

BABERGH DISTRICT COUNCIL

**FROM: WORKING GROUP TO REVIEW
CALL-IN PROCEDURES**

REPORT NUMBER **F103**

**TO: **OVERVIEW AND SCRUTINY
(STEWARDSHIP) COMMITTEE
AND
OVERVIEW AND SCRUTINY
(COMMUNITY SERVICES)
COMMITTEE****

**DATE OF MEETING **10 October 2006
17 October 2006****

REVIEW OF CALL-IN PROCEDURES

1. SUMMARY

At their meetings on 21 and 28 March 2006 the Overview and Scrutiny (O&S) Committees established a Working Group to review the Council's call-in procedures along the lines set out in the Planning Assessment Sheet attached as Appendix 1. Originally it was envisaged that the Group would report to the July meetings of the O&S Committees, but due to difficulties in finding dates when all Members were available, it was agreed, in consultation with the Chairmen of the Committees, that the Group would report to the October meetings. The Working Group has met twice and this report outlines its findings.

2. RECOMMENDATIONS TO STRATEGY COMMITTEE AND COUNCIL

- 2.1 That a minimum of any five Members of either Overview and Scrutiny Committee will be needed to sign a call-in request.
- 2.2 That the Chairmen of the Overview and Scrutiny Committees be excluded from signing call-in requests.
- 2.3 That a call-in request form be introduced as set out in Appendix 3 and that requests received by fax or e-mail be acceptable.
- 2.4 That the Head of Corporate Services, in consultation with the Monitoring Officer and the Chairman of the appropriate Overview and Scrutiny Committee, considers the validity of a call-in request, having regard to the protocol attached as Appendix 5. The Chief Executive and Corporate Directors are to maintain an overview of procedures, be notified of a call-in request and be consulted if necessary.
- 2.5 That the Head of Corporate Services, in consultation with the Monitoring Officer and the Chairmen of both Overview and Scrutiny Committees, should decide which would be the most appropriate (having regard to the terms of reference of the Committees) Overview and Scrutiny Committee to deal with a matter the subject of a call-in.
- 2.6 That any Member making a request for call-in should have the right to attend and speak at the meeting of the Overview and Scrutiny Committee considering the matter.
- 2.7 That Babergh's procedures be streamlined so that the appropriate Overview and Scrutiny Committee can either refer a called-in matter back to the Strategy Committee, or refer the matter to Council. Council should then be able to make the final decision or refer the matter back to the Strategy Committee.

- 2.8 That the Head of Corporate Services be authorised to make appropriate amendments to the Constitution in relation to recommendations 21. to 2.7 above.
- 2.9 That the new procedures be implemented with immediate effect and reviewed after one year.

The Committee is asked to make recommendations to Strategy Committee and Council on the above matters.

3. **FINANCIAL IMPLICATIONS**

- 3.1 There are no direct financial implications.

4. **KEY INFORMATION**

- 4.1 The Working Group looked at the Council's current procedures relating to call-in which are set out in paragraphs 38 to 45 of the Constitution (pages C-4-4(8) to C-4-4(13)). A summary is attached at Appendix 2.

- 4.2 In order to gather information about other Councils' call-in procedures, the Committee Services Section contacted 53 members of the Fourth Option Special Interest Group (FOSIG). Sixteen councils replied with detailed information, and the Working Group considered a summary of their replies. The FOSIG members who replied to Babergh's request for information have a variety of political make-ups. All the respondents have had very few call-ins, and some have had none.

- 4.3 Taking into account all the information presented to them, the Group Members agreed on the points set out in paragraphs 5 to 11 below.

5. **How does Babergh compare with other authorities?**

- 5.1 Babergh's Constitution is based on the model constitution issued by the then ODPM (now DCLA) and adopted by the Council with effect from April 2001. This Council deals with call-in requests in a broadly similar way to other councils. However, there are some dissimilarities, and these are dealt with in paragraphs 6.4, 9.1, 9.2, 9.3 and 9.4 below.

6. **Making a call-in request**

- 6.1 Currently the Head of Legal and Administrative Services calls in a decision if requested to do so by the Chairman and any four Members of the appropriate O&S Committee. The Group Members feel that this is restrictive. They are conscious of the fact that the current arrangement at Babergh of 'no overall political control' could change and are concerned to protect the interests of minority groups in the future. They therefore propose that in future a minimum of any five Members of *either* O&S Committee should be needed to make a call-in request. In this way, should there be a political administration in the future, the interests and rights of minority groups would be better preserved.

- 6.2 Currently a request for call-in has to have the support of the Chairman of the appropriate O&S Committee. The Working Group believes that this can place the Chairman in a difficult position, and, in any case it is proposed that he or she should be consulted on the validity of a call-in request (see para 7.2 below), so it would not be appropriate also to have the right to make the request. Therefore the Group recommends that the Chairmen of O&S be excluded from signing call-in requests. It may appear that in this way the O&S Chairmen are being

deprived of the right to initiate a call-in, but Group Members are aware of the fact that these Chairmen do in any case have an in-put into O&S agendas.

- 6.3 Members are aware that there can be practical problems in obtaining signatures from Members within the limited time for call-in. It is proposed that a Call-In Request Form be adopted as set out in Appendix 3. The procedure would be that Members wishing to make a Call-In Request could

either sign a paper copy of the Form and hand it in, post or fax it to the Head of Corporate Services before the end of the call-in period

or submit the Form by e-mail. In this case, only one Member would need to submit the actual form. However, individual e-mails (or letters) in support of the request would also have to be submitted by the other Members specified on the Request Form before the end of the call-in period.

- 6.4 Babergh appears to be unusual in allowing a relatively long period for call-in. (Two working days for publication and then seven working days before implementation.) Most of the FOSIG respondents allow five or seven working days from the date of a decision for a call-in request. The Working Group has considered whether the period for call-in should be shortened in line with other authorities, but has decided to recommend no change.

7. Deciding on the validity of a call-in request

- 7.1 In all the cases considered by the Working Group, a member of staff is responsible for ensuring that evidence of what took place is accurate and that procedures are in place for a formal response to those members initiating a call-in. However, some authorities stipulate that requests for call-in are dealt with by an officer, in consultation with one or more Members.
- 7.2 The Working Group sees merit in an arrangement where there is Member in-put into the decision as to whether or not a request for call-in can be accepted. It is proposed that the Head of Corporate Services, in consultation with the Monitoring Officer and the Chairman of the appropriate O&S Committee, should be responsible for responding to a request for call-in.
- 7.3 The Constitution states that call-in should only be used where Members of the appropriate O&S Committee have evidence which suggests that the Strategy Committee did not take a decision in accordance with the principles set out in Article 12 of the Constitution (see Appendix 4), or where the decision taken is outside the Terms of Reference of the Strategy Committee.
- 7.4 Officers have a duty to ensure that any request for a call-in complies with the procedures set out in the Constitution. Clearly a properly constituted call-in request should not be rejected. However, Babergh may differ from other authorities in the way it interprets the word 'evidence' in this context. Some authorities have produced guidelines which set out the criteria against which the Council expects Members to judge any request for a call-in. The Working Group believes this could be a useful tool and recommends the adoption of the protocol attached at Appendix 5.

7.5 Irrespective of the above, the Monitoring Officer has a legal duty to ensure that all Council actions are lawful. If at any time it appears to her that any proposal or decision is likely to give rise to a contravention of any rule of law or code of practice, then a report must be prepared and sent to all Members. The report must be considered at a meeting of full Council. The implementation of the proposal or decision is suspended until consideration of the report.

8. Determining which O&S Committee should consider a called-in decision

8.1 If Members from both O&S Committees had called a matter in, there might be doubt as to which Committee should deal with the call-in. It is therefore proposed that the Head of Corporate Services, in consultation with the Monitoring Officer and the Chairmen of both O&S Committees, should decide which would be the most appropriate Committee to deal with the matter (having regard to the Terms of Reference of the Committees), but that there be a provision in the Constitution to the effect that any Member making a request for call-in would have the right to attend and speak at the meeting considering the matter.

9. When a call-in goes to Committee

9.1 At Babergh, when an O&S Committee considers a called-in decision, if Members are still concerned about it, they can refer it back to the Strategy Committee for reconsideration, setting out the nature of their concerns. Strategy can either reject the O&S recommendations, in which case the issue is referred to Council for consideration, or they can accept the O&S recommendations and adopt an amended decision.

9.2 Paragraph 38 (f), page C-4-4(8) of the Constitution states:

“If the matter was referred to Full Council in circumstances where Strategy Committee did not accept the recommendations of Overview and Scrutiny Committee (as set out in (d) above) and Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if Council does object, Council will refer any decision to which it objects back to the Strategy Committee, together with the Council’s views on the decision and Strategy Committee shall make its decision in accordance with the views expressed by Council. A meeting will be convened by Strategy Committee to reconsider as soon as practicable following Council request.”

This could prove to be a long drawn out process.

9.3 Not all the FOSIG respondents provided information about their procedures once a call-in request has been accepted. However, from the information provided by nine authorities, it would appear that the procedure set out in 9.1 and 9.2 above is unique to Babergh. Many authorities stipulate that the scrutiny committee can

either

refer the called-in matter back to the decision-making body, to amend its decision or not

or

it can refer the called-in matter to full Council. Some authorities give the Council power to make the final decision, others give the Council power to decide whether or nor to refer the matter back to the decision-making body.

9.4 The Working Group Members recommend that Babergh's procedures be streamlined so that the O&S Committee can either refer the matter back to the Strategy Committee, or refer the matter to Council. Council should then be able to make the final decision or refer the matter back to the Strategy Committee.

10. Implementation and Review

10.1 In the light of the proposals set out above, a number of amendments to the Constitution would be required, and it is proposed that the Head of Corporate Services be authorised to make the appropriate changes.

10.2 It is proposed that the new procedures should be implemented with immediate effect and reviewed after one year of operation.

11. APPENDICES

Appendix 1 – Planning Assessment Sheet, as amended by the Overview & Scrutiny (Stewardship) Committee on 21 March 2006

Appendix 2 – Summary of current Call-In Procedures

Appendix 3 – Proposed new Call-in Request Form

Appendix 4 – Extract from Article 12 of the Constitution – principles of decision-making

Appendix 5 – Proposed Protocol for Use of Call-In Procedure

12. BACKGROUND PAPERS REFERRED TO:

Report entitled "Review of Call-In Procedures" circulated to Working Group Members for their meeting held on 28 July 2006.

Report entitled "Review of Call-In Procedures" circulated to Working group Members for their meeting on 9 June 2006.

Information provided by e-mail by sixteen members of the Fourth Option Special Interest Group

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OVERVIEW AND SCRUTINY (Joint) COMMITTEE

PLANNING ASSESSMENT SHEET FOR REVIEWS

(as amended by Overview and Scrutiny (Stewardship) Committee on 21 March 2006)

What is to be reviewed?	The operation of the Call-In process covered by O&S Committee Rules 38-40
Why?	The decision by Head of Legal & Admin to reject the request by Members for a Call-In of a Strategy decision of November 2005. Her action to refuse to allow the call-in process to operate was contrary to the expectations of Members, who had expected the O&S Committee to be able to review the evidence put forward.
What benefits are expected?	A greater understanding by Members and Officers. Possible review of Constitution. Improved drafting of the Constitution.
<u>What needs to be examined and asked?</u>	
<p style="text-align: center;">Documents/evidence/research</p> <p><i>What?</i> Council Constitution; emails from Head of Legal & Admin. Constitution & procedures of other Councils.</p> <p><i>Why?</i> To examine whether process actually followed is in line with interpretation elsewhere, and to determine expectations of Babergh Members.</p>	<p style="text-align: center;">Questions to be asked</p> <p>Are articles of Constitution consistent with those of other Councils?</p> <p>Is interpretation consistent with that elsewhere?</p> <p>What process do Members want to see for future?</p> <p>What changes, if any, are required to BDC Constitution?</p> <p>Why should an Officer be able to reject a properly-constituted call-in, when the members believe there is a case to be investigated? i.e. – shouldn't the Committee requesting the call-in make that decision?</p> <p>Do other Councils allow Officers to do this?</p>
<p style="text-align: center;">Site visits</p> <p><i>Where?</i> None envisaged as necessary (should be possible to gather evidence by post and email)</p> <p><i>Why?</i> N/A</p>	<p style="text-align: center;">Questions to be asked</p>

<p style="text-align: center;">Consultation</p> <p><i>Who/what?</i> Organisations representing the political parties, such as the Association of Liberal Democrat Councillors; Members and Officers from other Councils.</p> <p><i>Why?</i> To obtain evidence of practice elsewhere. To obtain alternative interpretations of our Constitution. To obtain advice on how to draft our call-in procedures.</p>	<p>Questions to be asked</p> <p>Is BDC Constitution comparable with that of other similar Councils?</p> <p>How does Call-In process operate in situations where there is and is not a controlling political grouping.</p> <p>Case material/precedents in Councils elsewhere for an officer to refuse to accept a call-in request</p> <p>Is this a precedent?</p> <p>If members wanted to appeal an Officer's action in such circumstances – whom should they appeal to? Eg. ODPM?</p>
<p style="text-align: center;">Witnesses</p> <p><i>Who?</i> Head of Legal & Admin; representatives from other Councils (if not by written evidence).</p> <p><i>Why?</i> To explain operation of process in Babergh and elsewhere.</p>	<p>Questions to be asked</p> <p>How does process operate in BDC?</p> <p>How does it operate elsewhere?</p> <p>If differences identified, explore reasons.</p>
<p>What resources will be needed for the review?</p>	<p>Members: 4-6 from the 2 O&S committees</p> <p>Officers: Corporate Director; Head of L&A + support</p>
<p>Over what period should it be carried out?</p>	<p>Start 22/3/06 (once approved by O&S)</p> <p>Complete 18/7/06 (O&S(S)) and 25/7/06 (O&S(CS))</p>
<p>Who will be the lead officer?</p>	<p><u>Helen Style (as Corporate Director supporting O&S/S) - but not (Acting) Head of Legal and Admin</u></p>

BABERGH'S CURRENT CALL-IN PROCEDURES: A SUMMARY

The Council's current procedures relating to call-in are set out in paragraphs 38 to 45 of the Constitution (pages c-4-4(8) to c-4-4(13)). The following is a summary of the procedures:

1. Call-in should only be used in exceptional circumstances. These are where Members of the appropriate Overview and Scrutiny Committee have evidence which suggests that the Strategy Committee did not take a decision in accordance with the principles set out in Article 12 (decision making) of the Constitution or where the decision taken is outside the Terms of Reference of the Strategy Committee.
2. The rules are:-
 - (a) When a decision is made by Strategy Committee it is published normally within two days. The Chairmen and Members of the Overview and Scrutiny Committees receive copies of the Decisions Notice.
 - (b) The Notice states that the decision will come into force on the expiry of 7 working days, unless it is called in.
 - (c) The Head of Legal and Administrative Services calls in a decision for scrutiny by the appropriate Overview and Scrutiny Committee, if requested to do so by the Chairman and any 4 Members of the Committee and notifies the decision-maker of the call-in. The Head of Legal and Administrative Services calls a meeting of the Overview and Scrutiny Committee, to be held as soon as practicable.
 - (d) The Overview and Scrutiny Committee considers the decision and if Members are still concerned about it, they can refer it back to the Strategy Committee for reconsideration, setting out the nature of their concerns. Strategy reconsiders the matter as soon as practicable. Strategy can either:-
 - (i) reject the Overview and Scrutiny recommendations, in which case the issue is referred to Council for consideration;Or
 - (ii) accept the Overview and Scrutiny recommendations and adopt an amended decision.
 - (e) Following an objection, if the Overview and Scrutiny Committee does not meet on the specified date, or if it does meet but does not refer the matter back to Strategy, the decision takes effect on the date of the Overview and Scrutiny Committee meeting.

- (f) If the matter goes to full Council in circumstances where Strategy does not accept the recommendation of Overview and Scrutiny:-
- If Council does not object to the decision, no further action is necessary.
 - If Council does object to the decision, the decision is referred back to Strategy, together with Council's views and Strategy makes its decision in accordance with the views expressed by Council. (Strategy meets as soon as practicable after Council).
- (g) If the Council does not meet, or if it meets but does not refer the decision back to Strategy, the decision becomes effective on the date of the Council meeting, or on the expiry of the period in which the Council meeting should have been held, whichever is the earlier.
3. A proposal should only be called in once, unless it is changed to such an extent that in reality it is a different proposal.
 4. Each Overview and Scrutiny Committee may only call in 10 decisions per year.
 5. The call-in procedures do not apply to urgent decisions. A decision is urgent if any delay is likely to prejudice the Council's or the public's interests. The Decision Notice makes clear whether an item is urgent and therefore not subject to call-in. The chairman of Council has to agree that the decision is both reasonable and urgent. Urgent decisions have to be reported to the next available meeting of Council, together with the reasons for urgency.
 6. The procedures relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.
 7. If a Member of Overview and Scrutiny Committee is subject to a party whip, he or she must declare this at the beginning of the Committee's deliberations and it must be recorded in the Minutes.

REQUEST FOR CALL-IN

Dated

We would like to call in the decision as detailed below:

Decision making body or individual

Date decision made

What decision do you want the Overview and Scrutiny Committee to consider

Reason for calling in the decision *(continue on separate sheet if necessary)*

Desired Witnesses

Members calling in the decision*

1
2
3
4
5

Signed

Signed

Signed

Signed

Signed

*NB Call-in can be requested by any five Members of either the Overview and Scrutiny (Stewardship) Committee and the Overview and Scrutiny (Community Services) Committee, excluding the Chairmen of those Committees.

**EXTRACT FROM ARTICLE 12 OF THE CONSTITUTION -
DECISION MAKING**

12.02 **Principles of decision making**

All decisions of the Council will be made in accordance with the following principles:

- (a) legality;
- (b) proportionality (i.e. the action must be proportionate to the desired outcome);
- (c) due consultation and the taking of professional advice from officers;
- (d) respect for human rights;
- (e) a presumption in favour of openness; and
- (f) clarity of aims and desired outcomes.

**BABERGH DISTRICT COUNCIL
PROTOCOL FOR USE OF CALL-IN PROCEDURE**

These are the criteria against which the Council expects any request for call-in to be judged. The call-in procedure applies to all decisions made by the Strategy Committee, with the exception of decisions taken as a matter of urgency in accordance with paragraph 42 of the Constitution. The Council does **NOT** expect Members to call in a Strategy Committee decision **UNLESS** one or more of the following circumstances applies –

- the decision appears, having regard to advice from the Monitoring Officer, to be contrary to the Budget or one of the policy framework plans or strategies;
- the decision appears to be inconsistent with any other form of policy approved by Council or the Strategy Committee;
- the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny Committee (and accepted by Council or the Strategy Committee);
- the Strategy Committee appears to have overlooked some relevant consideration in arriving at its decision;
- the Strategy Committee appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
- the decision in question has already generated particular controversy amongst those likely to be affected by it or, in the opinion of Members, it is likely so to do;
- the decision appears to be particularly “novel” and therefore likely to set an important precedent; or
- the decision appears to give rise to significant legal, financial or propriety issues.

In addition, the Council expects Members to satisfy themselves, before deciding to call in a particular Strategy Committee decision that the delay which will ensue, as a consequence of calling in the decision in question, is unlikely to cause prejudice to the interests of the Council or third parties.