

Corporate Policy Development and Scrutiny Panel

Date: Monday, 10th February, 2020

Time: 5.00 pm

Venue: Kaposvar Room - Guildhall, Bath

Councillors: Paul Myers, Winston Duguid, Mark Elliott, Andrew Furse, Hal MacFie, Alastair Singleton, Shaun Hughes, Karen Warrington and Lucy Hodge



Mark Durnford

Democratic Services

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E-mail: Democratic_Services@bathnes.gov.uk

NOTES:

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

Paper copies are available for inspection at the Guildhall - Bath.

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

3. Recording at Meetings:-

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator.

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast An archived recording of the proceedings will also be available for viewing after the meeting. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. Public Speaking at Meetings

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may also ask a question to which a written answer will be given. **Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.** Further details of the scheme:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

5. Emergency Evacuation Procedure

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are signposted. Arrangements are in place for the safe evacuation of disabled people.

6. Supplementary information for meetings

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

Corporate Policy Development and Scrutiny Panel - Monday, 10th February, 2020

at 5.00 pm in the Kaposvar Room - Guildhall, Bath

A G E N D A

1. WELCOME AND INTRODUCTIONS

2. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out under Note 6.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** *or* an **other interest**,
(as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

6. ITEMS FROM THE PUBLIC OR COUNCILLORS - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS RELATING TO THE BUSINESS OF THIS MEETING

At the time of publication no notifications had been received.

7. CALL-IN OF DECISION E3191: PROPOSED ASSET TRANSFER OF LAND AT NORTH PARADE ROAD TO THE BATH CRICKET CLUB AT LESS THAN BEST CONSIDERATION (Pages 7 - 42)

The Committee Administrator for this meeting is Mark Durnford who can be contacted on mark_durnford@bathnes.gov.uk, 01225 394458.

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Bath & North East Somerset Council	
MEETING:	Corporate Policy Development & Scrutiny Panel
MEETING DATE:	10 th February 2020
TITLE:	Call-in of decision E3191: Proposed Asset Transfer of Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration
WARD:	ALL
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1 Cabinet Decision</p> <p>Appendix 2 Accompanying Report for the Decision</p> <p>Appendix 3 Call-in Request</p> <p>Appendix 4 Call-in Guidance Note & Part 4 (D-1) Call- In procedure flow chart</p> <p>Appendix 5 Terms of Reference for the Call-in</p>	

1 THE ISSUE

- 1.1 Any 9 Councillors not in the Council's Cabinet may request that a Cabinet or Single Member Decision made but not yet implemented be reconsidered by the person or body who made it. This is called a "call-in" and has the effect of preventing the implementation of the decision pending a review of the decision by a Policy Development and Scrutiny Panel.
- 1.2 This report sets out the call-in received by 9 Councillors of the decision of the proposed transfer of Land at North Parade Road to the Bath Cricket Club. The role of the Panel is to consider the issues raised by the call-in notice and to determine its response.

2 RECOMMENDATION

THE PANEL IS ASKED TO:

- 2.1 a. Consider the call-in request received (refer to Appendix 3, Please refer to the validated call in points 2, 8 & 9)
- b. Approve the Terms of Reference of the Call-in.
- c. Decide whether it will reach a conclusion about whether to uphold or dismiss the call-in; or refer the matter to the Council itself to undertake the role of the Panel, at this meeting or if a further meeting is required.

d. If a further meeting is required to hear and determine the call-in, the Panel is asked to agree the date for this. [The constitutional requirement is for that meeting to take place before the end of the 11th February 2020 (this timescale would not apply if the Panel decided to refer their role to the full Council)].

3 FINANCIAL IMPLICATIONS

3.1 The Panel should be aware that the Council's Constitution (Part 4E, Rule 13) requires that

"Where an Overview and Scrutiny Panel makes a recommendation that would involve the Council incurring additional expenditure (or reducing income) the Panel has a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources or the extent to which that should be seen as a priority for future years' budget considerations".

3.2 It is important, therefore, in its consideration of the call-in that the Panel gives consideration to the alternative options available to the decision-maker and the financial consequences of these.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSALS

4.1 A Call-in is a statutory process pursuant to the Council's Constitution Part 4E.

5 THE REPORT

BACKGROUND

5.1 The decision which is now subject to a call-in request was a single Member Cabinet Decision made on the 8th January 2020 (Appendix 1) following consideration of the officer report (Appendix 2). The Council Solicitor, in consultation with the Chief Executive, has validated the call in request for reasons 2, 8 and 9. (*The reasons relating to the Planning Committee decisions are not within scope and reasons 1 and 11 are inaccurate, as the usual statutory consultation period of publication in the Forward Plan and Weekly list took place, and comments/objections could have been made*)

5.2 Appendix 3 sets out the reasons for the call-in request. (Please refer to points 2, 8 & 9)

ASSESSING THE CALL-IN REQUEST

5.3 The Terms of Reference (Appendix 5) will indicate the suggested scope of the Call-in. This will outline the information and contributions the Panel is advised to consider in order to determine the call-in. It will have been prepared in consultation with the Chair. Panel members are invited to comment on the terms of reference and any changes they request will be taken into account in an updated version which will be circulated at the meeting.

5.4 The Policy Development and Scrutiny Panel Chairs have approved guidance on the handling of call-in requests which make clear that there is a presumption that every validated call-in will proceed to a public meeting stage. The process for that

meeting is set out in paragraph 5.4 below. If a second meeting of the Panel is required to complete the review it needs to take place no later than 20th February 2020 to comply with the constitutional requirement that the total period of overview and scrutiny involvement in a call-in must not exceed 21 working days.

SUGGESTED FORMAT FOR THE MEETING TO DETERMINE THE CALL-IN

5.5 When the Panel determines the call-in, it is suggested that the following format be adopted:

- (1) Remind itself of the issues to be considered and consider any additional written information supplied.
- (2) Hear from and ask questions of the Cabinet Member(s) and Lead (or other agreed) Officers.
- (3) Hear from and ask questions of Councillor(s) representing the call-in signatories.
- (4) Hear from and ask questions of any public speakers. appropriate external contributors (a “panel” style contributors` session is suggested).
- (5) Call-in Councillor and Cabinet member(s) have the opportunity to make comments on any new considerations that may have arisen during the debate.
- (6) Discuss and draw conclusions from the written and oral information presented.
- (7) Consider and formulate the Panel’s determination of the call-in.

6 RATIONALE

6.1 The recommendations were suggested pursuant to the Council’s constitution.

7 OTHER OPTIONS CONSIDERED

7.1 Not applicable

8 CONSULTATION

8.1 This report has been prepared following consultation with the Chair and Vice Chair of the Policy Development and Scrutiny Panel.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<i>Donna Vercoe, Senior Scrutiny Officer, 01225 396053</i>
Background papers	<i>none</i>
Please contact the report author if you need to access this report in an alternative format	

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Single Member Cabinet Decision**Executive
Forward Plan
Reference****E3191**

Proposed Asset Transfer of Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration

Decision maker/s	Cllr Samuel Cabinet Member for Resources
The Issue	Bath Cricket Club require land owned by Bath & North East Somerset Council in order to carry out their proposed development on part of the Cricket Club's land.
Decision Date	On or after 28 th December 2019
The decision	<p>The Cabinet Member agrees to</p> <p>Delegate to the Head of Estates the authority for the completion of the transfer (as a Community Asset Transfer) of the asset at less than best consideration.</p> <p>Note that the transfer of the asset will be in compliance with the statutory responsibilities under S123 Local Government Act 1972</p>
Rationale for decision	Provision of community benefits.
Financial and budget implications	The maintenance of the embankment will be passed to the Cricket Club.
Issues considered	Social Inclusion; Young People; Equality (age, race, disability, religion/belief, gender, sexual orientation);
Consultation undertaken	Section 151 Finance Officer; Chief Executive; Monitoring Officer
How consultation was carried out	Report circulated by email.
Other options considered	No other viable options would provide these community benefits.

Member taking the decision:	
Declaration of interest by Cabinet Member(s) for decision, including any dispensation granted:	
Any conflict of interest declared by anyone who is consulted by a	
Name and Signature of Decision Maker/s	
Date of Signature	
Subject to Call-in until 5 Working days have elapsed following publication of the decision	

Bath & North East Somerset Council		
DECISION MAKER:	Cllr Richard Samuel, Cabinet Member for Economy & Growth	
DECISION DATE:	On or after 28 December 2019 (for single Member decision)	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3191
TITLE:	Proposed Asset Transfer of Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration	
WARD:	Bathwick	
AN OPEN PUBLIC ITEM/Part exempt		
<p>List of attachments to this report:</p> <p>Appendix A – Heads of Terms & plan</p> <p>Exemption certificate</p> <p>Appendix B - EXEMPT - National Themes, Outcomes and Measures 2019 Basic Calculator – Edition: 2019, Assessment of the Community Benefits</p> <p>Appendix C – EXEMPT - Valuation</p>		

1 THE ISSUE

- 1.1 The Bath Cricket Club are proposing to develop their land to accommodate an indoor cricket school, improved facilities and a 136 bed student accommodation block. They have planning consent under planning reference 17/04338/FUL.
- 1.2 The Bath Cricket Club do not own the strip of land between North Parade Road and their property. In order to enable the proposed development, Bath & North East Somerset Council has agreed lease terms with the Bath Cricket Club to enter into a 250 year lease in respect of land and parking spaces adjacent to North Parade Road. It is proposed that this is a long lease at a peppercorn rent, with a premium payable upon the grant of the lease.
- 1.3 The development at the Club will provide a number of community benefits, which are detailed in appendix B. The community benefits have been valued using the National TOMs 2019 Basic Calculator – Edition:2019 to assess the social value.

The value attributed to these benefits clearly suggests a Community Asset Transfer is appropriate.

1.4 The transfer will however represent a disposal at less than best consideration. The report covers the background to the proposed transfer, identifies the benefits arising from this and addresses key financial, legal and other considerations.

1.5 The disposal falls within the parameters of the General Disposal Consent.

2 RECOMMENDATION

The Cabinet Member for Resources is asked to;

2.1 Delegate to the Head of Estates the authority for the completion of the transfer (as a Community Asset Transfer) of the asset at less than best consideration.

2.2 Note that the transfer of the asset will be in compliance with the statutory responsibilities under S123 Local Government Act 1972.

3 THE REPORT

3.1 Bath Cricket Club obtained planning permission in 2018 for the erection of a 136 no. bed purpose built student accommodation and associated communal and ancillary facilities, re-provision of car parking, demolition and replacement of indoor cricket training facility, formation of new access, and landscaping works.

3.2 The strip of land connecting the Cricket Club land with the adopted highway is owned by Bath & North East Somerset Council.

3.3 The Cricket Club approached the Council with a view to obtaining an easement over the land to enable the development to go ahead. The land was valued by an independent valuer

3.4 The Cricket Club provided the Council with information on the community benefits that the development and subsequent investment would provide.

3.5 Benefits include a new indoor cricket school, which will enable a winter training and coaching programme, and act as a hub for Disability Cricket

3.6 The extension to the Cricket Club will also provide new teaching and learning space and separate female changing facilities.

3.7 There will also be further employment opportunities and improvements to the Bath Cricket Club secondary state school cricket programme.

3.8 The investment in the club will also enable it to increase the size of the bursary fund available and improve facilities at their second cricket club site in Lansdown.

3.9 Additional Leisure community benefits as a result of the development create a value of around £2 million.

- 3.10 In order to unlock this investment the Bath Cricket Club requires the land to enable the development and subsequent investment to proceed.
- 3.11 A Community Asset Transfer will enable the club to provide the community benefits, whilst the Council will be able to impose a rent for a term of 30 years should the benefits not be provided. This will be monitored by the Council.
- 3.12 The Bath Cricket Club will also pay a premium for the lease.
- 3.13 Two parking spaces are also included as this will enable the club to improve security in their second car park.
- 3.14 The permitted user clause in the lease restricts the use of the land.
- 3.15 Maintenance of the embankment will be undertaken by the Cricket Club which is a direct saving of £900 pa to the Council.
- 3.16 A lease of the land to the Bath Cricket Club will enable a significant amount of funding to be released to the club, producing improved sporting facilities for current and future members, leveraging in external funding and delivering sufficient community benefits to meet the tests set out in paragraph 4.4 below.
- 3.17 The Bath Cricket Club will also enter into a contractual agreement with the Council obliging the Club to deliver these community benefits and will provide evidence to the Council annually of the activities being delivered.

4 STATUTORY CONSIDERATIONS

- 4.1 The proposal meets the Council's corporate objectives.
- 4.2 Public health and inequalities: the Council has a statutory duty to promote the health and wellbeing of the inhabitants of its area and reduce inequalities amongst its population
- 4.3 The Royal Institution of Chartered Surveyors (RICS) is the governing body for Chartered Surveyors and they have set out guidance specifically to deal with the disposal at less than market value which should be followed unless there are particular circumstances that mean that it is not appropriate. It puts in place an audit trail so that the decision is demonstrably robust. It is, therefore, considered that this is an appropriate model for sign off of the individual transactions which should be undertaken in liaison with the Section 151 Officer. The assessment requires:
- (1) A full valuation exercise is undertaken which identifies the maximum theoretical Market Value for the asset to be transferred.
 - (2) Calculation of the reduced values that apply because of any restrictions that the Council applies relating to things such as use, alienation, clawback, etc.

- (3) The value added to the Council through the outcomes of the transfer has been assessed and found to be not less than the difference between market value and the actual price to be paid

4.4 Property considerations: under s123 of the Local Government Act 1972, any disposal by the Council of an asset in excess of 7 years (including leasehold interests) must obtain “best consideration”, unless Circular 06/03 The Local Government: General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained apply or a specific consent is obtained. The general consent allows specified circumstances where the consent can be applied:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
 - i) the promotion or improvement of economic well-being; ii) the promotion or improvement of social well-being; iii) the promotion or improvement of environmental well-being;
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 The maintenance of the embankment will be passed to the Cricket Club. There will be on-going monitoring of the community benefits by the Council.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

7 CLIMATE CHANGE

7.1 There is no positive impact to improve the climate and help to achieve carbon neutrality

8 OTHER OPTIONS CONSIDERED

8.1 This option has been chosen as a long lease to the Bath Cricket Club enables improved sports facilities and opportunities for the residents of Bath & North East Somerset.

8.2 It provides the community with a valuable facility which could lead to health benefits.

8.3 No other viable option provides these benefits

9 NO OTHER VIABLE OPTION PROVIDES THESE BENEFITS. CONSULTATION

9.1 Cabinet members; Section 151 Finance Officer; Chief Executive; Monitoring Officer

Contact person	<i>Richard Long tel: 01225 477075</i>
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Background papers	None
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Please contact the report author if you need to access this report in an alternative format

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**BATH & NORTH EAST SOMERSET
COUNCIL**

and

BATH CRICKET CLUB

HEADS OF TERMS

Land at North Parade Road, Bath, BA2 4ET

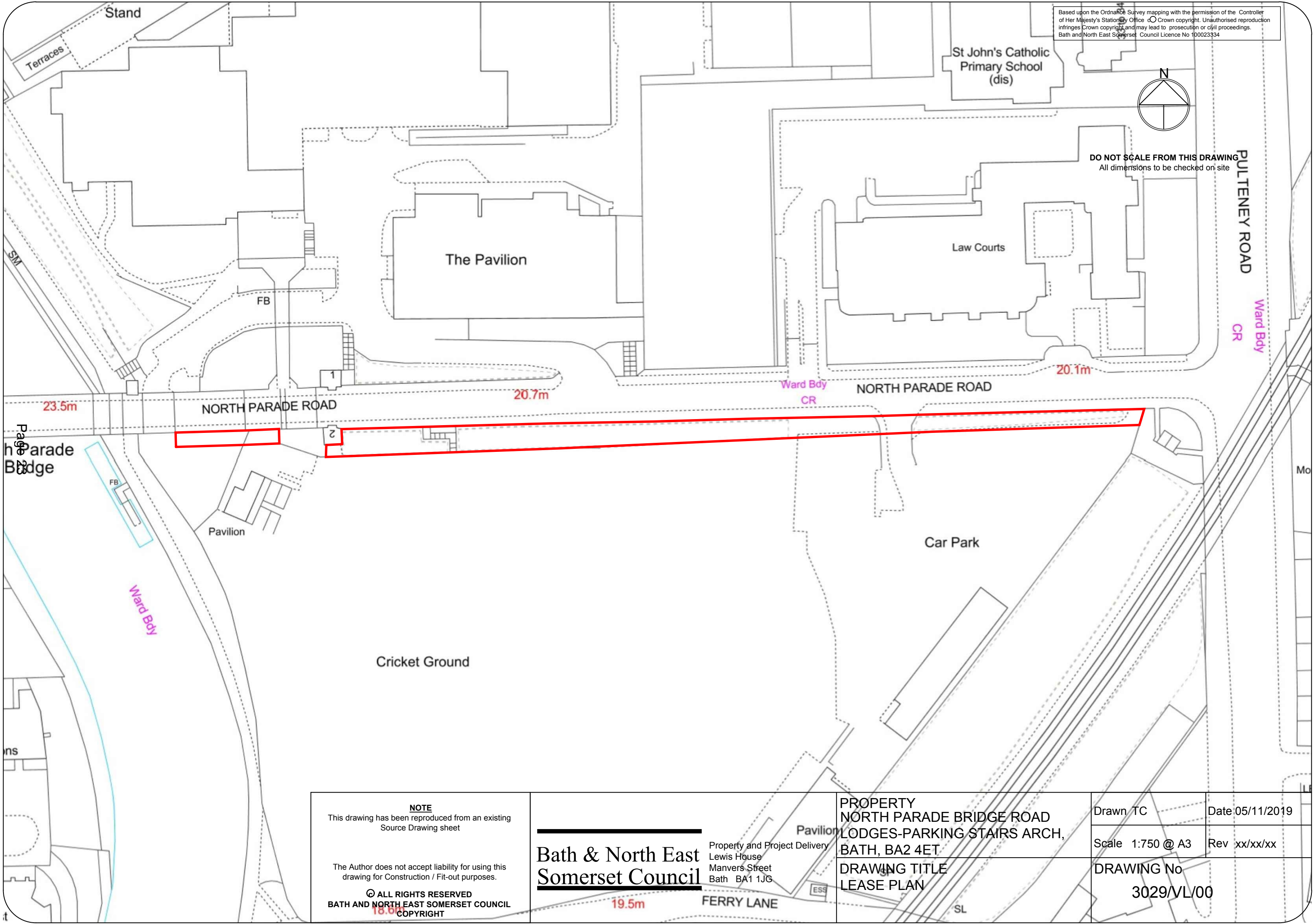
SUBJECT TO CONTRACT

October 2019

1.	FREEHOLDER	BATH & NORTH EAST SOMERSET COUNCIL (Council)
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2.	TENANT	THE BATH CRICKET CLUB (BCC)
3.	DESCRIPTION OF PROPERTY	Land adjacent to North Parade Road, Bath (the embankment) all shown edged red on the attached plan.
4.	PURCHASE PRICE	£150,000
5.	TENANT'S SOLICITOR	Mr Peter Alford Associate Burgess Salmon LLP One Glass Wharf Bristol BS2 0ZX Tel 0117 307 6058 Mobile: 07794 030 866 Email: Peter.Alford@burgess-salmon.com
6.	FREEHOLDER'S SOLICITOR	Mr Zaheer Bashir Senior Associate Solicitor DAVITT JONES BOULD 12-14 The Crescent, Taunton TA1 4EB Tel: 0161 399 8203 Mobile: 07749 128938 Email: Zaheer.Bashir@djblaw.co.uk
7.	TERM	250 years
8.	RENT	Peppercorn but reserving a reversion to annual rent in the event the community benefit ceases. Rent to be equivalent of £30,000 pa inflated by RPI or relevant index from commencement of term to date of rent being triggered. Rent to continue with annual inflation at RPI. Rent to abate after 30 years.

9.	Permitted use	<p>1. access to and from the land at Bath Cricket Club included in HM Land Registry title number ST203538 (the “Club’s Title”) and any land included within HM Land Registry title numbers from time to time derived out of the Club’s Title at any time and for any purpose with or without vehicles equipment materials goods and the like;</p> <p>2. a highway verge;</p> <p>3. the parking of vehicles at any time and for any purpose and access for such vehicles across the Property;</p> <p>4. any use at any time connected to sports education and/or community benefit; and/or</p> <p>5. any use at any time to support and facilitate whether in whole or in part the maintenance improvement development furtherance and the like of sport education and/or community benefit.”</p>
10.	Repairs	FRI
11.	Costs	Tenant to cover the landlord’s reasonable legal and surveyors costs in connection with the transfer.
12.	Maintenance	Tenant to be responsible for the maintenance of the land.
13.	Other conditions	Subject to Contract Subject to formal approval
14.	Other terms	Community uses to be recorded on an obligation to the Council and set out in a Deed, including annual inspection by the Council to ensure covenants are being delivered relating to the community benefit.



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Bath & North East Somerset Council

Property and Project Delivery
Lewis House
Manvers Street
Bath BA1 1JG

PROPERTY
NORTH PARADE BRIDGE ROAD
LODGES-PARKING STAIRS ARCH,
BATH, BA2 4ET
DRAWING TITLE
LEASE PLAN

Drawn TC	Date 05/11/2019
Scale 1:750 @ A3	Rev xx/xx/xx
DRAWING No 3029/VL/00	

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Access to Information Arrangements

Exclusion of access by the public to Council meetings

Information Compliance Ref: LGA 1682/19

Meeting / Decision: Single Member Decision

Date: On or after 28th December 2019

Author: Richard Long

Report Title: Proposed Asset Transfer of Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration

List of attachments to this report:

Appendix A – Heads of Terms & plan

Exempt Appendix B - National TOMs 2019 Basic Calculator – Edition: 2019, Assessment of the Community Benefits. Exempt Appendix C – Valuation

The Report contains exempt information, according to the categories set out in the Local Government Act 1972 (amended Schedule 12A). The relevant exemption is set out below.

Stating the exemption:

1. Information relating to any individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

The public interest test has been applied, and it is concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure at this time. It is therefore recommended that the Exempt Appendix be withheld from publication on the Council website. The paragraphs below set out the relevant public interest issues in this case.

PUBLIC INTEREST TEST

If the Cabinet (Member for Economy & Growth) wishes to consider a matter with press and public excluded, they must be satisfied on two matters.

Firstly, they must be satisfied that the information likely to be disclosed falls within one of the accepted categories of exempt information under the Local Government Act 1972.

The officer responsible for this item believes that this information falls within the following exemptions and this has been confirmed by the Council's Information Compliance Manager.

The following exemptions are engaged in respect to this report:

3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Secondly, it is necessary to weigh up the arguments for and against disclosure on public interest grounds. It is considered that there is a public interest in information about property acquisition being disclosed into the public domain. Other factors in favour of disclosure include:

- furthering public understanding of the issues involved;
- furthering public participation in the public debate of issues, in that disclosure would allow a more informed debate;
- promoting accountability and transparency by the Council for the decisions it takes;

Weighed against this is the fact that the exempt appendix contains strategic and financial information which could prejudice the commercial interests of the parties if disclosed at this time. It would not be in the public interest if advisors and officers could not express in confidence opinions which are in good faith and on the basis of the best information available. It is important for public authorities to have some measure of 'private thinking space', and that they are able to share important information with Elected Members tasked with representing the local community.

It is in the public interest that the Council is able to deliver cost-effective solutions. This depends partly on the Council being able to protect its commercial position while the detailed terms of relevant schemes are agreed.

It is considered that the public interest is best served in this matter by not releasing this information at this time and that a significant amount of information regarding the matter has been made available on these issues – by way of the main report. Relevant information regarding any property transactions will be put in the public domain at the appropriate time. Therefore it is recommended that exemption 3 applies. The Council considers that the public interest is in favour of not holding this matter in open session at this time and that any reporting on the meeting is prevented in accordance with Section 100A(5A).

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Notice requesting to call in Single Member Decision E3191

Proposed Asset Transfer of Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration

The undersigned Councillors wish to call in decision E3191 to “Asset Transfer Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration’ taken on 8 January 2020 by the Cabinet Member for Resources for the following reason

1. There has been no opportunity for Elected Members to scrutinise the proposals.
2. The report was inadequate, lacked information and did not demonstrate how we came to this recommendation.
3. During the planning process Members were not made aware that the development was dependent upon the acquisition of a strip of land owned by Bath & North East Somerset Council.
4. Lack of information relating to the live planning application (19/04142/COND) This concerns discharge of condition 5, access to the site (over the land to be transferred) which is strenuously opposed by the Highways Team as it involves closing North Parade to allow heavy vehicles onto the site. There is absolutely nothing on the council’s website to indicate that the original planning application was controversial, partly over the question of access but there are 201 documents under 17/04338/FUL relating to discharge of other conditions , consultants’ reports etc.
5. There is no recognition of the fact that the chief beneficiary will be the developer of the luxury student hostel.
6. If the planning Committee had been made aware of this, this may have had an impact on the decision that was made.
7. The Developer would have gone into this application knowing that this piece of land was required. Therefore would have made a provision in its budget for it.
8. The report gives insufficient justification as to why this Council is disposing of this land at less than best consideration.
9. The report gives no clear way of measuring the supposed community benefits so it will be impossible to judge in the future whether these benefits have been delivered.

Further to point 8, the report to the Planning Committee stated that because no details of the financial deal between the developer and Bath Cricket Club had been provided, it was unclear what the scale of the proposed investment in community benefits would be and that there was a significant degree of uncertainty around what actual benefit would be derived.

10. We do not know when it was discovered that the development was dependent on this piece of land or who authorised the negotiations with the developer.
11. This Administration pledge to ‘.. work with local communities so they can have a greater say and take more responsibility for what goes on in their area and address the issues that are most important to them. We want to listen to the views of our residents and partners and ensure that the council is operating transparently.’ We believe that this collaborative working can’t take place until there is more transparency in decision making.

9 signatures required.

Councillors

Colin Blackburn (lead)

Doug Deacon

June Player

Paul May

Alan Hale

Karen Warrington

Eleanor Jackson

Grant Johnson

Liz Hardman

CALL-IN GUIDANCE (OFFICERS)

What is a “call-in”?

A “call in” is a key element of the scrutiny function and it relates to the right of Members to “call in” for examination an executive decision that has been made but not yet implemented.

The Council’s Constitution allows any 9 Councillors to make a call in request. Providing the call in meets certain criteria, a Policy Development & Scrutiny Panel will re-examine the decision and has the power to ask the Cabinet or Cabinet Member to reconsider the decision.

It is important to note that the panel can only recommend that the Cabinet reconsider the decision it made. The panel does not have the power to amend the decision itself.

What are “Executive” decisions?

These are decisions made by

- the Cabinet
- a Cabinet Member,
- a committee of the Cabinet
- an officer taking a key decision acting on delegated authority from the Cabinet,
- an area committee (with delegated authority from the Cabinet)
- a body under joint arrangements (with delegated authority from the Cabinet).

Call-in of decisions of quasi-judicial or Regulatory Committees is not permitted.

All executive decisions are published in the weekly list and are available at the Council offices and on the Council’s web site. Executive decisions made by the Cabinet are published as minutes. Those decisions taken by individual Cabinet Members are published as a decision register entry.

Are there any instances when decisions cannot be called in?

Yes. The call-in procedures set out above shall not apply where;

- The executive decision is urgent as defined in the Urgency Procedure Rules at Part 4 of the Constitution. (The advice of the Chief Executive, Monitoring Officer or (if necessary) the Chief Financial Officer shall be sought in applying this exception.)
- the effect of a call in alone would be to cause the Council to miss a statutory deadline for action.

Who can request a call-in?

Any Councillor who is not a member of the Cabinet can initiate or sign up to a call-in notice.

The call-in notice must state why, in the opinion of the councillors, it is considered that the decision should be reviewed and / or reconsidered by the decision-maker(s) and a reason for the call-in.

Note: we can also receive **more than one call-in submission** (if different political parties don't want to sign up to the same call-in notice) on the same item or related items. There is no automatic priority on first submission as all notices received within the deadline must be considered.

Example: we received two call-in submissions on the executive decision on modern libraries programme (November 2017) & another on a decision related to the same topic.

This was approached by:-

- The Monitoring Officer compiling a merged version of the two call-in submissions on the same decision, to set out all the relevant considerations on that item. This helps to avoid duplication.
- The original call-in submissions and signatories being included as Appendix 3.
 - All three call-in submissions being addressed at one meeting. The call-in decision with two submissions was discussed first; both lead call in members had their own speaking slot to discuss reasons for call-in. The decision was made on the first item, and then we moved onto the second relevant call-in topic. (We had the same lead call-in members for two similar topics but different decision)
- Note: a member of the Panel who is hearing and discussing the call-in can also be a signatory to the call-in.

What are the timescales for completing a call-in?

Once a call-in has been verified, the Panel meeting to consider the call-in has to be held within 10 working days. Day 1 is the first full working day after the day the verification takes place. It's preferable if the panel meeting does not happen on the final (10th) day. This allows for contingency (meeting being cancelled/stopped in progress due to fire alarm etc.)

Usual agenda despatch deadlines apply.

The whole process of call-In must take place within 21 working days.

How many call-in requests can a Councillor sign?

No member of the Council (or statutory co-opted member) will be entitled to sign up to more than 5 call-in requests in a Council year.

What is the process?

Receipt and verification

The Chief Executive & Monitoring Officer shall determine whether a “call-in” is valid (i.e. whether it has been received within the prescribed period and is signed by the required number of members). If the call-in is valid, the Democratic Services officer shall inform the Chair of the relevant Policy Development and Scrutiny Panel, the Leader, relevant Cabinet Member(s) and the Lead Officer.

Scrutiny Officer and Democratic Services Officer roles

- Both officers lead on the management of the review process (send out initial email to panel/ lead call in members/ cabinet member)
- convene a private meeting with the relevant Strategic Director, key officer, PDS Lead Officer, and Chair of the Panel to scope the call-in (including any exclusion- *items not being looked at on the day*)
- DSO liaises with Panel Chair and other key players to arrange date and venue
- Scrutiny Officer collates paperwork and sends to DSO to send out to panel
- DSO drafts running order
- Both offer guidance on procedure to chair/ lead –call in members/ Cabinet Members so need to keep in close contact.
- Members of the public and interested parties can register to speak by contacting Democratic Services – usual deadlines and rules apply.

At the Call-In meeting?

The Panel can only consider and discuss submissions, questions or comments which are directly relevant to the Cabinet decision. The Chair of the panel has discretion to decide what is relevant to the call-in discussion, guided by officer advice. (Already agreed during the scoping meeting and set out in the terms of reference for that meeting.)

As with other meetings, a councillor substitution on the Panel remains in place for the duration of the meeting.

The Panel will consider the evidence presented by officers, councillors, other contributors and members of the public and then draw a conclusion about whether to:-

- a) **Dismiss** the call-in (original decision goes ahead)
- b) **Uphold** the call-in (refer back to the decision maker for reconsideration)
- c) **Refer the matter to Council** to itself undertake the role of the Panel (which may necessitate an additional Council meeting to meet

necessary timescales) [NB: the ultimate decision still remains with the original decision maker].

Wording: - DSO to remind the Chair (and include in Chair's Briefing note) to announce that the Panel must be certain of their exact decision wording before the meeting closes, as they will have no opportunity to change this after the meeting. [If there is any perceived ambiguity, it is up to the Cabinet to act on the wording as they see fit.]

Other areas for consideration:-

Financial considerations: - A planned scrutiny review, when a Panel is providing options to Cabinet before they make a policy decision, would have a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources or the extent to which that should be seen as a priority for future years' budget considerations.

However, at a call-in, the Panel's purpose is very specific to address the points made in the call-in so there is not the same requirement for the Panel to suggest alternative funding options, nor do they have the time to investigate and propose alternative recommendations.

Press: - Often items are sensitive and controversial so it would be helpful for an officer from the Communications & Marketing team to be kept informed during the planning and preparation stage. i.e., during the initial scoping meeting and to consider attending the call-in meeting if possible.

CABINET RECONSIDERATION OF AN UPHELD DECISION

- It has to give reasons in either case.
- The Executive have to complete this process within 10 working days.
- This meeting does not have to be in public.

Other considerations;

- *Any points from*
- *Clarity needed on options available to Cabinet and definition of making a different decision*
- *If it was a Cabinet decision, does it have to go back to Cabinet?*
- *Is it appropriate for public/cllrs to speak at Cabinet meeting with risk of presenting new information?*

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<p>If the panel need more time to consider further information a second meeting must be held within 21 working days</p>	<p>hear</p>	<p>If the decision is overruled this is referred back to the Executive. They must reconsider this decision within 10 working days stating their reasons for their decision.</p>	<p>ec Men</p>	<p>If the Panel disagree with and overturn the Call-In, the Executive Decision can be implemented straight away.</p>
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Call-in Procedure

Cabinet Decision Published: There is now a period of 5 working days during which members can decide whether or not they want to challenge the decision. If a decision is not challenged, the Cabinet is free to implement.



Call-in Verified: At least 9 signatories are required in order to secure a call-in. The Monitoring Officer shall determine whether the call-in is valid. If the call-in is valid, the Monitoring Officer identifies the Panel to hear the call-in. The meeting has to be held within 14 working days after the call-in request has been verified.



Scoping and Planning: Democratic Services & Scrutiny Officers liaise with relevant Councillors and Officers to determine the scope of the call-in, fix a date/time for the call-in meeting, publicise the meeting and determine what briefing and information will be required to help inform the investigation.



Public Involvement: In run up to meeting, members of the public and relevant/interested bodies are able to notify Democratic Services if they would like to submit any evidence to the call-in or speak at the public meeting.



Call-in Meeting: The Panel (or Council undertaking that role) will consider the evidence presented by Councillors, Officers, other contributors and members of the public and then come to a conclusion about whether to ask the Cabinet (Member) to reconsider its decision.



If the Panel need more time to consider further information a second meeting must be held within 21 working days.



Call-in Upheld:

If the Panel (or Council undertaking that role) agree and **UPHOLD** the reason for the call-in, the decision is referred back to the Cabinet (Member). The Cabinet (Member) must reconsider the decision within 10 working days stating the reasons for their decision.



Call-in Dismissed:

If the Panel (or Council undertaking that role) disagree with and **DISMISS** the call-in, the original Cabinet (Member) decision can be implemented straight away and CANNOT be amended in any way by the Panel.

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Appendix 5 - Terms of Reference

Call-in of the Cabinet decision: E3191

Introduction

A single member Cabinet Decision was made on the 8th January 2020 resolved as set out below:

2.1 The Cabinet Member agrees to Delegate to the Head of Estates the authority for the completion of the transfer (as a Community Asset Transfer) of the asset at less than best consideration.

Note that the transfer of the asset will be in compliance with the statutory responsibilities under S123 Local Government Act 1972

2.2. The rationale for the decision was the provision of community benefits

On the 22nd January 2020 a call-in notice was received, signed by 9 Councillors, objecting to this decision.

This relates to the proposed Asset Transfer Land at North Parade Road to the Bath Cricket Club at Less Than Best Consideration' taken on 8 January 2020 by the Cabinet Member for Resources for the following reasons:

1. There has been no opportunity for Elected Members to scrutinise the proposals.
- 2. The report was inadequate, lacked information and did not demonstrate how we came to this recommendation¹.**
3. During the planning process Members were not made aware that the development was dependent upon the acquisition of a strip of land owned by Bath & North East Somerset Council.
4. Lack of information relating to the live planning application (19/04142/COND) this concerns discharge of condition 5, access to the site (over the land to be transferred) which is strenuously opposed by the Highways Team as it involves closing North Parade to allow heavy vehicles onto the site. There is absolutely nothing on the council's website to indicate that the original planning application was controversial, partly over the question of access but there are 201 documents under 17/04338/FUL relating to discharge of other conditions , consultants' reports etc.
5. There is no recognition of the fact that the chief beneficiary will be the developer of the luxury student hostel.

¹ The Council Solicitor, in consultation with the Chief Executive, has validated the call in requests for reasons 2, 8 and 9.

6. If the planning Committee had been made aware of this, this may have had an impact on the decision that was made.
7. The Developer would have gone into this application knowing that this piece of land was required. Therefore would have made a provision in its budget for it.
- 8. The report gives insufficient justification as to why this Council is disposing of this land at less than best consideration.**
- 9. The report gives no clear way of measuring the supposed community benefits so it will be impossible to judge in the future whether these benefits have been delivered.**
10. We do not know when it was discovered that the development was dependent on this piece of land or who authorised the negotiations with the developer.
11. This Administration pledge to work with local communities so they can have a greater say and take more responsibility for what goes on in their area and address the issues that are most important to them. We want to listen to the views of our residents and partners and ensure that the council is operating transparently.' We believe that this collaborative working can't take place until there is more transparency in decision making.

Relevant PDS Panel

The 'call-in' request has been referred to Bath & North East Somerset Council's Corporate Panel to review the decision.

Call-in Meeting

At the Panel meeting on the 10th February 2020 the Panel will investigate and determine the matter. They will assess in detail the reasons for the Cabinet decision and consider the objections, **(2, 8, and 9)** stated in the call-in notice via a range of information from Councillors, Officers and members of the public (further details below).

Objective

The objective of the Call-in review is to determine whether or not the resolution made by the Cabinet Members should:-

- Be referred back to the Cabinet for reconsideration [**'Uphold' the call-in**]
- Proceed as agreed by the Cabinet [**'Dismiss' the call-in**], or
- Be referred to Full Council to undertake the role of the Panel [*the ultimate decision would still remain with the Cabinet*].

Method

To achieve its objective, **the Panel will investigate the original decision and the objections stated in the call-in notice for reasons 2, 8 and 9.** The Panel will hear statements from members of the public who have registered to speak about both the substance and processes behind the decision. Public statements will be limited to 3 minutes

per speaker or any variation proposed by the Chair. It will also require attendance and/or written submissions from:-

- Representative Councillor(s): Cllr Colin Blackburn
- Lead Cabinet Member – Cllr Richard Samuel (Cabinet Member for Resources) and key service officers

Outputs

The Panel's view and supporting findings will be made publicly and will include:

- Minutes & papers from public Panel call-in meetings.
- A summary note will be provided, setting out the result of the call-in meeting

Constraints

The Panel will only address questions from the validated point within the call-in notice.

- **Timescales.** The Panel must hold its initial meeting within 14 working days of the call-in being verified to consider the call-in request. The Panel has a total of 21 working days to reach its decision.
 - Initial Public Meeting must be held by **11th February 2020** [14 working days from receipt of validated call-in request]
 - If meeting adjourned, second public meeting must be held by the **20th February 2020** [21 working days from receipt of validated call-in request]
 - If referred directly to the Cabinet, a response must be received by the **24th February 2020** [10 working days from date of 1st meeting]
 - If adjourned and then referred to the Cabinet, a response must be received within 10 working days from date of 2nd meeting, **4th March 2020**.
- **Resources.** The call-in process must be managed within the budget and resources available to the Panel.
- **Council Constitution.** Part 4E, Rule 13 requires that "*Where an Overview and Scrutiny Panel makes a recommendation that would involve the Council incurring additional expenditure (or reducing income) the Panel has a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources*". Section 3.1 of the cover report (formal agenda papers) provides further explanation.

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