

OVERVIEW AND SCRUTINY BOARD

A meeting of the Overview and Scrutiny Board was held on 7 September 2015.

PRESENT: Councillors J Sharrocks (Chair), J Blyth (substitute for N Hussain), J Culley, E Dryden, T Higgins, C Hobson, J McGee, P Purvis (substitute for D Rooney), J Rathmell and B E Taylor (substitute for J G Cole)

PRESENT BY INVITATION: Councillor B A Hubbard, Councillor C M Rooney

ALSO IN ATTENDANCE: Councillor J Brunton, Councillor J Hobson, Councillor T Lawton, Councillor L Young

OFFICERS: A Crawford, P Duffy, A Parkinson, B Roberts and M Shepherd

APOLOGIES FOR ABSENCE Councillor J G Cole, Councillor N Hussain, Councillor T Mawston, Councillor D Rooney, Councillor J A Walker

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DECLARATIONS OF INTERESTS

There were no declarations at this point in the meeting.

Councillor C Hobson, a Member of the Board, who had supported the Call In, said that she had taken legal advice and, from that, she was clear that she would not be prejudiced by considering this matter. She would listen to the arguments and come to a view on this matter, based on those arguments.

The Deputy Mayor and Executive Member for Regeneration asked if the Council had a view on this. The Council's Legal Officer advised that it is down to the individual Member as to whether they felt comfortable with the situation - it is they who make that determination.

15/19 **CALL IN - TAD CENTRE COMPLEX, ORMESBY ROAD, MIDDLESBROUGH - PROPOSED FREEHOLD SITE**

The Chair outlined the purpose of the meeting and the remit of the Board in terms of the Call-In.

The Scrutiny Support Officer submitted a report which detailed the:-

- decisions taken by the Executive Sub-Committee for Property on 12 August 2015;
- Council's Call In Procedure; and
- reasons for the Call In, as shown on the form submitted to the Council's Monitoring Officer in relation to decisions concerning the sale of the TAD Centre Complex.

Appended were the report considered by the Executive Sub-Committee for Property on 12 August 2015.

The decision of the Executive Sub-Committee for Property was:-

That the disposal of the complex for the sum of £400,000 plus fees be approved.

The decision was supported by the following reason:

This will result in the disposal of surplus property in return for a capital receipt to the Council and assist in the regeneration and enhancement of the local area.

The reasons for the Call In, as submitted to the Council's Monitoring Officer, were as follows:-

1. "A substantial number of people, as well as Councillors, believe that the process is flawed.

This is not an exhaustive list but will include "the preferred vision" for the TAD Centre not specified in sales particulars (which stated currently used for business conference, meeting rooms etc. In addition to development, the property also has potential for change to a number of other uses, subject to the receipt of planning permission) thereby creating confusion in the potential bidders. Four of the five original interested parties were not informed in writing of the decision being made, thereby giving a clear advantage to the remaining interested party, as admitted by a council officer at the meeting.

2. Best Value - this wasn't achieved, in fact it could not be considered without those expressing an interest being given an opportunity to formally bid.

3. To date, we believe the whole process has been flawed, creating more questions than answers. Because of that, the process should begin again."

The Service Department and Executive Member presented the case for the decisions.

- The Director of Commercial and Corporate Services outlined the timeline that culminated in the decision to dispose of the complex.
- The proposal had emanated from the Council's Change Programme and Accommodation Review. He noted that no objections had been received to the proposal when it was consulted upon, as part of the Mayor's Budget Proposals.
- Following an illicit recording of the Executive Sub-Committee meeting of 24 March 2015 being posted on You Tube, an unsolicited offer of £500,000 had been received from Nunthorpe Nurseries for the freehold of the TAD Centre Complex. The Director had informed Nunthorpe Nurseries that their offer could not be legally considered, as it was outside of the current disposal process.
- There had been an administrative error in that the four other organisations who had expressed an interest in the complex had not been informed that the Council would be taking the disposal process forward with one of the organisations that had expressed an interest at Stage 1 of the process.
- The Deputy Mayor and Executive Member for Regeneration stressed that the process had been questioned robustly by Members of the Executive Sub-Committee for Property.
- Three meetings had considered this issue and no questions had been received from any members of the public, or from any Councillors not on the Sub-Committee.

In response to questions from Councillor Hubbard, officers confirmed that:-

- The assessment as to the number of businesses that could be attracted to the complex was that of the purchaser.
- The calculation as to the Depreciated Replacement Cost of £1.526 million took into account rebuilding costs and discounted this against obsolescence e.g. it took into account the age of the building. This would not include a rental valuation. The figure did not relate to the market value for disposal.
- Stage 2 was entered into following the decision by Corporate Management Team on 4 December 2014.
- It would not be correct to say that the Council had failed to allow all of the organisations concerned to submit a bid. The options had been to seek to get as much as possible via tender, or best consideration - foregoing the level of capital receipt, to obtain social value for the town. In determination of best consideration, the price is looked at, together with the level of investment required, which would be at least £300,000, and economic and social value to the town e.g. the fact that jobs would be maintained and businesses supported.
- As well as achieving the above outcomes, the disposal would allow the Council to divest itself of an asset, with running costs of £120,000 per annum. This was a net saving.
- If more than one expression of interest had been taken forward to Stage 2 then a tender process involving those expressions of interest would have taken place.
- Although no financial offers were required at Stage 1 of the process, three of the five who expressed an interest did include a provisional financial offer. All were below the negotiated sale price of £400,000.

- An Investigation had been carried out by the Chief Executive into the illicit recording referred to. The outcome of this was not known at this stage.
- The reason the square foot area for the building, stated in the Valuation Report of April 2015, differed from the figure quoted when it was marketed, was because the marketing figure included the full area whereas the valuation figure excluded areas that had no valuation in terms of rental space - such as toilets.

Councillor Hubbard stated that he felt that he had been obstructed from presenting the full case, as there were a number of reports that he had been advised he could not see unless he signed to say he would not divulge the comments. Because of the fact he would not be able to use the information, he had decided, on that basis, not to view the papers. He felt that this undermined the scrutiny process and his role as an elected Member. In addition, he had still not received a copy of the Disposal Business Case that he had requested.

Councillor Hubbard then highlighted the main reasons for the Call In:-

- As part of his submission, Councillor Hubbard circulated a copy of the Council's Code of Corporate Governance 2008. He referred to the statement within the Code that "Where good corporate governance is in place it underpins credibility and confidence in our public services". And the fact that "stakeholders and potential stakeholders have a right to expect the highest standards of honesty, selflessness and objectivity from the Council's officers and members". He felt that the Council's obstruction had impaired the scrutiny process.
- Guidelines state that the Council should determine the desired use, but the sales particulars did not specify a particular use. This failing attracted bids that fell outside what the Council was looking for. If the intended use had been stated, more suitable bids would have been attracted.
- Organisations on the Stage 2 shortlist were not invited to bid. Therefore, how could this represent best value?
- What was described by the Director of Commercial and Corporate Services amounted to a breach of the Public Contracts Regulations. There should have been a standstill period of 15 days, following notification of the intended award, to enable unsuccessful bidders the opportunity to seek clarification and, if they wished, to make a formal challenge to the outcome of the tender process. On completion of the standstill period, when all issues had been resolved, the contract exchange could take place. The administrative error prevented this from happening.
- The valuation process had to be questioned as the valuation of 1st August differed so greatly from the previous valuation of £1.5 million in 2010.
- On 27 June 2013 the complex was valued at £4.3 million - and that was at a time when property prices were low. How then could it be valued £1.5 million 16 years later? The current valuation is almost £1 million less than the valuation of £1.6 million and this was when property prices had recovered.
- Why had the last valuation been undertaken by Mouchel? - they were not independent and should not have been chosen to do the valuation.
- There was no check for due diligence on the purchase, nor an Energy Performance Certificate, with the particulars. The stated aims were not rolled out.

The Director of Commercial and Corporate Services stated that there had been no difference in approach taken for this matter and asked Councillor Hubbard if he accepted that no standstill could have commenced as no decision to dispose of the complex had yet been made. Councillor Hubbard responded that if there had been a standstill period the other four organisations that had expressed an interest would have been able to raise issues.

The Director of Commercial and Corporate Services also asked Councillor Hubbard if he accepted that the reason he was given the advice regarding not using information from confidential reports had been provided and that this was consistent with the Council's practices in any situation of this nature. Councillor Hubbard accepted this.

In response to further questions from the Deputy Mayor and Executive Member for Regeneration, Councillor Hubbard said that:-

- It was not possible to quantify what a substantial amount of the public equated to - it depended on what you view substantial as.
- With regard to allegations made against Members of the Executive Sub-Committee for Property, it was up to the people concerned as to whether or not they wished to withdraw these allegations.

Members of the Overview and Scrutiny Board posed questions of all parties, the responses from which focussed on the following:-

- The Council accepted that the nursery was being run successfully, but did not believe the Nursery was qualified to run the other aspects it had proposed.
- The Council did not have the necessary skill to run a Business Centre, as it was not its core business. Although the Council was running the Southlands Centre, it was not best placed to do so and the Centre was running at a loss.
- The Council would insert a condition into the contract to ensure that the complex was not used for housing.
- The valuation of £1.5 million was based on discounted rebuild. The figure of £523,000, held on the Council's Asset Register, was at a time when the building had become surplus to requirements and reflected the potential rental and market climate. The first figure was a market sheet valuation.
- The 1994 valuation reflected the cost of the land and building costs. The difference between cost and market valuation was often considerable.
- The other four organisations who had expressed an interest should have been contacted within a week or so of the decision by CMT on 4 December 2014.
- The illicit recording had been posted on You Tube on 2 May 2015. The Director of Commercial and Corporate Services became aware of it a day or so later.
- The offer outside of the timescale by Nunthorpe Nurseries was made on 12 May 2015 and the Director of Commercial and Corporate Services had met with them on 19 May 2015.
- Councillor Hubbard agreed that the You Tube video had put the purchaser at a disadvantage. However, other people had not been informed that the Council intended to proceed with discussions with the purchaser, so they had not been able to bid.
- There was pressure on the Council to make savings and to be more pro-active with the capital budget.
- If the building was marketed for 18 months, this would incur costs to the Council of about £79,000.
- Disposal was part of the Change Programme and would enable the Council to divest itself of revenue responsibility of £120,000 per annum and achieve a capital receipt, which would be used for new initiatives.
- The provider ran a long standing very successful business and was confident he could germinate small businesses at the Complex.
- The purchaser would be charged fees associated with the disposal.
- Usage of the property was discussed around the merits of extended nursery usage; a children's respite facility and the creation of a Business Centre. No view had been formed by the Executive Director for Well Being about these uses.
- Whilst there was a risk that the purchaser's plans would not succeed the two businesses he ran in Stockton were flourishing.
- Councillor Hubbard had not attended public meetings but was aware of strength of feeling about the disposal. He felt that due process had not taken place.
- This was part of the proposals approved by Council which were subject to public consultation. No queries had been raised.

The Deputy Mayor and Executive Member for Regeneration summed up as follows:-

- The process was legal. The decision was not flawed and had been made within a process.
- Social Value was not always an easy decision.
- No questions had been raised about the process.
- This was a management decision, then a political one.
- Cuts had led to a lack of capacity, but the Council want to achieve best value for the people of the town.

- There had been three open meetings to consider this matter.
- He refuted the comments made on social media that referred to criminality and insanity on the part of Members taking the decision.

Councillor Hubbard made the following points in his summing up:-

- A lot of information had been presented - and a lot of information had been withheld.
- The Council failed to enter into Stage 2.
- Best Value had not been achieved, due to the administrative error referred to.
- The lack of a 15 day standstill period was a breach of the Public Contracts Regulations.
- The 2010 valuation was a market valuation - not a replacement cost.
- The Council failed to have an independent valuation undertaken in 2014, as this had been carried out by Mouchel Business Services.
- State aid had not been considered.
- No Energy Performance Certificate had been issued with the sales particulars.
- It has been said that the Council could not run businesses - yet the Southlands Centre was making money.
- The building was to be sold well below its market value. There was a duty on the Council to ensure it achieved the best price.

Following closing submissions, the Board discussed the evidence received and voted on its decision.

ORDERED:

- a) That the decision taken by the Executive Sub-Committee for Property on 12 August 2015 in relation to the disposal of the TAD Centre, be endorsed.
- b) That the decision be not referred back to the Executive.