

THE OVERVIEW AND SCRUTINY COMMITTEE

7 DECEMBER 2015

REVIEW OF SCRUTINY PROCESS – CHAIRMAN’S REPORT

REPORT OF COUNCILLOR SIMON COOK, CHAIRMAN OF THE OVERVIEW AND
SCRUTINY COMMITTEE

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RECENT REFERENCES:

Minutes of The Overview and Scrutiny Committee – 16 February 2015

EXECUTIVE SUMMARY:

The main purpose of the study was to decide if The Overview and Scrutiny Committee could have taken effective action to influence the Council from taking the action that subsequently attracted the critical High Court Ruling concerning the procurement issue for the Silver Hill 2014 scheme. The Report concluded that there was no effective action that could have been taken within current Terms of Reference.

This Report reviews the Scrutiny process in comparable local authorities and draws attention to areas of good practice that might be considered for adoption by the City Council. This report also invites consideration of the alternative Committee system of Governance, despite the reduction in Council numbers as from May 2016.

RECOMMENDATIONS:

1. That the conclusions, as set out in paragraph 17 of the Report, be agreed; and
2. That a cross party and time limited Informal Scrutiny Group (ISG) be appointed to:
 - (i) consider if any action is appropriate to review the Terms of Reference and current procedures for The Overview and Scrutiny Committee
 - (ii) decide if there would be any justification in reverting to the traditional Committee system of Governance and, if so, recommend a suitable organisational structure.

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DETAIL:

Background

1. Immediately after the High Court Judgement had been announced, with a damaging ruling against the Council about the procurement issue with the Silver Hill Development scheme, The Chairman of The Overview and Scrutiny Committee resigned. This resignation was followed by that of the Leader of the Council. Unfortunately, many people, prompted by the press and ill informed public comment, interpreted both resignations as an admittance by the Council that they had acted illegally and that a major mistake had been made.
2. This report is the result of the resignation of The Chairman of The Overview and Scrutiny Committee and the need to establish if it would have been possible for the Committee to have taken any action to stop or delay the process involved in the Silver Hill development. It follows that my main Term of Reference for the study was to decide if The Overview and Scrutiny Committee or the Chairman could or should have taken any action under the Terms of Reference or powers of ‘call in’ to halt the decisions made by Cabinet on the procurement issue for the Silver Hill project.
3. My conclusion is that under our current rules and procedures, there was no failure by the Overview and Scrutiny Committee in this case. My reason for this conclusion is because the powers of ‘call in’ are too weak to be effective or relevant in this case. The procedure is that there is currently no accepted mechanism for issues to be considered at The Overview and Scrutiny Committee, without first being considered by Cabinet or an associated Committee. All that could have been done is for The Overview and Scrutiny committee to comment on the Cabinet discussions, unless there was expenditure required without authority that was above the ‘call in’ level of figure over £100,000.
4. Nonetheless, in coming to this conclusion and in the light of the criticism of the Council, fair or not, there is a compelling case to review the current procedures within the Council and recommend any improvements. With this intention in mind it was essential to study alternative Scrutiny procedures that were operated successfully in other comparable local authorities and decide if there was some best practice examples that might be applied to Winchester City Council.
5. The scope of my research has included (a) visits to a number of other local authorities, (b) the study of various web sites, (c) numerous phone call discussions with officers/members in comparable Councils, (d) a lunch time meeting with an acknowledged expert on the subject of Scrutiny systems in Local Government and (e)

attendance at two Seminars. I have also taken note of observations from Councillors and have consulted the Centre for Public Scrutiny (CFPS).

6. Concurrent with my research outlined in the preceding paragraph, I have also taken note of a number of observations made to me as Chair O and S about the effectiveness of the current committee structure and modus operandi in this Council. While these comments and representations are not part of the Overview and Scrutiny study, it is worth noting that there is some dissatisfaction amongst some councillors about the way the Cabinet system works, the effectiveness of the O and S Committee in considering the Cabinet reports **after** they have already discussed and made their recommendations or decisions.
7. The model of Scrutiny that is operated in this Council is largely based on the original concept that came into operation in 2002, when Government imposed the Cabinet system upon local authorities. The model chosen followed Civil Service guidelines in the format adopted, although apparently this was 'tweaked' by the then Chief Executive to fit Winchester's needs, with a Cabinet, Principal Scrutiny Committee and the statutory committees of Planning, Licensing, Standards and Housing. At that time all District Local Authorities introduced a similar structure, although some who were under a certain population level retained the traditional committee system (e.g. (Runnymede)).
8. In 2011, the Localism Act changed the absolute requirement for a Cabinet style of local authority and removed the legal requirement as such, although the statutory officer functions remained. Since that time, a number of local authorities have reverted to the traditional committee system. Amongst these is Canterbury District Council, which is a similar local authority to Winchester. Their justification for the change back is that it provides more opportunity for more councillors to be involved in the services provided by the Council.
9. What is evident from the study of operational practice in a number of other local authorities, either by personal visit, telephone discussion or web site study, is that there is a wide variation in how the scrutiny process works in practice. Some of the differences occur because the political representation is unevenly balanced and there is virtually no effective opposition. For instance many local authorities have a substantial one party Conservative majority and have developed a Scrutiny process, which is designed to be largely uncritical of their Cabinets. In these authorities the Scrutiny function tends to be more investigative and research in character, rather than critical.
10. Some of the local authorities have a scrutiny system which allows individual Members to request that Chairman of Scrutiny bring issues direct to the Scrutiny Committee, without necessarily supported by an officer report. In one case (Havant) the member can carry out his/her own research and report direct to the Scrutiny Committee, who can then decide if the subject is worth further action, in terms of officer advice or further information. In some cases the report can go direct to Cabinet for a decision.
11. In a directly comparable local authority the Scrutiny Process is similar to Winchester, with one significant difference, with any important report being discussed by The Overview and Scrutiny Committee **before** it is presented to Cabinet. In this case the Cabinet has the opportunity to consider the issues or points raised in the Scrutiny discussion before they have to consider the report and make either a decision or a recommendation to Council.

12. One Local Authority splits the scrutiny roles in a similar way to Winchester, but The Overview and Scrutiny Committee concentrates on the Policy issues, with a Corporate Governance and Audit Committee concentrating on Risks, Finance and Procurement issues. In this authority the main Scrutiny Officer does not have to carry the responsibility for other significant duties, while the whole process is supported with impressive documentation and Councillor training.
13. In one Council, with a substantial one party majority, the Principal Scrutiny Committee in the format used by Winchester becomes largely irrelevant, because there is unlikely to be serious criticism of 'their' Cabinet. The Principal Scrutiny Committee therefore becomes a critical friend, which is designed to identify problem areas and suggest changes, which might improve the decision. In these councils the minor parties do not get a formal role, which is strength of Winchester's system, with the constitution requiring that a Member of an opposition party hold the role of the Chair of The Overview and Scrutiny Committee.
14. The only changes to the Scrutiny process in Winchester since the Cabinet model was adopted was the split of the Audit function away from The Overview and Scrutiny Committee. This was a pragmatic change because the combined roles meant that The Overview and Scrutiny Committee meetings spent a long time covering the detail of financial and audit type information, to the detriment of the consideration of policy and management issues. These two committees now operate independently from one another, with both Chairs being members of the Liberal Democrat opposition.
15. The main criticisms of Scrutiny from Councillors within the City Council concern the effectiveness of The Overview and Scrutiny Committee in influencing the Cabinet in their decisions, or altering their proposals before implementation. Others think that it is effective enough for the Leader and the Cabinet members to attend The Overview and Scrutiny Committee and respond to any criticisms, with the significant points being referred to full Council.
16. The concern amongst some Councillors is that few members have a role in the Council's work, unless they are members of Cabinet, or of one of the statutory Committees. For some Members this means that there is little opportunity to influence decisions or gain confidence in public speaking, which used to be a useful advantage of involvement in Committee discussions,

CONCLUSIONS:

17. My conclusions are:

- (a) That The Overview and Scrutiny Committee could not, under their Terms of Reference, have taken any action to overrule the Cabinet recommendations and officer action on the decisions taken concerning the lack of a tendering process with the 2014 Silver Hill scheme that was the subject of criticism by the High Court;
- (b) That there is a case for review of the Terms of Reference for The Overview and Scrutiny Committee and the procedures for the consideration of reports submitted to Cabinet; and

- (c) That there is a case for reviewing the current Cabinet system of Governance in the Council to decide if the current committee structure operated in the City Council provides the most effective method of delivering a service to the general public.
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