to restore them, the capital value would go down and they would deteriorate more.

**Q How much would it cost for the Cottages to be retained and brought up to standard?**

It would cost around £290,000 to restore the cottages to houses for letting purposes and they would, in the majority of situations, be subject to 'right to buy' legislation. If the Council undertook to renovate the cottages it would have to borrow this money and it was clear that any rental income would not cover the cost of the borrowing and in addition as the cottages would be subject to the right to buy legislation, the Council could end up disposing of the Cottages at a loss.

The rent paid by Council tenants is governed by Legislation and must be less than the market value, i.e. about £13,000 per annum. Borrowing costs would be in excess of £13,000, possibly around £20,000 and then the Cottages could be sold under 'right to buy'. It is clear that any rental income would not cover the cost of the borrowing and in addition as the

Cottages would be subject to the right to buy legislation, the Council could end up disposing of the cottages at a loss.

**Q Is the comment made in your email of 13 October 2009 a political or organisational comment?**

**R:** Councillor Perkins confirmed that it is his duty to encourage officers to use resources to the best use for the town and the comment was not politically driven.

**Q: Have there been many private suitors for the Cottages**

**R:** Not at present. If the decision could progress, the Cottages would be actively marketed.

**Q: Was it always your view that NBC would retain some control over the lease of the Cottages?**

**R:** The viable option was to dispose of the properties under a 125 year lease, but the issue regarding 'right to buy' had to be understood.

**Q: The Council should have some control over the lease and what the Developer does with the Cottages?**

**R:** There are enormous planning controls over Grade II listed properties.

**Q Were you aware of the email of July 2009?**

**R:** I was not aware. However I was aware that 'Right to buy' was always going to be an issue. Discussions were held with the Asset Manager in this respect.

**Q There appears to be some confusion regarding should the Council retain the Cottages, return them to domestic use and they would be subject to 'right to buy'?**

**R:** If the Council retains the Cottages with Council tenants – they would be subject to 'right to buy'. If the Cottages were sold to a Developer, who then leased them with a long lease, the lessee would still have the option to buy the properties.

The report to Cabinet on 16<sup>th</sup> December 2009 made the right to buy issue explicit.

Councillor Perkins was thanked for his address.

Isabell Procter, Director of Finance and Support, addressed the Committee clarifying that capital receipts could only be used for capital purposes and could not be used for underpinning any revenue purposes. A clear Capital Strategy is agreed by Cabinet each year. The Director of Finance and Support provides advice on looking at the different assets, whether they provide good value for money and whether the sale of an asset is advantageous to maintain other capital assets for the good of the community. Advice from valuers was provided for the options for the future of Archway Cottages.

A capital receipt from Archway Cottages could be used to enhance other capital assets. The two reports contained judgement of professional officers. All Cabinet reports are subject to a robust process of challenge to ensure that the financial and legal governance contained in the report is correct.

At this point, Francis Fernandes, Borough Solicitor, advised that comments had been made about pre-determination and governance issues. He asked Isabell Procter to clarify whether

the reports of 7<sup>th</sup> April 2008 and 16<sup>th</sup> December 2009 were based on professional officer judgement or produced by Cabinet.

In response, Isabell Procter advised that the two reports contained judgement of professional officers. All Cabinet reports are subject to a robust process of challenge to ensure that the financial and legal governance contained in the report is correct. If a report is not robust it does not go before Members.

Isabell Procter was thanked for her address.

Simon Dougall, Asset Manager, addressed the Committee clarifying that whole life costs for the restoration of Archway Cottages, include both the initial capital costs and holding costs. Holding costs (e.g. maintenance and management) would be significant given the listed nature of the premises. A Developer would almost certainly seek to recoup its investment by granting long-term leases of the properties. The risks of losing overall control/freehold ownership as a result of either: retention and renovation and associated with disposal were set out in the report to Cabinet of 16<sup>th</sup> December 2009.

The Committee put questions to Simon Dougall:

**Q: Did you make Cabinet aware of all the options for the future of Archway Cottages?**

**R:** In considering all options for the future of Archway Cottages, Officers had to be mindful that the premises were Grade II list buildings. A range of options for the future of Archway Cottages were considered, but in the context that they had to be financially viable in capital terms and sustainable in revenue terms.

**Q: Do you have any views on Councillor Clarke's evidence regarding damage to the Cottages when boarding up took place?**

**R:** I cannot comment in detail. I was not personally involved with agreeing the methodology of the boarding up of the Cottages, as one of my team was involved in organising the actual boarding up of the Cottages. I was consulted on placing an order for the boarding up due to the costs involved. The Cottages had a problem with squatters.

**Q: When did the Cottages become vacant and to what degree have they deteriorated since?**

**R:** The last tenant vacated Archway Cottages during early 2007. There has not been a great deal of recorded deterioration to the Cottages since this date, but there is the risk of further damage and deterioration if they continue to stand empty.

Simon Dougall was thanked for his address.

The Call-in authors were given the opportunity to add any points of clarification before any resolution or recommendation was moved.

Councillor Hawkins commented that in her opinion the evidence provided had proved the reason for call-in. She drew attention to the fact that Officers who were not represented at the meeting were those from Conservation and Regeneration and the Parks Directorate.

Councillor Clarke referred to his evidence pack stating that the terminology used in boarding up the windows of Archway Cottages was "break glass where required" and "break glass at the four corners of all windows". He commented that should steel have been used there

would not have been a need to break the glass. Councillor Clarke added that in his opinion the Committee had heard just some of the evidence that Cabinet should have been presented with and that the Call-In Hearing need to decide whether Cabinet had had all the facts to make a decision on the long-term use of the Cottages for the benefit of the town. Cabinet had failed to look at all the options.

Councillor Clarke went on to refer to the issues raised by the Youth Project and the fact that this was not referred to in the Cabinet report and the other potential uses for the Cottages which were also not referred to in the Cabinet report. He then asked the Committee to consider whether Cabinet had made a decision based on all the evidence and advice from all departments, whether there were alternatives and whether the decision was safe.

Francis Fernandes, Borough Solicitor, reminded the Executive Members present and those Councillors that were members of the Executive on 7<sup>th</sup> April 2008 of the need to leave the meeting and take no part in the Committee's deliberation session. The Call-In has, at Officer level, been deemed valid. There are no concerns that the decision was unlawful. The decision that Cabinet was required to make on 16th December 2009 was a consideration of objections following statutory advertisements as required for the sale of public open space. The reasons for the Call-In referred to the substantive decision, which was made on 7 April 2008. Whilst the December meeting asked for a reconfirmation of the earlier (April) decision, his view was that any Call-In for the substantive decision should have been made within 7 or exceptionally 21 working days from that decision. Whilst the April 2008 decision has not been implemented (because it was awaiting the completion of the statutory advertisement process), the Chair, with advice from the Borough Solicitor, had at the beginning of the meeting advised the Call-In Authors of the need to explain to the Committee their reasons for leaving it so late to call-in the decision.

## **FINDINGS AND CONCLUSIONS**

Following the submission of all the evidence, the Committee concluded that Cabinet had been furnished with adequate evidence and had considered alternative options for Archway Cottages.

Following the deliberation session, it was proposed by Councillor Scott Collins and seconded by Councillor Pam Varnsvery, that the Call-In be rejected on the grounds that it was unfounded as Cabinet had considered adequate evidence and alternative options had been considered. Upon a vote, it was: -

### **Resolved:**

- (1) That after all the evidence had been heard that the Call-In be rejected on the grounds that it was unfounded, as Cabinet had considered adequate evidence and alternative options had been considered.

The meeting concluded at 10.25pm