

LONDON BOROUGH OF CROYDON

REPORT:	COUNCIL	
DATE OF DECISION	29 MARCH 2023	
REPORT TITLE:	QUARTERLY REPORT ON THE USE OF SPECIAL URGENCY FOR KEY DECISIONS AND EXEMPTION FROM CALL-IN JANUARY TO MARCH 2023	
CORPORATE DIRECTOR	JANE WEST CORPORATE DIRECTOR FOR RESOURCES	
LEAD OFFICER:	STEPHEN LAWRENCE-ORUMWENSE DIRECTOR OF LEGAL AND MONITORING OFFICER Email: stephen.lawrence-orumwense@croydon.gov.uk	
LEAD MEMBER:	MAYOR JASON PERRY	
KEY DECISION?	No	REASON: N/A
CONTAINS EXEMPT INFORMATION?	NO	PUBLIC
WARDS AFFECTED:	ALL	

1. SUMMARY OF REPORT

- 1.1. In accordance with the Access to Information Procedure Rules (Part 4B of the Constitution), the Executive Mayor is required to submit a report to Council on the use of Special Urgency for key decisions.
- 1.2. This report details the cases where Special Urgency has been used between January and March 2023.
- 1.3. In accordance with the Scrutiny and Overview Procedure Rules (Part 4E of the Constitution) the Executive Mayor is also required to submit a report to Council on the use of the exemption from call-in powers agreed by the Chair of the Scrutiny & Overview Committee at least annually.
- 1.4. Therefore this report also details the cases where Exemption from call-in powers have been used between January and March 2023.

2. RECOMMENDATIONS

- 2.1. For the reasons set out in the report Council is recommended:
 1. To note the use of Special Urgency for the key decisions listed at section 4.4 of this report during the period January to March 2023.

2. To note the use of Exemption from Call-in for the key decisions listed at section 5.3 of this report during the period January to March 2023.

3. REASONS FOR RECOMMENDATIONS

3.1 As noted in paragraph 1.1, there is a requirement within the Access to Information Procedure Rules in the Council's Constitution that Council will receive a quarterly report on decisions taken under Special Urgency provisions.

3.2 As noted in paragraph 1.3, there is a requirement within the Scrutiny and Overview Procedure Rules in the Council's Constitution that Council must receive a report at least annually on the use of the Exemption from call-in powers.

4 SPECIAL URGENCY DECISIONS

4.1 The proposed making of a key decision requires the giving of 28 days' prior public notice. Where the giving of such notice is impracticable the Constitution provides both General Exception and Special Urgency provisions. The General Exception provisions require, amongst other things, a period of five clear working days' notice to be given. Where compliance with the General Exception principle is impractical the decision can be taken under the Special Urgency provisions. In cases of Special Urgency the decision may only be made where the decision maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred from:

- a) The Chair of the Scrutiny & Overview Committee; or
- b) If there is not such person, or if the Chair of the Scrutiny & Overview Committee is unable to act, the Chair of the Council; or
- c) Where there is no Chair of the Scrutiny & Overview Committee or Chair of the Council, the Deputy Chair of the Council.

4.2 There has been two cases of the use of Special Urgency procedures during this period which the Chair of Scrutiny & Overview Committee approved after consideration.

4.3 Following the approval of the Chair of Scrutiny & Overview Committee two notices were published and circulated to all Members of the Council stating the decision had been made and included the report upon which the decision was based.

4.4 During this period the provision of Special Urgency has been used for the following:

Decision Title	Decision number	Decision maker	Reason for Special Urgency	Date SU notice published	Date decision notice published
Lettings in Bernard	0823EM	Executive Mayor	The London Ambulance Service need to secure capital funding from NHS England this financial year.	15 March 2023	15 March 2023

Weatherill House			<p>On this basis the lease needs to be completed by the 24th March 2023 at the latest and therefore this decision needs to be made under Urgency Provisions</p>		
Refinancing of Streetlighting PFI	0323RES	Executive Mayor	<p>The Council needs to make a timely decision to allow PFI contractors and their lenders to agree entering into a new refinancing agreement for the Croydon and Lewisham Streetlighting Contract. The nature of the process means as soon as legal documents are completed the Council needs to seek internal approval as the date of the Financial Close is set almost as soon material legal matters are finalised. It would be unadvisable to delay the Council's decision as the longer it goes it could impact on the final gain benefit. The gain to the Council is determined by the national interest rates market and with the current macro economic climate indicating high levels of inflation that could mean an increase in interest rates which feeds into the refinancing exercise resulting in lower gains. The gains are generated because the overall cost of replacing existing lenders with new lenders is less than when the contract was initially entered into. This is largely driven by lower rates currently.</p>	15 March 2023	16 March 2023

4.5 More detail on each decision is available by clicking on the links in the table above or by visiting the website at: [Decisions](#)

4.6 Members will note that Council agreed at its meeting on 23 March 2022 to amend the Access to Information Procedure Rules set out in Part 4B of the Constitution. One of the agreed amendments, set out in rule 34.1 of Part 4B was to increase the frequency of any future reports to Council by the Executive Mayor on the use of Special Urgency from annually to quarterly. Reports are now presented to full Council on a quarterly basis by the Executive Mayor containing details of each executive decision taken during the period since the last report was submitted to Council where the making of the decision was agreed as urgent in accordance with Special Urgency requirements set out in rule 32.

5. EXEMPTION FROM CALL-IN PROCEDURES

- 5.1. There are instances when although 28 day notice has been given, it is not practicable for a key decision to be subject to the call-in process. This would normally be on the grounds that any delay to implementation of the decision may have an undue impact on delivery. When such a decision occurs, it is within the power of the Chair of the Scrutiny & Overview Committee to agree that it will be exempt from the call-in process.
- 5.2. In the period since the last report to Council there have been two decisions which the Chair of the Scrutiny & Overview Committee has agreed could be exempt from the call-in process due on the grounds of urgency.
- 5.3. During this period the exemption from the Call-In Process has been used for the following:

Decision Title	Decision number	Decision maker	Reason for exemption from Call-in process	Date decision notice published
Whitgift Indemnity And Land Transfer Agreement (IltA) Remedy	5922EM	Executive Mayor	<p>The report recommends that the Council triggers a retail remedy under its agreement with the developer of the Whitgift Centre, Croydon Limited Partnership ("CLP").</p> <p>The remedy is to seek improvements to North End to a cost of £4 million Indexed (from 5 February 2014) and a programme of asset management initiatives at the existing Whitgift Centre.</p> <p>In order to trigger this remedy, the Council needs to issue a written notice pursuant to clause 11.1(c) of</p>	25 January 2023

		<p>the Indemnity Land & Transfer Agreement (“ILTA”) as soon as possible, and before the deadline of 21 February 2023.</p> <p>There are a number of parties that will need to be formally issued with the remedy notice via post before the deadline.</p> <p>Notices issued in accordance with the ILTA are deemed to have been received, if sent by mail, on the third Working Day after the day of posting, unless it is proved to have been received later in which case it shall be treated as given on receipt.</p> <p>Given recent issues with postal service strikes, backlogs and delays, the Council has been advised to process the remedy notice as soon as possible after a decision has been made in order to seek to minimise any impact of possible delays and other potential issues with service.</p> <p>If the Council fails to issue the notices correctly and before the deadline, it will lose its ability to seek the remedy under the ILTA, which would seriously prejudice its ability to bring forward improvements to the town centre.</p> <p>A waiver of the call-in period is therefore sought to ensure that the Council has sufficient time to address any delays or</p>	
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			potential issues with service of the remedy notices.	
Re-procurement of Responsive Repairs Contract - Contract Award	9022RES	Executive Mayor	<p>A pre-decision scrutiny took place on Monday 27 February 2023 which allowed for the committee to address any concerns in the report to cabinet the following week.</p> <p>The project is on a critical timing path with no contingency allowed for delays.</p> <p>It is intended to issue the contract award on 7 March immediately following Cabinet and commence the leaseholder consultation in parallel.</p>	6 March 2023

6. ALTERNATIVE OPTIONS CONSIDERED

- 6.1. It is a constitutional requirement to present Council with a quarterly update on decisions taken under Special Urgency. As such, there are no other options to consider.

7. CONSULTATION

- 7.1. The process for agreeing the use of special urgency and exemption from call-in both require consultation with the Chair of the Scrutiny & Overview Committee.

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

- 8.1.1 There are no direct financial consequences of this report. Each decision taken under the special urgency framework was supported by a report that set out the financial implications of that decision and was subject to financial review as part of the decision making process.

- 8.1.2 Approved by: Lesley Shields Head of Finance – Assistant Chief Executive and Resources

8.2 LEGAL IMPLICATIONS

- 8.2.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Legal Services and Monitoring Officer that the statutory definition of a 'key decision' is set out in regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 as a decision which is likely:
- a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
 - b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.
- 8.2.2 Guidance issued under the Local Government Act 2000 section 38 provides that the council shall agree as a full council limits above which items are 'significant' and publish those limits which the council has done via its Constitution.
- 8.2.3 The Constitution defines a "key decision" as defined in Article 13.2(d) namely an executive decision, which is likely to—
- a) result in the Council incurring expenditure, or making savings, of more than £1,000,000 or such smaller sum which the decision-taker considers is significant having regard to the Council's budget for the service or function to which the decision relates; or
 - b) be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.
- 8.2.4 The Access to Information Procedure Rules in Part 4B of the Constitution paragraphs 31 and 32 set out specific requirements including publicity in relation to the taking of 'key decisions' and in particular exceptions to the usual publicity requirements on the grounds of General Exception and cases of Special Urgency. Paragraph 34 makes specific provision for a quarterly report on the use of the Special Urgency provisions by the Executive Mayor to be made to full council.
- 8.2.5 Separately the Scrutiny and Overview Procedure Rules in Part 4E of the Constitution provide at paragraph 11.19 that the referral call-in procedure shall not apply in respect of urgent decisions. A decision will be urgent if any delay likely to be caused by the referral process would seriously prejudice the Council's or the public's interests. The record of the decision and the notice by which it is made public shall state if the decision is urgent and therefore not subject to the referral process. The Chair of the Scrutiny and Overview Committee must agree that the decision proposed cannot be reasonably deferred and that it is urgent. In the absence of the Chair, the Deputy Chair's consent shall be required. In the absence of both the Chair and Deputy Chair, the Mayor's consent shall be required. Any such urgent decisions must be reported at least annually in a report to Council from the Mayor. *Approved by:* Sandra Herbert Head of Litigation and Corporate Law for and on behalf of the Director of Legal Services and Monitoring Officer.

8.3 EQUALITIES IMPLICATIONS

8.3.1 There are no direct equalities implications from this report. Each decision taken under special urgency provision was supported by a report that set out the equalities impact of that decision and was subject to an equality analysis as part of the decision-making process. This is in line with the Equality Strategy 2020-2024 which states that all key decisions should be supported by an equality impact assessment and that equality impact assessments must be data driven.

8.3.2 Approved by: Denise McCausland – Equalities Programme Manager

8.4 HUMAN RESOURCES IMPLICATIONS

8.4.1 There are no direct workforce implications arising from this report. Should any workforce implications arise, these will be dealt with in accordance with the Council's HR policies and procedures.

8.4.2 Approved by: Gillian Bevan, Head of HR, Resources and Assistant Chief Executives on behalf of the Chief People Officer.

9. APPENDICES

9.1 There are no appendices to this report.