

Meeting:	General scrutiny committee
Meeting date:	Monday 9 September 2019
Title of report:	Call-in of cabinet member decision on Hereford Transport Package and South Wye Transport Package
Report by:	Statutory Scrutiny Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To consider the call-in of the decision of the cabinet member – infrastructure and transport on the Hereford Transport Package and the South Wye Transport package dated 9 August.

“Call in” is a statutory right for members of council to call in a decision of the executive after it is made but before it is implemented. Call in is not intended to be a mechanism for voicing objection to or dislike of any particular decision, but may be used in exceptional circumstances and where there is evidence to show there are grounds for doing so.

The cabinet member’s decision has been called in by the following twelve councillors,,:
Councillors Shaw, Phillips, Swinglehurst, Johnson, Durkin, Millmore, Guthrie, James, Gandy, Polly Andrews, Symonds and Tillett.

Recommendation(s)

That the committee determines either:

- (a) not to refer the decision back to the cabinet member to reconsider; or**
- (b) to refer the decision back to the cabinet member to reconsider, and in doing so**

specifies the concerns that the cabinet member is asked to take into account.

Alternative options

1. There are no alternatives to the recommendations which reflect the options open to the Committee.

Key considerations

2. "Call in" is a statutory right for members of council to call in a decision of the executive after it is made but before it is implemented.
3. Call in is not intended to be a mechanism for voicing objection to or dislike of any particular decision, but may be used in exceptional circumstances and where there is evidence to show that one of the following grounds may apply:
 - a) that there has been inadequate consultation with stakeholders prior to the decision being made;
 - b) that there was inadequate evidence on which to base a decision and that not all relevant matters were fully taken into account;
 - c) that the decision materially departs from the budget and policy framework;
 - d) that the decision is disproportionate to the desired outcome;
 - e) that the decision has failed to take into account the provisions of the Human Rights Act 1998 and or the public sector equality duty;
 - f) that the decision-maker has failed to consult with and take professional advice from all relevant officers including the monitoring officer and the chief finance officer, as appropriate, or has failed to have sufficient regard to that advice;
 - g) that the decision exceeds the powers or terms of reference of the decision-maker responsible for the decision; or
 - h) that the access to information rules have not been adhered to.
4. In accordance with the scrutiny rules set out in the council's constitution, the decision by the cabinet member – infrastructure and transport on 9 August 2019: Hereford Transport Package and South Wye Transport Package (at appendix 1) has been called in for consideration by this committee.
5. The validly stated reasons for the call-in are are::

Grounds for call in	
Ground	Evidence
(a) that there has been inadequate consultation with stakeholders prior to the decision being made;	<ol style="list-style-type: none">i. The business community has not been consulted on the decision.ii. There was no active engagement with all members on such a significant decision.iii. There has been no consultation with the public who must be allowed to voice their views on this subject.iv. The consultation which took place prior to the

	<p>decision was fundamentally flawed. I was advised by the Leader that 2500 letters went out from him via Balfour Beatty with his expressed wish that all relevant stakeholders be included. He believed this would include all parish councils. This did not happen. In my ward alone at least 2 of my 5 parishes received no such letter. The mailing list used by Balfour Beatty was way out of date and the Leader informed me the letter had been addressed to some people who had died up to 5 years previously causing great distress to relatives. Any previous consultation unless done face to face is therefore totally discredited.</p>
<p>(b) that there was inadequate evidence on which to base a decision and that not all relevant matters were fully taken into account;</p>	<ul style="list-style-type: none"> i. If a pause leads to a loss of the funding for these infrastructure projects not enough consideration was given to the ramifications of failing to deliver the housing requirements of the core strategy ii. There is no material evidence to support a delay in these projects and a further review can only duplicate work that has already been done. iii. The decision fails to take adequate account of the risks to ongoing discussions and timetable of delivery with the Department for Transport, Highways England and Homes England, or the impact on our existing Core Strategy.
<p>(d) that the decision is disproportionate to the desired outcome;</p>	<ul style="list-style-type: none"> i. The pausing of the projects has the potential to jeopardise the allocation of government funding and as a result hamper the delivery of the core strategy, prevent delivery of income from extra council tax and business rates and therefore investment and economic growth as well as jeopardise the funding of active travel measures around the city. Consequently, if so this will be disproportionate to the desired outcome. ii. If the desired outcome is to improve Herefordshire's economy, air quality and infrastructure then there is no evidence presented relating to the long term impact of failing to complete the scheme. iii. There has been no financial or other evidence provided regarding non completion and how this would compare to the benefits to the county of completion.
<p>(f) that the decision-maker has failed to consult with and take professional advice from all relevant officers including the</p>	<ul style="list-style-type: none"> i. There is no evidence that the relief road studies documents have been properly checked and assimilated before the decision was made to pause work on the Hereford by-pass

<p>monitoring officer and the chief finance officer, as appropriate, or has failed to have sufficient regard to that advice;</p>	
<p>(g) that the decision exceeds the powers or terms of reference of the decision-maker responsible for the decision; or that the access to information rules have not been adhered to.</p>	<p>i. The decision impacts on both the infrastructure of the county and the finances of the council and therefore was not a decision involving only one portfolio and should therefore have been made by the whole cabinet in the public domain.</p>

6. Having considered the decision in light of the grounds and evidence for the call in, if the committee is still concerned about it, then it may refer the decision back to the decision-maker for reconsideration, setting out in writing the nature of its concerns
7. If the committee is satisfied, the original decision may be implemented immediately.
8. If the committee makes a recommendation to the cabinet member, they shall reconsider any decision referred to them following call-in, taking into account any recommendations made by the relevant scrutiny committee. The cabinet member may either amend or confirm the original decision or require further specified work to be undertaken before making a final determination.

Community impact

9. In accordance with the council's adopted code of corporate governance, the council is committed to promoting a positive working culture that accepts, and encourages constructive challenge, and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development and review.

Equality duty

- 10 Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 11 The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As any recommendation of the scrutiny committee must be referred

to the cabinet member to consider, we do not believe that it will have an impact on our equality duty.

Resource implications

12. There are no resource implications arising from the recommendations. If the scrutiny committee makes any recommendations to the cabinet member the resource implications of those recommendations will be taken into consideration by the cabinet member.

Legal implications

13. The call-in was determined as valid by the deputy monitoring officer and the meeting has been convened in accordance with the council's constitutional provisions, which in certain circumstances permit an extension to the specified 10 day period within which a call-in meeting is generally held.

Risk management

14. There are no risks identified with the recommendations. If the scrutiny committee makes any recommendations to the cabinet member the risk management implications of those recommendations will be taken into consideration (alongside those already stated in the original decision report) by the cabinet member.

Consultees

15. None.

Appendices

Appendix 1: Decision Notice – decision by cabinet member infrastructure and transport – 9 August 2019.

Appendix 2 – Cabinet member report – Hereford Transport and South Wye Transport Packages – (August 2019

Appendix 2a – Correction to Cabinet member report

Appendices to cabinet member report

Appendix 1 South Wye Transport Package Scheme Development

Appendix 2 – Hereford Transport Package Scheme Development

Appendix 3 – Option A: Pause all work on the Southern Link Road, undertake a review of the project and evidence base to determine next steps and continue work on SWTP active travel measures

Appendix 4 – Option B: Pause all work on the Hereford Bypass, undertake a review of the project and evidence base to determine next steps and continue work on HTP active travel measures

Appendix 5 – Option C: Stop all work on the South Wye Transport Package

Appendix 6 – Option D: Stop all work on the Hereford Transport Package

Appendix 7 – Option E: Continue the delivery of the South Wye Transport Package

Appendix 8 – Option F: Continue the delivery of the Hereford Transport Package

Appendix 9 - Responses received from affected local ward members

Background papers

None identified