

Lancashire County Council

Internal Scrutiny Committee

Tuesday, 21st August, 2018 at 1.00 pm in Committee Room 'C' (The Duke of Lancaster Room) - County Hall, Preston

Agenda

Part I (Open to Press and Public)

No. Item

1. Apologies

2. Disclosure of Pecuniary and Non-Pecuniary Interests

Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3. Call In Request: Update on Preston Youth Zone Operator (Pages 1 - 14)

4. Urgent Business

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

5. Date of Next Meeting

The next meeting of the Internal Scrutiny Committee will be held on Friday 21 September 2018 at 10:00am in Cabinet Room B, County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Internal Scrutiny Committee

Meeting to be held on Tuesday, 21 August 2018

Part I

Electoral Division affected:
All

Call In Request: Update on Preston Youth Zone Operator (Annexes 'A and 'B' refer)

Contact for further information:

Josh Mynott, (01772) 534580, Legal and Democratic Services

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Executive Summary

On 9 August 2018, Cabinet received and approved recommendations contained in a report (as at Annex 'A') on the update on Preston Youth Zone Operator. Cabinet approved an additional recommendation for officers to explore with stakeholders alternative options that might work in the current climate.

Following requests from nine County Councillors in accordance with the "Call In" procedures, the Chair of the Internal Scrutiny Committee has called a meeting to consider calling in the decision.

Recommendation

In accordance with the Call In procedures contained in Overview and Scrutiny Procedural Standing Orders E1-2, the Committee is asked to consider:

1. Whether or not to request Cabinet reconsider the decision made on 9 August 2018 to approve the recommendations as set out in the report below.
2. If so, to determine the grounds on which the request is to be based.

Background and Advice

On 9 August 2018, Cabinet received a report on the update of the Preston Youth Zone Operator. Cabinet resolved that:

- i. The council withdraw from the delivery of a Preston Youth Zone on the Preston Bus Station site and extend the public realm treatment associated with the Bus Station redevelopment across the whole western apron.
- ii. The additional public realm works estimated at £1.25m be funded from the £5.925m currently allocated to the Preston Youth Zone.

- iii. The £3.431m capital funding remaining following reductions of £1.244m abortive costs and £1.25m additional Public Realm costs be repurposed..
- iv. The £150,000 revenue allocation previously committed to the operation of the Preston Youth Zone be released.
- v. Officers explore with stakeholders alternative options that might work in the current environment.

On Tuesday 14 August 2018, the Chief Executive received a request, signed by nine County Councillors representing more than one single political group, for the Internal Scrutiny Committee to consider whether that decision should be the subject of a Call In.

The request was received in accordance with Overview and Scrutiny Procedural Standing Orders E1-2 from County Councillors Azhar Ali, Kevin Ellard, John Fillis, David Howarth, Erica Lewis, Jennifer Mein, Gillian Oliver, Liz Oades and John Potter. The decision cannot now be implemented until the call-in procedure is completed.

Standing Order E2(5) requires those requesting the special meeting to specify how the decision has breached one or more of the Principles of Decision Making set out at Standing Order A4. These are that all decisions of the council, including Cabinet and Committees, will be:

- (a) proportionate in all ways, including financially, to the issues under consideration and to the desired outcome;
- (b) based on appropriate consultation and professional officer advice;
- (c) In line with our duties around Human Rights and equality and diversity;
- (d) clear in terms of aims and outcomes;
- (e) in line with the legal test of reasonableness; and
- (f) made with all relevant information being available to the decision makers, and, where appropriate, other councillors and the public.

The reasons for this request as submitted by the above members are as follows:

"At Cabinet a last minute 5th recommendation was suddenly submitted by Cllr Driver to be considered. This came as a surprise to backbench Councillors, the public, the press and interested parties within the room. This caused confusion as to the exact meaning of "what models might work in the current environment". We believe that this decision should be called in because it failed to be 'clear in terms of aims and outcomes'.

Furthermore there was a heated discussion regarding the advice on whether the proposed Youth Zone would be in breach of State Aid rules and how being tied to Preston bus station should limit a 125 year lease given that the bus station is now a listed building and will be around longer than the 25 years suggested. Based on the

discussion in Cabinet it is far from clear that the decision was 'based on appropriate consultation and professional officer advice'.

Concerns have also been raised that the decision may not be in-line with 'our duties around Human Rights and equality and diversity' particularly around people with disability and the lack of consultation with the disabled and other affected groups and the potential impact on them.

Finally we believe the recommendations, especially as a last minute addition was put in, may have been in breach of principle (f) in LCC constitution regarding decision making. This states that 'all relevant information being available to the decision makers, and where appropriate, other Councillors and the public.' We believe that 'not' all the relevant information was put before the cabinet or made available to Councillors and affected third parties particularly local partners and stakeholders.

In summary I believe the decision taken at cabinet does not meet B, C, D and F of Standing Order A4 of the constitution for the reasons cited above".

To assist the Committee, the Call In procedures contained in Overview and Scrutiny Procedural Standing Orders E1-2 are attached as at Annex 'B'.

Of particular relevance in attached provisions (as at Annex 'B') are the requirements that the Committee must determine at the meeting whether or not to request that the decision be reconsidered, and if so to determine the grounds upon which the request is based.

The Committee is required to meet within seven clear working days of the request to consider the Call In being received, and a special meeting has therefore been scheduled for Tuesday 21 August 2018.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

There are no significant risk management implications arising from this item. However, the risk management and other implications associated with the decision are set out in Annex 'A' to this report.

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
N/A	N/A	N/A

Reason for inclusion in Part II, if appropriate

N/A

Report to the Cabinet

Meeting to be held on Thursday, 9 August 2018

Report of the Director Programmes and Project Management

Part I

Electoral Division affected:
Preston Central East; Preston
Central West; Preston City
Preston East; Preston North
Preston Rural; Preston South
East; Preston South West
Preston West;

Update on Preston Youth Zone Operator

Contact for further information:

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Sue.Procter@lancashire.gov.uk

Executive Summary

In August 2017 Cabinet agreed that a procurement exercise would be undertaken to secure a Preston Youth Zone Operator. This ensured that the potential for state aid issues was negated by opening the opportunity to competition through a procurement process which complied with the Concession Contracts Regulations (2016).

In April 2018 Cabinet agreed that the County Council capital contribution to the Preston Youth Zone scheme would be capped at £5.925m, with any additional capital requirements (estimated at £2.6m) being met by the private/voluntary sector delivery partner. The council had also previously made a commitment to make a revenue contribution of £150,000 per annum to the operation of the Youth Zone for an initial implied period of 10 years.

The procurement process commenced on 19th April and concluded on 8th June with no bids received.

It is now necessary for Cabinet to consider the next steps for the delivery of a Preston Youth Zone. The options considered within this report are:

- Undertake a further procurement exercise on the same terms and conditions
- Re-procure on different terms and conditions
- Approach interested organisations directly
- Withdraw from the project

This is deemed to be a Key Decision and the provisions of Standing Order C19 have been complied with.

Recommendation

Cabinet is asked to:

- (i) Withdraw from the delivery of a Preston Youth Zone on the Preston Bus Station site and extend the public realm treatment associated with the Bus Station redevelopment across the whole western apron.
- (ii) Fund the additional public realm works estimated at £1.25m from the £5.925m currently allocated to the Preston Youth Zone.
- (iii) Consider repurposing of £3.431m capital funding remaining following reductions of £1.244m abortive costs and £1.25m additional Public Realm costs.
- (iv) Release £150,000 revenue allocation previously committed to the operation of the Preston Youth Zone.

Background and Advice

The Preston Bus Station and Multi-storey Car Park regeneration programme includes the delivery of a Preston Youth Zone on a section of the western apron of the bus station. Following the agreement of the Cabinet in August 2017, and clarification regarding the county council's capital contribution agreed by Cabinet in April 2018 a compliant procurement process to secure a Preston Youth Zone Operator was undertaken.

The procurement process also ensured that the county council was able to comply with the requirements of s123 of the Local Government Act 1972 by removing reference to a 'peppercorn' rent and seeking a market rent for the facility from the prospective operator through the tender process.

The Invitation to Tender was issued on 19th April 2018 with a closing date of 8th June 2018.

No tender bids were received.

Options for Next Steps

1. Re-procure on the same terms and conditions

The procurement process generated very limited supplier interest, either through the Prior Information Notice or Invitation to Tender. 10 organisations expressed an interest or viewed the tender documents, but none took any further action.

Following the conclusion of the procurement process the Lancashire Procurement Service contacted all organisations who accessed the tender documentation via Oracle to explore what prevented them from submitting a bid.

From the organisations who responded and direct feedback one organisation provided by letter to the Leader, the following concerns were identified:

- difficult for suppliers to commit to the level of capital contribution required,
- length of proposed lease was insufficient
- lease terms including break clauses and the requirement for an open market rent were not acceptable
- co-location with Youth Offending Team was a concern, and
- design of the building was not compatible with model of delivery.

It was also apparent that some organisations were only interested in certain elements of the service such as the delivery of activities, support and guidance, with some expressing an interest in the construction of the building rather than the operation of the Youth Zone.

Based on this feedback it is considered unlikely that a second procurement exercise would generate any tenders if the tender is re-issued on the same terms and conditions.

2. Re-procure on different terms and conditions

This would require further officer time and resources in engaging with suppliers to understand what terms and conditions are particularly restrictive and what would be more acceptable to the market, with no guarantee a compromise could be found.

Given the feedback that has been received it is anticipated that for suppliers to engage the county council would need to increase its capital contribution above the £5.925m identified. The current estimate for the development is £8.53m. It was previously anticipated that the operator would provide £1m capital investment, but none of the feedback received has indicated what level of capital investment would be achievable.

The length of lease is also an area of concern for suppliers, with an indication that a 125 year Peppercorn lease would be required. Any move away from achieving an open market rent for the property would not enable the county council to satisfy the requirements of s123 Local Government Act.

The co-location of the Youth Offending Team service within the Youth Zone has also been raised as a concern and this would need to be addressed, potentially by removing this service from the building.

Any changes to terms and conditions would require the re-issuing of a revised Invitation to Tender to the open market to comply with the Concession Contracts Regulations (2016). Given the comments received it is clear that there is a very limited market available to provide the role of operator, and there is a risk that any re-tender would also fail to generate compliant bids, even if the county council were able to compromise on the issues mentioned above.

3. Approach interested organisations directly

To ensure compliance with procurement regulations any direct approach to any organisation following a tender exercise which elicited no responses, or no suitable responses, would have to be made in accordance with the principles of the "negotiated procedure without prior publication" under the Public Contract Regulations 2015. That procedure could only be considered if the terms and conditions of the original tender are not substantially altered.

Contacted organisations have indicated that they wouldn't be able to present a viable business plan based on the current tender requirements, but are open to further discussions around commissioning options if the council wishes to have that dialogue. These are likely to require significant changes to material terms and conditions, such as capital contribution, length and nature of lease arrangements and the co-location of the Youth Offending Team.

In such circumstances, altering key terms and conditions would require re-issuing a tender to the open market to ensure compliance with Public Contracts Regulations.

4. Withdrawal from the Project

It is unlikely that the county council will be able to deliver a Preston Youth Zone on the Bus Station location without a significant increase in capital funding, a reduction in lease payments, an increase in the term of lease and the removal of the co-located Youth Offending Team service.

It would be very challenging in the current financial climate for the authority to compromise on these points. It should also be noted that since the first discussions on the construction of a Preston Youth Zone, children, young people and family services have developed a much stronger focus on targeted services rather than a universal service offer such as that provided through a Youth Zone. The shift in focus towards delivery of an integrated 'early help' service offer in Lancashire for children, young people 0-19yrs+, now focusses on targeting those most in need of support and was agreed by Cabinet at its meeting in November 2015. The decision detailed the 'Transformation of Wellbeing, Prevention and Early Help Services', integrating a number of existing services (including the former Young People's Service in the County Council) and repositioning the service delivery offer to be principally focussed on those assessed as having complex or intensive needs aligned to Lancashire's Continuum of Need at Levels 2 and above.

Although the council has demonstrated to date, a continuing commitment to the provision of a Preston Youth Zone, and continues to recognise that this would represent an extremely welcome asset in Preston, it must now consider whether this is aligned with the targeted approach described above which ensures the greatest support and assistance is provided to those with greatest need.

A decision to withdraw from the delivery of a Preston Youth Zone would reduce the capital requirement of the Preston Bus Station development programme. However it should be noted that significant expenditure has already been incurred on the project. This is split in to two principal areas:

- Firstly, the abortive costs of the extensive design work done to date, as well as a likely claim from the contractors for loss of profit. These costs total £1.244m.
- Secondly, the expansion of the public realm works to include the entire area of the western apron of the bus station, covering the area that would have been taken by the Youth Zone footprint. It is estimated that in order to deliver quality public realm to a suitable standard to complement that planned for the rest of the apron would incur an additional cost of £1.25m. This includes £150k additional design costs, £350k additional electrical works (primarily lighting) and £750k construction. The total cost of the public realm works would be £2.75m including the apron works already programmed across other approved capital projects associated with the bus station re-development and Fishergate.

Taking the abortive costs and the costs of delivering the additional public realm from the original capital allocation of £5.925m would release £3.431m capital funding. Repurposing this capital funding will reduce borrowing requirements if no longer needed to fund a Youth Zone.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

Legal/Procurement

In proceeding with the procurement process the county council as a public authority must comply with the relevant procurement regulations, state aid rules and s123 of the Local Government Act 1972.

The potential for state aid issues has been negated by opening the opportunity to competition through a procurement process which complies with the Concession Contract Regulations 2016. Appointing a Youth Zone Operator following an open tender process does not create an unfair advantage to the recipient but offers a fair and transparent opportunity to all those interested in delivering the services (including operators from other EU states). Under a compliant procurement process all bids would be evaluated on an equal basis according to pre-published criteria and there is thus no detrimental impact upon inter-state competition.

Section 123 of the Act provides that a council cannot dispose of its land for a consideration less than the best that can be reasonably obtained in the market,

except with the express consent of the Secretary of State. A disposal of land includes the granting of a lease. The removal of all reference to a peppercorn rent from within the Invitation to Tender, allowing for an open market rent, gives compliance to this requirement.

Finance

The financial contributions committed to the delivery of the Preston Youth Zone have been considered through previous reports, most specifically within the report to Cabinet on 9 June 2016.

The cabinet established at its April 2018 meeting that all capital costs above the agreed £5.925m would be met through the Youth Zone Operator, therefore limiting the county council's financial commitment to that already agreed. The required commitment of the Youth Zone Operator is currently estimated to be £2.605m, rather than the £1m contribution previously discussed.

The procurement process specified that the Youth Zone Operator would take on the operational and financial risk associated with delivering the Preston Youth Zone. It was envisaged that they would need to secure private sector contributions from sponsors, arrange contributions from other public sector partners, as well as charging a fee for young people to access the activities to cover costs.

The county council has previously made a commitment to provide a maximum revenue contribution of up to £150,000 per annum, for a maximum period of ten years. This was detailed within the procurement documentation. The withdrawal from the project would enable the release of this revenue funding.

OnSide have written to the Leader stating that they will be placing an invoice with the county council for the development costs they have contributed to the project. There is an anticipated cost for all fees included within the abortive cost figure of £1.244m. At the commencement of the Project, OnSide provided a figure for their fixed consultancy fee and this amount is included within the Project Cost Plan and is reflected in the abortive costs.

Funding for the delivery of the existing western apron public realm treatment has been secured through Growth Deal, through the Preston City Centre Improvements Programme. Whilst this funding does not specifically relate or contribute to the delivery of a youth zone, the outputs in the business case used to secure the funding do refer to the youth zone and as such the Growth Deal Board will require a change request to be submitted to address any implications on the outputs to be delivered by this change to the business case deliverables. The impact of this is unknown and is subject to Growth Deal Management Board discussion but could result in reduced funding for the public realm treatment.

List of Background Papers

Paper	Date	Contact/Tel
Proposals for Transforming Wellbeing, Prevention and Early Help Services for Children, Young People and Families in Lancashire	26.11.2015	Debbie Duffell 01772 532173
Procurement Report – Request for approval to commence procurement exercise	10.8.2017	Rachel Tanner 01772 534904
Update on Preston Youth Zone Operator	12.4.18	Sue Procter 01772 538848

Reason for inclusion in Part II, if appropriate

N/A

Section E (Overview and Scrutiny)

Request for a Decision not Implemented to be Reconsidered

1. Each Overview and Scrutiny Committee may consider whether an executive decision made but not implemented should be reconsidered by the decision maker (known as a "Call In"), or to arrange for the Full Council to review that decision and decide whether it should be reconsidered.

2. Requests in accordance with Standing Order 1 above must be made in accordance with the following procedure:

(1) Unless designated as Urgent in accordance with Standing Order C29 above, no decision of the Executive can be implemented until after three clear working days following the date of the Cabinet or Cabinet Committee at which the decision was made, or, in the case of decisions made by individual Cabinet members, from the date that the decision is published.

(2) During this period a written request for a meeting in accordance with Standing Order 1 above to be called for the consideration of "Call In" can be made by any five County Councillors representing more than one single political group on the County Council. Co-opted Members cannot request a special meeting to consider "Call In".

(3) The request(s) must be received by Democratic Services on behalf of the Chief Executive by no later than 5.00pm on the third working day following the date of the record of the decision being published. A request submitted later than that cannot be considered.

(4) Requests for a special meeting must be made in writing, and signed by the councillor(s) making the request, a proforma for this purpose is available from the C-First portal. E-mail requests must be emailed to democratic.services@lancashire.gov.uk. For verification purposes, requests must come from the Councillors' county council provided email address. Any Councillor wanting to request a special Call In meeting by email must submit an individual email. Emails cannot be sent by one councillor on behalf of another councillor(s).

(5) Requests for a special meeting must specify how the decision has breached one or more of the Principles of Decision Making set out at Standing Order A4 above.

(6) The meeting of the overview and scrutiny committee must be held within seven clear working days of the request being received by Democratic Services. The date will be agreed by the Chair of the relevant overview and scrutiny committee.

(7) The following will be invited to attend the scrutiny meeting:

(a) Any Councillor who requested the special meeting;

(b) Appropriate representatives of Cabinet;

(c) The appropriate officers from the service subject to the proposed decision; and

(d) Any other witness the committee wishes to invite.

(8) At the meeting, the case for the Call In will first be heard. Those requesting the Call In will be given 20 minutes to present the case, and they may, within that time, arrange for outside witnesses (such as members of the public or representatives of other organisations) to speak.

(9) The Decision Maker (or representative) if present will be invited to respond, and officers invited to clarify any issues raised. The committee will then debate the matter, questioning any of the presenters as required, and a vote will be taken whether to request the Call In.

(10) At the special meeting, the committee may request Full Council to review the decision and decide whether it should be reconsidered only where the original decision was contrary to the Budget and Policy Framework set by the Full Council

(11) If the Call In is requested, the committee must also agree the reasons on which the request is based. These reasons must specify which of the Principles of Decision Making set out at Standing Order A4 has been breached and how. The decision and the grounds upon which the request is based shall be registered in writing with the Chief Executive within three clear working days of the meeting of the Overview and Scrutiny Committee.

(12) The Decision Maker shall reconsider the decision as soon as is reasonably practical, and publish his/her response in accordance with the rules for the publication of executive decisions. A copy shall be provided to the Chair of the relevant Overview and Scrutiny Committee.

(13) All arrangements are subject to the Council's Standing Orders.

(14) Once the written request described at Standing Order 2(2) above has been made, the decision must not be implemented until either the overview and scrutiny committee has decided not to request a reconsideration, or until the Decision Maker has published a response to a request for reconsideration, with reasons.