

Time Commenced – 18:01
Time Finished – 20:17

Executive Scrutiny Board 1 August 2017

Present: Stanton (Chair)
Councillors Barker, Bayliss, Eldret, Graves, Hezelgrave,
M Holmes Jackson, J Khan, Pegg, Poulter, Webb

Cabinet Member: Councillor Rawson

Signatories: Councillors Hassall, Ingall, Smale,

Officers present: Christine Durrant (Strategic Director for Communities and Place), Claire Davenport (Director of Leisure, Culture and Tourism), Paul McMahon (Principal Lawyer), Mark Elliott (Assistant Head of Libraries: Resources and Learning), Clare Harrison (Democratic Services Manager), Janie Berry (Director of Governance and Monitoring Officer)

17/17 Apologies for Absence

Apologies were received from Councillor Carr and Raju.

18/17 Late Items

There were no late items.

19/17 Declarations of Interest

There were no declarations of interest.

20/17 Meeting procedure for call-in of Council Cabinet decision

The Chair introduced the procedure and advised members Councillor Raju could not be present but Councillor Rawson was attending in his place. The Chair also advised the meeting that the delegate of the Cabinet Member and Officers would be fielding questions on behalf of the Cabinet Member.

21/17 Call-in of Council Cabinet decision 25/17

The board received a report of the Cabinet Member for Leisure, Culture and Tourism and the Strategic Director for Communities and Place which had been considered by Council Cabinet on 12 July 2017 in respect of the Libraries Strategic Review: New Service Delivery Model. In addition to the full reports and appendices considered by Council Cabinet a minute extract of the decision taken by Council Cabinet was also considered. The board received

one call-in notice in relation to the decision, submitted by Councillors Hassall, Ingall and Smale.

Signatories to the call-in notice addressed the board and highlighted the parts of the council decision-making process which they alleged to have been breached, namely: (a) proportionality, (b) due consultation, (d) a presumption in favour of openness, (e) clarity of aims and desired outcomes, (f) a record of what options were considered and giving the reasons for the decision and/or that relevant issues do not appear to have been taken into consideration.

Councillor Hassall made representations on proportionality and presumption in favour of openness, stating that an alternative option to closure had not been put forward if no CMLs come forward to operate the libraries and that the decision will disproportionately affect people living in areas without a Council run library service. It was also claimed that the proposals are motivated by the need to meet budget savings targets and that options were put forward on a financial cost basis and to an unrealistic time schedule.

Councillor Ingall made representations on the clarity of aims and outcomes and record of what options were considered. It was put forward that there was missing detail in the proposals on lease agreements and responsibilities for groups which meant it was unclear what people would be taking on. It was felt that there had been no consultation on Option B+ and that the following information unclear or missing:

- library management/running costs;
- funding splits;
- service outcome expectations;
- opening hours;
- what happens if no-one comes forward;
- other options in the event of no CML being formed;
- risk of redundancies/risk of union involvement.

Councillor Smale made representations on due consultation and that professional advice from officers was not taken on board. It was felt that there was inadequate consultation and that not enough options had been put including, especially the lack of 'no change' option. It was claimed that the not consulting on the B+ option was fraudulent. It was also claimed that the timeframes were undeliverable and unrealistic.

Members of the board were given an opportunity to ask questions of the signatories in relation to their statements and asked questions in relation to the due consultation and legalities of consultation. The Monitoring Officer confirmed that the consultation had been done legally.

The Cabinet Member was given an opportunity to address the Board in response to the signatories' statements. The Director of Leisure, Culture and Tourism addressed the meeting on behalf of the Cabinet Member, clarifying that the proposal to keep 5 council run libraries met the Council's statutory library provision. The Director also clarified that the Council is not obliged to consult further on proposal amended to reflect the outcome of the consultation and explained that other service delivery models had not been ruled out and

that 'Community Managed Libraries' was a generic term which could cover these models.

Officers informed the meeting that the consultation was carried out in good faith and options had been put forward which (it was felt) would best meet Derby's needs. Officers stated that the needs assessment had been carried out openly with reasons given, and that the Council was within its right to do this with the required budget savings in mind, which have also been openly discussed and present in the budget as required savings in the library service since 2016. It was further stated that these budget savings targets needed to be met and an attempt to run all the libraries with a much reduced budget would not meet requirements for the Council to operate an efficient and effective library service. Officers felt that the reductions proposed were in the context of the availability of resources and that an effective and comprehensive library service does not mean that every resident in the city has to live close to a library.

Officers further clarified that building conditions would be assessed before handover to CMLs, and that an inventory would be provided. Application packs would also provide more detail to potential CMLs and interested parties. It was also explained that there was no guarantee or requirement for the CMLs to be run out of existing library buildings. In relation to timeframes, officers said that they are still proposing a 12 week period for the application deadline, inclusive of a 4 week deadline for expressions of interest.

Members of the board were given an opportunity to ask questions of the Cabinet Member. Councillor asked if officers felt that in the event of legal action, if the five council run libraries and 10 CMLs met our statutory obligations. Officers responded that they were confident that the 5 council run libraries met this criteria and that all options put forward in the consultation met this criteria.

Members asked why CMLs were not proposed for all library services and officers explained that if volunteers had not come forward in sufficient number or if CMLs did fail, this would expose the Council to the risk of not having an efficient or effective statutory library service.

Members further questioned that the chosen options were developed in line with the savings target and that the decision on the chosen option was potentially predetermined because of this. Officers explained that options needed to be developed in line with the planned budget savings for the service and that this was not predetermination.

Members asked for clarification of the application timescales and were informed that the deadline for expressions of interest would be 29 August 2017 and that the deadline for full applications would be 23 October 2017, however, this would be put back a week to take the call-in period into account. The Cabinet Member clarified that the application pack and other detailed information had not yet been disseminated because it would have been inappropriate to do this prior to a decision being made and implemented.

Officers responded to questions relating to groups that may be disadvantaged if CMLs close or fail to materialise and how this can be mitigated against. Officers informed the Board that the costs of mitigation would be difficult to predict and would need to be assessed on a case by case basis, however, officers reassured members that they are absolutely committed to making CMLs work.

Councillor Hassall summed up on behalf of signatories to the call-in notice, and the Strategic Director for Communities and Place summed up on behalf of the Cabinet Member.

The Chair notified members that he would be asking each member of the board in turn to vote on whether they felt there had been a breach of the council's decision-making principles and to identify which principles had been breached.

Councillor Barker voted to uphold the call-in on the basis that he felt that principles on proportionality (a), due consultation (b), a presumption in favour of openness (d), clarity of aims and desired outcomes (e), a record of what options were considered and giving the reasons for the decision and/or that relevant issues do not appear to have been taken into consideration (f) had all been breached. Councillor Barker felt that the reduction in libraries and geographic distribution of libraries was disproportionate; that there had been predetermination in relation to costs; that there had been a lack on consultation on option B+; a lack of openness in the way that CMLs will operate and a lack of options provided.

Councillor Webb voted to uphold the call-in on the basis that he felt that principles (a), (b), (d), (e) and (f) had all been breached. Councillor Webb felt this was due to: disproportionate access and availability of libraries; a lack of options for consultation; missing information on how CMLs would work; the clarity of outcomes was solely to meet budget savings; and that not all options had been considered.

Councillor Graves voted to uphold the call-in on the basis that he felt that principles (f) had been breached because the plans could not be effectively delivered within the timescales proposed.

Councillor Eldret rejected the call-in on the basis that none of the decision-making principles had been breached.

Councillor Hezelgrave rejected the call-in on the basis that none of the decision-making principles had been breached.

Councillor J Khan rejected the call-in on the basis that none of the decision-making principles had been breached.

Councillor Poulter voted to uphold the call-in on the basis that he felt that principles (a), (b), (d) and (e) had all been breached. Councillor Poulter wished to submit the following reasons for his decision and these are outlined as follows:

a) Proportionality

The review was dictated by the decision to make a specific budget saving of £648K as opposed to carrying out a needs assessment with a view the provision of an adequate Statutory Library service for the City. The preferred option B and the eventual approved option B+ were obviously tailored to meet the projected saving as included in the MTFP. I.e. £648k. Further £90k of one of funding was provided for in the budget, to support CML's, prior to the decision being taken.

Cabinet members confirmed that budget savings were the driver for the changes, during their contributions at Cabinet.

Any CML which actually proves viable and meets the timetables set will not form part of the city's statutory library provision. Consideration must therefore be given as to whether or not the five remaining libraries constitute an adequate library provision for the City. The remaining five libraries would not provide an adequate statutory provision for the City. The loss of the all-encompassing and fully resourced Central Library, as currently provided, means provision would be undermined. The geographical location of the retained libraries would have a disproportionate effect on the residents in many areas to gain reasonable access to library services.

Considerations:-

Demographics of areas without a library.

Lack of transport links from many suburbs.

Disadvantage for schools, young people and people with disabilities.

b) Due Consultation

The consultation was run on the basis of only four options A to D with the only prescribed alternative management model being the operation by the communities volunteers as a CML. Options did not include an alternative of no change (hence apparent support for option B). Options did not include an option to retain some or all of the libraries by operating an alternative operating model such as increased voluntary working, charitable trusts etc. Which could be tailored to the individual needs of the library and its community. No consultation took place on the introduction of the final preferred option B plus. Officers conceded that no consideration was given to the option of not increasing the opening hours of the retained libraries with a view to allowing the retention of one or more of the libraries under local authority controls part of the statutory provision.

d) Presumption of openness.

The outcome of the review was predetermined on the basis of budget savings and not purely on the needs assessment in respect of an adequate statutory library provision. The intention is to force the closure of libraries in the city to reduce the statutory provision by setting timescales and criteria which communities will not practically be able to meet. The agreed proposals and inadequate levels of resources available to support ten proposals for CML s, in the timescales prescribed, means that all or many of the bids would be doomed to failure resulting in the closure of the provision.

Numerous budgetary provisions have been made prior to the decision being taken, it is no coincidence that the eventual preferred option B or B plus would meet the projected of £648K. Officers apparently have a detailed package of further information to be made available to CML's to assist expressions of interest and bids. Why has this information been released and made available to Cabinet to assist the decision making process. Officers have refused to attend community meetings to discuss and begin the process of setting up a CML and have declined the opportunity to share the extra information necessary for the process, which by existence confirms that the provisions to be made available to a CML as available in reports to date is inadequate for their needs in preparation of a valid and sustainable bid. The financial implications of the process in the reports do not include an assessment of the effect of the slippage of the timescales initially proposed on the potential savings or the implications of some or all of the proposed CML's not being viable or failing.

Lottery funding clawback.

Potential TUPE liabilities.

Shortfall in budget savings / increased implementation costs - payback period for savings to be achieved.

e) Clarity of aims and outcomes.

The proposals do not provide sufficient detail in terms of the lease arrangements or the roles and Responsibilities of voluntary groups considering the establishment of a CML to make to it viable and sustainable.

No property maintenance liability surveys have been conducted to inform the Council of its liability in respect of the maintenance of the buildings or the CML's of the extent of the liability they would have to accept in terms of internal maintenance.

No breakdown of current running costs of libraries is available to inform CML's of the viability of running the library on the grant available. There is no clarity on how the level of individual grants would be calculated, what the formula to be applied by the Director and Cabinet member would be, and how the potential for political bias in deciding the level of grants made, would be avoided.

What training / practical professional support available?

DBS vetting necessary? Cost?

Discipline / HR / complaints / performance issues?

Insurance?

Charges?

Health and safety?

Data protection?

Key holders /security / alarms?

Support for engagement with schools?

Councillor Holmes voted to uphold the call-in on the basis that he felt that principles (a), (e) and (f) had all been breached for reasons already aforementioned.

Councillor Jackson rejected the call-in on the basis that none of the decision-making principles had been breached.

Councillor Pegg rejected the call-in on the basis that none of the decision-making principles had been breached.

Councillor Bayliss rejected the call-in on the basis that none of the decision-making principles had been breached.

Councillor Stanton rejected the call-in on the basis that none of the decision-making principles had been breached.

The Board resolved that in making decision 25/17, Council Cabinet had not breached the council's decision-making principles.

MINUTES END