

Time Commenced – 17:00
Time Finished – 19:26

Executive Scrutiny Board

22 October 2018

Present: Councillor Graves (Chair)
Councillors Eldret, Hudson, Jackson, J Khan, Marshall,
Rawson, Russell, Stanton, Willoughby and Wood.

Other councillors in attendance: Councillors Hussain, Poulter, Roulstone
and Williams

In attendance: Frederico Almeida, Pauline Anderson, Nigel Brien, Keith
Cousins, Christine Durrant, Suanne Lim, Richard Martin, Don
McLure, Kirsty McMillan, Gurmail Nizzer, Alison Parkin, Andy
Smith and Alex Hough (Democratic Services).

46/18 Apologies for Absence

Apologies for absence were received from Councillor Potter.

47/18 Late Items

The Chair introduced the call-in of Council Cabinet Decision 94/18, following the receipt of a call-in notice on 18 October 2018. It was agreed that the call-in would be heard following consideration of the Council Cabinet Agenda.

48/18 Declarations of Interest

There were no declarations of interest.

49/18 Council Cabinet Agenda

The Board considered a report from the Chief Executive on the Council Cabinet Agenda. Members considered the Council Cabinet Agenda in its entirety for the meeting scheduled for Wednesday 24 October 2018 and made a number of comments and recommendations to Council Cabinet.

Item 6 – Air Quality: Reducing Roadside Nitrogen Dioxide

The Board received a report of the Strategic Director for Communities and Place with regards to air quality and reducing roadside nitrogen dioxide levels.

It was noted that in 2015 Derby had been identified by DEFRA as one of five cities requiring early action to decrease levels of nitrogen dioxide. In December 2017, a ministerial directive was received requiring a business case to be submitted to the Secretary of State by 15 September 2018; this deadline has been extended to 30 November 2018.

The process of developing local measures to tackle air quality had resulted in a public consultation exercise, which concluded on 24 September 2018. The report included the consultation outcome and recommended traffic management measures focused on Stafford Street as the preferred option, prior to the submission of a full business case.

The Board questioned officers on the proposed extent of the scheme. It was reported that the proposals included altering traffic flows on routes adjacent to Stafford Street; managing displacement flows and traffic light sequencing; as well as alterations to nearby junctions.

Members queried whether a previously proposed scrappage scheme remained part of the proposals; it was confirmed that a scrappage scheme would be incorporated as part of a bid to the Clean Air Fund (CAF). It was further noted that issues highlighted as part of the consultation would also be included in the CAF bid.

The Board noted that when Derby was identified as requiring urgent measures to tackle air quality, there were six areas of nitrogen dioxide exceedance highlighted in the city. Moreover, members questioned the implications of failing to meet the deadline imposed by the Government and asked whether discussions with DEFRA had taken place as to if the plans would be accepted.

It was reported that the collection of more refined local data had led to the number of areas of exceedance being reduced, with initial modelling based on national averages. It was stated that the timeframe for the submission of the full Business Case was dependent on consultation, further modelling and agreement by the Government. The legal implications of missing the deadline were unknown at the current time. It was confirmed that a traffic management option was not considered viable prior to the reduction in the number of areas of exceedance in June 2018.

The Board noted ongoing work with bus companies and taxi operators, including a £2 million bid to the Clean Bus Technology Fund and investment in a city centre rapid charging hub for electric vehicles. Proposals to encourage cycling and reduce idling were also discussed, with members noting evidence in the consultation suggesting women were significantly less likely to take up cycling.

Four recommendations were put to the vote and carried.

The Executive Scrutiny Board resolved:

- **To recommend to Council Cabinet that measures to encourage women to cycle safely were included as part of the bid to the Clean Air Fund.**
- **To recommend to Council Cabinet that local councillors are consulted on both citywide and ward based measures to improve**

air quality, as part of wider public consultation prior to submission of the Clean Air Fund bid.

- **To recommend to Council Cabinet that a sub-group of the Green Forum was formed to consider air quality, to include cross-party and officer representation.**
- **To recommend to Council Cabinet that the number, scale and scope of air quality management areas is expanded as part of the bid to the Clean Air Fund.**

Item 7 – Medium Term Financial Plan 2019/20 – 2022/23 – Update

The Board received a report of the Strategic Director of Corporate Resources providing an update on the 2019/20 to 2022/23 Medium Term Financial Plan (MTFP). The report anticipated a further report to Council Cabinet in December 2018, prior to the planned start of the budget consultation process on 13 December.

It was noted that a report considered by Council Cabinet in July 2018 forecast a £22.8 million budget gap for 2019/20 to 2022/23. In the intervening period, the gap had been reduced to £9.6 million, with £5.5 million of savings still to be identified for 2019/20.

The report outlined significant budget pressures in People Services and sought approval to begin consultation on a range of savings proposals. It was noted that the planned savings included the loss of 128 full-time equivalent posts; it was emphasised that compulsory redundancies would be kept to a minimum.

Relevant officers responded to questions on a wide range of budget proposals. The Board expressed concern that some measures may not result in value for money and could incur greater costs in the long-term, particularly with regards to the remodelling of the universal offer to carers and the Connexions service.

The Board noted proposals to remodel fostering and residential provision for children in care. It was reported that this would predominantly focus on outsourcing the recruitment and assessment of foster carers, following a recent soft-market testing exercise.

Members questioned how the administration was lobbying the Government for more sustainable resources. It was reported that letters to the Home Office, Secretary of State for Adult Social Care and a cross-party letter from the Health and Wellbeing Board had been sent in recent weeks, as well as extending an invitation to the Children's Minister to visit Derby.

Other questions included what would happen to buildings earmarked for closure; what the statutory minimum offer was for the school improvement service and the likely impact of reductions in the public health grant and funding for the Troubled Families Programme. The removal of free parking for

employees and councillors was considered; it was also confirmed that savings identified against the library service had already been included in the MFTP as part of the on-going review.

The Board queried why an additional report was necessary outside of the standard budget process and sought clarification on previously reported in-year overspends in People Services. It was stated that the report would allow consultation to begin on a number of proposals which, if approved, could be implemented from early in the 2019/20 financial year to avoid further pressures; it was stated that a further report would be provided to Council Cabinet on the quarter two outturn position. Additional forecasted pressures in the Communities and Place and Corporate Resources Directorates were also queried; it was suggested that this information would be collated and detailed to the Board in due course.

The Executive Scrutiny Board resolved:

- **To note the report**
- **To recommend that Council Cabinet explore the viability of employing foster carers as in-house staff.**

50/18 Call In of Council Cabinet decision 94/18

The Board received a late item in relation to the call-in of Council Cabinet decision 94/18 (Special Educational Needs and Disability (SEND) Provision in Derby). The Chair outlined the call-in procedure and invited a signatory of the call-in notice to address the Board.

The signatories raised concerns with regards to the decision to reallocate the funding provided to Central Community Nursery School and Lord Street Nursery School to a single Early Years Inclusion Fund; this included the decommissioning of enhanced resource school places.

It was noted that the signatories agreed with the need to support children with SEND in mainstream settings, but that there remained a need for enhanced resource school places and that the two nurseries in question were centres of excellence.

It was stated that in the opinion of the signatories, the human right to education for early years children with severe disabilities was not being fulfilled, either under the current or proposed arrangements. Furthermore, it was argued that a record of options considered had not been provided in the original report and that relevant issues had not been taken into consideration.

The Board questioned the signatory of the call-in notice, particularly with regard to respect for human rights. It was stated that no alternative plans were in place for early years children and that it was vital that support and intervention for children with SEND took place as soon as possible. It was suggested that expecting nurseries to make their own individual arrangements was not sufficiently specific to fulfil the human right to education.

The Cabinet Member for Children and Young People was invited to address the Board. It was stated that in their opinion, the council's decision-making principles had not been breached.

With regards to respect for human rights, the Cabinet Member refuted that there had been a lack of regard as outlined in the call-in notice, stating that the proposals ensured that parents had options available locally for early years children with SEND and that the two nursery schools in question remained eligible for the Early Years Inclusion Fund. Furthermore, it was stated that the proposals had been consulted upon extensively and a full record of other options considered had been provided as part of Appendix 2 of the original report.

It was argued that the issues highlighted in the call-in notice as not being taken into account had been considered by Council Cabinet. The Cabinet Member rejected the suggestion that the removal of enhanced resource places would result in the two nurseries in question being unable to comply with the SEND Code of Practice. Moreover, it was suggested that the recommendations from Executive Scrutiny had been carefully considered but were not deemed appropriate in the circumstances; it was stated that this in itself did not constitute a breach of decision making principles. The Cabinet Member concluded by stating that in their opinion the decision was informed, justifiable and lawful.

The Board questioned the Cabinet Member, seeking clarity on whether staff in other early years settings had been trained in the identification and assessment of children with SEND. It was stated that each setting would have a Special Educational Needs Coordinator (SENCO), with the support offered set out in the Graduated Response Strategy also approved by Council Cabinet on 10 October.

Members asked the Cabinet Member whether they were satisfied with the detail on pupil pathways contained within the report and queried whether it was possible to establish an inclusion fund whilst maintaining the enhanced resource places at the two nurseries. The Cabinet Member stated they were satisfied with the report and believed it created a fairer situation across localities.

Further questions were received in relation to respect for human rights, with members of the Board suggesting it was unfair for children under four with SEND to be treated differently to older children. The Cabinet Member again refuted that there had been a lack of regard for human rights, as outlined in the call-in notice.

Clarification was sought on the extent to which briefings were held with officers and Cabinet colleagues following the recommendations made by Executive Scrutiny. The Cabinet Member stated that the decision represented a more transparent and consistent approach to early years SEND provision and confirmed that briefings took place with both officers and other Cabinet Members prior to the meeting on 10 October.

The signatory of the call-in notice and the Cabinet Member were invited to

sum-up. The signatory requested that the report was sent back to Council Cabinet, to make specific proposals on how the needs early years children with SEND would be met. The Cabinet Member reaffirmed their opinion that there had been no breach of the decision making principles and that the resolutions made were proportionate, justifiable and lawful.

The Board were invited to make final statements. Some members argued that the council's decision making principles had been breached, citing lack of consultation with those directly impacted by proposals to decommission enhanced resource places. It was suggested that the expertise of practitioners needed to be fully considered in a decision of this magnitude. Moreover, some members felt there had been disregard for the recommendations made by Executive Scrutiny.

The Board agreed that early intervention remained of vital importance, with some members suggesting that there was widespread support for maintaining enhanced resource places at Central Community Nursery School and Lord Street Nursery School.

The Chair thanked members for their contributions and stated that due consideration had been given to the matters in question. Members of the Board were asked individually to state whether they felt the council's decision making principles had been breached in relation to the three reasons stated in the call-in notice.

The Executive Scrutiny Board resolved:

- **To uphold the call-in of Council Cabinet decision 94/18 on the following grounds:**
 - **That respect for human rights had not been demonstrated**
 - **That a record of options considered and giving reasons for that decision were not provided**
 - **That relevant issues were not taken into consideration**
- **To refer Council Cabinet decision 94/18 to Council Cabinet for reconsideration at the earliest opportunity.**

MINUTES END