

REPORT TITLE: DETERMINATION OF CALL-IN REQUEST

15 FEBRUARY 2022

REPORT OF MONITORING OFFICER: Lisa Kirkman, Strategic Director, 01962 848 501, lkirkman@winchester.gov.uk

WARD(S): ALL

PURPOSE:

The Council's [Constitution](#) (Part 4.3 – Overview and Scrutiny Procedure Rules, paragraph 15) details the operation of the council's "Call-In" process. This includes the following requirement "*Where a Call-In Notice is not accepted the Monitoring Officer will submit a report to the next available meeting of The Scrutiny Committee giving details of the request and the reasons for not accepting it.*"

The Monitoring Officer (MO) received a call-in request on 1 December 2021, regarding a decision taken at the [Cabinet meeting](#) on the 23 November 2021, report reference CAB3324 and accompanied by 5 electronic signatures. The MO reviewed the contents of the request and assessed it against the grounds for call-in specified within the constitution.

The call-in request was not accepted, and this was communicated to the call-in signatories via email on the 8<sup>th</sup> December 2021 with a detailed breakdown for the reasons. In line with the constitutional requirement outlined above, that email is attached to this report in full.

RECOMMENDATIONS:

It is recommended that scrutiny committee note the contents of this report.

**From:** Lisa Kirkman

**Sent:** 08 December 2021 19:13

**To:** Caroline Horrill (Cllr) <[CHorrill@winchester.gov.uk](mailto:CHorrill@winchester.gov.uk)>; Susan Cook (Cllr)

<[susancook@winchester.gov.uk](mailto:susancook@winchester.gov.uk)>; Frank Pearson (Cllr)

<[FPearson@WINCHESTER.GOV.UK](mailto:FPearson@WINCHESTER.GOV.UK)>; Hugh Lumby (Cllr) <[HLumby@winchester.gov.uk](mailto:HLumby@winchester.gov.uk)>;

Stephen Godfrey (Cllr) <[SGodfrey@winchester.gov.uk](mailto:SGodfrey@winchester.gov.uk)>

**Subject:** RPLC - Call-in determination

**Importance:** High

**Sensitivity:** Confidential

Good Evening Councillors,

I email further to your call in received on Wednesday 1 December and accompanied by 5 electronic signatures. Your call in noted the following paragraphs as being relevant;

- i) The decision is outside the terms of reference of the Cabinet, or delegated powers of the decision-maker
- ii) The decision appears to be contrary to, or not wholly consistent with, the Council's Budgetary and Policy Framework or other Council Policy
- iii) The information contained within the report, and/or considered by the Cabinet (or other decision-maker) was incomplete or inaccurate
- iv) The decision was not made in accordance with the 'Principles of Decision making' set out in Article 11 of the constitution or in some other way appears to give rise to significant legal, financial or propriety issues.

I have separated out and numbered each point of your call in below for ease. It is not my role to defend the decision made by Cabinet nor to find other reasons to allow a call-in. My role is to assess the merits of the points made to me by you as the signatories and whether it is reasonable to put those points that may be considered valid before the Scrutiny Committee. I therefore conclude each of your points with whether I consider it to be valid or not valid. My response is set out in red below under each of your points.

1. There has been no consultation with residents and councillors regarding the future of the site, contrary to articles on the principles of decision making in the Constitution, that state that decisions of the Council will be made after due consultation and with a presumption in favour of openness.

There are statutory requirements for public consultation in some areas where there is a requirement set out in law to consult a specific body. Those consultation exercises are prescriptive in nature and there is much case law about what is then considered due consultation. This is not one of those cases as there is no legal or statutory requirement for consultation. In section 7 of the Cabinet report this is covered and I set this out below;

## 7 CONSULTATION AND COMMUNICATION

7.1 There is no formal statutory requirement for consultation in this proposed leasehold disposal. The University of Southampton and the council set out proposals for the development of the Winchester School of Art campus at a Member Briefing on 20 October 2021 and at a Public Briefing on 1 November 2021 which attracted 191 attendees.

7.2 In addition to a public meeting, individual meetings were held with a number of stakeholder groups and organisations and this will continue.

7.3 The public event saw questions raised about the following matters which were responded to at the meeting: e) What other options were being considered for this site, including reference to the petition for a Lido f) Clarification sought on the site boundaries and restrictive covenants g) the scope of the facilities that would be included, for example whether there would be options for an auditorium/concert hall h) Several points were made regarding the potential impact on the area: (i) Stewardship of the green spaces and any impact on Winnall Moors (ii) The likely size of the proposed buildings on the site (iii) Whether housing would be allowed on the site (iv) Whether the development would be co-designed with the public (v) How buildings on the site would integrate with the outside space (vi) The potential number of students who would be using the facilities (vii) Whether access to the site would be retained for local people (viii) 'Access for All' – whether access for people with disabilities would be supported on the site (ix) The impact on parking – the degree to which the existing parking capacity would be retained and publicly accessible. (x) The likely timescale for the demolition of the RPLC building i) The impact upon specific organisations was also raised including the bowling club and canoe club j) Other considerations regarding impact on the use of the land by St Bede's school

7.4 The council's previous consultations relating to this area (and the wider area) include engagement around: · North Walls Recreation Ground · Central Winchester Regeneration · Vision for Winchester (Winchester Town Forum) · The Green Economic Development Strategy, and · Winchester Movement Strategy (part of Hampshire County Council's broader Movement Strategy).

7.5 This development at Winchester School of Art forms part of a wider campus enhancement aligned with the overall development plans for the university as a whole. Early stakeholder engagement is proposed by the university as part of their initial feasibility study. Stakeholders would continue to be engaged during the planning application process. It is envisaged that the development of the entire campus would be consulted upon and masterplanned prior to planning applications being submitted for individual elements of the site such as the RPLC site.

You also mention the presumption in favour of openness. I have reviewed the report and its governance. The report and heads of terms were all held in open session with only 1 financial aspect covered in exempt. I conclude that the decision taken was an open one.

**MO Consideration - this ground is not valid.**

2. We are extremely concerned regarding what will happen to this community facility, once it is leased to a private commercial organisation who are run as a competitive profit-making business.

It is not immediately apparent which ground of call in this relates to. That the information contained within the report, and/or considered by the Cabinet (or other decision-maker) was incomplete or inaccurate seems the best fit considering the rest of the call-in and grounds stated.

The signatories concern is about what happens to this community facility if the land is leased to the UoS. The lease is granted only once planning permission has been issued by the Local Planning Authority. This will give certainty as to what will be happening through the planning application process.

Following a previous lawful cabinet decision the community facility has closed and is replaced by a new facility in a different part of the City.

Not knowing what will happen does not make the report incomplete or inaccurate.

**MO consideration – this ground is not valid.**

3. It is acknowledged that there was a member briefing and a public briefing in advance of the cabinet decision, but this was not an opportunity for fellow Councillor colleagues or members of the public to either offer support for or raise concerns over the proposals. Infact this was a presentation by the University not the Cabinet. Whilst it seems that we are all generally in support of the vision which was presented to us by the University of Southampton, it is not clear whether this proposal was the best/only option for our residents and our district.

There was opportunity for anyone, whether in public participation or as a visiting councillor, to speak at the cabinet meeting where decision was taken whether to offer support or to raise concerns. The briefings were before decision was taken and the relevant Cabinet papers were available within the statutory timeframes.

**MO consideration – this ground is not valid.**

4. There has been no consultation made by Cabinet at any time particularly about the selling off of the land at below market value or the waiving of the rights of residents in relation to land ownership.

The land disposal must comply with best consideration – this is clear in the Cabinet report.

The waiving of the rights of residents in relation to land ownership is incorrect. The land ownership is and stays within the City Council. There are restrictive covenants on the land and as yet we cannot determine to what extent they will be affected. This is because the extent of the future land uses are not known. When known, a statutory consultation, as laid down by law will occur, if required.

**MO consideration – this ground is not valid.**

5. The principal issues are that: (a) the site is part of a parcel of land transferred in 1902 to be used as a public park or recreation ground for the benefit of the citizens of Winchester; (b) there is a covenant attached to the 1902 conveyance protecting the purposes for which the land was to be used; (c) the City Council has acknowledged (as in the attached extract from CAB3190) that it holds the land as a public park/recreation ground on statutory trust for the citizens of Winchester, and (d) the proposal is for an initial 'lock-out' 5-year lease, followed by a 150-year lease to the University of Southampton, which would appear to breach both statutory and common law as well as the terms of the covenant.

There is no breach of any statutory or common law at this point as any future land uses are unknown. It is outlined in the report and acknowledged that there may have to be a statutory process (which includes consultation) if the land is to be appropriated. I set the relevant extract of the report below and note the Service Lead: Legal clarified this verbally in the Cabinet meeting when the decision was made.

4.6 As is common in relation to development sites, there are a number of potential adverse rights which might inhibit the proposed redevelopment, as set out in the previous Cabinet report ref CAB 3190. A more detailed legal review could be undertaken once the precise intended use of the site is known and might recommend that the proposed development area be appropriated to enable the university's development proposals to move forward. If this occurs then such appropriation is subject to a statutory process which would include a period of public consultation.

**MO consideration – this ground is not valid.**

## **Financial Elements**

I have consulted with the Section 151 Officer in respect of your call-in where it relates to financial procedure rules. The 151 has confirmed the following and his comments are in blue below;

6. Financial Procedure Rules 7.4 require schemes over £2m to be fully appraised by cabinet.

This FPR relates to capital expenditure budgets and so doesn't apply

7. 8.2 requires such changes to capital programme must be approved by council.

This FPR relates to capital expenditure budgets and so doesn't apply

8. 8.11 states cabinet must approve a business case and

This FPR relates to capital expenditure budgets and so doesn't apply

9 18.1 is this a finance or an operating lease and has the s151 officer included the proposal in the statement of accounts.

The purpose of this FPR is to ensure that any leases entered in to are accounted for correctly: 1. A final assessment of whether any lease is operating or finance would be made at the point at which the lease was entered into and would be based on the International Financial Reporting Standards (IFRS) applicable at the time. 2. The proposal itself won't be included in the statement of accounts but the relevant accounting will be from the financial year in which lease payments commence. This FPR is therefore not relevant to the decision.

It is important to note that as yet, there is no "scheme" to appraise. The decision relates to an agreement to lease which effectively provides an option for the university to bring forward a scheme subject to their own business case and planning. At this stage, I would not be disclosing such an event in the statement of accounts.

Whilst the agreement for lease terms include a commitment for the council to demolish if the scheme progresses, this would only be after planning has been secured and once the receipt was more certain. It is proposed that if the scheme progresses to this stage, a contract of exchange would be agreed at that time and a deposit paid which would effectively cover the demolition costs.

FPR 8.8 covers proposals to make prior commitments with regard to future budgets, but within existing baseline budgets.

The valuation is "gross of demolition costs" and would fully fund any council costs. There would be no requirement for "minimum revenue provision" to be applied or any additional capital financing requirements.

The overall financial impact on the Council if the lease progresses is positive. However, there is not sufficient certainty at this stage to include income projections in the medium term financial strategy. For the same reason, it would not be appropriate to include potential costs. A reference to the scheme can be included in the Capital Strategy in February 2022, although no financing provision would be included at this stage.

If the Council decided to bring forward demolition independent of this scheme or more than a year ahead of a planning decision, it would need to be separately accounted for and therefore included in the Capital Programme along with details of how it is to be financed in accordance with FPR 8.2.

**MO consideration – on the advice of the S151 officer - this ground is not valid.**

10. It is also unclear whether there has ever been a formal tendering process to allow other possible community uses to be fully considered.

It is within the authority of Cabinet to effect a land disposal and a decision for a land disposal does not require a formal tendering process to be undertaken. It is clear that a formal tendering process has not been undertaken. Section 4 of the Cabinet report covered the point at 4.2 with regard to best consideration and a competitive process. I set this out below.

4.2 On a land disposal the council has an obligation to obtain the 'best consideration reasonably obtainable' (section 123 Local Government Act 1972). That best consideration can be established by way of a competitive process or by valuation exercise (or both). In this case the council is not able to satisfy the duty by reference to and reliance on the outcome of a competitive process but may lawfully gain assurance by way of separate valuation advice

**MO consideration – this ground is not valid.**

11. CAB3324 para 3.1: 'The land disposal will generate a capital receipt based on an independent assessment of "best consideration" and other relevant valuation assumptions. No deposit will be paid which means that the full receipt will be due on completion of the long lease. This means that there will be no income to the Council for up to 5 years at which point the building and land might be in such a dire condition that the capital receipt will be minimal, at a time when the finances of the council are facing huge gaps and are very uncertain.

It is not apparent at all which criteria relates to this statement – the statement relates to income and capital receipts but does not state why this is contrary to the budgetary framework. It is a legal requirement that best consideration is achieved and the building condition in 5 years' time has no relevance to the

site value for development purposes therefore I cannot see an argument that can be supported against any of the 4 grounds stated.

**MO consideration – this ground is not valid.**

In respect of procedural rules for a call-in - Part 4.3 - Overview and Scrutiny Procedure Rules state that any member considering calling in a decision **must** first make **every effort** to discuss the issue with the relevant Cabinet Member or the Leader of the Council. No such contact was made by any signatory to the call-in which would also lead to me considering the call-in to not be valid.

Furthermore in accordance with these procedure rules I can confirm I have discussed this determination with the Chair of Scrutiny. They further state that “where a Call-In Notice is not accepted the Monitoring Officer will submit a report to the next available meeting of The Scrutiny Committee giving details of the request and the reasons for not accepting it.” This email will therefore be reported to the next meeting of the Scrutiny Committee.

Many thanks,

Lisa

**Lisa Kirkman**

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