

COUNCIL

23 FEBRUARY 2017

USE OF URGENCY PROVISIONS

Portfolio Holder: Councillor Alan Jarrett, Leader

Report from: Neil Davies, Chief Executive

Author: Perry Holmes, Chief Legal Officer

Summary

This report details a decision taken by the Leader under the executive side (Cabinet) special urgency provisions contained within the Constitution.

1. Budget and Policy Framework

1.1 The Constitution requires that the use of urgency provisions is reported to Council for information.

2. Background

2.1 Paragraph 3.2 of Responsibility for Cabinet Functions (Part 3, Chapter 3 of the Constitution) allows for the Leader to consider urgent matters (which would ordinarily be a matter for Cabinet) on occasions where the taking of the decisions cannot be reasonably deferred. This requires the agreement of the Chairman of the relevant Overview and Scrutiny Committee, in accordance with rule 17 of chapter 4, part 2 of the Constitution (Access to Information Rules). Such matters must be reported to Council following the use of rule 17, in accordance with section 18.3 of the access to information rules.

2.2 The Constitution also allows for the call-in provisions to be waived where a decision is considered urgent, in that any delay caused by the call-in would seriously prejudice the Council's or public's interest. This requires the agreement of the Chairman of the relevant Overview and Scrutiny Committee and for the matter to be reported to the next available meeting of the Council, in accordance with rule 15.11 of chapter 4, part 5 of the Constitution (overview and scrutiny rules).

2.3 A summary of the recent use of these provisions is set out in the following section.

3. Supermarket Premises, Britton Farm Shopping Centre, High Street, Gillingham - Company Voluntary Agreement

- 3.1 On 26 January 2017, the Leader considered an exempt report on the above matter. The Leader agreed to authorise the Chief Legal Officer to vote in favour of the Company Voluntary Agreement (CVA) as set out in paragraph 2.4 of the exempt report at the creditors' meeting to be held on 27 January 2017 and to take any other necessary steps to mitigate the Council's financial exposure in this matter (decision no. 187/2017). The Leader also agreed that this decision was considered urgent and therefore should not be subject to call-in (decision no. 188/2017).
- 3.2 The exempt report was presented to the Leader as an urgent item because the Creditors' meeting was due to take place on 27 January 2017, therefore, it was not possible to defer consideration until the next Cabinet meeting which was due to be held on 7 February 2017.
- 3.3 It was noted that the Chairman of the Business Support Overview and Scrutiny Committee had agreed to waive call-in on this report on the basis that this matter was reasonable in all the circumstances and to it being treated as a matter of urgency in accordance with rule 15.11 of Chapter 4, Part 5 of the Constitution and rule 17 of Chapter 4, Part 2 of the Constitution.
- 3.4 All Members of the Business Support Overview and Scrutiny Committee was notified, when agreement to use these provisions was given on 26 January 2017. In addition, the requirements of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 were met via the republication of the Forward Plan on 26 January 2017.
- 3.5 Subsequent to the Leader's urgent decision on 26 January 2017, the creditors' meeting held on 27 January 2017 was attended by officers from Legal Services and Asset and Property Management. The meeting was, however, adjourned at the opening of the meeting by the appointed nominees in view of additional questions that had been raised by the main creditors. The meeting was adjourned to 9 February 2017 where the Company Voluntary Agreement (CVA) was rejected by creditors and following the meeting an Administrator has now been appointed.
- 3.6 In conclusion, the Chief Legal Officer will continue to act to protect the Council's interests. In addition, the Cabinet agreed on 7 February 2017 to delegate authority to the Chief Legal Officer, in consultation with the Portfolio Holder for Resources, to let the supermarket premises, at Britton Farm Shopping Centre, High Street, Gillingham, on the best terms reasonably obtainable (decision no. 14/2017).

4. Financial, legal and risk implications

- 4.1 The requirement to report decisions taken under the various urgency provisions is set out within the Constitution. Details of the financial, legal and risk implications are set out in full within the relevant report.

5. Recommendation

5.1 That the report be noted.

Lead officer contact

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Appendices

None

Background papers

Urgent decision made by the Leader – 26 January 2017

<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=3680&Ver=4>

Report to Cabinet – 7 February 2017 (item 12 refers)

<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=3375&Ver=4>