

OVERVIEW AND SCRUTINY BOARD



Report subject	Call-in of Decision - Tatnam Road ETRO
Meeting date	6 December 2021
Status	Public Report
Executive summary	<p>The Board is asked to review and scrutinise the decision of the Portfolio Holder for Transport and Sustainability in relation to the Tatnam Road ETRO, following the receipt of a valid call-in request from the pre-requisite number of councillors.</p> <p>In accordance with the Constitution, the Board must determine whether or not to offer any advice in relation to the decision. If advice is offered, Cabinet will be required to reconsider the decision and consider any advice offered.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <p>the Overview and Scrutiny Board consider the reasons submitted in the request for call-in, review and scrutinise the decision of the Portfolio Holder against these reasons, and determine whether to offer any advice to Cabinet.</p>
Reason for recommendations	<p>The Constitution prescribes the process for the call-in of decisions. It is for the Overview and Scrutiny Board to determine whether it wishes to offer any advice to the Cabinet.</p>

Portfolio Holder(s):	Not applicable
Corporate Director	Graham Farrant (Chief Executive)
Report Authors	Lindsay Marshall (Overview and Scrutiny Specialist)
Wards	Oakdale; Poole Town;
Classification	For Decision

Background

1. The Portfolio Holder for Transport and Sustainability made a decision under delegated authority in relation to Tatnam Road ETRO. The Portfolio Holder's proposed decision was first published on 23 August 2021, allowing a period of five clear working days for representations until 31 August 2021. Following this period for representations, the final decision was made and published on 15 November 2021. A copy of the final decision, the proposed decision (which was confirmed without modification) and other background papers is appended to this report.
2. Any decision which is not subject to urgency provisions shall not come into force, and may not be implemented, until the expiry of five clear working days after the decision was made, recorded and published, pending call-in. The call-in period ran from 16 -22 November 2021 inclusive.

Requirement for Valid Call-In

3. The procedure within the Constitution states that the Monitoring Officer will consider the Call-In request and confirm its validity or otherwise. A valid Call-In request must comply with the following:
 - a) Have the correct number of signatures
 - b) Give reasons for the Call-In. The reasons must set out the grounds upon which the Call-In is based with reference to Rule 10.2 and the evidence to support the grounds. Reasons must be legitimate and not designed to create an obstacle to or delay the proper transaction of business nor should they be vexatious, repetitive or improper in any other way.

Number of signatories (a)

4. In terms of the number of councillors who are required to make a request, the provisions in the Constitution provide that any three or more members of the Overview and Scrutiny Board, or alternatively 10 Councillors (who are not members of the Cabinet), may submit a Call-In notice, in writing, within the period specified, to the Monitoring Officer or their nominated representative. In this case four councillors who are members of the Overview and Scrutiny Board have been named as requesting the Call-In. The Monitoring Officer has therefore accepted the Call-In notice as valid in respect of the number of signatures required.

Reasons for Call-In (b)

5. Procedure Rule 10 (Call-In) states that:

Call-In applies to a decision of the Cabinet, the Leader, Portfolio Holder or an Officer that is a Key Decision and there are reasonable grounds that one of the following is applicable:-

a) The decision was not made in accordance with the principles of decision-making set out in Article 12 of this Constitution

b) The decision was neither published in accordance with the requirements for the Cabinet Forward Plan and not subject to the 'general exception' or 'special urgency procedures' set out in this Constitution

c) The decision is not in accordance with the Key Policy Framework or Budget.

6. The decision, which was a non-key decision, was made by the Portfolio Holder for Transport and Sustainability.
7. The question therefore is whether there are reasonable grounds that one of the three limbs of Procedure Rule 10, as set out above, apply. Neither (b) nor (c) apply, so the question is whether there are reasonable grounds that the decision was not made in accordance with the principles of decision-making set out in Article 12 of the Constitution. For ease of reference, these have been reproduced in full below.

Article 12 – Decision Making

- 1.1 *When the Council takes a decision it will do so in accordance with the following principles:*

(a) Be clear about what the Council wants to happen and how it will be achieved

(b) Ensure that the decision and the decision-making process are lawful

(c) Consider the Public Sector Equality Duty and its obligations under the Human Rights Act

(d) Consult properly and take professional advice from Officers

(e) Have due regard to appropriate national, strategic, local policy and guidance

(f) Ensure the action is proportionate to what the Council wants to happen

(g) Ensure the decisions are not unreasonably delayed

(h) Explain what options were considered and give the reasons for the decision

(i) Make the decision public unless there are good reasons for it not to be.

8. The email notices of Call-In from the respective councillors list the grounds and reasons for the Call-In as follows.

"With reference to the decision on the Tatnam Road ETRO we do not feel that the principles of decision-making, as per Article 12 of the Constitution, sub-sections (a), (b), (e) and (f), have been properly adhered to. In particular we believe there has been an

over-reliance on the opinion of the Ward Councillors and that undue weight has been given to those opinions over and above the wider consultation process.”

For ease of reference, the specific subsections of Article 12 that are cited in the Call-In notice are as follows.

Article 12-1.1

- (a) Be Clear about what the Council wants to happen and how it will be achieved*
- (b) Ensure that the decision and the decision -making process are lawful*
- (e) Have due regard to appropriate national, strategic, local policy and guidance*
- (f) Ensure the action is proportionate to what the Council wants to happen.*

Options for Overview and Scrutiny Board to Offer Advice

- 9. The Constitution prescribes the Call-In procedure. It is for the Board to consider the matter and decide whether to offer any advice to the Cabinet.
- 10. If the Board decides not to offer any advice to Cabinet, then the decision may be implemented immediately. If advice is offered, the Cabinet will be required to reconsider the decision in light of the advice of the Board.
- 11. Where a matter is considered and advice is offered by the Overview and Scrutiny Board, its advice will be submitted to the Cabinet for a decision to be made on the matter. The Cabinet shall consider the advice, but shall not be bound to accept it in whole or in part. It shall have sole discretion to decide on any further action to be taken in relation to the decisions in question, including confirming, with or without amendment, the original decision or deferment pending further consideration, or making a different decision. There are no further rights to enable a Councillor to submit a Call-In notice. The decision may then be implemented.

Summary of financial implications

- 12. There are no financial implications arising from this report.

Summary of legal implications

- 13. The law relating to Call-In originates from the Local Government Act 2000 which establishes that scrutiny has a power to review or scrutinise decisions made but not implemented by the executive.
- 14. The Constitution, (Part 4, Section C) prescribes the Council's procedures pursuant to the regulations.
- 15. The right of Call-In should only be used in exceptional circumstances and not as a means of delaying a decision. It is an established part of the checks and balances on the Executive.

Summary of human resources implications

- 16. There are no human resource implications arising from this report.

Summary of sustainability impact

17. There are no sustainability issues arising from this report. The decision record appended addresses relevant implications.

Summary of public health implications

18. There are no public health implications arising from this report. The decision record appended addresses relevant implications.

Summary of equality implications

19. There are no equality implications arising from this report. The decision record appended addresses relevant implications.

Summary of risk assessment

20. The procedures for processing and considering Call-In requests is detailed in the Council's Constitution. There are no specific risks associated with this report, however failure to comply with the Council's procedure rules would give rise to potential reputational damage or legal challenge.

Background papers

Published works

Appendices

Appendix 1 – Portfolio Holder Final Decision, the proposed decision (which was confirmed without modification) and other background information.