

**MINUTES OF THE EXTRAORDINARY MEETING OF  
THE BOROUGH COUNCIL OF WELLINGBOROUGH  
HELD AT SWANSPool HOUSE, WELLINGBOROUGH  
ON TUESDAY 22 MARCH 2016**

**Present:** The Mayor, Councillor B Graves and Councillors Abram, Bailey, Beirne, Bell, Bone, Carr, Ekins, Emerson, Francis, Gough, Griffiths, Hallam, Harrington, Henley, G Lawman, L Lawman Lloyd, Maguire, Morrall, Patel, Scanlon, Scarborough, Simmons, Skittrall, Walia, Ward, M Waters, V Waters, and York.

**Officers present:** Mr J T Campbell (Chief Executive), Mrs L Elliott (Head of Finance), Mrs B Gamble (Head of Resources), Miss S Lyons (Solicitor, District Law), Mr G Betts (Mayor's Sergeant) and Mrs C A Mundy, (Democratic Services Officer).

**1. APOLOGIES FOR ABSENCE**

**RESOLVED** to note that apologies for absence were received from Councillors Allebone, Anslow, Aslam, Partridge-Underwood, Stevenson and Watts.

**2. DECLARATIONS OF INTEREST**

**RESOLVED** to note that in accordance with the Localism Act 2011, the council's code of conduct and the council's constitution, the following declarations were made.

<b>Name of Councillor</b>	<b>Minute no. and title</b>	<b>Reason for interest</b>
Carr	4, 6 & 8 – The Castle	Personal – observer on the Board of The Castle on behalf of the council.
G Lawman	4, 6 & 8 – The Castle	Personal - chairman of Northamptonshire Pension Board
Henley	4, 6 & 8 – The Castle	Personal – employee of company referenced in report.
Scarborough	4, 6 & 8 – The Castle	Personal – wife is a shareholder and pensioner of Barclays Bank PLC.

**3. REQUESTS TO ADDRESS THE MEETING**

Requests to address the meeting had been received from nine speakers, namely Mrs M Turner-Hawes, Mr H Bentley, Mr G Johnson, Mrs H Saunders, Mrs A Denny, Mr I Hamilton, Mrs A Snell, Mr R Levene and Mr D Walter.

Each addressed the committee for three minutes.

A number of speakers voiced their concern about the current operation of The Castle venue by The Castle (Wellingborough) Ltd, particularly in respect of the financial performance under the existing contract, and expressed the wish that any community asset transfer should only be considered after full consultation with the public. There were a number of community groups in the borough who felt that The Castle (Wellingborough) Ltd no longer connected with the community and that there was little inclusion. Investigations by the speakers had indicated that the Castle (Wellingborough) Ltd. was in severe financial difficulties. There was concern that the public perception of The Castle was that it was elitist and no longer affordable, and that the connection with local people needed to be enhanced.

Representatives of The Castle (Wellingborough) Ltd reminded members that The Castle had been built as an arts venue for the people of the borough and was considered to be of great importance both economically, bringing people into the borough, and as a social and recreational venue for community use.

Many schools had used the facility for their productions and much talent had been nurtured over the years. The Castle provided participation classes for children and the youth of the borough giving those children a sense of confidence and well-being for the future. These classes were very popular and the workshops and events were well attended. Disabled users were also considered, along with support being given to the diverse needs of the local community.

A number of improvements had been made at The Castle, with the revitalisation of arts and culture, resulting in increased attendance figures for productions and participation. A local restaurant chain, Franks, had opened and was proving to be extremely popular. There were a number of regular user groups and a clear vision for the future of The Castle to make it the hub of activity for the town.

The venue itself brought people into Wellingborough from the villages, other towns and from further afield, thus improving the economy. It was also considered that the business community should give their support to The Castle via sponsorship.

The trustees of The Castle (Wellingborough) Ltd wished to serve the needs of the people of the borough and to continue to provide an excellent facility. Concern was expressed that, should the contract be terminated, the doors would close and The Castle as a venue would never re-open. The experienced staff would find alternative employment and would be difficult to replace. It was felt that the reputation of The Castle as an arts venue would also suffer and professional performers would be reluctant to commit to working there. By working together it was hoped that a suitable solution could be found. The representatives of The Castle (Wellingborough) Ltd both accepted that there were considerable financial challenges, but wished to minimise disruption and risk, and asked that members allow the contract to

continue to ensure that The Castle remain open. There was also an offer for the current board members to be replaced.

All the speakers concurred that The Castle was a key asset for the town which needed to be retained for the people of the borough.

The Mayor thanked the speakers for addressing the meeting.

#### **4. THE CASTLE**

The Mayor proposed that there be a suspension of the normal convention, where officers did not speak at a council meeting, as this would allow officers to present the report and answer any questions. This was agreed.

The Head of Resources and Head of Finance presented their annexed circulated joint report and confidential appendices to members. The report detailed the request from The Castle (Wellingborough) Ltd to consider a proposal to redevelop the premises, known as The Castle, to make it a more viable business leading to complete financial self-sufficiency.

The Castle (Wellingborough) Ltd (TCW), a registered charity, entered into a contract with the council on 1 April 2011 to provide a range of specified services at The Castle, which is owned by the council. The contract would terminate on 31 March 2021.

The contract provided for changes to the contract price, by agreement, and was based on the premise that the services and price would be provided in line with the financial challenges faced by the council. Over recent years the council's financial situation has changed dramatically and, in line with the contractual arrangements, the contract price paid to TCW has been reduced as detailed in the report.

In addition to the contract price the council made a further payment of £90,000 per annum to fund the repair and maintenance of the internal areas. The council was responsible for the repair and maintenance of the external areas and fabric of the building, as well as providing capital grants for larger projects such as new cinema equipment

The total amount given to TCW in 2015-16 was £309,623. In 2016-17 it would be £276,680 – a reduction of £32,943. The total agreed reduction in the contract price, since the beginning of the contract, was £108,739.

The performance of the contract had been reviewed by senior officers and TCW's director on a regular basis. Attempts have been made by TCW to increase levels of income from shows and external funding, and a new restaurant and bar was operating on the premises.

In 2015, TCW had submitted a proposal to take responsibility for developing the facility to provide a wider arts offer to the community, thereby making it a

going concern and giving it the ability to become less reliant on funding from the council.

A business case had been prepared by TCW, and council officers had commissioned legal and procurement advice as well as an analysis of the business case submitted. This advice concluded that there could be state aid implications, should the council agree to TCW's proposal. Whilst state aid exemptions were available these could not be used to give state aid to an 'undertaking in difficulty'.

The Head of Finance commissioned an audit report in December 2015 and, based on the accounting information available, it was established that TCW could be regarded as an 'undertaking in difficulty'.

Further discussions with the director of TCW had resulted in an alternative proposal in February 2016 from him, after discussions with board members. This consisted of a request for the council to fund the redevelopment from the council's capital budget, as well as providing a loan to TCW of £300,000 per annum for each of the next two years, totalling £600,000, to assist with cash flow during the development.

Again officers sought legal advice from specialist consultants as risks arising from state aid and procurement remained. The detailed findings were set out in the exempt appendices.

Separately from the consideration of redevelopment proposals a request was made by TCW in February for an advance of £50,000 in respect of the contract fee due on 1 April 2016. Resources committee agreed to a one-off loan to assist with cash-flow, acknowledging the financial risk, but considering that the risk to The Castle's future operation and expectations by local people was higher.

A valuation of The Castle had been carried out and set at £1.2m with vacant possession, with the value of a 125 year leasehold interest being £1.14m.

Since the council report had been published TCW had made a further proposal to the council that it could enter into a Company Voluntary Agreement (CVA) and members had been issued with additional exempt appendices summarising the information provided.

The report detailed four options for members to consider, having regard to all of the details presented in the report and exempt appendices.

The leader of the council, Councillor Bell, thanked the officers for the very comprehensive report. He made it clear that the rumours on social media about the site being developed for housing were incorrect. There was no intention to develop this site for housing and the site would remain as part of a cultural quarter for the people of the borough. Following a long negotiation process a ten year contract had been signed with TCW in 2011, and the council had also invested in on-going improvements, including digital

equipment, heating and specialist equipment. The Castle belonged to the people of the borough. He considered that the evidence clearly indicated that TCW was unfit to run it.

The leader of the opposition, Councillor Scarborough concurred that the retention of The Castle played a pivotal role and was of vital importance to enable arts provision to continue in the borough. He referred to the history and vision of former councillors in building The Castle, using council tax payers' money 20 years ago, and the contract negotiations and long debate that had taken place in 2011, when TCW had been awarded the contract.

Evidence indicated that TCW had not delivered on the contract because it was facing financial difficulty. The current situation needed to be addressed to ensure that The Castle remained at the heart of the community.

The Mayor thanked the leader and leader of the opposition for their comments.

## 5. EXCLUSION OF PRESS AND PUBLIC

To enable discussions to take place on the exempt appendices the following was agreed.

**RESOLVED** that the press and public be excluded from the meeting during consideration of the following items in accordance with Section 100A(4) to the Local Government Act 1972 on the grounds that they would involve the likely disclosure of exempt information of the description shown in schedule 12A to the Act:

Minute no.	Item	Paragraph of schedule 12A
6	The Castle – exempt appendices	E3

## 6. THE CASTLE – EXEMPT APPENDICES

The Head of Finance presented her findings to members, making reference to Appendix A and the following paragraphs:

Paragraph:

- 1.8 - Reputational risks;
- 1.17 - Future management contract;
- 1.24(c) vii - Contractual payment;
- 1.25(c) & (d) iii - Next steps – analysis of options or termination of contract and;
- 1.36 - the Section 151 officer's recommendation.

The four options within the report for members to consider were as follows:

Option A – agree to TCW's initial proposal of a community asset transfer and a contract termination payment of £616,000 with TCW to redevelop the site;

Option B – agree to TCW’s second proposed alternative solution of no asset transfer, the council to provide the capital funding, TCW to do the redevelopment and the council to provide a cash flow loan of approximately £300,000 in both 2016-17 and 2017-18 in lieu of contractual payments for 2018-19 and 2019-20;

Option C - Accept neither proposal and to let the current contract continue under the same terms, with renegotiations of price and service delivery prior to April 2017 in accordance with schedules four and five of the contract;

Option D – to terminate the contract in accordance with schedule six of the contract.

A number of members commented or asked questions for clarification in relation to the options before them, to which the Head of Finance, Head of Resources, Chief Executive and Head of Legal responded.

These are summarised as follows:

- The viability of TCW continuing to deliver the services for the council and the feasibility of a managed exit plan. Also discussed was the risk of closure and re-opening again at a later date.
- Allowing TCW to continue to trade and the risks of both accruing further debt and the council making further contractual payments on 1 April. The risk of breach of contract was discussed if this payment was not made.
- Reputational damage and uncertainty over the future trading and sales of TCW, including the need for clear communication.
- The council’s liabilities for any of TCW’s debts and future acts and booking arrangements. It was established there were none.
- The timeline as included in the report and the lack of information shared with the council on TCW’s financial situation or its progress on options, including the charge made over the company and the change to the accounting period.
- Board membership, their responsibilities and the potential for current members to step down.
- Reference to the position on both tangible and intangible assets which were clarified by the Head of Finance.
- The impact on communities who use the facilities and the participation programme if the theatre were to close.
- Details of potential insolvency options that may be explored, including the CVA proposal made by TCW. The Head of Finance clarified the options, processes and timelines for these.
- The Castle had been built as a community asset for the people of the community to use and get pleasure from. There was a need in the future to ensure this was taken into account. The council expressed its commitment to keep the facilities available and to ensure the theatre remains an integral part of the borough.

The mayor allowed a lengthy debate to ensue to enable members to fully discuss the options available.

Having listened to the comments of members and officers Councillor Bell proposed the following amendment to option D which terminated the contract in accordance with schedule 6. Schedule 6 allowed for immediate termination but also an agreed exit management plan over a specified period:

That the council resolves to:

- (i) terminate the contract in accordance with the relevant contract terms, and give six months' notice to end not later than 30 September 2016 or earlier by agreement;
- (ii) Instruct officers to prepare, in conjunction with The Castle (Wellingborough) Ltd, an exit management plan which both protects the council's interest and provides a smooth transition;
- (iii) As part of that agreed exit management plan request The Castle (Wellingborough) Ltd, to prioritise, where possible, local community groups and businesses when settling outstanding liabilities;
- (iv) take into consideration the positive interest shown by many members of the local community and to consult widely on options for the future of the venue, with a further report to members in due course;
- (v) look at ways for the council to mitigate the pension deficit part of The Castle (Wellingborough) Ltd.'s liabilities and give authority to the Head of Finance, in consultation with the chairman of the Resources Committee, to take any necessary urgent action on this.

The Head of Finance made it clear that contractual payments due on 1 April 2016 would need to be paid under this proposed amendment.

Members discussed the proposed motion, with many giving their support to the contract payment due on 1 April 2016 being made and agreement being reached for a managed exit as being the best way forward for the future of The Castle. This could ensure that The Castle did not close immediately.

Other members raised concern that TCW was not a financially viable concern and that this option would only delay the inevitable for a further six months with the public being reluctant to book seats, and uncertainty for employees resulting in good staff leaving. They considered that the contract should be terminated immediately.

Members debated the proposal at length.

Councillor Beirne proposed an amendment to Councillor Bell's proposition as follows:

That the contract with The Castle (Wellingborough) Ltd be terminated immediately in accordance with schedule six of the contract, to enable the council to move forward with alternative provision.

This was seconded by Councillor Gough.

The amendment was put to the vote with 14 votes in favour and 15 against and declared lost.

Councillor Scarborough referred to Councillor Bell's proposal (v) above and asked whether investigations could take place separately, and be dealt with under urgent action. Councillor Bell consulted with the Head of Finance and agreed that clause (v) could be removed from his proposal.

The Mayor informed members that as it was 10pm standing orders would need to be suspended to enable the meeting to continue.

## **7. MOTION TO SUSPEND STANDING ORDERS**

It was proposed by Councillor Scarborough and seconded by Councillor Bell that in accordance with clause 4.1.08 of the constitution, standing orders be suspended to enable the meeting to proceed beyond three hours.

On being put to the vote this was unanimously carried.

**RESOLVED** that standing orders be suspended to enable the meeting to proceed.

## **8. CONTINUATION OF THE MEETING**

The meeting continued and members expressed their concern that, if the contract continued for a further six months, there would be considerable uncertainty. The council would also have paid a large amount of money in accordance with the contract.

The Chief Executive addressed the meeting. He understood members' concerns and agreed that this was a very difficult decision to make. There was no good outcome, but the proposal before members was probably the least bad option.

Councillor Ekins proposed a further amendment as follows:

- (i) the contract with The Castle (Wellingborough) Ltd. be terminated with immediate effect;
- (ii) The Castle remain open and continue to be run as a going concern, with the council putting in its own management team to run it until such time as a management company can be put in place.

The Chief Executive advised that this amendment was very similar to the previous amendment and that it would not be a viable option to take forward. If members, however, wished to debate it a seconder was required.

Councillor Beirne seconded this amendment.

Councillors debated this amendment but the majority did not consider that this would work and that this would put the onus on the council to run The Castle in the interim, with there being no expertise to undertake this.

The Mayor put the amendment to the vote. There were four votes in favour, 20 votes against and two abstentions. The amendment was declared lost.

This concluded the debate and it was moved that the meeting be re-opened to the public to enable the decision to be taken.

(Councillor Bailey left the meeting at 10.10pm.)

The public returned to the meeting.

Councillor Bell formally proposed the following, which was seconded by Councillor Scarborough.

That the council resolves to:

1. terminate the contract in accordance with the relevant contract terms, but give six months' notice to end not later than 30 September 2016 or earlier by agreement;
2. Instruct officers to prepare, in conjunction with The Castle (Wellingborough) Limited, an exit management plan which both protects the council's interest and provides a smooth transition;
3. As part of that agreed exit management plan to request that The Castle (Wellingborough) Ltd prioritise, where possible, local community groups and businesses when settling outstanding liabilities;
4. taking into consideration the positive interest shown by many members of the local community to consult widely on options for the future of the venue, with a further report to members in due course.

In accordance with rule 4.1.16(d) Councillor Henley proposed that a recorded vote be taken and this was supported by seven councillors.

The following votes were cast:

For: Councillors Abram, Bell, Carr, Emerson, Francis, Griffiths, Henley, G Lawman, L Lawman, Lloyd, Maguire, Morrall, Scarborough, Walia, Ward, M Waters, V Waters and York (no. 18);

Against: Councillors Beirne, Bone, Ekins, Hallam, Patel, Simmons (no.6);

Abstention: Councillors Gough, Harrington, Scanlon, Skittrall (no.4);

Absent: Councillors Allebone, Anslow, Aslam, Bailey, Partridge-Underwood, Stevenson and Watts (no.7)

The motion was declared carried with 18 votes in favour, six against, four abstentions and seven councillors who were absent.

**RESOLVED** that:

- (i) the contact with The Castle (Wellingborough) Ltd be terminated in accordance with the relevant contract terms, and that six months' notice be given to end not later than 30 September 2016 or earlier by agreement;
- (ii) Officers be Instructed to prepare, in conjunction with The Castle (Wellingborough) Limited, an exit management plan which both protects the council's interest and provides a smooth transition;
- (iii) The Castle (Wellingborough) Ltd be requested, as part of the agreed exit management plan, to prioritise, where possible, local community groups and businesses when settling outstanding liabilities;
- (iii) the council would consult widely on options for the future of the venue, taking into consideration the positive interest shown by many members of the local community, with a further report to members in due course.

Mayor

The meeting closed at 10.35pm.