Evidence from Justin Guest, Local Resident and Risk Specialist

Zena,

I have read the documents. Comments below. Obviously I am not 100% familiar with HDV, nor what work has been done to date, but I hope these are helpful:

Risks and Risk Management (Incentives)

- Scrutiny Committee Report identifies risk (“very significant risks”) and weaknesses- not clear how these are being identified, managed, mitigated or allocated to appropriate parties (a key principle of risk management is that the risks should be allocated and borne by those best positioned to absorb/manage them)
- I have a real problem with a structure that sees an open needed commitment by the council but no proper way of managing that risk via an appropriate level of control over the actions of the HDV, and how money is taken out of the HDV (via fees etc)
- A key approach here is to look at who is incentivised to do what when you determine if you are going in the right direction
- Please remember that the people on the other side of this structure (including the lawyers taking massive fees) are not there to help Haringey, and thus they and everything they say and do must be treated with a level of healthy scepticism and suspicion
- It strikes me you need someone with commercial experience of these structures acting for the council to make sure you get a good deal. I would not leave this to Officers who have little or no experience of how the real (commercial) world works.
- Who is advising Haringey, are they sufficiently on the hook that the advice they offer means you have recourse to them and their professional indemnity (indeed has anyone checked their PI to ensure an appropriate level of cover is available?)

Governance and Control:

- 50:50 does not give the council the ability to control the actions of the HDV, it only offers both sides the ability to frustrate the other, and by extension the risk of paralysis that will critically injure the HDV is extremely high (I have experience of this in a previous investment, it never ends well)
- Shareholding is only one level of control of a business, the Board make up is also critical as this is what actually runs the HDV and makes daily and material decisions!
- I would expect that the council would have a number of protections that I am not clear it does, such as reserved matters that allow it at board and shareholder level to block or drive through certain decision irrespective of what the other side says
- You need to be clear that the shareholder agreement ensures that shareholdings cannot be inappropriately transferred to third parties without Haringey permissions
- You need to be clear the basis that decisions are made as to where money flows etc, as I can see scope for lots of people paying themselves lots of money!

- The external third party are ostensibly bringing money in to the partnership to make money, and it is not clear how they can be driven to achieve social objectives if they are not money making?
- 6.20 Of the scrutiny committee report is relevant here, as the relationship is not going to be one of equals, certainly not one of similar incentives and drivers.
- I would suggest that Haringey needs a professional advisor to sit on the HDV board to ensure that the decisions made are appropriate and the Haringey board members are not led by the nose. It may be that this person may have no voting rights but can have full participation (in discussion) rights, observer and advisory status so as to properly advise the Haringey board members.

Capital Sources

- Are you clear the other partner is putting in sufficient equity at risk, that they are not debt financing directly themselves or via the HDV (and therefore not putting their own money in) their contribution with a view to allowing the lenders to take security either over their shares or the assets themselves in the HDV
- You need to be clear the partner brings their own money in and it does not rely on bank financing that goes into the HDV as its contribution. Fine if the lending sits on their own balance sheet, so long as they do not mortgage their shares in the HDV! - Where is the money coming in from, and in what form?

Due Diligence & Risk Management

- I see no discussion in the Scrutiny Panel report on how DD is to be carried out (and indeed, if any proper DD has been carried out and by whom.)
- Normally in a situation like this there is a rigorous DD process that looks at all aspects of the process by professionals (with insurance to back up their advice and work) and not (with the greatest of respect) an amateur Scrutiny Panel. Who has looked at this and torn it to pieces to work out where this whole things breaks?
- I would want to see a proper risk matrix that sets out where risk arises, and how it is allocated or mitigated/managed
- You need a proper and experienced third party to advise and guide you!
- Who retains ownership of the building assets if this all goes wrong?

Nuclear Issues

- I see <u>no discussion</u> of who is responsible if this all goes wrong. I cannot see the council walking away from its social obligations if the commercial partner pulls the plug or goes insolvent and an administrator steps in.
- Even though the structure is through a Limited Liability partnership, in effect the council will have to absorb losses and are offering (essentially) a Parent (Haringey council backed) guarantee that is not being valued or even recognised.

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- Overall I am not clear that the risks and rewards of this approach are appropriately set out and shared, especially not if the council could inherit and take responsibility for a massive black hole of a disaster if the commercial partner walks away. Are their parent on the hook for anything (think risks and rewards all the time)?
- This strikes me as an 'everything on black 8'/, betting the farm' opportunity…

I should say that I do not necessarily see this initiative as a bad thing- Haringey might have little option, but as presently presented there are huge risks that are not approximately managed or allocated that even I (as someone who knows little about this detail) can see. Much of this is basic schoolboy stuff, and it will allow the HDV partners to take Haringey to the cleaners with little recourse.

Jus

Further Comments:

- As stated several times above, <u>there is a significant need for external advice to guide Haringey through this process</u>, advice that following the scrutiny panel meeting I was not clear is being offered- I do not see that the requisite level of analysis, diligence and risk assessment it being carried out. The lack of officer participation in the scrutiny committee was disappointing.
- The people on the other side of this transaction do this sort of thing every day (think PFI). Officers in Haringey and Councillors do not. However exciting a piece of work this is, there is a need to step back and actually ask yourself are you well equipped to negotiate and manage a deal with partners who have such an advantage with respect to their level of competency and experience.
- Again, if this goes wrong the council will not be able to walk away from its social responsibilities to its citizens- even if its commercial partner does. This can lead to the council having to shoulder massive liabilities, liabilities that could effectively see the council collapse financially with the all the risks that such an event would entail.
- You may need to assess the implications as to what happens if the worst case occurs- what is the down side? If property is being transferred in as an in specie contribution can an administrator seize this property etc,
- Should this worst case scenario occur it will likely be in the near term when many of those making decisions will still be in office! Are you clear if you have any legal liability?
- As stated at every occasion, my comments are not premised on the basis of being against this initiative. They are premised on the need to ensure that it is done correctly, as the down side is enormous!

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