



Report of the Acting Director of City Development

Scrutiny Board (City Development)

Date: 8th March 2011

Subject: Inquiry on the Future of Kirkgate Market – Session 4
Evidence for Scrutiny

Electoral Wards Affected: All

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Purpose of Report

1.1 This report provides an update since the last Scrutiny Board meeting in February.

2.0 Update

2.1 Since the last Scrutiny Board the public consultation on the future of Kirkgate Market has been completed. The results were being analysed at the time of writing.

2.2 In addition, at the time of writing, the first meeting of the Members' Markets' Forum had been held and the second meeting for the 24th February 2011 has been arranged. The establishment of a cross-party Member group was proposed at Council on 21st April 2010. Efforts were made to form such a group on a number of occasions and this was finally achieved last month. The draft minutes of the first meeting are attached at Appendix 1 and a verbal report will be given at the Scrutiny Board meeting.

2.3 Finally the meeting between the Acting Director City Development and tenant representatives had been arranged for the 2nd March to ascertain tenants' views on different potential ownership and management models for Kirkgate market. A verbal update will be given at the Board meeting. Section 3 of this report is the text of a paper that was prepared for that meeting. It is based on information contained in the report to this Scrutiny Board on 11th January 2011.

3.0 Ownership and Management models

3.1 Markets are unique in retail and wholesale trading terms in that they are still predominantly managed by the public sector; 669 (60%) of traditional markets are run by the public sector, although 321 (29%) are now run by the private sector.¹

3.2 There are currently three common forms of market management in the UK: local authority run markets; privately operated markets; and markets run in some form of partnership such as a joint venture, or contracted out operational management. There are also a number of models, which are not currently common, but offer scope for the future. These are: trader-operated markets; social enterprise operated markets; markets run by an arms-length company; and sharing management between a number of local authorities.² The prevalence of these models is listed below:

Public Sector	669
Private Sector	321
Privately Managed for the public sector	91
Public sector partnership	2
Public Private Partnership	10
Charity	1
Community Association/ other	4
Cooperation	19
Membership	3

3.3 **Local Authority.** The majority of markets, like Kirkgate Market, are still directly provided and managed by local authorities. This model offers the advantage of accountability, linking markets to wider policy strategic goals, and by understanding the 'public good' that markets provide.

3.4 The profits generated by successful markets are generally taken by the local authority and used to support other service provision within the authority, which has often resulted in a lack of reinvestment in those markets both in the fabric of the buildings and in their marketing. Decision making is often slow and needs to take account of a range of factors that might not always be in the best interests of running a commercial business.

3.5 **Arm's length.** In 2008, Glasgow City Council became the first UK local authority to establish its markets as an arm's-length limited liability partnership (LLP). This model offers the advantage of more responsive, streamlined decision making; lower costs; an increased focus on the core business, and the opportunity for directly raising investment capital. City Markets (Glasgow) LLP are responsible for the overall management of the market, for property maintenance, cleaning, refuse removal and security. The profits generated by the markets are ploughed directly back into the markets. One of the reasons Glasgow used this model was to enable it to undertake prudential borrowing for £6m required to improve their wholesale market. One of the challenges for elected members sitting on the Board is to remember that they must serve the best interests of the company and not the Council. One of the drawbacks to this model is that the Council is limited in how much prudential borrowing it can undertake either directly or through arms-length companies.

3.6 **Private.** Many markets are operated directly by the private sector, either licensed by the local authority under its market rights, with their own charter rights, or in some instances, completely outside the licensing framework. This model offers the advantage

¹ 'Markets 21', 2010, The Retail Markets Alliance.

² 'Markets 21', 2010, The Retail Markets Alliance.

of faster, streamlined decision making, an increased focus on the core business, and the opportunity for directly raising investment capital.

- 3.7 For example, Town & Country Markets Limited is a 100% owned operating subsidiary of Wellington Market Company and is the leading private sector retail market operator in the United Kingdom. Currently it operates markets at 35 locations throughout England and Wales from its own freehold premises, leasehold premises and licensed locations providing around 5000 stalls each week, at markets from Aldershot to **Morley** through to Worthing. The company offers money back on faulty goods and hold regular events and competitions etc to draw in customers.
- 3.8 **Partnerships.** These can range from the local authority retaining the strategic management of its markets but outsourcing the operational management, to a formal medium to long-term joint venture between the public and private sector. These models are useful where the local authority lacks the in-house resources to effectively manage and promote the markets, and/or where external capital investment is required.
- 3.9 Geraud Markets UK Ltd works in partnership with local authorities over an extended period of time to develop, expand and invest in markets. The company currently runs markets on behalf of Liverpool City Council, Allerdale Borough Council, South Derbyshire District Council, Clevedon Town Council, Ipswich City Council and New Covent Garden Sunday market. Geraud Markets Liverpool Ltd is the biggest example of Public Private Sector Partnerships. Geraud Markets Liverpool Ltd in partnership with Liverpool City Council runs over 1,200 regular market days each year. In addition to this there are over 100 Speciality Event Market days, providing residents and tourists with access to choice, value and quality. The Council has one seat on the Board, which is held by a senior elected member who has the right to veto any decision taken by the Board. The disadvantage of the model is that each party can block things from happening but neither can make anything happen without the consent of the other party. As Geraud does not currently own the market buildings or land it has no reason to invest in the fabric of the markets, although it has invested substantially in marketing, spending for example £40,000 on TV advertising in one year alone. Geraud assert that because they are a family owned company that has been in business for over 130 years they can afford to take the long term view and are not obsessed with ensuring every market day or even every market is profitable.
- 3.10 **Traders.** There are a number of traditional street markets and farmers' markets that are directly managed by the traders themselves. This offers the advantage of reduced bureaucracy and costs, and an increased sense of 'ownership' by the traders. However these are only operated as street markets and therefore are not comparable to a large scale indoor market like Kirkgate, but may be a useful model for the fortnightly Farmers' Market at Kirkgate outdoor market.
- 3.11 **Trust.** Borough Market – the only fully independent market in London – is owned by a charitable trust, the Borough Market (Southwark) Trust, run by a board of volunteer trustees. According to the formal objectives laid out in its Charity Commission registration, the Trust's commitments are to provide a market as a public amenity and, once a year, to pass any surplus to the London Borough of Southwark for the benefit of residents in the parish of St Saviour's. In addition to these registered objectives, the Trust has extended its formal charitable commitments to include running community events, providing food related health education and contributing to local community projects and schemes. There are legal restrictions on how Charitable Trusts can raise money, however, if the Council gave the Trust the freehold to the market it could mortgage the property or seek a loan on it providing it could demonstrate that it could repay the loan.

- 3.12 **Social Enterprise** The government defines social enterprises as "businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners." There are 62,000 of them in the UK operating in almost every industry in the UK and, as with all businesses, they compete to deliver goods and services. Well known examples of social enterprises include *The Big Issue*, Jamie Oliver's restaurant Fifteen, and the fair-trade chocolate company Divine Chocolate.
- 3.13 Social enterprises cover a wide range of activities,, from health and social care to renewable energy, from retail to recycling, from employment to sport, from housing to education. Whatever they do, they do it differently from typical business, because they are driven by a social and/or environmental mission, and they are focused on the community they serve. In a recent survey into social enterprise, 45% of respondents said that 'putting something back into the community' was their reason for setting up a social enterprise.
- 3.14 Social enterprises use a variety of legal forms but the most relevant for Kirkgate Market is the **Community Interest Company (CIC)**. A CIC is a legal form created specifically for social enterprises. It has a social objective that is "regulated" ensuring that the organisation cannot deviate from its social mission and that its assets are protected.
- 3.15 A Community Interest Company can be set up in one of three forms:
- Private company limited by guarantee (not for profit)
 - Private company limited by shares
 - Public company.
- 3.16 CICs can be established for any lawful purpose, as long as their activities are carried on for the benefit of the community. Community interest is at the heart of the CIC and the Community Interest Test is what differentiates CICs from other not-for-profit organisations. When a CIC is requested, the CIC Regulator considers whether applications meet the criteria.
- 3.17 **Governance.** As CICs range in size and purpose, there is no standard governance scheme for CICs. Company law sets out a number of requirements such as the need for a company to have at least one director to maintain financial and statutory records. Compliance with corporate governance codes is seen as good practice for all CICs, even if not public or listed. For example, the appointment of independent non-executive directors, audit and directors' remuneration committees and the separation of roles of Chairman and Chief Executive would all contribute to the transparency of the organisation and stakeholder confidence.
- 3.18 Private companies must appoint at least one director who is an individual. Public companies must appoint at least two directors, one of which must be an individual.
- 3.19 Like other kinds of registered limited companies, CICs:
- Have self-selecting "members" (who retain certain key rights, but may have limited involvement in day-to-day matters);
 - Have directors (to whom members' powers are delegated to a greater or lesser extent for day-to-day management).

3.20 Unlike a charity, a CIC does not have a board of trustees, but are usually run by an Executive Board, on which elected members could sit. The CIC's community purpose and the use of its assets are overseen by the Regulator and, stakeholder involvement is integrated into the CIC's governance through the community interest company report. There is nothing to stop a CIC establishing a stakeholder steering group to scrutinise the work funded and to monitor its progress – for example, this could consist of local authority elected members.

3.21 Stakeholder groups can be given official standing under a company's constitution. The setting up of a user or advisory group separate from the Board of Directors can be an effective way of bringing stakeholders into the organisation. Stakeholders who are very influential may find they become 'Shadow Directors' – a status which can attract the same liabilities as those of directors in some cases.

3.22 **Political Activities.** CICs should not be formed for political purposes, or have engagement in political activities amongst their main objectives. Any political activities in which CICs do engage should be closely related to the non-political community benefit activities which they are set up to carry out. For example, a CIC that uses a community centre for activities, which benefit local people, may be able to lobby local government for a grant to improve the facilities available in the building.

4.0 Which model is best?

4.1 Any model other than keeping the Market effectively as it is, would require the Council being prepared to forgo all or some of its income from the market.

4.2 The best model for Kirkgate market will be the one that can:

- raise the necessary funds to carry out pressing maintenance repairs and invest in both the buildings and in marketing activities; and
 - respond quickly to the dynamics of the retail industry;
- to ensure Kirkgate market is competitive and that its long term future is secured.

4.3 Depending on the model chosen, if it were to be a new body staff would either be seconded or transferred under the Transfer of Public Undertakings (protection of employment) (TUPE) legislation.

5.0 Recommendation

5.1 Members are asked to note and comment on the contents of this report.