

MIDDLESBROUGH COUNCIL

OVERVIEW AND SCRUTINY BOARD

31 MARCH 2023

CALL IN – DEVELOPING A NEW NUNTHORPE COMMUNITY FACILITY
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PURPOSE OF THE REPORT

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.

RECOMMENDATION

2. That the Overview and Scrutiny Board considers the decision of the Executive and determines whether it should be referred back to the decision making body for reconsideration.

EXECUTIVE DECISION

3. A meeting of the Executive was held on 7 March 2023. At that meeting, consideration was given to a report of the Executive Member for Regeneration in respect of the Developing a New Nunthorpe Community Facility.
4. A copy of the above report, which outlined the background to the New Nunthorpe Community Facility, is attached at **Appendix 1**.
5. The report included the following recommendations:-
 - a. the identification of land adjacent to the new GP Surgery at Nunthorpe as the preferred site for a new community centre;
 - b. the commencement of a process to identify an appropriate organisation to operate the new community centre, prior to any major expenditure being incurred;
 - c. the release of up to £20,000 from the budget to enable early stage design consideration to inform the identification of an appropriate organisation; and,
 - d. the allocation 0.5 acres of land owned by the Council off Stokesley Road for designation as a community garden.

The decision was supported by the following analysis:

6. The Council has undertaken an option appraisal process to identify the most appropriate location for a new community facility in Nunthorpe, including a public consultation. The option appraisal identified the location adjacent to the new GP Surgery as the preferred site for the new facility for the following reasons:
 - a. the proposed land is owned and controlled by the Council;
 - b. the proposal looks to develop a stand-alone new build solution and as a consequence will not require a proportion of the budget to be spent on required energy efficiency improvements to an existing building;
 - c. the area suggested for the new facility would provide some flexibility to adjust plans should any issues occur during construction;
 - d. no significant environmental issues are present on the site that would require mitigation;
 - e. the outcome of the appraisal meets that of the preferred location from the community consultation; and,
 - f. provides no immediate Highways and/or Planning concerns.

CALL IN PROCEDURE

7. The power to call in a decision of a local authority executive body was introduced under the Local Government Act 2000. 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.
8. 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.
9. 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.
10. The completed Call-In form, signed by five Members supporting the request to call in the decision outlined above was received by the Monitoring Officer on 10 March 2023.
11. The five Members supporting the call in were Councillors C Hobson (Proposer) Davison, J Hosbon, Rathmell and Wilson.
12. The decision to be called in is as follows:
 - The preferred location adjacent to the GP Surgery as the preferred site for a new community facility in Nunthorpe.

13. The reasons for the call in, as determined as being valid by the Council's Monitoring Officer, are as follows:

1. The public consultation was ran by MBC but the parish council as one of the bid writers, were given control of the paper consultation responses and moved the drop off locations multiple times during this period. This means MBC did not retain full control of the consultation.
2. The public consultation did not have the integrity of consultations MBC has previously carried out. It did not require respondents to list their details, names or address. Therefore the respondents could be from outside of Nunthorpe/ Marton or even the U.K.
3. The public consultation was the result of the initial process having been stopped and restarted by Ian Wright the then section 151 officer for multiple reasons, one including a conflict of interest between the Parish Council bid writers, in part because they were sat on panels such as Nunthorpe Vision in other capacities without stating their conflicts of interest.
4. At the executive meeting, no reference to the planning objectives for site selection were given, although could provide a fundamental hurdle at a later stage, and;
5. The executive were not advised that the original process adopted by the council resulted in both site proposals being independently scored by an outside panel. This panel scored the PFA site and community centre 30 points higher than the option being recommended by officers to the executive.
 - MBC are at risk of legal challenge from the PFA due to the poor governance and lack of integrity of the public consultation,
 - The preferred location could potentially have been overlooked as a result of the bias of the public consultation, as one bidder had significant control over the paper responses (parish council).

We would like to see the public consultation be restarted, MBC retain full control of the consultation and not provide one of the bidders access to paper responses. We would also like to see a requirement for respondents to provide their names and addresses on the completed consultation responses. This could easily be completed within 6 weeks and would remove any risk or doubt of legal challenge. It would also guarantee the integrity of the consultation process and provide an outcome which genuinely represents the will of residents.

14. 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 report and the decision that was made. The Member who initiated the call in will also be present to explain their views and concerns in respect of the decision.

15. A copy of the procedure to be followed at the meeting is attached at **Appendix 2**.
16. Having considered the submitted information, the Overview and Scrutiny Board has the following 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.
17. In the event that the decision is referred back to the Executive, a further meeting of the Executive would be arranged within ten further working days. The Executive would then make a final decision in the light of any recommendations made by OSB.
18. 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.

BACKGROUND PAPERS

19. The following background papers were used in the preparation of this report:

- Middlesbrough Council's Call-In Procedure.
- Report to Executive – 7 March 2023.

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