

ADULT SOCIAL CARE AND COMMUNITIES SCRUTINY COMMITTEE

13 August 2019

Call-in of Cabinet decision taken on 24 July 2019

Future provision of Care Homes in Gloucestershire

1 Background

1.1 This decision has been called in, in accordance with the Council's constitution. The following information is attached to the report:

Appendix 1 – Call-in notice

Appendix 2 – Cabinet Decision Statement 24 July 2019

Appendix 3 – The report considered by the Cabinet on 24 July 2019

1.2 The Constitution sets out the call-in procedure rules. Any decision which is the responsibility of the Cabinet, but not yet implemented, can be called-in within a prescribed timescale. Call-in should only be used in exceptional circumstances and be invoked only when there is evidence to suggest one or more of the prescribed grounds have been satisfied.

1.3 On 24 July 2019 the following five members called in the Cabinet decision:

Cllr Paul Hodgkinson

Cllr Lesley Williams

Cllr Rachel Smith

Cllr Eva Ward

Cllr Kate Haigh

2 Decision by the Adult Social Care and Communities Scrutiny Committee

2.1 Whether the committee agrees, wholly or partially with any of the grounds set out in the call-in notice.

2.2 Which of the options set out in paragraph 3.4 of this report is to be adopted and, if any, what qualifications, comments, modifications and/or alternatives are to accompany that decision.

3 Call-in procedure

3.1 The first stage in the process is for the committee to decide whether it agrees, wholly or partially with the grounds for call-in.

3.2 The call in notice states that the matter contravened is:

- (Call in Procedure rule 3.3) In making the decision, the Cabinet, Leader of Council or Cabinet Member took account of an irrelevant matter or failed to take account of a relevant matter.
- (Call in Procedure rule 3.4) The Cabinet, the Leader of the Council or a Cabinet Member or Officer under delegated powers acted contrary to the Cabinet Procedure Rules, the Access to Information about the County Council's Formal Business and/ or the principles of decision making set out in Part 2, Article 7.02 of the Constitution

- (Part 2, Para 7.02.3) – They should take proper consultation with others.

No formal consultation has taken place with residents, their families, the wider community or other stakeholders. This leaves the County Council open to judicial review and to complaints to the local government ombudsman. Under the Gunning principles consultation must take place when proposals are at a formative stage, but the report indicates limited consultation with residents once the decision to close has been taken. The principles state that " where people have come to legitimately expect a process of consultation, for example, with local authority budget cuts or healthcare changes, there are grounds for a judicial review should a public consultation not take place".

The report fails to consider the legitimate expectations to proper consultation under the doctrine of legitimate expectation and take into account the risk of legal challenge.

- (Part 2 Para 7.02.8) – They should be properly reasoned and alternatives that are discounted should be identified and the reasons for their rejection explained adequately.

The report to Cabinet states at para 9 that Cabinet Members should read and consider the Due Regard statement to satisfy themselves as decision makers that due regard has been given. This statement was not included in the published Cabinet Papers or accessible on the County Council Website via the link in the report, nor was it included in the Due Regard Statements Pack 5 days before the meeting. It was published on 24th July. Not only does this mean that it is not possible to be certain that Cabinet members had seen the Due Regard statement before the meeting and had sufficient time to consider it but it also contravenes the rules on access to information about the County Council's formal business that state that papers must be published 5 full days before the meeting.

- 3.3 If the committee does agree with the grounds for call-in then members will need to consider the report presented at the Cabinet meeting on 24 July 2019 (Appendix 3), the Cabinet Decision Statement for that meeting (Appendix 2) and the response from the Cabinet Member for Adult Social Care Commissioning.

- 3.4 The following options are available to the committee:
- 3.4.1 Support the decision without qualification or comment (in which case it can be implemented immediately without being considered again by the Cabinet, Leader of the Council or Cabinet Member).
 - 3.4.2 Make adverse comments regarding the process when set against the guiding principles for decision-making, but no adverse view on the decision itself (in which case it can be implemented immediately, with the committee's comments being set out in a report and considered by the Cabinet, Leader of the Council or Cabinet Member).
 - 3.4.3 Propose modifications to the decision or an alternative to the decision to achieve the same effect (in which case the implementation is delayed until the Cabinet, Leader of the Council or Cabinet Member has received and considered a report of the Overview and Scrutiny Management Committee and decided how to proceed).
 - 3.4.4 In exceptional circumstances (which shall be determined by the Adult Social Care and Communities Scrutiny Committee and recorded in the minutes) arrange for the full Council to review or scrutinise a decision and decide whether or not to recommend the Cabinet, Leader of the Council or Cabinet Member to reconsider the decision and/or consider an alternative decision recommended by full Council. If full Council does not recommend the Cabinet, Leader of the Council or Cabinet Member to reconsider the decision and/or consider an alternative decision, the called in decision may be implemented immediately. If full Council does recommend the Cabinet, Leader of the Council or Cabinet Member to reconsider the decision and/or consider an alternative decision the called in decision shall not be implemented until the Cabinet, Leader of the Council or Cabinet Member has considered the recommendation of full Council and decided how to proceed.
 - 3.4.5 In the event the decision is further considered by the Cabinet or Cabinet Member, the Cabinet or Cabinet Member may do any of the following and the reasons for its or his choice will be published and reported to the next meeting of the committee.
 - 1 Confirm the called-in decision without modification.
 - 2 Confirm the called-in decision with modification.
 - 3 Rescind the called-in decision, take the alternative decision recommended by full Council or (if considered appropriate) propose a new one.
 - 3.4.6 If the Committee does not agree with the grounds for call-in, then the Cabinet decision stands.

Response from Cllr Roger Wilson, the Cabinet Member for Adult Social Care Commissioning

Context

Closing a care home, under any circumstances, always needs to be handled with sensitivity given the impact it has on residents, their families, staff and the wider community. We do not do this lightly. However, it is important to note that any call-in looks at concerns with the administrative process of a decision – not at the reasoning behind it.

Consultation

Engagement and consultation are processes that are used to share information, acquire new information and test ideas as part of change management. Consultation involves engagement with people, engagement is not necessarily consultation unless specified as such.

Previous consultation has been undertaken as part of the Older People's Care Home Strategy, which was approved by Cabinet in June 2019. This included the wider community, older people in care homes and those living in their own homes. The Strategy clearly states:

- the Council's intention to reduce the number of people in permanent care and increase the range of services in the community and
- the council will discuss with residents and their families the closure of residential only care homes and care homes that cannot provide an appropriate environment to meet the care needs of older people.

Due to the nature of the proposals, we then sought professional advice from the Consultation Institute who are experts in public and stakeholder engagement and consultation for the public, private and voluntary sectors and who supply services to over 300 UK public bodies.

The Institute advised that with decision making deadlines being tight there was the need to act swiftly to:

- i. Avoid prolonging the uncertainty, and,
- ii. Undertake an engagement exercise to:
 - a. explain draft proposals, the case for change, Council's understanding of actual and potential impacts, impact mitigation measures, and,
 - b. give residents, their relations and carers the opportunity to discuss and debate proposals and suggest alternatives, as part of an opportunity to influence thinking, before the Council decides whether to close the homes.

The Institute advised that engagement was needed because, though there had been earlier consultation around strategy, there had not been specific work with interested parties on a locality basis.

They suggested that we call a group together in each home comprising residents, families, staff and carers, representation from an equality specialist/representative body, representation from the care market and that these groups should have a discussion, led by an independent facilitator.

The Institute further advised that following such an engagement exercise, and depending on what is learned, the Council would need to decide if a consultation was needed. They cautioned that if the Council decided to consult it must appreciate the Gunning 1 requirement, that 'consultation must be at a formative stage', the risk being that consulting on one option or on something already decided could induce a predetermination challenge.

We followed this advice and commissioned ASV and Evolving Communities as the independent representatives. We were also mindful that good practice in situations such as home closures is to take action speedily as a lengthy process creates anxiety.

In addition to those discussion groups, we have offered and arranged other meetings with residents, families and staff, many of whom have had 1:1 discussions with the officer leading on this. This is so that we can understand the impact on every individual.

No consultation has commenced about these two homes yet – purely engagement, as advised by the Consultation Institute. Consultation on the impact of closures will follow Cabinet's decision.

The first ground of the call-in is therefore not proven.

Due Regard Statement:

The call-in is inaccurate. The Due Regard Statement (DRS) for this Cabinet decision was published at 3.30pm on Friday July 19th 2019, not on July 24th. My Cabinet colleagues and I read it before the meeting and it was specifically referenced by the Leader in his summing up before Cabinet approved the recommendation. The Cabinet Report itself also details the findings set out in the DRS.

There is no legal requirement to produce a DRS so the requirements of the Access to Information are not in play, nor does it have any role in the council's constitution. It is our local practice to produce a DRS to demonstrate compliance with the Public Sector Equality Duty, which is part of the Equality Act 2010. Discussing and understanding the needs of those people with protected characteristics will be part of individual conversations we will have with residents and their families. There is no legal or constitutional obligation on the council to produce a DRS, nor, consequently, is there any obligation to publish one, or to do so by a specific time.

The second ground of the call-in is also not proven.