

		<b>AGENDA ITEM 5</b>
		<b>PSEG/11/16</b>
<b>Committee:</b>	<b>Place Services and Economic Growth Scrutiny Committee</b>	
<b>Date:</b>	<b>21 April 2016</b>	
<b>CALL IN OF DECISION: FP/317/11/15 – BASILDON TOWN CENTRE COLLEGE ENABLING WORKS – GRANT AGREEMENT</b>		
<b>Enquiries to:</b>	<b>Christine Sharland, Scrutiny Officer</b> 0245 430450 <b>Christine.sharland@essex.gov.uk</b>	

On 29 March 2016 Councillor Andy Erskine called in decision FP/317/11/15 – Basildon Town Centre College Enabling Works – Grant Agreement on behalf of Councillors Ellis and Smith. A copy of his Notification of Call-In form is attached at Appendix A.

An informal meeting was held on 5 April 2016 and a note of that meeting is attached at Appendix B. The outcome of that meeting was that Councillors Erskine, Ellis and Smith decided that they wanted this call in to be considered by the full Committee based upon two out of the three reasons set out in the original notification of call in. The following reasons now form the basis for the call in being brought to the Committee:

1. The present site of the College is within the 725 home Westley Green development. The Westley Green development is taking place in three sections. The College will have to make way for Phase 2.

This grant of £750,000 is to cover design and surveys, new market procurement fees and legal costs.

Therefore this grant is to financially help the developers (Redrow Homes) build the Westley Green development. No other private developers will be handed taxpayers' money to pay off present/former land owners aforementioned relocation costs.

2. There are a number of colleges in the south Essex area which can easily be reached by local public transport (rail and bus). This new College will have no car park for the students. With the college being a short walk away from rail and bus connections, this new campus will be able to draw students from outside the Borough of Basildon, which will act as an unfair advantage.

Therefore we believe that if Essex County Council agrees to this £750,000 enabling grant will fall foul of EU rules on state aid.

A copy of the Cabinet Member's decision is attached at Appendix C setting out background in this matter. Please note that full details of the decision may be viewed via the following link to the County Council's website.

[http://cmis.essexcc.gov.uk/essexcmis5/Decisions/tabid/78/ctl/ViewCMIS\\_DecisionDetails/mid/422/Id/6580/Default.aspx](http://cmis.essexcc.gov.uk/essexcmis5/Decisions/tabid/78/ctl/ViewCMIS_DecisionDetails/mid/422/Id/6580/Default.aspx)

In line with the published Call In Procedure, the format for consideration of this call in will be as follows:

- The councillor responsible for the call in will be given the opportunity to make the case for calling in the decision including an allocation of time to any other contributors whom they wish to call – up to 15 minutes.
- Any local member associated with the call in will then be invited to speak, if they have indicated their wish to do so – up to 10 minutes.
- Other interested parties will then provide evidence to the Committee – up to 10 minutes
- The Cabinet Member will then be given the opportunity to answer the case and seek to justify the decision taken, including giving time to any other contributors whom they wish to call – up to 15 minutes.
- There will then be an opportunity for other members of the Committee to ask questions in open debate.
- The Scrutiny Committee shall then consider whether:
  - (i) to refer the decision back to the person who made it; or
  - (ii) to refer the matter to the full Council to decide whether to refer the decision back to the person who made it; or
  - (iii) to accept the decision be implemented.

- A member of the Committee must move a motion to do one of the above actions, and another member must second that motion. The Committee will the vote upon that motion.

**Action required by the Committee:**

**To consider the reasons given for the call in of decision FP/317/11/15 –  
Basildon Town Centre College Enabling Works – Grant Agreement**

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## Appendix A

### Notification of Call-in

<b>Decision title and reference number</b> <b>FP/317/11/15 – Basildon Town Centre College Enabling Works – Grant Agreement</b>	
<b>Cabinet Member responsible</b> Cllr Bentley, Cabinet Member for Economic Growth Waste And Recycling	<b>Date decision published</b> 23 March 2016
<b>Last day of call in period</b> 29 March 2016	<b>Last day of 10-day period to resolve the call-in</b>

## Reasons for Making the Call in

We wish to call in this decision as it breaches three separate and distinct points in regards to EU rules on state aid (see [www.gov.uk/guidance/state-aid](http://www.gov.uk/guidance/state-aid)). Below is a breakdown and explanation of these three points. This proposed grant is to enable the college to move from its present site on the Nether Mayne into Basildon Town Centre. This is where we believe Essex County Council will be breaching EU rules on state aid if this enabling grant is awarded:

1. The present site of the College is within the 725 home Westley Green development. The Westley Green development is taking place in three sections. The College will have to make way for Phase 2.

This grant of £750,000 is to cover design and surveys, new market procurement fees and legal costs.

Therefore this grant is to financially help the developers (Redrow Homes) build the Westley Green development. No other private developers will be handed taxpayers' money to pay off present/former land owners aforementioned relocation costs.

2. Unfair competition to the other college in Basildon Town Centre. There is a smaller further education campus within Basildon Town Centre. This enabling grant will allow the relocated College to entice students and make the existing college campus in Basildon's town centre financially unviable.

3. There are a number of colleges in the south Essex area which can easily be reached by local public transport (rail and bus). This new College will have no car park for the students. With the college being a short walk away from rail and bus connections, this new campus will be able to draw students from outside the Borough of Basildon, which will act as an unfair advantage.

Therefore we believe that if Essex County Council agrees to this £750,000 enabling grant will fall foul of EU rules on state aid.

<b>Signed:</b>	<b>Dated:</b>
Called in by Cllr Erskine on behalf of Cllr. Kerry Smith (Westley Heights Division) and Cllr Mark Ellis (Laindon Park & Fryerns Division)	29 March 2016

## **Appendix B**

# **CALL IN – BASILDON TOWN CENTRE ENABLING WORKS – GRANT AGREEMENT**

**Informal meeting held on Tuesday, 05 April 2016 at 14:00 in Committee Room 2**

### **Present**

Cllr Kevin Bentley, Deputy Leader of the Council and Cabinet Member for Economic Growth, Waste and Recycling; Cllr Andy Erskine, Tendring Rural East; Cllr Kerry Smith, Basildon Westley Heights; Cllr Mark Ellis, Laindon Park and Fryerns; Cllr Simon Walsh, Chairman of Place Services and Economic Growth Scrutiny Committee (PSEGSC), Cllr Andy Wood, Vice-Chairman of PSEGSC.

### **Officers:**

Andrew Cook, Director for Operations: Environment and Economy; Daniel Taylor, Senior Policy and Strategy Advisor; Alex Polak, Scrutiny and Corporate Governance Manager; Paul Turner, Deputy Monitoring Officer.

### **Introduction and comments from Cllr Kerry Smith and Cllr Mark Ellis**

At Cllr Walsh's invitation, Cllr Erskine introduced Cllr Smith and Cllr Ellis, on whose behalf he had called in decision FP/317/11/15 on 29 March 2016. Cllr Erskine added only that he supported the call in.

Cllr Smith and Cllr Ellis each outlined their reasons for the call in. With regard to the three points of the call-in notice, Cllr Smith made the following points:

1. In normal commercial settings the housing developer would make a financial arrangement with the existing land owner to cover their costs, leaving them with a monetary gain. However, the College was paying for some of the costs of the market's relocation. The County Council allocating money to help the market relocate was providing an unfair advantage to Redrow Homes. The College should have made sure their costs were covered in full by Redrow Homes when they purchased the College's site. The County Council could set a precedent for other developments across Essex to expect the County Council to step in with financial aid.
2. Cllr Smith disputed the claim in the Council's documents that it will generate another £1m for the Basildon economy, on the basis that the nearest shops and entertainment area is Basildon's town centre. (This part of the call in was however later withdrawn by Cllr Smith and Cllr Ellis).

3. A new College building on the site of the old market would have an unfair advantage over other colleges in the area, in part due to excellent public transport links provided by the nearby bus station. Commercial development at Eastgate and by Basildon Council (creating housing above worn-out shopping units) will entice students to travel to Basildon with the assistance of their parents.

Cllr Ellis spoke in support of the development itself and of Cllr Smith's points. He added that since money was being provided to enable one part of the development to take place, and there was developer involvement in other parts of the scheme, he felt it was right to ensure the developer wasn't benefitting financially.

In discussion, the following further points were raised by Cllr Smith and Cllr Ellis:

- The documents submitted to Basildon with the planning application said that this project would be self-financing.
- Unless the College moves, there would be no phase 2 of the development scheme. The concern was that this sets a precedent for other developers in future.
- The Treaty of Maastricht limited the funding that member states could give for education.
- The EU website said that when a project was about to start it should be submitted to be checked with regard to state aid concerns. Had this been done?
- There was a lot of local interest. Residents wanted to know why the County Council is 'digging into its pockets'.

Cllr Smith concluded by saying that he felt it was possible that this grant would interfere with the open market in the building industry, distort competition within the further education sector and be in breach the 1957 Treaty of Rome.

### **Response by Cllr Kevin Bentley and County Council officers**

Cllr Bentley had consulted Paul Turner, Deputy Monitoring Officer, who was also present to give a legal opinion. The following points were made by Cllr Bentley:

- This was a grant to Basildon Borough Council. Cllr Bentley was of the view that no developer was benefitting. The wider taxpayer was benefitting from services brought in by the development. The agreement between ECC and Basildon was on terms which require Basildon to ensure that there was no state aid. Therefore there was categorically no state aid issue at all.
- The County Council was supporting the College's move by facilitating the move of the market from the College's proposed new site. This was in line with the County Council's desired skills development and economic

outcomes for the area. In this case the investment was about attracting the right skills to the area and reducing the incidence of young people not in education or training (NEET).

- All further education colleges by their nature compete with each other for students and this was appropriate. Cllr Bentley was not aware of any opposition from other colleges; no representation had been received from them.
- Any point in the planning application about the project being self-funding was for Basildon Council to comment on as the planning application and approval were not County Council matters. It remained that there was a funding gap; Basildon Council were also putting money in.

In discussion, the following further points were added by Cllr Bentley:

- The Council invested in a number of projects across the County on a case-by-case basis, such as the Harlow Investment Zone, in line with the Council's priorities. The County Council wasn't setting a new precedent.
- Cllr Bentley offered to come and speak to any local residents about this issue if the local members wanted to set up a meeting for this purpose.

Cllr Bentley said in conclusion that he hadn't treated the subject or the call in lightly. The state aid matter could be knocked on the head easily based on corroborating legal advice from the County Council's Deputy Monitoring Officer and from Essex Legal Services on separate occasions. He had addressed the competition issue. He felt the project would add greater prosperity to Basildon.

Paul Turner, Deputy Monitoring Officer

Paul Turner, Deputy Monitoring Officer, was invited to give his legal advice on the position and made the following points:

- It was very clear that there was no possible unlawful state aid proposed.
- Unlawful state aid occurs when:
  - a) The resources of the state – which would include public money – are used
  - b) to give an economic operator an advantage on a selective basis (ie the benefit is not open to everyone); and
  - c) the advantage distorts or may distort competition; and
  - d) the aid is likely to affect trade between Member States of the EU; and
  - e) the aid is not authorised by the EU commission.

In his view, these points were not met with respect to the College or the Developer.

- There had been a competitive process which complied with procurement law to select the developer. This ensured that Redrow Homes were paying the best market price achievable by the vendors for the College's site.



They were simply buying land on the open market in competition with other developers. It was impossible to say that there was any state aid issue here.

- According to the EU Commission, the public education system was considered as a non-economic activity and the college were not therefore an economic operator and therefore condition (b) was not met and there could be no state aid (otherwise whenever the Council expanded any school or college with Council money it could constitute state aid). Colleges compete for pupils but this was not the same thing as economic competition because most of the College's funding comes from the Government [the Higher Education Funding Council for England]. There was no state aid issue here and the Maastricht Treaty was not a relevant concern.
- Furthermore clause 27 of the draft agreement included in the decision papers ensured that liability for any illegal state aid would be the responsibility of the recipient (ie Basildon Borough Council) and therefore this was not a County Council matter even if it were an issue. That said, if the County Council thought that the recipient of the money were going to do anything that constituted illegal state aid it would have affected the viability of the project, so the County Council had still done the work in advance to ensure this was not going to be a relevant concern.
- The EU website explains that matters can be submitted to the EU Commission for checking if there is felt to be a risk of a state aid issue. There was no risk here so it was not necessary for the County Council to submit anything on this matter. It would not be usual to submit a project for state aid clearance unless there was any doubt.

Andrew Cook, Director for Operations: Environment and Economy

Andrew Cook, Director for Operations: Environment and Economy made the following points:

- The developer had paid market value for the land. The College intend to use that money to relocate and build new premises. The existing use of the College's new site needs to be moved. That was what this grant was for. The developer was several steps removed from the funds granted to Basildon Borough Council.
- The County Council provided grants all over the County where there were gaps in funding which would otherwise prevent outcomes which were aligned to the Council's priorities. The Council did its homework in each case and consulted with its lawyers, carrying out the necessary due diligence. This decision had by this point been checked twice; in both instances the Council had come to the conclusion that there was no state aid issue. The Council had got two separate sources of advice: the Deputy Monitoring Officer and Essex Legal Services. Both sources corroborated. As a third safety net, the grant agreement provided in black and white that

the County Council had passed all state aid issues to Basildon Borough Council. The Council could not be expected to do any more than this.

## **Conclusion**

Cllr Walsh summarised the position as had been presented in the meeting:

- The purpose of the grant was not to benefit the College or developer but to relocate the market in Basildon to St Martin's Square. This was not apparent in the call in document but was apparent in the decision documents.
- There was no state aid issue; and in any event, the risk sat with Basildon Borough Council rather than the County Council.
- Due diligence had been taken in this process and those present had been offered reassurance.
- If the call-in were withdrawn on the basis of this evidence, a document of the meeting would still be taken to the next public meeting of the Place Services and Economic Growth Scrutiny Committee so that the public could see the due consideration given by all parties to the matter.

## **Outcome**

After a brief adjournment to confer with Cllr Smith and Cllr Ellis, Cllr Erskine indicated that he would not withdraw the call in and would like to proceed to a public meeting of the Place Services and Economic Growth Scrutiny Committee. However the second of the three points on the call in documents would no longer be pursued.

All present agreed to aim to hold this meeting at 10:30am on 21 April 2016.

ENDS