

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL
OVERVIEW AND SCRUTINY BOARD

Minutes of the Meeting held on 09 October 2023 at 4.00 pm

Present:-

Cllr S Bartlett – Chairman

Cllr S Aitkenhead – Vice-Chairman

Present: Cllr P Broadhead, Cllr L Dedman, Cllr B Dove, Cllr C Goodall,
Cllr S Moore, Cllr L Northover, Cllr K Salmon, Cllr M Tarling,
Cllr T Trent and Cllr M Andrews (In place of Cllr O Walters)
Present Cllr F Rice
Virtually:
Also in Cllr K Wilson
attendance:

1. Apologies

Apologies were received by Cllr O Walters and Cllr F Rice who joined virtually.

2. Substitute Members

Cllr M Andrews attended as a substitute for Cllr O Walters

3. Declarations of Interests

There were no declarations of interest made on this occasion.

4. Public Issues

There were three public statements received from Mr McKinstry which were read out in his absence by the Democratic Services Officer as follows:

1. The statement in Paragraph 8 of today's report, that all twelve Conservative councillors have sought this call-in (but no member of any other group, nor any unaligned member), suggests this is a political exercise. And this is supported, too, by the fact that the Conservatives were planning their own PSPO before the elections, and that their own clauses, which would have criminalised sleeping in vans or overnight camping, have now been removed. It seems reasonable to assume that the group is now trying to get its own back, possibly to woo the hotelier vote. Procedure Rules 4C 14.2 and 14.7.2 of the Constitution state that call-in should only be used exceptionally, and not for purposes that are "vexatious ... or improper". I trust, therefore, that statutory officers are watching for any sign of scrutiny being manipulated for political grandstanding, or political vengeance.
2. Regarding the call-in claims: contrary to what is alleged, Cllr Wilson cited *two* lines of possible legal challenge at July's Cabinet, the first being that a PSPO banning sleeping in vans is challengeable under "negative equality impacts". Such grounds were indeed cited by Sarah Ward when she sued this Council

over an earlier PSPO, penalising homelessness, in 2019. Secondly, Cllr Wilson described how behaviour needs to be "detrimental" - not merely "inconveniencing" - to justify criminalisation. With open fires and excretion already targeted under a separate order, what remains is the potential criminalisation of sleeping in a tent or van. The idea that these activities could wreak "a detrimental effect on the quality of life ... in the locality", as required under Section 59(2) of the Anti-Social Behaviour, Crime and Policing Act 2014, is laughable. Cabinet acted wisely therefore in rejecting these disproportionate proposals.

3. Finally I want to address the claim, again in Paragraph 8, that "exactly the same PSPOs have been implemented by other councils without legal challenge." This remark is disingenuous, as Section 66(7) of the Anti-Social Behaviour, Crime and Policing Act severely limits the way in which "interested persons", such as residents or visitors to an area, can challenge PSPOs once implemented. Such applications can only be made under Section 66(2) of the said Act, a procedure which is little-known, time-limited (to six weeks), and subject to legal aid only in very narrow circumstances (following the decision in *R (Liberty) v Director of Legal Aid Casework*, 2019). It may be this, rather than mass concurrence, that explains the paucity of legal challenge which the Conservative group is so swift to cite.

5. Call-in of Decision - Protecting our Coastal and Open Spaces

The Board was asked to review and scrutinise the decision of the Cabinet taken on 26 July 2023 in relation to the 'Protecting our Coastal and Open Spaces' item, following the receipt of a valid call-in request from the pre-requisite number of councillors.

The Interim Monitoring officer presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'A' to these Minutes in the Minute Book. In accordance with the Constitution, the Board had to determine whether or not to offer any advice in relation to the decision

The Interim Monitoring Officer explained the grounds that were required for the call in to be accepted by the monitoring officer as valid. The officer cited the three principles within Article 12 of the Council's constitution that were referenced as the grounds for the call-in to be considered by the Board, namely:

- (b) ensure that the decision and the decision-making process are lawful;*
- (e) have due regard to appropriate national, strategic, local policy and guidance;*
- (h) explain what options were considered and give the reasons for the decision;*

The lead call-in member explained the reasons for the call in as outlined in the report. Another party to the call-in also addressed the Board. The Portfolio Holder for Housing and Regulation then responded to the call-in.

The Portfolio Holder advised that they had been actively working with officers and partners to determine the most appropriate options for Protecting our Coastal and Open Spaces and outlined the process that was followed in reaching the decision and the response to the call-in reasons as follows:

1. The requirements to implement a PSPO were set out in Sections 2-4 in the report. Section 4 of the report showed the legal requirement for behaviour to have a '*detrimental effect on the area*' in order for a PSPO to be sought. Behaviours that were considered inconvenient from a legal perspective were very different from detrimental. Council and external legal advice was sought throughout the PSPO process, and that advice was followed throughout the decision-making to ensure the Council did not act unlawfully.
2. All the relevant policies and guidance were considered with particular attention to the government's updated guidance from June 2022. The guidance highlighted that PSPOs should not be used to target individuals purely because they were homeless or rough sleeping.
3. Section 19 of the report presented an options appraisal that outlined the available decisions and their justifications for Cabinet to consider.
4. An equality impact assessment was carried out that considered The Public Sector Equality Duty and its obligation under the Human Rights Act. The assessment showed that carrying out some of the PSPOs could infringe on the rights of some of the most vulnerable within society.
5. A potential legal challenge around whether the Council would have been in violation of Section 6 of The Human Rights Act 1998 had been raised.

The Chair then invited the Overview and Scrutiny Board to discuss the items that were raised and consider whether the decision-making process was lawful. In the discussion that followed a number of points were raised and responded to, including:

- In response to a question, it was confirmed that the decision could be taken back to Cabinet if the Board found that any one of the grounds was met and it did not need to be referred on all three.
- Questions were raised regarding the possible legal challenge referenced in the report. It was confirmed that the Council had been contacted by Liberty, a civil liberties organisation, that would have pursued a legal challenge were the PSPO to be granted.
- A Councillor highlighted that the PSPO was being considered as a way to prevent Antisocial behaviour and not harm homeless people. Concerns were raised throughout the consultation around the negative impact on homeless people.
- Officers confirmed that the detrimental impact was measured in line with legal advice and advice given by officers. There was not enough evidence found to satisfy the legal test.
- There were concerns raised regarding similar PSPOs that were granted by other nearby local authorities. The Board was advised

that BCP were only able to consider the evidence they had gathered and not that used in other PSPO decisions.

- It was confirmed that the PSPO that was put in place by Dorset Council was approved before the new government guidance was released.
- The Board raised concerns about reporting antisocial behaviour as residents had been directed elsewhere when contacting the Council about this. It was suggested that this may affect the way evidence was collected.
- Officers confirmed that there was evidence of sleeping on the beach. However, it was the impact of that behaviour which was required to be detrimental for the legal test. It was noted that the PSPOs could be varied and only applied for a three-year period, if the behaviour were to be evidenced in the future the process could be reviewed.
- Officers confirmed that work was being done to look at how evidence is collected and how detrimental impact is best reflected within BCP.
- The Board had concerns about the trends that were identified through residents' views in the consultation document, which raised concern with overnight sleeping. It was suggested that there seemed to be an imbalance between what was able to be done legally and what could be done to address resident concerns.
- The Board acknowledged that this was an emotive issue and was not about whether it agreed with the decision or not, but whether the decision was made correctly. It was felt the decision was made lawfully but that if anything, it was criticised for being overcautious.

Councillor Broadhead proposed under article 12 1.1h that the Overview and Scrutiny Board did not think enough explanation was given for the options considered and the reasons for the decision needed to be reconsidered by Cabinet. This was seconded by Councillor Dedman.

Voting: 4 for, 7 against, 1 abstention.

RESOLVED that the Overview and Scrutiny Board did consider the reasons submitted the request for call-in, they reviewed and scrutinised the decision of Cabinet against these reasons and determined that no advise would be offered to the Cabinet in this instance.

The Interim Monitoring Officer advised that as no formal advice had been offered the Cabinet decision could progress with immediate effect.

The meeting ended at 5.18 pm

CHAIRMAN