

Report for: Special Overview and Scrutiny Committee
3rd January 2024

Title: **Joint report of the Monitoring Officer and the Chief Finance Officer on the Call-In of a Decision taken by the Cabinet on 5th December 2023 to approve the insourcing of leisure services**

Report authorised by: Fiona Alderman, Monitoring Officer and Jon Warlow, Chief Finance Officer & Section 151 Officer

Lead Officer: Haydee Nunes de Souza, 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 5th December 2023 relating to the insourcing of leisure services, is within the budget and policy framework.

2. Cabinet Member Introduction

N/A

3. Recommendations

That Members note:

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

4. Reasons for decision

When considering what action to take in relation to the called-in decision, the Overview and Scrutiny Committee, having considered the advice from the Monitoring Officer and the Chief Finance Officer, is expected to make its own determination as to whether the called-in decision is within the budget and policy framework.

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 budget and 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 5 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 and 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 budget and policy 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 and 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 Budget and Policy Framework

6.6 The Policy Framework is defined in the Constitution at Article 4(a) 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 Budget is defined in the Constitution at Article 4(b) as follows:

(b) Budget. 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.

6.8 The budget and policy framework is intended to provide the general context, as set by Full Council, within which decision-making occurs. The general premise is that executive decisions must be within the scope of the budget or policy framework and should not be wholly inconsistent with it. It is not expected that every executive decision taken should satisfy every individual aspect of the framework, but they should not be outside the framework.

6.9 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 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 the 14th December 2023, a call-in request was received in relation to the Cabinet decision taken on 5th December 2023 to insource leisure services. A copy of the Cabinet report dated 5th December 2023, the published draft minutes and the call-in request all form part of the published Agenda pack distributed to Members of the OSC, and so are not reproduced again here as appendices to this report.
- 7.2** In summary, the call-in claims that the decision to insource leisure services has been taken without Cabinet being provided with sufficient information to make an informed decision because: a) the decision was taken without evidence that insourcing provides best value for money; b) there was no effort to quantify the costs and benefits of different options c) Cabinet was not provided with information about the comparative costs of a new leisure management contract in the immediate term, despite several providers displaying interest; d) no attempt was made to interrogate the ongoing costs of running leisure services in house or under a new contract; e) the external advice in respect of financial modelling was not included with the report, even as an exempt paper; f) there was no consideration of a joint contract with another authority or consideration about the impact on current members of external providers and: g) residents were not consulted as to who should run the service.
- 7.3** A deputation from Park Road Lido User Group attended Cabinet on the 5th December 2023 and highlighted concerns about insourcing of the Service.
- 7.4** The call-in went on to detail an alternative course of action, namely:
- The council should publish a cost/benefit analysis between the 5 options presented in the Cabinet paper including a financial risk assessment spanning five years which would present best and worst case scenarios for each option, perform a robustly and independently graded scoring system between the five options in the Cabinet paper and consult key stakeholders and residents before taking a final decision on which option to take.

8. Monitoring Officer's Assessment

- 8.1** The Monitoring Officer having conferred with the Chief Finance/Section 151 Officer is of the view that the insourcing of leisure services is within the budget and policy framework.
- 8.2** The Monitoring Officer does not consider that the decision is contrary to any of the plans or strategies forming the policy framework. None of these are concerned with the provision of leisure services in general terms, far less specifically in relation to matters such as insourcing.
- 8.3** The Monitoring Officer considered the request on 15th December 2023, and determined that it met the 6 criteria for validity as set out in the Call-In Procedure Rules.

9. The Chief Finance Officer's Response

- 9.1 It is the view of the Chief Finance Officer that the decision is within the Budget on the basis that the recommendations within the report are in line with the Council's Budget and Policy Framework Procedures Rules set out in Part 4 Section E of the Council's Constitution.
- 9.2 The Cabinet's decision to insource Leisure Services on 5th December 2023 does not commit the Council to revenue or capital expenditure in future years. Rather, its resolution expressly provides that the revenue budget and capital programme implications of the decision be included in the "draft Medium Term Financial Strategy for 2024/25". The Final version of the 2024/25 budget and the Medium-Term Financial Strategy for 2024/29 will be presented for approval to Full Council on 4 March 2024.
- 9.3 Further, any mobilisation costs incurred within the current financial year, as a result of the decision, will be met through existing resources within the approved budget for 2023/24.
- 9.4. For these reasons, it is the view of the Chief Finance Officer that Cabinet's decision was not contrary to, or not wholly in accordance with the Budget.

10. Conclusion

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

11. Contribution to strategic outcomes

N/A

12. Statutory Officers comments (Chief Finance Officer (including procurement), Head of Legal & Governance (Monitoring Officer), Equalities)

Finance and Procurement

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

Legal implications

The Monitoring Officer's views are set out above.

Equality

N/A

13. Use of Appendices

Appendix 1 Call-In Procedure Rules

14. Local Government (Access to Information) Act 1985

N/A