



ADUR & WORTHING
COUNCILS

Joint Overview and Scrutiny Committee
20th June 2019
Agenda Item 5

Key Decision: No

Ward(s) Affected: All

Request for Call-In of Executive Officer Decision

Report by the Monitoring Officer

Executive Summary

1. Purpose

The Council's Joint Overview and Scrutiny Procedure Rules provide that where the Monitoring Officer received 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 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. Background

On 4th April 2019 the Councils’ Head of Major Projects and Investments made a decision to make, on behalf of Worthing Borough Council, a strategic property investment purchase, of a development known as the Waitrose site at Newton Means. The decision was published on 4th April on the Councils’ website with reference number HMP&I/018/18-19. The call-in deadline was 5pm on 11th April 2019.

On Wednesday 10th April the Monitoring Officer had received, in writing, a request from 3 Elected Members of the Councils to call in the decision: Cllrs Cooper, Deen and Mulholland.

In summary the request for call-in of the decision of the Head of Major Projects and Investment 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 Council’s Constitution. 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 decisions.

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 maker had breached the principles of decision making as he:

- Had not taken due regard of the recent advice given by the Councils' auditors, Ernst & Young, to the Joint Governance Committee concerning risks being taken by Councils in investing in commercial property, and
- Had not made a proportionate decision compared with the desired outcome, in that there was excessive risk.

Members alleged that this was a breach of Article 12.02 (b) and (g).

5. Issues for consideration

The Monitoring Officer, in considering the first ground for the request, was mindful that the advice referred to was from the Councils' External Auditors rather than Officers, but accepted that nevertheless it was professional advice presented to Members. The Monitoring Officer considered the advice given to the Joint Governance Committee by way of a report on 26th March 2019 which stated that *"there is a growing concern that too many local authorities are investing heavily in commercial property at a rate that is disproportionate to their available resources."* Those requesting the call in purported that this advice was not given due regard by the decision maker in reaching decision HMP&I/018/18-19.

The Monitoring Officer was of the view that the Audit report related to the impact of Brexit on Consumer Demand and stated that some authorities may have exposure to certain sectors citing the retail sector specifically. However, the advice was generic, and was not given in respect of the commercial investments made by Worthing Borough Council and so had limited direct relevance to this particular decision to purchase. The Head of Major Projects and Investment was present at the meeting where the advice was given, and has confirmed that, whilst he didn't specifically refer to it in his Decision Notice, he was mindful of the advice when making this decision.

The Head of Major Projects & Investment also confirmed that in making the decision he was also mindful of the Council's Strategic Property Investment Strategy, which is of greater significance. This Strategy, adopted by Worthing Borough Council, sets out the Council's approach to risk management in respect of property purchases, was taken into account by the decision maker and is referred to in the Decision Notice.

In relation to the Council's portfolio generally, the Head of Major Projects and Investment had also taken more relevant and specific advice from external advisors, Citicentric in January 2019. In respect of this particular purchase a risk matrix was completed, and the Council commissioned specialist advice on the retail market in the vicinity of the property and wider advice on the strength of the grocery sector.

The Monitoring Officer concluded that there was evidence that the Head of Major Projects and Investment had given due regard to both internal and external professional advice and made an informed and reasoned decision.

In respect of the second ground, the Monitoring Officer found no evidence that the decision to purchase the property was disproportionate to the desired outcome, due to excessive risk. The decision maker completed a risk assessment matrix for the

investment in accordance with the Council's adopted Strategy and the proposed purchase scored above the minimum threshold. The decision maker undertook due diligence on the local grocery market, local economic conditions, and relied upon a site visit undertaken by a professional colleague. The decision maker also consulted with the Council's Head of Financial Services and the Executive Member for Resources and the Leader. The Monitoring Officer found no evidence of excessive risk or lack of proportionality in the decision.

The Monitoring Officer therefore concluded that the grounds to request a call-in of a decision were not met and rejected the request.

Engagement and Communication

The Council's Deputy Monitoring Officer (in the absence of the Monitoring Officer) contacted the Joint Chairmen of the Councils' Joint Overview and Scrutiny Committee by email on 11th April 2019 by way of consultation, as to the determination of the request for call-in of the decision. Both Cllr Barraclough and Cllr Chipp responded that they did not consider there were sufficient grounds for accepting the request for call-in.

In determining the request for call-in the Monitoring Officer noted that the Head of Major Projects and Investment had, in reaching his decision to purchase the property on behalf of the Council, consulted with both the Leader and the Executive Member for Resources for Worthing Borough Council.

6. Financial Implications

There are no financial implications arising from this report.

7. Legal Implications

Legal issues are addressed above.

Background Papers

Record of Decision Notice HMP&I/018/18-19 dated 4th April 2019
Reports and Agenda to the Joint Governance Committee on 26th March 2019
Worthing Borough Council Strategic Investment Strategy
Worthing Borough Council Constitution

Officer Contact Details:-

Susan Sale

Solicitor to the Councils and Monitoring Officer

01903 221119

Susan.sale@adur-worthing.gov.uk

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.