

CALL-IN SUB-COMMITTEE MINUTES

8 FEBRUARY 2016

Chair:	* Councillor Jerry Miles	
Councillors:	* Richard Almond	* Jo Dooley
	* Jeff Anderson	* Paul Osborn
In attendance: (Councillors)	Marilyn Ashton	Minute 17
	Ramji Chauhan	Minute 17
	Stephen Greek	Minute 17
	Barry Macleod-Cullinane	Minute 17

* Denotes Member present

12. Attendance by Reserve Members

RESOLVED: To note that there were no Reserve Members in attendance.

13. Declarations of Interest

RESOLVED: To note that there were no declarations of interests made by Members.

14. Appointment of Vice Chair

RESOLVED: To appoint Councillor Paul Osborn as Vice-Chair of the Sub-Committee for the 2015/2016 Municipal Year.

15. Minutes

RESOLVED: That the minutes of the meeting held on 10 March 2015, be taken as read and signed as a correct record.

RESOLVED ITEMS

16. Protocol for the Operation of the Call-In Sub-Committee

The Chair drew attention to the document 'Protocol for the Operation of the Call-In Sub-Committee'. He outlined the procedure to be followed at the meeting, and the options open to the Sub-Committee at the conclusion of the process.

In accordance with Committee Procedure Rule 46.5, a notice seeking 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.

He informed the Sub-Committee that the grounds a), b) and d) had been cited on the Call In notice, and this had been deemed to be valid for the purposes of Call-in.

RESOLVED: That the Call-In would be determined on the basis of the following grounds:

- a) inadequate consultation with stakeholders prior to the decision;
- b) the absence of adequate evidence on which to base a decision;
- d) the action is not proportionate to the desired outcome.

17. Call-In of the Cabinet Decision (20 January 2016) - Draft Harrow Weald Conservation Areas Supplementary Planning Document

The Sub-Committee received the papers in respect of the call-in notice submitted by 6 Members of the Council in relation to the decision made by Cabinet on the Draft Harrow Weald Conservation Areas Supplementary Planning Document.

The Chair advised the Sub-Committee on the suggested order of proceedings and reminded Members of the timings allowed for submissions and questions. He invited the two representatives of the signatories to present their reasons for the call-in.

The first representative had been the Portfolio Holder in 2006 when it had been unanimously resolved that the three roads qualified for conservation area status. She acknowledged that the decision had been marginal and had met with some resistance from the Conservation Officer but stated that this did not mean that the areas did not have merit. The discussion at the Planning Policy Working Group had given the impression that the roads had no merit and had questioned their inclusion in the conservation area. She expressed the view that as some of the six criteria had been met and as there had been no change in the subsequent ten years their exclusion was flawed.

In addition, the Supplementary Planning Document (SPD), which had taken ten years to produce, was an essential piece of work to support the Council's position at planning appeals. The three areas were being excluded at the first opportunity using a misleading and misdirected report. The ability to remove areas from conservation areas was acknowledged but such a decision should be based on accurate information assessed by an unbiased person.

The second representative stated that there had been significant local concern at the decision to remove the roads from the Conservation Area as evidenced by in excess of 300 letters and a petition. He considered the decision to be unnecessary and unjustified on the grounds of lack of consultation, insufficient evidence and proportionality.

With regard to lack of consultation, the consultation letter did not state that responses would be judged against six criteria nor did it state what the criteria were but that responses would be taken into account and changes made if appropriate. Significant evidence had been provided, particularly in two responses, which supported the criteria. Although viable, the status quo was not given as an option. He considered that the onus had been on residents to justify the status quo rather than the Council stating the reasons for change and residents would not be expected to have the requisite planning knowledge. In addition, views should have been sought on the decision to change the name of the conservation area. A number of residents had asked to meet the Portfolio Holder and had not received the opportunity.

There was insufficient evidence on which to change the decision made at the Local Development Framework Panel (LDF) which had been based on the same criteria, there had been no material change to planning policies that would affect the assessment and there had been no change on the ground. As the decision had been made ten years previously the status quo was viable but no evidence had been presented. The roads had been taken out of the conservation area without their appraisal or any detailed discussion.

The decision was not proportionate as the consultation had been conducted as if from scratch, ignoring the evidence on which the previous decision had been based. An overwhelming need to outweigh the responses of residents had not been demonstrated and the decision was not proportionate or consistent with corporate policy. The advice to Cabinet that retention of the boundaries would weaken other conservation areas was disputed as the current Area had been supported in decisions by planning inspectors and appeal decisions. Had it been unsound it would have become apparent

previously and, as the first time Conservation Area status had been withdrawn, threatened the stability of conservation areas throughout Harrow.

The Deputy Leader and Portfolio Holder for Business, Planning & Regeneration supported the decision made by Cabinet and that the Call-in should be taken no further and the decision implemented citing the following:

- there was no statutory requirement to consult on the proposed designation of conservation areas or any modification of their boundaries or cancellation;
- tables 1 & 2 and pages 141-206 were specifically the area appraisal and contained all the evidence required;
- the report detailed the statutory procedure for review of a conservation area which included cancellation and outlined the criteria which had been in place since at least 1989;
- the Council response had stated that the 2006 report was unclear as to which, if any, of the criteria had been met and the case for designation was said to be marginal. The decision in 2006 had been made on the balance of probabilities with little information. The same criteria had been applied for all 27 conservation areas and the decision that was subject to the call-in had been based on a huge amount of work;
- independent views had been sought and received from Historic England and the Council for British Archaeology, both which supported the de-designation;
- the roads in question had not been included in 1989, were marginal in 2006 and this had been the first full appraisal. There was a lack of public attendance at the meeting, there being two residents, whereas the appraisal had been supported by three professional planners. He could not see any reason for additional views to be sought.

A representative of the Call-In stated that, in consulting with the public, the Council had an obligation to ensure it was in the proper way and without any suggestion of predetermination. Whilst public attendance at the meeting was low, there had been 300 written responses, a petition and attendance at previous events and their responses of residents had been given insufficient weight.

In response to questions from the Sub-Committee, the representatives of the Call-in stated that the criteria met were numbers 2, 4, 5 and perhaps 6. This had been unchanged since the 2006 decision.

The representatives of the Call-In and Members of the Sub-Committee posed questions to the Portfolio Holder who responded as follows:

Consultation had been robust and in accordance with the Council's adopted Statement of Community Involvement. The consultation had sought objective

evidence in support of the criteria and insufficient evidence had been received. The officers had responded to the matters raised in public responses.

Detailed appraisal had only been undertaken for areas that had met the criteria. There were other nice and pretty roads without listed buildings that had not been incorporated into a conservation area. Subsequent to consideration of the appraisal, the Council had recognised that the previous decision was incorrect and had re-consulted on that basis. Without a robust legal basis for maintaining conservation area status, the Council could have been open to challenge. He was unable to recall the criteria used in the original decision but noted that, other than criteria 1 and 3, the criteria were subjective.

The Call-in questioned whether the decision was biased and his view was that it was not. The decision had been based on those areas most relevant to the Planning (Listed Buildings and Conservation Areas) Act 1990, that is those of special historical interest or archaeological importance. Consideration had been given to a detailed assessment comprising 150 pages of evidence on two small conservation areas produced by a full time officer over approximately nine years. He had not been in discussion with the three professionals responsible for the report to Cabinet and had not met with members of the public as he could not take unilateral evidence that could cloud his judgement as a final decision maker.

Representatives re-iterated that in 2006 the roads were considered to meet three of the criteria and that an independent person should be commissioned to consider the assessment. With the exception of Call-in, judicial review was the only challenge available.

The Portfolio Holder responded that the report to Members represented the considered professional views of several of the Council's planning officers who knew the area well and had worked on the assessment of the borough's other conservation areas over recent years. He did not see what benefit a further independent assessment would have.

In response to a question from a Member of the Sub-Committee as to the need to address the criteria in consultation responses, the Portfolio Holder referenced the six criteria set out in the original Cabinet report, a public question to Cabinet regarding the criteria and information at public meetings. The criteria were also set out in the draft SPD itself. It had not been purely a database exercise. The Council had said that the inclusion of areas would take place subject to appropriate evidence. The points made regarding devaluation of the roads and the period of time they had already been included in a conservation area had no bearing if areas were not in fact of special interest in accordance with the legal requirements.

With regard to questions as to whether or not the status quo had been an option during the consultation, the public had not been precluded from supporting its inclusion and it did not say that the status quo was or was not an option.

(The Sub-Committee then adjourned from 8.35 pm to 9.25 pm to receive legal advice.)

The Chair announced the decision of the Sub-Committee and it was

RESOLVED: (by a majority decision) That

- (1) the challenge to the decision should be taken no further and the decision be implemented;
- (2) the Call-In Scrutiny Sub-Committee recommended that for future consultations where consultees are asked to comment against specific criteria, these criteria should be noted.

The Sub-Committee wished it to be recorded that the decision was by a majority of votes.

Councillors Jerry Miles, Jeff Anderson and Jo Dooley voted that the challenge to the decision should be taken no further and the decision be implemented. Councillors Richard Almond and Paul Osborn voted against the decision and that all three grounds should be upheld.

(Note: The meeting, having commenced at 7.00 pm, closed at 9.25 pm).

(Signed) COUNCILLOR JERRY MILES
Chair