

Report of:	Director of Regeneration
Relevant Executive Member:	Executive Member for Regeneration
Submitted to:	Executive
Date:	20 December 2023
Title:	Middlesbrough Development Company Update
Report for:	Information
Status:	Public
Strategic priority:	Town centre
Key decision:	Not applicable
Why:	Not applicable
Subject to call in?:	Not applicable
Why:	Not applicable

Proposed decision(s)

That Executive note the progress made towards closure of the Middlesbrough Development Company, and the revised timetable for the Members Voluntary Liquidation.

Executive summary

The timetable previously agreed by Executive for closure of the Middlesbrough Development Company is no longer achievable due to delays in agreeing final accounts and the potential arbitration processes built in to the relevant construction contracts. A revised timetable is set out that should achieve full closure by 31st March 2024. In order to achieve the necessary closure actions three new directors have been appointed from the Council's senior leadership team. It is recommended that the Executive notes the

progress made towards closure, and the revised timetable for the Members Voluntary Liquidation that takes into account the evolving contractual situation.

Purpose

1. The purpose of the report is to update the Executive on the progress made in relation to the closure of the Middlesbrough Development Company and the revised timetable for the Members Voluntary Liquidation. The report also fulfils the commitment to provide a quarterly report on the Company's operation, in line with the requirements of the Partly and Wholly Owned Council Companies policy and supporting minimum standards.

Recommendations

2. That the Executive note the progress made in relation to the closure of the Middlesbrough Development Company and the revised timetable for the Members Voluntary Liquidation.

Rationale for the recommended decision(s)

3. The contractual position regarding the two major developments undertaken by the company (and their inter-relationship) has necessitated a reformatting of the company board, and an extension to the timetable relating to the Members Voluntary Liquidation. The revised timetable is necessary to ensure that the risks associated with the closure of the company are minimised.

Background and relevant information

4. In September 2023 Executive were advised that the process to close down the Middlesbrough Development Company was underway, and the process and timetable for this to happen were set out. The *Middlesbrough Development Company Closure* report set out that although all project activity had ceased, there were a number of contractual issues that would require further work, and upon completion of these a Members Voluntary Liquidation would be undertaken to close down the company. The timetable set out concluded with the company closing down by 31st December 2023.
5. The proposed process and timetable for the closure of the company was consistent with the actions identified against recommendations by the Council's external auditors in the Section 25 report presented to Council on 24th November 2023. A recommendation was also made that Executive would be provided with regular updates, and that any changes to the situation would be formally reported.

Company Activity / Performance

6. It should be noted that all project activity had ceased at the point of the previous report, and that no further activity has been pursued through the company. All activities undertaken relate specifically the closure process, and the actions required to conclude the contractual position on developments previously undertaken by the company. There is therefore no activity to report in terms of new activity, or performance metrics to update.

Concluding the Contractual Position on Previous Developments

7. The company has carried out two significant development projects:
 - a. *Boho Village* – an apartment scheme with construction completed early in 2023 and all units sold to registered social landlords.
 - b. *Newbridge Court* – an apartment scheme with construction completed in summer 2023 and all units currently held by the company.
8. As with any significant development project, the contractual relationship between the developer and the construction contractor extends beyond the completion and sale of the properties to enable final accounts to be agreed, defects to be remedied and retention payments to be made. In order to close down the company it is necessary to ensure that the right arrangements are in place to conclude these contractual relationships and protect the Council from any ongoing risks. The latest position with both contracts is as follows:
 - a. *Boho Village* – a final account figure cannot be agreed between the company and its contractor through negotiation. In short this is a relatively common occurrence in the development industry where the contractor is claiming costs from the developer that it believes compensate them for site delays etc. that they feel are beyond their control. The professional advisors and legal representatives of the company do not agree with the assessment of the contractor, hence it is likely that this will lead to the standard arbitration clause in the contract being triggered. The process for resolution is set out formally, and an independent arbitrator will determine the final account figure as a result. The financial implications of the outcome will then be reflected in the company's accounts. The arbitration process could however take up to three months to conclude.
 - b. *Newbridge Court* – as final snagging works are being concluded and minor repairs undertaken, no final account has yet been prepared. Although the risk of an arbitration situation similar to that arising at Boho Village is unlikely, it is still possible that a negotiated figure cannot be achieved. Again, the standard construction contract provides for this situation, and therefore same arbitration process may still occur. As noted in the previous report, it is intended that the property transfers to Middlesbrough Council upon completion, in order to maximise Homes England grant funding and then to facilitate any onward sale to a registered social landlord. At this point the property remains in the ownership of the Middlesbrough Development Company.

Inter-relationship

9. As there is an ongoing contractual dispute over the final account figure on Boho Village, the company needs to ensure that it has the financial capacity to cover all possible outcomes of the arbitration or would risk being declared insolvent. At present the company has sufficient financial capacity to achieve this, as its assets exceed any potential liabilities. It is however necessary for the company to retain its current asset base until the potential liability is either quantified or disappears. As a result, there is a

direct relationship between any liabilities arising from the potential arbitration case, and the transfer of Newbridge Court to the Council.

10. As the Council is ultimately responsible for the final financial position of the company when it is closed down, it may however be desirable to have both of the contracts for Boho Village and Newbridge Court novated (transferred) to the Council prior to their conclusion, which would allow the company to be closed down earlier. The risks associated with this from a company and a Council perspective would need to be formally assessed prior to any such transfer being completed and may require a further, specific Executive decision. This would obviously have an impact on the future timetable.

Other Progress

11. In line with previous audit findings and the recently approved guidance for Council owned companies, all conflicts of interest caused by the previous board membership have been addressed, with all previous board members standing down. The Managing Director of the company has also been removed from the board, and his direct employment through the company has ended.

12. There are however a number of practical issues that will require board decisions, and the expertise of the previous Managing Director – specifically around the agreement of final accounts and any arbitration processes. It is also necessary for the company to have a functioning board to take the final decision to enact the Members Voluntary Liquidation.

13. As a result, three members of the Council's leadership team that are not conflicted by their statutory or Council roles have been registered as directors and appointed to the company's board. These are as follows:

- a. Director of Adult Social Care and Health Integration
- b. Director of Education and Partnerships
- c. Director of Environment and Community Services

14. The newly appointed board members have undergone training to clarify their responsibilities, and will be provided with independent legal advice to ensure they are able to fulfil their roles appropriately.

15. The former Managing Director has also been retained by the company on a consultancy basis for two days per week for a period of three months, to undertake any actions required to support the final agreement of accounts and potential arbitration processes. This minimises the risk to the company (and ultimately to the Council) of procedural failures.

16. A first board meeting has been held to make the board appointments, confirm consultancy arrangements and confirm working arrangements with the company's legal and financial partners. The minutes are included as Appendix I.

17. It is anticipated that the board may need to meet two to three more times prior to closure to enact practical arrangements and then ultimately to enact the Members Voluntary Liquidation. Financial experts FRP remain on standby to undertake the final closedown.

Timetable

18. The ongoing potential for arbitration over the Boho Village contract, and also potentially the Newbridge Court final account means that the original timetable for closure cannot be achieved. The revised timetable is expected to be as follows:

Action	Timescale	Lead	19. Notes
Conclude all company activities	By 31 st December 2023	MDC Consultant	All complete except for agreement of final accounts
Agreement on potential novation (transfer) of contracts from MDC to MBC	By 31 st December	Director of Regeneration / Director of Finance	Based on appropriate risk assessment once full position on both final accounts is known
FRP commence MVL process	By 31 st December 2023	FRP	Timing to be directed by FRP in line with arbitration progress
Conclude all arbitration activities	By 28 th February 2024	MDC Managing Director	Timescale dependent upon arbitrator
Data transfer / data protection assessment completed	By 31 st March 2023	Development Services Manager	To ensure compliance at point of closure
Special Board Meeting to confirm closure	By 31 st March 2024	Development Services Manager	Timing to be directed by FRP in line with arbitration outcomes
Company formally closed through MVL	By 31 st March 2024	FRP – overseen by Director of Regeneration and Director of Finance	Estimate is 3 to 12 months, although FRP have indicated that 3 months is a reasonable timescale to expect from the start of the process.
Company audit requirements for 2023/24 concluded	By 31 st March 2024	Finance Business Partner - Regeneration	Company audit is undertaken as part of the liquidation process. All financial documentation to be retained by Regeneration as client for audit purposes.
Final report to Executive	By 31 st March 2024	Director of Regeneration	A progress report would be brought in March if the required progress is not achieved.
Deregistration at Companies House	Within 3 months of closure of the liquidation		

Final accounts reflected in the Council's 2023/24 Group Accounts	By 30 June 2024	Finance Business Partner - Regeneration	
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20. All other actions from the previous plan have been completed.

21. As some of the milestones are not solely within the control of the Council or the company, it may not be possible to achieve all milestones as set out. If this impacts upon the final closure date, then an update report would be brought to Executive in March 2024 to set out the reasons and the revised timescales.

Other potential alternative(s) and why these have not been recommended

22. Other options for the final closure of the company have been examined, including the option to simply deregister the company. Although this option could be delivered more cheaply (£15) it does not provide the appropriate assurance that all matters have been concluded satisfactorily and all risks have been managed.

Impact(s) of the recommended decision(s)

Financial (including procurement and Social Value)

23. The costs associated with closure of the company are all being met by the company itself and will feed into the reconciliation of the company's final accounts. An audit of the year 2023/24 will be conducted as part of the closure process.

24. The only subsequent change in the company's financial position is the engagement of the former Managing Director in a consultancy capacity, which has been procured in line with the company's procurement policy.

25. All assets and liabilities of the company will revert to the Council upon winding up. A full financial breakdown will be included in the final reconciliation of accounts that will be reported to Executive following closure.

26. The final MDC accounts will be incorporated into the Council's 2023/24 Group Accounts.

Legal

27. The process for closing down the company is being overseen in part by representatives of the Council's Legal Services, and in consultation with Endeavour Law to ensure that the appropriate steps are being taken to minimise risk to the organisation. Independent legal support is being provided to the three newly appointed directors to ensure clarity of the role.

28. The legal entity of the Middlesbrough Development Company will cease to exist post March 31st 2024. All ongoing liabilities, retentions, assets and interests will be held by Middlesbrough Council directly.

Risk

29. Closure of the company would potentially impact a number of priorities set out in the Strategic Plan. Key priorities affected would include:

- a. establish the requirement for potential CPO of derelict buildings and problem sites;
- b. St Hilda’s housing starts around Old Town Hall; and,
- c. commercial and residential development of west and south side Middlehaven sites.

30. As the company is only one of the routes by which the Council addresses these priorities, work towards them would still continue in the event of closure.

31. The steps set out in this report will have a positive impact on a number of risks set out within the Strategic Risk Register, including:

Risk	Impact
Corporate Governance arrangements are not fit for purpose	The closure of the company removes the risk that any revisions to the governance arrangements still fall short of the recently established guidance or are misaligned with the recently adopted policy on partial or wholly owned companies.
An unlawful decision is taken by the Council.	The closure of the company removes any residual risk that the Council could potentially take future decisions with respect to the company that could be viewed as unlawful.

Human Rights, Public Sector Equality Duty and Community Cohesion

32. Not applicable.

Climate Change / Environmental

33. Not applicable.

Children and Young People Cared for by the Authority and Care Leavers

34. Not applicable.

Data Protection / GDPR

35. An assessment will be undertaken to ensure that any data transfer between the company and the Council is managed appropriately upon closure.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Deliver the remaining actions in the Action Plan set out in the body of the report	Director of Regeneration	31 st March 2024

Appendices

1	Middlesbrough Development Company Board Minutes 16 th November 2023
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Background papers

Body	Report title	Date
Executive	Middlesbrough Development Company Closure	6 th September 2023
Executive Member for Finance and Governance	Wholly and Partly Owned Council Companies Policy and supporting Minimum Standard	25 July 2023
Corporate Affairs and Audit Committee	Internal Audit Report - Middlesbrough Development Company	15 August 2023

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