

SCRUTINY ITEM RESPONSE – PROPOSED CONVERSION OF A SEATING SHELTER AT PROMENADE PARK MALDON INTO A SERVICE KIOSK**1. Purpose**

- 1.1 To provide the Committee with a full response relevant to the agreed scoping of this scrutiny item.

2. Background

- 2.1 The description of this scrutiny item as originally requested by Councillor K Lagan was as follows:

A review of the delegations used by Officers and the procurement process followed in the proposed conversion of a shelter into a service kiosk at Promenade Park. Lack of proper application of the Council's Contract Procedure Rules – Part 4 – failure to apply procedures to ensure best value and no open tender process to allow transparency of process.

- 2.2 The scoping of this scrutiny item in terms of the broad questions to be addressed were agreed by the Committee, following an initial assessment by its Working Group, as follows:

1. How Officers exercised the requisite delegated powers.
2. Whether this proposal involved actual procurement of goods or services such as to require compliance with the Contract Procedure Rules.
3. How this proposal came about, what it involves, and how it was dealt with by Officers.
4. To what extent 'operational' matters in relation to Promenade Park should be dealt with solely by Officers without involvement by Members given the obvious public interest and in the absence of a management plan for Promenade Park.
5. To avoid reputational damage, how can the transparency of delegated decisions be improved by greater information and publicity.

3. Context

- 3.1 In determining the questions to be addressed the Committee noted that the Working Group in its initial assessment was mindful that it was not being asserted that the necessary delegated powers did not exist or that Officers had stepped beyond them. In light of this, it was concluded that in a wider context there were concerns over the actual exercise of these powers in relation to certain operational matters.

4. Scrutiny Questions**Existence and use of delegated powers, and whether this involved the procurement of goods and services**

- 4.1 The Council's Constitution includes a Scheme of Delegation which empowers Corporate Directors to make decisions and take actions on certain matters without the need to reference to the Council or a Committee. The Director of Service

Delivery has delegated powers to deal with operational matters relating to parks and open spaces, and in this respect 'parks' would include Promenade Park, Maldon, and the seating shelter would be regarded as a building within that park. He also has delegated powers in relation to Asset Management subject to certain parameters. The full terms of these powers are as follows:

41. *Operational issues relating to:*

- a) *Parks and public open spaces;*
- b) *Formal recreation area and any buildings therein and the letting of any stalls, kiosks and other operations thereon including lettings such as funfairs, circuses and other short-term lettings;*

56. d) *To negotiate the terms of new leases, including interim and initial rent both at market rent and in those cases where existing tenants have a statutory right to call for a new lease on expiry of the current term, and to authorise completion of such new leases up to an annual value of £15,000 and duration not exceeding seven years.*

56 e) *In consultation with the Chairman or Vice-Chairman of the Strategy and Resources Committee and the Leader, as (d) above in relation to leases with an annual value in excess of £15,000, but not exceeding £25,000, or tenure in excess of 7 years but not exceeding 14 years.*

4.2 The lease agreement for the converted shelter has an annual value of £10.5k for a six year period, and the associated use (not exclusive) of an area above the amphitheatre for seating is to be the subject of a licence with an annual value of £6k for a six year period. While the individual components clearly fall within 56 d), taken together they exceed the £15k threshold and therefore the consultation required in 56 e) was undertaken. There is no provision for any extension or renewal built in. The rental valuations compare favourably with those for the other retail kiosks at Promenade Park which are established businesses and for which a competitive process would be pursued for the renewal of their leases.

4.3 The Council's Contract Procedure Rules (also part of the Constitution) are made in accordance with section 135 of the Local Government Act 1972 and are intended to promote good purchasing practice and public accountability and deter corruption. These Rules require to be followed by all Officers involved in the purchase of goods and services on behalf of the Council. All purchasing or disposal procedures must ensure good value for money and propriety in the spending of public money. Since no procurement of any goods or services or the spending of public money was involved, the Contract Procedure Rules and the associated issues of best value and open tendering did not apply. This was accepted by the Committee's Working Group and supported by advice obtained by the Commercial Manager from both legal and procurement specialists at the time.

How this proposal came about, what it involves, and how it was dealt with by Officers.

4.4 The Commercial Manager was approached by a local business which requested a meeting to discuss development options within Promenade Park. Arising from this, the possible conversion of the seating shelter was discussed. The shelter was central to anti-social behaviour, drug taking and being used as a toilet when the Park

was closed at night. Officers felt the proposal to make something of the shelter was a positive one and not one previously considered. The other option which had been considered was demolition of the shelter.

4.5 While not a condition of the exercise of delegated powers in this instance, the Commercial Manager sought to provide informal updates to Members on a number of occasions as follows:

- 14/12/20 informal briefing with all BOC & Maldon ward members invited
- 11/01/21 (commercial activity meeting with Cllr Nunn, Cllr Stamp, Cllr Siddall, Cllr Swain, Cllr Mayes)
- 19/01/21 informal briefing with all BOC & Maldon ward members invited
- 02/03/21 informal briefing with all BOC & Maldon ward members invited
- 04/05/21 informal briefing with all BOC & Maldon ward members invited

In addition, 1:1 catch up briefings were offered to Members unable to attend.

4.6 A key objective of the role of Commercial Manager is to generate new income for the authority. It was believed that this approach and proposal represented a good opportunity in that respect and included significant investment in a Council asset. The decision to act and proceed under the available delegated powers did not attract any opposition at the time from any Councillors, some in fact giving strong support. The view that other potential commercial interests could have been pursued is acknowledged, however this may have risked the opportunity as presented being lost and the likelihood of the structure falling into a further state of disrepair and misuse, with potential resulting cost to the Council.

4.7 While the purpose of this scrutiny is to understand rather than justify the decision/action taken, it is worth noting that the proposal had the following features:

- New rental income for the Council
- Reduced maintenance liability for the Council (covered the lease agreement)
- Enhanced asset returned to the Council upon expiration of the lease term (potential for further income generation)
- Consistent with Local Development Plan Policy (E5 tourism)

4.8 The proposal was the subject of a planning application under reference FUL/MAL/0314/21 which was approved by the Central Area Planning Committee in June 2021. While this dealt simply with the evaluation of the material planning and policy considerations, and not the land management or related issues at the heart of this scrutiny item, it is noted that the Maldon Town Council recommended approval, and in terms of the public response there were 15 letters of support, one of comment, and five of objection (none relating to the land management/process). Officers have received no other objections to the proposal.

Operational Matters in relation to Promenade Park

4.9 Clearly there are a wide range of day-to-day operational matters undertaken, and the long-established delegated power for this does not set down any requirements or expectations as to how the power should be exercised. Equally, Officers accept the obligation on their part to keep Members advised of what is happening in their Wards or localities, and sense what may carry a higher profile or what is of community interest. In this respect, the Member/Officer Relations Protocol adopted by the Council provides that Officers shall ensure that where practicable and prudent they

will keep Members informed of issues affecting their Wards as the elected representatives of the Council, including stage 2 customer complaints.

- 4.10 In relation to Promenade Park there is no forum or other mechanism by which Members can be updated, although as indicated in 4.5 above opportunities were created for liaison and updating on this particular proposal. A possible outcome from this scrutiny review could be the escalation of a Management Plan for the riverside including Promenade Park, as highlighted in the Central Area Action Plan, together with a Working Group or other Member/Officer liaison group to support it.

Reputational Damage - Transparency of delegated decisions

- 4.11 The Council's Scheme of Delegation (referred to in para. 4.1) has its foundations in law (section 101 of the Local Government Act 1972), has been in place for several years, and was reaffirmed when the Council's new Constitution was adopted in 2019. While the intention of the Scheme is to provide clear parameters within which Officers can act, advice as to any interpretation required would be given in the first instance by the Council's Monitoring Officer, and ultimately by the Council itself should the need arise.
- 4.12 Some delegated decisions are required to be recorded and published due to the statutory nature of the function, for example in the areas of planning and public licensing. The Openness of Local Government Bodies Regulations 2014 strengthened the obligation to record and publish decisions the effect of which:
- (i) grant a permission or licence;
 - (ii) affect the rights of an individual; or
 - (iii) award a contract or incur expenditure which, in either case materially affects the relevant local government's body's financial position,

and there is a general obligation upon Authorities to look to extend publicity where possible. To that end, and in the interests of transparency and accountability, internal arrangements for recording and publicity are in the course of being revised and developed.

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