

Report for: Special Overview and Scrutiny Committee
17 July 2017

Title: Monitoring Officer's Report on the Call-In of a Decision taken by the Cabinet on 3 July 2017 to enter into legal agreements with the preferred bidder and establish the Haringey Development Vehicle (HDV)

Report authorised by : Bernie Ryan, Monitoring Officer

Lead Officer: Victoria Barman, Senior Corporate Lawyer

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 3 July 2017 to enter into legal agreements with the preferred bidder to facilitate the establishment of the Haringey Development Vehicle (HDV), and approve the initial business plans, is within the budget and/or 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 Finance Officer that the decision taken by the Cabinet was inside the Council's budget and policy framework.

4. Reasons for decision

The Overview and Scrutiny Committee (OSC) is expected to take its own decision with regard to whether a called-in decision is outside or inside the budget/policy 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 Once a validated call-in request has been notified to the Chair of 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.
- 6.2 If OSC Members determine that the original decision was within the policy/budget 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.
- 6.3 If the Overview and Scrutiny Committee (OSC) determine that the original decision was outside the budget/policy framework, the Committee 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.
- 6.4 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

- 6.5 The Policy Framework is set out in the Constitution at Article 4 of Part Two (Articles of the Constitution) which I 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”*

- 6.6 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 authority, the majority of decisions are taken by the executive – in Haringey’s case this being the Cabinet/Leader/Cabinet member. 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. Case law also 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 11 July 2017, a valid call-in request was received in relation to the Cabinet decision of 3rd July 2017 to enter into legal agreements with the preferred bidder and establish the Haringey Development Vehicle (HDV). A copy of the public report to Cabinet is reproduced at Appendix 1 to this report. A copy of the published draft minutes of the Cabinet meeting is reproduced at Appendix 2 to this report, and a copy of the call-in request is reproduced at Appendix 3 to this report.
- 7.2 The call-in request asserts that the decision was not outside the policy or budget framework.

8. Monitoring Officer’s Assessment

- 8.1 The Monitoring Officer agrees that this decision falls within the policy framework. In particular, the Housing Strategy explicitly envisages (in section 4.1 ‘*Harnessing regeneration and growth to deliver our ambition for housing*’) the establishment by the Council of the Haringey Development Vehicle as a joint venture with a

private partner to develop new homes and employment space on Council-owned land. It should also be noted that the Land Assembly Agreement considered by Cabinet as part of the 3 July decision includes (at section 3.1.2) a requirement that *'The HDV shall ensure in drawing up any Development Business Plan or Planning Application for a Category 1A Property (or Phase thereof), it is consistent with...the Council's housing policies, as notified to the HDV from time to time, including the Council's Housing Strategy...'*.

- 8.2 The decision taken by Cabinet is compliant with the Council's Budget and Policy Framework as set out in Part Four Section E of the Constitution and are within the Cabinet's powers and terms of reference.

9. The Chief Finance Officer's Response

- 9.1. The call-in request does not claim the decision is outside the budget framework. The Interim Deputy Chief Executive, in her capacity as Chief Finance Officer, agrees with this view on the basis that recommendations in the report are in line with the Council's Budgetary & Policy Framework Procedure Rules set out in Part 4 Section E of the Council's Constitution.
- 9.2 Whilst the financial mechanisms contained in the commercial arrangements for the HDV are complex, there are no items that fall outside of the budgetary framework for 2017/18. The financial implications arising from future business plans for each phase of the HDV, will form part of the Medium Term Financial Strategy (MTFS) planning in future years, and will be approved as part of the Council's normal budget setting processes.

10. Contribution to strategic outcomes

N/A

11. 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

The Monitoring Officer's comments are set out above.

Equality

N/A

12. Use of Appendices

Appendix 1 Cabinet report dated 20th June 2017
Appendix 2 Published draft minutes of the Cabinet meeting
Appendix 3 Copy call-in request

13. Local Government (Access to Information) Act 1985

N/A