

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



Date: Monday, 22 February 2021

Time: 3.00 pm

Venue: Virtual Meeting - Zoom Committee Meeting
with Public Access via YouTube

Distribution:

Councillors: Steve Smith, Richard Eddy, John Goulandris, Claire Hiscott, Mark Weston, Geoff Gollop, Gary Hopkins, Fi Hance, Margaret Hickman, Paul Goggin and Donald Alexander

Issued by: Johanna Holmes, Scrutiny Coordinator

City Hall, PO Box 3167, Bristol, BS3 9FS

Tel: 0117 903 6898

E-mail: democratic.services@bristol.gov.uk

Date: 19th February 2021



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e) Officer / Executive Response to Call-in

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Appendix E: Officer/Executive Response to Call-in



QUESTION	Executive/Officer response
<u>Proportionality</u>	
<p>It is clearly unreasonable to relax the requirements, rules or regulations governing tendering processes when contracting with potential developer(s). These standard stipulations are normally strictly applied to every other contract/tender for goods or services and set at predetermined threshold levels.</p>	<p>Although decision making is delegated, there are no planned relaxations of requirements, rules or regulation relating to the tendering process.</p> <p>To the extent that any aspect of any the proposed deals raise issues under the Public Contracts Regulations 2015 (PCR), or indeed the Council’s own procurement rules, then these will be addressed with regard to and in compliance with those regulations/rules. Both the cabinet recommendation and the legal comment make this clear. (For example, it may be that delivery the schemes will require external consultancy support etc, and this will be procured in a compliant manner)</p> <p>The delegation to the Executive Director is in consultation with the Deputy Mayor, (to ensure political oversight) and S151 Officer (to ensure value for money and financial prudence etc) and is subject to obtaining the appropriate legal and procurement advice.</p> <p>It is however likely that ‘developer-led’ deals (ie where the developer provides the land/opportunity) will comprise essentially land transactions of a type falling outside the scope of the PCR.</p> <p>The process for assuring Value for Money of these transactions includes, initially, a scheme viability appraisal assessment, followed by RICS Red Book valuation and finally an independent Value for Money Statement provided by the lead consultant.</p> <p>The Cabinet report also noted that all delegated authority given will follow the Officer Executive Decision making procedure and that all decisions will be published.</p>
<u>A presumption in favour of openness</u>	
<p>The move to devolve or delegate decision-making for significant HDP [indicative budget of £40m] contracts and, with particular reference to ‘developer-led’ schemes to a senior officer -without scrutiny oversight - is not conducive to transparency in decision-making nor is it usually regarded as an example of good practice for obvious reasons (i.e undue influence, bias etc). Even consultation with political leads before tendering does not provide sufficient safeguards due to recognised imbalances in specialist knowledge and experience. Such arrangements have failed local taxpayers in the past – as highlighted by external auditors in their recent review of governance in respect of Bristol City Council subsidiaries.</p>	<p>The majority of the proposed schemes (340 of 419 units) at which the £40m is targeted are summarised in Appendix 3 to the report (section 4). The other scheme (Airport Road, 79 units) was approved for delegation at the Cabinet meeting in January 2020 and commitment has already been made. It should be noted this was a site previously owned by the Council.</p> <p>In January 2020 Cabinet gave approval for commitment to a ‘developer-led’ (pre-emptions) pipeline of £70m. Further in October 2020, Cabinet gave approval for re-allocation of £20m within the HRA Development Programme that aims to deliver 100 new council homes through developer-led schemes</p> <p>All schemes that are attributable to the £40m budget in questions were reported and approved in prior Cabinets in January 2020 and October 2020. Within the £40m there is a budget for potential future acquisition of 22 units on a site that is not yet identified.</p> <p>The full commercial details of these projects are not provided at Cabinet, owing to the requirement to protect commercially sensitive information and achieve best value in the negotiation of transactions with developers. If this information were to be made publicly available, it would reduce flexibility in engagement with the developer market and the ability of the Council to secure the most advantageous commercial terms. For example, if detailed budgets for each project are reported publicly, at the same time or before the terms of agreements with developers are agreed, it would reduce any ability of the Council to negotiate their commercial position, as each developer (and other potential purchasers) would know how much money is available.</p> <p>The process for assuring Value for Money of the transactions is stated in our response to the question of Proportionality above. As well as the internal scrutiny arrangements with senior officers there is the opportunity for post decision scrutiny of the purchase of ‘developer-led’ schemes. Members would identify these through the quarterly progress reports on the HRA Development Programme (provision of quarterly report was a recommendation in the HRA Budget 2020/21 report approved by Cabinet In January 2021).</p>
<u>Due regard to public sector equality aims</u>	
<p>Delegated authority in procurement is also stated as a positive move in the EqIA as this will result in greater efficiencies and expedite work programmes without the need for ‘additional approvals’. This ignores the important role of multiple auditing layers or trails in procurement processes.</p>	<p>The processes will be compliant with the Council’s audit and procurement processes and requirements.</p> <p>As stated above processes will include the scheme viability appraisal assessment, RICS Red Book valuation, an independent Value for Money Statement provided by the lead consultant and the Officer Executive Decision that will be published.</p>