

Extracts from Draft Minutes – Scrutiny 21 September 2022
Decisions of the Cabinet – Minute 27

Call in – 3RDL Funding Request – By Cllr S J Clist – Chairman

At the Cabinet on 6 September 2022, Members considered the funding request that has been received from 3 Rivers Development Ltd.

Following discussion with various Officers, including a detailed conversation with the Monitoring Officer on Thursday 8 September, I am requesting that this item is called into the next Scrutiny meeting. I believe the Cabinet did not take the decision in accordance with the principles set out in Article 15 (Decision Making).

Reason for call in:

Principles of Decision Making –

- Consideration of alternative options. The report presented to Cabinet did not set out alternative options or the option not to proceed. Cabinet did not therefore consider all options or viable alternatives.
- The report presented to Cabinet did not fully consider the risks involved. There was no detailed analysis of financial risk or otherwise. The report was not presented to Scrutiny or Audit in advance of the decision.
- I am therefore asking that Cabinet reconsider the decision, taking into account alternative options and a full risk analysis.

Advice from the Interim Monitoring Officer:

I have received a request for Call-In from Cllr Simon Clist as Chairman of Scrutiny Committee, thus meeting the threshold in rule 19(f) of the Scrutiny Committee etc. Procedure Rules.

The overarching rules of call-in must still be observed, namely:

1. Call-in by Scrutiny should only be used in exceptional circumstances. These are where members of Scrutiny Committee have evidence which suggests that the Cabinet did not take the decision in accordance with the principles set out in Article 15 (Decision-making) (rule 19 preamble);
2. Members who wish to call-in a decision are required to seek guidance from the Monitoring Officer on the veracity of their stated grounds for the call-in and demonstrate that they have been mindful of the advice they have received when deciding whether or not to proceed (rule 19 (f)); and
3. When the relevant Cabinet minutes are put before the Scrutiny Committee, together with the advice from the Monitoring Officer on the grounds for the call-in, the councillors who called in the decision shall have the right to attend

and speak (rule 19 (h)). The principles of decision of decision-making – Article 15

Article 15.2 provides that all decisions of the Council will be made in accordance with the following principles:

- a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- b) Due consultation and the taking of professional advice from officers;
- c) Respect for human rights;
- d) A presumption in favour of openness;
- e) Clarity of aims and desired outcomes;
- f) Consideration of any alternative options; and
- g) The giving of reasons for the decision and the proper recording of those reasons

Call-In – 3 Rivers Developments Limited – Funding Request:

The above rules and principles apply. In this instance, from the reasons advanced, I can see that the first and primary reason put forward is that alternative options should have been considered (Article 15.2 (f)) i.e. the alternative option of not proceeding with the recommendation or viable alternatives. That is a principle of decision-making. As to whether the concern about alternative options for funding is an exceptional circumstance, I will leave that to the Committee. I would confirm that there is sufficient reason in accordance with the constitution for this decision to be called in.

There are other areas of concerns raised in the call-in that I will leave to be discussed by the Scrutiny Committee.

Discussion took place and consideration was given to:

- That the papers had been published within the 5 day requirement and the supplement papers had been published as a matter of urgency.

At this point the Committee wanted to discuss specific matters concerning the exempt information provided to the Cabinet and it was agreed that the matters would be discussed in closed session and therefore:

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the next item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 respectively of Part 1 of Schedule 12A of the Act, namely information relating to the financial or business affairs of any particular person (including the authority holding that information)

(Proposed by the Chairman)

Note: Cllr A Wilce requested that his vote against the decision be recorded.

Returning to open session the following was considered:

- A reminder of the decision made by the Cabinet
- The risks that were considered as part of the decision
- Alternative options considerations made by the Cabinet
- The lending funding levels
- That the Cabinet, with input from the Scrutiny and Audit Committees had previously agreed to 33 recommendations to ensure that tight governance was in place with the Council's dealings with 3 Rivers Developments Ltd

It was therefore **RESOLVED** that: The Scrutiny Committee were of the opinion that the updates contained in the Cabinet papers of 6th September were of such significance that the Committee believed that they constituted a new business plan rather than a simple update and therefore the Committee recommended that Cabinet, before reaching a decision on further borrowing, ensured that the agreed due diligence and governance steps were carried out, namely that the business plan was reviewed by the Audit Committee and that they were given the opportunity to comment on any risks and mitigations and that the opinion of the Audit Committee would be taken into account when making any further lending decisions.

(Proposed by Cllr J Buczkowski and seconded by Cllr L J Cruwys)

Note:

- A proposal that the decision by the Cabinet was accepted was not supported (Proposed by Cllr R F Radford and seconded by Cllr Mrs E J Slade)
- Cllr S J Clist requested that his abstention from voting be recorded.