

OVERVIEW AND SCRUTINY BOARD

A meeting of the Overview and Scrutiny Board was held on 11 May 2018.

PRESENT: Councillors J Sharrocks (Chair), S Biswas (As Substitute), T Higgins, L Lewis, L McGloin, P Purvis, M Storey, M Walters and J A Walker (As Substitute)

PRESENT BY INVITATION: Councillor J Mohan
Councillor J Rathmell
Executive Member for Finance and Governance - Councillor N J Walker

OFFICERS: S Bonner, J Bromiley, S Dorchell, G Field, S Reynolds

APOLOGIES FOR ABSENCE Councillors E Dryden, Councillor T Mawston, Councillor J McGee, Councillor J Young, Councillor J Blyth.

DECLARATIONS OF INTERESTS

Councillor McGloin declared a non-pecuniary interest as a Trustee of the Southlands Centre.

1 CALL-IN - SOUTHLANDS CENTRE FUTURE OPTIONS

The Chair made a statement informing members of the public the meeting was being recorded and to remind them of appropriate behaviour during the meeting.

The Chair provided an outline of how the Call In would proceed; the Councillor proposing the Call In (Cllr Jon Rathmell) would be afforded 15 minutes to do so and this would include any statements from witnesses. At the end of the 15 minute presentation the Executive Member would have the opportunity to question the proposing Councillor for 5 minutes, this could include input from officers from the relevant service area.

The Executive Member/ service area would then have 15 minutes to provide the reasons for the decision after which the proposing Councillor would have the opportunity to question the Executive Members/ service area for 5 minutes.

The Overview and Scrutiny Board (OSB) would then be given the opportunity to ask the proposing Councillor and Executive Member/ service area questions. After this the proposer and the Executive Member would be given 5 minutes each to sum up. OSB would then vote on whether or not the decision should be sent back to the Executive.

The Chair confirmed that the subject of the Call In was the decision made by the Executive Sub-Committee for property on the 20th April 2018.

The Chair invited Cllr Rathmell to provide the case to OSB. Cllr Rathmell made the following comments as part of the presentation:

- Cllr Rathmell wanted to make it clear this issue had previously been discussed by OSB in April 2017 after a previous decision by the Executive Sub Committee for Property in relation to the future of the Southlands Centre.
- The Chair of OSB had, at that time, directed officers discuss possible rent increases with businesses currently operating out of the Southlands Centre.
- Officers were instructed to explore viable uses for the Southlands Centre that were consistent with the Council's strategic priorities and to produce detailed options and report these back to Executive in September 2017.
- OSB endorsed the decision of the Executive Sub Committee for Property on 22nd March 2017, which was in part to explore viable options for the future of the site.
- The decision taken on 22 March 2017 had not been back to the Executive to be varied or changed and there was no evidence of delegated powers that would allow officers to ignore the orders provided by Councillors, yet the decision had been ignored.
- The Executive Sub Committee for Property heard, that by September 2018, a further

- report would be submitted that would set out the options for the future of the site. This was embarrassing as it was ordered to be undertaken in March 2017 and endorsed by OSB in April 2017, however officers had chosen to ignore this and sought permission to deviate from those decisions.
- That the report agreed in April 2018, which was the same as that considered in March 2017, was not questioned as to why the orders issued to officers had not been carried out.
 - The Executive's ability to scrutinise the report had not produced questions concerning why the same issues had been brought back from 12 months prior.
 - Why, in a Councillor led Council, did officers circumvent Councillors without the delegated authority to do so.
 - Not only were the orders issued by Executive Sub Committee for Property and OSB ignored but officers, and the Executive Member for Finance and Governance, failed to advise both committees that the basis of the orders issued in March and April 2017 were fundamentally flawed. This was an omission from the report presented to the Executive in April 2018.
 - On 16 October 2017 the Corporate Affairs and Audit Committee received a report from the Tees Valley Audit and Assurance Service (TVAAS). That report identified processes, adopted by the Executive Sub Committee for Property relating to the Southlands Centre, that contained failings.
 - With regard to the previous decision made, no scoring matrix was completed therefore value for money could not be assessed.

The Executive Member for Finance and Governance stated that Cllr Rathmell was referring to previous reports. Cllr Rathmell responded that references to previous reports were pertinent to the current decision.

Cllr Rathmell continued with his presentation:

- For the avoidance of doubt, the integrity of the orders issued by the Executive Sub Committee for Property and OSB had been ignored since March and April 2017.
- To follow the orders the officers would need to correct a fundamentally flawed process as identified by TVAAS.
- When the report of the 20 April 2018 was presented to the committee this vital information was left out.
- Officers and the Executive Member for Finance and Governance had failed to seek permission for deviation from the orders given and failed to adhere to them.
- Had the orders been adhered to, officers would have carried out a disposal business case and got a current market valuation. The valuation eventually derived was in breach of the Council's own valuation policy.
- Council assets had to be valued every five years, not as when officers chose.
- Officers would have to inform the Executive Sub Committee for Property they were trying to dispose of something without knowing its market value. This was a high risk strategy for the tax payers of the Town.
- Officers would have needed to ensure that any scoring matrix was correct, however it was never used.
- When considering the report presented to the Executive Sub-Committee for Property it was important to note that at paragraph 32 "The recommendations in this report do not involve disposal of the site, and therefore an asset disposal business case is not included. However, in accordance with the Council's asset disposal policy, an asset disposal business case is in preparation and will be brought forward in the event that a future report recommends disposal." This was at odds with the TVASS report which refers to requiring the asset disposal business case.
- The decision of the 27 March 2017 taken by the Executive Sub Committee for Property had not changed and the latest decision is a continuation, in which officers had failed to comply with the orders of both the Executive Sub Committee for Property and OSB.
- Changes to process cannot be changed without the approval of the Council and its committees especially as the Council was Member led. This was especially the case if processes were simply an inconvenience to officers.
- As the current decision was a continuation of the decision of March 2017 it must be

- taken back the drawing board to correct all of the governance and process failings.
- The report of 20 April 2018 was very concerning especially regards the information contained within paragraph 32. This was because since April 2017 it had been stated that the only consideration by the Executive Sub Committee for Property had been to enter into negotiations with businesses and community groups to see if they could produce a sustainable offer. This statement was made at local community groups, and the Executive Sub Committee for Property, but was not true.
- The omission from the 20 April 2018 report was the detailed information contained within the report of the 6 September 2017 that went to the Executive Sub Committee for Property. The report of the 6 September stated the Council had received an unsolicited interest in the Southlands Centre from a third party. They were interested in developing the existing facility, especially in respect of the community offer, and was prepared to fund some improvements. This offer was likely to be informed of capital receipt for the freehold of the site.
- In paragraph 23 the report stated a further report in November would set out the final offer.
- Therefore in September, and before considering any offer for the freehold, regardless of which asset disposal policy claimed to be adopted, the Council was duty bound to obtain a market valuation and hold the Southlands Centre on its asset register as an asset for sale. However it did not do this. This was still the case and did not comply with CIPFA guidance.
- Despite clear instructions from the Executive Sub Committee for Property in March 2017 and OSB on 20 April 2017, the officer that authored the report still engaged in negotiations and discussed the disposal of the freehold without any basic process and governance guidance.
- It was even more alarming that since September 2017 the Executive Sub Committee for Property had not asked about the progress of the unsolicited bid, despite no changes to its membership. Therefore the Executive Sub Committee for Property should have been aware there was more information to be reported to them and should have sought to challenge the report of officers.

The Chair informed Cllr Rathmell that the 15 minutes allotted to his presentation had expired.

The Chair invited the Executive Member for Finance and Governance to pose questions to Cllr Rathmell.

The Executive Member for Finance and Governance asked Cllr Rathmell if there was any evidence regarding officers entering into negotiations about the freehold.

Cllr Rathmell responded that the evidence was contained within the report of the 6 September 2017 and quoted paragraph 21, "Further discussions need to take place to tease out the future uses for the site, the level of investment, the sustainability of the offer and the level of security given to the existing users of the building and the likely capital offer."

The Executive Member for Finance and Governance asked Cllr Rathmell how he knew if Members of the Executive Sub Committee for Property did not discuss issues with officers between meetings. Cllr Rathmell stated he would expect any informal meetings taking place between formal meetings to be documented and logged because one of the concerns raised by the TVAAS report was there was no adequate paper trail in these instances.

The Executive Member for Finance and Governance asked if Cllr Rathmell believed no engagement with stakeholders had taken place. Cllr Rathmell clarified that insufficient engagement had taken place.

The Executive Member for Finance and Governance asked Cllr Rathmell what relevance the information presented, and references to previous reports, had to the decision made by the Executive Sub Committee for Property in April 2018. Cllr Rathmell responded that the report of 2018 is a continuation of the report of 2017 which was flawed.

The Executive Member for Finance and Governance asked if the Call In, therefore, was about

the decision made in 2017 and not 2018. Cllr Rathmell clarified that the Call In was relevant to the decision of 2018 as critical information was omitted from it and incompetency cannot be overlooked.

The Executive Member for Finance and Governance queried what report Cllr Rathmell was reading from and if it was in the public domain. Cllr Rathmell clarified the report was the TVASS report and it was in the public domain.

The Chair invited the Executive Member for Finance and Governance to provide their case to the Board.

The Executive Member for Finance and Governance made the following comments as part of their presentation:

- The majority of Cllr Rathmell's presentation referred to previous decisions and many of the points raised were also considered by the previous Call In on the issue of the Southlands Centre.
- The report cited by Cllr Rathmell was private and confidential.

Cllr Rathmell stated the report was not marked as such and a copy was provided to the Chair.

- There was a delay in reaching the decision in April, and any possible decision on disposal, as officers were actively engaged in trying to find a viable solution for the Southlands Centre.
- During that process there were 21 different contacts made with stakeholders and had officer paid lip-service to this, the process would not have taken as long.
- There were update reports provided to the Executive Sub Committee for Property. If the officers were guilty of anything it would be that they tried too hard and took longer than expected to complete their work.
- The decision taken in March 2017 was to find a viable future for the site and the subsequent Call In instructed that discussion take place with business owners. This took place following the Call In meeting.
- There was no governance failing as the officers undertook the orders of both the Executive Sub Committee for Property and OSB.
- The Strategic Director for Finance and Governance commented that, regarding the issue of valuation, in normal circumstances there would be a valuation of assets every five years however on this occasion this did not happen because the future of the asset was uncertain. This valuation had since been completed and incorporated into the Council's asset register. There had not been a valuation for market purposes as there had been no decision to dispose. If there was a decision to dispose the valuation would need to reflect the proposed usage. As there was, currently, no agreed usage there could be no valuation undertaken.
- The Director for Environment and Commercial Services commented that, regarding the consultation process, there were numerous meetings with stakeholders. The main objective for the process was to examine if the deficit at that time could be reduced. This was undertaken in two parts; the first with the businesses operating from the Southlands Centre and the second with the leisure element of the Southlands Centre. After a final profit/ cost analysis had been undertaken the Council proposed an offer as did the businesses and that was reflected in the final report. In October of 2017 the proposal was sent to all licensees of which 86% said they would consider it, whereas 14% said they could not. There was a high degree of engagement with the business and the leisure elements at the centre.
- The Executive Member for Finance and Governance stated that with regard to allegations of non-compliance with the CIPFA guidelines it was very important the Council follow those guidelines and had the Southlands Centre been labelled as an asset for sale this would have not complied with the CIFA guidelines.
- The processes cited by Cllr Rathmell in the TVASS report referred to when the Council was seeking expressions of interests and bidders.
- There was a delay in the process, however this was because the Council was undertaking consultation with the stakeholders at the Southlands Centre.

- The April 2018 report did not follow the disposal policy because no decision had been made to dispose of the site. If the decision was made to dispose of the site the asset disposal policy would be followed.
- The consultation process was complicated as the building could not be separated or split and as such the two parts together had to be viable.
- A lot of work had been done under difficult circumstances by officers. Councillors had not been involved in the process because it was not required.

The Chair invited Cllr Rathmell to pose questions to the Executive Member for Finance and Governance.

Cllr Rathmell asked the Executive Member for Finance and Governance when officers stated they were teasing out an offer from a third party bidder this should have triggered the initiation of the asset disposal policy.

The Executive Member for Finance and Governance responded that if a third party was making a vague expression of interest this did not count as an asset disposal. The example cited in the April 2017 report was a very early expression of interest and a deal was not made.

The Strategic Director for Finance and Governance stated that the early expression of interest was followed up but did not come to anything. This was the reason the asset disposal business case did not begin. However, had this become a formal offer that could be recommended to Councillors the asset disposal business case would have been completed.

Cllr Rathmell asked the Strategic Director for Finance and Governance if he felt it important to report to the Council's most senior elected Councillors on the process and what was happening with the third party bidder. The Strategic Director for Finance and Governance responded that as the expression of interest did not come to anything there was no need to report this to Councillors.

Cllr Rathmell asked if there was a paper trail with regards to the initial expression of interest. The Strategic Director for Finance and Governance responded there was no formal meeting and that it was unrealistic to expect there would be.

Cllr Rathmell asked the Strategic Director for Finance and Governance if, as the asset had only been valued in January 2018, it was important to keep the asset register up to date.

The Chair requested that questions be directed through the Chair rather than direct to the officer.

Cllr Rathmell asked if the Strategic Director for Finance and Governance felt it appropriate not applying the Council's valuation policy to the Southlands Centre and waiting 6 years before doing so. Cllr Rathmell also asked if it was essential the Council had a true reflection of values on the asset register in respect of the statement of accounts. The Strategic Director for Finance and Governance responded by saying that, as previously stated, valuations were undertaken every 5 years under normal circumstances. The uncertainty around the Southlands prevented this, however the valuation had since taken place and was in the 2017/18 accounts.

The Executive Member for Finance and Governance stated the methods of undertaking valuations was not something the Council decided and was instead required to adhere to the international financial reporting standards. If the decision was made to dispose of an asset the value of replacing the venue from its current purpose would be relevant and the Council would seek to follow the asset disposal procedure.

Cllr Rathmell queried if the comments provided by the Executive Member for Finance and Governance would be counted in proceedings as they were made without a question being asked. The Chair confirmed that they would.

The Chair invited OSB to ask questions of both Cllr Rathmell and/ or the Executive Member

for Finance and Governance.

Cllr Storey asked the Executive Member for Finance and Governance what the original purpose of the Southlands Centre was. The Executive Member for Finance and Governance responded that it was set up as a business start-up and leisure centre.

Cllr Storey asked how long the majority of business had been in operation. The Director for Environment and Commercial Services responded that the original intention of the Southlands Centre, in a similar way to other enterprise centres, was to act as a business start up with the intention that those businesses would then move out of the centre when established. However, this was not what had happened at the Southlands Centre and the average length of time of businesses being based at the Southlands Centre would be sent to Cllr Storey directly.

Cllr Walker asked if Middlesbrough tax payers were supporting the businesses and if so how much was that support costing the tax payer. The Executive Member for Finance and Governance stated that while it was difficult to split the costs of the centre due to shared utilities and so on, the centre, as a whole, was being supported by the revenue budget at a cost of £210,000 for the current financial year but this did not include any of the overheads. The report of April 2018 contained a projection of costs over the next 10 years.

Cllr McGloin asked how many businesses were in operation in the centre. The Director for Environment and Commercial Services responded that the centre was operating at 39% of capacity.

Cllr Biswas asked that if a feasibility study was carried out and an alternative proposal offered by the occupants of the centre. The Executive Member for Finance and Governance commented that Cllr Biswas's query sounded like a community asset transfer which had happened to other Council buildings, such as Langdon Square in Coulby Newham. However, this proved not to be a feasible option for the businesses in the Southlands Centre due to its size and complexity. The Strategic Director for Finance and Governance stated a community asset model was not endorsed by the businesses in the Southlands Centre.

The Executive Member for Finance and Governance stated that it was hoped one of the other organisations where a solution such as community asset transfer has been successful would have come forward to support the businesses in that solution however this did not happen.

Cllr Biswas clarified that he did not mean asset transfer, but instead was there a proposal for the businesses within the Southlands Centre to buy the centre. It was confirmed that this was not the case.

Cllr Higgins commented that the Council had agreed to provide a new community centre for the area and that it seemed the businesses were more concerned with the potential closure of the centre than other sections. Cllr Higgins asked what proportion of the businesses within the centre were based in Middlesbrough. The Executive Member for Finance and Governance responded saying concerns were felt by both the business and community users. Some businesses were based in the town and some not, in a similar way to community users where some groups were based in the East Middlesbrough area where others were from outside the Tees Valley. The importance of the current site was instances where it served the local community, as those outside the local area just needed a venue. A key question was looking to provide for the current generation or future generations.

Cllr Walters asked the Strategic Director for Finance and Governance at what point an informal expression of interest becomes a formal expression of interest that needed to be addressed through the mechanisms already discussed.

The Strategic Director for Finance and Governance responded saying that the bid would need to be supported by a business case that could then be assessed, including follow up meetings to judge the quality of the bid. With regard to the initial approach discussed earlier in the meeting it was apparent the bidder could not guarantee the long term future of the Southlands Centre. The interested party consequently withdrew.

Cllr Lewis asked about what percentage of the Centre's occupancy levels related to community groups. The Director for Environment and Commercial Services responded by stating the Southlands Centre was split into 2/3rds dedicated to businesses with 1/3rd dedicated to leisure including community groups.

The Chair invited the Executive Member for Finance and Governance to sum up.

The Executive Member for Finance and Governance made the following comments as part of the summing up:

- OSB were not tasked with deciding if they agreed with the decision of the Executive Sub Committee for Property, but instead if the processes had been followed correctly.
- It also had to question if the Council failed to adhere to its asset disposal policy and provide an up to date valuation for the site and so on.
- The decision to dispose of the site had not been taken which is the reason the asset disposal policy has not been adhered to. This was made clear in the report to the Executive Sub Committee for Property.
- The other reason for the Call In was due to insufficient engagement with stakeholders. However the officers outlined how this was not the case and that sufficient engagement had taken place.
- While there was a delay in making the final decision for the Southlands Centre this was due to the work carried out by officers sufficiently engaging with stakeholders.
- Much of the presentation provided by Cllr Rathmell made reference to previous reports that were not relevant to the current Call In and repeated much of what was discussed at a previous Call In.

The Chair invited Cllr Rathmell to sum up.

Cllr Rathmell made the following comments as part of the summing up:

- In response to the Executive Member for Finance and Governance's assertion that many of the points raised were covered in a previous Call In, the points raised were proved, by internal audit, to have had fundamental failings from both the Executive and the Council.
- It was known a third party bidder approached the Council in September 2017 and the Council's asset disposal policy did not specify at which point informal approaches require formal proceedings.
- The Council should not take officers and the Executive's advice that the bid was not sustainable as there was no up to date valuation for the site, so did not know what to score the bid against.
- There had been continued procedural failings by the Council despite these being identified by audit.
- With regard to the cost to the tax payer supporting the Southlands Centre, this was due to the centre operating at 39% occupancy levels. However, prior to the Council driving businesses out this was closer to 90% occupancy.
- Officers had advised that it would take eight years to get occupancy levels back to 90% at a rate of two businesses per year. However this was worrying considering the Town Centre development deal worth £70m to the Tax Payer over 35 years.

The Chair advised Cllr Rathmell that his last statement was not relevant to current proceedings and to move on with the summing up.

- Growing occupancy levels by two businesses per year was an underachievement. Especially considering businesses had approached the centre manager wanting to move into units. However this was not possible because the Council were using the units as storage.

The Chair advised Cllr Rathmell new material was being introduced rather than summing up.

- Cllr Rathmell stated consideration should be given to what was a reasonable subsidy. The Council paid £500,000 annually to subsidise MIMA, whereas the proposed subsidy of £650,000 for the Southlands Centre would be over 10 years.
- Southlands had a footfall of 55,000 people and full every weekend.
- The centre provides health and wellbeing and while being told of a new community facility this was pie-in-the-sky and the report of 2018 did not provide the Executive with sufficient information to confirm it could be delivered.
- The Executive Member for Finance and Governance stated at a public meeting the new facility was something the Mayor said to throw in the report.

The Executive Member for Finance and Governance denied using the phrase "throw in" at the public meeting.

Cllr Mohan confirmed they had taken a minute of the meeting in question.

The Chair confirmed the Call In notes should reflect the disagreement of what was said at the public meeting, but that it should also be resolved outside the Call In. The Chair invited the Executive Member for Finance and Governance and Cllr Mohan to speak to clarify the situation.

The Executive Member for Finance and Governance again denied using the words "throw in" and confirmed the Mayor directed the report should be amended so the new facility was not to be dependent on the disposal of the Southlands Centre.

The Chair confirmed that after Cllr Mohan had spoken the summing up section of the Call In would be closed as the allowed time had expired.

Cllr Biswas raised a point of order and queried if summing up should include new information as much of what was being discussed was confusing for the panel. The Chair agreed with the point of order but confirmed the Executive Member for Finance and Governance and Cllr Mohan had been afforded the opportunity to speak in this instance to provide clarification.

Cllr Mohan quoted from the minutes of the public meeting, "Yes, that's right and I admit it hasn't been mentioned previously that's because the Mayor said last week to include a community facility in the report. It doesn't matter about the cost we'll find the money".

The Chair afforded Cllr Rathmell 2 minutes to sum up.

Cllr Rathmell made the following comments as part of the summing up:

- OSB had heard how previous orders had been ignored as had the Executive's orders.
- The report of April 2018 was a continuation of a process and orders given by both committees in 2017 and had been disregarded and ignored.
- Officers did not feel it appropriate to adopt an asset disposal policy when discussing a bid with a third party bidder.
- Officers did not feel it appropriate to get a valuation of the site they were discussing the value of.
- The report of 20 April was even more abstract when discussing the community facility but the Executive were being asked to consider the provision of a community facility with no money set aside in the accounts and no statement of where the funding would come from.
- The report read like an electioneering brochure trying to retain the votes for the community users.
- Unfortunately, as with other projects around the town, the Council would probably not deliver on it.
- The report should be sent back until the officers and the Executive understand the processes they should be following, what decisions had been made previously and what the auditor's requirements were.
- It made uncomfortable reading when qualifications were made to the Council's

accounts for failing to achieve value for money and OSB needed to stop tolerating it.

The Chair invited OSB to vote on sending the decision back to the Executive.

ORDERED: After considering all of the information presented at the meeting, the decision of the Overview and Scrutiny Board was not to refer the decision back to the Executive.