



OVERVIEW AND SCRUTINY VIEWS AND RECOMMENDATIONS TO

Cabinet – 28th April 2010

| | |
|--------------|---|
| Report Title | <p>RECOMMENDATIONS OF OVERVIEW AND SCRUTINY COMMITTEE ONE (REGENERATION, PLANNING, COMMUNITY ENGAGEMENT AND SAFETY) – ON THE CALL- IN OF CABINET DECISION OF 3RD MARCH 2010: -</p> <p>LEISURE AND SPORT STRATEGIC BUSINESS REVIEW – MANAGEMENT OPTIONS APPRAISAL</p> |
|--------------|---|

Agenda Status: PUBLIC

1. Purpose

- 1.1 To submit a report to Cabinet detailing the Committee's findings following the Call-In Hearing that took place on Thursday, 18th March 2010.

Recommendations

- 2.1 That Cabinet be formally notified of Overview and Scrutiny Committee One (Regeneration, Planning, Community Engagement and Safety)'s findings following the Call-In Hearing of 18th March
- 2.2 That the Call-In be rejected on the grounds that insufficient evidence had been provided in support of the five reasons for call-in.
- 2.3 That it be recommended to Cabinet that it gives a greater explanation of the timeline of the implementation process regarding the leisure centres and possible Trust Status.

3. Background and Issues

- 3.1 The Cabinet decision: -
 1. That Cabinet notes the outcome of an appraisal of potential management options for leisure and sports provision (see annex 1 of the Cabinet report).
 2. That, in accordance with the outcome of the management options appraisal, Cabinet agrees to the commencement of the implementation phase for the establishment of a new charitable trust for the provision of leisure and sports development services.

was called-in for Scrutiny by Councillors Tony Clarke and Lee Mason for the following reasons: -

- 1) Lack of any Pre Scrutiny.
- 2) Lack of Public Consultation despite the paper being prepared and written before and during the period of the Council's Public Consultation on the 2010- 2011 Budget and the Council Corporate Plan
- 3) Lack of Complete Legal Advice
- 4) Lack of an Equalities Impact Assessment on the outcome of the report
- 5) Lack of proper consultation with non-Cabinet members of the Council

The Call In Authors also asked that Overview and Scrutiny rejected the Cabinet's proposal for "Post" decision scrutiny on the grounds that this sets a precedent for Cabinet to ignore the need for pre scrutiny of sensitive decisions by way of fait accompli post decision scrutiny after the event.

3.2 Councillors Clarke and Mason expanded upon their reasons for Call-In: -

- The Call-In Authors were concerned that the decision had been made without any pre-decision scrutiny of the issue.
- Concerns were raised regarding possible increases to fees and charges should Leisure Services be managed by a Charitable Trust, and examples were provided of how such a change had been opposed elsewhere.
- The Overview and Scrutiny Leisure Services Review (2007) had not recommended the establishment of a new Charitable Trust for the provision of leisure and sport.
- The Call-In Authors felt that more research and background information was required before implementation. In the Call-In Authors' opinion there had not been a thorough assessment of the risks and challenges.
- The need for more pre-decision scrutiny had been identified. The agenda for Cabinet of 3 March 2010 had been published on 23 February 2010, giving a period of five working days, which is adequate time for a report to be discussed by Cabinet. The Call In Authors, felt that this timescale precluded any pre-decision scrutiny.
- There appeared to have been a lack of public consultation. The proposal had not been referred to during consultation on the Council's Corporate Plan or consultation of the General Fund Budget 2010/2013.
- In querying whether complete legal advice on this issue had been provided, the Call-In Authors referred to the report that stated that "*the establishment of a charitable trust has complex and challenging legal implications which will need to be carefully managed. These implications will require expert legal advice and guidance which will need to be externally commissioned*"...
- The Call-In Authors acknowledged the completion of an Equality Impact Assessment for the Leisure Strategy and queried the production of an EIA for the report on Leisure and Sport Strategic Business Review. In the Call-In Authors' opinion this report could have implications for certain groups in terms of affordability.
- The Call-In Authors referred to the section in the report - *consultees (internal and external)*, advising that in their opinion there had been a lack of proper consultation with non-Cabinet members of the Council.

4 Evidence

4.1 The Committee heard evidence from four public attendees: -

- Dr Ronald Mendell

4.2 Internal Witnesses

- Councillor Paul Varnserry Portfolio Holder (Community Engagement)
- Councillor Brian Hoare Leader of the Council
- Julie Seddon Director of Culture and Environment

4.3 Councillor Paul Varnserry, Portfolio Holder (Community Engagement), provided evidence, advising that: -

- The purpose of the decision was to safeguard the provision of the leisure and sports development services for the citizens of Northampton. The Council, like every other Local Authority, faces some extremely tough financial challenges.
- A charitable trust would be able to seek external funding from a variety of sources not available to the council. Some Trusts have operated successfully for more than twenty years.
- There is no legal requirement to exercise pre-decision scrutiny. No requests from Overview and Scrutiny for pre-decision scrutiny of this issue have been received.
- The decision made by Cabinet on 3 March 2010 was about how the Council provides leisure and sports development services and about starting the implementation process which the Portfolio Holder (Community Engagement) envisaged would take around twelve months. At the appropriate stage of the implementation, public consultation will take place.
- All Cabinet papers go through a rigorous call-over procedure and are reviewed by both the Monitoring Officer and the Section 151 Officer prior to submission to Cabinet.
- The Equality Impact Assessment (EIA) that had been produced was appropriate for the decision taken on 3 March 2010. There will be the need for the completion of further EIAs at different stages of the implementation.
- The Portfolio Holder (Community Engagement) confirmed that he had given a briefing to the Liberal Democrat Group and that he had been thoroughly questioned. On 22 February 2010, the Director for Environment and Culture had issued an invitation to the Leaders of the three opposition Groups, to provide them with a briefing on this issue, but she had not received any responses. Consequently, she had spoken to them on 1 March and the Leaders of the Conservative and Labour groups had then taken up the invitation.

4.4 Councillor Brian Hoare, Leader of the Council, provided evidence, advising that: -

- The future of leisure services had been at the forefront of Cabinet's decision. The deficit of leisure provision in certain parts of the town was noted and Cabinet was considering how best these services could be provided.
- The Leader of Council confirmed that Overview and Scrutiny could of put in a request for pre-decision scrutiny, but no such request had been received.
- Cabinet resolved that:-
That, in accordance with the outcome of the management options appraisal, Cabinet agrees to the commencement of the implementation phase for the establishment of a new charitable trust for the provision of leisure and sports development services.
- The Leader of the Council reiterated the advice given by the Portfolio Holder (Community Engagement) in respect of legal advice, the production of an Equality

Impact Assessment and confirmed that opportunities were available for non-Cabinet members to receive a briefing on this issue.

- 4.5 Julie Seddon, Director for Environment and Culture, provided evidence, advising that: -
- An Equality Impact Assessment (EIA) of the Management Options appraised had been produced and further EIAs will be completed as the details are worked up.
 - It is expected that the implementation process will take just over twelve months to complete, working with experienced consultants. The timescale would allow for Overview and Scrutiny to carry out work, if it so chooses.
 - When the implementation process is at the appropriate stage, consultation will take place.
- 4.6 **Legal Advice**
- 4.7 The Borough Solicitor provided legal advice to the Call-In Hearing. He confirmed that the Call-In had, at Officer level, been deemed valid and it was for the Committee to decide whether the Call-In proceeds further.
- 4.8 The Borough Solicitor advised that there is no legal requirement for the provision of pre-decision scrutiny; it would be for the Committee to decide upon the validity of reason 1 for Call-In - Lack of any Pre Scrutiny.
- 4.9 Cabinet Members present at the Call-In Hearing declared a personal and prejudicial interest in the issue and were advised by the Borough Solicitor that they should remain in the Call-In Hearing as long as they were required to by the Committee, however, when the Committee commenced its decision making Cabinet Members present were asked leave.

5 Findings and Conclusions

- 5.1 Following the submission of all the evidence, the Committee concluded that it is not a statutory requirement for pre-decision scrutiny to take place and the forthcoming decision had been properly advertised on the Council's Foreword Plan and published within the correct timescales. Cabinet had not received a request by Overview and Scrutiny for pre-decision scrutiny on this issue. It was not appropriate for full public consultation to take place at this stage, however; clearly defined consultation will take place at the relevant stage of the process. Appropriate legal advice on the production of this report had been received. The report had been subject to the rigorous call-over process that each report goes through prior to its submission to Cabinet. Further legal advice will be obtained in setting up the Trust. An Equalities Impact Assessment (EIA) was produced for the management options appraised. Further EIAs will be produced as the details are worked up. The Liberal Democrat Group received a briefing on this issue by the Portfolio Holder (Community Engagement) prior to the Cabinet meeting of 3 March 2010. An invitation was issued on 22 February 2010 to the Leaders of the three Opposition Groups inviting them to attend a briefing but no responses to the invitation had been received.
- 5.2 The Committee further concluded that the Call-In Hearing had provided Councillors with a better understanding of the issue.
- 5.3 Following deliberation session, it was proposed and seconded that the Call-In rejected on the grounds that insufficient evidence had been provided in support of the five reasons for call-in. Upon a vote, it was: -
- 5.4 **Resolved:**
- (1) That the Call-In be rejected on the grounds that insufficient evidence had been provided in support of the five reasons for call-in.

- (2) That it be recommended to Cabinet that it gives a greater explanation of the timeline of the implementation process regarding the leisure centres and possible Trust Status.

6 Implications (including financial implications)

6.1 Policy

- 61.1 The work of Overview and Scrutiny plays a major part in the development of the Council's policy framework through its work programme.

6.2 Legal

- 6.2.1 The duties to undertake Overview and Scrutiny are set out in the Local Government Act 2000.
- 6.2.2 The Monitoring Officer advised the Call In Hearing, details provided at paragraph 4.6.

6.3 Equality

- 6.3.1 Not applicable.

6.4 Resources and Risk

- 6.4.1 The decision cannot be implemented until Cabinet has resolved and made a decision upon Overview and Scrutiny Committee One (Regeneration, Planning, Community Safety and Engagement)'s report on the result of the Call-In Hearing.

7. Consultees (Internal and External)

- 7.1 Overview and Scrutiny Committee One (Regeneration, Planning, Community Safety and Engagement) held the Call In Hearing.
- 7.2 Internal witnesses as detailed at paragraph 4.2
- 7.3 The Call-In Authors, Councillors Tony Clarke and Lee Mason, attended the Call-In Hearing to respond to the Committees questions.
- 7.4 The Call-In Hearing was published through the Council's usual channels and was attended by five members of the public, of which one addressed the Committee.

8. Background Papers

- 8.1 The key papers are:-
- Cabinet report of 3 March 2010 – Item 11 – Leisure and Strategic Business Review – Management Options Appraisal
 - Cabinet decision and minutes of 3 March 2010 – Item 11 – Leisure and Strategic Business Review – Management Options Appraisal

| | |
|---------------------------------|---|
| Report Author and Title: | Tracy Tiff, Overview and Scrutiny Officer, on behalf of Councillor John Yates, Chair, Overview and Scrutiny Committee One |
| Telephone and Email: | (01604) 837408, email: ttiff@northampton.gov.uk |