

To Mr Robin Taylor, Head of Policy and Governance, Waverley Borough Council

From Cllrs. Julia Potts, Stephen Mulliner, John Gray, Simon Dear, Members or Substitute Members of the Overview & Scrutiny Committee – Value for Money & Customer Service (“VfM O&S Committee”)

Subject: Call in of an Executive Decision taken on 8th July 2020

1) What decision is being called in?

- (a) The decision to approve the use of up to £50,000 from the Investment Advisory Board Reserve to commission the Council’s external property advisors, Montagu Evans, to undertake a detailed options appraisal of the Broadwater Golf Course site.
- (b) the decision to approve a further draw down of the reserve to cover legal fees of £20,000 which were (or are to be) incurred in obtaining the site back for the Council.
- (c) the inadequate explanation and apparent failure of process in relation to how the decision by the Executive in December 2018 to grant a new lease to Broadwater Golf Club was overturned which then led to the decisions to approve the requested expenditure. (Reason: to ensure that the VfM O&S Committee can examine all the facts from the decision to grant the new lease to the current situation where there is a potential legal issue and further expenditure which could breach the Constitution and process).

2) Why is the decision being called in?

We call these decisions in because:

- The decision to undertake the appraisal conflicts with the decision made by the WBC Executive at its meeting on 4th December 2018 to “Proceed with due legal process to grant a new lease to the Golf Club on the terms proposed in Exempt Annex 1”. A decision appears to have been made to change WBC’s position from supporting the granting of a new lease to opposing it. However, the intention to decide to overturn the 2018 Executive decision was not made public, which prevented prior scrutiny and questioning, and the reasons for doing so have not been disclosed. It is therefore not possible to be confident of the soundness of the decision to overturn and of the decisions to spend £50,000 on the appraisal and £20,000 on legal fees.
- The failure to disclose publicly the intention to decide to overturn the 2018 Executive decision conflicts with parts of Article 13.1 of Part 2 of the WBC Constitution (Principles of decision-making), namely:
 - (c) “a presumption in favour of openness”
 - (d) “clarity of aims and desired outcomes”
 - (f) “that decisions are only taken after the proper consideration of written reports which comply with the principles of the Access to Information legislation”.
 - (g) “that relevant matters are taken fully into account in decision-making”
- The failure to disclose the reasons for the decision to overturn the 2018 Executive decision is in conflict with Article 13.1(j) of Part 2 of the WBC Constitution which requires “that decisions are recorded by officers and published together with the reasons and relevant background papers”.

- The reports published as part of the agenda for the Executive meeting held on 8 July 2020 that relate to the decisions contain insufficient information to make a sound decision in accordance with Article 13.1(f) and (g) of Part 2 of the WBC Constitution.
- The proposed level of expenditure on the appraisal has not been adequately justified and so may conflict with Article 13.1(a) of Part 2 of the WBC Constitution (that decisions should display “proportionality”).
- The proposed level of expenditure on legal fees has not been adequately justified and so may conflict with Article 13.1(a) of Part 2 of the WBC Constitution (that decisions should display “proportionality”).
- The decisions emanate from a decision to refuse a new lease stated by the Portfolio Holder for Finance at the Executive meeting held on 8 July 2020 to have been taken by himself which thereby conflicted with Article 13.1(i)(iv) of Part 2 of the WBC Constitution in that it failed to comply with section J11 of the Scheme of Delegation which reserves to the Executive the grant or renewal of leases in excess of 25 years and, by implication, any decision to rescind a decision to grant such a lease.
- The decisions involve the making of a Supplementary Estimate but were not accompanied by a report from the Section 151 Officer and thereby failed to comply with paragraphs 4.27 to 4.30 of the Finance Regulations.
- The failures to comply with Article 13.1 as listed above and with the Finance Regulations give rise to grave concerns about the propriety and soundness of the process followed in deciding to refuse a new lease and about the wisdom and financial soundness of that decision and of the decisions to spend £50,000 on an appraisal and £20,000 on legal fees.
- There has been a lack of consultation and engagement with the local ward members, local residents and the parties that currently occupy Broadwater Park. This displays a lack of transparency and openness and conflicts with the Waverley Corporate Plan.
- The VfM O&S Committee needs to understand why it is believed by the Executive that there are other uses of the site that will offer better value for money than the fully developed scheme proposed by Broadwater Golf Club and supported for over four years and until very recently by WBC.
- The VfM O&S Committee needs to understand how the Executive plan to have a sufficiently detailed redevelopment plan in place to defend proceedings if Broadwater Golf Club challenge the notice under s.25 Landlord & Tenant Act 1954 by applying for a new lease and secure a court hearing within 18 months.

3) Who is calling in the decision?

- a. Cllr Julia Potts
- b. Cllr Stephen Mulliner
- c. Cllr John Gray
- d. Cllr Simon Dear

4) What information do you want to be available at the call-in meeting?

The below is an indicative list, to be agreed following consultation with the Head of Policy & Governance, Robin Taylor.

- Portfolio Holder to be present and to make a presentation to the meeting

- Head of Policy & Governance to present on the processes followed, especially the way in which the Executive decision of December 2018 has not been implemented
- Borough Solicitor, Representative of DAC Beechcroft to present on the legal matters and to explain all correspondence in relation to this matter to justify the spending of £20,000 on legal fees to date and what is expected going forward
- Counsel's opinion on the issue of the Section 25 Notice, including any advice (both internal and external (and the cost of such external advice)) of successfully defending an application by the Tenant for a new lease
- The Tenant to appear and detail process and timeline
- The Tenant's Surveyor and other associated Consultants
- The Tenant's lawyers and any other relevant legal advisors to present in detail the position of the Tenant

Please note that all documentation, including emails, minutes of meetings, options considered, advice received, summaries of any consultation that has taken place and any documentation in which a decision is recorded are to state the date on which the relevant document was created. The VfM O&S Committee also requires copies of all documents which seek to justify all relevant decisions made by Waverley Borough Council Officers and Councillors.

Dated July 15th 2020