



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

to
COUNCIL
8 SEPTEMBER 2022

NOTICE OF MOTION – COUNCIL CONSTITUTION AND SCHEME OF DELEGATION

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to provide background information and advice to enable the Council to consider the implications of the Notice of Motion submitted by Councillor K M H Lagan.

2. RECOMMENDATION

That the Council considers the implications of the Notice of Motion in the light of the advice provided in this report and the further clarification required as mentioned in paragraphs 4.2.3 and 4.2.9 below.

3. SUMMARY OF KEY ISSUES

- 3.1 Formal Motions submitted by Councillor K M H Lagan under Procedure Rule 4 have been received and are set out on the agenda. The Chairman proposes to deal with Motion 2 at this meeting rather than it stand referred to a Committee, thus dispensing with Motion 1.
- 3.2 The terms of the Motions are as follows:

Motion 1

That Motion 2 be recommended to the PGA committee for review and consideration and any recommendations brought to full council.

Motion 2

To enable a more inclusive process, that the scheme of delegation be updated to include active elected member participation in decision making for certain matters at Maldon's much loved Promenade Park and Historic Quay.

Part A

To amend the scheme of delegation currently as is:

Part 3 – Responsibility and Functions section 44 – (a)- Parks and Open Spaces, (b) Formal recreation area and any building therein and the letting of stall, kiosks and other operations thereon including the lettings such as funfairs, circuses, and other short term lettings;

To be:

Part 3 – Responsibility and Functions section 44 – (a)- Parks and Open Spaces, (b) Formal recreation area, other operations thereon including the lettings such as funfairs, circuses, and other short term lettings;

With the inclusion of Maldon Ward members, officers and Maldon members work together to consider proposals for the letting of kiosks and stalls.

And part B -

Asset management.

That 56 (d) (e) that are:

(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.

(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.

To be:

(d) Following consultation and input from Maldon Ward members on proposed options for assets, 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.

(e) 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, referral to the Strategy and Resources Committee is required.

4. REVIEW OF PROPOSED CHANGES

4.1 Background context

- 4.1.1 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.
- 4.1.2 The preamble to the Motions refers to another recent Motion by Councillor Lagan review these aspects of the Scheme of Delegation which was subsequently withdrawn following a report to the Performance, Governance and Audit Committee advising that Motion was flawed and sought to introduce a process which would negate the exercise of delegated powers. The new Motion seeks to revise the existing delegations to enable, in part, matters relating specifically to Promenade Park, Maldon to be dealt with by exception. The preamble adds that the intention is simply to ensure that Maldon's Ward Members are involved "in a macro number of matters that impact the operation and management of the town's primary assets and as a matter of course, to ensure local representation is considered in robust and transparent decision making". It is further stated that it is not the intention to involve Members in general day to day activities but to focus on key issues that would provide better outcomes for the Council in terms of reputation and effectiveness in the way it conducts business.

4.1.3 It is vital that 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.

4.2 **Review of the proposed changes**

4.2.1 Paragraph 44 of the Scheme of Delegation gives the Director of Service Delivery flexibility to deal with a wide range of Community and Leisure activities. Since operational issues are generally accepted as being of a low level and very much 'day to day', then in a sense they need not ordinarily require to be included in an expression of delegated powers. They are there however for clarity and the avoidance of any doubt and would apply to parks and open spaces and formal recreation areas etc. across the entire District.

4.2.2 The proposed change would see the removal from delegation of the ability to deal with any buildings on formal recreational areas and also the letting of any stall or kiosk. This would mean anything relating to a building on a recreation area in the District would need to be referred to a Committee. The proposal introduces into the delegation the inclusion of Maldon Ward Members working together with Officers to consider proposals for the letting of kiosks and stalls. This is not made specific to Promenade Park and implies a process for the involvement but is not expressed in any specific way. While an expectation rather than a requirement, how such involvement may work in practice can, and perhaps should be developed outside the Scheme of Delegation.

4.2.3 The proposed changes on Asset Management are more specific to require prior consultation with Maldon Ward Members on proposed options for assets and existing asset management arrangements and value / tenure limits. While prior consultation can be a caveat on the exercise of delegated power it should be understood that the power remains with the Director and he needs only to take into account any comments received. It may be worth clarifying the extent of consultation envisaged here – to seek prior consultation with the actual Ward Members rather than all the Members for the Maldon Town area would at least be consistent with certain aspects of Planning delegation. Again, the existing delegation relates to Asset Management for the District as a whole and not involving just parks and open spaces, and therefore any change would need to specify that consultation is only required in relation to a site or sites within the town of Maldon.

4.2.4 The final proposal would simply take Asset Management for leases between the value of £15k and £25k out of delegation (despite the existing prior consultation caveat) and put them within the terms of reference of the Strategy and Resources Committee.

4.2.5 It is worth reiterating to the Council the same observations that were put to the Performance, Governance and Audit Committee when considering the previous motion. 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, many requests for short term and summer concessions are managed. Standard terms and conditions are used, subject to variation to fit individual circumstances and requirements.

- 4.2.6 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.
- 4.2.7 It is therefore important that the introduction of a level of consultation does not add time and cost to the asset management process or indeed in any way weaken the negotiating stance of Officers during the course of drafting and reviewing a proposed agreement. Equally, 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.
- 4.2.8 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.
- 4.2.9 If, as it seems, 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 restraining the existing delegation. Under the Member / Officer Relations Protocol Officers are under a general obligation to keep Members abreast of what is happening in their Wards. In addition, and resulting from a related previous scrutiny item, 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. It may be that more meaningful Member involvement can be achieved in this way.

5. CONCLUSION

- 5.1 While the proposed changes are clearer in terms of their intention, the nature of the Member involvement needs further clarification as to what is meant in practice, and consideration needs to be given as to whether this can be achieved in other more meaningful ways.

6. IMPACT ON STRATEGIC THEMES

- 6.1 Good governance will enable delivery of strategic priorities going forwards.

7. IMPLICATIONS

- (i) **Impact on Customers** – None directly, but part of the stated reasoning for the proposed change is to increase Member representational influence on decisions.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.
- (iv) **Impact on Resources (financial)** – None.
- (v) **Impact on Resources (human)** – None.
- (vi) **Impact on the Environment** – None.
- (vii) **Impact on Strengthening Communities** – None .

Background Papers: None.

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