

**CALL IN: OFFICER DECISION SGC2327- Authorisation To Issue The Invitation To Tender For The Management Of The Secret Garden Café**

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**Purpose of Report**

1. To provide Committee Members with background information on the Council's Call-In procedure; the decision being called-in at this meeting; and the scope, process and structure of Call-In scrutiny.

**Call-In Procedure**

2. The Council's Constitution contains a Call-In Procedure<sup>1</sup> which provides that any non-Cabinet Member may call-in a decision of which notice has been given, via publication on a Decision Register, by writing to the Head of Democratic Services (HDS) within the Call-In Period (within seven clear working days after publication of the decision). The HDS shall then notify the Cabinet Business Office and call a meeting of the relevant Scrutiny Committee, where possible after consultation with the Chairperson of the Committee, and in any case within five clear working days of the decision to call-in.
3. Officer Decisions, for purposes of the Call-In Procedure, are those made by the Chief Executive, a Corporate Director or Director; these must be published on the Council's Officer Decision Register.
4. Point 12 (f) of the Scrutiny Procedure Rules sets out that the role of Scrutiny Committees calling-in a decision is:
  - To test the merits of the decision;
  - To consider the process by which the decision has been formulated;
  - To make recommendations (to support the decision, change aspects of

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<sup>1</sup> [Scrutiny Procedure Rules.pdf \(moderngov.co.uk\)](#) – Point 12

the decision or to invite the decision-making body to reconsider);

- To suggest further steps before a decision is made (but not to try to carry out those steps in place of the decision-making body);
- To come to a view in a relatively short time scale, so as not to compromise the speed and efficiency of the decision-making process.

5. The scope of the scrutiny is limited to exploring the reasons stated for the Call-In, set out at point 8. If questions are judged as probing areas not within the remit of the Call-in, the Chair will deem it necessary to disallow the line of inquiry.

6. The Constitution sets out the process for Call-In scrutiny as follows:

- a. The Scrutiny Committee decides whether to consider the Call-In or whether to refer the Call-In to Full Council
- b. If the Scrutiny Committee chooses to consider the Decision, it may refer the Decision back to the decision maker for reconsideration, setting out in writing the nature of its concerns. The decision maker shall then reconsider the matter before adopting a final decision or formally deferring the matter for further consideration. The relevant Scrutiny Committee would be advised of the outcome at its next meeting.
- c. If the Scrutiny Committee chooses to consider the Decision, it may decide not to refer the matter back to the decision maker, in which case the decision shall take effect on the date of the relevant Scrutiny Committee meeting which considers the issue, or the expiry of the Scrutiny Period or the Council Scrutiny Period as appropriate, whichever is the later.

7. Whether or not the Scrutiny Committee decides to refer the matter back to the decision maker, the Scrutiny Committee may agree to forward any comments, observations, or recommendations to the Decision-maker in writing, for their consideration.

## **Decision Being Called-In - OFFICER DECISION SGC2327- Authorisation To Issue The Invitation To Tender For The Management Of The Secret Garden Café**

8. On 19 June 2023, the above officer 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.*

9. This Decision, known as **Officer Decision SGC2327** was published on 21 June 2023 in the Officer Decision Register<sup>2</sup>, with a proposed implementation date of 01 July 2023. The purpose of taking this Decision was:

- *To ensure continuity of service provision for the benefit and enjoyment of users to Bute Park and its Visitor Centre.*

### **Reasons given for Calling-In Officer Decision SGC2327**

10. During the Call-In period after publication of the Officer decision on 21 June 2023, a non-Cabinet councillor submitted a request to call-in **Officer Decision SGC2327**.

11. The reasons set out by the non-Cabinet councillor for calling in the decision are set out in the following extract taken from the written request to the Head of Democratic Services, dated 30 June 2023:

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-*

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<sup>2</sup> [Decision - Authorisation To Issue The Invitation To Tender For The Management Of The Secret Garden Café : Cardiff Council \(modern.gov.co.uk\)](https://modern.gov.co.uk)

*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.*

12. The Call-In request has been deemed valid by the Head of Democratic Services, in consultation with the Monitoring Officer.

### **Structure of the Papers**

13. The papers for this meeting consist of:
  - Appendix A** - Officer Decision Report – Secret Garden Café
  - Appendix B** - Officer Decision Report - Authorisation
  - Appendix C** – Officer Response to Reasons given for Calling-In Decision SGC2327

### **Structure of Scrutiny**

14. This decision has been called in by Councillor Rhys Taylor. As such, Councillor Taylor will commence the Call-In meeting by presenting to the Committee his reasons for calling in the decision.
15. To assist Members, Neil Hanratty, (Director of Economic Development), Jon Maidment (Head of Parks and Harbour Authority) and Richard Crane (Legal Services) have been invited to respond to the Call-In and answer Committee Members' questions.
16. Following Members' questions, Councillor Rhys Taylor will have an opportunity to make final, closing comments, as will Neil Hanratty, Jon Maidment and Richard Crane.
17. Committee Members will then discuss the evidence received and decide whether or not to refer the decision back, and whether they have any recommendations, observations and/ or comments they wish to send to the decision takers.

### **Legal Implications**

18. The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if, and when, the matters under review are

implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

### **Financial Implications**

19. The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage.

### **RECOMMENDATION**

The Committee is recommended to:

- Consider Officer Decision **SGC2327** in accordance with the Call-In Procedure;
- Determine whether to refer the matter to the Decision-maker or not;
- Agree whether it wishes to forward any comments, observations or recommendations to the Decision-maker in writing.

**DAVINA FIORE**

**Director of Governance & Legal Services**

**28 July 2023**