



Clerk: Kate Spencer
Telephone: 01803 207013
E-mail address: governance.support@torbay.gov.uk
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Governance Support
Town Hall
Castle Circus
Torquay
TQ1 3DR

Dear Member

OVERVIEW AND SCRUTINY BOARD - THURSDAY, 19 SEPTEMBER 2019

I am now able to enclose, for consideration at the Thursday, 19 September 2019 meeting of the Overview and Scrutiny Board, the following reports that were unavailable when the agenda was printed.

Agenda No	Item	Page
7.	Land Release Fund	(Pages 111 - 116)

Yours sincerely

Kate Spencer
Clerk



Meeting: Overview and Scrutiny Board

Date: 19 September 2018

Wards Affected: All

Report Title: Land Release Fund

Report Author and Councillor Contact Details: Karen Kennedy, 07464 201149, karen.kennedy@torbay.gov.uk

1. Purpose

To consider where Torbay Council currently stands regarding the Land Release Fund, whether there are any current risks, and what we have learned from this process.

As this report considers the whole process of the bid, recommendations are made throughout the body of the report and summarised again for ease under section 11. Where appropriate this report will mirror the headings as set out in the Officer report.

The Land Release Fund (LRF) is funding granted by the Ministry of Housing, Communities and Local Government (MHCLG) secured to prepare three sites in Torbay ready for development by the end of March 2020 at the latest. These three sites are Preston Down Road, Collaton St Mary and Victoria Square.

By completing a bid for Land Release Funding the Council committed to completing the project work within the bid within financial years 2017/18 and 2019/20 so that projects can move into delivery stage after this. There is also a commitment to adhere to quarterly reporting arrangements (page 25 & 26 Land Release Fund Appendix).

The Fund is specifically for infrastructure works necessary for, and prior to, the commencement of any development. The terms and conditions contain time limits for steps within the contract which Torbay Council need to evidence compliance by way of monitoring reports.

2. Background

The application for LRF was submitted in November 2017, an offer letter including the terms and conditions of funding was received by Torbay Council on 8 March 2018, and Torbay Council accepted these terms on 14 March 2018.

The Council's scheme of delegation, delegates to the Chief Finance Officer the acceptance of grants. The Chief Finance Officer consulted with the Elected Mayor and Group Leaders prior to his decision. There is no report upon which the Elected Mayor and Group Leaders were consulted on. There are no minutes of the meeting between Officers and the Elected Mayor and Group Leaders which was held on 13 March 2018 which would have demonstrated the level of political agreement, and no Officer record of decision for acceptance of the LRF was published.

The Monitoring Officer has advised that a record of decision for the acceptance of the Grant was not legally necessary because the Chief Finance Officer was exercising a general delegation, not a specific delegation, and because at the point of acceptance of the grant, it was not known that there would be a significant financial implication for the Council.

When Full Council considered the issue of land at Preston Down Road and Collaton St Mary, the audio of the Council meeting on 18 October 2018 indicates an apparent lack of understanding for some Councillors as to what the LRF monies were to be spent on.

Recommendation:

- (i) There is a need for clear and transparent reports,
- (ii) Meetings such as the one where the Mayor and Group Leaders were consulted on the LRF, should be minuted in the future,
- (iii) Significant decisions made by Officers, such as the acceptance of the LRF Grant, should have Records of Decision, irrespective of whether or not the legal test for their preparation is met.

3. Governance

The LGA announcement referred to in the officer report states that local councils can use the LRF money to combat barriers which would otherwise make land unusable for development. It goes on to specifically mention that Torbay Council has been awarded £1.9m for “a new 350m sewer, drainage upgrades and two new roads to help unlock up to 200 homes.”

Request to Officers for clarification : what were the issues surrounding the three sites which made the sites unusable for development without the LRF?

Request to Officers for clarification : what is the current position with regard to delivering all the items as contracted prior to seeking development partners?

The LRF contract between Torbay Council and MHCLG contains within the terms and conditions certain milestones to be achieved by Torbay Council and a requirement to submit monitoring reports to evidence these achievements. Six reports should have been submitted to MHCLG to date but none have been produced to the author prior to the submission of this report. These quarterly reports are imperative to, and provide key information for the understanding of the Council’s current position with regard to the LRF contract.

Recommendation: Any information requested by Councillors for consideration by committees must be produced as requested and in a timely manner.

4. The Bid

In accordance with the Officer Scheme of delegation, the Chief Finance Officer should have approved the submission of the Grant bid. This did not happen, although the Director of Place had supported the submission of the bid. Whilst the Monitoring Officer believes that in respect of the LRF this error was remedied by the acceptance of the Bid by the Chief Finance Officer, it is important that this error is not repeated in the future.

Recommendation:

- (i) All future bids for Government money must be made and submitted in accordance with the Constitution,
- (ii) That Council Directors ensure that all bids that are submitted for their portfolio are approved by them for accuracy.

The Government press release in August 2017 stated that the purpose of the LRF is to enable Councils to “release some of their unused or surplus land for housing”. Given that neither Preston Down Road nor Collaton St Mary were allocated sites within the Local Plan (as evidenced by page 117 Appendix 3 CSM and PDR planning statement at 18 July 2019 Council meeting) is not clear why Officers believed it was appropriate to submit a bid for these sites.

Collaton St Mary is deemed to be a Future Growth Area. Both the Local Plan and the Collaton St Mary Masterplan set out development there towards the end of the Local Plan 20 year period, on the basis that it provides a more sustainable community and enhances the character of the village. However the Plan acknowledges both the sewerage system and the A385 are both at, or beyond, capacity and cannot sustain further development in their current state, which need to be addressed prior to any development. Preston Down Road is identified within the Local Plan for potential future housing allocation but is not a currently allocated site. The bid document states in the project summary that there is an intention to build 150 houses here which is contrary to the maximum of 100 shown in the Local Plan.

Request to Officers for clarification: provide the reasoning behind the decision to include these two sites in the bid, including

- I) how the Local Plan and Collaton St Mary Masterplan were considered in the decision to include these sites in the bid, and
- II) Why they were given preference over town centre brownfield sites?

Recommendation: that Officers ensure that the submission of all future bids are in accordance with Council Policies.

It would appear that the Bid document listed both Preston Down Road and Collaton St Mary as allocated sites within the Local Plan. However if the report to Council of 18 July 2019 is correct (Page 117 Appendix 3), the bid document is not correct.

The bid document references 150 houses at Preston Down Road, however the Local Plan appears to limit this to 100.

Request to Officers for clarification : whether the bid document was accurate in these respects?

There was no mention within the bid document that the land at Collaton St Mary and Preston Down Road, whilst owned by Torbay Council were leased to Torbay Coast and Countryside Trust and negotiations had to be carried out to obtain vacant possession. The terms and conditions of the LRF state that the land must be wholly owned by the Council.

Request to Officers for clarification : why was it believed that it was correct to confirm that the land was wholly owned by the Council? What advice was sought in this respect?

5. Funding/Criteria

Land to which the bid relates must be wholly owned by the local authority.

Funding must not be available from any other source.

The works for which funding is sought are deliverable, and within a time frame that will enable the land to be released in time.

Evidence that the proposals can be taken forward at pace.

Timelines agreed within the contract:

Victoria Square – planning application submission October 2018 with the expectation permission would be granted January 2019 and work to commence July 2019.

Preston Down Road – site surveys to be carried out during the summer of 2018 and design and community engagement in the autumn 2018. Planning application January 2019 with permission expected in April 2019. Work to commence autumn 2019.

Collaton St Mary –

surveys (summer 2018)

Back to Back agreement with adjoining landowners

Access Planning applications – autumn 2018

Planning Decision – March 2019

Tender for works – March 2019 – June 2019

Start off site drainage / flood risk works – autumn 2019

Start on site access works – Jan 2020

Fund is specifically for the following:

Victoria Square – IT/Comms equipment relocation and flood risk mitigation

Preston Down Road – Off site highways and drainage works

Collaton St Mary – 350m new sewage pipe, flood risk and drainage upgrade, 2x access points

Torbay Council to act as master builder and master developer with the opportunity to seek developer partners for the house building projects.

6. Land Designations

See comments under the Bid heading at 4 above.

7. Five Year Housing Land Supply

On 12 December 2016 the Planning Minister, Gavin Barwell, issued a written statement on Neighbourhood Plans in which he stated that where the neighbourhood plan allocates sites for housing the requirement on the local authority to demonstrate a 5 year land supply falls away and the requirement is only for a 3 year supply.

The Brixham Peninsula and Torquay Neighbourhood Plans clearly allocate sites for housing. However, Torbay Council's position on the Paignton Neighbourhood Plan is that it does not. The rationale here is unclear as, according to the LRF bid the PNP does allocate sites.

Request to Officers for clarification : which of these two statements does the Council hold to be correct?

The comments in the Officer report about sites being imposed through Government intervention which are locally unpalatable are incomplete. The current Local Plan housing need figures are based upon a balanced delivery of jobs and housing. However, the job figures have not increased despite the expansion in house building.

Giving priority to the disposal of the green field sites is not in accordance with achieving sustainable development because the provision of affordable housing in either of the two green field locations would not be supported by appropriate facilities.

There are high priority brownfield sites across the Bay, including those unequivocally allocated in development plans, which would make an identical contribution to housing delivery but which also face infrastructure issues.

The comments in the Officer report regarding a risk to the 5 year housing land supply are not accurate, on the basis that Preston Down Road was not included in the published figures.

8. Progress on Delivery

a) Victoria Centre (Garfield Road)

According to the timetable all surveys should have been completed, planning permission granted and work started in July this year. It is understood that there is ongoing discussion with the OPE and LGA team to agree an extension to the date.

Request to Officers for clarification:

- (i) explain how the proposals for the site have evolved (if at all) since the submission of the bid,**
- (ii) explain the timetable relating to the progress made in the last 18 months,**
- (iii) Why the planning application has not yet been submitted,**
- (iv) provide all of the relevant correspondence with regard to any variation to the original contract along with the 6 monitoring reports.**

b) Collaton St Mary and c) Preston Down Road

The LRF grant was obtained in order to carry out specific enabling works to unlock these sites. Torbay Council is contracted to carry out the enabling works prior to any development works. However there appears to be some inconsistencies between what is currently being proposed in the officer report and what has been agreed by MHCLG.

Request to Officers for clarification:

- (i) explain how the proposals for these sites have evolved (if at all) since the submission of the bid,**
- (ii) the timetable relating to the progress made in the last 18 months,**

- (iii) the current position in respect of delivery of the works, together with evidence of written agreement with MHCLG for any variation to the original contract.**

9. Risks

The risks will need to be re-evaluated once all of the matters upon which this report seeks clarification are known.

Recommendation : that the risks are further evaluated once all outstanding matters are clarified.

10. Liaison with OPE/LGA

See comments in respect of the monitoring reports under section 3, Governance.

11. Recommendations

- (i) Significant decisions made by Officers, such as the acceptance of the LRG Grant, should have formal Records of Decision, irrespective of whether or not the legal test for their preparation is met.
- (ii) Meetings such as the one where the Mayor and Group Leaders were consulted on the LRF, should be minuted in the future.
- (iii) Any information requested by Councillors for consideration by committees must be produced as requested and in a timely manner.
- (iv) There is a need for clear and transparent reports. All reports must include background information and context to items for which there is a need for a decision by either Cabinet or Full Council.
- (v) All future bids for Government money must be made and submitted in accordance with the Constitution.
- (vi) That Officers ensure that the submission of all future bids are in accordance with Council Policies.
- (vii) That Council Directors ensure that all bids are submitted for their portfolio are checked by them for accuracy.