

**Special Overview and Scrutiny Committee on 15 August 2011**

Report Title: **Monitoring Officer's Report on the Call-In of a Decision taken by the Cabinet at its meeting on 19 July 2011 relating to the proposed closure of three Older People's Residential Care Homes and one Learning Disabilities Residential and Respite Home.**

Forward Plan reference number (if applicable): **N/A**

Report of: **The Monitoring Officer and Head of Legal Services**

Wards(s) affected: **All**

Report for: **Consideration by Overview and Scrutiny Committee**

**1. Purpose**

1.1 To advise the Overview and Scrutiny Committee whether or not the decision, taken by the Cabinet on 19 July 2011 on a report entitled "**Proposed closure of three Older People's Residential Care Homes and one Learning Disabilities Residential and Respite Home**" falls inside the Council's policy or budget framework.

**2. Recommendations**

2.1 That Members note the advice of the Monitoring Officer and Chief Financial Officer that the decision taken by the Cabinet was inside the Council's policy and budget framework.

Report Authorised by:

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**3. Local Government (Access to Information) Act 1985**

3.1 The following background papers were used in the preparation of this report:

The Council's Constitution

#### **4. Background**

- 4.1 Under the Call-In Procedure Rules, set out in Part 4, Section H of the Council's Constitution, any 5 Members may request a Call-In even though they do not claim that the original decision was in any way outside the Council's budget/policy framework. Members requesting a Call-In must give reasons for it and outline an alternative course of action. But it is not necessary for a valid Call-In request to claim that The Cabinet or Cabinet Member acted outside its powers.
- 4.2 The Call-In Procedure Rules require the Monitoring Officer to rule on the validity of the request at the outset. The Monitoring Officer has ruled that this Call-In request complies with all the 6 essential criteria for validity.
- 4.3 The Monitoring Officer must also submit a report to Overview and Scrutiny Committee (OSC) advising whether each Cabinet decision, subject to Call-In, was inside or outside the Council's policy framework (budget framework advice, when this is relevant, is provided by the Chief Financial Officer). This is still a requirement even when those Members requesting the Call-In do not allege that the Cabinet decision was outside the policy framework. While OSC Members should have regard to the Monitoring Officer's advice, it is a matter for Members' to decide whether the Cabinet decision was inside the policy framework or not.
- 4.4 This decision should be the subject of a separate specific vote and it should be expressly minuted.
- 4.5 It is not every Council policy that forms part of the "Budget & Policy Framework". This framework is set out at Part 3 Section B of the Constitution. It contains the most important over-arching strategies, such as the Sustainable Community Strategy, and major service plans. There would have to be a clear contravention or inconsistency with such a Plan before a Cabinet decision could be ruled to be outside the policy framework.

#### **5. Details of the Call-In and the Monitoring Officer's Response**

- 5.1 The Call-In request form states, under the first heading, that the proposals in the original decision of the Cabinet "are considered to be inside the policy and budget framework".
- 5.2 The Monitoring Officer agrees that this decision falls within the policy framework.
- 5.3 The Council has a duty to provide residential accommodation, whether long-term, short term or for respite care, under section 21 National Assistance Act 1948 and also by exercise of other statutory powers, where this is appropriate. There is no policy or Council Strategy that provides that the Council must meet these obligations by direct provision. The commissioning arrangements currently in place meet the needs of the service users affected and any new arrangements should continue to meet these needs in order that the Council may discharge its duties without the need for these homes.

- 5.4 The Cabinet report records the extensive consultation that has taken place with users and relevant Council staff affected and contains and comments upon an Equality Impact Assessment carried out of the proposals designed to demonstrate that the Council has had due regard to its duty to eliminate discrimination and advance equality of opportunity.
- 5.5 The Cabinet report does not run counter to any of the published key Council policies and strategies and as such the Monitoring Officer confirms that it falls within the Council's Policy framework.
- 5.6 The call in request states that this decision is within the budgetary framework. The Chief Financial Officer agrees with this view given that the initial proposals for the closure of three Older People's Residential care homes and one Learning Disabilities Residential and Respite Home and the related financial implications were specified in the Council's Medium Term Financial Planning (MTFP) report that was approved by Cabinet and subsequently by Council in February 2011. The financial implications of the closures were factored into the MTFP and set out within the report. The decision taken by members to approve the MTFP, and therefore this proposal, was part of the normal budget setting procedures within the Council's budgetary framework.

## **6. Call-In Procedure Rules**

- 6.1 Once a Call-In request has been validated and notified to the Chair of OSC, the Committee must meet within the next 10 working days to decide what action to take. In the meantime, all action to implement the original decision is suspended.
- 6.2 If OSC Members determine that the original decision was within the policy framework, the Committee has three options:
  - (i) Not to take any further action, in which case the original decision is implemented immediately
  - (ii) To refer the original decision back to The Cabinet as the original decision taker. If this option is followed, The Cabinet must, within the next 5 working days, reconsider their decision in the light of the views expressed by OSC.
  - (iii) To refer the original decision on to full Council. If this option is followed, full Council must meet within the next 10 working days to consider the decision. Full Council must either decide, itself, to take no further action and allow the decision to be implemented immediately or it must refer the decision back to The Cabinet for reconsideration.
- 6.3 If OSC Members determine that the original decision was outside the policy/budgetary framework, the Committee must refer the matter back to The

Cabinet with a request to reconsider it on the grounds that it is incompatible with the policy/budgetary framework.

6.4 In that event, The Cabinet would have two options:

- (i) to amend the decision in line with OSC's determination, in which case the amended decision is implemented immediately
- (ii) to re-affirm the original decision in which case the matter is referred to a meeting of full Council within the next 10 working days.

## **7. Recommendations**

7.1 That Members note the advice of the Monitoring Officer that the decision taken by The Cabinet was inside the Council's policy framework. To note the advice of the Chief Financial Officer that the decision taken by the Cabinet Member was inside the Council's budgetary framework.

## **8. Use of Appendices / Tables / Photographs**

8.1 Not applicable.