



**MINUTES OF THE MEETING OF THE
PETITIONS AND COMMUNITY EMPOWERMENT REVIEW
COMMITTEE**

**THURSDAY 10 OCTOBER 2019
COUNCIL CHAMBERS, TOWNHOUSE, HADDINGTON**

Committee Members Present:

Councillor J McMillan, Convener
Councillor L Bruce
Councillor S Currie
Councillor W Innes

Other Councillors present:

Councillor J Goodfellow
Councillor J Henderson

Council Officials Present:

Mr I Forrest, Senior Solicitor
Ms C Molloy, Project Manager, Development Management
Ms D Pringle, Corporate Accountant
Ms S Smith, Team Manager – Economic Development
Ms S Saunders, Head of Communities & Partnerships
Ms C McCorry, Service Manager – Connected Communities
Mrs A Smith, Committees Officer
Ms R Crichton, Committees Officer

Applicant's Present:

Ms L Kay, North Berwick Community Development Company
Mr B Mack, North Berwick Community Development Company
Mr I Watson, North Berwick Community Development Company

Others Present:

Ms K Towler, Lime Grove Group

Clerk:

Ms F Currie, Committees Officer

Apologies:

None

Declarations of Interest:

None

The Convener welcomed everyone to the meeting, introduced the Committee members and outlined the procedure that would be followed. He confirmed that the Committee members had considered the information provided as part of the request for review and the original application process and had attended a site visit. The Committee had agreed to determine the review on the basis of the information already provided and no new information could be submitted at this stage.

1. COMMUNITY ASSET TRANSFER REQUEST FOR REVIEW – LIME GROVE, NORTH BERWICK

The North Berwick Community Development Company had submitted a request for review of the Council's decision to refuse a community asset transfer application for the former Council depot site at Lime Grove, North Berwick.

The Convener invited Catherine Molloy, Project Manager, to present the Council's submission.

Ms Molloy advised that East Lothian Council had received an asset transfer request on 13 July 2018 from North Berwick Community Development Company (NBCDC) to acquire Lime Grove, a former storage depot located in North Berwick. NBCDC proposed a price of £2.65 million for the site. She explained the process for determining the application, including the key considerations set out in the legislation: economic development, regeneration, public health, social wellbeing, environmental wellbeing and the seven themes associated with best value. The viability of the business case was carefully scrutinised by key officers within the Council and the NBCDC were engaged throughout the process to provide responses to key questions and comments on the business case.

Ms Molloy indicated that the Council's Corporate Asset Group met on 2 April 2019 and determined that the application should be refused. A Decision Notice was issued on 12 April 2019 which set out the statutory grounds of refusal and gave a detailed narrative on other matters critical to the assessment of the project. Ms Molloy briefly summarised each of the grounds. Funding: while the business case was well structured there was insufficient evidence that the significant funding sources could be secured and the project was almost wholly reliant on one funder. Governance: it was acknowledged that members of the NBCDC had varied skills and experience, however there was no confirmation of the legal structure to be adopted or who would be the legal owner of the site. Deliverability and sustainability: no clear evidence was provided on the mitigation of foreseeable financial challenges or to show the project could be delivered and sustained.

Ms Molloy concluded that while the Council recognised the commitment and enthusiasm of NBCDC, the completion of the detailed and lengthy diligence exercise identified that there were reasonable grounds for refusing the application. Ms Molloy also informed Members that part of the site was inalienable Common Good and as such could not be sold.

Responding to a question from Councillor Currie on funding, Ms Molloy acknowledged that some funders may not be willing to consider an application before the site is secured. However, the absence of any letter of intent or commitment subject to conditions was a concern given the size of the costs associated with the project. She added that issues of governance were closely linked to funding and also fed into questions of deliverability and sustainability.

Councillor Currie raised further questions regarding governance, community support and the level of detail provided to support the application. Ms Molloy acknowledged that the NBCDC had 1200 members and that it had undertaken community engagement through meetings

and surveys. She disputed the NBCDC's assertion that the Council had not asked for evidence of community support. Ms Molloy indicated that the level of detail looked for within an application should be weighed against the scale and projected costs of the proposals. She agreed that if an application were approved there would be a period of negotiation over the legal detail, however, this should not detract from the fact that the Council was required to consider the application on the basis of the information provided and to assess it against the requirements of the legislation.

The Convener queried the key factors in the Council's decision to refuse the application and its assessment of the business case. Ms Molloy indicated that economic development and regeneration were important considerations, as was the legislation's emphasis on achieving best value for the asset. She confirmed that the process was evidence-based and explained that officers with the appropriate skills were selected from within the Council to assess key aspects of the application. She acknowledged that the business case was a well-structured document but said that it was necessary to investigate the detail of the proposals to assess their viability.

The Convener invited Ben Mack, one of the directors of the NBCDC, to present the submission on behalf of the applicants.

Mr Mack said he would outline briefly the NBCDC's reasons for requesting a review of the Council's decision. Referring to the Scottish Government guidance he stated that an application should be granted unless there were reasonable grounds for refusal and that the guidance required authorities to give clear reasons for their decision. Moving to the Decision Notice issued in April 2019, he said it was difficult to understand the grounds for refusal as the Council had not outlined the basis for its decision and had not shared the assessment matrix it had used to reach its decision. The process was therefore not transparent.

Mr Mack then addressed the issues of economic development, regeneration and environmental wellbeing which were included in the grounds for refusal. He summarised some of the many benefits of the proposals contained in the application including regeneration of a derelict site, employment, volunteering and work placement opportunities, active travel and accessible facilities for the community which would take account of the environmentally sensitive nature of the site. Moreover, he informed Members the proposed community hub would provide additional revenue for the local economy and would help to reduce social disadvantage across the county. He referred members to the NBCDC's formal request for review which set out its detailed response to the other grounds for refusal.

Mr Mack indicated that he and his colleagues had been surprised by the Council's repeated referrals to a lack of information. The NBCDC had provided a detailed business plan and had also provided detailed responses to all of the questions raised by the Council during the application process. The NBCDC had repeatedly asked the Council if further information was required and it was therefore disappointing that the Council had specified a lack of information in its grounds for refusal. Mr Mack pointed out that there had been only two objections lodged against the proposals; a very small number for a project of that size and some of which would also be relevant if the land were developed for housing. He concluded that the proposals would provide significant community benefit to North Berwick and would transform and provide a legacy for town for years to come. He reiterated that the NBCDC disagreed with the Council's decision to refuse the application and he asked the Members to uphold the request for review.

Councillor Bruce sought clarification of the primary and secondary considerations as set out in the legislation. Ian Forrest, Legal Adviser, indicated that although the legislation did differentiate between certain aspects such as economic development and social or

environmental wellbeing, the Council was entitled to take into account any factors it considered relevant and to do so on the same basis.

Mr Mack responded to questions from Councillor Currie on the issues of community support and funding. He disagreed with the Council's view that the NBCDC had failed to demonstrate sufficient community support for the application. He referred to the work undertaken to engage with local community groups and to the size of the membership of the NBCDC itself. He acknowledged that perhaps this was not clearly reflected in the documents provided with the application but it was not the case that there a lack of community support. On the question of funding, he said it would be difficult to secure an absolute commitment without first securing the asset. He confirmed that discussions had taken place with the North Berwick Trust, the key funding source, but the Trust were not able to give a commitment to funding until NBCDC had completed the application process. It was their intention that the Trust would be the legal owner of the site. He added that the proposed governance arrangements were based on one funder and if this changed the governance arrangements would also be revised. The expectation had been that the application process would be completed first and then the funding would be secured.

The Convener referred to Mr Mack's presentation and asked him to sum up the NBCDC's vision of a "legacy for North Berwick". Mr Mack said that the proposals would provide a quadrupling of youth facilities in the town through the provision of a multi-functional arts space and that the additional resources, such as the gardens and café, would provide additional facilities suitable for all ages.

The Convener also asked about the sustainability of the project and the risk analysis undertaken as part of the business plan. Mr Mack said the NBCDC recognised that this was a significant undertaking and that it would require a variety of skills during all phases of the project. However, there was a lot of support and talent within North Berwick and the NBCDC had recognised the need to engage appropriate consultants to assist them in this process. He recognised there were risks associated with the project and the intention would be to review the membership of the Board and add additional knowledge and expertise as required to allow the NBCDC to take the next steps.

The Convener invited statements from Local Elected Members.

Councillor Jim Goodfellow began by requesting clarification on whether the further representations included in the papers constituted 'new information'. The Clerk explained that the legislation required that anyone who had made representation on the original application be given a further opportunity to comment on the request for review. The further representations were not new information.

Councillor Goodfellow then proceeded with his statement. He commended the work which had been put into the application by the NBCDC. He noted that the concept of a community and arts hub had been under discussion for a number of years and he considered the proposals to be a comprehensive embodiment of that vision. While noting the restrictions on new information, Councillor Goodfellow referred to a petition recently submitted by the NBCDC.

The Convener interjected advising Councillor Goodfellow that this document could not be discussed as it constituted new information. He asked if the Councillor had any other remarks but Councillor Goodfellow said he had concluded his statement.

Councillor Jane Henderson spoke briefly to explain that she had declared an interest at an early stage in the review process and had removed herself from the Committee. She had

nominated Councillor Bruce to sit in her place. She confirmed that she would be making no further statement on the matter before the Committee.

Councillor Currie queried whether Councillor Henderson should have declared an interest at the beginning of the meeting. The Clerk outlined the requirements within Standing Orders (7.4(i)) and confirmed that the Councillor had complied with these.

The Convener announced a brief adjournment.

The Committee reconvened and the Convener invited the Members to give their opinions on the request for review.

Councillor Bruce said that this had not been an easy decision to make; not least because it was the first case of its kind to come before the Committee. He stated that following detailed consideration of written and oral submissions he had concluded that it was reasonable to refuse the request for review on the grounds that the proposals did not meet the legislative requirements regarding economic development, public health and wellbeing; and the considerations raised in relation to governance and sustainability. He added that, in his view, the decision taken by officers regarding the original application had been correct.

Councillor Innes remarked that the project was an exciting one that had captured the imagination of the community and that aspects of the proposal had proved popular. However, he considered that there was a lack of detail in some important areas of the application and that the Council's concerns about these aspects were reasonable. He concluded that, on balance, he supported the Council's assessment of the application and he could not uphold the request for review.

Councillor Currie referred to the legislation and observed that the test for the Council and the Committee was whether it was reasonable to refuse the application. He had considered all of the documents and had heard the statements from both parties and the key issue for him was whether it was reasonable to expect a significant level of detail in relation to funding and governance structures at this stage of the project. He likened the process to that of the Planning Committee where applications could be considered 'in principle' with further detail on the proposals being presented at a later stage. While he agreed with Ms Molloy about the need for due diligence, he argued that this could continue throughout the process. On the issue of funding he stated that many funding bodies would not consider applications unless the applicants had control of the asset. He also noted that the Council had no alternative plans to develop the site. Based on the written submissions and the statements given, he considered that it would be unreasonable to refuse the application and he was minded to uphold the request for review. He added that the community should have the opportunity to develop the site and further detailed discussions should take place to progress the application.

The Convener said he had listened closely to colleagues, had read documents and had heard the submissions. In his view, the key issue was value for money. He had given careful consideration to the intentions of the legislation and whether the desired community benefits would be delivered by these proposals and whether alternatives had been considered which might yield the desired benefits in a different way. He considered the business case to be well structured but he was not convinced regarding its ability to deliver the stated benefits and he had concerns about proposed governance arrangements. He noted Councillor Currie's remarks regarding the site and he commended the applicants for their vision but, in his view, the business case was not strong enough. He concluded that the questions asked and concerns expressed indicated that, on balance, the right decision had been taken by officers on the original application. He agreed with the views of Councillors Bruce and Innes and he was minded to uphold the Council's decision and to refuse the request for review.

He reiterated that the Committee had carefully considered all of the information before it and had had access to all of the supporting documentation submitted as part of the application and review process. He also noted that the Committee had been advised of issues surrounding a portion of Common Good land within the site and this would be reflected in the Decision Notice.

The Convener concluded that the Committee had reached its decision by a majority vote and had agreed not to uphold the request for review for the reasons stated in the Council's original decision. He confirmed that a formal Decision Notice would be issued no later than 17 November 2019 and would contain the detailed grounds for refusal of the request for review.

Councillor Currie asked that the Members' individual votes be recorded in the minute. On the question of whether to uphold the request for review, the Members voted as follows:

Councillor Bruce: Against
Councillor Innes: Against
Councillor Currie: For
Councillor McMillan: Against

Decision

The Committee agreed by a majority vote not to uphold the request for review and to confirm the Council's decision to refuse the community asset transfer application. Detailed grounds for refusal would be set out in the Decision Notice which would be issued no later than 17 November 2019.

Signed

Councillor John McMillan
Convener of the Petitions and Community Empowerment Review Committee