

Report for: Special Overview and Scrutiny Committee
29th 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 9th 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 9th 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 19th July 2019, a call-in request was received in relation to the Cabinet decision taken on 9th 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 9th 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 of 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 19th 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 9th 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