

# Public Document Pack



## Agenda Supplement

Dear Councillor

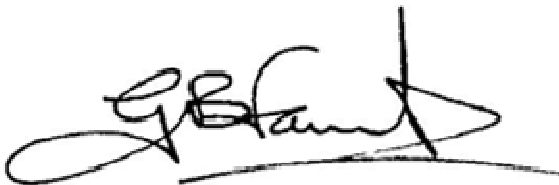
### **AUDIT AND SCRUTINY COMMITTEE - MONDAY, 9TH MARCH, 2015**

I am now able to enclose, for consideration on Monday, 9th March, 2015 meeting of the Audit and Scrutiny Committee, the following reports that were unavailable when the agenda was printed.

<b>Agenda No</b>	<b>Item</b>
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|----|--|
| 3. | <b><u>Call-in of decision 458 of the Asset and Enterprise Committee 18 February 2015, Hutton Community Centre - New Lease (Pages 3 - 32)</u></b> |
|----|--|

Yours sincerely



Chief Executive

Encs

06/03/15



**9 March 2015**

## **Audit and Scrutiny Committee**

### **Call-in of decision 458 of the Asset and Enterprise Committee 18 February 2015, Hutton Community Centre – New Lease**

**Report of:** Ben Bix, Corporate and Democratic Services Manager

**Wards Affected:** Hutton North

**This report is:** Public

#### **1. Executive Summary**

- 1.1 This report summarises the constitutional provisions of 'Call-in' (attached in full as Appendix 5)
- 1.2 All of the rules and procedures relating to call-in seek to recognize that in a Committee System every non-delegated decision is taken in a politically balanced committee, where all Councillors who are members of that committee have the opportunity to question and debate the issues in hand in public forum and participate in the decision-making process.

#### **2. Recommendation(s) That the Committee must resolve *one* of the following:**

- 2.1 To allow the decision to be implemented without further delay;**
- 2.2 To refer the decision back to the Asset and Enterprise Committee together with the observations (to be stated) of the Audit and Scrutiny Committee. The Asset and Enterprise Committee will then take the final decision and that decision may not be called in;**
- 2.3 To request that the Chair of Asset and Enterprise allow further time for the Audit and Scrutiny Committee to consider the issue and make observations at a later date; or**
- 2.4 Referral to the Monitoring Officer and/or the Section 151 Officer for further consideration (for exceptional/complex matters).**

#### **3. Introduction and Background**

- 3.1 Call-in is intended to be used only in exceptional circumstances, the procedure being seen as a last resort through which Councillors may request scrutiny of a decision they believe to be contrary to the authority's

decision making principles. The process cannot be used simply because members disagree with a decision that has been taken.

- 3.2 A call-in form, complying with the requirements set out in Part 4.4 of the Council's Constitution, was received within the permitted timescale following the publication of decision 458 of the Asset and Enterprise Committee, on 20 February 2015.
- 3.3 Part 4.4 of the Constitution, paragraph 1.3 states that "No member may participate in the scrutiny of a decision in which he/she has been directly involved unless he/she attends a meeting for the purpose of making representations, answering questions or giving evidence." The relevant decision makers precluded from the scrutiny of this decision are Councillors Sapwell, Aspinell, Mrs Coe, Hirst, Kerslake, Morrissey, Sleep, Kendall, Le-Surf and Mrs McKinlay.
- 3.4 Decisions can be called-in by eight individual Councillors. Councillor Hossack started the call-in procedure. Councillors Cloke, Mrs Coe, Hirst, Mrs Hones, Kerslake, Mrs McKinlay and Ms Sanders were signatories in support of the call-in.
- 3.5 The Chair, Vice Chair and Caller-in agreed the procedure for the meeting on 4 March 2015.

#### **4. Issue, Options and Analysis of Options**

- 4.1 The options before the Committee are described in stages 3 and 4 of the Council's call-in procedure as follows:
  1. To allow the decision to be implemented without further delay
  2. To refer the decision back to the Asset and Enterprise Committee together with the observations (to be stated) of the Audit and Scrutiny Committee. The Asset and Enterprise Committee will then take the final decision and that decision may not be called in
  3. To request that the Chair of Asset and Enterprise allow further time for the Audit and Scrutiny Committee to consider the issue and make observations at a later date
  4. Referral to the Monitoring Officer and/or the Section 151 Officer for further consideration (for exceptional/complex matters).

#### **5. Reasons for Recommendation**

- 5.1 To comply with Part 4.4 of the Council's Constitution – Overview and Scrutiny Procedure Rules

## 6. Consultation

- 6.1 As required by paragraph 10 of Part 4.4 of the Constitution the Monitoring Officer and the Chair of Audit and Scrutiny were consulted.

## 7. References to Corporate Plan

- 7.1 *A Modern Council*. The Council adopted its amended Constitution in April 2014 enabling improved 'governance arrangements leading to faster, more effective decision-making'.

## 8. Implications

### Financial Implications

**Name & Title:** Jo-anne Ireland, Director of Strategy and Corporate Services

**Tel & Email** 01277 312712 / [jo-anne.ireland@brentwood.gov.uk](mailto:jo-anne.ireland@brentwood.gov.uk)

- 8.1 The call-in procedure has no direct financial implications.

### Legal Implications

**Name & Title:** Christopher Potter, Monitoring Officer and Head of Support Services

**Tel & Email** 01277 312860 / [christopher.potter@brentwood.gov.uk](mailto:christopher.potter@brentwood.gov.uk)

- 8.2 The power to 'call-in' a decision taken but not yet implemented is sourced from *The Local Authorities (Committee System) (England) Regulations 2012* as interpreted in Part 4.4 of the Council's Constitution.

**Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.3 None

## 9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

- 9.1 Background papers relating to the decision of the Asset and Enterprise Committee can be found on the Council's website. There were two exempt appendices Appendix A Expressions of interest received, and Appendix B Summary of the expressions of interest received.

## **10. Appendices to this report**

- Appendix 1 – Call-in form received and validated by the Monitoring Officer, including a statement from the Caller-in
- Appendix 2 – Procedure for the meeting
- Appendix 3 – Report to Asset and Enterprise Committee 18 February 2015
- Appendix 4 - Published decision of 18 February 2015
- Appendix 5 - Call-in extract from the Council's Constitution

### **Report Author Contact Details:**

**Name:** Ben Bix, Corporate and Democratic Services Manager

**Telephone:** 01277 312550

**E-mail:** [ben.bix@brentwood.gov.uk](mailto:ben.bix@brentwood.gov.uk)



**Form of Request for Decision to be Called-In<sup>1</sup>**

Call-in is intended to be used only in exceptional circumstances, the procedure being seen as a last resort through which Councilors may request scrutiny of a decision they believe to be contrary to the authority's decision making principles. The process cannot be used simply because members disagree with a decision that has been taken. The Call in process is clearly described in the Council's constitution.

Any Councilor can start the call-in procedure. Decisions can be called in by eight individual Councilors.

Councillor name:	CHRIS HOSSACK.		
Date Call-in request submitted:	27 - FEB - 2015.		
Decision title:	AGENDA ITEM 3. MUTTON COMMUNITY CENTRE - NEW LEASE.		
Name and date of Committee Meeting where the decision was taken:	ASSET & ENTERPRISE CITEE. 18 <sup>th</sup> - FEB - 2015		
Signatories (of which 8 in total are required)	1		
	2		
	3		
	4		
	5		
	6		
	7		
	8		

If the call-in is to be submitted by e-mail, only one Councilor need submit the actual form/request. However, individual e-mails (or letters) in support of the request must also be submitted by the other Councilors specified on the form before the end of the call-in period. Call-ins submitted by fax or telephone must be followed up in writing with the required number of signatures before the end of the call-in period.

<sup>1</sup> Overview and Scrutiny Procedure Rules, Part 4.4, Paragraph 10.1

Please return email this completed form to: [democratic.services@brentwood.gov.uk](mailto:democratic.services@brentwood.gov.uk)

Please use the space below to outline your reason(s) in detail, including:

1. Whether the whole or part of the decision is being called in.
2. Clear reasons for call-in and written evidence that the decision meets the requirements of section 9.10 of the Constitution.
3. Details of attempts the caller-in has made to discuss the issue with the relevant chairperson in advance of the call-in. If no attempts were made then the call-in will not be accepted.

\* PLEASE REFER TO THE REASONS GIVEN ON THE ATTACHED DOCUMENT.

\* I AM CALLING IN THE WHOLE DECISION.

\* I ENDED CUE QUACK/SAPWAL/CLACK ON 26/FEB/15 AT 13H33. TO INVITE THEM TO DISCUSS WITH ME ON THE NUMBER P61000.

VM CALL W CUE QUACK 14H50 26/FEB/15.

EXCHANGED OPINS W CUE SAPWAL 26/FEB

Continue onto separate sheet if required

What is your desired outcome of the call-in?

THAT THE ENTIRE PROCESS IS REVISITED AND RUN PROPERLY AND THAT QUESTION RAISED IN MY CALL IN REASONS, ARE INVESTIGATED THOROUGHLY AND ANSWERS GIVEN PRIOR TO THIS ESPECIALLY W.R.T. TIME AND OWNERSHIP OF HCC

Would you like to make representation at meeting of the Audit and Scrutiny Committee?

Yes/No

Delete as appropriate

Please return email this completed form to: [democratic.services@brentwood.gov.uk](mailto:democratic.services@brentwood.gov.uk)



The evidence in accordance with Rule 9.10 to support why the decision is being submitted for call-in is as follows:-

**Reason (a) have evidence that it may be contrary to the normal requirements for decision-making.**

*Decision making Rules*

A motion was put immediately following the presentations to pursue just one proposal, this was put before any debate had taken place and indicates a pre-determined outcome.

*Best value assessment*

"Best value not considered". "please explain best value of this proposal from EBGC and how this complies with the Council's own mantra and legal obligation of best value".  
"Officer delegation exceeds reasonableness as they are disposing of an asset for significantly less than best value without further reference to cttee or full council..."  
"Given that the information in pink made it clear which proposal contained best value".  
"best value was not even made part of the debate in any detail – questions how councillors could have been expected to vote on a decision without debating these crucial figures".

The strongest revenue propositions to the council were not debated and disregarded. No effort was sought to secure the best revenue opportunity that was withdrawn prior to the meeting.

*Insufficient Information / Not a level playing field*

"Bidders received varying information and at different times". "asked questions on the night they had not been asked to prepare for". "repair cost estimates...could only be provided if the bidders had sought input from a surveyor, this had not be requested prior and was therefore not a level playing field for the other two parties"

Bidders unclear about what was taking place an EOI response or an invitation to tender? There is an obvious dispute amongst bidders as to what the process was that was actually taking place.

Key potential bidders were not even invited so we have no idea what the proposal might have been if at all i.e. BLT therefore the question remains what was the process around who should be proactively contacted and was the EOI request sufficiently advertised at all?

How many other bidders were personally escorted around the HCC by the council leader, EBGC had this benefit, this happened during the previous scrutiny piece into this project.

There was insufficient information given to the cttee to progress with just one bidder.

That clarification be sought and evidence provided as to the actual ownership and title of the building. It is known that it sits on BBC owned land that was transferred from LCC in the 1970's but the building was actually paid for by the Hutton Community, so who owns it and therefore has the rights to make decisions on it's future?

The proposal progressed was a large departure as it included office space for a HQ and significant extensions but limited further information was given to support these statements or consider the opinions of local people  
Without it [information given regarding new building proposals from EBGC], their proposal collapses.

No consideration given to the fact that the financial proposal in the pink from EBGC was very low considering they would attain the benefit of a new administrative HQ

**Reason (c) lack reasonable and significant information from the decision-taker to explain why it was taken**

- No information was given to demonstrate either way as to why the alternate, local community led proposals were so unworkable
- No information provided that HCC site is the only viable appropriate location in the Borough to accommodate the proposals of EBGC
- Supporting statements given by members were factually unworkable, i.e. could benefit Pilgrims Hatch Youth, how?
- Also, supporting statement's given by members that it was for the "benefit of the whole Borough" and that was the basis of their decision, again, what benefits?
- The bank balance of EBGC seems to have been the basis of the decision, but a bank balance does not constitute a commitment to spend or make payments.

**Concluding Statement**

Due process and a level playing field were not applied for this item from the initiation of the EOI to a decision being made in the Chamber. There are questions over the process with regard to tendering legislation, best value has not been sought in the interests of the council or public, public endorsement has not been sought, the decision has been imposed without full consideration of material facts and without full available information for members to make a sound and robust judgment. For these reasons, we call the decision process and information provided in for scrutiny and further examination.

## Appendix 2

### The Call-in meeting

Procedure	Commentary	Time
The call-in will be the first item of business on the agenda, in order that witnesses are not kept waiting.	Agenda published in line with constitutional requirements	27/2/15
Witnesses will have reserved seats around the table with the committee if space permits, but if there are a large number of witnesses or other attendees at the meeting; they may be required to wait in a separate seating area or the public gallery.	A large number of witnesses would make the meeting difficult to manage. A small number was preferred. This was agreed during discussion between the Chair, Vice-Chair and Caller-in under provision 12.2 of the Constitution. Members notified the Monitoring Officer of whom the witnesses would be.	4/3/15
The caller-in will be invited to make a presentation outlining his or her main reasons for calling in the decision. A question and answer session will follow. <sup>1</sup>	Councillor Hossack will make a presentation (3 minutes)	19:05 – 19:10
The representative of the decision-taker will be invited to make a presentation outlining his or her main reasons for making the decision.	Councillor Aspinell as representative of the decision maker will make a presentation (3 minutes)	19:10 – 19:15
Any other parties relevant to the decision-making process, for example Chairs of other committees, or officers, will be invited to make presentations outlining their reasons for any recommendations on the issue concerned, or in the case of officers their reasons for any recommendations or advice to Councillors.	The Strategic Asset Manager will make a presentation (3 minutes)	19:15 - 19:20
Witnesses will be invited to make a presentation to the committee without interruption for up to three minutes each, following which there will be a question and answer session.	3 witnesses for the Call-in will speak. Each for up to 3 minutes. No repetition (9 minutes) <ul style="list-style-type: none"> <li>• Martin Lazenby</li> <li>• Bernadette Benn</li> <li>• Brian Darwood</li> </ul> 3 witnesses for the original decision will speak. Each for up to 3 minutes. No repetition (9 minutes) <ul style="list-style-type: none"> <li>• The Monitoring Officer</li> <li>• Cllr Kendall</li> <li>• TBC/A Member of the Public</li> </ul>	19:20 – 19:40
	Questions and answers through the Chair (20 minutes)	19:40 –

<sup>1</sup> All questions and answers will be taken in one session

		20:00
Witnesses will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.	Through the Chair	20:00 – 20:05
The caller-in will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.	Councillor Hossack will speak (3 minutes)	20:05 – 20:10
The representative of the decision taker will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.	Councillor Aspinell will speak (3 minutes)	20:10 – 20:15
A Committee Member will propose and a Committee Member will second one the Committee's permitted resolutions	<ol style="list-style-type: none"> <li>1. To allow the decision to be implemented without further delay;</li> <li>2. To refer the decision back to the Asset and Enterprise Committee together with the observations (to be stated) of the Audit and Scrutiny Committee. The Asset and Enterprise Committee will then take the final decision and that decision may not be called in;</li> <li>3. To request that the Chair of Asset and Enterprise allow further time for the Audit and Scrutiny Committee to consider the issue and make observations at a later date; or</li> <li>4. Referral to the Monitoring Officer and/or the Section 151 Officer for further consideration (for exceptional/complex matters).</li> </ol>	20:15
The Committee will debate the Motion	Through the Chair	20:15 – 20:30
The Committee will resolve one of it permitted resolutions	Through the Chair	20:30

Agreed under provision 12.2 on 4/3/2015 by the Chair, Vice-Chair and Caller-in.

**18 February 2015**

## **Asset and Enterprise Committee**

### **Hutton Community Centre - New Lease**

**Report of:** *Adrian J Tidbury Estates and Valuation Surveyor*

**Wards Affected:** *Hutton North*

**This report is:** *Public*

#### **1. Executive Summary**

- 1.1 This report considers the response to the expressions of interest received from organisations interested in taking a medium term lease on the Hutton Community Centre.

#### **2. Recommendation(s)**

- 2.1 That officers enter into negotiations with those bidders selected by the Committee to seek best value for the Council.**
- 2.2 To report the findings of those negotiations to the next Committee.**

#### **3. Introduction and Background**

- 3.1 Members will recall the decision of 5 June 2103 Community Services Committee where members considered a phased approach to the reopening of the Centre. Those phases were:
- Phase 1 - Building repaired/rebuilt (if a cheaper and better option) open and being run by the Council
  - Phase 2 - Development of a community based organisation to run the Centre
  - Phase 3 - Lease of the Centre to an independent organisation

- 3.2 Criteria set out before Members consisted of the following:
- That the primary usage will be a balance between community and sports use
  - That there should also be a balance between fee paying and drop-in use (to be looked at as part of the process of developing the business case)
  - A café will be provided and space will be made available to provide a limited bar facility but the views of the public will be sought on this
  - The Centre needs to be sustainable in each phase
  - Facilities Management arrangements will need to be put in place.
  - That the Council will look after the structure and exterior of the building whilst it is running the Centre.
- 3.3 The 6 November 2013 Performance and Resources Board agreed to accept the tender for the renovation works to the Centre. The Committee requested a detailed budget, to include a summary narrative for approval by the Community Services Committee.
- 3.4 The 26 February 2014 Community Services Committee considered the report concerning the detailed budget and business plan from the Community Group working with the Council. Members reaffirmed that the Community Centre was a community based facility which the Council in partnership with the local community would manage for the first year as part of the phased approach to the community running the Centre independent of the Council. In addition, reassurance was given that Council Members would form part of the management committee supported by officers and that the Council would monitor the Centre's finances closely.
- 3.5 The Committee on 18 November 2014 considered the current use of the Centre and set out the parameters for any future lease on the property which are repeated here for clarity.
- 3.6 In order for the Council to consider best value for the Centre the Council would need to seek bids for the site and for the Council to therefore maximise its income on the asset.
- 3.7 For any lease on the property the Council will need to consider the basis upon which a new lease will be entered into. Any lease greater than 7 years will need to be on a best consideration basis to satisfy section 123 of the Local Government Act 1972 ( s123(2) ) "Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can be reasonably obtained". A short tenancy is defined in section 123(7) of that Act if it consists "... (a) of the grant of a term not exceeding seven years, or (b) of the assignment of a term which at the date of the assignment has not more than seven years to run..." .

- 3.8 In order to gain best value the Council would need place the property on the market and seek bids from prospective organisations and provide a lease with the person or organisation that provides both the best rental income.
- 3.9 To ensure compliance with the best value requirement any lease on the property should be subject to yearly rent reviews increased utilising the Retail Price Index at the relevant time.
- 3.10 In order to provide a lease of less than best consideration the Council would need to follow the advice given in Circular 06/03 Local Government Act 1972 General Disposal Consent (England) 2003 - disposal of land for less than the best consideration that can be reasonably received. In such cases a valuation of the property by a chartered surveyor will need to be obtained taking into account the requirements of the RICS Appraisal and Valuation Standards (Fifth Edition). Leases in this respect would be seven years or less than 7 years duration.

#### **4. Issue, Options and Analysis of Options**

- 4.1 In line with the Committee's instructions, the Council placed a public notice in the Brentwood Weekly News and also wrote to all existing users of the Hutton Community Centre as well as those organisations known to have an interest in the Centre.
- 4.2 The Public Notice was placed in the press during the week beginning 26 January 2015 and direct emails to all users of the centre were sent out on 29 January 2015 as well as known interested parties.
- 4.3 Expressions of interest have been received which are detailed in the Appendices to this report, listed in order of receipt and summarised.
- 4.4 **The Essex Boys and Girls Clubs** is a registered charity and their proposal is a significant departure from the Council's original objective for the Centre as the Club envisage a three year lease at a peppercorn rent and that during the term there be an option to purchase the freehold of the premises for a nominal consideration (£100) upon condition that the proposed development is carried out and completed.
- 4.5 The proposed redevelopment would consist of retaining the existing halls and redeveloping the remaining buildings to provide a dedicated boxing club for under 25's of between 3000 and 4000 square feet of offices, storage and changing rooms, ancillary facilities for the existing halls for a youth club, community club meetings and gatherings, the full detail of the proposal is contained in the Appendices to this report.
- 4.6 In consideration of this proposal, Members will need to consider the Councils wish for a disposal of the property, which has not been

considered in the past and as to how this meets the objects of the original charity that still remain.

- 4.7 Members will need to consider any conflicts of interest that may become apparent between the proposed uses of the premises and how well the different uses will marry together.
- 4.8 Members will be aware of the change in the use of the Centre prior to it being surrendered to the Council in January 2013 and of what avenues would be open to the Council to rectify and return the property to full community use should a similar situation occur again. Should Members agree to any proposed sale, control of the use of the Centre could not be controlled as the property would be in private ownership.
- 4.9 **Purple Puddles Childcare** is a commercial organisation who originally sent in their proposal on 5 February 2015 and revised that proposal by email on 9 February 2015.
- 4.10 Their original offer was to take a rental on the small hall and two other rooms in the premises which does not meet with the terms requested by the Council of securing a lease with a community organisation rather than a rental.
- 4.11 The revised proposal is for a higher bid for all of the premises. This proposal is assumed to still be on a rental basis as they request the retention of the existing centre manager.
- 4.12 **The Hope Community Church** is a registered charity and have declined to provide a rental figure. There was insufficient information provided and the Church would be willing to negotiate a competitive rental once more detailed accounts, usage analysis and information pertaining to any necessary repairs on the building is provided. Members will be aware that the Centre since being brought back into operation has not yet had a full year and therefore this information is not yet available, although budget and income so far received was made available.
- 4.13 Whilst being a religious organisation, they have indicated that they do not intend to try to make the Centre into a church building but rather use their resources and skills to help it become an effective community resource- thus fulfilling the intention of the previous committee decisions of the Council.
- 4.14 In addition the Church have outlined that their hope is that with investment and partnership with other local organisations the Centre can be more than just a space for hire but can become a community hub catering for the needs of the local community. They see a need in Hutton for communal resources to develop social cohesion (e.g. mother and toddler groups, cafes, clubs, etc.) and also for resources to tackle some of the social problems in the area (debt counselling, youth activities, skills



workshops, etc.) The Church intends to see the community centre to be a place where such activities and resources can find a home.

- 4.15 **Building a Better Hutton** have presented their proposal for a 7 year lease but would prefer to secure a longer lease, 25 years, in order that security of tenure can be provided to financial backers, many of which require a longer than 7 year term and who already have agreements in principle in place.
- 4.16 The Group have raised an issue regarding legislation under the Community Right to Buy. However, properties considered under this legislation would need first to be placed on the Register of Assets of Community Value. Should the property be placed on the open market, properties on this register are provided with two moratorium periods enabling time for community groups to raise funds. As the Council has neither placed the property on the register nor proposed to sell the property, this would not apply.
- 4.17 The Group have also asked if the Council would transfer the asset to the Group enabling them to attract funding to undertake further improvements to the property.
- 4.18 The Group has also considered the 'Right to Bid' scheme where they would acquire the property as a community asset on a covenanted purchase basis.
- 4.19 Members will be aware that at the outset of the rejuvenation of the property as a community centre, the Group presented to the 26 February 2014 Community Services Committee a detailed budget and business Plan. It is this business plan that is currently successfully being used to map the direction of the Centre back into community use.
- 4.20 In addition, the Group have indicated their development of the Centre in that the Group believes that it should be a place for cultural, recreational and sporting pastimes. But importantly with the concept of being a hub whereby people can drop in to socialise, individuals can find useful information and meet with their community representatives when the occasion allows. In addition, a community café would be key in both social and income generation.
- 4.21 The Group have indicated that they are made up of local individuals with a collective 200 years' of local knowledge between the Group.
- 4.22 The proposal from the Group provides significant detail of the intentions of the Group towards the Hutton area utilising the community centre and the partners they have started to work with during this first year to the reopening of the Centre.

## **5. Consultation**

- 5.1 No formal consultation has been undertaken specifically regarding the proposed lease. Public engagement has taken place through public meetings during the early stages in the renovation of the project. It was from these public meetings that the working party working alongside the Council in leading the project was brought together.
- 5.2 The Council has placed a public notice regarding its intention to seek expressions of interest and also has written to current users of the Centre along with those groups that it was aware had an interest in the Centre. Members will therefore need to satisfy themselves that the level of circulation is sufficient for the process to be determined or whether to extend the period and seek interest in the site from elsewhere.

## **6. References to Corporate Plan**

- 6.1 Value for Money: policies that invest in key services to create opportunity for all, provide better value for Brentwood's taxpayers and enhance the Borough's infrastructure whilst modernising and transforming Brentwood Borough Council. We will re-prioritise and focus our resources and be innovative in our approach.
- 6.2 Our Borough: Policies which promote our environment, support sustainable growth, and safeguard our high quality environment including heritage and countryside. We will provide responsive, accessible and forward thinking services for vulnerable residents, supporting people back into work and providing good quality housing making Brentwood our residents' Borough of Choice.

## **7. Implications**

### **Financial Implications**

**Name & Title:** Jo-Anne Ireland, Acting Chief Executive

**Tel & Email** 01277 312712 / jo-anne.ireland@brentwood.gov.uk

- 7.1 During the presentations, Members will need to take note that the financial implications will vary between the proposals. The current budgeted costs for the first year of operation at HCC are estimated at £35,000. A full financial evaluation of the proposals will form part of the report to this Committee in March.

## **Legal Implications**

**Name & Title:** Christopher Potter, Monitoring Officer and Head of Support Services

**Tel & Email** 01277 312860 / christopher.potter@brentwood .gov.uk

- 7.2 The Council is under a fiduciary duty to its council taxpayers.
- 7.3 The Council is required to comply with section 123 of the Local Government Act 1972.
- 7.4 Because of the history of this matter officers have sought advice from the Charity Commission who advised as follows:

### **“The Charity Commission’s findings**

Having undertaken a review of all relevant information, I would summarise the key points in this case as follows:

- the charity leased premises from Brentwood Borough Council (the Council) in 1971 for 60 years
- the charity had been unable to maintain the premises and , over time, the premises lapsed into a state of disrepair and the charity was unable to further its charitable objects effectively
- the charity took the decision to enter into a Deed of Surrender with the Council (signed on 24th January 2013 by Mr Ian Oval an behalf of the charity), which served to surrender its remaining interest in the premises back to the Council.
- the surrender of the remainder of the lease (approximately 18 years) constituted a disposal of charity property
- the disposal may have required the Commission's authorisation (by Order), as you are of the view that the charity did not comply with the provisions of section 119 (1) of the Charities Act 2011
- Mr Oval notified the Council in March 2014 that the association had been disbanded along with any charitable status and our register of charities reflects that the charity had not filed Annual returns/accounts from 2009 onwards, therefore it could be argued that the charity no longer exists
- The Commission is pleased to note that the Council is now taking action to get its premises back on a proper footing and proposes to advertise for expressions of interest from local charities, to reconstitute the premises for the local community

### **Next steps**

- In conclusion, the Commission is content for the Council to take the lead in matters at present and proceed with its proposals as outlined above, without our further involvement.

- We would however appreciate it if you provide us with a progress update in due course, to enable us to establish if we have any regulatory or other role to play at that point”
- Therefore any final choice by the Committee should be expressed as subject to the approval of the Charity Commission if it involves a significant departure from the original charitable objects.”

7.5 Whilst the Committee’s terms of reference on page 32 of the Constitution includes the power of disposal, the Committee cannot make any decision as to disposal without being in possession of all relevant information, including financial information. Moreover, as expressions of interest were invited on a particular basis i.e. as regards a lease, it would be inappropriate for any decision to be taken at the present time on a freehold disposition whether or not “expressed as subject to the approval of the Charity Commission”.

**8. Background Papers** (include their location and identify whether any are exempt or protected by copyright)

All Committee papers relating to Hutton Community Centre are available on the Council’s website.

**9. Appendices to this report**

Appendix A Expressions of interest received (Exempt)

Appendix B Summary of the expressions of interest received (Exempt)

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## Minutes

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### **Asset and Enterprise Committee Wednesday, 18th February, 2015**

#### **Attendance**

Cllr Sapwell (Vice-Chair, in the Chair)	Cllr Kerlake
Cllr Aspinell	Cllr Morrissey (Acting Vice-Chair)
Cllr Mrs Coe	Cllr Sleep
Cllr Hirst	

#### **Substitutes Present**

Cllr Kendall (Substituting for Cllr Quirk)  
Cllr Le-Surf (Substituting for Cllr Clark)  
Cllr Mrs McKinlay (Substituting for Cllr Cloke)

#### **Also Present**

Cllr Baker  
Cllr Hossack  
Cllr Mrs Murphy  
Cllr Mynott  
Cllr Reed  
Cllr Ms Sanders  
Cllr Clark (during the latter part of the meeting)

#### **Officers Present**

John Parling	Strategic Asset Manager
Chris Potter	Monitoring Officer & Head of Support Services
Jean Sharp	Governance and Member Support Officer
Adrian Tidbury	Estates and Valuation Surveyor

#### **456. Apologies for Absence**

Apologies were received from Cllrs Clark, Cloke and Quirk. Cllr Clark attended during the latter part of the meeting.

#### **457. Minutes of the previous meeting**

**RESOLVED** that the minutes of the 21 January 2015 Asset and Enterprise Committee meeting were a true record.

#### **458. Hutton Community Centre - New Lease**

The report before Members considered the response to the expressions of interest received from organisations interested in taking a medium term lease on the Hutton Community Centre. The four proposals received were outlined within the report, however, the proposal from Purple Puddles was withdrawn before the meeting took place.

There were two confidential appendices before Members which provided further details on the proposals, including some financial information, and a summary of each.

Before the Committee considered the expressions of interest, each organisation made a presentation and Members were given the opportunity to ask questions of each representative.

Presentations were received from:

- Build a Better Hutton
- Hope Community Church
- Essex Boys and Girls Clubs

At the end of the presentations and questions from Members, the Committee agreed to have a short comfort break and the meeting was adjourned for ten minutes.

Upon recommencement of the meeting, in accordance with Rule 28.1 of the Council's Procedure rules, the Committee **RESOLVED** to continue with the business of the meeting since it had not been concluded within two hours.

**Cllr Aspinell MOVED and Cllr Le-Surf SECONDED the following:**

**That delegated authority be granted to the Strategic Asset Manager after consultation with the Chair of Asset and Enterprise Committee to negotiate and enter into a lease of the Hutton Community Centre with Essex Boys and Girls Clubs.**

**Cllr Hirst MOVED and Cllr Mrs McKinlay SECONDED an AMENDMENT as follows:**

**That delegated authority be granted to the Strategic Asset Manager after consultation with the Chair of Asset and Enterprise Committee to negotiate with both the Essex Boys and Girls Club and Build a Better Hutton Group regarding the lease of the Hutton Community Centre and bring it back to the next Committee for a final decision.**

Following a full discussion a recorded vote was requested in accordance with Rule 9.5 of the Council's Procedure Rules. Members voted as follows:

**FOR: Cllrs Mrs Coe, Hirst, Kerslake, Mrs McKinlay and Sleep (5)**

**AGAINST: Cllrs Aspinell, Kendall, Le-Surf, Morrissey and Sapwell (5)**

**The Chair exercised his casting vote and the AMENDMENT was LOST.**

**Returning to the SUBSTANTIVE MOTION, following further discussion, Cllr Mrs McKinlay MOVED and Cllr Hirst SECONDED that the decision be DEFERRED.**

**A vote was taken on a show of hands and the MOTION to DEFER was LOST, the Chair having exercised his casting vote.**

**A recorded vote was requested on the SUBSTANTIVE MOTION in accordance with Rule 9.5 of the Council's Procedure Rules. Members voted as follows:**

**FOR: Cllrs Aspinell, Kendall, Le-Surf, Morrissey and Sapwell (5)**

**AGAINST: Cllrs Mrs Coe, Hirst, Kerslake, Mrs McKinlay and Sleep (5)**

**The Chair exercised his casting vote and the MOTION was CARRIED. It was therefore RESOLVED:**

**That delegated authority be granted to the Strategic Asset Manager after consultation with the Chair of Asset and Enterprise Committee to negotiate and enter into a lease of the Hutton Community Centre with Essex Boys and Girls Clubs.**

#### **459. Urgent Business**

There were no items of urgent business.

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# Appendix 5

## 9. Call-in

9.1 All of the rules and procedures relating to call-in seek to recognize that in a Committee System every non-delegated decision is taken in a politically balanced committee, where all Councillors who are members of that committee have the opportunity to question and debate the issues in hand in public forum and participate in the decision-making process. Call-in procedures and practices should recognise this, and the procedures set out intend to allow decisions to be swiftly implemented.

9.2 Call-in is intended to be used only in exceptional circumstances, the procedure being seen as a last resort through which Councillors may request scrutiny of a decision they believe to be contrary to the authority's decision making principles. The process cannot be used simply because members disagree with a decision that has been taken.

### What is a call-in?

9.3 Where there is concern about a decision which has just been taken, there is a formal procedure to allow it to be "called in" so members of the Audit and Scrutiny Committee can review it before the decision is implemented. It is a key way of holding decision-makers to account. A called-in decision cannot be implemented until it has been considered by the Audit and Scrutiny Committee, which can examine the issue and question the decision-taker on the actions taken. The Audit and Scrutiny Committee does not have the power or remit to change or overturn a decision taken elsewhere.

### Who can call in a decision?

9.4 Any Councillor can start the call-in procedure. Decisions can be called in by eight individual Councillors.

### What can be called-in?

9.5 Call-in powers relate to non-statutory decision making functions. Subject to the exceptions listed below, any key decision made by the Council's non statutory decision making committees or a key decision made by an officer with delegated authority may be called-in.

### What can't be called-in?

9.6 The following categories of decision cannot be called-in:

1. a decision which is not a key decision, and which has been taken by an officer under delegated powers;
2. a decision which the decision-taker has certified as urgent (giving reasons) in accordance with the Council's Rules of Procedure;

3. a decision relating to a matter which has already been the subject of a call-in during the previous six months;
4. a decision by, or to be taken by, the full Council; or
5. a decision taken at stage 4 of the call-in procedure (see below);
6. decisions to award a contract following a lawful procurement process
7. a decision that has gone through pre-scrutiny, except for where there is evidence that due process has not been followed.
8. Where the Monitoring Officer, after consultation with the Chair of the relevant Audit and Scrutiny Committee, considers the Call-In to be frivolous, vexatious or not a proper use of the Call-In taking into account the rules set out in the procedural rules.

9.7 In particular, it should be noted that the Audit and Scrutiny Committee cannot scrutinise individual decisions made by, or on behalf of, the regulatory / quasi-judicial committees of the Council, eg decisions relating to development control, licensing, registration, consents and other permissions. Nor can it scrutinise decisions taken by committees or sub-committees relating to individual members of staff, or recommendations by the Independent Remuneration Panel.

9.8 Furthermore, although they may be key decisions (and included in the Forward Plan), decisions taken by the committees when preparing annual budget or new policy proposals for submission to the full Council will not be subject to call-in. In these circumstances the full Council is responsible for the final decision and the Audit and Scrutiny Committee will be consulted, even if it has been involved earlier in the process.

#### When can a decision be called-in?

9.9 It is important that the call-in process is not abused, nor causes unreasonable delay; the main tool of the Audit and Scrutiny Committee to improve the delivery of policies and services should be detailed reviews, rather than call-ins.

9.10 Call-ins should be reserved for exceptional circumstances. Broadly, a decision can be called-in when Councillors:

- (a) have evidence that it may be contrary to the normal requirements for decision-making;
- (b) have evidence that it may be contrary to the Council's agreed policy framework and/or budget;
- (c) lack reasonable and significant information from the decision-taker to explain why it was taken.

- 9.11 Any key decision which is subject to potential call-in cannot be implemented until the end of the call-in period. The call-in period lasts for **five working days** after relevant minutes are published by Governance Services.
- 9.12 Minutes of the committees will be published no later than three clear working days after the meeting. This means that the call-in period will expire at 4:30pm five clear working days after the publication of the minutes (adjusted for bank holidays as appropriate). Call in requests received after this will not be accepted. For example if the minutes were published by 9am on Monday, the call in period would expire at 4.30pm on the following Monday assuming there were no bank holidays in that week.
- 9.13 Call-in requests may be submitted prior to publication of the minutes, however validity will not be determined until the minutes are available for consideration alongside the call-in request.

10. **The call-in procedure itself follows four stages**

**STAGE 1**

- 10.1 A valid call-in request must be submitted in accordance with the current rules in the Constitution. The request must say who is making the call-in and to which decision it relates. It must also give:
- (a) reasons and provide evidence in accordance with paragraph 9.10 to support why the decision is being submitted for call-in;
  - (b) what action the caller-in would like to see the decision-maker take to address the concerns outlined in the call-in, or how the original decision should be varied; and
  - (c) details of attempts the caller-in made to discuss the issue with the relevant Chairperson in advance of calling the decision in. If reasonable attempts were not made in advance, the call in will not be accepted.
- A pro-forma will be made available.
- 10.2 Requests may also be submitted by electronic mail, fax or by telephone. If the call-in is to be submitted by e-mail, only one Councillor need submit the actual form/request. However, individual e-mails (or letters) in support of the request must also be submitted by the other Councillors specified on the form before the end of the call-in period. Call-ins submitted by fax or telephone must be followed up in writing with the required number of signatures before the end of the call-in period.
- 10.3 In the event of lack of clarity about the validity of a call-in; the Monitoring Officer (in consultation with the Chair of Audit and Scrutiny Committee and the Chief Executive) will decide.

- 10.4 In exceptional cases, where there is clear evidence that a delay to the implementation of a decision would lead to a specific and significant financial or reputational harm to the Council, a call-in request may be refused.
- 10.5 Where a submitted call-in request is considered as invalid, the Councillors requesting the call-in will be written to by the Monitoring Officer explaining the reasoning for the decision.

## **STAGE 2**

- 10.6 When the officers receive a valid call-in request with respect to a decision, then that decision may not be implemented until that decision has completed the call-in procedure. The officers will convene a meeting of the Audit and Scrutiny Committee to take place within 10 working days of the receipt of a valid call-in request. In setting the date of the call-in hearing, all efforts will be made to maximize attendance by Audit and Scrutiny Committee members, relevant committee chairs and required officers and other witnesses. The chair of the relevant committee will be kept informed and invited to address the Audit and Scrutiny Committee. Councillors who have requested the call-in will have the right to address the committee when it deals with the issue.

## **STAGE 3**

- 10.7 The Audit and Scrutiny Committee will consider the called-in decision and decide to take one of the following courses of action (the Audit and Scrutiny Committee's decision should not be adjourned or delayed without an exceptional reason):
- (1) to allow the decision to be implemented without further delay.
  - (2) to refer the decision back to the relevant committee together with the observations of the Audit and Scrutiny Committee. The committee will then take the final decision, and that decision may not be called in.
  - (3) to request the decision-making committee Chair to allow further time for the Audit and Scrutiny Committee to consider the issue and make observations at a later date.
  - (4) referral to Monitoring Officer (S106 officer) and/or S151 officer for further consideration (for exceptional / complex matters).

## **STAGE 4**

### Reference back to Committee

- 10.8 Where the Audit and Scrutiny Committee decides to refer the decision back, the relevant committee must reconsider the decision in the light of any observations of the Audit and Scrutiny Committee.

- 10.9 Where the Audit and Scrutiny Committee has requested more time to consider an issue, the decision-making committee Chair must have regard to the urgency, and to the Budget and Policy Framework Rules, when deciding whether to implement the decision.

Reference to Monitoring Officer and/or Section 151 Officer

- 10.10 The Audit and Scrutiny Committee may, in exceptional circumstances, refer the called-in decision to the Monitoring Officer (S106 officer) and/or the S151 Officer if it considers it to be contrary to the policy framework or budget. This should only refer to complex matters that cannot be adequately examined within the call-in hearing itself. The relevant officer(s) will then submit a report on the matter to the next meeting of the relevant committee. A copy of this report will be sent to all members of the Council. No action may be taken in respect of the decision or its implementation pending that meeting. If, in that report, the Monitoring Officer (S106 officer) and/or the S151 Officer is of the view that a decision referred to him/her by the Audit and Scrutiny Committee is not a departure from the policy framework or budget, the decision may be implemented immediately. A report to this effect will be submitted to the Audit and Scrutiny Committee for information. If, however, a referred matter is deemed to be a departure from the policy framework or the budget by the Monitoring Officer (S106 officer) and/or the S151 Officer, the relevant committee has two options.
- 10.11 Firstly, it may choose to adjust its decision to bring it within the policy framework or budget, in which case it can then be implemented. In these circumstances, the committee would submit a report to the next meeting of the Audit and Scrutiny Committee explaining its actions.
- 10.12 Secondly, if the committee does not wish to adjust its original decision, it must prepare a report for the full Council. This report must include the views of the Audit and Scrutiny Committee. No action may be taken in respect of the decision or its implementation until the Council has met to consider the matter.

11. **Reference to Full Council**

- 11.1 Subject to the provisions above, the Audit and Scrutiny Committee may require that any called-in matter which has been deemed to be (and remains) contrary to the policy framework or budget is referred to the full Council. The report to the full Council will set out the views of the relevant committee and the Audit and Scrutiny Committee and the advice of the Monitoring Officer and/or the S151 Officer.
- 11.2 The Council may:
- decide that the decision is within the existing policy framework and/or budget (in which case it can be implemented); or
  - amend the financial regulations or policy concerned to encompass the decision (in which case it can be implemented); or agree that the decision is contrary to

the policy framework or budget and require the committee to reconsider the matter in accordance with the advice of the officer(s).

12. **Guidance for Call-in hearings**

12.1 The following guidance set out in paragraph 12-14 is intended to assist the conduct of call-in hearings and the preparation work carried out in the run-up to such a hearing.

Prior to the Call-in

12.2 A meeting will take place between the Chairperson and Vice Chairperson of the Audit and Scrutiny Committee, Chairperson of the relevant committee, relevant officers, the Corporate & Democratic Services Manager and the caller-in, at which a definitive list of witnesses for the call-in hearing will be drawn up, together with a list of questions for each witness, as appropriate.

12.3 A statement from the Chair of the decision-taking committee may be published with the agenda for the meeting.

12.4 A caller-in's statement will be published with the agenda for the meeting, should the caller-in wish to provide such a statement.

12.5 The caller-in and relevant committee Chairperson will be invited to the meeting, together with any other parties relevant to the decision-making process, for example Chairs of other committees or officers.

12.6 Any other relevant internal or external witnesses will be invited to the meeting.

12.7 Five working days notice of a request to attend the meeting will be given to all witnesses, or as soon as possible thereafter. If a list of questions is to be produced, five working days notice of the questions planned will also be given to witnesses.

12.8 Any witness at a call-in will be invited to speak for no more than three minutes.

12.9 Prior to the meeting any Councillor who may have a conflict of interest should declare that conflict, and will be given relevant advice by the Monitoring Officer.

13. **The Call-in meeting**

13.1 The call-in will be the first item of business on the agenda, in order that witnesses are not kept waiting.

13.2 Witnesses will have reserved seats around the table with the committee if space permits, but if there are a large number of witnesses or other attendees at the meeting; they may be required to wait in a separate seating area or the public gallery.

13.3 The caller-in will be invited to make a presentation outlining his or her main reasons for calling in the decision. A question and answer session will follow.

- 13.4 The decision-taker will be invited to make a presentation outlining his or her main reasons for making the decision. A question and answer session will follow. 78
- 13.5 Any other parties relevant to the decision-making process, for example Chairs of other committees, or officers, will be invited to make presentations outlining their reasons for any recommendations on the issue concerned, or in the case of officers their reasons for any recommendations or advice to Councillors. Question and answer sessions will follow.
- 13.6 Witnesses will be invited to make a presentation to the committee without interruption for up to three minutes each, following which there will be a question and answer session.
- 13.7 Witnesses will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.
- 13.8 The caller-in will be given the opportunity to add any points of clarification before any resolution or recommendation is moved.

14. **Call-in Checklist**

The above rules and criteria have been brought together in the checklist of questions (or tests). Councillors should use this checklist when they are considering a call-in. Questions 2 - 4 should also be used by report authors to test draft reports for completeness.

<p>1. Can the decision actually be called-in?</p> <p><b>If the answer to any of questions 1(a)-(g) is “yes” then the decision can NOT be called-in.</b></p>	<p>a) Does it relate to a statutory function?</p> <p>b) Was it a non-key decision taken by an officer under delegated powers?</p> <p>c) Was it classified as an urgent decision?</p> <p>d) Has this issue been called-in in the last 6 months?</p> <p>e) Does the decision relate to an existing call-in (ie decisions taken in relation to a reference back)?</p> <p>f) Does the decision relate to the formulation of a policy or budget matter which requires full Council approval?</p> <p>g) Was it a decision taken by, or to be taken by, full Council?</p>
<p>2. Was the decision in accordance with the Council’s policy framework?</p>	<p>a) What is the relevant policy or strategy?</p>

	<p>b) Is the decision contrary to that policy?</p> <p>c) If yes, how? (Evidence must be provided at the time of the call in.)</p>
3. Was the decision in accordance with the agreed budget or budget procedures?	<p>a) Is there funding for the proposal in an agreed budget/capital programme? (If yes, no call in can be evoked on this ground)</p> <p>b) If no, have the rules for virement and supplementary estimates been observed?</p>
4. Was the decision taken in accordance with the Council's Constitution and the principles of decision- making?	<p>a) Does the decision comply with the Council's Constitution, ie.</p> <ul style="list-style-type: none"> <li>• Articles of Constitution</li> <li>• Scheme of Delegation</li> <li>• Rules of Procedure</li> <li>• Codes and Protocols</li> </ul> <p>b) Did the decision taken show a reasonable regard for the following:</p>
	<ul style="list-style-type: none"> <li>• The presumption in favour of openness and transparency.</li> <li>• The need for consultation with interested parties.</li> <li>• The need to take account of relevant professional advice from appropriate officers.</li> <li>• The need for clarity of aims and desired outcomes.</li> <li>• The need to identify the range of options considered.</li> <li>• The need to give reasons and explanation for a decision.</li> </ul>