Review of Overview Scrutiny Procedures at Gravesham Borough Council

Report of the Task Group

1 Executive summary.

1.1 At the request of the Cabinet a task group consisting of the Deputy Leader, Cllr David Turner, as Chairman along with Cllr John Burden the Chairman of Scrutiny, Cllr John Cubitt the Lead Member for Community Safety/Environment and Cllrs Andrea Webb and Harold Craske both substitutes for the Overview Scrutiny Committee was set up to undertake the review.

1.2 Terms of reference

To review by various means, including learning visits to other authorities and the involvement of South East Employers, the Overview Scrutiny function within the Council and identify if the committee could better fulfil its role through

- pre-Cabinet scrutiny of key decisions and the role that Overview Scrutiny Committee or the Policy Overview Committees may play in this process
- an improved relationship between the Cabinet Overview Scrutiny Committee, and what form this could take
- the development of a clear protocol for use of the call-in tool, and
- enhanced selection and prioritisation of topics for scrutiny review

To submit recommendations to Cabinet and Overview Scrutiny Committee based on the evidence gathered during the review.

1.3 Recommendations to Cabinet are:-

1. That the committee maintains political impartiality, including appointment of an opposition member as chairman.

2. That the Executive acknowledges the importance of impartiality and values it, not least in the light of the view of the Audit Commission and the way it will view the council if the functions of scrutiny are not seen to be working (see note below).

3. That there is follow up on the implementation of recommendations: (1) At meeting following their resolution, response to recommendations. (2) After 6 months, automatic agenda item to receive report on (a) actions completed and their outcomes and (b) status of actions in progress.

4. That members of the ruling group on the committee be encouraged to freely challenge the Executive without being ‘primed’ on what questions to ask.

5. That a form for call-ins be implemented, to include the reasons for the call-in, and a format for discussing called-in items be agreed.
6. That there be cross-party agreement of criteria for call-in.

7. That there be additional training for members to include the scrutiny of partnerships (eg CDRP, LSP, local boards, delivery board).

8. That there is ability for the Overview Scrutiny Committee to co-opt other councillors with specific expertise onto scrutiny in a non-voting capacity when appropriate.

9. That there is ability for the Overview Scrutiny Committee to co-opt non-elected members with specific expertise onto scrutiny, in a non-voting capacity.

10. That there be further investigation into practicality of pre-decision scrutiny at GBC and report back in two months.

11. That POCs be permitted and encouraged to identify actions/projects in support of council policies.

12. That suggestions for topic reviews from a wider audience including cabinet, POCs, other members, officers and the public be permitted and encouraged.

13. That a rolling programme of topic reviews be established and maintained.

14. That informal mechanisms for local health scrutiny reviews be developed and strengthening of district representation on county health scrutiny committees be sought.

15. That a work programme be developed based on the strategic aims of the Sustainable Community Strategy.

16. That a methodology for the scrutiny of partnerships be developed.

17. That protocols for Councillor Call for Action (CCfA) be developed.

Note

At a recent seminar on the function of scrutiny in CAA Alison Kelly (Strategy Advisor Governance and Accountability for the Audit Commission) stated that scrutiny was “absolutely key” to an authority’s future prospects for improvement under CAA.

“The chairmen of scrutiny, lead members and directors should be working together. The Audit Commission also holds the view that Finance & Audit and Standards committees had a role to play in the scrutiny function, indeed Standards should be proactive.”

1.4 The context in which this review was undertaken was the outcome of a training session entitled ‘Overview and Scrutiny – realising the potential’ held in September 2008 facilitated by South East Employers.
1.5 Evidence Gathering

Evidence gathering sessions were held with the Vice Chairman and an opposition member of the Overview Scrutiny Committee, Cllr Mike Snelling the leader of the council and Glyn Thomson the Chief Executive. Mr Graham Smith who is employed by South East Employers to facilitate training sessions as one of their peer councillors and experts on scrutiny was also involved at an early stage to help shape the review (he was one of the facilitators at the training session mentioned above). Members of the task group visited scrutiny committee meetings at both Dartford and Maidstone Borough Councils and spoke to the respective chairmen of those meetings and a Kent County Council select committee. The task group also attended a LGiU seminar “Comprehensive Area Assessments – the Role of Scrutiny”. Enquiries were made of the other Kent authorities as to whether they had specific criteria for call-ins.

1.6 Conclusion

The review concluded that only a limited amount can be learnt from the study of the scrutiny processes at other authorities. The success or failure of scrutiny revolves around the relationship between the committee and the executive and the commitment of the members to take on the responsibilities of the overview and scrutiny function.

2 Background

The Council’s constitution states:-

“To achieve enhanced accountability and transparency of the decision making process, effective overview and scrutiny is essential. Scrutiny is a key element of the Council’s executive arrangements and is the main way by which executive decision-makers are held to public account for the discharge of the functions for which they are responsible”.

The scrutiny process is also a key mechanism for enabling councillors to represent the views of their constituents, and other organisations, to the cabinet and to the Council. By examining the operation and impact of the Council’s policies, is a useful means of improving the development and delivery of services.

The 2004 CPA review of the authority stated that -

“The role of scrutiny is still under developed and it has yet to provide a consistent and positive challenge to the council’s decision-making process. Current arrangements provide for call-in of decisions after they have been agreed by cabinet, which reduces the opportunity for positive challenge. However, scrutiny has shown itself to be effective in supporting the review of council policy. For example it recently completed a thorough review of community wardens. Cabinet accepted its findings and has acted on its recommendations, for example to match fund police community support officers. In this case scrutiny has had a positive impact supporting the council’s work in its key priority objective of improved community safety.”

Gravesham Borough Council has one Overview Scrutiny Committee chaired by the leader of the opposition group.
2.1 Overview Scrutiny (OS) has two main functions

2.1.1 Overview – policy development

The OS committee has a role in the budget process and development of the council’s policy framework although policy development is generally covered by the Policy Overview Committees.

2.1.2 Scrutiny – holding the executive to account and topic reviews

a) Holding the executive to account.

The overview and scrutiny committee carries out this function through the 'call in' process. This process 'calls in' cabinet decisions and then seeks the reasoning behind the decision from elected members, council officers and any outside agencies that are involved.

All decisions taken by the cabinet are subject to 'call in'.

b) To carry out specific reviews of issues and services affecting residents of the borough.

The committee selects a topic for review and draws up terms of reference to define the scope of the review. These reviews are usually undertaken by a task group selected from members and subs of the OS committee. The review is carried out through a series of evidence gathering sessions with all relevant groups, agencies and individuals whose expert knowledge and experience will inform the review. Evidence can be gathered by face to face meetings at the Civic Centre or at outside locations, site visits and by letter or e-mail.

When the evidence gathering is complete, a report with recommendations is submitted to the Cabinet.

Cabinet has to consider the recommendations but does not have to adopt them.

2.2 Policy Overview Committees

Following the election in 2007 the new Cabinet established 6 Policy Overview Committees (recently reduced to 5) which reflect the portfolios of the Lead Members. Each of the committees has the following terms of reference.

- to assist and advise the Leader and the Cabinet on the development of the Council’s Policy Framework by investigating topics referred to them by the Leader or Cabinet;
- to request the Leader, Cabinet members and officers to attend and answer questions;
- to invite input, where appropriate from external sources, to assist in the committees’ deliberations;
- to investigate service performance, policy issues and possible options;
- to make recommendations to the Leader and Cabinet arising from the exercise of the preceding terms of reference or affecting Gravesham or its inhabitants within the allocated areas of responsibility of the committee.
The constitution states that:

“Scrutiny Committees may invite any Advisory Panels (POCs), appointed by the Cabinet, to offer comments and make recommendations in relation to matters that the Scrutiny Committee may have under consideration”.

2.3 Outcome of group discussions at the training session ‘Overview and Scrutiny – realising the potential’

What have been the successes and benefits of overview and scrutiny?

- Opportunity to challenge and examine Cabinet decisions.
- Accountability/transparency of portfolios.
- Chance to involve the public in local politics/decisions.
- Non-political reviews e.g. Taxi Safety, Accessibility of Services, Regulatory Board Protocols.
- Encourages cross party engagement.
- Pre-Cabinet Scrutiny – opportunity for early challenges.
- Good/effective chairmanship.

What have been the barriers to effective scrutiny?

- Political tensions/agendas.
- Lack of (perceived) reasoning for ‘call-ins’.
- Lack of rigorous and regular reporting back on recommendations.
- Prolonged process (‘drifting’).
- Fear factor – Members/Officers/Public.

What future changes/improvements would you like to see?

- New image/understanding required – Raise the profile of scrutiny.
- Further Member/Officer training.
- Educate and involve the public.
- Clarification of pre-scrutiny vs. Policy Overview Committee role.
- Good Chairman and appropriate selection of members for reviews.
- Establish mechanism for the selection/prioritisation of review topics.
- Ensure processes and programmes are subject to regular review.
- Expanded role for scrutiny to include wider community issues, such as Local Strategic Partnerships (LSP’s).
- Greater use of the forward plan in selecting items for scrutiny involvement.

3 Outcome of Review

To help make the report more readable, detailed notes of visits to other authorities are not included. They are available from Doug Finch if required.

3.1 Evidence gathering session with vice chairman and opposition member of scrutiny committee.

- It was agreed that scrutiny should be a forum for discussions on policy and be seen as a critical friend. It should be used to empower backbenchers to get involved in the development of council policy.
- There was concern that scrutiny had become too political.
It also questioned the role of Policy Overview Committees (POC) and how they fitted in with scrutiny. It was felt that they were a duplicate of scrutiny and that they needed to be broadened out to be able to look at new subjects and make recommendations to cabinet rather than just rubber stamp policy as was the case at the moment.

They also felt that the outcomes of the recommendations from topic reviews weren’t known or followed up.

Recommendations

1. That the committee maintains political impartiality, including appointment of an opposition member as chairman.

2. That the Executive acknowledges the importance of impartiality and values it, not least in the light of the view of the Audit Commission.

3. That there is follow up on the implementation of recommendations: (1) At meeting following their resolution, response to recommendations. (2) After 6 months, automatic agenda item to receive report on (a) actions completed and their outcomes and (b) status of actions in progress.

3.2 Evidence gathering session with Councillor Snelling – the Leader of the Council.

3.2.1 Call-ins

Councillor Snelling said that in his experience of being chairman of scrutiny it had taken his committee some time to learn that calling in too many items antagonised everyone and was counterproductive.

He welcomed the introduction of the reasons for the call-in being circulated to the relevant members and officers.

Members of the ruling group on the committee need to be mature enough to know that they can challenge the executive.

Councillor Snelling pointed out that decisions are made as a group and as such it is sometimes difficult for someone to challenge something that they have signed up to.

A desktop survey of Kent councils revealed that most had no clear criteria controlling call-ins. Canterbury and Tunbridge Wells have implemented criteria and these appear in Appendix 1.

Recommendations

4. That members of the ruling group on the committee be encouraged to freely challenge the Executive without being ‘primed’ with what questions to ask.

5. That a form for call-ins be implemented, to include the reasons for the call-in, and a format for discussing called-in items be agreed.

6. That there be cross-party agreement of criteria for call-in.

Appendix 2 provides an example of a typical call-in form.

Another issue was whether members had read and fully understood the papers put before them particularly in the case of budget and finance scrutiny. A lot of time is spent explaining the intricacies of local government finance before any actual scrutiny can take place through intelligent, decisive and informed questioning.

There needed to be more selection of members that could bring their expertise to scrutiny.
The constitution states that “A scrutiny committee or sub-committee shall be entitled to request the Council to appoint up to two people as non-voting co-optees”.

Recommendations

7. That there be additional training for members, to include scrutiny of partnerships (eg CDRP, LSP, local boards, delivery board).

8. That there is ability for the Overview Scrutiny Committee to co-opt other councillors with specific expertise onto scrutiny in a non-voting capacity when appropriate.

9. That there is ability for the Overview Scrutiny Committee to co-opt non-elected members with specific expertise onto scrutiny, in a non-voting capacity.

Councillor Snelling believed that pre-decision scrutiny, which involved looking at key decisions from the forward plan, was a good thing. However, he had a couple of reservations

- A review can take time.
- If these reviews are carried out in the public forum of a scrutiny committee with the possibility of the press and public being present it could influence those taking part in the review, whereas a review can be done more informally at a POC which is a private meeting.

A number of councils make use of pre-decision scrutiny but any implementation of this function would need further investigation to address the issues raised above.

He felt that it was up to the chairman of scrutiny as to which decisions would be looked at and by whom. For example a key decision on housing might be better dealt with by the housing POC whereas a key decision on finance/budget matters might be better dealt with by the scrutiny committee.

Better use could be made of POCs: They could not determine the broad policies of the council but could be encouraged to identify actions/projects that would support the policies.

Recommendations

8. That there be further investigation into the practicality of pre-decision scrutiny at GBC and report back in two months.

9. That POCs be permitted and encouraged to identify actions/projects in support of council policies.

3.2.2 Topic reviews

The general view was that suggestions for topic reviews needed to come from a wider audience. The cabinet, POCs and any members, officers or, indeed, the public should be able to put forward ideas for reviews rather than restrict the suggestion of topics to a few members of the scrutiny committee. Further useful sources are neighbourhood forums and PACTs.

Councillor Snelling suggested a cross party group be established to manage topic reviews.

The seemingly insurmountable issue of member availability, especially during the working day, was noted.

Recommendations
10. That suggestions for topic reviews from a wider audience including cabinet, POCs, other members, officers and the public be permitted and encouraged.

11. That a rolling programme of topic reviews be established and maintained.

Recommendations 7 and 8 also support resolution of the availability issue.

3.3 Evidence gathering session with Glyn Thomson the Chief Executive.

- Mr Thomson saw the Overview Scrutiny Committee as one of the four committees that were politically impartial (the others being Licensing, Regulatory Board and Standards). However, the current approach to scrutiny didn’t work as politics gets involved.
- He felt that there were opportunities for the committee to take the lead in the scrutiny of external partnerships.
- He agreed with the comments of others on such things as to the source of topic reviews and the need to follow through on the implementation of recommendations coming out of these reviews.

3.4 KCC

At KCC Policy Overview Committee meetings the first item on the agenda is an update by the respective Managing Director and Cabinet Members. Committee members can then ask questions and sometimes will request a report for more information.

Cross party informal member groups can be set up to explore topics of concern to the committee and produce a short report. These explorations can be through evidence gathering sessions, a desktop review or requesting a report from officers. The group has to prepare its report and recommendations for the next meeting of the committee which is in 3 months.

3.5 LGiU Seminar “Comprehensive Area Assessment – the Role of Scrutiny”

Tim Young, a Centre for Public Scrutiny Associate, in his presentation at the seminar said that the scrutiny of partners was even more crucial.

He believed that overview and scrutiny had the potential to develop its role of:

- Scrutinising the work of local service providers
- Helping to deliver priorities set out in local area agreements and sustainable community strategies
- Helping improve openness and accessibility of decision-making

There were opportunities for joint reviews with partner organisations with co-option of Local Strategic Partners representatives onto task groups or working parties.

The CAA framework states that “There is a two-way relationship between scrutiny and CAA. Scrutiny reviews carried out locally will provide valuable evidence that can feed in to CAA and may help directorates understand issues without having to carry out additional work. The findings from CAA will also be helpful to overview and scrutiny committees in identifying where they may wish to focus their attention and in providing them with helpful insights when conducting reviews.”

The scrutiny of partnerships can be extended to include Crime and Disorder Reduction Partnerships (CDRP) and Health Scrutiny. However, getting borough and district council
involvement in the scrutiny of health issues affecting local residents in a two tier area can be very difficult.

KCC is developing a protocol, as an appendix to its constitution, to enable district and borough councils to carry out their own reviews on health topics relevant to their own residents and for their councillors to be represented on county scrutiny committees. The draft protocols refer to district councils:

**District/Borough/City Council Overview and Scrutiny Committees or Panels**

District/Borough/City Council Overview and Scrutiny Committees or Panels will look at health services issues in their respective local areas on the following basis:

- local co-ordination (or joint committees) to ensure cross-district issues are dealt with jointly;
- local KCC Members and LINk representatives to have rights of participation;
- focus on the commissioning of NHS services by Primary Care Trusts and others.

(The full draft protocol is available from Doug Finch.)

**Recommendation**

12. That informal mechanisms for local health scrutiny reviews be developed and strengthening of district representation on county health scrutiny committees be sought.

The OS committee should be aiming for a core work programme explicitly based on the Local Area Agreement that seeks to find out on behalf of the community how far the various partners are delivering on the strategic objectives of the Sustainable Community Strategy.

**Recommendations**

13. That a work programme be developed based on the strategic aims of the Sustainable Community Strategy.

14. That a methodology for the scrutiny of partnerships be developed.

3.6 **Councilor Call For Action (CCfA)**

CCfA is introduced by Section 119 of the Local Government Involvement in Health Act 2007. Section 119 inserts a new section 21A in the Local Government Act 2000 which “enables any member of the authority to refer to an OS committee of the authority of which he is not a member any local government matter which is relevant to the function of the committee.” A “local government matter” is defined as a matter which:

- relates to the discharge of any function of the authority
- affects all or part of the electoral area for which the member is elected or any person who lives or works there, and
- is not an excluded matter

Matters concerning the Council and/or its partners in the delivery of the LAA may also be the subject of a CCfA.

However, guidance makes it clear that CCfA are intended as a last resort, to be used when all other means of resolving an issue have proved unsuccessful.
Recommendation

15. That protocols for Councillor Call for Action (CCfA) be developed.
Appendix 1 – Typical Call-in Criteria

Canterbury
1. Non inclusion in the Forthcoming Decision List (if it was a key decision).
2. Inadequate consultation.
3. Non-compliance with a relevant policy or protocol without sufficient reason.
4. Decision outside the Budget and Policy Framework.
5. Failure to consider a relevant matter or having regard to an irrelevant matter.
6. Failure to give proper reasons for a decision.
7. On the advice of one of the Statutory Officers (Head of Paid Service, Chief Financial Officer or Monitoring Officer).

Tunbridge Wells
1. Inadequate consultation with stakeholders prior to decision;
2. The absence of adequate evidence on which to base a decision;
3. The decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
4. The action is not proportionate to the desired outcome;
5. A potential human rights challenge;
6. Insufficient consideration of legal and financial advice;
7. The decision is not within the Cabinet’s powers or terms of reference or the Portfolio of the Leader or Portfolio Holder who took it.
Appendix 2 – Typical Call-in form (Maidstone BC)

To:  Overview and Scrutiny Partnership Manager

**CALL IN FORM**

I would like to call in the decision as detailed below:

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