

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.