

Committee: Overview and Scrutiny Commission

Date: 20th September 2016

Wards: All

Subject: COUNCIL TAX CONSULTATION

Lead officer: Paul Evans – AD Corporate Governance

Lead member: Councillor Peter Southgate, Chair, Overview and Scrutiny Commission

Contact officer: Paul Evans, 0208 545 3163

REASON FOR URGENCY: the Chair has approved the submission of this report as an additional urgent agenda item in response to discussion at Council on 14 September 2016, subsequent to the publication of the agenda for the Commission's meeting

Recommendations:

- A. That the Commission discuss and comment on the background to the consultation on council tax and council spending
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To enable the Commission to consider the Administration's right to conduct consultation on the Council Tax level.

2 DETAILS

- 2.1. At full council on the 14th September 2016 questions were put to the Administration regarding the consultation process contained in the autumn edition of My Merton on the level of council tax.
- 2.2. Following answers to those questions a request was made by the Chair of the Overview and Scrutiny Commission that a report be presented at the next available meeting of the Commission to establish the administration's right to consult on the council tax level and give an opportunity for members to consider any advice provided on the process.
- 2.3. A copy of the consultation material appearing in My Merton is attached at appendix 1 for ease of reference.
- 2.4. For members information the relevant constitutional provisions appear in part 4C of the Constitution.
- Part 4C of Merton Council's Constitution (the Budget and Policy Framework Procedure Rules) provides that the Leader and Cabinet are responsible for drawing up initial proposals in relation to the budget. Those proposals are referred to the Overview and Scrutiny Commission for consideration and any comment before the cabinet makes a final decision on a recommended budget to Council.

- Paragraph 2(a) of Part 4C provides that the initial proposals may be drawn up by Cabinet “after consulting stakeholders in a manner appropriate to the matter under consideration”.

2.5. Counsel’s advice was obtained in relation to the consultation process and is available to members of the Commission if required as an exempt background paper. The question and advice given is set out below:

Question 1: Is the proposed method of consultation (i.e. publication of a questionnaire in the *My Merton* magazine) a lawful use of a council publication?

It was counsel’s opinion that it is lawful.

The concern arises from the fact that it stems from an election promise.

A commitment was made by Councillor Stephen Alambritis in the March council meeting. Even if he said it at the time as the group leader, rather than the office holder, he has given reasons for having the consultation published. There is very little difference between the two hats as regards the creation of a legitimate expectation.

As this statement was made following the election, it can actually give rise to an expectation that there will be a commitment to consult.

There is no distinction between which role he was performing when he made that statement for the expectation to arise. It is therefore appropriate to include the consultation in the *My Merton* magazine.

Paragraph 24 of *Moseley (R (on the application of Moseley) v Haringey London Borough Council [2014] UKSC 56)* refers to the democratic principle as a purpose behind consultation.

A statement was made that it should be done and therefore there will be an expectation that there will be a consultation.

3 ALTERNATIVE OPTIONS

3.1. N/A

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. N/A

5 TIMETABLE

5.1. N/A

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. There are no financial implications in relation to this report..

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. Counsel's advice has confirmed the lawfulness of the consultation process as detailed above.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. N/A

9 CRIME AND DISORDER IMPLICATIONS

9.1. N/A

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. N/A

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – consultation “have your say on council tax and council spending”, My Merton, Autumn 2016

12 BACKGROUND PAPERS

12.1. Instructions to Counsel to advise (exempt)

12.2. Counsel's advice (exempt)

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