





Brighton & Hove  
City Council

# Overview & Scrutiny

Title:	<b>Children &amp; Young People's Overview &amp; Scrutiny Committee</b>
Date:	<b>21 October 2010</b>
Time:	<b>10.00am</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Contact:	<b>Sharmini Williams</b> <b>Overview &amp; Scrutiny Support Officer</b> 29-0451 sharmini.williams@brighton-hove.gov.uk

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## CHILDREN & YOUNG PEOPLE'S OVERVIEW & SCRUTINY COMMITTEE

The following are requested to attend the meeting:

### **Councillors:**

Older (Chairman), McCaffery (Deputy Chairman), Davis, Deane, Hyde, A Norman, Phillips and Smart

### **Statutory Co-optee with Voting Rights**

Mike Wilson

Diocese of Chichester

David Sanders

Diocese of Arundel & Brighton

Amanda Mortensen

Parent Governor Representative

### **Non-Statutory Co-optees without Voting Rights**

Carrie Britton

Children's Health

Joanna Martindale

Community Voluntary Sector Forum

Mark Price

Youth Services

**AGENDA**

**Part One** **Page**

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**23. PROCEDURAL BUSINESS** **1 - 2**

(Copy attached).

**24. CALL-IN OF THE BRIGHT START NURSERY CONSULTATION** **3 - 24**

*Contact Officer:* Tom Hook *Tel:* 29-1110

*Ward Affected:* All Wards;

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

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Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Sharmini Williams, (29-0451, email [sharmini.williams@brighton-hove.gov.uk](mailto:sharmini.williams@brighton-hove.gov.uk)) or email [scrutiny@brighton-hove.gov.uk](mailto:scrutiny@brighton-hove.gov.uk)

Date of Publication – Monday, 18 October 2010



## Agenda Item 23

### To consider the following Procedural Business:-

#### A. Declaration of Substitutes

Where a Member of the Committee is unable to attend a meeting for whatever reason, a substitute Member (who is not a Cabinet Member) may attend and speak and vote in their place for that meeting. Substitutes are not allowed on Scrutiny Select Committees or Scrutiny Panels.

The substitute Member shall be a Member of the Council drawn from the same political group as the Member who is unable to attend the meeting, and must not already be a Member of the Committee. The substitute Member must declare themselves as a substitute, and be minuted as such, at the beginning of the meeting or as soon as they arrive.

#### B. Declarations of Interest

- (1) To seek declarations of any personal or personal & prejudicial interests under Part 2 of the Code of Conduct for Members in relation to matters on the Agenda. Members who do declare such interests are required to clearly describe the nature of the interest.
- (2) A Member of the Overview and Scrutiny Commission, an Overview and Scrutiny Committee or a Select Committee has a prejudicial interest in any business at meeting of that Committee where –
  - (a) that business relates to a decision made (whether implemented or not) or action taken by the Executive or another of the Council's committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken the Member was
    - (i) a Member of the Executive or that committee, sub-committee, joint committee or joint sub-committee and
    - (ii) was present when the decision was made or action taken.
- (3) If the interest is a prejudicial interest, the Code requires the Member concerned:-
  - (a) to leave the room or chamber where the meeting takes place while the item in respect of which the declaration is made is under consideration. [There are three exceptions to this rule which are set out at paragraph (4) below].
  - (b) not to exercise executive functions in relation to that business and

(c) not to seek improperly to influence a decision about that business.

(4) The circumstances in which a Member who has declared a prejudicial interest is permitted to remain while the item in respect of which the interest has been declared is under consideration are:-

- (a) for the purpose of making representations, answering questions or giving evidence relating to the item, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, BUT the Member must leave immediately after he/she has made the representations, answered the questions, or given the evidence,
- (b) if the Member has obtained a dispensation from the Standards Committee, or
- (c) if the Member is the Leader or a Cabinet Member and has been required to attend before an Overview and Scrutiny Committee or Sub-Committee to answer questions.

**C. Declaration of Party Whip**

To seek declarations of the existence and nature of any party whip in relation to any matter on the Agenda as set out at paragraph 8 of the Overview and Scrutiny Ways of Working.

**D. Exclusion of Press and Public**

To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

*Note: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is confidential and therefore not available to the public.*

*A list and description of the exempt categories is available for the public inspection at Brighton and Hove Town Halls.*

# CHILDREN AND YOUNG PEOPLE'S OVERVIEW AND SCRUTINY COMMITTEE

## Agenda Item 24

Brighton & Hove City Council

**Subject:** Bright Start Nursery Consultation

**Date of Meeting:** 21 October 2010

**Report of:** The Director of Strategy and Governance

**Contact Officer:** Name: Giles Rossington Tel: 29-1038  
E-mail: Giles.Rossington@brighton-hove.gov.uk

**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1. PURPOSE OF REPORT:

- 1.1 To determine whether to ask the Children and Young People Cabinet Member to reconsider the decision in relation to the Bright Start Nursery Consultation which was taken at the Children and Young People Cabinet Member Meeting on 11 October 2010.
- 1.2 The following information is included in the appendices to this report:
  - a. **Appendix 1** contains the Call-In request;
  - b. **Appendix 2** contains the report from the Acting Director of Children's Services which was agreed at the 11 October Cabinet Member meeting;
  - c. **Appendix 3** contains the official record of Cabinet Member's Decision in relation to this report;
  - d. **Appendix 4** contains an extract from the draft minutes of the Cabinet Member meeting;
  - e. **Appendix 5** contains further information on this issue supplied by the Acting Director of Children's Services.

#### 2. RECOMMENDATIONS:

- 2.1 That members:

- (a) Note the decision taken by the Children and Young People Cabinet Member on the 11 October 2010 in relation to the Bright Start Nursery Consultation;
  - (b) Note the subsequent Call-In request;
  - (c) Note the additional information supplied by the Acting Director of Children's Services.
- 2.2 That, having regard to the grounds for the Call-In, members determine whether to refer the decision back to the Children and Young People Cabinet Member for reconsideration.

### **3. BACKGROUND INFORMATION**

- 3.1 On 11 October 2010 the Children and Young People Cabinet Member meeting agreed a report on the Bright Start Nursery Consultation. This report is reprinted in **Appendix 2**. An extract from the draft minutes of this meeting is contained in **Appendix 4**, and a copy of the Decision List for this meeting is contained in **Appendix 3**.
- 3.2 Further information relating to this matter from the Acting Director of Children's Services is contained in **Appendix 5**.
- 3.3 On 12 October 2010 Councillor Kennedy wrote to the Chief Executive, requesting that the Children and Young People Cabinet Member decision be called in. The Call-In request is reprinted as **Appendix 1** to this report.
- 3.4 The Chief Executive accepted the Call-In request on 13 October 2010 and asked for the issue to be considered at the Children and Young People's Overview and Scrutiny Committee within seven working days.
- 3.5 Call-In is the process by which Overview & Scrutiny Committees can recommend that a decision made (in connection with Executive functions) but not yet implemented be reconsidered by the person or body which originally took the decision. That person or body can only be asked to reconsider any particular decision once.
- 3.6 Call-In should only be used in exceptional circumstances, for instance where there is evidence that an important decision was not taken in accordance with the Council's constitution.
- 3.7 An Overview & Scrutiny Committee examining a decision which has been Called-In does not have the option of substituting its own decision for that of the original decision. The Overview & Scrutiny Committee may only determine whether or not to refer the matter back to the original decision making body for reconsideration.



- 3.8 In referring the decision back to the Cabinet Member the Overview and Scrutiny Committee may attach recommendations for the Cabinet Member as to a new course of action or a preferred alternate decision. The Cabinet Member is however free to take the same decision again, or amend the decision in the light of the issues raised by the Overview and Scrutiny Committee.
- 3.9 In determining whether to refer a decision back to its originating body for reconsideration, the Overview & Scrutiny Committee should have regard to the criteria for Scrutiny reviews, as set out in the Council's constitution (Part 6.4.2) namely,
- The importance of the matter raised and the extent to which it relates to the achievement of the Council's strategic priorities, the implementation of its policies or other key issues affecting the well being of the City or its communities;
  - Whether there is evidence that the decision-making rules in Article 13 of the constitution have been breached; that the agreed consultation processes have not been followed; or that a decision or action proposed or taken is not in accordance with a policy agreed by the Council;
  - The potential benefits of a review especially in terms of possible improvements to future procedures and/or the quality of Council services;
  - What other avenues may be available to deal with the issue and the extent to which the Councillor or body submitting the request has already tried to resolve the issue through these channels (e.g. a letter to the relevant Executive Member, the complaints procedure, enquiry to the Chief Executive or Chief Officer, Council question etc.);
  - The proposed scrutiny approach (a brief synopsis) and resources required, resources available and the need to ensure that the Overview and Scrutiny process as a whole is not overloaded by requests.
- 3.10 In addition, the Committee should take into account:
- Any further information which may have become available since the decision was made
  - The implications of any delay; and
  - Whether reconsideration is likely to result in a different decision.
- 3.11 If, having scrutinised the decision taken by the Children and Young People Cabinet Member, CYPOSC is still concerned about it, CYPOSC may refer the decision back to the Cabinet Member for reconsideration, setting out in writing the nature of its concerns.

- 3.12 If the decision is referred back, the Cabinet Member shall reconsider whether to amend the decision or not before reaching a final decision and implementing it. This reconsideration shall take place either at the next programmed meeting of the Cabinet Member or at a special meeting called for the purpose.

#### **4. CONSULTATION**

- 4.1 No formal consultation has been undertaken in regard to this report.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1 Closing the nursery will potentially result in a long term saving of the Council subsidy of £87,000. In the short term there may be redundancy and pension costs depending on the number of staff involved. There could also be increased costs in the Children's centre nurseries because of the redeployment of Bright Start staff.

If the closure is delayed then the saving achieved will be reduced. In addition, if because of the uncertainty around the future of the nursery, take up of places falls as parents remove their children, then there would be a pressure on achievement of fee income. It is not possible to quantify this at present.

*Finance Officer Consulted: Louise Hoten Date: 15 October 2010*

##### Legal Implications:

- 5.2 In determining whether to refer a decision back to its originating body for reconsideration, the Overview & Scrutiny Committee should have regard to the criteria for Scrutiny reviews, as set out in the Council's constitution and set out in the body of the report.

*Lawyer Consulted: Elizabeth Culbert, Acting Head of Legal Date: 15 October 2010*

##### Equalities Implications:

- 5.3 There are no direct equality implications to this report, although the Children and Young People Cabinet Member decision was made with regard to the equality implications contained within the original report of the Acting Director of Children's Services.

##### Sustainability Implications:

- 5.4 There are no direct sustainability implications to this report, although the Children and Young People Cabinet Member decision was made

with regard to the sustainability implications contained within the original report of the Acting Director of Children's Services.

Crime & Disorder Implications:

- 5.5 There are no direct crime & disorder implications to this report, although the Children and Young People Cabinet Member decision was made with regard to the crime & disorder implications contained within the original report of the Acting Director of Children's Services.

Risk and Opportunity Management Implications:

- 5.6 The Call-In procedure seeks to provide a system via which important decisions can be re-examined in a timely fashion, so as to ensure that the Council is not unnecessarily exposed to risk associated with taking decisions contrary to established procedure, whilst also minimising risk inherent in unduly delaying the decision making process.

Corporate / Citywide Implications:

- 5.7 There are no direct corporate/citywide implications to this report, although the Children and Young People Cabinet Member decision was made with regard to the corporate/citywide implications contained within the original report of the Acting Director of Children's Services.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. **Appendix 1** contains the Call-In request;
2. **Appendix 2** contains the report from the Acting Director of Children's Services which was agreed at the Children and Young People Cabinet Member meeting;
3. **Appendix 3** contains the official record of the Cabinet Member's Decision in relation to this report;
4. **Appendix 4** contains the draft minutes of the Children and Young People Cabinet Member meeting;
5. **Appendix 5** contains further information on this issue supplied by the Acting Director of Children's Services

### **Documents in Members' Rooms:**

There are none.

### **Background Documents:**

1. The Council's Constitution (May 2008)
2. The Council's Forward Plan



## APPENDIX 1

Cllr Amy Kennedy  
Green Member for Preston Park ward  
Brighton & Hove City Council

Mr John Barradell  
Chief Executive  
Brighton & Hove City Council

Tuesday 12<sup>th</sup> October 2010

Dear Mr Barradell

### **BRIGHT START NURSERY CONSULTATION: REQUEST FOR CALL IN**

I would like to request that the decision made on Monday 11<sup>th</sup> October in relation to Agenda Item 34 at the Children & Young People Cabinet Member Meeting (Bright Start Nursery Consultation) be called-in as per Section 6 of the Council's constitution.

During the meeting, the Cabinet Member for Children & Young People made the point repeatedly that the decision was concerned only with whether or not to consult on the future of Bright Start, rather than being an outright decision about the nursery's prospects and viability.

The report included details about the costs of refurbishment of the building, but the Cabinet Member refused to answer a public question about that issue (following legal advice), saying that that was a matter for the consultation itself.

Why then was this information included in the report? – surely, if data is contained within a report it is there to be addressed. Thus my first point in requesting a call in is that the recommendation was based on sections of the report that were not relevant to the decision to consult, and should therefore not have been included.

Secondly, the 'alternatives' section was presented as if all possible options had been considered, but many present at the meeting felt that this was not the case. If there are other alternatives, they need to be included, otherwise again the report is incomplete and any decision arising from that report is flawed, being informed by incomplete or misleading information.

There is also concern that, as the nursery could be considered a benefit for all staff, possible closure of the nursery should include all staff as potential users, otherwise it might be seen as a change to the terms and conditions of employment if a benefit is removed. Therefore the proposed consultation as it stands will not be wide enough, if it does go ahead.

Finally, the Cabinet Member gave no consideration to the point raised that the council has requirements placed on it by the Children's Act 2006 to ensure that there is sufficient nursery provision in the city. The report mentions this, but says that whether or not that becomes an issue is something to decide after the consultation.

It is in the Council's interest not to waste money consulting on something it may not be able to do legally, and if the Children's Act 2006 prevents the closure of Bright Start, that should be made clear from the outset.

Many thanks for your consideration of my request to call in the decision about the Bright Start Nursery consultation.

Yours sincerely

Cllr Amy Kennedy

# CHILDREN & YOUNG PEOPLE CABINET MEMBER MEETING

## APPENDIX 2 Agenda Item 62

Brighton & Hove City Council

<b>Subject:</b>	<b>Bright Start Nursery Consultation</b>		
<b>Date of Meeting:</b>	<b>11 October 2010</b>		
<b>Report of:</b>	<b>Director of Children's Services</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Caroline Parker</b>	<b>Tel:</b> <b>29-3495</b>
	<b>E-mail:</b>	Caroline.parker@brighton-hove.gov.uk	
<b>Key Decision:</b>	No	Forward Plan NO:	
<b>Wards Affected:</b>	All		

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 The Bright Start Nursery provides childcare places for children 0-4 for both Council and community parents. The Council subsidy for the nursery in 2010/11 is £87,000 and there is a projected over-spend of £12,000. It is estimated that the Children & Young People's Trust will have to find savings of £7.1 million in 2011/12.

#### 2. RECOMMENDATIONS:

- 2.1 That the Children and Young People Cabinet Member agrees to a consultation with Bright Start nursery staff and parents of children who use the nursery on the closure of the nursery by April 2011.

#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The nursery is registered with Ofsted for 51 children including 21 babies under 2. The nursery is staffed for 47 places and, from September 2010, will be used by 73 children. Of these children 43 have Council employee parents, 23 parents from the local community and 7 funded two year olds. The occupancy in September was 70% compared to 79% last July.
- 3.2 The nursery is very highly valued by the parents who do use it. However the nursery only benefits a very small percentage of all Council employee parents. The number of childcare places in the city has increased substantially since the nursery was first opened and many parents choose to send their children else where. All council employees can purchase childcare vouchers through salary sacrifice up to the value of £55 a week.
- 3.3 The Council has a statutory duty under the Childcare Act 2006 to ensure that there are sufficient childcare places to meet the needs of parents who are working and training. This includes parents who travel in to the city to

work. There are few nurseries in the immediate area and few vacancies within a half mile radius of Bright Start. The increase in use by community parents who pay the higher rate demonstrates a demand for places. There has been a small increase in the amount of daycare places available across the city over the last year with new nurseries opening in Hove. Two other city centre nurseries (Regent House in Dyke Road and Western Road) closed in September 2010 at very short notice with the loss of 112 places. However the new Supersaurus nursery has recently opened in Cromwell Road with 120 places. An analysis of the home post codes of Council staff using the nursery in March 2010 showed that parents are spread across the city with six parents living outside the city, six parents live in central Brighton, six in central Hove, six in Hollingdean, six in west Hove and four in Moulsecoomb. Government guidance on the sufficiency is clear that local authorities should not run childcare unless no other person is willing to provide childcare or that it is appropriate for the local authority to run childcare – for example in a disadvantaged area.

- 3.5 Bright Start costs are higher than many private sector nurseries which pay their staff less than Council rates of pay. Many private sector nurseries do not offer staff pension schemes and their staff work longer hours. Most of the staff at Bright Start are at the top of their scale because retention is good. This makes the cost of running Bright Start considerably higher than many private sector nurseries.
- 3.6 The building was refurbished in 2006 but needs a substantial capital investment to bring it up to a good standard. A feasibility study completed by NPS estimated that the cost would be some £230,000. The flooring in the children's toilets and the heating needs urgent attention. The estimated cost is £5,000.
- 3.7 Where possible Bright Start staff will be re-deployed to fill vacancies in Council run Children's Centre nurseries. In some nurseries it may be possible to employ additional staff to provide more childcare places.

#### **4. CONSULTATION**

- 4.1 This paper asks for permission to consult with the nursery staff and the parents using the nursery on the closure of the nursery. A consultation paper will be issued to all nursery staff and nursery parents with a deadline of 12 November. The final decision will be taken at CMM on 10 December.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1.1 Closing the nursery will potentially result in a long term saving of the Council subsidy of £87,000. There will be increased costs this year if occupancy levels drop. In the short term there may also be redundancy and pension costs. The amount will depend on the number of staff who can be redeployed. There could also be increased costs in the Children's



Centre nurseries because of the redeployment of Bright Start staff, for example if staff are redeployed to a lower grade and their salary protected.

Finance Officer Consulted: Jeff Coates

Date: 20<sup>th</sup> August 2010

Legal Implications:

- 5.2 At this time the only decision being made is to consult on the possibility of closure of the nursery. When the matter returns for a decision as well as the outcome of the consultation being available for consideration, there will need to be information available as to the implications of closure for the city, including the council's capacity to meet the sufficiency requirements of the Children Act 2006.

Lawyer Consulted: Natasha Watson

Date: 27.09.10

Equalities Implications:

- 5.3 The closure of the nursery may make it more difficult for some children to access nursery provision. An Equalities Impact Assessment will be completed for the December report.

Sustainability Implications:

- 5.4 There are no direct environmental implications arising from this report.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications.

Risk and Opportunity Management Implications:

- 5.6 The ground floor of the Old Slipper Baths will become vacant and the Council would continue to be responsible for rates, insurance, security and maintenance costs whilst unoccupied. The property is however located in a good central position near to the Jubilee Library, Prince Regent swimming pool and the Pavilion cultural quarter. It could be occupied for a wide range of useful community purposes including Medical & Health services, Day Centre, Museum, Library, Art Gallery, or Education & Training Centre. The first floor is used as a fitness centre in conjunction with the swimming pool and there is scope to expand this facility. There is also the option of disposal of the property if an asset review assesses this as the optimum option at the time. There is a secure residential tenant of the second floor flat.

Corporate / Citywide Implications:

- 5.7 The closure of the nursery may make it more difficult for some children to access nursery provision.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

6.1 The other option which has been considered is to increase the fees in order to remove the subsidy. There are currently two charging rates. Council employees (M10 and below) pay £35 per day and Council employees (M8 and above) and community users pay £40 per day. Based on March 2010 occupancy rates it is estimated that these would need to increase by 31.43 %

to £46 a day for employees (M10 and below) and 27.5% to £51 a day for employees (M8 and above) and community users. These are substantial increases and it is considered likely that they would actually lead to a drop in occupancy that would prevent the savings target being reached. The table below shows how the average cost of a daycare place in Brighton and Hove in October 2009. Many nurseries provide hot meals and nappies in these costs which Bright Start does not.

	<b>Cost per day 0-2s £</b>	<b>Cost per day 3-5s £</b>
<b>Citywide</b>	42.13	36.63

## **7. REASONS FOR REPORT RECOMMENDATIONS**

7.1 The reason is to help achieve the savings the Council needs to make in 2010/11. At present a small number of children are receiving a substantial subsidy towards their childcare costs. Most of these children do not have identified needs.

7.2 The report is also recommending that where there is some spare capacity in Children's centre nurseries then the number of spaces should be increased and staff redeployed to these nurseries where possible.

### **SUPPORTING DOCUMENTATION**

**Appendices:** None

**Documents In Members' Rooms:** None

**Background Documents:** None

Decision No: CMM –

Forward Plan No:

This record relates to Agenda Item 34 on the agenda for the Decision-Making

## **RECORD OF CABINET MEMBER DECISION**

**DECISION-MAKER:** COUNCILLOR VANESSA BROWN  
**PORTFOLIO AREA:** CHILDREN & YOUNG PEOPLE  
**SUBJECT:** BRIGHT START NURSERY  
CONSULTATION  
**AUTHOR:** CAROLINE PARKER

### **THE DECISION**

1. That the Children and Young People Cabinet Member agrees to a consultation with Bright Start nursery staff and parents of children who use the nursery on the closure of the nursery by April 2011.

### **REASON FOR THE DECISION**

1. The reason is to help achieve the savings the Council needs to make in 2010/11. At present a small number of children are receiving a substantial subsidy towards their childcare costs. Most of these children do not have identified needs.
2. The report is also recommending that where there is some spare capacity in Children's centre nurseries then the number of spaces should be increased and staff redeployed to these nurseries where possible.

### **DETAILS OF ANY ALTERNATIVE OPTIONS**

1. The other option which has been considered is to increase the fees in order to remove the subsidy. There are currently two charging rates. Council employees (M10 and below) pay £35 per day and Council employees (M8 and above) and community users pay £40 per day. Based on March 2010 occupancy rates it is estimated that these would need to increase by 31.43 % to £46 a day for employees (M10 and below) and 27.5% to £51 a day for employees (M8 and above) and community users. These are substantial increases and it is considered likely that they would actually lead to a drop in occupancy that would prevent the savings target being reached. The table below shows how the average cost of a daycare place in Brighton and Hove in October 2009. Many nurseries provide hot meals and nappies in these costs which Bright Start does not.

**OTHER RELEVANT MATTERS CONCERNING THE DECISION**

None

**CONFLICTS OF INTEREST****CONFIRMED AS A TRUE RECORD:**

We certify that the decision this document records was made in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and is a true and accurate record of that decision

**Date:**

11 October 2010

**Decision Maker:**

Councillor Vanessa Brown  
Cabinet Member for Children & Young  
People

**Signed:****Proper Officer:**

11 October 2010

Mark Wall, Head of Democratic Services

**Signed:**

**SCRUTINY**

Note: This decision will come into force at the expiry of 5 working days from the date of the meeting at which the decision was taken subject to any requirement for earlier implementation of the decision.

*Or: This decision is urgent and not subject to call-in (date of CE's agreement to urgency of decision).*

**Call-In Period**

**11- 18 October 2010**

Date of Call-in *(if applicable) (this suspends implementation)*

**13 October 2010**

Call-in Procedure completed *(if applicable)*

Call-in heard by *(if applicable)*

Results of Call-in *(if applicable)*



**BRIGHTON & HOVE CITY COUNCIL  
CHILDREN & YOUNG PEOPLE CABINET MEMBER MEETING**

**4.00pm 11 OCTOBER 2010**

**COMMITTEE ROOM 1, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillor Brown (Cabinet Member)

**Also in attendance:** Councillor Hawkes (Opposition Spokesperson) and Deane (Opposition Spokesperson)

**Other Members present:** Councillors Rufus, Kemble and Older

**PART ONE**

**28. BRIGHT START NURSERY CONSULTATION**

- 28.1 The Cabinet Member considered a report of the Acting Director of Children's Services concerning the beginning of consultation with Bright Start nursery staff and parents of children who use it on the closure of the nursery by April 2011.
- 28.2 Councillor Hawkes informed the meeting of her disapproval of the consultation of closure. Although there were a lot of nursery places now available across the city, this did not mean that Bright Start should be closed. In her opinion the quality of care at the nursery was of the highest standard and moves should be made to increase attendance at the nursery rather than begin a consultation to close. Should the consultation lead to a decision to close the nursery, she had great concern for the emotional impact upon the children of the nursery. In addition, Councillor Hawkes did not believe that the report accompanying the agenda had made a viable financial argument on the potential reasons for closure.
- 28.3 Councillor Deane said she agreed with the points raised by Councillor Hawkes. Councillor Deane suggested that there were options for a higher uptake in attendance to the nursery including more flexible session times. Councillor Deane did not believe a case for the financial implications had been made. She understood that a refurbishment of the nursery would cost £5,000 which in her opinion would make more sense than consulting on closure and lead to a higher uptake at the nursery. Councillor Deane added that the birth rate in Brighton was rising which would necessitate the need for more nursery places, that a transfer of nursery provision would be disruptive for a young child and that she felt sympathetic for the staff who she believed were so highly qualified that they had become too expensive to employ. In addition, Councillor Deane queried the legal implications of closing a staff nursery.

- 28.4 The Chairman noted the comments and stated that evidence suggested that flexible session times very often led to empty sessions. She also noted that the report indicated an increase in fees would still not cover the financial losses at the nursery. She recognised that this was an extremely sensitive issue for everyone involved and that the nursery was rightly held in high regard by the community. However, this did not detract from the matter that the restrictions of the present financial climate necessitated that the option of closure should be considered and consulted on.
- 28.5 **RESOLVED-** That the Children and Young People Cabinet Member agrees to a consultation with Bright Start nursery staff and parents of children who use the nursery on the closure of the nursery by April 2011.



## APPENDIX 5

### Bright Start Call In Request – Additional Information

1. As identified in the call in request, the paper being considered by the Cabinet Member identified the option of closing the nursery, and asked for approval to commence a consultation with staff and parents. No decision to close the nursery was made or recommended at the meeting. The call in raises issues as to the degree of information needed for a Cabinet Member to make a decision to consult. The committee will wish to consider whether the Cabinet Member had either irrelevant or inadequate information upon which to base the decision to *consult*.
2. The call in relies on the refusal to answer the public question as evidence that the process by which the decision made to consult was flawed. The question asked of the cabinet Member was :  
*“How much of the £230k cost of bringing the condition on Barrack Yard up to good condition would have to be spent on the building regardless of its future use?”*
3. The Cabinet Member refused to answer the question based on legal advice to the meeting, which was repeated at the meeting by the lawyer present. That legal advice has not changed, and the legal department stands by it.
4. In essence the legal advice was that this was an issue most suited to consideration within the consultation period. When the proposal returns to the next CMM in December, all the issues raised in the consultation could and should be considered and weighed in the balance before any decision as to closure was made. The legal advice emphasised that it would not be appropriate at this stage to give an answer which might appear to pre-empt the consideration and outcome of the consultation. That advice is legally sound. Were cabinet members to give detailed answers as to issues which will be raised in a consultation process there would be a significant risk that they could later be accused of fettering their own discretion when they later have to consider the same issues when looking at the outcome of any consultation, at the point a decision is needed.
5. The call in request equates the refusal to answer the question given with the notion that the information the question related to must therefore be irrelevant to consideration of the recommendation to consult :  
**“The report included details about the costs of refurbishment of the building, but the Cabinet Member refused to answer a public question about that issue... Why then was this information included in the report? – surely, if data is contained within a report it is there to be addressed. Thus my first point in**

**requesting a call in is that the recommendation was based on sections of the report that were not relevant to the decision to consult, and should therefore not have been included.”**

6. The recommendation to consult was based on a number of different elements contained in the report of which the cost of refurbishment of the building was one. The public question asked did not seek to challenge the factual accuracy of the need for significant capital investment. The information in the report about the need for capital investment in the nursery is relevant to both the decision to consult and the consultation itself, and so it was legitimate to include the information in the report, and cannot be properly described as an irrelevant consideration, as implied.
7. The question sought to clarify whether or not the refurbishment referred to was needed in any event. If the consultation goes ahead the consultation document will include information about the capital investment and there will be opportunities for members of staff and parents to ask detailed questions. The results of the consultation will be available to the Member at the point of decision making. It is at that stage that the detail of the competing merits of the information and arguments presented must be considered by the Cabinet Member in more detail.
8. The call in request further suggests that the report upon which the decision to consult was made was incomplete , and therefore any decision arising from it was flawed:  
**“...the ‘alternatives’ section was presented as if all possible options had been considered, but many present at the meeting felt that this was not the case. If there are other alternatives, they need to be included, otherwise again the report is incomplete and any decision arising from that report is flawed.”**
9. It is not the role of a Cabinet Member at a pre-consultation stage to fully evaluate, and have identified in the report under consideration, the merits of any and all possible arguments for and against the subject of the proposed consultation. It is hard to envisage in practical terms how it would be possible for a pre-consultation report to do this in the way demanded by the call-in request.
10. The report included the only other option that might end the Council subsidy for the nursery. Action has already been taken to improve the sustainability of Bright Start. Over the last three years the staffing in the nursery has been reduced to match the number of places. Places have been offered to community parents to increase the occupancy. This has included offering free part time places for a small number of disadvantaged two year olds. The option of increasing the flexibility of nursery sessions has not been proposed because the experience in

the Children's Centre nurseries has been that more flexible sessions reduces overall occupancy levels and increases costs.

11. The consultation document will invite those responding to consider how else the savings needed might be achieved, and these options will be available to and considered by the CM at the point of the decision.
12. The call in request also raises concern that the consultation proposed is not wide enough. Currently it is proposed that the consultation document will be sent to staff at the nursery, and parents of children currently attending. The call in suggests that as the nursery could be considered a term and condition of employment “ **the proposed consultation as it stands will not be wide enough, if it does go ahead.**”
13. The proposition that the nursery could be considered as a term or condition of employment of Council staff has already been considered by HR, and legal advice taken. In fact the ability to use the provision at Bright Start Nursery is not a term and condition of employment for those parents who are also staff, but a benefit. It is also not a benefit for all Council staff as plainly it would not be possible for all staff to use the nursery because of the limited number of places. The Council offers a childcare voucher scheme as a whole staff benefit and these may be used to exchange for approved child care.
14. In reality the nursery is used by a very small proportion of the total number of Council employees ( approximately 40), and there on going problems with vacancy rates. The nursery is open to all parents so is not exclusively a council employee service.
15. The call in request finally suggests that the decision to consult on possible closure was flawed as it did not consider that closure may not be a viable legal option under the Children Act 2006: “**It is in the Council's interest not to waste money consulting on something it may not be able to do legally, and if the Children's Act 2006 prevents the closure of Bright Start, that should be made clear from the outset.**”
16. The report, and legal comments contained therein, referred to the requirements of the Children's Act 2006. The Children's Act 2006 does not prevent the closure of Bright Start. Section 6(1) of the Childcare Act 2006 places a duty on local authorities to secure the provision of childcare for the needs of working parents in their area “so far as is reasonably practical”. In assessing “reasonably practical” the statutory guidance states that the local authority may take into account “the local authority's resources, capabilities and overall budget priorities”.

17. The call in request appears to be based on a misunderstanding of the contents of the report and the legal advice given. What the report makes clear is that at the current time even with the recent closure of 2 nurseries overall there is an increase in places in the city. There is therefore no legal basis upon to suggest that the decision to consult was flawed because of the constraints of the Children Act 2006.
18. The committee will appreciate that the sufficiency of places can change over time, and it would be a flaw in the process if this were not looked at again at the time of the decision. For the sake of completeness the report and legal comments therein therefore also properly made clear that whatever the position pre-consultation it will of course be necessary to revisit this during the consultation and at the time of the decision.
19. In considering the call in as well as the issues above the committee will wish to be mindful of the impact of potential delay in this process. The planned consultation is now on hold. If the Scrutiny Committee agrees that the CMM decision can proceed then the 30 day consultation with staff and parents can still commence on 25 October with a deadline of 24 November. This would be in time for the final despatch date of 2 December for the 10 December meeting. This would allow a decision to be made before Christmas.
20. If the decision is remitted back to the CMM on 10 December then it would just be possible to fit in a 30 day consultation period before the meeting on 17 January but only if consulting over the holiday period, which may well be considered unreasonable. The safer alternative would be to delay the decision to the next meeting which is not until Monday 28 March. This would lead to a long period of uncertainty for staff and parents and would reduce any potential budget savings for next year.