

## CALL-INS

(Overview & Scrutiny Procedure Rule 15)

I have received a Notice of Call-in from the following Members which refers to;

Executive Meeting 22 November 2018 Minute ref E46/18

**Cllr John Birch**

**Cllr John Green**

**Cllr Keith Baldry**

As Members of the O&S Panel.

The Notice is also supported by the following Non Executive Members;

**Cllr Robert Vint**

**Cllr Julian Brazil**

I have referred to these Members collectively here as 'the Applicants' for the purpose of this request.

The reasons submitted are set out in full on the Notice and 3 Appendices.

I have considered the reasons in detail and my advice on behalf of the Monitoring Officer is as follows;

### **Reason 1; Due consultation and taking of officers' professional advice.**

The Applicants state that there has been inadequate consultation with Totnes Town Council and local businesses affected by the decision.

The basis of this objection is that an email dated 8 August 2018 from Cathy Aubertin to Totnes TC indicated plans for a pay on entry scheme (PoE) for public toilets at Coronation Rd and Civic Hall Totnes, but also stated that *'The facilities at Steamer Quay are the subject of further consideration and I will be in touch with you about these at a later date'*.

As a result of this email a Ward Member for Totnes, Cllr Birch concluded and told the local businesses and Town Council that there were no current plans for Pay on Entry at Steamer Quay. He had no information to think otherwise.

In a later email dated 16 November to the Totnes TC, Cathy Aubertin indicated that the Council did now propose PoE at Steamer Quay. The email was not shared with the Totnes Members until 19 November which was four working days before the Executive meeting on 22 November. The meeting Agenda was published on Weds 14<sup>th</sup> November (i.e. the required five working days before the meeting), with this agenda item being indicated as 'to follow'. The report was subsequently published on Friday 16<sup>th</sup> November (14.22hrs) (i.e. two days later than the published agenda). At the time of publication the Totnes Members would have had no pressing need to check the report urgently although they would have been expected to consider it prior to the Executive meeting. This

changed on 19 November when Cllr Birch became aware of the plans for PoE at Steamer Quay via the shared email. Cllr Birch and any other Totnes Members effectively now had no more than four days to follow up and find out more about the plans for Steamer Quay. Strictly speaking due to the late report and the previous assurance of further discussions about Steamer Quay, the Members were to some extent mis-informed and / or were not provided with the requisite 5 working days' notice to consider the officers report. Notice to Totnes TC on 16 November was within the required time limits but did not provide opportunity for further discussion through their formal meeting cycle. In terms of consultation it appears to me that there was no consultation on *the change of plan*, just notice on the change of plan for Steamer Quay.

There was extensive consultation on the impact of toilet closures / charging generally prior to the Officer's report.

It is not possible to say what Cllr Birch and the Totnes Members would have done if they had been provided with the requisite Notice period, but the point here is that the correct process for consultation and publication was not followed. It is widely accepted by the council members, officers and the residents of South Hams that closure of public toilets is a contentious issue and 'high on the agenda'.

**For these reasons my advice is that due consultation was not provided as part of the decision making process.**

## **Reason 2; Human Rights and Article 11.2(e) of the Constitution**

I have looked at the UN statements referred to in Appendix 2 and the UN guidance in relation to sanitation. Whilst I agree that the UN supports the right for all to have access to toilet facilities this does not translate to a statutory obligation to provide a free toilet on every street corner. Much of the UN emphasis is centred on not preventing access to toilets when people are detained or not provided with sufficiently clean and safe facilities. There needs to be an element of proportionality.

In considering human rights and equality the Council MUST have regard to relevant guidance but it must then balance the competing needs of local services with available resource and the demands for statutory services. It is inevitable that budgetary pressures will come in to the reckoning. From a procedural point of view the Council's obligation is to **consider** the impact of the various types of toilet provision if any and make its decision on a fully informed basis.

In carrying out a Comprehensive Impact Assessment which includes sections on Equality, Diversity, safeguarding, health and safety and wellbeing my advice is that the Council **HAS** properly considered its obligations under Article 11.2(e) of the Constitution (respect for human rights and equality).

**In my view there are no grounds to call-in on the basis of Reason 2.**

## **Reason 3; Lack of clarity and desired outcomes Article 11.2(d)**

The Applicants submit that the report and its presentation lacked clarity. Effectively the Applicants now raise a number of questions upon which they require clarification.

If the report had been published in the requisite time period, and if Cllr Birch or the other Totnes Members had been aware of the change of plan before 16 November it would be reasonable to expect them to raise all the questions in Appendix 3 at the Executive meeting.

However due to the failure of process at Reason 1 above, that opportunity was denied or was impeded by the late notice.

For this reason (procedural impropriety and late notice) but not because of the content of the questions, I would respectfully refer the O&S Panel back to reason 1 above. In my view Reason 3 simply strengthens Reason 1 and I would recommend that an update that clarifies some of these points raised be included with the published agenda papers that will be presented to the O&S Panel when it formally considers this call-in.

Signed Sue Nightingale

Dated 03 December 2018

Those councillors calling-in will need to specify the reasons for the call- in.

(h) W hen the relevant Executive minutes are put before the Overview & Scrutiny Panel, together with the advice from the Monitoring Officer on the grounds for the call-in, the councillors who called in the decision shall have the right to attend and speak. The Leader of the Council and/or relevant Executive Members shall be invited to attend to explain the basis for the decision but may then be asked to leave. They may choose also to make submissions in writing. Relevant officers shall also be invited to attend.