



ADUR & WORTHING
COUNCILS

23 August 2019

Joint Overview & Scrutiny Committee	
Date:	3 September 2019
Time:	6.30 pm
Venue:	QEII Room, Shoreham Centre, Shoreham-by-Sea

<p>Committee Membership:</p> <p>Adur District Council: Councillors; Stephen Chipp (Adur Chairman), Joss Loader (Adur Vice-Chairman), Carol Albury, Catherine Arnold, Kevin Boram, Paul Mansfield, Andy McGregor and Lavinia O'Connor</p> <p>Worthing Borough Council: Councillors; roy barraclough (Worthing Chairman), Keith Bickers (Worthing Vice-Chairman), Paul Baker, Margaret Howard, Charles James, Jane Sim, Bob Smytherman and Carl Walker</p>

Agenda

Part A

1. Declaration of Interests

Members and officers must declare any disclosable pecuniary interests in relation to any business on the agenda. Declarations should also be made at any stage such an interest becomes apparent during the meeting.

If in doubt contact the Legal or Democratic Services representative for this meeting.

2. Substitute Members

3. Confirmation of Minutes

To approve the minutes of the Joint Overview and Scrutiny Committee meeting of held on 25 July 2019, copies of which have been previously circulated.

4. Public Question Time

So as to provide the best opportunity for the Committee to provide the public with the fullest answer, questions from the public should be submitted by 12.00pm Tuesday 30 August 2019

Where relevant notice of a question has not been given, the person presiding may either choose to give a response at the meeting or respond by undertaking to provide a written response within three working days.

Questions should be submitted to Democratic Services
democratic.services@adur-worthing.gov.uk

(Note: Public Question Time will operate for a maximum of 30 minutes.)

5. Items Raised Under Urgency Provisions

To consider any items the Chairman of the meeting considers to be urgent

6. Call-in Procedure (Pages 1 - 2)

To note the procedure for the meeting, copy attached as item 5

7. Consideration of any matter referred to the Committee in relation to a call-in of a decision (Pages 3 - 10)

To consider a report by the Monitoring Officer, copy attached as item 6

Recording of this meeting

The Council will be voice recording the meeting, including public question time. The recording will be available on the Council's website as soon as practicable after the meeting. The Council will not be recording any discussions in Part B of the agenda (where the press and public have been excluded).

For Democratic Services enquiries relating to this meeting please contact:	For Legal Services enquiries relating to this meeting please contact:
Chris Cadman-Dando Democratic Services Officer 01903 221364 chris.cadman-dando@adur-worthing.gov.uk	Joanne Lee Solicitor 01903 221134 Joanne.lee@adur-worthing.gov.uk

Duration of the Meeting: Four hours after the commencement of the meeting the Chairperson will adjourn the meeting to consider if it wishes to continue. A vote will be taken and a simple majority in favour will be necessary for the meeting to continue.

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ADUR & WORTHING
COUNCILS

**Joint Overview and Scrutiny
Committee
3 September 2019
Agenda item 5**

CALL-IN PROCEDURE

The following shall be the procedure for considering Call-Ins. The procedure may be amended, if necessary, to reflect the business being considered, but only with the agreement of the Joint Chairmen of the Committee, and in consultation with the Monitoring Officer.

This procedure must be used in conjunction with the Council's existing Procedure Rules applying to Overview and Scrutiny function.

- 1 The Elected Members who have requested the call in will be given the opportunity to address the Committee on their reasons for the Call-In. Each of the three Members may speak, or they may appoint a spokesman to speak on behalf of them all.
- 2 The Decision Maker(s), (the relevant Executive Member(s) or Leader(s) who made the decision), will have the opportunity to ask any questions of the Members requesting the call in.
- 3 The Committee will have the opportunity of asking questions of the Members requesting the call in.
- 4 The Decision Maker(s) will be asked by the Committee to speak on the issue to explain how they complied with Council Policy and the Constitution in making their decision.
- 5 The Members requesting the call in will be given the opportunity of asking questions of the Decision Maker(s)
- 6 The Committee will have the opportunity of asking questions of the Decision Maker(s).

- 7 The Members requesting the call-in will have the opportunity of making a final statement.
- 8 The Decision Maker(s) will have the opportunity of making a final statement.
- 9 The Committee will debate the Call-In and determine the matter.
- 10 The Overview and Scrutiny Committee can choose to agree with the Elected Members who have called the matter in and request that the matter be reconsidered, giving its reasons why. If this is the case, the Executive Member or Leader decision cannot be acted upon until it has been formally reconsidered.
- 11 Alternatively the Committee may choose not to agree with the Elected Members who have called the item in. In which case, the decision may be acted upon forthwith.
- 12 Once the decision has been formally reconsidered and a further decision reached, the matter is not subject to a further Call-In.



ADUR & WORTHING
COUNCILS

Joint Overview and Scrutiny Committee
3rd September 2019
Agenda Item 6

Ward: N/A

Consideration and Determination of the 'Call-In' of a Decision relating to Ropetackle North

Report by the Monitoring Officer

1.0 Summary

- 1.1 A decision was made and published on 30th July 2019 by the Joint Executive Members for Customer Services, Cllrs Carson Albury for Adur District Council and Heather Mercer for Worthing Borough Council with reference number JAW/009/19-20. The decision concerned the release of affordable housing budget to secure additional affordable housing. The decision was taken following receipt and consideration of an Officer report, written by James Appleton, Head of Planning and Development and Akin Akinyebo, Head of Housing. The report was dated 11th July 2019 and published on the Council's website on that same date.
- 1.2 On 2nd August 2019 the Council's Monitoring Officer received a request for a 'call-in' of the decision from three Members of the Councils. The request was considered by the Deputy Monitoring Officer, in the Monitoring Officer's absence, who accepted the request, as it was deemed to be in compliance with the Joint Overview and Scrutiny Procedure Rules. The matter has been referred to this meeting of the Joint Overview and Scrutiny Committee for consideration and determination.

2.0 Background

- 2.1 The report dated 11th July 2019, 'Release of the Affordable Housing Budget to Secure Additional Affordable Housing', sought the approval of the Executive Members to release the sum of £720,000 from the 19/20 affordable housing budget to deliver additional affordable housing on the Ropetackle North site.
- 2.2 Planning permission had been granted in respect of the site in 2015 and it required 22% of the overall development to be affordable; it was accepted that the development could not deliver the full 30% required by the Local Plan due to the high infrastructure costs. However, the site was then sold to Hyde Group who indicated that, without additional funding, they would not be able to deliver the rented accommodation and meet all the infrastructure payments and it was agreed that the financial position had worsened since planning permission had been granted.

- 2.3 Due to the urgent need to deliver more rented accommodation to reduce the current housing waiting list, the report proposed releasing £720,000 from the unallocated budget for Grants to Social Landlords, to enable 14 rented apartments to be delivered with an overall provision of 30% affordable housing on the site.
- 2.4 A copy of the report 'Release of the Affordable Housing Budget to Secure Additional Affordable Housing', can be found at Appendix 1 to this report.
- 2.5 The decision was taken by the Executive Members for Customer Services on 30th July 2019. Cllr Mercer abstained from the decision as she considered it to relate to a matter affecting Adur District Council. Cllr Carson Albury made the following decision:

"The Adur Executive Member agreed that £720,000 be released from the 2019/20 affordable housing budget to deliver additional affordable housing on the Ropetackle North site as set out in Paragraph 4.4 of the report".

The reason given for making this decision was:

"To provide additional affordable housing on Ropetackle North site".

In respect of Consultation Cllr Albury noted:

"This report was circulated to Councillors, and published on the Council's website on 11 July 2019. The following responses were noted by the decision maker: None".

- 2.6 A copy of the decision notice, reference JAW/009/19-20, can be found at Appendix 2 to this report.
- 2.7 The decision notice confirmed that the call-in deadline for the decision was 5pm on 6th August 2019.
- 2.8 The Councils' Joint Overview and Scrutiny Procedure Rules provide that between the date of a decision of Executive Members being made, and it coming into force, the Monitoring Officer may call in the decision for scrutiny if any three Members of the Council submit in writing a request for call-in. The request must be made within 5 clear working days from the date upon which the record of decision is published. This decision made by Cllrs Albury and Mercer was published on 30th July 2019; a request for call-in for scrutiny was received in writing by the Monitoring Officer from Cllrs Alden, Balfe and Cowen on 2nd August 2019.

The principles of decision making are set out in Article 12 of both Councils' Constitutions and state as follows:

"All decisions of the Council will be made in accordance with the following principles:

- *There should be clarity of aims and desired outcomes;*
- *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,*
 - *Leave out of account irrelevant considerations*
 - *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 to the extent authorised by Parliament , ‘live now, pay later, and forward funding are unlawful, and*
 - *Act with procedural propriety in accordance with the rules of fairness.”*

2.9 Cllrs Alden, Balfe and Cowen requested a call-in for scrutiny of the decision, for the following reasons:

“I wish to Call in the above decision under Constitution Para. 15.0 on the basis that the principles of decision making (12.02) have not been complied with.

In particular 12.02 c), d), g), h), i). Also b) (i) – all relevant matters

I bring to your attention the following matters.

1. *Due consideration should have been given to the consultation response submitted by Cllr Alden, within time, and attached as Appendix A. Equally the concerns expressed to the Head of Planning by Cllr Cowen should have been reported. In fact the decision sheet says there were no responses. The Executive members were therefore mis-directed.*

2. *The Report to Executive members states that inter alia predicted sales values have fallen since 2015. The Land Registry site for flat sales in Adur in this period <http://landregistry.data.gov.uk/app/ukhpi/browse?from=2015-06-01&location=http%3A%2F%2Flandregistry.data.gov.uk%2Fid%2Fregion%2Fadur&to=2019-06-01> shows that this is not correct. In fact values have increased by 15% in this period (£169k to £194k). This anomaly should have been pointed out to the Executive members.*

3. *The effect of the letting of a secure tenancy of a new flat is to lower the book value of the property. This is normally regarded as 25% loss of value as opposed to*

a vacant property. The sum of £720,000 to be paid to the developer for 14 flats approximates to this book loss. Adur does not gain equity from its contribution. Therefore the effect of the contribution is to approximately fully compensate the developer for his book loss and no affordable rented accommodation benefit is gained by Adur citizens as required by the Local Plan. This should have been pointed out to the Executive members, and due regard given.

4. The proposal removes the previously agreed provision of 4 much needed rented houses. This loss is significant and the Executive members should have been presented with alternative proposals to mitigate this as far as possible.

5. The proposal represents such a substantial variation from the original decision of the Planning committee that the matter should have been referred back to that committee for consideration.

6. The proposal suggests that further shared ownership units could be funded by Homes England grant. It is understood that HE grants and RTB receipts cannot both be used in a project. This needs to be resolved and the Executive members assured that their decision is legal.

Appendix A

JAW/009/19-20

*19 Jul 2019, 09:48
(12 days ago)*

To Carson, James, Gary, Lee

Dear Carson

I am asking you to not agree the above until there has been further consideration.

The development was originally agreed by the planning committee in 2013.

The changes now proposed are substantial and I think it should be referred back to the planning committee.

In particular there is a proposal to dramatically alter the make up of the proposed affordable rented accommodation (removing 4 houses) and for the council to make a considerable financial contribution of £720k which was not mentioned in the original committee item.

The effect of the proposals are as follows.

The original agreed by the Planning committee is that there would be 13 rented flats and 4 rented houses and 9 shared ownership.. Total 26 units. Although this only gives 22% affordable overall it does conform to the ALP policy of 75% rented.

The new proposal (omitting the uncertain Homes England Grant) is for 14 rented flats and 12 shared ownership. Total 26 units. And with an RTB fund contribution of £720k.

It is therefore proposed that Adur residents should lose 4 houses and gain one flat in exchange for a substantial contribution from the accumulated RTB receipts.

The use of most of the RTB fund itself reduces future flexibility.

This does not seem a good deal for Adur.

I hope you can agree that the decision should be referred to the Planning Committee.

Cllr Les Alden”.

- 2.10 The Deputy Monitoring Officer considering this matter determined that there was evidence to suggest that the principles of decision making may not have been complied with. The request for call-in of the decision was therefore accepted.
- 2.11 Consequently, the decision cannot be implemented at the current time, until the outcome of the scrutiny process.

3.0 Proposals

- 3.1 This meeting of the Joint Overview and Scrutiny Committee is advised to scrutinise the decision and determine whether or not they consider the decision has been made contrary to the principles of decision making. It is important to note that it is not the decision itself that is to be scrutinised, but the decision making process and whether or not the decision-makers complied with the principles of decision making.
- 3.2 Having considered the decision, the Overview and Scrutiny Committee may refer the decision back to the Executive Members for Customer Services for reconsideration, setting out in writing the nature of its concerns. The decision-makers must reconsider the decision within a further 5 clear working days, and may or may not amend the decision.
- 3.3 Once the decision is published following the call-in procedure, the decision cannot be called in again. The decision following the call-in procedure cannot be acted upon until 5 clear working days after the publication of the Record of Decision.

4.0 Legal

- 4.1 The Council's Principles of Decision-Making are set out at Article 12 of the Constitution.
- 4.2 The procedure for Call-In of Executive decisions is set out in the Council's Joint Overview and Scrutiny Procedure Rules which can be found in Part 4 of the Constitution.

5.0 Financial implications

- 5.1 There are no financial implications arising from this report.

6.0 Consultation

- 6.1 The Joint Chairmen of the Joint Overview and Scrutiny Committee were consulted by the Deputy Monitoring Officer is reaching the decision to accept the request for call-in of the decision.

7.0 Recommendation

- 7.1 The Overview and Scrutiny Committee are recommended to scrutinise the decision and determine whether or not they consider the decision has been made contrary to the principles of decision making. If so, they are recommended to refer the decision back to the Executive Members for Customer Services, setting out the nature of their concerns in writing.

Local Government Act 1972

Background Papers:

Worthing Borough Council Constitution
Adur District Council Constitution
Officer report of 11th July 2019
Decision notice JAW/009/19-20 dated 30th July 2019
Consultation email from Cllr Alden to Cllr Albury dated 19th July 2019

Contact Officer:

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Solicitor to the Councils & Monitoring Officer
Worthing Town Hall
Chapel Road
Worthing
01903 221119
susan.sale@adur-worthing.gov.uk

Schedule of Other Matters

1.0 Council Priority

1.1 The issue of the Call-in relates to Adur District Council's Housing function.

2.0 Specific Action Plans

2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

3.1 Matter considered and no issues identified.

4.0 Equality Issues

4.1 Matter considered and no issues identified.

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

6.1 Matters considered and no issues identified.

7.0 Reputation

7.1 It is important for public confidence in the democratic process to demonstrate that Council decision making is made in a transparent way and in compliance with the principles of decision making, to avoid reputational damage.

8.0 Consultations

8.1 Issue addressed in the body of the report.

9.0 Risk Assessment

9.1 Matter considered and no issues identified.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified.

11.0 Procurement Strategy

11.1 Matter considered and no issue identified.

12.0 Partnership Working

- 12.1 Adur and Worthing Councils work in partnership in accordance with their Joint Committee Agreement which determines that their Housing service is a Joint Council Service. The relevant decision was therefore taken by the Joint relevant Executive Members from ADC and WBC. The call-in of the decision is therefore to be considered by the Councils' Joint Overview and Scrutiny Committee.