

**Corporate and Scrutiny Management Policy and
Scrutiny Committee (Calling – In)**

14 July 2015

Report of the Assistant Director, Governance and ICT

**Called-in Item: Application for Community Right to Bid under the
Localism Act 2011 – Clementhorpe Malt House**

Summary

1. This report sets out the reasons for the call-in of a decision made by the Leader (incorporating Finance and Performance) at a Decision Session on 29 June 2015 to reject an application from the Clementhorpe Community Association to list the Clementhorpe Malt House, 19/21 Lower Darnborough Street, York as an Asset of Community Value (ACV).

This cover report sets out the powers and role of the Corporate and Scrutiny Management Policy and Scrutiny Committee in relation to dealing with the call-in.

Background

2. An extract from the Decision Sheet issued after the Leader Decision Session is attached as Annex A to this report. This sets out the decision taken by the Leader on the called-in item. The original report to the Leader Decision Session on the called-in item is attached as Annex B to this report.
3. The Leader's decision has been called in by Councillors Kramm, Gunnell and Hayes for review by the Corporate and Scrutiny Management Policy and Scrutiny Committee (Calling-In), in accordance with the constitutional requirements for call-in. The following are the reasons given for the call-in:

“In the Decision Session the leader of City of York Council decided that the application to list the Clementhorpe Malthouse as an Asset of Community Value is rejected as the criteria have not been met for the reasons set out in the report.

Cllr Steward followed the officer's recommendation to dismiss the ACV application on just one ground, the previous usage of the building. The report to the leader states:

"It is considered that this application does not meet the criteria for the legislation to apply as the building has never been used for a use which furthers the well-being or social interests of the community and is therefore not eligible for listing as an asset of community value."

The Localism Act 2011 is not giving a clear definition of "social interest" and case law has not been widely established giving the local council a wider discretion in its interpretation. It is our belief that the social interest in the Malthouse has been well established on the local community. Clementhorpe Malthouse has been for years a silent and passive monument for the industrial heritage of Clementhorpe. Interest is the state of wanting to know or learn about something. Several residents stated in recent open viewings and public meetings that they for years were admiring the building from the outside wondering about its past and function. The high attendance in the open viewing showed that the interest of the local community is strong despite the council's idleness in the last years to build on it. The current ACV application is not just aiming to retain the current social interest but to develop it even further.

Additionally Section 88 of the Localism Act 2011 states that

"In order to be listed, the land or building must further the social wellbeing or social interest of the local community, or have been used in the recent past."

There is no case law supporting the interpretation that the condition "have been used in the recent past" is cumulative. Leaving the interpretation that the reason that the inside of the Malthouse has never been used as a cultural and historic heritage site as criterion for exclusion under Localism Act doubtful.

The Malt House has for much of the last 50 years been used by the Castle Museum. It was providing a community function and the community knew it was a part of the Museums Service for City of York Council. It was part of the heritage complex of buildings for the City. That its previous use was furthering the cultural and heritage needs of the community.

The Clementhorpe Community Association feel that they have always acted in the spirit of the law and will provide evidence of precedents in other parts of the UK to illustrate their case.

The CCA have argued their case to us and this is why the three Micklegate Councillors have decided to call in the ACV decision of 29th June".

Consultation

4. In accordance with the requirements of the Constitution, the calling-in Members have been invited to attend and/or speak at the Call-In meeting, as appropriate.

Options

5. The following options are available to Corporate and Scrutiny Management Policy and Scrutiny Committee (Calling-In) Members in relation to dealing with this call-in, in accordance with the constitutional and legal requirements under the Local Government Act 2000:
 - a. To decide that there are no grounds to make specific recommendations to the Executive in respect of the report. If this option is chosen, the original decision taken on the item by the Leader on 29 June 2015 will be confirmed and will take effect from the date of the Corporate and Scrutiny Management Policy and Scrutiny Committee (Calling-In) meeting; or
 - b. To make specific recommendations to the Executive on the report, in light of the reasons given for the call-in. If this option is chosen, the matter will be reconsidered by the Executive at a meeting of Executive (Calling-In) to be held on 23 July 2015.

Analysis

6. Members need to consider the reasons for call-in and the report to the Leader and form a view on whether there is a basis to make specific recommendations to the Executive in respect of the report.

Council Plan

7. There are no direct implications for this call-in in relation to the delivery of the Council Plan and its priorities for 2011-15.

Implications

8. There are no known Financial, HR, Legal, Property, Equalities, or Crime and Disorder implications in relation to the following in terms of dealing

with the specific matter before Members; namely, to determine and handle the call-in.

Risk Management

9. There are no risk management implications associated with the call in of this matter.

Recommendations:

10. Members are asked to consider all the reasons for calling in this decision and decide whether they wish to confirm the decisions made by the Leader or refer the matter back for reconsideration and make specific recommendations on the report to the Executive.

Reason: To enable the called-in matter to be dealt with efficiently and in accordance with the requirements of the Council's Constitution.

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**Report
Approved**



Date 6 July 2015

Specialist Implications Officer(s) None

Wards Affected: Micklegate Ward

All

For further information please contact the author of the report

Annexes

Annex A – Extract from the Decision Sheet produced following the Leader Decision Session on the called-in item.

Annexes B, B1 and B2 – Report of the Assistant Director of Finance, Asset Management and Procurement of 29 June 2015 and annexes of the report relating to the Clementhorpe Malt House Application.

Annex C – written representation received in respect of the Leader
Decision Session

Background Papers

None