

# Overview and Scrutiny Commission

Tuesday 23 June 2009

## PRESENT:

Councillor James, in the Chair

Councillors Mrs Aspinall, Berrow, Fox, Pattison and Roberts (substitute for Councillor Mrs Watkins)

Apologies for absence: Councillors Coker, Viney and Mrs Watkins

The meeting started at 1.30 pm and finished at 3.00 pm.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

## 20. DECLARATIONS OF INTEREST

There were no declarations of interest made by Members in accordance with the Code of Conduct.

## 21. CHAIR'S URGENT BUSINESS

There were no items of Chair's Urgent Business.

## 22. DECISION FOR CALL IN: TRANSFER OF BRICKFIELDS MANAGEMENT (Pages 1 - 8)

The Commission considered the call-in of the Cabinet decision: transfer of Brickfields management (Cabinet minute no. 15).

The Commission heard from –

- one of the Members who had called the decision in – Councillor Wildy represented Councillor Smith and Councillor Stevens who had both sent their apologies for absence
- The decision maker – Councillor Jordan, Cabinet member for Leisure, Culture and Sport, on behalf of the Cabinet (and the Assistant Director for Culture, Sport and Leisure)

It was resolved that the Cabinet be recommended to re-consider its decision about the transfer of the Brickfields management made on 2 June 2009 and accept the recommendations included in Section 6 of the Commission's report (attached as an appendix to these minutes).

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**OVERVIEW AND SCRUTINY COMMISSION  
CALL-IN  
22 JUNE 2009**



## **DECISION CALLED-IN:**

**TRANSFER OF BRICKFIELDS MANAGEMENT  
(CABINET DECISION 2 JUNE 2009 MINUTE NO. 15)**

**Plymouth City Council**

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## **1. The Panel**

1.1 Members of the Commission present at the meeting held on Tuesday, 23 June 2009 to hear the called-in decision were –

- Councillor James (Chair)
- Councillor Mrs Aspinall (substitute for Councillor Coker)
- Councillor Berrow (substitute for Councillor Viney)
- Councillor Fox
- Councillor Pattison
- Councillor Roberts (substitute for Councillor Mrs Watkins)

1.2 Council officers at the meeting were Kevin Thomas, Sports and leisure Manager, Ross Cook, Democratic and Member Services Manager and Judith Shore, Team Leader (Democratic Support).

## **2. Reasons for Call-Ins**

2.1 The following Cabinet decision was called in:

- Transfer of Brickfields management

The stated reasons for the call-in were as follows:

- “The process is deficient since the consultation with all relevant parties is not complete. Re (2) of the decision, no agreement has been made with all relevant parties, as identified in the resolution; and negotiations are ongoing. In making this delegated decision, it could be seen that the process of consultation and agreement is suspect.
- The decision maker has not demonstrated that alternative courses of action have been pursued.
- There is the question of ‘claw-back’ to be considered if an agreement between all parties cannot be reached. This is surely a relevant factor since it will involve repayment of nearly £2m. (See above). The decision does not deal with this and could, therefore, become outside the budgetary and policy framework.”

## **3. Scrutiny Approach**

Procedure followed in the call-in meeting (as included in the agenda)

3.1 Councillor Wildy represented the three Members who called in the decision and was asked to explain why they had done so and what they felt should be reviewed. (Members making the call-in are allowed up to 15 minutes to present their case.) The decision-makers then respond (15 minutes allowed).

3.2 After each presentation, Commission members may ask questions to clarify any points made by the speakers (the speakers do not have an opportunity to cross-examine one another).

3.3 The Commission then discusses the matter and may ask further questions of the Members making the call-in, or the decision makers, during the debate.

3.4 When the Chair considers that the matter has been debated for a reasonable length of time, the decision maker is offered the opportunity to make any final

comments on the matter. One of the Members making the call-in will also be offered the opportunity to sum up. Each side is allowed five minutes for this purpose.

3.5 The matter then moved to the vote and the options are as follows:

- a) Do Members wish to refer the decision for further consideration? If Members vote no at this stage, the call-in is ended. The matter is not referred back and the original decision can be implemented.
- b) If Members vote in favour of referring the matter for reconsideration, they must decide the following:
  - i) Where to refer the matter back for reconsideration –
    - directly to the original decision-maker (i.e. the Cabinet or a Cabinet member)
    - to the City Council with a request that they decide whether to refer the matter back to the original decision-maker for reconsideration.
  - ii) Reasons for referring the matter back - Members must agree on the factors the decision-maker (or Council) are asked to consider.

3.6 The matter cannot be referred for reconsideration without reasons being given.

#### **4. Witnesses**

Members heard from the following people –

Member who called the decision in:

- Councillor Wildy (Councillors Smith and Stevens had given their apologies)

Decision maker:

- Councillor Jordan, Cabinet Member for Healthy Communities and Leisure with Kevin Thomas, Sports and Leisure Manager.

#### **5. Findings**

##### **5.1 Call-in**

In order to support the reasons why this delegated decision was called in, Councillor Wildy informed the Commission that –

- Cabinet minute 15 (1) (regarding the transfer of the Brickfields Leisure Centre to the Devonport Community Leisure Trust (DCLT) was clear.
- Cabinet minute 15(2) (regarding the inclusion of the Brickfields site in the leisure management contract)) was less clear.
- In Devonport, consultation was currently being undertaken with the DCLT, Devonport Community Regeneration Partnership (DCRP), with Government Office South West (GOSW) and with Sport England regarding the best option for the management of the Brickfields. However, the Council had already made

a decision which could not take account of the conclusion that had not yet finished, or the results assessed.

- James Coulton, Assistant Director (Culture, Sport and Leisure) had informed Councillor Wildy, via email, that the original deadline for informing potential contractors for the management of the Brickfields had moved back to July, possibly September. This meant that the Cabinet had taken the decision prematurely. A company called SPG Associates had been appointed to undertake and report on the consultation.
- Cabinet taking this decision before the end of the consultation period did not engender trust in the process.
- The Statement of Community Involvement and the Plymouth Compact agreement confirm that transparency and openness are important when involving people, as people must feel involved and that they can influence decision making.
- Alternative courses of action have not been communicated to the community or been discussed with the community.
- The 'claw back' referred to in the call-in reasons referred to the possibility of Sport England and other agencies that had funded the Brickfields Leisure Centre potentially wishing to 'claw back' some or all of that funding if the facility no longer benefited Devonport people. If 'claw back' was demanded it would have a serious impact on the Council budget.
- The decision should be re-furred back to the Cabinet who should take into account the results of the consultation before reconsidering the decision.
- James Coulton had advised Councillor Wildy that DRCP had funded the consultant to undertake the consultation and that the results of the consultation would be considered by the DCLT Board.
- The DCLT members had not been included in the consultation.
- Ward Members had not been consulted.

5.2 In order to support the reasons why this decision had been taken, the Cabinet Member for Healthy Communities and Leisure informed the Commission that –

- The consultation was concluded and the consultation report had been sent to a DCLT meeting, but the meeting had been inquorate so the report could not be formally considered. However, most of the people and organisations consulted supported the proposed transfer.
- Future consideration of the options for Brickfields facility was required and DCLT following consultants advice, had looked at alternatives.
- DCLT members were not consulted individually however, they elected the board members who were consulted.
- Members should make the distinction between the effective governance and the effective management of the Brickfields facility. The option under discussion regarded the management of the facility.

- Regarding 'claw back', GOSW, has changed their stance and indicated that 'claw back' would not be an option because of the identified benefits of the option.
- There will continue to be local/stakeholder input into the governance of the facility.
- DCLT has invited a GOSW representative to attend board meetings.

5.3 In order to support the reasons why this decision had been taken and address some of the concerns highlighted by the Members calling in the decision, the Sports and Leisure Manager informed the Commission that –

- The 2006 decision was that the facility would transfer to the DCLT. Since then, discussions have been ongoing regarding suitable solutions.
- Initially there was a tight timescale for agreeing a solution which is why the report went to Cabinet in June.
- Meetings had been held with funding agencies whose representatives had indicated that if the transfer was proceeded with, they would not require any funds to be returned.
- The Council's lawyers advised that the transfer had to be agreed prior to advertising for the contract tenders, and the transfer option could not be included in the proposed contract at a later date.
- DCLT wanted to examine potential options.
- If 'claw back', was instigated then the option would have to be re-examined.
- Three options had been put before the DCLT board. However if the Trust put forward other options they would be considered.

5.4 The Commission then debated the issues and Members' comments included –

- Why was this decision being made now? In 2006, Members were advised that this transfer was not a viable option.
- Potentially 'claw back' could be an issue. No firm assurances had been received that funding agencies would not re-claim some or all of the funding. Firm assurances were required.
- The future management of this facility must not be put at risk.
- The leisure management contract issue seemed to be driving this decision rather than the requirements for the Brickfields.
- A rushed decision may lead to financial penalties/difficulties for the Council.
- DCLT had not yet given a formal response about their preferred option.



- The Council would not be disadvantaged by waiting until the consultation was complete and by confirming advice from the funding agencies.
- The community's views should be taken into account before a final decision is made. The community is supposed to be at the centre of the decision making process but, in this case appears not to be.

5.5 In order to support the reasons why this decision should not be called in, the decision maker summed up as follows –

- The community has a vital role in the governance of the facility. The management of the facility is a separate issue.
- DCLT is composed of local stakeholders and DRCP is a member of DCLT. Therefore, there is input on the DCLT board.
- The proposed option will be effective.
- Consultation has been undertaken, though not to the extent required by the councillors who have called-in this decision.

5.6 In order to support the reasons why this decision should be called in, Councillor Wildy summed up as follows –

- There is uncertainty about 'claw-back' – will or won't the funding agencies ask for money back if this option is implemented? This must be confirmed before the transfer proceeds.
- DCLT only has three community representatives and the rest are stakeholders. This is why wider consultation within the community is important.
- The Cabinet decision [minute 15(1)] indicated that the transfer should not proceed without agreement with all relevant parties. However, minute 15(2) prejudged the decision.
- Ward Members and local residents should be more involved in the consideration of alternative options.
- There is time for the decision to be revisited, as a final decision does not have to be made until September.
- If the decision is not referred back to the Cabinet this will indicate contempt for the Plymouth contract and will not accord with CIP 1, Improving customer service, CIP2, Improving and Involving residents or CIP 4, Reducing inequalities between communities.

## 6. Decisions

6.1 Members of the Commission resolved to refer the decision back to the Cabinet for the following reasons -

- (1) The consultation with local residents is not yet complete and the results of the consultation should be considered prior to a final decision about the transfer of the Brickfields facility.
- (2) Firm assurances should be received from the agencies that

funded the Brickfields Leisure management, if the proposed transfer option is implemented they will not require the return of any part of the funding.

(A unanimous vote was recorded)

## **7.0 Background Information**

Listed below is the relevant background information to this report –

- Cabinet decision (2 June 09, min. number 15) (Transfer of Brickfields management), web link as follows –

[www.plymouth.gov.uk/democracy](http://www.plymouth.gov.uk/democracy)

- Cabinet report (Transfer of Brickfields management) Part II
- Delegated Decision Background Paper – briefing paper (Part I)