

COUNCIL

29 MARCH 2022

REPORT OF LEADER OF THE COUNCIL

A.1 EXECUTIVE DECISION(S) TAKEN AS A MATTER OF URGENCY

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To notify Members of recent Executive Decision(s) taken in the circumstances set out in the Council's Constitution in:-

- (a) Rule 15 of the Access to Information Procedure Rules (Special Urgency); and/or
- (b) Rule 18(i) of the Overview and Scrutiny Procedure Rules (Call-in and Urgency); and/or
- (c) Rule 6(b) of the Budget and Policy Framework Procedure Rules.

EXECUTIVE SUMMARY

In accordance with the requirements of Rule 16.2 of the Access to Information Procedure Rules and/or Rule 18(i) of the Overview and Scrutiny Procedure Rules and/or Rule 6(b) of the Budget and Policy Framework Procedure Rules, this report notifies Members of recent Executive Decision(s) taken in the circumstances set out in Rule 15 of the Access to Information Procedure Rules and/or Rule 18(i) of the Overview and Scrutiny Procedure Rules.

RECOMMENDATION

That the contents of the report be noted.

PART 2 – SUPPORTING INFORMATION

BACKGROUND

The "Special Urgency" procedure in Rule 15 of the Access to Information Procedure Rules provides that where a key decision cannot be reasonably deferred to allow the procedure in Rule 14 (General Exception) of those procedure rules to be followed, it may still be taken with the agreement of the Chairman of the relevant overview and scrutiny committee, or failing him/her, the Chairman or Vice-Chairman of the Council.

Rule 18(i) of the Overview and Scrutiny Procedure Rules provides that the "call-in" procedure will not apply to a decision if the Chairman, or failing him/her the Vice-Chairman, of the relevant overview and scrutiny committee agrees both that the decision is reasonable in all its circumstances and that any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests.

DECISION(S) TAKEN AS A MATTER OF URGENCY

(1) Transfer of funds from Additional Restrictions Grant to Business Adaptations Grant

On 21 February 2022, the Interim Corporate Director (Project Delivery) (Lee Heley), on behalf of both the Business & Economic Growth Portfolio Holder (Councillor Newton) and the Corporate Finance & Governance Portfolio Holder (Councillor G V Guglielmi), and in view of the urgency of the issue concerned, in accordance with Rule 18(i) of the Overview and Scrutiny Procedure Rules, sought and subsequently obtained the Chairman of the Resources and Services Overview and Scrutiny Committee's (Councillor M E Stephenson) consent that the Business & Economic Growth Portfolio Holder's and the Corporate Finance & Governance Portfolio Holder's joint decision relating to the transfer of funds from the Additional Restrictions Grant to the Business Adaptations Grant would be exempt from the Council's call-in procedure.

The Business & Economic Growth Portfolio Holder's and the Corporate Finance & Governance Portfolio Holder's joint decision was as follows:-

"To transfer £195,000 from the latest Additional Restrictions Grant (ARG) funding to the Business Adaptations Grant (BAG) scheme to support the Covid-19 recovery scheme to those applicants who applied after available funding had been allocated."

It was felt that any delay likely to be caused by the call-in process would have seriously prejudiced the Council's and the public's interest for the following reasons:-

"During December 2021 Government announced a further phase of the ARG and allocated Tendring District Council £195,000 to provide enhanced business support."

This particular phase of the grant would need to be spent by the end of March 2022 or returned to Government. This criteria offers very limited time to develop a proposal and implement a scheme.

At a meeting on 11th January 2022 it was agreed to seek clarification from the Department for Business, Energy and Industrial Strategy (BEIS) as to whether the £195,000 could be transferred from the ARG to support the BAG scheme. The amount transferred to the BAG scheme would cover the shortfall from the funds being allocated and the amount of applications received before the end of the scheme.

Confirmation has now been received by BEIS that they support the transfer. To comply with the guidance received from BEIS a new form will be produced and sent to the businesses who have recently applied for BAG but were unsuccessful due to all available money being allocated or had been rejected without the opportunity to provide missing information."

(2) Award of the construction contract for the Jaywick Sands Market site

On 25 February 2022, the Interim Corporate Director (Project Delivery) (Lee Heley), in view of the urgency of the issue concerned, in accordance with Rule 18(i) of the Overview and Scrutiny Procedure Rules, sought and subsequently obtained the Chairman of the Resources and Services Overview and Scrutiny Committee's (Councillor M E Stephenson) consent that his decision relating to the award of the construction contract for the Jaywick Sands site would be exempt from the Council's call-in procedure.

The Interim Corporate Director's decision was as follows:-

"To award the construction contract for the Jaywick Sands Market site development to TJ Evers Limited as the lowest tender received, as a matter of urgency due to the expiration of the tenders received."

It was felt that any delay likely to be caused by the call-in process would have seriously prejudiced the Council's and the public's interest for the following reasons:-

"During October 2021, with Cabinet's approval Tendring District Council carried out the tender process for the construction of the Jaywick Market site with its Professional Team: HAT Projects (Architects), Potter Raper (Cost Consultants) and Daniel Connal Partnership (Construction, Design and Management Consultants).

On 3 December 2021 the Council's cost consultants Potter Raper produced a revised cost appraisal based on the Council's tender pack and the latest market information on the cost of materials. This work indicated that the total construction cost of the scheme had likely increased from £2.1m to at least £2.7m.

On 6 December 2021 the Council received tenders from building contractors as part of the Council's procurement exercise, which came in significantly above the budget. The lowest tender was from TJ Evers Limited, which after value engineering came in at £3,877,239, over £1.1m greater than the cost consultant's recent estimate. This gives a total scheme value of £4,407,182, which is £1.98m over the total budget currently allocated of £2,427,000 to secure delivery.

During a Cabinet meeting on 28th January 2022 permission was given to increase TDC's allocation by a further £254,465 and to explore external funding to a value of £1.68m. The Council approached the South East Local Economic Partnership (SELEP) and Essex County Council (ECC) for the potential for additional investment in the project.

ECC have now committed to provide the necessary funding with a public announcement on the 25th February 2022 in Jaywick Sands.

However, providing the extra funding externally has taken a significant period of time and has pushed the project to the end of the tender values period. Therefore, to avoid a further increase in tender prices the project needs an exemption from the call in period to enable us to issue the Letter of Intent to the contractor before the tender price period expires."

(3) Jaywick Market Project Contingency Fund

On 25 February 2022, the Interim Corporate Director (Project Delivery) (Lee Heley), in view of the urgency of the issue concerned, in accordance with Rule 15 of the Access to Information Procedure Rules and Rule 18(i) of the Overview and Scrutiny Procedure Rules, sought and subsequently obtained the Chairman of the Resources and Services Overview and Scrutiny Committee's (Councillor M E Stephenson) consent that the decision of Portfolio Holders relating to the creation of a contingency fund for the Jaywick Market Project would be both exempt from the need to give 28 days' notice of that decision and also the Council's call-in procedure.

The joint decision of the Corporate Finance & Governance Portfolio Holder, the Business

& Economic Growth Portfolio Holder and the Housing Portfolio Holder was to:-

“(a) set aside the remaining funds within the existing Business Investment and Growth Budget of £411,000 to provide an available construction contingency amount of £481,000 for the Jaywick Market site project; and

(b) that the additional £411,000 additional set aside funding will be released back into the Business Investment and Growth Budget if not required.”

It was felt that any delay likely to be caused by the 28 day prior notification and call-in processes would have seriously prejudiced the Council's and the public's interest for the following reasons:-

“In January 2022, a report was presented to Cabinet which not only provided a summary of the project progression is also requested further funding from both Tendring District Council of £254,465, sought permission to seek further external funding of £1,680,182 and requested permission to award the contract to the lowest tender bid.

Essex County Council agreed to provide the extra funding and a decision was published to award the contract to T J Evers on the 3rd March 2022. As part of the above arrangements, a total construction contingency sum of £150,000 was identified.

During contract negotiations, some omissions to the tender value were found and some of the proposed value engineering savings were found to be unsuitable. Along with the additional costs identified by the Council's Architects due to the extended period of the project, the total additional construction costs for the project have increased by £80,000. This puts an immediate pressure on the original project contingency sum of £150,000.

To address this issue, it is currently proposed to set aside the remaining funds within the existing Business Investment and Growth Budget of £411,000. Although this would result in an amount in excess of the more usual contingency allowances (of up to 10%), it does provide extra assurance. However, the project will be managed to limit the use of the revised contingency amount wherever possible.

By taking the above approach, the available construction contingency amount would increase to a total of £481,000.

As the project will be delivered over a relatively short time period, this additional set aside of funding may be able to be 'released' during the construction phase as risks change (e.g. once 'out of the ground') or at the end of the project, which will be early next year. All remaining funds will be returned to the Business and Investment Growth Fund once the project is complete.

Although the existing Business Investment and Growth budget is being set aside as the project contingency, the Service are currently exploring whether savings can be identified elsewhere within the wider directorate budgets to support the project. Although it is too early to confirm the scale of these potential savings, any savings that are identified will enable the Business Investment and Growth budget to be 'repaid' which in turn would then become available to support other projects within the Corporate Investment Plan.”

BACKGROUND PAPERS

(1) Transfer of funds from Additional Restrictions Grant to Business Adaptations Grant

Letter dated 21 February 2022 from the Interim Corporate Director (Projects Delivery), to the Chairman of the Resources and Services Overview and Scrutiny Committee.

Reply dated 25 February 2022 from the Chairman of the Resources and Services Overview and Scrutiny Committee signifying his consent to allow the Portfolio Holders' decision to be exempt from call-in.

(2) Award of the construction contract for the Jaywick Sands Market site

Letter dated 25 February 2022 from the Interim Corporate Director (Projects Delivery), to the Chairman of the Resources and Services Overview and Scrutiny Committee.

Reply dated 25 February 2022 from the Chairman of the Resources and Services Overview and Scrutiny Committee signifying his consent to allow the Interim Corporate Director's decision to be exempt from call-in.

(3) Jaywick Market Project Contingency Fund

Letter dated 11 March 2022 from the Interim Corporate Director (Projects Delivery), to the Chairman of the Resources and Services Overview and Scrutiny Committee.

Reply dated 11 March 2022 from the Chairman of the Resources and Services Overview and Scrutiny Committee signifying his consent to allow the Portfolio Holders' decision to be both exempt from the 28 day notification period and also call-in.

APPENDICES

None.