

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

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

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.

Statement

Thank you for giving me the opportunity to speak on this issue. To make it easier for the committee I have some printed copies that I would like to distribute to you now. I will also email a copy to the committee clerk in order that it can be included within the minutes of the meeting.

By way of introduction, perhaps I can say that I know very little of the work of Flash Musicals, and they and their work is irrelevant to this call-in which is focussed solely on the processes involved and used by the Council.

Also can I say to those that are attending this meeting, that this committee is a sub-committee of the Council's main Overview and Scrutiny responsibilities and is made up of the chair of the Overview and Scrutiny Committee and its members. It has no decision making powers, only the power to recommend. It is part of our duty as Councillors to hold the executive to account and to scrutinise their decision making. This meeting is part of that process.

I believe that the residents, the voluntary sector, and all of our partners, expect us as elected representatives to make decisions in an open, honest, fair and transparent way based on all of the facts available to us and after we have listened to their views.

Some may try to say that this is a political issue. This couldn't be further from the truth.

I have been to a few Flash Musicals functions and events and I can honestly say that I have thoroughly enjoyed them. I can see what they have brought to the community since 2002 when they moved to the derelict building in Harrow and turned it into something useful for the community. I would recommend to all in this room that they should visit Flash Musicals and see what excellent work they are doing.

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

With regard to the council commissioning work and providing grants, these are done in an open, honest, fair and transparent way.

Whilst some may not agree with it, everybody understands that there has to be a process – there have to be rules. There are always winners and losers in any process of this kind but everyone accepts the outcomes because they have all been treated the same.

It must be noted that the decision commits the council to expenditure through a 5 year SLA that is not available to other providers; it is outside of the current commissioning process and is not open and transparent. It also undermines the "Outcome Based Grants" process. To make a decision of this type then a large

section of the effected community needs to be informed of the issues and to be largely in agreement.

The reason we have called this decision in is because:-

1. We do not believe that there has been adequate consultation with stakeholders
2. We do not believe adequate evidence has been provided to the Council, or indeed, the wider community before the decision was made
3. We believe the decision is contrary to the policy framework and not wholly in accordance with the budget framework
4. We believe that the action is not proportionate to the desired outcome
5. We believe that the decision has been made by the Portfolio Holder without due regard to the Public Sector Equality Duty.
6. We also believe that the legal and financial advice has not been fully considered before the decision was made.

Bearing in mind that fairness is central to and underpins the processes previously used by the Council; I would like to address the 6 points of the call-in separately.

1. Inadequate consultation with stakeholders prior to the decision

As we are all aware the perception is that this decision was made in a rush on an afternoon when others were preparing for a full council meeting where their own future as Leader and Portfolio Holder would be decided. I cannot believe that the Portfolio Holder thought that this issue was so pressing when his own future was being called into question.

As we all know, council decided to remove the Leader that evening and subsequently the new leader dismissed the Portfolio Holder from his position.

It is clear from the report that there has been no recent consultation or briefing with Councillors from the different political parties for their views on such a major and highly public decision.

As we are all aware this property is within the Housing Revenue Account and there are other properties owned by this account that are used by voluntary sector organisations that also bring immeasurable value to local communities.

Were they consulted and will they be treated in exactly the same way?

Within the report it says that the council will place work with flash musicals but doesn't indicate what this work could be. This would confirm to anyone outside this process that the decision has been made in a hasty and hidden way?

Who else could have applied for this unknown work? Has there been any consultation with any affected group for this unknown work – quite frankly, we do not know.

One might be forgiven for believing that there was an intention to circumvent such scrutiny.

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

Within the report (2.2.2) at the bottom of page 18 it clearly states that the evidence has not been provided to the council, or more importantly to the Portfolio Holder prior to making the decision that would support the statement that services have been delivered to the value of £72,000.

I would ask why a decision has been made so quickly when this basic information has not been provided. I understand that this situation has developed over many years and little other than a passing reference is made to the complications of the relationship between the council and this site is referenced in the report.

I would further ask why we are making a decision to pay someone for something when the report gives so little or no real justification.

If we are to be an open, honest, fair and trustworthy council, 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 sector?

Where are the details of any action that the Council has undertaken with other people or groups that were in a similar position? Where is the indicative precedent that the Council has used from the past that has informed the way this situation has been dealt with?

This report should contain more of the history of this site and its work with Flash Musicals. The voluntary sector should be consulted, the results of that consultation should be in the report and Flash themselves should be asked to contribute.

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.

Quite frankly, by one organisation, with little explanation, receiving preferential treatment through a hasty decision making process with regard to the write-off of debt and the reduced rental for council owned buildings, it has meant that there is significant risk that other organisations or individuals will also seek financial reimbursement under similar circumstances and the possible consequence if they are refused. Indeed, this was highlighted within the report as a risk (page 23) but quite clearly, ignored.

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, or other Council budgets used to reimburse the HRA, due to the lower rent. This could be seen as contrary to the long term business plan for the HRA that has been previously agreed by Cabinet.

4. The action is not proportionate to the desired outcome

We accept that this debate around flash musicals has been going on for some time, one source has said for 13 years, and we have sympathy with their position.

But is this the right outcome?

The council needs to ensure that in exercising its functions it must have regard to a combination of economy, efficiency & effectiveness.

Where is this articulated within the report?

I would contend that the decision has been made without it being understood how it is proportionate to the desired outcome.

5. A potential human rights challenge

Under Equality legislation, specifically the Public Sector Equality Duty (PSED), a decision maker must have due regard to the effect of that decision.

Where is it articulated how this decision has taken due regard to fostering good relations between people who share a protected characteristic and those who do not?

Where is it articulated how this decision has taken due regard to positively contributing to the advancement of equality and good relations within the voluntary sector within Harrow when the decision has ignored the financial difficulties of other organisations that the Council connects with.

Where is it articulated how this decision reflects the wider sector and the delivery of services, which may contribute to greater inequality and poorer outcomes.

6. Insufficient consideration of legal and financial advice.

a. Legal Advice

What Legal Advice was given that made this decision so urgent? 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

In these tight fiscal times we need proper information before making these decisions. We need to know what the long term impact of our decisions will be, and in decisions like these, especially on other voluntary sector organisations.

But is it £72,000? Within the press it has been stated, and I quote, *“Flash has done services in the tune of £103,000. Which the council has an invoice for and still needs to be made”*

Do we have a contract with Flash to provide services valued at £103,000, if so, can we see the contract and the SLA that governs it? And was this work won as a result of a competitive tender, and will this cost escalate?

What I suspect has happened is that officers have exploited the good nature of this charity and that we will find little formal evidence to support any invoice for services rendered to the council by Flash Musicals.

To Conclude:

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. This should happen particularly if the Portfolio Holder making the original decision is not present to be questioned.

I believe that there are many lessons to be learnt from the way that the Council has dealt with Flash Musicals over the years and these should be studied in a public arena.