

OVERVIEW AND SCRUTINY BOARD

Date: Monday 30th September, 2024 Time: 4.30 pm Venue: Mandela Room (Municipal Buildings)
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AGENDA

1. Apologies for Absence
2. Declarations of Interest
3. Call In - Disposal of Land at Nunthorpe Grange 3 - 68
4. Any other urgent items which, in the opinion of the Chair, may be considered.

Charlotte Benjamin
Director of Legal and Governance Services

Town Hall
Middlesbrough
Friday 20 September 2024

MEMBERSHIP

Councillors I Blades (Chair), J Kabuye (Vice-Chair), J Banks, D Branson, E Clynch, D Coupe, J Ewan, B Hubbard, L Lewis, M McClintock, I Morrish, M Saunders, M Smiles and G Wilson

Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Scott Bonner/ Joanne Dixon, 01642 729708/ 01642 729713, scott_bonner@middlesbrough.gov.uk/ joanne_dixon@middlesbrough.gov.uk

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MIDDLESBROUGH COUNCIL	
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Report of:	The Monitoring Officer
Relevant Executive Member:	Executive Member for Regeneration
Submitted to:	Overview and Scrutiny Board
Date:	30 September 2024
Title:	Call In - The Disposal of Land at Nunthorpe Grange
Report for:	Decision
Status:	Public
Council Plan priority:	Delivering Best Value
Key decision:	Not applicable
Why:	Not applicable
Subject to call in?:	Not applicable
Why:	Not applicable

Proposed decision(s)
That the Overview and Scrutiny Board considers the decision of the Executive Sub Committee for Property and determines whether it should be referred back to the decision-making body for reconsideration.

Executive summary
<p>A meeting of the Executive Sub Committee for Property was held on 4 September 2024. At that meeting, consideration was given to a report of the Executive Member for Regeneration in respect of the land disposal at Nunthorpe Grange.</p> <p>That decision has been subject to Call In by the requisite number of Councillors and is submitted to OSB in accordance with the Council's Call In procedures.</p>

1. Purpose

- 1.1 In accordance with Middlesbrough Council's call in Procedure, to allow Members of the Overview and Scrutiny Board (OSB) the opportunity to consider a decision made by the Executive.

2. Recommendations

- 2.1 That the Overview and Scrutiny Board considers the decision of the Executive Sub Committee for Property and determines whether it should be referred back to the decision-making body for reconsideration.

3. Rationale for the recommended decision(s)

- 3.1 OSB is required to consider valid Call In applications in accordance with legal and constitutional requirements.

4. Background and relevant information

EXECUTIVE DECISION

- 4.1 A meeting of the Executive Sub Committee for Property was held on 4 September 2024. At that meeting, consideration was given to a report of the Executive Member for Regeneration in respect of the Land Disposal at Nunthorpe Grange.
- 4.2 A copy of the above report, which outlined the background to the decision, is attached at **Appendix 1**. The report was also accompanied by an Exempt Appendix (4) which contained financial information relating to the proposed bid and the name of the successful bidder. However, as the information remains private and exempt, it is not part of the public report and will not be considered or referred to as part of the OSB process. As such that Appendix is not included as part of this report
- 4.3 The report included the following recommendations:-
- a) the private treaty sale of land at Nunthorpe Grange to Housing Developer (Ref A – Exempt Appendix 4) for the development of housing for the sum of (Ref B – Exempt Appendix 4); and,
 - b) the private treaty sale of land at Nunthorpe Grange to Care Home Provider (Ref C – Exempt Appendix 4) for the development of an elderly persons care home for the sum of (Ref D – Exempt Appendix 4).
- 4.4 The decision was supported by the following analysis:

Disposal of land at Nunthorpe Grange meets the established objectives of Policy H29 of the Housing Local Plan, which allocates land at Nunthorpe Grange Farm for the development of high quality, mixed, medium to higher density housing. The development will make a significant contribution to the prescribed national housing targets for Middlesbrough. In addition, securing

a significant capital receipt in the 2024/25 financial year would assist in achieving the required level of receipts to support the delivery of the main capital programme and the Council's Transformation portfolio.

Executive considered a report on the 23rd December 2023 and approved the marketing and disposal of a 14.03ha site at Nunthorpe Grange for the development of new homes.

The subject parcel of land identified for disposal formed part of a much larger, now defunct, agricultural landholding situated at Nunthorpe Grange Farm – close to both Poole Roundabout on the junction of Guisborough Road [A1043] with Stokesley Road, and the site of the newly constructed Nunthorpe Medical Centre building.

Policy H29 of the Housing Local Plan allocates land at Nunthorpe Grange Farm for the development of high quality, mixed, medium to higher density housing'. In addition to the subject site held by the Council at Guisborough Road, the LPF housing allocation includes two parcels of privately owned land, together with a further parcel of land held by the Council earmarked for mixed community purposes.

The parcel of land was farmed for a number of years under an agricultural tenancy, prior to the Council acquiring the subject lease in April 2018. Letting of the land continued via a Farm Business Tenancy in the interim, thus affording the Council opportunity to continue drawing revenue income from the asset until the formal decision was made by the Council to bring the same forward for disposal.

The Asset Disposal Business Case (ADBC) that was appended to the December 23 report stated that the site was valued at (Ref E – Exempt Appendix 4) pending agreement of any allowable scheme development, infrastructure & abnormal cost deductions identified following the completion of relevant site planning, engineering, diligence & investigations.

The report set out the next steps that would be undertaken to “de-risk” the site prior to marketing in order to maximise the potential capital receipt, which included:

- a) updating the adopted Masterplan and Design Code;
- b) undertaking due diligence; and,
- c) securing an outline planning consent.

Since the original Design Code was adopted in 2018, a GP Surgery has been developed on the site, and in July 2023 Executive approved the disposal of a parcel of land for the development of a place of religious worship. The updated Design Code will therefore reflect the development that has been undertaken to date and that proposed for the future. A consultant has been appointed to undertake the review.

CALL IN PROCEDURE

- 4.5 The power to call in a decision of a local authority executive body was introduced under the Local Government Act 2000 (as amended). The process is intended to hold decision makers to account and ensure that executive powers are discharged properly. Call In ensures that a decision can be reviewed and reconsidered before it is implemented.
- 4.6 The procedure allows Members the opportunity to call in decisions for review by the Overview and Scrutiny Board as follows:
- A decision made by The Executive;
 - A decision made by an individual Member of the Executive;
 - A decision made by a committee or sub-committee of the Executive;
 - A key decision made by an officer with delegated authority from the Executive; or
 - A decision made under joint arrangements.
- 4.7 The process is initiated by five Members of the Council requesting a decision to be reviewed within five working days following publication of the decision and submitting a form that outlines the reason(s) for the Call In.
- 4.8 A Call In form, signed by five Members supporting the request, was received by Democratic Services on 11 September 2024. A copy of the Submitted Call In form can be found at **Appendix 2**. A copy of the Call In Protocol can be found at **Appendix 3**.
- 4.9 The five Members supporting Cllr McClintock's Call In are:
- M McClintock (Proposer),
 - T Grainge
 - T Livingston,
 - M Smiles
 - J Young.
- 4.10 The decision to be called in is as follows:
- a) the private treaty sale of land at Nunthorpe Grange to Housing Developer for the development of housing.
 - b) the private treaty sale of land at Nunthorpe Grange to Care Home Provider for the development of an elderly persons care home.
- 4.11 The reasons for the call in, as determined as being valid by the Council's Monitoring Officer, are detailed in **Appendix 4** but are summarised as follows:
- In respect of ground 5.2(ii), "(That there was inadequate/inaccurate evidence on which to base a decision and that not all relevant matters were fully taken into account)";

While the majority of issues were not considered to have been made out, the Monitoring Officer accepts at paragraph 13.5 that more detail could have been provided in respect of alternative options open to the Council. Particularly the call-in concerns regarding the perceived negative impact of completing of the sale of land prior to the refresh of the masterplan which may require further explanation and exploration by the Overview and Scrutiny Board.

Accordingly, the Monitoring Officer considers that this element of the call-in request only is valid and should be considered by the Overview and Scrutiny Board.

Therefore, the Call-In is partially accepted and the Overview and Scrutiny Board are invited to consider the decision, and particularly: whether sufficient alternatives were provided to the decision makers in relation to the proposed unconditional sale of land by private treaty to a developer.

- 4.12 To assist the Overview and Scrutiny Board in the Call In process the Executive Member for Regeneration and appropriate Council officers will be present at the meeting. The Executive Members and officers will explain the reasons and rationale behind the Executive report and the decision that was made. The Member (or their substitute) who initiated the Call In will also be present to explain their views and concerns in respect of the decision.
- 4.13 A copy of the procedure to be followed at the meeting is attached at **Appendix 5**.
- 4.14 Having considered the submitted information, the Overview and Scrutiny Board has the following courses of action available:
- To refer the decision back to the Executive/Executive Sub-Committee/Executive Member/Officer for reconsideration. In that case, OSB should set out in writing the nature of its concerns about the decisions.
 - To determine that it is satisfied with the decision-making process that was followed and the decision that was taken by the Executive/Executive Sub-Committee/Executive Member/Officer. In that event, no further action would be necessary, and the Executive decision could be implemented immediately.
 - Request that the decision be deferred (adjourned) until the Overview and Scrutiny Board has received and considered any additional information/evidence required to make a decision with regard to the Call-In from other witnesses not present at the committee. (The Committee need to clearly identify the relevant issues that need to be given further consideration and whether there are any specific time constraints or other implications affecting the proposed implementation of the decision.)
 - Take no action in relation to the Called-In decision but consider whether issues arising from the Call-In need to be added to the Work Programme of any existing or new Overview and Scrutiny Standing Panel/OSB. (The

Committee need to clearly identify the issues to be added to the Work Programme.)

- If, but only if (having taking the advice of the Monitoring Officer and/or the Chief Finance Officer), the Committee determines that the decision is wholly or partly outside the Budget and Policy Framework refer the matter, with any recommendations, to the Council after following the procedure in Rule 8 of the Budget and Policy Framework Procedure Rules. Only in this case is there a continuing bar on implementing the decision.

- 4.15 In the event the decision is referred back to the Executive Sub Committee for Property, a further meeting of the Executive would be arranged within ten further working days. The Sub Committee would then make a final decision in the light of any recommendations made by OSB.
- 4.16 Where the recommendations of OSB are not accepted in full by the relevant Executive body, the body should notify the OSB of this and give reasons for not accepting the recommendations.

5. Other potential alternative(s) and why these have not been recommended

- 5.1 No other options are put forward as part of the report.

6. Impact(s) of the recommended decision(s)

Not Applicable

6.1 *Financial (including procurement and Social Value)*

7. Not Applicable

7.1 *Legal*

Not Applicable

7.2 *Risk*

Not Applicable

7.3 *Human Rights, Public Sector Equality Duty and Community Cohesion*

Not Applicable

7.4 *Climate Change / Environmental*

Not Applicable

7.5 *Children and Young People Cared for by the Authority and Care Leavers*

Not Applicable

7.6 *Data Protection*

Not Applicable

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
If OSB decide to refer the matter back to the Executive; a meeting of Executive will be convened within 10 working days of OSB's referral.	Scott Bonner	10 October 2024

Appendices

1	Executive Report – Disposal of Land at Nunthorpe Grange
2	Submitted Call In Form
3	Call In Protocol
4	Deputy Monitoring Officer's Decision
5	Call In Procedure

Background papers

Body	Report title	Date

Contact: Scott Bonner**Email:** scott_bonner@middlesbrough.gov.uk

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MIDDLESBROUGH COUNCIL



Report of: Director of Regeneration and Interim Director of Finance

Relevant Executive Member: Executive Member for Regeneration and Executive Member for Finance

Submitted to: Executive Sub-Committee for Property

Date: 4 September 2024

Title: The Disposal of Land at Nunthorpe Grange

Report for: Decision

Status: Public

Strategic priority: Physical environment

Key decision: Yes

Why: Decision(s) will incur expenditure or savings above £250,000

Subject to call in?: Yes

Why: Non-urgent Report, and place on Executive Forward Work Programme.

Proposed decision(s)

That the Executive approves:

- a) the private treaty sale of land at Nunthorpe Grange to Housing Developer **(Ref A – Exempt Appendix 4)** for the development of housing for the sum of **(Ref B – Exempt Appendix 4)**; and,
- b) the private treaty sale of land at Nunthorpe Grange to Care Home Provider **(Ref C – Exempt Appendix 4)** for the development of an elderly persons care home for the sum of **(Ref D – Exempt Appendix 4)**.

Executive summary

The Executive considered a report on the 23rd December 2023 that gained approval for the marketing and disposal of the Nunthorpe Grange housing site.

The report also set out the next steps that would be undertaken to “de-risk” the site prior to marketing in order to maximise the potential capital receipt, which included undertaking due diligence and securing an outline planning consent. This would lead to the generation of a capital receipt, estimated to be paid between 2025 and 2029.

Since the approval of the Executive report in December 23, the Council has been approached by two parties who expressed an interest in acquiring land at Nunthorpe Grange for the development of housing and for the provision of an elderly persons care home.

The respective developers have subsequently submitted formal private treaty offers to acquire land in advance of the Council “de-risking” the site. This would lead to a significant capital receipt being wholly-paid during the current financial year.

This report will seek Executive approval for the private treaty sale of land at Nunthorpe Grange for the development of housing and an elderly persons care home.

This report contains exempt information under paragraph 3 of Part 1 of Schedule 12 A of the Local Government Act 1972 the detail of which are contained within Appendix 4 to the report being the purchasers names, purchase prices and valuations, the disclosure of which could compromise completion of the sales, ability to obtain best value and restrict future transactions and negotiations.

1. Purpose

- 1.1. To seek Executive approval for the private treaty sale of land at Nunthorpe Grange for the development of housing and an elderly persons care home.

2. Recommendations

- 2.1 It is recommended that the Executive approves:
 - a) the private treaty sale of land at Nunthorpe Grange to Housing Developer (**Ref A – Exempt Appendix 4**) for the development of housing for the sum of (**Ref B – Exempt Appendix 4**); and,
 - b) the private treaty sale of land at Nunthorpe Grange to Care Home Provider (**Ref C – Exempt Appendix 4**) for the development of an elderly persons care home for the sum of (**Ref D – Exempt Appendix 4**).

3 Rationale for the recommended decision(s)

- 3.1 Disposal of land at Nunthorpe Grange meets the established objectives of Policy H29 of the Housing Local Plan, which allocates land at Nunthorpe Grange Farm for the development of high quality, mixed, medium to higher density housing. The development will make a significant contribution to the prescribed national housing targets for Middlesbrough. In addition, securing a significant capital receipt in the 2024/25 financial year would assist in achieving the required level of receipts to support the delivery of the main capital programme and the Council's Transformation portfolio.

4. Background and relevant information

- 4.1 Executive considered a report on the 23rd December 2023 and approved the marketing and disposal of a 14.03ha site at Nunthorpe Grange for the development of new homes.
- 4.2 The subject parcel of land identified for disposal formed part of a much larger, now defunct, agricultural landholding situated at Nunthorpe Grange Farm – close to both Poole Roundabout on the junction of Guisborough Road [A1043] with Stokesley Road, and the site of the newly constructed Nunthorpe Medical Centre building.
- 4.3 Policy H29 of the Housing Local Plan allocates land at Nunthorpe Grange Farm for the development of high quality, mixed, medium to higher density housing'. In addition to the subject site held by the Council at Guisborough Road, the LPF housing allocation includes two parcels of privately owned land, together with a further parcel of land held by the Council earmarked for mixed community purposes.
- 4.4 The parcel of land was farmed for a number of years under an agricultural tenancy, prior to the Council acquiring the subject lease in April 2018. Letting of the land continued via a Farm Business Tenancy in the interim, thus affording the Council opportunity to continue drawing revenue income from the asset until the formal decision was made by the Council to bring the same forward for disposal.
- 4.5 The Asset Disposal Business Case (ADBC) that was appended to the December 23 report stated that the site was valued at **(Ref E – Exempt Appendix 4)** pending agreement of any allowable scheme development, infrastructure & abnormal cost deductions identified following the completion of relevant site planning, engineering, diligence & investigations.
- 4.6 The report set out the next steps that would be undertaken to “de-risk” the site prior to marketing in order to maximise the potential capital receipt, which included:
- a) updating the adopted Masterplan and Design Code;
 - b) undertaking due diligence; and,
 - c) securing an outline planning consent.
- 4.7 Since the original Design Code was adopted in 2018, a GP Surgery has been developed on the site, and in July 2023 Executive approved the disposal of a parcel of land for the development of a place of religious worship. The updated Design Code will therefore

reflect the development that has been undertaken to date and that proposed for the future. A consultant has been appointed to undertake the review.

Private Treaty Offers

- 4.8 The traditional method for disposing of a site such as this is to place the property on the open market, with a reasonable marketing period being allowed, and then accepting the most advantageous (usually the highest) offer that is received. The definition of ‘advantageous’ can include not just the amount, but also the conditions that the bidder has identified, the likely timescales to completion and the extent to which the bidder is likely to be able to proceed to completion.
- 4.9 A conditional contract is then entered into, to allow the bidder to resolve issues such as planning requirements and abnormal development costs. These issues may lead to a revision of the consideration prior to completion of the sale. This marketing procedure is generally considered to maximise the capital receipt to the vendor and is also the most transparent as wide exposure to the market enables all interested parties to bring forward an offer.
- 4.10 However, it should also be noted that there is a subjective aspect to this issue in that an individual landowner such as the Council will have their own requirements/considerations in determining the terms of sale that they wish to agree to, according to whether they wish to either maximise the overall capital receipt over the time available, or prioritise the receipt of sums in the shortest possible time period.
- 4.11 From a legal perspective, the traditional position assumes that the transaction would be subject to a staged exchange of contracts and legal completion involving the payment of a price equivalent 10% deposit sum with the balance payment of 90% subsequently triggered by the grant of a satisfactory planning permission, confirmation/agreement of all development related abnormal cost deductions and other scheme risk items prior to contract completion and transfer of the site. All of which could take a period of 18 months to two years to procure, facilitate and close off; in contractual terms. Phased payments based on build-out rates can be received over numerous years. The payment profile of the receipt for Nunthorpe Grange would have potentially been as follows:

Marketed site – Optimistic Payment Profile

Deposit	Design and Planning Permission	Phased Payment 1	Phased Payment 2	Phased Payment 3	Total
2024/2025	2025/2026	2026/2027	2027/2028	2028/2029	
(Ref F: Exempt Appendix 4)					
10%	0%	30%	30%	30%	100%

Unredacted table available at (Ref F: Exempt Appendix 4)

- 4.12 Since the approval of the Executive report in December 23, the Council has been approached by two parties who expressed an interest in acquiring land at Nunthorpe Grange for the development of housing and for the provision of an elderly persons care home.
- 4.13 The respective developers have subsequently submitted formal private treaty offers to acquire land in advance of the Council “de-risking” the site.

Care Home

- 4.14 The Council has received an unsolicited enquiry from Care Home Provider (**Ref C – Exempt Appendix 4**) that is prepared to approach the matter of the site acquisition predicated on the payment of full and benchmarked open market value. The benefit to the Council of arranging disposal via such a private treaty method being the opportunity to expedite the sale of the asset without the need to schedule a formal tender marketing exercise, but with the agreed sale price having been favourably benchmarked against comparable values from recent known site disposal transactions.
- 4.15 The 0.775ha site is held on the Council’s asset register at a figure of (**Ref G – Exempt Appendix 4**), following its valuation by an independent third-party surveyor, assuming that an open market sale was to be delivered via tender going forward. The open market valuation provided also assumes that such a sale would be predicated on the site’s use for care purposes, with bidders approaching its acquisition upon a conditional contract basis with the transaction to acquire the site being subject to the confirmation and agreement of any allowable scheme development, infrastructure and abnormal cost deductions identified following the completion of relevant site planning, engineering, diligence and investigations. An ADBC is attached as Appendix 1.
- 4.16 There are various implications in terms of value that arise from seeking to bring forward the date of sale completion and from the Council’s point of view, if a decision is taken to sell a given asset, then the period of time from that decision being made to the receipt being realised can be seen in accounting terms as representing a cost to it.
- 4.17 Discussions with the prospective buyer have resulted in a sum of (**Ref D – Exempt Appendix 4**) plus fees being agreed by the parties following detailed negotiations.
- 4.18 From a valuation perspective, the offer made by the buyer for the 0.775ha site is considered to represent best consideration for a development site offered on a conditional basis for the purposes of care use – either matching or exceeding the Market Value known to have been paid for comparable parcels of land and also representing a price 30% higher than that currently listed by the Council on its asset register.
- 4.19 By using private treaty methodology to expedite the sale in such a way, the Council is in a position to generate and bank the payment of a significant benchmarked capital receipt during the forthcoming financial year 2025/26.

- 4.20 The offer is subject to the agreement of any allowable scheme development, infrastructure and abnormal cost deductions identified following the completion of relevant site planning, engineering, diligence and investigations limited to a combined capped sum of **(Ref H – Exempt Appendix 4)**.
- 4.21 The offer is also conditional upon the granting of a satisfactory planning consent for the development of the care home facility.
- 4.22 The proposal will contribute towards improving Middlesbrough's overall offer, ensuring there is a sufficient supply of high-quality location options to prevent older residents moving outside of the town whilst also attracting new economically active residents from neighbouring areas.
- 4.23 As this disposal negates the requirement to conduct site de-risking planning and investigations, this would save the Council approximately £50,000 (economies would have arisen from joint work with the residential land parcel).

Housing

- 4.24 The Council received an unsolicited enquiry from a residential developer that was prepared to approach the matter of site acquisition on an unconditional contract basis with the full **(Ref B – Exempt Appendix 4)** balance paid on the transfer of the land. The benefit to the Council of arranging disposal in such a way being the opportunity to expedite the sale of the asset and potentially deliver payment of the associated capital receipt during October 2024.
- 4.25 The offer was for a reduced area of 12.45ha that excluded a part of the wider site identified for the development of an elderly persons' care home and land retained to provide an access corridor.
- 4.26 The site is held on the Council's asset register at a figure of **(Ref I – Exempt Appendix 4)** following its valuation by an independent third-party surveyor, assuming that an open market sale was to be delivered via tender going forward. The open market valuation provided also assumes that such a sale would be predicated on the site's use for residential purposes, with bidders approaching its acquisition upon a conditional contract basis with the transaction to acquire the site being subject to the confirmation & agreement of any allowable scheme development, infrastructure & abnormal cost deductions identified following the completion of relevant site planning, engineering, diligence & investigations. The ADBC is attached as Appendix 2.
- 4.27 Negotiations with the prospective buyer have resulted in a sum of **(Ref B – Exempt Appendix 4)** being agreed by the parties following stepped negotiations over a three-month period – the final price agreement representing a significant increase (as against an opening offer **(Ref J – Exempt Appendix 4)** on the initial offer presented by the buyer at the outset of the negotiation).

- 4.28 As per the Executive report of December 2023, Council officers were in the process of preparing marketing particulars, de-risking surveys and other work to bring the site forward for disposal. The site has not yet been marketed. That process has been paused pending Executive consideration of the relative merits, lack of conditionality and timing, of this proposal. Should the Executive not be minded to take the offer set out, officers would revert to the marketed disposal route.
- 4.29 There are various implications in terms of value that arise from seeking to bring forward the date of sale completion and from the Council's point of view, if a decision is taken to sell a given asset, then the period of time from that decision being made to the receipt being realised can be seen in accounting terms as representing a cost to it.
- 4.30 To consider the comparable price impact of facilitating earlier payment of the capital receipt versus a marketing and assessment process, a discounted cash flow (DCF) can be applied to the valuation of **(Ref I – Exempt Appendix 4)**, by applying a prudent discount rate of 3.5% and assuming a 10% deposit, followed by a year of no payments – to reflect design, planning and site investigation; and, a further three years of phased payment (30% per year) to reflect an ambitious build-out rate of C. 50 plus units per year. This arrives at a net present value of **(Ref K – Exempt Appendix 4)**, as set out in para 4.38.
- 4.31 The payment profile of the receipt for Nunthorpe Grange would have potentially been as follows:

Marketed site – Optimistic Payment Profile

Deposit	Design and Planning Permission	Phased Payment 1	Phased Payment 2	Phased Payment 3	Total
2024/2025	2025/2026	2026/2027	2027/2028	2028/2029	
(Ref F: Exempt Appendix 4)					
10%	0%	30%	30%	30%	100%

Unredacted table available at **(Ref F: Exempt Appendix 4)**

- 4.32 In addition to this the Council would not be required to outlay the de-risking costs associated with site due diligence and outline planning fees, which were estimated to be £200,000.
- 4.33 Therefore, from a valuation perspective, the offer made by the buyer of **(Ref B: Exempt Appendix 4)** plus fees, for the 12.45Ha [30.76 Acres] site is considered to represent best consideration for a development site offered on an unconditional basis for the purposes of residential use – either matching, or exceeding, the Market Value known to have been paid for comparable parcels of land offered on a closed sale basis within the local environs. In addition to which, the net figure of **(Ref B: Exempt Appendix 4)** stated is

protected going forward with all associated development and finance risks related to the buyer’s proposal being borne by the buyer under the terms of the contract, without further financial recourse to the Council.

- 4.34 The view from Align is that this represents the best likely offer, and this is comparable in terms of net present value.
- 4.35 The offer offsets expense of £200,000 in site de-risking and preparation costs, as well as any unforeseen delays.
- 4.36 This route avoids any risks associated with a protracted negotiation period and the incremental chipping away at and agreed price, following detailed site surveys and any arising abnormal costs.
- 4.37 This offer avoids Council costs and liabilities associated with the provision of any site access and infrastructure – previously estimated at including the provision of a roundabout associated with the site estimated to cost C.£1m.
- 4.38 The Net Present Value of the marketed approach is set out below.

Assumptions:

- a) 3.5% annual discount rate
- b) 10% deposit paid in 2024/2025.
- c) 2025/2026 assumes no income as design and planning phases
- d) Build-out rate of 50+ units per year – from 2026/2027
- e) Equal phased payments from 2026 to 2029

Discount rate	3.50%					
Year	2024/2025	2025/2026	2026/2027	2027/2028	2028/2029	Totals
Cumulative discount rate	1	0.965	0.931225	0.898632125	0.867180001	
Payment Profile (before discount)	(Ref L: Exempt Appendix 4)					
	10%	0%	30%	30%	30%	100%
Net Present Value	(Ref L: Exempt Appendix 4)					

- 4.39 The net present value of **(Ref I: Exempt Appendix 4)** made over the payment schedule set out above, is equivalent to a real-terms amount of **(Ref K: Exempt Appendix 4)**, today.
- 4.40 Applying the negated outlay of £200,000 for site de-risking and associated work would give a comparable net receipt of **(Ref M: Exempt Appendix 4)**, which shows the net present value of the current offer marginally exceeds the Align valuation, which is considered to be at the upper-end of their concluded estimate.

Unredacted table available at **(Ref N: Exempt Appendix 4)**

- 4.41 By using an unconditional contract mechanism in order to expedite this sale, the Council is in a position to generate and bank the payment of a significant capital receipt during the current financial year 2024/25 with the potential timeframe for the freehold disposal & legal transfer of the subject site being brought forward by a period of at least 18 months.
- 4.42 It should be noted that whilst the developer's offer is not conditional upon securing full planning approval, the Council is required to provide mitigation to offset the development impact of both Nutrient Neutrality and Biodiversity Net Gain at nil cost to the buyer. The Council would have been obliged to provide this mitigation irrespective of the disposal route, so it does not constitute an additional cost.

Financial rationale for accepting private treaty offers.

- 4.43 The Council needs to achieve a programme of asset sales to support the delivery of its Medium Term Financial Plan (MTFP) whilst ensuring that it realises the best value upon disposal of each asset. Securing capital receipts earlier than anticipated within the MTFP has the potential benefit of reducing the Council's need to borrow to finance its capital programme and therefore potentially reducing the revenue costs of borrowing. Furthermore, once inflation is factored in through the NPV calculations, the value to the Council of receiving **(Ref B: Exempt Appendix 4)** for the housing site now, exceeds the alternative of receiving the potential **(Ref I: Exempt Appendix 4)** from market sale via stage payments in two to three years' time.
- 4.44 An alternative proposal of putting the site on the market 'sold as seen' and requesting competitive unconditional offers has been considered, but the limited potential for increasing the receipt through a competitive process is balanced out by the timing of the receipt being delayed until 2025/26. It is not felt that a competitive process based on unconditional offers would increase the receipt by enough to justify that course of action.
- 4.45 In addition to the capital receipt that will be generated by the disposal, the sale of the site will contribute towards the Medium-Term Financial Plan (MTFP) via the income achieved through growth in the Council Tax base once houses are constructed and occupied; as well as an annual business rates yield on the care home facility. It is anticipated that the generation of Council Tax will be brought forward approximately 18 months if the private treaty bid is accepted.

- 4.46 The developer's proposal is for the development of approximately 160 units on the 12.45ha site. It is envisaged that the dwellings will primarily be a mix of Council Tax Band D to F. Assuming an average of Band E, this would generate £0.463m, per year upon completion of the development.
- 4.47 The December 23 report set out that the Council may be required to incur expenditure to provide a new site access. The private treaty offer does not require the Council to commit this expenditure as the developer will provide the access at their own expense. Furthermore, an early transfer of the land via this route would avoid up to two years of site management and maintenance costs.

Potential Ongoing Costs

- 4.48 The scheme is likely to require Sustainable Urban Drainage system (SUDs) to attenuate the land to reduce risks from flood events. Consultation is underway on the Governments Flood and Water Management Act.
- 4.49 Under Schedule 3 of the new proposals, local authorities will be required to adopt and maintain SUDs for new developments. This cost will be fully understood when the Government either issues further guidance and/or legislates the proposals within the consultation on the Flood and Water Management Act. If this arises, this will be a revenue liability for the Council in terms of maintenance. Although this will be offset by growth in Council Tax income, it must be reflected in services budgets / plans.

5. Other potential alternative(s) and why these have not been recommended

Don't sell the land

- 5.1 This would result in the Council foregoing the benefit of the capital receipt which is required to support the delivery of the MTFP. In addition, there would be no opportunity, on this site to grow Council Tax revenue and business rates revenue over the longer term. Failure to dispose of the land would be contrary to the Local Plan (2014). The overall integrity of the Local Plan depends upon the land supply identified within it being made available; the Council would be open to significant challenge from the housebuilding industry if it were seen to constrain land supply.
- 5.2 Furthermore, this approach would result in abortive costs to date of **(Ref O: Exempt Appendix 4)** for the Council resulting from the surrender of the farming tenancy, and assuming no onward disposal.

Sell the land after undertaking due diligence and achieving outline planning approval

- 5.3 The Council's proven financial approach to housing site disposals has been to maximising capital receipts by 'de-risking' sites. This involves undertaking site investigation works, producing design guidance or masterplans and gaining outline planning approval to competitively market sites. As outlined above, this approach may generate a higher capital receipt at a stage in the future, but there are benefits associated with receiving a guaranteed receipt earlier than anticipated.

- 5.4 It remains the case that undertaking measures to de-risk sites, bringing sites to sale and the competitive marketing of sites, is the preferred route for the disposal of sites and demonstrating best value in terms of the capital receipts achieved. However, the payment schedule, timing and relative value of this proposal is closely reflective of the independent valuation for the site and is, therefore, worthy of Executive consideration.

Enter a Joint Venture

- 5.5 Independent advice and professional analysis consistently draws the conclusion that the proposal to collaborate with external partners on the disposal and delivery of housing site does not present Best Value for Money for the Council.

6. Impact(s) of the recommended decision(s)

Financial (including procurement and Social Value)

- 6.1 The sale of the land for the proposed care home will generate a minimum receipt of **(Ref P: Exempt Appendix 4)** within this financial year. Additionally, the Council will receive business rates upon the completion of the building.
- 6.2 For the residential component, the upfront payment of **(Ref B: Exempt Appendix 4)** would be paid in the current financial year.

This approach negates the requirement for the Council to finance £200,000 on site de-risking costs. The table below compares the value of the receipt received within this financial year opposed to the assumed phased receipt using net present value methodology. Unredacted table available at **(Ref Q: Exempt Appendix 4)**

- 6.3 This approach avoids protracted negotiations and the erosion of the headline offer through application of abnormal costs.
- 6.4 This approach dispenses with any Council costs and liability in terms of preparatory highway infrastructure and access arrangements.
- 6.5 By using an unconditional contract mechanism in order to expedite this sale, the Council is in a position to generate and bank the payment of a significant capital receipt during the current financial year.
- 6.6 Council Tax income funds a significant proportion of the Council's revenue spending and the recent growth in housing numbers across the town has ultimately enabled key services to be protected.. Assuming an average Council Tax rating of Band E, the site is expected to generate £0.463m from the development of 160 units per year upon completion of the development. There is currently **(Ref R: Exempt Appendix 4)** of Council Tax growth built each financial year within the MTFP and this development will contribute to achieving that target.
- 6.7 Should MHCLG announce the continuation of New Homes Bonus Scheme, the 160 dwellings will contribute towards the net addition to the housing stock that is required in order to qualify for new homes grant.

- 6.8 The Council would receive a minimum net total capital receipt of **(Ref S: Exempt Appendix 4)** (which assumes that 100% of the capped deductions are being drawn down) from the disposal of both sites. This would enable the Council to utilise the capital receipts as per the approved MTFP for the following purposes:
- a) to fund investment in projects that will either deliver ongoing revenue savings or deliver transformation in public service delivery through cost and/or demand reduction in accordance with Government regulations governing the Flexible Use of Capital Receipts;
 - b) to repay the Council's debt and reduce the annual costs of repaying principal and/or interest on such debt; and,
 - c) to invest in infrastructure through the capital programme.
- 6.9 It is recognised that development of the scale proposed for the site will result in impacts on local infrastructure. In order to enable permission to be granted for any future planning application it is important that the developer provides mitigation to address these impacts through a S106 Agreement that accompanies any planning approval.
- 6.10 It is not possible at this stage to identify the exact nature of the infrastructure requirements as these will be determined via the planning application process and will only be identified through the proper assessment of the application including consultation with infrastructure providers and the community. This assessment will identify the cost (at current values) and timing for delivery of the infrastructure and the contribution required from development of the site.

Legal

- 6.11 The land would be disposed of freehold in accordance with standing financial orders and the established asset disposal protocol.
- 6.12 The Council will follow the relevant legal processes when disposing of sites, the nature of which will depend on the presence of any existing designations (such as allotments or public open space).
- 6.13 The process of disposing of sites requires significant input from Legal Services and Procurement, as the process is inherently contractual in nature and the Council needs to achieve Best Consideration in respect of any asset disposal.
- 6.14 The Council's governance processes will be observed accordingly throughout the disposal process.

Risk

- 6.15 The project will contribute towards the following strategic aims and objectives:
- a) Place - Securing improvements in Middlesbrough's housing, infrastructure and attractiveness, improving the town's reputation, creating opportunities for local people and improving our finances.

- b) People - Working with communities and other public services in Middlesbrough to improve the lives of local people.
- 6.16 The generation of the significant capital receipt through the sale of land at Nunthorpe Grange would contribute towards reducing the overall risk to the Council's ability to set a balanced budget (SR-01).
- 6.17 The following high-level risks identified in the Strategic and Directorate Risk Registers, will also be reduced as a consequence of the sale of land at Nunthorpe Grange:
- a) O1-045 - If the Housing Programme does not meet the projected targets, then this can have a negative impact on the assumptions within the MTFP.
 - b) O8-059 - If incorrect assumptions are made in the MTFP this will result in a funding gap requiring further savings to be made.
 - c) O1-029 - Insufficient Council Tax Band D+ properties are built to enable Middlesbrough to retain its economically active population resulting in further population decline and impact upon the MTFP.
- 6.15 The development of greenfield land is often contentious and there is a strong and active anti-development movement in Middlesbrough.

Human Rights, Public Sector Equality Duty and Community Cohesion

- 6.16 The Impact Assessment, attached as Appendix 3, has concluded that the decisions would not have any disproportionately negative impacts on protected groups.

Climate Change / Environmental

- 6.17 As part of the Council's drive to achieve net carbon and in line with One Planet Living, developers will be encouraged to implement energy efficiency measures in line with building regulations, and to reuse and source local materials and labour to reduce transportation impacts.

Children and Young People Cared for by the Authority and Care Leavers

- 6.18 The Impact Assessment demonstrated that this development presents no impact on children and young people cared for by the Authority and care leavers.

Data Protection / GDPR

- 6.19 The proposed decision does not involve the collation and use of personal data.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Completion of the legal sale of land at Nunthorpe Grange to the identified housing developer.	David Velemir	31 st October 2024
Completion of the legal sale of land at Nunthorpe Grange to the identified care home developer.	David Velemir	31 st March 2026

Appendices

1	Asset Disposal Business Case – Care Home site
2	Asset Disposal Business Case – Housing site
3	Impact Assessment
4	Exempt Appendix 4 – Exempt from Publication

Background papers

Body	Report title	Date
Executive	The Disposal of Land at Nunthorpe Grange for Housing	20 th December 2023

APPENDIX 1

Asset Disposal Business Case

Name of Asset:	Nunthorpe EPCH - Land Adjacent Stokesley Road, Nunthorpe, Middlesbrough TS7 0NB
Asset Register Number:	12062/003
Current Use:	Agricultural Land
Valuation at Current Use (Asset Register):	(Ref G: Exempt Appendix 4)
Reason for Disposal:	<p>Housing Policy H29 of the Local Plan Framework allocates land at Nunthorpe Grange Farm for the development of high quality, mixed, medium to higher density housing’.</p> <p>The LPF housing allocation includes 2 parcels of privately owned land, together with a further parcel of land held by the Council for mixed community purposes.</p> <p>Development of the subject site, measuring 1.91 Acres [7,746.81 Sqm] for care purposes, will contribute towards improving Middlesbrough's overall offer, ensuring there is a sufficient supply of high quality location options to prevent older residents moving outside of the town whilst also attracting new economically active residents from neighbouring areas.</p> <p>As well as generating payment of a significant capital receipt, it is hoped that the proposed development will increase the vibrancy of the town, supporting overall economic growth and stemming out migration.</p>
Latest Valuation (Proposed Disposal):	(Ref D: Exempt Appendix 4) – pending agreement of any allowable scheme development, infrastructure & abnormal cost deductions identified following the completion of relevant site planning, engineering, diligence & investigations.

Asset Disposal Stream (Please Select):

Generate Capital Receipt	(1)
Stimulate Economic Activity	(3)
Support Communities	(2)

In the event of more than one stream being relevant please rank in order of importance; (1), (2), (3)

Officer requesting Disposal (Responsible Service Manager):

Name:	Peter Brewer
Position:	Housing Growth Project Officer

Could the asset be disposed of for an alternative use that may give a higher capital receipt to the Council?

(To be completed by Valuation and Estates): (Tick)

Yes		No	✓
-----	--	----	---

If yes please outline potential use:

N/A

Estimated Value at Alternative Use:	£ N/A
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Key factors to be considered when assessing potential disposals:

1.	Capital receipt generated
2.	Suitability of development in line with the site masterplan
3.	Quality of development being proposed
4.	Provision of recurring income [Business Rates & Council Tax] in perpetuity

Any additional financial factors to be considered other than immediate capital receipt:

<p>Disposal as proposed brings forward the development of land measuring @ 1.91 Acres [7,746.81 Sqm] at Guisborough Road, Nunthorpe for care purposes.</p> <p>The land was farmed for a number of years under an agricultural tenancy, prior to the Council acquiring the subject lease in April 2018.</p> <p>Letting of the land has continued via a Farm Business Tenancy, thus affording the Council opportunity to continue drawing revenue income from the asset until the same is capable of being taken forward for disposal.</p> <p>Disposal of the site proposed will generate a significant capital receipt for the Council and help deliver improved care provision within the locality.</p> <p>The proposed transaction to dispose of the asset to Care Home Provider (Ref C: Exempt Appendix 4) will enable the delivery of a sustainable and viable development scheme, capable of bringing this parcel of land into far more beneficial use whilst also stimulating economic activity in this specific micro-location.</p>
--

Asset Not Needed by the Council - Approved to proceed:

Head of Asset Management:	(Yes) Tick	No (Tick)	Date:
	✓		02/08/2024

Preferred Method of Marketing (to be completed by Valuation & Estates): (Tick)

Formal / Informal Offers	
Private Treaty	✓
Auction	
Community Asset Transfer Process	

Method for Final Approval (before proceeding with preferred method of marketing) :

Estimated Value:	Approval Required:	Authorised:	Date:
Less than £50,000	Valuation & Estates Manager		
Between £50,000 & £250,000	Director of Finance		
More than £250,000	Executive Property Sub Committee or Executive		02/08/2024



APPENDIX 2

Asset Disposal Business Case

Name of Asset:	Land at Nunthorpe Grange Farm – 12.45Ha (30.76 Acres)
Asset Register Number:	12062/003
Current Use:	Agricultural Land
Valuation at Current Use (Asset Register):	(Ref I: Exempt Appendix 4)
Reason for Disposal:	<p>Policy H29 of the Housing Local Plan allocates land at Nunthorpe Grange Farm for the development of high quality, mixed, medium to higher density housing’.</p> <p>In addition to the subject site held by the Council at Guisborough Road, the LPF housing allocation includes 2 parcels of privately owned land, together with a further parcel of land held by the Council for mixed community purposes.</p> <p>Development of this site will contribute towards improving Middlesbrough's overall housing offer, ensuring there is a sufficient supply of high quality housing to prevent residents moving outside of the town whilst also attracting new economically-active residents from neighbouring areas.</p> <p>There is currently an adopted masterplan/design guide for the whole housing allocation site, but it is in need of a refresh to reflect the current position and ambitions. This will be completed alongside the work that will be done to bring the site forward for sale.</p> <p>It is hoped that the disposal, as proposed, will increase the vibrancy of the town, supporting overall economic growth and stemming out migration.</p>
Latest Valuation (Proposed Disposal):	(Ref B: Exempt Appendix 4)

Asset Disposal Stream (Please Select):

Generate Capital Receipt	(1)
Stimulate Economic Activity	(3)
Support Communities	(2)

In the event of more than one stream being relevant please rank in order of importance; (1), (2), (3)

Officer requesting Disposal (Responsible Service Manager):

Name:	Peter Brewer
Position:	Housing Growth Project Officer

Could the asset be disposed of for an alternative use that may give a higher capital receipt to the Council?

(To be completed by Valuation and Estates): (Tick)

Yes		No	✓
-----	--	----	---

If yes please outline potential use:

N/A

Estimated Value at Alternative Use:	£ N/A
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Key factors to be considered when assessing potential disposals:

1.	Capital receipt generated
2.	Fulfilment of the Borough's Local Plan Framework housing requirement
3.	Suitability of development in line with the site masterplan
4.	Quality of development being proposed

Any additional financial factors to be considered other than immediate capital receipt:

<p>Disposal as proposed brings forward the residential development of the remnant LPF housing allocation site measuring @ 12.45Ha (30.76 Acres) at Guisborough Road, Nunthorpe.</p> <p>The land was farmed for a number of years under an agricultural tenancy, prior to the Council acquiring the subject lease in April 2018. Letting of the land has continued via a Farm Business Tenancy, thus affording the Council opportunity to continue drawing revenue income from the asset until the same is capable of being taken forward for disposal.</p> <p>Disposal of the site proposed will generate a significant capital receipt for the Council.</p> <p>With an unconditional offer now being sought by the Council in order to generate the payment of a significant capital receipt during the current financial year 2024/25, the potential timeframe for the freehold disposal & legal transfer of the subject site could be brought forward by a period of @ 18 months.</p>
--

Asset Not Needed by the Council - Approved to proceed:

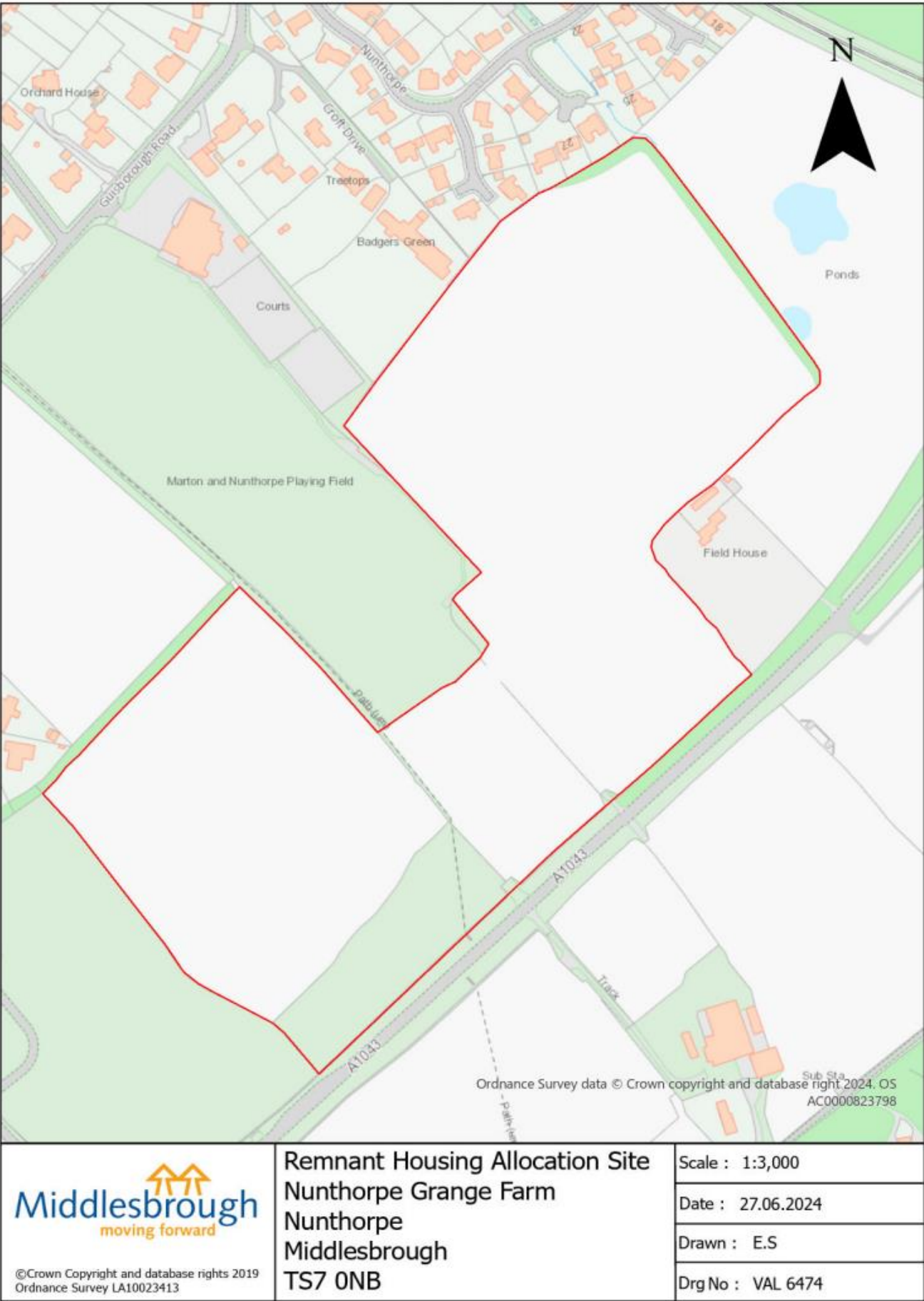
Head of Asset Management:	(Yes) Tick	No (Tick)	Date:
	✓		15/07/2024

Formal / Informal Offers	
Private Treaty	✓
Auction	
Community Asset Transfer Process	

Preferred Method of Marketing (to be completed by Valuation & Estates): (Tick)

Method for Final Approval (before proceeding with preferred method of marketing) :

Estimated Value:	Approval Required:	Authorised:	Date:
Less than £50,000	Valuation & Estates Manager		
Between £50,000 & £250,000	Director of Finance		
More than £250,000	Executive Property Sub Committee or Executive		15/07/2024



APPENDIX 3

Impact Assessment Level 1 – Initial Screening Assessment

Subject of assessment:	The private treaty disposal of the Council’s freehold interest in land at Nunthorpe Grange for the development of housing and an elderly persons care home.			
Coverage:	Service specific			
This is a decision relating to:	<input type="checkbox"/> Strategy	<input type="checkbox"/> Policy	<input type="checkbox"/> Service	<input type="checkbox"/> Function
	<input type="checkbox"/> Process/procedure	<input type="checkbox"/> Programme	<input checked="" type="checkbox"/> Project	<input type="checkbox"/> Review
	<input type="checkbox"/> Organisational change	<input type="checkbox"/> Other (please state) Asset management		
It is a:	New approach:	<input checked="" type="checkbox"/>	Revision of an existing approach:	<input type="checkbox"/>
It is driven by:	Legislation:	<input type="checkbox"/>	Local or corporate requirements:	<input checked="" type="checkbox"/>
Description:	<p>Key aims, objectives and activities To assess the impact of the proposal to dispose of Council assets at Nunthorpe Grange via private treaty.</p> <p>Statutory drivers (set out exact reference) The Local Government Act 1972 Section 123, as amended by the Local Government Planning & Land Act 1980 Section 118 Schedule 23 Part V.</p> <p>Differences from any previous approach The site was originally intended to be de-risked and marketed for disposal prior to receipt of the private treaty offers. There are no Council staff, or services that will be affected by the disposal proposed.</p> <p>Key stakeholders and intended beneficiaries (internal and external as appropriate) The Council, buyers and the local community.</p> <p>Intended outcomes The proposed disposal of the subject site would:</p> <ul style="list-style-type: none">• generate a significant capital receipt for the Council;• generate revenue by increasing the Council Tax base; and• remove the Council’s liability for future holding costs, responsibility for, and maintenance of the site.			
Live date:	September 2024			
Lifespan:	Not applicable.			
Date of next review:	Not applicable.			
Screening questions	Response			Evidence
	No	Yes	Uncertain	

Human Rights Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	It is considered that the disposal of the site will not impact negatively on individual human rights.
Equality Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Council has a duty to consider the impact of the proposed decision on relevant protected characteristics, to ensure it has due regard to the public sector equality duty. Therefore, in the process of taking decisions, the duty requires the Council to have due regard to the need to:</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. <p>Consideration of this duty has shaped the proposals.</p> <p>It is considered that the proposal will not have a disproportionate adverse impact on a group, or individuals, because they hold a protected characteristic.</p> <p>Evidence used to inform this assessment includes engagement to date with relevant Council departmental teams and the proposed purchasers, together with analysis of the terms and conditions that will be incorporated within the proposed sale.</p>
Community Cohesion Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	There are no concerns that the proposal could have an adverse impact on community cohesion.
Sustainable Community Strategy Objectives Could the decision impact negatively on the achievement of the vision for Middlesbrough?*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	In consideration of these outcomes, the proposal does not impact negatively upon the Council's sustainable community strategy objectives.
Organisational Management / Transformation Could the decision impact negatively on organisational management or the transformation of the Council's services as set out in its Transformation Programme?*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No tangible relationship between the disposal of the site and the organisational management of the Council, or the transformation of its services (as set out in its Transformation Programme), have been identified. The funding secured through sale would however have the potential to contribute positively to the future transformation.

*Consult the Impact Assessment further guidance appendix for details on the issues covered by each of these broad questions prior to completion.

Next steps:

➡ If the answer to all of the above screening questions is No then the process is completed.

➡ If the answer of any of the questions is Yes or Uncertain, then a Level 2 Full Impact Assessment must be completed.

Assessment completed by:	Andrew Carr	Head of Service:	Sam Gilmore
Date:	05/08/24	Date:	05/08/24

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SCRUTINY CALL IN REQUEST FORM

Appendix A

Note: At least five members are required to sign the form for the Call-in request to be valid. Page I.

DECISION DETAILS DISPOSAL of LAND at NUNTHORPE GRANGE, APPROVED BY EXECUTIVE SUB-COMMITTEE AS RECOMMENDED BY EXECUTIVE MEMBERS for FINANCE and REGENERATION. (ITEM 3 on AGENDA)		DECISION MAKING BODY EXECUTIVE SUB-COMMITTEE for PROPERTY	
DATE OF MEETING 4 SEPTEMBER 2024	SUBJECT HEADING DISPOSAL of LAND at NUNTHORPE GRANGE.	DATE CALL-IN FORM RECEIVED 12 SEPTEMBER 2024	
Has the decision on this matter been subject to prior consideration by the Overview and Scrutiny Board		YES	
		NO	

PLEASE COMPLETE THE BOX BELOW WITH THE INFORMATION REQUIRED IN PARAGRAPH 6.1 (ii) TO (vi) OF THE CALL-IN PROTOCOL

- * (i) DECISION CONTRARY TO PRINCIPLES of GOOD DECISION MAKING
 1. OUTDATED EVIDENCE-BASE PRESENTED TO COMMITTEE
 2. CONFLICT of INTEREST BETWEEN COUNCIL'S ROLES as (a) STRATEGIC PLANNER and ENFORCER of LOCAL PLAN (b) LAND-OWNER SEEKING MAXIMUM SPECIFIC LEVERAGE (c) BUDGET-SETTER MAXIMISING COUNCIL INCOME
 - 3 LACK of CONSULTATION
- * (ii) DEFECTS in DECISION-MAKING PROCESS
 1. LIMITED INFORMATION PROVIDED TO COMMITTEE MEMBERS
 2. NO REALISTIC ALTERNATIVES PRESENTED TO COMMITTEE MEMBERS
 - 3 MISLEADING INFORMATION PROVIDED TO COMMITTEE MEMBERS.
- * (iii) ADVERSE EFFECTS LIKELY TO ARISE FROM THE DECISION BEING IMPLEMENTED
 1. ENVIRONMENTAL EFFECT ON THE NUNTHORPE COMMUNITY. 2. FINANCIAL EFFECT ON NUNTHORPE COMMUNITY. 3. FINANCIAL EFFECT ON MIDDLESBROUGH COUNCIL. 4. IMPACT ON COMMUNITY COHESION. 5. IMPACT RELATIVE TO THE TWO OTHERSITES WITHIN NUNTHORPE GRANGE
- * (iv) EVIDENCE TO SUPPORT THE CALL-IN REQUEST - ANNEXES 1-5 (MAPS)
- * (v) PROPOSED ALTERNATIVE COURSE of ACTION - RECONSIDERATION by EXECUTIVE, so THAT REFRESHED MASTERPLAN PRECEDES SIGNATURE of DEVELOPER AGREEMENT

SIGNATURES OF MEMBERS WISHING TO CALL IN THE DECISION (AT LEAST 5 SIGNATURES ARE REQUIRED)

SIGNATURE	PLEASE PRINT NAME	DO YOU WISH TO SPEAK AT COMMITTEE		
		YES	✓	NO
	M. McCLINTOCK - PROPOSER			
	COUNCILLOR TOM LIVINGSTONE			
	COUNCILLOR MIEKA SMILES			
	COUNCILLOR JACKIE YOUNG			
	COUNCILLOR TONY GRANGE			
	COUNCILLOR			

SCRUTINY CALL IN REQUEST FORM

Appendix A

Note: At least five members are required to sign the form for the Call-in request to be valid.

Page 2

NAMES OF ANY WITNESSES YOU WISH TO CALL		AGREED BY CHAIR OF OVERVIEW AND SCRUTINY BOARD			
NAME	PURPOSE OF ATTENDING COMMITTEE	YES		NO	
WADE TOVEY, PARISH COUNCILLOR, and LEAD on WINTHORPE NEIGHBOURHOOD PLAN	CORROBORATION	YES		NO	
		YES		NO	
		YES		NO	
		YES		NO	
		YES		NO	
		YES		NO	

****ONCE COMPLETED THIS FORM MUST BE RECEIVED BY DEMOCRATIC SERVICES BY 4PM BEFORE THE END OF THE FIFTH WORKING DAY AFTER THE PUBLICATION OF THE DECISION**

THIS PART OF THE FORM IS TO BE COMPLETED BY THE MONITORING/DEPUTY MONITORING OFFICER

CALL IN REQUEST APPROVED	YES		NO	
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CALL IN REQUEST REFUSED	A	The procedures set out in the Overview and Scrutiny Protocol have not been followed properly.	
	B	A similar decision has been called in to the committee previously.	
	C	The Executive decision was recorded as an urgent decision and is therefore not subject to the call-in procedures.	
	D	The Monitoring Officer, in consultation with the Chair of the Overview and Scrutiny Board considers the call-in to be frivolous, vexatious or clearly outside the call-in provisions.	

DATE ADVISED OF DECISION	
SIGNED:	

(ii). **DECISION CONTRARY to PRINCIPLES of GOOD DECISION-MAKING**

1. **Outdated evidence-base presented to Committee**

It is manifestly poor practice for the Council to agree to conclude negotiations with a developer by October 2024, on the basis of a MasterPlan which even the Committee Report acknowledges "is in need of a refresh to reflect the current position and ambitions". (Appendix 2 of Committee Report)

2. **Conflict of interest between the Council's roles as (a) strategic planner and enforcer of the Local Plan, (b) land-owner seeking maximum leverage in a specific area, and (c) budget-setter, seeking to maximise Council income**

The Committee Report asked the Executive to claim for the Council 160 houses out of the total of a maximum of 250 dwellings authorised for the totality of Nunthorpe Grange in the current Housing Local Plan. This would leave only 90 dwellings available for the other two land-owners of much of the relevant area, without any rational basis for the Council's assertion. This apparently unfair advantage taken by the Council is exacerbated because it takes no account of the potential impact of changes in the balance between housing, parks, and other green spaces created since the Masterplan was established in 2019. Major changes since then include the transfer by the Council of a large area allocated in the Masterplan for housing to non-housing purposes - ie. Care-home, Medical Centre, and Place of Worship. (See Annex E.) Furthermore, the justification for assigning to itself 160 dwellings in the proposed deal is stressed in the Committee Report as being "the significant capital receipt during the current financial year 2024/25" - thus confirming the conflict of interest outlined in the heading above.

3. **Lack of Consultation**

Although Appendix 3 of the Report identifies "the local community" as one of the three "Key stakeholders and intended beneficiaries", there has been no community consultation on the implications of the current Masterplan having been side-lined by carving out areas for a Care-home and for a Place of Worship. This is particularly concerning because consultation on the same area for the Nunthorpe Neighbourhood Plan has continued on the basis of the current MasterPlan. Despite repeated calls to expedite consultation on revising the Masterplan, based on a constructive partnership approach, there has been only one preliminary meeting (in July) between two leaders of the Nunthorpe Neighbourhood Plan and the Council's consultants working on this project. After months without response to many pleas to treat consultation as a matter of urgency, the Nunthorpe community is now informed that there is unlikely to be time to conclude consultation on the MasterPlan before the deal signature date in October. The secrecy of the financial aspects of the deal should be a ground for particular sensitivity to the need for consultation on all other aspects, rather than a justification for minimising consultation, and for postponing and reducing any potential impact of consultation until after the deal is signed.

(iii). **DEFECTS in DECISION-MAKING PROCESS**

1. **Limited information provided to Committee Members.**

Committee Members were not shown sufficient maps to enable understanding of the points made under (ii) above. Examples of maps which would have facilitated a more comprehensive appreciation of the issues are now provided as Annexes A to E, on pages 8-12 of this Call-in Request.

2. **No realistic alternatives presented to Committee Members.**

The three options offered as an alternative to the recommendation were unrealistic -

5.1. **"Don't sell the land."** This is even presented as an unacceptable option. The Report states, "failure to dispose of the land would be contrary to the Local Plan (2014)". Also the Council's current financial position negates endorsement of such an option.

5.5. **"Enter a Joint Venture"**. This apparent option is explicitly discounted in one sentence as not representing Best Value for Money.

5.3. **"Sell the land after undertaking due diligence and achieving outline planning approval"**. This option is not totally discounted (being evaluated as "worthy of Executive consideration"), but the option is explicitly undermined on the basis that a guaranteed receipt of funds earlier than anticipated outweighs the potential of generating higher capital receipts in the future. It is difficult to challenge this conclusion when all the pertinent facts are undisclosed. If it is a fair conclusion, it is confirmation that no constructive alternative was offered to the recommended proposal.

The Committee was not presented with the obvious compromise - the realistic alternative of undertaking **some** basic "due diligence" to "de-risk" a deal reached without competitive tender. Section 4.2.3. confirms that the recommended disposal "negates the requirement to conduct site de-risking planning"; and "de-risking" is defined in section 4.6. of the Committee Report as including "updating the adopted Masterplan and Design Code". The credible alternative of a significant contribution to "de-risking" by **requiring the developer to operate within the confines of an established, refreshed Masterplan** was not even offered to Members as an option. This is particularly difficult to understand when, with goodwill, such a constructive delay could be measured in weeks rather than months or years (which the unrealistic option of awaiting planning approval might entail.)

3. **Misleading information provided to Committee Members.**

Appendix 2 of the Committee Report notes that the refresh of the Masterplan "will be completed alongside the work that will be done to bring the site forward for sale". In addition, clarification from the Regeneration Directorate since the Committee Meeting has stated that contact between Neighbourhood Plan representatives and Council Officers / consultants is "timetabled to conclude before the end of this calendar year", but will then need to be submitted for adoption

by the Executive. However, the date for completion of the negotiations on sale of land for housing is 31st October 2024 - ie. before the expected establishment of the revised Masterplan. Officers claimed during the meeting and subsequently that, in due course, the developer will need to obtain planning permission which must comply with the requirements of the new Masterplan. The clear message is that this timetable will create no issues.

This assertion downplays the following two likely outcomes :

(a). The developer, having agreed a price which the Council regards as being on terms favourable to the Council, will reasonably expect the Council to **minimise changes in refreshing the Masterplan** which could have any serious financial implication on the deal. (It must surely be assumed that the deal agreed by the developer will be based on the understanding that the framework for development will not differ significantly from the terms of the deal.)

(b). Officers will potentially face pressure to **minimise Section 106 calculations** which significantly increase the cost of the deal which the developer has already agreed with the Council.

In both scenarios, it is the Nunthorpe community which would be short-changed by failure to establish an updated Masterplan before concluding the deal. Disappointment in the lack of community investment would extend to the residents of the new houses built by the developer.

(iv). **ADVERSE EFFECTS likely to arise from the decision being implemented.**

1. **Environmental Effect on the Nunthorpe Community.**

As outlined above, the defects of the **current** outdated Masterplan could be exploited by a developer, and attempts to resolve outstanding issues during establishment of a **new**, subsequently-approved Masterplan are likely to be resolved with particular sensitivity to the developer. As the developer will be less constrained by a planning framework than might usually be expected, the Nunthorpe community will be deprived of standard planning tools to ensure that the developer does not excessively or unpredictably impact on their environment.

2. **Financial Effect on the Nunthorpe Community.**

Local residents could be deprived of compensation which they might reasonably expect from Section 106 contributions. Once a deal is signed in October, the developer will inevitably resist claims for such contributions on the grounds that Middlesbrough Council has already been compensated exceptionally well through the terms of the finance deal.

3. **Financial Effect on Middlesbrough Council.**

Where a deficiency in Section 106 contributions results in Middlesbrough Council having to undertake expenditure in default (on roadworks etc), this will constitute an adverse effect on the Council.

4. Impact on Community Cohesion

The circumstances under review provide a rare combination of the classic ways to foster suspicion and mistrust of the Council among residents - a secret deal, negotiated without competitive tender, to be implemented at speed, without community involvement, and without prior publication of an updated framework for development. Whereas Nunthorpe residents reasonably assumed that there would be an opportunity to have some input into the Masterplan review process, there is currently anxiety arising from the uncertainty about the location of housing and green spaces, and the balance between them. For example, residents ask whether the total number of 250 houses will be reduced to make way for such large innovations as a Care-home and Place of Worship, or whether parkland will be sacrificed to make way for the Care-home and Place of Worship. Cynicism about the Executive decision is exacerbated in the context of the on-going community work to establish a Nunthorpe Neighbourhood Plan, with residents engaged in consultation about options for the same land in Nunthorpe Grange, which they reasonably assumed would be taken into account within a refreshed Masterplan.

5. Impact relating to the two other sites within Nunthorpe Grange.

Completion of a deal with a single housing developer before establishment of a revised Masterplan defers challenging decisions about the interrelationships between the developers within the overall framework of Middlesbrough's Local Plan. The lack of timely transparency by the Council could result in dissatisfaction by the two independent land-owning developers, and potential legal action, if their housing numbers are constrained by the Council's unilateral claim to 160 of 250 houses. Alternatively, the precedent established by the Council could simply encourage both of the other developers to claim the right to any number of dwellings, so that the maximum total established by the Local Plan in 2014 could be significantly exceeded. Here again, the Nunthorpe community would be the loser from the lack of having a prior Masterplan.

(v) EVIDENCE to support the Call-in Request

Annex A. Middlesbrough Housing Local Plan, adopted November 2014. Figure 3.4.
Page 76. "Land south of Guisborough Road - Indicative Site Layout"

Annex B. Nunthorpe Grange Design Code, adopted January 2019.
Page 19. "Masterplan and Rationale."

Annex C. Report to Executive Sub-committee for Property, 4th September 2024.
Appendix 2. Page 24. "Remnant Housing Allocation Site"

Annex D. Combination of Annexes B and C.

Annex E. Enlarged section of Annex D to indicate the extent of housing allocation in the current Masterplan, on land which has since been re-assigned.

(vi). **PROPOSED ALTERNATIVE COURSE of ACTION.**

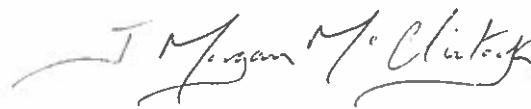
Most of the adverse effects outlined above arise from the combination of an early date for completion of a deal with the housing developer, followed by a late date for completion of a refreshed Masterplan.

This Call-in request seeks support for reconsideration of the Executive decision, so that the refreshed Masterplan is consulted upon and established before signature of an agreement with the developer.

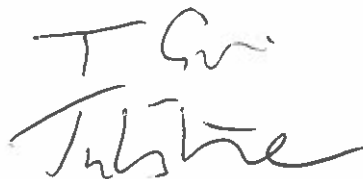
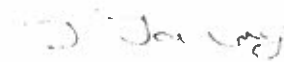
This could be achieved -

- (1) By the Executive formally agreeing to defer signature of the deal with the housing developer until there is a Masterplan framework to control development.
- (2) By the Executive prioritising consultation on a new Masterplan, so that, in practice, the Executive may still conclude negotiations with the developer without significant deferment of the proposed completion date of 30th October 2024.

[The lack of an updated Masterplan also has implications for the deal about the Care-home, such as concerns about road access, but these are not considered in this application because of the much later date for signature of the agreement with the Care-home developer - 31st March 2026.]



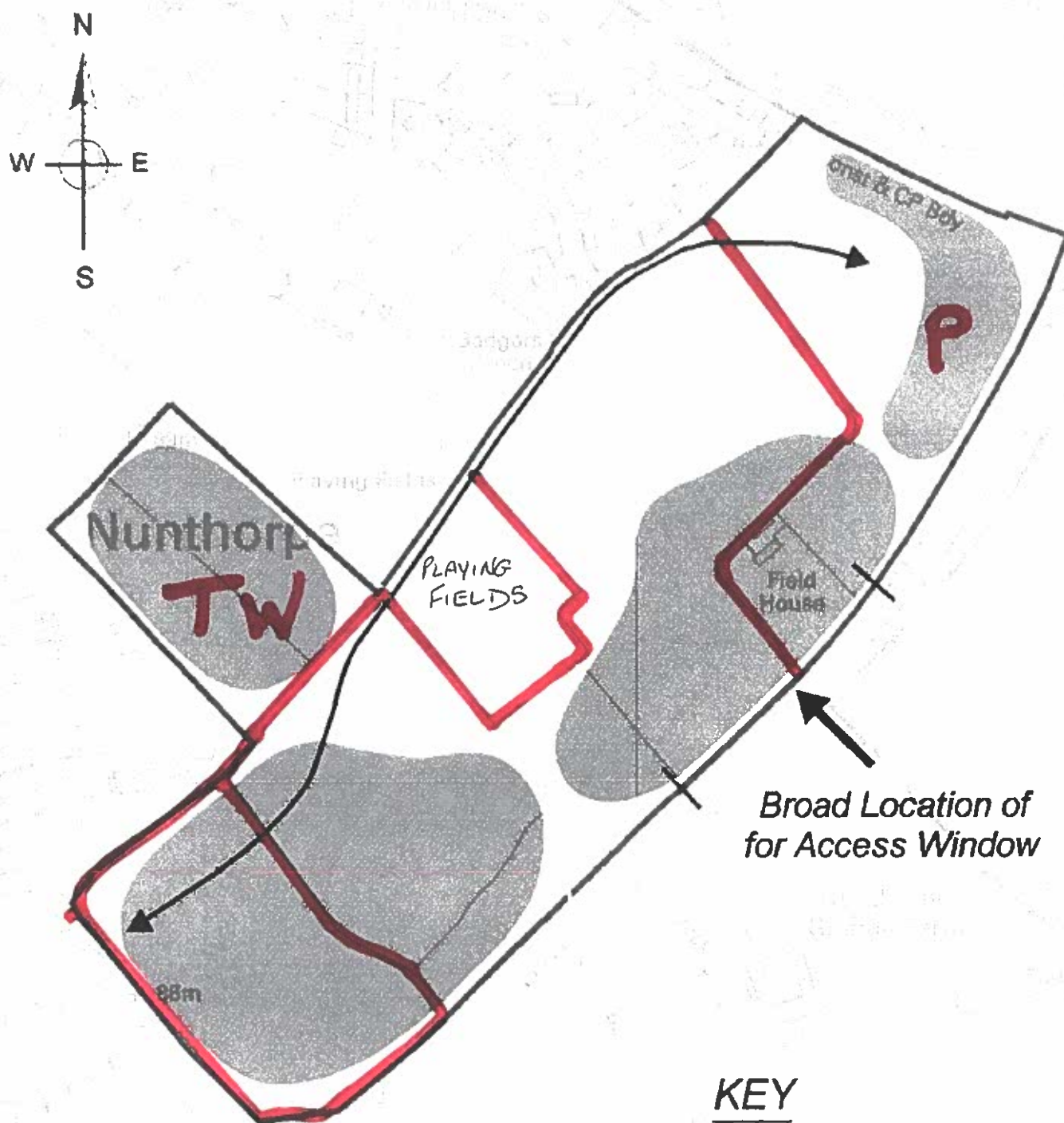
M. Smiles -



ANNEX A.

MIDDLESBROUGH HOUSING LOCAL PLAN, adopted NOVEMBER 2014.

Figure 3.4. Page 76. "LAND SOUTH of GUISBOROUGH ROAD - INDICATIVE SITE LAYOUT."



KEY

Housing

Open Space/
Recreation

TW = Taylor Wimpey site. P = Persimmon site.

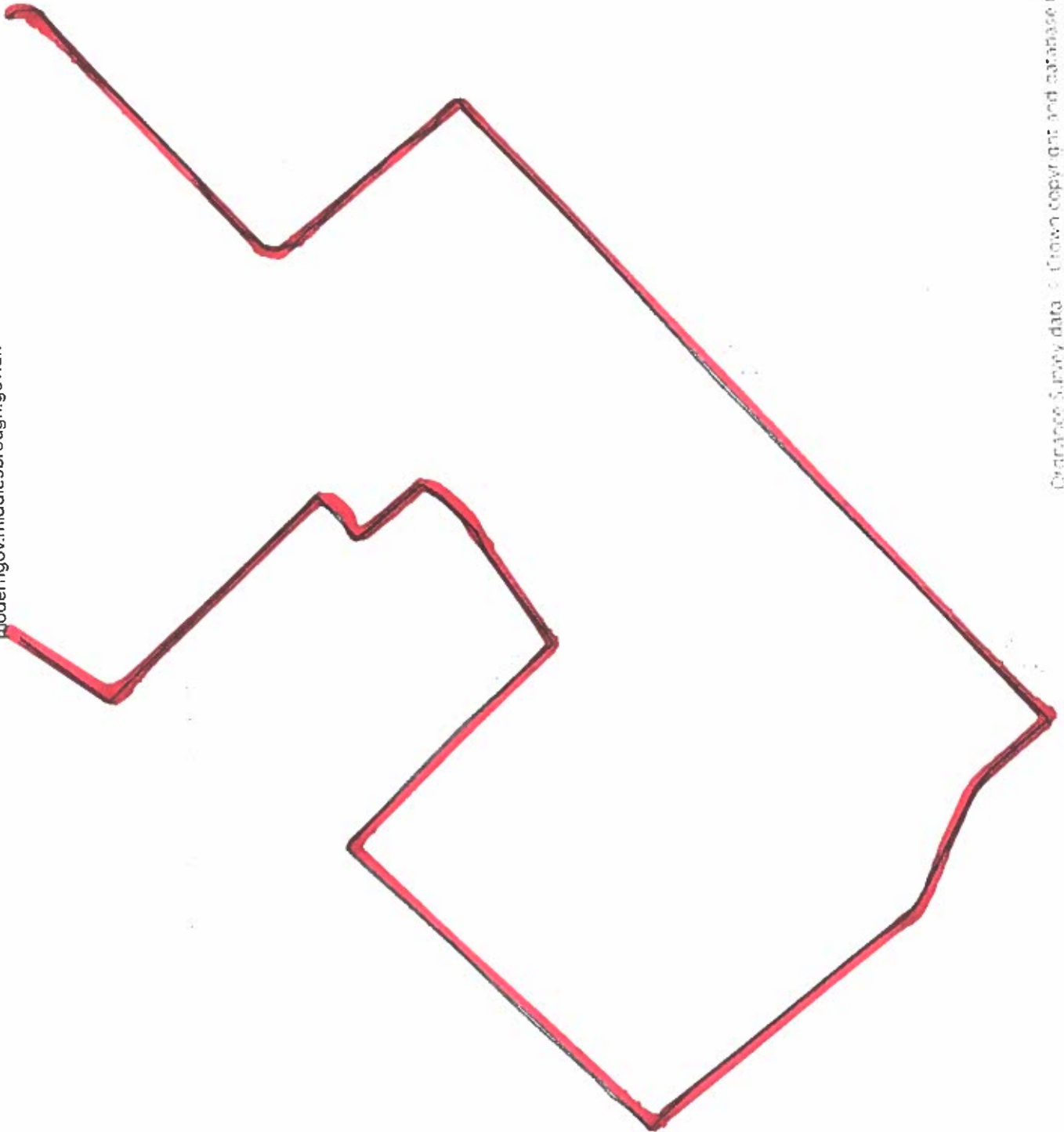
ANNEX C.

REPORT to EXECUTIVE Sub-COMMITTEE for PROPERTY. 4th SEPTEMBER 2024.

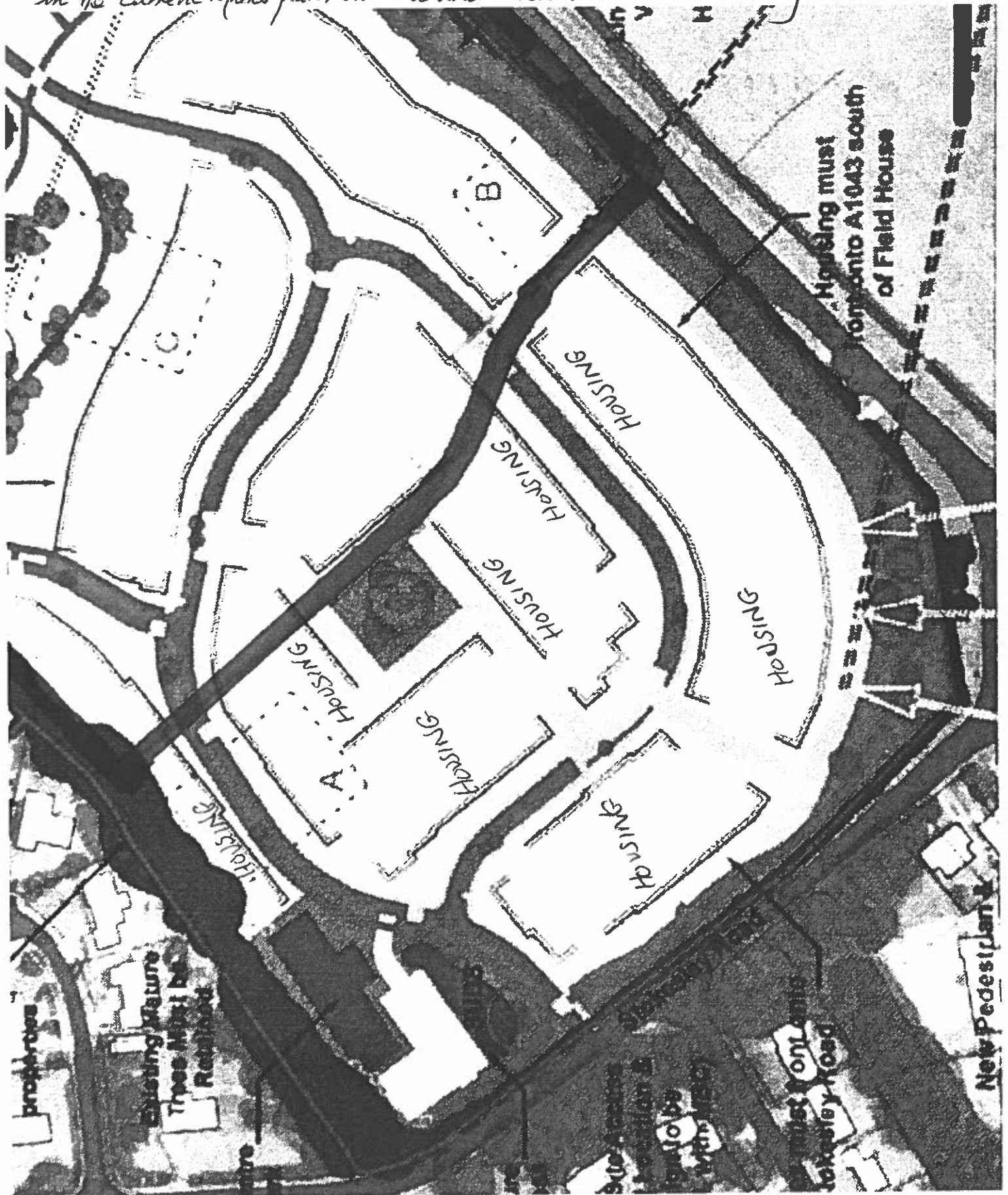
Appendix 2. Page 24. "REMNANT HOUSING ALLOCATION SITE"

modern.gov/middlesbrough.gov.uk

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Enlarged section of Annex D to indicate the extent of housing allocation in the current Masterplan, on land which has since been re-assigned.



Overview and Scrutiny Board - Call-In protocol

1.Call-In

1.1. The concept of 'overview and scrutiny' was originally introduced to English and Welsh local authorities by the Local Government Act 2000 and consolidated in schedule 2 of the Localism Act 2011. That legislation gave the power for Executive decisions made but not yet implemented to be 'called in' for consideration by scrutiny. This includes decisions taken by the Executive (collective or individual) or key decisions delegated to Chief Officers.

1.2. The responsibility for consideration of Call-Ins will rest with the Overview and Scrutiny Board (OSB).

2.Which decisions can be Called-In?

2.1. A decision taken collectively by the Mayor and Executive.

2.2. A decision taken by the Mayor or an individual Executive Member.

2.3. A key decision taken by an officer under delegated powers.

3.Which decisions cannot be Called-In?

3.1. Non-Executive decisions e.g. those taken by Council or a Council Committee or are considered regulatory e.g. Planning Committee, Licensing, Standards, Audit Committee, Health and Well Being Board.

3.2. A non-key decision taken by an officer – an operational decision.

3.3. A decision that has been deemed urgent and grounds for urgency has been supported by the Chair of Overview and Scrutiny.

3.4. A decision that has previously been called in e.g. reconsidered following OSB's recommendations.

3.5. A decision that relates to the formulation of a policy or budget matter which requires full Council approval.

3.6. A decision that has been implemented by the Executive following a scrutiny recommendation.

4.Publication of decisions

4.1. When a decision is made by the Executive, an individual member of the Executive or a committee of the Executive, or a key decision is made by an officer with delegated authority from the Executive, or Council the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council by the second working day following the day of the decision.

4.2. All Members will generally be sent notice (electronically) of all such decisions within the same timescale, by Democratic Services. A record of the decision(s) will also appear on the Council's website.

4.3. That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, after the fifth working day following the publication of the decision, unless the decision becomes subject to the Call-In procedure.

4.4. During that five working days following the day of the publication of the decision, any five members of the Council including voting co-opted members in respect of education matters may request that the Monitoring Officer calls in a decision for scrutiny by the Overview and Scrutiny Board.

5.Triggering a call in

5.1. Triggering a call in should be an exceptional step to be used when Members consider it to be a proportionate step, which will be of benefit to the delivery of services under the Budget and Policy Framework or will improve the decision-making process.

5.2. Call-In is not intended to be a mechanism for voicing objection to, or dislike of, any particular decision or to admonish officers. It should only be used where there is evidence to show that one of the following may apply:

(i)That there has been inadequate consultation with stakeholders prior to the decision being made;

(ii)That there was inadequate/inaccurate evidence on which to base a decision and that not all relevant matters were fully taken into account;

(iii)That the decision materially departs from the budget and policy framework;

(iv)That the decision is disproportionate to the desired outcome;

(v)That the decision has failed to take into account the provisions of the Human Rights Act 1998 and or the public sector equality duty;

(vi)That the decision maker has failed to consult with and take professional advice from relevant officers including the Monitoring Officer and the Chief Finance Officer, as appropriate, or has failed to have sufficient regard to that advice; or

(vii) That the decision exceeds the powers or terms of reference of the decision-Maker responsible for the decision.

5.3. Those Members triggering the Call-In will need to demonstrate that they are exercising the use of Call-In appropriately by following each step detailed within the prescribed Call-In form before submitting the relevant form and triggering the calling in of a decision

5.4.Members should where possible:

(i)Discuss their concerns with the relevant officer(s) and decision taker Executive Member to ensure they are aware of all the relevant information and have an opportunity to discuss their concerns informally;

(ii)Contact the Chair of the Overview and Scrutiny Board to discuss their concerns as this issue may have already been considered by an Overview and Scrutiny Panel; and

(iii)Seek advice from Democratic Services Officers who will be able to provide further advice and guidance on the process.

6.Call-In Validity

6.1. In order for a Call-In to be valid members must:

- (i)Use the prescribed Call-In form (Appendix A) which must be completed and returned to Democratic Services by 4pm on the fifth working day following publication of the decision;
- (ii)Explain why they believe the decision is contrary to the principles of good decision making;
- (iii)Describe any perceived defects in the decision-making process;
- (iv)Describe any adverse effects which are likely to arise from the decision being implemented;
- (v)Provide any evidence to support their reasoning; and
- (vi)Identify alternative course of action or recommendation that they wish to propose.

6.2. The Call-In form is available from Democratic Services and:

- i)Must be signed by at least 5 members; (1 proposer and 4supporters)
- ii)Must be returned to Democratic Services by 4pm on the fifth working day following publication of the decision.

6.2. The Call-In form is available from Democratic Services and:

- i)Must be signed by at least 5 members; (1 proposer and 4supporters)
- ii)Must be returned to Democratic Services by 4pm on the fifth working day following publication of the decision.

6.3. A form that is submitted after the deadline, or is not submitted on the prescribed form, will not trigger a call in meeting.

6.4. On receipt of a completed form the Head of Democratic Services will liaise with the Monitoring Officer.

6.5. The Monitoring Officer, in consultation with the Chair of the Overview and Scrutiny Board, will determine the validity of the Call-In as soon as possible following receipt. The Monitoring Officer may, if appropriate, reject a request for call in if, in their opinion (subject to the above consultation), it fails to meet any of the grounds listed above, or if they consider it is in any way vexatious, frivolous or otherwise inappropriate.

6.6. Examples include but are not limited to:

- (i)It is not clear what the grounds for the Call-In and which would prohibit effective debate by OSB;
- (ii)The cited grounds bear no relevance to the decision that is identified for Call-In;
- (iii)The requisition cites grounds for which no relevant evidence is produced in support;
- (iv)The Call-In includes material which could be defamatory;

(v)The requisition is being used for improper purposes (e.g. to admonish an officer); or

(vi)The decision is in accordance with the advice or recommendations provided to the decision maker by a scrutiny panel.

6.7. Democratic Services will notify the decision-taker and all members of the Call-In and will call a meeting of the Overview and Scrutiny Board on such date as they may determine, where possible after consultation with the Chair of the Overview and Scrutiny Board, and in any case no sooner than 10 working days of the decision to Call-In.

6.8. Early liaison with Democratic Services by Members wishing to Call-In the decision will provide an opportunity for any procedural issues to be addressed ahead of the Call-In deadline

7.Call to account

7.1. If the proposer/supporters who initiated the Call-In want a person/s who is a Member or an officer of the authority to appear as a witness, then the permission of the Chair of the Overview and Scrutiny Board (who will agree with the appropriate Director of Service) must be sought at least five clear working days prior to the date of the Call-In meeting, or with the permission of the chair of OSB within 3 working days in exceptional circumstances in order to allow for members/officers to be called.

7.2. Any Members attending as a witness or as part of OSB may wish to consider the nature of the Call-In and where relevant, their duty to declare an interest.

7.3. When providing the names of potential witnesses the proposer should provide information as to the relevance of the witness to the Call-In to enable the Chair of the OSB to consider whether their attendance is appropriate. Paragraphs 13 and 14 of the Overview and Scrutiny Procedure rules shall apply equally to Call-Ins.

7.4. OSB may also wish to call other Members or Officers to provide information or give account at the Call-In meeting.

7.5. Those invited to appear as a witness should be treated with respect. The Call-In procedure enables an Executive decision to be examined/challenged, it should not be used as form to admonish an officer's personal performance as other more appropriate mechanisms are available for this.

7.6. Any person appearing at a Call-In as a witness may only provide factual information.

8.The Call-In meeting

8.1. If the Overview and Scrutiny Board holds a quorate meeting to consider the Call-In, the meeting may be adjourned to allow additional information to be obtained; or (with the agreement of the Chair presiding at the meeting or the relevant Executive Member, as appropriate) for additional witnesses to attend. This should only happen in exceptional circumstances; every effort should be made to deal with the Call-In in one meeting. If a meeting is adjourned a date for the meeting to continue must be specified and the decision will be held in abeyance until the Board has made a decision at the reconvened meeting. If the committee does not hold a quorate meeting on that date, the decision will take immediate effect.

8.2. If, having considered the decision, the Overview and Scrutiny Board is concerned about it, then it may refer the decision back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns. If a decision is so referred, then the decision

maker shall reconsider the decision within a further 10 working days, amending the decision or not, before adopting a final decision.

8.3. If the recommendations of the Overview and Scrutiny Board are not accepted in full, then the decision maker should notify the Overview and Scrutiny Board and give reasons for not accepting the recommendations.

8.4. If following an objection to the decision, the Overview and Scrutiny Board does not meet within 17 working days of the publication of the decision, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the overview and scrutiny meeting, or the expiry of that 17 working day period, whichever is the earlier.

8.5. If the matter is referred to full Council by the Overview and Scrutiny Board, on the grounds that the Board consider the decision in question to be contrary to the policy framework or contrary to or not wholly in accordance with the budget, and the Council does not object to the decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. .

8.6. However, if the Council does object to the decision, on the grounds that it is contrary to the policy framework, or contrary to or not wholly consistent with the budget the Council will refer that decision back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it.

8.7. Where the decision was taken by the Executive as a whole or a committee of it, a meeting will be convened within 10 working days of the Council in order to reconsider the request of the Council. Where the decision was made by an individual, the individual will reconsider their decision within 5 working days of the Council's request. If the recommendations of the Council are not accepted in full, then the decision maker should notify the Council and give reasons for not accepting the recommendations.

8.8. If the Council does not meet within six weeks, or if it does meet but does not refer the decision back to the decision making body or person, the decision will become effective on the expiry of the six week period or upon the date of the Council meeting, whichever is the earliest.

8.9. The Call-In procedure set out above shall not apply where the decision being taken by the Executive is urgent. A decision will be urgent if any delay likely to be caused by the Call-In process would seriously prejudice the interests of the Council or the public. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to Call-In.

8.10. The Chair of Overview and Scrutiny Board should agree that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chair of Overview and Scrutiny Board, the Vice-Chair's consent shall be required. In their absence, the Head of Paid Service or their nominee's consent shall be required. Decisions taken as a matter of urgency must be reported quarterly to the Council by the chair of OSB, together with the reasons for urgency.

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Call-in Decision – Disposal of Land at Nunthorpe Grange, Executive sub-Committee for Property 4 September 2024 (Presented by Councillor McClintock)

I have now had the opportunity to review and consider the call-in presented by Cllr Morgan McClintock and co-signed by Cllrs Tom Livingston, Mieka Smiles, Jackie Young and Tony Grainge. I have also had the opportunity of consulting with the Chair of OSB.

Decision

The call-In is partially valid for OSB to consider the narrow points set out in paragraphs 18 and 19 to the conclusion of this report. The reasons for the decision are as follows:

Background:

1. Call-in is a safety valve to delay and interrogate important executive decisions. It provides a way for councillors who do not sit on executive to ask that particular decisions are reconsidered by the person or people who originally made them.
2. The phrase “call-in” is not used in legislation, but it is there that the central powers can be found. There is a two-step legal process for the establishment of call-in at law.
 - a. **s9F(2) of the Local Government Act 2000**, as amended. This provides the general power for overview and scrutiny committees to review or scrutinise executive decisions;
 - b. **s9F(4) of the same Act**, which provides a specific power to review or scrutinise a decision made, but not implemented.
3. Call-in cannot “overturn” a decision. A call-in can result in a recommendation that a decision be reconsidered or withdrawn, but nothing more. It is best regarded as an urgent and serious request from councillors to the executive decision maker that they should think again. That request should be seen as notable because it is a function that should only be used in exceptional circumstances and, such a request, if then made, will come from a review carried out by a cross-party committee.
4. Paragraph 7.24.2 of the Constitution states – “The Monitoring Officer will, in consultation with the Chair of Overview and Scrutiny Board, determine the validity of the Call-in as soon as possible following receipt of the Scrutiny Call-in Request Form. The Monitoring Officer may reject a call-in if, in their opinion, it does not meet the requirements for call-in or is vexatious, frivolous, or otherwise in appropriate.
5. The call-in form specifically makes reference to the “Call-in Protocol”. The Protocol is attached to this decision.
6. The presence of clear rules around call-in’s operation is important. Critically this should include the use of criteria to determine whether a call-in is “valid”. The use of criteria will make call-in more focused and reduce the risk that it will be used for exclusively party-political reasons – criteria also frame the nature of a debate in committee in a way that makes it more likely that a reasoned, informed outcome will be reached.
7. In order to validate a call-in, call-in arrangements must, practically, place hurdles which have to be overcome for a call-in to be considered “valid”. Putting such hurdles in place is not only legal, but also a specific component of the legislation and formal guidance on this subject. Not to do so risks call-in being effective.

8. Non statutory guidance suggests a permissive approach to decision making. This means that in cases where the “validity” of a call-in may be marginal, the approach should probably be to allow the call-in.
9. This suggests that if members requesting a call-in are able to articulate a reason why, in their view, procedural or substantive reasons require it, it should be allowed to proceed if it complies with the council’s own rules.

Reasons

10. Turning to the call-in on the disposal of Nunthorpe Grange. The correct form was used for the call-in , the correct number of signatories applied and the form was submitted in time.
11. **The Protocol confirms at part 5.2 call-In is not intended to be a mechanism for voicing objection to, or dislike of, any particular decision or to admonish officers. It should only be used where there is evidence to show that one of the following may apply, thereby breaching the principles of good decision making set out at Section 13 of the Council’s Constitution:**

(i)That there has been inadequate consultation with stakeholders prior to the decision being made;

Please see explanations under paragraph under paragraph 13.3 below.

(ii)That there was inadequate/inaccurate evidence on which to base a decision and that not all relevant matters were fully taken into account;

Please see explanations under paragraph 13 below.

(iii)That the decision materially departs from the budget and policy framework;

This was not raised as part of the call-in and therefore not applicable

(iv)That the decision is disproportionate to the desired outcome;

Please see the explanations under paragraph 13 below.

(v)That the decision has failed to take into account the provisions of the Human Rights Act 1998 and or the public sector equality duty;

This was not raised as part of the call-in and is not applicable

(vi)That the decision maker has failed to consult with and take professional advice from relevant officers including the Monitoring Officer and the Chief Finance Officer, as appropriate, or has failed to have sufficient regard to that advice; or

This was not raised as part of the call-in and is not applicable

(vii) That the decision exceeds the powers or terms of reference of the decision-Maker responsible for the decision.

This was not raised as part of the call-in and is not applicable

12. Paragraph 5.4 of the Protocol also requires members calling in a decision to, where possible:

- (i) Discuss their concerns with the relevant officer(s) and decision taker Executive Member to ensure they are aware of all the relevant information and have an opportunity to discuss their concerns informally;
- (ii) Contact the Chair of the Overview and Scrutiny Board to discuss their concerns as this issue may have already been considered by an Overview and Scrutiny Panel; and
- (iii) Seek advice from Democratic Services Officers who will be able to provide further advice and guidance on the process.

Although it appears that Democratic Services may have been consulted upon the process, there is no evidence provided in the call-in request that those requesting the call-in have consulted either the relevant officer, Executive Member or Chair of Overview and Scrutiny in relation the request. No explanation has been offered by those requesting the call-in for this apparent failure to comply with the protocol (e.g. telephone calls made and not returned, or emails sent and not responded to). Accordingly, those requesting the call-in have not fully discharged their obligations under Paragraph 5.4 of the protocol.

13. The Protocol confirms that for a Call-in to be valid members must ensure that the form sets out specific criteria as set out in paragraph 6.1 (ii) to (vi) of the Protocol. Namely:

(NB a summary only of the call-in criteria has been provided in this decision however the full content of the call-in was considered.)

(ii) The Form must explain why they believe the decision is contrary to the principles of good decision making;

13.1 The call-in form Alleges outdated evidence-base was presented to committee.

In summary it alleges that it is poor practice to conclude negotiations with a developer by end of October 2024 on the basis of a masterplan which is in need of a refresh to reflect the current position and ambitions.

Those requesting the call-in appear to have conflated the roles of the Council as a seller of land and the distinct role as the local planning authority. The status of the masterplan (entirely related to planning activities) is not relevant to the Council's decision on how best to manage it's assets. Whilst it is understandable that those with an interest in the Ward may prefer there to be an up to date masterplan prior to any agreement for sale being entered into, the status of the masterplan is not a relevant consideration in respect of the management of Council assets, and particularly how and when to sell land.

The purpose of the sub-committee is to make decisions on the management of Council Property. As such, it received information in a report in accordance with the Asset Disposal Policy. The meeting was called, and the report published, in accordance with the Access to Information Procedure Rules. The Asset Disposal Policy does not require a current masterplan to be in place prior to land being sold by the Council, as this is a planning consideration. There is a masterplan in place although going through a refresh process.

The report explained a masterplan is already in place which is currently being reviewed and the decision maker was therefore fully aware of the status of the existing masterplan.

The Monitoring Officer is satisfied that the report presented to the Property Sub-Committee contained current and accurate information. The decision was not made on inaccurate or outdated information and therefore the principles of good decision making have not been breached in respect of this element of the call-in request.

13.2 The call-in form alleges there is a conflict of interest between the Council's roles as planner, budget setter and landowner

The Council is entitled to sell land that it owns. It has chosen to delegate responsibility for making decisions on the sale of land to the Executive Sub Committee for Property. This Sub-Committee is obliged to ensure that it secures best value for the Council. To assist it, the Council has adopted an Asset Disposal Policy.

The mere fact of the Council selling land upon which it may, at some point in the future, need to determine a planning application does not create a conflict of interest. The Council's hierarchy of delegation carefully provides for planning matters to be determined through the planning committee and officers exercising the non-executive functions of the Council. The Council's budget setting obligations are discharged by all of the councillors in full Council, ensuring transparency and democratic accountability for budget decisions. Further, the Council is in any event able to develop land that it owns or has an interest in.

The risk in this transaction lies entirely with the developer/purchaser, which will need to work closely with the Council as LPA to obtain planning permission.

The Monitoring Officer is satisfied that there is no conflict of interest in the Council selling land without the benefit of planning permission and subsequently negotiating with the new owner in respect of planning obligations connected with the site.

13.3 The call-in form Alleges a lack of consultation

The proposed disposal is in accordance with the Council's approved Asset Disposal Policy. The Policy does not require consultation to take place and there is no lawful or statutory requirement to consult at this stage.

However, notwithstanding the lack of obligation to formally consult upon the disposal, it was included in the forward plan, which is available to all Members, and notice provisions were complied with. The Agenda and public report were published in accordance with the procedure rules. During the public part of the meeting considering the report a Councillor was given the opportunity to address the sub committee at length and the issues raised were considered.

The Call-in does not set out why there was a requirement or legal basis for consultation or set out what consultation should have taken place.

The call-in refers to consultation on planning matters however these are distinct from the decision to dispose of the land. Planning matters will be considered at the appropriate

time by the Council as the local planning authority, including the masterplan, in compliance with statutory consultation provisions for such planning decisions.

The Call-in does not identify any lawful requirement or legal basis to consult.

The Monitoring Officer does not consider that there is a requirement to delay the disposal to undertake consultation.

For the reasons set out above, the Monitoring Officer is unable to identify any breaches of the principles of good decision making and therefore does not consider that ground 5.2(ii) of the protocol has been made out in respect of this element of the call-in request.

(iii) The Form must describe any perceived defects in the decision-making process;

13.4 The call-in form alleges limited information was provided to the sub-Committee

In summary the call-in asserted the committee were not shown sufficient maps to understand the issues raised under part (ii) of the call- in (and above) being maps within the local plan masterplan and design code

The maps provided within the report were sufficient to allow the decision maker to identify the land being considered for sale.

The maps and plans referred to in the call-in request relate to the local plan and are therefore relevant to planning decisions made by the local planning authority rather than management of assets by the council.

The Monitoring Officer is satisfied that there were no defects in the decision-making process and therefore this part and ground 5.2(ii) of the protocol is not made out in respect of this element of the call-in request.

13.5 The call-in form alleges there were no realistic alternatives presented to Committee Members

In summary the call-in alleged the alternatives to the decision were insufficient and it was not presented with the compromise to ensure the developer operates within the confines of a refreshed masterplan.

The report set out the rationale for the decision and background information in support of the proposal for a disposal of Council owned land by private treaty. The report explained the different financial impacts of a private treaty as opposed to the traditional method of disposing of the site on the open market and included alternative courses of action open to the Council, including a section on de-risking sites and why this was not considered appropriate in this case.

As it appears throughout the call-in the main issue is generally the alternative consideration of completion of the sale of land once the refresh of the masterplan is adopted and the perceived negative impacts if the sale is completed prior to the masterplan refresh, additional information may have been provided in the report in respect of this alternative. Generally as to why this was not recommended. For this matter to be resolved further explanation as to why an unconditional sale on planning is not detrimental may be required.

The correct premises for this issue to be further explained and explored is through OSB not through the validity process.

Accordingly, the Monitoring Officer is satisfied there is potential for further exploration on this point in consideration of Part 5.2(ii) of the Protocol.

13.6 The call-in form alleges misleading information was provided to Committee Members

The call-in asserts Appendix 2 of the report states the masterplan will be completed alongside the work to be done to progress the sale. The call-in explains clarification from Regeneration is that contact between neighbourhood plan representatives and officers is timetabled to conclude before the end of this calendar year but the timetable for completion is 31 October 2024.

There is no evidence that the information provided to the decision makers was misleading. The revisions to the masterplan are underway and will be undertaken in parallel with the site coming forward for development.

As the masterplan is a matter for the local planning authority, and separate from the decision whether to sell the land. Accordingly, the timing of the sale and the masterplan are not linked.

The Monitoring Officer therefore considers there were no defects in the decision-making process in relation to this part of the call in request.

13.7 The Call-In form asserts the developer will have undue influence to maintain masterplan changes in their favour and to reduce amounts payable or obligations under a Section 106 Agreement in view of the amount paid for the land.

As previously set out, the decision by the Council to sell land is distinct from any decision made in planning terms by the council as local planning authority. The proposal is for the unconditional outright sale of the land.

Developers are consulted as part of master planning as a matter of routine and all developers are therefore involved in changes in masterplans. However, the purchaser of this land would have no more or less influence on the masterplan than any other.

Regeneration say selling the land unconditionally does not put the purchaser in any more favourable position or the planning authority in a more detrimental position with regard to the masterplan or other planning matters.

The assertion that the developer will be in a position to wield pressure upon officers or have undue influence in respect of planning matters is rejected as speculation and supposition with no evidence in support. The unconditional sale of the land rather ensures that all planning tools remain available to the local planning authority in relation to any application that should be forthcoming in respect of the land.

The Monitoring Officer therefore considers there were no defects in the decision-making process in relation to this part of the call in request

(iv)The Form must describe any adverse effects which are likely to arise from the decision being implemented;

13.8 The call-in form asserts a negative environmental and financial impact on Nunthorpe Community and the Council

The call-in repeats the belief that the developer as a result of the sale without having the revised masterplan in place, will have undue influence and be in a position to exploit and revisions in the developer's favour, that the developer will be in a position to resist S106 Agreement contributions or obligations due to the sale price already paid which will be detrimental to Nunthorpe community and the Council

In reality, the sale of the land will only have a financial impact on the Council – the community will benefit from all available planning tools when any application for planning permission is considered by the planning authority, including requirements for section 106 contributions.

The sale of the land will have no environmental impact given that the sale is unconditional. Environmental impact of any change of use for the land will be assessed when any future planning application is received.

The call-in has not provided any evidence to support the allegation that the purchaser of the land will, as a result of the purchase, be able to exercise an undue and or detrimental influence on the planning process.

The Monitoring Officer does not consider there is sufficient evidence to show ground 5.2(iv) of the protocol is made out in respect of this element of the call-in request.

13.9 The call-in form alleges detrimental Impact on Community Cohesion

In summary the call- in asserts "secret deals", negotiated without competitive tender, to be implemented at speed, without community involvement, without publication of a prior updated framework for development fosters suspicion and mistrust.

The report clearly sets out the rationale for the recommended sale by private treaty as opposed to the traditional open market sale and the rationale in best value terms in completing the sale in the timescales provided.

The concerns raised about allocation of housing and greenspaces and the effect of additional developments are as stated above planning considerations and not relevant in relation to the disposal.

The Monitoring Officer is not satisfied that ground 5.2(iv) of the protocol has been made out in relation to this element of the call-in request.

13.10 The call-in form alleges negative impact on two other development sites

The call-in refers to the impact of selling to a housing developer before the revised masterplan is in place on other land-owning developers at the site in relation to housing provision under the local plan.

There is no evidence to suggest that selling the land will have any adverse impact upon other sites in the vicinity of this land. As explained above, all developers are invited to

influence master planning activity, and to make representations as appropriate on the proposals for development of the land. The development of the site is not a material consideration for the decision maker given the sale is proposed to be unconditional. Accordingly, planning considerations not relevant matters for consideration on a determination to sell the land.

The Monitoring Officer is not satisfied that ground 5.2(iv) of the protocol has been made out in relation to this element of the call-in request.

“(v) The call-in form must provide any evidence to support their reasoning; ”

13.11 The call-in form asserted to provide evidence, however, that was mainly in relation to planning considerations, which are not material to the decision being challenged – the sale of land.

The Monitoring officer is not satisfied that sufficient evidence has been provided.

“(vi) The call-in form must identify alternative course of action or recommendation that they wish to propose”

13.12 The call-in application in summary asserted that the completion of the sale to the proposed buyer should not take place until the refreshed masterplan is consulted upon and adopted.

It is considered that this proposal highlights the misconception throughout the call-in request that planning matters are material to the unconditional sale of land by Council

However, please refer to paragraph 13.5

Conclusion

14. The form was completed, completed on time, signed by the required signatories and therefore accepted under part 6.2 of the Protocol
15. The form contained the headings and explanations within those headings as required under Part 6.1 (ii) to (vi).
16. There does not appear to be evidence within the call-in form that concerns were discussed with the Executive Member and the Chair of Overview and Scrutiny Board under 5.4 of the protocol however, it is noted Democratic Services advice has been sought.
17. In respect of the provisions of paragraph 5.2 of the protocol in respect of the validity of the call-in request, for the reasons set out above, paragraphs 5.2(i), 5.2(iii), 5.2(iv), 5.2(v) 5.2(vi) and 5.2(vii) are not considered to have been made out.
18. In respect of ground 5.2(ii), ***“(That there was inadequate/inaccurate evidence on which to base a decision and that not all relevant matters were fully taken into account”);***
While the majority of issues were not considered to have been made out, the Monitoring Officer accepts at paragraph 13.5 that more detail could have been provided in respect of alternative options open to the Council. Particularly the call-in concerns regarding the perceived negative impact of completing of the sale of land prior to the refresh of the

masterplan which may require further explanation and exploration by the Overview and Scrutiny Board.

Accordingly, the Monitoring Officer considers that this element of the call-in request only is valid and should be considered by the Overview and Scrutiny Board.

19. Therefore the Call-In is partially accepted and the Overview and Scrutiny Board are invited to consider the decision, and particularly:

whether sufficient alternatives were provided to the decision makers in relation to the proposed unconditional sale of land by private treaty to a developer.

20. A meeting of the Overview and Scrutiny Board will be convened in accordance with the provisions of Section 7 of the Council's constitution. All Members will be notified of the meeting and the signatories to the call-in request are expected to attend the meeting to explain their call-in request. The possible outcomes following this meeting are:

- a. Referral back to the decision-maker with or without recommendations;
 - i. The decision-maker will have 10 working days from the date the decision is referred back to decide whether to amend the decision.
 - ii. If the Overview and Scrutiny Board's recommendations are not accepted in full, the decision-maker should inform the Overview and Scrutiny Board and give reasons for rejecting its recommendations.
- b. Determine that there is no case to answer, allowing the decision to be implemented as made;

Dated 20.09.24

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Procedure for Call-in Requests at OSB

1. Once a valid call-in request has been received, a meeting of the Overview and Scrutiny Board must be held to consider the matter.
2. The procedure shall be as follows:

Agenda:

The agenda for the meeting shall include a report, or a set of reports, which will include the following:

- (a) The procedure to be followed, including an explanation of the courses of action open to the committee.
 - (b) Details of the call-in request and any additional written material the members making the call-in wish to submit for consideration.
 - (c) Details of the decision, which shall include:
 - A copy of the original report or other papers considered by the Executive (or other decision maker) when the decision was made.
 - A copy of the minutes of the meeting where the decision was made.
 - (d) A copy of any written information provided by the decision maker, in response to the points raised in the call-in request.
3. Procedure to be followed in the meeting:
 - 3.1. Once the Chair has opened the meeting, a note will be taken of the members present at the meeting. Any member who arrives after the call-in signatories have started their presentation may not vote on the call-in, although they may take part in the discussion. If there is a very low turnout, or if the Chair has been made aware that other members are on their way but have been delayed, they may, at their discretion, delay the start of the meeting to allow time for members to arrive.
 - 3.2. It should be noted that no party whip should be applied to call-in meetings and any member who has been subject to a party whip in respect of the matters being considered must declare it in accordance with Paragraph 15 of the Scrutiny Procedure Rules.
 - 3.3. The Chair will outline the Procedure to be followed.
 - 3.4. The Proposer – the first named member who called-in the decision will then be asked to explain why the decision has been called-in and what should be reviewed. The members making the call-in shall be allowed up to 15 minutes in total to present their case. It shall be up to them to determine how they wish to use their time, they may ask one speaker to speak or share the time among several speakers/witnesses as they see fit. (Maximum 15 minutes).

- 3.5. The Executive Member and the service department will have the opportunity to ask factual questions of the Member who called in the decision(s) and the witnesses (Maximum 5 minutes).
- 3.6. The relevant Executive Member will explain the background to the decision(s). The Executive Member must speak first (unless the decision that has been called in was made by an officer under delegation), The Executive member may then call on officers to deal with matters of detail. (Maximum 15 minutes).
- 3.7. The Proposer – the first named Member who called in the decision(s) will have the opportunity to ask factual questions (Maximum 5 minutes).
- 3.8. Members of the Overview and Scrutiny Board (OSB) will have the opportunity to question all parties. Requests to speak should be made through the Chair. It shall be up to the Chair to decide whether to allow people to speak and how many speakers will be allowed.
- 3.9. Following questioning, both parties may make closing submissions (5 minutes each), commencing with the Executive Member, then the Member submitting the call in. After closing submissions, no further representations will be heard.
- 3.10. The Chair should then clearly indicate that the floor is open for debate and invite members to discuss and examine the main issues. Members may ask further questions of the members making the call-in or the decision makers, or any other people present at the meeting, during the debate. The members making the call-in and the decision maker will not normally speak during the debate, except to answer questions.
- 3.11. When the Chair considers that the matter has been debated for a reasonable length of time, the Chair will invite the committee members to vote on whether the decision should be referred back and what the reasons for this are. The committee may also agree any comments or recommendations it would like the decision maker (or Council) to consider.
- 3.12. Following the completion of discussions on the Call-in request, the Overview and Scrutiny Board has a number of courses of action available:
 - i. To refer the decision back to the Executive/Executive Sub-Committee/Executive Member/Officer for reconsideration. In that case, OSB should set out in writing the nature of its concerns about the decisions.
 - ii. To determine that it is satisfied with the decision making process that was followed and the decision that was taken by the Executive/Executive Sub-Committee/Executive Member/Officer. In that event, no further action would be necessary and the Executive decision could be implemented immediately

- iii. Request that the decision be deferred (adjourned) until the Overview and Scrutiny Board has received and considered any additional information/evidence required to make a decision with regard to the Call-In from other witnesses not present at the committee. (The Committee need to clearly identify the relevant issues that need to be given further consideration and whether there are any specific time constraints or other implications affecting the proposed implementation of the decision.)
- iv. Take no action in relation to the Called-In decision but consider whether issues arising from the Call-In need to be added to the Work Programme of any existing or new Overview and Scrutiny Standing Panel/OSB. (*The Committee need to clearly identify the issues to be added to the Work Programme.*)
- v. If, but only if (having taking the advice of the Monitoring Officer and/or the Chief Finance Officer), the Committee determines that the decision is wholly or partly outside the Budget and Policy Framework refer the matter, with any recommendations, to the Council after following the procedure in Rule 8 of the Budget and Policy Framework Procedure Rules. Only in this case is there a continuing bar on implementing the decision.

3.13. The Chair will confirm the OSB's decision.

- ii) If members vote not to refer the decision back at this stage, the call-in is ended. The matter will not be referred back and the original decision may be implemented.
- iii) Even though members have decided not to refer the decision back for reconsideration they may still decide to refer issues of concern arising from the call-in to the Executive, officers, a committee, or Council, or any other body they consider appropriate, for consideration.
- iv) If members vote in favour of referring the matter for reconsideration, the decision will normally be referred directly back to the decision maker.
- v) A written report, detailing OSB's decision and the reasons for it, will be prepared and made available to all Council Members by e mail.
- vi) Where OSB refers a decision back to the decision maker, it shall be reconsidered by the decision maker within 10 working days.

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