

COUNCIL

26 NOVEMBER 2024

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) Approval of Tendring District Council's formal response to the Government's proposed reforms to the National Planning Policy Framework and other changes to the planning system

On 20 September 2024, the Portfolio Holder for Housing and Planning, in view of the urgency of the issue concerned, and in accordance with Rule 18(i) of the Overview & Scrutiny Procedure Rules, and through the offices of the Director (Planning and Communities), sought and subsequently obtained the Chairman of the Community Leadership Overview and Scrutiny Committee's consent, that his decision relating to the approval of Tendring District Council's formal response to the Government's proposed reforms to the National Planning Policy Framework and other changes to the planning system, be exempted from the call-in procedure.

The Portfolio Holder for Housing and Planning's decision was as follows:-

"To approve Tendring District Council's formal response to the Government's proposed reforms to the National Planning Policy Framework and other changes to the planning system."

It was felt by the Portfolio Holder for Housing and Planning 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 reason:-

"The deadline for the submission of consultation responses is Tuesday 24th September 2024. Failure to meet that deadline could lead to this Council's concerns about the Government's proposals not being properly taken into account."

The Planning Policy and Local Plan Committee debated and agreed the proposed response at its meeting held on 16th September 2024 and so this matter has therefore been considered by Members from all political groups represented on the Council. That discussion followed on from the all-Member briefing held on 4th September 2024."

(2) Termination of the 'YourStride' Careline Contract

On 24 October 2024, I, acting on behalf of the Cabinet under my delegated powers, in view of the urgency of the issue concerned, and in accordance with Rule 15 of the Access to Information Procedure Rules and Rule 18(i) of the Overview & Scrutiny Procedure Rules, and through the offices of the Director (Governance), sought and subsequently obtained the Chairman of the Resources and Services Overview and Scrutiny Committee's consent, that my urgent decision taken on behalf of the Cabinet relating to the termination of the 'YourStride' Careline Contract, be both taken under the 'Special Urgency' provisions of the Council's Constitution and also that it be exempted from the call-in procedure.

My urgent decision taken on behalf of the Cabinet decision was as follows:-

"That:-

- (a) the Leader of the Council in exercising their authority and following consultation with the Section 151 and Monitoring Officers, makes an urgent decision, to authorise immediate notice being served on AE Partners Ltd giving 16 weeks prior notification to terminate the Supply of Services Agreement between them and the Council;*

- (b) *the Directors for Governance and of Planning and Communities be authorised to take the necessary administrative steps to enable this decision to be implemented as soon as possible and without further delay to the Council; and*
- (c) *notification of such decision will be reported to Members accordingly.”*

I felt that any delay likely to be caused by following the usual procedure before taking key decisions and/or decisions that would involve the disclosure of confidential or exempt information and the call-in process would have seriously prejudiced the Council's and the public's interest for the following reasons:-

“It is acknowledged that the position largely remains the same as in July 2024 when the future of Careline was reported to Cabinet (refer to link in previous decisions section below), in that the Contract is costing the Council more in staff resources and system costs than the income being generated. However, the scale and rate of the increased YourStride registered users are resulting in significant strain on the resources of the Careline Service and the Council. The Tendring tax-payer is effectively having to subsidise, at a growing rate, a product provided through a private company to residents living outside of the Tendring District, whom are paying a subsidised fee. The legal implications of this arrangement are set out in more detail later in the report.

For reasons of commercial sensitivity and implications on the Council, the details of the YourStride contract and the cost to the Council are set out within this report to be considered in 'Part B'. The impact on the Council's resources are significant enough to warrant urgent consideration by the Leader of the Council, as there are no other options to reduce the increased flow of registered users.

On 15 October 2024, the Council's Director of Planning and Communities (who has recently taken on strategic responsibility for Careline) wrote to AE Partners Ltd (“the Customer”) under delegated authority to seek an immediate change to the Contract preventing any new service users being registered from 1 November 2024 on the basis that the pace at which new users are being registered with the Council's Careline Service had reached a level that is outstripping the Council's ability to continue supporting YourStride customers in an effective, safe and viable manner.

On 22nd October 2024, the Customer's response was received via Aria Grace Law rejecting that proposal. The response reinforced that the Council remains contractually obliged to provide the Services as set out in Schedule 1, in accordance with the terms and conditions of the Agreement and in particular clauses 3, 6 and 7. No amendment shall be made to Schedule 1 except on terms agreed in writing by the Parties in accordance with clauses 22-26.

The letter also stated that “While we understand that you may be facing internal resource constraints, you have a continuing obligation to supply the Services at the volumes requested by our client as priced in Schedule 2. Your own resource constraints, over which you have full control, do not absolve you from the requirement to fulfil your contractual obligations. For the avoidance of doubt - our client does not agree to your proposed new variation agreement and intends to fully enforce the terms of the Agreement.”

Consequently, it is now proposed that measures need to be put in place to serve notice to permanently terminate the Contract, giving the Customer (AE Partners Ltd) 16-weeks'

notice in accordance with the termination provisions as set out within clause 46 of the Contract.

Irrespective of, and without prejudice to, any decision the Cabinet takes in respect of the future of the Careline Service following the recent customer, resident and stakeholder consultation, the Contract is (and would be under any of the options under consideration by the Cabinet) economically unviable, unstainable, possibly ultra vires and harmful to the Council's resources - requiring a substantial and potentially unlawful subsidy from Tendring residents and placing an increasingly unmanageable burden on resources and the Council's ability to maintain an effective and safe service its own Careline users and to YourStride customers.

The report requesting an urgent decision from the Leader is based upon the scale of the increased registered YourStride users, which are now taking 83% of the Careline Services resources to respond to, with only 35 of those 9500 users being Tendring residents. The Customer has responded to the consultation exercise and referred to the Council's actions not to continue with its TSA accreditation and therefore, considers the Council unable to deliver the contract and believes Option 2 is the only viable option."

BACKGROUND PAPERS

(1) Approval of Tendring District Council's formal response to the Government's proposed reforms to the National Planning Policy Framework and other changes to the planning system

Chairman of the Community Leadership Overview and Scrutiny Committee (Councillor Graham Steady)'s consent to allow the Portfolio Holder for Housing and Planning's decision to be exempt from call-in.

(2) Termination of the 'YourStride' Careline Contract

Chairman of the Resources and Services Overview and Scrutiny Committee (Councillor Paul Honeywood)'s consent to allow the Leader of the Council's urgent decision taken on behalf of the Cabinet to be taken under the 'Special Urgency' procedure and it be also exempt from call-in.

APPENDICES

None