

Report of:	Deputy Mayor / Executive Member for City Centre Strategy: Cllr Charles Rooney Executive Member for Finance and Governance: Cllr Nicky Walker Kevin Parkes: Executive Director of Growth and Place James Bromiley: Strategic Director of Finance, Governance and Support
Submitted to:	Executive Sub Committee for Property – 14 March 2019
Subject:	Acquisition of Homes England Land at Middlehaven – Dockside North

Summary

1. This report outlines the strategic case for Middlesbrough Council to undertake two land transactions. The first is to acquire the freehold land interest in the final, remaining Homes England (formerly Homes and Communities Agency (HCA)) land parcel, at Middlehaven. The second is for the back-to-back, onward disposal to Subzero (Middlehaven) Limited (**Subzero**).
2. Cool Runnings NE Ltd (**Cool Runnings**) currently have an option agreement in place with Homes England to take a long lease of this parcel of land and any purchase of this land will be subject to that agreement. Cool Runnings have set up a new special purpose vehicle (Subzero) to take their development forward and this report recommends granting what amounts to an extension of the existing option to Subzero.
3. The report also sets out a number of amendments to the option agreement for the onward disposal to Subzero. These amendments have been balanced to ensure sufficient flexibility to enable the realistic commercial progress of the snow centre, whilst being stretching enough to ensure timely progress of the development; without adding unreasonable contractual encumbrances which could prejudice the overall commerciality of the development.
4. Subject to corollary approval by Homes England governance and approval routes, the report seeks approval to acquire Homes England land at Middlehaven - Dockside North (commonly referenced as the snow centre site) and the amendment to the assigned conditional lease agreement (virtual freehold) on a cost neutral basis to Middlesbrough Council; to enable the development of the Sub Zero snow centre development in Middlehaven.

Proposed decision(s)

It is recommended that the Executive Sub Committee for Property:

- a. approves the freehold acquisition of the final, remaining Homes England land holding at Middlehaven - Dockside North, at the cost set out in Part B of this report;
- b. approves the acquisition, as set out, and notes the contents of the existing legal agreement in place between Homes England and Cool Runnings NE Ltd, set out at CONFIDENTIAL Appendix B;
- c. approves the termination of the agreement with Cool Runnings NE Ltd (as mentioned above) and approves the grant of an option to Subzero (Middlehaven) Limited, subject to appropriate company due diligence and background checks, on the same terms as contained within the original agreement between Homes England and Cool Runnings NE Ltd, subject to the amendments contained in this report, to enable the timely and realistic progression of the snow centre development, with appropriate contractual safeguards and milestones maintained to protect Middlesbrough Council's interests
- d. approves the necessary contractual changes to existing option agreements relating to land north of the snow centre site (Cool Runnings NE Ltd) and Dockside South (Twenty13 Developments Limited), which are contingent upon the timescales of the main snow centre lease; and,
- e. delegates any further / emerging contractual amendments required to facilitate this agreement to the Executive Director of Growth and Place and the Strategic Director of Finance, Governance and Support, in consultation with the Deputy Mayor / Executive Member for City Centre Strategy and the Executive Member for Finance and Governance.

Report for:	Key decision:	Confidential:	Is the report urgent?¹
Decision	Yes	<p>Commercially confidential information has been reserved for Part B of this report.</p> <p>This is because the financial information cited may be prejudicial to the business interests and negotiations of an individual or business.</p> <p>Paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding the information)</p>	Non urgent

Contribution to delivery of the 2018-22 Strategic Plan		
Business Imperatives	Physical Regeneration	Social Regeneration
Increasing Council income from local sources through building the business base and increasing the NNDR yield.	<p>We will create a Middlesbrough 'brand' to improve the town's reputation, attract new investment, visitors and residents, and add to civic pride.</p> <p>We will develop Middlehaven as an education, leisure, sports and entertainment centre of national significance.</p>	<p>We will continue to strengthen the local economy, creating 3,500 new jobs and increasing the number of local services we commission.</p> <p>The number of local jobs and the average weekly wage will increase, as our communities will be able to access the opportunities arising from Middlesbrough's regeneration.</p>

Ward(s) affected
Although based in the Central Ward, the impact are anticipated to be enjoyed across all wards in Middlesbrough.

What is the purpose of this report?

5. This report outlines the strategic case for Middlesbrough Council to acquire the freehold land interest in the final, remaining Homes England (formerly Homes and Communities Agency (HCA)) land parcel, at Middlehaven.
6. In providing Homes England with a short term exit strategy, this proposal has been predicated on the firm understanding that, in temporarily holding the land to enable the progression of the snow centre project, the transaction is to be structured to ensure that it is wholly cost-neutral to Middlesbrough Council; with all receipts, levies, transactional costs and outgoings, being recovered.

Why does this report require a Member decision?

- a. The proposed financial transaction exceeds the delegated authority financial threshold of £150,000 and, as such, requires Executive approval.

Report Background

7. The development of a key leisure anchor at Middlehaven is a key priority to transform Middlesbrough's local economy and rebalance the economic mix of the City Centre economy. The SubZero snow centre will perform exactly that function and has the potential to have a transformative effect on Middlesbrough's economic performance and visitor economy; underpinning the commercial and retail district of the area.
8. The land on which the snow centre is proposed is largely based on a site to the north west of Middlesbrough Dock and is known as Dockside North (locally known as the snow centre site). This land belongs to Homes England and there is an active agreement in place for Cool Runnings (snow centre developer), to acquire a long leasehold of the site.

9. On 25 January 2017, Executive Sub Committee for Property approved the acquisition of HCA (as was) land at Middlehaven, save for the snow centre land in question. This parcel of land was omitted from the transaction as the HCA and Cool Runnings had entered contractual terms for the option for a conditional leasehold disposal of the site and it was considered too disruptive to include this parcel of land in the wider acquisition agreement with the HCA. However, Middlesbrough Council has the benefit of having first refusal on this remaining HCA / Homes England land in the event that the transaction did not reach legal completion, or was withdrawn.
10. The current option agreement between Cool Runnings and Homes England has a key trigger point in April 2019. Cool Runnings have sought an extension of these dates from Homes England, however, Homes England would require a renegotiation of the existing terms of the lease agreement. This approach would include a significant delay for a protracted renegotiation of terms, the revaluation of the site for an extended disposal date and the inclusion of an additional option fee. Together, these delays and additional expenses are potentially prejudicial to the financial viability and deliverability of the snow centre development. With the completion of the nearby dock bridge and highway reconfiguration, as well as the options which Cool Runnings have secured from neighbouring land, there is significant concern that these benefits would disproportionately inflate Homes England's financial ask, and severely restrict the viability of the development. As such, these discussions have reached an impasse.
11. Middlesbrough Council have the option to intervene and enable the continued progression of the snow centre development in Middlehaven. By securing the freehold interest from Homes England, the Council could benefit from the onward leasehold disposal to Subzero, albeit with some reasonable contractual amendments to the milestones and conditionality which relate to the agreement. It is important to stress that flexibility would only be applied to milestones which have been assessed to be realistic and reasonable, given the complexity of the undertaking. It is not proposed that any financial flexibilities are offered. Indeed, the proposed amendments would be conditional upon the transaction being, ultimately, cost-neutral to Middlesbrough Council, in terms of recovering all associated receipts, levies and transaction costs.

Homes England Position

12. Since 2006, and prior to 2017, Middlesbrough Council was party to a Joint Venture (JV) agreement for the purposes of assembling and developing the vast swathes of post-industrial land at Middlehaven. Originally predicated on the pooling of land assets and regeneration funding, the Middlehaven JV had four signatories, principally One NorthEast, The Urban Regeneration Agency (trading as English Partnerships and currently known as the HCA), Tees Valley Regeneration and Middlesbrough Council.
13. In line with the policies of successive Governments, One North East and Tees Valley Regeneration were subsequently wound up. In order to protect the freehold interests of the existing committed investors, and the on-site strategic partners such as Middlesbrough College, the bulk of their remaining land interests in Middlehaven were subsequently novated to the HCA and held as part of their

portfolio. This left a remaining JV partnership comprising Middlesbrough Council and the HCA, alone.

14. In recent times, the Homes and Communities Agency (HCA) has been contracting in terms of staffing levels and delivery capacity. As a consequence, the HCA is refocusing its efforts to its core business of enabling housing growth.
15. This created a position whereby the HCA is actively liquidating its interests in many ancillary regeneration and development initiatives. Specifically, the HCA were effectively seeking to withdraw from the Middlehaven Joint Venture and dispose of their holdings.
16. In liquidating its assets (largely acquired under the dissolution of bodies such as OneNortheast), the HCA remains under pressure from HM Treasury to achieve the best available consideration for its land holdings, regardless of local suitability or compliance with the extant masterplan. As Middlesbrough Council is keen to deliver development at Middlehaven in line with the hard-won vision for architectural novelty, appropriate economic uses and quality public spaces, the pressures faced by the HCA mean that the HCA are willing to consider options which the Council would consider sub-optimal, or as having the potential to undermine the progress made at Middlehaven.
17. The HCA have offered this land to Middlesbrough Council, in the first instance, in order to keep the land in public ownership and assist with the development of Middlehaven. This presents an opportunity which better-allows the Council to steer the future delivery phases of Middlehaven in a way which is consistent with the vision, ethos and regeneration objectives of the extant masterplan for the area.
18. On 25 January 2017, Executive Sub Committee for Property approved the acquisition of HCA (as was) land at Middlehaven, save for the snow centre land in question. This parcel of land was omitted from the transaction as the HCA and Cool Runnings had entered contractual terms for the option for a conditional leasehold disposal of the site and it was considered too disruptive to include this parcel of land in the wider acquisition agreement with the HCA. However, Middlesbrough Council has the benefit of having first refusal on this remaining HCA / Homes England land.
19. Homes England have alternative priorities in their core business role and do not, necessarily, have the same stake in the regeneration ambitions for the areas, as previously held. This may partially explain their reluctance to show the same flexibility in terms of milestones and commerciality, as Middlesbrough Council, as the transformational impacts of such a development are better understood locally.

Strategic Rationale for Acquisition

20. The purchase of land at Middlehaven – Dockside North presents a number of opportunities to align the land holdings in the area to the delivery of the strategic ambitions of Middlesbrough Council. They include:
 - a) enabling the development of the SubZero snow centre at Middlehaven. Some additional flexibilities in the development timescales can increase the likelihood of developing in a measured way, without being needlessly

rushed. The site represents an additional holding of employment land, necessary to meet growth aspirations;

- b) 'marriage value'. Appendix A shows the Dockside North land holding for disposal. By combining with adjacent Middlesbrough Council land holdings to the north of the site, there is an opportunity to realise a 'marriage value' in terms of strategic benefits and overall commercial appeal of the site – this protects the Council in the event that the project, for whatever reason, were to stall;
- c) the consolidation of land holdings at Middlehaven retains control which helps to protect the integrity of the outstanding urban design which has been established in the area. The Council are best-placed to enable appropriate development which reflects an ongoing commitment to the vision for the area, appropriate uses which maintain the ethos for the area, quality of design and unique architecture; and,
- d) the strategic control of the pace, quality and scale of development is retained on the site. This reduces the risk of land being fragmented to third party ownerships to be acquired and held in abeyance without clear plans of how the area will be developed.

Headline Terms of Acquisition (Middlesbrough Council from Homes England)

21. In acquiring the Dockside North Land from Homes England, the following terms are anticipated:

- a. freehold disposal of 5.08 acres of land;
- b. assignment of existing option agreement of Cool Runnings;
- c. purchase price determined by an independent valuation conducted by Homes England in December 2018.
- d. no overage premium for future disposal; and,
- e. otherwise unencumbered disposal – i.e. no restrictive terms.

22. The legacy of the Joint Venture between Middlesbrough Council and Homes England makes provision for a division of any land receipts in proportion to any disposal. This proportion currently stands at 79.1% to 20.9%, in favour of the agency.

Headline Terms of Onward disposal (Middlesbrough Council to Subzero)

23. In taking ownership of the land holding which relates to the snow centre development, Cool Runnings have requested that their option is transferred to Subzero with the following amendments:

Timescales

- a. an additional 10 months from April 14th 2019 to submit full planning permission (reserved matters application to discharge current outline status – taking C. three months to complete);
- b. upon the granting of a (positive) planning Decision Notice, Subzero will have a further eight months to satisfy the funding condition and draw down on the land;

- c. 10% deposit will be paid on the drawdown of the land / building license, by January 2021;
- d. the balance of the consideration (including SDLT) would be due by June 2024, and subject to a discounted cashflow, to ensure that the amount payable would be cost neutral to the Council.
- e. the cost payable by Middlesbrough Council is made up of the purchase price and SDLT and is set out in Part B of this report;
- f. including the cost of borrowing and inflation, the transaction is cost neutral to Middlesbrough Council, over the recovery period; and,
- g. this represents flexibility for a maximum overall extension of up to 21 months, against the current contractual timescales.

Contractual Clauses

- h. the main contractual amendment allows the lessee to assign the contract rights, commitments and obligations to a nominated third party. This is deemed necessary due to the dynamics of the funding relationship between the developer, funder and any underlet tenants. Any body to which the contractual obligations are assigned will undergo appropriate due diligence checks to ensure that the assignee company / company vehicle is fit for purpose and retains all of the necessary protections afforded by the lease agreements and supplementary schedules;
 - i. the contract includes a restriction period of 15 years, in which the lessee must undertake to satisfy certain obligations. Whilst many of the clauses which relate to this period are appropriate, some clauses can be relaxed, as they pertain to planning related matters and are best managed through the planning process; and,
 - j. the restriction period also obliges the tenant to fully decorate the external elevations of the property every five years (whether it is required, or not). This is proposed to be relaxed to a five year inspection regime where any remedial actions are delivered, as they are required.
24. The above contractual amendments are considered reasonable and have the protection of the weight of the planning regime to govern their proper implementation.
25. The Council retains two main protections prior to the lease disposal completing; albeit this is supplemented by various other conditions. They are:
- a) Within eight months of the amendment to the lease (February 2020), the option agreement requires that the Reserved Matters application (relating to the current Outline Planning Application) be submitted;
 - b) Within 10 months of securing Planning Approval (Reserved Matters), the option agreement requires that evidence is required to demonstrate that sufficient funding / credit, has been secured to fund the delivery of the project.
26. Failure to meet any of these conditions, or associated dates, would constitute a breach of the contract and the Council would be able to revoke the agreement and consider alternative disposal options for the land.

What decision(s) are being asked for?

27. It is recommended that the Executive Sub Committee for Property:
- a. approves the freehold acquisition of the final, remaining Homes England land holding at Middlehaven - Dockside North, at the cost set out in Part B of this report;
 - b. approves the acquisition, as set out, and notes the contents of the existing legal agreement in place between Homes England and Cool Runnings NE Ltd, set out at CONFIDENTIAL Appendix B;
 - c. approves the termination of the agreement with Cool Runnings NE Ltd (as mentioned above) and approves the grant of an option to Subzero (Middlehaven) Limited, subject to appropriate company due diligence and background checks, on the same terms as contained within the original agreement between Homes England and Cool Runnings NE Ltd, subject to the amendments contained in this report, to enable the timely and realistic progression of the snow centre development, with appropriate contractual safeguards and milestones maintained to protect Middlesbrough Council's interests;
 - d. approves the necessary contractual changes to existing option agreements relating to land north of the snow centre site (Cool Runnings NE Ltd) and Dockside South (Twenty13 Developments Limited), which are contingent upon the timescales of the main snow centre lease; and,
 - e. delegates any further / emerging contractual amendments required to facilitate this agreement to the Executive Director of Growth and Place and the Strategic Director of Finance, Governance and Support, in consultation with the Deputy Mayor / Executive Member for City Centre Strategy and the Executive Member for Finance and Governance.

Why is this being recommended?

28. The proposed acquisition of land at Dockside North, achieves the following outcomes:
- a. Middlesbrough Council can enable the development by providing increased certainty for the snow centre developer to deliver the project (and all of the associated strategic benefits) in a realistic, yet optimistic, timescale;
 - b. the proposal delivers the consolidation of a prime land holding in Middlehaven, through the marriage of adjacent, Council-owned sites; and,
 - c. the Council will secure strategic control of one of the best appointed sites in the Middlehaven area with an agreed onward disposal route and appropriate milestone controls for the proposed development.

Other potential decisions and why these have not been recommended

29. **Do Nothing:** With Homes England and Cool Runnings being unable to agree extension terms in a way which does not financially prejudice the development, the development remains at risk of suffering unrealistic financial and milestone burdens which may undermine the entire development. As Middlesbrough Council own the neighbouring property, there is a risk that the agreement with Homes England would lapse and that the position arises that the Dockside North site remains fragmented from the neighbouring land holding. This would make it much harder to bring forward a coherent development on the site.
30. **Council Broker Agreement** – Homes England are under significant pressure from HM Treasury to achieve the best available consideration for its land holdings, regardless of local suitability or compliance with the extant masterplan. To this end, their governance arrangements do not accord with the requirement for the strategic flexibility, at a local level. The pressures faced by Homes England mean that they are willing to consider options which the Council would consider sub-optimal, or as having the potential to undermine the progress made at Middlehaven.

Impact(s) of recommended decision(s)

31. The proposed acquisition of land at Dockside North allows for the continued progress of one of the key regeneration initiatives within the Investment Prospectus.
32. The project offers significant potential for transformational change in Middlesbrough's economy and places Middlesbrough on the national map as a leisure and visitor destination.
33. The amended legal agreement gives relative certainty for the onward disposal of the site subject to meeting key milestones. If the current proposal was not to progress, and there is no indication as to why it would not, the site is retained in the Council's ownership as a strategic asset suited to any number of high quality leisure uses.

Legal

34. The disposal is envisaged to be delivered by way of land transfer with transfer of all existing legal agreements. This is the same methodology as the previous land acquisition exercise in 2017.
35. Subject to the necessary approvals from all parties, the aim is to complete the acquisition of the site by the end of March 2019. In parallel, arrangements would be made to agree documentation for the substantive option agreement with Subzero and the extant option agreements in place for adjacent land holdings.
36. To meet the necessary timescales, the following legal processes would need to be completed:

- I. Transfer agreement – acquisition of Dockside North Land from Homes England, with assignment of existing option agreement between Homes England and Cool Runnings;
- II. Dockside North – transfer of existing option to Subzero with the amendments to the timescales and conditionality as set out in paras 23 to 26;
- III. Dockside South – transfer of the existing option from Twenty13 Developments Limited to Subzero with appropriate amendments to align conditionality with the above, amended timescales; and
- IV. Scotts Road / Land to North of Scotts Road – transfer of the existing option to Subzero with appropriate amendments to align conditionality with the above, amended timescales.

Financial

37. It has been confirmed that the acquisition of this land can be financed within the Council's existing borrowing limits and lies within the currently approved MTFP constraints. This funding request lies outside of the current Capital Programme allocation and represents an additional request for funding. The existing lease agreement, as amended, sets out an onward land receipt and will generate a capital receipts which will cover the outgoings; making the transaction cost-neutral.
38. The acquisition transaction would be subject to, Stamp Duty Land Tax (SDLT) and VAT; the latter being directly recoverable.

Policy Framework

39. The acquisition of land at Middlehaven accords with the Mayor's Vision 2025: Fairer, Safer, Stronger. There is a strong alignment with priorities: strengthening and diversifying our local economy and strengthening our town through bold and innovative regeneration.
40. The strategy will also help realise the Mayor's promise number 3, regenerate inner Middlesbrough through a range of targeted interventions.

Equality and Diversity

41. This acquisition is not judged to present any equality and diversity issues.

Risk

42. Homes England's current reluctance to be flexible to the terms of the existing option agreement has the potential to prejudice the overall financial viability of the snow centre development and its commercial appeal. By acquiring the property and providing an exit strategy for Homes England, on a cost-neutral basis for Middlesbrough Council, the Council can offer reasonable (non-price) flexibility which will serve to enable the final critical stages of the snow centre development.
43. In the event that the assigned option agreement with Subzero were to lapse, Middlesbrough Council owns the adjacent land holdings, which have significant marriage value, when consolidated as a single site. Middlesbrough Council could

market and dispose of the site for a premium development, ideally leisure uses consistent with the current underrepresentation in that sector. The setting, accessibility, dockside location and south-facing aspect of the site, make it a prime candidate for an early onward disposal.

44. The proposal is based on a cost-neutral position to Middlesbrough Council, whereby the costs associated with the acquisition of the site, have the benefit of being recoverable from the onward disposal.

Actions to be taken to implement the decision(s)

45. Given the progress to date, it is recommended Next Steps are:

Legal Agreement

- i. The main acquisition of land at Dockside North would be completed via land transfer, whilst all associated option agreements (1) Scotts Road and land north of Scotts Road; and, (2) Dockside South, would be subject to a deed of variation to align the amended timescales.
- ii. The existing option agreement between Homes England and Cool Runnings will be terminated and a new agreement between the Council and Subzero will be entered into on the same terms as the initial agreement, subject to the amendments outlined in this report.
- iii. A similar process will be undertaken in respect of the option agreements for Scotts Road & land north of Scotts Road (Cool Runnings NE Ltd) and Dockside South (Twenty13 developments Limited).
- iv. Legal completion will be targeted for the earliest opportunity and this is anticipated to be resolved by 31 March 2019.
- v. The grant of these options to Subzero will be subject to appropriate due diligence. Albeit the lease contract has recovery mechanisms and performance milestones, this process will include Middlesbrough Council conducting a credit check on Subzero and the directors of the Subzero will be assessed for their background and suitability, via a number of due diligence checks including business/ director verification, developer credentials, such as director disqualification check conducted through Companies House and a consideration of track record. These checks will be presented to the Executive Director of Growth and Place and the Strategic Director of Finance, Governance and Support, for approval.

Appendices

46. Plan of Dockside North (and neighbouring land holdings) is enclosed at Appendix A.
47. existing legal agreement in place between Homes England and Cool Runnings NE Ltd, at CONFIDENTIAL Appendix B;

Background papers

48. Strategic Acquisition of HCA land holdings at Middlehaven – CONFIDENTIAL report of 25 January 2017

Contact: Sam Gilmore, Head of Economic Growth

PART A

Email: Sam_gilmore@middlesbrough.gov.uk

Contact: Ian Wright, Director of Business, Performance and Change

Email: ian_wright@middlesbrough.gov.uk