

SPECIAL URGENCY DECISIONS: OCTOBER – DECEMBER 2018

Cabinet Member(s): The Leader of the Council
Responsible Officer: Group Manager for Legal Services and Monitoring Officer

Reason for Report: To report special urgency decisions taken in the preceding quarter.

RECOMMENDATION: that the report be noted.

Financial Implications: The decision taken was ‘in principle’ and it was acknowledged that further financial due diligence was required before a final decision could be taken. Where there is a cost to such due diligence (e.g. valuation, legal etc.), it is expected that such costs are met by the other party.

Legal Implications: Rule 17.3 of the Access to Information Procedure Rules in the Constitution requires the Leader to submit quarterly reports to Council on decisions taken by Cabinet under Rule 16 (Special Urgency). The legal implications of the decision ‘in principle’, in terms of due diligence and any other matters which arise, are still being assessed – as the decision itself recognised.

Risk Assessment: Any risk arising from the decision reported here was assessed at the time of the decision, but the ongoing due diligence is an integral and essential part of that due diligence.

Equality Impact Assessment: None arising from this report.

Relationship to Corporate Plan: None arising from this report, but the decision described below might fall within the section on “Economy” – be more entrepreneurial and commercial as a council and also “Community” – working with health partners; the retention and development of local facilities and services; and working with partners on the public health agenda.

1.0 Introduction

1.1 The Council has made provision in its Constitution for decisions to be taken which are so urgent that there is insufficient time:

- (a) to publish a Notice of Key Decision in the Forward Plan; and
- (b) to comply with the general exception (to the obligation to publish a Notice of Key Decision) set out in Rule 15 of the Access to Information Procedure Rules (“the Access Rules”).

1.2 The relevant provisions on Special Urgency are set out in Rule 16 of the Access Rules. Rule 17 then addresses subsequent reporting requirements. Rule 17.3 provides:

In any event the Leader of the Council will submit quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule

16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

2.0 Special urgency decisions – October to December 2018

2.1 There has been one decision taken relying on the special urgency powers in the quarter being reported. This decision, taken on 18 December 2018, was as follows:

“To agree to make a loan to the NHS of £2.1m repayable over 28 years on an annuity basis at a fixed interest rate of 3.75%, subject to the Deputy Chief Executive in consultation with the Group Managers for Finance and Legal:

- a) Completing a suitable loan agreement or similar arrangement with the NHS adequately protecting the Council’s position;*
- b) Registering a charge over the relevant land and completing a deed of priorities to be registered at the land registry; and*
- c) Being satisfied following any further due diligence deemed necessary that the loan remains a financially prudent course of action before the NHS is permitted to draw down any portion of the loan.”*

2.2 The reasons for the decision were:

“The NHS requires certainty over the loan before Christmas in order to progress the scheme which has the benefit of planning permission. Therefore it would not be possible to go through Cabinet on 3 January 2019. However, it is acknowledged that the loan cannot be finally agreed until the matters raised above have been concluded. Finance and Legal Officers will complete the necessary due diligence to ensure this is properly costed and prudent in financial and legal terms.”

2.3 The decision form also set out the following background to the decision:

“Background

The NHS approached us as they have a desire to create a “strategic, integrated primary care facility for Crediton”. They intend to co-locate the two town practices from existing premises to a new-build primary care facility, strategically located for future medical expansion in Crediton and Mid Devon. The new building will be 80% funded by the NHS from a national funding programme, bringing £4.1m of inward investment into Mid Devon.

Project Timeline

2015 - Crediton’s GPs began to analyse how the GP Primary Care services in Crediton could be made sustainable for the next 20 to 30 years.

2016 – Joseph Locke Way, Crediton was identified as a strategically located site.

Funding

The 80% funding from the NHS is interest free (£4.1m) plus regional and IT funding. The request is for MDDC to lend £2.1m over 28 years with a First Call, as a primary bank lender would have. The NHS would have second-call. This de-risks the repayment.

What this would mean

1. MDDC has First call, just as a primary bank lender - so the value in the building will always repay the borrowing. The NHS have second call.
2. Guaranteed stream of rental income from NHS to cover interest.
3. Larger partnership of committed individuals providing this key service to the community.
4. Will always be a requirement for NHS England to provide primary care services to the Crediton Community – so there will always be a need to them to support a building of this nature.
5. Profitable, long standing, ongoing business with continued stream of income from NHS based on the registered list
6. Notional rent review every three years which may increase the rental income
7. Huge percentage of funding for the project provided by NHS England ETTF, so provides highest level of security on MDDC borrowing. Depending on the interest rate we agree with the borrower, we will make a “mark-up” on the PWLB rate. Clearly Treasury management decisions would have to be made to ascertain the timing of any borrowing needed by the Council. The following is a possible scenario.

We lend £2.1m over 28 years; interest payable half-yearly on an annuity basis. We charge 3.75% which is c1% above the PWLB rate. This would mean that **if** the Council had to borrow in order to lend, we would receive c£27k per annum in **additional** interest income, reducing as the loan is repaid (£503k in total). **If we did not need to borrow** as we had sufficient funds within our own resources, this profit would rise to between c£62k in the early years reducing as the loan is repaid (£1.019m in total).

Summary

This investment would tick several boxes including providing a hub for local residents, providing a purpose built building which would enhance the area and it would also be a reliable, low-risk source of income to the Council at a time of falling Central Government funding and increasing cost pressures.”

- 2.4 The decision was taken under Rule 16.3 by the Cabinet Member for Finance, Peter Hare-Scott and authorised by the Chairman of Scrutiny Committee, Frank Rosamond.

3.0 Current position

- 3.1 Financial and legal due diligence is on-going, although further progress depends on the settlement of the terms of both the ETTF funding (NHS England’s Estates and Technology Transformation Fund) and the acquisition of the property. Until that is sufficiently clear, key aspects of the due diligence, including valuation, assessment of risk and final heads of terms cannot be progressed – otherwise work would be abortive and need to be repeated on a different basis.
- 3.2 It remains the case that the decision depends on a satisfactory outcome of this due diligence and the finalisation of the terms, with internal and external expertise being deployed. It is also the case that if the final ‘deal’ is materially

different from that which was described in the decision, a new or supplementary decision will be necessary. It would not be helpful to make incremental or piecemeal decisions as the negotiations and diligence progress. The pathway and process for any further decision will be determined by the detail of what is being decided and the timing. It should not be assumed that such a decision will, or will not, be an urgent decision – it very much depends on the circumstances and whether the manner of decision-taking meets the principles and rules set out in the Constitution.

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Circulation of the Report:

List of Background Papers: Decision recording form dated 18 December 2018