

CABINET



Report subject	Call-in of Decision - Tatnam Road ETRO - Advice to Cabinet
Meeting date	15 December 2021
Status	Public Report
Executive summary	<p>Cabinet is advised of the outcome of the call-in request of the above item and the advice offered by the Overview and Scrutiny Board meeting held on 6 December 2021.</p> <p>In accordance with the Constitution, the Cabinet must 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.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <p>Cabinet consider the advice offered by the Overview and Scrutiny Committee, and determine whether to :-</p> <ul style="list-style-type: none">(a) confirm, with or without amendment, the decision of the Portfolio Holder; or(b) defer the decision pending further consideration; or(c) make a different decision in relation to this matter.
Reason for recommendations	<p>The Constitution prescribes the process for the call-in of decisions. The Overview and Scrutiny Board determined to offer advice to the Cabinet and it is for Cabinet to now consider that advice.</p>

Portfolio Holder(s):	Councillor Mike Greene (Portfolio Holder for Sustainability and Transport)
Corporate Director	Graham Farrant (Chief Executive)
Report Authors	Susan Zeiss (Service Director of Law and Governance and Monitoring Officer)
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.

Valid Call-In Request

3. A valid request for a call-in was received in accordance with the Council's Constitution and referred to the meeting of the Overview and Scrutiny Board meeting held on 6 December 2021 at 2.00pm.

Reasons for Call-In

4. 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.*
5. The decision, which was a non-key decision, was made by the Portfolio Holder for Transport and Sustainability.

6. The call-in claimed that the decision was not made in accordance with the principles of decision-making set out in Article 12 of the Constitution, citing specifically that *“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 sub-sections 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.*

Decision of Overview and Scrutiny Board

7. In accordance with the Constitution, the Overview and Scrutiny Board considered the call-in submission and resolved to offer advice to Cabinet in relation to this matter requesting that the decision be reconsidered for the reason that it did not comply with Article 12 (Principles of Decision-Making) in that the decision-maker placed an over-reliance on the opinion of the Ward Councillors and gave undue weight to those opinions over and above the views expressed through the wider consultation process.

Duty of Cabinet to Consider Advice and Options

8. The Constitution prescribes the Call-In procedure. If advice is offered, the Cabinet must reconsider the decision in light of the advice arising from the Overview and Scrutiny Board.
9. 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.
10. Following the Cabinet's reconsideration, 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

11. There are no financial implications arising from this report.

Summary of legal implications

12. 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.

13. The Constitution, (Part 4, Section C) prescribes the Council's procedures pursuant to the regulations.
14. 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.
15. If Cabinet is minded to take the advice of Overview and Scrutiny Committee then any decision reached will need to include full reasons for reaching that decision.

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.