



ADUR & WORTHING
COUNCILS

Committee Date: 29th November 2018
Agenda Item 6

Key Decision: No
Ward(s) Affected: N/A

Request for Call in of an Executive Decision

Report by the Monitoring Officer

Executive Summary

1. Purpose

The Councils' Joint Overview and Scrutiny Procedure Rules provide that where the Monitoring Officer receives a request to call-in a decision of the Executives, and rejects that request, they must report to the Joint Overview and Scrutiny Committee with details of the request and reasons for the rejection.

2. Recommendations

The Joint Overview and Scrutiny Committee is recommended to note the contents of this report.

3. Context

Part 1A Local Government Act 2000 sets out the arrangements in respect of Local Authority Governance in England. Where an authority is exercising Executive

arrangements, it is required to have an Overview and Scrutiny Committee. Section 9F of the Act sets out the functions of an Overview and Scrutiny Committee (JOSC) which includes “to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Executive” and “to make reports or recommendations to the Authority or the Executive with respect to the discharge of any functions which are the responsibility of the Executive”.

It is prudent for a Local Authority to have locally adopted procedures to enable the JOSC to implement this scrutiny function. In this regard Adur and Worthing Councils have adopted Joint Overview and Scrutiny Procedure Rules.

At paragraph 17 of the procedure rules, call-in of decisions is dealt with and the rules provide that at least 3 Members must request a call-in and that the grounds for a decision being called in are :

If it conflicts with Council Policy

If it conflicts with the Council’s Budget Strategy, or

Where there is evidence to suggest the principles of decision-making have not been complied with.

4.0 Background

The Councils are waste collection authorities pursuant to section 30(2) of the Environmental Protection Act 1990 and have entered into joint arrangements for the delivery of this function. With the intention of further increasing recycling rates and to create further savings the Councils made proposals to change the frequency of non-recyclable waste collections to fortnightly, rather than weekly at present, resulting in alternate collections of recyclable waste one week and non-recyclable waste the following week.

On 6th November 2018 a report was taken to the Councils’ Joint Strategic Committee (JSC) with the following recommendations, which were approved by the Joint Committee:

The introduction of an alternate weekly collection service of household refuse and recycling, commencing in September 2019. This will involve an operational redesign of services to be led by the Head of Environmental Services, supported by other departments as required;

Delivery of an extensive communications campaign in the lead up to and during implementation;

Delegated authority be given to the Director for Communities to procure additional bins needed during the delivery phase of the project; and

That Officers report back to this Committee with a review of the delivery of the alternate weekly collection service, 6 months after implementation.

The minutes relating to the JSC meeting of 6th November 2018 were published on Friday 9th November 2018. In accordance with the JOSC procedure rules therefore the deadline for requesting a call-in of the decision was 5pm on Friday 16th November 2018.

By Tuesday 13th November the Monitoring Officer had received, in writing, a request from 11 Elected Members of the Councils to call-in the decision: Cllrs Alden, O'Connor, Stainforth, Howard, Balfe, Cowen, Arnold, Monk, Barrett, Mulholland and Cooper.

In summary the request for call-in of the JSC decision was on the ground that the Councils' decision making principles had not been complied with.

The Councils' have adopted decision making principles which are set out in Article 12 of each Councils' constitutions. These provide that :

- There should be clarity of aims and objectives
- Proper regard should be paid to professional advice from Officers
- All decisions shall be in accordance with the law
- Proper regard should be paid to the outcome of any internal or external consultation
- There should be a presumption in favour of openness, accountability and transparency
- There should be respect for human rights
- There should be proportionality
- There should be an explanation of the alternative options considered, and
- There should be proper and documented reasons given for all decision.

In exercising discretion, the decision maker must:

- Understand the law that regulates the decision making power and gives effect to it. The decision maker must direct itself properly in law
- Take into account all relevant matters and leave out any irrelevant matters
- Act for a proper purpose, exercising its powers for the public good

- Not reach a decision which no Authority acting reasonably could reach
- Comply with the rule that Local Government finance is to be conducted on an annual basis save as authorised by Parliament
- Act with procedural propriety in accordance with the rules of fairness.

To be lawful a decision:

- if taken at Council or a Committee must comply with the principle of being reached by a majority at a properly constituted meeting
- Be one that the decision-maker is empowered to take
- Not contravene Wednesbury reasonableness
- Be capable of execution, and
- Not purport to undo what has already been done irrevocably

Members requesting the call-in of the decision in summary alleged that the decision was:

- There was insufficient notice of the decision being made, and
- there was a failure to carry out appropriate consultation.

In terms of decision making principles it seems therefore that the most relevant provisions are those relating to a decision being made in accordance with the law, the duty to take proper regard of the outcome of consultation, the principle of acting with procedural propriety and fairness and the principle relating to openness, accountability and transparency.

5.0 Issues for Consideration

Notice

Members requesting the call in allege that the decision is unlawful because insufficient notice of it was given.

In accordance with Article 12 of the constitutions this is a key decision. Section 9 of the *Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012*, provides that in respect of key decisions, the decision may not be made until a document (the forward plan) has been published which states that a key decision is to be made, the name of the decision making body and the date on which the decision is to be made. In accordance with section 9(2) at least 28 clear days before a key decision is made, the document must be made available for inspection by the public at the Local Authority's offices and on the relevant website.

On 26th September 2018, Democratic Services Officers updated the Council's forward plan to include the decision relating to 'Environmental Services for the Future'. The plan provided the information that the decision relating to this matter was due to be taken by the Joint Strategic Committee on 6th November 2018. On the same date the Officer uploaded the amended forward plan to the Councils' website.

There is therefore no evidence that the Councils failed to comply with the provisions of section 9 of the *Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012*.

Consultation

Members requesting the call in have also suggested that the decision does not comply with the principles of decision making in respect of consultation.

Consultation is the term generally applied to the process by which a decision making body seeks the views of the public, or a section of the public, on a proposal that may have a general impact, before it decides whether to implement that proposal.

There was no consultation undertaken and therefore the Monitoring Officer cannot make a finding of failure to comply with the principles of decision making by not taking proper account of the outcome of a consultation process.

The Monitoring Officer has considered the law on consultation and concluded that, on balance, it is unlikely that there was a legal duty upon the Councils to undertake consultation on this matter. The MO has taken into account the fact that there is no statutory duty to consult, there was no promise to consult, nor an established practice of such consultation, the consequences of the decision are not severe, and a failure to consult is unlikely to lead to a conspicuous unfairness.

The Courts have been reluctant to find a duty to consult in the absence of an express requirement, and this would appear to be a reflection of their understanding of public decision making as involving wide discretionary powers that must be exercised in the public interest, balancing a wide spectrum of interests and resolving polycentric disputes. If the courts too readily imposed a requirement of public consultation in decision-making the exercise of public authority functions may be stultified and consultation may generate defensive public administration.

Openness, transparency and accountability

The MO is mindful of the fact that the Officer report to the JSC on 6th November was informative and complete and set out two options for the Committee to consider. The report was published on the Councils website and was therefore in the public domain. The meeting where the matter was considered by the Executives was also held in the public domain and members of the public were welcome to attend. Questions concerning their decision may be asked of the Executive, by other Members of the Council and members of the public, at the next Council meeting in a public arena.

The principles of openness, accountability and transparency therefore appear to have been upheld.

6.0 Decision

The MO has concluded that the ground of failing to comply with the Councils' decision making principles is not met and has therefore rejected the request for a call-in of the decision.

7.0 Engagement and Communication

In reaching this determination of the request for call-in of the decision, the MO engaged and consulted with the Joint Chairpersons of the Joint Overview and Scrutiny Committee, in accordance with the procedure rules.

8.0 Financial Implications

There are no financial implications arising as a result of this report.

9.0 Legal Implications

Legal issues are addressed in the body of this report.

Background Papers

- Report to JSC 6th November 2018 titled Environmental Services for the Future
- Minutes of the JSC meeting of 6th November 2018
- Adur District Council Constitution
- Worthing Borough Council Constitution

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Sustainability & Risk Assessment

1. Economic

- Matter considered and no issues identified

2. Social

2.1 Social Value

- Matter considered and no issues identified

2.2 Equality Issues

- Matter considered and no issues identified

2.3 Community Safety Issues (Section 17)

- Matter considered and no issues identified

2.4 Human Rights Issues

Matter considered and no issues identified

3. Environmental

- Matter considered and no issues identified

4. Governance

- Governance issues have been addressed in the body of the report