

## **NORTHAMPTON BOROUGH COUNCIL**

### **OVERVIEW AND SCRUTINY COMMITTEE 1 - PARTNERSHIPS, REGENERATION, COMMUNITY SAFETY AND ENGAGEMENT**

**Thursday, 18 March 2010**

#### **PRESENT:**

Councillor John Yates (Chair); Councillor Ifty Choudary (Deputy Chair); Councillors Jenny Conroy, Brendan Glynane, David Palethorpe, Marianne Taylor (substitute for Councillor Andrew Simpson and Tony Woods (substitute for Councillor Mel de Cruz

#### **Call In Authors**

Councillors Tony Clarke and Lee Mason

#### **Internal Witnesses**

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

#### **Observing**

Councillor Malcolm Mildren	
Councillor Jean Hawkins	
Councillor Tess Scott	
Councillor Keith Davies	
David Kennedy	Chief Executive
Cara Boden	Assistant Chief Executive
Cassie Triggs	Democratic and Chief Executive Services Manager
Ian Redfern	Head of Leisure
Diana Martten	Principal Lawyer
Gary Youens	Political Assistant

#### **Officers**

Francis Fernandes	Borough Solicitor
Tracy Tiff	Scrutiny Officer

#### **Members of the Public**

Harry Tuttle, Ann Timson, Dr Ronald Mendell, John Dickie, Dr Marie Dickie

Wayne Bantolf (Press)

#### **1. APOLOGIES**

Apologies for absence were received from Councillors Andrew Simpson and Mel de Cruz.

## **2. DEPUTATIONS/PUBLIC ADDRESSES**

Dr Ronald Mendell, representing Northampton Trade Union Council, addressed the Committee under agenda item 4.

## **3. DECLARATIONS (INCLUDING WHIPPING)**

In accordance with the advise provided by Francis Fernandes, Borough Solicitor, Executive Members present, Councillors Brian Hoare and Paul Varnsverry, declared a personal and prejudicial interest in the substantive agenda item – Call In of Cabinet Decision of 3 March 2010 - agenda item 11 - Leisure and Sport Strategic Business Review - Management Options Appraisal They provided witness evidence but left the meeting when the Call In Hearing went into deliberation session, taking no part in the debate.

Councillor Tony Woods declared a personal and non-prejudicial interest in the substantive agenda item – Call In of Cabinet Decision of 3 March 2010 - agenda item 11 - Leisure and Sport Strategic Business Review - Management Options Appraisal as he was Leader of the Council when Strategic Business Reviews (including Leisure and Sport Strategic Business Review) were introduced and also in the capacity as Chair of the West Northants Joint Planning Committee.

## **4. CALL IN OF CABINET DECISION OF 3 MARCH 2010 - AGENDA ITEM 11 -F - MANAGEMENT OPTIONS APPRAISAL - REPORT OF THE DIRECTOR OF ENVIRONMENT AND CULTURE**

The Chair advised that upon the advice of the Borough Solicitor and Monitoring Officer, this Call-In request had been through the appropriate channels and it is confirmed that the correct procedure had been followed. The Borough Solicitor confirmed that there is no legal requirement for pre-decision scrutiny to take place. Francis Fernandes, 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.

The Chair then advised the Call-in Hearing of the procedure that would be followed and reminded the Committee of the reasons for Call-In: -

- 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.

The public addressee was invited to speak to the Committee.

Dr Ronald Mendell, representing Northampton Trade Union Council, addressed the Committee advising that his comments were in respect of call in reasons 2 and 4. He was concerned that there had been no consultation on this issue as part of the consultation process on the draft general fund budget 2010/2013. In his opinion this issue should have been subject to consultation with both users and providers. He felt that there was no evidence of the production of an Equality Impact Assessment for this report and highlighted the fact that the proposal could have a negative impact on specific groups such as pensioners, disabled and youth. Dr Mendell went on to state that in his opinion a Trust could introduce a charge that could have a negative impact to users.

Dr Mendell was thanked for his address.

The Chair then invited the Call-In Authors to expand upon their reasons for concern, following which the Overview and Scrutiny Committee questioned the Call-In Authors. Councillor Lee Mason, Call-In Author, addressed the Committee commenting that she had deep concerns for the future of Leisure Centres, in particular Lings Forum. She was further concerned regarding the implementation and process, which would impact on both staff and residents. In Councillor Mason's opinion costs would rise and she was concerned that current concessions such as free swimming might not continue. Leisure Services currently provides a high quality service and Councillor Mason queried why it was proposed to change this.

Councillor Mason referred to a previous Overview and Scrutiny Review that had in 2007 investigated leisure services but had not concluded that the Service should be run by a Trust. She went on to refer to areas such as Southampton, Yorkshire and Preston where proposals to run their leisure services by a Trust had been opposed. Councillor Mason felt that more research was required and a full consultation undertaken. The setting up of a Trust to run the leisure services must be in the best interest of the residents.

The Committee put questions to Councillor Mason and heard: -

- Councillor Mason did not feel that a thorough assessment had taken place regarding potential risks and challenges. The decision should have been made by full Council.
- Councillor Mason acknowledged that this decision had been included on the Foreword Plan but felt that the detail was very general.

- Councillor Mason agreed that there might be some very successful leisure services run by Trusts but emphasised the need for further research.

Councillor Mason was thanked for her address

Councillor Tony Clarke, Call-In Author addressed the Committee commenting that he was concerned that the decision had been made without any pre-decision scrutiny of the issue. 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. Councillor Clarke felt that this timescale precluded any pre-decision scrutiny. More research and background information was required before implementation. In Councillor Clarke's opinion there had not been a thorough assessment of the risks and challenges. Councillor Clarke went on to comment that 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, Councillor referred to the report that stated, "*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*"... Councillor Clarke went on to acknowledge the completion of an Equality Impact Assessment (EIA) for the Leisure Strategy and queried the production of an EIA for the report on Leisure and Sport Strategic Business Review. In his opinion this report could have implications for certain groups in terms of affordability. Councillor Clarke 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. Councillor Clarke concluded his address by commenting that the call-in was about process and that fair rules of engagement are required, in his opinion this decision did not take this into consideration. He urged the Committee to support the call-in.

The Committee put questions to Councillor Clarke and heard:

- Councillor Clarke acknowledged that the debate on this issue would come at a later date; he supported leisure services being managed in-house. He was concerned about Cabinet's recommendation of post-decision scrutiny
- There is a need to engage in pre-decision scrutiny.
- Councillor Clarke reiterated that it did not appear that an EIA had been completed for the Leisure and Sport Strategic Business Review

Councillor Clarke was thanked for his address.

At this point, Francis Fernandes, Borough Solicitor, advised that 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 to leave.

Councillor Paul Varnsberry, 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. The Leader of the Independent Group did not take the invitation up.

The Committee put questions to Councillor Paul Varnsberry and heard: -

- In response to a query regarding the Portfolio Holder (Community Engagement)'s view of the sustainability of keeping leisure services in-house, Councillor Paul Varnsberry advised that the Council's leisure services have achieved a level of performance above recognised national benchmarks used for the private sector.
- The council's leisure and sport development services also provide opportunities for the most disadvantaged residents of the town, who might otherwise be unable to participate in organised physical exercise. The continuation of this approach needs to be addressed, as private sector organisations do not work in this way. Ideally, a Charitable Trust would also look to enhance current facilities and provide new schemes.
- Regarding sustainability, Councillor Varnsberry confirmed that he had emphasised at the Cabinet meeting of 3<sup>rd</sup> March 2010 that there is a need to set up a Charitable Trust to ensure that the service is in the best shape to

avoid the worst effects of anticipated cuts in public sector funding. Any risks associated with the move have been experienced elsewhere. Highlighting the experience of others in the cabinet report was merely a case of 'forewarned is forearmed' for this council.

- It was important to note that no final decision to formally commence the trust had been reached. Much work was still needed, for example, to establish the precise structure, conduct appropriate consultations, and perform necessary due diligence and other legal investigations. At the end of the process, Cabinet would make a final decision.
- Councillor Paul Varnserry confirmed that the Forward Plan of 17<sup>th</sup> June 2009 contained details of the Strategic Business Review.

Councillor Paul Varnserry was thanked for his address.

The Chair, in his capacity as of Chair of the Liberal Democrat Councillor Group confirmed that the briefing had taken place.

The Committee put questions to Councillor Paul Varnserry and heard: -

- In response to a query regarding the Portfolio Holder (Community Engagement)'s view of the sustainability of keeping leisure services in-house, Councillor Paul Varnserry advised that the Council's leisure services operate at above the benchmark. . The fact that the facility is offered to the most disadvantaged needs to be addressed, private sector organisations do not work in this way but a Charitable Trust would also look to enhance current facilities and provide new. Regarding sustainability, Councillor Varnserry confirmed that he had emphasised at the Cabinet meeting of 3<sup>rd</sup> March 2010 that there is a need to set up a charitable Trust to ensure that the service succeeds. Any risks have been experienced elsewhere and 'to be forearmed is being forewarned'. At the end of the process, Cabinet would make a final decision.
- Councillor Paul Varnserry confirmed that the Forward Plan of 17<sup>th</sup> June 2010 contained details of the Strategic Business Review.

Councillor Paul Varnserry was thanked for his address.

Councillor Brian Hoare, Leader of the Council, addressed the Committee 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 have put in a request for pre-decision scrutiny, but no such request had
- 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.
- In response to a query, Councillor Brian Hoare confirmed that further reports on this issue would be submitted to Cabinet on issues such as the remit and scope of the Trust.

Councillor Brian Hoare was thanked for his address.

Julie Seddon, Director of Environment and Culture, addressed the Committee 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.

The Call-In Authors were given the opportunity to add any points of clarification before any resolution or recommendation was moved.

Councillor Lee Mason commented that the Leaders of the three Political Groups had been notified of this issue on 26<sup>th</sup> February 2010 and in her opinion two working days was not enough time for the Leaders of the Political Groups to be briefed prior to the Cabinet meeting. Councillor Mason went on to query the implementation stage, which she felt once entered into was a commitment to setting up a charitable Trust.

## **FINDINGS AND CONCLUSIONS**

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 before 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.

The Committee further concluded that the Call-In Hearing had provided Councillors with a better understanding of the issue.

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: -

**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.

The Call-In Hearing concluded at 19.30 hours