



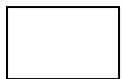
Report of the Head of Scrutiny and Member Development

Overview and Scrutiny Committee

Date: 6th November 2007

Subject: Proposed amendments to the Call In Guidance Notes within the Council's Constitution

Electoral Wards Affected:



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Introduction

- 1.1 Recently Members have raised a number of issues regarding the Call In arrangements. A discussion was held in this Committee in September regarding which Members could trigger a Call In. The Committee resolved to maintain the current arrangements of two members sitting on Overview and Scrutiny Committee from two different political groups.
- 1.2 Another issue has concerned the level of justification required from the individual signatories when a decision is called in.
- 1.3 There are two possible approaches that can be taken by Members seeking to call in a decision: that the process in making the decision is suspected to be flawed in some way (i.e some information overlooked, consultation not as thorough as required, other options not fully considered etc.); or that there is disagreement with the decision per se, though the process can be shown to be rigorously followed.
- 1.4 The current procedure for Call In as described in the Constitution (22.7 footnote 35 pages 251) allows justification for calling in a decision on any grounds, including procedural issues. This does not preclude disagreement with the decision per se.
- 1.5 The impact of providing for call in on *any* grounds can be seen in the following hypothetical scenarios:

A political group fundamentally disagrees with the use of external companies to provide the Council's core business. The Executive is of the opposite view and are making a series of decisions in line with Council policy of using external providers where this is seen as beneficial. The political group wishes to call in decisions of this nature simply because they disagree with the political philosophy and wish to disrupt such decisions wherever possible. Under current arrangements, it can be argued that this is within the Constitutional rules

An individual Councillor has a long running campaign against car use of any kind. The Call In process is used by this Councillor (with the co-operation of other Councillors as signatories) to disrupt any decisions that go against this particular campaign, such as parking schemes and road improvements. These decisions may be reasonable and correct against all other criteria; however, currently they can be called in as part of a single issue agenda of one or a small number of Councillors.

- 1.6 The question is whether this is intentionally how the Authority wishes to organise its Call In process (allowing Call In for any reason including general disagreement with the policy or political standpoint it supports) or whether the Authority wishes to be more explicitly in accord with what is cited as best practice.

2.0 Best Practice

- 2.1 Whilst the Local Government Act 2000 does not spell out the precise detail of how Local Authorities should make provision for Call In, there have been subsequent publications from the Government that identify what is considered good practice. In particular, 'Strengthening Local Democracy – Making the Most of the Constitution' July 2003, includes a discussion about the justification provided when a decision is called in:

*"There are authorities in which no reasons are required from a councillor wishing to invoke the call in procedure. This is not good practice. It allows trivial issues or personal crusades to take up the time of scrutiny panels and to inappropriately delay decision-making. It is important that those wishing to invoke call in should be required to indicate why they are challenging the executive decision. **A disagreement per se is not an adequate reason. There should be a requirement to identify evidence that has not been taken into account or viable options that have not been considered.** The arbiter of such applications should be the monitoring officer. In the case of uncertainty, the benefit of the doubt should be given to the applicant."*

Page 31

- 2.2 Derby City Council (a four star authority) makes explicit reference to the criteria by which a decision may be called in:

Call-in should only be used in exceptional circumstances. These are where members of the Council are of the opinion that the Council Cabinet did not take the decision in accordance with the principles set out in Article 13 (Decision Making), namely,

- a. *proportionality (i.e. the action must be proportionate to the desired outcome)*
- b. *due consultation and the taking of professional advice from officers*

- c. *respect for human rights*
- d. *a presumption in favour of openness*
- e. *clarity of aims and desired outcomes*
- f. *a record of what options were considered and giving the reasons for the decision.*

or where relevant issues do not appear to have been taken into consideration.

[.....]

The written notice must specify which principle in Rule OS33 has allegedly been infringed

2.3 It is recommended that the Scrutiny Call In process should be amended to reflect the best practice cited above; that justification is required from the applicant over and above disagreement with the decision per se. The following change to the relevant Scrutiny Guidance Note is proposed:

- Scrutiny Board Procedure Rules Guidance Note 3 paragraph 5.2 and 5.3 to include reference to the requirement for justification relating to process and the manner in which the decision was taken as set out in Article 13 of the Constitution and the role of the Proper Officer in ensuring adequate justification is given.

The proposed amended Guidance Note is attached at appendix 1.

2.4 If Overview and Scrutiny Committee agree to the above changes, the consequential changes to the Constitution will be made by the Assistant Chief Executive (Corporate Governance) under delegated powers.

3.0 Recommendation

3.1 Members are requested to consider the proposed amendment to the Scrutiny Board Procedure Rules Guidance Note 3 in relation to Call In and, if mindful to do so, agree the attached revised Guidance Note.