

# Children and Young People Policy Development and Scrutiny Panel

**Date: Monday, 16th April, 2018**

**Time: 4.00 pm**

**Venue: Brunswick Room - Guildhall, Bath**

**Councillors:** Alison Millar, Matt Cochrane, Sally Davis, Liz Hardman, Michelle O'Doherty,  
Peter Turner and Lizzie Gladwyn

**Co-opted Voting Members:** David Williams and Andrew Tarrant

**Co-opted Non-Voting Members:** Chris Batten and Kevin Burnett

Chief Executive and other appropriate officers  
Press and Public



**Mark Durnford**

**Democratic Services**

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## NOTES:

1. **Inspection of Papers:** Papers are available for inspection as follows:

Council's website: <https://democracy.bathnes.gov.uk/ieDocHome.aspx?bcr=1>

Paper copies are available for inspection at the **Public Access points:-** Reception: Civic Centre - Keynsham, Guildhall - Bath, The Hollies - Midsomer Norton. Bath Central and Midsomer Norton public libraries.

2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above.

3. **Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator.

The Council will broadcast the images and sound live via the internet [www.bathnes.gov.uk/webcast](http://www.bathnes.gov.uk/webcast) The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. **Public Speaking at Meetings**

The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may also ask a question to which a written answer will be given. **Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.** Further details of the scheme:

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=12942>

5. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are signposted. Arrangements are in place for the safe evacuation of disabled people.

6. **Supplementary information for meetings**

Additional information and Protocols and procedures relating to meetings

<https://democracy.bathnes.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13505>

**Children and Young People Policy Development and Scrutiny Panel - Monday, 16th April,  
2018**

**at 4.00 pm in the Brunswick Room - Guildhall, Bath**

**A G E N D A**

1. WELCOME AND INTRODUCTIONS

2. EMERGENCY EVACUATION PROCEDURE

The Chair will draw attention to the emergency evacuation procedure as set out under Note 6.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

4. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is a **disclosable pecuniary interest** *or* an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

6. ITEMS FROM THE PUBLIC OR COUNCILLORS - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS RELATING TO THE BUSINESS OF THIS MEETING

At the time of publication no notifications had been received.

7. CALL-IN OF DECISION E3038 - CLOSURE OF THE REMAINING TWO COUNCIL RUN NURSERIES (Pages 7 - 30)

Any 10 Councillors not in the Council's Cabinet may request that a Cabinet or Single Member Decision made but not yet implemented be reconsidered by the person or body who made it. This is called a "call-in" and has the effect of preventing the implementation of the decision pending a review of the decision by a Policy Development and Scrutiny Panel.

This report sets out the call-in received by 10 Councillors of the decision relating to the decision on the proposed closure of the remaining two Council run nurseries and the transfer of children's places to other providers in the local area. The role of the Panel is to consider the issues raised by both call-in notices and to determine its response.

The Committee Administrator for this meeting is Mark Durnford who can be contacted on 01225 394458.

<b>Bath &amp; North East Somerset Council</b>	
MEETING:	<b>Children &amp; Young People Policy Development and Scrutiny Panel</b>
MEETING DATE:	16 <sup>th</sup> April 2018
TITLE:	<b>Call-in of decision E3038 - Closure of the remaining two Council run nurseries</b>
WARD:	ALL
<b>AN OPEN PUBLIC ITEM</b>	
<p><b>List of attachments to this report:</b></p> <p>Appendix 1 Cabinet Decision</p> <p>Appendix 2 Accompanying Report for the Decision</p> <p>Appendix 3 Call-in Request</p> <p>Appendix 4 Call-in Guidance Note</p> <p>Appendix 5 Terms of Reference for the Call-in</p>	

## **1 THE ISSUE**

- 1.1 Any 10 Councillors not in the Council's Cabinet may request that a Cabinet or Single Member Decision made but not yet implemented be reconsidered by the person or body who made it. This is called a "call-in" and has the effect of preventing the implementation of the decision pending a review of the decision by a Policy Development and Scrutiny Panel.

This report sets out the call-in received by 10 Councillors of the decision relating to the decision on the proposed closure of the remaining two Council run nurseries and the transfer of children's places to other providers in the local area. The role of the Panel is to consider the issues raised by both call-in notices and to determine its response.

## **2 RECOMMENDATION**

THE PANEL IS ASKED TO:

- a. Consider the call-in request received (refer to Appendix 3).
- b. Approve the Terms of Reference of the Call-in.
- c. Decide whether it will reach a conclusion about whether to uphold or dismiss the call-in; or refer the matter to the Council itself to undertake the role of the Panel, at this meeting or if a further meeting is required.

d. If a further meeting is required to hear and determine the call-in, the Panel is asked to agree the date for this. [The constitutional requirement is for that meeting to take place before the end of the 18<sup>th</sup> April (this timescale would not apply if the Panel decided to refer their role to the full Council)].

### **3 FINANCIAL IMPLICATIONS**

3.1 The Panel should be aware that the Council's Constitution (Part 4E, Rule 13) requires that

*“Where an Overview and Scrutiny Panel makes a recommendation that would involve the Council incurring additional expenditure (or reducing income) the Panel has a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources or the extent to which that should be seen as a priority for future years’ budget considerations”.*

3.2 It is important, therefore, in its consideration of the call-in that the Panel gives consideration to the alternative options available to the decision-maker and the financial consequences of these.

### **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSALS**

4.1 A Call-in is a statutory process pursuant to the Council's Constitution Part 4E.

### **5 THE REPORT**

#### **BACKGROUND**

5.1 The decision which is now subject to a call-in request was a Cabinet Decision made on the 15<sup>th</sup> March 2018 (Appendix 1) following consideration of the officer report (Appendix 2). The Council Solicitor, on behalf of the Chief Executive, has validated the call in and confirms that it conforms to constitutional requirements in terms of time of receipt and number of Members validly subscribing to it. Appendix 3 sets out the reasons for the call-in request.

#### **ASSESSING THE CALL-IN REQUEST**

5.2 The Terms of Reference (Appendix 5) will indicate the suggested scope of the Call-in. This will outline the information and contributions the Panel is advised to consider in order to determine the call-in. It will have been prepared in consultation with the Chair. Panel members are invited to comment on the terms of reference and any changes they request will be taken into account in an updated version which will be circulated at the meeting.

5.3 The Policy Development and Scrutiny Panel Chairs have approved guidance on the handling of call-in requests which make clear that there is a presumption that every validated call-in will proceed to a public meeting stage. The process for that meeting is set out in paragraph 5.4 below. If a second meeting of the Panel is required to complete the review it needs to take place no later than 27<sup>th</sup> April to comply with the constitutional requirement that the total period of overview and scrutiny involvement in a call-in must not exceed 21 working days.

## SUGGESTED FORMAT FOR THE MEETING TO DETERMINE THE CALL-IN

5.4 When the Panel determines the call-in, it is suggested that the following format be adopted:

- (1) Remind itself of the issues to be considered and consider any additional written information supplied.
- (2) Hear from and ask questions of the Cabinet Member(s) and Lead (or other agreed) Officers.
- (3) Hear from and ask questions of Councillor(s) representing the call-in signatories.
- (4) Hear from and ask questions of any public speakers. appropriate external contributors (a "panel" style contributors' session is suggested).
- (5) Call-in Councillor and Cabinet member(s) have the opportunity to make comments on any new considerations that may have arisen during the debate.
- (6) Discuss and draw conclusions from the written and oral information presented.
- (7) Consider and formulate the Panel's determination of the call-in.

## 6 RATIONALE

6.1 The recommendations were suggested pursuant to the Council's constitution.

## 7 OTHER OPTIONS CONSIDERED

7.1 Not applicable

## 8 CONSULTATION

8.1 This report has been prepared following consultation with the Chair and Vice Chair of the Policy Development and Scrutiny Panel.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	<i>Donna Vercoe, Senior Scrutiny Officer, 01225 396053</i>
<b>Background papers</b>	<i>None</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

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Single Member Cabinet Decision

<b>Executive Forward Plan Reference</b>	<b>E 3038</b>
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**To close the remaining two Council run nurseries and support the transfer of children’s places to other providers in the local area and consider options for the two buildings**

<b>Decision maker/s</b>	Cllr Paul May, Cabinet Member for Children and Young People
<b>The Issue</b>	<p>The Council has two remaining Nurseries; both are situated within the grounds of existing Primary Schools (one in Radstock, St. Nicholas Primary School, and the other in Bath on the St. Martin’s Garden site). Over the past few months the Council have been actively engaging with a range of potentially interested organisations to explore the option of the School taking on the ownership and running of the nursery provision. However, no organisation has confirmed that they would wish to take on the running of the nurseries and TUPE staff to run the buildings.</p> <p>The Council has a statutory duty to assess the local childcare market and to secure sufficient childcare for working parents. However we are not expected to provide childcare directly but will be expected to work with local private, voluntary and independent sector providers to meet local need.</p>
<b>Decision Date</b>	Not before 10 <sup>th</sup> March 2018
<b>The decision</b>	<p>The Cabinet Member agrees;</p> <p>A) The proposal for the two children’s nurseries to close, while staff work with local private nurseries and other providers including child minders to ensure where possible, appropriate levels of placement sufficiency in both areas. In addition, staff will work with parents to ensure a smooth transition of placements over the coming months to ensure all young children have identified nursery or child care placements.</p> <p>B) To approve the likely staff redundancy costs which are currently estimated at £105k for staff that do not transfer to other posts within the council. In addition, the report requests agreement to dispose of surplus assets; Radstock nursery portable building, and nursery rooms/accommodation at St. Martin’s Garden School.</p>
<b>Rationale for decision</b>	Given the continued development of private nursery and child-minding provision across the B&NES area, it is right that the Council reviews its requirement to directly provide nursery placements for young children. The private market has an established record of providing these resources more efficiently than the Council can

	<p>provide.</p> <p>Recent reviews of sufficiency show that private provision is at, or near to levels that would allow all existing places provided by the Council to be taken up by private nurseries. Where the sufficiency is slightly lower (Radstock), we are confident that we can use the ensuing months to work with providers to increase capacity sufficiently to ensure all children will be able to find alternative provision.</p>
<b>Financial and budget implications</b>	<p>These building related proposals will potentially allow for capital receipts on the sale/lease of both remaining buildings and land currently owned by the Council. The proposal to close both of the remaining Nurseries would mean a number of existing staff being made redundant. An initial review of costs indicates that if all staff were to be made redundant this would cost £105k from the Council reserves set aside for such situations.</p> <p>Currently both nurseries employ 26 people or 20 FTE of this 24 people are likely to be made redundant.</p> <p>The Council owns the grounds and buildings in which both Nurseries are located. Both Nurseries are located within existing Primary School grounds. It is possible that each School would be interested in obtaining the vacant rooms, grounds should the nursery buildings be vacated.</p>
<b>Issues considered (these are covered in more detail in the report)</b>	Social Inclusion; Customer Focus; Human Resources; Property; Young People; Equality (age, race, disability, religion/belief, gender, sexual orientation); Human Rights; Corporate.
<b>Consultation undertaken</b>	Ward Councillor; Cabinet colleagues; Trades Unions; Staff; Other B&NES Services; Service Users; Community Interest Groups; Stakeholders/Partners; Other Public Sector Bodies; Section 151 Finance Officer; Chief Executive; Monitoring Officer.
<b>How consultation was carried out</b>	Throughout the process of discussing the future of the remaining nurseries, we have kept staff fully engaged. We have communicated with parents and notified them of the possibility of the closure of the nurseries and the likely time-scale for this. We have also been in communication with Trade Unions and local Councillors.
<b>Other options considered</b>	The Council has actively explored whether or not other private providers could take on the running of the nurseries. However, it will also be important to acknowledge that feedback from potential providers has consistently been that this would be difficult due to some of the potential financial implications of TUPE costs.
<b>Declaration of interest by Cabinet Member(s) for decision, including any dispensation granted:</b>	Not applicable in this instance.

<b>Any conflict of interest declared by anyone who is consulted by a Member taking the decision:</b>	None
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<b>Signatures of Decision Makers</b>	
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<b>Date of Signature</b>	
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**Subject to Call-in until 5 Working days have elapsed following publication of the decision**

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<b>Bath &amp; North East Somerset Council</b>		
DECISION MAKER:	<b>Cllr Paul May</b>	
DECISION DATE:	<b>On or after 10<sup>th</sup> March 2018 (for single Member decision)</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3038
TITLE:	<b>Proposed closure of the remaining two Council run nurseries and support the transfer of children's places to other providers in the local area and consider options for the two buildings</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
None		

## **1 THE ISSUE**

- 1.1 The Council has two remaining Nurseries; both are situated within the grounds of existing Primary Schools (one in Radstock, St. Nicholas Primary School, and the other in Bath on the St. Martin's Garden site). Over the past few months the Council have been actively engaging with each of the schools to explore the option of the school taking on the ownership and running of the nursery provision. However, in recent weeks both schools have confirmed that having carefully considered the option of taking on the nurseries, they have concluded they do not wish to proceed any further with this option.
- 1.2 The confirmation that the schools do not wish to run the nurseries means that we now need to take a decision about the future of both nurseries. This paper sets out the possible options in terms of (a) continuing to run these services within the Council, (b) a further period of exploring private options to take-over of the nurseries, or (c) the option of closing both Nurseries and supporting parents to find alternative nursery placements within local private Nursery provision.
- 1.3 The Council has a statutory duty to assess the local childcare market and to secure sufficient childcare for working parents. However we are not expected to provide childcare directly but will be expected to work with local private, voluntary and independent sector providers to meet local need.

## 2 RECOMMENDATION

The Cabinet Member for Children & Young People is asked to;

- 2.1 Agree the proposal for the two Children's Nurseries to close, while staff work with local private nurseries and other providers including child minders to ensure where possible appropriate levels of placement sufficiency in both areas. In addition, staff will work with parents to ensure a smooth transition of placements over the coming months to ensure all young children have identified nursery or child care placements.
- 2.2 To approve the likely staff redundancy costs which are currently estimated at £105k for staff that do not transfer to other posts within the Council. In addition, the report requests agreement to dispose of surplus assets; Radstock Nursery portable building, and Nursery rooms/accommodation at St. Martin's Garden School.

## 3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 These building related proposals will potentially allow for capital receipts on the sale/lease of both remaining buildings and land currently owned by the Council. The proposal to close both of the remaining Nurseries would mean a number of existing staff being made redundant. An initial review of costs indicates that if all staff were to be made redundant this would cost £105k from the Council reserves set aside for such situations.
- 3.2 Currently both nurseries employ 26 people or 20 FTE of this 24 people are likely to be made redundant.
- 3.3 The Council owns the grounds and buildings in which both Nurseries are located. Both nurseries are located within existing Primary schools grounds. It is possible that each school would be interested in obtaining the vacant rooms, grounds should the nursery buildings be vacated. The likely savings due to redundancy of staff across both Nurseries will be 145k.

## 4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 Children – Under the Children Act 2006, **Sections 6, 8-11 & 13** require local authorities to assess the local childcare market and to secure sufficient childcare for working parents. Childcare will only be deemed sufficient if meets the needs of the community in general and in particular those families on lower incomes and those with disabled children. Local authorities take the strategic lead in their local childcare market, planning, supporting and commissioning childcare. Local authorities will not be expected to provide childcare directly, but will be expected to work with local private, voluntary and independent sector providers to meet local need.

- 4.2 Apprenticeships, Skills, Children and Learning Act 2009 section 198 Arrangements for children's centres are particularly relevant:

Section 5A of the Act: The duty to make sufficient provision of Children's Centres to meet local need, so far as is reasonably practicable to ensure all children and families can be reached effectively, especially the most deprived.

## 5 THE REPORT

- 5.1 In January 2017, the Council closed two nursery buildings in Keynsham and Midsomer Norton. These small nurseries catered for 2 year old children only. The numbers of young children attending the nurseries were small due to a high level of alternative private nursery placements in each locality and high numbers of childminders locally as well. This meant that each of these nurseries ran at a loss. Therefore a decision was taken to close the nurseries and transfer places into private nurseries nearby or other providers. The closure of these nurseries assisted in the plan to ensure that the 0-11yrs Early Help Service was able to reduce costs and assist in developing a balanced budget for 2017/18.
- 5.2 The closure of the Nurseries in Midsomer Norton and Keynsham meant that the Council had only two remaining nurseries. Although the remaining nurseries in Radstock and St. Martins Garden were larger nurseries, catering for young children between the ages of 1 to 4yrs old they are un-economical for the Council to run. Therefore it was agreed that we would now explore the option for each of the schools to run them and combine the nursery provision into the existing Primary school provision as a “through” school arrangement. Although both schools initially expressed an interest in this option, in recent weeks, both St. Nicholas School in Radstock, and St. Martins Garden School (The Palladium Trust) have confirmed that they are no longer looking to take on the running of the nurseries nor able to cover the TUPE costs of taking on the existing staff.
- 5.3 Both Nurseries are currently below numbers and run at a loss. This is primarily due to increased childcare sufficiency (number of childcare places) in their areas. The budget for running Radstock Nursery is £69,978.00, the budget for running St. Martins Garden is £65,476.00. Due to the lower than capacity numbers of children in both sites, both nurseries are forecast to over-spend in 2017/18 by a combined total of £67,691.00 on top of the Local Authority contribution of £135,454.00.
- 5.4 Currently there are 40 pre-school children attending St. Martin’s Garden, of this number 26 are due to leave to start Primary school in September 2018, with 8 children expected to start in January 2018.
- 5.5 At Radstock Nursery there are currently 55 children, with 33 expected to leave in September 2018, and 8 likely to start January 2018. It is important that notice of any decision to close the nurseries is communicated to parents and staff at the earliest opportunity, so that parents are given as much time as possible to make decisions about alternative early years placements for their children.
- 5.6 Should the decision be taken to close the Nurseries, it is proposed that each of the Nurseries is given the option to continue to provide services up until July 2018. This would allow for a smooth transition for those 59 children to stay in a setting that they are familiar with and where they are doing well, to then move into their school setting, as planned. We will also provide support to the staff and managers in each of the Nurseries to explore other employment options within the Council should opportunities become available, whilst balancing the need to maintain the appropriate level of staffing ratios within the nursery settings. This approach will give

managers more time to consider the options around the building and support handovers to new provision with families, especially for those children who are more vulnerable.

- 5.7 One further option when considering the future of both nurseries is to actively explore whether or not other private providers could take on the running of the nurseries. However, it will also be important to acknowledge that this process may be difficult due to some of the potential financial challenges facing potential private providers. We understand from feedback from the schools that were initially interested in running the nurseries that some of the key factors leading to their decision not to proceed were the TUPE costs and continuing wage costs. Any Private nursery would also face having to take on these costs, which could compromise business plans.
- 5.8 The Councils statutory duty to review child-care sufficiency in both localities shows that within the St. Martin's Garden area there is already a level of 1.35% which means that there is more than enough existing provision to accommodate the children currently attending St. Martins Garden Nursery, so staff would be able to support families to change locations.
- 5.9 The sufficiency figures for Radstock show a sufficiency figure of only 0.73%. This indicates that there are slightly fewer places at present than the number required, should we chose to close the Radstock nursery. However, we would be able to use the period between any decision and the end of school year to work with local private providers and others to increase this capacity to ensure all young children requiring places were able to find the right provision.

## **6 RATIONALE**

- 6.1 Given the continued development of Private Nursery and child-minding provision across the BaNES area, it is right that the Council reviews its requirement to directly provide nursery placements for young children. The private market has an established record of providing these resources more efficiently than the Council can provide.
- 6.2 Recent reviews of sufficiency show that private provision is at, or near to levels that would allow all existing places provided by the Council to be taken up by Private Nurseries. Where the sufficiency is slightly lower (Radstock), we are confident that we can use the ensuing months to work with providers to increase capacity sufficiently to ensure all children will be able to find alternative provision.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 As highlighted earlier in this paper, prior to this proposal, officers had approached both schools to fully explore the option of the schools taking

over the running of the Nurseries and the TUPE of current staff. We have now been informed by both schools that they no longer wish to pursue this option. Given the issues raised by the schools in regard to TUPE costs, it is possible that other potential private providers would also highlight the same barriers and dis-incentives to taking on the nurseries as a commercial proposition.

7.2 We would be seeking to notify staff and parents of any decision as soon as possible. This will allow the maximum opportunity for parents to be provided with details of alternative provision, as well as providing the maximum opportunity to explore with staff any re-deployment options that might be available.

## 8 RISK MANAGEMENT

8.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	<i>Richard Baldwin, Divisional Director,</i> <a href="mailto:Richard_Baldwin@Bathnes.gov.uk">Richard_Baldwin@Bathnes.gov.uk</a>
<b>Background papers</b>	<i>None</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

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## **Call In of decision E 3038**

### **Proposed closure of the remaining two Council run nurseries and support the transfer of children's places to other providers in the local area and consider options for the two buildings**

We wish to call-in this decision on the following grounds:

The proposed decision has not taken into account the impact on families and children in crisis, families with challenging children and children with disabilities protected under the 2010 Equalities Act.

Under the Children Act 2006, this Council is required to assess the local childcare market and to secure sufficient childcare for working parents. In Radstock the sufficiency figure is only 0.73% meaning that already there are fewer places than required.

The papers give no indication about how long the nurseries have been running at a loss.

The papers do not indicate long the nurseries have been below numbers and whether the threat of closure has impacted on the numbers.

Signed by:

Liz Hardman (lead)  
Joe Rayment  
Eleanor Jackson  
John Bull  
Robin Moss  
Chris Dando  
Karen Walker  
Sarah Bevan  
Lin Patterson  
June Player

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# **CALL-IN OF EXECUTIVE DECISIONS**

## **RULE 1 – WHO MAY REQUEST A CALL-IN?**

Elected members who do not sit on the Cabinet have the right to request a “call-in” of an executive decision which has been made by the Cabinet, or a person or body to whom the power to make executive decisions has been delegated, but not yet implemented.

These decisions could be made by;

- the Cabinet
- a Cabinet Member,
- a committee of the Cabinet
- an Officer taking a key decision acting on delegated authority from the Cabinet
- an area committee
- a body under joint arrangements

BUT NOT the decisions of quasi-judicial or Regulatory Committees.

Notice of the decision made shall be published to every councillor and the publicity shall specify the period in which the “call-in” right may be exercised.

## **RULE 2 – SUBMISSION OF A “CALL-IN” NOTICE**

A notice requesting a “call-in” of an executive decision shall be in writing and signed by 10 or more elected members (excluding Cabinet Members) making the request. The request shall be deposited with the Chief Executive.

The request shall include individual signatures on the notice or electronic communications from individual members signifying their support for the call-in. If a Member is unable to communicate in writing or electronically he/she may signify support by telephone.

The persons making the call-in request shall state the decision being called in, the decision maker, the date the decision was taken and shall give reasons for the call-in.

No member of the Council is entitled to sign up to more than 5 call-in requests in any Council year.

The Chief Executive shall determine whether a call-in is valid (ie whether it has been received within 5 working days of the decision being published and requested by the appropriate number of members and that the decision may properly be called in under the Constitution) and, if so, consult with Overview & Scrutiny Chairs to decide which Panel should consider it.

The Chief Executive shall make a report of any validated call-in to a meeting of the relevant Overview and Scrutiny Panel which shall meet wholly in public within 14 working days of a valid call-in notice being verified.

A decision may only be called in once.

## **RULE 3 – CONSIDERATION BY OVERVIEW AND SCRUTINY PANEL**

The Overview and Scrutiny Panel shall consider the issues raised in the “call-in” request and the stated reasons for the request. They have the following courses of action open to them;

- a) To dismiss the call-in: the decision shall then take effect immediately;
- b) To refer the decision back to the decision-making person or body for reconsideration, setting out in writing the nature of the Panel's concerns; or
- c) To refer the matter to Council to itself undertake the role of the Panel (which may necessitate an additional Council meeting to meet necessary timescales) [NB: the ultimate decision still remains with the original decision maker].

If the call-in is dismissed, notification will be made to all interested parties and the original decision can be implemented. No amendments can be made to the decision [Six-month rule applies – Part 4(D), rule 15]

If the Panel consider any aspect of the decision requires further consideration, it must refer it back to the decision maker.

In total, the Panel shall ensure that the period of overview and scrutiny involvement in an individual call-in shall not exceed 21 working days.

#### **RULE 4 – CONSIDERATION BY DECISION MAKER**

The person or body which made the decision shall consider the report of the Overview and Scrutiny Panel or Council and must;

- (a) confirm the original decision; or
- (b) make some changes to the original decision; or
- (c) make a different decision.

The decision maker may not ignore the report. The decision maker shall undertake this consideration within 10 working days from the date of the Overview and Scrutiny (or Council) meeting.

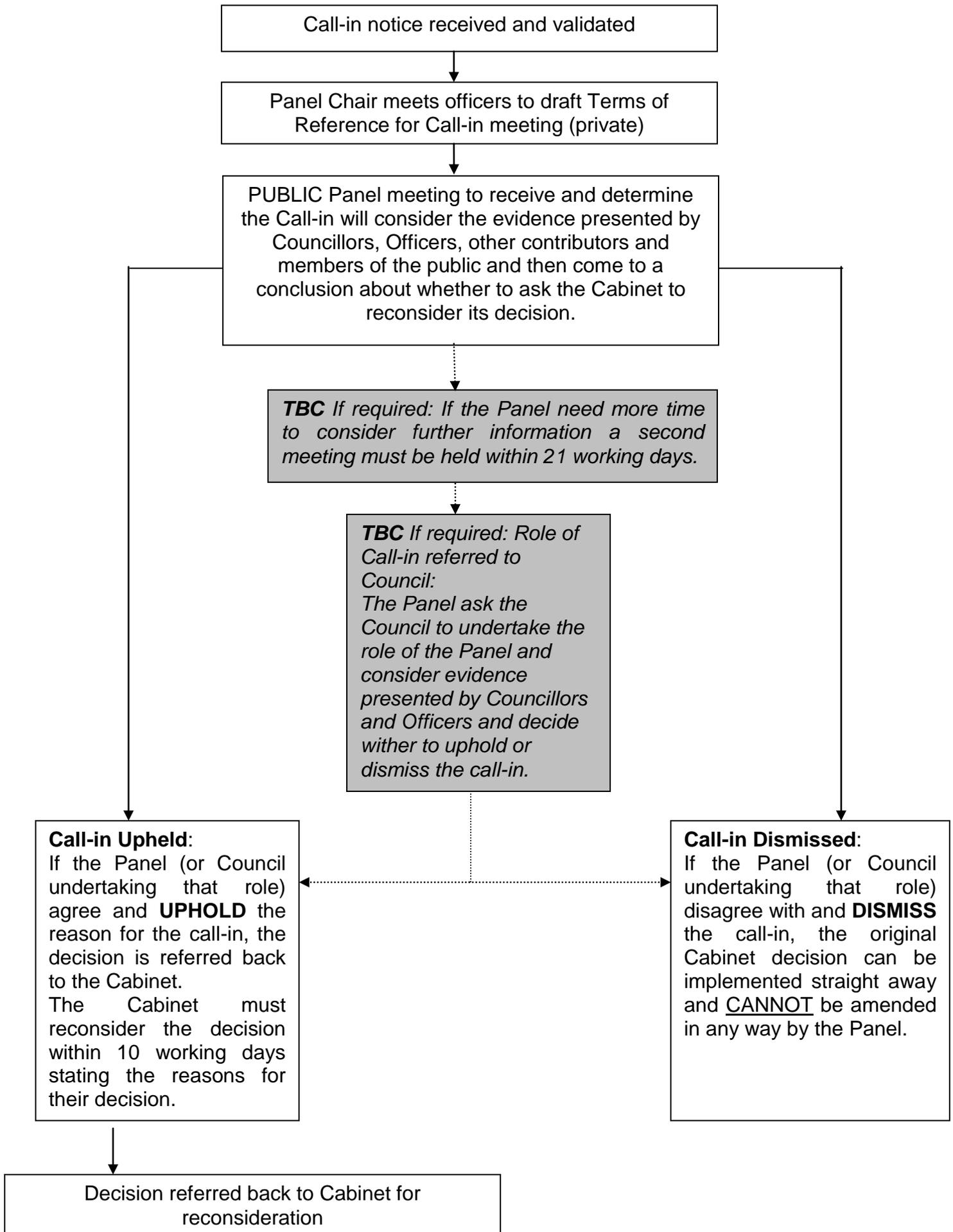
The decision made by the decision maker after considering the report of the Overview and Scrutiny Panel shall be final and will be implemented immediately. There is no further opportunity for “call-in” of the decision.

#### **RULE 5 – EXCEPTIONS TO “CALL-IN”**

The rights under this Procedural Rule shall not apply in the following circumstances:

- when the executive decision is urgent as defined in the Urgency Procedure Rules within this Constitution
- the effect of the call-in alone would be to cause the Council to miss a statutory deadline
- a decision taken under the General Exception and Special Urgency Access to Information Rules [Part 4B, rules 15 and 16].

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## **APPENDIX 5 - TERMS OF REFERENCE**

### **Call-in of the Cabinet decision: E3038**

#### **Introduction**

The Cabinet Member for Children & Young People, on the 15<sup>th</sup> March 2018 resolved as set out below:

- A) The proposal for the two children's nurseries to close, while staff work with local private nurseries and other providers including child minders to ensure where possible, appropriate levels of placement sufficiency in both areas. In addition, staff will work with parents to ensure a smooth transition of placements over the coming months to ensure all young children have identified nursery or child care placements
- B) To approve the likely staff redundancy costs which are currently estimated at £105k for staff that do not transfer to other posts within the council. In addition, the report requests agreement to dispose of surplus assets; Radstock nursery portable building, and nursery rooms/accommodation at St. Martin's Garden School.

On the 28<sup>h</sup> January 2018 a call-in notice was received, signed by 10 Councillors, objecting to this decision.

This decision relates to the proposed closure of the remaining two Council run nurseries and support for the transfer of children's places to other providers in the local area and the considered options for the two buildings, taken by the Cabinet Member for Children & Young People, for the following reasons:

1. The proposed decision has not taken into account the impact on families and children in crisis, families with challenging children and children with disabilities protected under the 2010 Equalities Act.
2. Under the Children Act 2006, this Council is required to assess the local childcare market and to secure sufficient childcare for working parents. In Radstock the sufficiency figure is only 0.73% meaning that already there are fewer places than required.
3. The papers give no indication about how long the nurseries have been running at a loss.
4. The papers do not indicate long the nurseries have been below numbers and whether the threat of closure has impacted on the numbers.

## Relevant PDS Panel

The 'call-in' request has been referred to Bath & North East Somerset Council's Children & Young People Panel Policy Development & Scrutiny Panel to review the decision.

## Call-in Meeting

At the Panel meeting on 16<sup>th</sup> April 2018 the Panel will investigate and determine the matter. They will assess in detail the reasons for the Cabinet decision and consider the objections stated in the call-in notice via a range of information from Councillors, Officers and members of the public (further details below).

## Objective

The objective of the Call-in review is to determine whether or not the resolution made by the Cabinet Members should:-

- Be referred back to the Cabinet for reconsideration [**'Uphold' the call-in**]
- Proceed as agreed by the Cabinet [**'Dismiss' the call-in**], or
- Be referred to Full Council to undertake the role of the Panel [*the ultimate decision would still remain with the Cabinet*].

## Method

To achieve its objective, the Panel will investigate the original decision and the objections stated in the call-in notice. The Panel will hear statements from members of the public who have registered to speak about both the substance and processes behind the decision. Public statements will be limited to 3 minutes per speaker or any variation proposed by the Chair. It will also require attendance and/or written submissions from:-

- Representative Councillor(s) : Cllr Liz Hardman
- Lead Cabinet Member – Cllr Paul May (Cabinet Member for Children & Young People), and key service officers

## Outputs

The Panel's view and supporting findings will be made publicly and will include:

- Minutes & papers from public Panel call-in meetings.
- A summary note will be provided, setting out the result of the call-in meeting

## Constraints

**The Panel will only address questions from the validated point within the call-in notice.**

- **Timescales.** The Panel must hold its initial meeting within 14 working days of the call-in being verified to consider the call-in request. The Panel has a total of 21 working days to reach its decision.

- Initial Public Meeting must be held by 18<sup>th</sup> April [14 working days from receipt of validated call-in request]
  - If meeting adjourned, second public meeting must be held 27<sup>th</sup> April [21 working days from receipt of validated call-in request]
  - If referred directly to the Cabinet, a response must be received by 2<sup>nd</sup> May [10 working days from date of 1<sup>st</sup> meeting]
  - If adjourned and then referred to the Cabinet, a response must be received by 11<sup>th</sup> May [10 working days from date of 2<sup>nd</sup> meeting]
- **Resources.** The call-in process must be managed within the budget and resources available to the Panel.
  - **Council Constitution.** Part 4E, Rule 13 requires that “*Where an Overview and Scrutiny Panel makes a recommendation that would involve the Council incurring additional expenditure (or reducing income) the Panel has a responsibility to consider and / or advise on how the Council should fund that item from within its existing resources*”. Section 3.1 of the cover report (formal agenda papers) provides further explanation.

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