

MIDDLESBROUGH COUNCIL

AGENDA ITEM 3

OVERVIEW AND SCRUTINY BOARD

4 APRIL 2019

<p>CALL IN – ACQUISITION OF HOMES ENGLAND LAND AT MIDDLEHAVEN</p>

PURPOSE OF THE REPORT

1. In accordance with Middlesbrough Council's Call In Procedure, to allow Members of the Overview and Scrutiny Board (OSB) the opportunity to consider a decision made by the Executive.

RECOMMENDATION

2. That the Overview and Scrutiny Board considers the decision of the Executive and determines whether it should be referred back to the decision making body for reconsideration.

EXECUTIVE DECISION –

3. A meeting of the Executive Sub Committee for Property was held on 14 March 2019. At that meeting, consideration was given to a report of the Deputy Mayor and Executive Member for City Centre Strategy in respect of the Middlesbrough Place Brand.
4. A copy of the above report, which outlined the background to the acquisition of the land at Middlehaven, is attached at **Appendix 1**.
5. The report included the following recommendations:-
 - 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.

The decision was supported by the following analysis:

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.

CALL IN PROCEDURE

6. The power to call in a decision of a local authority executive body was introduced under the Local Government Act 2000. The process is intended to hold decision makers to account and ensure that executive powers are

discharged properly. Call in ensures that a decision can be reviewed and reconsidered before it is implemented.

7. The procedure allows Members the opportunity to call in decisions for review by the Overview and Scrutiny Board as follows:
 - A decision made by The Executive;
 - A decision made by an individual Member of the Executive;
 - A decision made by a committee or sub-committee of the Executive;
 - A key decision made by an officer with delegated authority from the Executive; or
 - A decision made under joint arrangements.
8. The process is initiated by five Members of the Council requesting a decision to be reviewed within five working days following publication of the decision and submitting a form that outlines the reason(s) for the call in.
9. Following the meeting of the Executive Sub Committee for Property on 14 March 2019, notification to submit the required call in form, and the call in detail, was made to the Monitoring Officer on Friday 22 March 2019. The completed form, signed by five Members supporting the request to call in the decision outlined above was collected by the Monitoring Officer on 25 March 2019.
10. The five Members supporting the call in were Councillors Hubbard, McCabe, Mohan, Rathmell and Saunders.
11. The decision to be Called-In is as follows:
 1. That 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, be approved;
 2. That the acquisition, as set out, be approved, and the contents of the existing legal agreement in place between Homes England and Cool Runnings NE Ltd, set out at confidential Appendix B, be noted;
 3. That the termination of the agreement with Cool Runnings NE Ltd (as mentioned in the report) be approved, and the grant of an option to SubZero (Middlehaven) Limited be approved, 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 the 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;
 4. That 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 were contingent upon the timescales of the main snow centre lease, be approved; and
 5. That any further / emerging contractual amendments required to facilitate this agreement be delegated to the Executive Director of Growth and Place and the Strategic Director of Finance, Governance and Support, in consultation

with the Deputy Mayor and Executive Member for City Centre Strategy and the Executive Member for Finance and Governance.

12. The reasons for the call in, as determined as being valid by the Council's Monitoring Officer, are as follows:

1. No Value for money considerations are contained within the report, including but not limited to an independent valuation. The legal duty of the Council, the cost of the stamp duty payable by the Council, due diligence on the new company or companies associated with it, all are either dormant or operating at a loss, nothing about why the Council consider this so important but previously refused the option to purchase the land. This report is also absent of best consideration.

2. No risk assessment of the land has been carried out in regard to contamination and/or flooding despite previous reports raising this concern.

3. There's no mention of the use of the £94,500 grant provided by MBC to advance the development or evidence any works have been carried out.

4. The companies referred to have stated previously there us an operator but now state one is to be sought. This has been omitted from the report but would underpin string due diligence and good governance.

5. The report does not mention or evidence where the £30 million investment is coming from or if it was even been secured by the dormant companies or those associated to it running at a loss.

6. There is no evidence or risk assessment to show that this purchase will not be a burden on the taxpayer or any evidence transfer will ever be achieved to the companies mentioned.

Solutions

1. An independent valuation should be sought in line with best consideration/ value for money and good governance

2. A risk assessment for contamination and flooding should be carried out in accordance with best consideration/ value for money and good governance.

3. Due diligence should be carried out on all companies associated with this transaction as they are either dormant or operate at a loss. There is also no evidence they have or will ever have the capital to purchase this land from MBC.

4. All of the above should be produced in a report to the Executive for consideration before advancement of this decision. The company/ companies associated with this scheme have had 4 years to fulfil its obligations and have fallen at the first hurdle despite already receiving £94,500 from MBC to advance/ progress the project. This is a total

absence of good governance best consideration and value for money with communicating this stage.

Communication with Officers and Executive Members

This is impossible within the required time frame of the Call In period due to a communication plan obstructing this. This means all responses would take approximately 14 days to be received via the OneStop.

13. To assist the Overview and Scrutiny Board in the call in process, the Deputy Mayor and Executive Member for City Centre Strategy, and appropriate Council officers, will be present at the meeting. The Executive Member and officers will explain the reasons and rationale behind the report and the decision that was made. The Member who initiated the call in will also be present to explain their views and concerns in respect of the decision.
14. A copy of the procedure to be followed at the meeting is attached at **Appendix 2**.
15. Having considered the submitted information, the Overview and Scrutiny Board has the following courses of action available:
 - i. To refer the decision back to the Executive/Executive Sub-Committee/Executive Member/Officer for reconsideration. In that case, OSB should set out in writing the nature of its concerns about the decisions.
 - ii. To determine that it is satisfied with the decision making process that was followed and the decision that was taken by the Executive/Executive Sub-Committee/Executive Member/Officer. In that event, no further action would be necessary and the Executive decision could be implemented immediately.
 - iii. Request that the decision be deferred (adjourned) until the Overview and Scrutiny Board has received and considered any additional information/evidence required to make a decision with regard to the Call-In from other witnesses not present at the committee. (The Committee need to clearly identify the relevant issues that need to be given further consideration and whether there are any specific time constraints or other implications affecting the proposed implementation of the decision.)
 - iv. Take no action in relation to the Called-In decision but consider whether issues arising from the Call-In need to be added to the Work Programme of any existing or new Overview and Scrutiny Standing Panel/OSB. (The Committee need to clearly identify the issues to be added to the Work Programme.)
 - v. If, but only if (having taking the advice of the Monitoring Officer and/or the Chief Finance Officer), the Committee determines that the decision is wholly or partly outside the Budget and Policy Framework refer the matter, with any recommendations, to the Council after following the procedure in Rule 8 of the Budget and Policy Framework Procedure

Rules. Only in this case is there a continuing bar on implementing the decision.

16. In the event that the decision is referred back to the Executive, a further meeting of the Executive would be arranged within ten further working days. The Executive would then make a final decision in the light of any recommendations made by OSB.
17. Where the recommendations of OSB are not accepted in full by the relevant Executive body, the body should notify the OSB of this and give reasons for not accepting the recommendations.

BACKGROUND PAPERS

18. The following background papers were used in the preparation of this report:
 - Middlesbrough Council's Call-In Procedure.
 - Report to Executive – 14 March 2019.

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