

## **BOROUGH OF REIGATE AND BANSTEAD**

### **OVERVIEW AND SCRUTINY COMMITTEE**

Minutes of an extraordinary meeting of the Overview and Scrutiny Committee held at the Town Hall, Reigate on Thursday, 30 November 2017 at 7.30 p.m.

Present: Councillors B. Stead (Chairman), R. Absalom, D. Allcard, R. Ashford, M. Blacker, M. Brunt, G. Curry, J. Ellacott, N. Harrison, R. Mantle, S. Parnall, J. Stephenson and R. Turner.

Also Present: Councillors J. Bray, V. Broad, L. Hack, R. Mill, J. Paul, R. Renton, M. Selby, S. Walsh, and C. Whinney.

#### **30. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Committee Members: Councillors R. Coad, J. Essex, D. Powell (Substitute: Cllr. J. Ellacott) and D. Ross-Tomlin (Substitute: Cllr D. Allcard)

Other Members: Councillors K. Foreman and E. Humphreys.

#### **31. DECLARATIONS OF INTEREST**

No declarations of interest were made.

#### **32. CALL-IN: PATHWAY FOR CARE (EXECUTIVE – 9 NOVEMBER 2017)**

The Chairman introduced the call-in procedure. It was noted that the decision subject to call in was the resolutions of the Executive at the meeting of 9 November 2017 that:

- (i) the Section 151 Officer be authorised to increase the loan ceiling to Pathway for Care, as set out in the Exempt Part 2 section of the Health and Well Being Executive Sub Committee's agenda; and
- (ii) the Head of Finance (Section 151 Officer) be delegated authority, in consultation with the Head of Legal, to amend the Loan and Draw Down Agreement between the Council and Pathway for Care within the approved loan ceiling.

It was noted that these resolutions followed from the recommendations of the Executive Health and Wellbeing Sub-Committee meeting of 6 November 2017.

The call in form was provided to the Committee. In summary, the reasons for the call in were:

- ‘Principle of Decision Making 14.2.4 (“a presumption in favour of openness”), due to the late release of the report, which impacted on Members’ ability to read and scrutinise the contents and relied on ad hoc questions at the meeting.
- ‘Principle of Decision Making 14.2.5 (“clarity of aims and desired outcomes”), with insufficient clarity regarding match funding or the nature of the resulting ownership arrangements to justify the commitment of the additional lending. ‘
- An error in the dates setting out the financial forecast in the report, which risks undermining confidence in the report and decisions based on it.’

It was noted that the decision of the Overview and Scrutiny Committee should be made with reference to those reasons stated in the call-in.

It was noted that the options available to the committee, as laid out in the Council’s constitution were:

- To refer the decision back to the Executive for reconsideration, setting out in the writing the nature of its concerns; or
- If the item is major or has significant public interest, to refer the matter to full Council; or
- To note the information and evidence considered, to inform the Executive accordingly, and to take no further action.

It was further noted that the decision in this case was not judged to be sufficiently major or of sufficient public interest to warrant referral to full Council, and that the Committee would therefore be deciding between the other two options.

Councillor S. Walsh was identified as the nominated lead Councillor for the call-in, and made a statement indicating the reasons for the call-in, including:

- The reasons for the call-in, as identified above.
- That the reports and supporting papers for the Executive and preceding Sub Committee had been made available later than was standard procedure.
- That an item on the agenda for the meeting had been withdrawn, and that there had therefore been no consideration of that item.
- That there was a lack of detail in the reports provided, particularly around payments made to Pathway to Care, those expected to be made in future, and the aims of the proposed deal with a third party.
- That some of the terminology in the reports provided, particularly regarding the performance of the company, was at odds with his understanding of the situation.

Councillor Walsh stated that he therefore considered that the decision had not been properly made.

The Leader of the Council, Councillor V. Broad, then made a statement identifying the rationale for the decision of the Executive, including:

- That the Council takes all call-ins of decisions seriously, and that it is appreciative of the importance of the role of the Overview and Scrutiny Committee in reviewing call-ins submitted to it.

- That the Pathway for Care project was worthwhile, and was intended to both assist residents and yield a return to the Council and a sound investment worth pursuing.
- That the members of the Health and Wellbeing Sub-Committee, and the wider Executive, had been involved in an in depth examination of the forthcoming plans for the company for eight months.
- That it had been expected that the company would require initial investment and lead-in time, and would then start to deliver a return.
- That a number of external factors had delayed the progress of the company's work, but that the business plan had been updated accordingly, and that the performance and expenditure of the company was in line with its business plan.
- That negotiations around contracts for the company were necessarily time consuming, but that an agreement was close to being reached.
- That not all information could be made available in a public report, due to the requirements of commercial confidentiality and the need to protect the interests of minority shareholders.
- That the members of the Executive had considered the decision and supporting evidence at length, including at points prior to the publication of the formal papers, and that the consideration of the information to support the decision had therefore not been insufficient.
- That there had been an opportunity for Councillors to have questions answered at the 9 November meeting of the Executive, and at an all-Member briefing, but that not all Councillors had attended these occasions.

The Leader of the Council stated that he therefore considered that the decision had been properly made.

The Council's Chief Executive, Mr J. Jory, stated that:

- Draft versions of reports were made available prior to the meeting for consideration by members of the Executive.
- The matter was considered at a meeting of Executive Members on 23 October, and then at an additional meeting on 26 October.
- The papers for the 6 November meeting of the Executive Health and Wellbeing Sub-Committee were dispatched on 2 November. This was later than the normal five clear days prior to the meeting, but that, in his view, Members had sufficient information before them and in advance to consider the papers and make a proper decision regarding their recommendation to the Executive.
- That there was an update on the progress of the company and the Council's investment scheduled for the next regular meeting of the Overview and Scrutiny Committee on 7 December 2017.
- That limited correspondence was received from Members between the publication of the initial papers on 2 November and the meeting of 9 November, and that this correspondence did not include any request for the meeting to be delayed to allow for additional consideration of the material.
- That reports do sometimes inevitably contain errors, and where these are considered to be material to the decision being made, an update will be provided to the relevant Committee. However, it was not considered material to do so in this case.

The Committee Noted the statements from Cllr S. Walsh, Cllr V. Broad and Mr J. Jory and moved to continue consideration of the call-in in private, to allow for consideration of Exempt matters before reaching a decision. It was therefore agreed that the committee's decision would be made as part of Item 5.

### 33. EXEMPT BUSINESS

**RESOLVED** that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- (i) it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- (ii) the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### 34. CALL-IN: PATHWAY FOR CARE (EXECUTIVE – 9 NOVEMBER 2017)

The committee considered a number of questions and answers regarding the call-in and associated decision making process.

Questions and comments related to:

- **The importance of the call-in procedure.** The importance of the option to call-in decisions as part of the scrutiny process was noted. It was noted that this did not automatically imply a criticism of the Executive.
- **Commercial confidentiality.** Members were sensitive to the requirement for confidentiality with regard to commercially sensitive matters, but suggested that it was therefore especially important that other matters were considered openly where it was possible to do so.
- **Written reports** and their importance for future scrutiny. It was noted that, whilst decisions might reasonably be made on the basis of sufficient briefings and discussions, it was important to also have comprehensive written reports to enable future review and scrutiny if required.
- **The withdrawal of item 17** of the 9 November Executive agenda. It was clarified that this item had originally been included on the agenda for the consideration of any additional exempt information arising. As no such information had arisen, this item had been withdrawn as part of the addendum to the agenda, but was then reinstated at the meeting to allow for discussion of existing exempt information regarding Pathway for Care.
- **'Match funding'**. It was noted that the use of the term 'match funding' did not correspond to any formal arrangement and was therefore potentially misleading. It was noted that additional care would be taken around the wording of similar matters in future.
- **Information provision** for Members outside of the Executive. It was suggested that the presumption of openness should be interpreted to mean that as much information as possible should be made available to all Members of the Council, where appropriate. It was noted that the decision regarding the call-in was however only concerned with the information required for the decision of the Executive to have been made properly. It was noted that a number of steps had been taken to provide information to Members, but that additional heed would be paid to ensuring that all

Members were appropriately informed in future.

- **Forthcoming governance**, particularly regarding decisions following the completion of the current major contract negotiations by Pathway for Care. It was confirmed that the Council's approval for the final contract and associated structure of the company would be considered by the Executive Health and Wellbeing Sub-Committee, which would make a recommendation to the Executive.
- **Pathway for Care operational matters and uncertainties.** A number of questions were raised regarding operational concerns around the Pathway for Care company, although these were noted to not be directly relevant to the call-in. It was noted that there would be a more complete opportunity to ask such questions at the forthcoming regular meeting of the committee on 7 December. Information provided in response to these questions was noted.
- **Executive opinions of information provision.** Executive Members present were asked for their assessment of if they had had sufficient information available in sufficient time to allow them to make a proper decision. Those present, including Cllrs L. Hack and R. Mill, who were noted to also be members of the Executive Sub-Committee, indicated that they considered that they had definitely had sufficient information and time for consideration.

At the Chairman's request, the committee waived the Constitution's procedure rule (to require the vote to be taken by a show of hands) to allow for a recorded vote on the action to be taken regarding the call-in.

A recorded vote was therefore undertaken on the following motion:

'That the Committee report to the Executive with recommendations for reconsideration of the Executive's decision (based on the reasons for the call-in).'

The votes were as follows:

For: Councillors M. Blacker, J. Ellacott and S. Parnall.

Against: Councillors R. Absalom, D. Allcard, R. Ashford, M. Brunt, G. Curry, N. Harrison, R. Mantle, and J. Stephenson.

Abstained: Councillors R. Turner and B. Stead.

The Chairman confirmed that the motion was lost and, it having been decided that the matter did not warrant referral to full Council, it was therefore:

**RESOLVED** that:

- (i) The information and evidence considered be noted, the Executive informed accordingly, and no further action be taken.
- (ii) The committee also noted that it hoped to see improved availability of information regarding Council decisions to all Councillors, where appropriate, and that greater attention would be paid to ensuring that formal reports were sufficiently comprehensive and informative.

### 35. ANY OTHER URGENT BUSINESS

There was no other urgent business.

**The meeting closed at 9.22 p.m.**