

29 March 2017		ITEM: 10
Council		
Review of Budget Setting Procedure at Full Council on 22 February 2017		
Wards and communities affected: All	Key Decision: Non-key Decision	
Report of: Councillor Rob Gledhill - Leader of the Council		
Accountable Head of Service: Not Applicable		
Accountable Director: Lyn Carpenter - Chief Executive		
This report is Public		

Executive Summary

This report reviews the budget setting procedure adopted by Council this year, the budget decisions made at last month's Council meeting on 22 February 2017 and considers options for reviewing that process going forward.

1. Recommendation(s)

1.1 Council note the advice of the Monitoring Officer set out in section 2 of the report.

2. Introduction and Background

- 2.1. The approach to setting the 2017/18 budget was based on a new, transformational approach and concentrated primarily on: income generation; more or the same for less; and reducing the impact of demand leading to less growth requirements.
- 2.2. This approach was reported to Cabinet and each of the Overview and Scrutiny Committees during 2016. Service specific proposals were also reported to the relevant Overview and Scrutiny Committee with all generic proposals being taken to the Corporate Overview and Scrutiny Committee. The approach and proposals were also submitted to, and agreed by, the cross party Council Spending Review (CSR) panel.
- 2.3. Despite the CSR process, in which all Group Leaders and Deputy Leaders were invited to meet monthly to discuss options for the 2017/18 budget setting, and as well the public reports considered at Overview and Scrutiny Committees, the majority of Members were not able to agree the budget envelopes at the council meeting on 22 February 2017.

- 2.4. The process of reporting budget proposals through Cabinet and the Overview and Scrutiny Committees has been the same for a number of years. Cabinet receives a draft budget in December/January that is then referred to Corporate Overview and Scrutiny Committee. The Cabinet then receives a further report in February, including comments from the Corporate Overview and Scrutiny Committee, and recommends a budget to the Council.
- 2.5. It is proposed that a peer Review is commissioned to review the budget setting process and to work with Members and officers to inform an approach over the coming months for 2018/19. The exact approach and scope will be proposed to the monthly Governance Group attended by Group Leaders. The review will consider the current approach in Thurrock, compare to nationally recognised best practice and make any recommendations back to the Governance Group in due course.

Monitoring Officer's Advice on General Fund Budget Resolutions

- 2.6. All resolutions on the General Fund Budget Report were passed by Full Council with the exception of Recommendation 1.4 which concerned the General Fund allocation to services.
- 2.7. During a short adjournment called by the Mayor the Chief Executive, Section 151 Officer, Monitoring Officer and Group Leaders all accepted that despite Recommendation 1.4 not passing the Council clearly had an Annual Budget and could proceed to bill.
- 2.8. By way of a further post meeting legal analysis the Monitoring Officer, with the agreement of the Director of Law & Governance and the Section 151 Officer, is of the opinion that:
- 2.9. All opposition groups had had an explicit opportunity to submit either alternative proposals and/or amendments to the Executive's budget proposals at or prior to this meeting - despite this only one amendment was submitted by the Labour Group, this was passed after acceptance of an alteration put forward by the Conservative Administration.
- 2.10. Therefore in default of any opposition amendments as to specific allocations, despite an opportunity to submit balanced alternative budget proposals, and noting the clear agreement that the annual budget had indeed been set it falls to the Executive to implement the agreed budget in line with the effect of Section 30 (6) and (7) of Local Government Finance Act 1992, Local Authorities (Functions & Responsibilities) (England) Regulations 2000 and Section 9 D Local Government Act 2000.
- 2.11. To quote the High Court judgment in R - v - Oxfordshire County Council (2016):

“Though the setting of Council Tax to meet the budget which determines it is a function of the whole council, the Cabinet alone has the responsibility of determining the precise expenditure and allocation of

the sums thus raised. This is the effect of section 9 D of the Local Government Act 2000, in particular Section 9D (2)”

2.12. I note Section 32 of Local Government Finance Act 1992 which states;

“Calculation of budget requirement:

In relation to each financial year a billing authority shall make calculations required of this section.

The authority must calculate the aggregate of :-

The expenditure which the authority estimates it will incur in the year in performing its functions and will charge to a revenue account for the year.”

2.13. Whilst it may be expected that an Authority will seek to specify service allocations or “envelopes” it is clear that Council had been and was following its Constitution for some months pursuant to Chapter 3, Part 3 – Budget and Policy Framework Rules and as indicated neither prior to nor at the budget setting meeting itself were any revised budget proposals or budget amendments submitted or moved by opposition groups (beyond the above-mentioned alteration).

2.14. Neither were standing orders as to the termination of the meeting extended beyond a short period of 30 minutes, nor were any without notice motions to adjourn the meeting forthcoming.

2.15. Therefore in all the circumstances Full Council on setting the Council Tax and overall budget explicitly choose thereafter to reject the Administration’s specific service allocations without submitting any alternative proposals - leaving the Authority with an agreed Council Tax & Budget and an aggregate allocation to its whole functions at the termination of the meeting under Council Procedure Rule 19.

2.16. This position is also supported by the fact that the annual budget is intended to set before the financial year begins at a dedicated and scheduled budget meeting

2.17. Seeking to apply R – v – Oxfordshire County Council (2016) Full Council having set the Council Tax to meet the budget (albeit with an aggregate allocation to its functions) the function of the Full Council was complete and the Executive alone in these circumstances now has the responsibility of determining the precise expenditure and allocation of the sums thus raised. This is also the effect of section 9 D of the Local Government Act 2000, in particular Section 9D (2).

Monitoring Officer’s Advice on HRA Report

2.18. The single Recommendation 1.1 in this HRA likewise did not pass - by way of a further post meeting legal analysis the Monitoring Officer, with the

agreement of the Director of Law & Governance and the Section 151 Officer, is of the opinion that:

- 2.19. Rent setting and housing management are executive functions and pursuant to this Cabinet had agreed at its meeting on 8 February 2017 the HRA Business Plan and Budgets 2017/18.

“Resolving:

1. That the assumptions included in the HRA Business Plan be noted.
 2. That the budgets for 2017/18 be agreed.
 3. That the HRA New Build programme maximises the use of Right to Buy (RTB) Receipts in place of Homes and Communities Agency funding.
 4. That growth for revenue repairs and capital investment is agreed.
 5. That a 3% increase to all existing tenant charges is agreed in line with the Council’s increases to Fees and Charges.
 6. That tenants receiving certain housing management services be consulted on the phased introduction of service charges, which are currently only levied on leaseholders, with a final report back to Cabinet in April.
 7. That tenants are consulted on the phased extension of the inclusive Sheltered Support Charge to all tenants with a final report back to Cabinet in April.
- 2.20. The above decisions are all within executive functions and under section 9DA (3) Local Government Act 2000 as amended; an executive function cannot be exercised by the Authority (i.e. the Full Council).
- 2.21. However many Authorities, including Thurrock, in some form or other (perhaps in part as a hold over from pre 2000 LGA days) make some provision in their procedures, to bring, either within the main Council Tax report or a separate report a reference or information to Full Council on the HRA Accounts. This is to inform Full Council when it is setting its overall budget, as to the position and state of the ring fenced HRA Accounts to note or to agree the accounts.
- 2.22. This can be seen here, although it could be clearer, by the very different nature of the single high level recommendation of HRA Accounts report to Full Council of last week, “to agree the Housing Revenue Account budget for 2017/18 as outlined in Appendix 1”, consisting of single page spreadsheet account.
- 2.23. Therefore in the light of Section 9DA (3) of the Local Government Act 2000, as amended this noting and rejection by Full Council of the accounts cannot

affect the detailed, specific and substantive executive HRA recommendations of Cabinet on the 8 February 2017.

- 2.24. I do however note that the General Fund / Council Tax Setting & Budget Report does state it had taken account of HRA budget - in particular the section 25 statement so it is arguable that the HRA position had been sufficiently referenced and approved to the overall budget setting without the need for a separate report and perhaps this should be looked at for next year.

3. Options and Analysis of Options

- 3.1 This report sets out the budget setting process, the roles of the Council and the Cabinet and identifies areas for consideration going forward.
- 3.2 It is also proposed that an independent review takes place of the budget planning process to inform actions and processes for the future.

4 Reasons for Recommendation

- 4.1 To provide ongoing reassurance as to the robustness of the budget process this year, provide additional legal advice and to consider options for further improvements going forward.

5 Consultation (including Overview and Scrutiny, if applicable)

- 5.1 Group Leaders were consulted as to the Monitoring Officer Opinion at Governance Group on 7 March 2017 and agreed the legal position.

6 Impact on corporate policies, priorities, performance and community impact

- 6.1 The proposal is intended to address potential and further incremental improvements in the Authority budget setting process going forward.

7 Implications

7.1 Financial

Implications verified by: **Sean Clark**
Director of Finance and IT

As this report is for noting, there are no direct financial implications. However, the proposed peer review will inform future budget setting and support the Council in meeting its statutory duty in setting a balanced budget.

7.2 Legal

Implications verified by: **Fiona Taylor**
Director of Law and Governance

All Legal implications are contained within the body of the report.

7.3 Diversity and Equality

Implications verified by: **Natalie Warren**
**Community Development and Equalities
Manager**

There are no direct Diversity or Equality Implications.

7.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

Not applicable.

8 Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

None

9 Appendices to the report

None

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Deputy Head of Legal Services and Monitoring Officer