

Information/Discussion Paper

Overview and Scrutiny Committee - 10 January 2013

Call in - Rickshaw Decision

This note contains information to assist Members in dealing with this call in request.

1. Why has this come to scrutiny?

- 1.1 A call-in request was received from Councillor Rob Garnham on 20 December 2012 relating to the decision made at Cabinet on 11 December 2012 regarding the Licensing of Rickshaws in Cheltenham. The request (attached as Appendix 1) was received within the call in period and signed by Councillors Penny Hall, Diggory Seacome and Jacky Fletcher. The request was received by the Proper Officer, the Chief Executive, Andrew North in accordance with the procedures set out in Part 4D – Overview and Scrutiny Rules – Rule 14 (attached as Appendix 2). The Proper Officer agreed that it was a valid call in request.
- 1.2 Under the rules of call-in, the request must be considered at a meeting of the O&S committee within 10 working days. As the meeting already scheduled for 10 January was within this period, it was added to the agenda for this meeting. At this meeting the O&S committee resolved to refer the call in to a later meeting of O&S when all the witnesses would be available.
- 1.3 Having considered the facts of the call-in and having received any representations from the member(s) who submitted the request and the decision maker, the options for O&S are set out in paragraphs 14.13 of the Rule 14 in the Constitution (attached as Appendix 2)

2. Summary of the Issue

- 2.1 Members are referred to the Cabinet report on Licensing of Rickshaws that went to Cabinet on 11 December together with the minutes of that meeting and the decision made. These are attached as Appendices 4 and 5.
- 2.2 Members are also referred to the call in request attached as Appendix 1.

3. Summary of evidence/information

- 3.1 Members of O&S have requested the following witnesses to attend:

Cabinet Member Housing and Safety – Councillor Peter Jeffries
Louis Krog – Business Support and Licensing Team Leader
Mr James Meyer – Member of the public who has submitted an application for

operating a rickshaw and has raised concerns regarding the proposed draft policy.
Licensing Manager – Hereford County Council

3.2 The witnesses have been advised of the potential line of questioning and this is attached as Appendix 3. These are intended to provide the broad line of questioning to assist the witnesses in their preparation but members may wish to ask additional questions on the night.

4. Next Steps - possible next steps

4.1 As set out in 1.3.

Appendices	1 – Call in request 2 – Rule 14 of the Council’s Constitution 3 – Cabinet report – 11 December 2012, Licensing of Rickshaws in Cheltenham – Rickshaw Safety 4 – Extract from the minutes of Cabinet 11 December 2012 5. – Line of questioning for the meeting
Background Papers	Cabinet report – 25 September 2012 - Licensing of Rickshaws in Cheltenham
Contact Officer	Rosalind Reeves, Democratic Services Manager, 01242 77 4937, rosalind.reeves@cheltenham.gov.uk
Accountability	Cabinet Member Housing and Safety
Scrutiny Function	Overview and Scrutiny Committee

Call-in Licensing of Rickshaws in Cheltenham - Cabinet Decision made on 11th December 2012.

The reasons for the call-in of this decision are because the decision was not made in accordance with one or more of the Principles of Decision Making as set out in Article 13 of the Constitution namely:-

13.1 shall be made in accordance with the following principles:

(b) the decision shall be proportionate to the desired outcome;

The desired outcome is a ruling on whether or not CBC will license the use of rickshaws in Cheltenham. The decision has still not been made and has been deferred for an indefinite period. There is no known date when a decision will be made but it is left *“until the outcome of the taxi and private hire licensing law reform review by the Law Commission is published in 2013/14.”* Even if an “outcome” of the review is made there is no known timetable for when it may become law.

This is the second time Cabinet have made a decision that is not proportionate to the desired outcome. In September the Cabinet decided, “To defer the item to a future meeting of Cabinet”.

(d) the decision should be taken following due consultation and on the taking of professional advice from Officers;

Professional advice of Officers did not explain the context of the fact that the City of Westminster has more rickshaws in operation than the whole of the rest of the UK. In total, during 2011, there were upwards of two million journeys and there were just 8 collisions involving rickshaws. No serious injuries resulted and no passengers were injured.

There was insufficient reference to Hereford Council who have been operating licensed rickshaws since 2006. The explanation given of “the difficulty of drafting a new licence” (as mentioned at Cabinet) is clearly invalid given another council has already taken this step.

(f) there shall be a presumption in favour of openness;

The whole process of arriving at a Cabinet decision has not been conducted in a transparent and open manner. Firstly there was an inappropriate delay in actually bringing the item to committee in December. Secondly, no valid reasons have been given for the delay in coming to the decision made by Cabinet on either the 25th September nor the 11th December. It would appear that the “official” reason for the delay in September was that, *“The proposal had been delayed due to the local government elections in May 2012, the change in Cabinet member, the summer recess and constitutional changes.”* Delays in December are because of “ongoing safety concerns”.

(g) there shall be clarity of aims and desired outcomes;

As for (b) above.

(i) the options considered and the reasons for the decision shall be clearly set out.

When a final decision is to be taken is not “clearly set out” and left to some

unspecified date. This is not compatible with good governance and the Council's responsibility to promote business and economic development in the town. Also, as in (d) above, not all relevant options have been considered.

Cllr Rob Garnham

20.12.2012

This notice of call-in has been signed by the following four members (signatures on attached sheet).

Councillor Rob Garnham

Councillor Penny Hall

Councillor Diggory Seacome

Councillor Jacky Fletcher

COUNCIL'S CONSTITUTION

OVERVIEW AND SCRUTINY RULES

RULE 14. CALL-IN

General Principles

- 14.1 Call-in is the exercise of the power of O&S Committee to review a decision in respect of an executive function that has been made but not yet implemented. Once called-in, the decision cannot be implemented other than in accordance with the call-in procedures set out in this Rule 14.
- 14.2 The following types of decision can be called-in: (i) Cabinet decision; (ii) Cabinet Member decision; (iii) Officer key decision; (iv) decision made under Joint Arrangements
EXCEPT that a decision to recommend to Council cannot be called-in.
- 14.3 A decision may be called in only once.
- 14.4 A request for call-in can only be made on the basis that the decision maker did not take the decision in accordance with one or more of the Principles of Decision Making as set out in Article 13 of the Constitution.

Procedure prior to call-in

- 14.5 When any decision is made by the Cabinet or a Cabinet Member or a key decision is made by an officer, or by a joint committee or officer under joint arrangements, notice of the decision shall be published including, where possible, by electronic means, and shall be available at the Municipal Offices normally within two working days of being made. Copies of all such decisions will be sent to all members of the Council at the same time as being published.
- 14.6 The notice in Rule 14.5 will bear the date on which it is published and will specify that the decision will come into force and may then be implemented, on the expiry of five clear working days after the publication of the decision, unless the decision has been called-in.

Procedure for calling-in

- 14.7 During the five clear working day period referred to in Rule 14.6, the Proper Officer shall call-in a decision for scrutiny by O&S Committee if so requested by its Chair or any four members of the Council, provided that full written particulars of the reason(s) for the call-in has been received by the Proper Officer by 4.30 p.m. on the fifth clear working day.
- 14.8 The Proper Officer shall immediately notify the decision maker that a call-in request has been received. The Proper Officer shall call a meeting of the O&S Committee to be held on such date as he/she may determine, where possible after consultation with the O&S Chairman and, in any case, the meeting shall take place within a period of ten clear working days of the receipt by the Proper Officer of a valid call-in request or such longer period as agreed by both the decision maker and the member(s) requesting the call-in.
- 14.9 If O&S Committee does not meet in the period set out in Rule 14.8 the decision can be implemented immediately at the end of that period.
- 14.10 In the event of the member(s) submitting the request for call-in confirming to the Proper Officer in writing that the request is withdrawn, the decision can be implemented immediately.

Procedure for scrutinising the decision

- 14.11 The member(s) submitting the request for call-in will be expected to attend O&S Committee to explain their reasons for the call-in and the alternative course of action or recommendations they wish to propose regarding the decision making process.
- 14.12 The decision maker (represented by the Leader or Lead Member if it is a Cabinet decision and the committee chairman or vice-chairman if it is a joint committee decision) may be required to and shall be entitled to attend O&S Committee and respond to the request for call-in.
- 14.13 Having considered the facts of the call-in and having received any representations from the member(s) who submitted the request and the decision maker, O&S Committee may either:
- (a) Support the decision without qualification or comment, in which case the decision can be implemented immediately; or
 - (b) Make adverse comments (with reference to the Principles for Decision Making in Article 13) regarding the process for reaching the decision but take no adverse

view on the decision itself, in which case the decision can be implemented immediately and the O&S Committee comments will be set out in a report to be considered by the decision maker; or

- (c) Propose modifications to the decision or an alternative to the decision to achieve the same effect, in which case implementation of the decision shall be delayed until the decision maker has received and considered a report from O&S Committee and decided how to proceed; or
- (d) In exceptional circumstances (to be determined by O&S Committee and recorded in the minutes) to refer the decision the decision to Council for review or scrutiny

14.14 O&S Committee may refer the call-in to a sub-committee or a STG for consideration prior to taking action under Rule 14.13 (b)-(d) and, if so, the following shall apply:

- (a) O&S Committee shall meet to take its final decision on the call-in under Rule 14.13 not later than 20 clear working days from the date of the O&S Committee meeting arranged by the Proper Officer under Rule 14.8
- (b) The member(s) who submitted the call-in and the decision maker (represented by the Leader or Lead Member in respect of a Cabinet decision and the committee chairman or vice-chairman in respect of a joint committee) may be required and shall be entitled to attend before the sub-committee or STG

14.15 On receiving a request from the member(s) who submitted the call-in within the 20 clear working day period set out in Rule 14.14 (a), the Proper Officer may extend that period by up to an additional 10 clear working days (potentially allowing up to 30 clear working days for O&S Committee to meet to take its final decision)

14.16 If O&S Committee does not meet to consider the call-in within the period set out in Rule 14.14 (a) or such extension to that period as is made by the Proper Officer under Rule 14.15, the decision can be implemented immediately at the end of that period or extended period.

Review and scrutiny by Council

14.17 Where O&S Committee decides to refer the call-in to Council under Rule 14.13 (d), Council must consider the matter at its next available meeting (other than an Annual or Annual and Selection Meeting) or, if the next available meeting is not due to be held within 15 clear working days of the O&S Committee meeting, at an Extraordinary Meeting to be convened by the Proper Officer within that time.

- 14.18 If Council does not meet to consider the call-in within the period set out in Rule 14.17 the decision can be implemented immediately at the end of that period.
- 14.19 If Council does meet to consider the call-in within the period set out in Rule 14.17 but defers consideration of all or part of the call-in to a future Council meeting, Council shall meet to make its final decision on the call-in within 60 clear working days of the receipt of the call-in under Rule 14.7. If Council does not meet to consider the call-in within that 60 clear working day period, the decision can be implemented immediately at the end of that period.
- 14.20 Having considered the facts of the call-in and any recommendations from O&S Committee and having received any representations from the member(s) who submitted the request and the decision maker, Council may either:
- (a) Support the decision without qualification or comment, in which case the decision can be implemented immediately; or
 - (b) Make adverse comments (with reference to the Principles for Decision Making in Article 13) regarding the process for reaching the decision but take no adverse view on the decision itself, in which case the decision can be implemented immediately and Council comments will be set out in a report to be considered by the decision maker; or
 - (c) Propose modifications to the decision or an alternative to the decision to achieve the same effect, in which case implementation of the decision shall be delayed until the decision maker has received and considered a report from Council and decided how to proceed.
- 14.21 Where the call-in relates to a failure to comply with the Budget and Policy Framework Rules Council may, in addition to its powers under Rule 14.20:
- (a) amend the Budget or the Policy Framework to allow the decision to be implemented in compliance with the Budget and Policy Framework Rules,
 - (b) authorise the decision to be implemented as a departure from the Budget or the Policy Framework.

Action by the decision maker following call-in

- 14.22 On receiving a report from O&S Committee or Council, the decision maker shall consider the report and any recommendations and report to the next available O&S Committee the outcome of that consideration.

14.23 Where O&S Committee or Council proposes modifications to or an alternative to the decision that was called in, the decision maker shall either:

- (a) Confirm the called-in decision without modification; or
- (b) Confirm the called-in decision with modification; or
- (c) Rescind the called-in decision, take the alternative decision proposed, or propose a new decision.

14.24 Where the decision maker is acting under delegated powers, they may refer the report or proposals from O&S Committee or Council to the delegator to take the actions under 14.9 and 14.20 instead of the decision maker.

Call-in and Urgency

14.25 Subject to Rule 14.26, call-in does not apply to an urgent decision as defined in Article 13.

14.26 In order to rely on Rule 14.25 the decision maker must:

- (a) Obtain the prior consent of the O&S Committee chairman to the decision being treated as urgent. In the absence of the chairman, prior consent may be given by, in order, the vice-chairman or the Group Leaders acting collectively; and
- (b) Request the Proper Officer to record in the decision, and notice by which it is made public, why in the opinion of the decision maker the decision is an urgent one and not subject to call-in.