

Guildford Borough Council

Report to: Overview & Scrutiny Committee

Date: 19 March 2024

Ward(s) affected: Shalford, Worplesdon

Report of Director: Transformation & Governance

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Report Status: Open

Option Agreement with Blackwell Park Limited in respect of purchase of Council-owned land - Call in of proposed decision taken by the Strategic Director: Place

1. Executive Summary

- 1.1 The proposed key executive decision taken by the Strategic Director: Place on 29 February 2024 in relation to entering into an Option Agreement on 8 March 2024 with Blackwell Park Limited providing the option for them to purchase a small parcel of Council-owned land necessary to enable development on Blackwell Park has been called in by a number of councillors for review by the Overview and Scrutiny Committee (OSC). The purpose of this report is therefore to invite the OSC to consider the call-in.
- 1.2 The call-in procedure and options, the reasons for the call-in, and details of the proposed decision are set out below.

2. Recommendation to Committee

2.1 That the Committee considers a call-in of the proposed decision referred to above and decide whether to:

- Refer the decision back to the decision-taker for reconsideration, with such comment and advice as the Committee deems appropriate; or
- Endorse the decision, or not to refer the matter back to the decision-taker, in which case the decision shall take effect immediately.

3. Reasons for Recommendation:

3.1. To ensure the call-in is considered in accordance with the Council's Constitution.

4. Exemption from publication

4.1. No part of this report is exempt from publication.

5. Purpose of Report

5.1. The purpose of this report is to invite the OSC to consider a call-in of the proposed key executive decision taken by the Strategic Director: Place on 29 February in relation to the proposal to enter into an Option Agreement with Blackwell Park Limited providing the option for them to purchase a small parcel of Council-owned land necessary to enable development on Blackwell Park.

6 Strategic Priorities

6.1 Principles of good decision-making, such as being open and accountable, underpin the Council's strategic framework for delivery of its vision for the Borough. Use of Overview and Scrutiny's power of call-in can help ensure that the Council adheres to these principles.

6.2 More specifically, call-in enables councillors to intervene when they feel that a decision being taken is questionable and needs to be revisited and possibly changed. In addition, call-in can enable further

debate on a topic of political contention and provide a forum both for opposition to, and explanation of, a decision.

- 6.3 Providing an opportunity to ask the decision-taker, or the Executive, to reconsider decisions before they are implemented can lead to improved decisions – in turn, improving the delivery of quality and value for money services – and help ensure we are more open and accountable to our residents.

7. Background

The call-in procedure and options

- 7.1 Call-in is the power of Overview and Scrutiny to scrutinise a decision by the Leader/Executive or an individual Lead Councillor before it is implemented. The call-in provisions can also apply to a key decision made by an officer with delegated authority from the Leader/Executive.
- 7.2 The effect of call-in is to prevent implementation of a proposed decision until the OSC has examined the decision. The OSC has the power to refer a decision back to the decision-taker or to refer a matter for further review by the Council.
- 7.3 The following extract from Overview & Scrutiny Procedure Rule 16 is set out to assist the Committee in understanding the call-in procedure options:
- “(f) The OSC may review the decision itself or refer the matter to the Council for review. If the OSC or Council, as the case may be, endorses the proposed decision, it comes into immediate force and effect. If the OSC or the Council do not support the proposed decision, the matter shall be referred back to the next appropriate meeting of the Leader/Executive or to the individual decision-taker for decision with such comment and advice as the OSC or the Council deems appropriate.
 - (g) Once a decision has been referred back to the Leader/Executive or individual decision-taker by the OSC or the Council on the basis described above, it shall not be subject to further call-in.

The decision shall then be final unless it is contrary to the policy framework or contrary to or not wholly consistent with the budget.”

The current call-in

- 7.4 In accordance with Overview and Scrutiny Procedure Rule 16, Councillors Patrick Oven, James Brooker, Jason Fenwick, Sue Wyeth-Price, and Catherine Young,¹ have called-in for review by this Committee the following proposed decision taken by the Strategic Director: Place on 29 February 2024:

Blackwell Park Development – Option Agreement

Decision:

“Subject to consideration of any objections to the Council’s notice of its intention to dispose of open space land pursuant to s123(2A) of the Local Government Act 1972 which closes on 7 March 2024, to enter into an Option Agreement on 8 March 2024 with Blackwell Park Limited providing the option for them to purchase a small parcel of Council-owned land necessary to enable development on Blackwell Park. If the option is exercised then, subject to the terms and conditions of the Option Agreement, the Council will transfer the land to Blackwell Park Ltd, for a further price, and an Overage Agreement will also be entered in to so that the Council can benefit from any additional financial gain as a result of the sale”.

Reasons for the decision:

“Selling the land to Blackwell Park Ltd will allow them to proceed with the development of a strategic site, allocated within the Local Plan, A26 Blackwell Farm. This meets the priorities set by the Council and supports delivery of the Local Plan.

An Option Agreement provides Blackwell Park Ltd with certainty about the sale of the land and enables the Council to benefit from an immediate financial return.

¹ The Council’s threshold for a call-in is ‘any five members of the Council’. Alternatively, the chair of O&S may call-in executive decisions

An option fee is paid to the Council on completion of the Option Agreement and then, if the option is exercised, the Council will receive a further payment (minus the amount already paid for the option) which is the higher of:

1. a set minimum value; or
2. a percentage of the development valuation.

It has been assessed that this deal represents best value for the Council in accordance with s123 of the Local Government Act 1972 and therefore it is a good use of the Council's assets to make a financial return and support the Local Plan".

Alternative options considered and rejected:

"The Council has considered not selling the land to Blackwell Park Ltd, this would mean that development could not be delivered on the site which would not be consistent with the Local Plan. It would also mean that the Council was not making best use of its assets by securing a financial return for the Council.

The Council has considered not entering into an Option Agreement, but this would create uncertainty for Blackwell Park Ltd in applying for planning permission and the terms of the Option Agreement ensure that the Council obtains best value as well as an immediate financial return".

Source of Authority to take Decision: Officer Scheme of Delegation

Paragraph 3 of the list of powers delegated to the Strategic Director: Place states:

"In consultation with the appropriate lead councillor and subject to being satisfied that the Council will receive the best consideration reasonably obtainable to sell land and buildings up to 0.2 hectares in area, following consultation with the Chief Finance Officer and ward councillor(s) in compliance with the Land and Property Disposal Policy".

Reason for the call-In

- 7.5 In accordance with the criteria within Overview and Scrutiny Procedure Rule 16(c), Councillors Patrick Oven, James Brooker, Jason Fenwick, Sue Wyeth-Price, and Catherine Young have referred the above decision to this Committee for the following reason:

“That the decision is not in accordance with the decision-making principles set out in the Constitution (criterion (iv) as referred to in Overview & Scrutiny Procedure Rule 16 (c)), namely that it fails to comply with principle (d) referred to in the Principles of Decision-Making in Article 14.2 (d) of the Constitution: that there should be a presumption in favour of openness in respect of the Council’s business. This decision breaches it for no good reason as such an important decision has been taken by an officer, without any opportunity for the public or councillors to engage with the decision-maker. The final decision on this matter should be taken by the Executive.

Furthermore, Access to Information Procedure Rule 22.3 requires officers contemplating a decision in connection with an executive function to have careful regard to a number of principles in deciding how the decision should be taken.

Principle (d) states that the officer should have careful regard to ‘whether the proposed executive decision is sufficiently important and/or sensitive so that a reasonable member of the public would reasonably expect it to be taken by the Executive’. We submit that this decision was both of such importance and sensitivity that any reasonable member of the public would reasonably have expected it to have been taken by the Executive.”

8. Consultations

- 8.1. Although there have been no specific consultations in respect of the drafting of this report, the Strategic Director: Place consulted formally with the Deputy Leader of the Council and Lead Councillor for Regeneration, Councillor Tom Hunt, the Chief Finance Officer, and relevant local ward councillors prior to taking the decision in

accordance with the relevant power delegated to her in the scheme of delegation to officers.

9. Key Risks

9.1. None relating to this covering report.

10. Financial Implications

10.1. There are no financial implications relating to this covering report.

10.2. The financial implications associated with the proposed transaction are set out in the decision in paragraph 7.4 above.

11. Legal Implications

11.1 Under section 9F (2) of the Local Government Act 2000, Overview and Scrutiny has the power to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive. Furthermore, section 9F (4) empowers the Overview and Scrutiny committee to recommend that any decision made but not implemented be reconsidered by the person who made it.

11.2 The Council's Constitution (Overview and Scrutiny Procedure Rule 16) indicates that the Committee's options, if deciding to review the proposed decision itself, include referring the proposed decision back to the decision taker for reconsideration, with such comment and advice as the Committee deems appropriate, or endorsing the proposed decision.

11.3 If the Committee endorses the proposed decision or determines not to refer the matter back to the decision taker, the proposed decision shall take effect immediately.

12. Human Resource Implications

12.1 There are no human resource implications arising directly from this report.

13. Equality and Diversity Implications

13.1 The Council has a statutory duty under section 149 of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

13.2 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

14. Climate Change/Sustainability Implications

14.1. No relevant climate change/sustainability implications apply to this report.

15. Suggested issues for overview and scrutiny

15.1 In accordance with the Council's Constitution, the proposed decision of the Strategic Director: Place dated 29 February 2024 has been called-in for this Committee to review. Details of the decision are within this covering report, as are the options available to the Committee.

16. Summary of Options

16.1 The Committee is requested to consider the call-in of the proposed decision and determine whether to:

- (a) Refer the decision back to the decision taker for reconsideration, with such comment and advice as the Committee deems appropriate; or
- (b) Endorse the decision, or not to refer the matter back to the decision-taker, in which case the decision shall take effect immediately.

17. Background Papers

None

18. Appendices

None