



Joint Overview and Scrutiny Committee
15 July 2024

ADUR & WORTHING
COUNCILS

Key Decision [No]

Ward(s) Affected:N/A

**Request for Call-In of the
Worthing Joint Strategic Committee Sub-Committee
Sale of Teville Gate**

Report by the Monitoring Officer

Executive Summary

1. Purpose

1.1 Paragraph 18.3 (e) of the Joint Overview and Scrutiny Rules confirms that if the Monitoring Officer, following consultation with the Joint Chairs of the Joint Overview and Scrutiny Committee, rejects a request for Call-In, they shall provide a report to the Joint Overview and Scrutiny Committee providing details of the request for Call-In of a decision and reasons given for the request being rejected. Such a report will be received by the next Joint Overview and Scrutiny Committee meeting, following the determination of the request for Call-In.

2. Recommendations

2.1 The Joint Overview and Scrutiny Committee is recommended to consider and note the contents of this report.

3. Context

- 3.1 Part 1A Local Government Act 2000 sets out the arrangements in respect of Local Authority Governance in England. Where an authority is exercising Executive arrangements, it is required to have an Overview and Scrutiny Committee. Section 9F of the Act 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 Both Adur and Worthing Councils have adopted the Joint Overview and Scrutiny Procedure Rules to enable the Joint Overview and Scrutiny Committee (JOSC) to implement this scrutiny function and these are set out in each Council’s Constitution.
- 3.3 At paragraph 18 of the JOSC Procedure Rules it is stated that ‘The Monitoring Officer shall Call-In a decision for scrutiny if any three Members in total, being of either Council, submit to the Monitoring Officer in writing by email a request for a decision to be called in’. Such a request is to be made by 5.00pm on the fifth clear working day, from the day on which the Record of Decision is published.
- 3.4 At paragraph 18.5 of the JOSC Procedure Rules is the Exemption from Call-In Procedure which confirms; A matter may not be called-in if it has already been considered by the Joint Overview & Scrutiny Committee or if the decision is urgent and any delay would prejudice the interest of the Council or the public in the opinion of the Monitoring Officer.

A decision will relate to a matter which is urgent if any delay caused by the Call-In process would:

- (a) be highly likely to result in either or both Councils incurring significant additional expenditure or loss of significant additional income; or
- (b) be highly likely to result in significant damage to either or both Councils’ reputation; or
- (c) prevent either or both Councils from meeting their legal obligations.

In advance of applying the exemption the agreement of the Chairs of the Joint Overview and Scrutiny Committee must be obtained in writing by way of completion of a Notice by the Director for Sustainability & Resources, that it is

reasonable in all the circumstances to treat the decision to be made as one which is urgent and therefore not subject to Call-In.

4. Background

4.1 On 14th March 2024 the Worthing Joint Strategic Sub-Committee (JSCSC) made a decision to:-

1.1. Approve an unconditional freehold sale of Teville Gate to Homes England, and continue to work in partnership with Homes England to develop this critical site.

1.2. Delegate authority to the Assistant Director for Regenerative Development, in consultation with the Cabinet Member for Regeneration, to negotiate and enter into the legal documentation required to effect legal completion of the sale of Teville Gate to Homes England.

1.3. Delegate authority to the Assistant Directors for Place and Economy, and Regenerative Development in consultation with the Cabinet Member for Regeneration, to seek and agree to a suitable meanwhile-use as a priority for the site, aligned to council objectives to utilise the site during the leaseback period.

4.3 On the 19th March 2024 a request for Call-In was made by three elected Members in writing; Councillors Jenkins, Morgan and Cochran. The Call-In had been made within the required time frame and was therefore to be accepted unless an exemption applied. A copy of the Call-In request setting out the reasons for it, was received via email dated 19th March 2024 and is attached to this report.

4.4 Upon receipt of the request the Monitoring Officer consulted with both Chairs of the Joint Overview and Scrutiny Committee. A determination is to be made within two days, however by agreement between the Monitoring Officer and the Call-In Members this time was extended. The Monitoring Officer acknowledges that the delayed response unfortunately extended beyond the agreed extension time, but it was important to carry out sufficient consultation on the urgency exemption prior to making any decision in relation to the Call-In.

5. Issues for Consideration

5.1 On receipt of the Call-In the Monitoring Officer notified the Director for Place and the Assistant Director for Regenerative Development that a Call-In had been received. The Monitoring Officer was then advised of the need for urgency to complete the sale by the 28th March 2024. The Director confirmed that any delay to completion of the sale arising from a Call-In created a real and probable risk of losing the purchaser. This was because Homes England, the proposed purchaser, could only guarantee its funding to the end of the financial year 23/24, after which funding for the sale may not be available.

5.3 The Monitoring Officer then carried out the following further actions:-

- Consulted with the Chief Finance Officer who supported Homes England's Solicitor's position that funding processes meant that allocations of funding available in one financial year were not necessarily available in the next and that this was not unusual for a publicly funded body. The Chief Finance Officer agreed that if we lost the sale arising from a delay in completing the sale contract, this was highly likely to result in the Council incurring significant additional expenditure on loan repayments which significantly worsened the Council's current financial position. It followed that the additional unplanned expenditure may then prejudice the Council's ability to meet its legal obligations to set and maintain a balanced budget, which is a legal duty under Section 114 of the Local Government Finance Act 1988 (and also a reason for applying an exemption to Call-In at 18.5 of the JOSC Procedure Rules). It was therefore imperative that exchange and completion was to take place.
- Checked the funding urgency which was confirmed in an email dated 25th March from Homes England's Senior Acquisitions Manager to the Assistant Director for Regenerative Development in which it is stated '*although our Solicitor is in funds, we can't carry it over and complete beyond 28th March*'.
- Considered if there was any known legal reason why the sale could not continue. This included consideration of whether the Council had complied with its statutory duty to dispose of land for best consideration pursuant to s123 Local Government Act 1972. On this point a red book valuation had been obtained from a surveyor who was a member of the Royal Institute of Chartered Surveyors upon which the Director for Place and the Assistant Director for Regenerative Development relied to meet best consideration obligations, the purchase price to be paid met the valuation given.

- Reviewed the decision making process and found that the decision making process had not previously highlighted the urgency of the Worthing Joint Strategic Sub-Committee decision. This was an oversight by the Officers and further decision making training is being given to Officers.
- Considered if there was any other reason that would make the decision and the subsequent sale unlawful. The Monitoring Officer is not aware of any illegality or maladministration in the decision making process.
- Consulted at length with the JOSC Chairs on whether an exemption was to be applied having regard to the financial advice of the Chief Finance Officer.

5.4 For the above reasons following consultations, the Monitoring Officer applied procedure rule 18.5 of the Joint Overview and Scrutiny Procedure Rules and rejected the Call-In request as the matter was urgent and accepting the Call-In would:-

- a) Be highly likely to result in Worthing Borough Council incurring significant additional expenditure or loss of significant additional income.

The Monitoring Officer notified the Call-In Members that the Call-In was rejected on 26th March by email at 2pm and thereafter the fact of the Call-In and the reason for not accepting it was reported to the Full Council by the Chief Executive Officer in the evening of 26th March. In accordance with the Constitution this is now reported to the JOSC Committee.

5.5 The JOSC Chairs have requested that the Assistant Director for Regenerative Development prepares a report for consideration by JOSC at the next available committee date. This report will better explain the recent history of Teville Gate and the rationale for the Worthing Joint Strategic Sub-Committee decision.

6. **Engagement and Communication**

6.1 The Council's Monitoring Officer contacted the Joint Chairs of the Councils' Joint Overview and Scrutiny Committee by way of consultation, as to the determination of the request for Call-In of the decision. The Monitoring Officer then notified the Members who made the request, the Director for Sustainability and Resources and the Decision-Maker.

7. **Financial Implications**

The financial implications as stated in this report at paragraph 5.3.

8. Legal Implications

- 8.1 The Decision Notice dated 26th March 2024 published on the Council's website and signed by the Joint Chairs of JOSC refers to JOSC Procedure Rule 18 which sets out the Exemption from Call-In Procedure. The Decision Notice also refers to Section 11 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 because the decision to negotiate and complete the sale was not on the Forward Plan of Key Decisions and could not comply with the notice, publication and Call-In requirements for a key decision under the special urgency provisions.

Background Papers

[Worthing Joint Strategic Committee Sub-Committee Sale of Teville Gate - 14 March 2024](#)

[Decision Notice - Case of Special Urgency](#)

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Sustainability & Risk Assessment

1. Economic

- Matter considered and no issues identified

2. Social

- Matter considered and no issues identified

2.1 Social Value

- Matter considered and no issues identified

2.2 Equality Issues

- Matter considered and no issues identified

2.3 Community Safety Issues (Section 17)

- Matter considered and no issues identified

2.4 Human Rights Issues

- Matter considered and no issues identified

3. Environmental

- Matter considered and no issues identified

4. Governance

- The governance issues are set out in the contents of this Report.