

Written Statement from Councillor Thaya Idaikkadar – Former Portfolio Holder for Property and Major Contracts

In accordance with Committee Procedure Rule 46.2, we the undersigned, hereby give notice that we wish to call-in the Executive Decision – Flash Musicals (Granting of Lease) made on Monday 16th September 2013 by the Portfolio Holder for Property and Major Contracts.

In accordance with Committee Procedure Rule 46.5, we the undersigned, hereby give notice that we wish to call-in the Executive Decision with the following reasons.

1. Inadequate consultation with stakeholders prior to the decision

The decision has been made by the Portfolio Holder in a rush on the day of a Full Council Meeting that had been called to debate a Motion that removed him from his position.

The undue haste of the decision being rushed through has prevented a briefing from taking place with Members or other affected organisations meaning limited time being allowed for proper consultation or examination of the proposal. It also suggests that the intention may have been to circumvent such scrutiny.

The property is within the Housing Revenue Account and the normal consultation process whereby the views of the Tenants and Leaseholders were not sought concerning a reduced rent or future use of the property. (Local Government and Housing Act 1989 Section 74)

Response

The discussions around the issues concerning the occupancy by Flash Musicals at Methuen Road have been ongoing for a period of years and have involved many councillors, many of whom have expressed their value for Flash's work in the community. For several years the organisation and its users have been left in an uncertain position due to the Council's indecision on these issues. The Portfolio Holder felt it was important to clarify this for all concerned. The Portfolio Holder understood that the previous administration also wanted to reach an agreement with Flash to preserve their services in the present location. He had planned to make the decision a few weeks earlier but needed to wait until Flash provided various correspondences relating to the issues.

This is a particular case which requires particular attention. There was no attempt to circumvent any scrutiny as the decision was made a public one subject to call-in. The two Service Level Agreements are under £50,000 and fall within the officers' scheme of delegation.

The lease granted in 2009 did not automatically lapse on 31st March 2013 and it is a protected tenancy under the Landlord and Tenant Act 1954 and thus Flash Musicals are holding over under the terms of this lease. Since the situation is unresolved and rent is not being covered, Members have sought a solution.

There is no legal obligation to consult on an individual tenancy.

2. The absence of adequate evidence on which to base a decision

We appreciate that Flash Musicals, along with the wider voluntary sector in Harrow, provide excellent services to their local communities. However, we fervently believe that the council must treat all of these organisations equitably.

Within the report (2.2.2) it clearly states that evidence has not been provided to support the statement that services have been delivered to the value of £72,000. Where is the evidence that the council specifically asked Flash Musicals to supply these services, what other groups were considered and what was the guiding principles to supply this work in an equitable way across the voluntary and private sector?

There are no details of engagement activity that the Council has undertaken with people whom they consider to be in a similar position of owing debt to the Council and the fairness of the decision.

The decision is unclear as to where, and which budget, the subsidy will come from.

There is insufficient information within the report to demonstrate compliance with the general equality duty across other affected parties or organisations.

Response

The report states that evidence must be finally confirmed before any funds are released. This is in accordance with financial due diligence. Assurance has already been sought by officers from Flash Musicals regarding their accounts, their OFSTED performance, their Health & Safety policies etc.

Flash have been in dispute with the Council over the period of the lease with regards to the original service level agreement they were awarded originally to deliver services. Flash's position is that the original agreement was that there would be an SLA to cover the rent every year and they claim they have therefore delivered those services over a number of years. The Call In assumes that Flash owes the Council money. In practice, the Council has not decided to proceed on that basis over a number of years. This assumption is not accurate. In fact, Flash Musicals provides various highly valued community and voluntary services to the Council and residents which have not been paid by the Council. For example, New Year's Parade and Under One Sky, as well as, numerous other services for disabled people/children and other users.

Other organisations are not yet in a similar position and in any case there are a variety of tenure arrangements for organisations across the borough historically. Where it is clear that monies are owed, those organisations are being dealt with individually.

Carramea have been supported by the Council for their first three years of operation. For year one the value of that support equates to the level of the HRA rent and is on a diminishing basis over the next two years until 2016/17 when the subsidy is at zero. This is in place with a Service Level Agreement which is what is being proposed for Flash Musicals.

Another pertinent example is The Red Brick Café (also known as Harrow Healthy Living Centre in Wealdstone) was supported with a Council subsidy of £50,000 for one year when the café was in serious financial difficulties and at risk of ceasing to operate. Due to this situation, then Council leader, Bill Stephenson, instructed and approved the 53,816 write off, without consultation on 15 February 2011.

A decision will have to be made as to which budget the monies will be met from. There is the Council contingency funding potentially available.

3. The decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework

The policies to apply for funding, or supplying services, across the Council are open and transparent. By one organisation receiving preferential treatment through a hasty process with regard to the write-off of debt and reduced rental for council owned buildings, it has meant that there is significant risk that other organisations will also seek financial reimbursement under similar circumstances and the possible consequence if they are refused.

The decision contradicts the Councils agreed policies that ensure there is a joined-up, cross-sector approach to agreeing the delivery of local priorities.

The property concerned is within the Housing Revenue Account (HRA) and the decision may have an adverse impact on the HRA due to the lower rent, which is contrary to the long term business plan for the HRA previously agreed by Cabinet.

Response

There is no overall Council policy on the leasing arrangements for Council or HRA buildings to community organisations or an overall Council policy on the awarding of SLAs to voluntary and community organisations. There are a variety of arrangements in place. This is not intended as a commissioning process but as a solution to an urgent and particular problem which The Portfolio Holder attempted to resolve.

At the moment, there are already substantial monies owing to the HRA account. This decision is intended to prevent that escalating further and to ensure regular rent is paid. The reduction is due to the capital

investment outlined as a minimum and to the agreed access by the Council to a minimum value of £1,500pa for the purposes of conducting local ward meetings, TRA meetings, etc.

4. The action is not proportionate to the desired outcome

At a time when the council is facing significant financial challenges to its budget with the council having to find £75 million so far and recent announcements that further savings of £60 million will need to be made over the next few years the council needs to ensure that in exercising its functions it has regard to a combination of economy, efficiency & effectiveness. This has not been articulated within the report that the decision has been made on.

There is no mention within the report as to how the decision is proportionate to achieving the Councils agreed vision and priorities.

Response

Without a solution to the Flash Musicals situation, there will continue to be a financial pressure caused by monies owing to the HRA which will increase. Flash Musicals are tenants with secure tenure under the Landlord and Tenant Act 1954. The Council could choose to take back the property and that option was outlined in the decision report. This has some financial implication and is not a guarantee that monies owing to the HRA could be recovered through this process.

The Corporate priorities covered by this decision are outlined in the report.

5. A potential human rights challenge;

When making the decision the Portfolio Holder did not take due regard to the Public Sector Equality Duty (PSED), in particular, where decisions must be aimed at *Fostering good relations between people who share a protected characteristic and those who do not.*

The decision does not positively contribute to the advancement of equality and good relations within the voluntary sector within Harrow as it has ignored the financial difficulties of other organisations that the Council connects with.

Further, the decision does not reflect the wider sector and the delivery of services, which may contribute to greater inequality and poorer outcomes.

Response

There is a draft EQIA for this decision. Flash offers services for people on low incomes, young people, older people, the disabled in one of the most disadvantaged wards in the borough. There are few such services in that area of Harrow. The report outlines the negative impact of Flash Musicals not delivering services. One of the key points of the Public Equality duty is to provide equality of access to services. Supporting Flash to deliver will support that duty.

Each organisation in this situation would need to be assessed on a case by case basis.

6. Insufficient consideration of legal and financial advice.

a) Legal Advice

There is no publication of any Legal Advice provided around the fact that the Council is commissioning services from Adult Services and Community & Culture without due consideration of other suitable providers and the effect that this may have.

There is no mention in the Legal Advice concerning the fact that the decision contradicts the commitments given within the agreed Council Equality Objectives that state:-

As a service provider, we are committed to ensuring our services are open, fair and accessible by taking into consideration the needs and requirements of our diverse community and service users. We will continue to improve our services through a comprehensive Equality Impact Assessment (EqIA) process, engaging with and listening to our communities and service users.

As a procurer of goods and services, we will continue to ensure our commissioning processes are fair and equitable and that service providers delivering a service on our behalf share our commitment to equality and diversity.

b) Financial Advice

No consideration has been given to the fact that the decision will have a major long term impact on the budgets within the council plus the write-off value of £72,000 out of this year's contingency fund.

It must be noted that the decision commits the council to expenditure through a 5 year SRA that is not available to other providers, is outside of the current commissioning process and is not open and transparent. It also undermines the Outcome Based Grants process.

In view of the reasons outlined in point 3, and due to recent changes within the political administration of the Council, we would like the committee to consider referring the decision to Full Council in accordance with the powers and duties given to the Call-In Sub-Committee as stated within the Constitution.

Response

The legal and financial impacts to the Council are contained within the report. This is not about a competitive commissioning process to award grant funding but a solution to a particular problem which has not been resolved for a number of years. If the situation is not resolved, the problem remains. Flash Musicals remain as tenants under the Act.

In conclusion, Independent Labour Group administration under my Leadership clearly recognised that Flash Musicals has a proven track record of providing outstanding services to the local community, including children and users from disadvantaged background, in one of the most deprived wards in Harrow.

Unfortunately, proper records were not kept by officers during successive previous administrations. There was some doubt about what was in the initial agreement that is why it was not resolved by previous Leaders and Portfolio Holders.

In fact, I discussed this matter many many months ago with the Chief Executive, as then Leader of the Labour Group and the Council, with a view to resolve this unacceptable situation, as it was essential to resolve this longstanding saga by providing a just solution, with the help and support from our officers, who had to trawl through past record stretching back nearly a decade ago when Labour's Keith Burchell was the Portfolio Holder, together with other pieces of information - hence the delay by officers in preparing the report for approval - which is completely reasonable. Officers at the highest level have been involved in the proceedings and the decision to grant the lease is based on the officers' valuation of the rent. Based on 2 new SLA agreements, and with contribution from Flash Musicals, the rent will be fully covered.

The Council is offering ten years lease term, with the break clause after 5 years, in line with agreements with other voluntary and community sector groups, by the Council.

Hard copy signed by

Councillors Bill Phillips, Keith Ferry, Krishna Suresh, Sasi Suresh.

Email notices have also been received from Councillors Amir Moshenson and Yogesh Teli citing the same grounds.