

CALL-IN SUB-COMMITTEE MINUTES

5 DECEMBER 2011

Chairman: * Councillor Jerry Miles

Councillors: * Ann Gate (1) * Paul Osborn
* Susan Hall * Sachin Shah

**In attendance:
(Councillors)** Nana Asante
Marilyn Ashton
Margaret Davine
Brian Gate
Thaya Idaikkadar
Manji Kara
Barry Macleod-Cullinane
John Nickolay
Bill Stephenson

* Denotes Member present
(1) Denotes category of Reserve Member

8. Attendance by Reserve Members

RESOLVED: To note the attendance at this meeting of the following duly appointed Reserve Member:-

Ordinary Member

Reserve Member

Councillor Sue Anderson

Councillor Ann Gate

9. Declarations of Interest

RESOLVED: To note that the following interests were declared:

Agenda Item 5 – Call-in of the Decision of Cabinet Held on 17 November 2011: Whitchurch Pavilion and Playing Fields

Councillor Nana Asante declared a personal interest in that her church, on occasions, used the Whitchurch Playing Fields. She would remain in the room to listen to the debate on this matter.

Councillors Marilyn Ashton and Barry Macleod-Cullinane declared personal interests in that they were Members of Cabinet in November 2008, when an initial report was submitted to it setting out options available to the Council on the replacement and/or refurbishment of Whitchurch Pavilion and the Playing Fields. Additionally they were also Members of Cabinet when initial proposals had been submitted to Cabinet on the Harrow Leisure Centre and the Skatepark. They would remain in the room to listen to the debate on this matter.

Councillors Margaret Davine and Brian Gate declared personal interests in that they were Members of Cabinet who had taken the decision on 17 November 2011. They would remain in the room to listen to the debate on this matter.

Councillor Ann Gate declared a personal interest in that she was married to a Member of Cabinet who had taken a decision on 17 November 2011. She would remain in the room whilst the matter was considered and voted upon.

Councillors Susan Hall and Paul Osborn declared personal interests in that they were Members of Cabinet in November 2008, when an initial report was submitted to it setting out options available to the Council on the replacement and/or refurbishment of Whitchurch Pavilion and the Playing Fields. Additionally they were also Members of Cabinet when initial proposals had been submitted to Cabinet on Harrow Leisure Centre and the Skatepark. They would remain in the room whilst the matter was considered and voted upon.

10. Minutes

RESOLVED: That the minutes of the meeting held on 4 May 2011, be taken as read and signed as a correct record.

11. Protocol for the Operation of the Call-In Sub-Committee

The Chair drew attention to the document 'Protocol for the Operation of the Call-In Sub-Committee' which was included with the agenda papers and read paragraphs 5 and 8 to the meeting. The Chairman outlined the procedure to be followed at the meeting and explained that in accordance with Committee Procedure Rule 46.5, a notice seeking to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:-

- (a) inadequate consultation with stakeholders prior to the decision;
- (b) the absence of adequate evidence on which to base a decision;
- (c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
- (d) the action is not proportionate to the desired outcome;
- (e) a potential human rights challenge;
- (f) insufficient consideration of legal and financial advice.

RESOLVED ITEMS

12. Call-in of the Decision of Cabinet held on 17 November 2011: Whitchurch Pavilion and Playing Fields

The Chairman welcomed to the meeting, Mr Stephen Lewis and other residents who were signatories to the Call-in notice. He also welcomed the Portfolio Holder for Property and Major Contracts, who was in attendance to respond to the call-in, the Corporate Director Place Shaping and the Head of Corporate Estate.

In accordance with Committee Rule 4.1.1, the Sub-Committee agreed that Councillor Barry Macleod-Cullinane could speak at the meeting.

Mr Lewis confirmed that their call-in related to the decision made by Cabinet on the Whitchurch Pavilion and Playing Fields taken on 17 November 2011. They also confirmed that the basis of their reasons for call-in related to grounds a and b of the Protocol, namely that there was inadequate consultation with stakeholders prior to the decision and there was an absence of adequate evidence on which to base the decision.

Mr Lewis and Councillor Macleod-Cullinane outlined their reasons relating to each of the grounds raised in the call-in notice. During the course of their presentation, they raised the following issues:

- there had been a lack of consultation stretching back to 2008/09 when the proposals had been initially discussed. Very few residents had received a leaflet relating to a presentation on the future of the Pavilion and Playing Fields and additionally in their view, had received nothing from the Council on this issue;
- it was believed that a new stage of consultation was required. There had been a number of socio-economic factors which had changed since 2009;
- wide ranging consultation was required for this project which should involve all local residents and Ward Councillors. Local residents and Ward Councillors had not been consulted as part of this process;

- senior officers within the Council had confirmed that consultation with Ward Councillors had not taken place. The report to Cabinet had incorrectly stated that this had occurred. Ward Councillors had not been asked for their view, which had been acknowledged by the Corporate Director Place Shaping in writing;
- the Council had not followed its principles of decision making and it had not given due consideration to relevant professional advice;
- there was inadequate evidence to base the decision on as an initial presentation was conducted in 2009. There was no clear evidence to show that there had been consideration to further issues that may have arisen between 2009 and this current stage;
- there had not been a demonstration of robustness in the details within the report presented to Cabinet. Additionally questions had been submitted to the Portfolio Holder at the Cabinet meeting on 17 November 2011, for which answers had only been received after the call-in notice period had expired. In their view, as these answers should have been prepared for the meeting this demonstrated that they had not been robust in their consideration to a change in the evidence base;

In conclusion the representative of the signatories stated that there had been no consultation with relevant local residents, it was unlikely that the development would meet the needs of the local community and their perception was that the decision was being thrust upon them. A copy of email correspondence was handed out to panel members and the Portfolio Holder to evidence the lack of consultation with ward councillors.

The Chairman then invited the Portfolio Holder for Property and Major Contracts to address the Sub-Committee. He made a statement to the meeting which included the following points:

- Cabinet had considered that it was best to secure investment from a suitable organisation, to enter into a partnership arrangement with the Council, to refurbish the Whitchurch Pavilion and ensuring the modernisation of the facilities;
- the Planning Policy Guidance 17 produced as part of the evidence portfolio for the Local Development Framework Core Strategy, clearly identified that within the Local Development Framework, there was a need to improve sports facilities within the borough;
- the Council had performed a marketing exercise in relation to the Pavilion and Playing Fields. This had resulted in twelve expressions of interest received by the deadline. From this the Council had shortlisted two preferred bidders and undertook a public consultation in June and July 2009. This involved, in particular, meetings with residents at Whitchurch First School;

- each of the Preferred Bidders had produced leaflets which had been circulated to residents. Feedback received from this meeting was that there were concerns relating to traffic congestion, parking, use of floodlights and late night nuisance;
- on 9 November 2009, the Council sent a letter to residents saying that this second stage had now been suspended while the Council considered the feedback received and the concerns raised;
- as part of the suspension, the Council made it clear to the Preferred Bidders that this was only a suspension and the project would be re-considered in the future;
- the Council also offered to both Preferred Bidders, the opportunity to seek recovery of costs incurred up to that date, if they wished to withdraw or if the Council subsequently decided not to complete the project;
- the Council re-engaged with the two Preferred Bidders and were keen to support the scheme commenced in 2009, to demonstrate their commitment;
- it was necessary at this stage to first select the Preferred Bidder and partner. Only once this had been decided could there be further detailed engagement and consultation with residents in producing detailed plans for the proposed development. Additionally any development would be subject to Planning permission which would provide a further formal opportunity for consultation and engagement;
- both preferred bidders had demonstrated that they had the potential and capability to deliver the project. However there was greater confidence in the Whitchurch Consortium;
- the Members of Cabinet had acted in the best interests of the Council and residents. There had been three alterations to the recommendations submitted to Cabinet, which demonstrated that there was a clear commitment to consultation with residents and ward Councillors;
- the Preferred Bidder would be responsible for progressing the further consultation with residents and other stakeholders. If the development agreement was successfully negotiated, it was envisaged that there would be two further stages of consultation. It was fully expected that any final sports facility would only go through with the full support of local neighbours;
- officers would not recommend any final development to be approved by Cabinet, if further adequate and necessary consultation had not been carried out;

- it was clear that there had been appropriate consultation carried out in June / July 2009. Both consortiums hand delivered leaflets to all relevant households, which had provided notice of the intention to hold a public presentation to discuss the proposals. These meetings had been held between 6.30 pm and 8.30 pm on 23 June and 1 July 2009;
- on 9 November 2009 a leaflet produced by the Council was hand delivered to local residents advising of the suspension of the project at the time. As this had therefore been an extensive process, it was deemed that no further consultations were required;
- the decision for selecting a Preferred Bidder was a matter reserved for Cabinet. The requirement for meaningful consultation to be undertaken by the Preferred Bidder was clear;
- the Corporate Director Place Shaping had apologised for the incorrect statement in the Cabinet report stating that Ward Councillors had been consulted. It was believed however that this was not detrimental to the decision made by Cabinet. The decision made clearly provided for further consultation with Ward Councillors and the public for a further report back to Cabinet before any decision was made to complete a development agreement with the Preferred Bidder;
- it was important to understand that in relation to this project, there was no statutory requirement to consult with Ward Councillors and members of the public prior to the decision made by Cabinet. The only statutory requirement relating to this project was to place an Open Space Notice which had been completed. The only other further requirement related to the Planning process which would only come into effect once developments had been proposed and progressed;
- Belmont Ward Councillors had been advised of a report being prepared on 10 October 2011. The report had been sent to Councillor Macleod-Cullinane in advance of the meeting on the basis of goodwill;
- the Council had checked with the Preferred Bidders whether their interest in the project still existed prior to the decision made by Cabinet. They had re-confirmed their interest and had the necessary resources to deliver the project;
- there was nothing to indicate that the economic context was different to 2009 or of any improved market solution.

In conclusion the Portfolio Holder commented that he expected the Preferred Bidder to engage in a positive manner with local residents and demonstrate the benefits of the scheme rather than focusing on any adverse impacts. There was no reason to re-tender on the proposals especially as there was no guarantee that a stronger preferred bidder would emerge. If the process was re-commenced it could also send a negative message to potential developers willing to invest in the borough. It was envisaged that the project would deliver a superb sports facility for the benefit of local residents and the

borough. It was therefore his belief that the grounds for call-in had not been met.

The Chairman invited representatives of the signatories to ask questions of the Portfolio Holder for Property and Major Contracts. The questions were responded to by the Portfolio Holder and officers as follows:

- the position could be summarised by having entrusted an organisation, a potential partner of the Council, to undertake meaningful, wide ranging consultation with all stakeholders including local residents. If a satisfactory outcome through consultation was not reached, officers would not be recommending sign of the final development so there could be no planning permission sought;
- there was no reason to reopen the project for re-tender. This would have lead to further delay and potentially have financial implications for the Council;
- from the Council's perspective, proper consultation had taken place. Two meetings had been arranged involving both preferred bidders. These meetings had been well attended from both local residents and Councillors. The consultation had raised a number of issues for consideration;
- the meaning of consultation could be interpreted as engaging with local residents where one is able to present key and material issues, reflect any concerns and ensure a two way process;
- an apology had been given verbally and in writing on the incorrect statement contained in the report relating to consultation with Ward Councillors. The Corporate Director had expected engagement to take place with Ward Councillors prior to the decision made by Cabinet and lessons had been learnt from the experience;
- the decision made by Cabinet did not grant a lease to the Preferred Bidder. It would simply allow them to develop proposals, through consultation, to deliver the best sporting facility possible;
- there was some commercially sensitive information which could not be disclosed publicly, however the Cabinet report was detailed and set out the parties' tenders and the process for selection. Officers had had regard to existing experience in utilising similar sites, the relevant business plans and the ability to finance the project when making a recommendation to select the Whitchurch Consortium as the preferred bidder;
- a key learning point of the Council was that if there was a project of strategic significance, there would be consultation with Ward Councillors to enable them to respond to enquiries from their constituents;

- the previous administration of the Council had conducted the initial consultation exercise and chose the two Preferred Bidders;
- in response to a query on why the consultation feedback had not been recorded fully, it was stated that there had been a number of issues raised which had been reflected in the report;
- as part of the planning process, further consultation would be undertaken and fed back to the Planning Committee and in relation to any licence, the Licensing Panel would consider relevant issues in relation to operating hours.

The Chairman then invited Members of the Sub-Committee to ask questions of the Portfolio Holder for Property and Major Contracts. The questions were responded to by the Portfolio Holder and officers as follows:

- at this stage, Cabinet had made the decision to select its preferred partner and engage them to conduct meaningful consultation and detail planning for a new sports facility;
- the selection of the two Preferred Bidders from the twelve expressions of interest were shortlisted when the previous Portfolio Holder for Property and Major Contracts was in post. The shortlisting was conducted by six officers, from diverse backgrounds, within the Council;
- it was never the intention for Cabinet to make a decision on shortlisting from the one expression of interest. The process had been agreed by the previous Portfolio Holder for Property and Major Contracts;
- Ward Councillors had been advised of the report but not consulted as stated in the report for which an apology had been made for the incorrect statement. There was an acknowledgement that the error contained in the report should have been picked up as part of the clearance process and the Portfolio Holder apologised for this;
- in response to a query on why a revised report had not been circulated after the mistake had been noticed, it was stated that the purpose of the report on the Supplemental Agenda was to contain a set of recommendations which further demonstrated the Council's commitment to ensuring that meaningful consultation took place with residents;
- it was officers' views that generally consultation consisted of one or more parties presenting proposals, receiving feedback on the proposals, considering and then making a decision. For more formal decisions it was expected that consultation feedback would be in writing. For the purposes of this project an officer had been present at the meeting held in 2009 to record the feedback provided. The material facts had been captured and reported as part of this process;

- the information relating to numbers of members of public present at the meetings was recorded but not available at this meeting. Officers had included the information they thought was relevant to the report;
- there was not a standard process followed in relation to consultations generally. This was because each project had different scales and complexities which therefore affected the extent of consultation required;
- the Planning process would ultimately be the final consulting mechanism of the design of any new facility. Prior to that it was envisaged that consultation would be held on aspects such as how the facility would be delivered, how access would be facilitated and the layout of the facility;
- in response to a query on why there was not an exempt report to the one presented to Cabinet containing more financial information on the process, it was stated that the report presented to Cabinet in November 2008 contained all the relevant information. The Portfolio Holder had seen all relevant information as part of the decision making process and Cabinet had been satisfied with the information provided. It was important to note that information, normally subject to the exemption principles, had been placed in the public report with the permission of the preferred bidders, so there was no need for a Part II supplement;
- a standard Equalities Impact Assessment had been conducted on the property and disposal aspects of the report. This was explained in more detail within the report. Equalities implications were covered under the selection criteria under the heading of Community Need;
- the assessment criteria and scoring matrix used in relation to the Preferred Bidders was clear about accessibility, diversity and equalities requirements. The Preferred Bidder would now have to further these considerations as detailed proposals were developed;
- a comparable project in relation to this specific scheme was in relation to the Harrow Leisure Centre and relocation of the skateboard park. A partner was appointed to relocate the skate park and undertook extensive engagement with local residents and service users;
- there had not been any urgency in presenting the report to Cabinet at its meeting on 17 November 2011. The decision was reserved to Cabinet. Whilst there was regret that three recommendations had been presented, the intention behind this was to strengthen the commitment for meaningful and full consultation on the issue.

Members of the Sub-Committee made a number of comments including the following:

- there was an expectation that exempt information should have been presented as a separate report to Cabinet, when it made its decision;
- there was a view that the Equalities Impact Assessment was not clear, and it was vital to ensure that this was correct;
- out of courtesy, Ward Councillors should have been consulted as they were accountable to their constituents who justifiably expected queries to be answered. The error contained in the report relating to Ward Councillors, was unfortunate and something which they would not wish to occur again;
- it would have been helpful if the officer present at the presentation meetings was in attendance to answer questions from the Sub-Committee.

The Sub-Committee then adjourned from 9.13 pm – 10.17 pm to receive legal advice.

Upon reconvening, the Chairman announced that on a majority decision, the Sub-Committee had decided that the challenge to the decision be taken no further and the decision be implemented. The Chairman allowed the dissenting Members of the Sub-Committee to comment which included:

- there was disappointment that consultation with ward councillors and residents had not taken place. Additionally in their view there had been insufficient evidence provided on the selection of the preferred bidder;
- more detail was required on the tendering process and the process of shortlisting against the criteria. Length of time was also a factor.

RESOLVED (majority): That the challenge to the decision be taken no further and the decision be implemented.

13. Termination of Meeting

In accordance with the provisions of Committee Procedure Rule 14 (Part 4B of the Constitution) an extension of time was agreed.

RESOLVED: At 9.58 pm to continue in the normal manner and complete the business remaining on the agenda.

(Note: The meeting, having commenced at 7.30 pm, closed at 10.25 pm).

(Signed) COUNCILLOR JERRY MILES
Chairman