

Executive Scrutiny Board

17 July 2018

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

In Attendance: Paul Clarke, Heather Greenan, Don McLure, Gurmail Nizzer,
Iain Peel, Ruth Sadler, Andy Smith, and Alex Hough
(Democratic Services).

9/18 Apologies for Absence

No apologies for absence were received.

10/18 Late Items

There were no late items.

11/18 Declarations of Interest

In relation to consideration of Item 15 on the Council Cabinet Agenda
(Compliance with Contract and Financial Procedure Rules), Councillor
Willoughby stated that his children attended Landau Academy.

12/18 Minutes of the previous meeting

Minutes of the previous meeting held on 12 June 2018 were agreed as an
accurate record.

13/18 Forward Plan

The Board considered the contents of the Forward Plan published on 10 July
2018. No items were added to the future work programme.

The Executive Scrutiny Board resolved to note the Forward Plan.

14/18 Transfers from Statements of Special Educational Needs to Education, Health and Care Plans

The Board received a report of the Strategic Director of People Services
presenting an update on transfers from Statements of Special Educational
Needs to Education, Health and Care Plans (EHCPs), following previous

consideration by the Executive Scrutiny Board in April 2018 and the inclusion of a 'Special Educational Needs and Disabilities Update' on the Performance Forward Plan for July 2018.

The Chair invited a member of the public and parent of five SEN children to address the Board and detail her experiences with regards to the conversion process. It was reported that she had encountered problems with sixth form placements and transport applications. It was also suggested that some EHCPs contained poor paraphrasing and copying of diagnoses.

The Board thanked the member of the public for their contribution.

In relation to concerns expressed by the Board regarding children with SEN transferring to Infant, Junior and Secondary Schools in September 2018, it was reported that 93 per cent had been processed by the statutory deadline. It was noted that of 1,375 transfers, only 14 appeals had been lodged by parents to the First Tier Tribunal and 26 cases had been identified by the Vulnerable Learners Service where an interim review may be required to update professional advice and reflect revised information.

It was noted that a range of performance indicators were being developed by the SEND Improvement Board to monitor the quality of EHCPs and it was stressed that a transition period was needed to embed new processes and procedures. It was suggested that a Performance Surgery was held in the fourth quarter once the SEND scorecard had been finalised and sufficient baseline data had become available, to ensure continued democratic oversight and quality assurance.

Members enquired to what extent and by what means parents were being consulted on a continuing basis. It was reported that officers were liaising with the Parent Carer Forum to engage families and ensure their voice was captured. It was noted that there was also a work stream for SEND as part of the Opportunity Areas initiative.

In relation to the concerns regarding sixth form placements and school transport, officers urged councillors to refer members of the public to the Vulnerable Learners Service so that problems could be addressed on a case by case basis.

Some members suggested that in striving to meet the deadline for conversions, the views of parents and carers may have been neglected. It was emphasised that all local authorities had faced a significant challenge to meet the 31 March 2018 statutory deadline and that there existed a disproportionately high volume of statements in Derby compared to other areas. Officers stressed that there was no loss of provision or service to children with SEN as a result of the conversion process.

The Board queried why there was such a significant spike in the conversion rate in the weeks preceding the statutory deadline. It was noted that there was a significant increase in capacity in the Vulnerable Learners Service at this time to allow conversions to be completed.

Members enquired about the consequences of missing the deadline. It was reported that this was never considered a viable option and that frontline officers, senior management and the Cabinet Member had worked tirelessly to meet the 31 March deadline.

The Board welcomed the contribution of members of the public and stated that they wished to see engagement with parents and carers formalised. The Chair also thanked officers for their hard work in meeting the statutory deadline and their openness in discussing the challenges they had faced with elected members.

Resolved to refer transfers from statements of special educational needs to education, health and care plans to the Children and Young People Scrutiny Review Board for an interim update in the Autumn, followed by a Performance Surgery with a full evaluation of the scorecard data once it was available.

15/18 Performance Items and Performance Forward Plan

The Board received a report of the Acting Chief Executive presenting the Executive Scrutiny Performance Forward Plan and allowing the Board to make amendments as necessary for items to be considered at future meetings.

It was noted that items in the Performance Forward Plan for July 2018 were discussed under Item 6 (Transfers from Statements of Special Educational Needs to Education, Health and Care Plans) and Item 14 of the Council Cabinet Agenda (Council Scorecard 2018/19).

Members requested that 'Managing demand in People Services', which was currently scheduled for consideration in January 2019, was brought forward to allow the Executive Scrutiny Board to make appropriate recommendations as part of the Budget Scrutiny process.

It was also requested that an Update on Leisure and Culture Projects was brought forward to feed into a proposed Leisure, Culture and Tourism Options Appraisal, currently included in the Forward Plan for consideration by Council Cabinet no earlier than 8 August 2018.

Resolved that the proposed amendments were incorporated into the Performance Forward Plan in consultation with the Chair.

16/18 Council Cabinet Response to Scrutiny Recommendations

The Board considered a report of the Chief Executive which allowed the scrutiny board to receive responses from Council Cabinet on recommendations made at the previous Board meeting held on 12 June 2018.

The Board resolved to note the report.

17/18 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 18 July 2018 and made a number of comments and recommendations to Council Cabinet.

Item 8 – New Primary School provision across the city and Hackwood Farm

The Board received a report from the Strategic Director of People Services seeking approval for the commencement of a competition process to establish a new school in Mickleover that would accommodate pupils from the proposed new housing development at Hackwood Farm.

It was noted that based on 700 proposed dwellings across the whole of the development, 196 primary school places would be required and that there was limited capacity available in nearby schools.

The report also sought to delegate approval to the Strategic Director of People Services in consultation with the Cabinet Member for Children and Young People, to approve the council's preferred sponsor for the school at Hackwood Farm and any future competitions to establish new free schools.

The Board queried the legislative basis on which new schools were established and the governance model they were required to follow. It was confirmed that there was now a 'free school presumption' when opening new schools.

Members asked whether there would be any up-front costs for the authority in opening the school; when the authority's liability would end and what input the council would have in appointing a head teacher. It was stated that Dedicated Schools Grant Growth Funding would be used to finance initial revenue costs and that this would increase in line with pupil numbers. However, it was noted that a lag existed in the receipt of this funding from the Government. It was confirmed that either the successful Free School or Multi Academy Trust would be responsible for initial appointments.

The Board noted that there was no means to dictate the catchment area for a Free School and raised concerns that school places may not be allocated to residents from the new development at Hackwood Farm. In addition, members queried the impact on sibling groups if the opening of year groups at the new school was heavily staggered.

Members stressed the importance of choosing a good sponsor and asked for further detail on how proposals would be evaluated. Concerns were raised that the report sought approval to delegate authority for the approval of sponsors, meaning they would no longer be considered by Council Cabinet nor scrutinised by the Board.

Officers stated that a detailed procurement process based on a Department for Education model would be followed and that bid documents would be publically available. Moreover, the tight timescales involved with identifying a sponsor; receiving sign-off by the Secretary of State and ensuring sufficient notice is given prior to the start of the school year were emphasised.

Some members of the Board felt that removal of the delegation would create unnecessary delays in preparation for opening of the new school, whereas others stressed that it risked creating a precedent that removed democratic oversight in relation to who was responsible for running local schools.

A recommendation that Council Cabinet retain responsibility for the approval of preferred sponsors rather than the Strategic Director for People Services and the Cabinet Member for Children and Young People was put to the vote and carried, with six members in favour and five against.

The Executive Scrutiny Board resolved:

- **To recommend that Council Cabinet approve the preferred sponsor, following evaluation of the proposals and prior to submission to the Secretary of State.**
- **To recommend that Council Cabinet retain responsibility for the approval of preferred sponsors in future competitions to establish new free schools.**

Item 9 – Essential Life Skills Arts, Culture, Leisure and Sport Large Grant Fund – Funding recommendations

The Board received a report of the Strategic Director of People Services proposing the award of a grant of £1 million to the Derby County Community Trust from the Essential Life Skills, Arts, Culture, Leisure and Sport Large Grant Fund.

It was reported that the grant formed part of the Opportunity Areas initiative, which was launched by the Government in a bid to improve social mobility in twelve areas of the country. The Essential Life Skills grant aimed to improve non-cognitive skills in vulnerable groups.

Four applications had been considered by a sub-group of the Opportunity Areas Board and a partnership based approach proposed by the Derby County Community Trust had been successful. The proposed partnership included a number of recognised local organisations that are known and trusted by hard to reach young people in the city.

Members asked how vulnerable groups would be identified for support. It was confirmed that the Community Trust would be working closely with local schools. The Board welcomed the report and supported the objectives of the successful proposal.

The Executive Scrutiny Board resolved to note the report.

Item 10 – Food and Feed Law Enforcement Plan 2018/19

The Board received a report of the Strategic Director of Communities and Place recommending the adoption of the Food and Feed Law Enforcement Plan for the administrative year 2018/19.

The Executive Scrutiny Board resolved to note the report.

Item 11 – Health and Safety Law Enforcement Plan 2018/19

The Board received a report of the Strategic Director of Communities and Place recommending the adoption of the Health and Safety Law Enforcement Service Plan for the administrative year 2018/19.

The Executive Scrutiny Board resolved to note the report.

Item 12 – Adoption of the Planning Obligations Supplementary Planning Document Review

The Board received a report of the Strategic Director of Communities and Place recommending the formal adoption of the Planning Obligations Supplementary Planning Document Review.

It was reported that the document detailed how the impacts of developments would be mitigated and that it established an updated process for securing contributions from developers, within the existing legislative and regulatory framework.

The importance of the document was stressed and the lengthy consultation process that had already been undertaken was outlined. It was noted that the document was last reviewed in 2008 and was overdue for reconsideration. Officers also stated their intention to fully brief elected members on how they could be involved in Section 106 negotiations in their wards, once the document had been formally approved.

Members questioned why a requirement for developers to provide lifetime homes had been removed. It was stated that national policy changes in relation to affordable homes had meant that lifetime homes were now included within that negotiation process with developers.

The Board also queried comments in the consultation from Derbyshire County Council in relation to school place planning that projected pupil numbers had not been included. It was stated that the authority preferred to calculate contributions based on factual information at the time such as census, birth and inward migration data.

Members noted that no action had been taken as a result of comments from members of the public and from Overview and Scrutiny Review Boards. It was emphasised that the use of S106 funding was tightly constrained by statute, however comments from the public and elected members would always be considered in relation to individual planning applications.

The Board stated that they wished to see the process for consultation on S106 agreements with members formalised. Officers envisaged a process whereby Neighbourhood Boards were consulted on an annual basis to establish priorities for their area that could then be reflected in negotiations with developers.

The Board expressed frustration that the existing policy forced ward members to consider proposals under S106 that they knew would be unpopular with local residents. It was suggested that this was one of a number of reasons why the document needed to be updated.

The Executive Scrutiny Board resolved to note the report.

Item 13 – Medium Term Financial Strategy and Council Plan 2019/20 – 2022/23

The Board received a report from the Interim Strategic Director of Corporate Resources outlining the proposed Medium Term Financial Strategy (MTFS) for the council's revenue and capital budget between 2019/20 and 2022/23.

It was noted that the current MTFP for 2018/19 – 2021/22 agreed by Council in January 2018 identified the need for £11.223 million of permanent savings for the three year period 2019/20 – 2021/22. It was reported that the estimated funding gap over this three year period plus an added year to include 2022/23 is now estimated at £22.843 million, with £12.199 million required for 2019/20.

The reasons for this significant increase were provided to the Board. It was reported that known and forecasted pressures in Adult Social Care combined with the end of the three year Improved Better Care Fund (2) grant in 2019/20 had created a forecasted budget pressure of £4.9 million in 2019/20. Secondly, a significant overspend in Q1 for the current financial year 2018/19 in relation to Children's Social Care had challenged a previous assumption that pressures could be maintained, resulting in a forecasted budget pressure of £4 million in 2019/20. Furthermore, previously agreed savings from staffing efficiencies of £2.43 million were now considered to be undeliverable, while permanent funding for the additional one per cent pay award for 2018/19 would also need to be identified as the lifting of the one per cent public sector pay cap was not anticipated when the Medium Term Financial Plan (MTFP) was last set.

The Board sought clarification on how the affordability of the MTFP agreed in January 2018 was demonstrated. It was stated that the Section 151 Officer had a statutory duty to agree and recommend a budget that was prudent and affordable by issuing a 'Section 25' statement. In the very unusual event that the Section 151 Officer and the Council were unable to reach this judgement, it was reported that the Section 151 Officer could then issue a 'Section 114' statement, as had recently been the case at Northamptonshire County Council.

Members also questioned how staffing efficiencies were to be achieved and why they were now considered to be undeliverable. It was reported that

anticipated cashable savings had been identified by not filling vacant posts; reducing sickness absence and improving performance of employees.

Based on evidence to date in 2018/19, it was stated that insufficient progress had been made as many of the vacated posts were in key positions that needed to be filled. It was reported that one-off savings from employees buying additional holiday; deletion of posts through voluntary redundancy in the closing and transferring of care homes to the private sector and the early payment of pension contributions had yielded one-off savings for 2018/19 that would cover the majority of the shortfall, with £80,000 still to find in 2018/19.

The Board enquired about the status of the Government's Social Care Green Paper and stressed that a sustainable funding solution for Adult Social Care was required urgently. It was reported that organisations such as the Association of Directors of Adult Social Services (ADASS) were in dialogue with Ministers and were awaiting release of the document for consultation.

It was also reported that the Cabinet Member for Children and Young People had written to the Government to express concern at growing cost and demand pressures in Children's Services and that the Cabinet Member for Adults, Health and Housing would likely do the same in relation to Adult Social Care.

Members enquired as to whether it was normal for such substantial in-year changes to the MTFS to be proposed; the Interim Strategic Director of Corporate Resources confirmed that this had been the case in recent years. It was noted that a plan had been in place to use reserves in the Adult Social Care service to address pressures and that the 'cliff-edge' created by the end of the Improved Better Care Fund (2) grant ending in 2019/20 had been recognised.

The Strategic Director of People Services stressed that there existed a clear, well-audited narrative from both officers and members about pressures on adult social care. The Chair echoed these comments and suggested that additional Government funding intended for the NHS should be in part redirected to local government to address social care pressures.

The Executive Scrutiny Board resolved to note the report.

Item 14 – Council Scorecard 2018/19

The Board considered a report of Acting Chief Executive on the Council Scorecard 2018/19, which had also been identified as an item for consideration by the Executive Scrutiny Board as part of the Performance Forward Plan discussed under Item 7.

The report outlined an updated selection of priority performance measures for 2018/19, to ensure members and Chief Officers are informed about key performance measures and outcomes.

It was reported that the criteria for inclusion on the Scorecard were that a measure is linked to a significant budget pressure or income source; that it is

a reflection of demand for services; that it constitutes a key inspection, reputation or compliance risk area; and, that the measure links to a commitment in the latest edition of the Council Plan.

It was noted that sixteen measures had been removed and twelve added to the Scorecard in order to streamline the set of priority measures that were considered. It was further noted that the proposed performance measures would be monitored and reported on a quarterly basis to Council Cabinet and the Executive Scrutiny Board.

Members noted changes to how homelessness was reported and expressed concern that trends could no longer be monitored over time. It was confirmed that the proposed measures were prescribed by national policy changes and that previous data could still be assessed.

The Board questioned how the impact of Universal Credit would be monitored. It was reported that a number of the performance measures had been proposed with Universal Credit in mind and that a broad view of performance was anticipated. It was further noted that the impact of Universal Credit was due to be considered in December by the Board as part of the Performance Forward Plan.

Members suggested that the number of residents accessing Council Tax Support should also be monitored. It was stated that a report was proposed for Council Cabinet in August, seeking consultation on changes to the Council Tax Support Scheme, that the Board would have an opportunity to scrutinise.

The Executive Scrutiny Board resolved to note the report.

Item 15 – Compliance with Contract and Financial Procedure Rules

The Board considered a report of the Interim Strategic Director of Corporate Resources outlining a number of items that required reporting and approval by Council Cabinet under Contract and Financial Procedure rules.

It was reported that approvals were being sought for the following items:

- To delegate authority to the Interim Strategic Director of Corporate Resources to establish new earmarked reserves in 2018/19 when considered prudent to do so.
- To approve the use of reserves to provide temporary Internal Audit resource.
- To approve changes to the Highways and Transport capital programme in relation to the Clean Bus technology scheme.
- To procure external consultants to undertake feasibility works on the Assembly Rooms project.
- To procure a framework for targeted and tailored tuition for children in care.
- To approve the use of reserves to provide two temporary posts in the Business and Intelligence team to support Children's Services in the planned Joint Area Targeted Inspection.

- To allocate Adult Social Care Reserves to support in year pressures.
- To agree the award of Opportunity Area Grants to Landau Academy and Bemrose Schools.
- To delegate authority to the Strategic Director of People Services to negotiate final terms of the Opportunity Area grant agreement between Derby City Council and both Landau Academy and Bemrose School.
- To support an application and receipt of grant if successful for the South Derby Growth Zone/Infinity Garden Village

The Board noted that feasibility work had already been carried out on the Assembly Rooms under the previous administration, with some members querying whether additional expenditure was necessary. The Chair encouraged members to raise their concerns with Council Cabinet directly.

The Executive Scrutiny Board resolved to note the report.

Item 16 – Bad Debt Write Off

The Board received a report of the Interim Strategic Director of Corporate Resources seeking approval for the write-off of a balance of a loan to EPM Technology Limited totalling £2 million.

It was noted that EPM Technology had been the recipient of a loan from the Derby Enterprise Growth Fund (DEGF) in 2013 and 2014 totalling £5.25 million, which was secured against the assets of the company.

Following the deterioration of the financial position of EPM Technology in 2016/17, it was agreed by the Leader of the Council that the authority would exercise its security over the company's assets to take ownership of the freehold of the factory; a commercial lease was subsequently agreed with the council in return for writing-off outstanding repayments.

Members noted that the value of the factory premises combined with the rental income over the duration of the lease was in excess of the outstanding loan amount. It was further noted that the report was required in order to ensure long-term debtors were reflected correctly in the council's Statement of Accounts.

The Board felt that the recommended course of action represented a positive outcome from a challenging situation. Members suggested that the operation of the DEGF was reviewed in the context of lessons learnt from the situation that arose in this instance.

The Executive Scrutiny Board resolved:

- **To support the write-off of the balance of the DEFG loan to EPM Technology**
- **To recommend that Council Cabinet refer loan arrangements in relation to the DEGF to the Audit and Accounts Committee to review processes and practices.**

MINUTES END