



ADUR & WORTHING  
COUNCILS

Key Decision [Yes/No]

Ward(s) Affected:

**Call-In of Decision: JAW/002/23-24 Emergency Accommodation Contract Award**

**Report by the Monitoring Officer**

**Executive Summary**

**1. Purpose**

1.1. The Council's Joint Overview and Scrutiny Procedure Rules provide that where the Monitoring Officer receives a request to call-in a Cabinet Member decision and accepts that request:-

- The decision will be put on hold pending referral to the Joint Overview and Scrutiny Committee;
- The Director for Sustainability & Resources after consultation with the JOSc Chairs, shall call a meeting of the Joint Overview and Scrutiny Committee to be held as soon as is reasonably practicable; and
- In accordance with the procedure rules, the Monitoring Officer is to submit this report to the meeting which shall include the procedure for the Call-In hearing which is attached at Appendix 1

## **2. Recommendations**

- 2.1. The Overview and Scrutiny Committee are recommended to scrutinise the decision and the reasons given for the Call-in and make recommendations to either:-
- Decide to take no further action
  - Refer the decision back to the decision-making person or body for reconsideration, setting out in writing the nature of its concerns or
  - Refer the matter to the Full Council of both Councils.

## **3. Context**

- 3.1. Section 9F of the Local Government Act 2000 sets out the functions of an overview and scrutiny committee which includes *“to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the Executive”* and *“to make reports or recommendations to the Authority or the Executive with respect to the discharge of any functions which are the responsibility of the Executive”*.
- 3.2. At paragraph 18.3 of the Joint Overview & Scrutiny Procedure Rules, the Monitoring Officer shall Call-in a decision for scrutiny if any three Members in total, being of either Council, submits a request in writing setting out the reasons for Call-in to the Monitoring officer. None of the exemptions to the Call-in procedure at paragraph 18.5 of the procedure rules apply.
- 3.3. On 15th June 2023 the Councils’ Monitoring Officer received a request for a call-in of the decision from three Members of the Councils, Councillors Daniel Humphreys, Kevin Jenkins and Elizabeth Sparkes. The request was considered by the Monitoring Officer, who accepted the request as it was deemed to be in compliance with the Overview and Scrutiny Procedure Rules. The matter was referred to this meeting of the Joint Overview and Scrutiny Committee for consideration and determination.
- 3.4. When making decisions the decision maker should bear in mind the principles of decision making as set out in section 12 of the Articles of the Constitution. The principles are set out below to inform and provide guidance to Members of the Committee in reaching their

determination in the context of matters set out in the Call-in request and are copied below for reference:-

### **Principles of Decision-Making**

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

- (a) there should be clarity of aims and desired outcomes;
- (b) all decision shall be in accordance with the Budget and Policy Framework, Finance, Contract and all other procedure rules, statutory requirements, guidance and codes of practice;
- (c) proper regard should be paid to the outcome of any internal or external consultation;
- (d) a presumption in favour of openness, accountability and transparency;
- (e) assessing the impact on human rights, equality, diversity and sustainability;
- (f) proportionality (i.e. the action must be proportionate to the desired outcome);
- (g) there should be an explanation of the alternative options considered;
- (h) there should be proper and documented records and reasons given for all decisions;
- (i) take into account all relevant considerations and ignore those which are irrelevant;
- (j) due consultation and proper advice is taken from Officers and consideration of alternative options before decisions are reached;
- (k) impartiality and an absence of bias, predetermination or conflicts of interest;
- (l) any interests are properly declared;
- (m) decisions are proportionate to the desired outcome;
- (n) a presumption in favour of transparency and openness;

### **In exercising discretion, the decision-maker must:**

- (a) understand the law that regulates the decision-making power and gives effect to it. The decision-maker must direct itself properly in law;
- (b) take into account all relevant matters (those matters which the law requires the Authority as a matter of legal obligation to take into account);
- (c) leave out of account irrelevant considerations;
- (d) act for a proper purpose, exercising its powers for the public good;
- (e) not reach a decision which no Authority acting reasonably could

reach (also known as the 'rationality' or 'taking leave of your senses' principle);

(f) comply with the rule that Local Government finance is to be conducted on an annual basis, save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and

(g) act with procedural propriety in accordance with the rules of fairness.

**To be lawful, a decision:**

(a) If taken in Full Council, Cabinet, Committee, Sub-Committee or Joint Committee, must comply with the principle of being reached by a majority of Councillors present and voting, at a properly constituted meeting;

(b) Be one which the decision-maker is empowered or obliged to take, otherwise it is ultra vires;

(c) If intended to secure action (as opposed, for example, to a resolution merely expressing the Council's collective view on an issue), be capable of execution, or it will be of no effect; and

(d) Not purport to undo what has already been done irrevocably (but it can rescind an earlier decision where this is feasible).

**4. Issues for consideration**

- 4.1. A joint service decision was made and published on 13th June 2023 by the Worthing Cabinet Member for Citizen Services, Cllr Emma Taylor-Beal and the Adur Leader, Cllr Neil Parkin (in the absence of the Cabinet Member for Adur Homes & Customer Services) with reference number JAW/002/23-24.
- 4.2. The decision concerned the approval of a service contract to acquire nomination rights to emergency accommodation and the delegation of authority to the Director for Housing and Communities to enter into a service contract for the purpose of acquiring temporary accommodation. The decision was taken following receipt and consideration of an Officer Report, written by the Acquisitions and Landlord Support Coordinator on behalf of the Director for Housing & Communities. The report was dated 19th May 2023 and was published on the Councils' website on 22nd May 2023. A copy of the Report is [attached at Appendix 2](#).
- 4.3. The Report dated 19th May 2023, 'Emergency Accommodation Contract Award' sought the approval, subject to approval of planning

permission, to approve a 10 year (5 year + 5 year) service contract with a private sector emergency accommodation provider to acquire nomination rights to 44 units of 24 hour staffed emergency accommodation for single people. It also sought, within existing and approved budgets, a delegated authority under delegation 2.6.8 of the Officer Scheme of Delegations, for the Director for Housing & Communities to enter into a service contract for the purpose of acquiring temporary accommodation.

4.4. Members will please note the reference to background papers in the Report (which have not been reproduced and attached) but are listed as:-

- The Financial Appraisal;
- Delivering Pathways to Affordable Homes
- Temporary Accommodation Placement and Procurement Strategy dated 02/01/2020
- Housing Strategy 2020-23

4.5. The Decision was taken by the Worthing Cabinet Member for Citizen Services on 13th June 2023 and the Decision Notice with reference JAW/002/23-24 is attached to this Report at [Appendix 3](#).

4.6. Cllr Emma Taylor-Beal made the following decision:

*“Subject to approval of planning permission, we approve a 10 year (5yr+5yr) service contract with a private sector emergency accommodation provider, with a total value of £7,780,776, to acquire nomination rights to 44 units of 24 hour staffed emergency accommodation for single people and delegate authority to the Director for Housing and Communities to enter into a service contract for the purpose of acquiring temporary accommodation.”*

The decision taken by the Leader of Adur District Council Council, Neil Parkin, was also on 13th June.

*“As this is essentially a Worthing issue, I am happy to follow the WBC Cabinet Member for Citizen Services’ lead in making this decision”.*

The reason given for making these decision was:

*“To enable the Council to fulfil its statutory housing duties under S188 and S193 of the Housing Act 1996”*

- 4.7. The decision notice confirmed that the call-in deadline for the decision was 5pm on 20th June 2023 and during this period a call-in was received by the Monitoring Officer on 15th June 2023.
- 4.8. Councillors Humphreys, Jenkins and Sparkes requested a call-in for scrutiny of the decision for the following reasons:

*“The report published on the 19th May 2023, lacked transparency and as such prevented timely open and honest feedback from the public. In that this report is bespoke to entering an agreement of a contract for accommodation at the Windsor House Hotel site; yet it is not until page 5 of the report at paragraph 5.5, where it hints at the premises in question, even then it incorrectly identifies the premises as the 'Windsor Hotel' - which does not exist in Worthing.*

*The decision maker has not demonstrated that they have taken into account the adopted Worthing Local Plan and the policies therein, nor given any consideration to the public comments and refusal for planning consent that this would be an over-concentration of this form of accommodation in the immediate area. This is compounded by the fact that the report at paragraph 5.3 and 5.4 reports that two other smaller HMO's are likely to come online in the near future and has declared the Council's intent to enter similar contracts for those premises. This commitment in itself further adds to the concerns of over concentration of this type of accommodation which have not been considered or mitigated for in the authors report nor recorded as considered by the decision maker.*

*Paragraph 4.2 of the report identifies 'serious anti-social behaviour', this has no basis in law, as all forms of anti-social behaviour can be serious to the victim/s. This comment demonstrates that the use of these premises for this purpose is anticipated to cause some less than serious ASB, which again has not been considered by the report's author nor recorded as considered by the decision maker.*

*It is our opinion that a call-in will not cause unnecessary costs, delays or loss of facilities to the Council as this is still 'subject to planning, which by the reports only noting is unlikely to be achieved before Late Autumn 2023.*

*That the decision by Cllr Taylor was premature, whilst it was made within the time frame allowed by the constitution, it was done in the full knowledge that she would be attending a planned public meeting on the 15th June 2023, with SDR living and WBC officers to engage in a public consultation. This meeting was attended by circa 150 person, which should have been expected given the public turn out at the previous planning meeting in*

*objection to this development and could therefore have been reasonably expected to have been well attended and provide considerable public representations, by making this decision when she did, she knowingly avoided these representations in her decision making.*

*That the decision paper was labelled as a Joint decision, yet all the notice boards at the public consultation contained the Adur / Worthing logo. However the text on the boards and language throughout the entire meeting was with reference to a venture between SDR Living and Worthing Borough Council. Not Adur & Worthing Councils. This is confusing and lacks transparency in decision making.*

## **5. Proposals**

- 5.1. Members of the Committee are referred to the procedure for this meeting at Appendix A and are asked to follow the procedure, at this meeting, to consider the Call-in.
- 5.2. Having considered the matter, the Committee is referred to Paragraph 2.1 of the Recommendations which reflects Paragraph 18.9 of the Joint Overview & Scrutiny Rules. The Committee may conclude to take no action or may refer the matter back to the decision makers setting out the nature of any concerns or refer the matter to the Full Council of either or both Councils. The decision-making person or body must reconsider the decision within a further 5 clear working days and may or may not amend the decision before making a final decision and implementing it.
- 5.3. Once the decision is published following the Call-in procedure, the decision cannot be called in again. The decision following the Call-in procedure cannot be acted upon until 5 clear working days after the publication of the Record of Decision.

## **6. Consultation**

- 6.1 The Joint Chairmen of the Joint Overview and Scrutiny Committee were consulted by the Monitoring Officer in reaching the decision to accept the request for call-in of the decision.

## **7. Financial Implications**

- 7.1. Other than the resources associated with preparing for and holding this meeting, there are no implications arising from this report.

## **8. Legal Implications**

- 8.1. The Council's Principles of Decision-Making are set out at Article 12 of the Constitution.
- 8.2. The procedure for Call-In of Cabinet decisions is set out in the Council's Joint Overview and Scrutiny Procedure Rules which can be found in Part 4 of the Constitution.

Legal Officer: Joanne Lee

Date: 12/07/2023

### **Appendices**

Annex 1 - Procedure for Meeting

Annex 2 - The Joint Cabinet Member Report dated 19th May 2023

Annex 3 - The Decision Notice dated 13th June 2023

### **Background Papers**

- Delivering Pathways to Affordable Homes
- Temporary Accommodation Placement and Procurement Strategy dated 02/01/2020
- Housing Strategy 2020-23

### **Officer Contact Details:-**

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## **Procedure for Meeting**

### **Purpose of the Call in Meeting**

The call-in meeting enables scrutiny Members to review the decision, having regard to the reasons given by the Call-in Members and the decision making principles set out in each Council's constitution at Article 12. It also provides an opportunity to ask the decision makers to reconsider their decision - if members think this is necessary.

### **What are the possible outcomes of this meeting?**

#### **In summary, members can:-**

Make recommendations to either:-

- Decide to take no further action
- Refer the decision back to the decision-making person or body for reconsideration, setting out in writing the nature of its concerns or
- Refer the matter to the Full Council of both Councils.

In considering the Call-in request, the Joint Overview and Scrutiny Committee is unable to consider excluded matters under Regulation 3 of the Overview and Scrutiny (Reference by Councillors) (Excluded Matters) (England) Order 2012).

**An excluded matter** is a local crime and disorder matter within the meaning of the Police and Justice Act or any matter relating to a planning or licensing decision, or where a person has a right of recourse to a review or appeal, or where the matter is vexatious, discriminatory or not reasonable.

### **Procedure at Meeting**

1. The Chair opens the meeting by outlining the call-in meeting and procedure;
2. The Lead Call-in Member is invited by the Chair to present the reasons behind the call-in of a particular decision;
3. The remaining two Call-in Members are invited to contribute to the Lead Call-in Member's argument;

4. The Cabinet Members (or appropriate representative of the decision-making body, e.g. Chairs of the Committee that made the decision called in) responds to call-in argument and offers their/decision-making body's viewpoint;
5. Any additional appropriate speakers, including the appropriate Director / Assistant Director (of the called-in decision) may speak to explain any technical issues/provide background to the decision;
6. After all appropriate Members or Officers have spoken, the Joint Overview and Scrutiny Committee Members may ask the Call-in Members, Members and Officers questions of clarification;
7. The Legal Services/Democratic Services representatives may be asked points of clarification/procedure by the Scrutiny Panel Members;
8. At this point the Chair may ask firstly the Cabinet member and then the Lead Call-in Member to briefly sum up their positions;
9. The Joint Overview and Scrutiny Committee can then discuss the issues around the call-in generally, without further interjection by Call-in Members, Cabinet Member(s) and Officers (unless the Committee asks for any further clarification).
10. At any time during the Committee's discussion of the issues, a Member may propose a motion as to how the Call-in should be dealt with by either proposing to take no action or referring the decision back to the decision maker. The Motion will need to be seconded, debated (as required) and voted on by the Committee Members in the usual way in accordance with the Council & Committee Procedure Rules found at Part 4 of each Council's Constitutions.
11. At the close of the meeting the Chair should summarise the recommendation or recommendations of the Committee for clarification of all present.
12. The Chair shall have a discretion to vary the terms of this procedure note if in their discretion it is reasonable to do so.

## **Sustainability & Risk Assessment**

### **1. Economic**

There are no direct economic issues.

### **2. Social**

Other than set out in the Report there are no direct economic, social or environmental issues arising.

#### **2.1 Social Value**

Other than set out in the Report there are no direct economic, social or environmental issues arising.

#### **2.2 Equality Issues**

There are no direct equality issues

#### **2.4 Human Rights Issues**

There are no direct human rights issues

### **3. Governance**

The governance issues are set out in the body of the report.