

SCRUTINY MANAGEMENT PANEL

MINUTES OF THE MEETING of the Scrutiny Management Panel held on Thursday 15 October 2009 at 9.30 am in the Executive Meeting Room, Floor 3, The Guildhall, Portsmouth.

(NB: These minutes should be read in conjunction with the agenda for the meeting).

Present

Councillors Les Stevens (Chair)

Cheryl Buggy

Jim Patey

Terry Henderson

Frank Jonas

Paula Riches

Caroline Scott

Mike Park (Deputising for Malcolm Hey)

Lee Hunt (Cabinet member for Culture & Leisure)

Robin Sparshatt (Opposition spokesman for Culture & Leisure)

Members who invoked call-in procedures

Steve Wemyss (till 9.45 hrs)

Donna Jones

Jim Fleming

Officers

Michael Lawther, City Solicitor & Monitoring Officer

Suki Binjal, Head of Legal Services

Stewart Agland, Local Democracy Manager

Toby Livermore, Senior Valuer

Seamus Meyer, Parks & Recreation Manager

Julian Pike, Corporate Finance Manager

28 Apologies for Absence (AI 1)

Apologies for absence were received from Councillors David Fuller and Malcolm Hey.

29 Declarations of interest (AI 2)

Councillor Hunt declared an interest, as he was the cabinet member involved in the original decision.

There were no other declarations of interest.

30 Minutes from the Meeting of 3 September 2009 (AI3)

The panel

RESOLVED that the minutes of the Scrutiny Management Panel meeting held on 3 September 2009 be confirmed as a correct record.

Councillor Henderson sought clarification in relation to item 25 (ii) to confirm when an officer would be attending scrutiny to answer questions in relation to this matter. It was noted that an officer would be invited to attend the next scheduled scrutiny management panel meeting on 26 November 2009.

31 Exclusion of Press and Public (AI 4)

The intention of the panel is to hold the meeting in open session as far as practicable, however, should the panel need to discuss items that are of an exempt nature, they have the ability to move into closed session.

32 Portsmouth Outdoor Centre – Call-in of a decision taken by the Cabinet at its meeting on 18 September 2009 (AI 5)

Councillor Wemyss was invited to address the panel as the lead member who invoked the call-in process and outline his reasons for doing so.

Councillor Wemyss accepted that whilst he disagreed with the decision taken by Cabinet on 18 September 2009, it was the process for doing so that he was aggrieved by for the following reasons

- Decision to prevent call-in should have been discussed in open session
- Portsmouth Outdoor Centre was not in the Forward Plan and therefore not available to be consulted on by the public
- Held in exempt session which prevented public representation
- Disagreed with the advice given by the City Solicitor and chose to seek legal advice elsewhere
- That section 15 of the Access to Information Procedure Rules was the appropriate rule in this case and that rule 16 was irrelevant as rule 15 specifically states, "*where such a decision is taken collectively, it must be taken in public*", and as such, felt that the decision taken was illegal
- That the decision should be set aside and reconsidered to allow the public to engage in the process when the outcome is considered
- The report could have been written with exempt appendices which would have made the bulk of the report open to all.

In response to Cllr Wemyss, the City Solicitor agreed that in essence rule 15 does apply even though the decision was taken in exempt session.

If the panel sought to comply with rule 15 and take the decision in public, this would have put the panel in the position of dealing with exempt items in open session, which would potentially have been in breach of Access to Information Procedure Rule 10.

It was acknowledged by the City Solicitor that the decision to exclude the press and public from the meeting when determining the prevention of call-in procedures was incorrect and that there was no reason why this decision should not have been taken in open session. Despite the fact that the decision was taken in closed session, this does not diminish the legitimacy of the decision that was taken regarding the Portsmouth Outdoor Centre.

Representations were then heard from the other councillors who invoked the call-in procedures.

Cllr Fleming was concerned that

- The decision was taken in breach of Access to Information Procedure Rules 13
- The decision making process was not open and transparent
- Did not follow due consultation, nor was it within the letter or spirit of the City Council's constitution

Cllr Jones queried why

- The issue was dealt with as urgent business and not added to the Forward Plan for a decision at the next available meeting

Cllr Hunt was then invited to address the meeting in his capacity as the Cabinet member for Culture & Leisure and agreed that

- It would have been preferable to have had the item included on the Forward Plan ahead of the meeting, however, due to ongoing negotiations to achieve the best outcome, this led to the meeting being required before the next publication of the Forward Plan (having addressed the panel, Cllr Hunt then left the meeting at 9.55 hrs)

Cllr Sparshatt addressed the panel in his capacity as opposition spokesman for Culture & Leisure and stated that whilst he commended the efforts of the officers involved, he felt that the procedure that was adopted was incorrect.

In a deviation from the procedure for dealing with call-in procedures which had been circulated to the participants at the beginning of the meeting, Cllr Park proposed that the decision of the panel be taken in public rather than move into closed session. The panel unanimously agreed this proposal and the meeting continued in open session.

In answer to questions raised by members, the panel heard

- The agenda was published within the correct legal time-frame for public meetings
- Members Information Service number 36 issued on 11th September 2009 advised all members and the general public that the meeting would be taking place on 18th September 2009 and would be discussing the Portsmouth Outdoor Centre
- The decision to prevent call-in, in exempt session was wrong due to the layout of the agenda but this did not affect the Cabinet decision
- It would have been preferable, if time would have allowed, to have made as much of the report open with an exempt appendix
- The decision remains in force and stands legally. If the panel were minded to refer back to Cabinet, the decision could be implemented prior to the next Cabinet meeting
- The call-in procedures in place are founded on the model constitution adopted by all local authorities in 2001 and are in need of being updated to reflect the needs of Portsmouth

A proposal was put forward by Cllr Park (seconded by Cllr Henderson) that the decision be referred back to Cabinet for reconsideration of the original decision.

Following a vote, three members voted in favour of the proposal with four members voting against the proposal.

The proposal to refer back to Cabinet was unsuccessful.

As a result of this, Cllr Riches proposed (seconded by Cllr Buggy) that the City Solicitor be asked to address the procedural points raised from this panel meeting to amend the constitutional rules of procedure relating to call-in, special urgency and the treatment of exempt reports to eliminate the current inconsistencies, especially around the law and how it sits within the constitution and report his conclusions to the standards committee in due course. This action will hopefully meet member's needs regarding the openness and transparency of decision making.

Following a vote, four members voted in favour of this proposal with three members abstaining. The proposal was carried.

RESOLVED that the City Solicitor address the procedural points raised from this panel meeting to amend the constitutional rules of procedure relating to call-in, special urgency and the treatment of exempt reports, to eliminate the current inconsistencies, especially around the law and how it sits within the constitution and report his conclusions to the standards committee in due course.

33 Date of Next Meeting (AI 6)

The next meeting will be held on Thursday 26 November 2009 at 3.30 pm in the Executive Meeting Room, third floor of the Guildhall

The meeting closed at 10.20 am.