

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councillors who do not sit on executive to ask that particular decisions are reconsidered by the person or people who originally made them.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 A call-in can result in a recommendation that a decision be reconsidered or withdrawn, but nothing more.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 ineffective.

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