

EXECUTIVE SUB-COMMITTEE FOR PROPERTY

A meeting of the Executive Sub-Committee for Property was held on 14 March 2019.

PRESENT: Councillors C Rooney (Chair), J Brunton Dobson, M Carr, D Rooney and N Walker.

ALSO IN ATTENDANCE: J Cain - Local Press.

OFFICIALS: S Gilmore, A Hoy, C Lunn and N Younis.

APOLOGIES FOR ABSENCE: Councillors J Rostron, M Thompson and L Young.

DECLARATIONS OF INTERESTS

There were no Declarations of Interest.

The Chair opened the meeting with a statement, which covered the following matters: appropriate conduct for a business meeting of the Council; and Minutes of Executive Sub-Committee for Property meetings. It was explained that the minutes were not a verbatim record of the meeting, but were instead a record of the decision(s) taken by the Committee.

19/30 MINUTES OF THE EXECUTIVE SUB-COMMITTEE FOR PROPERTY MEETING HELD ON 20 FEBRUARY 2019

The minutes of the Executive Sub-Committee for Property meeting held on 20 February 2019 were submitted and approved as a true record.

19/31 ACQUISITION OF HOMES ENGLAND LAND AT MIDDLEHAVEN – DOCKSIDE NORTH - PART A

The Deputy Mayor and Executive Member for City Centre Strategy presented a report, the purpose of which was to outline 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.

The development of a key leisure anchor at Middlehaven was a key priority to transform Middlesbrough's local economy and rebalance the economic mix of the City Centre economy. The SubZero snow centre would perform exactly that function and had the potential to have a transformative effect on Middlesbrough's economic performance and visitor economy; underpinning the commercial and retail district of the area.

The land on which the snow centre was proposed was largely based on a site to the north west of Middlesbrough Dock and was known as Dockside North (locally known as the snow centre site). This land belonged to Homes England and there was an active agreement in place for Cool Runnings (snow centre developer), to acquire a long leasehold of the site.

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 had 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.

The current option agreement between Cool Runnings and Homes England had a key trigger point in April 2019. Cool Runnings had 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 were 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 had secured from neighbouring land, there was 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 had reached an impasse.

Middlesbrough Council had 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 related to the agreement. It was important to stress that flexibility would only be applied to milestones which had been assessed to be realistic and reasonable, given the complexity of the undertaking. It was not proposed that any financial flexibilities were 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.

The submitted report provided details in respect of:

- Homes England's Position;
- The Strategic Rationale for Acquisition;
- Headline Terms of Acquisition (Middlesbrough Council from Homes England);
- Headline Terms of Onward disposal (Middlesbrough Council to SubZero);
- Timescales; and
- Contractual Clauses.

The report outlined that the Council retained two main protections prior to the lease disposal completing; albeit these were supplemented by various other conditions. 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.

A plan of Dockside North (and neighbouring land holdings) was shown at Appendix A, and the existing legal agreement in place between Homes England and Cool Runnings NE Ltd, at confidential Appendix B.

The Head of Economic Growth referred to paragraph 25 of the report to advise Members of a typographical error. It was explained that:

- Point 'a' should have read: *'Within ten months of the amendment..'* (as opposed to *'Within eight months of the amendment..'*); and
- Point 'b' should have read: *'Within eight months of securing Planning Approval..'* (as opposed to *'Within ten months of securing Planning Approval..'*)

Due to unavoidable late arrival, Councillor N Walker abstained from participating in the decision-making process.

OPTIONS

Other potential decisions and why these had not been recommended

Do Nothing - With Homes England and Cool Runnings being unable to agree extension terms in a way which did not financially prejudice the development, the development remained at risk of suffering unrealistic financial and milestone burdens, which may have undermined the entire development. As Middlesbrough Council owned the neighbouring property, there was a risk that the agreement with Homes England would lapse and that the position arose that the Dockside North site remained fragmented from the neighbouring land holding. This would make it much harder to bring forward a coherent development on the site.

Council Broker Agreement - Homes England were 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 did not accord with the requirement for the strategic flexibility, at a local level. The pressures faced by Homes England meant that they were willing to consider options which the Council would consider sub-optimal, or as having the potential to undermine the progress made at Middlehaven.

ORDERED

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.

REASONS

The decisions were supported for the following reasons:

The proposed acquisition of land at Dockside North, achieved the following outcomes:

1. Middlesbrough Council could 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;
2. The proposal delivered the consolidation of a prime land holding in Middlehaven, through the marriage of adjacent, Council-owned sites; and
3. The Council would 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.

19/32

EXCLUSION OF THE PRESS AND PUBLIC

ORDERED

That the press and public be excluded from the meeting for the following item on the grounds that, if present, there would be disclosure to them of exempt information, as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

Regarding future agendas containing confidential items, a Member requested that further detail be included in terms of the exclusion clauses applied.

19/33

(CONFIDENTIAL) ACQUISITION OF HOMES ENGLAND LAND AT MIDDLEHAVEN – DOCKSIDE NORTH - PART B

The Deputy Mayor and Executive Member for City Centre Strategy presented Part B of the Acquisition of Homes England Land at Middlehaven - Dockside North report.

The report provided background and supporting information in relation to the proposed decision.

ORDERED

That the recommendations of the report be approved.

REASON

For reasons outlined in the report.

The decision(s) will come into force after five working days following the day the decision(s) was/were published, unless the decision(s) become(s) subject to the call in procedures.