

Name of meeting: Cabinet
Date: 15 December 2015

Title of report: Overview and Scrutiny Management Committee –
 Recommendations from Call-In Hearing – Mirfield
 Community Centre Asset Transfer

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	n/a – the implications of the Scrutiny recommendation are included in a further report for Cabinet’s consideration.
Is it in the Council’s Forward Plan?	No
Is it eligible for “call in” by Scrutiny?	Not applicable
Date signed off by <u>Director</u> & name	David Smith – 3.12.15
Is it signed off by the Director of Resources?	As above
Is it signed off by the Assistant Director – Legal, Governance & Monitoring?	Julie Muscroft – 3.12.15
Cabinet member portfolio	Councillor Graham Turner Resources and Community Safety

Electoral [wards](#) affected:

Ward councillors consulted: None

Public or private: Public

1. Purpose of report

To advise the Cabinet of the decision and recommendations of the Overview and Scrutiny Management Committee following its consideration of a Call-In in respect of the decision made by Cabinet on 20th October 2015 on ‘Mirfield Community Centre – Asset Transfer’.

2. Key points

2.1 On 18th November 2015, the Overview and Scrutiny Management Committee met to consider a Call-In in respect of the decision made by Cabinet on 20 October 2015 on ‘Mirfield Community Centre – Asset Transfer’.

2.2 The Committee considered evidence from Councillors who were signatories to the Call-In, the Cabinet Member for Resources and

Community Safety, the Assistant Director for Physical Resources and Procurement, and members of the public. The Committee also considered all relevant background information used in the decision-making process and determined if the decision had been made in accordance with the Council's decision-making principles.

2.3 According to the Overview and Scrutiny Procedure Rules, the Committee had three options available to it:

- (1) To take no further action and free the decision for implementation.
- (2) To refer it back to Cabinet with recommendations for amendment.
- (3) To refer it back to the next Council, if the Panel considered that the decision was not made in accordance with the budget or policy framework.

2.4 Prior to the meeting the Committee had sought advice from the Assistant Director for Legal, Governance & Monitoring and was satisfied that the third option did not apply in this instance.

2.5 It is noted that Cabinet is also considering a report elsewhere on this agenda which sets out information to assist the Cabinet in making a decision about the action it wishes to take in response to the call in.

2.6 **The Committee's Findings:**

i. **Grounds of call in i:**

The Cabinet's decision to review the previous decision of Cabinet in 2002 in relation to Mirfield Community Centre and to demand new terms from the Mirfield Community Trust failed to take full account of the Asset Advancement Policy set by Cabinet on 08 Oct 2013.

After considering all the evidence presented the Committee concluded that it shared the concern. The cabinet report of 20 October 2015 stated that the current Asset Advancement Policy required asset transfers to be approved with restrictive covenants for community use. However, the Committee came to the view that the Asset Advancement Policy did not specify that it was a requirement to have a covenant.

The Committee noted that within the basis for transfer set out in the Asset Advancement Policy the text states "restrictions (called covenants) would normally ensure property remained available to local people". The Committee interpreted the word "normally" to mean that there may be exceptions. There was no mention of a covenant being a requirement, in the legal sense, of every decision made under the Asset Advancement Policy.

In addition, when considering the Council's decision making principles the Committee found no evidence that principles 13.2 a (due regard to all relevant considerations and disregard of all irrelevant factors) and 13.2 i (the ability to explain the options considered and the reasons for decisions) of the constitution were fully adhered to. The Committee concluded that there was no evidence that the flexibility allowed by the

Asset Advancement Policy was fully considered. It was the Committee's view that Cabinet had not explored all alternatives so they could say why they were not appropriate in this case and were discounted.

- ii. **Other asset transfers have not been subject to covenants, which was said to be applied to all transfers, and is not reflected in the policy mentioned above.**

The Committee was satisfied that other asset transfers had been subject to covenants.

- iii. **The decision made by Cabinet is a breach of Article 13.2 of the Council's Constitution.**

In addition to the concerns relating to 13.2 a and 13.2 i of the decision making principles, the Committee had further concerns relating to 13.2 b and 13.2 h with respect to the proportionality of the desired outcome, and the clarity of aims and desired outcomes. There was no evidence to show that the decision took into account whether it was feasible and desirable to enter into an agreement/arrangement that would enable the covenant to be released on sale and for the proceeds to be used specifically for the ongoing project to develop the Gilder Hall site.

- iv. **The decision made by Cabinet may have been pre-determined as the cabinet member's recommendation appeared on the report, before all consultation had been received. Therefore, the Cabinet Member was not in possession of all the facts when making his recommendation/judgement.**

The Committee was satisfied that there was no evidence of pre-determination of the decision.

2.7 **Scrutiny Committee Recommendations:**

It was therefore the Committee's decision, after taking all factors into account, that the decision should be referred back to Cabinet with the following recommended amendment:-

- That Cabinet consider the feasibility and desirability of entering into an agreement/arrangement that would enable the covenant to be released on sale and for the proceeds to be used specifically for the ongoing project to develop the Gilder Hall site.

3. **Implications for the Council**

This report sets out the recommendations of the Overview and Scrutiny Management Committee and the Cabinet has a number of options available to it. The implications for the Council will be dependent upon the course of action taken by the Cabinet.

4. Consultees and their opinions

None.

5. Next steps

Dependent on the Cabinet's response to the Scrutiny Committee's recommendation, officers will implement any agreed actions.

As required constitutionally the call in and its outcomes will be reported to Council.

6. Officer recommendations and reasons

That the Cabinet consider the Overview and Scrutiny Management Committee's findings and recommendation as set out in paragraph 2.6 of the report and determine one of the following courses of action:

- Accept the recommendation (in full or in part) of the Scrutiny Committee and amend its original decision accordingly;
- Decide that further work needs to be done and defer the item until this is completed. The Scrutiny Committee should be kept informed of the work as it progresses and be formally notified when it is to be reconsidered;
- Not accept the view of the Scrutiny Management Committee and confirm its original decision;
- Refer the issue for discussion at the next appropriate Council meeting.

7. Cabinet portfolio holder recommendation

As this is a Scrutiny referral, this is not applicable.

8. Contact officer and relevant papers

Penny Bunker, Governance & Democratic Engagement Officer
Tel: 01484 221000 E-mail: penny.bunker@kirklees.gov.uk

Relevant papers: Agenda papers and decision of Overview and Scrutiny Management Committee on 18th November 2015 and the Cabinet meeting held on 20th October 2015.

9. Assistant directors responsible

Julie Muscroft, Assistant Director (Legal, Governance & Monitoring)
Joanne Bartholomew, Assistant Director (Physical Resources and Procurement)