

Bristol City Council
(Draft) Minutes of the Call In Sub-Committee
(of the Overview and Scrutiny Management Board)



26 June 2018 at 4.00 pm

Members of the sub-committee present:

Councillors: Gollop (Chair), Alexander, Hopkins, Mead, O'Rourke and Langley (substitute)

Members who called-in the 5 June Cabinet decision – Enhancement of six of the Ardagh Tennis Courts:

Councillors: Combley, Fodor, Denyer, Stevens and Bolton

Cabinet Member:

Councillor Dudd, Cabinet Member for Energy, Waste and Regulatory Services

Officer Attendance (in full or in part):

Kevin Slocombe (Head of Mayor's Office), Jacqui Jensen (Executive Director: Adults, Children & Education), Dr Susan Milner (Interim Director of Public Health), Nancy Rollason (Deputy Monitoring officer and Service Manager Legal), Gemma Dando (Director: Communities), Richard Fletcher (Service Manager: Communities), Guy Fishbourne (Sport & Physical Activity Development Manager) and Louise deCordova (Scrutiny Advisor)

1. Welcome

The attendees were welcomed to the meeting.

Councillor Gollop was elected as Chair.

2. Declarations of interest

There were no declarations of interest.

3. Public forum

The sub-committee received and noted the public forum questions and statements as follows:

Questions:

1. Sam Thompson – Ardagh Community Trust



The questioner was in attendance and presented her statement. The sub-committee noted that the questioner had expressed concern that information contained in the responses to her questions differed significantly from her recollection of the matters raised.

Statements:

1. Cllr Tom Brook
2. Cllr Claire Hiscott
3. The Parks Forum
4. Ardagh Community Trust
5. Cllr Eleanor Combley
6. Cllr Clive Stevens

Those in attendance presented their statements.

4. Call In Cabinet Decision - Enhancement of six of the Ardagh Tennis Courts

In accordance with the prescribed procedure, the sub-committee reviewed the Call-in of the decision as follows:

(i) Explanation of procedure:

The Chair explained the procedure to be followed at the meeting. The purpose of this meeting was to specifically review and assess the reasons why this decision had been called-in, and then to determine one of the three options available to the sub-committee, as follows:

- a. to take no further action; or
- b. to refer the matter back to the Cabinet, identifying specific issues for the Cabinet to consider before a final decision was taken.
- c. to refer the matter to the Full Council for a wider debate, on the basis that Full Council could decide to take no further action or to refer specific issues/recommendations for the Cabinet to consider before a final decision was taken.

The Chair advised the parties that the majority of Panel Members, having reviewed the submissions, considered that the key issues in this case were to ascertain i) whether consultation had been required in making the decision and ii) if so whether the consultation that had taken place had been sufficient.

(ii) Presentation of the case by Councillors who called-in the decision:

With reference to the Call-in form included with the agenda papers, Councillors who had called-in the decision presented their case and highlighted their key points as follows:



Cllr Fodor:

- a. In the Councillor's view, silo thinking had been evident in this decision and it had raised the concern that a focus on the sports element of the investment alone, may derail the ongoing Community Asset Transfer negotiations, and in addition, did not appear to be congruent with the Mayor's Empowering Communities Strategy.
- b. A misunderstanding over ward boundaries and relevant neighbourhood partnerships had resulted in key stakeholders in relevant communities not having adequate opportunity to raise their issues and this had exacerbated tensions.
- c. The Councillor expressed the view that a commitment to genuine consultation and partnership, working with the key stakeholders involved, had not been demonstrated.

Cllr Combley:

- a. In the Councillor's view there had been a lack of legitimate consultation with an active stakeholder which had been engaged in advanced negotiations with the Council for several years on the community asset transfer of the whole site. Ardagh Community Trust currently leased the site for a range of community activities and was intrinsically involved in the working of the site.
- b. The decision to withhold a number of tennis courts from the community asset transfer had not been consulted upon.
- c. As a ward councillor, the Member had not experienced the spirit of collaboration expected, once the Lawn Tennis Associations proposals had been put forward.
- d. There had been a lack of clarity over the financial imperative for the Council continuing to be responsible for maintenance of the tennis courts when there was an offer on the table for Ardagh Community Trust to absorb this cost.

Cllr Stevens:

- a. The Councillor referred to Lord Woolf's four legal tests for good consultation and expressed the opinion that there had been no evidence provided to demonstrate that adequate consultation had taken place.
- b. Cllr Stevens played a clip of Cllr Brooks' public forum statement from the Cabinet webcast on 5th June to illustrate his view that the relevant ward councillors considered that residents that had not felt empowered in respect of this process.

The Cabinet Member for Energy, Waste and Regulatory Services, Cllr Dudd, raised a point of order, in respect of the webcast. In response to the Cabinet Member's request, the Sub-Committee noted, that Cllr Brook's public forum statement had concluded in support of the Cabinet decision.

(iii) The Sub-Committee asked questions of the Councillors who called-in the decision:

In response to the Sub-Committee's questions, the following points were raised:

- a. There was no clear evidence available that identified when the Community Trust had been made aware that six courts would be removed from the CAT process.



- b. Callers-in confirmed that there had been discrepancies between the information provided at meetings and that provided via email. Meetings had not been indicative of an ongoing dialogue but more a way for the Council to impart information to the attendees.
- c. Callers-In were of the view that whilst a city wide consultation may have had merit in respect of a Sports strategy, there was a specific and key stakeholder in this particular case that warranted a degree of consultation on the proposal.
- d. It was clear that there had been some evidence of engagement, where a series of meetings had taken place, with various parties, in a variety of contexts, but there had been a lack of consistency and no evidence of records having been kept.
- e. There was concern that meaningful consultation had not fed into the decision and it was the Callers-in view that there had been a focus on increased profitability without sufficient concern for whether the decision was right for this site. The Cabinet report had stated that the City wide model was not dependent on the Ardagh Courts.
- f. It was considered that the lack of consultation had resulted in an undermining of the relationship and negotiations with the Ardagh Community Trust and there could be a risk of undermining the potential for the engagement of other community stakeholders in respect of future community asset transfer opportunities.

(iv) Explanation of Cabinet decision by the Cabinet member and Head of Mayor's Office, and response to issues raised by the Councillors who called-in the decision.

Councillor Dudd, Cabinet Member for Energy, Waste and Regulatory Services provided an overview of the decision and referred to the Cabinet report which set out the basis for the decision and made the following points:

- a. The city wide operating model offered a household membership scheme and pay to play options, with the income generated to be paid into a sink fund which could be drawn down to maintain the courts as required, and this represented a sustainable model for the City.
- b. There had been no legal requirement to carry out consultation in respect of an in principal investment to refurbish a sports facility. However, they had engaged with stakeholders and ward councillors at a series of meetings.
- c. There was evidence that compromises had been made, demonstrated by the negotiation of the Lawn Tennis Association proposal which had resulted in a reduction from the inclusion of 11 courts to 6 courts.
- d. The report was positive and welcome good news in support of the city's pro sport strategy for elite sport.

(v) Questions asked by members of the sub-committee of the relevant Service Director / Cabinet member

In response to the Sub-Committee's questions, the following points were raised:



- a. It was clear that the potential for a Community Asset Transfer model on the Ardagh site added some complexity to what would normally be seen as a straight forward sports investment issue.
- b. There had been no statutory or legal impetus for consultation in respect of an in principal decision but engagement activity had been arranged with key stakeholders on at least 8 occasions. There was evidence of the decision maker having made some compromise in respect of the numbers of courts identified in the decision.
- c. It was not clear when key stakeholders had first been made aware that there was a compromise of 6 courts, but the proposal had been had been tabled during a meeting at City Hall in December 2017.
- d. A consultation in respect of a fee charging model on a number of sites had been carried out via survey questionnaire during 2016. A number of public tennis courts in the city were already operating a fee charging model.
- e. The Deputy Monitoring Officer clarified that a consideration should be given as to whether consultation was needed and if so what a fair and proportionate level of consultation might be in respect of any decision being taken on a case by case basis
- f. It was difficult for the Council to provide usage figures for open access tennis courts as there was no mechanism to collect the information. The Ardagh Trust had carried out surveys of the courts usage so were able to provide some evidence of existing usage.
- g. It was noted that several courts were unplayable, in part due to the open access nature of the facilities, and hence the need for investment in maintenance.
- h. Other areas of the city, such as Redcatch may have been broadly in favour of charging, but the community had raised concern that the charging proposal had come after significant community investment had already been made to refurbish the courts.
- i. The Chair sought the Sub-Committee's views on the option to ask the Cabinet Member if they would agree to have ongoing discussions about implementation of the in principle decision with the Ardagh Community Trust.
- j. Consensus could not be reached in discussion, and the Deputy Monitoring Officer referred the Sub-Committee to the Cabinet Decision Record and confirmed that the Sub-Committee's role was to determine whether the correct process had been followed in making the decision.
- k. In response to debate, the Chair sought further clarification on whether consultation had been required in this case. The Deputy Monitoring Officer referred the Committee to the Council's Code of Good Practice on consultation, the difference between engagement and consultation and the general principles to be applied in deciding whether consultation should take place and if so the principles of good consultation that needed to be followed.
- l. The Deputy Monitoring Officer advised that consultation would not normally be required on in principle decisions to invest in the upkeep of Council property and the Committee needed to consider all the circumstances of this case when making their decision.
- m. It was understood that the Community Asset Transfer discussions with the Ardagh Community Trust were ongoing, but it was recognised that these matters were not within the Cabinet Member for Energy, Waste and Regulatory Service's portfolio.



(vi) General debate and decision

In summary, the following points were raised:

- a. Members firstly considered whether consultation was required in this case. It was recognised that consultation would not usually be required on matters relating to in principle investments to enhance local facilities, and that the Officers are guided by the Council's published Consultation Guidance as to whether to consult, and if so how to do so appropriately, on a case by case basis. However, it was also recognised by the majority of Members that there was a complexity to this specific case due to the ongoing discussions with the Ardagh Community Trust in respect of their business case for a Community Asset Transfer at the same site. The Majority of Members therefore considered that a reasonable expectation of some level of consultation with key stakeholders had been warranted.
- b. Members then went on to consider whether the consultation/engagement that had taken place was sufficient. Members considered that there had been a lack of evidence presented, to support the level of engagement that had taken place, in order to be able to assess its effectiveness; in particular there had been no noting of discussion outcomes or clarity that both sides had clearly understood the evolving positions in respect of the Ardagh tennis courts. Therefore the majority of Members considered that the level of engagement had been neither sufficient nor satisfactory. The majority of members raised concern that the Council could risk undermining future negotiations with community groups if a good faith and robust process of communication could not be relied upon.
- c. Members considered that good consultation led to good decisions and the lessons learned in this case should require that future processes maintain a clear record of consultation or engagement activity.

The Sub-Committee RESOLVED:

To refer the matter back to Cabinet, with issues as detailed above, for Cabinet to reconsider before taking its final decision.

(Note: the above resolution was supported by the Chair and Cllrs O'Rourke and Hopkins. There were two Councillors Against and one Abstention).

Meeting ended at 6.35pm

CHAIR _____

