

CALL-IN SUB-COMMITTEE

MINUTES

1 OCTOBER 2013

Chairman: * Councillor Chris Mote

Councillors: * Sue Anderson * Jerry Miles
* Mano Dharmarajah * Anthony Seymour

In attendance: Bill Phillips Minute 58
(Councillors)

* Denotes Member present

Denote category of Reserve Members

† Denotes apologies received

53. Appointment of Chairman and Members

RESOLVED:

(1) To note the appointment of Councillors Anthony Seymour and Chris Mote as Members of the Sub-Committee in place of Councillors Osborn and Ferrari and Councillors Teli, Moshenson and Chauhan as Reserves in place of Councillors Wright, Chris Mote and Chana and in accordance with Council Procedure Rule 1.5, following notification from the Conservative Group;

(2) that Councillor Chris Mote be appointed as Chair for the meeting.

54. Attendance by Reserve Members

RESOLVED: To note that there were no Reserve Members in attendance.

55. Declarations of Interest

RESOLVED: To note that the following interests were declared:

Agenda Item 6 – Call In of the decision of the Portfolio Holder for Property and Major Contracts – Flash Musicals (Granting of Lease)

Councillor Margaret Davine, who was not a member of the Sub-Committee, declared a non pecuniary interest in that she was the Edgware ward councillor and had done some work with Flash Musicals. She would remain in the room whilst the matter was considered and voted upon.

Councillor Kairul Kareema Marikar, who was not a member of the Sub-Committee, declared a non pecuniary interest in that she had attended film events at Flash Musicals. She would remain in the room whilst the matter was considered and voted upon.

Councillor Chris Mote declared a non pecuniary interest in that he had previous involvement with Flash Musicals whilst he was Leader of the Council in 2006. He would remain in the room whilst the matter was considered and voted upon.

56. Minutes

RESOLVED: That the minutes of the meeting held on 5 August 2013, be taken as read and signed as a correct record.

57. 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’ and drew attention to paragraphs 5 and 8. He outlined the procedure to be followed at the meeting and indicated that, with the Sub-Committee’s agreement, he would permit any members of the public who wished to speak on the issue, although there was no specific provision, to do so, as part of the signatories to the call in time allocation.

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.

He informed the Sub-Committee that the grounds (a) - (f) had been cited on the Call In notice and had been deemed to be valid for the purposes of Call-In.

RESOLVED: That the Call-In would be determined on the basis of the following grounds:

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

RESOLVED ITEMS

58. Call In of the Decision of the Portfolio Holder for Property and Major Contracts - Flash Musicals (Granting of Lease)

The Sub-Committee received the papers in respect of the call-in notice submitted by 6 Members of Council in relation to the decision made by the former Portfolio Holder for Property and Major Contracts on Flash Musicals (Granting of Lease).

The Chair advised the Sub-Committee that the former Portfolio Holder for Property and Major Contracts had indicated that he would not be in attendance at the meeting but that he had submitted a written statement which was available to those present at the meeting and attached at Appendix A to these minutes. The Chair indicated that he would break for five minutes during the meeting to allow reading time.

The Chair invited the representative of the signatories, Councillor Bill Phillips, to present the reasons for the call in of the decision to the Sub-Committee.

Councillor Phillips circulated a written statement to members of the Sub-Committee which he read out and which is attached as appendix B to these minutes. He stated the call in was focused on the process and the importance of treating all organisations equally. It was recognised that there would always be winners and losers in any process but the former Portfolio Holder's decision committed the Council to a 5 year contract and other groups had not been afforded the same opportunity.

Gerry Davine, Chair of Harrow Community Transport, stated that he was in attendance as the representative of an organisation that dealt with the Council in terms of community premises. He expressed his concern about the allocations used to set grants. He explained that his organisation had struggled in terms of community premises since the demise Harrow Association of Voluntary Service (HAVS) and stated that, in his view, there

had not been an even handed approach in terms of assistance given by the Council. He understood that Flash Musicals was an excellent and valued organisation but the process in this instance was of concern as it appeared that the amount being written off was close to the sum removed from the grants budget. As a result of the Council's budget savings several organisations had ceased to exist in Harrow and he stated that one organisation should not be permitted to have an increase in finances as a result. The process for allocating funding should be fair and transparent and had an impact on the morale and effectiveness of the voluntary sector.

After allowing five minutes to allow Members and those present to read and consider the former Portfolio Holder's tabled written statement, the Chair invited Councillor Phillips, as representative of the signatories, to make comments.

Councillor Phillips expressed the view that it would be unfair to comment on the statement in the absence of the former Portfolio Holder but it appeared that there had been a great deal of informality in relation to the arrangements in place. He did accept that the decision appeared to be about tidying up history but stated that he would have liked to have had the opportunity to question the former Portfolio Holder.

Having considered the call in notice, the tabled statement and the representations made, the Sub-Committee made comments and, having clarified that the Corporate Director of Community Health and Wellbeing and Divisional Director of Community and Culture would respond if they were able but were not present to either defend or support the decision, asked questions as follows:

- Clarification was sought as to whether Flash Musicals had provided services to the Council, the Corporate Director outlined the history since 2012 when he and his Divisional Director had begun their involvement. In September 2013 it was clear that the Housing Revenue Account (HRA) was £73,000 in arrears. He had met with the Chief Executive and former Portfolio Holder on 9 August 2013 to consider options and it had been agreed that it would be helpful if Flash Musicals provided details of the services that had been provided. As a result of this enquiry, Flash Musicals had provided an invoice in the sum of £103,000 to the Council. The then Portfolio Holder, Chief Executive and then Deputy Leader had met with the Corporate Director and Divisional Director in early September and cleared the report for publication. Following advice from the Council's Director of Finance and Assurance, the report recommendations indicated that verification be sought as to the services delivered by Flash Musicals.
- A Member questioned whether it was felt that Flash Musicals had provided value for money and was advised that the former Portfolio Holder had considered that the organisation had provided services to the Council.

- Having been the Chair of the Performance and Finance Scrutiny Sub-Committee for some time, a Member expressed her concern at the practice of raising a purchase order on the system after receipt of an invoice. In this case there appeared to be no purchase order to support the invoice of £103,000.
- In terms of payment of the HRA debt and having considered the services provided, the Corporate Director advised that he believed that the former Portfolio Holder (and Leader of the Council) had taken the view that the organisation had done good work and that the payment was in recognition of this. He confirmed that he was not aware of there having been an agreement in place but explained that Flash Musicals clearly generated income from a range of sources and prided themselves on their innovative approach. There was no connection between the invoice and future work.
- Referring to page 14 of the agenda papers, a Member sought clarification as to which Members had considered the financial information submitted by the organisation. The Corporate Director stated that governance on this issue had been more closely monitored during the last year and that there had been two Leadership Group discussions and several former Portfolio Holders (prior to May 2013) had met with Flash Musicals. It was his view that the former Portfolio Holder for Property and Major Contracts had reached a conclusion on the issue on 9 August but had requested that the organisation provide an invoice.
- The lead signatory questioned whether the records of the former Corporate Director of Place Shaping, the officer who had had early involvement with the organisation, were available, as it was he that had formed some of the relationships. An open Service Level Agreement may have resolved the situation but no other organisation had had the opportunity to test this. The Corporate Director advised that whilst he had not seen the records his former colleague had submitted several reports to the leadership group. It was, however, clear to officers that Members had thought that they were resolving the issues in relation to Flash Musicals.
- In response to a Member's question as to the state of the building occupied by the organisation, the Corporate Director advised that the improvements had been funded by Flash Musicals. The Member referred to the former Portfolio Holder's tabled statement which indicated that another organisation, The Red Brick Café, had been supported with £50,000 Council subsidy.
- A Member sought an explanation in terms of the lease and the amount paid/owed by Flash Musicals and was advised that the crux of the dispute was whether the Council had agreed to pay the cost of the lease in the SRA or whether Flash Musicals had been expected to pay. By default, the Council had never formed a view.

- A Member requested an explanation of the commissioning process in this case as there was a lack of transparency and was advised that neither the Chief Executive, Corporate Director or Members had viewed this as a commissioning exercise.
- A Member questioned why the decision had been taken in the way it had been and on the day that former Portfolio Holder and Leader of the Council had known it was likely that he was likely to lose his position. He stated that he would have liked to have had the opportunity to question the former Portfolio Holder. He expressed concern at the effect on other voluntary groups and stated that it appeared that Flash Musicals had received preferential treatment. The Corporate Director acknowledged the comments made but explained that there had been extensive discussions on the issue in the preceding months.
- Responding to a Member's comments that the decision had resulted in a reduction in the Council's General Fund of £72,000 and that the report appeared to indicate that not all of the issues with Flash Musicals had been resolved, the Corporate Director advised that there were three issues – should there be a lease, should there be a Service Level Agreement and could the Council satisfy itself in terms of the £103,000 invoice. There was a clear recommendation from the former Portfolio Holder which stated that more work was required in terms of finance. The Divisional Director added that Flash Musicals had a secure tenancy so the situation would continue until the Council took action.

(The Sub-Committee then adjourned from 8.21 pm – 8.42 pm to receive legal advice).

The Chair announced the decision of the Sub-Committee and was

RESOLVED: That

- (1) the call-in on ground (a) – inadequate consultation with stakeholders prior to the decision – be upheld as the stakeholders were the voluntary sector and should have been consulted;
- (2) the call-in on ground (b) – the absence of adequate evidence on which to base a decision – be upheld due to issues with the invoice and the need to get it substantiated;
- (3) the call-in on ground (c) – the decision was contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework – not be upheld;
- (4) the call-in on ground (d) – the action was not proportionate to the desired outcome – be upheld in the context of the current financial climate;

- (5) the call-in on ground (e) – a potential human rights challenge – not be upheld;
- (6) the call-in on ground (f) – insufficient consideration of legal and financial advice – be upheld in terms of financial advice in that it must be noted that
 - (a) the decision committed the Council to expenditure through a 5 year Service Level Agreement that was not available to other providers, was outside of the current commissioning process and was not open and transparent;
 - (b) it undermined the Outcome Based Grants Process; and
 - (c) before the Council had made the decision it should have consulted the voluntary sector.

(Note: The meeting, having commenced at 7.00 pm, closed at 8.45 pm).

(Signed) COUNCILLOR CHRIS MOTE
Chairman