

Governance Directorate
Legal Services

Mulberry Place
5 Clove Crescent
London
E14 2BG

Tel: 020 7364 4801

Email: asmat.hussain@towerhamlets.gov.uk

DX: 42656 Isle of Dogs

Mayor Biggs
1st Floor
Mulberry Place

www.towerhamlets.gov.uk

18 October 2018

Dear Mayor Biggs

The Mayor in Cabinet on 26 September 2018 agreed the report entitled *Securing the future of Early Years Services - phased closure of the three local authority childcare day nurseries*. On the Friday 3 October, 5 Councillors (which is the number required in the constitution) called-in the decision.

The Call-In Members proposed an alternative course of action as follows:

“We ask that Overview & Scrutiny call for a “pause” on any decision to proceed with the closure of the LADNs.

That a fair public consultation which responds to the 2017 budget savings should include a comprehensive set of options to closure in order to provide the service that the three LADNs are currently operating.

In accordance with Section 4.3 of this authority’s constitution (Budget & Policy Framework Procedure), the Overview & Scrutiny Committee should therefore consider whether this Executive decision is “contrary to the policy framework, or is contrary to, or not wholly in accordance with the Council’s budget”.

If so, in accordance with paragraphs 7.1, 7.2 and 7.3 of section 4.3 of the constitution, the committee should “seek advice from the Monitoring Officer and/or the Finance Officer” whether there has been a departure, and reach a conclusion itself whether this matter actually should be referred to Full Council.”

For the purpose of this paper we intend to focus on the consideration that this decision was contrary to the Council’s budget and policy framework.

Part 4 Rules of Procedure in the Council’s constitution sets out Budget and Policy Framework Procedure (see 4.3 page 244) where the Framework for the decision is laid out alongside the process for developing the framework.

Under point 7 it sets out call in of decisions outside the budget or policy framework. It states *“where the OSC is of the opinion that an executive decision is, or if made would be contrary to the policy framework or contrary to or not wholly in accordance with the Council’s budget then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer”*

The committee considered that the decision would be outside the budget and policy framework.

It is our advice that the decision is within the budget and policy framework and does not need to be referred to Full Council.

The decision to close the three Local Authority Day Nurseries (LADN) originated from a proposal agreed on 22 February 2017 by the Council that envisaged increasing the involvement of partners in Early Years in order to deliver a budget saving in 2018/19, which would remove the full budget provision.

When the Council sets its budget, and associated Council tax, it is in effect giving the overall financial envelope for the Council for the financial year in question. This is set out in the requisite calculations required under the relevant Local Government Finance Act 1992. In February 2017 the Council was setting the 2017/18 budget although in accordance with the principles of sound financial planning it also set out in its Medium Term Financial Strategy, approved at the same time, proposals relating to subsequent financial years’. In the case of the LADN proposals the saving related to the 2018/19 financial year.

Budget consultation takes place on a range of overall proposals including for ‘savings’ and ‘growth’ that are included to facilitate the budget consultation process but which do not in themselves obviate the need for appropriate and subsequent consultation to take place prior to any implementation.

This is because it would not be feasible to consult fully, adequately and effectively on a wide range of proposals across a number of years solely through the budget consultation process. Proposals for later years (as was the case for the LADN proposal) would expect to be less clearly defined and so would require further separate consultation on a proposed implementation approach. This must logically allow for the outcome from consultation to vary from the original proposal.

Two separate and specific consultations took place in respect of the detailed implementation proposals for this particular saving; the first reporting in February 2018 was based on the original proposal of seeking an outsourcing arrangement with a provider. The second which was agreed, proposed closure of the LADN. During this time there were no proposals which would have changed the Council’s overall budget envelope in relation to this proposal since both envisaged the cost to the Council being fully removed.

The budget framework position is, additionally in this case, complicated by the fact that an element of the funding for the service was provided through the Dedicated Schools Grant (DSG); a ring fenced grant that can only be spent on activities set out in detailed regulations. In order to spend the DSG on the LADN provision the Council has to seek the specific approval of the Schools Forum. This requirement is summarised in the 'Schools Forum powers and responsibilities' document issued by the Education and Skills Funding Agency in September 2017. It details that Central Spend (by the Council) on early years' provision is proposed by the LA but decided by the School's Forum.

The Council, as in previous years, proposed the retention of sums in respect of the LADN in 2018/19 following the initial consultation and decision in February 2018. This was on the basis that more time was needed to develop alternative proposals. However, the Schools Forum resolved only to allow funding to be made available for the period to September 2018.

The effect of the budget decisions taken by the Council and the Schools Forum are to remove all budget provision for this service and there have been no proposals to vary the budget or policy framework in that regard.

In conclusion it is the opinion of the Monitoring Officer and the Section 151 Officer that there has been no departure from the Council's Budget and Policy Framework.

Signed



Asmat Hussain
Corporate Director of Governance (Monitoring Officer)



Zena Cooke
Corporate Director of Resources (S151 Finance Officer)

cc Will Tuckley
All Councillors