



Report of the Assistant Chief Executive (Corporate Governance)

Executive Board

Date: 8 February 2008

Subject: Inquiry Into River Safety Management At Wharfemeadows Park, Otley – Officer Observations

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Purpose Of This Report

- 1.1 This report has been prepared to assist Members of Executive Board in considering the recommendations of Scrutiny Board (Culture and Leisure) in regard to their inquiry into the decision by Executive Board to erect fencing at Wharfemeadows Park, Otley.
- 1.2 The final report of the Scrutiny Board is being considered as a separate item on this agenda and Members are asked for their response to the recommendations.
- 1.3 This report is intended to assist Members of Executive Board in forming their response to Scrutiny.

2.0 Background Information

- 2.1 In July 2007, the Scrutiny Board (Culture and Leisure) received a request for scrutiny from the Wharfemeadows Action Group (WAG), relating to the proposed fencing arrangements within Wharfemeadows Park. Following a full presentation by WAG the Scrutiny Board agreed to undertake an inquiry into this matter.
- 2.2 In accordance with the Scrutiny Board Procedure Rules (15.1), the Executive Board is asked to send its response to the Scrutiny Board (Culture and Leisure) within two months of this meeting. In response to the report and recommendations, the Executive Board is requested to detail:
- Views on the conclusions and recommendations;
 - Details of any actions already taken in response to the recommendations;

- c) Proposed actions and timescales; or
- d) Reasons for inaction.

3.0 Main Issues

- 3.1 The substantive conclusion of the scrutiny inquiry is detailed at paragraph 30 of the final report which states:

'On all accounts faced with the legal advice and the evidence from the risk assessments, the Executive Board made the decision it did in all good faith with all available and appropriate information before it.'

- 3.2 The Scrutiny Board did, however, make four recommendations and Members of Executive Board are being specifically asked for their response on these four issues.
- 3.3 ***Recommendation 1 – That the Charter between Leeds City Council and the Parish and Town Councils within the administrative areas of Leeds City Council, particularly Section Three – Working in Partnership, is strictly adhered to.***
- 3.3.1 Officers are supportive of this recommendation and recognise that the Charter and its key principles do need to be more widely communicated and promoted within the Council and more generally.
- 3.3.2 The specific section of the Charter referred to states “Consultation will be used to involve local councils in decisions of the City Council that affect local communities. Consultation between the partners of this Charter is a two-way process, which can only be effective where there is a sense of partnership and mutual trust.”

This does raise a specific issue which did cause some confusion in this particular case in respect of when the City Council is “consulting” and is thus prepared and able to change its approach/proposal based upon the feedback received and when it is “informing” because factors dictate that there is little scope to take an alternative course of action.

- 3.3.3 Therefore, in agreeing to this recommendation, officers and Members will, in the future, need to be mindful of the fine distinction between consulting and informing and the need to provide clarity in this regard.
- 3.4 ***Recommendation 2 – That all legal advice obtained by the Council is publicly available save in circumstances to be determined by the Council’s Monitoring Officer. The reasons for any non public disclosure should be made clear by the Monitoring Officer.***
- 3.4.1 Officers acknowledge the purpose of the recommendation, but for the reasons set out below, suggest that Executive Board consider adopting a slightly amended recommendation to clarify that the question of making external legal advice publicly available will be considered **upon a request being received** and will be considered on a case by case basis.

Requests for external legal advice obtained by the Council to be made publicly available should be determined by the Council’s Monitoring Officer on a case by case basis. The reasons for any non public disclosure should be made clear by the Monitoring Officer.

The Assistant Chief Executive (Corporate Governance) has concerns that the recommendation as agreed by Scrutiny Board will not be in the best interests of the Council or council tax payers. Legal advice (from both specialist external solicitors and Counsel) is obtained by the Council on (a) specific cases involving named parties and (b) general issues, and for several reasons including:

- Assessing the Council's likelihood of success in proceedings that the Council may wish to initiate or indeed defend.
- Assessing the strength of evidence available on particular matters.
- Identifying the Council's potential financial liability in terms of compensation or damages where the Council has accepted liability.
- Assessing the legality of actions proposed by the Council, often in contentious areas and identifying the risks and likely challenges available in the event that the Council took certain action/decisions.

It is the Assistant Chief Executive (Corporate Governance)'s view, that it is not in the interests of the general public to have legal advice generally available, as to do so will, in the majority of cases, particularly those relating to specific cases involving named parties e.g. personal injury cases, child protection cases, litigation by or against the Council, severely prejudice the Council's position in terms of negotiations, court proceedings, decision taking etc.

Further, if legal advice was to be made widely available as a matter of routine, a key issue to consider would be the timing of making it available. Making it available during the legal proceedings themselves or at the time at which the Council is proposing to take the action about which advice is being sought, is likely to seriously prejudice the Council's position, which in turn could have an impact on the Council's fiduciary duty towards Council tax payers.

External legal advice is obtained several times a week and the recommendation as agreed by Scrutiny Board would suggest that the Monitoring Officer would have to read each one once received to assess whether or not exceptional circumstances applied. For the reasons set out above, particularly relating to disclosing legal advice during the conduct of the proceedings, it is likely that in the majority of cases, the Monitoring Officer's view upon receipt of the advice would be that there were exceptional circumstances for non disclosure. That view could of course change as and when proceedings were concluded or as time passed

However, the Assistant Chief Executive (Corporate Governance) agrees that where **general advice** is sought (as opposed to advice relating to a specific case with named parties), and the Wharfemeadows case is an example of such, in certain circumstances and where it will not prejudice the Council's interests, it may be useful to make the legal advice available to the public in order that there is transparency and that the public have an opportunity to understand the basis on which and why the Council is taking a certain course of action. This could be achieved by the slightly amended version of the recommendation set out above.

3.5 Recommendation 3 – That all requests for Counsel's advice are made in written form save in exceptional and urgent circumstances.

3.5.1 Where written Counsel's opinion is being sought it is standard practice to clarify the request for advice by sending written instructions and, therefore, officers are again, in principle, supportive of this recommendation. There are exceptions to this rule, as the Scrutiny Board recommendation allows, in respect of exceptional and urgent circumstances. It also should be noted that Counsel's advice is sometimes sought

through the form of a conference with Counsel at which the relevant parties would be present to discuss the issue under consideration and the nature of such conference may not, therefore, always allow for full instructions to be provided in writing. Therefore, subject to these caveats, officers would be supportive of this recommendation.

- 3.6 ***Recommendation 4 – That the Executive Board and Scrutiny Boards work in partnership to identify future decisions where Scrutiny input prior to the decision being made can add value to the overall process and decision made.***
- 3.6.1 Officers are supportive of this recommendation in principle and would point out that action has already been taken to seek to ensure an effective partnership between Scrutiny and the Executive Board. Meetings between Executive Members and Scrutiny Board Chairs have taken place in recent months to consider such issues and it is expected that such meetings will take place in the future at which discussion can be had on the relevant decisions where it would be appropriate and helpful for Scrutiny input prior to the formal decision being taken. The intention of this recommendation is also supported by the publication of the Council's Forward Plan of decisions, which is available to all Scrutiny Boards and provides a comprehensive list of key and major decisions to be considered in the future.
- 3.6.2 In conclusion, officers are supportive of this recommendation based upon the measures and procedures that are already in place.

4.0 Recommendations

- 4.1 In considering the recommendations of Scrutiny Board (Culture and Leisure), Members of Executive Board are asked to note the officer observations detailed above.