

Call-In of Cabinet Decision: Budget Update 2023/24

For Overview and Scrutiny Committee on Thursday 10 November 2022

Summary

Lead Director: Lee Colyer – Director of Finance, Policy and Development

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Classification: Public Document.

Wards Affected: All

Approval Timetable	Date
Management Board	28 September 2022
Portfolio Holder	25 September 2022
Finance and Governance Cabinet Advisory Board	11 October 2022
Cabinet	27 October 2022
Overview and Scrutiny Committee	10 November 2022

Recommendations

Without prejudice to any other resolutions which the Committee may adopt, the Overview and Scrutiny Committee are to come to one of the following conclusions:

1. Take no further action on the Call-In; or
2. The decision is to be referred to the Cabinet for consideration of the Committee’s concerns which are to be stated; or
3. The decision should be referred to Full Council if the original decision is outside the budget and policy framework.

1. Introduction and Background

- 1.1 This report sets out the details of the call-in request and the procedures by which the Overview and Scrutiny Committee is to consider the call-in of the Cabinet decision in respect of “Budget Update 2023/24” made at the meeting of Cabinet on 27 October 2022 (agenda item 9).
- 1.2 Where the report refers to a specific procedure rule, the relevant Overview and Scrutiny Procedure Rule (OSPR) in Part 4 of the Constitution is quoted.

Cabinet Advisory Board

- 1.3 Prior to the Cabinet making their decision, the report titled “Budget Update 2023/24” was considered by the Finance and Governance Cabinet Advisory Board at its meeting on 11 October 2022.
- 1.4 The Advisory Board supported the recommendation set out in the report: “That officers continue to work towards reducing the projected budget deficit in line with the Budget Strategy and report back in December with draft proposals prior to public consultation.”

Cabinet decision

- 1.5 On 27 October 2022, having considered the report set out here at Appendix A along with its appendices set out here at Appendix B, Cabinet resolved as follows:
 1. That Officers shall continue to work towards reducing the projected budget deficit in line with the Budget Strategy and report back in December with draft proposals prior to public consultation; and
 2. That £100,000 from the car park income budget be transferred to the Community Support Fund be approved.

Call-In Procedure

- 1.6 Call-in is the procedure whereby a decision of the Cabinet, the Leader or a Portfolio Holder, or a member or officer with delegated executive authority (an executive decision), taken but not implemented, may be examined by the Overview and Scrutiny Committee prior to implementation.

- 1.7 This is a power which should only be used in exceptional circumstances and should not be used in respect of day -to-day operational decisions. The procedure will not apply to decisions to which the Call-in and Urgency Procedure is applied (OSPR 14) or to recommendations to or decisions of Full Council.
- 1.8 An executive decision can be called-in within five clear working days of the publication of the decision by the Chairman of the Overview and Scrutiny Committee or at least any three (non-Cabinet) members of the Council in accordance with OSPR 12 of the Constitution.
- 1.9 Any request for call-in must be in writing, bearing the signature(s) of the Council member(s) initiating the call-in, or by email which, if from several persons, shall require a separate email from each of them. A request for call-in must state the reason(s) and must meet at least once of the grounds specified in OSPR 12.6.

Call-In Request

- 1.10 On 1 November 2022, a call-in request from Councillor Bailey was received. The request specifically refers to part 2 of the Cabinet decision: **“That £100,000 from the car park income budget be transferred to the Community Support Fund be approved.”**
- 1.11 The reasons given for the call-in were as follows:
 1. **OSPR 12.6.1 inadequate consultation with stakeholders prior to decision** – There's no evidence of any consultation with anyone prior to the decision including the Finance and Governance Cabinet Advisory Board.
 2. **OSPR 12.6.2 the absence of adequate evidence on which to base a decision** – No evidence was presented of the decision being based on any reliable data about the operation of the Community Support Fund, including administrative cost or methods of distribution or that the decision represents best value.
 3. **OSPR 12.6.3 the decision would require a departure from or a change to the agreed budget and policy** – The decision is outside the current budget because there was no such thing as the Community Support Fund when the budget was agreed by the Council. It also is an increase in spending which risks a draw down from reserves to cover the redirection of income which is against budget policy.
 4. **OSPR 12.6.6 insufficient consideration of legal and financial advice** – There was no evidence presented that this had been thoroughly examined by the finance and legal officers or that they had put forward recommendations for the Cabinet to consider.
- 1.12 Further Call-In requests bearing the same wording were received from Councillor Goodship on 2 November 2022 and Councillor Fairweather on 3 November.

- 1.13 The Chairman of the Overview and Scrutiny Committee determined that the call-in request met the requirements set out in OSPR 12.6 and therefore the decision of Cabinet was, by notice issued on 03 November 2022, called-in to the Overview and Scrutiny Committee. (OSPR 12.7)
- 1.14 The Overview and Scrutiny Committee will consider the Call-in at a hearing to be held as part of a special meeting on 10 November 2022.

Hearing Procedure

- 1.15 The Call-In Hearing will be conducted in accordance with OSPR 13.4 as follows:
1. Introduction by the Chairman
 2. Presentation of the call-in by one signatory to the call-in
 3. Response of the decision maker
 4. Committee discussion (starting with any public speakers and visiting members)
 5. Summing up and vote
- 1.16 If a member of the Overview and Scrutiny Committee has signed a call-in request, that member, or another signatory must present the call-in to the Committee. (OSPR 13.3).
- 1.17 After the presentation by one of the signatories to the call-in, members of the Committee may ask questions to the presenter.
- 1.18 Representative(s) of the Cabinet may then respond. The Cabinet has been invited to attend and nominate one or more of their number to present on behalf of the Cabinet.
- 1.19 Council officers are to provide the Committee with all the information held by them which was available to the decision taker(s) and, if requested, be available to answer questions from Committee members. (OSPR 13.2) A copy of the Cabinet report and its appendices is included at Appendix A and B. Cabinet members have also been requested to provide copies of any other documents which informed their decision making and which they intend to rely on as part of their response to the call-in.
- 1.20 After the Cabinet's presentation, members of the Committee may ask questions to the Cabinet.
- 1.21 Once both sides have presented their case any members of the public or visiting members who have registered may speak (usual speaking rules apply.)
- 1.22 Then the hearing moves into debate. Members of the committee may also ask either side any other questions either arising out of the debate or comments from the public speakers.

- 1.23 At the end of the debate, members of the committee will be asked to put forward a motion which will be put to the vote.

2. Outcomes

- 2.1 The Committee should avoid giving an opinion on the original decision and focus on examining the decision-making process. The hearing is to examine an alleged failure in the process and the Committee should examine and made a determination whether the concerns raised in the Call-In are valid.
- 2.2 Without prejudice to any other resolutions which the Committee may adopt (e.g. recommendations as to future conduct) the Overview and Scrutiny Committee are to come to one of the following conclusions (OSPR 13.3):
1. Take no further actions on the call-in; or
 2. The decision is to be referred to the Cabinet, for a Cabinet decision, in which case the nature of the Committee's concerns and the reasons are to be cited; or
 3. The decision should be referred to the Full Council if the original decision would require a departure from or change to the agreed budget and policy framework, in which case the nature of the Committee's concerns and reasons are to be cited.
- 2.3 The third option is only available in the event that the Committee does make a determination that the original decision is outside the budget and policy framework. If the Committee does not find that to be the case, then only options one and two remain.

4. Next Steps

- 4.1 Where the Committee decides to take no further action on the call-in, the original decision may be implemented at any time after the Committee's decision. (OSPR 13.4)
- 4.2 Where a called-in decision is referred for further consideration it shall be reconsidered by the Cabinet within five working days and the reason(s) cited by the Overview and Scrutiny Committee will be considered. (OSPR 13.5)
- 4.3 If a cited reason includes non-compliance with the budget and policy framework, consideration will be given by the Cabinet to the need to seek Full Council's agreement to amend the budget and policy framework. (OSPR 13.7)
- 4.4 Once an executive decision has been reconsidered following referral from the Overview and Scrutiny Committee, it will be capable of immediate implementation if the person or body giving the consideration decides to confirm the original decision. If the original decision is not confirmed by them within the prescribed timescales it falls and will not be implemented. (OSPR 13.8)

5. Appendices and Background Documents

Appendices:

- Appendix A: Original Cabinet Report
- Appendix B: Appendices to the original Cabinet Report

Exempt appendices (if any):

- None

Background Papers:

- None

6. Cross Cutting Issues

A. Legal (including the Human Rights Act)

Overview and Scrutiny Committee (“OSC”) Procedure Rule 12.1 (in the Constitution) enables a Cabinet decision taken, but not implemented to be examined by the OSC prior to implementation.

The decision may be implemented if the OSC decide to take no further action.

The proposed review by the OSC accords with the requirements of the Local Government Act 2000, section 21.

Robin Harris, Team Leader (Contentious and Corporate Governance), Mid Kent Legal Services, 04 November 2022

B. Other Implications (Staffing, Risk Management, Environment and Sustainability, Community Safety, Equalities, Data Protection, Health and Safety, Health and Wellbeing)

There are no direct, significant cross-cutting implications as a result of this report of the options within this report. Implications of implementing the original Cabinet decision have been assessed as part of the original Cabinet report.

Mark O’Callaghan, Scrutiny and Engagement Officer, 03 November 2022