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26 July 2019

To: All Members of the Overview and Scrutiny Committee

Dear Member,

Overview and Scrutiny Committee - Monday, 29th July, 2019

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 RED HOUSE YARD, 432 WEST GREEN ROAD N15 3PJ  
(PAGES 1 - 28)**

d)Report of the Director for Housing, Regeneration and Planning  
responding to the Call in

e)Report of the Monitoring Officer and Director of Finance on the Call in -

**8. CALL IN RED HOUSE YARD 432 WEST GREEN ROAD N15 3PJ  
(PAGES 29 - 36)**

To consider exempt information pertaining to item 6d

Yours Sincerely

Ayshe Simsek  
Acting Democratic Services and Scrutiny Manager  
0208 489 2929

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Report for: **Special Overview and Scrutiny Committee on 29<sup>th</sup> July 2019**

Title: **Call-in of Cabinet's decision relating to Disposal of Red House Yard, West Green Road, N15**

Report  
Authorised by: **Dan Hawthorn, Director of Housing, Regeneration and Planning**

Lead Officer(s): **Steve Carr, Interim Assistant Director of Economic Development & Growth and Alan Benson, Interim Assistant Director, Housing**

Ward(s) affected: **St Ann's**

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

## **1. DESCRIBE THE ISSUE UNDER CONSIDERATION**

- 1.1. The purpose of this report is to provide further information to support the Overview and Scrutiny Committee's consideration of the issues raised in the 'call-in' of the Cabinet decision of 9<sup>th</sup> July 2019 in relation to the disposal of Red House, 423 West Green Road N15, to Magic Living (part of the Paul Simon Magic Homes Group).

## **2. CABINET MEMBER INTRODUCTION**

- 2.1. My introduction to the original report considered by Cabinet on 9<sup>th</sup> July 2019 set out the case as I see it for that decision. This report deals with the specific points raised in the call-in, and I would simply and clearly confirm my view that nothing raised in the call-in or set out in this report changes my view that the decision taken on 9<sup>th</sup> July 2019 was the right one.

## **3. RECOMMENDATIONS**

- 3.1. It is recommended that the Committee take into account the information in this report when considering its decision on this matter.

## **4. BACKGROUND**

### The decision and the call-in

- 4.1. At its meeting on 9<sup>th</sup> July 2019, Cabinet made a number of decisions relating to the Disposal of Red House, 423 West Green Road to Magic Living/Paul Simon Magic Homes Group and acquisition of homes in the proposed site redevelopment for retention as social rented Council housing. The decisions and the report are published on the Council's website and are accessible at the link provided in Section 10 below.
- 4.2. Following the publication of the draft minutes of the meeting on 9<sup>th</sup> July 2019, a 'call-in' of the decision was received and deemed valid in line with the criteria set out in

Part Four, Section H of the Council's Constitution. Accordingly, the matter is now to be considered by the Overview and Scrutiny Committee.

**Reasons for the call-in**

4.3. The call-in form gives six primary reasons for the call-in and several sub-reasons:

**1. Outside the policy and budget framework and non-compliance with priorities outlined in the Borough Plan:**

The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57.

**2. Value for money/OJEU:**

The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance.

**3. Non-Compliance with the Borough Plan:**

Priority 1 of The Borough Plan states: "*One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards*". The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority.

**4. Alternative Options:**

There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council's current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.

**5. Due Diligence on the Developer**

There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council.

**6. The Cabinet Report**

The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts.

4.4. The form lists these as the six primary reasons for call-in each with sub-reasons. This report provides an officer response to the given reasons for call-in, and the proposed variations to the decisions made by Cabinet on 9<sup>th</sup> July 2019. The report of the Monitoring Officer and Section 151 Officer, which is also presented as part of this item, makes recommendations about whether any of the decisions fall outside the financial and policy framework.

4.5. **REASON 1**

**Outside policy/budget framework.**

Reason 1a

*“Planning: The proposal is not compliant with the current DPD brief which envisages the inclusion of the Mitalee Community Centre in SA57.”*

Response

- 4.6 These planning matters were considered both as part of the planning application and the Cabinet report (Part A, para 6.10). The land agreement with Paul Simon Magic Homes as set out in the Cabinet Paper was based on the assumption that the project would be compliant with planning policy. Planning Committee on 8<sup>th</sup> July resolved to grant the planning application and the s.106 agreement is being finalised prior to the decision notice being issued. The background planning factors taken into consideration and summarised in Part A para 6.10 in the land disposal report to Cabinet are as below.
- 4.7 Policy DM55 of the DM DPD states that, where development forms only part of a larger site allocation, a masterplan must be submitted with the application in order to demonstrate to the Council’s satisfaction that the proposal would not prejudice the future development of other parts of the site allocation, or frustrate the delivery of the wider site allocation requirements. The applicant has provided an indicative masterplan for the entirety of SA57, within the submitted Design and Access Statement (Appendix A). The masterplan includes the community facility located immediately to the south of the application site (Mitalee Centre), which is located within the boundary of SA57 but is unable to form part of this development proposal as it is being rented on a long lease.
- 4.8 The indicative schematic submitted with the application shows how potential future development on the Mitalee Centre site can be achieved, with a similar building scale, massing and layout to Block C of the proposed development. The proposed development has been designed without windows on the southern side of Block C so that the potential masterplan can be completed without adversely affecting the living conditions of future occupiers of that block at a later date. This arrangement is considered an appropriate potential design for the remaining part of SA57 and demonstrates that the approved proposed development does not result in a reduction in capacity on the site.
- 4.9 The masterplan would not prejudice any of the site-specific requirements or development guidelines of SA57. As such, it is considered that the applicant has submitted a logical and workable masterplan that is acceptable as it complies with the requirements of Policy DM55.
- 4.10 The Secretary of State has considered two appeals in the borough, Cross Lane in 2017 and the Goodsyrd Site, Tottenham in 2019, which involved the development of only part of a site allocation. The Secretary of State granted planning permission in both and confirmed that the sites in a site allocation do not need to be delivered in one planning application to be acceptable.

Mitalee/Planning

- 4.11 The Council is the freeholder of the land where the Mitalee Centre (which is also known as the West Green Community Centre) is situated and which is leased to the Bangladeshi Women's Association in Haringey Ltd (BWAH) on a long lease term as set out in **Part B**, the exempt part of this call in report.
- 4.12 – 4.13 The response on this is set out in **Part B**, the exempt part of this call-in report.

Reason 1b:

*"The Pub is also not part of SA57 and contravenes policy DM50 on Public Houses (paragraphs 7.19 and 7.20). Insufficient evidence has been provided on the non-viability of the existing pub as per paragraph 7.21 of DM50".*

Response

- 4.14 This was fully considered as part of the Planning Committee consideration of the planning application on 8<sup>th</sup> July. From a Planning point of view the inclusion of the former pub was considered to be a benefit of the scheme given the opportunity to improve the Locally Listed Building in particular. The planning issues were also considered in the Cabinet report Part A, Para 6.10.
- 4.15 The application site includes the 'Golden Sands' bar and restaurant, which was formerly the Duke of Cambridge public house. The building is locally listed. Policy DM50 Part A of the Development Management DPD 2017 states that the Council will resist changes to the use of public houses unless it can be demonstrated that: (a) the public house is no longer viable financially; (b) all feasible options for re-provision of a public house on site have been explored; or (c) redevelopment of the site would secure an overriding public benefit. All these tests were satisfied in the planning process.
- 4.16 The proposed development would refurbish and extend the former public house to enable its conversion to a church, including a street-facing café at ground floor and nursery at rear which would both be operated by the church.
- 4.17 The existing building has ceased operations as a traditional public house (Use Class A4) and instead now operates as a bar-restaurant (Use Class A3/A4). Bar-restaurant operations appear to have been active on this site since at least 2009. As such the viability limb of DM 50 is not considered to be engaged. The community element of the use is replaced in the street facing café which is proposed.
- 4.18 The relocation of the existing Derby Hall Church and associated nursery into an extended and renovated former public house building 'frees up' existing land adjacent to the former care home, which enables the remainder of the site to be redeveloped on a more comprehensive basis for residential purposes. This includes the provision of more than 50% social rented housing, plus other benefits including improvements to the size and landscaped quality of the adjacent park and an improved public realm.
- 4.19 The proposed development would also facilitate the refurbishment of the locally listed building, which has been significantly damaged and unsympathetically altered by unauthorised development over the years. The refurbishment would incorporate

improvements to important elements of the building's external fabric, with features such as the ground floor window openings reverting to their original design and appearance. Unauthorised extensions such as the visually dominant street-fronting awning would also be removed.

- 4.20 Although an informal community meeting place would be replaced, there are several other public houses and bar-restaurants on West Green Road and elsewhere in the vicinity, including on the nearby Green Lanes. Furthermore, the church would incorporate a self-contained café at ground floor level thereby replacing the existing bar-restaurant space, which would provide an alternative community space as well as enabling and retaining an active frontage on this part of the site.
- 4.21 Therefore, in any event, the proposed extension, renovation and conversion of the former public house into a church and nursery would facilitate the restoration of a visually prominent and locally listed heritage asset and would also enable the comprehensive development of this allocated site for housing including a substantial and policy-compliant provision of low-cost affordable rental housing. As such, it is considered that the change of use of the former public house as proposed would secure an over-riding public benefit and would therefore be acceptable in principle in accordance with Policy DM50 (A)(c).
- 4.22 There is also no policy restriction on the development containing parts outside of the site allocation. As set out above, there are a number of public benefits arising from including the former public house within the development and the change of use is acceptable in planning terms.

#### Reason 1c

*“There is a lack of clarity on the ownership of 435 West Green Road and lack of evidence around the rights the church holds to land or access to land. Councillors are concerned to receive clarity over this ownership of the pub and the church and whether the Council should have considered opening up negotiations with the other interested parties to the red line site. A call-in of the decision would enable clarity and further investigation into this matter”.*

#### Response

- 4.23 These issues were covered in Part A, Section 6 giving the background on the site. The history of the Council's relationship with the church is set out in the Cabinet Report of February 2013 and February 2015 cited as background documents for the July 2019 Cabinet report. The Council has no current direct relationship with the owners of the church or the owner of the pub. The Council's previous attempts to assemble this wider site and reach agreement with the church did not reach a satisfactory conclusion. The current development is therefore in response to a land assembly by Paul Simon Magic Homes and the proposed land agreement with Paul Simon Magic Homes will be contingent on PSMH securing these two land interests as part of the development of the wider site.
- 4.24 The Land Registry shows that the registered proprietor (title absolute number MX464250) of the public house known as 435 West Green Road is Violet Holdings



Ltd, a company incorporated and registered in Cyprus. As above, the Council does not have a direct relationship with the owner of the pub and will have an agreement in respect of the Red House site with Paul Simon Magic Homes.

4.25 **The background to the church interest in the car park is set in part B of the Cabinet Report and is further addressed in Part B, the exempt part of this report.**

4.26 **REASON 2:**

**Value for Money/OJEU:**

Reason 2a

*“The proposal, to dispose of this significant council asset to a private interest by private treaty (i.e. without marketing it, inviting other interests to bid and evaluating/comparing alternative bids), appears contrary to procurement guidance”.*

Response:

4.27 The interpretation in the Reason given on the form is not correct. The nature of the transaction is clearly described in the Part B of the Cabinet Paper, Section 6.27 onward. The main object of the contract between the Council and Paul Simon Magic Homes is not an obligation to carry out works for the Council but is rather a standard property transaction. This is an agreement for a land disposal and an acquisition of residential units after they have been completed. The Council will buy the new units if they comply to certain standards but the design and specifications of the development are not those of the Council and the Council has not procured or commissioned the scheme from Paul Simon Magic Homes.

4.28 As the Cabinet Paper clearly stated, the Council is disposing of its land interest, the sale of land and/or the acquisition of properties do not fall within the Public Contracts Regulations 2015. The Council can dispose of a land interest as long as it meets both its legal and fiscal duties. The sale of the Red House site is compliant in both these respects as it has satisfied s.123 Local Government Act 1972.

Reason 2b

4.29 *“The purchasing of 46 units of housing on the site suggests this is more than a land disposal as Haringey Council will (a) receive an economic benefit from the site (the 46 units) and (b) be involved in specifications of those units to meet Homes for Haringey standards (see Cabinet Report 6.14 and Borough Plan below).”*

Response:

4.30 The nature of the proposed agreement with Paul Simon Magic Homes is as set out above and in Part B, Heads of Terms, section of the Cabinet Report. As stated in the Cabinet Paper, the Council is disposing of its land interest, the sale of land and acquisition of properties do not fall within the Public Contracts Regulations 2015. The Council can dispose of a land interest as long as it meets both its legal and fiscal duties. The sale of the Red House is compliant in both these respects as it has satisfied s.123 Local Government Act 1972.



Reason 2c

*“The report states officers consulted a QC for assurance and councillors would like more clarity about the nature of that QC advice on whether the land disposal with the purchase of housing requires procurement/tender under OJEU procurement law. Calling in this decision would provide OSC with a chance to satisfy councillors that the absence of a bidding process for the development was value for money and transparent”.*

Response:

- 4.31 This is set out in **Part B**, the exempt part of this call-in report.

**REASON 3**

Non-Compliance with the Borough Plan:

*“Priority 1 of The Borough Plan states: ‘One of our very highest priorities is to start a new era of council housebuilding in the borough, particularly using our own land. We will set and publish clear standards for the quality and design of these homes, and ensure every subsequent new council homes meets those standards’. The proposed sale of Council-owned land to Paul Simon seems not to align with this very high priority”.*

Response

- 4.32 The Cabinet report cited the policy context under “reasons for decision” at paragraphs 4.1 - 4.3. Part of the recommendation was that two blocks of flats comprising the 46 new-build homes are to be constructed within the proposed development on the land which the Council is selling to Paul Simon Magic Homes, the freehold of these new build units will then be acquired (by the Council) when completed. These 46 new homes will directly contribute to the Council’s target of a 1,000 new homes.
- 4.33 The various means for delivering the 1,000 new homes target in the Borough Plan were fully set out in the report on the Council’s Housing Delivery Programme considered and approved at July 2019 Cabinet. The primary focus is on bringing forward direct delivery by the Council on its own land. But it was noted and approved that the Council will need to make full use of other opportunities as they arise that will enable the delivery of Council homes at greater pace and volume than might be possible through the direct delivery route alone. This includes entering into contracts with developers to acquire homes on new developments. Sometimes this will be homes that were already identified as affordable homes to rent through planning, sometimes homes that were shared ownership that the Council can convert to social rent and sometimes homes that were originally intended for market sale. And sometimes this approach will be used on schemes where Council land has been brought together with other land ownerships in order to achieve a better overall outcome. Homes acquired in this way will all come at different price points and will all have corollary benefits including supporting the delivery of overall housing numbers and supporting wider Borough Plan objectives.

- 4.34 Red House is just such an opportunity. The Council did consider the option for this site to be developed directly by the Council rather than acquiring them through the contractual relationship with Paul Simon Magic Homes. That option was not pursued for the reasons set out in answer to question 4 (alternative options) below.

#### **REASON 4**

**“Alternative Options:** *There has been an inadequate exploration and evaluation of alternative courses of action that appear more in line with the council’s current stated policy preferences. The case for a less risky development plan that could deliver more social housing units needs further consideration.*

*The option for building/contracting directly has not been adequately addressed. The alternative of an in-house option lacked costings and denied councillors a proper assessment of the viability of this course of action. The possibility of more social housing units, better control over the speed, quality and timing of delivery by developing the site ourselves has not been taken fully into account. The risks of a private partner failing is also not adequately addressed.*

*There have been contradictory reports given to councillors over the council’s capacity to develop the site. The report appears to have drawn its recommendations a priori without providing a detailed account of risks or advantages of the Council developing the site. There is an unwarranted assertion that Paul Simon could develop the site more quickly than the Council. The only evidence available suggests the reverse. Paul Simon applied for planning permission which expired after three years (in 2018) with no development taking place.*

*We would like the decision paused at this stage to allow further exploration and investigation of both the alternative options and to fully clarify the recommended decision is within the budget framework.”*

#### **Response**

- 4.35 The alternative delivery options were carefully considered, as set out in the Cabinet Report paragraphs 5.1 - 5.4, Options A – C. In summary, these are the factors which informed the Cabinet report consideration of options and were material to the recommendations and content of the report approved by Cabinet.
- 4.36 The option to provide grant funding to a Housing Association in order to deliver affordable homes on the Red House was discounted because of the Council’s stated aim to deliver its own Council housing. This option would have also had many of the disadvantages if the direct delivery option, discussed below. The option not to acquire any homes on the Red House site at all was also discounted because this would have resulted in a lower level of affordable housing and no Council rent homes.
- 4.37 The alternative option given the most consideration was the one alluded to in this reason for call-in, i.e. for the Council not to proceed with the disposal of the site to the Paul Simon Magic Homes entity Magic Living Ltd, but rather to develop the scheme directly. Cabinet decided not to pursue this option for the reasons set out in detail in the Cabinet report, that is:

- It would take significantly longer for the Council to work up an alternative scheme, achieve a planning consent and get a start on site, delaying the delivery of homes – including new Council homes – and delaying savings in the cost of Temporary Accommodation for the Council's General Fund.
- There is a planning risk, because the planning status of the site requires that the whole site be brought forward together into a single development. There would be major challenges for the Council in trying to bring in the land it does not own (the pub and the church) and it might not be able to achieve planning permission if it tried purely on the part that it already owns.
- Fewer homes would be delivered in any scheme solely on the Council-owned land, which would be directly in tension with the Borough Plan objectives on delivering new homes. Issues such as rights-to-light and access requirements for neighbouring users would reduce the overall density of any stand-alone development.
- Any such Council scheme would also not deliver the other benefits - an improved church building, community space, and café and nursery provision - which the Magic Living scheme will achieve, and would lose the green space.

4.38 Therefore, while it was accepted that the overall costs per home of direct delivery could be less than the costs of acquiring the homes from Magic Living, this was outweighed in the balance by this range of factors, which meant that the arrangement being entered into with Magic Living represented the best option overall.

4.39 **REASON 5:**

**Due Diligence on the Developer**

Reason 5a

*“There appears a lack of due diligence carried out on Paul Simon Magic Homes (PSMHG) and any assessment of risk to the council.”*

4.40 Due Diligence was carried out on Paul Simon Magic Homes. This was set out in Part B of the Cabinet Report. The detailed response to the call-in question are set out in **Part B**, the exempt part of this report.

Reason 5b

*“This is particularly important given the uncertainty in the UK construction sector over Brexit, general overheating in the London market and the collapse in the past month of Keir, Shaylor and (last week) Aspin. Councillors would like assurance that PSMH is sufficiently financially healthy to take on such a large development and whether there is any underwriting or collateral being provided by the Council. We believe that a call-in would allow time for scrutiny to assess what guarantees/liabilities the Council has in relation to any financial underwriting (advance deposits due to PSMHG) and whether that would fall outside the budgetary framework?”*

Response

- 4.41 The Construction Sector Risks in relation to PSMH were considered in Part B of the Cabinet Paper. The more detailed response to this call-in question is set out in **Part B**, the exempt part of this report.

**REASON 6:**

**The Cabinet Report**

*“The report to the cabinet meeting is not thorough enough and could prove misleading because it includes assumptions and assertions that have, on subsequent questioning and investigation, found to be either erroneous, or inadequately supported by facts. For example: the inconsistency with current planning brief for the site; the estimation of any likelihood of planning complications for alternative options brought by the Authority; assertions about presumed lack of organisational capacity within the authority and HfH; the lack of adequate comparisons of actual and likely financial costs and benefits and potential risks to the Authority”.*

Response

- 4.42 Officers are satisfied that the report is thorough and covers all the relevant considerations at the necessary level of detail.
- 4.43 Officers are not aware of any erroneous claims in the Cabinet Paper.
- 4.44 The report addresses the compliance with the DPD planning brief and indeed since the report was written the development has received planning consent as compliant with current planning policy.
- 4.45 As set out above, alternative direct delivery options were considered and set aside because of the timing of delivery and the risk of achieving planning, and this is referenced in the report.
- 4.46 To take on a new mixed use development of a church and its community space as well as housing – including a land assembly exercise requiring new dialogue with the pub and church owners – would have a significant detrimental impact on the Council’s capacity to deliver other projects in the Council housing delivery programme and across its wider property function. The Council does have capacity to deliver housing on its own land (Red House only) and officers did carry out an indicative comparable assessment which concluded that such a direct delivery scheme would take longer for the Council to deliver through its own capacity than through the developer and therefore did not meet policy objectives of early delivery of Council homes, and would also likely deliver less good outcomes.
- 4.47 It is not correct to say that no comparison with a Council scheme was carried out. Whilst no direct comparison between a Council scheme and the proposed developer scheme are made in the Cabinet paper itself, the conclusions are based on an indicative assessment carried out by officers, the conclusions of which were discussed in the Cabinet Paper (Part B).

**SECTION 2 of Call-In form: Variation of Action Proposed:**

- 4.48 Officers have considered the proposed section 2 of the Call-in form: Variation of Action Proposed:

**“Defer the decision at this stage”** – Response: The deferral of the decision may have consequences for the draft terms of the agreement with Paul Simon Magic Homes. A significant deferral would mean that the developer could not start on site in the autumn as was planned and would thus put at risk the delivery of Council homes beyond the timeframe and longstop date given in the draft heads of terms approved at Cabinet.

**“Refer the issue to the Relevant Scrutiny Panel”** – Response: Were the project to be referred for full review by Scrutiny there would be such a delay in the implementation of the developer scheme as to make it possible that it will be unable to proceed under the same terms as approved at Cabinet and either new terms and timing would need to be negotiated and agreed at Cabinet.

**5. CONTRIBUTION TO STRATEGIC OUTCOMES**

- 5.1. The contribution of the decision in question to strategic outcomes was set out in the report to July 9<sup>th</sup> 2019.

**6. STATUTORY OFFICER COMMENTS**

**Finance**

- 6.1. The Section 151 Officer has been consulted in the preparation of this report.
- 6.2. The financial implications of the decisions taken by Cabinet were detailed in the July 9<sup>th</sup> 2019 cabinet report.

**Legal**

- 6.3. The Assistant Director of Corporate Governance has been consulted in the preparation of this report, and his views are as set out in his Monitoring Officer report.

**Equalities**

N/A

**9 USE OF APPENDICES**

**10. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

Report to 8th July Cabinet regarding the proposed disposal of Red House Yard 423 West Green Rd, N15 to Paul Simon Magic Homes Group and agreement to acquire homes within the proposed site development for retention as social rented Council housing  
Cabinet’s decisions: <https://www.minutes.haringey.gov.uk>



**Report for:** Special Overview and Scrutiny Committee  
29<sup>th</sup> July 2019

**Title:** Joint report of the Monitoring Officer and the Chief Finance Officer on the Call-In of a Decision taken by the Cabinet on 9<sup>th</sup> July 2019 relating to the disposal of The Red House Yard, 423 West Green Rd N15 3PJ

**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 9<sup>th</sup> July 2019 relating to the disposal of the Council's freehold interest in The Red House, 423 West Green Rd N15, to Magic Living Ltd, part of Paul Simon Magic Homes Group (PSMHG), and the acquisition by the Council of the freehold interest in two blocks of property comprising 46 new-build homes within the proposed site development, as well as open green space, 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 19<sup>th</sup> July 2019, a call-in request was received in relation to the Cabinet decision taken on 9<sup>th</sup> July 2019 on the recommendation to dispose of the Council's freehold interest in The Red House, 423 West Green Rd N15, to Magic Living Ltd, part of Paul Simon Magic Homes Group (PSMHG), and the acquisition by the Council of the freehold interest in two blocks of property comprising 46 new-build homes within the proposed site development, as well as open green space. A copy of the Cabinet report dated 9<sup>th</sup> July 2019; the published draft minutes and the call-in request all form part of the published Agenda pack

distributed to Members of the Overview and Scrutiny Committee, and so are not reproduced again here as appendices to this report. A copy of the exempt Part B report and exempt minutes also form part of the Agenda pack distributed to Members of the Overview and Scrutiny Committee, and so are not reproduced again here as appendices to this report.

**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 his view that the Cabinet decision is within the budgetary framework. The request also asserts that the decision does not comply with priorities outlined in the Borough Plan.

**7.3** In summary, a key concern in the call-in, is the assertion that the decision is not compliant with the current Development Plan Document approved by full Council, a document which forms part of the Policy Framework. It is also asserted that the disposal may not deliver value for money in questioning whether procurement guidance / law has been followed. It is also asserted that the disposal is not in line with the Borough Plan priority on Council house building in the Borough. It is also asserted that greater due diligence needs to be undertaken into the financial viability of PSMHG in the current financial climate in the UK construction sector. It is also asserted that the report to Cabinet was not thorough enough and could prove to be misleading.

**7.4** The request also detailed alternative courses of action, namely:

- “Defer the decision at this stage”.
- “Refer the issue to the relevant Scrutiny Panel for a full examination of all the possible valid options and in particular the direct development of the whole or part of the council owned site for social housing, against VFM and current policy criteria. Revisit the decision of how to proceed, taking into account the findings of Scrutiny”.
- Pause the decision

## **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 19<sup>th</sup> July 2019, and determined that it met the 6 criteria for validity as set out in the Call-In Procedure 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 paragraph 9 below.

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

- a. That the decision is outside the policy framework in planning terms in that it contradicts the Development Plan Documents brief which envisages the inclusion of the Mitalee Community Centre in SA57; the Pub is not part of SA57 and so contravenes policy DM50 paragraphs 7.19 and 7.20 of DM50; insufficient evidence has been provided on the non-viability of the pub contrary to paragraph 7.21 of DM50. In addition, greater clarity is required around the ownership of the neighbouring property at 435 West Green Road, and the need to investigate whether negotiations with other interested parties to the red line site is required.
  - b. That the disposal and subsequent purchase of 46 housing units may not represent value for money for want of compliance with procurement guidance / law.
  - c. That the disposal does not comply with Borough Plan Priority 1 around a new era of council housebuilding in the Borough in terms of the Council's ability to set quality and design standards.
  - d. That a further due diligence exercise needs to be undertaken into the financial viability of PSMHG given the prevailing financial climate in the UK construction sector.
  - e. That the report which Cabinet made its decisions on was "not thorough enough and could prove misleading"
- 8.4** As stated at paragraph 7.4 above, the request also set out alternative courses of action.
- 8.5** In the Monitoring Officer's view, only the points raised at paragraph 8.3 a. need to be considered in this report, on the basis that by their nature, the other points do not amount to policy framework issues – in particular as can be seen from paragraph 6.6 above, the Borough Plan does not form part of the policy framework - and as such are dealt with in the Director's report to this Committee.

## **9 Development Plan Document (DPD)**

- 9.1** The Development Plan Document is part of the policy framework, and is adopted by full Council. The question of whether the Cabinet's decision on 9<sup>th</sup> July 2019 was contrary to the DPD (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 merits of the assertions made in the call-in document.
- 9.2** It is the Monitoring Officer's view that the Cabinet's decision was consistent with, and not contrary to, the DPD for the reasons given in the report of the Director Housing, Regeneration & Planning to this Committee. It is understood that Policy DM55 of the DM DPD states that, where development forms only part of a larger site allocation, a masterplan must be submitted with the application in order to demonstrate to the Council's satisfaction that the proposal would not prejudice the future development of other parts of the site allocation, or frustrate the delivery of the wider site allocation requirements. It is further understood that the applicant has provided an indicative masterplan for the entirety of SA57. The

masterplan would not prejudice any of the site-specific requirements or development guidelines of SA57. Against that background, the Director has concluded that the applicant has submitted a logical and workable masterplan that is acceptable as it complies with the requirements of Policy DM55.

- 9.3** It is also understood that DM50 of the DM DPD states that the Council will resist changes to the use of public houses unless it can be demonstrated that: (a) the public house is no longer viable financially; (b) all feasible options for re-provision of a public house on site have been explored; or (c) redevelopment of the site would secure an overriding public benefit. Paragraphs 7.19 and 7.20 referred to in the call-in are supportive text to the policy, but are not direct policy. The Council firstly considers that DM50 is not engaged, as the premises now operates as bar-restaurant (Use Class A3/A4) instead of a traditional public house (Use Class A4). Further, the public benefits arising out of the development as a whole (restoration of a visually prominent and locally listed heritage asset and comprehensive development of this allocated site for housing including 54.9% to be social rented units) would secure an over-riding public benefit and therefore, regardless of whether the premises was still in use a public house, a change of use would be acceptable under DM50(A)(c). Where DM50(A)(c) is engaged, there is no requirement to provide viability evidence pursuant to DM50(A)(a). Consequently, the Director has concluded that the development of those parts of the site comprising the 'Golden Sands' bar and restaurant does not contravene policy DM50.

## **10 Conclusion**

- 10.1** For the above reasons, the Monitoring Officer concludes that the Cabinet's decision was not outside of the policy framework.

## **11 The Section 151 Officer's Assessment**

- 11.1** The current budget framework for the Council is detailed in the "2019/20 Budget and Medium Term Financial Strategy (2019/24)" report, approved by Full Council at its meeting on 25th February 2019. The decision to progress with this scheme falls within this 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**

The Chief Finance Officer's comments are set out above.

### **Legal implications**

The Monitoring Officer's comments 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

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## Part Four, Section H

# Call-In Procedure Rules

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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

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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

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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**

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- (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.

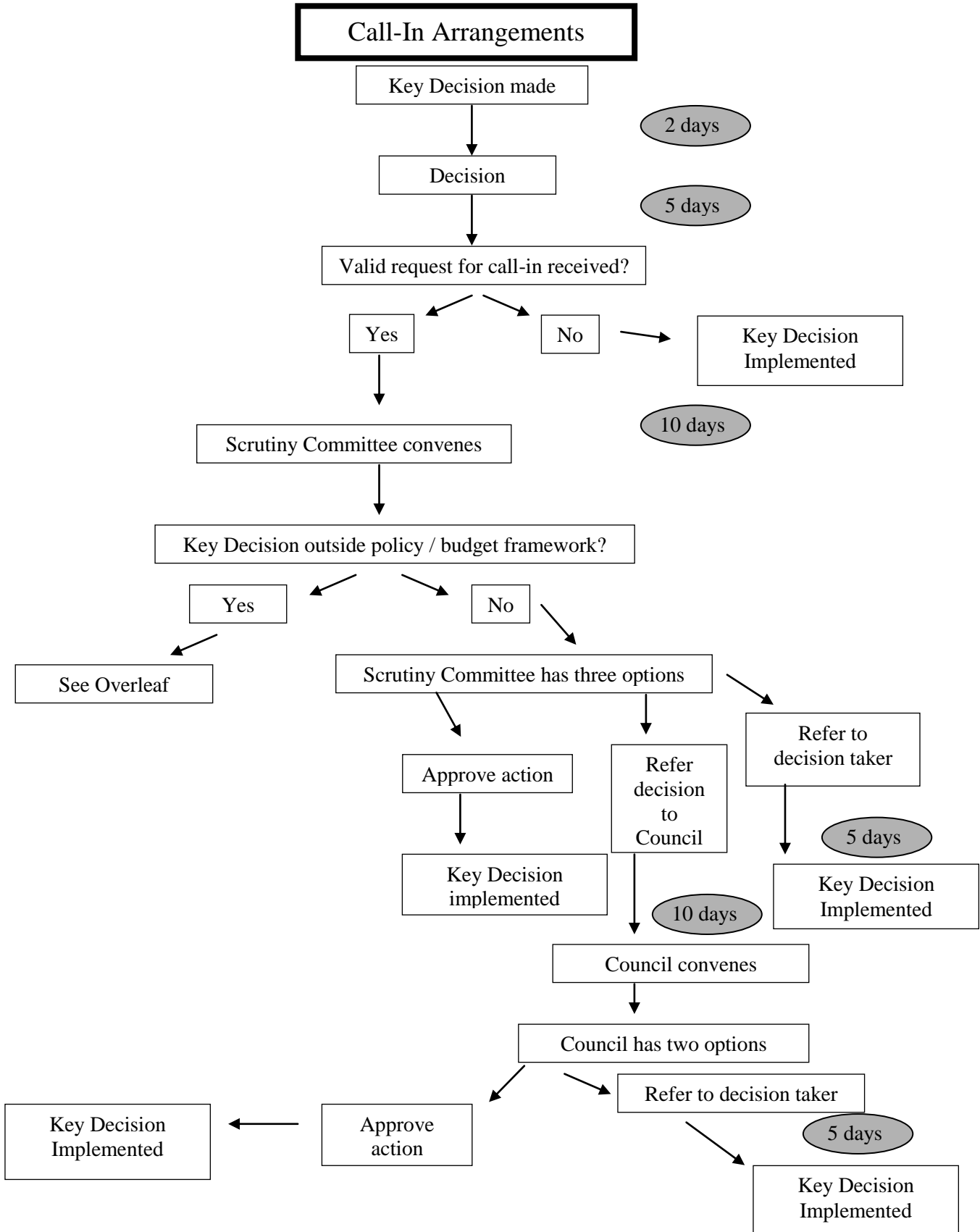
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- (b) The Overview and Scrutiny Committee may select a forthcoming decision and examine the issues around it.
- (c) In order not to obstruct the Council in its business, the Overview and Scrutiny Committee may call-in a key decision in advance of its 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.

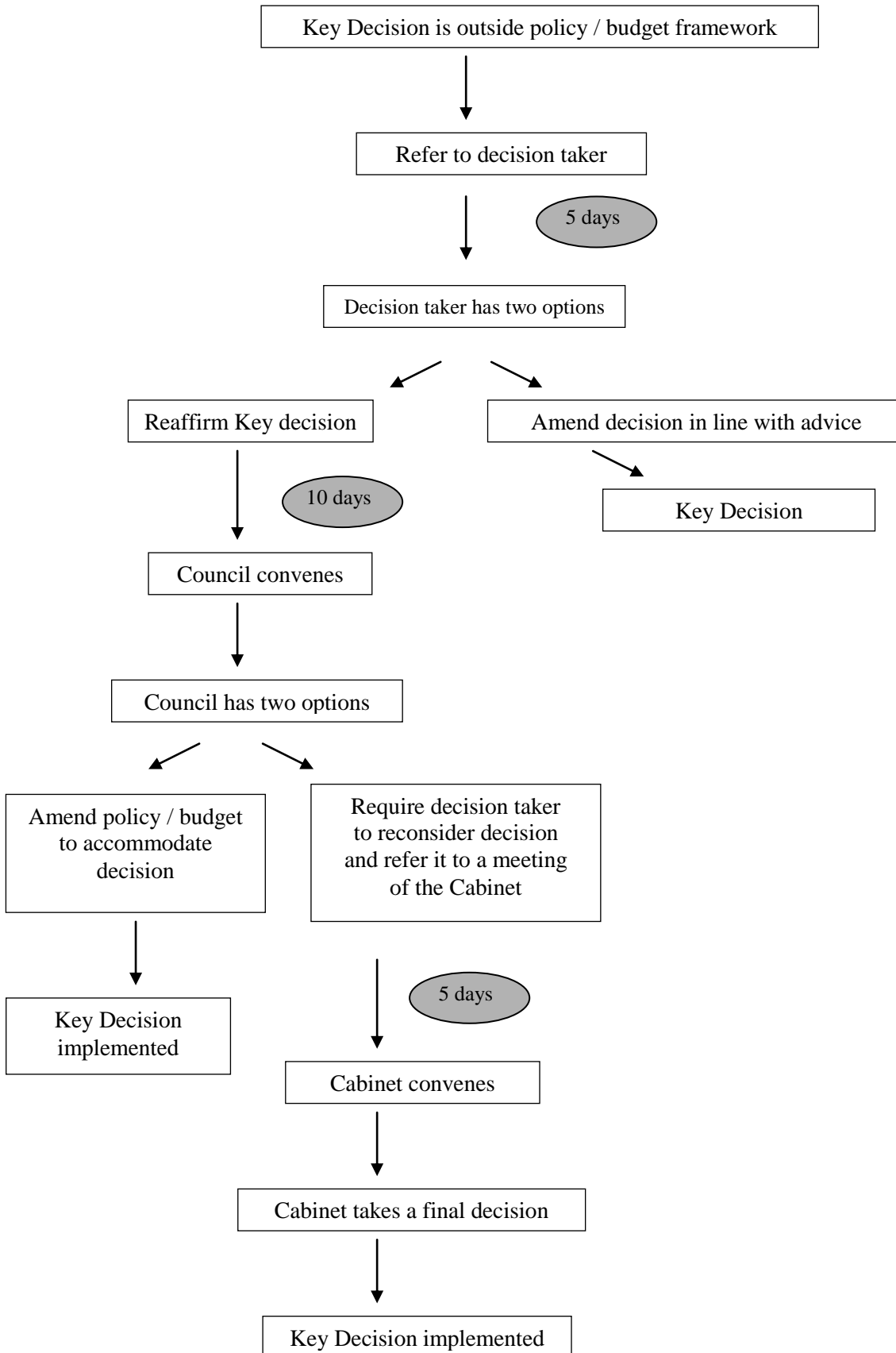
**20. Monitoring Arrangements**

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.

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By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is exempt

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