

JOINT ECONOMIC GROWTH, ENVIRONMENT AND DEVELOPMENT AND STRATEGIC (OVERVIEW & SCRUTINY) COMMITTEE

30 MAY 2018

PRESENT:

Councillors Mrs Barnett, Constable, Cox, Drinkwater, Mrs Eagland, Mrs Evans, Mrs Fisher, Mrs Grange, Mrs Little, Mrs Stanhope MBE, Strachan, Tittley, Warfield, Mrs Woodward, A Yeates and White.

Also in attendance:

Councillors Mrs Constable, Eadie, Leytham, Matthews, Pritchard, Pullen and Wilcox; Mr K Hardman (Cushman and Wakefield) and Mr K Khangura (Pinsent Masons).

1 ELECTION OF CHAIRMAN

Councillor Cox was elected as Chairman.

2 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Mrs Baker, Marshall and Powell.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That as publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted, the public and press be excluded from the meeting for the following item of business, which would involve the likely disclosure of exempt information as defined in Paragraphs 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended.

IN PRIVATE

5 OPTIONS FOR THE FUTURE OF FRIARSGATE SCHEME

The Committee was advised that the meeting was being held in private due to the likely disclosure of commercially sensitive financial information and privileged legal advice which was exempt information as defined in Local Government Act 1972. Given the presumption in favour of openness it was questioned whether the subsequent Cabinet report could be split into public and confidential sections to enable residents to understand the nature of the decision.

Prior to consideration of the item the Chairman adjourned the meeting for fifteen minutes to give Members the opportunity to read additional papers that had been circulated prior to the meeting.

Consideration was then given to a report on the future options for the Friarsgate site, which amounted to a choice between (i) funding the proposed development or (ii) serving notice to terminate the Development Agreement on 30 June given that the milestone for securing a funder for the scheme would have been missed.

Members were advised that if the Council decided to act as a funder and investor and enter into a formal funding agreement to undertake the Friarsgate development scheme the Cabinet and Full Council would need to approve the following actions:

- Approve the Heads of Terms and delegated approval to progress the detail of the funding and development agreements.
- Approve an extension to the milestone and long stop dates in the Development Agreement relating to the Friarsgate development site.
- Give approval to amend the Development Agreement to facilitate the Council acting as funder and investor in addition to the Council's current roles as Development Partner, Planning Authority and Client in the context of services provided.
- Give approval to enter into a Procurement Challenge Deed 2018.
- Approve an update to the Mid-Term Financial Strategy to reflect the financial implications.
- Give delegated authority to sign the Funding Agreement, the variation to the Development Agreement and the Procurement Challenge Deed.

If the Council did not act as the funder it was advised that the development milestone in the Development Agreement to secure a funder would not have been met by the developer U&I and, as the pre-lets were time limited and dependent on construction commencing on site, and all current avenues for funding had been explored without success there would be no merit in extending the deadline further. In this scenario approval would be sought from the Cabinet to serve notice on the Developer and terminate the Development Agreement and the Friarsgate Scheme as currently proposed would not proceed.

The Cabinet Member for Economic Growth, Environment and Development advised that the sole purpose of the meeting was to understand the consequences of the development and consider the funding option.

He reported that the offer from U&I had been improved prior to the meeting but the offer had been received too late to adjust the report. Although this would make a difference to the detail, the central question remained unchanged, and this was whether the Council wished to proceed as funder of the scheme or not.

The report considered by the Committee gave details of the progress made on the scheme, funding and finance issues, the Council's Investment Strategy, potential socio-economic benefits of the scheme and legal considerations. The report included:

- a briefing on the funding proposal by the Council's S151 Officer and Head of Finance and Procurement
- a letter from BNP Paribas Real Estate
- legal advice from Pinsent Masons regarding the personal liability of Members, state aid, procurement and the development agreement
- written responses to questions raised by Members prior to the meeting.

Attention was drawn to procurement advice received from Pinsent Masons that indicated proposed changes to the funding arrangement were likely to give rise to a 'substantial modification' for the purposes of procurement law. It was judged that the practical risk of a procurement challenge was low however the impact of a challenge could be high and therefore options were presented to minimise risk. Mr K Khangura (Pinsent Masons) answered Members' questions in connection with the procurement advice provided including questions relating to the practical risk of a challenge, challenge agreements and insurance.

The Chief Executive advised that the procurement position had been assessed with legal advisors taking into account evidence from the market place. She confirmed that the risk of a procurement challenge was likely to be very low given the small number of organisations in a position to deliver the scheme with the funding available. However, the impact of the risk was potentially severe and therefore it was necessary to assess probability versus potential impact.

Questions were asked about the personal liability of elected Members when taking decisions given the context of emerging information and advice. In response to a question about cash flows it was advised that these needed to be modelled against an agreed programme, including mitigation and would form part of the due diligence exercise.

The Chief Executive reminded the Committee of the context of the decision, recalling that U&I had advised the Council in early April that it had been unable to secure a funder for the scheme. Whereas commercial funders would only consider the financial aspects of the scheme the Council also needed to consider the socio-economic impact of the scheme and the desire of the Council to see the scheme delivered for the benefit of the community.

It was noted that following 30 June agreements with tenants would start to expire and uncertainly and risk would increase which effectively meant there would be no Friarsgate scheme. Given the situation and in full awareness that time was limited, work that would usually take twelve months was compressed into two months in order to provide Members with the best possible opportunity to judge if they wanted to take the risk to fund Friarsgate or not.

The Chief Executive went on to outline the possible risks and rewards of each course of action that the Council might choose to pursue. She noted that the decision needed to be taken on two levels (i) commercial and (ii) socio-economic.

For commercial investments the Council had a Commercial Investment Strategy which sought to invest and seek a return to address the shortfall in the Council's budget. Members were advised that this was not a commercial deal that fulfilled the criteria of the Investment Strategy. It was therefore a question of Members appetite for taking risk, mitigated as far as possible with the assistance of professional advisors.

It was noted that the figures contained in the report would be subject to change and the due diligence exercise would result in further changes. The Chief Executive advised it was impossible to give certainty as to whether the scheme would be successful or unsuccessful in the current environment citing a number of variables including uncertainty in the retail sector and BREXIT.

With regard to professional negligence, the Chief Executive said elected Members would not be put in a position where they were exposed to accusations of professional negligence. She said there was a rationale behind everything that had been done and the information provided, which had been brought forward in as timely, effective and understandable way as possible.

The Cabinet Member for Economic Growth, Environment and Development noted that there was no recommendation to be endorsed in the report or political pressure. He wanted Members to consider the options and make their own judgement.

The Leader of the Council said the Council had not expected to find itself in the current position and thanked the team that had compiled the information in the timeframe available. He said it was not a scheme to be delivered at any cost and Members must be certain that it was right for the Council. The Leader said he would like the views and thoughts of the Committee on one of the biggest decisions that the Authority would take.

The Head of Finance and Procurement then advised Members on the Prudential Code for borrowing and the Committee noted that there was no limit but it was necessary to make decisions in accordance with the principles of affordability, sustainability and prudence.

During the debate Members voiced the following reasons for not funding scheme:

- The procurement challenge risk and the potential severity of the impact.
- The investment did not meet the criteria under the Council's Investment strategy or provide an adequate return on the level of borrowing to assist in meeting the current MTFS shortfall in 2019/20 onwards.
- Risks in the retail market in terms of rental levels, CVA, voids, consumer confidence and shopping habits could undermine the viability and sustainability of the scheme.
- The inability to give a guaranteed return – the financial models will be subject to change through due diligence and construction.
- Concerns as to whether the scheme, now 13 years old, is a sustainable scheme in the changing face of the city centre and its role.
- The level of borrowing required and the long term nature of this loan effectively committing the council for 35 years.

It was proposed by Councillor Tittley and seconded by Councillor Mrs Woodward that it be recommended to Cabinet that the Council does not fund the scheme and that the development agreement be terminated should the milestone dates not be met.

The proposition was put to the vote and the Committee unanimously:

RESOLVED: That it be recommended to Cabinet that the Council does not fund the scheme and that the development agreement be terminated should the milestone dates not be met.

(The Meeting closed at 7.40 p.m.)

CHAIRMAN