



CALL-IN SUB COMMITTEE

MONDAY 23 MAY 2005

7.30 PM

SUB-COMMITTEE AGENDA (SCRUTINY)

**COMMITTEE ROOMS 1&2
HARROW CIVIC CENTRE**

MEMBERSHIP (Quorum 3)

Please note that the membership of the Sub-Committee, set out below, is subject to confirmation at the Special Meeting of the Overview and Scrutiny Committee on 16 May 2005.

Chair: To be confirmed at the Special Meeting of the Overview and Scrutiny Committee on 16 May 2005.

Councillors:

**Mitzi Green
Gate
Thammaiah**

**Jean Lammiman
Osborn**

Reserve Members:

1. Blann
2. Ann Groves
3. Mrs R Shah

1. Seymour
2. Versallion
3. Romain

**Issued by the Legal Services Section,
Legal Services Department**

**Contact: Nick Wale, Committee Administrator
Tel: 020 8424 1323 E-mail: nick.wale@harrow.gov.uk**

***NOTE FOR THOSE ATTENDING THE MEETING:
IF YOU WISH TO DISPOSE OF THIS AGENDA, PLEASE LEAVE IT BEHIND AFTER THE MEETING.
IT WILL BE COLLECTED FOR RECYCLING.***

HARROW COUNCIL

CALL-IN SUB COMMITTEE

MONDAY 23 MAY 2005

Protocol for the Operation of the Call-in Sub-Committee (Pages 1 - 2)

Protocol for Handling Portfolio Holder Decisions Referred Back by the Call-in Sub-Committee (Pages 3 - 4)

AGENDA - PART I

1. **Appointment of Chair:**
To note the appointment at the Special Meeting of the Overview and Scrutiny Committee on 16 May 2005 (subject to confirmation of that decision) of Chair of the Sub-Committee for the Municipal Year 2005/2006.
2. **Attendance by Reserve Members:**
To note the attendance at this meeting of any duly appointed Reserve Members.

Reserve Members may attend meetings:-
 - (i) to take the place of an ordinary Member for whom they are a reserve;
 - (ii) where the ordinary Member will be absent for the whole of the meeting; and
 - (iii) after notifying the Chair at the start of the meeting.
3. **Declarations of Interest:**
To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from all Members present.
4. **Arrangement of Agenda:**
To consider whether any of the items listed on the agenda should be considered with the press and public excluded on the grounds that it is thought likely, in view of the nature of the business to be transacted, that there would be disclosure of confidential information in breach of an obligation of confidence or of exempt information as defined in the Local Government (Access to Information) Act 1985.
5. **Appointment of Vice-Chair:**
To appoint a Vice-Chair of the Sub-Committee for the Municipal Year 2005/2006.
6. **Minutes:**
That the minutes of the meeting held on 11 January 2005, having been circulated, be taken as read and signed as a correct record.
7. **Call-in of the Leader's Decision: Release of Restrictive Covenant, Brooks Hill:**

Enc.

- (a) Notice Invoking the Call-in (Pages 5 - 6)

Enc. (b) Record of the Decision of the Leader (Pages 7 - 8)

Enc. (c) Documentation sent to the Leader (Pages 9 - 12)

8. **Any Other Business:**

Which the Chair has decided is urgent and cannot otherwise be dealt with.

AGENDA - PART II

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1. Call-in is the process whereby a decision of the Executive, Portfolio Holder or Officer (where the latter is taking a Key Decision) taken but not implemented, may be examined by the Overview and Scrutiny Committee prior to implementation. The Overview and Scrutiny Committee has established the Call-in Sub-Committee to carry out this role. Overview and Scrutiny Procedure Rule 22 sets out the rules governing the call-in process.

The process for call-in

2. Any six of the Members of the Council and the co-opted members on the Lifelong Learning Scrutiny Sub-Committee can call in a decision of the Executive which has been taken but not implemented. (NB: Co-opted members of the Lifelong Learning Scrutiny Sub-Committee may only sign up to requests to call in decisions relating to education matters). Only decisions relating to Executive functions, whether delegated or not, may be called in.
3. Decisions of the Executive will not be implemented for 5 clear working days following the publication of the decision and a decision can only be called in within this period (this does not apply to urgent decisions - Overview and Scrutiny Procedure Rule 23 refers). The notice of the decision will state the date on which the decisions may be implemented if not called in.
4. Call-in must be by notification to the Borough Solicitor in writing or by fax, signed by all six Members/co-opted members requesting the call-in. A request for call-in by e-mail will require a separate e-mail from each of the six Members/co-opted members concerned. A proforma of a notice for call-in has been circulated for the use of Members and co-opted members.
5. In accordance with Overview and Scrutiny Procedure Rule 22.5, a notice by Members/co-opted members to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:-
 - (a) inadequate consultation with stakeholders prior to the decision;
 - (b) the absence of adequate evidence on which to base a decision;
 - (c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
 - (d) the action is not proportionate to the desired outcome;
 - (e) a potential human rights challenge;
 - (f) insufficient consideration of legal and financial advice.

The call-in notice should also provide details of the evidence to support the grounds for call-in.

6. Requests for call-in which, on investigation by the Borough Solicitor, are found to have been made without the support of the required number of Members or co-opted Members, or without specifying one of the grounds set out under Overview and Scrutiny Committee Rule 22.5, will not be referred to the Call-in Sub-Committee.

Referral to the Call-in Sub-Committee

7. Once a valid notice invoking the call-in procedure has been received, a meeting of the Call-in Sub-Committee will be arranged, in consultation with the Chair and Nominated Member(s) of the Sub-Committee, within seven clear working days of the receipt of the request for call-in. The other Members of the Sub-Committee will be notified of the need for a meeting, and the date thereof, at the earliest possible opportunity.
8. The papers to be considered by the Call-in Sub-Committee will be all those considered by the decision-taker when the decision was taken, the record of the decision and the written details of the call-in request. Where information material to the decision is known to officers and was not available to the decision taker, either because it only became known after the date of the decision or otherwise, such information should be drawn to the attention of Members of the Call-in Sub-Committee.

9. The papers will be sent to all Members and Reserve Members of the Sub-Committee, the Executive, the relevant Chief Officer, and all those who had signed up to the call-in. Relevant Ward Councillors will also be notified of the meeting if the issue in question is specific to a particular Ward or Wards. The Chair of the Sub-Committee may also request that the papers be sent to any other persons that he/she feels is appropriate.
10. Members sitting on the Call-in Sub-Committee should bring to the meeting an open mind and an impartial approach. Where a Member of the Sub-Committee is one of the Members calling in the decision, that Member should send a Reserve Member to the meeting of the Sub-Committee which considers the call-in, unless (for example because they are a co-opted member) they do not have a nominated Reserve.
11. The relevant Portfolio Holder and the relevant Chief Officer (or his/her representative) will be invited to attend the meeting to explain the reasons for the decision and to clarify any aspects associated with the issue in question.
12. The Members initiating the call-in will be invited to nominate one of their number or another Member who is not a Member of the Call-in Sub-Committee to advocate on their behalf and on behalf of others who may oppose the decision. Such a Member will be entitled to speak at the Call-in Sub-Committee on an equal footing with the Portfolio Holder and the relevant Chief Officer (or his/her representative).
13. The Chair of the Call-in Sub-Committee, in consultation with the meeting, may invite any other persons (for example, a legal adviser or other appropriate officer) to assist during the meeting as he/she feels appropriate.
14. The Chair of the Call-in Sub-Committee, in consultation with the meeting, will determine how the call-in will be dealt with. The rules on deputations and petitions shall apply as they apply to the Overview and Scrutiny Committee.
15. Having considered the call-in, the Sub-Committee may come to one of the following conclusions:-
 - (i) that the grounds for the call-in be upheld and
 - (a) in the event that it is upheld that the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework, the decision be referred to the Council. In such a case the Call-in Sub-Committee must set out the nature of its concerns for Council. The nature of such concerns would usually be expected to be significant and well proven in the context of the decision under consideration; or
 - (b) the decision be referred back to the decision taker for reconsideration. In such a case the Call-in Sub-Committee must set out the nature of its concerns for the decision taker. The nature of such concerns need only be sufficient to indicate that reconsideration is warranted, and need not necessarily indicate that the Sub-Committee believes the decision should be reversed, unless so stated by the Sub-Committee.
 - (ii) that the grounds for the call-in be rejected and the decision be implemented.

**PROTOCOL FOR HANDLING PORTFOLIO HOLDER DECISIONS REFERRED BACK BY
THE CALL-IN SUB-COMMITTEE**

- (1) This protocol applies to decisions made by individual Portfolio Holders (whether or not on the recommendation of an Advisory Panel) which are (a) the subject of call-in by the Call-in Sub-Committee of the Overview and Scrutiny Committee and (b) the Call-in Sub-Committee refers the decision back to the Portfolio Holder for reconsideration under Overview and Scrutiny Procedure Rule No 22.8(c).
- (2) In every case where the circumstances in the preceding paragraph arise, a local protocol shall apply to the effect that the Call-in Sub-Committee shall refer the matter to the Leader of the Council who will determine whether the matter should be referred to the Cabinet or to the Portfolio Holder.

Agreed by Cabinet, 17/12/02.

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To: The Chief Executive

1. NOTICE OF CALL-IN OF EXECUTIVE DECISION

Rec'd in Room 131

In accordance with Overview and Scrutiny Procedure Rule 22, we, the undersigned, hereby give notice that we wish to call-in the Executive decision detailed in section 2 below:-

<u>NAME (PLEASE PRINT)</u>	<u>SIGNATURE</u>
PADDY LYNE	
S. THORNTON	
JOHN S W BRANCH	
MARILYN ASHTON	
CUNY MOTE	
David Ashton	

HARROW COUNCIL LONDON
 Local Council Administration
 11 MAY 2005
 Rec'd in Room 131

2. DETAILS OF EXECUTIVE DECISION

The details of the Executive decision are as follows:-

Decision: P.H.D./093/04 - Release of Restrictive Covenant, Brook Hill

Made by: Mr. NAVIN SHAH - Leader
(Cabinet/relevant Portfolio Holder)

Published On: 5 May 2005
(Date)

3. GROUND FOR CALL-IN

Please specify below the grounds for the call-in, in accordance with Overview and Scrutiny Procedure Rule 22.5 (the grounds on which an Executive decision may be called in are set out overleaf). Please note that the considerations of the Call-in Sub-Committee will focus on the grounds stated, and the Sub-Committee will seek evidence to support them. Please therefore also set out below details of the evidence to support the grounds for call-in, continuing on a separate sheet if necessary.

- a) Inadequate consultation with stakeholders prior to decision
- b) The absence of adequate evidence on which to base a decision
- f) In sufficient consideration of legal and financial advice

Once completed, please forward this form to Claire Vincent in Room 138, Civic Centre or send it by fax to 020 8424 1557 WITHIN 5 WORKING DAYS OF THE DATE OF PUBLICATION OF THE DECISION.

Extract from Overview and Scrutiny Procedure Rule 22 – Call-in

Call-in is the process whereby a decision of the Executive, Portfolio Holder or Officer (where the latter is taking a Key Decision) taken but not implemented, may be examined by the Overview and Scrutiny Committee prior to implementation. They may recommend that the Executive reconsider the decision.

The process for call-in

Any six of the Members of the Council and the co-opted members on the Lifelong Learning Scrutiny sub-committee can call in a decision of the Executive which has been taken but not implemented. Only decisions relating to Executive functions, whether delegated or not, may be called in.

Decisions of the Executive shall not be implemented for 5 clear working days following the publication of the decision and a decision can only be called in within this period. This Rule does not apply to urgent decisions (see Overview and Scrutiny Procedure Rule 23). The notice of the decision will state the date on which the decisions may be implemented if not called in.

Call-in must be by notification to the Chief Executive in writing or by fax, signed by all six Members requesting the call-in. A request for call-in by e-mail will require a separate e-mail from each of the six Members concerned.

Requirement to Give Reasons

A notice by Members to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:-

- (a) inadequate consultation with stakeholders prior to the decision;
- (b) the absence of adequate evidence on which to base a decision;
- (c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
- (d) the action is not proportionate to the desired outcome;
- (e) a potential human rights challenge;
- (f) insufficient consideration of legal and financial advice.

Referral to the Call-in sub-committee

Subject to 22.6.1 and 22.6.2 below once a notice invoking the call-in procedure has been received the decision may not be implemented until the Call-in sub-committee has considered it. The Borough Secretary and Solicitor to the Council shall arrange a meeting of the Call-in sub-committee to be held within seven clear working days of the receipt of the request for call-in.

22.6.1 Where the Call-in sub-committee fails to meet within seven clear working days of the call-in request being received by the Chief Executive, the decision may be implemented on the day following twelve clear working days from the date the decision was published.

22.6.2 Where the Call-in sub-committee meets within seven clear working days of the receipt of notification of a call-in request, but fails to refer the matter back to the Executive, Portfolio Holder or officer (if a key decision), the decision may be implemented on the day following the Call-in sub-committee.

Process for Consideration of Called-in Items at the Call-in Sub-Committee

22.7 The Call-in sub-committee will consider the decision and the reasons for call-in. The sub-committee may invite the Executive decision taker and a representative of those calling in the decision to provide information at the meeting.

The sub-committee may come to one of the following conclusions:-

- (a) that the challenge to the decision should be taken no further and the decision may be implemented;
- (b) that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget framework, and should therefore be referred to the Council. In such a case the Call-in sub-committee must set out the nature of its concerns for Council; or
- (c) that the matter should be referred back to the decision taker for reconsideration. In such a case the Call-in sub-committee must set out the nature of its concerns for the decision taker.

Record of the Leader's Decision

Ref: PHD 093/04

Subject:	Release of Restrictive Covenant, Brooks Hill (The report sought agreement for an objection not to be lodged for the release of a restrictive covenant by 5 May 2005).
Date of Decision:	4 May 2005
Declaration of interest (if any):	None
Key decision (Yes/No?):	No
Urgent/Non Urgent decision?:	Urgent – Any objection must be lodged with the Lands Tribunal by 5 May 2005.
Public/Exempt?:	Public
Options considered:	As set out in 2.2 of the published officer report.
Any other option identified by the Portfolio Holder:	None
Decision:	Not to lodge an objection to the release of a restrictive covenant in respect of The Timbers, 41 Brooks Hill, Harrow Weald.
Reasons for decision:	To respond to the Lands Tribunal on the application by the owners of The Timbers, Brooks Hill, for the release of a restrictive covenant, by 5 May 2005. Insufficient grounds for objecting and no adverse effect on Harrow's property holding. A failed objection could give rise to liability in respect of all or part of the applicant's costs.

Is the decision subject to call-in? YES

YES - *The call-in period expires on 12 May 2005 (5.00pm).
The decision can be implemented on 13 May 2005 if not called in.*

NO - *The decision is Urgent and can be implemented now.*

CALL-IN - this is the process whereby a decision taken by the Executive or a Portfolio Holder may be examined by the Overview and Scrutiny Committee. The Overview and Scrutiny Committee may recommend that the Executive reconsider the decision.

For further information, please contact Nick Wale on 020 8424 1323 or by e-mail: nick.wale@harrow.gov.uk

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Ref: PHD 093/04

Subject:	Release of Restrictive Covenant, Brooks Hill
Responsible Officer:	Director of Strategy-Urban Living
Contact Officer:	Philip Loveland-Cooper Tel: 020 8424 1877
Portfolio Holder:	Leader
Key Decision:	No
Urgent/Non Urgent:	Urgent
Power to be exercised:	Paragraph 3 of delegated powers to Portfolio Holders Appendix to Executive Procedure rules Part 4D of the constitution
Status:	Part 1

Section 1: Summary

Decision Required

Not to lodge an objection to the release of a restrictive covenant in respect of The Timbers, 41 Brooks Hill, Harrow Weald

Reason for report

The owners of The Timbers, Brooks Hill have applied to the Lands Tribunal for the release of a restrictive covenant which would otherwise prevent the premises and land being used as a place of worship and religious instruction. Any objection must be lodged by the 5th May 2005

Benefits

The provision of a place of religious worship

Cost of Proposals

There are no associated costs to Harrow Council

Risks

If the Council were to object and the Lands Tribunal ultimately uphold the application Harrow Council could be liable for a percentage of the applicants costs

Implications if recommendations rejected

An objection would need to be lodged by the council by 5th May 2005 with the risk that the council may be exposed to paying all or part of the applicants costs

Section 2: Report

2.1 Brief History

When this area of the borough was originally developed all the land and properties were subject to the following restrictive covenant :- “ no house for the time being standing on the said land shall be used for any trade business or manufacture or otherwise than as a private dwelling house only. Any stable coach house garage or other erection shall be used for private purposes and not in connection with any trade business or manufacture. Nothing contained shall however be deemed to prevent any medical practitioner or solicitor practising in or upon the premises”. The land which forms the subject matter of the application to the Lands Tribunal became subject to the covenants by a conveyance dated 7th October 1925. The covenants are expressed as being for the benefit of the Harrow Weald Park Estate. It is assumed that these covenants were put in place to protect the character of the area and to ensure it remained residential. The property is within the Green Belt.

2.2 Options considered

- A) To oppose the application. - Harrow Council owns Harrow Weald Park which adjoins the subject property and also 31 sheltered homes. The current UDP provides for the open space to be gradually developed as Public Woodland. There do not appear to be any grounds to object as the release would not have an adverse effect on the value or use of Harrows land and property holding.
- B) Not to object -on the basis of insufficient grounds and no adverse effect on Harrows property holding. A failed objection could also give rise to liability in respect of all or part of the applicants costs if the Tribunal decides that the conduct of the objector in opposing the application has been unreasonable

2.3 Consultation

Ward councillors and via the planning process

2.4 Financial Implications

None other than contained within the report

Signature Date

Name (print)

2.5 Legal Implications

Legal implications are contained in the body of the report

Signature Date

Name (print)

2.6 Equalities Impact

Assist the provision of facilities for the Hindu community which are under provided in relation to the percentage of population.

Section 3: Supporting Information/ Background Documents

List information that is on deposit in Group Offices and can be viewed on the web:
None

List other background papers that are available on request:

- Lands Tribunal Publicity Notice LP/69/2004
- Site plan 703/10, building plan703/7
- Copy of application ref LP/69/2004
- Copy of title ref MX254271

Signature:

Position *Director of Strategy-Urban Living*

Name (print)

.....

Date:

FOR PORTFOLIO HOLDER/LEADER

* I do agree to the decision proposed

* I do not agree to the decision proposed

* Please delete as appropriate

Notification of personal interests (if any) :-

(Note: if you have a prejudicial interest you should not take this decision)

Additional comments made by and/or options considered by the Portfolio Holder

Signature:

Portfolio Holder

Date: