



Decision under the Special Urgency Provisions

1. This decision is made by Councillor Alan Franey, being the Deputy Leader of the Council and Executive Member, Resources on Monday 25 November 2013. It is made against the background of the following matters.

Background

2. On 3 November 2009 Cabinet made certain resolutions and on 31 March 2010 Full Council made certain resolutions, which resulted in the Council entering into an agreement ("the Agreement") for housing management and other services with the Welwyn Hatfield Community Housing Trust Limited (the 'Trust'), on 1 April 2010. The Agreement incorporates Service Legal Agreements from time to time, and as referred to in Annex 3 thereof.
3. Part of the Trust's functions under, and by reason of, the Agreement are the undertaking of such of the Council's functions under Part 7 Housing Act 1996 as a local housing authority is permitted to contract out, by the Local Authorities (Contracting Out of Allocation of Housing and Homelessness Functions) Order 2006 ("the Part 7 functions").
4. The Council is the respondent in legal proceedings in the High Court of Justice, Queen's Bench Division (HQ13X03030-3) with three appellants who were the recipients of negative review decisions under s.202 Housing Act 1996. The appeals are due to be heard in the week of 25 November 2013, having been listed for a number of months.
5. The appellants put in issue the lawfulness of the Trust exercising these Part 7 functions on a number of grounds. In response to the grounds then pleaded, on 22 January 2013 Full Council considered a report of the Director (Governance) dated 14 January 2013 and made a series of resolutions.
6. At 8pm on Friday 22 November 2013 legal counsel for these appellants sent an email to the Council's legal counsel, attaching a skeleton argument (submitted late and in breach of the directions made by the court). This seeks to argue new grounds at the hearing of the appeals, which have not previously been raised by the appellants.

They are that:

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- (1) The Part 7 functions are functions of the executive of the Council, and are not functions that may be exercised by Full Council;
 - (2) The Council's Executive was required to, but did not make an authorisation under ss.69 and 70 Deregulation and Contracting Out Act 1994, to the Trust and prior to the Agreement being entered into;
 - (3) The resolutions of Full Council on 22 January 2013 are of no legal effect.
7. The legal advice to the Council is that Cabinet did make a sufficient authorisation under ss.69 and 70 Deregulation and Contracting Out Act 1994 by its Resolutions of 3 November 2009 but that it would be prudent, given the new ground now raised, at the last moment, to make the following urgent decision for the avoidance of any doubt.
8. I have considered all the relevant issues, including the sets of resolutions referred to above, and the reports to Cabinet and Full Council that led to those resolutions being made.

Reasons for the Use of this Procedure

9. It is recognised and recorded that:
- (1) This decision is a Key Decision as defined by Article 13.03 of the Constitution of Welwyn and Hatfield District Council;
 - (2) Individual Members may take Key Decisions only in cases of urgency as set out in Rule 1.1(b) of the Cabinet Procedure Rules and Rule 16 of the Access to Information Procedure Rules;
 - (3) Rule 14 to those Rules provides for a Special Urgency Procedure where Rule 13 (general exception from rules) cannot be followed.



10. I am satisfied that Rule 14 applies in this case for two reasons. First, because a potential effect of the appellants' arguments (if correct in all respects) is that the Trust is even now not lawfully undertaking the Part 7 functions (and, possibly, other housing management functions). If this is the case, it must be urgently remedied. Second, because of the imminent hearing of the appeals in the High Court, in circumstances where the appellants did not raise this new ground, or challenge the ratifications of 22 January 2013, until immediately before the hearing of these appeals.

11. In these circumstances, I do not consider this decision can be deferred at all, including for the periods which would enable the Rule 13 to be followed.

12. I also note and record that:

- (1) The resolutions of Cabinet of 3 November 2009 were unanimous;
- (2) The resolutions of Council on 31 March 2010 were unanimous; and
- (3) The resolutions of Council on 22 January 2013 were unanimous

and my decisions would, I consider, have the support of both Cabinet and Council.

13. I confirm that I have today obtained the agreement of Councillor Fiona Thomson, the Chairman of the Social Overview and Scrutiny Committee that the taking of this decision cannot reasonably be deferred. The Chairman of that Committee has seen and approved this document.

14. There are no interests to be declared by myself or any Cabinet Member who has been consulted by me in relation to the decision.

The Decision

15. For the avoidance of doubt and in so far as may be legally necessary as a Key Decision of the Council's Executive (Cabinet):

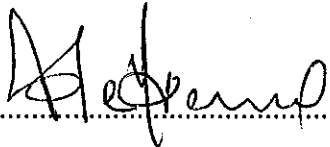


- (1) I ratify the contracting out of the Part 7 functions to the Trust, pursuant to ss.69 and 70 Deregulation and Contracting Out Act 1994, reg 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, and all other necessary powers. The contracting out and/or authorisation that I ratify is for a period of 10 years from 1 April 2010, as provided by, subject to or and in accordance with the terms of the Agreement. I recognise and record that this authorisation may be revoked at any time, by virtue of s.69(5) of the aforesaid Act.

- (2) I ratify the Council's entry into the Agreement with the Trust for all purposes with effect from 1 April 2010.

- (3) These ratifications are to have effect retrospectively, including in relation to the exercise of all Part 7 functions by the Trust and its employees under and in accordance with the Agreement, from 1 April 2010 to date, and also for the remainder of its 10 year period from 1 April 2010. In the alternative, I ratify/authorise the matters in (1) and (2) for what remains of the period, and from today's date.

Signed


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Councillor Alan Franey, Deputy Leader of the Council and Executive Member, Resources

Dated

..... 25/11/13

25 November 2013