

ASSET TRANSFER UNDER THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

To: North Berwick Community Development Company (“NBCDC”)

Date of Notice: 15 November 2019

This Decision Notice relates to the review of the Asset Transfer Request made by NBCDC on 27th August 2018 in relation to Lime Grove, North Berwick, East Lothian (“Site”). The Request was for the development of a Community Hub (“Proposal”). The Request was refused by the Council per decision Notice dated 11 April 2019 and this decision was reviewed by the Petitions and Community Empowerment Review Committee of the Council on 10 October 2019.

Outcome: East Lothian Council has decided to confirm the decision to refuse the Request.

East Lothian Council (“ELC”) has re-considered the Request in terms of Section 82 of the Community Empowerment (Scotland) Act 2015 (“the Act”) and ELC has also had regard to the guidance issued by the Scottish Ministers, as required by section 96 of the Community Empowerment (Scotland) Act 2015, and to the submissions, both oral and written, provided at the Review Committee hearing. ELC has reached the decision that ELC have reasonable grounds in terms of Section 82 of the Act to refuse the Request. The reasons for this refusal are:

1. Statutory Grounds for Refusal

- 1.1 On consideration of the business plan and supporting documentation, ELC consider that there is insufficient evidence that the Request will result in or is likely to promote or improve: (i) economic development; (ii) regeneration (iii) public health; (iv) social wellbeing; (iv) environmental wellbeing or any other benefits and accordingly it is not unreasonable for ELC to refuse the request.
- 1.2 Furthermore in accordance with S 82 (3) (j) of the Act, ELC took into consideration such other matters that ELC considered relevant which include the funding, governance, sustainability, deliverability of the Proposal and the community support for the Proposal.

2 Funding

- 2.1 There are significant costs attributable to the project (an estimated £7.25 million for acquisition and build costs alone). Whilst the business plan is well structured, ELC are of

the view that there is insufficient evidence that the significant initial, short term and long term funding sources can be properly secured to deliver the Proposal.

- 2.2 NBCDC's funding strategy for the acquisition and build costs are almost wholly reliant on one key funder, the North Berwick Trust ("NBT"). However, given the significant acquisition and build costs that are needed there has been no evidence from NBCDC or NBT that this is a likely and viable funding source. Any funding from NBT is also subject to a grant scheme and to be eligible for the grant, certain criteria are required to be met by NBCDC. ELC have no evidence that NBT are minded to support a funding application. ELC have no clarity or details of the criteria to access the funding and any conditions that would be attached.
- 2.3 Additional potential funders were listed in supplementary documentation (funding strategy) but were not of significant value to meet the projected cost of the Proposal.
- 2.4 There is no clear defined strategy on the acquisition of the Site and it remains at an option stage that either (1) NBT will buy the site and lease it to a newly constituted community body or (2) provide funds to support the acquisition that will allow the community body to lever additional funds. There is no evidence provided to support the proposition that option 2 would realise the leveraging of the significant additional funds that are needed to deliver the Proposal.
- 2.5 ELC had regard to the fact that the business case note in the business case that the funding environment is increasingly competitive and the perception of North Berwick as an affluent place would inhibit funding. The business case also states that initial capital funding would face similar difficulties
- 2.6 NBCDC have not provided an appropriate level of information on the significant funding levels that are required for a Proposal of this size, scale and cost. This impacts on the ability to promote or improve economic development or regeneration of the Site.

3 Governance

- 3.1 ELC recognise that members of NBCDC are clearly varied in skill set and have the experience to assist with the delivery of the Proposal. ELC recognise that the business plan also provides a clear narrative on the purpose, roles and duties of a board of directors of the Community Hub, if the structure is established. Members of NBCDC are clear on the types of external expertise needed to deliver the Proposal. ELC recognize that the members of NBCDC are committed to seeing the Site regenerated. ELC also note that the Site is referred to in the Local Area Partnership Plan.
- 3.2 However, ELC were concerned about key elements of governance around the Proposal to enable it to be delivered. There is no confirmation on (1) the final legal structure to be adopted to purchase and develop the site and (2) the entity of the ultimate owner. Given the uncertainty on the ultimate owner, ELC are concerned that it has not been able to effect the proper diligence in accordance with the relevant legislation and guidance.
- 3.3 With reference to 3.2, ELC cannot effectively assess the level of succession planning desirable for a Proposal of this size and scale and cost. ELC cannot obtain certainty on how succession planning will be monitored and measures put in place to ensure that the Proposal promotes/improves economic development or regenerate the Site.

- 3.4 ELC were concerned that the strategic objectives were primarily aligned with NBT's strategic objectives. ELC were of the view that this is not representative of the community. The community is much wider than NBT with varied needs and interests.
- 3.5 NBCDC have not provided an appropriate level of information or detail on the governance and intended structure that is required for a Proposal of this size, scale and cost and this impacts the ability to deliver the Proposal and to regenerate the Site.
- 3.6 The Review also clarified that a section of the Site is held by ELC under the Common Good and as such could not be sold without obtaining the authority of the Court of Session.

4 Deliverability

- 4.1 ELC recognise the commitment to staffing the hub through volunteering opportunities. NBCDC provided a clear narrative on the role of each volunteer to ensure that volunteers are fully engaged, supported and know the value of their role. It is also noted that the volunteers will carry out a range of roles including supporting the delivery of the performing arts programme, day time activities for all age groups, informal learning and sharing of skills with young people's groups and promotion of the facilities and opportunities available. ELC recognizes the importance of the voluntary sector but had concerns over how this would be delivered on a continued basis to ensure that the level of volunteers is maintained to deliver the significant operational activities of the Proposal.
- 4.2 For a Proposal of this size, scale and cost, the lack of evidence of the likelihood of securing the significant funding streams impacts on the ability to deliver the Proposal.
- 4.3 The final legal structure to be adopted to purchase and develop the site has not yet been finalised and it remains unclear on the entity of the ultimate intended owner. This lack of clarity impacts on the delivery of the Proposal.
- 4.4 The business plan names numerous delivery partners to assist with the delivery of the operational aspects of the Proposal, including occupancy. The named delivery partners include, but are not limited to, ELC, NBT, East Lothian Youth Theatre, independent dance operators, East Lothian Works. ELC did not receive any letters of representation from any delivery partner identified in the business plan to demonstrate how it would deliver the Proposal. ELC would have preferred to see representations from the named delivery partners in support of the Proposal. This is considered critical to demonstrate the deliverability of the Proposal.
- 4.5 The business case notes that a 2014 feasibility study showed a £90k loss annually.
- 4.6 ELC were concerned on the potential inclusion of a learning academy as part of the Proposal. It was confirmed by East Lothian Works that a learning academy does not feature in any future strategic or operational arrangements of East Lothian Works. There also appears to have been no consideration that NBCDC would need to become accredited before delivering the proposed service. North Berwick High School has been recognized as a role model for demonstrating effective collaboration between the School and Skills Development Scotland to create work pathways and therefore the

Proposal is not demonstrating a need for this, as it already exists. ELC were concerned on the lack of clarity on how the Proposal would compliment East Lothian Works/the Education Authority's role.

- 4.7 NBCDC have not provided an appropriate level of information on the ability to deliver the Proposal both short term and long term. This impacts on the ability to promote or improve economic development or regeneration of the Site.
- 4.8 The Review agreed with the Council's initial assessment that there was a lack of detail in some important areas and found that the Council's concerns about these aspects were reasonable, and that there are doubts about the ability of the business case of NBCDC to deliver the stated benefits.

5 Sustainability

- 5.1 ELC acknowledge that there is evidence of market research in the business plan and some further responses received in the supplementary documentation.
- 5.2 A number of elements of the business plan costings are still at high level for the operational phase of the project especially as profit once operational is not anticipated until 3rd year of trading. ELC were concerned that the running costs of the facility were a conservative estimate.
- 5.3 ELC were of the view that there were displacement and duplication issues with existing or planned facilities that had not been properly considered.
- 5.4 For a project of this size, scale and cost no clear details were provided on probability/impact and mitigation of foreseeable financial barriers and challenges.
- 5.5 ELC were not persuaded that as a site it was sufficiently integrated into the Community geographically. There were concerns that this impacts on the feasibility of accessing the Proposal, especially for less able/ less affluent groups.
- 5.6 NBCDC have not provided an appropriate level of information on the ability to sustain the Proposal both short term and long term. This impacts on the ability to promote or improve economic development or regeneration of the Site.
- 5.7 The Review had continuing doubts as to whether the desired community benefits would be delivered by the Proposals and whether there sufficient consideration had been given to whether the said benefits could be delivered in a different way.

6 Community Support

- 6.1 ELC acknowledges that there has been community engagement in the form of public meetings, consultations and surveys. ELC are also aware that the Site is referred to in the Local Area Partnership Plan. However, ELC were concerned that the responses to community surveys were only indicative of a percentage of the population of North Berwick, considering the relatively low level of responses.
- 6.2 For a project of this size, scale and cost and the vision to service existing community activities/needs/address local demand, there is no detail/representations/evidence

in terms of actual commitment for proposed occupancy/use from either the community groups or the delivery partners referred to in the business plan.

- 6.3 ELC did not receive any letters of representation from any community group identified in the business plan. ELC would have preferred to see representations from the community groups in direct support of the Proposal. This is considered critical to demonstrate that the Proposal is supported and will deliver the community benefits. The absence of representations from community groups indicates limited support for the Proposal and the benefits associated with the Proposal which directly impacts the long term use of the Site.
- 6.4 ELC is named as a potential partner in the business case albeit there has been limited engagement with ELC. . However ELC were not persuaded that the Proposal supported ELC's overarching strategies. There was a lack of evidence for a project of this size, scale and cost of the need for the facility, the synergy with surrounding community activities and how surrounding community groups' needs will be met.
- 6.5 ELC note that given the significant size, scale and long terms running costs of the Proposal that ELC would have preferred to have evidence that the Proposal would include communities beyond North Berwick. ELC did not receive any evidence from NBCDC that NBCDC have given any consideration to this. There appears to have been no consideration of ELC expansion plans for the North Berwick High School include drama facilities and performance arena which the Proposal is also seeking to provide. It is preferred that curriculum facilities are on school site to ensure the school can operate an effective timetable
- 6.6 ELC were concerned that there was a failure to properly engage with service areas of ELC that were referred to in the business case to ensure a full and comprehensive analysis of impact on ELC services, need, displacement.
- 6.7 There appears to be a lack of engagement with the neighbouring properties and representations received from the neighbouring properties expressed concern with the Proposal.
- 6.8 NBCDC have not provided an appropriate level of information to properly evidence community support for the Proposal both short term and long term. This impacts on the ability to promote or improve economic development or regeneration of the Site.

7 **Right to appeal**

7.1 You have a right to apply to the Scottish Ministers to appeal this decision. Any application for appeal must be made in writing to Scottish Ministers within 20 working days from the date of this notice. Guidance on making an application for appeal is available at

<https://beta.gov.scot/policies/community-empowerment/asset-transfer>

Date of decision notice – 15 November 2019



Signed by Carlo Grilli
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