



ADUR & WORTHING
COUNCILS

Joint Overview and Scrutiny Committee
19th September 2019
Agenda Item 5

Key Decision: No

Ward(s) Affected: All

Request for Call-in of an Executive Decision

Report by the Monitoring Officer

Executive Summary

1. Purpose

- 1.1 The Council's Joint Overview and Scrutiny Procedure Rules provide that where the Monitoring Officer, or in her absence, the Deputy, 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

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

3. Context

- 3.1 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”.

3.2 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.

3.3 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

4.1 On 9th July 2019 the Adur and Worthing Joint Strategic Committee made a decision concerning ‘Worthing Theatres and Museum - the Future of Culture for Worthing’. The decision was published on the Councils’ website within the minutes of the meeting with reference JSC/020/19-20. The call-in deadline was 5pm on 19th July 2019.

4.2 On 18th July 2019, within the prescribed deadline, the Deputy Monitoring Officer, in the Monitoring Officer’s absence, had received a request, in writing, for call-in of the decision from at least 3 Elected Members: Cllrs Howard, Cooper, Barrett, Deen, Dawn Smith, Walker, Chowdhury, Silman, Sally Smith and Mulholland.

4.3 In summary, the reasons for the request for call-in were as follows:

It was argued that there was evidence to suggest that decision making principles had not been complied with; namely that the decision was not in accordance with the law, and did not comply with the Councils’ own Standing

Orders / Financial Regulations relating to contracts, and that it was in contravention of the Council's Budget Strategy.

4.4 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.

- 4.5 Members requesting the call in of the decision in summary alleged that the Joint Strategic Committee had breached the principles of decision making and acted contrary to the Budget Strategy by delegating the signing of the contract to an Officer, to a contractual party that doesn't exist, for an opaque contract cost, following an unsatisfactory tendering process.

5. Issues for consideration

- 5.1 The Deputy Monitoring Officer, Andrew Mathias, considered the request and determined that the grounds for requesting a call-in were not made out.
- 5.2 The Deputy Monitoring Officer found that the Council was confident that there had been no breach of procurement law; the procurement process had been overseen by our external procurement advisors and was compliant with procurement legislation and in particular, the Public Contract Regulations 2015. The fair and transparent process resulted in one bid being received and no contract award was made as a result of that procurement process. The in-house team had set up a Company called 'Chalk and Clay' for the purpose of the tender process; it had been their intention for that company to become the contracting vehicle but as the company could not establish a suitable track record as a new company and a separate legal entity, it was not considered to be a suitable tender. Having tested the market and ascertained that there were no suitable bids received, the Council now intends to make a direct award to its in-house team under Regulation 32(2)(a) of the Public Contract Regulations 2015.
- 5.3 The Deputy Monitoring Officer further found that there had been no lack of compliance with the Councils' Budget Strategy. Within the medium term financial plan an allowance of £500,000 had been made for the additional cost of the new contract above the current cost of the service over the first 5 years of the contract. At the time of the request for call-in the contract price had not been finalised but the Deputy Monitoring Officer concluded that there was no evidence of the Joint Strategic Committee's decision being contrary to the Councils' Budget Strategy.

6. Engagement and Communication

- 6.1 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 telephone on 22nd July 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.

7. Financial Implications

7.1 There are no financial implications arising from this report.

8. Legal Implications

8.1 Legal issues are addressed in the main body of the report above.

Background Papers

- Minutes of a meeting of the Joint Strategic Committee of Adur District and Worthing Borough Councils, Tuesday 9th July 2019.
- Reports and agenda to the Joint Strategic Committee on 9th July 2019.
- 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.