

TUNBRIDGE WELLS BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

MINUTES of the meeting held at the Council Chamber, Town Hall, Royal Tunbridge Wells, TN1 1RS, at 6.30 pm on Thursday, 10 November 2022

Present: Councillor Seán Holden (Chair)
Councillors Britcher-Allan, Ellis (Vice-Chair), Goodship, Johnson, Knight, Le Page, McMillan, Morton, Ms Palmer and Rogers

Officers in Attendance: Lee Colyer (Director of Finance, Policy and Development (Section 151 Officer)), Claudette Valmond (Head of Legal Partnership and Interim Monitoring Officer) and Mark O'Callaghan (Scrutiny and Engagement Officer)

Other Members in Attendance: Councillors Bailey, Chapelard, Dawlings, Hayward, Pound and Warne

APOLOGIES FOR ABSENCE

OSC37/22 Apologies were received from Councillor Atkins.

DECLARATIONS OF INTEREST

OSC38/22 There were no disclosable pecuniary or other significant interests declared at the meeting.

DECLARATIONS OF A PARTY WHIP

OSC39/22 There were no declarations that any Member was subject to a party whip.

NOTIFICATION OF PERSONS REGISTERED TO SPEAK

OSC40/22 Councillor Macmillan took the opportunity at this point in the meeting to give an apology regarding any statements or comments made at the last meeting that might have caused offence.

Councillor Bailey was in attendance and would be presenting the Call-in in respect of Item OSC41/22.

Councillors Chapelard, Hayward, Pound and Warne were in attendance on behalf of the Cabinet in respect of item OSC41/22.

Councillor Dawlings had registered to speak on item OSC41/22.

CALL-IN OF CABINET DECISION: BUDGET UPDATE 2023/24

OSC41/22 The Chairman explained the Call-In process.

Councillor Bailey presented the Call-In on behalf of those who had signed the Call-In request. Comments included:

- To ask whether the correct process had been followed, following the decision by Cabinet on 27 October 2022 to allocate £100k of parking

- revenue to the new Community Support Fund.
- The Community Support Fund was a worthy and viable scheme that would help the most vulnerable in the Borough and this was welcomed.
 - Decisions on the use of tax payers money must be made on sound evidence and advice and that it acted within the budget framework that was democratically agreed by Full Council. Further that it allowed for thorough and transparent scrutiny of its proposals. On this occasion this had not happened.
 - The Council's decision making process had a number of stages that included public consultations, the opportunity for Members to ask Officers questions and the right of members of the public to speak. This tried and tested method of scrutiny had been in place at the Council for a number of years and ensured that any proposed policy/decision was fully considered before it was put before Cabinet for a final decision.
 - In terms of the decision to move £100k from car parking revenue to the new Community Support Fund, this process was not followed. Instead Cabinet announced the proposal at their meeting on 27 October 2022.
 - There was no advance notice of this proposal and the decision to approve was taken by Cabinet in under 3 minutes.
 - This proposal, including any mention of the Community Support Fund had not been discussed at the Finance and Governance Cabinet Advisory Board on 11 October 2022 and had therefore not been scrutinised by the Committee specifically set up to consider upcoming Cabinet decisions.
 - Due to the lack of notice, no Members or members of the public were afforded the opportunity to speak on this issue.
 - There was still little detail regarding the Community Support Fund. At Cabinet in July, only scant details were given, with only an initial step of creating terms of reference being decided.
 - To date, details of any terms of reference had not been made known to Members.
 - The only details available were included in Appendix D (2.16 and 2.17) of the report which stated that an initial allocation to the fund would be made from higher fees and charges and the money would be awarded to local organisations based on recommendations from the Grants Assessment Panel.
 - Who were these local organisations and what were the mechanisms in place to distribute the funds.
 - Details of the Grants Assessment Panel were also not known.
 - This raised further questions related to the criteria that would be used to establish who would benefit from the fund.
 - Central Government were also providing support including help with energy bills. Will all types of support be taken into account when considering which households would benefit from this funding to ensure parity across the Borough.
 - Who would administer the funds and at what cost to the Council.
 - None of these questions had been answered and it appeared that since the announcement in July, this time had been wasted.
 - It was therefore premature to allocate taxpayers money to a fund that nobody knew anything about.
 - In terms of the specific reasons for the Call-In:
 - o Inadequate consultation with stakeholders, including the

Finance and Governance Cabinet Advisory Board prior to the decision being made.

- No public consultation on the issue.
- The Community Support Fund had not been included in the annual budget survey last year.
- The additional consultation on car parking charges made no mention of the Community Support Fund.
- The Council's Monitoring Officer had raised concerns that the issue had not been discussed with anyone outside of Cabinet.
- There was no evidence to suggest that a report had been prepared by officers that would give an indication of any practical problems with running the Community Support Fund, including details of the resources required and the administration costs that would be involved.
- The move would be a departure from the budget framework for this financial year as the Community Support Fund was not included in the agreed budget set in February 2022. However, there did seem to be an agreement between Cabinet and Officers to increase fees and charges (particularly car parking) to raise additional fees for this fund.
- The uncertainty about levels of revenue lead the Council's s151 Officer to warn Cabinet about the impact the allocation of £100k on the Council's finances. It created a risk that the budget deficit for this year would not be reduced as quickly as previously agreed.
- When Cabinet made their decision, no legal or financial advice had been given. Given the comments made by the s151 Officer and the Monitoring Officer, this suggested that their comments had been ignored.

The Committee asked questions, to which the answers included the following points:

- There had been no discussion with Councillor Hayward, Cabinet Member for Governance and Transparency on any constitutional matters arising from this proposal.
- There had been no discussion with any Cabinet Member either prior or after the decision had been taken.

Councillor Chapelard presented part of the response to the Call-In for the Cabinet and the points raised included:

- On 25 May 2022, the Borough Partnership took control of the Council.
- One of the priorities was the safeguarding of the Council's finances.
- The financial position inherited was a multi-million pound deficit.
- The deficit this year was £944k rising to £2.6m in 2023/24.
- Given the financial position, Cabinet took an urgent decision to address the deficit.
- An In-Year budget review was undertaken with the aim of raising £485k to help reduce the £944k deficit. As part of the In-Year budget review, Cabinet set up a Community Support Fund with a budget of £100k.
- Cabinet approved the In-Year budget review, including the setting up of the Community Support Fund in July 2022.
- The aim of the In-Year budget review was to reduce the deficit by raising fees and charges, including parking, rather than cutting

Council services.

- The Borough Partnership had listened to concerns raised about parking charges, and a consultation was subsequently undertaken.
- There were 2 consequences of the public consultation, firstly that some of the proposed increases were not taken forward, and secondly, the implementation of the new charges were delayed.
- As a result of these consequences, less money was being raised than had been expected.
- The parking revenue was however higher than originally forecast. Cabinet therefore made a decision at the October meeting to put forward £100k rather than wait for the revenue from the increases to take effect.
- Cabinet believed this decision was consistent with voting to create a Community Support Fund as part of the In-Year budget review in July 2022.
- The Community Support Fund was set up to support the neediest residents in the Borough and it was hoped that all concerned would agree that it was the right thing to do.

Councillor Warne presented part of the response – inadequate consultation with stakeholders prior to decision - to the Call-In for the Cabinet and the points raised included:

- Responsibility for understanding the cost of living crisis and addressing the Council's response to it was part of Councillor Warne's remit as Deputy Leader and Cabinet Member for Rural Communities.
- Details of the consultation and stakeholder engagement undertaken in the 5 months prior to the decision being taken included:
 - o June 2022 – met with the manager of the Hawkhurst Community Fridge.
 - o A proposed pilot scheme by Nourish to supply 'crock pot packages' for those unable to afford the increasing energy prices.
 - o June 2022 – met with the chairman of Cranbrook and Sissinghurst Parish Council who together with representatives from Cranbrook and District Age Concern and Wellbeing in the Weald were working to set up a Warm Room project and a Cranbrook Community Kitchen which would be held weekly in the Vestry Hall. This scheme was now up and running. The Chairman of Cranbrook and Sissinghurst Parish Council was invited to speak about this initiative at the Cabinet on Tour meeting held in Cranbrook in June 2022. Other Warm Room initiatives were now being set up across the Borough.
 - o Discussions were also now taking place to resume the weekly face to face service previously provided by the Citizens Advice Bureau in Cranbrook (this had ceased during the pandemic).
 - o September 2022 – Consultation took place with the Manager of the Paddock Wood Community Advice Centre.
- At the Finance and Governance Cabinet Advisory Committee held on 12 July 2022, in the In-Year budget Review 2022-23 paper included a recommendation to create the Community Support Fund and invited Members to debate and offer suggestions on its Terms of Reference. Members did not take the opportunity to do this but they did vote to support the recommendation. Cabinet ratified the decision at the meeting held on 20 July 2022.

- The production of Terms of Reference had been delayed until greater certainty of the funds available were known.
- On 28 September 2022 a Cost of Living Summit was held at The Amelia Scott Centre. Invitations were sent to a wide selection of stakeholders from both the public sector and from Charitable Organisational Sector Partners. The invitations were well received and delegates were sent from across the Borough, including the CEO of the North and West Kent Citizens Advice Bureau, West Kent Mind and Torchlight, KCC's Financial Hardship Project Manager, Operations Director of Nourish, Manager of the Paddock Wood's Community Advice Centre and representatives from Town and County Housing, Kent Police, NHS, Tunbridge Wells Town Forum, KALC Parish Chairman, Salvation Army, local churches, Mosaic Resource Centre and the No1 Community Centre. In addition there were a number of representatives from Tunbridge Wells Borough Council.
- Following the summit, the Council were developing a digital hub that would signpost residents who were looking for support. This would be launched in the next few weeks.
- Support continued to grow across the Borough and it was important that Councillors continued to discuss this issue as widely as possible.
- In response, the Chairman of OCS reiterated that the purpose of the Call-In was related to the decision making process not the merits of the scheme. It was noted that none of the information presented on the level of stakeholder consultation and engagement had been made known to Members prior to the decision being taken.

Councillor Hayward presented part of the response – absence of adequate evidence on which to base a decision - to the Call-In for the Cabinet and the points raised included:

- Parking revenue, even before the increases were introduced were trending above budget forecasts.
- Over £50k of added revenue had been reported.
- Conscious of the impact on the loss of revenue due to no increases in parking charges being implemented in Southborough and Paddock Wood, confirmation was sought from Officers that top slicing car parking revenue to fund the Community Support Fund was still viable.
- There was no lack of evidence to support providing funds for the scheme.

There were no questions to Councillor Hayward.

Councillor Pound presented part of the response – a departure from or a change to the agreed budget and policy framework - to the Call-In for the Cabinet and the points raised included:

- The budget was developed in late 2021 early 2022 by the previous administration and approved by Full Council before the current administration took over.
- Two of the Members of the Call-In were Members of Cabinet in the previous administration and the third, a Member of the Finance and Governance Cabinet Advisory Board who was present at the meeting in July 2022.
- At the Finance and Governance Cabinet Advisory Board in July 2022

the In-Year budget report made clear that updates on the Council's financial position would be provided each quarter with the opportunity for Cabinet to revise the budget and their forecasts.

- The report further stated (ref para 2.16) that the impact of the cost of living crisis was impacting on many of the most vulnerable residents in the Borough and to help, the Council would create a Community Support Fund and would receive an initial allocation raised from the additional income received from sales, fees and charges.
- Car parking revenues had improved and therefore it was reasonable to allocate these funds to the scheme.
- The report further detailed (ref para 2.18) a summary of further budgetary revisions, including the setting up of the Community Support Fund with a budget of £100k.
- At paragraph 2.20, the report it made clear that the revised budget forecasts would change as a result of further expected cost pressures.
- There was no departure from the budget and no change of policy.
- The creation of the Community Support Fund went through the Council's Cabinet cycle and the decision to allocate funds was within the purview of Cabinet.

There were no questions to Councillor Pound.

Councillor Chapelard presented part of the response – insufficient consideration of legal and financial advice- to the Call-In for the Cabinet and the points raised included:

- An additional recommendation was added to the report that went to Cabinet to approve the £100k for the Community Support Fund.
- The Constitution included a provision for Cabinet to amend and add recommendations to the agenda papers.
- Prior to the Cabinet meeting all Cabinet Members were made aware of the legal and financial implications of including the new recommendation.
- Legally, Cabinet were informed of two things: that they were able to make the virement and secondly that in doing so, there was a risk the item might be Called-In.
- Financially, Cabinet were informed of two things: the transfer of £100k would slow down the new administration's attempt to reduce the £944k deficit for this year, and secondly, that any deficit at the end of 2022/23 would have to be met from Reserves.
- The Borough Partnership were proud to support the neediest households in the Borough.

The Committee asked questions of the Cabinet, to which the answers included the following points:

- Details of how the money would be administered and distributed were still to be worked out. It would be premature to convene the Grants Assessment Panel until such time as there was an assurance the funds were available.
- Cabinet had not deliberately withheld information from the public and there was no attempt to bypass the Council's decision making process. The issue was discussed at the Finance and Governance Cabinet Advisory Board and subsequently approved at Cabinet in July 2022 and was in the budget line for 2022/23.

- The virement of funds was acceptable and allowed for in the Council's Constitution.
- The reason for bringing it forward to Cabinet in October was because it was recognised that the Community Support Fund was already in place and that there would be no change in the budget – money would simply be moved between budgets. The action by Cabinet was both allowable and reasonable.
- The logistics of how the funds would be administered and distributed were still to be finalised. This would be dependent on the schemes that came forward. At such time as these were submitted, it would be then that discussions would take place with the Council's finance department.
- Officers had made Cabinet aware of the financial and legal risks associated with making this additional recommendation in advance of the Cabinet meeting held in October.
- Funds existed within the budget for 2022/23 that allowed for a virement from one budget to another budget and with no change to the budget outturn that was agreed by Full Council in February 2022.
- Given that resource levels within the Council were overstretched, Cabinet decided not to start the process of putting together a Terms of Reference and mechanisms for delivery and distribution until such time as the money became available. As soon as the decision has been approved, the details for delivering the £100k would be taken forward.
- The report that was discussed and approved at the Finance and Governance Cabinet Advisory Board in July 2022 made clear that the Community Support Fund would be financed from additional revenue from Sales, Fees and Charges. There had been additional income raised from Sales, Fees and Charges. It would be for the Committee to determine whether the process was appropriate.
- The budget deficit for 2022/23 was £944k. In the In-Year budget review sought to reduce the deficit by £485k. The latest information was that by the end of this financial year, the Borough Partnership aimed to cut the inherited deficit of £944k and make headway on the £2.6m deficit inherited for 2023/24.
- The aim of the Borough Partnership was to reduce the deficit as much as practically possible, using Reserves as little as possible. The rate the deficit would be reduced would now be slower as Cabinet had decided to transfer £100k to the Community Support Fund. Cabinet were fully aware of the risk and confirmed it would not draw on Reserves above £944k.
- Cabinet confirmed they believed the decision was transparent and supported by the public.

Councillor Dawlings had registered to speak which included the following:

- The Call-In stemmed from the misrepresentation of the Council's financial position.
- It was about the financial procedure that had been followed, not about the establishment of a Community Support Fund which was welcomed.
- At 31 March 2022 the Council had £132m of fixed assets an increase of £7m in the year, usable cash reserves of £24m and no borrowing.
- As a direct result of this financial position, the Council was now benefiting from higher interest rates being paid on deposits, now

- forecast to be £750k above the budget estimate.
- The £944 deficit, agreed by Full Council in February 2022 followed 2 years of the pandemic.
 - The Council's primary income stream came from fees and charges – totalling about £22m a year. It was prudent to see how the Council's income recovered and the level at which it might plateau before considering any reduction to Council services.
 - To give perspective to the £944k deficit, at the end of quarter one, the car park revenue was £300k above the forecast budget. The budget for the outlying years did not include the impact of any co-working arrangements which was estimated to deliver cost savings of £500k. This two factors alone would have substantially addressed the budget shortfall.
 - The major change since the budget had been approved was the rate of inflation, now forecast to peak at 11%. In addition, energy costs for the Council had doubled.
 - Cabinet instigated an In-Year review to consider how to raise income and reduce costs.
 - As part of the review, Cabinet announced the plan to establish a Community Support Fund, to be funded from increased car parking charges.
 - The decision to increase car parking charges were also Called-In because they had overlooked the need to consult with residents, businesses and the Town Council's concerned.
 - The increased fees from car parking had not yet been received.
 - Cabinet had the power to approve the virement of items within the budget. Additional revenue was being generated, but it should be used to offset budgetary pressures not originally forecast.
 - Funding the Community Support Fund from Reserves should have been detailed in a report from the s151 Officer and presented to the Finance and Governance Cabinet Advisory Board before going to Cabinet.

Debate Included:

- A motion was put forward that the decision be put back to Cabinet for reconsideration and the opportunity for Democratic oversight including reports from Officers. Members to also be given the opportunity for review. The motion was put by Cllr Holden and seconded by Cllr Goodship.
- There was an objection to the conduct of the meeting, that there was a lack of impartiality shown by the Chair of OSC.
- There was doubt the Cabinet had addressed the core issue of the process by which the decision was taken.
- Had the normal Democratic process been followed, including questions relating to the use of existing grant funding would have been explored.
- In addition there had been no opportunity to discuss the costs of administering the scheme.
- There was contradiction by Cabinet in that at the July Cabinet the funds would come from the increases in car parking charges, but now the funds would come from additional revenue brought forward and not included in the £944k forecast.
- There had now been 2 Call-In's, both related to the lack of consultation.

- The distribution of the Fund would be done via the Grants Assessment Panel which was an establishment mechanism by the Council.
- The In-Year review allowed for the use of revenue streams.
- There was concern about delaying the implementation of the Fund should the decision be taken to refer the item back to Cabinet.
- Cabinet had assured the Committee that the £944k deficit was still on forecast, or would be reduced. This assurance gave Cabinet the ability to move funds between budgets provided they still delivered the forecast budget.
- The reasons for making the decision had been more than covered by Cabinet. The evidence presented to the Committee was robust and had been explained in great detail.
- The main purpose of the Call-In was due to Cabinet making a decision to use £100k. The general consensus tended to suggest that it was a good cause. The level of engagement with stakeholders was made clear at the meeting this evening, but at the time the decision was taken, none of these details were made known. Due process should be undertaken before moving forward.

A recorded vote was requested on the motion made by Councillor Holden and seconded by Councillor Goodship to refer this decision back to Cabinet for reconsideration with the opportunity for the usual democratic oversight.

For: Cllrs Goodship, Holden, Palmer (3)

Against: Cllrs Britcher-Allan, Ellis, Johnson, Knight, Le Page, McMillan, Morton, Rogers (8)

Abstain: 0

The motion failed.

A motion was proposed by Councillor Le Page, seconded by Councillor McMillan that no further action on the Call-In be taken. A recorded vote was requested.

For: Cllrs Britcher-Allan, Ellis, Johnson, Knight, Le Page, McMillan, Morton, Rogers (8)

Against: Goodship, Holden, Palmer (3)

Abstain: 0

The motion was carried.

RESOLVED – That no further action be taken.

URGENT BUSINESS

OSC42/22 There was no urgent business.

DATE OF THE NEXT MEETING

OSC43/22 The next meeting is scheduled for 21 November 2022.

NOTE: The meeting concluded at 8.10 pm.