

<b>Report of:</b>	Richard Horniman - Director of Regeneration and Culture Ian Wright - Director of Finance Councillor Ashley Waters - Executive Member for Regeneration Councillor Chris Hobson - Executive Member for Finance and Governance
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<b>Submitted to:</b>	Executive - 11 May 2021
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<b>Subject:</b>	Middlesbrough Development Company (MDC): Finance
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**Summary**

Proposed decision(s)
<p>That Executive approves:</p> <p>a) additional funding of up to £1,200,000 to MDC to facilitate the delivery of the Tollesby development. The funding will be provided from £700,000 of Section 106 contributions and £500,000 of Council resources, with the latter being provided in the form of a commercial loan (subject to sign off from the Council’s Section 151 Officer). Both amounts sit within the current approved Investment Strategy allocation to MDC so there will be no additional requirements in this regard; and,</p> <p>b) delegated authority to the Council’s Section 151 Officer to approve the transfer of residual funds held within MDC accounts to the Tollesby project, subject to MDC Board approval.</p>

Report for:	Key decision:	Confidential:	Is the report urgent? <sup>1</sup>
Decision	Yes	N/A	Non urgent

Contribution to delivery of the 2020-23 Strategic Plan		
People	Place	Business
The development of housing, will contribute towards Middlesbrough’s Housing Growth Programme and increase the quality and quantity of homes available to residents.	Investing in Middlesbrough to provide new housing on a key site, which will support the regeneration of the town centre and help create an attractive place to live, work and visit.	The proposal will support the Mayor’s urban living agenda and help underpin the Medium Term Financial Plan, by generating Council Tax.

<sup>1</sup> Remove for non-Executive reports

## Ward(s) affected

Projects undertaken by MDC could occur in any ward but Tollesby is in Acklam Ward.

### What is the purpose of this report?

1. The purpose of the report is to seek Executive approval for an additional capital allocation to MDC, to meet a funding shortfall caused by a lower than anticipated Homes England grant allocation and increased costs.

### Why does this report require a Member decision?

2. The proposal is concerned with the use of over £150,000 and is a key decision.

### Report Background

3. In December 2019, the Executive approved the use of £3.5m of allocated funding for the development of land at Rievaulx Drive, known locally as Tollesby shops.
4. The report informed the Executive that the vacant parade of shops had been causing significant problems for the local community and were viewed to be 'blighting the area'. It was proposed that MHome (now Middlesbrough Development Company) would acquire the site and utilise an existing scheme, for which planning permission had already been secured by the then owner, to redevelop the site and provide 21 units of affordable residential accommodation and two commercial units.
5. The report advised that a design review was going to be undertaken by MHome to understand whether any revisions to the scheme would result in a stronger end product.

### Tollesby Update

6. Since the approval of the December 19 Executive report, the existing buildings have been demolished and MDC has completed the purchase of the site from the private owner.
7. The MDC Board approved a Project Plan for the development, which included the appointment of a professional team to redesign the project and directly appoint a construction contractor, with MDC acting as the developer. The Project Plan included a cash flow and viability assessment for the project, which assumed a total development cost of £4.986m and an Affordable Housing Programme (AHP) grant of £1.5m from Homes England.
8. A new scheme design provides retail units on the ground floor and a total of 24 flats for affordable rent on the first and second floors, with associated car parking and access provision.
9. The revised scheme was submitted to Homes England for consideration for funding from the 2016 to 2021 AHP and a grant allocation of £936k was subsequently confirmed.

10. The Project Plan assumed that planning approval would be granted in November 20, and that construction would commence in December 20, and complete in December 21. As the funding was from the already extended 2016 to 2021 AHP, it was a condition of the funding that the project would be complete before the end of March 22.
11. Planning approval was granted in February 2021 but, as a consequence of the delay in securing the consent, and the extended build timescales due to Covid compliant working practices, it is not possible to achieve the March 22 timescale for project completion. The best possible construction commencement date is currently May 2021, with a contract programme of 56 weeks, giving a completion by the end of June 2022.
12. After discussion with Homes England, it has been confirmed that they will accept the project completion date slipping into 2022/23, and the £936k award has been approved on that basis.

### Project Costs

13. As stated in Paragraph 7, the MDC Project Plan assumed a scheme cost of £4.986m. The total cost of the project is now estimated to be £5.4m (including a £100k contingency) as a consequence of the factors set out below.
  - a) The scheme which achieved planning is significantly different from the original draft design.
  - b) The build costs are now largely based on actual contractor / consultant prices.
  - c) Unforeseen costs associated with complex foundation requirements and a new electricity sub-station.
  - d) A 2.5% increase in labour and material costs since the original Project Plan was produced.
14. The MDC Board has subsequently approved a revised Project Plan for Tollesby, which reflects the cost increases outlined in this report.

### Way Forward

15. In order to allow construction to commence, this report will recommend that Executive approves additional funding of up to £1,200,000, which will be provided to MDC in part from £700,000 of Section 106 contributions and £500,000 from Council resources, with the latter being provided as a commercial loan.
16. Although the financial arrangements of the deal would be a matter for the MDC Board rather than the Council, the Council's Section 151 officer would need to be satisfied that the funding is being used appropriately and in line with the Company's objectives, and that it represents an appropriate use of the Council's resources. This would be done in consultation with the appropriate Executive Member(s).

### **What decision(s) are being asked for?**

17. That Executive approves:
  - a) additional funding of up to £1,200,000 to MDC to facilitate the delivery of the Tollesby development. The funding will be provided from £700,000 of Section 106

contributions and £500,000 of Council resources, with the latter being provided in the form of a commercial loan (subject to sign off from the Council's Section 151 Officer). Both amounts sit within the current approved Investment Strategy allocation to MDC so there will be no additional requirements in this regard; and,

- b) delegated authority to the Council's Section 151 Officer to approve the transfer of residual funds held within MDC accounts to the Tollesby project, subject to MDC Board approval.

### **Why is this being recommended?**

- 18. The approval of the additional funding will enable the regeneration of the now cleared site to commence in late May/early June 2021, which will:
  - a) enable MDC to develop a high quality scheme of apartments and commercial units and secure a long term future for a site;
  - b) generate a long-term rental income stream for MDC;
  - c) support local residents, who campaigned for the removal of a significant blight on the area; and,
  - d) secure income, which will be received from Council Tax and Business Rates.

### **Consultation**

- 19. The local community and Ward Members have been consulted on the scheme through the statutory planning process.

### **Other potential decisions and why these have not been recommended**

- 20. In respect of the recommendation for the Council to borrow additional capital in order to fund the Tollesby development, other potential decisions were considered and are summarised in the following paragraphs.
- 21. **Do nothing** – In the absence of an additional capital allocation the development would be undeliverable in its current form. Considerable expense has been incurred in acquiring the site and achieving planning consent, which may not be recovered.
- 22. **Reduce the scale/quality of the development** – The scheme could be re-designed to bring it within the original budget approval. Considerable expense has again been incurred to gain planning approval for the scheme and the proposals have been subject to consultation with the local community and is discounted as an option for this reason.

### **Impact(s) of recommended decision(s)**

#### ***Legal***

- 23. The Council can rely upon the general power of competence within the Localism Act 2011 for its own purpose, for a commercial purpose and/or for the benefit of others i.e. this includes the role of Middlesbrough Development Company Limited. The proposed Council led interventions involve carrying out a commercial activity and must therefore be done through a Company

24. MDC is a local authority trading company limited by shares and operates in accordance with its Memorandum and Articles of Association, Shareholder Agreement, Strategic and Project Plans, and, Loan Agreement.

### ***Financial***

25. The existing approved funding allocation to MDC for Tollesby is up to £3.5m, which was provided as equity.

26. The MDC Board has subsequently approved a revised Project Plan for Tollesby, which reflects the cost increases outlined in this report, and Executive approval is therefore being sought to approve additional funding of up to £1,200,000 to deliver the scheme.

27. On the 18th December 2018 Executive approved: the creation of a Housing Delivery Vehicle in the form of a Wholly Owned Company (by Middlesbrough Council) limited by shares; the associated business plan and a funding package of up to £10m.

28. The £10m included £5m of Section 106 contributions and up to £5m of Council resources provided to the company as a commercial loan. £9,703m of Council resources currently sit within the Investment Strategy, this includes £7m provided for the Boho Bright Ideas project. Therefore, £2,703m is available within the Investment Strategy and the £500k additional request for the Tollesby project will be taken from this allocation.

29. The revised project plan includes a contingency of £300,000. Any balance left within the contingency will reduce the value of the loan provision.

30. The funding requested is already allocated within the Investment Strategy to MDC as part of the original funding provision. Therefore, there will be no additional constraints on Council resources.

31. The revised development appraisal has been reviewed by Finance to ensure that MDC have the ability to repay the loan through rental yields from the development.

32. The Council would ultimately benefit from the development of the Tollesby scheme, through the Council Tax and Business Rates generated by the apartments and commercial units.

33. This report will also seek delegated authority to the Council's Section 151 Officer to approve the transfer of residual funds held within MDC accounts to the Tollesby project, subject to MDC Board approval.

### ***Policy Framework***

34. The decision will not amend the Council's policy framework.

35. The decision is aligned with the Mayor's strategic priority to facilitate urban living. The decision is also aligned to the Medium Term Financial Plan as the proposed development will generate income from Council Tax and Business Rates.

### ***Equality and Diversity***

36. The Impact Assessment, attached as Appendix 1, has concluded that the decision would not have any disproportionately negative impacts.

## **Risk**

37. The following high level risks identified in the Strategic and Directorate Risk Registers, will be reduced as a consequence of the market intervention enabled by the recommended decisions:

O1-005 - If poor economic growth occurs, then this will reduce public and private sector investment in the town, including town centre retail, housing development and business.

O1-045 - If delivery of the new housing programme does not meet the projected targets then this can have a negative impact on the assumptions within the MTFP.

38. The main risk directly associated with the proposed increase in borrowing to fund the Tollesby scheme, is the ability of MDC to repay the loan. The risk has been minimised through the development of a revised project plan, which has been approved by the MDC Board.

### **Actions to be taken to implement the decision(s)**

39. The Council's Section 151 Officer will be asked to sign off whether the use of the additional funding required for the development of the Tollesby scheme represents an appropriate use of the Council's resources.

40. MDC will enter into a construction contract with the preferred builder to enable a start on site in late May/early June 2021.

## **Appendices**

Appendix 1: Impact Assessment.

### **Background papers**

<b>Body</b>	<b>Report title</b>	<b>Date</b>
Executive	Housing Delivery Vehicle – New Direction	20 December 2019

## Appendix 1 - Impact Assessment Level 1: Initial screening assessment

<b>Subject of assessment:</b>	MDC Finance – The allocation of additional funding of up to £1,200,000 to MDC to facilitate the delivery of the Tollesby development.			
<b>Coverage:</b>	Service specific.			
<b>This is a decision relating to:</b>	<input type="checkbox"/> <b>Strategy</b>	<input type="checkbox"/> <b>Policy</b>	<input type="checkbox"/> <b>Service</b>	<input type="checkbox"/> <b>Function</b>
	<input type="checkbox"/> <b>Process/procedure</b>	<input type="checkbox"/> <b>Programme</b>	<input type="checkbox"/> <b>Project</b>	<input type="checkbox"/> <b>Review</b>
	<input type="checkbox"/> <b>Organisational change</b>	<input checked="" type="checkbox"/> <b>Other (please state)</b> Asset management		
<b>It is a:</b>	<b>New approach:</b>	<input type="checkbox"/>	<b>Revision of an existing approach:</b>	<input checked="" type="checkbox"/>
<b>It is driven by:</b>	<b>Legislation:</b>	<input type="checkbox"/>	<b>Local or corporate requirements:</b>	<input checked="" type="checkbox"/>
<b>Description:</b>	<p><b>Key aims, objectives and activities</b> To assess the impact of the proposal to allocate additional funding to the Tollesby development. .</p> <p><b>Statutory drivers (set out exact reference)</b> The Local Government Act 1972 Section 123, as amended by the Local Government Planning and Land Act 1980 Section 118 Schedule 23 Part V.</p> <p><b>Key stakeholders and intended beneficiaries (internal and external as appropriate)</b> The Council, MDC and the local community.</p> <p><b>Intended outcomes</b> The approval of the additional funding will enable the regeneration of the now cleared site to commence in late May/early June 2021, which will:</p> <ul style="list-style-type: none"> <li>a) enable MDC to develop a high quality scheme of apartments and commercial units and secure a long term future for a site;</li> <li>b) generate a long-term rental income stream for MDC;</li> <li>c) support local residents, who campaigned for the removal of a significant blight on the area; and,</li> <li>d) secure income, which will be received from Council Tax and Business Rates.</li> </ul>			
	May 2021			
<b>Lifespan:</b>	Not applicable			
<b>Date of next review:</b>	Not applicable			

Screening questions	Response			Evidence
	No	Yes	Uncertain	
<p><b>Human Rights</b></p> <p>Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?*</p>	☒	☐	☐	<p>It is considered that the allocation of increased funding to the Tollesby scheme will not impact negatively on individual human rights as the proposal represents a significant and positive enhancement for the local and wider area. This assessment has been made taking into account that the decision will:</p> <ul style="list-style-type: none"> <li>• enable MDC to develop a high quality scheme of apartments and commercial units and secure a long term future for a site;</li> <li>• generate a long-term rental income stream for MDC;</li> <li>• support local residents, who campaigned for the removal of a significant blight on the area; and, secure income, which will be received from Council Tax and Business Rates</li> </ul>
<p><b>Equality</b></p> <p>Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?*</p>	☒	☐	☐	<p>The Council has a duty to consider the impact of the proposed decision on relevant protected characteristics, to ensure it has due regard to the public sector equality duty. Therefore, in the process of taking decisions, the duty requires the Council to have due regard to the need to:</p> <p>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;</p> <p>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and</p> <p>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</p> <p>It is considered that the proposal to allocate increased funding to the Tollesby scheme to facilitate the development of affordable housing will not have a disproportionate adverse impact on a group, or individuals, because they hold a protected characteristic.</p>
<p><b>Community cohesion</b></p> <p>Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?*</p>	☒	☐	☐	<p>There are no concerns that the proposal could have an adverse impact on community cohesion.</p> <p>The decision to allocate increased funding to the Tollesby scheme to facilitate the development of affordable housing will not impact negatively on relationships between different groups. The decision would assist the Council's Social Regeneration agenda, ensuring a steady supply of affordable housing to meet the needs of its emerging and aspiring population.</p>

\*Consult the Impact Assessment further guidance appendix for details on the issues covered by each of these broad questions prior to completion.



Screening questions	Response			Evidence
<p><b>The Mayor's Vision For Middlesbrough</b>            Could the decision impact negatively on the achievement of the vision for Middlesbrough?*</p>	☒	☐	☐	<p>The allocation of increased funding to the Tollesby scheme to deliver affordable housing is aligned to the Mayor's Urban Living agenda. The Mayor's ambition accords with the priorities for Place, set out in the Strategic Plan 2020-23, which states that the Council will build more town centre homes to boost businesses and increase vibrancy, while reducing the need to build on green space.</p>
<p><b>Organisational management / Change Programme</b>            Could the decision impact negatively on organisational management or the transformation of the Council's services as set out in its Change Programme?*</p>	☒	☐	☐	<p>The decision would not have any negative implications for the Council's transformation programme. The allocation of increased funding to the Tollesby scheme will generate Council Tax and Business rates, which supports the Council's Medium Term Financial Plan.</p>
<p><b>Next steps:</b></p> <ul style="list-style-type: none"> <li>➡ If the answer to all of the above screening questions is No then the process is completed.</li> <li>➡ If the answer of any of the questions is Yes or Uncertain, then a Level 2 Full Impact Assessment must be completed.</li> </ul>				