

ECONOMY & CULTURE SCRUTINY COMMITTEE

3 AUGUST 2023

Present: Councillor Wong(Chairperson)
Councillors Berman, Henshaw, Jenkins, Jones and Lloyd Jones

23 : APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllrs Brown-Reckless, Shimmin and Thomson

24 : DECLARATIONS OF INTEREST

None received.

25 : CALL IN - OFFICER DECISION SGC2327 - AUTHORISATION TO ISSUE THE INVITATION TO TENDER FOR THE MANAGEMENT OF THE SECRET GARDEN CAFÉ

The Chairperson advised that Officer Decision SGC2327 was published on 21 June 2023 in the Officer Decision Register. The Decision resolved:

'that the commencement of a procurement process (including issuing of tender documents) be approved in respect of the Management of the Secret Garden Cafe on a concessionary basis and the use of evaluation criteria and weightings as set out in the body of the report.'

Members were advised that Cllr Rhys Taylor had called-in this decision and his request had been deemed as valid.

The Chairperson explained the structure of the meeting at Stage One and that, as set out in the Constitution, the first decision Members need to make is whether to consider the Call-In or to refer to Full Council:

Members were asked if they wished to consider the Call-In or refer to Full Council.

RESOLVED: to consider the Call-In.

The Chairperson explained the structure of the meeting at Stage Two and that, he had agreed that Cllr Joel Williams could ask questions as part of the consideration of the Call-In; however, he could not take part in the determination of the Call-In as he is not a Member of this Committee.

Members were reminded that the scope of the Call-In, and therefore the scope of Members' questions, was limited to the reasons set out by Councillor Taylor in his request for a Call-In. These were set out in full at point 11 of the scrutiny cover report in the committee papers.

The Chairperson asked if there were any questions at this point.

Cllr Williams noted that there were no Cabinet Members present at the meeting and asked if they had been invited to attend. It was explained that when seeking availability for the Call-In meeting, the date that was best for most Committee Members was not a date that the Cabinet Member could make. It was stressed however, that as this was an Officer Decision, the Cabinet Member was not required to attend.

Cllr Berman sought clarification on whether there was any further information he needed to be briefed on as he was unable to attend the pre-meeting. It was explained that the information discussed at the pre-meeting was the same information contained in the papers.

For consideration of the Call-In, the Chairperson welcomed:

- Cllr Rhys Taylor – the Member who has Called-In the decision.
- Neil Hanratty – Director of Economic Development
- Jon Maidment – Head of Parks and Cardiff Harbour Authority
- Richard Crane – Operational Manager – Principal Solicitor (Property and Planning)
- Eirian Jones – Operational Manager – Strategic Estates
- Steve Robinson – Operational Manager – Commissioning and Procurement

Cllr Taylor was invited to present his reasons for the Call-In as follows:

1. *The process does not represent value for money for the council or public purse.*

It does not represent value to the public purse to end a lease of a sitting tenant who is open to negotiation on the terms of their lease, including increasing their rent obligations. The willingness of the tenant to do this is a matter of public record. The council engaged with the current tenant to renegotiate the lease in June/July 2022, only to reject the options appraisal presented by the tenant in December 2022, on request of the council. In February 2023 the council determined that it would no longer be able to re-negotiate the lease and was required to go out to public tender in July 2023. The rationale for doing this is open to question.

2. *The council progressed the current process (public tender) on the basis of incomplete or inaccurate information.*

The council's position in February 2023 that it could not progress on the basis of a re-negotiation with the sitting tenant because it was progressing a Management Agreement - rather than a lease with an accompanying Management Agreement - was incorrect. Advice presented to officers subsequent to the decision to opt for a Management Agreement (and therefore public tender) stated that the council is not able to solely offer a Management Agreement and must use a lease as the primary vehicle. Had proper advice been sought at the outset, the protracted and costly process could have been avoided. In addition, the initial lease negotiations – and decision to adopt a new approach in February 2023 – was led by officers who with neither legal nor lease expertise. As such, the process has been flawed from the outset.

3. The process has undermined a successful, independent business which council policy (including Procurement Policy) wishes to promote.

The council's refusal to formally extend the end point for the tenants' lease, opting rather for a Tenancy at Will, stripped the business of legal rights and protections, and has put significant financial pressures on the business. With only a 24-hour notice period to end the tenancy, the decision to move to a Tenancy at Will has needlessly put huge pressures on a successful, popular independent business. There has been a lack of scrutiny around the decision to move from a lease to a management agreement and subsequently to move the tenant on to a Tenancy at Will. Furthermore, the lack of complete and accurate advice on the terms of which the council was able and should re-shape the lease has undermined the business and council policy.

4. The rationale and decision making around entering a public procurement process, rather than lease negotiation, is not clear.

The council has stated that this process is being undertaken for the benefit of users of Bute Park but has failed to set out what the current offer from the current tenant fails to deliver. In addition, there is a large petition and responses to a visitor survey which suggest that users are overwhelmingly supportive and appreciative of the offer of the current tenant. The decision making to date has not taken that public view into account. I would suggest that engaging the New Friends of Bute Park group to gauge public opinion on what the offer from the café should be, just weeks before issuing the tender, suggests that the council was not itself sure what the current gaps in the current offer are, or what it intends to deliver through a public procurement process. Furthermore, it is a matter of record that the sitting tenant was open to re-negotiating the terms of their lease, including increasing their rent obligation. As such, the decision to end the lease deserves full scrutiny.

Neil Hanratty & Jon Maidment were invited to present their response. Neil Hanratty stated that he had nothing to add to the written statement that had been submitted and was contained in the papers at Appendix C.

Members were invited to ask questions to the panel. These included questions around:

- Social Procurement and how this was used in this instance.
- The differences between a property lease and a concessionary agreement.
- The benefits of the new agreement to the general public.
- If the current tenant could bid at the next stage.
- Whether information available to inform decision making was complete and accurate
- Whether the Council had acted in good faith and complied with the Welsh Government Procurement Policy.
- The length of time taken to seek legal advice and speak to the existing tenant.
- The views of the Cabinet Member
- Stakeholder engagement and consultation including the timing of such
- Concern around misleading Council communications to the public.
- Drivers for moving to a concessions agreement and the meaning of 'operational experience' cited in Appendix C

- Whether or not it is good practice to undertake public consultation in these types of cases
- Sell 2 Wales process and information provided at various stages
- Clarification of 24-hour notice period in Tenancy At Will
- Clarity on operational impact if no change to the property lease agreement.
- Benefits of changing to a concessionary service agreement.
- Impact of extending the property lease until March 2024.
- Lessons to learn from this process
- Legal implications if remain with property lease agreement – process to be followed and impact on operations
- Clarification of what service provision the concessions agreement would include
- Whether there were any pertinent legal matters that some, but not all, committee members had been made aware of
- Whether there were any additional costs to the Council from this process.

Following a short break, Cllr Taylor was invited to sum up, this is summarised as follows:

Cllr Taylor stated that this was not about not moving forward, it was clear that the current arrangements needed to be improved, but it is about the process and its fairness and whether the decision taken on the best way forward could be evidenced. He added that he understands the Council is the landlord and that the new agreement benefits them, but he considered that there didn't seem to be any consideration to the impact on the sole trader and the context they are operating in.

Cllr Taylor considered that there needed to be a full apology to the tenant about the length of time taken to seek the correct legal advice and the impact on the tenant during this time. He sought assurances that lessons would be learned on this going forward.

He considered that the Council backtracked somewhat by engaging with the New Friends of Bute Park too late in the process and that communications with the public had been generally problematic.

Cllr Taylor considered that the 'no choice' of options going forward was a value judgement that suits the landlord and not the tenant or users of Bute Park.

He considered that lessons needed to be learned so that this situation does not happen again, and Officers do not find themselves with a call-in for a public procurement exercise.

In conclusion, Cllr Taylor considered there needs to be a pause, a stay of execution, the length of which should be negotiated between the tenant and the landlord. He stated that this would provide confidence to the tenant, the public, the users of Bute Park and other tenants who may be in a similar position. It would also show fairness and accountability when things go wrong.

Neil Hanratty was invited to sum up his response. He stated that he personally regretted the anxiety caused to the existing tenant and staff at the Secret Garden Café, and he apologised for the time taken to get to the point when it was realised a

concession agreement was required. He added that he will personally be involved in future conversations with the existing tenant about the way forward. He stated the Council is very happy with the job that the existing tenant and her team do and encouraged the tenant to bid. He stated that he completely disagreed with the view that the Council had not undertaken stakeholder engagement, as the Council had consulted with the existing tenant, who is the stakeholder. He concluded that the right thing to do was for him to receive the response from the Committee, to consider it, and to have a conversation with the tenant.

The Chairperson asked each Member for their views going forward. All Committee Members except for Cllr Berman decided to not refer the decision back. Cllr Berman wanted it noted that he did want to refer the decision back. As part of their feedback, Members raised the following points:

- Recommend a pause if that is what tenant wishes and is appropriate
- Suggest developing guidance to provide clarity on process to follow when move to other concession agreements, learning lessons from this process to improve the process followed
- Suggest speaking to the tenant sooner rather than later
- Suggest seek legal advice earlier in the process
- Recommend the Council review any lessons to learn re communications to ensure public have the full picture.
- Suggest reach out proactively to other tenants also affected and contact them as soon as possible.

In his feedback, Cllr Berman made the following points supporting his decision to recommend referring the decision back:

- Need to learn lessons from this process before going ahead with changes in this or other concessions agreements
- Need to review decision, re-examine potential procurement routes and potentially seek external legal advice on this
- Need to look at whether need to have shareholder engagement as part of looking at different procurement routes
- Need to ensure there is clarity and transparency around the process that gives reassurance to all those interested in the outcome, including those who have signed the petition.

AGREED: that the Chairperson, on behalf of the Committee, writes to the Director conveying the above suggestions as recommendations of the Committee when discussing the way forward.

26 : URGENT ITEMS (IF ANY)

None received.

27 : DATE OF NEXT MEETING

19 September 2023 at 4.30pm

The meeting terminated at 7.15 pm