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Meeting	Corporate and Scrutiny Management Policy and Scrutiny Committee (Calling In)
Date	14 July 2015
Present	Councillors Levene (Chair), Fenton, Flinders, Galvin (Vice-Chair), Gates, Lisle, Reid, Williams and D'Agorne (Sub for Cllr Kramm)
In attendance	Councillors Boyce, Craghill, Hayes and Waller
Apologies	Councillor Kramm

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## 1. **Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal interests not included on the register of interests, any prejudicial interests or any disclosable pecuniary interests which they might have in respect of the business on the agenda.

Councillor D'Agorne declared an interest in Agenda item 5. Procurement of Council Security Services (minute 5), as one of the calling-in Members.

## 2. **Public Participation**

It was reported that there had been two registrations to speak at the meeting under the Council's Public Participation Scheme and that one Member of Council had also requested to speak.

David Papworth spoke in respect of the call-in of the decision to halt development of new council housing on Newbury Avenue, as he lived adjacent to the site. He expressed support for the Executive's decision in order to allow further consultation in respect of the loss of a drying area, problems with construction and delivery vehicles, contractor parking and site access.

Andy Johnson spoke as Chair of the Clementhorpe Community Association, in respect of the decision not to list the Clementhorpe Malthouse as an Asset of Community Value. He referred to the reasons for rejection of the application

highlighting that the building had been used for storage by the Yorkshire Museums Trust in the last ten years. He asked the Committee to respond to the wishes of local residents and provide them with an opportunity to develop the building as a community hub, which they considered a viable and worthy option.

Councillor Waller spoke in respect of the Newbury Avenue call-in, as one of the Ward Members. He referred to a petition signed by 24 residents in the immediate area objecting to the proposed development as they felt that their concerns had not been taken into account. The problems they raised included the mix of flats and open space, parking, the condition of access roads and development on an adjacent site which had had a cumulative affect on the area.

### **3. Minutes**

Resolved: That the minutes of the last meeting of the Committee held on 16 March 2015 be approved and signed by the Chair as a correct record.

### **4. Called-In Item: New Council Housing and Approval for Development at Ordnance Lane**

Members received a report which asked them to consider the decision made by the Executive on 25 June 2015, in relation to the re-examination of proposals for housing development at a site at Newbury Avenue, Acomb in order to allow full consultation with Ward Members and local residents.

Details of the Executive's decision were attached at Annex A to the report and the original report of the Director of Communities and Neighbourhoods to the Executive, attached at Annex B.

The original decision had been called in by Councillors S Barnes, Boyce and Derbyshire on the following grounds:

- i) That in halting the scheme the Executive has chosen to ignore the fact that a full consultation has already been undertaken where residents' views were listened to. Amendments were made to the proposal following objections received from four local residents and the local Residents Association, prior to the consideration of the planning application;

- ii) The scheme has already been agreed for development following that same planning application. Executive councillors should not now be seeking to retrospectively bring political influence beyond the exercising of a quasi-judicial function of the council;
- iii) The scheme delivers much needed affordable housing in a climate of ever increasing need and at a time when York continues to experience an affordable housing crisis that shows no signs of abating;
- iv) That this decision directly contradicts both the council leader's expressed comments in the same meeting where he stated that the 'affordable housing challenge is massive, is one we will have to address and will address", and the Executive Member for the Environment's professed commitment to affordable housing through his comments at the same meeting;
- v) No consideration has been given to the impact of any permanent removal of the Newbury Avenue scheme on the commissioning process now the tender has been issued. The Executive Member responsible needs to be clear about the cost to York taxpayers of removing this scheme from the tender and whether the process will have to be restarted if this is what the Executive agrees to do.

Councillor Boyce addressed the meeting on behalf of the group of Calling In members. She highlighted their principal concern that consultation had already been undertaken with local residents, prior to submission of the planning application, which had resulted in amendments having previously been made to the Newbury Avenue scheme. She also spoke of the impact permanent removal of the scheme would have on the provision of affordable housing, including increased procurement costs.

The Cabinet Member for Housing and Safer Neighbourhoods spoke in response to the points made for the call-in of the decision. He pointed out that the decision taken had been to halt the scheme, rather than remove it from the programme, in light

of residents concerns and in order to allow a review of the proposals for the site.

In answer to Members questions the Cabinet Member confirmed that the scheme had not yet gone out to tender and that any design fees or work undertaken could be used in any future scheme, therefore any abortive costs would be minimal. He also confirmed that he hoped a reasonable compromise could be agreed with the residents concerned.

On being put to the vote it was:

Resolved: That Option A be approved and that the decision of the Executive be confirmed.

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

## **5. Called-In Item: Procurement of Council Security Services**

Members received a report which asked them to consider the decisions made by the Executive on 25 June 2015, in relation to procurement of security service as a corporate contract, including exploration of the possibility of outsourcing the Council's current in-house CCTV monitoring service.

Details of the Executive's decision were attached at Annex A to the report and the original report of the Assistant Directors of Finance, Asset Management & Procurement and Transport Highways and Fleet to the Executive, attached at Annex B.

The original decision had been called in by Councillors D'Agorne, Craghill and Kramm on the following grounds:

- Full details of the scope of the Council buildings to be included have not been provided e.g. does this include schools and community centres?
- No details of the scale of the extension of the contract from West Offices to all Council buildings have been provided i.e. how many posts will be affected and by how much will the value of the contract increase?

- There is no mention of the Council's commitment to protect the Living Wage for all staff and whether or not retention of the Living Wage will be required as part of the new contract.
- Regarding the option to include the CCTV operations centre in the contract, there is no evidence of consultation with Safer York Partnership, the Police or the unions prior to this decision, nor any assessment of the impact on public confidence from the city's CCTV cameras being managed and run by a private operator.
- There is no recognition that services such as the Mansion House are specialised with a special importance to the city and rely on experienced specialist staff.

Councillor Craghill addressed the meeting on behalf of the group of Calling In members. She highlighted their principal concerns as the lack of consultation, particularly with the Unions on the Council's key CCTV service, the lack of detail of the Council buildings included as part of the procurement e.g. Hostels, Schools, Community Centres and payment of the Living Wage.

The Executive Leader spoke in response to the points made for the call-in of the decision. He pointed out that the procurement would not include schools, community centres or Mansion House staff and that whilst discussions were still in the early stages, any staff affected by the changes would be transferred with TUPE protection. He also confirmed the Council's commitment to pay the Living Wage and to undertake full consultation with all concerned.

Members questioned details of the consultation undertaken and public confidence in the outsourcing of the CCTV operations centre and the affect on relationships with other organisations.

The Assistant Director, Finance, Property and Procurement and Assistant Director for Transport, Highways and Fleet provided further information in answer to Members questions and in support of the Executive's decision. In particular they highlighted that the proposals were an extension of the current service, that

the CCTV function would continue to be run by the City of York Council and that no concerns had been raised by partners.

Officers also confirmed that the existing security staff were registered with the Security Industry Authority and that an additional note which provided additional information in relation to the service and the procurement would be forwarded to Members for their information.

Following further lengthy discussion it was

Resolved: That Option A be approved and that the decision of the Executive be confirmed.

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

**6. Called-In Item: Applications for Community Right to Bid Under The Localism Act 2011 - Clementhorpe Malt House**

Members received a report which asked them to consider the decisions made by the Leader at his 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, as an Asset of Community Value (ACV).

Details of the Leader's decision were attached at Annex A to the report and the original report of the Assistant Directors of Finance, Asset Management & Procurement to the Executive Leaders Decision Session, attached at Annex B.

The original decision had been called in by Councillors Kramm, Gunnell and Hayes on the following grounds:

“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 to 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 side 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".

Councillor Hayes addressed the meeting on behalf of the group of Calling In members. He confirmed that the Clementhorpe Community Association had sought further advice since the call-in of the decision. He highlighted their principal concern that the decision taken not to grant the Malt House as an ACV had been taken on the basis that the property had never been used for a use that furthered the wellbeing and social interest of the community, however the Castle Museum had used the building for storage. He also circulated additional information in support of the call-in and listed other successful ACV applications in Northampton and Greenham Common.

The Executive Leader spoke in response to the points made for the call-in of the decision. He clarified that the decision taken had not been taken on only one ground as mentioned in the call-in, but as the criteria for listing the building had not been met.

The Assistant Director, Finance, Property and Procurement provided further information in answer to Members questions and in support of the Leader's decision. She confirmed that Clementhorpe Malt House did not meet the basic requirements for listing the property, particularly as the public had not had any access to the building and as it had been eight years since the building had last been used for storage.

In answer to questions, the Assistant Director, Governance and ICT gave advice relating to the application of section 88 of the Localism Act 2011.

Members confirmed that whilst the building may be of interest to the community they felt that, in this particular case, the correct decision had been made not to list the property as an Asset of Community Value, and following further discussion it was



Resolved: That Option A be approved and that the decision of the Executive be confirmed.

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

Cllr D Levene, Chair

[The meeting started at 5.30 pm and finished at 7.10 pm].

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