

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Regeneration
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Relevant Executive Member:	Executive Member for Regeneration
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Submitted to:	Executive
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Date:	10 April 2024
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Title:	Middlesbrough Development Company Update
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Report for:	Decision
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Status:	Public
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Strategic priority:	Town centre
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Key decision:	No
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Why:	Not applicable
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Subject to call in?:	Yes
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Why:	Not applicable
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Proposed decision(s)	<p>That the Executive notes the progress made by the Directors of the Middlesbrough Development Company towards its closure, the commencement of the Members Voluntary Liquidation, and the distribution of key assets to the Council. Formal endorsement of the directors decision to close the company is also sought.</p>
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Executive summary	<p>The Middlesbrough Development Company is a separate legal entity from the Council with a Board of Directors who are legally and independently responsible for taking decisions on the strategy and operations of the Company and any decision to close it down.</p>
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As set out in previous reports, the Directors of the Middlesbrough Development Company has resolved that the company is to be closed down via a Members Voluntary Liquidation route. This process has commenced, and the Company's major assets have now been distributed to the Council. The final stages of the closure process will take place with the company under the management of a specialist liquidator (FRP Advisory Ltd) over the next three to four months.

Purpose

1. The purpose of the report is to update the Executive on the process being followed by the Directors to close down the Middlesbrough Development Company. The report also fulfils the commitment to report on the Company's status, in line with the requirements of the Partly and Wholly Owned Council Companies policy and supporting minimum standards.

Recommendations

2. That the Executive:
 - a. notes the progress made towards closure of the Middlesbrough Development Company, the commencement of the Members Voluntary Liquidation, and the distribution of key assets and liabilities to the Council; and,
 - b. as the shareholder, formally endorses the director's decision to close the company.

Rationale for the recommended decision(s)

3. The previous decision of the Directors of the Middlesbrough Development Company to close down the company through a Members Voluntary Liquidation required the appointment of an external liquidator, to minimise the risk to the company and the Council. The process followed by the external liquidator would include the distribution of key company assets to the Council. This distribution of assets would allow the Council to commence proactive management of Newbridge Court.

Background and relevant information

4. In September 2023 Executive were advised that following a decision of the Directors of the company to close down the Middlesbrough Development Company was underway, and the process and timetable for this to happen were set out.
5. Although the company had ceased trading at that point, there were still three major items identified at the time as requiring ongoing work or consideration:
 - a. *Construction contract for Boho Village* – although the development was completed and sold, a contractual dispute remains outstanding that means the final contract sum is unlikely to be agreed without external arbitration. Executive were advised that this contract was to be novated to the Council, to allow the company to be closed down.

- b. *Construction contract for Newbridge Court* – although the development was completed and partially occupied, a contractual dispute remains outstanding that means the final contract sum is unlikely to be agreed without external arbitration. Executive were advised that this contract was to be novated to the Council, to allow the company to be closed down.
 - c. *Newbridge Court* – the property was nearing completion but Executive were advised that this would need to be transferred over to the Council, to allow the company to be closed down.
6. As the three items were interrelated in terms of the Company's balance sheet, they needed to be addressed in a specific sequence to ensure the company remained solvent at the point of closure. Without adhering to the above sequence (and transferring the asset last) the company would be unable to demonstrate it was able to meet its liabilities throughout the process.
7. The actions that have been taken since the previous report to Executive are as follows:
 - a. The construction contracts for Boho Village and Newbridge Court (and responsibility for settling the final account) were novated from MDC over to Middlesbrough Council on 18th March 2024.
 - b. FRP were formally appointed on the 18th March 2024 as the liquidators of the company, ending the Council's involvement in the running of the company. The company was declared solvent at that date.
 - c. Newbridge Court was transferred from MDC over to the Council on 20th March 2024.
8. Following the completion of these three stages, the closure of the company is now being progressed by FRP and will take a period of three to four months. This allows for the appropriate notifications to be advertised and all remaining filings to be completed. The remaining net assets of the company will then be distributed to the Council.
9. At this stage, all loans to the company from the Council have been repaid through a mixture of cash payments or through the transfer of Newbridge Court, and the company remains solvent.
10. The Council will work with FRP to reflect any interest payments due on funding provided through loans as part of the final reconciliation of the company's accounts.
11. The responsibility for concluding the final accounts on the two novated contracts for Boho Bright Ideas and Newbridge Court now lies with the Council, and these will be settled through arbitration, supported by the appropriate external professional advisors. The outcome of these will be reported in future quarterly budget reports. The company will also remain part of the Council's group accounts for financial accounting and reporting purposes at least during 2024/25.

12. The settlement of the construction contracts and management of Newbridge Court will be handled by the Council as 'business as usual'.

Approving the Closure

13. Although the directors of the company have resolved to close the company through a members voluntary liquidation, and the Council has previously confirmed its support for the closure, it would be prudent to ensure that a recommendation is included within this report to confirm explicitly that the Council (as shareholder) formally endorses the directors decision to close the company. The company's articles do not specifically require this, but formal endorsement by the Council would reflect good governance principles.

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

14. Other options considered by the Directors of the Middlesbrough Development Company for supporting the final closure of the company have been examined, including the option to support the simple deregistering of the company. Although this option could be delivered at lower cost (£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)

15. The company has entered liquidation in a solvent position and is expected to remain solvent throughout the closure process. This should result in the remaining cash balance within the company accounts being returned to the Council by FRP.
16. The loans provided to the company by the Council have all been repaid through a mixture of cash (from the sale of Boho Village) and assets (Newbridge Court). Both will now be reflected in the Council's accounts. The Council will work with FRP to reflect any interest payments due on funding provided through loans as part of the final reconciliation of the company's accounts.
17. Any remaining assets and liabilities held by the company will revert to the Council upon winding up.
18. Although the value of the assets, contracts and liabilities being transferred exceeds the 'key decision' threshold, the financial position of the Council is ultimately unchanged as the organisation is already responsible for the company's final balance sheet, and these movements represent the implementation of previous executive decisions towards closure.
19. The final MDC accounts will be incorporated into the Council's Group Accounts.

Legal

- 20. The process undertaken so far has required significant input and advice from external representation from DWF with assistance from the Council’s Legal Services team in arranging for completion of the documents, novation of the contracts and transfer of the assets. The remaining requirements of the process will be supported by FRP and their legal representatives.
- 21. The legal entity of the Middlesbrough Development Company will cease to exist once FRP have completed their work. No further input is expected from the Council.

Risk

- 22. 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.
- 23. 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.
- 24. 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

25. Not applicable.

Climate Change / Environmental

26. Not applicable.

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

27. Not applicable.

Data Protection / GDPR

28. Not applicable.

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

29. No further actions are required in respect of the Middlesbrough Development Company.

Appendices

None

Background papers

Body	Report title	Date
Executive	Middlesbrough Development Company Update	20 th December 2023
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

Contact: Richard Horniman
Email: richard_horniman@middlesbrough.gov.uk