

COUNCIL

21 FEBRUARY 2019

USE OF URGENCY PROVISIONS

Portfolio Holder: Councillor Alan Jarrett, Leader
Report from: Neil Davies, Chief Executive
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Summary

This report provides details of recent usage of urgency provisions contained within the Constitution.

1. Budget and Policy Framework

- 1.1 The Council's Constitution provides for a report to be submitted to Council following the usage of urgency provisions contained within the Constitution.

2. Background

Cabinet – special urgency

- 2.1 Rule 13.2 (procedure prior to a private meeting of the Cabinet) permits the Cabinet to hold a meeting, or part of a meeting, in private if the matter has not complied with rule 13.1 (this relates, primarily, to the requirement that a notice is published in the Forward Plan at least 28 clear days before the meeting).
- 2.2 Rule 17 (special urgency) of the Council's Access to Information Rules permits the Cabinet to make decisions when compliance with Rule 15 (The Forward Plan of Key Decisions) and Rule 16 (General Exception) is not possible.
- 2.3 On such occasions, a report to Council on the Cabinet decisions taken in the circumstances set out in Rule 17 (Special Urgency) will be submitted, in accordance with paragraph 18.3 of the Access to Information Rules.

Cabinet – call-in and urgency

- 2.4 A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision and notice by which it is made public shall state whether in the opinion of the decision making person

or body, the decision is an urgent one, and therefore not subject to call-in. The chair (or in their absence the vice-chair) of the relevant Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency.

- 2.5 Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency
- 2.6 Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency
- 2.7 A summary of the recent use of these provisions is set out in the following section.

3. Final 2019/20 Mainstream Schools and Academies Funding Formula

- 3.1 On 5 February 2019, the Cabinet considered the above report (item 6 refers):
<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=4131>
- 3.2 This report provided details of the final funding proposals for Medway's schools and academies for 2019/2020.
- 3.3 It was noted that in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in could be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. In this case, the deadline for the submission of the final funding formula to the Education and Skills Funding Agency was 21 January 2019, it was therefore proposed that call-in be waived to prevent any further delay in confirming the Cabinet's decision to the ESFA and to allow the authority to implement the funding formula changes in accordance with the regulations. The Chairman of the Children and Young People Overview and Scrutiny Committee had agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 3.4 The Cabinet instructed officers to implement the Final 2019-20 Funding Formula for mainstream schools and academies, as set out in section 3 of the (Cabinet) report (decision no. 8/2019).
- 3.5 The Cabinet agreed that decision number 8/2019 is considered urgent and therefore should not be subject to call in (decision no. 9/2019).

4. Housing Infrastructure Fund Bid - New Routes to Good Growth

- 4.1 On 5 February 2019, the Cabinet considered the above report (item 12 refers):
<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=4131>
- 4.2 This report provided details of Medway's Housing Infrastructure Fund (HIF) Bid – New Routes to Good Growth, which planned for much needed infrastructure to enable growth in and around the Hoo Peninsula and waterfront regeneration sites and sought approval for the submission of the Bid for up to £170million on 1 March 2019.
- 4.3 It was noted that in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in could be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. In this case, the bid business case and bid submission would need to be completed and uploaded to the HIF Portal from mid-late February to ensure that all documents are received prior to the 1 March 2019 submission date. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee had agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 4.4 The Cabinet approved the submission of the Housing Infrastructure Fund (HIF) bid to the Ministry of Housing, Communities and Local Government on 1 March 2019 for up to £170 million (decision no. 22/2019).
- 4.5 The Cabinet agreed to delegate authority to the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive, in consultation with the Leader, to agree the final submission of the HIF Bid, as detailed within the (Cabinet) report (decision no. 23/2019).
- 4.6 The Cabinet agreed to delegate authority to the Director Regeneration, Culture, Environment and Transformation and Deputy Chief Executive, in consultation with the Leader, that following submission of the bid, to liaise with Homes England to make any required changes to the HIF bid prior to the MHCLG's final decision on the outcome of the bid (decision no. 24/2019)
- 4.7 The Cabinet agreed that decision numbers 22/2019, 23/2019 and 24/2019 were considered urgent and therefore should not be subject to call in (decision no. 25/2019).

5. Commercial Property

- 5.1 On 12 February 2019, the Cabinet considered the above report (item 5 refers):
<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=4364>
- 5.2 This exempt report provided details of a proposal for acquiring commercial property.
- 5.3 On this occasion it had neither been practicable to provide 28 clear days' notice, nor provide 5 clear days' notice of this report coming

forward to Cabinet, therefore, Rule 17 (Special Urgency) of the Access to Information Rules, as set out in the Council's Constitution, had been complied with. As the position of Chairman of the Business Support Overview and Scrutiny Committee was currently vacant, the Mayor had agreed that consideration of this report was urgent and could not be reasonably deferred until the next Cabinet meeting on 5 March 2019 to enable confidential negotiations to take place with appropriate authority at the earliest opportunity. The Forward Plan was published on 5 February 2019 in accordance with this requirement and the Cabinet Agenda was published on 7 February 2019. The Cabinet, at its meeting on 12 February 2019, agreed to accept this item as urgent to enable confidential negotiations to take place with appropriate authority.

- 5.4 Additionally, in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. In this case, a call in would delay this matter at a sensitive point in the negotiations. Therefore, on this occasion it was proposed that the call in period be waived. As the position of Chairman of the Business Support Overview and Scrutiny Committee was currently vacant, the Vice-Chairman agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 5.5 The Cabinet approved the acquisition of the head leases of the property identified in paragraph 2.1 of the (Cabinet) report and the freehold properties also identified in paragraph 2.1 of the (Cabinet) report for a price within the tolerance provided by the professional valuation obtained from Knight Frank, as set out in Appendix 1 to the (Cabinet) report (decision no. 31/2019).
- 5.6 The Cabinet agreed to delegate authority to the Chief Legal Officer in consultation with the Leader, the Portfolio Holder for Resources and the Chief Finance Officer to take all reasonable steps and due diligence to complete acquisition of the head leases of the property identified in paragraph 2.1 of the (Cabinet) report and the freehold properties also identified in paragraph 2.1 of the (Cabinet) report including obtaining necessary professional legal and tax advice and to complete all the necessary legal steps (decision no. 32/2019).
- 5.7 The Cabinet agreed to delegate authority to the Chief Legal Officer in consultation with the Leader and Portfolio Holder for Resources to carry out the re-configuration and improvement works to the property identified in paragraph 2.1 of the (Cabinet) report, as detailed in paragraph 5.10 of the (Cabinet) report (decision no. 33/2019).
- 5.8 The Cabinet agreed to delegate authority to the Chief Legal Officer in consultation with the Leader, the Portfolio Holder for Resources and the Chief Finance Officer to arrange management of the property identified in paragraph 2.1 of the (Cabinet) report and the freehold properties identified after acquisition and to let, cease letting and sell premises subject to an agreed criteria within the property identified at paragraph 2.1 of the (Cabinet) report and the freehold properties also identified in paragraph 2.1 of the (Cabinet) report (decision no. 34/2019).

- 5.9 The Cabinet recommended to Council that this acquisition, including the re-configuration and improvement works to the property identified in paragraph 2.1 of the report, as detailed in paragraph 5.10 of the (Cabinet) report, is added to the Capital Programme (decision no. 35/2019).
- 5.10 The Cabinet agreed that decision nos. 30-34/2019 are considered urgent and therefore should not be subject to call in (decision no. 36/2019).

6. Financial, legal and risk implications

- 6.1 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 Cabinet report.

7. Recommendation

- 7.1 That the report be noted.

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Background papers

None

Appendices

None