Leicestershire County Council

Minutes of a meeting of the Cabinet held at County Hall, Glenfield on Tuesday, 10 October 2017.

PRESENT

Mr. N. J. Rushton CC (in the Chair)

Mr. R. Blunt CC
Mr. I. D. Ould CC
Mr. B. L. Pain CC
Mrs. P. Posnett CC
Mr. J. B. Rhodes CC
Mr. R. J. Shepherd CC
Mr. E. F. White CC

In attendance

Dr. R. K. Feltham CC, Mr. T. J. Pendleton CC, Mr. D. Jennings CC, Mrs. R. Page CC, Mr. D. Slater CC, Mr. L. Breckon, Dr. T. Eynon CC

43. Minutes of the previous meeting.

The minutes of the meeting held on 15 September were taken as read, confirmed and signed.

44. Urgent Items.

The Chairman advised that there was one urgent item for consideration, a joint report of the Chief Executive, Director of Adults and Communities and Director of Health and Care Integration regarding progress with the assurance of the Leicestershire Better Care Fund Plan 2017/18 – 2018/19 and the target for improving delayed transfers of care set by NHS England.

The report was urgent because the issue had arisen after the agenda for the Cabinet meeting had been published and the subject needed to be addressed at the earliest opportunity.

With the agreement of the Cabinet the report was taken as the first substantive item (minute 46 refers) and the order of business was amended from that set out on the agenda for the meeting.

45. Declarations of interest.

The Chairman invited members who wished to do so to declare any interest in respect of items on the agenda for the meeting.

Mr. N. J. Rushton CC, Mr. R. Blunt CC, Mr. J. B. Rhodes CC, Mr. R. J. Shepherd CC, Mr. B. L. Pain CC and Mrs. P. Posnett CC declared a personal interest in agenda item 6 (Localisation of Council Tax – County Council Contributions), item 8 (Planning for the Right Homes in the Right Places – Consultation Response) and item 9 (Delegation of

Adult Social Care Functions To Blaby District Council (Lightbulb Programme) – Urgent Action by the Chief Executive) as district council members.

Mr. R. J. Shepherd CC also declared a personal interest in agenda item 4 (ESPO Trading Company Limited) as a member of the ESPO Management Committee.

Mr. R. Blunt CC also declared a Disclosable Pecuniary Interest in agenda item 11 (Delivery of Leicester and Leicestershire Rail Strategy (including HS2)) as an owner of land affected by HS2 and he undertook to leave the meeting during consideration of that item.

46. Urgent Item - Delayed Transfers of Care and Assurance of the Leicestershire better Care Fund Plan.

The Cabinet considered an urgent joint report of the Chief Executive, Director of Adults and Communities, Director of Health and Care Integration regarding progress with the assurance of the Leicestershire Better Care Fund Plan 2017/18 – 2018/19 and the target for improving delayed transfers of care set by NHS England. A copy of the report, marked ‘13’, is filed with these minutes.

The Director of Health and Care Integration said that in all respects NHS England had confirmed that the Leicestershire Better Care Fund Plan was acceptable, but it would not approve this without the Council’s acceptance of the target to improve delayed transfers of care (DTOC) by November 2017. It had also threatened to withdraw funding if this was not agreed. Like a number of others, the Director said the Authority was faced with two unsatisfactory options; to agree a target which was unreasonable and unachievable, or risk losing funding of up to £22m.

The Director of Adults and Communities highlighted that responsibility for DTOC fell either to the NHS, the County Council (adult social care services), or they were a joint responsibility. The Council was meeting its DTOC targets. Performance across the health system to release acute care beds was also good in Leicestershire. It did experience difficulties in respect of transfers of people with more complex mental health needs that required non-acute care in the community. However, measures had been identified with health partners to address this.

The Director said that the approach of NHS England and the threat of withdrawing funding risked upsetting local partnership arrangements and could result in the Council no longer meeting its DTOC targets and more importantly, being able to meet its overall statutory responsibilities for domiciliary care. He further highlighted that any withdrawn funds would be transferred to the NHS to procure care directly which perversely would cost the NHS more as this would be less planned and at higher rates.

Mr White CC said the position was very frustrating as local care, partnership working and DTOC performance by the Authority was good. He said he also remained concerned about the possible consequences if NHS England’s target was not met.

Mr Blunt CC said that the NHS was in difficulty and a pragmatic approach was necessary, as despite NHS England’s method of tackling its problems, the Council was committed to working with local NHS partners to improve DTOC across the County.

Mr Rhodes CC said he was concerned about how the approach of NHS England might affect the local health economy as reducing funding would risk a deterioration in the

DTOC position in Leicestershire. He said he considered the approach of NHS England to be ‘stupid’ and a result of incompetence by senior management within the organisation which could not continue.

RESOLVED:

(a) Notes the current status of the assurance of the Leicestershire BCF Plan as “not approved”, the reason for this position, and the placing of Leicestershire’s BCF plan in formal escalation with NHS England as a result of this;

(b) Notes the additional risks on the BCF pooled budget and the Council’s Medium Term Financial Strategy (MTFS) should any BCF funds be withheld/removed during 2017/18 or 2018/19, the impact this could have on core service provision for citizens, and the associated reputational risk for the Council and NHS partners;

(c) Reluctantly accepts the DTOC target imposed by NHS England but with the following caveats:

  (i) The County Council continues to object to the imposition of this target by NHS England, with the significant risks that have been placed on BCF assurance, and the associated financial penalties if a compliant target is not submitted;

  (ii) In accepting this change to the submitted DTOC trajectory, the County Council expects the Health and Wellbeing Board’s BCF plan assurance rating to be reviewed and adjusted with immediate effect;

  (iii) As the County Council and partners still bear a clear risk of financial penalties during 2017/18 (if the Leicestershire, Leicester and Rutland (LLR) area does not reach the required level of improvement by November 2017) information is immediately provided to the three Councils and the three CCGs about:

    a) The process, scale and timing for imposing any DTOC performance penalties per the November milestone, so that partners can plan effectively for the remainder of this financial year; and
    b) Implications for local areas in relation to DTOC performance beyond November 2017 so that financial risks for 2018/19 can be assessed as soon as possible.

(d) Draws the attention of the Local Government Association and the County Councils’ Network to its serious concerns about the actions and attitude of NHS England in this regard and requests them to continue to challenge Ministers so that partnership working on health and care integration is not further damaged;

(e) Notes that a further report on this matter will be made to the Health and Wellbeing Board at its meeting on 16 November 2017.

REASONS FOR DECISION:

In July 2017, after a lengthy national delay, technical guidance was published by NHS England for the preparation and submission of BCF Plans for the period 2017/18 – 2018/19. This technical guidance included new requirements for improving delayed transfers of care (DTOC) with challenging expectations placed on each health and wellbeing board area in terms of the rate of improvement to be achieved during 2017/18.

The guidance also highlighted that areas with poor performance on DTOC could be subject to escalation with NHS England, external review by the Care Quality Commission and financial penalties.

The national conditions for the BCF Plan include a requirement that it is jointly agreed by the County Council and Clinical Commissioning Groups, including through the Health and Wellbeing Board.

47. <u>ESPO Trading Company Ltd.</u>

The Cabinet considered a joint report of the Chief Executive and Director of Corporate Resources, which set out the recommendations of the ESPO (Eastern Shires Purchasing Organisation) Management Committee and senior officers of the six member councils concerning the establishment of a new company, ESPO Trading Company Ltd. A copy of the report, marked '4', is filed with these minutes.

Mr Rhodes CC said that ESPO had grown into a very successful organisation and by creating a limited company it would be able to expand further, increasing its trading capacity and therefore the income generated.

RESOLVED:

(a) That the decision of the ESPO Management Committee, having reviewed the detailed business case and other documents, to recommend each of the six member authorities establish a new trading company, be noted;

(b) That approval be given to the establishment of a new trading company, 'ESPO Trading Company Limited', on the basis outlined in the report and that the Chief Executive be authorised to agree the terms of, and sign the necessary documentation to give effect to this decision;

(c) That it be noted that the Board of Directors of the trading company will include five officers, acting as Executive Directors made up as follows:

(i) three officers from ESPO's senior Management Team including the Director;
(ii) the Director of Corporate Resources (Leicestershire County Council) or his nominee;
(iii) an officer nominated by the other Shareholders (member authorities) of ESPO;

(d) That approval be given for arrangements to be put in place to indemnify the ESPO and Leicestershire County Council officers in discharging their role as Executive Directors of the Company;

(e) That it be noted that the Shareholders (member authorities) may nominate up to two Non-Executive Directors to serve on the Board of the Company;

(f) That it be noted that each of the six member authorities will be equal shareholders in the new Company and that the shareholder representatives on the new company will be one elected member from each member authority drawn from the membership of the ESPO Management Committee;

(g) That it be noted that the shareholder representatives (elected members) will be responsible for taking strategic decisions and agreeing the Annual Business Plan for the Company.

(KEY DECISION)

REASONS FOR DECISION:

ESPO is established as a joint committee set up in accordance with the Local Government Act 1972 and the Local Government Act 2000. Its servicing authority, Leicestershire County Council, is limited to trading under powers in section 1 of the Local Authorities (Goods and Services) Act 1970 with a limited number of organisations defined as public bodies under that Act.

Member authorities of ESPO have the opportunity to explore alternative markets that are not public bodies, by using the powers under:-

i) Section 4 of the Localism Act 2011 and Section 95 of the Local Government Act 2003 to trade for profit, through the new separate company;

ii) Section 3 of the Localism Act 2011 and Section 93 of the Local Government Act 2000 to make a charge through the existing joint committee and servicing authority for goods and services to organisations other than those with which ESPO may trade by virtue of the Local Authority (Goods and Services) Act 1970.

By virtue of being able to trade with organisations in addition to public bodies, ESPO and the new Company will be able to secure ESPO's position in an increasingly competitive market and deliver the growth and profit targets set by the ESPO Management Committee in its Medium Term Financial Strategy.

48. Implementation of the Markets in Financial Instruments Directive (MiFID II).

The Cabinet considered a report of the Director of Corporate Resources, which recommended action to ensure the County Council could continue to access a full range of relevant investment opportunities following implementation of the Markets in Financial Instrument Directive 2014/65 (MiFID II). A copy of the report, marked '5', is filed with these minutes.

Mr Rhodes CC criticised the new EU directive, but said the proposed approach to 'opt-up' would ensure the Authority was not unreasonably disadvantaged.

RESOLVED:

(a) That the potentially detrimental impact on the County Council's treasury management and other investment activities if it becomes classed as a 'retail client' in accordance with Markets in Financial Instrument Directive 2014/65 with effect from 3rd January 2018, be noted;

(b) That the Director of Finance be authorised to commence the relevant applications for the County Council to seek to opt-up to elected professional client status with all relevant institutions in order to enable it to continue to implement an effective treasury management strategy and other investment activities;

(c) That it be noted that if it is successful in its applications to obtain elected professional client status, the County Council will forgo those protections available to retail clients as listed in the appendix attached to this report.

REASONS FOR DECISION:

Unless the County Council seeks to 'opt-up' to elected professional client status there will be a detrimental impact on the investments it can access either as part of its treasury management function, or as part of any other investment activity. Retail investors (which, under the new Directive, the County Council will become classified as without the opt-up) will not be able to access some of the investment options that are currently available, and there is a possibility that some of the existing investments (most notably the pooled property funds currently held) may be forcibly sold if the County Council is reclassified as a retail investor.

49. Localisation of Council Tax Support - County Council Contributions.

The Cabinet considered a report of the Director of Corporate Resources which sought approval to cease all contributions made by the County Council to Leicestershire billing authorities (i.e. the seven district councils) to support the administration of the Localisation of Council Tax Support schemes (LCTS) and to the Discretionary Discount Funds (DDF) administered by the billing authorities, both introduced in 2013. A copy of the report, marked '6' is filed with these minutes.

The Director of Finance emphasised that council tax collection was a district council function for which it received Government funding and that the withdrawal of County Council contributions to the DDF did not necessarily mean it would come to an end.

Mr Rhodes CC said that delaying the withdrawal of contributions to the DDF to 2019 gave district councils time to consider and introduce changes to the scheme as they considered necessary. The Fund was established for a good purpose, but over time had not been drawn on as expected and it was therefore appropriate for the Council's contributions to now be withdrawn.

RESOLVED:

(a) That the County Council cease all contributions it makes to billing authorities towards the administration costs of operating the Localisation of Council Tax Support schemes as from 1 April 2018 and to the Discretionary Discount Funds from 1 April 2019;

(b) That £100,000 be set aside from the forecast 2017/18 Medium Term Financial Strategy monitoring underspend to fund the contribution to the Discretionary Discount Fund in 2018/19 until this is ceased in accordance with (a) above.

(KEY DECISION)

REASONS FOR DECISION:

Due to the financial pressures facing the County Council, the MTFS included a saving from a review of the contributions it makes to the 7 Leicestershire billing authorities in respect of Localisation of Council Tax Support scheme administration costs and to the Discretionary Discount Funds (DDF). The proposals set out in this report are aimed at achieving this saving but on a timescale that will enable billing authorities to manage the proposed reduction in funding, particularly in respect of the DDF.

50. Developer Contributions towards County Council Services - Update.

The Cabinet considered a report of the Chief Executive, which provided an update on the work undertaken to address concerns that the Council's reasonable expectations of receiving Developer Contributions via S106 planning agreements are being met to meet demands placed on services created by development across the County following the previous report to the Cabinet in November 2016. A copy of the report, marked '7', is filed with these minutes.

Members noted the comments received from the Labour Group, a copy of which is filed with these minutes.

Mr Rhodes CC emphasised the need for all district councils to support the Council's requests for developer contributions which would in turn support the infrastructure required by schemes approved by local planning authorities.

RESOLVED:

That the update now provided be noted and that progress on Developer Contributions continue to be monitored.

REASONS FOR DECISION:

It is important that the County Council does what it can to meet the demands on its services in increasingly difficult financial circumstances. Ensuring that developers make appropriate contributions to mitigate the consequences of their developments via Developer Contributions is essential if communities are not disadvantaged and the County Council is not put under excessive financial demands which it will not be able to meet.

Local planning authorities should do all they can to ensure developments are sustainable and meet the reasonable obligations requested of them.

51. Planning for the Right Homes in the Right Places - Consultation Response.

The Cabinet considered a report of the Chief Executive which sought approval of the draft response to the Department for Communities and Local Government's 'Planning for the right homes in the right places' consultation. A copy of the report, marked '8', is filed with these minutes.

Mr Rushton CC said it was unfair that the need for additional resources for county councils was not being recognised as they too played a role in supporting housing delivery.

Mr Rhodes CC expressed concern that the introduction of a formula based approach to apportioning housing need could be too rigid and needed to allow for some local flexibility. He also supported the concern raised by Mr Rushton.

The Chief Executive undertook to address both issues further in the final response to be submitted to Government.

RESOLVED:

(a) That the summary response to the Government Consultation ‘Planning for the right homes in the right places’ as set out in paragraphs 18 to 46 of the report be approved;

(b) That the Chief Executive, following consultation with the Leader of the Council, be authorised to make any minor amendments to the proposed response arising from further detailed consideration of the consultation paper prior to its submission to the Government by the 9th November 2017 deadline.

REASONS FOR DECISION:

To respond to the Government Consultation regarding a number of proposals to reform the planning system which are aimed at increasing the supply of new homes and local authority capacity to manage growth.

The County Council is working with Local Planning Authorities across Leicester and Leicestershire to develop a Strategic Growth Plan which will guide housing and infrastructure requirements across the agreed Housing Market Area. This response has been written to ensure that the robust and collaborative work already undertaken is not undermined, but benefits from any changes to a revised National Planning Policy Framework.

52. <u>Delegation of Adult Social Care Functions to Blaby District Council (Lightbulb Programme) - Urgent Action by the Chief Executive.</u>

The Cabinet considered a report of the Director of Adults and Communities regarding urgent action taken by the Chief Executive, following consultation with the Leader of the Council, to delegate the Adult Social Care functions to be undertaken under the Lightbulb Programme pathway to Blaby District Council. A copy of the report, marked ‘9’ is filed with these minutes.

RESOLVED:

That the urgent action taken by the Chief Executive under delegated powers, following consultation with the Leader of the Council, to delegate the Adult Social Care functions to be undertaken under the Lightbulb Programme pathway to Blaby District Council as detailed in paragraph 19 of the report, be noted.

REASONS FOR DECISION:

The delegation of those Adult Social Care (ASC) functions detailed in paragraph 19 of this report is a requirement under the legal agreement necessary to enable the delivery of a streamlined housing support pathway under the Lightbulb Programme being hosted by Blaby District Council.

Urgent action was taken by the Chief Executive on 12 September 2017 to delegate these ASC functions to Blaby District Council to enable the Lightbulb Programme to be rolled out to all Leicestershire districts by 2 October 2017.

53. Draft Leicester, Leicestershire and Rutland Carers Strategy 2018 - 2021.

The Cabinet considered a joint report of the Director of Adults and Communities, Director of Children and Family Services and the Director of Public Health which sought approval to consult on the draft Leicester, Leicestershire and Rutland (LLR) Carers Strategy 2018-2021. The Strategy set out the draft strategic priorities relating to unpaid carers of all ages and was intended as a joint strategy including all local authorities and Clinical Commissioning Groups across LLR. The report also highlighted key improvements being made to the cares support offer in Leicestershire. A copy of the report, marked '10', is filed with these minutes.

Mr Rushton CC thanked the Director of Adults and Communities for what was an excellent piece of work to ensure carers of all ages were being properly supported.

Mr Blunt CC said that from the survey, it was clear that the support offered to carers was not good enough and therefore work was being undertaken to address this and to improve things for the future.

RESOLVED:

(a) That the draft Leicester, Leicestershire and Rutland Carers Strategy 2018 – 2021 (attached as Appendix A to the report) be approved for consultation;

(b) That a further report be submitted to the Cabinet in March 2018 regarding the outcome of the consultation and presenting the final Leicester, Leicestershire and Rutland Carers Strategy 2018 – 2021 for approval;

(c) That the Director of Adults and Communities be authorised to take such action as he considers appropriate in response to the engagement feedback received to improve the Council's response to adult carers whilst further consultation on the overarching Strategy is completed.

(KEY DECISION)

REASONS FOR DECISION:

The Directors of Adults and Communities, Children and Family Services and Public Health require the Cabinet's permission to undertake a formal joint consultation alongside Leicester City Council, Rutland County Council, Leicester City Clinical Commissioning Group (CCG), West Leicestershire CCG and East Leicestershire and Rutland CCG on the priorities and actions identified for supporting unpaid carers.

Significant carer and stakeholder engagement has been undertaken during the summer of 2017, and the draft Strategy has been co-produced alongside carers. Amendments may be required to the draft Strategy after formal consultation responses are received.

Through the engagement undertaken during the summer of 2017, three key areas for improvement to support adult carers have been identified which can be implemented without impact on the progression of the Strategy:

- helping carers to navigate the pathway to support;
- simplification of the assessment process;
- increase in respite provision.

54. Delivery of Leicester and Leicestershire Rail Strategy (Including HS2)

[Mr. R. Blunt CC left the meeting during consideration of this item.]

The Cabinet considered a report of the Director of Environment and Transport which sought approval of the Council's proposed response to the East Midlands Rail Franchise consultation, to advise of the impact of the Department for Transport announcement to cancel electrification of the Midland Mainline (MML) north of Kettering on the delivery of the priorities set out in the Leicester and Leicestershire Rail Strategy, and to re-affirm the Council's position, in light of this announcement, on the now confirmed route for HS2 Phase 2b, as set out in Appendix A. A copy of the report, marked '11', is filed with these minutes.

Members noted the comments received from Mr Sheahan CC, a copy of which is filed with these minutes.

The Director of Environment and Transport highlighted that the Chancellor in his recent speech at the Conservative Party Conference had announced a further £300m to future proof the railway network in the north to ensure HS2 infrastructure could link up with future Northern Powerhouse and Midlands Rail projects. The Director confirmed that officers were seeking clarification of what this might mean for rail projects in the Midlands and whether this might affect Leicester and Leicestershire.

Mr Rushton CC said he was very disappointed by the announcement not to proceed with electrification of the MML and felt that bi-mode trains would not prove to be adequate.

RESOLVED:

(a) That the proposed County Council response to the Government's East Midlands Rail Franchise consultation as set out in Appendix B to the report be approved;

(b) That the Government announcement to cancel the proposed electrification of the Midland Mainline north of Kettering and to instead introduce bi-mode inter-city trains by 2022 be noted with regret, together with the effect this will have on the future delivery of priorities identified in the Leicester and Leicestershire Rail Strategy;

(c) That the Director of Environment and Transport be authorised to:

    (i) Undertake work, as necessary, to make the case to the Department for Transport (DfT) to reverse its decision to cancel electrification of the Midland Main Line north of Kettering;
    (ii) Enter into discussions with the DfT and other bodies, as necessary, to seek clarification and assurances in respect to concerns about future rail services on the Midland Mainline, as set out in paragraph 39 of this report;

(d) That the Council continue its support, in principle, for the now confirmed route of HS2 subject to the caveats previously agreed and set out in Appendix C, and those issues now identified in paragraph 49 of this report;

(e) That the Director of Environment and Transport explore opportunities through the HS2 Phase 2b hybrid Bill or other means to achieve the objectives and benefits of the Leicester and Leicestershire Rail Strategy with regards to HS2;

(f) That the Council's support for HS2 be reviewed following the introduction of the HS2 Phase 2b hybrid Bill (to be introduced to Parliament in 2019) and the response to the reassurances sought on Midland Mainline performance in accordance with (c)(ii) above, and that a further report be brought back to the Cabinet as appropriate.

(KEY DECISION)

REASONS FOR DECISION:

The Government has set out its proposals to improve train services on the East Midlands rail network under the new East Midlands rail franchise and is seeking feedback on those proposals.

Confirmation of the Authority's position on the eastern leg of HS2 and MML electrification will enable officers to engage with the DfT to seek outcomes that are for the benefit of Leicester and Leicestershire residents and businesses and which will ensure that the priorities identified in the Leicester and Leicestershire Rail Strategy can be met. This will enable the Authority to respond appropriately to correspondence and enquiries regarding rail.

2.00 - 2.45 pm
10 October 2017

CHAIRMAN

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