



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

IMPROVEMENT AND SCRUTINY COMMITTEE - PEOPLE

2 December 2024

Report of the Director - Legal and Democratic Services

Call in: Discretionary Grant Funding

1. Purpose

1.1 To consider a call-in in respect of the decision taken by Cabinet to.

2. Information and Analysis

2.1 The Council's Constitution provides for decisions to be called-in where Members consider that the decision-making principles set out in Article 7 (Decision-Making), which are set out at Appendix 2 to this report, have been breached. The Improvement and Scrutiny Procedure Rules set out in the Constitution require a call in to be requested by at least 4 councillors, from a minimum of 2 political groups

2.2 On 14 November 2024 the Cabinet considered a joint report of the Executive Director Adult Social Care and Health and the Executive Director Corporate Services and Transformation and agreed to:

- 1) Note the outcomes of the full report on the consultation responses and detailed analysis of the feedback in Appendix 3 and the Equality Impact Analyses in Appendix 4-9;
- 2) Approve the recommendation to cease all existing discretionary grant funding arrangements set out in this report after 31 March 2025, totalling £1.106M;

3) Note that £25,000 of funding would be retained in the CST budget to support the Council's strategy and partnership objective; and

4) Note that £25,000 of funding would be retained in the CST budget to support the Council's equality objective.

2.3 In accordance with the provisions of the County Council's Constitution, Councillors Dixon, Allen, Burfoot and Frances-Hayes and Mihaly have asked that the decision be called-in and considered by this Committee.

2.4 The call in has been requested on the basis that the decision breaches Articles:

- 7.2 (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- 7.2 (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- 7.2 (d) due consultation and the taking of professional advice from officers
- 7.2 (f) a presumption in favour of openness
- 7.2 (g) clarity of aims and desired outcomes.

2.5 The principal objections, as given in the call-in notice, were stated as follows:

- The report repeatedly makes clear that the review has been conducted in response to the council's dire financial position in order for the authority to set a balanced budget and meet its statutory duties. The report has not been produced as part of a service redesign process aimed at improving, changing, or replacing a service. Consequently, it has been produced at pace, to a timetable linked solely to the council's budget making process, limiting the time available to officers to gather information and make detailed assessments of the consequences that would result from the recommendations. The report also reminds Cabinet that it had previously decided to develop a commissioning pathway, a clear recognition of a need for some, if not all, of the services paid for by the grant funding. However, due to capacity and timing constraints officers have never been able to implement that commission pathway and the report instead recommends the cessation of voluntary grants to save money. If the only purpose of the report is to save money and balance the budget, a purpose not formally listed in section 3 of the main report, Cabinet cannot be sure that it has only had regard to relevant and material consideration and without regard to irrelevant ones because the report makes clear that there has been

insufficient time to analyse and assess some important consequences of the proposal.

- Many of the grants have been in place for a significant number of years, over 20 in some cases, with the grant simply rolled over from one year to the next, often with little scrutiny or changes to the grant agreement. In itself a clear failure by the Cabinet to oversee the spending of public money. A consequence of this is that the report is, in some cases, unable to inform Cabinet precisely what activity the grant funding supports and what services would change if the funding ceased, meaning the report is often unable to give a reasonable assessment of the consequences of any change. Without this information the decision maker cannot know whether the decision is proportionate. The loss of a grant funded service could, for example, place extra demands on other council revenue funded services which then cost the authority more than the proposed savings.
- Implementing major policy changes at pace as part of a saving processing is recognised as bad practice and likely to lead to major policy failings and/or unintended consequences and the report constantly recognises that there are weaknesses in the information presented to Cabinet that forms the basis of this decision raising real risks of that happening in this case.
- An example of these weaknesses is contained in the appendices to the report which repeatedly make clear that it has often been challenging for officers to identify what activity would change if cession of funding went ahead. The report goes on to state that that in turn makes it more challenging to identify possible mitigation opportunities for some of the organisations which is one reason why the main body of the report regularly uses the words “may” or “could” when suggesting organisations seek alternative funding sources to mitigate the lost grant. Because there is no commentary as to the prospects of such alternative funding being successful the Cabinet cannot make a realistic evaluation of the likely availability of the mitigation measures relied on in the report. Consequently, Cabinet cannot be sure what the consequences of its decision and therefore cannot be satisfied that it has had due regard to all relevant and material consideration and without regard to any irrelevant consideration.
- This inability of Cabinet to be sure as to what activity would change is further evidence by the open letter from the Derby & Derbyshire Infrastructure Alliance (DDIA) sent to all members of the authority prior to the decision. It points out factual errors in the report such as its assertion that organisations are able to use their reserves to maintain services, with the DDIA stating that is not true for some of its members. The main report appears to accept that there was a risk of that criticism and is possibly why it fails to analyse for Cabinet which organisations have sufficient usable

levels of reserves and which do not. Consequently, Cabinet could not be aware of which organisations may close down as a result of the reports recommendation or what activities will cease. As well as meaning Cabinet cannot be sure it has only had due regard to all relevant and material consideration and that it may have taken into account irrelevant considerations it also means that Cabinet cannot be sure if the decision is proportionate.

- The report states that these grant funded services for older people may have been included as possible mitigation measures for those same people in reports dealing with cutting other services. Citing these discretionary grant services as mitigation measures to justify proceeding with other cuts to services and then cutting the discretionary grant funding in full demonstrated a lack of clarity of aims and desired outcomes. It also means that this proposal, and others considered on the same day by Cabinet, may result in a significant cumulative adverse impact on some sections of the community and raises questions about the openness of the decision making.
- The consultation undertaken as part of this report is subject to the Gunning principles and should be undertaken whilst the decision maker retains an open, but not empty, mind. By recommending the ceasing of all existing discretionary grants, irrespective of and often not knowing the impact of ending that grant, and by repeatedly making plain in the report that the motive of the review is to save money and not redesign, change, or improve the service a fair-minded reader would be left with the impression that the outcome was predetermined. That nothing could be said during the consultation process to stop all grants being ended. Indeed, the repeated statements by both the Executive Managing Director, the S151 officer, and senior members of the Cabinet throughout the year that any savings measure proposed in the February Cabinet Budget paper that was not implemented would have to be replaced by an alternative saving adds to that impression that the decision maker did not go into the consultation with an open mind.
- The realistic risk of predetermination being perceived is evidence by the DDIA letter which states their concerns about the manner in which the consultation took place and that the language used in the report left them concluding that the decision had already been predetermined before the consultation even started.

2.6 The procedure to be adopted when a decision is called in is set out in the Call-in procedure set out in the Improvement and Scrutiny

Procedure Rules at Appendix 5 to the Constitution. This is attached at Appendix 4 to this report.

- 2.7 The Committee will need to determine whether or not the decision-making principles set out in Article 7.2 (a), (c), (d), (f) and (g) have been breached in relation to the decision of Cabinet set out in paragraph 2.2 above.
- 2.8 If, having considered the matter, the Committee is satisfied that the principles have been followed, the decision of Cabinet can be implemented. If, however, the Committee concludes that the decision-making principles have been breached, it may:
 - refer the decision back to Cabinet for reconsideration; or
 - refer the matter to Full Council (only for decisions that have contravened the budget and policy framework).

The Committee must state in writing the nature of the concerns regarding the decision.

- 2.9 As with all Improvement and Scrutiny Committee meetings, the call-in process should be inquisitorial not adversarial.

3. Consultation

- 3.1 Not applicable.

4. Alternative Options Considered

- 4.1 To not consider the call-in request, however this would result in the Council failing to comply with the Constitution.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 None identified.

7. Appendices

- 7.1 Appendix 1 – Implications
- 7.2 Appendix 2 – Extract from Article 7 of the Constitution

- 7.3 Appendix 3 – Call in procedure set out in the Improvement and Scrutiny Procedure Rules
- 7.4 Appendix 4 – Report to Cabinet dated 14 November 2024

8. Recommendation

That the Committee consider the call-in of the decision made by Cabinet on 14 November 2024 and determine whether or not the decision-making principles set out in Article 7.2 (a), (c), (d), (f) and (g) have been breached.

9. Reasons for Recommendation

- 9.1 To comply with the Council's Constitution.

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Implications

Financial

1.1 None directly arising from the report.

Legal

2.1 The Council's Constitution sets out the procedures for 'call in' which must be followed and is based upon relevant paragraphs of the Local Government Act 2000 as follows:

- a) s9F(2) provides the general power for overview and scrutiny committees to review or scrutinise executive decisions;
- b) s9F(4) provides a specific power to review or scrutinise a decision made, but not implemented.

Human Resources

3.1 None directly arising from the report.

Information Technology

4.1 None directly arising from the report.

Equalities Impact

5.1 None directly arising from the report.

Corporate objectives and priorities for change

6.1 None directly arising from the report.

Other (for example, Health and Safety, Environmental, Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None directly arising from the report.

7.2 Principles of decision-making

All decisions of the Council will be made in accordance with the following principles:

- (a) due regard to all relevant and material considerations and without regard to any irrelevant considerations;
- (b) where appropriate, the realistic evaluation of alternatives;
- (c) proportionality (i.e. the action must be proportionate to the desired outcome);
- (d) due consultation and the taking of professional advice from officers;
- (e) respect for human rights and equalities;
- (f) a presumption in favour of openness;
- (g) clarity of aims and desired outcomes; and
- (h) reasons being given for the decision, as appropriate.

CALL-IN PROCEDURES

Procedure to be Adopted when a Decision is Called-In

1. The Director of Legal & Democratic Services on receiving a request for the call-in will check that the call-in notice is signed by the requisite number of Members. The call-in notice must identify which principle(s) of decision making in Article 7 of the constitution have allegedly been breached and give reasons. This requirement will be checked by the Director of Legal & Democratic Services.
2. The Director of Legal & Democratic Services will arrange a meeting of the appropriate Committee, in consultation with the Chairman of that committee.
3. The Director of Legal & Democratic Services will acknowledge the call-in notice and notify the appropriate Cabinet member.
4. The Scrutiny Officer will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Strategic Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Strategic Director may nominate a second or third tier officer to attend in his/her place. If none of the call-in signatories attend, the Committee will decide whether to proceed. If the Committee decides not to proceed, then the call-in will be decided on the basis that the Committee does not have any concerns it wishes to refer to the Council Cabinet, and the Council Cabinet will not be required to reconsider the decision.
5. The Scrutiny Officer will send copies of the call-in notice, minute of Cabinet/record of the Cabinet Member decision and any associated reports to members of the Committee with the agenda for the meeting.
6. The Scrutiny Officer will liaise with the Chairman and the Vice Chairman of the Committee over any other appropriate arrangements for the call-in, e.g. additional information, witnesses etc. If the Chairman or Vice Chairman have signed the call-in notice, the SO will liaise with another member of the Committee nominated by the Chairman or Vice Chairmen.
7. The aim of the Committee meeting when the call-in is considered should be inquisitorial not adversarial. The Meeting Procedure for a call-in of a Council Cabinet decision will be adopted.

Meeting Procedure for a Call-in of a Council Cabinet Decision The role of the Chair

1. This procedure shall be implemented at the meeting by the Chairman and any deviation from this procedure will be at the discretion of the Chairman. The Chairman will advise attendees at a Call-in meeting of any reasonable intention to deviate from the procedure at the start of the meeting where possible.

2. In the absence of the Chairman, the meeting will be led by the Vice Chairman. In the absence of both, the Monitoring Officer or their representative shall facilitate a vote of Members so that a Chairman shall be appointed. The appointed Member will chair for the duration of the meeting or until the Chairman or Vice Chairman is present.

3. Where the Chairman is in attendance, the Vice Chairman shall be treated in the same way as every other Member of the Board.

Role of signatories to the Call-in notice and the Council Cabinet member

4. Signatories to the Call-in notice and the Council Cabinet Member will be invited to provide evidence to the Committee, both in terms of a presentation and by answering questions put to them by the Committee.

5. There is no provision for either the signatories to the Call-in or the Cabinet Member to question each other, either directly or through the Chairman.

Role of officers in attendance

6. Supporting Officers will be present from Democratic Services (providing procedural advice to the Chairman and Committee as required and recording decisions) and Improvement and Scrutiny (advising the Chairman and the Committee as required on relevant scrutiny of the decision under consideration). The Monitoring Officer or their representative may also be present and may undertake any of these duties in addition to providing any legal advice if required.

7. The Managing Director, Executive Directors or Assistant Directors or Heads of Service may provide support to the Council Cabinet Member and contribute to the meeting as required by advising the Committee on the strategic, technical or operational basis of decisions taken or considerations given relevant to the Call-in, or by responding to questions referred by the Council Cabinet Member to them.

Procedure at the meeting

8. The signatories to the Call-in notice will be invited to address the Committee on the Call-in and will be required to focus on justifying why they considered the council's decision-making principles to have been breached as raised in the signed Call-in Notice lodged with the Monitoring Officer. The order in which signatories are invited to speak will be at the discretion of the Chair. Signatories shall limit their contributions to the reasons for the call-in

9. After all signatories have made their contributions, members of the Committee will be invited to put questions to the signatories and receive responses to those questions.

10. The Council Cabinet Member will then be invited to address the Committee on the call-in by the Chairman and will be required to respond to the assertions relating to the council's decision-making principles as set out in the Call-in notice.

11. Members of the Committee to make any contributions they may wish prior to the vote being taken. Each member of the Committee shall be permitted to make one speech lasting no more than ten minutes.

Voting on whether decision-making principles have or have not been breached

12. The Chairman shall then ask each Member in turn to state whether they consider the decision-making principles identified in the Call-in Notice were, or were not, breached giving reasons. Where a Member considers that a principle has been breached, they will be required, at this stage, to state which principles they consider to have been breached. This information shall be recorded by the Monitoring Officer or their representatives.

13. The Chairman may, at their discretion, state whether they believe the decision-making principles identified in the Call-in Notice were or were not breached, giving reasons.

Finding of no breach

14. In the event that a majority of Members consider that there was not a breach, the Chairman will state that the Committee has resolved that the Council Cabinet Decision identified in the Call-in Notice did not breach the decision-making principles and close the meeting.

Finding of a breach

15. In the event that a majority of Members consider that there was a breach in the decision-making procedure, the Chairman will invite the Monitoring Officer or their representative to address the Committee. The Monitoring Officer or their representative will state which decision-making principles were individually identified by Committee members as having been breached, and which of those principles were identified by a majority of Members present as having been breached.

16. The Chairman will declare the outcome of the vote and the resultant resolution and close the meeting referring the decision back to the next meeting of the Council Cabinet.

Consideration of multiple Call-in notices in relation to the one decision of Council Cabinet

17. In the event that more than one Call-in notice is received in relation to a single matter, the Chairman will use their discretion to vary the procedure accordingly to afford signatories to all Call-in notices equal opportunity to state their case.