

**OVERVIEW AND SCRUTINY BOARD**

A meeting of the Overview and Scrutiny Board was held on 13 March 2018.

**PRESENT:** Councillors J Sharrocks (Chair), T Higgins, L Lewis, J McGee, L McGloin, P Purvis, D Rooney, M Storey, M Walters and J Young

**PRESENT AS OBSERVERS:** L Henman A Hoy, D Johnson and A Pain

**PRESENT BY INVITATION:** Deputy Mayor and Executive Member for City Centre Strategy - Councillor C Rooney  
Executive Member for Finance and Governance - Councillor N J Walker

**OFFICERS:** S Bonner, B Carr, S Gilmore, T Parkinson, B Roberts and I Wright

**APOLOGIES FOR ABSENCE** Councillor J Blyth, Councillor E Dryden, Councillor T Mawston.

**DECLARATIONS OF INTERESTS**

None Declared

**17/43 CALL IN - CENTRE SQUARE EAST OFFICE DEVELOPMENT - COUNCIL INVESTMENT AND ACCOMMODATION**

The Chair asked the Monitoring Officer to detail amendments to the papers presented to the Board. Taking the report as read, the Monitoring Officer noted that there were two minor amendments; namely the fourth line of paragraph eight, listed at page 3 of 38, which should have read Councillor Jacob Young instead of Councillor Young. The second amendment was on the sixth line of the same paragraph which read "Councillor Rathmell also indicated that he would like to support this request for Call-In" should have read "Councillor Rathmell subsequently signed Councillor Young's Call-In."

The Chair described that there were two Call-In issues proposed by Councillors Young and Rathmell, respectively.

The Chair confirmed she would examine Councillor Young's Call-In first and Councillor Rathmell's second.

The Chair provided an outline of how the Call-In would proceed; the Councillor presenting the Call-In would be afforded 15 minutes to do so and this would include any statements from witnesses. At the end of the 15 minute presentation the Executive Members would then have the opportunity to question the presenting Councillor for 5 minutes, this could include input from officers from the relevant Service Area.

The Executive Member/ Service Area would then have 15 minutes to provide the reasons for the decision after which the presenting Councillor would have the opportunity to question the Executive Members/ Service Area for 5 minutes.

The Overview and Scrutiny Board (OSB) would then be given the opportunity to ask the presenting Councillors questions. After this both the presenters and the Executive Members would be given 5 minutes each to sum up. OSB would then vote on whether or not the decision should be sent back to Executive.

Councillor Young queried that, according to the Call-In procedure, the Executive Members/ Service Area/ presents their case first, not the presenter of the call in. The Chair clarified that because there was insufficient information provided about the Call-In other than "Value for Money" the presenting Councillors were invited to speak first.. Councillor Young respectfully stated that he would have preferred the Executive Members/ Service Area to speak first.

The Chair confirmed that the presenters of the Call-In would speak first.

Councillor Young stated that this was contrary to the call in procedure.

The Monitoring officer stated that the procedure rules allowed the Chair, as head of the committee, to amend the procedure and the running order of any items. The Chair confirmed similar amendments to the procedure were undertaken at the previous Call-In.

The Chair requested that any questions should be posed through her to minimise confusion and that all participants should be respectful to one another at all times. The Chair then invited Councillor Young to present his reasons for the Call-In.

As part of his Call-In presentation Councillor Young thanked the Chair for accepting the Call-In and stated, "I have called this decision in, not because I disagree with the proposal, but because I think that the decision making process was flawed". Councillor Young also made the following comments as part of his presentation:

- A primary concern was if the Council had achieved Value for Money stating the issue was an area the Council had failings on previously as highlighted by the Council's Auditors. It was therefore critical the Council achieve value for money, especially with a proposal that carried such high risk.
- There were concerns that not all relevant information was received by decision makers, which was important so decisions could be made with the best interests of Middlesbrough residents in mind.
- Councillor Young cited the Executive report "Centre Square East Office Development - Council Investment and Accommodation" dated 20 February 2018 (the 20 February report), specifically paragraph b in the summary of recommendations. This stated "the independent value for money advice (BNP Paribas) in terms of the parameters of the proposed lease arrangements and their relative advantages / disadvantages in terms of whole life cost financial modelling". There were, however, no references in the 20 February report stating the Council had achieved value for money.
- Page 10, paragraph 43, of the report entitled "Value for Money Analysis", showed that the initial paragraphs outlined the importance of value for money with paragraph 45 noting the input of Faithful and Gould and BNP Paribas on the issue of value for money.
- Paragraph 46 made reference to Part B of the report which was confidential and because of this it would not be discussed at the meeting.
- That paragraph 47 stated: "In summary, due diligence conducted by BNP Paribas and Faithful and Gould has concluded that the lease proposal, as presented, reflects:
  1. a) a proportionate cost for the development, in terms of the outlined cost appraisal and with respect to the relative value of Middlesbrough Council's covenant;
  2. b) a reasonable risk and return profile for Middlesbrough Council, particularly when building in the market enablement and associated economic benefits;
  3. c) that the proposed rent rate which the Council aims to achieve is reflective of the local market and the prices which tenants are willing to pay; and,
  4. d) that the assumptions on quality of the development, price-point of the market rents and demand for the proposed units, are sufficient to allow for a reasonable expectation that the units would be leased by the market within a reasonable timeframe."
- The focus would be on paragraph 47 as this referenced due diligence performed by Faithful and Gould and pointed out the report of the 20 February failed to mention the report by Bilfinger GVA, which contradicted many of the assertions made in the February 2018 report.
- That Bilfinger GVA were commissioned in 2016 to examine the Centre Square proposals and their report that stated, "We would outline however that the level of rent required in order to effectively result in the residual land return breaking even is over and above current market levels, with the consequential risk that upon underletting by the Council, there will be a shortfall in rental return achievable in the Open Market, the

- cost of which will need to be covered by Middlesbrough Council. This is a significant issue of consideration for the Council, with their requirements of demonstrating Best Value in any potential property deal."
- That the Bilfinger report illustrated concerns about information being omitted from decision makers, as it was omitted from the February 2018 report and this was reason enough to call this decision in.
  - The conclusions made by Bilfinger GVA stated, "As you will see there is considerable risk attached to bringing forward an office development in Middlesbrough Town Centre. Demand is weak and on the established Teesdale Business Park rents are continuing to decline as landlords attempt to attract tenants."
  - Further concerns about the process included the Bilfinger report being accepted by officers, perhaps by the relevant Executive Member, but not referenced in any other reports.
  - That the Bilfinger GVA report went on to further contradict the assertions in the February 2018 report. Examples included the assertions regarding the abundance of office space in the Tees Valley and across the region. The Bilfinger GVA report stated the "Teesdale Business Park is situated on the southern edge of Stockton on Tees, directly on the southern banks of the River Tees. The park is regarded as the premier business park within Teesside, providing approximately 46,450 sq m (500,000 sq ft) of office, educational, leisure and residential accommodation" and that "there has been a fall in occupier demand and consequently current high levels of vacant space within the park."
  - With regards to developments in Peterlee and Seaham the report stated, "after initial success there has been a lack of demand and many of the buildings remain unoccupied" stating this was another example of a direct contradiction to the assertions made in the February 2018 report which, in paragraph 106 (i), stated, "market analysis indicates positive demand for the accommodation, as specified."
  - The Bilfinger report also discussed the rent values the Council could achieve and the incentives of rent free periods. It also discussed Hudson Quay and how it achieved £16 to £16.50 per square foot of rent but also pointed out that this is an out of town office building that had significant parking provisions and good access provisions.
  - The Bilfinger GVA report stated that good quality office space in the town centre could achieve £10-£12 per square foot saying, "to secure lettings on new city centre office buildings significant rent free/tenant incentives will need to be offered, upwards of 9 - 12 months on 5 years leases and in excess of this for leases of 10 years and more." This was something the tax payers of Middlesbrough would not accept for rent free periods of that amount.
  - In relation to Newcastle's Stephenson Quarter, the Bilfinger GVA report stated, "Other office development in the region cannot compete with the immediate availability and substantial incentives on offer at Cobalt and Quorum which range from 5-10 years rent free." Middlesbrough Council could not hope to achieve that level of incentive to attract businesses to the town.
  - The Bilfinger GVA report shows the Centre Square proposal would not be value for money, and asked why this information was not included in the February 2018 report, giving decision makers all relevant information available for such an important and high risk decision. There were concerns that officers had received advice such as that contained in the Bilfinger GVA report but not passed this on to decision makers.
  - That the Council's Valuation Team disagreed with the proposal for Centre Square. The valuation report for the Registry Office conducted by Mouchel, dated 17 May 2016, stated that, "the demand for office accommodation in Middlesbrough, remains limited. In the Town Centre there is an abundance of vacant office accommodation with landlords offering reduced rent and various incentives in order to attract tenants. Rents are currently at circa £6 per square foot even in the prime buildings". This, again, disagreed with the assertions made in the February 2018 report.
  - There was no mention of the recent announcement of the office space in Darlington which given its road and rail links and abundant parking provision would naturally be a preferred choice over Middlesbrough Town centre.
  - There was a direct contradiction with the February 2018 report citing paragraph 85, "As confirmed by independent advice of KPMG and BNP Paribas, there is no speculative market for the development of Grade A Office accommodation, such as is being proposed, outside of the South East of England."

- There were concerns the Centre Square development was being progressed to ensure the Ashall scheme went ahead and that the report is constructed to make the independent advice no longer independent.
- That emails originally sent between Council Officers, supported this argument. The emails indicated that without substantial support from the Council the scheme was unviable.
- Overall, the issue was not the decision taken by the Executive, or if the proposed scheme was acceptable, instead it was more about if those making the decisions were in possession of all the relevant information. Because of this Councillor Young asked if value for money had been achieved.

The Chair invited the Executive Member for Finance and Governance and the Deputy Mayor and Executive Member for City Centre Strategy and their Service Area representatives to ask questions of Councillor Young.

The Executive Member for Finance and Governance questioned why, given the level of detail that had been provided during the presentation, this had not been provided to the committee in advance of the meeting.

Councillor Young responded that all of the information provided in the presentation should have been provided to the Executive previously and therefore provided to Overview and Scrutiny Board (OSB).

The Executive Member for Finance and Governance commented that the Members of OSB had not had the papers presented by Councillor Young and therefore did not have time to consider them properly.

The Chair agreed with this stating it was disingenuous for OSB not to have received all the paperwork cited and this has done Councillor Young a disservice.

The Executive Member for Finance and Governance asked, with regard to the reports for the valuation of the registry office and for the office accommodation, how much of the accommodation referred to in those reports were Grade A office accommodation.

Councillor Young responded that he was unable to provide that information, however this was not an incumbency on him. Councillor Young also stated that he is quoting directly from a report constructed by the Council and that he could not provide information on how much Grade A office accommodation there was in Middlesbrough. However, the report he was quoting from indicated there was an abundance of office space in the town whereas the February 2018 report said there was not.

The Executive Member for Finance and Governance asked Councillor Young if he had read the report of 2016 containing independent advice which was referred to in the February 2018 report.

Councillor Young confirmed that he had read both the Centre for Cities and Faithful and Gould reports.

The Executive Member of Finance and Governance asked Councillor Young, on the issue of the confidential element of the report, which was a legal requirement, if it had been explained to him why it had been kept confidential.

Councillor Young confirmed that after approaching the Deputy Monitoring several times he was informed the Section 151 Officer would be consulted about releasing the relevant information. However, despite several requests Councillor Young was unable to view the report by time the decision was considered by the Executive. It was only at the Executive meeting, while it was being considered, that Councillor Young had five minutes to look at the report. The only information provided to Councillor Young about the reasons for confidentially was that it could weaken the Council's negotiating position.

The Chair invited the Executive Members and their Service Area representatives to address OSB.

The Executive Member for Finance and Governance emphasised that the information cited by

Councillor Young had not been presented to the Board prior to the meeting and questioned the Service Area as to why the Bilfinger GVA report could not be included in the February 2018 report.

The Acting Head of Economic Growth stated the Bilfinger GVA report was commissioned as part of Centre Square land disposal in September 2016 and was intended to inform the disposal process. The Executive Member for Finance and Governance confirmed that subsequent independent advice was different from that report. The Executive Member asked the Service area to address the issue of demand for office accommodation. The Acting Head of Economic Growth stated there were different types of demand for different areas and it was difficult to make like-for-like comparisons. The figures quoted by BNP Paribas were consistent because this was an untested market due to the lack of substantial development in the area for last 25 years or more. Reference was made to Teesdale Industrial park, noting the figures quoted by Councillor Young for this development were for a different kind of product. The Acting Head of Economic Growth stated there were three issues when looking at a developments such as this namely; demand, profitability and funding.

With regard to demand, reports from such companies as BNP Paribas had shown there was demand for offices with high specification such as those in the proposal. There was also an expectation that the building could be occupied over its lifespan and result in a profit. On the whole the market would not fund this kind of development. It was also clarified that, with regard to the office development announced in Darlington, this was funded with European funds.

The Executive Member for Finance and Governance stated that outside London it was extremely difficult to find funding for this sort of scheme. It was also confirmed Middlesbrough Council were not alone in contributing to a scheme like this. Previous schemes had benefited from a similar input, such as the Holiday Inn Express in the Town Centre which was proving profitable to the Council.

The Executive Member for Finance and Governance stated Councils were no longer acting as they once were and Middlesbrough was operating on the Centre Square scheme in the way Central Government wanted them to by trying to increase their own income.

The Head of Financial Planning and Support commented that:

- With regard to the Register Office report, this should not be used as a comment on the level of demand for Grade A office accommodation. Information for this demand was sourced from KPMG and BNP Paribas.
- Some of the points raised in the Bilfinger GVA report cited by Councillor Young were relevant and pointed to paragraph 24 (part A) that stated, "market failure exists in commercial property markets across the Tees Valley, particularly in terms of capital flows for any enabling investment" while in Part C it stated that, "public sector investment and leadership is one of the few credible mechanisms for which such enabling investment funding is available."
- This was the same point that was being addressed in his email to the Valuation department in that the Council would need to be involved in the scheme to make it viable.
- These points were brought forward and presented to Members making the decision. The Deputy Mayor and Executive Member for City Centre Strategy commented that decisions of the Executive are made using information that is up to date, on the state of present and future markets. He also commented that Members trust Council Officers but also question them robustly on the risks and those risks were clearly outlined in the February 2018 report.

The Executive Member for Finance and Governance stated the Centre Square development was not a risk free project but that with every project such as this the Executive looks at the risk of undertaking the project and risk of not undertaking the project. Based on the risks identified the Executive, in this instance, decided to approve the scheme.

The Executive Member for Finance and Governance also commented as this was a long process the relevant Scrutiny Panel could possibly examine this issue regardless of OSB's decision at the Call-In. The Chair of OSB confirmed that she had already considered this and would explore the Ad Hoc Scrutiny Panel undertaking the investigation.

The Chair invited Councillor Young to ask questions of the Executive Members/ Service Area.

Regarding the Bilfinger GVA report, Councillor Young highlighted an email from Valuation Officers to Bilfinger GVA which stated, "The concept of the Council taking an enabling role with the developer is being considered at the moment but no detailed terms have been discussed nor any commitment given in that regard." Councillor Young stated that this showed the Council taking an enabling role in this project.

The Executive Member for Finance and Governance raised a point of order and requested that Councillor Young address his questions through the Chair. Councillor Young apologised and addressed his question through the Chair.

Councillor Young stated that the Bilfinger GVA report was directly relevant to the February 2018 report as it mentioned the Council taking an enabling role.

The Chair reminded Councillor Young that he needed to pose questions to the Executive Members at this point. Councillor Young asked the Deputy Mayor and Executive Member for City Centre Strategy when the City Centres report was produced. The Executive Member could not recall the exact date but believed it to be at some point in 2017.

Councillor Young pointed to Paragraph 22 of the February 2018 report and pointed out that the report was carried out in 2016. Councillor Young also asked the Deputy Mayor and Executive Member City Centre Strategy if he knew when the KPMG report was produced.

The Chair reminded Councillor Young that as not all papers were provided to OSB the Executive Member was at a disadvantage. Councillor Young responded that the information referred to was in papers already seen by the Executive Member. Councillor Young stated that given the age of the different reports discussed, the report he referred to was equally relevant.

The Deputy Mayor and Executive Member for City Centre Strategy stated the February 2018 report pulled together the risks and the advantages of the scheme and the decision was taken by the Executive based on the advantages knowing there were risks as well. The Executive Member stated that just outlining all the risks and negatives was a not cogent analysis of the full report.

Councillor Young asked the Acting Head of Economic Development about the rise in demolition costs for the Civic Centre. In the report "Council Future Accommodation Requirements" dated December 2017 (December 2017 report) the cost of demolition of the Civic Centre was quoted at £630,000 whereas in the February 2018 report this rose to £900,000.

It was confirmed this was due to additional contingency costs, for example the removal of asbestos and the heritage work involved with regards to the Town Hall. The figure used in the December 2017 report was a headline figure and this had been tightened up since.

Councillor Young asked that, due to the current single business rateable value for the current Council buildings, would the rates change. The Head of Financial Planning and Support responded that the current benefits were due to the current buildings being connected to the Town Hall and this is a heritage asset. The Council was hopeful that a similar, campus based, discount could be achieved because of their related purpose. However, confirmation of this will only come when the Valuation Office have been able to examine this.

The Chair invited members of OSB to pose questions, however none were put forward.

The Chair invited the Executive Members to sum up their position.

As part of their summing up the Executive Member for Finance and Governance made the following comments:

- It would have been preferential for the nature for the Call-In to have been provided in advance of the meeting.
- The issue of value for money was an important consideration and the Executive was provided with all of the information required both in terms of the risks and in terms of the advantages. The nature of a project such as this would always carry risk, however the Council needs to be ambitious in order to regenerate the City centre, support the retail sector and to provide jobs for the future.
- The process of making the decision was a robust one and that there was nothing presented in the Call-In to change that view.
- There may have been a misunderstanding about the different types of office accommodation available in the town.

The Deputy Mayor and Executive Member for City Centre Strategy commented that constructing a new building would save more money than by refurbishing the existing building. The demand for building new offices was demonstrated on the report as was the need.

The Executive Member for Finance and Governance stated the February 2018 report was about investing in new accommodation whereas other reports referenced in the meeting, such as those relating to the disposal of land in centre square were all agreed previously but not called in.

The Chair invited Councillor Young to sum up his position.

As part of his summing up Councillor Young made the following comments:

- The information contained in the Bilfinger GVA report is not old it is of similar age to that cited in the February 2018 report.
- The basis for the Call-In was that the Executive should have had sight of the Bilfinger GVA report and because it did not this constitutes a failure in the decision making process.
- There would be nothing wrong with returning the decision to the Executive and letting them have sight of the Bilfinger GVA report. This would ensure that decision makers had all of the relevant information.

Following closing submissions, the Board voted on its decision in respect of the Call-in presented by Councillor J Young in relation to Value for Money.

**ORDERED:**

a) That the decision taken by the Executive on 20 February 2018 in relation to Centre Square East Office Development - Council Investment and Accommodation, be endorsed.

b) That the decision be not referred back to the Executive.

The Overview and Scrutiny Board then considered the Call-In by Councillor John Rathmell.

The Chair confirmed the timings of the meeting as undertaken with the previous Call-In were acceptable.

Councillor Rathmell noted the Call-In procedures contained within the constitution did not require paper bundles to be provided in advance and can be presented on the day of the meeting. The Chair confirmed that while not stipulated in the procedures without papers being provided in advance of the meeting this is an injustice and disservice to those presenting the Call-In.

The Chair confirmed that the purpose of the Call-In, with regard to the Centre Square

development was due to:

- (i) Process and Governance failings
- (ii) Viability of Development

The Chair confirmed that due to a lack of specific detail for the above reasons Councillor Rathmell would be invited to present his reasons first, followed by questions from the Executive Members/ Service Areas.

As part his presentation, Councillor Rathmell made the following comments:

- How the Executive report of February 2018 sought "Executive approval for the investment in office space at land east of Centre Square for the purposes of (i) securing an efficient, cost-effective and sustainable solution for the long-term accommodation of Middlesbrough Council staff and (ii) investment in a second building in the development to achieve a commercial return for the Council."
- That in order to get to the proposal a number of background reports were completed, including the Bilfinger GVA report. This report was considered before the Council decided to occupy the site and this must be considered throughout.
- That references to Centre Square were quite alien as a piece of land, however this was green space and also well used by the local community and by people visiting the town.
- That the Executive's powers had not been discharged properly.
- That the decision making process was fundamentally flawed because not all information was provided to it.
- A number of material flaws had been found in the process breaching the general treaty principles of openness, fairness and transparency and those flaws were repeatedly identified by both internal and external Auditors. Despite changes to policy with regard to asset disposal, the flaws identified were still present. An example of this was the use of the 2015 policy, despite the whole process not being completed.

The Executive Member for Finance and Governance raised a point of order stating Councillor Rathmell was referring to the decision to dispose of a piece of land, which was not the decision within the February 2018 report.

The Chair stated the Call-In was for the decision of the February 2018 and would not allow the decision to be taken backwards.

Councillor Rathmell stated that he did not want to take the decision backwards. References made to the September 2016 report were made because it was quite clear about the legal implications and referred to the statutory power to dispose of the land under sections, 1, 2 and 3 of the Local Government Act.

Councillor Rathmell continued his presentation and made the following comments:

- The disposal of land is best carried out where there is an open market process and not favouring a single individual.
- The Council had commissioned the Bilfinger GVA report about governance and process which included value for money.
- That the last and most poignant piece of legal advice received was that, "In order to determine the final market valuation for this development site so long as the site is consistent with or exceeds the market valuation, disposal by private treaty is a legitimate disposal method."
- In the 20 February report it stated that legal advice was privileged, but believed the report itself was privileged on the grounds of commercial sensitivity
- The Council has never adhered to the plan and this had never been referred to in the February report.
- There was acknowledgement that the Bilfinger GVA report related to land value primarily, however it also related to a lot more.
- Based on the February 2018 report, the Council was selling land valued at £175,000 per acre but having to apply a negative calculation to make it viable.



- Between the two proposed sites, one building would cost £8.3 million with the second costing approximately £7 million which in layman's terms meant once the offices were built the land on which they were situated would increase by that much. This was contradictory to other land disposals and valuations such as the Registry Office.
- If the development were to be successful, the developer would have found a header lease and would not be reliant on Middlesbrough Council to be provider of the header lease and move into the site.
- There was a 35 year lease on two buildings at a cost of approximately £50m to the tax payer which did not include insurance and maintenance leases. Councillor Rathmell stated that a reputable bank manager, with experience in finance and assets, reasonably expected a price of approximately £12 per square foot. Therefore this was more than a risk, it was a gamble.
- The initial advice for the development was that it was not viable and there was a lack of clarity about who was taking the development forward, for example was it Ashall Ltd, Ashall LLP etc.
- The Executive Member for Finance and Governance was correct in seeking to engage Scrutiny in the process due to a lack of confidence in the process.

The Executive Member for Finance and Governance stated it was not true that she lacked confidence in the process. The Chair confirmed this was not what was said, and that any reflection of a lack of confidence in the process was Councillor Rathmell's opinion.

Councillor Rathmell continued with this presentation and made the following comments:

- When looking at the whole policy, there were land estimates stating the value of the land was £175,000 per acre but these did not compare to the estimates that were relied upon for the decision.
- The land in Centre Square was classified as agricultural land, however there were no signs the land was being used for this purpose. By classifying it in that a way could reduce the land value.
- The purpose of the Call-In was to protect the public's finances and assets.
- With regard to the assets disposal policy, there was reference to compliance with the 2015 policy. However the disposal of assets needed to comply with the 2016 policy as, after a previous Call-In regarding the Southlands Centre significant failings were identified. During that process the Section 151 Officer stated all disposals would be checked for compliance with that policy, and asked why this project not.
- Due diligence was questioned with regard to the risk assessment and what stage this was that last carried out. As there was no details provided about funding there would have been no way to assess the risk.
- While comparisons were made with other developments, such as the Cobalt Business Park, there was no full details passed on to Members.
- In terms of business rates, this was another financial risk that had been omitted by officers and it was reasonable to assume that by not being attached to a heritage property the business rate liability for the new buildings would increase.
- It was inappropriate to consider a report that was based on hopes and dreams of what the scheme could or could not be without informing Members making the decisions.
- With regard to reports that have been made public, there was reference to State Aid but no detail provided. The Council had not, in the last decade, allowed any other developer to put forward a proposal for the scheme. It had now entered into a deal with one developer, not gone to the free market nor through a procurement process and there was little reference to State Aid and State Aid compliance.
- Overall, Councillor Rathmell felt the whole process had been poor from start to finish, for example reliance on the Bilfinger GVA valuation.
- There was a lot of significant changes that had occurred. For example, it was in December 2017 that the findings the current Civic Centre was not fit for purpose were made known, and now the Council was in a position whereby it could move into two ready-made sites.
- The estimated cost of £50m was conservative based on the information that was referred to and ultimately not all of the relevant information available has been provided to Members.

The Chair invited the Executive Members/ Service Area to ask Councillor Rathmell questions on his presentation.

The Executive Member for Finance and Governance asked Councillor Rathmell to identify where the term "it is not viable" appeared.

Councillor Rathmell confirmed that the phrase appears in the email exchange between officers and in the Bilfinger GVA report.

The Executive Member for Finance and Governance asked Councillor Rathmell if he was aware that the findings of the Bilfinger report were analysed in the 2016 report. Councillor Rathmell confirmed that he was aware of this in relation to the land value but not for the issue of value for money.

The Executive Member for Finance and Governance asked Councillor Rathmell, as he was present at the February meeting of the Executive, had he had sight of part B of the report. Councillor Rathmell confirmed that he left the meeting early.

The Executive Member for Finance and Governance also asked why Councillor Rathmell had not called-in the previous reports he was referring to in his presentation as these regarded disposal of land. Councillor Rathmell stated it was fair to place a reliance on the Executive that should be in a position to scrutinise decisions and be aware of facts.

The Deputy Mayor and Executive Member for City Centre Strategy asked Councillor Rathmell to confirm that, in the 2016 report, regarding the issue of viability, the report stated that without intervention from the Council the development of Grade A office buildings would not be viable. Councillor Rathmell confirmed that he was referring to the Bilfinger GVA report quoting, "We would outline however that the level of rent required in order to effectively result in the residual land return breaking even is over and above current market levels, with the consequential risk that upon underletting by the Council, there will be a shortfall in rental return achievable in the Open Market, the cost of which will need to be covered by Middlesbrough Council."

The Deputy Mayor and Executive Member for City Centre Strategy asked Councillor Rathmell why he believed the Council was moving into two buildings. It was confirmed that Councillor Rathmell had stated the Council was moving into two buildings and taking responsibility for two buildings.

The Deputy Mayor and Executive Member for City Centre Strategy asked Councillor Rathmell the identity of the bank manager mentioned in his presentation. The Chair advised the Executive Member they could not ask that question.

The Chair invited the Executive Members/ Service Area to present the reasons for the decision.

The Executive Member for Finance and Governance stated that Members were informed about the Bilfinger GVA report as it was referred to in the 2016 report, within paragraphs 31 to 34. The Bilfinger GVA report was an independent analysis on a theoretical situation, and was undertaken at an early stage of the development. Later independent advice was sought on the actual situation and this advice is referenced heavily in the February 2018 report.

The Acting Head of Economic Development stated that the rental income of £12 per square foot cited by Councillor Rathmell would be to make the scheme break even. He also stated that the amount of rent charged would be significantly less than that quoted by BNP Paribas, this would result in the Council being able to offer a range of rental levels and still be profitable.

The Executive Member for Finance and Governance made the following comments as part of the presentation:

- While there was a large outlay to the project and would incur cost to the public purse, there would be an even larger cost to the public purse if the project did not go ahead.

- There was also the consideration that if the Council did not move into new accommodation at this stage it would spend more on running costs in the long term for the existing Civic Centre.
- In terms of business rates, within the grey paper there was reference made to the Council paying full business rates, therefore if a reduction occurred there would be a further saving.
- Most of the Call-In was about the disposal of land, which was subject to earlier reports. Had a Call-In been made for those decisions it would have been clear the proper procedure had been followed.
- The Corporate Affairs and Audit committee had examined the issue of Centre Square from a project management perspective.
- All members are entitled to attend the Executive and ask any questions they wish.
- This was in contrast to members of OSB not receiving all documentation in advance of the meeting so they could make measured consideration of the facts.
- There was nothing in the Call-In that indicated the Executive had not been in possession of all the facts and the associated risks.

The Deputy Mayor and Executive Member for City Centre Strategy stated that the development site had been in the Local Plan since the 1980s as a development site and that the report was robust.

The Chair invited Councillor Rathmell to ask questions of the Executive Members/ Service Areas.

Councillor Rathmell asked the Acting Head of Economic Development if the figure he quoted of £17 per square foot included maintenance and insurance leases. The Acting Head of Economic Development confirmed these would be additional costs.

The Executive Member for Finance and Governance was asked that if the business rate discount is not realised, would this cost then increase, thereby increasing the burden on the Council. The Head of Financial Planning and Support confirmed that the assumptions made were based on full business rates being paid on both buildings. This was also done in the December 2017 report when discussing the move to a new Civic Centre.

The detail of the figures contained in the February 2018 were deemed confidential and included in Part B. However, the Head of Financial Planning and Support, stated there was no reason for the Business Rates figures themselves to be confidential so, subsequent to the meeting, provided them and are listed below:

Estimated Annual Business Rates for Building 1 (New Council Accommodation) (Para 57 Part B): £300,220

Current (2017/18) Business Rates for the Civic Centre: £70,178

Gross Increase in Business Rates: £230,042

As part of this subsequent information the Head of Financial Planning and Support also stated that the Council would be seeking to apply for a similar discount to that currently enjoyed through being linked to a Heritage Building (The Town Hall). This would reduce the estimate of £300,220 considerably were it to be successful. However, as with the other figures in the report we have taken a prudent view and gone with the higher figure so as to not be overly optimistic in the picture.

It was also worth noting that at present 49% (£112,721) of this increase would be retained by the Council as income under the Business Rates Retention Scheme. From 1st April 2020 onwards this figure was proposed to rise to 75% which would increase the amount retained by the Council to £172,532.

Councillor Rathmell stated that the Executive Member for Finance and Governance had said the terms of the lease had changed. However the Executive Member denied this stating the situation had changed, not the lease or specified a time limit on the lease. The situation changes referred to concern the Bilfinger GVA report that was commissioned on a

hypothetical situation rather than an actual one. One of the issues that had changed since the Bilfinger GVA report was the Council was prepared to lease one of the buildings.

The Deputy Mayor and Executive Member for City Centre Strategy was asked that if the situation had changed between 2016 and the February 2018 report why the scheme was not sent back to the open market, as this would have provided the best value for money.

The Executive Member confirmed that the procurement process was dealt with in an earlier, published report, and the lease and land sale transactions remain separate issues.

The Chair invited members of OSB to ask questions, however none were put forward.

The Chair invited the Executive Members/ Service Areas to sum up their positions.

The Executive Member for Finance and Governance made the following comments as part of the summing up:

- That the decision being called-in was not about disposal of land, which had already been made without a Call-In.
- The Corporate Affairs and Audit Committee looked at the project in December 2017.
- The issue of business rates and this was dealt with within the confidential part of the February 2018 report.

The Deputy Mayor and Executive Member for City Centre Strategy commented that the February 2018 report was very detailed and that the decision was made based on the facts.

The Chair invited Councillor Rathmell to sum up his position.

As part of his summing up, Councillor Rathmell made the following comments:

- OSB send the decision made on the February 2018 back to the Executive on the basis of process, governance and value for money.
- Careful consideration should be given to the Council's asset disposal policy, to ensure it does not leave itself open to any legal challenge as there had been significant changes in the process.
- There were a number of questions in relation to the decision of the February 2018, including what confidence could a member of the public, or other Members, have in the Council if not all information was given to decision makers. For example, the Bilfinger report referred to was selective in that it provided land value but no other considerations.
- Had everybody seen the Bilfinger report they would have seen it stated "As you will see there is considerable risk attached to bringing forward an office development in Middlesbrough Town Centre. Demand is weak and on the established Teesdale Business Park rents are continuing to decline as landlords attempt to attract tenants."
- Information could not be cherry picked when gambling with £50m of public money.
- The £17 per square foot of rental income quoted does not include other costs including insurance and maintenance leases.
- How could there be open and honest decision making when key documents were being held from decision makers.
- With regard to openness and transparency, why was information about business rates placed within the confidential section of the report, as this had not been decided upon as yet.
- Another consideration was the input from a legal perspective, which was apparent in 2016 but not so in the 2018 report even though this was a legal requirement.
- There was also a clear indication that the Council wanted to carry out the development with one developer and this does not offer value for money.
- If the issue of the development was to be addressed by the Scrutiny process then there should be no harm in the issue being sent back to the Executive.

The Chair stated that had Councillor Rathmell raised this issue with her this may have negated the need for the Call-In.

Following closing submissions, the Board voted on its decision in respect of the Call-in presented by Councillor J Rathmell in relation to:

- (i) Process and Governance failings
- (ii) Viability of Development

ORDERED:

- a) That the decision taken by the Executive on 20 February 2018 in relation to Centre Square East Office Development - Council Investment and Accommodation, be endorsed.
- b) That the decision be not referred back to the Executive.