
Performance and Finance Scrutiny Committee

3 December 2020

Rejected Call-in – Award of Contract: Enabling works Horsham Enterprise Park

Report by Director of Law and Assurance

Summary

A call-in request relating to proposals for the enabling works for the Horsham Enterprise Park ([link to decision](#)) has been considered and rejected by the Director of Law and Assurance in his role as Monitoring Officer. As set out in the Constitution, the reasons for any call-in requests rejected by the Monitoring Officer are published in the papers for the next meeting of the relevant scrutiny committee.

Focus for scrutiny

The Committee is asked to note the reasons for the rejection of the call-in request as set out below.

1. Reasons for Rejection

- 1.1 The Monitoring Officer confirms that the request for a call-in of the decision by the Executive Director Place Services in relation to enabling works for the Horsham Enterprise Park has been rejected.
- 1.2 The call-in request was made on the grounds that new information has come to light since the issue was scrutinised by the Committee in January 2020.

2. Monitoring Officer's Assessment

- 2.1 The call-in request is considered by reference to the factors set out in Standing Order 8.32, the pre-conditions for the request set out in Standing Order 8.29-31 having been met. Those factors are:
 - The matter has previously been considered by the scrutiny committee
 - New information has come to light since such consideration
 - It is a matter the committee would be expected to consider
 - A delay to the decision would likely significantly damage the interests of the Council.

In relation to these factors the position or conclusion I adopt is:

- 2.2 **The matter has been previously considered by a scrutiny committee:**

- 2.2.1 The matter has previously been considered by the relevant scrutiny committee as indicated in the request. The commitment to the expenditure on the enabling works for the development was approved by the Cabinet Member for Finance after scrutiny by Performance and Finance Scrutiny Committee in January 2020. The proposed officer key decision is simply implementing that decision.
- 2.2.2 It is notable for the purpose of this request that the commitments scrutinised by the committee in January included entering a development agreement through the procurement of a development partner and plans for enabling works and the allocation of capital funds for that purpose. The committee gave the project and these next steps careful consideration. This led to the project proceeding and for a complex procurement process to be set in motion. This has proceeded through the subsequent ten months.
- 2.2.3 The current proposed officer decision is simply to implement the decision previously committed and to facilitate the project endorsed by the earlier decision. The proposal for these works has therefore been known since that earlier decision was taken and has accordingly been in the Forward Plan and therefore on notice to all members and to the public and available for preview through scrutiny.

2.3 New information has come to light:

- 2.3.1 The question of whether new information has come to light since that scrutiny in January is central to the call-in request. For the purpose of this request the information said to be new and relevant to the decision needs to be examined.
- 2.3.2 It is suggested that the property market, commercial and residential, has changed and that the country is in recession. This is not contested but those changes have been taking effect for several months and the country went into recession some time ago and well before this proposed decision was issued.
- 2.3.3 It may be the case that the way in which residents work and live will be changed by the impact of the pandemic but it is less clear how those general changes are said to have direct relevance to the decision under consideration. That is not therefore an aspect of new information that appears to have a direct bearing on the decision.
- 2.3.4 The same conclusion must be reached in reference to the reference to changes to the housing requirements of the district council. The County Council's project has been prepared by reference to the district's local plan and received planning permission in that context. The scheme's housing provision has already therefore been settled. Whilst the council's local plan housing requirements may change in future, this will not have an impact on this project and cannot have a bearing on its planning consent. This reference does not therefore amount to relevant new information pertinent to the decision subject to this request.

2.3.5 It may well be the case that the economic landscape of the county and the country has changed over the last few months but the issue of whether this decision requires additional scrutiny should be as a result of new information affecting it in a direct or material way. The new information must have more direct bearing on the specific decision. Those making the request are of the view that these significant changes to economic circumstances and the local economy are relevant to the County Council's plans for the site and have a bearing on the implementation of the decision taken by the Cabinet Member in January. The request appears therefore to be to seek a broader scrutiny of the overall scheme and the economic assessments driving it.

2.4 It is a matter the committee would be expected to scrutinise:

2.4.1 On the question of whether this is a matter the committee would expect to scrutinise the position is that it has previously done so. It has expressed a strong interest in the subject of the Council's investment and development plans. It is a matter of general public interest, affects a significant site of keen local interest and with important economic implications for the area, affecting a wide number of residents across the district and with wider economic implications for the County. It is therefore a matter the committee would have expected to continue to scrutinise. The specific proposal is however limited to the procurement of enabling works which has previously been scrutinised.

2.5 A delay to the decision would likely significantly damage the interests of the Council:

- 2.5.1 I have taken advice on the progress and status of the procurement process and the related development negotiations in order to consider the impact of any delay to a decision. I have already noted that the decision has been planned and expected since the original cabinet member decision in January and it has been in the Forward Plan for the required period to ensure that members and the public are able to consider it in advance and seek preview scrutiny if so advised. That is the purpose of the Forward Plan.
- 2.5.2 All of the additional information referred to in the call-in request was known about or was becoming clear during that period and whilst the proposal was in the Forward Plan of key decisions. It is therefore a concern that the request for scrutiny has arisen only on the emergence of the detailed decision report.
- 2.5.3 In relation to the possible impact on the interests of the Council the position is that the decision forms a critical stage in a long running procurement exercise which itself sits within a tightly drawn development programme if the Council's scheme objectives are to be realised. The letting of the contract is planned to lead to work commencing on site on 23rd November for which the contractor is already mobilising. That start date would in turn lead to the handing over of the site to the selected developer in March 2021. It is the case that a call-in meeting would inevitably cause delay to that timetable.
- 2.5.4 The discussions with potential bidders for the development partner have been long running and were in place at the time of the earlier scrutiny. Understandably they are complex and finely balanced. They too are working within the long-established timetable and they will be preparing cashflow

analyses based on the enabling work plans. Those arrangements would also be disrupted by a delay to the enabling works start date.

- 2.5.5 As part of the dialogue with potential development partners detailed briefings on ground conditions, infrastructure and the enabling works are already fixed to meet the deadlines for the submission of complex and long developed bids within the procurement exercise. That dialogue and critical timetable would be disrupted by a delay due to a call-in debate.
- 2.5.6 The final element of the complex project planning is the discussion with potential pre-let occupiers of the developed site. Those sensitive and complex discussion have been running for some time. The commercial considerations and financial and property planning by such organisations are at a critical stage and those discussions may be adversely affected by any delay caused by a call-in.

3. Conclusion

- 3.1 Taking all these considerations carefully into account in accordance with the factors listed in Standing Orders the conclusion I must reach is that the delay caused by granting this call-in request would be likely to cause significant damage to the interests of the Council. It would cause late disruption to a long-planned procurement exercise. It would also delay works by a contractor for which mobilisation has been undertaken. It would also disrupt very sensitive and critical negotiations with potential investors in the site which inform their complex commercial plans.
- 3.2 Whilst the issues of new information are, to an extent, valid and relevant they have arisen over a significant period since the economic impacts of the pandemic began to be experienced earlier in the year and they do not justify their presentation as information to justify a delay in the implementation of this decision so late in the process. There will have been opportunities to call for scrutiny of the overall Horsham Enterprise Scheme at any stage since the emergence of these economic impacts and, more specifically, since the inclusion of this proposal in the Forward Plan. This particular plan for enabling works and the associated investment has been expected since the commitments made after scrutiny in January 2020.
- 3.3 For the above reasons and consideration of the relevant factors the call-in request is declined.

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Background papers

None