

Special Overview and Scrutiny Committee on 13 February 2007

Report Title: **Monitoring Officer's Report on the Call-In of a Decision taken by The Executive on 23 January 2007 recorded at minute TEX 148**

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 Executive on 23 January 2007 on the Review of Parking Fees and Charges and minuted at TEX 148 falls inside the Council's policy or budget framework

2. Recommendations

2.1 That Members note the advice of the Monitoring Officer that the decision taken by The Executive was inside the Council's policy 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

The report on the Review of Parking Fees and Charges to The Executive meeting on 23 January 2007

4. Background

- 4.1 In order for a decision to be outside the policy framework, it would have to be contrary to, or inconsistent with, a policy set out in Part F.6 of the Constitution which is "The Budget and Policy Framework Schedule". Among these framework policies are "over-arching" strategies such as the Community Strategy. The Council's Constitution itself is part of the framework that must be complied with. A decision would be outside the budget framework if it necessarily resulted in expenditure exceeding an agreed budget. Decisions must, of course, comply with the relevant legislation.
- 4.2 Under the Call-In procedure set out in Part I.3 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 budget/policy framework. Members requesting a Call-In must give reasons for it and outline an alternative course of action. In other words, it is not necessary for a valid Call-In to claim that The Executive acted outside its powers. It is sufficient to allege that the original decision was ill-advised.

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

- 5.1 The Call-In form states, under the first heading, that the original decision of The Executive "is not claimed to be outside the budget/policy framework". The Monitoring Officer agrees with this.
- 5.2 In order that Members of OSC should be fully advised, the Monitoring Officer has also commented on two other issues raised by the Call-In which are (i) public consultation and (ii) referring the decision to full Council.
- 5.3 The Call-In form continues by criticising the extent of the public consultation that preceded the original decision. It appears to attack the absence of a full "informal" consultation of local residents that is often undertaken to assess local opinion on new traffic schemes before proceeding to "statutory" consultation.
- 5.4 The original decision of The Executive was to commence "statutory" consultation under the provisions of the Road Traffic Regulation Act 1984 and the Local Authorities Traffic Orders (Procedure) (England and Wales) Regulations 1996. This "statutory" consultation, as the name implies, constitutes the complete procedures required by the relevant legislation just mentioned. This will include a notice of the proposals in the local press and the official London Gazette, notices attached to street furniture in the roads affected and the placing of the full proposals on deposit for public inspection in Council offices. Compliance with these procedures is therefore sufficient, legally. There is no legal requirement for any other "informal" public consultation.
- 5.5 The Call-In form states, under the second heading, that "the decision is properly the prerogative of the whole Council". However, all decisions under the above legislation are "executive" functions. Any decision on a Traffic Order subject to objections must be taken by The Executive rather than full Council. This does not prevent OSC from referring the matter to full Council for consideration in accordance with paragraph 6.3 (iii) below but it should be noted that full Council cannot actually take the decision.

6. Call-In Procedure Rules

- 6.1 The rules governing the Call-In procedure are set out in Part I.3 of the Council's Constitution. Once a Call-In request has been validated and notified to the Chair of Overview and Scrutiny Committee (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 The Monitoring Officer must prepare a report (this report) to advise OSC whether or not the original decision was within the Council's policy framework. OSC Members must have regard to that report and any advice from the Monitoring Officer but Members themselves make the eventual determination as to whether the original decision was, in fact, within the policy framework.
- 6.3 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 Executive as the original decision taker. If this option is followed, The Executive must meet within the next 5 working days to reconsider its 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 Executive for reconsideration.
- 6.4 If OSC Members determine that the original decision was outside the policy framework, the Committee must refer the matter back to The Executive with a request to reconsider it on the grounds that it is incompatible with the policy framework.
- 6.5 In that event, The Executive 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 Executive was inside the Council's policy framework.

8. Use of Appendices / Tables / Photographs

- 8.1 Not applicable.