

OVERVIEW AND SCRUTINY BOARD

A meeting of the Overview and Scrutiny Board was held on 4 April 2019.

PRESENT: Councillors J Sharrocks (Chair); M Storey (Vice Chair) Councillors Coupe, Higgins, L Lewis, Mawston, McGee, McGloin, Saunders and J A Walker and Walters (As Substitute).

PRESENT BY INVITATION: Councillor Charles Rooney (Deputy Mayor and Executive Member for City Centre Strategy)
Councillor Nicky Walker (Executive Member for Finance and Governance)

ALSO IN ATTENDANCE: J Cain (Local Democracy Reporter)

OFFICERS: S. Bonner, S. Dorchell, S. Gilmore, A Hoy, D Johnson, I Wright.

APOLOGIES FOR ABSENCE Councillor E Dryden, Councillor A Hellaoui.

DECLARATIONS OF INTERESTS

Name of Member	Type of Interest	Item/Nature of Interest
Cllr Michael Saunders	Non-Pecuniary	Signatory to Call In

19/67 **EXCLUSION OF PRESS AND PUBLIC**

The Chair advised the Overview and Scrutiny Board (OSB) that the decision being called in was partly heard in private session at the Executive meeting of 14 March 2019. As a consequence the Call In may need to be held in private session. The Chair enquired if the Call In proposer (Cllr Jon Rathmell) or the Deputy Mayor needed to refer to the confidential element or the report.

Both Councillor Rathmell and the Deputy Mayor agreed that they would not need to refer to the confidential element of the report. As a consequence, the Chair, and OSB, agreed the Call In did not need to be heard in private session.

ORDERED: That the Call In not be heard in private session.

19/68 **CALL IN - ACQUISITION OF HOMES ENGLAND LAND AT MIDDLEHAVEN**

The Chair provided an outline of how the Call In would proceed; the Councillor proposing the Call In (Cllr Jon Rathmell) 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 Deputy Mayor would have the opportunity to question the proposing Councillor for 5 minutes, this could include input from officers from the relevant service area.

The Deputy Mayor/ service area would then have 15 minutes to provide the reasons for the decision after which the proposing Councillor would have the opportunity to question the Deputy Mayor/ service area for 5 minutes.

The Overview and Scrutiny Board (OSB) would then be given the opportunity to ask the proposing Councillor and Deputy Mayor/ service area questions. After this the proposer and the Deputy Mayor would be given 5 minutes each to sum up. OSB would then vote on whether or not the decision should be sent back to the Executive.

The Chair confirmed that the subject of the Call In was the decision made by the Executive Sub-Committee for property on the 14th March 2019.

The Chair invited Cllr Rathmell to provide the case to OSB. Cllr Rathmell made the following comments as part of the presentation:

- Investment in the Town was welcomed by opposition groups, but the investment needed to be positive not reckless.
- The reason for the call in was a lack of value for money considerations.
- There had not been an independent valuation for the land, yet a sum of money had been allocated for its purchase.
- Previous reports had mentioned the Council having legal duties when they became owners of the land, including any environmental assessments.
- There was no mention of how contaminated the site was or if an environmental assessment had been carried out.
- It was known the Council had awarded a grant of £94k to one of the companies involved to advance work on the site.
- There was no evidence of due diligence having been carried out on either of the companies the Council were previously dealing with. One of those companies had been trading at a loss while another company had no assets and no trading history.
- Based on this, there needed to be evidence that the land could be purchased.
- The site in question had previously flooded, which meant a full environmental assessment was essential.
- It would have been beneficial if the report had included information regarding the Stamp Duty owed with the purchase.
- There was nothing in the report to show what legal advice had been provided as well as what Risk Assessments had been carried out.
- There was nothing in the report to demonstrate that the Council would not be at financial loss because of the transaction and other clean-up costs.
- The report omitted which operator had been selected as this conflicted with press reports.
- It was unacceptable that a dormant company should announce they were looking for an operator for the site.
- The Council should seek an operator for the site themselves rather than use a middle man.
- There was no indication of the project management functions of the sale of the land.
- It was not unreasonable for the decision to be re-considered by the Executive, and for the Risk Assessments to be carried out.
- It appeared the Council was taking on substantial risk because deadlines were approaching.
- If OSB did not understand the serious issues faced by this situation the Council had serious issues.

At this point in the meeting the Chair invited the Deputy Mayor to pose questions to Cllr Rathmell.

The Deputy Mayor drew OSB's attention to Paragraph 21, (c) of the report and stated the report stood for itself and that all of the points raised by Cllr Rathmell had been answered within it. The Deputy Mayor also requested that an apology be issued as some of the statements made by Cllr Rathmell were not true.

The Deputy Mayor tabled a diagram that illustrated the Council's land ownership in the area in question and drew OSB's attention to paragraph 42 of the report in which Risk was discussed. It was commented that the largest risk to the Council was to not take any action. The Chair queried if the Deputy Mayor had any questions to which the Deputy Mayor asked if the biggest risk to the Council was to do nothing.

Cllr Rathmell responded by pointing to paragraph 21 (c) and stated that the Council needed to carry out its own assessment rather than rely on other vendors.

The Deputy Mayor queried if Cllr Rathmell understood that it was a joint instruction for an independent valuation.

Cllr Rathmell responded that those details were not contained within the report.

The Deputy Mayor queried if Cllr Rathmell was aware if an independent valuation had been

carried out.

Cllr Rathmell responded that OSB was only discovering this fact in the meeting.

The Executive Member for Finance and Governance queried where the alleged fee paid to the operator had been derived as this information was contained within the confidential element of the report.

Cllr Rathmell replied the amount was contained within local media reports.

The Deputy Mayor queried if Cllr Rathmell understood that companies could be set up as outlined in the report.

Cllr Rathmell responded that, from a business perspective, it was normal for holding companies to be established only with financial backing and that this was not the case in relation to this decision.

At this point in the meeting the Chair invited the Deputy Mayor to present the case for the Executive. The following comments were made during the presentation:

- The report stood for itself.
- Reference to an independent valuation was clearly referenced in paragraph 21 (c) of the report.
- Stamp duty was referred to in paragraph 38.
- Due diligence was, and continued to be, carried out.
- It was not abnormal for companies to be established for specific purposes, examples of this included the Holiday Inn and the Centre Square development.
- The companies in question were being held to due diligence by Homes England and the Tees Valley Combined Authority.
- The Council did not refuse the option on the land.
- The timescales in place were influenced by central government, as they had asked Homes England to liquidate their assets.
- The council did not want any liquidated assets to be placed within the middle of its holdings.
- With regard to flood risks; the example cited by the proposers of the call in was an anomalous event.
- Reports such as the one called in were not created in isolation, instead they were informed by previous decisions.
- The Council had invested in the infrastructure around the site to act as an enabler for further development.
- Significant amounts of money had been spent in different areas, such as planning and architects, to ensure the best possible job was being carried out.
- Overall, the Council was aware of the risks involved and after considering all of the options the greatest risk was not to do anything.
- All of the pertinent information relating to the transaction was contained within the report.
- The Executive Member for Finance and Governance confirmed that the monies reported to have been paid to the holding company had not left the Council's bank accounts. This fee was conditional on commencement and would not be paid until then.
- The Snow Centre was not the Council's project, that was the responsibility of private companies which meant the source of the funding would not be referenced in any of the reports.
- The figure of £30m was not the Council's calculation. With regards to the transfer of the land the Executive Member for Finance and Governance brought OSB's attention to paragraph 25 (b) of the report which stated that any company undertaking the development would be required to have sufficient funding in place before commencement.
- The Executive Member also drew the Board's attention to paragraph 45 (5) that detailed what due diligence needed to be carried out, including credit checks.
- The fee quoted in local media was a matter for a previous decision which was why it was not included in the report being considered.

At this point in the meeting the Chair invited Cllr Rathmell to pose questions to the Deputy Mayor.

Cllr Rathmell pointed out that the issue had been ongoing for more than six years, and queried why the date was so important now and why the land was not purchased sooner. Cllr Rathmell queried if the Deputy Mayor could confirm if the conditions in the report that were placed to protect the Council from loss were in the same conditions as those laid down by Homes England.

The Deputy Mayor responded by saying there were no deadlines and the Council did not refuse the purchase of the land. Instead Homes England opted not to sell the land. Due to Homes England wanting to dispose of land it was now an opportune time for the Council to purchase such land to enable developments such as the Snow Centre.

Cllr Rathmell queried if the report was governed by deadlines or if the disposal of the land was the right time. The Deputy Mayor responded that the Homes England deadline had not been agreed and that the terms may be altered.

Cllr Rathmell asked the Executive Member for Finance and Governance, with reference to paragraphs 45 in the report, that as due diligence was ordinarily carried out after the event, what credit checks could be carried out to satisfy the Council's risk on the companies. The Executive Member for Finance and Governance commented that the checks to be carried out were listed in the report.

At this point in the meeting the Chair invited OSB to ask questions of both Cllr Rathmell and the Deputy Mayor.

A member posed the following questions after which the Deputy Mayor's response responded:

Q: Had an independent valuation been carried out?

A: Yes.

Q: Was it the case that £94,500 was not referenced in the report because it had not been and would not be until commencement of connectivity and ground works?

A: Correct

Q: Is the consideration of stamp duty included in the report being called-in?

A: It was

Q: Was the issue of due diligence referenced in the report and identified the checks that would be carried out?

A: Yes.

At this point in the meeting the Chair invited The Deputy Mayor to sum up. The following points were made:

- All of the necessary detail required for the decision to be made was contained within the report.
- All of the questions that had been brought forward had been answered robustly.
- The Executive challenged reports such as this both at the point of approval and while they were being created.
- Some lessons could be learned from the call-in, namely that future reports could potentially reference previous reports.
- All time scales for all processes were adhered to.
- At meetings where reports were considered the exclusion of press and public did not include Members and as such Members could attend those meetings and present challenge if they wish.
- On the whole, all Councils were taking on risks to suit their local economy however there was greater risk in doing nothing.

At this point in the meeting the Chair invited Cllr Rathmell to sum up. The following points were made:

- The call in was centred around the Council committing £840,000 to the purchase of land when no due diligence had been carried out on companies that had few assets.
- There was an absence of risk assessments, especially relating to contamination.
- There had been previous discussion of other investment projects in the area of the site however it was doubtful if these were working in the way intended.
- The Council should take some risks, however this was an example of recklessness.

At this point in the meeting the Chair invited OSB to vote on sending the decision back to the Executive.

ORDERED: After considering all of the information presented at the meeting, the decision of the Overview and Scrutiny Board was not to refer the decision back to the Executive.