

MEETING:	GENERAL OVERVIEW AND SCRUTINY COMMITTEE
DATE:	9 NOVEMBER 2012
TITLE OF REPORT:	CALL-IN OF CABINET DECISION CONCERNING THE VARIATION TO THE RETAIL QUARTER (OLD LIVESTOCK MARKET) DEVELOPMENT AGREEMENT
REPORT BY:	Assistant Director – Law, Governance and Resilience

CLASSIFICATION: Open

Purpose

To review the Cabinet decision to vary the terms of the Retail Quarter Development Agreement, which has been called in by three Members of the Committee: EPJ Harvey; A Seldon and GR Swinford.

Recommendation(s)

THAT the Committee reviews Cabinet’s decision and decides:

- a) **whether it accepts that decision with no further comment, or**
- b) **whether it wishes to accept the grounds on which the decision of the Cabinet has been called-in and refer the decision back to the decision maker for reconsideration and, if so, what recommendations to Cabinet it wishes to make.**

Key Points Summary

- Call-in is a statutory right for Members of the Council to review a decision of the Executive taken by Cabinet or an individual Cabinet Member after it is made but before it is implemented.
- A decision can not take effect pending consideration of the call-in by the General Overview and Scrutiny Committee.
- After consideration by the General Overview and Scrutiny Committee the decision maker may implement the original decision or reconsider it in the light of the General Overview and Scrutiny

Committee's comments.

- The Committee has no power to overturn a decision of the Executive. It can only request the Executive to reconsider its decision.
- The Constitution (4.5.16.5) provides that call-in should only be used in exceptional circumstances including but not limited to;
 - a where there is evidence which suggests that issues have not been handled in accordance with the decision-making principles set out in the Constitution;
 - b where a key decision has been taken which was neither published in accordance with the requirements for the Forward Plan, and is not subject to the urgency procedures set out in the Constitution; or
 - c where a decision is outside the Budget and Policy Framework.
- The General Overview and Scrutiny Committee can either accept the Cabinet decision with no further comment or accept the grounds on which the decision of the Cabinet has been called-in and refer the decision back to the decision maker for reconsideration.

Reasons for Call-in

2. In accordance with the Scrutiny Procedure Rules set out at Part 4 Section 5 of the Constitution, the Cabinet decision on 31 October 2012 concerning a variation of the Retail Quarter (Old Livestock Market) Development Agreement has been called in for consideration by this Committee.

3. The stated reasons for the call-in are:

“A key decision has been taken which has not been published in accordance with legal requirements and is not subject to the urgency procedures set out in the Constitution.

Cabinet has not given appropriate consideration to the risks inherent in this decision.

Cabinet was not able to give due consideration to the legal advice on procurement, which was distributed at the meeting.

In dealing with this matter under the urgency procedure, a decision was made in a hurry when the circumstances were foreseeable at an earlier date. This meant that the decision did not receive proper consideration.

This turn of events presented an opportunity to reappraise the Cabinet's commitment to the overall scheme which was not taken.”

The call-in is therefore made on the basis that there is evidence which suggests that issues have not been made in accordance with the decision making principles set out in the Constitution.

5. The decision notice (Ref No. 2012.CAB.084), together with the report presented to Cabinet on 31 October 2012 entitled 'Variation of Retail Quarter (Old Livestock Market) Development Agreement' and additional advice from Pinsent Mason (which was circulated at the meeting) is appended.

6. At the Cabinet meeting on 31 October 2012 the Chief Executive, Hereford Futures, corrected Appendix 2 of the document before Cabinet. The figure of 6.5% funding yield in section 1, column 2 of the report should have read 6.3%, whilst the figure of 6.5% yield in section 3 should have read 6.3%.

Appendices

- Decision Notice of Cabinet on 31 October 2012 (Ref No. 2012.CAB.084).
- Report to Cabinet held 31 October 2012 - Variation of Retail Quarter (Old Livestock Market) Development Agreement
- Pinsent Mason Retail Quarter Development Agreement Advice – Public Procurement

Background Papers

- None identified.