

Advice of Monitoring Officer
Re: call in of Executive Decision – Nunthorpe Grange Farm

SUMMARY

I am asked by the Council's Overview and Scrutiny Board to advise whether the above named key decision of Middlesbrough Council's Executive on 24 November 2020 '*materially departs from the budget and policy framework*'¹. Having considered the contents of the report to Executive and the submissions of Councillor Rathmell in the context of the Council's Budget and Policy Framework, my advice is that the decision does not materially depart from the Council's Policy Framework. I will set out my advice as to next steps, below.

BACKGROUND

The call-in request stated:

'Members were provided with insufficient information to take the decision as some of the information provided was misleading and disingenuous e.g. Members were not told that this falls outside the Local Development Plan Policy Document. The site was not on the Council's disposal asset register, which lists sites that the Council intends to dispose of. Therefore this decision falls outside the Council's Policy Framework.'

This was supplemented with an email from Councillor Rathmell to the Monitoring Officer on 10 December stating:

"The Local Plan is referenced in the report but it omits to advise members that the local plan is underpinned by the Mayors Vision, the problem arises because the Local Plan is fundamentally intertwined and composed in substantial part by the Mayors Vision.

This is why it was only necessary to mention the Local Plan as the two are constructed using each other.

The problem arises because the Local Plan is a 2014 document drawn up around/with the Mayors Vision 2020 (Mayor Budd's Vision).

Mayor Preston's Vision is substantially different and departs from Mayor Budds 2020 Vision therefore rendering the 2014 Local Plan useless."

And an additional email from Councillor Rathmell to the Monitoring Officer on 18 December 2020 stating:

'I further considered this morning's meeting and the original report acknowledged that the disposal of the land fell outside of the budget & policy framework. The budget and policy framework is made up of 14 documents, as it only requires the decision to fall outside of the above & it's acknowledged within the report, it should clearly proceed to full council. The officers made it clear that there was no policy related to the decision and use of the land. I asked it on multiple occasions.'

¹ Para 5.2 (iii) Overview and Scrutiny Board – Call-in Protocol, Middlesbrough Council Constitution page 123

FINDINGS

Policy framework

The following documents constitute the policy framework:

1. Mayor's Vision
2. Change Strategy
3. Medium Term Financial Plan
4. Capital Strategy and Council's Budget Strategy (incorporated within: a) Council Tax Base; b) Revenue Budget c) Council Tax; and d) Prudential Indicators)
5. Youth Justice Plan
6. Licensing Authority Policy Statement (2003 Act)
7. Statement of Principles Gambling (2005 Act)
8. Local Development Plan (Local Development Framework/Local Plan)
9. Local Transport Plan
10. Pay Policy Statement

For the avoidance of doubt, if any of the above plans, as contained in Schedule 3 to Local Authorities (Functions and Responsibilities) (England) Regulations 2000, are replaced by other plans dealing with the same or similar issues, such replacement plans shall be classed as forming part of the Policy Framework.

Decision making

The report to Executive sought approval to sell the site, it did not seek approval to grant planning permission. This is something that will need to be sought by the purchasers. The relevant policy being applied in this instance was the Asset Disposal Policy which is not part of the Policy framework.

Consideration of any request to depart from the local plan would be considered by Planning Committee, not Executive. That consideration by Planning Committee would take place when in receipt of a planning application by the purchaser.

Local Plan (relevant policies are in the 1999 version of the Local Plan)

The relevant policy for considering the proposal is E20 Limit to Urban Development.

The Local plan classifies land by type. Within the current plan the land in question is currently identified as protected from development as it's beyond the limits of development.

However it should also be noted that the planning systems provide for variations in planning where material considerations allow. This is outside the scope of call in as it is not a decision that Executive has made, however I would make the point for completeness that a decision to depart from the local plan by Planning and Development committee is possible without requiring a full Council decision.

Statement in the original report re: Policy Framework

The report does not state that the decision to sell the land will result in varying the Local Plan.

I have set out the relevant quotes from the report below:

- The report states that the land is ‘Rectangular in shape, and situated outside of the Local Plan Framework development boundary’ for the wider Nunthorpe Grange site which is being developed for housing.
- ‘The design of the new arrangement [referenced in Appendix B] will allow the Council to bring forward the subject site, serve any future requirement to access the land situated north of Guisborough Road [A1043] and potentially facilitate delivery of a park & ride scheme proposal on land to the east of the subject site.’
- ‘Although the site is capable of being used for other purposes, it is situated outside of the Local Plan Framework development boundary and certain types of development would be restricted in planning terms. The future use of the site for the purposes of religious worship as being proposed by the Buyer is preferred.’

The report states that any development of the land, not disposal of the land would be outside the local plan (and therefore outside the policy framework) and would require a departure from the local plan. The Executive is concerned with the disposal of the land, not the development of the land.

While the preamble could have been clearer that any subsequent planning application was outside the scope of the decision by Executive about the disposal of the asset - because it is a decision reserved for the quasi-judicial Planning and Development committee- the impact section of the report does clearly state that:

Policy Framework

- 22. The proposals do not require any change to the Council’s existing policy framework.

Conclusions

Allegation	Conclusion
Members were not told that this falls outside the Local Development Plan Policy Document.	This was highlighted in the report, although it could have been clearer that it is the remit of planning and development committee to take any decision about change in use that the purchaser may submit an application for.
The site was not on the Council’s disposal asset register.	The land in question has been on the Asset Control Sheet since January 2017.
The original report acknowledged that the disposal of the land fell outside of the budget & policy framework. The budget and policy framework is made up of 14 documents, as it only requires the decision to fall outside of the above & it’s acknowledged within the report, it should clearly proceed to full council.	The report did not acknowledge that the disposal of land fell outside the budget and policy framework. The disposal of land does not fall outside of the budget and policy framework and so it would not have been correct for the report to state that the disposal fell outside the framework. The planning system allows for variations to the local plan to be made by Planning and Development Committee. Although it is out of scope of call in as it’s not a decision Executive took, Planning and Development Committee could agree an

	application from the purchaser to vary the use of the land without that decision being required to be referred to full Council.
Mayor Preston's vision and the Local Plan are in conflict with each other and this renders the local plan 'useless'	The application of the Local Plan is a matter for Planning and Development Committee and not within the remit of Executive in making a decision about the disposal of the asset in question.

Next Steps

The implication of the advice in this notice is that the matter should not be referred to Council for consideration, on the basis that the Executive decision is not a departure from the Council's Budget and Policy Framework.

This advice is to be presented to Overview and Scrutiny Board (OSB) and Executive, copied to all members of the Council.

OSB will meet again to consider the advice and determine its impact on the call in request.

Charlotte Benjamin
Monitoring Officer
January 2021