

HAMPSHIRE COUNTY COUNCIL

Report

Committee:	Health and Adult Social Care Select Committee
Date:	14 March 2019
Title:	Findings from the Consultation and recommendations on respite services at Orchard Close, Hayling Island - Consideration of Request to Exercise Call-in Powers
Report From:	Director of Transformation and Governance

Contact name: Barbara Beardwell – Head of Law and Governance and Monitoring Officer

Tel: 01962 845157

Email: Barbara.beardwell@hants.gov.uk

Purpose of this Report

1. The purpose of the meeting to which this Report relates is for the Health and Adult Social Care Select Committee to consider whether or not it should exercise its powers under Section 9F of Part 1A of the Local Government Act 2000 ('the 2000 Act'), referred to in the County Council's Constitution as 'Call-in'.

2. Recommendation(s)

1. That Members of the Health and Adult Social Care Select (Overview and Scrutiny) Committee (HASC) determine whether:
 - a) they consider that the Executive Member for Adult Social Care and Health should re-consider her decisions as set out in the Decision Record attached at Annex 1, OR
 - b) they consider that the Executive Member for Adult Social Care and Health should not re-consider her decisions as set out in the Decision Record attached at Annex 1.

3. Contextual information

1. As part of the Transformation to 2019 programme, the Health and Social Care Select Committee ('HASC') considered the proposed savings for the Adults' Health and Care Department ('Department') on 21 September 2017. On the same day, the Executive Member for Adult Social Care and Health ('Executive Member') approved for submission to Cabinet, the proposed savings options for the department, which included that consideration would be given on the way in which respite provision is provided. The savings proposals were approved by Cabinet on 16 October 2017 and recommended to the County Council on 2 November 2017, whereupon the overall Transformation to 2019 savings were

approved, subject to further consultation and Executive decision making where necessary.

2. In September 2018, the Department commenced a detailed consultation exercise on the future of Orchard Close respite service on Hayling Island. Orchard Close is a 13-bed respite unit, used primarily for Adults with learning disabilities.
3. On 11 February 2019 the HASC met and as part of their agenda pre-scrutinised the report, 'Findings from the consultation and recommendations on respite services at Orchard Close, Hayling Island', prior to its consideration by the Executive Member at her decision day on 27 February 2019. A copy of the report to the HASC is attached at Annex 2. Proposed recommendations to the Executive Member are contained at Paragraphs 1.1 to 1.6 at Paragraph 1 of the report. Recommendations of the HASC to the Executive Member following consideration of the report are contained in a letter dated 11 February 2019 from the Chairman of the HASC to the Executive Member contained at Annex 3.
4. On 27 February 2019 the Executive Member received a report, which includes the report to the HASC contained at Annex 2, together with the letter to the Executive Member from the Chairman of the HASC contained at Annex 3. The report to Executive Member is contained at Annex 4.
5. The Executive Lead Member approved the recommendations contained at paragraph 1.1 and 1.2 of the report to the Executive Member contained at Annex 4. The decision record of the Executive Member dated 27 February 2019 is attached at Annex 1.
6. Following the decision of the Executive Member on 27 February 2019 a call-in request was made by a quorum of members of the HASC for a meeting of the Committee to be held in order for it to consider whether or not it should exercise its call-in powers. The stated reason for the call-in request was 'in order to question the Executive Member'.

4. Legal and Constitutional Position

1. Legal provisions in respect of Call-in are set out at Section 9F of Part 1A of the 2000 Act and reflected at Part 3, Chapter 3, Paragraph 1.17 of the County Council's Constitution. A copy of Part 3, Chapter 3, Paragraph 1.17 of the Constitution is attached at Annex 5 for ease of reference. It should be noted however that discussion of the Executive decision subject of the Call-in request is not limited to the points raised in the request.
2. When a Scrutiny Committee meets in order to consider whether or not it should exercise its Call-in powers in respect of an Executive Decision, a Select Committee is required to consider whether or not to recommend:
 - a) that the decision be reconsidered by the relevant decision maker; or

- b) that its function in respect of review or scrutiny of the decision should be exercised by the County Council.
3. It should however be noted that the recommendation as referred to at 4.2 b) is not available where the Executive decision in question is in line with the Budget or Policy Framework. Neither does the exercise of Call-in powers prevent implementation of a decision within the Budget and Policy Framework. As indicated at Section 3 of this Report, the decision of the Executive Member relates to proposals regarding implementation of the County Council's Decision regarding the Transformation to 2019 proposals, following submission of the Department's proposed savings options, agreed by Cabinet prior to consideration by the County Council at its meeting on 2 November 2017. Therefore, should the HASC determine it appropriate to exercise its Call-in powers, the recommendation open to the Committee is as set out in Paragraph 4.2 a).

5. Scrutiny

1. The role of a Scrutiny Committee includes both developing and reviewing policy and holding the Executive to account. A Scrutiny Committee may not however discharge any functions other than those conferred on it, and whilst it is perfectly proper for a Scrutiny Committee to offer advice and recommendations to an Executive decision maker, in law responsibility for an Executive decision is that of the Executive.
2. Statutory Guidance confirms that pre-scrutiny of a proposed Executive decision might consist of (inter-alia) seeking the views of local stakeholders and interested parties, and advises that the Executive should take into account any views expressed by an Overview and Scrutiny Committee when determining their final decision. The Executive is not however limited to consideration only of the views of a Scrutiny Committee, and may take into account other factors in its decision making process and make other determinations as it thinks fit.
3. It should be noted that the outcome of the scrutiny of the recommendations in the HASC report of 11 February 2019 was clearly referenced in the report to the Executive Member and that recommendation 1.1 of the Executive Member report of 27 February 2019 asks that the Executive Member notes and acknowledges the discussion and recommendations made at the HASC on 11 February 2019, in regards to the findings of the consultation on respite services at Orchard Close, Hayling Island as set out in the report.
4. Statutory guidance advises that when operated effectively, call-in provisions should ensure that there is an appropriate balance between effectively holding the Executive to account, being able to question decisions before they are recommended, and allowing effective and efficient decision making by the Executive within the policy framework and budget agreed by the full Council.

6. Call-In

1. So far as reconsideration of the Executive Member decision goes, since the first recommendation in the Executive Member report contained at Paragraph 1.1 of the decision record, asks the Executive Member to note and acknowledge the discussion and recommendations made by the HASC on 11 February 2019, it is self-evident that this is a decision which is not capable of reconsideration.
2. So far as reconsideration of the second recommendation in the Executive Member report contained at Paragraph 1.2 of the decision record, it is open to the HASC to ask the Executive Member to reconsider her decision to request that further work be undertaken prior to any decision being made, as to all possible wider options, and that further reports be submitted not before autumn 2019 to the relevant Executive Member/s for consideration.
3. It is not however possible under the provisions relating to call-in for the HASC to do anything other than ask the Executive Member to reconsider the specific decision she made. Therefore, the call-in request must relate to the question of whether or not the Executive Member should request any further work should be undertaken by Officers in relation to Orchard Close, not the future of Orchard Close itself, or the wider issues discussed in the draft report attached to the report to the HASC dated 11 February 2017. It is also not possible for the HASC to recommend a course of action which fetters the professional discretion of Officers to perform their professional roles, or which fetters the discretion of the County Council to take action in future.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because the appropriate quorum of Members have requested a meeting of the HASC.

NB: If the 'Other significant links' section below is not applicable, please delete it.

Other Significant Links

Links to previous Member decisions:

<u>Title</u>	<u>Date</u>
Findings from the consultation and recommendations on respite services at Orchard Close, Hayling Island	11 Feb 2019
Findings from the consultation and recommendations on respite services at Orchard Close, Hayling Island	27 Feb 2019

Direct links to specific legislation or Government Directives

<u>Title</u>	<u>Date</u>
Local Government Act	2000

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

No equality impact has been identified in connection with the recommendations in this report.