

Request for call-in from Cabinet 3 December 2020 –

Advice from the Monitoring Officer

I have received a request for call-in from Cllr Graeme Barnell, supported by 3 further councillors, thus meeting the threshold in rule 19(f) of the Scrutiny Committee etc. Procedure Rules.

Regardless of a request being supported by the required number of councillors, the overarching rules of call-in must still be observed, namely:

- 1 Call-in by Scrutiny should only be used in exceptional circumstances. These are where members of Scrutiny Committee have evidence which suggests that the Cabinet did not take the decision in accordance with the principles set out in Article 15 (Decision-making) (rule 19 preamble);
- 2 Members who wish to call-in a decision are required to seek guidance from the Monitoring Officer on the veracity of their stated grounds for the call-in and demonstrate that they have been mindful of the advice they have received when deciding whether or not to proceed (rule 19(f)); and
- 3 When the relevant Cabinet minutes are put before the Scrutiny Committee, together with the advice from the Monitoring Officer on the grounds for the call-in, the councillors who called in the decision shall have the right to attend and speak (rule 19(h)).

The principles of decision-making – Article 15

Article 15.2 provides that all decision of the Council will be made in accordance with the following principles:

- (a) Proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) Due consultation and the taking of professional advice from officers;
- (c) Respect for human rights;
- (d) A presumption in favour of openness;
- (e) Clarity of aims and desired outcomes;
- (f) Consideration of any alternative options; and
- (g) The giving of reasons for the decision and the proper recording of those reasons

Call-in – Post Hill, Tiverton

The above rules and principles apply. In this instance, from the reasons advanced, I can see that the first and primary reason put forward is that alternative options should have been considered. That is a principle of decision-making. As to whether the concern about alternative options for the mix of housing is an exceptional circumstance, I will leave that to the Committee.

As to whether there is pre-determination, it is important to contrast the reasons put forward in support of the call-in and specifically –

The Cabinet decision that the delivery of 70 units of affordable rented housing will be through any new TECKAL company clearly pre-empts a future decision of Full Council on the scope of the MDDC services and activities to be transferred to such a Company.

Cabinet could have decided instead to recommend that the delivery of the Post Hill homes be through a future TECKAL company.

with the actual decision:

In the event that Cabinet proceeds in future to establish a new company structure, which

(i) is “Teckal” compliant; and

(ii) appropriate for the delivery of social/affordable housing

the Cabinet agrees that delivery of the housing will be through that new company, subject to advice received when establishing the new company and any other material factors.

There is clearly sufficient scope within that resolution to look at the appropriateness of the arrangement and other material factors in future. Indeed, the Cabinet must, in any decision, consider all relevant and material factors at the time of the decision. So a decision in future about a Teckal company is not going to be one which is shaped around a desire of what to do at Post Hill – it will naturally have to be a much wider discussion.

We cannot pre-empt the nature of a Teckal company and its purpose, if indeed one is created. The above decision does not do that. A decision on a Teckal company is more likely to be a Cabinet decision, but that would need to be reviewed in light of the advice received and in consideration of statutory designation of functions and responsibilities and the Constitution. I am unclear as to the argument about the decision being ‘unconstitutional’, but I have not had time to explore this further with Cllr Barnell, due to inquiry commitments and the imminent expiry of the call-in period. I’m happy to hear more about this and consider these concerns if required to do so.

Kathryn Tebbey 10 December 2020