

**REPORT FOR: Property and Major
Contracts Portfolio Holder
Decision**

SUBJECT: Flash Musicals (Granting of Lease) – Referral by
Call-In Sub-Committee

**Responsible
Officer:** Hugh Peart, Director of Legal and
Governance Services

Portfolio Holder: Councillor Stephen Wright, Property and
Major Contracts

Key Decision: No

Urgent/Non Urgent: No

**Power to be
exercised:** Paragraph 2(iii) of the Appendix to the
Executive Procedure Rules, Part 4D of the
Constitution

Exempt: Public

**Decision subject to
Call-in:** No/Yes (please see end of report)

Enclosures: Appendix 1 – Call-In Notice by 6 Members of
Council
Appendix 2 – Minutes of the Call-In Sub
Committee – 1 October 2013
Appendix 3 – Decision Notice – 16
September 2013
Appendix 4 – Portfolio Holder Report

Section 1 – Summary and Recommendations

This report sets out the decision of the Call-In Sub-Committee held on 1 October 2013 following the receipt and consideration of a Call-In notice in relation to the former Portfolio Holder for Property and Major Contract's decision of 16 September 2013 on Flash Musicals (Granting of Lease).

Recommendations: That

- (1) in accordance with Committee Procedure Rule 46.8.3, the decision of the Former Portfolio Holder for Property and Major Contracts on 16 September 2013, as set out in Appendix 3, in relation to Flash Musicals (Granting of Lease) be re-considered as result of the decision of the Call-In Sub-Committee;**
- (2) the original Portfolio Holder decision of 16 September 2013 be confirmed or amended in light of the Call-In Sub-Committee's comments having been noted and the Portfolio Holder is requested to note the further actions proposed as a result of the Call-In in paragraph 2.5 below and decide whether he wishes to proceed with the actions outlined.**

Reason (For recommendation):

In accordance with Committee Procedure Rule 46.8.3, Cabinet must reconsider its decision within 10 clear working days of a referral by the Call-In Sub-Committee.

Section 2 – Report

2.1 Background.

On 16 September 2013, the Portfolio Holder for Property and Major Contracts agreed that the Corporate Directors of Community Health and Well Being and Environment and Enterprise be authorised to approve the leasing of the premises at Methuen Road, Edgware to Flash Musicals on the terms outlined, the Director of Finance and Assurance be authorised to make payment from the Council's General Fund in respect of previous services delivered to the Council subject to final verification of the services delivered by Flash Musicals to the Council, to settle monies outstanding to the Housing Revenue Account on the rent of Methuen Road and the Corporate Director of Community Health and Well Being be instructed to enter into Service Level Agreements with Flash Musicals for the delivery of services outlined in paragraph 2.2.2 of the report. The report considered by the Portfolio Holder is attached at Appendix 4.

2.2 Call-in of decision. On 20 September 2013, a Call-In Notice signed by 6 Members of Council (4 Labour and 2 Conservative) was received citing the grounds of inadequate consultation with stakeholders prior to the decision, the absence of adequate evidence on which to base the decision, the decision was contrary to the policy framework, or not wholly in accordance with the budget framework, the action was not proportionate to the desired outcome, a potential human rights challenge and insufficient consideration of legal and financial advice. The Call-In Notice is attached at Appendix 1. Having been validated, a meeting of the Call-In Sub-Committee was held on 1 October 2013 to consider the Call-In notice. The subsequent reference arising from the Sub-Committee meeting is attached at Appendix 2 for Cabinet Members consideration.

2.3 Response of the Call-in Sub-Committee

The Sub-Committee agreed the call-in on the following grounds:

- i) Ground (a) – inadequate consultation with stakeholders prior to the decision – be upheld as the stakeholders were the voluntary sector and should have been consulted.
- ii) Ground (b) – the absence of adequate evidence on which to base a decision – be upheld due to issues with the invoice and the need to get it substantiated.
- iii) Ground (d) – the action was not proportionate to the desired outcome – be upheld in the context of the current financial climate.
- iv) Ground (f) – insufficient consideration of legal and financial advice – be upheld in terms of financial advice in that it must be noted that
 - (a) the decision committed the Council to expenditure through a 5 year Level Agreement that was not available to other providers, was outside of the current commissioning process and was not open and transparent;
 - (b) it undermined the Outcome Based Grants Process; and
 - (c) before the Council had made the decision it should have consulted the voluntary sector.

The Sub-Committee agreed that the call-ins on ground (c) – the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework and on ground (e) – a potential human rights challenge – not be upheld.

In his concluding comments, Chair of the Sub-Committee stated that whilst the Portfolio Holder had made the decision with good intentions, the Sub-Committee had considered the process and agreed that had failed on 4 grounds. The Sub-Committee would have liked other stakeholders to have had an input.

2.4 Recommendation In accordance with Committee Procedure Rule 46.8.3, the decision taker must reconsider the original decision within 10 clear working days of a referral by the Call-In Sub-Committee. In accordance with a

protocol agreed by Cabinet in December 2002, as the original decision was taken by a Portfolio Holder, the Leader has been asked to determine whether the matter for re-consideration should be referred to Cabinet or the Portfolio Holder. The Leader has determined that the matter should be referred to the Portfolio Holder.

The Portfolio Holder is recommended to:

(1) in accordance with Committee Procedure Rule 46.8.3, the decision of the Former Portfolio Holder for Property and Major Contracts on 16 September 2013, as set out in Appendix 3, in relation to Flash Musicals (Granting of Lease) be re-considered as result of the decision of the Call-In Sub-Committee;

(2) the original Portfolio Holder decision of 16 September 2013 be confirmed or amended in light of the Call-In Sub-Committee's comments having been noted and the Portfolio Holder is requested to note the further actions proposed as a result of the Call-In in paragraph 2.5 below and decide whether he wishes to proceed with the actions outlined.

2.5 Options considered

Options for the granting of a lease to Flash Musicals were outlined in the Portfolio Holder's report of 16th September 2013. In the light of the findings and recommendations of the Sub-Committee, there is a further option to respond to the points raised through the following actions:

- a) Engaging the voluntary and community sector in discussion of the options and the transparency of the decision making process
- b) Ensuring that further financial advice is sought regarding the evidence base on which to make the decision
- c) Considering the impact of the decision to the Council and to other voluntary and community sector organisations
- c) Further considering the impact of any decision on the Council's policy framework.

This will involve consultation with representatives of the voluntary and community sector and further consideration of the financial and policy issues before any final decision is actioned.

Legal Implications

As set out in the Portfolio Holder report .

Financial Implications

As set out in the Portfolio Holder report.

Performance Issues

As set out in the Portfolio Holder report .

Environmental Impact

As set out in the Portfolio Holder report.

Risk Management Implications

As set out in the Portfolio Holder report.

Equalities implications

As set out in the Portfolio Holder report .

Corporate Priorities

To deliver a cleaner, safer and fairer Harrow

Section 3 - Statutory Officer Clearance

Signature:

Name: Simon George Chief Financial Officer

Date:

Signature:

Name: Hugh Peart Monitoring Officer

Date:

Section 4 – Performance Officer Clearance

Signature:

Name: Alex Dewsnap Divisional Director
Strategic

Date: Commissioning

Section 5 – Environmental Impact Officer Clearance

Signature:	on behalf of the*
Name: Andrew Baker	<input type="checkbox"/> Divisional Director (Environmental Services)
Date:	

Section 6 - Contact Details and Background Papers

Contact:

Alison Atherton
Senior Professional Democratic Services
Tel: 020 8424 1266
Email: alison.atherton@harrow.gov.uk

Background Papers: None

Signature:

Position Director of Legal and Governance Services

Name (print) Hugh Peart

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 disclosable non-pecuniary and pecuniary interests (if any):

[Should you have a Disclosable Pecuniary Interest, you should not take this decision.]

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

Signature:

Portfolio Holder/Leader

Date:

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

*(for completion by Democratic
Services staff only)*

NOT APPLICABLE

**Call-in does not apply if
original decision of the
Portfolio Holder on 16
September 2013 is
confirmed unchanged.**

**However, if original
decision is amended
Call-in will apply.**