

Felicity Foley,  
Principal Committee  
Co-ordinator

020 8489 2919

020 8881 5216

felicity.foley@haringey.gov.uk

05 December 2016

To: All Members of the Overview and Scrutiny Committee

Dear Member,

Overview and Scrutiny Committee - Tuesday, 6th December, 2016

I attach a copy of the following reports for the above-mentioned meeting which were not available at the time of collation of the agenda:

- 6. CALL-IN OF CAB 121: SALE OF LAND AT KERSWELL CLOSE N15 5HT (PAGES 1 - 26)**
  - a. Report of the Monitoring Officer
  - b. Report of the Director of Regeneration, Planning and Development

Yours sincerely

Felicity Foley, Principal Committee Co-ordinator  
Principal Committee Co-Ordinator

This page is intentionally left blank

**Report for:** Special Overview and Scrutiny Committee  
6<sup>th</sup> December 2016

**Title:** Monitoring Officer's Report on the Call-In of a Decision taken by the Cabinet on 15<sup>th</sup> November 2016 relating to the sale of land and retail unit at Kerswell Close Tottenham N15 5HT

**Report authorised by :** Bernie Ryan, Monitoring Officer

**Lead Officer:** Raymond Prince Deputy 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 15<sup>th</sup> November 2016 relating to the disposal of land at Kerswell Close N15 5HT on a long lease to Pocket Living is within the policy and budgetary 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 budgetary 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 policy and budgetary 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** The Call-In Procedure Rules (the Rules) appear at Part 4, Section H of the Constitution, and are reproduced at Appendix 1 to this report.
- 6.2.** The Rules prescribe that once a validated call-in request has been notified to the Chair of Overview and Scrutiny Committee (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.
- 6.3** If OSC Members determine that the original decision was within the policy 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
- 6.4** If OSC determine that the original decision was outside the budget/policy framework, it 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.
- 6.5** 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

**6.6** A definition of The Policy Framework is set out in the Constitution at Article 4 of Part Two (Articles of the Constitution) which is reproduced as follows:

#### ***“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”*

**6.7** 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 government, the majority of decisions are taken by the Executive – in Haringey's case this being the Cabinet/Leader/Cabinet member. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the determination of a matter in the discharge of an Executive function nonetheless becomes a matter for the full Council if the proposed determination would be contrary to a plan or strategy adopted or approved by the full Council in relation to the function in question. Case law 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.

## **7. Current Call-In**

- 7.1** On 25<sup>th</sup> November 2016, a call-in request was received in relation to the Cabinet decision taken on 15<sup>th</sup> November 2016 on the recommendation to dispose of land and retail unit at Kerswell Close, N15 5HT to Pocket Living LLP.
- 7.2** The request asserts that the decision was outside the policy framework, and so it is that assertion which this report focuses on. The Chief Financial Officer also confirms her view that the Cabinet decision is within the budgetary framework.

- 7.3** A key concern in the call-in, is the assertion that the decision runs contrary to policies relating to affordability of intermediate housing contained in the Council's Housing Strategy approved by full Council on 21st November 2016, a document which forms part of the Policy Framework. It is also asserted that the decision runs contrary to the policies relating to open spaces and trees in the saved policies of the Unitary Development Plan. Further, that no consultation or information on the proposals was given to the local community, and no meaningful consideration had been given to exploring alternative options. It also asserts that the Pocket Living model fails to provide genuine affordability as the 20% reduction from average prices for 1 bedroom flats is achieved through the reduction of 24% in floorspace below the London standard for a 1 bedroom flat. In the call-in it is also maintained that council land should be used for building council houses or failing that other homes at social rents.
- 7.4** The request also detailed alternative courses of action, namely to “[build] council homes” on the land, and if that were not possible “to work with a Housing Association to build social homes on part of the area”.

## **8. Monitoring Officer's Assessment**

### **8.1** 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.”*

### **8.2** The Monitoring Officer considered the request on 28<sup>th</sup> November 2016, and determined that it met the 6 criteria for validity as set out in the Rules. Following investigation and consideration, The Monitoring Officer made an assessment of whether the decision was outside the policy framework and concluded that it was not for the reasons which appear at paragraphs 9 – 11 below.

### **8.3** The call-in request made the following points:

- a. That the decision is outside the policy framework in that it contradicts the Housing Strategy principles on building affordable homes because “the homes in the proposed development ... would be unlikely to cost at or less than 45% of net income received by a household on £30,000 to £40,000.”;
- b. That the “Unitary Development Plan (Saved Policies) gives reasons why open spaces should not in general be built on ... unless the open space [is] surplus to requirements”. Further, the need to protect and encourage “flora and fauna with environmental value or amenity”. ; It is asserted that the proposals do not meet either requirement, with no proposals or apparent scope to replant and replace affected trees;
- c. That “The policy and presumption against building on open green space and removing trees requires very strong reasons to override, which have not been provided”;

- d. That the “model fails to provide genuine affordability” by reference to the “average market price for a 1 bed flat”;
- e. That “Given that 36 flats which are not genuinely affordable are to be built on the site, the proposed sale price of the land does not represent value for money for the Council”;
- f. That “There has been no serious and thorough exploration of alternatives”;
- g. That “Where council owned land is build on, the priority should be for those most in need, which would be served by building council homes or failing that, other homes at social rents”.

**8.4** As stated at paragraph 7.4 above, the request also set out alternative courses of action.

**8.5** In my view, only the points raised at paragraph 8.3 a. and b. need to be considered in this report, on the basis that by their nature, the other points do not amount to policy framework issues.

## **9 Housing Strategy**

**9.1** The Housing Strategy is part of the policy framework, and is adopted by full Council. The question of whether the Cabinet’s decision on 15th November 2016 was contrary to the Housing Strategy (so as to be outside the policy framework, and one which it was for full Council to take) is to be determined by reference to the Housing Strategy that was in force when that decision was taken. The relevant strategy is, therefore, the Housing Strategy approved by full Council in July 2009, not the new Housing Strategy approved by full Council on 21st November 2016.

**9.2** In my view, the Cabinet’s decision was consistent with, and not contrary to, the Housing Strategy for the reasons given in the report of the Director Regeneration, Planning & Development to this Committee. The housing to be developed under the proposed sale agreement with Pocket Living would meet the definition of intermediate housing in the London Plan, which is how references to intermediate housing in the Council’s Housing Strategy should be understood. Were it relevant, it is also my view (again, for the reasons given in the Director’s report) that the Cabinet’s decision would be consistent with the new Housing Strategy adopted on 21st November 2016, because the housing to be developed is affordable to one of the relevant income bands.

## **10 Local Plan Policy**

**10.1** The Director’s report to this Committee indicates that it is not possible at this stage to say whether the proposed development of the land will be consistent with Local Plan policy. That will depend upon assessments to be carried out at the time of a planning application, as well as the detail of the scheme for which planning permission is sought, including any mitigation or off-site replacement measures.

**10.2** The Cabinet’s decision was that the grant of a 250 year lease to Pocket Living would be subject to the grant of a satisfactory planning permission. This

condition will need to be incorporated into any agreement with Pocket concluded pursuant to the Cabinet's decision.

**10.3** In my view, the Local Plan, although it is part of the policy framework, is a plan that is adopted in relation to the discharge of planning functions, and not in relation to the discharge of other functions, such as the Council's function as a landowner disposing of land. It would not, therefore, be a matter for the full Council to decide upon the disposal, even if the terms of that disposal contemplated a development contrary to the Local Plan: that would be a matter to be dealt with through the planning process.

**10.4** In any event, I consider that by making the grant of a lease subject to a satisfactory planning permission, the Cabinet's decision was consistent with, and not contrary to, the Local Plan. It is well understood that planning permission may be granted for a development contrary to the development plan if there are material considerations that justify such an outcome, and the Local Plan should be understood accordingly.

## **11 Conclusion**

**11.1** For the above reasons, I conclude that the Cabinet's decision was not outside the policy framework.

## **12 Contribution to strategic outcomes**

N/A

## **13 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 the 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 implications**

The Monitoring Officer's views are set out above.

### **Equality**

N/A



**14 Use of Appendices**

Appendix 1 Call-In Procedure Rules

**15 Local Government (Access to Information) Act 1985**

N/A

This page is intentionally left blank

PART FOUR – RULES OF PROCEDURE  
Section H– Call-In Procedure Rules

## Part Four, Section H

# Call-In Procedure Rules

---

1. When a key decision is made by the Executive (that is, the Leader, Individual Cabinet Members or the Cabinet) or a committee of the Cabinet, the decision shall be published and shall be available for inspection at the Civic Centre and on the Council's website, normally within 2 working days of being made. The right to Call-In does not apply to a decision by way of an appeal hearing or a quasi-judicial procedure.
2. The notice of the key decision will be dated and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless a valid request has been received objecting to the decision and asking for it to be called-in. This does not apply to "urgent" decisions.
3. The Monitoring Officer will deem valid a request that fulfils all of the following 6 criteria:
  - (a) it is submitted by any five Members of the Council.
  - (b) it is received by the Democratic Services Manager by 10am on the fifth day following publication.
  - (c) it specifies the decision to which it objects.
  - (d) it specifies whether the decision is claimed to be outside the policy or budget framework.
  - (e) it gives reasons for the call-in and outlines an alternative course of action.
  - (f) it is not made in relation to a decision taken in accordance with the urgency procedures in paragraph 18 below.
4. The Democratic Services Manager will forward all timely and proper call-in requests, once deemed valid by the Monitoring Officer, to the Chair of the Overview and Scrutiny Committee and the Overview and Scrutiny Manager and will notify all Cabinet Members including the decision maker and the relevant Chief Officer.
5. A key decision will be implemented immediately after a call-in request is deemed invalid by the Monitoring Officer or after the expiry of ten working days following the receipt of a valid call-in request by the Chair of the Overview and Scrutiny Committee, unless a meeting of the

PART FOUR – RULES OF PROCEDURE

Section H– Call-In Procedure Rules

Overview and Scrutiny Committee takes place during the 10-day period.

6. If a call-in request is deemed valid, the Democratic Services Manager will forward the call-in request to the Monitoring Officer and/or Chief Financial Officer for a report to be prepared for the Overview and Scrutiny Committee advising whether the decision does fall inside or outside the policy or budget framework.
7. Unless a key decision is designated "urgent" pursuant to paragraph 18, when it shall be implemented immediately, no action shall be taken to implement the decision until 5 working days have elapsed after the date of the publication of the decision. In the event that a call-in request has been received, no action shall be taken until the Monitoring Officer has determined the validity of the request.
8. Subject to paragraph 5, when a request for call-in is deemed valid, all action to implement the key decision is suspended until the Overview and Scrutiny Committee has met to decide what action to take. The Committee must meet no later than 10 working days after the Chair has received a valid call-in request.
9. Discussion of any called-in decisions shall precede all other substantive items on the agenda of the Overview and Scrutiny Committee. Any reports of the Monitoring Officer and Chief Financial Officer shall be part of that agenda.
10. The 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. If the Overview and Scrutiny Committee determine that the decision was within the policy / budget framework, the Committee has three options:
  - (a) The Overview and Scrutiny Committee may decide not to take any further action, in which case the key decision is implemented immediately.
  - (b) The Overview and Scrutiny Committee may decide to refer the decision back to the decision maker, in which case the decision maker has 5 working days to reconsider the key decision before taking a final decision.
  - (c) The Overview and Scrutiny Committee may decide to refer the decision to Full Council.
11. When the Overview and Scrutiny Committee refers a decision to Council (when the decision is deemed to fall within the policy / budget

PART FOUR – RULES OF PROCEDURE

Section H– Call-In Procedure Rules

framework), any Council meeting must be held within 10 working days (with an extraordinary meeting being called if necessary) of the date of the Overview and Scrutiny Committee's referral.

12. When considering a called-in decision (when this decision is deemed to fall within the policy / budget framework) the Council has two options:
  - (a) The Council may decide not to take any further action, in which case the decision is implemented immediately.
  - (b) The Council may refer the decision back to the decision maker, in which case the decision maker has 5 working days to reconsider the decision before taking a final decision.
13. Once a final decision has been made there is no further right of call-in. This decision or any other key decision having the same effect may not be called-in again for a period of six months following the date at which the final decision was taken.
14. If the Overview and Scrutiny Committee determines that the decision is outside the policy / budget framework, the Committee shall refer the decision to the decision maker and with a request to reconsider it on the grounds that it is incompatible with the policy / budget framework. The decision maker shall have 5 working days in which to reconsider the decision.
15. The decision maker has two options:
  - (a) Amend the decision in line with the Overview and Scrutiny Committee's determination, in which case the decision is implemented immediately.
  - (b) Reaffirm the original decision, in which case the decision goes to a Council meeting which must convene within 10 working days of the reaffirmation of the original decision.
16. When considering a called-in decision where a decision maker fails to amend a decision in line with the Overview and Scrutiny Committee's determination, that it falls outside the policy / budget framework, the Council has two options:
  - (a) Amend the policy / budget framework to accommodate the called-in decision, in which case the decision is implemented immediately.
  - (b) Require the decision maker to reconsider the decision again and refer it to a meeting of the Cabinet to be held within 5 working days of the Council meeting. The Cabinet's decision is final.

**17. Abuse of Call-in**

PART FOUR – RULES OF PROCEDURE

Section H– Call-In Procedure Rules

- (a) Members are expected to ensure that call-in is not abused, or causes unreasonable delay to the functioning of the Cabinet.
- (b) The call-in procedure is to be reviewed annually (see paragraph 18 g), if such a review leads to the conclusion that the call-in procedure is being abused, the Constitution may be amended to include greater limitations.

**18. Call-In and Urgency**

- (a) The call-in procedure set out above shall not apply when the action being taken is urgent or time-critical in terms of (b) below.
- (b) A key decision will be urgent if any delay in implementation likely to be caused by the call-in procedure would seriously prejudice the Council's or the public's interests.
- (c) A key decision which has not been given the requisite publicity for a key decision or a private meeting and which the Chair of Overview and Scrutiny Committee has agreed is 'urgent and cannot reasonably be deferred' is not regarded as urgent for the purposes of call-in unless it fulfils the criteria of paragraph (b) above.
- (d) If a key decision is urgent and therefore not subject to call-in, this will be stated on the record.
- (e) In order for a key decision to be deemed urgent, the Chair of the Overview and Scrutiny Committee must agree that the decision is both reasonable in all circumstances and that it should be treated as a matter of urgency. In the absence or unavailability of the Chair the consent of the Mayor is required. In the absence of both, the consent of the Deputy Mayor shall be required.
- (f) Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- (g) The operation of the provisions relating to call-in and urgency shall be monitored annually and a report submitted to Council with proposals for review if necessary.

**19. Call-In and the Forward Plan**

- (a) The Overview and Scrutiny Committee should consider the Forward Plan as its chief source of information regarding forthcoming Cabinet decisions.

PART FOUR – RULES OF PROCEDURE

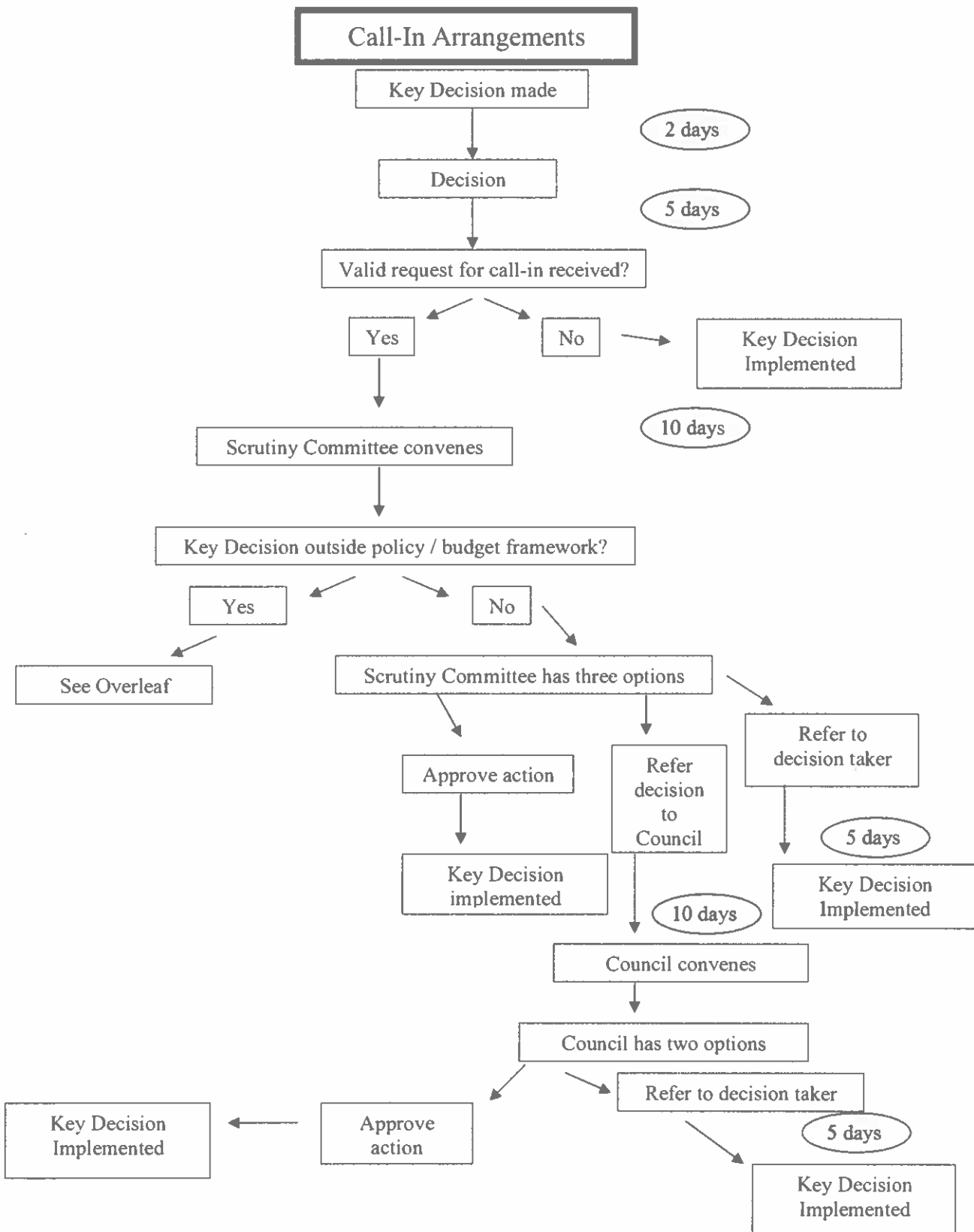
Section H– Call-In Procedure Rules

- (b) The Overview and Scrutiny Committee may select a forthcoming decision and examine the issues around it.
- (c) In order not to obstruct the Council in its business, the Overview and Scrutiny Committee may call-in a key decision in advance of its actually being taken. In such a situation all the time-limits apply as above, except that a key decision cannot actually be implemented any sooner than it would have been had the Overview and Scrutiny Committee not called it in.
- (d) Where the Overview and Scrutiny Committee has called-in a key decision from the Forward Plan before its due date, the decision cannot be called-in again after the final decision has been taken.

**20. Monitoring Arrangements**

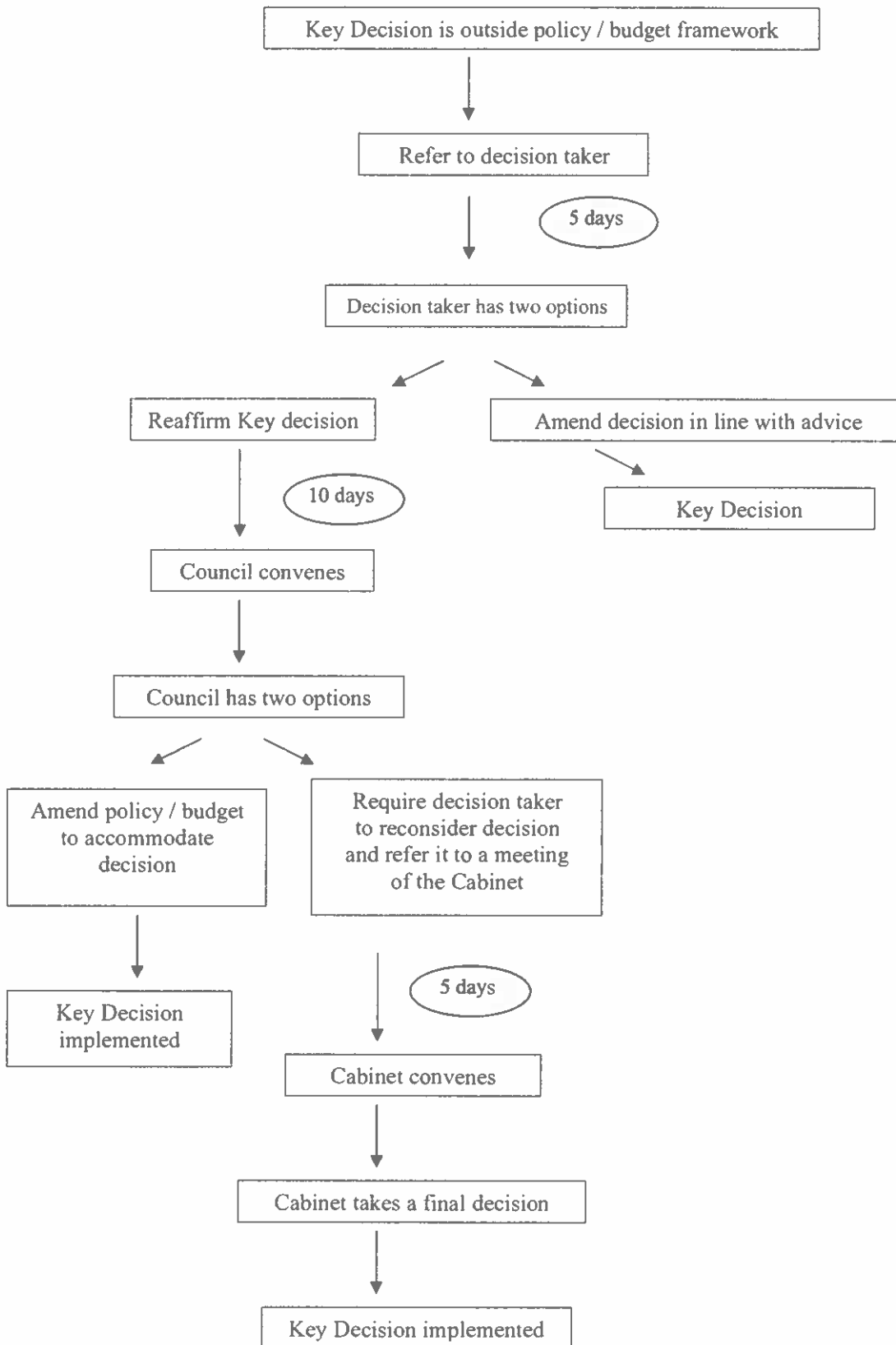
The operation of the provisions relating to call-in and urgency shall be monitored by the Democratic Services Manager, and a report submitted to Council annually with proposals for review if necessary.

PART FOUR – RULES OF PROCEDURE  
Section H– Call-In Procedure Rules





PART FOUR – RULES OF PROCEDURE  
Section H– Call-In Procedure Rules





**Report for:** Special Overview and Scrutiny Committee on 6<sup>th</sup> December 2016

**Title:** Further information in response to “Call-in” of decision of Cabinet of 15<sup>th</sup> November 2016 for the Sale of land and retail unit at Kerswell Close, Tottenham.

**Report authorised by :** Lyn Garner, Director Regeneration, Planning & Development

**Lead Officer:** Jon McGrath, Assistant Director Property & Capital Projects

**Ward(s) affected:** St. Anns and Seven Sisters

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

**1. Describe the issue under consideration**

- 1.1 The purpose of this report is to provide further information to support the Committee’s scrutiny of the issues raised in the “Call-in” of the Cabinet decision of 15<sup>th</sup> November 2016 in respect of the sale of land and retail unit at Kerswell Close.

**2. Cabinet Member introduction**

- 2.1 The Cabinet’s most recent decision on the sale of land and retail unit at Kerswell Close has been referred to the Scrutiny Committee. Officers have carefully gone through the issues raised in the call-in and have set out a full response in this report.

**3. Recommendations**

- 3.1 Committee are asked to note and consider all details contained within this report when making a decision on the most appropriate course of action for the sale of land and retail unit at Kerswell Close.

**4. Reasons for Call-In**

- 4.1 “The decision is outside the policy framework. A) The Housing Strategy states a requirement in respect of intermediate housing affordability that housing cost (including mortgage costs and service charge) should not exceed 45% of net income received by a household; and that the households which should have priority in the provision of such housing are those with a gross income of £40,000 per annum or less, with the income range £30,000 to £40,000 given for households in ‘Band D’. In contradiction to this, the homes in the proposed development by Pocket Living would be unlikely to cost at or less than 45% of net income received by a household on £30,000 to £40,000.”

When Cabinet took this decision (on 15 November 2016), the Council’s new Housing Strategy 2017-2022 had not yet been adopted by Full Council; this took place on 21

November 2016. As a consequence, for the purposes of the formal Policy Framework, the previous Housing Strategy 2009-19 was the strategy against which the Cabinet decision would have been tested.

The 2009-2019 Housing Strategy states (in section 1.1) that among the Council's priority actions will be to 'Develop and promote a range of flexible intermediate housing products'. Unlike the new strategy, the previous strategy does not go on to define affordability for intermediate housing or distinguish between different types of intermediate housing.

In the absence of a formal adopted local definition of intermediate housing, the default definition that would have to be applied would be that contained within policy 3.10 of the Mayor of London's London Plan, in line with the definition in the National Planning Policy Framework (see Appendix 1). That is that "*Intermediate housing should ... be homes available for sale or rent at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rent. Households whose annual income is in the range £18,100–£66,000 should be eligible for new intermediate homes. For homes with more than two bedrooms, which are particularly suitable for families, the upper end of this eligibility range will be extended to £80,000. These figures will be updated annually in the London Plan Annual Monitoring Report.*"

Paras 3.43 and 3.44 of the latest Annual Monitoring Report in February 2016, included the following update of the income cap: "*The thresholds are therefore to be updated as follows. Intermediate provision is sub-market housing, where costs ... are affordable by households on incomes of less than £90,000. This figure has been updated on the basis of the latest data (from 2015) on lower quartile house prices in London rounded, and is an increase from the figure of £71,000 in AMR 11. In his 2011 replacement London Plan, the Mayor set out a higher intermediate housing income threshold of £74,000 for households with dependents ... However, in line with the Government's approach to shared ownership, from April 2016 people wanting to access intermediate products will no longer be restricted in terms of the size of units they buy or rent. Therefore, a single £90,000 household income will apply to all intermediate housing; in effect removing the higher income cap for families in larger homes.*"

Therefore, the decision to dispose of the land to Pocket Living for the provision of affordable housing is consistent with the local, regional and national policy framework in place at the time that the decision was taken.

The terms agreed for the sale of the land are however consistent with the Council's new Housing Strategy 2017-2022, which has now been adopted as part of the Policy Framework. The call-in quotes the new Housing Strategy.

In particular, the call-in draws attention to two provisions (set out in Appendix D of the new Housing Strategy): first, that affordability should be defined as households paying up to 45% of their net income; and second that the Council's preferred intermediate provision is lower cost shared ownership affordable to households on gross incomes at or below £40k per annum. It is correct that Pocket homes are not

targeted at – and for the most part would not be affordable (by the Housing Strategy definition) to – households on gross incomes of below £40k. Pocket homes are not therefore considered to fit the definition of the Council’s preferred provision of intermediate homes.

However, Appendix D of the new Housing Strategy also clearly states the Council’s commitment to supporting intermediate homes that are affordable to the group defined as ‘Band 6’ (on incomes between £40k and £90k per annum). The chart entitled ‘Affordability of Housing Options’ sets out the rented options and ownership options available to seven income bands. The key to this chart makes clear that the Council prioritises the rented and ownership options for bands 1, 2 and 5 but also supports the rented and ownership options for bands 3 and 6. As set out in paragraph 6.4 of the Cabinet report, Pocket homes (by targeting households earning up to £90,000 per year) clearly meet the definition of intermediate purchase homes for people in band 6. The Strategy does not set strict criteria for when the Council should promote its ‘prioritised’ provision (for bands 1, 2 and 5) over its ‘supported’ provision (for bands 3 and 6), leaving such judgements to the Council’s discretion.

This discretion enables the Council to promote other strategic priorities set out in new Housing Strategy, for example, encouraging mixed tenures as set out in section 5.3. Within this section, the new Housing Strategy in particular states that the Council will:

- Move towards a more diverse and balanced portfolio of housing tenures, including intermediate products in the private and public sectors and affordable home ownership
- Use council-owned land to increase provision of these homes, including by agreeing more flexible finance options with developers.
- Make it easier to accept innovative schemes which have a single tenure – for example, all homes are for affordable rent, or homes are all one size where a good affordable housing mix can still be achieved within the wider area, and it is appropriate to that particular site.

Given these factors, and the fact that the Pocket homes currently planned in the Borough (including on the Kerswell Close site) are part of a wider context of intermediate homes across the borough, there is no evidence to suggest that the Council would be acting inconsistently with the approach set out in the Strategy by promoting the provision of Pocket homes on the Kerswell Close site.

The promotion of Pocket homes by the Council for this site is therefore consistent with the terms of the new Housing Strategy 2017-2022.

**4.2 “B) The Unitary Development Plan (Saved Policies) gives reasons why open spaces should not in general be built on, and states (8.1) that “Existing open spaces should not be built on unless an assessment shows the open space to be surplus to requirements”. The key objectives (8.3) include ensuring that flora and fauna with environmental value or amenity value is protected and encouraged.**

**Under OS17 the document states that the Council will seek to ‘protect and improve the contribution of trees, tree masses and splines to the local**

landscape character' including by (d) 'ensuring that when unprotected trees are affected by development, a programme of tree replanting and replacement of at least equal amenity and ecological value and extent is approved by the Council.

The area for sale to Pocket Living includes open space, a footpath and a considerable number of trees including large mature trees. These form an important barrier and provide absorption and mitigation for the local people and pedestrians against the pollution and emissions from the adjacent extremely busy and congested road junction. In contradiction to the spirit and wording of the UDP, the proposal fails to protect the flora with its environmental and amenity value, or the open (green) space, and the latter cannot be assessed as surplus to requirements. Also, a programme of replanting and replacement as per (d) above which could replace the local amenity and ecological effect of the trees on the site has not been proposed, nor does there appear to be any scope for such a scheme."

This aspect of the call in has two main points;

1) impact on open space which quotes supporting text but not policy grounds:

The actual policies to be considered that are relevant when assessing the open space grounds are as follows:

Policy SP13 of the Local Plan, which has superseded the UDP, provides the basis for protection of both designated and 'other' open spaces against inappropriate development. This space is undesignated and is therefore considered to be 'other' open space.

SP 13 sets out that 'New development shall protect and improve Haringey's parks and open spaces. All new development shall:

*Protect and enhance, and when and where possible, extend the existing boundaries of the borough's Green Belt, designated Metropolitan Open Land, designated Open Spaces, Green Chains, allotments, river corridors and other open spaces from inappropriate development;*

Emerging policy DM20 from the pre-submission version of the Council's draft Development Management DPD helps give effect to SP13. The Council is currently consulting on a Main Modification to this policy following the Examination in Public into the Plan to reflect the National Planning Policy Framework paragraph 74, which provides that existing open space should not be built upon unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements;
- or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

It would therefore be incumbent on any applicant to undertake an open space assessment in support of a development proposal, and where appropriate, set out how suitable replacement provision, if possible, would be delivered where a loss was

proposed at the time of the planning application. The scope for a possible design solution to ensure no net loss of open space by way of site re-configuration would need to be investigated. Without these assessments, which would be expected at application stage, it is not possible to say whether the proposal is in line with Council planning policy.

2) impact on trees/biodiversity where the call in quotes the policy OS17:

The relevant policies to be considered when assessing the trees/biodiversity grounds are as follows:

Saved UDP Policy OS17, Local Plan policy SP13 and Draft Development Management Policy DM19.

At the current time all three policies have some weight. They set out the following:

*OS17 (C): when unprotected trees are affected by development, a programme of tree replanting and replacement of at least equal amenity and ecological value and extent is approved by the Council.*

*SP13: All development shall protect and improve sites of biodiversity and nature conservation, including private gardens through its: protection, management, and maintenance of existing trees and the planting of new trees where appropriate.*

*DM 19- B Development that has a direct or indirect adverse impact upon important ecological assets will only be permitted where the harm cannot reasonably be avoided; and it has been suitably demonstrated that appropriate mitigation can address the harm caused.*

All of these policies talk about the potential for loss of trees and biodiversity impact to be mitigated against by design or replacement trees/habitat. These considerations would be dealt with through any planning application process, and it should be noted that mitigation measures or appropriate replacement off-site through a contribution to a tree planting programme could be acceptable rather than replacement on-site. As such as we do not have a detailed scheme it is not possible to say at this time whether the proposal is in line with Council planning policy.

In any case Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and section 70 (2) of the Town and Country Planning Act 1990 sets out that proposed development that conflicts with the Development Plan should be refused unless material considerations indicate otherwise. As such if a proposal, when submitted for planning permission, is not in line with Planning Policy but has other sufficient material considerations in its favour, such as the provision of housing, and in particular affordable housing, Planning Permission may still be granted.

As such at the time of considering the planning application, material considerations regarding the optimal use of land in the Seven Sisters Rd Area of Change, particularly in helping to deliver the spatial strategy and delivering affordable housing, may be a reason to grant planning permission in any case notwithstanding any mitigation proposed. Therefore it is only at the time of considering the planning

application with its supporting documents when it can be determined that any proposal was in line with Planning Policy or not.

**4.3 “There has been no consultation with or even information given to the local community, who should be given the opportunity to express their views given the importance of the issues.”**

The Council is not required to undertake consultation when selling a site. Consultation will be undertaken once a planning application is made by Pocket Living for the site. This will take the normal statutory process and residents will be able to express their views on the proposal which will be taken into consideration at Planning Committee. The sale is subject to planning.

**4.4 “The policy and presumption against building on open green space and removing trees requires very strong reasons to override, which have not been provided.”**

The land sale proposed to Pocket Living is subject to planning. The issue of building on open green space and the potential removal of trees will depend on the development proposed as part of the planning application. The policies that will apply when the planning application is considered have been set out above in section 4.2.

As set out above the mitigation to be proposed has not been discussed and this will take place at the planning application stage. Details of the mitigation is needed in order to make a decision as to whether the proposal is in line with planning policy.

**4.5 “The Pocket Living model fails to provide genuine affordability, as the 20% reduction from average market prices for a 1 bed flat which the company offers is achieved through the reduction of 24% in floor space below the London Standard for a 1 bed flat.”**

Units developed by Pocket Living do generally meet London Plan Space standards and exceed the standard for a 1 bed unit for 1 person by 1sqm. The model is acknowledged as an intermediate affordable home by the Mayor of London.

**4.6 “Given the 36 flats which are not genuinely affordable are to be built on the site, the proposed sale price of the land does not represent value for money for the Council.”**

The Council has commissioned an independent valuation which confirms that the price agreed with Pocket Living which is subject to planning represents best consideration under S123 of the Local Government Act 1972.

**4.7 “There has been no serious and thorough exploration of alternatives.”**

This is not correct. The Council intends (subject to Cabinet approval) to dispose of a portfolio of under-used infill sites to one of our preferred partner housing associations, following a tender exercise. This will enable development of up to 19



such sites for housing with a significant proportion of affordable homes including both affordable rented dwellings (with 100% nominations to the borough) and shared ownership homes. Kerswell Close was originally part of this portfolio of sites; it was considered that one site with a Pocket Living affordable sale product would provide a diversity of affordable tenure across the portfolio, addressing a wider market of Haringey first time buyers and supporting our strategic objective of increasing the supply of sale dwellings in the East of the borough where the balance of existing accommodation is predominantly rented.

The Kerswell Close site will yield (subject to planning) 36 Pocket homes (a provision of 100% affordable housing on the site). The separate Pocket development on the former Keston Centre site in West Green ward will yield a further 67 Pocket homes (along with 35 private homes for sale). This makes a total pipeline of 103 Pocket homes in Haringey, compared to an overall total of 407 intermediate rent and shared ownership homes completed in the last three years (with a further 154 given planning consent over the same period) – all targeted at lower income households than Pocket homes or other discount market sale homes – over the last three years.

It should also be noted that the Council's disposal will include a requirement that the Council's Intermediate Housing Policy (approved for consultation at October Cabinet) would be applied. Whilst this policy is currently out to consultation and has not been adopted yet, it does in draft form include a cascade of 5 priorities for Council nominees to intermediate housing schemes. This includes within the first priority group, existing social housing tenants who – in taking up an intermediate home – would release a social rented unit for re-letting. The draft policy also states that, where there is more than one nominee in a priority group, the household on the lowest income will be preferred. Therefore, households in band 5 (rather than band 6) may be successful in securing homes in schemes such as that proposed at the Kerswell Close site.

**4.8 “Where Council owned land is built on, the priority should be for those most in need, which would be served by building Council homes or failing that, other homes at social rents.”**

The strategic priorities set out in new Housing Strategy 2017-2022 include encouraging mixed tenures as set out in section 5.3. Within this section, the new Housing Strategy in particular states that the Council will:

- Move towards a more diverse and balanced portfolio of housing tenures, including intermediate products in the private and public sectors and affordable home ownership
- Use council-owned land to increase provision of these homes, including by agreeing more flexible finance options with developers.
- Make it easier to accept innovative schemes which have a single tenure – for example, all homes are for affordable rent, or homes are all one size where a good affordable housing mix can still be achieved within the wider area, and it is appropriate to that particular site.

Given these factors, and the fact that the Pocket homes currently planned in the Borough (including on the Kerswell Close site) are part of a wider context of

intermediate homes across the borough there is no evidence to suggest that the Council would be acting inconsistently with the approach set out in the Housing Strategy by promoting the provision of Pocket homes on the Kerswell Close site.

## **5. Variation of Action Proposed**

### **5.1 “Cancel the proposal to sell the area to Pocket Living.”**

The land has been identified as an area that could provide much needed affordable housing in the Borough. The proposal to sell the land to Pocket Living, subject to planning, is consistent with the Council's new Housing Strategy and will achieve best consideration. The sale reflects a wider strategy encouraging mixed tenures helping to achieve a balanced portfolio. Therefore it is deemed the best decision to sell the site to Pocket homes.

### **5.2 “Explore alternative options, including building Council homes or failing that, working with a Housing Association to build social homes on part of the area while protecting the trees and enhancing the attractiveness, environmental value and amenity of the green space. Options for the site of the building currently used as a shop should also be considered.”**

The site has been identified as one that fits with the Pocket Living model and will reflect the mix of tenures as set out in the Council's Housing Strategy. A number of other sites in the Borough will be developed to reflect a mix of affordable homes including affordable rented dwellings and shared ownership homes. The shop is subject to a lease and as the site is being sold in its entirety to Pocket Living they will explore options for the building with the leaseholder.

### **5.3 “The local community including residents of the estate/s, the residents’ association; and environmental and other relevant organisations should be informed, consulted and involved in decision making about the future of the area.**

The local community will be consulted by Pocket Living as part of the design and planning process. This will include proposals for site including infrastructure, green space and parking.

## **6. Background information**

### **6.1 The Cabinet Report from November 2016 acts as background information for the decisions taken by Cabinet.**

### **7. Contribution to strategic outcomes** N/A

## **8. Statutory Officers comments**

### **8.1 Comments of the Chief Finance Officer and financial implications** N/A

### **8.2 Comments of the Assistant Director of Corporate Governance and legal implications** N/A

**8.3 Equalities and Community Cohesion Comments**

N/A

**8.4 Head of Procurement Comments**

N/A

**9. Use of Appendices**

Appendix 1 –National Planning Policy Framework & Local Plan definitions

**10. Local Government (Access to Information) Act 1985**

Background document

Housing Strategy 2017-2022 – Cabinet 18<sup>th</sup> October 2016 & full Council 21 November 2016

## **Appendix 1 – National Planning Policy Framework & Local Plan definitions**

### **NATIONAL PLANNING POLICY FRAMEWORK:**

#### **Annex 2: Glossary**

**Affordable housing:** Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision. [...]

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

### **LONDON PLAN:**

#### **Policy 3.10 Definition of affordable housing**

A Affordable housing is social rented, affordable rented and intermediate housing (see para 3.61), provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision

3.61: Intermediate housing should meet the criteria outlined in Policy 3.10 and be homes available for sale or rent at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rent. Households whose annual income is in the range £18,100–£66,000 should be eligible for new intermediate homes. For homes with more than two bedrooms, which are particularly suitable for families, the upper end of this eligibility range will be extended to £80,000. These figures will be updated annually in the London Plan Annual Monitoring Report. [Note: This was update to £90,000 in the last AMR]