

Call In Sub-Committee (of the Overview and Scrutiny Management Board)



Supplementary Information

Date: Thursday, 27 February 2020

Time: 10.00 am

Venue: The Council Chamber - City Hall, College Green, Bristol, BS1 5TR

5. Call In - Temple Island - Scheme Content and Development Agreement

Appendix E: Officer/Executive Response to the Call In

(Pages 2 - 7)

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Date: Wednesday, 26 February 2020



Question	Executive Officer response
<p>Submission for Call-In of The Temple/Arena Island Site.</p> <p>The fundamental problem is that the administration having made the decision to kill off the previous plans for this site in secret then had to deliver a replacement. Until something else was in place the calls for the resurrection of the arena plans, which were almost complete when the present mayor came to power pledging to deliver them to completion.</p> <p>The decision making process was not therefore as stated to take a derelict undevelopable site and do something but in practice to stop development and come up with something.</p> <p>With the attractions of the site and the terms available we could have expected a number of potential investors. Instead we have finished up with one and of course they have been insiders all the way through this process.</p> <p>The decision not to go out to competition has been fatal and led to the many contradictions within the report. There is bluntly no certainty of delivery of anything and Legal & General get considerable rights without any obligations. It is admitted that if we were to attempt to put specific requirements into the deal it would immediately become illegal. So there is no certainty of a single flat or a hotel or conference centre.</p> <p>This simply does not do what it says on the Mayors tin.</p>	<p>The decision to terminate the arena was made in public by Cabinet in September 2018 on the strength of the economic evidence presented which provided an overwhelming case for exploring an alternative scheme of development on the Temple Island site.</p> <p>L & G are considered to be best placed to deliver this proposed scheme having concluded very similar deals in Newcastle, Sheffield and Cardiff. The Newcastle development is particularly relevant given its innovation theme and given the interface of the Temple Island scheme with the University of Bristol's £400m innovation campus.</p> <p>Other key factors are:-</p> <ul style="list-style-type: none"> Their covenant strength Their substantial investment in Bristol to date The Affordable Housing and PRS strands to their business Their regeneration track record Their links with other central government funding streams eg English Cities Fund <p>Their willingness to offer better than market deliverables/ returns to the Council, for example, the aspiration to deliver a higher than compliant level of affordable housing; and financial arrangements which deliver substantial benefits to the Council.</p>

Let us look at some of the areas of failure of this report (whoever wrote it and when) and the decision taken.

Taking of professional advice

The advice that has not been redacted is full of caveats. The process walks a tightrope between the different pieces of legislation. What is very clear from all of the advice is that there is no obligation on Legal & General to do anything. Given the language that has been used the mayor either does not understand this or is misrepresenting the situation. Clearly we need to get clarity on this because it is vital that everyone involved in the process understands the legal position.

It is clear that there is a legal requirement to demonstrate best value and that has not happened.

Despite the wooliness of the agreement the legal advice is for the publication of a VEAT. This has not happened.

We have taken the advice of both our internal legal team and external legal advisors (including a leading QC) to ensure that our proposed approach is fully compliant and that advice has given us the assurances we require. It is worth noting that L & G have also sought the advice of both their legal team and external advisors, as they must also satisfy themselves that this investment structure is legally compliant.

It is important to remember that we have a duty to achieve “Best Consideration” on any site disposal but, as detailed below, we are seeking the right investor for this site, not a supplier of goods, works or services, which also influences the procurement process. The legal advice suggests we consider the publication of a VEAT notice and a decision will be taken on this in due course. It would be inappropriate to issue a VEAT notice at this time.

Due consultation

You will note from the cover sheet with this report no reference to Scrutiny. Given the scale and importance of this that is a staggering position. The report was produced late and Scrutiny did not have what any reasonable person would regard as a proper opportunity to examine and consider. It is certainly highly possible that other parties with funds to invest would want to be involved but of course the secrecy followed by the very short partial exposure has precluded that. The Bristol public on whose

Two Scrutiny briefing sessions were held - the first on the 23rd and the second on the 28th January.

What scrutiny considers is a matter for scrutiny.

<p>behalf the council is supposed to act have been excluded on one of the most important decisions involving huge amounts of public money and assets.</p>	
<p>A presumption in favour of openness</p> <p>Because of technical failures the media had access to un-redacted information. Leaving aside any figures involved, some of the redactions seem very clearly to have been made to avoid embarrassment rather than to protect commercially sensitive numbers. There has been a misportrayal of this arrangement that is the very opposite of openness. It is clear that the secret dealings were a part of the arena cancellation but no information was made public.</p>	<p>We have sought to put all information which is not commercially sensitive into the public domain. The decision not to proceed with the arena at Temple Island was made by Cabinet on the strength of overwhelming economic evidence. An independent assessment demonstrated that the benefits to Bristol of a mixed used scheme far outweigh that of an arena on the site. At the same time a private operator came forward to take all of the risk and make all of the investment in building and operating a larger and more sustainable arena for Bristol. A factor which also needed to be borne in mind when making the decision, however the decision was made on the basis of the overwhelming economic evidence.</p> <p>The figures contained in the report to Cabinet in September 2018 speak for themselves.</p>
<p>Proportionality</p> <p>This is not demonstrated .We see a heads of terms that is admitted places no obligation on l and g at all but gives them rights. We propose to give a completely unconditional long lease after spending millions of pounds of public money preparing the site. None of this is proposed to be under democratic control as all the decisions are delegated. What happens if and when l and</p>	<p>The Council has agreed performance obligations that L&G will need to comply with but is accepted that these have been limited to comply with procurement rules given recent case law.</p> <p>Therefore, in order to ensure that L&G perform as they say, the Council has:</p>

g decide they want to build something completely different to that desired by the present or future administration. We are powerless as a democratic body accountable to the public.

It is important when scrutinising a deal to not just listen to the salesmen that are paid to promote it but to check if there are caveats on the supporting “advice” and also to check on what other parties are getting out of this and if that means we are losing out and if therefore we should consider an alternative way forward.

The legislation in place that this arrangement partly skirts around is there for a purpose.

It seeks to prevent either:

A. Corruption.
 B. Poor decision making that puts public money at risk.

Read the caveats in the expensively paid for reports, if you are allowed to, and consider why they are there. Do they give us absolute protection or not? Do they allow the “professionals” to avoid responsibility if this all goes wrong for taxpayers? Crucially, were we given full access and time to test and check matters and assertions or were they flashed in front of a limited number of Cllrs who were restricted?

Even more telling is to look at what Legal and General get from this arrangement. If they are getting everything they want we are missing out. They, after all, are not skilled builders but merely in control of a pot of money that could be obtained by other methods. Nobody is able to borrow more cheaply than a public body like a council.

- required a clause which states that after a reasonable period of time, if L&G haven’t commenced the proposed development, the Council will be able to withdraw from the project.
- proposed a series of preconditions which have to be met before the site is transferred to L&G (including a satisfactory planning permission).
- made clear that the Council taking the lease of Office 1 (and critical factor in securing L&G funding), is dependent on satisfaction of certain conditions.

This should provide a good incentive to ensure L&G expedite the development in accordance with their anticipated Planning Approval.

The scheme does deliver, subject to planning,

In phase 1: 180,000sq ft of Grade A commercial office space
 Up to 500 much needed new homes with 40% affordable

Phase 2:
 A high quality Hotel and world class Conference Centre, with further residential and commercial floorspace (tbd)

In a sustainable location where people can travel using public transport and support city centre businesses and retail.

All this to be provided on a site that hitherto the market has failed to bring forward.

The money invested here by Legal and General is annuity funds. They have a legal duty to maximise the return on these funds on behalf of their pensioners and crucially where they put this money must be a long term safe investment with absolute minimal risk.

Typically this was always put into loans to government but the returns on that are very poor so what will they be looking for and are the Bristol taxpayers giving it to them at potential cost to themselves?

What are the specifics?

- A property investment in a prime location next to the railway station in a boom city **TICK**
- As a bonus in an enterprise zone **TICK**
- Have large amounts of public money spent on preparing the site **TICK**
- Have a hugely long lease granted (250 years) **TICK**
- Have no conditions on the lease so we can build what we want later **TICK**
- Have no contracted deal that the council could enforce **TICK**
- Have a council administration that is desperate to look like it is delivering something **TICK**
- Remove any competition so that we do not spend money competing **TICK**
- In case what we build first is not commercially viable then have the council prepared to pay the rent **TICK**
- Be able to keep it all secret from the public **TICK**

<ul style="list-style-type: none"> Put the council planning committee over a barrel with regard to granting what we want and avoiding national investigation. TICK <p>A good report supporting a good decision will detail the alternative proposal considered and why they were not proceeded with. Does this one?</p>	
<p>Clarity of aims and desired objectives.</p> <p>The very fact that this has not gone through competitive tendering absolutely precludes clarity of aims and desired outcomes. As a council we have democratic duties which are completely ignored. Legal & General are a commercial organisation, who are good at making money. That is in potential conflict with what the council on behalf of the Bristol public might want. There is nothing we could do about it.</p> <p>There is also concern about the pressure that would be placed upon any planning committee. By having land G submit the application rather than ourselves BCC can technically decide the outcome but of course there will be significant financial interest to the council leaving open the possibility of challenge.</p>	<p>We have always acknowledged that a procurement following the Public Contracts Regulation would enable BCC to impose obligations, but this would present a different set of risks as neither a disposal or a procurement is without risk.</p> <p>We are well used to considering planning applications by third parties on Council owned land. This is nothing unusual.</p>