

**STRONG AND SUPPORTIVE COMMUNITIES SCRUTINY
COMMITTEE**

**TUESDAY 6 APRIL 2010
6.30 PM**

Bourges/Viersen Room - Town Hall

AGENDA

Page No

1. Apologies for Absence

2. Declarations of Interest and Whipping Declarations

At this point Members must declare whether they have an interest, whether personal or prejudicial, in any of the items on the agenda. Members must also declare if they are subject to their party group whip in relation to any items under consideration.

**3. Request for Call In of an Executive Decision: Nene Park Trust -
Appointment of Council Representative**

1 - 8



There is an induction hearing loop system available in all meeting rooms. Some of the systems are infra-red operated, if you wish to use this system then please contact Paulina Ford on 01733 452508 as soon as possible.

Emergency Evacuation Procedure – Outside Normal Office Hours

In the event of the fire alarm sounding all persons should vacate the building by way of the nearest escape route and proceed directly to the assembly point in front of the Cathedral. The duty Beadle will assume overall control during any evacuation, however in the unlikely event the Beadle is unavailable, this responsibility will be assumed by the Committee Chair.

Committee Members:

Councillors: M Todd (Chairman), S Day (Vice-Chairman), M Collins, M Fletcher, P Kreling, J R Fox and S Goldspink

Substitutes: Councillors: D Over, B Saltmarsh and G Murphy

Further information about this meeting can be obtained from Paulina Ford on telephone 01733 452508 or by email – paulina.ford@peterborough.gov.uk

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| STRONG AND SUPPORTIVE COMMUNITIES SCRUTINY COMMITTEE | Agenda Item No. 3 |
| 6 APRIL 2010 | Public Report |

Report of the Solicitor to the Council

Report Author – Paulina Ford, Performance and Scrutiny Officer
Contact Details – (01733) 452508 or email paulina.ford@peterborough.gov.uk

REQUEST FOR CALL-IN OF AN EXECUTIVE DECISION: NENE PARK TRUST – APPOINTMENT OF COUNCIL REPRESENTATIVE

1. PURPOSE

- 1.1 To consider a request to call-in an executive decision made by the Leader of the Council.

2. RECOMMENDATIONS

- 2.1 That the Strong and Supportive Communities Scrutiny Committee considers a request to call-in a decision taken by the Leader in respect of the Nene Park Trust – Appointment of Council Representative.

3. BACKGROUND

- 3.1 On 19 March 2010, the Leader made an executive decision relating to the appointment of a Council representative to the Nene Park Trust. In accordance with the Constitution this decision was published on that date.
- 3.2 On 24 March 2010, Councillors Goldspink and Sandford submitted a request to call-in this decision on the following grounds:
- (i) The decision does not follow the principles of good decision making as set out in Article 12 of the Council's Constitution, specifically that the decision maker did not:
 - (a) Realistically consider all alternatives and, where reasonably possible, consider the views of the public; and
 - (b) Follow procedures correctly and be fair.
- 3.3 A copy of the request to call-in is attached at Appendix 1 and a copy of the decision notice is attached at Appendix 2.
- 3.4 After considering the request to call-in and all relevant advice, the Committee may either:
 - a) not agree to the request to call-in, when the decision shall take effect;
 - b) refer the decision back to the decision maker for reconsideration, setting out its concerns; or
 - c) refer the matter to full Council.

4. IMPLICATIONS

- 4.1 Any implications are contained within the decision notice at Appendix.

5. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

None

6. APPENDICES

Appendix 1 – Request to Call-In Decision
Appendix 2 – Decision Notice

CALL-IN REQUEST FORM

This form must be completed, signed by at least two members of any Scrutiny Commission or Scrutiny Committee and returned to the Scrutiny Team within 3 working days of the decision being published (*not including the day of publication*)

| | |
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| Decision taker: | Leader of the Council |
| Date of publication of decision: | 19/3/10 |
| Decision Called in : | Nene Park Trust – Appointment of Council Representative |

| | REASONS FOR CALL-IN | Tick which reason applies |
|---|--|----------------------------------|
| 1. | Decision contrary to the policy framework? | |
| 2. | Decision contrary or not wholly consistent with the budget? | |
| 3. | Decision is Key but it has not been dealt with in accordance with the Council's Constitution. | |
| 4. | Decision does not follow principles of good decision-making set out in Article 12 of the Council's Constitution. | ✓ |
| If reason 4, please tick which specific element of Article 12 the decision maker has not followed, did he or she not: | | |
| (a) | Realistically consider all alternatives and, where reasonably possible, consider the views of the public. | ✓ |
| (b) | Understand and keep to the legal requirements regulating their power to make decisions | |
| (c) | Take account of all relevant matters, both in general and specific, and ignore any irrelevant matters. | |
| (d) | Act for a proper purpose and in the interests of the public. | |
| (e) | Keep to the rules relating to local government finance. | |
| (f) | Follow procedures correctly and be fair. | ✓ |
| (g) | Make sure they are properly authorised to make the decisions. | |
| (h) | Be responsible for their decisions and be prepared to give reasons for them. | |
| (i) | Take appropriate professional advice from officers. | |

Detailed Reason(s) for Call-in. Please explain below why one of the reasons for call-in applies (eg. For number 1 - which major policy affected and how/why)

On 15 February, a vacancy on Nene Park Trust was notified to group secretaries by Democratic Services, caused by the withdrawal of Cllr Sharp, and it was stated that "the Trust has requested that the new appointee has a genuine interest in the activities of the Nene Park trust" and "the new appointee is usually from the same political group as the outgoing representative." Nominations were called for by 22 February.

By 22 February, Democratic Services advised that the only nominees were Cllrs John Fox and Graham Murphy and if that were still the case by 15 March, the Leader would be entitled to determine the appointment. On 24 February, Cllr Fox indicated his willingness to withdraw his nomination and this was notified to Democratic Services on 1 March, leaving Cllr Graham Murphy as the only nominee.

No decision was made, but on 10 March the Leader himself nominated Cllr Samantha Dalton for the vacancy on the Nene Park Trust, which was duly notified by Democratic Services the same day, together with the statement that "if this dispute still exists by close of business on Monday 15 March, according to the Constitution, the Leader must determine the appointment."

On 19 March, the Leader made the decision to appoint Cllr Samantha Dalton to the vacancy.

For the last eight years, the two appointees have been from different parties – one Conservative and one from another party, and since 2002 Councillor Ridgeway (Mr Ridgeway since 2008) occupies the "Conservative" position. The other position has been held by Labour, Liberal Democrat and Independent Members in various years.

In addition, the decision notice states that "the City Council is entitled to appoint two representatives to the Nene Park Trust", but the Memorandum and Articles of Association of the Nene Park Trust state that "up to three Board members may be appointed by Peterborough City Council." Custom and practice has been for an officer to fill one role, without formal appointment, a clear error in practice that leaves the officer appointment unauthorised through the correct channels and (in formal terms) a third vacancy unfilled and the "appointee" not properly authorised by the Council to serve in that role.

The correct procedures set out in part 3 section 6 of the Council's constitution have not been followed because:

1. There was no discussion between Group Secretaries to try and reach agreement on the dispute over nominees Cllr Murphy and Cllr S Dalton (6.3.4(a))
2. Members now occupy only one of the three positions, and one has no authority for appointment, contravening the general rule that "elected Members will fill all formal appointments available" (6.3.4(a))
3. Paragraph 6.3.4(c) states that "seats in the community engagement category....will then be allocated equitably amongst the Council's declared political groups". The English Democrats have no seats, but the Labour Group with the same number of Council Members has one; this is clearly inequitable.
4. There is no evidence that the Conservative Group Secretary took any part in the process at all (in general contravention of the principles of paragraph 6.3.4 and 6.3.5), with the Conservative nomination being made by the Leader of the Council, who then himself made the decision to appoint his own nominee.
5. The replacement representative is not a nominee of the same political group, and breaks with a fair approach to seat allocation that has been honoured since at least 2002, depriving opposition groups of a role and representative on Nene Park Trust.
6. If the Conservative Group and their nominee has a genuine interest in the activities of the Nene Park Trust (a request made by the Trust itself), why was the nomination only put forward after it was clear who the other nominees were, and some 16 days after the administrative deadline for the submission of names of nominees?

The Leader was not fair in his decision because, by both proposing the nominee and making the decision, he broke the bias rule of the principles of natural justice (*nemo iudex in causa sua*), which says no-one ought to be judge in his or her case, the deciding authority must be unbiased and decision-makers should be careful to avoid the appearance of bias. This will undermine public confidence in the Council's processes.

The Leader did not realistically consider all the alternatives because:

- A. No discussions took place with the English Democrats Group or Cllr Murphy himself as to why he wished to take on the role, so no proper assessment of the respective appointee's experience, skills, interest, potential contribution and benefit to the Trust and Council can have been made.
- B. The option of asking Mr Ridgeway to make way for a Conservative representative, in order to maintain the fair approach to seat allocation that has been honoured since at least 2002, was not considered.
- C. There is a third Board member place on Nene Park Trust that remains unofficially occupied, which does not appear to have been considered when making the decision.

| | Name (please print) | Signature | Date |
|-----------|----------------------------|--------------------------|---------------|
| 1. | Cllr S Goldspink | Stephen Goldspink | 24 March 2010 |
| 2. | Cllr N Sandford | Nick Sandford | 24 March 2010 |
| 3. | | | |

THIS PART OF THE CALL-IN REQUEST FORM IS TO BE COMPLETED BY THE CHIEF EXECUTIVE (OR HIS/HER REPRESENTATIVE)

| | | | |
|--|---|--|------|
| Date form received: | | 24 March 2010 | |
| Form processed by (name): | | Louise Tyers | |
| Was Call-in request received within timescales? | YES | If No, reject and inform parties, initial and date this box to show completed | |
| Is the request form signed at least 2 members of any Scrutiny Commission or Scrutiny Committee? | YES | If No, reject and inform parties, initial and date this box to show completed | |
| URGENCY | | | |
| 1. | In the view of the decision-maker, was the decision made of an urgent or special urgent nature, and if so, why? | | |
| 2. | In the view of the Chairman of the Environment Capital Scrutiny Committee, is the decision under consideration sufficiently urgent that it should not be available for call-in, and if so, why? | | |
| To be considered by which Scrutiny Commission/Committee | | Strong and Supportive Communities Scrutiny Committee | |
| Date for Scrutiny Commission/Committee to consider request for call-in | | 6 April 2010 | |
| Result of the Scrutiny Commission/Committee's considerations | | | |
| If necessary, which decision-maker is to reconsider decision and by which date? | | Decision-maker | Date |
| Signature and date of officer completing Call-in request form | | Signature | Date |
| | | Name (please print) | |

DECISION NOTICE – Leader of the Council.

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| Report Title | Nene Park Trust – Appointment of Council Representative |
| Delegations Checked | This decision is proposed in accordance with the delegations for the Leader as set out at delegation number 3.3.9 of Part 3 of the delegation document. |
| Name and contact details of officer requesting the decision | Helen Edwards, Solicitor to the Council, 01733 452533, Helen.edwards@peterborough.gov.uk |
| Is the report or background information attached to this request exempt? | No |
| Is this a Key Decision Key Decision Reference | No |
| Details of decision required | To appoint Councillor Samantha Dalton to represent the city council on the Nene Park Trust. |
| Reasons for recommending decision and any relevant background information | <p>The city council is entitled to appoint two representatives to the Nene Park Trust each municipal year. These appointments are made following Annual Council each year. Following the withdrawal of a Councillor to one of these positions, Group Secretaries were advised of the vacancy and were requested to nominate replacements.</p> <p>Part 3 Section 6 of the Council's constitution states that the time allowed before appointment is deemed disputed and is one calendar month from the date of the initial approach to Group Secretaries. Group Secretaries were initially advised of the vacancy on Monday 15 February 2010 and therefore, any remaining dispute by Monday 15 March 2010 must be reported to the Leader of the Council for determination. The constitution states that a seat will be deemed disputed if "either one or more political group secretaries disagree with the proposed allocation". Nominations for Cllr G Murphy from the English Democrat group and Cllr S Dalton from the Conservative group remain for this position (Cllr J R Fox from the Peterborough Independent Forum group was also previously nominated but withdrew).</p> <p>Following consideration, the Leader has determined that Councillor Samantha Dalton be appointed to the vacant position on the Nene Park Trust. Councillor Dalton's position within the Council as a Cabinet Advisor for Environment Capital and Culture would maximise the Council's ability to make decisions and work most effectively alongside the Nene Park Trust.</p> |
| Alternative options considered and rejected | <p>Appoint Cllr G Murphy – this option was rejected as Councillor Dalton's position as a Cabinet Advisor for Environment Capital and Culture would maximise the Council's ability to make decisions, work most effectively alongside the Nene Park Trust and assist the Trust in carrying out its work.</p> <p>Do not appoint a replacement until the next appointment round after the May elections – this option was rejected as the Nene Park Trust plays a key role in providing leisure and cultural activities within Peterborough. A reduced Council representation at any time could reduce the effective collaboration between the Nene Park Trust and the Council.</p> |

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|--|--|---|----------------|---------------------------|
| Declarations / conflict of interest | Declarations of any other Cabinet Members consulted by the Cabinet Member making the decision. <i>The Cabinet Member should be reminded to declare any interests/conflicts of interest here.</i> | | | |
| Dispensations granted | In respect of any declared conflict of interest in relation to the decision, any dispensation granted by the Secretary of State/Standards Committee. <i>The Cabinet Member should detail any dispensations granted in this box.</i> | | | |
| Consultation (officers/ward councillors) <i>Legal and finance should be consulted regarding the proposals. Ward Councillors, other Cabinet Members and officers should be consulted if the proposals will have an impact on their service area/ward.</i> | Section | Name | Outcome | Date |
| | Ward Councillors <i>(if decision is ward specific)</i> | | | |
| | Legal | Kim Sawyer | Approved | 18.03.10 |
| | Finance | Vicki Palazon (approved with Steven Pilsworth delegated responsibility 19 February – 22 March) | Approved | 16.03.10 |
| | Democratic Services | Alex Daynes | Approved | 16.03.10 |
| | Procurement Project Director <i>(if decision is contract/procurement related)</i> | | | |
| | Head of Strategic Property <i>(if decision is property related)</i> | | | |
| Other Officers / Members | | | | |
| Director's approval <i>Directors are requested not to sign if the above section is incomplete</i> | Gillian Beasley | | | Date 19.03.2010 |
| Date sent to Cabinet Member if key decision | <i>To be inserted by Democratic Services</i> | | | |
| If key decision – date decision may be taken | <i>To be inserted by Democratic Services</i> | | | |
| Cabinet Member approval | Cllr M Cereste | | | Date 19.03.2010 |
| Reasons for making decision Please tick one of the Options | Option 1 I agree with the officer's reasons for recommending the decision. | | | ✓ |
| | Option 2 I agree with the officer's reasons for recommending the decision and have the following additional comments to make. | | | |
| Once signed by Director, please pass to Democratic Services. We will contact the Cabinet Member and arrange for signature. | | | | |