

Report for: Special Overview and Scrutiny Committee
8 November 2016

Title: Monitoring Officer's Report on the Call-In of a Decision taken by the Cabinet on 17 October 2016 relating to Recommendation of a preferred bidder to secure the future of Hornsey Town Hall

Report authorised by : Bernie Ryan, Monitoring Officer

Lead Officer: Bernie Ryan, Monitoring Officer

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

To advise the Overview and Scrutiny Committee on the call-in process, and in particular whether the decision taken by Cabinet on 18 October 2016 relating to the "recommendation of a preferred bidder to secure the future of Hornsey Town Hall" is with the budgetary or policy framework.

2. Cabinet Member Introduction
N/A

3. Recommendations

That Members note:

- a. The Call-In process;
- b. The advice of the Monitoring Officer and Chief Financial Officer that the decision taken by the Cabinet was inside the Council's policy and budget framework.

4. Reasons for decision

The Overview and Scrutiny Committee is expected to take its own decision with regard to whether a called-in decision is outside or inside the budget/policy framework when considering action to take in relation to a called-in decision.

5. Alternative options considered
N/A

6. Background information

Call-in procedure rules

- 6.1 Once a validated call-in request has been notified to the Chair of OSC, the Committee must meet within 10 working days to decide what action to take. In the meantime, all action to implement the original decision is suspended.
- 6.2 If OSC Members determine that the original decision was within the policy/budget framework, the Committee has three options:

- (i) to not take any further action, in which case the original decision is implemented immediately.
 - (ii) to refer the original decision back to Cabinet as the original decision-maker. If this option is followed, the Cabinet must reconsider their decision in the light of the views expressed by OSC within the next five working days, and take a final decision.
 - (iii) to refer the original decision on to full Council. If this option is followed, full Council must meet within the next 10 working days to consider the call-in. Full Council can then decide:
 - to either take no further action and allow the decision to be implemented immediately, or
 - to refer the decision back to the Cabinet for reconsideration. The Cabinet's decision is final.
- 6.3 If the Overview and Scrutiny Committee determine that the original decision was outside the budget/policy framework, the Committee must refer the matter back to the Cabinet with a request to reconsider it on the grounds that it is incompatible with the policy/budgetary framework.
- 6.4 In that event, the Cabinet would have two options:
- (i) to amend the decision in line with OSC's determination, in which case the amended decision is implemented immediately.
 - (ii) to re-affirm the original decision, in which case the matter is referred to a meeting of full Council within the next 10 working days. Full Council would have two options:
 - to amend the budget/policy framework to accommodate the called-in decision, in which case the decision is implemented immediately, or
 - to require the decision-maker to reconsider the decision again and to refer it to a meeting of the Cabinet, to be held within five working days. The Cabinet's decision is final.

The Policy Framework

- 6.5 The Policy Framework is set out in the Constitution at Article 4 of Part Two (Articles of the Constitution):

Policy Framework. *These are the plans and strategies that must be reserved to the full Council for approval:*

- *Annual Library Plan*
- *Best Value Performance Plan*
- *Crime and Disorder Reduction (community safety) Strategy*
- *Development Plan documents*
- *Youth Justice Plan*
- *Statement of Gambling Policy*
- *Statement of Licensing Policy*
- *Treasury Management Strategy*

Any other policies the law requires must be approved by full Council.

Such other plans and strategies that the Council agrees from time to time that it should consider as part of its Policy Framework:

- Housing Strategy

- 6.6 The policy framework is intended to provide the general context, as set by full Council, within which decision-making occurs. In an executive model of local authority, the majority of decisions are taken by the executive – in Haringey’s case this being the Cabinet/Leader/Cabinet member. It is not expected that every executive decision taken should satisfy every individual aspect of the framework, but they should not be outside the framework. Case law also makes it clear that it would not be a proper use of a full Council approved plan or strategy to seek to make it a means for full Council to micro-manage what ought to be executive decisions.

Current Call-In

- 6.6 Two valid call-in requests have been received in relation to the Cabinet decision on the recommendation of a preferred bidder to secure the future of Hornsey Town Hall. The first did not claim the decision was outside the budget/policy framework. The second call-in did claim it was outside the policy framework, and this report focuses on the points raised in that second call-in. Neither call in has claimed that the Cabinet decision is outside the budgetary framework.
- 6.7 A key concern in the second call-in is that the decision taken by Cabinet was predicated on fulfilment of a scheme that had already received planning consent. In essence, it is argued that the approved scheme is unsatisfactory in fulfilling the Council’s ambitions around the provision of affordable housing, as set out in the Corporate Plan and the policy framework.

Monitoring Officer’s Assessment

- 6.8 The Call In Procedure Rules require that:
“The [Overview and Scrutiny] Committee shall consider any report of the Monitoring Officer / Chief Finance Officer as to whether a called-in decision is inside or outside the policy / budget framework. The Overview and Scrutiny Committee shall have regard to that report and any advice but Members shall determine whether the decision is inside or outside the policy/ budget framework.”
- 6.9 The Monitoring Officer’s assessment of whether the decision was outside the policy framework is below.
- 6.10 The call-in request made the following points:
- a. That the “decision delivers an outcome outside of the policy framework Priority 5 of our Corporate Plan ‘creating mixed and inclusive neighbourhoods’”;
 - b. That the “decision was taken in contravention of [a] key policy objective within the Housing Strategy” – specifically the objective to “put mixed communities at

the heart of our approach... focusing new affordable rented housing as much as possible in places where it is currently scarce”;

- c. That the decision was “taken in contravention of Corporate Plan policy outcome ‘value for money’” – “we will get better value of every pound spent”;
- d. That the decision was “taken in contravention of Local Plan Policy SP2” – Housing.

Consistency with the Corporate Plan

- 6.11 There are two points raised to assert that the current decision is not consistent with the Corporate Plan – first, on its commitment to creating mixed communities, and second in relation to securing value for money.
- 6.12 As a starting point, it should be noted by the Committee that the Corporate Plan is not part of the Policy Framework, as defined by the Constitution. The Corporate Plan was approved by Cabinet, rather than the full Council. The current, 2015-18 Corporate Plan was agreed in February 2015. The consistency of this decision with the Cabinet’s Corporate Plan is irrelevant when considering whether the decision was within the Policy Framework.
- 6.13 While the question is not relevant, I am satisfied in any event that the decision taken by Cabinet does not contradict the quoted extract of the 2015-18 Corporate Plan: *“achieve a step change in the number of new homes being built... to provide greater numbers of affordable housing... supporting low and middle income residents to get on the housing ladder”*.
- 6.14 The second quote from the Corporate Plan is a commitment to *“get better value out of every pound spent”*. This introduces an argument that there is no clear evidence that the proposal of Hornsey Town Hall site make financial sense or is the best or only financial option available.
- 6.15 Value-for-money is inherently subjective, and ultimately for the Cabinet to satisfy itself with. The Cabinet decision followed a rigorous procurement process. There is no evidence presented in the call-in that the decision taken by Cabinet provides value-for-money or not. The procurement exercise that led to this decision included an emphasis on the financial aspects of the various bids, and the Cabinet report highlights the financial aspect of the successful bid contributed to its preference over the unsuccessful bid.
- 6.16 In either case, I do not agree that the rather broad statements of general policy in the Corporate Plan are contradicted by this specific decision. It is very much a matter of judgment for the Cabinet how they should be applied, and these statements cannot in any event be read as dictating or constraining decisions about individual sites or projects of this nature.
- 6.17 I also note that the Cabinet report referred to the priorities in the Corporate Plan and the decision was clearly taken in a way that reflected, on balance, the priorities contained within the Corporate Plan.

Housing Strategy

- 6.18 The Housing Strategy is part of the policy framework, and is adopted by full Council. At the Cabinet of 18 October, a new Housing Strategy was formally endorsed by Cabinet for recommendation to full Council at its meeting of 21 November. Until that new Strategy is adopted, the extant version is the Housing Strategy 2009-29, which was approved by full Council in July 2009.
- 6.19 The call-in form includes the following quote from the Strategy, which it claims the decision is inconsistent with:
"[Haringey Council will] put mixed communities at the heart of our approach. Not just a mix of homes across the borough, but a mix within each neighbourhood... in Haringey this means focusing new affordable rented housing as much as possible in places where it is currently scarce".
- 6.20 The call-in goes on to argue that the development at Hornsey Town Hall provides an opportunity to deliver against this objective, noting that Crouch End is an area where social and affordable housing is scarce.
- 6.21 The quoted section above is from the draft of the Housing Strategy published in 2015 for consultation. The specific commitment around focussing new affordable rented housing in areas where it is currently scarce does not feature in the version that was approved by Cabinet on 18 October. It also does not appear in the extant 2009-19 Strategy.
- 6.22 That said, the 2009-19 Strategy includes a commitment to *"deliver new housing in line with Haringey's Housing Supplementary Planning Document, and in so doing contribute to the creation of mixed and balanced communities"*. The specific decision of the Cabinet in this case does not contradict the broad commitment to the creation of mixed and balanced communities set out in the extant Housing Strategy which is the relevant policy at present.
- 6.23 The Housing Strategy that was approved by Cabinet on 18 October includes the following:
"Haringey needs a wide range of homes, to meet the diversity of current and future needs and to obtain the mix in our communities that lies at the heart of our vision for housing in the borough. This cannot just be a mix of homes across the borough; it needs to be mixed as much as possible within each neighbourhood, offering diversity in the type and size of home, the tenure and the value."
- 6.24 It should be noted that both the version approved by Cabinet and the earlier draft quoted in the Call-in form include the qualification "as much as possible". The pragmatic formulation in the revised Housing Strategy makes clear that this ambition of the policy framework is not expected to be met in all circumstances. It is also not asserted as a site by site imperative but instead as a neighbourhood-by-neighbourhood one. I do not consider that the Cabinet decision is outside either the general and qualified statements of policy made in either the current Housing Strategy or the proposed Housing Strategy or indeed the version quoted in the call-in.

Local Plan Policy

6.25 The Local Plan is part of the Development Plan documents that are included in the Policy Framework. Haringey's Local Plan is currently being revised, and a revised version underwent the Examination in Public process but has not yet been adopted by full Council. The extant version, for the purposes of the policy framework, would be that of March 2013, which includes a borough-wide affordable housing target of 50%.

6.26 The call-in form includes two quoted paragraphs from a draft of the revised Local Plan Policy that was published in February 2015:

“The need for affordable housing outstrips supply, with a shortfall in provision of 11,757 homes over the period 2015 to 2031. As a proportion of the total net housing requirement for all tenures (20,172) over the same period, this equates to 59%.

Subject to viability, sites capable of delivering 10 units or more will be required to meet a borough wide affordable housing target of 40%, based on habitable rooms.”

6.27 The Local Plan is used in the consideration of planning applications, rather than a procurement decision of the Cabinet, which is the subject of the call-in. It is a statutory plan required pursuant to the planning legislation. The Local Authority (Functions and Responsibilities) Regulations 2000 indicate that full Council is the appropriate forum for decision-making in certain circumstances. These include where the Cabinet is intending to take a decision which is contrary to a policy agreed by the Council in relation to the particular “function” proposed to be exercised by the Cabinet. The Local Plan is not adopted in relation to procurement or landowner “functions” of the Council. Rather it is adopted in relation to planning functions of the Council. That means it is only directly relevant in relation to the discharge of a local authority’s planning function, and not its executive functions, including when the authority is acting as a landowner.

6.28 In any event this Cabinet decision does not fall outside the Local Plan policies of either the existing or proposed Local Plan policies necessitating a decision by full Council. It should be borne in mind that the reference to the borough-wide target has meant that the site’s contribution to the borough’s target should be considered, rather than the application of the target to the specific site. There is also the clear qualification that this would be subject to viability. It is not an absolute or compulsory provision.

6.29 Ultimately, a planning application has been made and decided for this site and the planning permission has already been implemented. The Council granted planning permission in 2010 for refurbishment of the town hall and an associated development on the car park to the rear of the Town Hall comprising 123 residential units. This new build element and extensions and alterations to the Town Hall were justified in order to cross subsidise the repairs and refurbishment of the Listed Building. The planning decision is not the subject of this call-in.

6.30 While there is an approved and implemented planning application in place for this site, neither the existing approval nor the decision taken by Cabinet that is

subject of this call-in precludes a further planning application being made in future

6.31 Cabinet's decision related to its responsibilities as a land-owner and in pursuit of a sustainable future for Hornsey Town Hall. The evaluation criteria did not refer to affordable housing, as the implemented planning consent already dealt with the number of affordable units that were required as part of that consent.

6.32 In conclusion, I am satisfied that this Cabinet decision is not outside the policy framework.

7. Contribution to strategic outcomes

N/A

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance and Procurement

Article 4.01 as written in the Council's constitution states that the meaning of the budget includes "the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirements, the control of its capital expenditure and the setting of virement limits. The determination of the Council Tax Base is delegated to the Chief Finance Officer in consultation with the Cabinet Member for Finance and the Cabinet Advisory Board."

Whilst there is no claim by either call-in that the decision is outside the budgetary framework, the Chief Financial Officer has confirmed that the decision is not outside the budget framework.

Legal

The Monitoring Officer's views are set out above.

Equality

N/A

9. Use of Appendices

N/A

10. Local Government (Access to Information) Act 1985

N/A