

OVERVIEW AND SCRUTINY BOARD



Report subject	Call-in of Decision - Protecting our Coastal and Open Spaces
Meeting date	9 October 2023
Status	Public Report
Executive summary	<p>The Board is asked to review and scrutinise the decision of the Cabinet taken on 26 July 2023 in relation to the item of business relating to 'Protecting our Coastal and Open Spaces', 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 in light of the advice but is not obliged to follow it.</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 Cabinet 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	Ian O'Donnell (Corporate Director for Resources)
Report Authors	Richard Jones (Head of Democratic Services)
Wards	Council-wide
Classification	For Decision

Background

1. On 26 July 2023 Cabinet approved the implementation of two Public Space Protection Orders (PSPOs) and commissioned a feasibility study for a designated

space for vehicular sleeping, caravanning and camping in relation to 'Protecting our Coastal and Open Spaces'. The decision was published on 26 July 2023. A copy of the decision, an extract of the minutes and the original report presented to the Cabinet are appended to this report.

2. Any key decision which is not subject to urgency provision 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 commenced on 26 July 2023, closing on 2 August 2023.

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 14.2 of Part 4C of the Constitution and the evidence to support the grounds. Reasons must be legitimate and not designated 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 Committee with the remit most closely aligned to the matter of the decision, 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 12 Councillors who are not members of Cabinet 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. Part 4C Procedure Rule 14.2 (Call-In) states that:

Call-In is the exercise of Overview and Scrutiny's statutory power to review an Executive key decision which has been made but not carried out. Call-In should only be used in exceptional circumstances. This Rule shall apply to a key decision of the Cabinet, the Leader, Portfolio Holder or a Key Decision made by an Officer 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; or*
 - (c) *The decision is not in accordance with the Key Policy Framework or Budget*
6. The decision, which was a key decision, was made by the Cabinet at their meeting on 26 July 2023.

7. The question therefore is whether there are reasonable grounds that one of the three elements of Procedure Rule 14.2, 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 makes a decision it will:

- (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; and*
- (j) take into account the Council's statutory duties and responsibilities relating to counter-terrorism, prevention of violent extremism and the Prevent channel.*

Call-In Content by 12 Councillors

8. The call-in, submitted by Councillor Philip Broadhead and supported by all 11 other members of the Conservative Group, is set out below:

“Article 12 – Decision Making highlights the necessary requirements for decision making. The decisions taken under this item were to proceed with all of the proposed PSPOs except those covering Overnight camping etc in designated areas covered by the PSPO and also the proposed PSPO preventing overnight sleeping or staying in a vehicle within the designated area.

“At the meeting, in explanation for the decision not to proceed with these proposals, reference was made to potential legal challenge to those proposals if enacted. Yet no evidence of this purported legal challenge has been supplied or provided.

“Furthermore, it was claimed that there was not enough evidence to justify these new proposals. Again, there was little to no background to those claims.

“Finally, it was claimed that the consultation did not support these proposals, yet the Council's own documents make clear that a large majority of residents support the two PSPOs not being taken forward. As an aside, consultation results

are not the only form of evidence needed to demonstrate the harm prevented by the introduction of these powers, and again there was insufficient evidence of the weight given to the decision.

“We therefore challenge the decision on grounds:-

“Article 12 – 1.1 (b) - Ensure that the decision and the decision-making process are lawful

Reasons for Call-in

“The argument had been made in the Cabinet meeting that the decision could be unlawful, yet no evidence was provided on this.

“It was claimed in the Cabinet Meeting by the Portfolio Holder that the Council should not proceed with the decisions as they could be deemed unlawful and open to legal challenge. There is no evidence to support this statement and reason and indeed exactly the same PSPOs have been implemented in other Councils without legal challenge.

“Article 12 – 1.1 (e) - Have due regard to appropriate national, strategic, local policy and guidance

Reasons for Call-In

“It seems evident that the decision not to proceed has not taken into account appropriate guidance and strategic policy and that insufficient evidence was given as to the options considered and the reasons for the decision.

“The current decision fails to take into account local policies as agreed in the adopted Corporate Strategy – such as the commitment in the Connected Communities objective to “ensure our communities feel safe”. It also potentially conflicts with the Council’s adopted Seafront Strategy, agreed on 13 April 2022, which talks about the preservation of the character of our seafront spaces, which could be put at risk by not adequately enforcing the no camping restrictions. There are more local adopted policies which will be referenced.

“Article 12 - 1.1 (h) - Explain what options were considered and give the reasons for the decision

Reasons for Call-in

“It seems evident that the decision not to proceed has not taken into account appropriate guidance and strategic policy and that insufficient evidence was given as to the options considered and the reasons for the decision.”

Options for the 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 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.

Summary of public health implications

18. There are no public health implications arising from this report.

Summary of equality implications

19. There are no equality implications arising from this report.

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 – Extract of decision notice - Cabinet – 26 July 2023

Appendix 2 – Extract of the minutes of Cabinet – 26 July 2023

Appendix 3 – Original report presented to Cabinet – 26 July 2023