

 <b>Executive</b> <b>13 January 2016</b>		<b>Agenda Item No.</b> <b>8</b>
<b>Title</b>	Call-in of Executive Decisions – Leisure Development Programme	
<b>For further information about this report please contact</b>	Lesley Dury, Democratic Services Bill Hunt, Deputy Chief Executive	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No (The report to the Executive 4 November 2015 is not private but confidential Appendices are included as a Part B report.)	
<b>Date and meeting when issue was last considered and relevant minute number</b>	Overview & Scrutiny 1 December 2015, Joint Scrutiny 3 November 2015 and Executive 4 November 2015	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	Yes
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes (Ref 688)
<b>Equality Impact Assessment Undertaken</b>	No

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	4/1/16	Chris Elliott
Head of Service	4/1/16	Rose Winship
CMT	4/1/16	Bill Hunt
Section 151 Officer	4/1/16	Mike Snow
Monitoring Officer	4/1/16	Andrew Jones
Finance	4/1/16	Mike Snow
Portfolio Holder(s)	4/1/16	Councillor Gallagher
<b>Consultation &amp; Community Engagement</b>		
Councillor Boad, Chairman of Overview & Scrutiny Committee – 16/12/15		
<b>Final Decision?</b>		Yes
<b>Suggested next steps (if not final decision please set out below)</b>		

## 1. **Summary**

- 1.1 On 4 November 2015, the Executive made a decision on two inter-related reports, items 3 and 8, entitled Leisure Development Programme. Subsequently, and in accordance with the Council's call-in procedure, three Councillors called-in some of the decisions to the Overview & Scrutiny Committee for consideration.
- 1.2 At Overview & Scrutiny Committee 1 December 2015, Members discussed the call-in and determined which of the four available options they wished to follow.

## 2. **Recommendations**

- 2.1 That Executive notes the outcome of the Overview and Scrutiny Committee's consideration of the call-in item on the Leisure Development Programme:

To refer the decision back to the Executive together with the observations of the Overview & Scrutiny Committee and further advice from the Monitoring Officer.

- 2.2 That Executive reconsiders its decision of 4 November 2015, in respect of recommendations 2.6 to 2.9 (inclusive) of the Leisure Development Programme report, in light of the observations made at Overview and Scrutiny (appendices 3 and 4), and the further advice received from the Monitoring Officer (appendix 5).

## 3. **Reasons for the Recommendations**

- 3.1 The call-in procedure specifies that one of four courses of action can be taken following a call-in of a decision made by the Executive. These four options are:
  - 1 to allow the decision to be implemented without further delay;
  - 2 to refer the decision back to the Executive together with the observations of the Overview & Scrutiny Committee;
  - 3 to request the Executive to allow further time for the Overview and Scrutiny Committee to consider the issue and make observations at a later date; or
  - 4 to seek the advice of the Monitoring Officer and/or the Chief Finance Officer as to whether the decision is contrary to, or not wholly in accordance with, the policy framework or the budget and, if applicable, to refer the matter to the Full Council for a final decision.
- 3.2 Members of the Overview and Scrutiny Committee resolved that an expanded option 2 was the course of action that should be followed after consideration of the reasons provided by the Members who had initiated the call-in (Appendix 1); advice provided by the Monitoring Officer prior to the meeting (Appendix 2), and observations made at the meeting (Appendix 3).
- 3.3 Members did not reach a consensus on the observations that should be considered by the Executive and therefore all the observations made during the meeting are listed in this report and will need to be considered by Executive (Appendix 3).
- 3.4 During the debate some members of the Committee observed that they felt that the advice provided by the Monitoring Officer beforehand (Appendix 2) did not address all of the relevant issues.

- 3.5 The Monitoring Officer was present at the Committee meeting and undertook to provide further advice once members had clarified what the perceived omissions were from the previous advice. The resolution therefore asks Executive to also consider this further advice from the Monitoring Officer, in conjunction with the observations from Committee.
- 3.6 The list of issues that required further consideration, received from some members of the Committee subsequent to the meeting, is set out at Appendix 4 and the Monitoring Officer's further advice, in response to these issues, is set out at Appendix 5.

#### **4. Policy Framework**

- 4.1 A call-in is the referral of a decision made, but not yet implemented, to the Overview and Scrutiny Committee. It is a key way of holding the Executive to account. A called-in decision cannot be implemented until it has been considered by the Overview and Scrutiny Committee, which can examine the issue and question the decision maker on the reasons for the decision.

#### **5. Budgetary Framework**

- 5.1 There are no budgetary framework implications as a consequence of this report.

#### **6. Risks**

- 6.1 There is a risk that the Leisure Development Programme will be delayed, causing stress to staff affected by the Programme and potentially discouraging potential interest in any future tender process for management of the leisure centres, if there is a further call-in of any fresh decision made by Executive after their consideration of this report.

#### **7. Alternative Option(s) considered**

- 7.1 There is no requirement for alternative options because a call-in requires that a set procedure is followed.

#### **8. Background**

- 8.1 On 3 November 2015, the Joint Finance and Audit Committee and Overview and Scrutiny Committee considered a report that would be decided by the Executive the following day. This was listed on the Executive agenda as:
- Item 3 – Leisure Options – Part A; and  
Item 8 – Leisure Options – Part B.
- 8.2 The comments made by Joint Scrutiny are attached as Appendix 6.
- 8.3 On 4 November 2015, the Executive met and made its decision on the report (see Appendix 7).
- 8.4 On 11 November 2015, three Councillors called-in the report for the reasons set out in Appendix 1.
- 8.5 The call-in is in respect of the decisions in respect of procuring a partner to manage the leisure centres (recommendations 2.6 to 2.9 in the report that

went to the Executive on 4 November). It is not in respect of decisions regarding the refurbishment and expansion of the leisure centres.

- 8.6 On 1 December 2015, the Overview and Scrutiny Committee met to discuss the call-in and make its decision on which course of action out of four choices of action that could be followed.
- 8.7 Members of the Conservative Group sought a resolution for option 1:
- "To allow the decision to be implemented without further delay"
- on the grounds that this would lead to a very large improvement in these facilities for the constituents, and by letting our facilities out to external management would provide further for the repayment of the investment and a return of income instead of the current necessity of subsidy.
- 8.8 This motion was defeated on the casting vote of the Chairman of Overview and Scrutiny Committee.
- 8.9 After a motion proposed by Councillor Quinney, and seconded by Councillor Boad, the Committee subsequently voted on option 2 (expanded to include the consideration of further advice to be provided by the Monitoring Officer) and this resolution was carried unanimously.
- 8.10 Following the decision of the Executive, 2 December 2016, a petition opposing the move to put the Leisure Centres out to external management was instigated. This received over 500 signatures. As a result, a special meeting of the Council will take place on 13 January 2016 to debate this.

## Appendix 1 – Call-in

Executive Agenda Item Number	Report Title	Councillors who called-in the report	Reasons
3	Leisure Development Programme	Councillors: Barrott Naimo Quinney	<p>(In respect of recommendations 2.6 to 2.9 in the report to Executive 4 November and the subsequent decision that evening.)</p> <ol style="list-style-type: none"> <li>1. The decision is contrary to the Fit for the Future Policy: <p>The Council usually examines thoroughly all options in determining the way forward on any matter of significance which this is. The Council has not done this in this case by failing to fully explore the option of a Trust or of allowing staff to being retained in house to allow a trial period to see if they can deliver the level of income alleged to be able to be delivered by outside bodies. Nor has the Council consulted on this issue with the public or staff.</p> <p>This means that the decision was not rational, reasonable or proportionate.</p> </li> <li>2. There is no funding for the proposal in an agreed budget/capital programme.</li> <li>3. The decision was not reasonable within the common meaning of the word, i.e. rational, based on sound judgement.</li> <li>4. The decision was not proportionate, i.e. the action was not proportionate to the desired outcome.</li> <li>5. The decision was not taken on the basis of due consultation.</li> <li>6. It was not clear what alternative options (if any) were considered.</li> <li>7. It was not clear why the alternative options were not chosen.</li> <li>8. More information/clarification is required.</li> </ol>

## **Appendix 2 – Advice provided by the Monitoring Officer to Members prior to Overview & Scrutiny Committee 1 December 2015**

Dear Councillor Boad

I refer to the e-mail exchange below in which I suggested that I obtain Legal advice in respect of the Reasons for Call-in (reproduced below) so that we do not end up in an unsatisfactory position with regard to process. In summary, the advice is that the decision is not flawed for want of reasonableness, proportionality or due consultation.

You will note that the legal advice addresses the issue of an Equality Impact Assessment (EIA) and that this should be undertaken as part of the decision making process. The only service change that may be relevant to the Executive's decisions is charging. The facilities available will in fact be enhanced once the anticipated investment has taken place. The new charging structure will be the responsibility of the new operator except for where concessions are to be offered to particular "groups". These charges are to be arrived at following consultation with the Member Working Group. It is therefore my advice that when these charges are at draft stage, an EIA is undertaken to ensure that there is "no unlawful discrimination, equality of opportunity is advanced and good relations are fostered on the basis of protected characteristics such as gender, race, disability or age."

With regard to whether the decisions are contrary to the Council's Policy Framework or Budgetary Framework (having taken advice from the Section 151 officer), I do not consider that they are. The Fit For the Future programme is to help "make Warwick District a great place to live, work and visit." It seeks to achieve this by addressing three themes: Services; People; Money. There is nothing to state that the Council has agreed a policy position against the consideration of providing its services through an external operator.

Turning to the Budgetary Framework, the resources required to prepare the tender for an external operator are within the Council's budget for 2015/16 and part of the Medium Term Financial Strategy for 2016/17.

I hope this information is helpful to the Committee's deliberations and avoids the issue I highlight below but if you have any queries do not hesitate to contact me.

Regards

Andrew Jones  
Deputy Chief Executive & Monitoring Officer

- 1. The decision is contrary to the Fit for the Future Policy:  
The Council usually examines thoroughly all options in determining the way forward on any matter of significance which this is. The Council has not done this in this case by failing to fully explore the option of a Trust or of allowing staff to being retained in house to allow a trial period to see if they can deliver the level of income alleged to be able to be delivered by outside bodies. Nor has the Council consulted on this issue with the public or staff. This means that the decision was not rational, reasonable or proportionate.*
- 2. There is no funding for the proposal in an agreed budget/capital programme.*
- 3. The decision was not reasonable within the common meaning of the word, i.e. rational, based on sound judgement.*
- 4. The decision was not proportionate, i.e. the action was not proportionate to the desired outcome.*
- 5. The decision was not taken on the basis of due consultation.*

6. It was not clear what alternative options (if any) were considered.
7. It was not clear why the alternative options were not chosen.
8. More information/clarification is required.



## Leisure Development Programme

### Briefing Note for Overview and Scrutiny Committee Call-in of Executive Decision

#### **(3) The decision was not reasonable within the common meaning of the word i.e. rational, based on sound judgement**

1. The Oxford English dictionary meaning of the word "reasonable" is *based on good sense, fair and sensible*.
2. In public law, a decision of a public authority, such as Warwick District Council, may be challenged as unreasonable if:
  - it *"is so unreasonable that no reasonable authority could ever have come to it"* (the so called principle of "Wednesbury unreasonableness" after the leading legal case of the same name);
  - the decision-maker in reaching its decision took into account **irrelevant matters and/or failed to consider relevant matters**; or
  - the decision-maker made a **mistake of fact**.
3. The general approach to reasonableness in law is that those making decisions in the public interest should not do so arbitrarily or on the basis of personal feeling. They should look at all of the available information and evidence and reach a considered view in light of their powers and duties. It does not matter if another person looking at the same material might have reached another decision. What matters is that the decision-maker can be shown, objectively, to have taken the material into account and reached its own conclusion based on the evidence.
4. The bar to establish unreasonableness is set high, The Courts are reluctant to set aside a decision of a local authority on the basis of unreasonableness. The courts have offered the following interpretations:
  - "Unreasonableness can include anything which can objectively be adjudged to be unreasonable. It is not confined to culpability or callous indifference. It can include, where carried to excess, sentimentality, romanticism, bigotry, wild prejudice, caprice, fatuousness or excessive lack of common sense". (*In Re W (An Infant) [1971] AC 682, Lord Hailsham (at 699H).*)
  - "a decision which does not add up". (*In R v Parliamentary Commissioner for Administration, ex parte Balchin [1998] 1 PLR 1.*)
5. With this legal backdrop, the decision of the Council to procure an external organisation to manage the leisure service is, in our view, a wholly reasonable one for it to take, **both within the common meaning of the word** i.e. rational, based on sound judgement and evidence (see below), and **also the legal sense**, and is **within the range of reasonable responses**. This is confirmed by:

- the decision has been made following extensive consideration of all of the **relevant facts** by both officers and members, including but not limited to (a) the production of a full options appraisal to the Executive in November 2014 detailing the pros and cons of the different types of service delivery (including the in-house and trust option), (b) comprehensive user, member and staff engagement, (c) officers commissioning advice from industry experts including a full financial analysis of the in-house option v's the outsourcing option and also legal advice, (d) the undertaking of a risk assessment, and (e) officers and members speaking with and visiting other authorities who have already successfully procured an external organisation to manage the leisure provision;
- all relevant factors have been taken into account, including maintaining (and improving) continued public accessibility to the service (including, for example, imposing maximum user fees and continuing concession arrangements within the management contract, and issues such as car parking);
- the decision taken is evidence based - specifically the overriding financial benefit to the Council (and ultimately tax payers) of outsourcing - and a fully considered view has been reached that procuring a provider to manage the leisure provision is the preferred option; and
- the Council has sought comprehensive legal advice on the different models of service delivery. This includes a full analysis of the trust option, which has raised the following significant concerns:
  - The Council would retain the lifecycle risk and ultimately operating risk if the Trust failed whilst relinquishing control of the service to a board of trustees;
  - It is not possible to make a direct award to a Trust. The Trust would need to bid against competitors.
  - The cost of establishing a local trust can be prohibitive (the two sets of legal costs for example, for both the shadow and eventual trust) and there is a process to go through to get formal charitable status. This process can take 18 months.
  - The Options Appraisal estimated the cost to establish a new trust being around £50 - 70k (legal input), and potentially £50-70k of leisure consultant support.
  - How support costs are dealt with can also impact on the potential savings. If a trust buys back support services from an authority it will significantly reduce the level of potential savings. Even if a trust creates its own support services this will lack economies of scale.
  - Industry evidence suggested that in the last 3-5 years there have been very few small leisure trusts established. The main reason for this is that a number have become insolvent or absorbed into other larger trusts.

Taking into account all of these factors, the trust option is not the preferred option.

6. One way that a public body can ensure that its decisions are objectively reasonable is to ensure they are evidence-based. The Council has met this requirement by generating a complete suite of documents that were presented to the Executive on 4 November 2015 including –
  - a. Draft Service Specification
  - b. Health & fitness – update on local provision
  - c. Investment proposals – extracts from RIBA Stage 2 report
  - d. Summary of parking surveys (SNPLC & NCLC)
  - e. Issues to consider when externalising the operation of WDC leisure centres
  - f. Phasing of s106 developer contributions
  - g. Risk Log



- h. Investment proposals – RIBA Stage 2 Cost Estimate
- i. In-house Business Plan
- j. In-house Prospectus – circulated separately
- k. Strategic Leisure appraisal of in-house model
- l. Commentary on Strategic Leisure appraisal
- m. Potential operator comparisons
- n. Costs and income - summary
- o. Atkins parking report
- p. Clip and Climb product
- q. NAA Facility Audit

7. The Council is required to take account of its equality duties when making decisions. A proper equality impact assessment is the best way for the Council to demonstrate that it has taken account of the equality duties. A full EIA should be undertaken as part of the decision making process.

**(4) The decision was not proportionate i.e. the action was not proportionate to the desired outcome.**

Public decision makers should act in a way that is proportionate (although it is important to note that common law does not necessarily accept proportionality as a ground for a judicial review challenge against an authority).

Legal advice is that the Council's decision to outsource the leisure service is proportionate, for the reason that it is rational, evidence-based and reasonable (see above).

**(5) The decision was not taken on the basis of due consultation**

The public law principle is that consultation is required for public-facing services where the proposal involves a **reduction** in service entitlement for the public. The failure to undertake proper consultation can open up a local authority to the risk of legal challenges whether by way of judicial review, for breach of statutory duty, or complaints to the ombudsman for maladministration.

The Cabinet Office has published 'consultation principles'. The governing principle is one of **proportionality** and consideration on the **potential impact** of the proposal or decision being taken.

The leisure service is a **non-statutory service** provided by the Council. The general approach taken by the courts is that consultation is usually not required in circumstances whereby a non-statutory service is being redesigned by the Council, including being outsourced to an external provider. This would be disproportionate. It is generally accepted in law that this is an **internal matter** for the authority.

Consultation would only be required where the new service specification:

- results in an **overall reduction** of services to the public
- creates a **barrier to use of the services by the public** (such as significantly increased fees, removal of all concessions, or the failure to undertake equality assessments).

This legal position is reinforced through case law.

In **R. v Essex County Council Ex p. Bucke, QBD, 1996**, the Court considered the ongoing care services for a user. The Court held that **the conflict between needs and resources** was a matter to be resolved by the authority. The weight to be given to these considerations was for the local authority to decide, provided that the user's needs were not relegated to the need to save money. Changes in provision which would have an adverse effect on a user would not be unlawful, if the user's needs continued to be properly provided for and the **correct balancing exercise** had been carried out.

In **Witt v Wiltshire County Council, QBD 1999**, the Court considered a decision by the authority to appoint a provider to provide ongoing care services. The Court held that this was not a case of the authority either withdrawing care or substituting another and less suitable provider simply because they are cheaper. It was agreed by all parties that the new provider would be the preferred candidate to **maintain the quality of service being provided**

In summary:

- There is no public law duty to consult with the public in circumstances where a service is being redesigned (including outsourcing) – this is for the local authority to decide.

- The Council has, in any event, conducted community consultation on leisure provision in May 2015 (before a decision had been made) and on the leisure centre activity programme in Spring/Summer 2014 – this is a proportionate response; and
- The new service specification would not create barriers to use of the services by the public, or result in an overall reduction of the services to the public.

26 November 2015

**From:** Andrew Jones

**Sent:** 24 November 2015 13:49

**To:** John Barrott

**Cc:** Kristie Naimo; Colin Quinney; Victoria Newbold; Mike Snow; Graham Leach; Alan Boad

**Subject:** RE: O&S Committee 1st December 2015 - Call-in of Executive Decisions - Agenda Item No. 5

Thank you, Councillor Barrott.

Regards

Andrew

**From:** John Barrott

**Sent:** 24 November 2015 12:38

**To:** Andrew Jones

**Cc:** Kristie Naimo; Colin Quinney; Victoria Newbold; Mike Snow; Graham Leach; Alan Boad

**Subject:** Re: O&S Committee 1st December 2015 - Call-in of Executive Decisions - Agenda Item No. 5

Dear Mr Jones

Following on from our telephone conversation this morning, can you please get Legal and 151 advice as laid out in your email.

Kind Regards

John Barrott  
Labour Group Leader  
District Councillor  
Leamington Sydenham

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**From:** Andrew Jones

**Sent:** 23 November 2015 17:18

**To:** John Barrott

**Cc:** Kristie Naimo; Colin Quinney; Victoria Newbold; Mike Snow; Graham Leach; Alan Boad

**Subject:** O&S Committee 1st December 2015 - Call-in of Executive Decisions - Agenda Item No. 5

Dear Councillor Barrott

Graham has today published the agenda for the aforementioned Overview & Scrutiny meeting which contains the item you, Councillor Naimo and Councillor Quinney have "called-in". You will be aware that there are four options available to the Committee at the meeting. I write to you in respect of the fourth option which I have reproduced below:

4. to seek the advice of the Monitoring Officer and/or the Chief Finance Officer as to whether the decision is contrary to, or not wholly in accordance with, the policy framework or the budget and, if applicable, to refer the matter to the Full Council for a final decision.

It is my preliminary view that the decisions of the Executive are neither inconsistent with the Policy nor Budgetary Frameworks of this Council but so that the Committee has all relevant information available to it on the evening would you like me to get legal and Section 151 officer advice on these matters in advance?

From a process perspective, I think this would be most helpful to Council business as the drafting of the 4<sup>th</sup> option leaves us somewhat in limbo if this is chosen at Committee but then the subsequent advice from the Monitoring Officer and Section 151 Officer is that there is no inconsistency: There is nothing to indicate what happens next!

Officers will need to address this matter in the next report to Executive/ Council on *Constitution Amendments*.

Regards

Andrew Jones  
Deputy Chief Executive & Monitoring Officer

## **Appendix 3 – Observations to be considered by the Executive**

(Members did not reach a consensus on which observations should be considered by the Executive; therefore officers have listed all the observations made at the meeting for consideration by Executive.)

### **1. Observations made by Labour Group Members**

Broad issues of concern were:

- 1.1. The adequacy of the information and analysis that was supplied to Members in the original reports.
- 1.2. That a lot of analysis had been done since the report was written and there had been inadequate time for Members to consider such an important set of decisions.
- 1.3. That information had been given to Members, which in the end proved not to be the case, that the decision was likely to be for the operation of the leisure centres to remain with the Council and the discovery "at the eleventh hour" that this would not be the case.
- 1.4. That information had also been given to Councillors in the early part of the process, that the in-house option would still be a viable option even if some sort of tendering process was begun and this had also been proven to be untrue.
- 1.5. That the process was not sound, robust and accurate in terms of what Members were led to understand and believe in terms of fact and process.
- 1.6. That the decision made by Executive was not reasonable in terms of the common meaning of the word, or rational, or based on sound judgement and fact, or proportionate.
- 1.7. That the Executive's decision was "not taken on the basis of due consultation" as there had been no consultation with the community, as required by Warwick District Council's Code of Governance, paragraph 3.3, bullet points 4 and 6, which requires engaging with the local people and other stakeholders to ensure robust public accountability. The only engagement the Councillors could see was the petition they had themselves started after the decision had been made. This failure to consult is contrary to the principle of transparency and open engagement with the local people; part of the Code of Governance.
- 1.8. That the advice from the Legal Officer and Monitoring Officer was based on their understanding of the information and analysis which had been provided in the presentations a few weeks ago and was, therefore, incomplete as officers had subsequently provided considerable additional information and analysis.
- 1.9. That the initial information and analysis had been superseded by a great deal of work (much done by Councillor Davison), which cast considerable doubt on the accuracy and weight with which that decision was taken, for example, on staff costs, where it was very unclear how that key fact in the original report was arrived at and whether it had a proper foundation. It was a key fact because without that staff saving in the original analysis, the whole proposal failed.
- 1.10. The staff saving had started at a certain level and had now changed.
- 1.11. The analysis and assumptions on which key cost indicators were based were not available to Members despite requests and, from work Members had done, did not make sense.
- 1.12. On the income side, there was no clarity about the pricing policy, outside of any concessions, which any future operator would follow. This was of critical importance to the community but had not been consulted on. The income information in terms of staff ratios and percentages included in the

confidential Appendix B report to Executive ,consideration of which formed part of the decision making process were therefore in question.

## **2. Observations made by Conservative Group Members**

- 2.1. The decision with regard to the Council's recommendation on the use of external management within the newly refurbished leisure centres had been fully addressed and those members, notably Councillor Davison, who had asked questions, had received comprehensive answers.
- 2.2. Staff were fully engaged with this initiative and the use of external management within our centres would give staff the opportunity to further their career advancements.
- 2.3. This would be in no way privatisation. There would be no transfer of assets or ownership of any leisure centres.
- 2.4. The Council would still be in charge of all concessions.
- 2.5. The Council would have its own professional team to monitor the running of the external management company.
- 2.6. There was no reason to further delay the decision and the matters raised in point 4 of paragraph 2.1 had been shown not to have a basis from information provided by the Monitoring Officer.

## **3. Observations made by the Green Group Member**

- 3.1. The crucial question was how much better the external bid would be than the in-house provider.
- 3.2. The four issues are the assumed income, the costs (which are mainly staff costs), the tax position and the timing of the options of refurbishments and the two Kenilworth centres and the joint facility at Myton School
- 3.3. Whether there was reasonable doubt that the private option would be better than an in-house option.
- 3.4. Whether the savings in staffing costs would still apply if the Living Wage was used as no figures had been provided for salaries meaning Members had no sense of whether the information in the original report was correct.
- 3.5. Business Rates could now be retained by the Council and this had not been taken into account when the decision was made to see if the in-house option might be better.
- 3.6. The external provider would get two new centres and four others which might get refurbished in the future. No consideration had been given to whether the lack of refurbishment at these centres would impact of the quality or cost of the tenders received or whether it would impact on the assumed income.
- 3.7. The reduction in staffing costs predicted would be higher in the smaller centres, impacting on the quality of service that would be received.

## **4. Observations made by Whitnash Residents' Association/ Independent Group Member**

- 4.1. There was a lack of information whether all prices including non-concessionary prices would be set by the Council.
- 4.2. There was a lack of information on whether the Council could choose a not-for-profit organisation to manage the centres.
- 4.3. There had been misleading and incomplete information available to members as to whether a bid from the in-house team was still an option.
- 4.4. There was a lack of information as to the meaning of the term "competitive bid" and how it would be decided which the best bid was.

**NB** A response to many of the observations made was provided on the night by those officers attending the Committee.

## **Appendix 4 - List compiled by the Members following Overview & Scrutiny Committee, 1 December 2015, spelling out what they consider to be the observations and issues uncovered and debated at the meeting.**

To: Mr Andrew Jones  
Monitoring Officer – WDC

### **Privatisation of Leisure Centre Management**

As agreed at the O&S Committee on Tuesday, I am sending you the main issues where Labour believe the decision-making process is not in accordance with the policy framework. This was mostly presented at this week's Committee and covers the more detailed and thorough work which has been undertaken by Councillors, liaising with Officers, since the first cycle of meetings. You could not have been aware of a good deal of it when you and the legal team gave your earlier advice.

1. Councillors were given incorrect information in the period prior to publication of the report in two respects:
  - a. that the inhouse option would still be a realistic option throughout any tendering process which was described as 'market testing'
  - b. that all the key decisions on the Leisure Centres would be taken in full Council.

Both major changes were only communicated to Councillors in the final report, issued a few days before Scrutiny and Executive meetings.

These points and the sheer size and complexity of the final report effectively denied Councillors the time necessary, individually and in Groups, to examine the facts and arguments. It was a rushed and unsatisfactory process and in breach of Warwick Code of Corporate Governance (CCG) 5.2 **which requires 'matters that have legal or financial implications [to be] available...well in advance of decision making'.**

2. Even with insufficient time, at that initial scrutiny stage a number of errors and omissions in the report were pointed out and questions raised, which clearly indicated some serious flaws in the information and analysis provided – a serious **breach of CCG 5.2 that Councillors be provided with 'information that is fit for purpose - relevant, timely and gives clear explanations of technical issues and their implications'**

In the additional time secured by asking that the decision to privatise be called in, these and other weaknesses in the original paper have been more clearly established. I will cite only the most important:

- a. **Pricing.** The report gave no facts on what was likely to happen to Leisure Centre prices. I asked for this information the day before original scrutiny and was told it was not immediately available and would in any case be superfluous to the decision. This is perhaps the most extraordinary and glaring omission. Thorough **research** since then has established that private operators typically charge 20-40% higher than WDC for annual memberships – perhaps 20% would be a low-end expectation. The potential impact of this on revenues and for residents was almost completely ignored (except for rather unclear comments about upside 'benchmark revenues per gym station' which presumably are as much available to the inhouse as the external models). This week the possibility of Members retaining control over all pricing, not just Concessionary rates, was suggested by an Officer – for the first time in the discussions.
- b. **Staff pay.** Alleged savings here account for most of the difference between inhouse and external models. The only basis given is a rather crude comparison with an 'industry benchmark' of 50% of revenues against the 54.5% in the inhouse model (by 20/21). Yet the

industry benchmark is likely to be based on operators paying minimum wages – Councillors could obtain no information on this from Officers but this seems to be a reasonable assumption. Both models assume we continue to pay staff the **Independent Living Wage, which is 25% higher than the Minimum**. Using the industry benchmark on this critical issue therefore looks incorrect – at the very least, without thorough investigation - as the whole decision to go to tender hinges financially on this alleged cost difference.

And of course it is worth pointing out that even a 10% rise in prices on unchanged staff costs would bring the inhouse ratio down to 50% in line with the industry benchmark.

- c. **Tax benefits.** Broadly the two tax benefits accruing to the external model fund the administrative costs and profit of the operator. There is an identified risk to both benefits, and that to Business Rates is clearer and has now been quantified by Cllr Davison in discussion with Mike Snow. This area of **risk was not adequately considered** within the report and therefore by Councillors and the Executive.

All three of these weaknesses point to a possible **breach of CCG 2.3 ‘to ensure the Council makes best use of resources’ (DCLG066 Best value duty)**, especially the upside revenue potential for the Council which the original proposal to tender out to a fixed fee bidder would block; and **Theme 5** is seen to be **‘managing risk’** effectively.

- d. **Social Value Act 2012.** No evaluation of the social value costs and benefits to the District was made in the original paper or shared with Members before or since the Executive decision was made. The key issues here are pricing to residents, decline in staff terms and conditions, integration with other local public and voluntary services, loss of WDC resilience and perhaps most important loss of revenues to the Council.

This **breach of statutory duty** is also a **possible breach of WDC Financial Strategy 4.1.vi** ‘the Council is committed to making good use of the ability to raise funds through charges and put them to good use for the community’.

- e. **Local Trust.** This option was discarded during 2014 in spite of its clear fiscal and fund-raising benefits, the same as for private operators. However that was based on a working assumption that the inhouse option would deliver £1.2m less financial benefits than the external option. The Trust, even after the benefits were added, would still lag.

Now that the detailed work has been undertaken the difference between inhouse and external models is at most £200k (7% of revenues), and arguably (a and b above) zero. So the Trust option is the best option financially, based on the two models tabled (by at least £140k).

This initial appraisal error – not uncommon in projects of this size – should be acknowledged without blame. Members and the Executive should now be given the opportunity to properly evaluate this option to avoid **breaching CCG Theme 5 - 5.1** (as well as 5.2 and FS4.1.vi) to deliver **‘informed and transparent decisions which are subject to effective scrutiny and managing risk’**.

### 3. **Public Consultation**

The report gives no information on any public consultation or engagement, in particular involving users of the Leisure Centres, on the Privatisation v Trust v inhouse options. We believe that no such consultation took place before the decision, nor is implementation of the decision subject to prior consultations. This is not in conformity with **DCLGG 067 ‘Involving and consulting with local communities’** nor with Warwick’s own **CCG 3.3 and Theme 6 ‘Engaging with local people’**.



4. The Leader of the Executive was reported publicly in the local Press stating his plans to privatise Leisure Centres, before the analysis was complete and a report prepared for Members. This is evidence of **prejudgement** in the decision-making process and breaches the spirit of CCG Theme 4.

To avoid any appearance of decision-making not based wholly on the facts and analysis and given the unsatisfactory nature of the original paper and process outlined above, the Leader is requested voluntarily to refer the matter to full Council.

Colin Quinney  
On behalf of the Labour Group  
2<sup>nd</sup> December 2015

## Appendix 5

### Leisure Development Programme

**Executive Committee – Report of the Monitoring Officer in response to the “Privatisation of Leisure Centre Management” paper submitted by Councillor Quinney on behalf of the Labour Group on 2 December 2015.**

#### Background

The Council's Labour Group presented a paper to the Council's Monitoring Officer on 2 December 2015 detailing areas where it is submitted the decision taken by the Council's Executive on 4 November 2015 to outsource the management of the Council's leisure portfolio to an external partner is contrary to the Council's "policy framework".

For the avoidance of doubt, the Council's policy framework, as contained in Article 4 of the Council's Constitution, incorporates the following plans and strategies:

- Sustainable Community Strategy
- Crime and Disorder Reduction Strategy
- Development Plan Documents i.e. Core Strategy and Area Action Plans
- Council's Corporate Strategy
- Food Law Enforcement Service Plan
- Housing Investment Programme
- Local Agenda 21 Strategy
- Community Engagement Strategy

Further Strategies, Plans and Programmes will have been agreed by Council over time to make up the entirety of the Council's current policy framework, however, the Code of Corporate Governance, as referred to by Councillor Quinney in his submission, is not such a policy.

This Report will respond to each of these submissions.

**Submission 1 – That the production of the Executive Report presented to the Executive at the meeting on 4 November 2015 (the Executive Report) was a rushed and unsatisfactory process and in breach of Warwick Code of Corporate Governance (CCG) 5.2 which requires ‘matters that have legal or financial implications [to be] available...well in advance of decision making’.**

#### Response

Rule 5 of the Council's Procedure Rules provides under "Agenda Papers" that *"Every meeting of the Council, the Executive, committees and Sub-Committees will be convened by the Chief Executive five clear working days before a meeting (other than a special meeting called as a matter of urgency)"*.

There was full compliance with this standing order and the correct procedure followed. The Executive Report (including all appendices) was provided to members at least 5 days before the meeting, in that it was circulated on Tuesday 27<sup>th</sup> October. The Chief Executive and the Head of Cultural Services met with Councillor Barrott to brief him on the report. The Chief Executive also met with the Group Leaders on 29<sup>th</sup> October to brief them on the report. On Monday 2<sup>nd</sup> November a group of officers, led by the Monitoring Officer, briefed a joint meeting of all the political groups on the report and received and answered a number of questions on the issues involved.

Notwithstanding such procedural compliance, the wider context is that there has been a long history of close engagement with Members on the development of the Leisure Development Programme well in advance of the Executive Meeting of 4 November 2015.

The Council's Executive agreed a Warwick District Sports and Leisure Vision and Principles paper in 9 October 2013. This paper established high level visions and principles for the provision of sports and leisure facilities managed by the Council.

At an Executive Meeting on 5 November 2014, the Executive considered a full Options Appraisal for the future provision and management of the Council's leisure centres and dual use sites. The Executive accepted the Recommendation that Council officers develop a service specification detailing the required operational requirements of the leisure operation at the Council against which both an in-house and commercial partner costs/income could be evaluated.

In February 2015, an officer Programme Board was established. The Board was sponsored by the Council's Deputy Chief Executive & Monitoring Officer and comprised the Head of Cultural Services and officers within the finance, HR, legal, procurement and property services disciplines. Between February 2015 and the Executive Meeting of 4 November 2015, the Programme Board worked closely with both Members and the Council's statutory officers to develop the recommendations for the future operational management of the leisure service including the service specification. The Programme Board has been advised by the Council's s.151 officer and its legal advisors on all Programme matters which have legal or financial implications.

The Members' Working Group for the Leisure Development Programme was established on 2<sup>nd</sup> March 2015 following the commencement of the Programme in February. The first workshop for Members of the Group was held on 2<sup>nd</sup> March and 31<sup>st</sup> March to accommodate the diaries of all Members, and the second workshop was held on 14<sup>th</sup> April. These workshops sought advice from Members on a range of subjects connected to the Programme.

The initial membership of the Members' Working Group was Councillors Mrs Gallagher, Cross, Weber, Wreford-Bush and Mrs Mellor. Following the elections the membership was agreed as Councillors Mrs Gallagher, Whiting, Naimo and Heath, Councillors Davison and Gifford have joined the Group recently. This means all political groups are now represented on the Group and the input from the Group is valued by officers working on the Programme.

Meetings have been held regularly since the election, with meetings on 17<sup>th</sup> June, 25<sup>th</sup> June, 26<sup>th</sup> August, 17<sup>th</sup> September and 11<sup>th</sup> December. Furthermore, a visit was planned for the Working Group to view facilities managed by private operators, and Councillors Mrs Gallagher, Whiting and Naimo visited facilities at Market Drayton and Stratford.

There was also a Design Workshop open to all Councillors, which was held on 9<sup>th</sup> September. The architect responsible for the scheme made a presentation to Members and all suggestions and questions from Members were captured as part of the design process.

A general update on the Leisure Development Programme was made to Shadow Portfolio Holders on 14<sup>th</sup> August and the progress on the Programme was reported to the Overview and Scrutiny Committee on 2<sup>nd</sup> October 2015.

With this context, it is submitted that Members were comprehensively apprised of the facts and reasons for the Recommendations included within the Executive Report so as to enable them to make fully informed decisions on 4 November 2015.

**Submission 2 – That at the initial scrutiny stage of the Executive Report, a number of errors and omissions were identified which indicated some serious flaws in the information and analysis provided. This is a breach of CCG 5.2 that Councillors are provided with 'information that is fit for purpose - relevant, timely and gives clear explanations of technical issues and their implications'**

#### Response

It is accepted that there was one inaccurate figure in Appendix 5 to Part B of the Executive Report. This was due to human error which was generated by a miscalculation. This error was identified by

the officer that made it during subsequent work on the report and in preparing a reply to a question asked by a Councillor after the first joint Scrutiny Committee. An email was sent to all Councillors to inform them of this error on 27<sup>th</sup> November 2015.

The error suggested that the in-house option was less far behind the external option than was in fact the case, and so it could not have influenced members of the Executive in favour of the decision to seek an external partner for the management of the leisure centres. If anything, it would have had the opposite effect, favouring the in-house model over the external option. The main body of the report did not make reference to this figure. In fact, the main body of the report referred Members to the figures contained in Appendix Y, which were correct.

Rule 5.2 requires those *making decisions* for the Council are required with good quality information and advice.

With this context, it is submitted that the main body of the report referred Members to correct figures, and if any Member had been influenced by the incorrect figure then that influence would have been likely to persuade the Member to support the in-house option, rather than the decision which was subsequently taken.

**Submission 3 – There was insufficient detail in the Executive Report on pricing, staff pay and tax benefits leading to a possible breach of CCG 2.3 ‘to ensure the Council makes best use of resources’ (DCLG066 Best value duty) and ‘managing risk’ effectively.**

## Response

### **Pricing**

It is suggested that the Executive Report “*gave no facts on what was likely to happen to Leisure Centre prices*”.

User charges are specifically addressed in the Executive Report at paragraph 3.6.3. This provides that:

*3.6.3 The Service Specification will also include a list of index linked key charges and concessionary rates that any operator will be required to adhere to as maximum charges. It will be left to the discretion of the operator should they wish to lower the key charges. In this way the Council is able to protect certain user groups and ensure that they are not disadvantaged or discouraged from using the facilities.*

The Specification is a legally binding document in which the Council will fully itemise all of its requirements on leisure service operation and will be used by the Council to hold the provider to account.

It is submitted that the Council’s detailed requirements on pricing and user charges are correctly picked up within the Specification. Recommendation 2.7 of the Executive Report conferred delegated authority to the Head of Cultural Services, in consultation with the Portfolio Holder for Culture, to finalise the Specification.

The approach to be taken with regard to the control of prices was one of the early issues that were discussed with members of the Working Group and it was discussed in many of the subsequent meetings. In particular the Working Group meeting on 26<sup>th</sup> August was dedicated to discussions about pricing – which prices should be controlled and how this would be picked up in the Service Specification.

At Group meeting (2<sup>nd</sup> Nov); Scrutiny (3<sup>rd</sup> Nov) and Executive (4<sup>th</sup> Nov) and again at Overview and Scrutiny on 1<sup>st</sup> December the Head of Cultural Services explained to Councillors that the level of control that the Council retained on prices was a question for Members to agree – and that it would

then be included in the Service Specification. The Draft Specification included as Appendix 1 in Part A of the Executive report outlined the “core prices” that officers were proposing should be controlled – but no decision has been made as yet. The decision is delegated to the Head of Cultural Services and the Portfolio Holder for Culture, in consultation with the Working Group.

### **Staff Pay**

It is submitted that insufficient detail is provided in the Executive Report to allow Members to properly compare salary costs between the in-house and external models.

The legal position is that under the Transfer of Undertakings (Protection of Employment) Regulations 2006, employees have the legal right to transfer to a new employer on their existing terms and conditions of employment, **including pay and conditions**, and with all their existing employment rights and liabilities intact. This was made clear to Members in response to a number of questions asked at the various meetings in early November.

The draft Specification provided as Appendix 1 to Part A of the Executive Report currently states in paragraph 2.1.10 - “The Contractor will implement the national initiative entitled the Living Wage and any similar successor schemes as agreed with the Council. This will apply to all staff, even those under 25 years of age. If at any time the Government’s National Living Wage achieves parity with the Living Wage the Contractor will, following agreement from the Council, be permitted to pay the National Living Wage.” This may be subject to change in subsequent revisions of the draft Specification, as the Council currently only pays the Living Wage on a discretionary basis, and also because the Government’s position on this matter may become clearer in the next few months. Authorities involved in public procurement will need to be ready to comply with the relevant National Living Wage legislation from April 2016.

### **Tax benefits**

It is submitted that the two tax benefits accruing to the external model fund the administrative costs and profit of the operator. There is an identified risk to both benefits, which was not adequately considered within the report and therefore by Councillors and the Executive.

The VAT benefits enjoyed by certain potential external operators are not currently challenged or questioned by any commentators on Government fiscal policy, and so they are likely to remain in force for the foreseeable future.

The benefits related to 80% exemption from National Non-Domestic Rate have been questioned by one decision in Tower Hamlets Council. However, officers stated in several of the recent meetings on this matter that this one isolated circumstance has not been challenged in the courts and so it is most unlikely that it will lead to any change in policy or practice. There is therefore an identified risk for this benefit, but it is the professional view of Council officers that the identified risk is extremely small, and most unlikely to influence the decision under review here.

With this context it is submitted that sufficient detail was provided in the report on pricing, staff pay and tax benefits, and that no significant omissions were present which could have misled Members during the decision-making process.

### **Submission 4 – That the Executive Report did not address the social value costs and benefits pursuant to the Social Value Act 2012.**

#### Response

Social value is specifically addressed in the Executive Report at paragraph 3.5.8F. This provides that:

*“The Public Services (Social Value) Act 2012 places a requirement on the Council to consider overall value, including economic, environmental and social value, when reviewing service*

*provision. These elements will be integrated into the evaluation methodology for the tenders for both the management and the construction and refurbishment projects”.*

The Act requires public authorities to undertake an assessment of how it will meet the requirements of the Act *as part of the procurement process*.

Recommendation 2.7 of the Executive Report conferred delegated authority to the Head of Cultural Services, in consultation with the Portfolio Holder for Culture, to finalise the Service Specification, undertake the procurement process to select one partner, and to enter into the necessary legal agreements with that partner.

It is the intention that through the development of the Specification and procurement process, officers will address:

- (a) How what is being procured might improve the economic, social and environmental well-being of the Warwick District area and
- (b) How that improvement might be secured

Social value will therefore be included in the procurement of both the construction contractor and the leisure centre management contractor. In each case potential tenderers will be asked how they will deliver various identified elements of social value, which will of course differ between the two, very different contracts. Their responses to these questions will be scored as part of the assessment process of the contract evaluation. The various elements to be assessed are currently being identified as part of the development of the tendering process for each contract.

Many of the requirements of the Specification, which was presented in draft form as Appendix 1 of Part A of the report to the Executive, are designed to preserve or enhance the social value provided by the services delivered through the leisure centres.

Social value will also be maximised through the public consultation on the designs of the building, which will take place in January and February 2016, as officers attending such consultations will ensure that wider public views on the social value provided by the buildings are captured as part of the feedback into the design and planning process.

It is submitted with this context that social value has already been involved in the process to date, and that this involvement will continue and deepen as the process continues.

**Submission 5 – Local Trust** This option was discarded during 2014 in spite of its clear fiscal and fund-raising benefits, the same as for private operators. However that was based on a working assumption that the in-house option would deliver £1.2m less financial benefits than the external option. The Trust, even after the benefits were added, would still lag.

Now that the detailed work has been undertaken the difference between in-house and external models is at most £200k (7% of revenues), and arguably (a and b above) zero. So the Trust option is the best option financially, based on the two models tabled (by at least £140k).

This initial appraisal error – not uncommon in projects of this size – should be acknowledged without blame. Members and the Executive should now be given the opportunity to properly evaluate this option to avoid **breaching CCG Theme 5 - 5.1** (as well as 5.2 and FS4.1.vi) to deliver **‘informed and transparent decisions which are subject to effective scrutiny and managing risk’**.

## Response

The alternative option of Warwick District Council establishing its own Trust was rejected in 2014 for a number of reasons as well as the financial outcomes. The commissioning process for a new local trust involves around 12 months’ work and considerable cost. The current estimate is between £100,000 and £140,000. As the Trust would be a separate legal entity to the Council, it

would still be necessary for the Council to procure the work in a competitive manner, including giving the private sector the opportunity to bid for the contract.

A number of local leisure trusts have recently become insolvent or become absorbed in larger Trusts, and very few, if any, small scale new Trusts have been set up in recent years, due to the poor performance of those currently in operation.

The Council would retain the lifecycle risk of the buildings, as well as the operating risk if the Trust fails. Local Trusts find it difficult to access capital funds to carry out major items of maintenance or any expansion of the facilities. Their finances tend to not be robust, and they can rely on Council subsidy if targets are not met. They struggle to provide support services at an economic rate, due to their small size.

The situation with Trusts was re-evaluated in preparing the report to Executive for November, and none of these risks had reduced. Officers felt it was therefore correct to retain the original decision to discount Trusts as an option in this case.

Now that all the major companies who operate in the leisure centre management industry have imbedded Trusts within their operation, it is possible to retain all the benefits of the in-house Trust with none of the significant weaknesses.

The difference between the figures in the 2014 report do not constitute an 'appraisal error' – they were the best figures available at the time, but these have been substantially revised due to the considerable amount of work undertaken by officers during 2015 to refine the in-house Business Plan and the external options.

It is therefore submitted, with this context, that the local Trust option remains unviable in the current fiscal climate and that officers were therefore entitled to retain the original decision to recommend that this option was not pursued. Direct comparisons between the financial modelling carried out in 2014 and the modelling carried out in preparing the report for Executive in November cannot easily or usefully be made, due to the changing parameters and changing assumptions behind the financial modelling.

#### **Submission 6 - Public Consultation**

The Executive Report provides no information on public consultation and there has not been any consultation before the Executive Meeting. This is in breach of DCLGG “**Involving and consulting with local communities**”.

The public law principle is that consultation is required for public facing services where the proposal involves a reduction in service entitlement for the public. The Cabinet Office has published 'consultation principles'. The governing principle is one of proportionality and consideration on the potential impact of the proposal or decision being taken.

The leisure service is a non-statutory service provided by the Council. The general approach taken by the courts is that consultation is usually not required in circumstances whereby a non-statutory service is being redesigned by the Council, including being outsourced to an external provider. This would be disproportionate. It is generally accepted in law that this is an internal matter for the authority.

Consultation would only be required where the new service specification:

- results in an overall reduction of services to the public
- creates a barrier to use of the services by the public (such as significantly increased fees, removal of all concessions, or the failure to undertake equality assessments).

This legal position is reinforced through case law, such as *R. v Essex County Council Ex p. Bucke*, QBD, 1996 and *Witt v Wiltshire County Council*, QBD 1999. There is no public law duty to consult

with the public in circumstances where a service is being redesigned (including outsourcing) – this is for the local authority to decide.

- The Council has, in any event, conducted community consultation on leisure provision in May 2015 (before a decision had been made) and on the leisure centre activity programme in Spring/Summer 2014 – this is a proportionate response; and
- The new service specification would not create barriers to use of the services by the public, or result in an overall reduction of the services to the public.

It is therefore submitted, with this context, that the consultation that has been carried out on the nature of the leisure service was proportionate under the principles published by the Cabinet Office, and that no further consultation would have been appropriate in this case.

**Submission 7 The Leader of the Executive was reported publicly in the local Press stating his plans to privatise Leisure Centres, before the analysis was complete and a report prepared for Members. This is evidence of prejudgement in the decision-making process and breaches the spirit of CCG Theme 4.**

Councillor Mobbs was quoted in the Courier newspaper on 21<sup>st</sup> May as saying that the Council would be privately outsourcing leisure centres. However, Councillor Mobbs told the Chief Executive and other officers after the article was published that he had been misquoted by the journalist, and that he had not made his mind up on the matter, and that he was looking forward to seeing the in-house Prospectus and Business Plan.

The legal context is that the Council's Members' Code of Conduct does not specifically prohibit Members from talking to the press but they must meet general principles of behaviour - Integrity, Objectivity and Accountability. This does not mean that a Member may not hold views on a particular application or issue but the views should only be publicly expressed at the Committee meeting after the Member has heard all the evidence. Until then a Member must keep an open mind until they have heard all the relevant considerations. A Councillor should never indicate how they intend to vote. If a Member goes public in support of a particular outcome – or even campaigning actively for it – it will not be possible for that Member to argue convincingly, when the committee comes to take a decision on the matter, that he or she has carefully weighed the arguments presented – perhaps in some respects for the first time – at the meeting. The proper course of action for such a Member would be to make an open declaration at the start of a meeting, indicating the action they intend to take, leave the meeting for the duration of the item, and not vote.

Other Members from various parties have expressed opinions on the proposal in advance of the debate, but the Monitoring Officer is satisfied that all Members involved have kept their minds open in advance of the debate and the various votes on the matter.

It is submitted, with this context, that Councillor Mobbs was not predetermined on this matter, and furthermore that no other Councillor of any party was predetermined on this matter, and not therefore entitled to vote.

## Conclusion

This report sets out responses to the issues raised by Councillor Quinney and seeks to address fully each matter in the interests of good governance. However, the material principle in question is whether the decisions of the Executive were at odds with the Council's policy framework. Having considered each of the issues, I can see no reason to uphold this claim.

**Andy Jones, Monitoring Officer**  
**29 December 2015**



## **Appendix 6**

### **Comments made on the Executive Agenda for 4 November 2015 by the Joint Finance & Audit Committee and Overview & Scrutiny Committee**

#### **Leisure Options**

The Joint Scrutiny Committee recommends to the Executive that

- (1) recommendations 2.6, 2.7, 2.8 & 2.9 are removed, effectively retaining the Leisure Options in Council's management control and continuing under existing arrangements;
- (2) the Executive investigate the option of introducing a "Passport to Leisure" into the contract to enable access to leisure facilities for all members of the community; and
- (3) the Executive considers the Trust option and ensure they consider the Social Value losses and gains of all three options.

## **Appendix 7 – Decision made by the Executive, 4 November 2015**

### **Resolved** that

- (1) the refurbishment and expansion of the Newbold Comyn and St Nicholas Park Leisure Centres, be approved, at a cost in the region of £12 million, subject to a further report to the Executive in June/July 2016 detailing the final cost model and the sources of funding for the investment;
- (3) (2) authority be delegated to the Head of Cultural Services, in consultation with the Portfolio Holder for Culture to seek planning permission and such other necessary statutory consents that would enable the proposed improvements to Newbold Comyn and St Nicholas Park Leisure Centres to be implemented; the Head of Cultural Services, in consultation with the Portfolio Holder for Culture, to work with Sport England to seek funding from Sport England's Strategic Facilities Fund (SFF) as a contribution to the costs of the capital investment;
- (4) that a further report be brought forward that would also provide details of further mitigation of car parking constraints at St Nicholas Park and note that the mitigation may involve:
  - i) Improved signage directing traffic to Myton Fields
  - ii) Remodelling of some areas of St Nicholas Park car park
  - iii) Reviewing the relative charges at St Nicholas Park and Myton Fields car parks.
- (5) the procurement of a partner to manage all of the Council's leisure centres and dual-use operations (subject to necessary consents by dual use partners) is undertaken on a timeline that marries-up with the refurbishment programme;; and a budget of £30,000 was allocated from the Contingency Budget to fund the cost of the procurement exercise;
- (6) note the principles of the draft Service Specification at Appendix 1 to the report, which detailed the future service standards that would be delivered at the Council's leisure centres and dual-use facilities (subject to necessary consents by dual-use partners); and delegates authority to the Head of Cultural Services, in consultation with the Portfolio Holder for Culture, to finalise the Service Specification, to undertake the procurement process to select one partner, and to enter into the necessary legal agreements with that partner including arrangements in relation to staffing, pensions and assets;
- (7) the current Members' Working Group that had been overseeing the Leisure Development Programme to date extend its role to provide oversight of the procurement process and risk logs;
- (8) the current level and process of liaison and consultation with staff and their representative bodies continue; and
- (9) officers investigate the option of introduction a "Passport to Leisure" into the contract to enable access to leisure facilities for all members of the community.

**Recommended** that Council approves the funding of £550,000 (included in the £12m) from Section 106 payments (c£170,000) already received and internal borrowing (c£380,000) managed by the Head of Finance, to allow the design proposals for Newbold Comyn and St Nicholas Park Leisure Centres to be developed up to and including the end of RIBA Stage 4, thereby enabling

appropriate planning applications to be submitted, a preferred developer to be selected and a provisional contract price to be established.