

Governance, Risk and Best Value Committee

10.00am, Tuesday, 3 December 2019

Edinburgh's Christmas – Motion by Councillor Mowat – referral from the Policy and Sustainability Committee

Executive/routine
Wards
Council Commitments

1. For Decision/Action

- 1.1 The Policy and Sustainability Committee has referred a report on Edinburgh's Christmas to the Governance, Risk and Best Value Committee for consideration.

Laurence Rockey

Head of Strategy and Communications

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Referral Report

Edinburgh's Christmas – Motion by Councillor Mowat

2. Terms of Referral

- 2.1 The Governance, Risk and Best Value Committee on 29 October 2019 agreed to a report to the Policy and Sustainability Committee on whether decisions taken by officers on Edinburgh's Christmas and the consultation and engagement around those decisions conformed to the Scheme of Delegation.
- 2.2 This report was considered by the Policy and Sustainability Committee on 26 November 2019.

Motion

- 1) To note the report by the Chief Executive.
- 2) To note that the Chief Executive would report to the Policy and Sustainability Committee on 25 February 2020 outlining revised governance arrangements for event planning.

- moved by Councillor McVey, seconded by Councillor Day

Amendment

- 1) To note the report by the Chief Executive.
- 2) To correct recommendation 1.2 to read 25 February 2020 along with all other references within the report but otherwise agrees this recommendation.
- 3) To instruct the Chief Executive to produce a further report outlining:
 - a) What actions could be taken regarding the failure to comply with the Scheme of Delegation outlined in paragraph 4.16 and his recommendations regarding any such actions;
 - b) steps to alter the Scheme of Delegation so that politically controversial decisions are required to be taken by Committee;
 - c) any failures by the Council in regard to statutory, or other requirements of not ensuring all terms of legislation were complied with in regard to Planning and Building Control; how the timescales for decision on these matters regarding the Christmas Market vary from normal processes; why any exceptions are considered acceptable and whether any other such exceptions are made;

- d) why briefings are given to one political Group within the Council and information is retained in private, limiting the ability of other Councillors to scrutinise issues, particularly when all Councillors have equal entitlement to information and equal responsibility as part of the decision-making body corporate that is the Council

4) To refer the report to the GRBV Committee for consideration.

- moved by Councillor Whyte, seconded by Councillor Mowat

In accordance with Standing Order 21(11), the amendment was adjusted and accepted as an amendment to the motion.

Decision

To approve the following adjusted motion by Councillor McVey:

- 1) To note the report by the Chief Executive.
- 2) To note that the Chief Executive would report to the Policy and Sustainability Committee on 25 February 2020 outlining revised governance arrangements for event planning.
- 3) To request that the Chief Executive's February report to also cover:
 - a) What actions could be taken regarding the failure to comply with the Scheme of Delegation outlined in paragraph 4.16 of the report by the Chief Executive and his recommendations regarding any such actions;
 - b) If any failures by the Council in regard to statutory, or other requirements of not ensuring all terms of legislation were complied with in regard to Planning and Building Control; how the timescales for decision on these matters regarding the Christmas Market varied from normal processes; why any exceptions were considered acceptable and whether any other such exceptions were made;

And request that the 2020 review of the Scheme of Delegation cover:

- a) steps to alter the Scheme of Delegation so that politically controversial decisions were required to be taken by Committee;
 - b) The process of members briefings.
- 5) To refer the report to the Governance, Risk and Best Value Committee for consideration.

3. Background Reading/ External References

Minute of the Policy and Sustainability Committee of 26 November 2019.

4. Appendices

Appendix 1 – report by the Chief Executive

Policy and Sustainability Committee

10.00am, Tuesday, 26 November 2019

Edinburgh's Christmas – Motion by Councillor Mowat

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 To note the report.
- 1.2 To note that the Chief Executive would report to the Policy and Sustainability Committee on 25 February 2019 outlining revised governance arrangements for event planning.

Andrew Kerr

Chief Executive

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Edinburgh's Christmas – Motion by Councillor Mowat

2. Executive Summary

- 2.1 This report responds to a motion by Councillor Mowat into the decision making surrounding the Christmas Market in East Princes Street Gardens.

3. Background

- 3.1 The Governance Risk and Best Value Committee on 29 October 2019 agreed an emergency motion by Councillor Mowat into Edinburgh's Christmas. It requested a report looking into whether the decisions taken by officers and the consultation and engagement around those decisions, conformed to the Scheme of Delegation. Although this report touches on 2018, its scope is firmly with the Christmas Market in 2019. Specifically, the motion asked:
- 3.1.1 how the decisions taken by officers and detailed in the briefing note sent to Councillors on 28th October 2019 (and attached to this motion at Appendix 1) conform to the scheme of delegation;
 - 3.1.2 when plans detailing the increase in size and scale were seen by senior Council Officers i.e. Head of Service or above;
 - 3.1.3 whether officers identified that the change in layout and increase in infrastructure was a politically sensitive decision;
 - 3.1.4 if this was identified was this communicated to National Galleries of Scotland and Underbelly;
 - 3.1.5 whether the new plans conform to the Council's aims as set out in para 3.1.1 in the report presented to Culture and Communities Committee on Edinburgh's Christmas and Hogmanay (item 8.4) on 10th September 2019;
 - 3.1.6 how and when were key decisions consulted on with Councillors.
- 3.2 The Council is a large and diverse organisation and requires a significant number of decisions to be taken every day to ensure the smooth running of the City. It is impossible for an authority to do this through committee decisions alone and it is not permitted for individual elected members to take decisions. As a result, powers

must be delegated to officers and the extent of these powers are outlined in the Council's Scheme of Delegation to Officers, "The Scheme".

- 3.3 The redevelopment of the Scottish National Gallery and the landscaping changes to East Princes Street Gardens required a new solution to deliver the Christmas Market and to protect the new landscaping. The redevelopment of the Gardens faced several delays which resulted in some areas being incomplete when the Gardens were due to be occupied by Underbelly for Christmas. In addition, the Executive Director of Place was in regular contact with the National Galleries Scotland on the work and scope in the Gardens and the need to implement Council policy regarding the market as had been previously agreed.

4. Main report

- 4.1 In looking to answer the terms of the motion, this report will consider the five main areas –
- 4.1.1 the decision to extend the contract;
 - 4.1.2 the decision to extend the market to south of the railway line;
 - 4.1.3 planning permission;
 - 4.1.4 the need for a building warrant and; and
 - 4.1.5 public safety.

Extension of Contract

- 4.2 The contract with Underbelly was first agreed by the Finance and Resources Committee on 23 March 2017 under a B agenda. The contract was a three-year contract with the option to extend for one to three years. The value of the contract was over £1,000,000 and thus required to be approved by the Finance and Resources Committee.
- 4.3 The extension of the contract was of a lesser value and below the £1,000,000 threshold requiring committee approval as set out in Contract Standing Orders. This was a decision that would normally be delegated to the Executive Director of Place.
- 4.4 In taking any decision under the Scheme, officers must comply with the principles of delegation and the requirements set out in the Scheme therein.
- 4.5 The principles of delegation set out that the decision must not be a reserved matter to Council or committee and should not alter or be contrary to law or policy set by the Council. This decision was not a reserved matter and the Edinburgh Parks Manifesto 2014 outlines that a winter market set in East Princes Street Gardens is Council policy and as a result any contract extension is within policy.
- 4.6 The Scheme sets out that any decision which is likely to be regarded as politically controversial or is a decision that will or is likely to have a significant effect on financial, reputational or operational risk and/or a significant impact on service delivery or performance requires the officer to consult with elected members. It then

defines the elected members as the relevant convener or vice-convener and where appropriate the Leader and/or Depute Leader.

- 4.7 The Scheme also states that where a decision relates to a particular ward or wards (but not the whole Council area) and is likely to directly affect the ward interests of a local member or members then those members should be consulted with before the decision is taken.
- 4.8 The Executive Director of Place in email correspondence clearly indicated that he felt the matter was politically controversial and was fully cognisant of the need to consult. The Executive Director of Place favoured taking the decision to committee, but Underbelly had highlighted an urgent need to take a decision ahead of committee in order for them to conclude contractual arrangements for Hogmanay and had indicated that to do otherwise would have negatively impacted the viability and deliverability of that event.
- 4.9 Early discussions were had with the Leader and Depute Leader and key conveners in May 2019 while advice was sought internally on the process required to agree a contract extension. A briefing was then held on 10 June 2019 which was attended by Councillors Wilson, McNeese-Mechan, Rankin, Osler and Mitchell. Councillors Doran, Miller and Mowat could not attend the meeting but subsequent conversations were had with these elected members.
- 4.10 Following this consultation, the Executive Director of Place took the decision to extend the contract. A motion was then considered at the Culture and Communities Committee on 18 June 2019 which, amongst other things, noted this decision. It would have been more beneficial if a report had been submitted to this committee and that the report also included the new layout of the market.
- 4.11 For clarity, the paragraph in the Scheme on politically controversial decisions, requires officers to consult with elected members but does not require for that decision to be made by a committee. The officer may choose to do this, but it is the officer's decision, guided by the elected members who have been consulted. The Council or a committee can require a proposed delegated decision to be carried out by the Council or the committee, but an individual elected member as per the Local Government (Scotland) Act 1973 is unable to take this decision.
- 4.12 Given the timescales involved and the possibility raised by Underbelly of Edinburgh's Hogmanay being put in jeopardy, the Executive Director of Place made every effort to consult timeously with the relevant elected members as per the Scheme. Therefore, although it would be preferable for all relevant elected members to have been consulted earlier, it is understandable that this could not be achieved, and the Executive Director complied with the Scheme when making this decision.

Use of the South Side of the Gardens

- 4.13 The Scheme sets out that the Executive Director of Place has delegated authority to consider and determine requests from organisations to make use of parks and recreational area subject to specific consultation and an additional power to manage events and activities taking place within parks and greenspace.

- 4.14 As a result, the Executive Director of Place did have the delegated authority to agree to the change in location of part of the market to make use of the south side of the Gardens. This decision also complied with the principles of the Scheme as set out in paragraph 4.7.
- 4.15 The new plans for the market were first shared with the Executive Director of Place in late April 2019, and when replying in May 2019 he refused the request by Underbelly to open the market to the public in the south side of the Gardens. However, Underbelly wrote to the Council on 2 September 2019 asking again to use the south side due to the need to mitigate the loss of stalls in the north side in key locations due to the landscaping works. The Leader, Depute Leader and Conveners and Vice Conveners of Transport and Environment and Culture and Communities were made aware of the request by a written briefing on 4 September 2019. On 16 September 2019 the SNP group were briefed on the delay to the National Galleries' landscaping works and the impact on the Christmas market. On 17 September 2019 the Convener and Vice-Convener of Culture and Communities were provided a briefing which included the request to move to the south side of the Gardens.
- 4.16 As outlined above there was extensive consultation with a number of the groups specified in the scheme but the scheme also requires that the Executive Director consult local ward members. Not all local ward members were consulted with and, as a result, this delegated decision was not taken in accordance with the rules laid out in the Scheme.

Planning Permission

- 4.17 Council officials met Underbelly on 30 August to discuss permissions required for the market and informed Underbelly that planning permission was required for this year's market. Underbelly stated that they would be making an application but would not be able to meet the timescales required for a full application to be in place before commencing their build on 18 October as there was no final layout plan. Discussions over detailed design to ensure safety of the public and protection of the gardens were protracted, and officers would not approve the design until the Council's engineers were satisfied on both fronts. This activity was concluded on 12 October.
- 4.18 It is Underbelly's responsibility to secure the necessary planning consent and, although it is permitted to be done retrospectively, this is still a breach of planning regulations. Given the importance of the event in terms of public benefit, officers did not consider it appropriate to instruct Underbelly not to proceed in the absence of planning permission. The Christmas Market has been in place for a number of years and it would have been a change in Council policy for the Council to stop the market at this late stage and a decision that would have required committee approval. The power for Planning to serve a notice would also have required committee approval.
- 4.19 However, Planning Enforcement is continuing to monitor the situation having set up an enforcement case. The enforcement team required four huts and their

supporting structures to be removed from the market. The structures for these had been installed and were removed to ensure that trees were protected. In addition, additional protective fencing has been required around two of the trees.

- 4.20 A Proposal of Application Notice (PAN) has now been submitted by Underbelly. This sets out the intention of the applicant to submit a planning application. The PAN process takes 12 weeks and allows the public to be engaged. A public consultation event is set for 26 November at the Scotsman Hotel. After the PAN period, it will be possible for a planning application to be submitted. This planning application will be progressed in the usual way and reported to the Development Management Sub-Committee for its decision.

Building Warrant

- 4.21 A building warrant is required to show compliance with the Building Regulations. On 30 August 2019 the Council met Underbelly and discussed and agreed the need for a building warrant.
- 4.22 A building warrant application was submitted for structures within the market. It includes what is known as a SER certificate which is a certificate of structural design. This certificate shows compliance with the Building Regulations in relation to structure. Building Standards have inspected the site and building warrants for the market have been granted and completion certificates accepted.

Public Safety

- 4.23 The event was discussed by a multi-agency, safety advisory group called the Event Planning and Operations Group (EPOG) as well as sub groups to discuss specific topics, such as crowd management and counter terrorism/security measures. These meetings are chaired by the Public Safety Team and involve organisations across the public sector including the emergency services.
- 4.24 As part of this process, Section 89 applications from Underbelly were requested in relation to temporary structures for all sites. Section 89 applications were received for all sites in use which showed the structures were designed and built in accordance with the relevant British standards. An independent engineer provided a sign off certificate for each structure before Section 89 permits were issued. The event sites were also inspected to ensure that they were safe, following industry standards such as the Purple Guide and relevant Building Regulations. The public safety team also reviewed the safety documentation, such as wind management plans, crowd management plans, medical and stewarding cover, contingency and emergency plans and ADIPS certificates. This team also act as an advisory team on site during the events and helped to put measures in place last year to ensure the safety of people at the market.

Council Aims

- 4.25 The new plans deliver an event that provides a diverse, dynamic and contemporary Christmas market. Edinburgh's Christmas provides extensive community benefit whilst attracting an increasing number of international visitors. The Council budget is £400,000 less per annum than in previous years. However, Edinburgh's

Christmas is not spread across the city centre as in previous years with George Street and St Andrew Square not being utilised. When looking beyond the City Centre, the Community Christmas Programme visits 12 different areas throughout Edinburgh. This programme aims to bring a building to life in each locality for one night with winter projections and local choirs.

Summary of Findings

- 4.26 All decisions and processes were followed correctly, with the exception of the decision to move the market to the south side of East Princes Street Gardens. This was not done in accordance with the Scheme and although there was consultation with elected members, there should have been consultation with all local ward members.
- 4.27 It is clear that the impact of the landscaping changes and the delay to work was a major contributing factor in the issues that the Council faced and created an environment that was often challenging and resulted in time critical decisions having to be made. In addition, Underbelly had clear duties to manage and run this event and it was their responsibility to apply for planning permission.
- 4.28 Public safety is paramount to the Council and there is no question of public safety being compromised at the market. This event and all previous Christmas markets have been safe.
- 4.29 This event has been supported by a number of Council services and this work has been extensive and integral to the event taking place. There have been mistakes identified with this event but that does not point to any systematic failure to manage events. The Council delivers successful major events throughout the year and there is a strong foundation to build on the work in this area.
- 4.30 Nevertheless, there appears to be weaknesses in the Council's co-ordination of this event. There was no planning permission for the Christmas Market in 2018 and this was the first year that a building warrant has been in place.
- 4.31 The Chief Executive called an initial meeting on 14 November 2019 to look at how the governance and strategic and operational management of significant events including this event could be strengthened. The Chief Executive intends to report to the Policy and Sustainability Committee on 25 February 2019 outlining the governance structures to ensure that these issues do not arise in future.

5. Next Steps

- 5.1 As outlined above the Chief Executive will report to the Policy and Sustainability Committee on 25 February 2019 outlining strengthened governance arrangements for event planning.

6. Financial impact

- 6.1 There is no financial impact as a direct result of this report.

7. Stakeholder/Community Impact

- 7.1 This report does not examine the community impact of the market, it looks at the decision making around the market and thus its focus is on process, statutory regulations and the Council's Scheme of Delegation.

8. Background reading/external references

- 8.1 [Scheme of Delegation to Officers](#)

9. Appendices

None