



**REPORT of  
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

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**to  
PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE  
9 JUNE 2022**

**NOTICE OF MOTION – COUNCIL CONSTITUTION AND SCHEME OF DELEGATION**

**1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to provide background information and advice to enable the Committee to consider the implications of a Notice of Motion recently received and considered by the Council, and to report back to the Council.

**2. RECOMMENDATION**

That the Committee considers input from Members and Officers and recommends to the Council accordingly, including the possible convening of the Corporate Governance Working Group to look at in detail and report on the implications of these proposals for the Constitution.

**3. SUMMARY OF KEY ISSUES**

- 3.1 At the Council meeting on 31 March 2022, a formal Motion submitted by Councillor K M H Lagan under Procedure Rule 4 was received. In accordance with that Procedure Rule, as the subject matter of that Motion fell within the remit of this Committee, it was referred to this Committee for consideration and report back. It was further agreed that the Committee would consider this with input from Officers and the relevant Members, including a review of the constitutional implications by the Legal Department. The terms of the Motion were as follows:

To ensure best value and scrutiny is undertaken as part of the council's park and waterfront asset management and associated operational processes, that the scheme of delegation to the Director of Service delivery (DOSD) be amended as follows:

17 – Asset Management:

- (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. The Director of service delivery to provide options to the town ward members who will review and determine the review of existing or issuance of new leases up to an annual value of £15,000 and duration not exceeding seven years.
- (e) Provide detailed report options for determination by the towns ward members 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. Sections (d) and (e), the results of the recommendation by members to be ratified at Strategy and Resources Committee.

44. Operational issues relating to:

- a) Parks and public open spaces including waterfront and Quays: To develop proposals and options for lettings and leases on buildings which must be referred to the Local Ward Member review Group for determination.
- b) Formal recreation areas. The development of proposals for the letting of any stalls, kiosks and other operations thereon including lettings such as funfairs, circuses and other short-term lettings shall be developed and submitted the Local Ward Member Group for determination.
- c) To provide proposals to the local Ward member review group on any community assets, including buildings, structures etc.) on any potential change of use from that intended for determination.

- 3.2 The Motion largely seeks to add words to the existing provisions, and for ease of reference the proposed changed or added wording will be highlighted in red when reviewed in detail below. Councillor Lagan seeks to improve the collaborative working between Members and Officers and give opportunity to help change and shape the future of things in the District and local areas. He submitted that it is important for people of the District to see Members having an input in the decision-making process which needs to be made more inclusive.

#### **4. REVIEW OF PROPOSED CHANGES**

##### Background context

- 4.1 The Council's Scheme of Delegation 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. The intention of the Scheme is to provide clear parameters within which Officers can act without the need for a Council or Committee decision. 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.
- 4.2 This proposal to change the Constitution follows a request by Councillor Lagan to scrutinise a decision taken under delegated powers to lease a former seating shelter at Promenade Park, Maldon for conversion and use as service kiosk. The scrutiny request stated that a learning outcome would include the need to ensure that the decision-making process was correctly allocated between Members and Officers. The Overview and Scrutiny Committee after consideration of a report at its meeting on 20 January 2022 addressing specific points identified by its Working Group, was reassured to the extent that no further scrutiny was required and made no recommendations.

## Asset Management

### 17 – Asset Management

- (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. ~~The Director of Service Delivery to provide options to the town ward members who will review and determine the review of existing or issuance of, and to authorise completion of such~~ new leases up to an annual value of £15,000 and duration not exceeding seven years.
- (e) ~~Provide detailed report options for determination by the towns ward members 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.

~~Sections (d) and (e), the results of the recommendation by members to be ratified at Strategy and Resources Committee.~~

- 4.3 It is vital that both the remits of decision-making, whether expressed through Committee terms of reference or a scheme of delegation, are clear and uncomplicated. It is not unusual however for the exercise of certain delegated powers to be conditional on prior consultation with named Members, as is currently the case with leases above a certain annual value or tenure. The basic difficulty with the proposal as drafted is that the delegated power relates to Asset Management across the board and not just riverside and parks facilities. It also talks about Town Ward Members 'determining' lease reviews, and a Local Member Review Group which has not been constituted and would not have the power of decision. The proposed changes however envisage the outcome of the Working Group's deliberations being ratified by the Strategy and Resources Committee.
- 4.4 In summary therefore, the proposal as drafted takes away the existing delegation on all Asset Management matters at the lowest level (17(d), and together with the next level (17(e)) introduces a Member Review involvement with a subsequent report to the Strategy and Resources Committee. This amounts to the introduction of a new process for Asset Management and if implemented these two elements would cease to amount to being exercisable delegated powers - a significant curtailment on operational issues at the lowest levels.
- 4.5 The Council as a landowner makes day to day operational decisions to lease areas for various periods in line with the Constitution and relevant policy/strategy set by Members. Where a long-term commitment or significant income/expenditure is involved, decisions are taken by members. Over 200 leases and licences are currently managed – these include moorings, business kiosks, leisure facilities and parks as well as the use of the Council Offices. In addition, a number of requests for short term and summer concessions are managed. Standard terms and conditions are used, subject to variation to fit individual circumstances and requirements.
- 4.6 In relation to the proposed changes to 17(d), where a lease has an automatic right to renewal under the Landlord and Tenant Act 1954 the Tenant is entitled to a lease on identical terms to that of the previous lease. The Lease can only be altered by consent. Unless the term is beneficial to the Tenant it is rare for any changes to be agreed. While a rent increase is acceptable there is no realistic room for negotiation,

and in a number of cases legislation will dictate the nature of the renewal. Members would therefore have no legal grounds to vary the terms of any agreement. If a tenant is unhappy with any proposed changes then they have the right to take the matter before the Courts for determination. It will be seen that this is very much a legal process with professional Officers best placed to review renewals in that light.

- 4.7 Introducing a level of consultation will add additional time and cost to the process and weaken the negotiating stance of Officers during the course of drafting and reviewing a proposed agreement. Given the relatively low income from some of the agreements this would not be cost-effective.
- 4.8 The process to agree new leases and licences can often be time-consuming with updates and changes being made on a number of occasions. To consult on every occasion would make the process very protracted for officers and tenants and introduce uncertainty. This would not fit well with the Council's aspirations as to how best to deal with commercial matters. How the Asset Management should be operated is another matter entirely to that of the decision-making provisions within the Constitution.

#### Operational Issues

44. Operational issues relating to:

- a) Parks and public open spaces **including waterfront and Quays: To develop proposals and options for lettings and leases on buildings which must be referred to the Local Ward Member review Group for determination.**
  - b) Formal recreation areas ~~and any buildings therein and.~~ **The development of proposals for the letting of any stalls, kiosks and other operations thereon including lettings such as funfairs, circuses and other short-term lettings shall be developed and submitted the Local Ward Member Group for determination.**
  - c) **To provide proposals to the local Ward member review group on any community assets, including buildings, structures etc.) on any potential change of use from that intended for determination.**
- 4.9 The existing delegation provides Officers with the flexibility to deal with operational issues relating specifically to parks, public open spaces and formal recreation areas. In themselves, due to their minor nature, they would not ordinarily amount to a power or function to be delegated but are included in the Scheme of Delegation for the avoidance of any doubt. As with the Asset Management proposal, the change would envelop operational issues relating to all parks, public open spaces and formal recreation areas within the District. Similarly, the proposal introduces a Member involvement through a Working Group which has not been constituted and would not have the power of determination. Only a formally constituted Committee or Sub-Committee would have the power to determine or decide. As a result, the proposal as drafted introduces a process for dealing with such operational matters across the board and would nullify the delegation.
- 4.10 It is for the Constitution to make clear where the balance between Member and Officer level decision-making should rest and the Council agreed this in 2019 to reflect the transformation and structural change that had occurred. For the most part, the Scheme of Delegation can be seen as largely operational and service delivery oriented, which allows decisions to be taken, and actions authorised by Officers without any conflict with policy and in line with corporate and service objectives. It is

not the role of the Scheme of Delegation to set out processes for how things are done.

- 4.11 If the intention behind the proposed changes is to enable greater Member involvement in the more operational and day to day matters affecting an area so specific as Promenade Park, Maldon, then this may be achieved without compromising the effect of the existing delegation. As was highlighted in the scrutiny outcome of the particular action/decision referred to above, Officers are under a general obligation to keep Members abreast of what is happening in their Wards and indeed the local Members were engaged on the particular proposal at the time. In addition, the identified need for a Parks Management Plan has been included as a priority objective for a proposal to be brought forward and reported to the Strategy and Resources Committee.

## **5. CONCLUSION**

- 5.1 For the reasons given above, it is considered that the Motion proposal as drafted is flawed and would negate the relevant delegated powers by the introduction of a process involving a Member Review Working Group. While it is conceivable that the existing delegation could be revised to enable matters relating specifically to Promenade Park to be dealt with by exception, the implications of this require careful consideration. The Committee may consider there is merit in the Corporate Governance Working Group being convened to consider these matters in greater detail given the potential impact on the Scheme of Delegation and therefore the Constitution in general. It is for the Council to convene that Working Group and to agree its remit.

## **6. IMPACT ON STRATEGIC THEMES**

- 6.1 No direct impact on the three Strategic Themes although the implications of the proposed changes in relation to largely low-level and operational matters would conflict with elements of the Performance and Value aspirations that underpin those Themes. Good governance, of which the Constitution is a key component in relation to decision-making, enables delivery of strategic priorities.

## **7. IMPLICATIONS**

- (i) **Impact on Customers** – Not Applicable (N/A)
- (ii) **Impact on Equalities** – N/A
- (iii) **Impact on Risk** – N/A
- (iv) **Impact on Resources (financial)** – Potential implications arising from the removal of a range of largely operational matters from delegation or by the introduction of a process to enable Member involvement.
- (v) **Impact on Resources (human)** – Potential implications arising from the removal of a range of largely operational matters from delegation or by the introduction of a process to enable Member involvement.
- (vi) **Impact on the Environment** – None.

(vii) **Impact on Strengthening Communities** – None.

Background Papers: None.

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