

Report for: Special Overview and Scrutiny Committee
6th December 2016

Title: Monitoring Officer's Report on the Call-In of a Decision taken by the Cabinet on 15th 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 15th 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 25th November 2016, a call-in request was received in relation to the Cabinet decision taken on 15th 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 28th 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