

**OVERVIEW AND SCRUTINY BOARD**

A meeting of the Overview and Scrutiny Board was held on 18 December 2020.

**PRESENT:** Councillors J Thompson (Chair), C Cooke, D Coupe, A Hellaoui, T Higgins, S Hill, B Hubbard (as substitute for Councillor Saunders), T Mawston, J McTigue, J Platt, M Storey, G Wilson and Z Uddin.

**PRESENT BY INVITATION:** Councillors C Hobson, E Polano, J Rathmell, M Smiles, A Waters and Mayor A Preston.

**OFFICERS:** C Benjamin, C Breheny, R Horniman, S Lightwing, C Lunn, T Parkinson, S Reynolds and I Wright.

**APOLOGIES FOR ABSENCE:** Councillors L Garvey and M Saunders.

**DECLARATIONS OF INTERESTS**

There were no declarations of interest made at this point in the meeting.

**CALL-IN – NUNTHORPE GRANGE FARM: DISPOSAL – CHURCH LANE**

The Chair welcomed attendees to the meeting and provided an outline of how the call-in would proceed.

The Chair confirmed that the subject of the call-in was the decision made by the Executive on 24 November 2020 – ‘Nunthorpe Grange Farm: Disposal – Church Lane’.

The following were in attendance at the meeting to explain the reasons and rationale behind the report, and the decision that was made:

- The Executive Member for Finance and Governance (Councillor C Hobson);
- The Executive Member for Regeneration (Councillor Waters);
- The Mayor (A Preston);
- The Director of Finance (I Wright); and
- The Director of Regeneration and Culture (R Horniman).

The proposer of the call-in, Councillor Rathmell, together with the supporting Members, Councillors Hill, Hubbard, Polano and Wilson, were in attendance to explain why the decision had been called-in and what should be reviewed.

In terms of the procedure to be followed at the meeting, a copy was shown at Appendix 3 of the submitted report. The Councillor proposing the call-in (Councillor Rathmell) would be afforded 15 minutes to present his case, which would include any statements from witnesses. At the end of the presentation, the Executive Members would have the opportunity to question the proposing Councillor for five minutes, which could include input from officers from the relevant service area.

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

Members of the Overview and Scrutiny Board (OSB) would then be given the opportunity to ask the proposing Councillor and the Executive Member / service area questions. Following questioning, both parties would each be given five minutes to present a closing submission.

Following debate by the OSB Members, a vote would be undertaken as to whether OSB Members felt that the decision should be referred back to the Executive for reconsideration.

The Chair invited Councillor Rathmell to present his case to OSB, and explain why the decision had been called-in.

Councillor Rathmell made the following comments as part of his presentation:

- The primary focus was that there had been no / inadequate consultation with regards to the whole disposal of this site, and the future use for it. The report stated that it did fall outside of the Local Plan and the Local Development Plan Policy, but the report appeared to omit considered and other potential uses for the site, as well as details regarding which policy document the Council was choosing to rely upon in order to identify the best possible use, and future use, for the land.
- The sale did not go through a tendering process and it appeared that no other options were considered for the use / retention / further disposal of the land. The approach to purchase the land was made by the purchaser and all discussions had been held behind closed doors. Consequently, Members could not be assured that best value for money was being achieved. Reference was made to previous instances of the authority's accounts being qualified in terms of value for money.
- The report regarding the decision was taken in two parts (A and B): Part A was public, whilst the financial and commercial elements were considered in private session (Part B). Reference was made to the publishing of financial information on social media, which was felt to create the perception of a lack of openness and / or transparency. It was indicated that the financial information published on social media had not been supported in Part B of the report, and therefore the decision had been made quickly and without access to full considered information. It was not evidenced which part of the Council's Policy Framework this followed, what other uses were considered, and which part of the Council's policy was adopted to explore and consider those options.
- Councillor Rathmell explained that he was first made aware of the intention to dispose of the site when a Council officer approached him, his Ward colleague and Members of the Parish Council in 2020. All were advised that the site was not on the Asset Register for disposal at that time, but was something that would be considered. Regular updates would be provided; however, it was felt that this leapt from being a matter of consideration to becoming an Executive Member report with no consultation. The lack of consultation and openness and transparency was disappointing, not only for Ward Members, but for Ward residents, many of whom had expressed that discontent.
- In summary, it was felt that there had been no consultation, there was no information stated anywhere as to which policy framework had been relied upon, and it was one of those decisions that should not have been dealt with in two parts if elements of Part B were to be placed on social media.

At this point in the meeting, the Chair invited the Executive Members to pose factual questions to the call-in proposers. The following enquiry was raised:

- The Executive Member for Finance and Governance referred to email correspondence with Councillor Rathmell and a subsequent meeting with Councillor Rathmell and the Parish Council, which had taken place in respect of the disposal of this site. It was queried whether, having received this correspondence and attended this meeting, Councillor Rathmell had consulted his residents. In response, Councillor Rathmell indicated that yes, he had consulted with residents and the matter had also been raised at a Parish Council meeting. The respective feedback had been provided to the appropriate Council officer at the time.

The Chair invited the Executive Members / Service Directors to present the case for the Executive; the following comments were made:

- For clarification, the Director of Finance queried whether Councillor Rathmell was referring to the Asset Disposal Control Sheet when he referred to the Asset Register for disposal. In response, Councillor Rathmell confirmed this to be the case. The Director of Finance advised that, following a review of those Asset Disposal Control Sheets, he was able to confirm that the proposed disposal of this land had been listed since January 2017, when that process had commenced following the Asset Disposal Policy being passed in December 2016.
- The Director of Finance confirmed that the site did not go out to tender and therefore value for money did need to be considered. However, it was explained that when

disposing of assets or anything else, the Council was not obliged to tender. Although this was one method of demonstrating value for money, it was not the only one. Reference was made to some land sales that had taken place previously, which had still encountered controversy despite going through a tendering process. It was explained that this site did not go out to tender because the disposal was for a specialist use, i.e. a place of worship, and a specialist purchaser, i.e. a religious group. A professional valuation of the site was carried out before it was sold and the offer price was 33% in excess of that valuation, which was felt evidenced / supported a value for money disposal.

- In terms of the points raised around confidentiality, the Director of Finance indicated that, to his knowledge, no information from Part B of the report had been placed into the public domain. It was explained that Part B was confidential because it contained information relating to the offer price, negotiations with the purchaser and required follow-up action.
- The Director of Regeneration and Culture referred to the point made about the Local Plan. It was explained that the Local Plan did not have this site designated as a place of worship or similar, and the sale of the land did not indicate that planning permission was being granted. There would be a separate process for the applicant to follow in terms of applying for planning permission, with the land sale being predicated on the applicant securing a suitable position at some point in the future. Therefore, if the applicant was unsuccessful in securing planning permission, either because of the Local Plan or other issues, the sale would not be progressed.

At this point in the meeting, the Chair opened up the floor to Councillor Rathmell and Members of OSB to ask questions. The following enquires / comments were raised:

- A Member commented that in order to attempt to obtain the maximum price for any asset being sold in the future, within reason, the sale ought to be put out to tender.
- The Executive Member for Finance and Governance indicated that if this land was not sold, the Council would be required to maintain it. It was felt that the Council was achieving good value for money through this sale. The site would be utilised by a religious group, and therefore it was felt that, in comparison to a housing development, the number of cars in the vicinity of the site would be lower. The comments made by the Director of Regeneration and Culture in respect of planning permission needing to be obtained by the purchaser / applicant were reiterated, with reference being made to consultation with residents during this process.
- A Member supported the view that the volume of traffic would be lower in the vicinity of the site if being used by a religious group, than if being used for a housing development. It was queried whether the land could ever be used for housing. In response, the Director of Regeneration and Culture advised that, theoretically, a housing developer could have made a bid for the site as it was a reasonable piece of land. However, owing to the knowledge of opposition from local residents, the Council would have been unlikely to sell it to a housing developer. The Council would not intentionally put the site out for housing use, hence its omission from the Local Plan as a housing site. In terms of this specific sale / site, the Director of Finance advised that there would be a restrictive covenant that would prevent use as housing land – it would only be usable for a place of worship.
- A Member queried the cost to the Council in terms maintaining this land. In response, the Director of Finance advised that a specific figure was not available because it had been used as farmland previously. Therefore maintenance work had not commenced as of yet.
- A Member sought clarification in relation to the financial information that had been published on social media. In response, Councillor Rathmell advised that the information related to the financial element for the community as a result of the sale of the site. This was not contained in either Part A or Part B of the report: there was no information pertaining to the calculations of that figure, the decision-making process, or any supporting information from officers. It was felt that Members had not received sufficient information to make a decision, but members of the public had seen the information. It was deemed unhelpful for information discussed during private meetings to be published online.

- A Member made reference to the proportion of the capital receipt (£43,500) and queried how that was calculated, and whether there was a formula that could be applied to other land sales across the town. In response, the Director of Finance confirmed that the figure, which was in the minutes of the Executive meeting in November 2020, was £43,500, and was calculated as a percentage of the capital receipt. As this was a public meeting, the percentage of that capital receipt could not be provided, as this was the exempt information contained in Part B of the report. Work would be taking place to create a policy for the Council's assets going forward. A report was due to be considered by Executive in February 2021, which would set out that policy to apply to asset disposals throughout the town.
- Councillor Smiles, Executive Member for Communities and Education and Ward Councillor for Nunthorpe, felt that development on Nunthorpe's green space and the community's needs were pivotal to this issue. Reference was made to an increased focus being made towards developments on brownfield sites, such as in the Town Centre and over the border, which removed the focus of development from Nunthorpe. In respect of this development, however, the issue around consultation was central to it. It was explained that information was presented on a confidential basis to Ward Members initially, which did subsequently go out to wider consultation, but this lacked sufficient information and detail as to what the development would consist of, pros and cons of it, etc. It was also felt that there were other, more pressing community needs that would have benefitted from the use of this site, such as a Community Centre, which was needed. Reference was made to the Guisborough by-pass as a perceived red line boundary for many people in terms of development, and concerns raised that this development could potentially result in further housing development around the site.
- A Member queried other potential (community-based) uses for the site, and the extent to which this had been considered. In response, Councillor Rathmell felt that no other options or uses had been considered for the site, as it had been identified / restricted solely for religious purpose and use. Reference was made to the reports, with no identification being made as to which part of the Policy Framework the authority had relied upon for solely singling out that one particular use.
- A Member commented that this site was located south of the by-pass and raised concerns that development in this area could potentially result in further housing development, which the residents of Nunthorpe did not want to see happen. In response, the Director of Regeneration and Culture advised that work was currently being undertaken with Nunthorpe Parish Council to develop a compact, which would clearly identify where future housing development would take place; there were no plans to develop further housing to the south of the by-pass. It was explained that there were other buildings already in-situ, such as the farm house, which were likely to be used for housing again, but within the current structure. The Council was not looking to use any of the greenfield land or other areas in the vicinity for further housing development, and this would be placed in the compact with Nunthorpe Parish Council. The Executive Member for Regeneration explained that work was currently being undertaken on the Local Plan; as part of the Mayor's Strategy, brownfield sites in central areas were currently being identified, which was felt would alleviate the pressure off Nunthorpe. No further housing, on top of what was already in the 2014 Local Plan, would be developed in Nunthorpe.
- A Member made reference to the comments made regarding the Council being required to maintain the land if it was not sold, and hoped that this would not be a consideration used when determining future land sales. The example of the need to maintain playing fields was provided. In response, the Executive Member for Finance and Governance clarified that the consideration for disposing this particular piece of land was value for money. The issue of maintaining the land was not considered at the time – it was the actual value for money that was considered.
- A Member made reference to brownfield sites being developed in the Town Centre and queried the locality of these. In response, the Executive Member for Regeneration explained that a number of sites were coming forward, as had been made public. These included: the Gresham site; the area across Middlehaven that tied in with Boho X; and housing development within the Town Centre itself (circa. 4000 houses). Such development removed the pressure from the outskirt and greenfield areas around the town.

- A Member made reference to the site not being developed for housing and queried the longevity of this. In response, the Director of Regeneration and Culture explained that, in respect of this site in particular, there were no plans to put housing on it or on the other greenfields around it, which would be reflected in the new Local Plan. It was explained that the compact being entered into with Nunthorpe Parish Council would provide a greater, longer-term guarantee that those sites would not be brought forward for housing.
- A Member made reference to the development of the circa. 4000 homes in the Town Centre and requested further information. The Executive Member for Regeneration would provide information to the Member outside of the meeting.
- After receiving clarification from the Chair in respect of meeting procedures, a Member queried how best value could be assured if the sale of the site did not go through a tendering process. In response, the Executive Member for Finance and Governance explained that the offer received exceeded the value of the asset and, on the basis that housing development would not take place on the site, was deemed very good value for money.
- Councillor Rathmell queried with the Executive Member for Finance and Governance as to whether any direct consultation with residents had personally been carried out, and how the viewpoint of residents' preferred use for the land had been reached. In response, it was explained that this was personal opinion - residents had not personally been consulted, but there was an awareness that residents did wish to keep greenfield sites. It was felt that this sale for a religious purpose provided a more appropriate option than having the site opened up for housing development, where 150/200 houses could potentially be built.
- Councillor Rathmell queried which policy document was relied upon to determine that this was the best possible use for the land. In response, the Director of Regeneration and Culture explained that when selling a piece of land, or when a piece of land was listed on the Asset Disposal Register and an acceptable offer was made for it, the Council did not have a policy to consider other potential uses for the respective site. Land was listed on the register for a reason, i.e. it was surplus to requirements and if someone had a use that was proven to be compatible through the planning process, then that was deemed an acceptable use for the site. Therefore, in terms of the Policy Framework, there was not a policy for that because it was not something that the Council did.
- Councillor Rathmell made reference to consultation activity and the new Local Plan, and queried the vulnerability of the Nunthorpe Grange site to development whilst a new Local Plan was awaited. In response, the Executive Member for Regeneration referred to the matter of tendering for the site and explained that the price secured for the land reflected housing values. The only other option to increase the land value would require the need to sell it for housing development, which the community and residents of Nunthorpe did not want. In terms of the Local Plan, it was indicated that this needed to tie-in with the Mayor's Strategic Vision for the town. COVID-19 had delayed further progress, but work was being undertaken to protect remaining land around Nunthorpe to ensure that it did not get built on. The Local Plan detailed plans for the next 10-15 years for the town, was a detailed document, and could therefore not be prepared with rapidness.
- Councillor Rathmell made reference to the compact with Nunthorpe Parish Council and queried the duration of the guarantee it provided, i.e. was this a 10-year period. In response, it was explained that the compact worked for the Council, the Parish Council and the residents of Nunthorpe, and tied-in with the Local Plan to set-out a 10-year vision; this timeframe should not be exceeded because things would change within that time. It was felt that if this needed to be kept in place beyond the ten years, further liaison with the Parish Council would take place accordingly.
- A Member referred to the needs and geographical coverage of different religious groups, as well as to the comments made previously regarding traffic, and queried which religious group would be purchasing this site. In response, Councillor Rathmell confirmed this to be the Plymouth Brethren, who were neither limited nor restricted to Nunthorpe. With regards to traffic, Members were advised that traffic had caused issues previously in Nunthorpe Ward, and there were concerns about the number of vehicles, potentially large vehicles, that could access this site at multiple times daily.

- A Member made reference to consultation and the responsibility of Executive Members in this regard. In response, the Executive Member for Finance and Governance clarified that it was not in the remit of her portfolio to go out to consultation; her remit was to consider value for money and, on this occasion, it was felt that this had been achieved. Consultation would be undertaken during the planning application process, during which all stakeholders would have the opportunity to submit their comments.
- A Member queried the year that the site came into Council ownership. In response, the Director of Finance explained that, due to the site forming part of a Council farm that was rented out to tenants, it was decades, but the exact year was unknown.
- In response to an enquiry regarding maintenance of this land, the Executive Member for Finance and Governance explained that the Council had not maintained the land previously because it was operated as a farm. Following vacation of the farm, the Council would need to maintain the site. The Director of Finance indicated that a decision was taken by the Council circa. 2018/2019 that the site would no longer operate as a farm, at which point, the question of maintaining the land became relevant.
- A Member made reference to planned housebuilding across the town, policies around the selling of land, further development post-sale and associated covenants. The Director of Finance indicated that, in respect of this site being disposed of, a covenant would be written into the deeds in terms of usage, which would only be released if the Council in the future made a democratic decision to do so.
- A Member commented on issues experienced in other areas of Middlesbrough with regards to car parking and congregations of large groups of people. A further Member acknowledged this point, before making reference to the Plymouth Brethren's current place of worship, which was located in a residential area in a very narrow lane. It was felt that the effect of traffic in its present location could not be compared to potential traffic in its proposed location. In response, Councillor Rathmell acknowledged that it would be less of an impact to their current location should the Brethren move to the new site, but felt that it would not be less of a detriment to the Ward in respect of traffic and speed volume.
- A Member queried whether the site could be utilised for commercial use. In response, the Director of Finance indicated that the restriction on the site was for use as a religious place of worship, not for commercial or residential purposes.
- A Member sought confirmation that the correct procedure had been carried out in accordance with the Asset Disposal Policy, and that a Business Disposal Case was available. In response, the Director of Finance indicated that yes, the correct procedure had been followed and there was a Business Disposal Case, which had been appended to Part B of the report.
- In response to an enquiry from a Member regarding the reasoning for such a large space for specific religious purposes, the Director of Finance was unable to comment on why this was needed or on particular religious practices. It was explained that this was a preference that the group had asked to purchase, and which had therefore increased the capital receipt for the Council.
- Councillor Rathmell made reference to proposed plans for the site, indicating that beyond religious purpose and ample parking, there was an orchard and vegetable garden also shown in preliminary plans, which would generate increased use.
- In response to an enquiry regarding potential alternative uses for the site, Councillor Rathmell explained that, at present, there was one community facility in Nunthorpe. However, this was part of a Middlesbrough Council-operated school, which was being transferred to an Academy. The space available for use by the community had gradually been restricted, with the space only able to be used on weekdays between 6pm-9pm, with the school's approval. It was felt that the site being disposed of was in a prime location that could have been considered for potential community use, particularly in reflection of the number of developments in Nunthorpe and the number of section 106 agreements that had been raised to create benefit for the community. Councillor Smiles supported this view, indicating that although any development in the area would require serious consideration, residents would prefer a building that would benefit the whole community.

At this point in the meeting, the Chair invited the Executive Members to present a closing submission. The following points were made:

- The Executive Member for Finance and Governance commented that this decision had been taken on the grounds that value for money had been achieved, and that the land would not be developed for housing.
- The Executive Member for Regeneration made the following points:
  - In terms of the suggestion that Members were provided with insufficient information to take the decision and that some of the information provided was misleading, the Board was advised that this site was on the disposal list, which could be evidenced, and it did fall outside of the Local Plan, which was unrelated to land sales. Council sites were sold subject to securing the appropriate planning permission and there was a full statutory process for the purchaser to go through to secure this (the sale did not automatically provide the purchaser with planning permission).
  - With regards to the site not going out to tender and no other options being considered, it was explained that the price secured was reflective of housing values, and therefore the only other viable option to increase the monetary value would have been to sell it for housing development, which Nunthorpe residents did not want.
  - No or inadequate consultation undertaken – it was explained that the purpose of consultation was to provide opportunity for people to respond and give their views. Although Ward Members would not normally be consulted about land sales, it was felt that there had been a number of opportunities for this to occur; details of meetings and email correspondence / notifications were outlined to the Board. The report also referenced that Ward Members would have the opportunity to input their views through the planning process.
  - Regarding this decision being taken in two parts, this was confirmed to be the case. Part B related to the decision to provide the local community with a proportion of the land sale proceeds, which was determined at the Executive meeting. It was not planned in advance and not contained in the report, and could therefore not have been withheld by officers. The Executive had taken the decision to give back to the residents of Nunthorpe: it was felt that Section 106 funding was needed for community facilities, and that the community should determine the most appropriate use for those funds.

At this point in the meeting, the Chair invited Councillor Rathmell to present a closing submission. The following points were made:

- Regarding the representations and the closing submissions made, it was commented that consultation was referred to as Ward Councillors receiving notifications of the intention to sell the land. Notifications were significantly different to consultation, and it was felt that, although Ward Councillors would not normally be consulted in respect of land sales, for reasons of openness and transparency and to involve communities in shaping their community and making decisions, consultation would be more appropriate than notification. It was felt that in an era of transparency and openness, consultation must be undertaken.
- Officers had indicated during this meeting that there was no policy in this scenario; that it fell outside of the Local Development Framework and local policies.
- Reference was made to the £43,500 that had been given to Nunthorpe for a community facility. It was felt that consideration prior to decision-making (i.e. carrying out necessary investigations and looking at alternative uses, going through a tendering process and going out to the community) should have been undertaken. Consequently, it had not been established as to whether best value, or best interest for Nunthorpe, had been achieved.
- £43,500 would not be sufficient for a community facility; land provided the opportunity to use the space as a community facility, with development of the actual building in the longer-term. Land could provide a community facility, whether it was another green space or playfields for children, which had been lost in Nunthorpe.
- There was no policy in this scenario as it fell outside of the Policy Framework. It was

indicated that OSB had a number of options available to it; when something fell outside of the Policy Framework, which was set by the Full Council on an annual basis, then it could be referred back to Full Council so that it could either be improved or implemented, or a policy could be created that protected communities, not just in Nunthorpe, but across the town, from future disposals, developments and use. It was felt that, on this occasion, this was outside of the Policy Framework, and should therefore be referred back to Full Council for debate, discussion and reconsideration.

At this point in the meeting, the Chair invited the OSB Members to debate the information provided and ask any questions of either party. The following points were raised:

- A Member commented that, in terms of future land sales and money going back into communities, a process should be formalised to ensure that communities benefitted accordingly. In response, the Director of Finance indicated that work was currently taking place in respect of this. An item had been placed on the Forward Work Programme and a report would be presented in due course. The Executive Member for Finance and Governance commented that additional monies for community use would only be applicable for sales of land that belonged to the Council; there would be no negotiations in respect of private sales.
- In response to an enquiry regarding how the buyer of this site was found, the Executive Member for Finance and Governance explained that the Plymouth Brethren had approached the Council as they knew that they wanted to move from their current site, and this piece of land suited their purposes. The Brethren offered over and above the price that was on the Asset Register.
- A Member queried whether the Plymouth Brethren site, once developed, could potentially be utilised for community activities, or if would be private for them and therefore effectively a private dwelling. In response, Councillor Rathmell felt that they were a very private group and therefore there was little potential for sharing community facilities.
- A Member made reference to the Ordnance Survey Map and commented that this indicated the church as a Community Centre.
- A Member felt it appropriate to refer the matter back to Full Council for consideration. The Chair queried the position on this with the Council's Monitoring Officer, who requested a short adjournment to review and clarify the correlation between the rules on call-ins and the Budget and Policy Framework Procedure Rules. Councillor Rathmell commented that the Policy Framework, which was considered by Full Council, helped set / formulate the budget and was also part of the decision-making process of the authority as a whole. Councillor Rathmell felt that certain elements of this matter had fallen outside of any policy or framework, and therefore there was the option to refer the matter back to Full Council. In response, the Monitoring Officer highlighted what appeared to be a conflict between the options that were presented in the call-in procedures and the advice provided in the Constitution (Budget and Policy Procedure Rules pertaining to any call-in of any decisions falling outside of the Budget and Policy Framework). A formal request for an adjournment to clarify the legal position in respect of the Budget and Policy Framework was made. With the agreement of the Chair, the meeting was adjourned pending further advice / information from the Council's Monitoring Officer.

**Unfortunately following the adjournment, technical difficulties were experienced and the Chair advised the Board that the meeting could not be live-streamed. In accordance with regulation 13 of *The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392*, the Chair advised the Board that the meeting would reconvene at a future date.**