

<p style="text-align: center;">Non-Executive Report of the:</p> <p style="text-align: center;"><b>Overview and Scrutiny Committee</b></p> <p style="text-align: center;">16 October 2018</p>	 <p style="text-align: center;"><b>TOWER HAMLETS</b></p>
<p><b>Report of:</b> Cllr Abdal Ullah, Chair of the Overview and Scrutiny Committee</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Call-in of ‘securing the future of early years services – phased closure of the three local authority childcare day nurseries’</b></p>	

### Executive Summary

The Decision made by the Mayor in Cabinet on Wednesday, 26 September 2018 in respect of agenda item 6.2 ‘securing the future of early years services – phased closure of the three local authority childcare day nurseries’ was “called in” under the Overview and Scrutiny Committee Procedure Rules of the Council’s Constitution by Councillors Puru Miah, Tarik Khan, Ruhul Amin, Shah Ameen and Gabriela Salva Macallan (‘Call-in Members’).

On 16 October 2018, the Overview and Scrutiny Committee (Committee) convened a meeting to consider the decision of the Mayor in Cabinet published on 28 September 2018, the subject of the ‘Call – in’. The Committee considered the following:

- Cabinet report, including the following appendices:
  - the Consultation report
  - Equality Impact Assessment
  - Submission from UNISON
- Letter addressed to Councillors of the London Borough of Tower Hamlets from Lorraine Flanagan, Head Teacher of Thomas Buxton Primary School and Chair of the LBTH Schools Forum dated 10 October 2018
- the “call in” requisition from the Call-in Members (undated)
- representations by the Call-in Members
- representations by the Lead Member for Children, Schools and Young People, Cllr Danny Hassell.
- A briefing on whether the decision is *contrary to the policy framework, or is contrary to, or not wholly in accordance with the Council’s budget*

The Committee was of the opinion that the decision would not be in accordance with the budget and policy framework and were minded to refer it to Council.

The Committee **RESOLVED** that:

1. The Decision would not be in accordance with the budget and policy framework and therefore agreed that the advice of the Monitoring Officer and S151 Officer be sought on this question.
2. If the Monitoring Officer and S151 Officer agree that the Decision is outside the budget and policy framework, the Decision be referred to full Council in accordance with paragraph 7.3 of Part 4.3 of the Constitution.
3. If the Monitoring Officer and S151 Officer do not agree that the Decision is outside the budget and policy framework, then the Decision be referred back to the Mayor in Cabinet to consider the alternative options outlined in the call-in requisition.
4. The advice from the Monitoring Officer and S151 Officer be submitted to the Overview and Scrutiny Committee.

## **1. THE MAYOR IN CABINET'S DECISION**

- 1.1 The Mayor in Cabinet's decision, published on 28 September 2018, agreed to
  - Note the outcome of the consultation.
  - Approve implementation of the proposal for a phased closure of the Local Authority Day Nurseries.
  - Note the intention to hold an Early Years Summit to inform and develop the role of the Council in promoting sustainable, accessible and affordable childcare.
- 1.2 The phased closure proposals referred to in the Mayor in Cabinet's decision refer to Mary Sambrook not reopening, following its temporary suspension from September, John Smith closing at the end of December and Overland closing at the end of July 2019.

## **2. THE 'CALL IN' REQUISITION**

- 2.1 The reasons for call-in are summarised below:
  - The Council's budget proposals in February 2017 proposed that the Council seek new providers for the LADNs. Other operators to run the three LADNs and alternative models could be explored, including:
    - raising the standard hourly rates, which have not been raised for ten years,
    - variable charging , including around core hours
    - income maximisation
    - recharging
  - The School Forum was presented with the high running costs of the LADNs, in 2017-18, which did not reflect the historic operational costs affected by recent significant reductions in the numbers of children attending them.
  - Concerns that the closure of LADNs would affect children with SEN and a large women BAME workforce, which is not reflected in the Equality Analysis

- There appears to be no clear replacement provision for children under 2 with SEN in the borough
- Unison's report that Children Centre staff were being used to manipulate the feedback of the Public Consultation and furthermore that the submission from Unison wasn't included in the first set of papers published for the Cabinet meeting on Wednesday 26<sup>th</sup> September 2018

2.2 For full details, please refer to the call-in requisition "reasons for call-in" section.

### 3. **CALL-IN MEMBERS' PRESENTATION**

3.1 The Call-in Members presented their reasons for the Call-in and highlighted concerns over due process, insufficient alternative options considered and a focus on budgetary issues.

#### 3.2 **Due process:**

- The Call-in members noted that Mary Sambrook had stopped taking children prior to the Decision and consultation process, accordingly the numbers presented to the Schools Forum and used throughout the consultation were not accurate
- Unison claimed that senior staff put pressure on children centre staff to encourage parents to complete the survey in favour of closure of the LADNs. The Call-in members noted that on the principles of democracy, accountability and integrity, the consultation should be investigated.

#### 3.3 **Service for the end-user:**

- The call-in members were concerned that there was insufficient provision, particularly for SEN children, and consider Overland to effectively be a deaf unit. Concerns were raised that the closure of the LADN will mean residents losing provision for under two year olds. Overland and John Smith are linked to children's centres and provide specialised affordable quality day nurseries with wrap around care.
- The Decision does not factor in the work needed to make up other services to the standard that Overland already is at.

#### 3.4 **Alternative options:**

- Alternative options should have been considered, such as investment and reconsidering charging, opening up the waiting lists, using spaces in better ways and looking at the voluntary sector. LADN staff have ideas and should have been engaged in the process.

3.5 Following the presentation by the Call-In members, the Committee queried the following issues:

- Noted that the charge of £4.80 was very low and had not been reviewed for over ten years. The Committee noted comments that the Council could consider alternatives rather than charge families with the full cost of £40 to be viable.

- The Committee noted that the strategic plan goals around reducing inequality and supporting a cohesive society had not been fully reflected in the Decision. The proposals have focused on cost rather than the benefits of affordable specialised care that the LADNs provide.

### 3 LEAD MEMBER'S PRESENTATION

3.1 The Lead Member set out the context of the Decision and highlighted considerations around equity of the Early Years provision, limited resources and alternative provisions for those currently attending Local Authority Day Nurseries.

3.2 Firstly, the Lead Member commented on budget pressures, number of children using the LADNs and costs, SEND provision including the quality of alternative provision and the consultation process. These are summarised as follows:

- **Budget pressure:** The Council would have to find £1million savings to keep the provision of LADNs. Few boroughs have this provision and those that do, such as Birmingham, are seeking to close as the provision is deemed unviable.
- **Capacity and cost:** A small number of childcare places are provided by the LADNs with high costs. At full capacity, the three LADNs could provide approx. 100 child care places. The cost per child, currently funded by the Early Years Budget, is approximately £11,000, which equates to 3 times the cost of alternative early education or childcare provision.
- **SEND provision:** The Lead Member noted that there are no children on a child protection plan and no Looked After Children currently attending the LADNs. The Lead Member also detailed the small number of children on a child in Need Plan, EHCP or with hearing impairments attending the LADNs. Alternative provisions could cater for this cohort. The head teacher at the Children's House maintained Nursery School is a trained audiologist with experience working with deaf children.
- **Consultation process:** As this was a non-statutory consultation, four weeks would have been reasonable. However, following a call-in by the Overview and Scrutiny committee, the consultation period was extended to seven weeks. The Lead Member noted Unison's letter regarding allegations of senior staff filling out feedback forms on behalf of residents and noted that this had not been corroborated and the Council had not received any complaints, and so this amounted to a rumour.

3.3 Following the presentation by the Lead Member, the Committee queried the following issues:

- Whether £1million savings are required to come from the Early Year budget and noted that there is pressure on the Early Years budget. Within that budget the discretionary elements are the LADNs and Children's Centres.
- To what extent the Council had considered the voluntary sector taking on the provision as an alternative way to provide for under two year olds. The

Committee noted the staff transfer requirements under TUPE would mean a cost of approx. 1m. Accordingly, the Lead Member noted it was unlikely that providers in the borough would be willing to take on this cost. It was also noted that staff if transferred will lose their employment rights they have with the Council as potential provider may restructure the service and put them on revised terms and conditions. Further, there is no funding from Government for under two year olds and it can be argued that childcare subsidy that is being paid to families using the LADN should be extended to all children in the borough. The Committee noted that there had been no formal consultation with the voluntary sector.

#### **4. CONSIDERATION OF THE “CALL IN”**

4.1 After hearing from the Call-in Members and the Lead Member, the Committee discussed the following issues:

- **Budget focus:** The Committee noted that the decision seemed to strongly based on budget considerations and insufficient focus on the benefits of the service provided for those children attending.
- **Alternative options:** The Committee were concerned that a series of alternative options had not been fully looked into, including partnering with voluntary organisations to continue the provision. While the Committee noted the benefit of informal discussions, the Committee commented that formal discussions with voluntary organisations should have taken place and considered as an alternative option.
- **Specialised services:** The Committee also noted that there did not appear to be comprehensive plans in place around the transition of SEN and vulnerable children and that specialised services need to be provided on more than just an adhoc basis during this period.
- **Consultation concerns:**
  - Those who responded to the consultation were not reflective of those who use the LADNs.
  - Consultation process itself had not been fair and balanced and that LADNs had been “run into the ground’ beforehand.

4.2 The Committee also commented that they did not believe the decision would not be in accordance with the budget and policy framework and requested formal advice from the S.151 and monitoring officers (Formal Advice).

4.3 The Committee **RESOLVED** that:

1. The Decision would not be in accordance with the budget and policy framework and therefore agreed that the advice of the Monitoring Officer and S151 Officer be sought on this question.
2. If the Monitoring Officer and S151 Officer agree that the Decision is outside the budget and policy framework, the Decision be referred to full Council in accordance with paragraph 7.3 of Part 4.3 of the Constitution.
3. If the Monitoring Officer and S151 Officer do not agree that the Decision is outside the budget and policy framework, then the Decision be referred back to the Mayor in Cabinet to consider the alternative options outlined in the call-in requisition.

4. The advice from the Monitoring Officer and S151 Officer be submitted to the Overview and Scrutiny Committee.