

Extract from the minutes of the Governance and Audit Committee meeting of 18 January 2022

297. Colchester Commercial Holdings Limited Business Plans

Andrew Tyrrell, Client and Business Manager, attended the meeting to introduce the report and assist the Committee with its enquiries. The Committee heard that Colchester Commercial Holding (CCHL)'s Business plan set out the overarching strategy for all the Council's wholly owned commercial companies (the Companies), and detailed the activities of the companies and how they aligned with Colchester Borough Council (the Council)'s strategic objectives, to ensure openness and transparency. Each subsidiary company also had its own Business Plan which were commercially sensitive, and which contained more detail and set out the Companies' plans for the coming four to five years. The report that had been presented to the Committee also set out the governance arrangements for the Companies, which were approaching the end of their fourth trading year, having been set up in April 2018. Although the last two years had been affected by the Coronavirus pandemic, signs of recovery were starting to be seen.

Paul Smith, Managing Director of Colchester Commercial Holdings Limited (CCHL), attended the meeting to deliver a presentation containing detailed information about the past performance and future plans of the Council's wholly owned commercial companies (the Companies), and assist the Committee with its enquiries. The Committee received information in relation to CCHL's prediction as to the dividend that would be available to be supplied to the Council this year, and it was considered that careful management of CCHL's finances had yielded a very positive return. The Committee were reminded that the achievements of CCHL were the result of joint working with the Council and the utilisation of Council funds, as CCHL carried out functions which could not be undertaken by a Local Authority under the Localism Act 2011 and the Local Government Act 1972. The Committee received updates on key projects and achievements from the period 2021-2022.

Colchester Northern Gateway Sports Park had opened in May 2021, had hosted the Women's Tour of Britain, and the whole sports complex had been very well received locally. Future events were planned for 2022.

With regard to Colchester Northern Gateway South, CCHL had been successful in negotiating and finalising the Turnstone Development, construction of which was due to commence before the end of the current financial year. The Walk, which was a boulevard which ran through the entire Northern Gateway development, had been completed in conjunction with heat network pipes and other ducting for future use. Work had commenced on the development of St Mark's Community Centre.

The Council's commercial companies had been very successful in managing the impact of the restrictions imposed as a result of the pandemic, and event that had been compliant with Covid restrictions had been held through the summer. The Committee were reminded that the events activities of CCHL did help to cross-subsidise the start-up of both the Council's Energy Company (CAEL) and Homes Company (CAHL), and should not be underestimated. As full a calendar of events as was permitted was planned for 2022.

The Helpline service had performed very well, and throughout the entire pandemic full operation of the service had been maintained. The Committee heard that the service did not simply monitor events, but actively assisted its customer base, and had been supported by staff and volunteers over the past year.

CCHL had continued to work on the provision of a Local Full Fibre Network (LFFN) to Colchester, which was of key importance to the continued economic growth and success in the borough, and the work would be completed in February 2022. The LFFN had also been used to increase the expanse of the Council's Close Circuit Television (CCTV) network, as well as its quality of image, which had been of great assistance to the Council's partners.

The Council's energy company, Colchester Amphora Energy Ltd (CAEL) had now completed all the boreholes necessary to support the operation of the Northern Gateway Heat Network, and consideration had been given to the feasibility of a potential solar farm and microgrid at the Northern Gateway to help deliver a more sustainable electricity supply to the development.

Colchester Amphora Homes (CAHL) had completed its first mixture of private and affordable housing, and the Committee heard that CAHL would always deliver 30% affordable housing on any of its developments, which was a very important aspect of what CAHL would be providing to the Borough. The Company was moving forwards with designs and feasibility for new pipeline sites coming forward.

With regard to the future activity of CCHL, the Committee heard that over the coming years, key priorities were to lead development of Section 106 funded community buildings at Stanway and North Colchester which had already commenced, together with the development of the new St Mark's Community Centre. Work would continue on the digital grow-on space scheme at the Queen Street Bus Depot, together with a continued focus on partnership working, and the delivery of the LFFN project.

The Committee was assured that the Asset Management Team had worked diligently through the pandemic to ensure that income from the Council's assets had been realised, and a strong income stream had been achieved with limited loss of rental income.

In line with signs that the pandemic may be coming to an end, CCHL hoped to deliver as full a programme of events and weddings as was possible in the coming

year, and the importance of the income that would be generated in supporting other elements of the Companies was again brought to the attention of the Committee.

It was intended that the excellent Helpline service would be maintained over the coming years, and the customer base expanded throughout Colchester and possibly beyond. The digital upgrade of the Helpline operating system would continue, facilitating the expansion of digital services to customers via the LFFN.

The Capital Projects Team would continue to lead delivery of key projects throughout the borough to include the Rowan House refurbishment works, the Northern Gateway, the Queen Street Bus Depot and the St Mark's Community Centre projects.

Of key importance to Colchester Amphora Energy Limited (CAEL), was engaging with a contractor for the installation and commission of the Energy Centre, which was hoped would come forward through the coming financial year. Work would also continue around examining the feasibility of a microgrid, and the continued provision of excellent advice to the Council around sustainable energy, to support the Council's Strategic Priorities in this regard.

Colchester Amphora Homes Limited (CAHL) would seek to progress its Housing Revenue Account (HRA) sites through its action as project manager of these, and it was hoped that the Military Road site Phase 1 development would be complete in the Spring of 2022. Further work would be undertaken to identify the feasibility of pipeline sites for future development, and bringing these forward, and all available Homes England housing grants would be taken advantage of.

The Committee heard that CCHL had previously been requested to consider how it might expand the business in the future, and one of the key obstacles that was envisioned with regard to this was the potential change with regard to the Department of Levelling Up, Housing and Communities in the approach they may take towards local authorities borrowing money, and how they could potentially be requested to input a minimum revenue provision to limit local authorities exposing themselves to undue risks. The Council was submitting a response to a consultation in relation to this, which was due to close on 8 February 2022 as it was important to ensure that no imposition was made that would stifle the delivery of homes in the borough, together with other investments that the Council may wish to make such as in the heat network. This uncertainty had been borne in mind when considering the Business Plans, as well as potential changes in the market which may affect household income and mortgage ability.

Bearing in mind the success of CCHL over the previous financial year, and the balance which existed between the individual Companies, CCHL considered that in the financial year 2022/2023 net profit for distribution would be £256,131, however, in subsequent years the effects of completed housing being sold on would be seen and net profit available for distribution rose significantly to £1,017,627 in 2023/2024,

£1,687,436 in 2024/2025 and £1,778,135 in 2025/2026. These predictions had been made as the result of very careful consideration, and were considered to be as realistic as possible.

Councillor Willetts considered that the proposed Business Plan was somewhat light on detail concerning the projected activities towards the end of 2026, but he accepted that this was as the result of unknown factors which could significantly affect CCHL. Councillor Willetts did, however, consider that three issues which had been raised by the Committee in the past had not been adequately addressed by the proposed Business Plan. The first of these issues was the financial flexibility and balance sheet strength of CCHL, so that in addition to executing the projects of the Council, CCHL retained the ability to engage in other profitable activities. Secondly, was the question of tax implications on turnover, and the effect that the move towards contracts which contained more social benefit would inevitably have on profitability and therefore the tax liability. Additionally, no reference had been made to the tax payable on dividends that were paid out by CCHL, and Councillor Willetts considered that this was an area which should be carefully considered to ensure the most favourable tax conditions were created. The third issue not addressed by the Business Plan was the range of activities that CCHL might consider including, but which were currently not included. Councillor Willetts noted that the Localism Act 2011 permitted local authorities to undertake profit making activity if this was delivered as part of a company structure, and he enquired whether there were activities currently being carried out by the Council which could be taken on by CCHL to expand its portfolio of profit-making activities.

Paul Smith confirmed that at a previous meeting of this Committee the possibility of retaining dividends in CCHL had been discussed with the aim of growing the balance sheet. This has been discussed internally with the Council, but with the budget pressures that the Council was expected to experience over the coming years it was not considered that dividend retention would be a viable option, and the Council would need to receive the benefit of the trading activities of CCHL. Consideration was being given to the expansion of the operations and profitability of CCHL, however, the lack of clarity which was caused by the regulation review that was being undertaken by the Department of Levelling Up, Housing and Communities had meant that CCHL had not been in a position to present ideas to the Committee. With regard to the tax implications of CCHL, both the external auditors of CCHL and the Council were very keen to make sure that there was nothing in the trading and the internal movement of costs, dividends and paybacks where there could be any perception that there was an undervalue for the cost of transfer. The Committee heard that the requirement to pay corporation tax was the result of successful trading, although if there was any surplus income from activities that a local authority could carry out itself then this was exempt from corporation tax liability. The three individual Companies also benefited from group relief, with losses made by the Energy Company through its inception being offset, to ensure that group relief was maximised to minimise the corporation tax liability. With regard to the range of activities that were undertaken by CCHL, this was something that was the subject of

detailed discussion between CCHL and the Council, but progress in this area was also subject to delay caused by the uncertainty surrounding future recommendations from the Department of Levelling Up, Housing and Communities.

Councillor Willetts considered that the Business Plan should touch on some of the issues that he had raised as he believed that they were particularly pertinent to the acceptability of the Business Plan, and it was right that the Governance and Audit Committee, as the shareholder committee for CCHL should explore these issues. He questioned the way that the Business Plan addressed unresolved risks, in particular the minimum revenue protection requirements (MRP), which may have a very significant impact on the Business Plan. He noted that the Business Plans would need to be referred to Cabinet for approval before the final position in relation to MRP was known, but wondered whether it would be prudent to have a section in the Business Plan dealing with unresolved financial risks, and the potential impact that MRP could have in a variety of scenarios; in particular the impact that MRP could have on the Council and any loans which had been made. Councillor Willetts sought an opinion on the extent to which unresolved financial risks should be included and addressed within the proposed Business Plan for the next four years, particularly with regard to the energy and housing projects.

Paul Smith confirmed that a balance had to be struck between the commercial sensitivity of the activities being undertaken, and the need to make information publicly available as part of the CCHL Business Plan. He was happy for the Business Plan to be augmented in accordance with the suggestions that had been made, and confirmed that the possible impact of MRP had been considered in the as part of the predictions for the coming years, however, more transparency could be included around some of the assumptions which had been made in this regard. In response to an enquiry from Councillor Bentley, Paul Smith confirmed that the projected rise in the cost of living and materials had been considered when making net profit predictions, together with any time delays which may occur. It was noted that the expectation was that production levels would return to their pre-pandemic levels during the course of the year, and CCHL had utilised predictions that had been made by the Royal Institute of Chartered Surveyors to ensure that the predictions that had been made were not overly optimistic.

Councillor King noted that two or three years ago he was aware that concerns had been expressed as to whether the Council should have the Companies, and the interrelationship between them, however, he was aware of far fewer concerns being expressed now. He sought a view on whether the set up of the Company felt right in the opinion of Officers, and also how the success of the Companies could be measured on a commercial level given that they received business from the Council. The Committee were reminded that the Companies were set up to deliver services which the Council could not. The boreholes which were part of the heat network were owned by the Council, however, the additional benefit associated with the renewable heat incentive scheme could not be obtained by a public body and had to be retained by a private company, in this case CAEL. Additionally, the Companies

allowed the Council to profit from the sale of council housing projects in a way that a local authority on its own could not. With regard to the LFFN, the Council was able to facilitate funding from the Department for Culture, Media and Sport (DCMS) to put in the basis of this network, however, a private company was then required by DCMS to implement the network itself. Given this rationale behind the creation of the Companies, and their utility in these areas, the governance and structure of the Companies, there were a number of activities where CCHL was an inwardly looking organisation which was utilising public sector funding and was therefore bound by public sector regulations. Other activities carried out by CCHL, for example the events business, were very commercially successful and were generating good surpluses. Paul Smith considered that the governance arrangements which had been put in place when CCHL had been formed were still appropriate and relevant now, however, should CCHL become more commercial in the future, the governance arrangements may need to be reconsidered. With to the competitiveness of CCHL the services that the Companies provided were measured against a baseline which allowed for some comparisons to be made with the services provided by CCHL and the same services provided commercially. When winning the prestigious 'Entrepreneurial Council of the Year' award, the assessment panel had been intrigued by the fact that CCHL had been able to deliver a positive return immediately, which had not been seen before. CCHL was also able to retain the social benefit in its activity, which made making a straight comparison between CCHL and private companies very difficult to do. Key Performance Indicators (KPI)s had been agreed with the Council to ensure that performance which was important to it was met, and CCHL was judged on these KPIs and the dividend which was provided.

Councillor Willetts noted that the Companies were not Council departments, but commercial organisations in their own right, and he would welcome a degree of boldness in the Business Plan about the aims of the Companies, how they wished to help the Council and assist in the provision of Council services in the future, a sentiment which was supported by Councillor King.

Councillor Fox also supported the inclusion of positivity in the Business Plans and considered that in his opinion the current Plan could be considered to be quite short term in its outlook. He noted that he had been involved with the Companies since their inception and considered that the same projects had been worked on throughout the life of the companies. He would welcome more long term thinking and planning within the Business Plans allowing the Companies to demonstrate the flexibility that would make them continuously successful. He considered, by way of example, that lessons which had been learned from the Northern Gateway Project should now be applied to future projects, such as the Garden Community. He questioned whether CAHL would deliver 350 homes by 2024 or 2025, as this was not clear in the Plan, and it was confirmed that there was an obligation to complete the 350 properties by July 2025. Paul Smith explained that the pipeline of Council based assets that could be developed was being considered and CAHL was concerned with ensuring that the land which the Council wished to see develop was

being utilised, and it was hoped that future targets for CAHL would be identified. The Events Company was identified as being a wholly commercial company which was not funded by the Council, and which generated significant income. The Events Company had also provided services to two other local authorities which represented an expansion of the business activity. Other local authorities had indicated an interest in utilising the services provided by the Companies, as these were delivered within a local government framework and with a public sector ethos, and this represented a further opportunity for expansion, subject to any funding issues which may arise.

Councillor Fox noted current rising energy prices and the impact which this would have on household income, and wondered whether there were any risks to the Northern Gateway Heat Network and the proposed Microgrid as a result of these changes to the energy market. The Committee heard that it was anticipated that the National Grid would experience strain during the transition from fossil fuels to more sustainable sources of energy, however, the energy that would be generated by the Northern Gateway Heat Network would generate a profit for the Council while at the same time providing cheaper hot water to all residential properties in the Northern Gateway development and reducing the carbon footprint; one of the Council's strategic priorities. The Committee heard that the proposed Microgrid was a bank of solar panels which could be used to create battery storage of electricity which could be utilised not only by the Council but potentially by developers concerned about the inability of the national grid to provide the electricity consumption that was required locally. It was considered that the associated risk element to this scheme was quite low, and this would be reflected in any business plan which was put forward for approval by the Council.

Andrew Tyrrell highlighted to the Committee the social and environmental benefits which the Companies were able to bring to the Council, which was particularly evident through the future Microgrid. The Council had declared a climate emergency in 2019, and has adopted an agreed pathway to net zero carbon emissions by 2030 in association with the Carbon Trust. Although the Council had managed to significantly reduce its carbon footprint already, if only the projects currently under way were completed, the Council would still have a carbon footprint of 2,700 tonnes of carbon. The Microgrid which was being currently considered would have the effect of removing approximately one third of this carbon, which was a significant beneficial impact.

Councillor Oxford noted that the Business Plan mentioned the hiring out of Council meeting rooms, and expressed a concern that these commercial hirings may have the effect of limiting the use of the meeting rooms for Council business. Councillor Oxford considered that this issue did need to be addressed in the Business Plan, as if there was a booking clash and a Council meeting which needed to be scheduled had to be held at another venue, there was no guarantee that the alternative venue would be fully accessible. He also noted that the disabled access lift to the Old Library building had required replacing relatively soon after it had been installed and

considered that a cover was needed for this lift to protect it. Paul Smith assured Councillor Oxford that CCHL was cognisant of the requirement for Council meetings, and had, on a number of occasions cancelled private bookings of meeting rooms to accommodate Council meetings. He would consider this issue in the future to ensure that both the needs of CCHL and the Council could be met. Dan Gascoyne, Chief Operating Officer, considered that the balance between Council meetings and commercial letting of the Council's property, principally the Town Hall, was about right, and noted that there was a separate hire agreement between CCHL and the Council which dealt with the operation matters which had been the subject of Councillor Oxford's enquiry.

Councillor Willetts considered that there was considerable overlap and duplication between the activities of the Council and CCHL, and he wondered to what extent this could be rationalised to increase the profitability of CCHL. Paul Smith was not aware of any particular areas of overlap between the services provided by the Council and CCHL, however, the structure of CCHL was currently being considered to build in resilience to the operational activities over forthcoming months, when any areas of overlap would be considered.

Councillor Willetts did not consider that any of the issues that had been discussed by the Committee were of sufficient seriousness for the Committee to recommend that the proposed Business Plan not be presented to Cabinet for approval. Nevertheless, many of the questions that had been asked had been pertinent, and it was down to CCHL to consider whether the Business Plan would be improved if it were amended to take account of the issues that had been raised by the Committee. Councillor Willetts summarised the issues on which the Committee had considered that clarification in the Business Plan would be useful as being; the financial flexibility of the balance sheet, the tax implications, the additional activities which could be envisaged in the Business Plan to ensure that profit making activities were within CCHL, the unresolved financial risks and assumption with regards to the potential impact of MRP on the two major projects which required capital which were energy and housing, the impact of inflation on the Business Plan, the competitiveness and boldness of CCHL (particularly in the energy market), and the issue of potential overlaps and duplications. It was suggested that the Committee commend these suggestions to the Company to consider whether the Business Plan would be improved by giving further consideration to these issues.

Councillor Fox pointed out that there were inconsistencies in the paperwork which had been presented in relation to whether the 350 homes would be delivered by 2024 or 2025, and although a verbal clarification had been given at the meeting, he requested that the Company be clear on when it expects the homes to be delivered. Councillor King noted the impact that the Companies could make in supporting the objectives of the Council in terms of delivering social value and contributing to reducing the Council's use of carbon, and he considered that the Company could be encouraged to highlight this element of their work when considering the final Business Plan.

Councillor Willetts confirmed that the Committee had now raised eight issues for further consideration by the Company, and considered that it was now for CCHL to consider whether or not it wished to modify the Business Plan to take into account the issues which the Governance and Audit Committee, as Shareholder, had raised. Councillor Lissimore, Portfolio Holder for Resources, thanked the Committee for its work, and looked forward to considering the proposed Business Plans at the forthcoming meeting of Cabinet.

RESOLVED that:-

- Colchester Commercial Holdings Limited be requested to consider amending the proposed Business Plans to take account of the following:
 - the financial flexibility of Colchester Commercial Holdings Limited's balance sheet
 - the tax implications associated with Colchester Commercial Holdings Limited's trading activity
 - the additional activities which could be envisaged in the Business Plan to ensure that profit making activities were within Colchester Commercial Holdings Limited
 - the unresolved financial risks and assumption with regards to the potential impact of Minimum Revenue Protection on the two major projects which required capital investment
 - the impact of inflation on the Business Plan
 - the competitiveness and boldness of Colchester Commercial Holdings Limited
 - the issue of potential overlaps and duplications between services delivered by Colchester Borough Council and Colchester Commercial Holdings Limited
- - clarity regarding the timeline for delivery of 350 new homes
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RECOMMENDED TO CABINET that the proposed Business Plans of Colchester Commercial Holdings Limited be agreed