

GOVERNANCE COMMITTEE

Subject Heading:

Review of Call-in provisions

SLT Lead:

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Policy context:

Governance

Financial summary:

None

The subject matter of this report deals with the following Council Objectives

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

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SUMMARY

This report reviews the Council's call-in provisions which, in broad terms, is the mechanism by which executive decisions are scrutinised before they are implemented.

RECOMMENDATIONS

That the Committee:

1. note the review of the Council's call-in provisions and the intention to consult the Overview and Scrutiny Board; and
2. if appropriate, make recommendations for changes for Council's approval.

REPORT DETAIL

1. Background

- 1.1 The Council's Constitution mandates an annual report to Council reviewing the operation of the provisions relating to call-in and urgency.
- 1.2 The Governance Committee, among other things, is responsible for monitoring and reviewing the role of overview and scrutiny and making recommendations.

2. What is call-in?

- 2.1 Call-in refers to the right to delay the implementation of certain executive decisions which have been made (but have not yet been implemented) to allow the decisions to be considered by a scrutiny committee. More broadly, scrutiny forms an integral part of the work of councils in delivering services by holding the executive to account for the important decisions they make.
- 2.2 It is necessary to recognise the legitimacy of call-in as an effective tool for holding the executive to account for the important decisions they make. By the same token, it should not be viewed as a substitute for early and constructive involvement in policy formulation or the decision making process and thereby minimising the need for call-in. Nor should call-in be viewed as a party-political tool.
- 2.3 The law relating to call-in can be found in the Local Government Act 2000. Sections 9F(2)(a) and 9F(4) of that Act between them establish that an overview and scrutiny committee has a power to review or scrutinise decisions made but not implemented by the executive, which includes a power to recommend that the decision be reconsidered by the

person who made it. The power in the Act also includes the power for an overview and scrutiny committee to refer the issue to Council for it to consider it substantively.

- 2.4 The law therefore requires councils to make provision for call-in but does not impose prescriptive rules on councils. Instead, councils have the freedom to make their own arrangements which best suit local needs and circumstances.
- 2.5 According to the Centre for Public Scrutiny Practice Guide on 'Key decisions and powers of call-in' (June 2014):

"call-in provides a mechanism for councillors to intervene when they feel that a decision being made by the executive needs to be revisited (or possibly changed). It provides a key check and balance in the leader/cabinet system of governance – a long-stop that, in theory, prevents the overweening exercise of power by Cabinet.

It should, however, be regarded as a measure that is only needed in exceptional circumstances, rather than day-to-day. It sits in the context of a range of other tools at scrutiny's disposal to influence decision-making."

3. The Council's call-in provisions

- 3.1 The Council's call-in procedure is set out in Part 4 of the Constitution and is attached as **Appendix 1** for ease of reference. In summary, decisions which have been made by Cabinet or individual Cabinet members, or key decisions made by officers, can be called-in by the following:
- 3.1.1 Overview and Scrutiny Board,
 - 3.1.2 overview and scrutiny committees/sub-committees,
 - 3.1.3 at least two members representing between them more than one group (and may include one or two members who are not attached to a group), or
 - 3.1.4 at least one co-opted member and one member.
- 3.2 A key decision is an executive decision, which is likely a) to result in the Council incurring expenditure which is, or the making of savings which are, significant or b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards.
- 3.3 According to Council rules, in financial terms, a decision is significant if it is in excess of £500,000 or in excess of 10% of the gross controllable composite budget at Head of Service level (subject to a minimum value

of £250,000) whether relating to revenue expenditure/savings or capital expenditure.

- 3.4 The Constitution also refers to the statutory education co-opted members on the Children & Learning Overview & Scrutiny Sub-Committees having call-in rights.
- 3.5 In addition, the Council's call-in provisions entitle the Overview and Scrutiny Board and the overview and scrutiny committees/sub-committees to refer an executive decision which has been made (but has not yet been implemented) to Council because, in its opinion, it is contrary to or not wholly in accordance with the budget and policy framework set by Council.
- 3.6 The time-limit for a call-in is within three working days of the publication of the decision in 'Calendar Brief'.
- 3.7 A call-in request must be in writing and signed (but, subject to specified requirements, this includes the use of email), and must state the grounds. Provision is also made for "holding" requests and for requests to be withdrawn.
- 3.8 If the decision maker and the Chairman of the Overview and Scrutiny Board agree that the decision is urgent, the right to call-in can be dis-applied. A decision is urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests.

4. Use of call-in and urgency powers

- 4.1 For Members' information, during the period May 2018 to May 2019 there were 11 call-in requests which are listed at **Appendix 2**.
- 4.2 Also during that period, the right to call-in was dis-applied on 3 occasions as listed at **Appendix 3**. These decisions will be reported to the next meeting of Council.

5. Other Councils' rules on call-in

- 5.1 As call-in rules are not prescriptive, detailed arrangements differ from council to council but are broadly similar. For comparison and benchmarking purposes, attached at **Appendix 4** is a snap-shot of the call-in rules recorded in the constitutions of 10 other councils. These include 5 other London Boroughs as well as district, county and unitary councils.
- 5.2 **Appendix 4** focuses on the following key issues: which executive decisions can be called-in; who can make a call-in request; the time-limit

(or standstill period) for call-in requests; call-in validity criteria and urgency rules.

- 5.3 As already noted, call-in arrangements must be suitable for the local needs and circumstances of individual councils. In particular, the political composition of a council, i.e. the number and sizes of different political groups and the number (if any) of independent members, can have a significant bearing on the operation of call-in in practice.
- 5.4 That said, as part of the review of the Council's call-in provisions, Members are asked to consider the following assessment:
 - 5.4.1 **Which executive decisions can be called-in:** the scope of the Council's call-in provisions, namely, decisions which have been made by Cabinet or individual Cabinet members, or key decisions made by officers, is in line with the practice adopted by most other councils and requires no change.
 - 5.4.2 **Who can make a call-in request:** the Council's threshold for the number of individual Members who can request a call-in (i.e. two) is relatively low. Having regard to the political composition of the Council, it is for Members to decide what they consider to be an appropriate threshold and the appropriate role of co-opted members.
 - 5.4.3 **The time-limit (or standstill period) for call-in requests:** compared to the Council's 3 working days, most councils appear to have a longer time-limit of 5 working days. In practice, however, the Council's standstill period is longer than 3 working days as notice of decisions which can be called-in is given on a Thursday (which is when Calendar Brief is dispatched) and the time-limit for calling in a decision does not expire until the following Wednesday at midnight. Also, in some cases, the decision may already have been published.
 - 5.4.4 **Call-in validity criteria:** having regard to the criteria adopted by other councils to determine what constitutes a valid call-in request, the following improvements are proposed.
 - 5.4.5 First, that it be made explicit that decisions may only be called-in once and that decisions are not eligible for call-in if there has been pre-decision scrutiny. Duplication would not serve a useful purpose, is not cost effective and would result in unacceptable delay.
 - 5.4.6 Second, that call-in requests should not only set out the grounds or reasons relied upon but also the suggested alternative proposals, actions or resolution of the matter. Clearly explained

grounds or reasons will in turn ensure that there are clear parameters within which the decision called-in can be reviewed.

5.4.7 Third, that the Monitoring Officer be authorised to decide whether a call-in request is valid as assessed against the stated criteria and that it is otherwise an appropriate use of the call-in process.

5.4.8 **Urgency rules:** all the councils have very similar urgency rules and there does not appear to be any need to change the Council's urgency rules as outlined above (see paragraph 3.8).

5.5 Members are requested to note the review of the Council's call-in provisions and, if appropriate, make recommendations for changes for Council's approval. Members are also requested to note that the views of the Overview and Scrutiny Board on the operation will also be reported to Council.

IMPLICATIONS AND RISKS

Financial implications and risks:

None in relation to this report.

Legal implications and risks:

The relevant legislative and constitutional provisions have been referred to in the body of the report.

Human Resources implications and risks:

None.

Equalities implications and risks:

None directly arising from this report.

Background Papers

None.