

Committee: OVERVIEW AND SCRUTINY	Date: 9th April 2013	Classification: Unrestricted	Report No.	Agenda Item No. 5.1
Report of: Service Head, Democratic Services		Title: Mayoral Executive Decision Call- in:		
Originating Officer(s): Angus Taylor, Principal Committee Officer, Democratic Services		Decision Log No: 021 - Budget Implementation 2013/14 (virements to fund East End Life)		
		Wards: All		

1. SUMMARY

- 1.1 The attached report entitled "Report in response to Mayor's request for Advice" was considered by the Mayor on Friday 22 March 2013 (Mayoral Executive Decision published on Tuesday 26 March 2013) and has been "Called-In" by Councillors Joshua Peck, Carlo Gibbs, Khaled Ahmed, Shiria Khatun, MA Mukit, Bill Turner and John Pierce. This is in accordance with the provisions of Part Four Sections 16 and 17 of the Council's Constitution.

2. RECOMMENDATION

- 2.1 That the OSC consider the contents of the attached report, review the Mayor's provisional decisions arising; and
- 2.2 Decide whether to accept them or refer the matter back to the Mayor with proposals, together with reasons.

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

Brief description of "background paper"

Mayoral Decision (No 21) – 26 March 2013

Name and telephone number of holder
and address where open to inspection

Angus Taylor
0207 364 4333

3. BACKGROUND

- 3.1** The request (dated Friday 5th April 2013) to “call-in” the Mayor’s decision dated Tuesday 26 March 2013 was submitted under Overview and Scrutiny (OSC) Procedure Rules Sections 16 and 17. It was considered by the nominee of the Assistant Chief Executive, Legal Services who has responsibility under the constitution for calling in Mayoral decisions in accordance with agreed criteria. The “call-in” request fulfilled the required criteria and the decision is referred to OSC in order to consider whether or not to refer the item back to the Mayor for further consideration. Implementation of the Mayoral decision is suspended whilst the “call-in” is considered.

4. THE MAYOR’S PROVISIONAL DECISION

- 4.1** The Mayor after considering the report attached, at Appendix 1, provisionally decided:-

DECISION

I have considered the above information and advice on the amendments to my budget proposal on East End Life and the powers of virement under the Council’s Constitution.

I have decided to vire £ 443k from general reserves which have not been allocated for any particular purpose to the Chief Executive’s budget heading in order to ensure sufficient resources are available to continue East End Life whilst I consider all options for the service and implications of ceasing production. I have done this as I do not believe the proposals adopted in the budget were properly evaluated and the timescales for alternative sourcing taken into account.

I have considered whether or not this is a Key Decision under Article 13 of the Constitution. In making this decision I do not consider virement of £443 k is significant when looking at the budget for the Communications Service and moneys spent on advertising across the Council

I also do not consider the virement to be significant in terms of its effect on communities in two or more Wards of the borough. I accept that the decision may be of public and/or political interest but that interest does not make the effect of my decision significant in itself.

It will not incur a significant risk socially, economically or environmentally and indeed, will act to mitigate such risks. The impact of the decision to vire the money will not be significant inside or outside the borough.

In light of the above, I am content that the decision to vire £443 k is a non key decision and I require officers to put this into effect.

I also require officers to conduct the review detailed at paragraph 3.2 in the report to fully inform any decisions on the future of East End Life .

4.2 Reasons for Decisions

These were detailed in section 2 &3 of the report.

4.3 Alternative Options Considered

These were detailed in section 3 of the report.

5. REASONS / ALTERNATIVE COURSE OF ACTION PROPOSED FOR THE 'CALL IN'

5.1 The Call-in requisition signed by the seven Councillors listed gives the following reason for the Call-in:

Given the significant impact that this decision will have on both residents and the constitutional framework of the Council as well as the wide ranging public interest in this decision we ask that it be reviewed by the O&S Committee.

It is our view that this decision not only results in an additional £433,000 of Council funds being allocated from reserves but also serves to bring the Council's governance further into disrepute by actively pursuing policies designed to specifically counteract the legitimate decision of full Council when setting the budget.

5.2 The requisition also asked the Committee to consider a number of specific issues:

- That the Council passed by a two-thirds majority an amended budget which resolved:
 - *To delete funding of £1.214m from the budget used to fund East End Life, delivering a saving of £433k by:*
 - o *Reducing funding available for public notices from £267,000 to £100,000, sufficient to support the provision of statutory advertising in local newspapers, tendering a long term contract in order to secure the best rates;*
 - o *Reducing the funding of £176,000 for the advertising of choice based lettings to £50,000, sufficient to fund a provision that can be made available on a weekly basis in each housing office, leisure centre and one-stop shop in the borough, as well as online, to be managed by the lettings team;*

- o *To cut departmental budgets by £143,000, to reduce their general advertising spend allocated in previous years to East End Life;*
- *To place a general restriction on the council that all virements outside of the agreed budget framework above £200,000 must be agreed by full council. (officers advised that this would not be dealt with as it was a constitutional amendment and must be agreed at an ordinary Council meeting not a Budget one)*

In making this executive decision the Mayor is attempting to use virements to directly undo the amendment put in place by Council to remove the £433,000 budget for East End Life from the Budget. Given that Budget setting is a Council function this attempt to circumvent the Constitution should not be allowed, especially in light of the fact that Council has twice before tried to change the limit on virements to prevent this form of abuse – both at the 2013 Budget meeting, which was prevented by a technicality, and previously in January 2012, a decision which was ignored by officers and the Mayor. Given these attempts and the failure of action we recommend that the Committee press for the Mayor to suspend this virement until Council has the opportunity to express its view on the virement limit, and that this decision should then be taken to comply with that decision.

- In taking this decision the Mayor decided not to classify this as a ‘key decision’. We were previously advised that this would indeed have to be a key decision and therefore would be subject to the 28 day notice period required for these types of decision – therefore allowing Council the time to ratify its proposed changes to the virement rules at its April 17th meeting. The criteria for deciding whether or not something is a key decision is set out in the constitution:

A “key decision” is an executive decision which is likely:

- a) *to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or*
- b) *to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the borough.*

(ii) A decision taker, when making a decision may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of the Constitution.

(iii) The Council has not adopted a financial threshold for key decisions but these are subject to financial regulations. However, the criteria that Councillors and officers will have regard to in determining what amounts to a key decisions include the following:

- *Whether the decision may incur a significant social, economic or environmental risk.*
- *The likely extent of the impact of the decision both within and outside of the borough.*
- *Whether the decision is likely to be a matter of political controversy.*
- *The extent to which the decision is likely to result in substantial public interest.*

It is our strong view that this decision is indeed a key decision as it will result in nearly half a million pounds being allocated from general reserves against a backdrop of a budget blackhole in forthcoming years of over £50m. Furthermore we believe the decision to reissue this funding will have a significant impact across the borough, especially given that the East End Life publication is delivered widely to residents.

We do not believe that the Mayor has taken due regard of the necessary criteria as this is most definitely an issue of great political controversy and is likely to result in substantial public interest. We also believe that in not taking account of the necessary factors and by deeming this to be a non-key decision, the Mayor has opened the Council up to legal challenge.

- The Constitution also states that if the Overview and Scrutiny Committee is of the opinion that a Mayoral Decision “is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by the Council, then that decision may only be taken by the Council.”

- It is our view that this decision explicitly goes against and indeed actively seeks to undermine the Budget framework agreed by Council on the 7th March 2013. The Constitution goes on to state:

7.2 In respect of functions which are the responsibility of the Mayor or the Executive, the report of the Monitoring Officer and/or Chief Finance Officer shall be to the Mayor and Executive with a copy to every Member of the Council. Regardless of whether the decision is delegated or not, the Executive must meet within 21 days of receiving the report to decide what action to take in respect of the Monitoring Officer’s or Chief Finance Officer’s report and to prepare a report to Council in the event that the Monitoring Officer or the Chief Finance Officer conclude that the decision was a departure, and to the Overview and Scrutiny Committee if the Monitoring Officer or the Chief Finance Officer conclude that the decision was not a departure.

7.3 If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Monitoring Officer and/or the Chief Finance Officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the

budget, the Overview and Scrutiny Committee may refer the matter to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within 21 days of the request from the Overview and Scrutiny Committee (or within 28 days if a meeting of the Council is scheduled within that period). At the meeting the Council will receive a report of the decision or proposals and the advice of the Monitoring Officer and/or the Chief Finance Officer.

7.4 The Council may either:

7.4.1 endorse a decision or proposal of the decision taker as falling within the existing budget and policy framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or

7.4.2 amend the budget, financial rule or policy concerned to encompass the decision or proposal of the body or individual responsible for that function and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or

7.4.3 where the Council accepts that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and does not amend the existing framework to accommodate it, require the Mayor or Executive to reconsider the matter in accordance with the advice of the Monitoring Officer and/or the Chief Finance Officer.

7.5 If the Council does not meet, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier providing that the Monitoring Officer and/or the Chief Finance Officer is/are satisfied that the decision is within the budget and policy framework or falls within Rules 6.1.1 – 6.1.4.

- We ask that the Overview and Scrutiny Committee forms a judgement as to whether they agree that the Mayor has broken the Council's agreed Budget policy framework and if so require officers to draw up a report as mandated by the Constitution.

- The Budget policy framework is one of the few powers reserved to Council. Riding roughshod over the Constitution and pressuring officers to find questionable workarounds not only demeans the office of the Mayor but illustrates the Mayor's utter contempt for the democratic process. This decision is both potentially unlawful and a dereliction of the Mayor's duty to operate in the public interest and within the bounds of the budgetary framework set by Council.

- There are extraordinary circumstances in which the Mayor would be forgiven for taking action such as we see here, for example in the case of emergencies or to ensure essential service delivery. For the Mayor to take these steps in order to fund an overtly political communications asset shows the misguided priorities the Mayor is pursuing at the public's expense.

5.3 Alternative action proposed:

That the Mayor does not vire this £433,000 and works within the Budget set by Council.

5.4 Action proposed for the Committee:

That the OSC makes a judgement as to whether or not this was a key decision and takes appropriate action.

That the OSC makes a judgement as to whether or not this decision would be within the Council's Budget and Policy Framework and takes appropriate action.

6. CONSIDERATION OF THE "CALL IN"

6.1 Having met the call-in request criteria, the matter is referred to the OSC in order to determine the "call-in" and decide whether or not to refer the item back to the Mayor.

6.2 The following procedure is to be followed for consideration of the "Call In":

- (a) Presentation of the "Call In" by one of the "Call In" Members followed by questions from members of OSC.
- (b) Response from the Lead Member/officers followed by questions from members of OSC.
- (c) General debate followed by OSC decision.

N.B. – In accordance with the Overview and Scrutiny Committee Protocols and Guidance adopted by the Committee at its meeting on 5 June, 2007, any Member(s) who presents the "Call In" is not eligible to participate in the general debate.

6.3 It is open to the OSC to either resolve to take no action which would have the effect of endorsing the original Mayoral decision(s), or the OSC could refer the matter back to the Mayor for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.