

Time began: 6:00pm
Time ended: 6.58pm

COUNCIL CABINET

10 April 2019

Present	Councillor Poulter (Chair) Councillors Barker, Grimadell, M Holmes, Roulstone, Smale, Webb and Williams
In attendance	Councillors Care, Eldret and Skelton Carole Mills – Chief Executive Don McLure – Strategic Director of Corporate Resources Christine Durrant – Strategic Director of Communities and Place Gurmail Nizzer – Director of Children's Integrated Commissioning Emily Feenan – Interim Director of Legal, Procurement and Democratic Services Alan Smith – Head of Economic Regeneration Mike Brown – ARTS Development Manager Kevin Tozer – Land Drainage Team Leader Phill Massey – Team Leader Structures Design and Bridges Lincoln Smithers – Principal Design Engineer Maria Murphy – Director of Derby Homes Frederico Almeida – Youth Mayor Ruth Sadler – Communications Officer

This record of decisions was published on 12 April 2019. The key decisions set out in this record will come into force and may be implemented on the expiry of five clear days unless a key decision is called in.

218/18 Apologies

There were no apologies.

219/18 Late Items

In accordance with Section 100(B) (4) of the Local Government Act 1972, the Chair agreed to admit the following late items on the grounds that they should be considered as a matter of urgency because decisions were required before the next scheduled meeting to enable the project to move to the next stage.

- Bold Lane Office Development
- A52 Wyvern Transport Improvements Project Update

Cabinet Members thanked Frederico Almeida for his work as Youth Mayor and wished him well for the future.

220/18 Receipt of Petitions

There were no petitions

221/18 Identification of Urgent Items to which Call In will not apply

There were no items.

222/18 Declarations of Interest

There were no declarations of interest.

223/18 Minutes of the Meeting Held on 13 March 2019

The minutes of the meeting held on 13 March 2019 were agreed as a correct record.

Matters Referred

224/18 Recommendations from the Executive Scrutiny Board

The Council Cabinet considered a report on Recommendations from the Executive Scrutiny Board. The Executive Scrutiny Board met and discussed items contained within the Council Cabinet Agenda. The report enabled the views and recommendations resulting from these discussions to be formally shared with Council Cabinet. These were submitted to Council Cabinet as Appendix 1, prior to commencement of the meeting.

Decision

To receive the report and consider the recommendations alongside the relevant report.

Key Decisions

225/18 Schools Capital Programme 2019/20

The Council Cabinet considered a report which stated that the Council was currently awaiting notification from the Department for Education (DfE) for our confirmed School Condition maintenance allocations for 2019-20. It was confirmed at the meeting that the allocation had now been confirmed and that there was an additional £126,000 funding.

In order to commence scheme development, and to complete essential work during the school summer holiday period, early approval of schemes was necessary. It was therefore proposed to seek scheme approval in principle, based on indicative allocations of £1.67m. A full breakdown of the indicative Schools capital programme

funding for 2019/20 was set out within Appendix 1 of the report. The proposed Schools capital programme schemes for 2019/20, including proposed individual school condition maintenance projects, were outlined in Appendix 2 of the report. As set out in paragraph 8.3 of the report, contracts would not be awarded until final allocations had been confirmed by the DfE.

The proposal was for funding to be prioritised to deal with essential school condition and maintenance issues across the schools estate. An on-going programme of work was required in school premises to deal with essential condition and health and safety issues to ensure that school buildings remained safe and open.

The DfE had previously announced Basic Need capital allocations (for school place planning) for 2019/20-2020/21 in relation to the Council's statutory duty to ensure sufficient school places. The Council had a remaining allocation of £7,151,959. Very careful consideration was being given to the allocation of the remaining funding and proposed projects would be reported to Council Cabinet for consideration and approval.

Derby was also expected to be allocated an additional £90,000 for capital schemes in Voluntary Aided schools as set out in Appendix 3 of the report. This funding was ring-fenced for VA schools and the Council was required to co-ordinate the allocation with the Church of England diocese.

The report sought approval for the Schools Capital Programme 2019/20 as set out within Appendix 2, Appendix 3 and Appendix 4 of the report.

The Executive Scrutiny Board noted the report.

Options considered

The available capital funding had been prioritised in line with the School Asset Management Plan to deal with the most urgent condition and health and safety issues.

Decision

1. To approve, subject to recommendation 2.3 the Schools Capital Programme priority schemes for 2019/20 as outlined in Appendix 2 and Appendix 3 of the report.
2. To approve, subject to recommendation 2.3, scheme commencement, subject to final allocations being confirmed by the DfE as set out in paragraph 8.3 of the report, and the amendment of the approved 2019/20-2020/21 capital programme with the proposed scheme allocations.
3. To note that the final allocations would be reported to Council Cabinet once confirmed by the Department for Education (DfE), and any adjustments necessary in line with recommendations 2.1 and 2.2, should there be a variation from the indicative allocation of £1.67m.

Reasons

1. An on-going programme of work was required in school premises to deal with essential condition and health and safety issues, across the schools estate, to ensure that school buildings remain safe and open. In order to complete as much work as possible during the school summer holiday period, early approval of schemes was necessary
2. In accordance with Financial Procedure Rules, amendments to the Council's capital programme were required to be reported to Council Cabinet.

226/18 Customer Feedback Policy

The Council Cabinet considered a report which stated that Customer Feedback and complaints were an important part of understanding the experience of customers, and offered valuable insight into what we were doing well, as well as what we needed to improve on and learn from.

In 2014 the Council adopted a new Customer Feedback Policy and reviewed its processes to ensure adequate capture of complaints, monitoring of performance and management oversight of learning outcomes. However, currently this was not being consistently applied across the Council and there were opportunities to make the policy and processes more accessible to our citizens.

The purpose of the report was to obtain approval for an updated Customer Feedback Policy and an improved complaints process.

The Executive Scrutiny Board noted the report.

Options considered

None.

Decision

To approve the changes to the Customer Feedback Policy and endorse its use by everyone across the organisation.

Reasons

The Council has a duty to respond to complaints from service users and there were statutory procedures in place to formally address complaints relating to children's and adults social care.

227/18 Approval for the Revised Funding Arrangements for the: Cuttle Brook Flood Alleviation Scheme (CBFAS)

The Council Cabinet considered a report which stated that in October 2016 Derby entered into an agreement with Nottingham City Council to obtain European Regional

Development Funding (ERDF) to deliver the joint Metro Biodiversity Action Plan Phase 1 (MBAP).

The original proposal included council Cabinet approval to bid for £276,300 of ERDF with partnership funding from £278,300 from the Flood and Coastal Erosion Risk Management Grant in Aid. (FCERM GiA) for the CBFAS.

At the time of submission, the Cuttle Brook project had not been fully developed. It was considered that the £276,300 would be the maximum FCERM GiA funding that would be available to provide the match funding to support the MBAP project.

Subsequent to the initial report, the business case for the Cuttle Brook Flood Alleviation project had now been developed to comply with DEFRA and Government Green Book requirements.

The estimated scheme cost were set out in the report.

The Executive Scrutiny Board noted the report.

Options considered

The Business Case had considered a number of various options for the project. The option selected was the most cost beneficial of all the options considered.

Decision

1. To approve the submission of bids to the Trent Region Flood and Coastal Committee (RFCC) for £260,160 of Local Levy and delegate approval to the Strategic Director of Communities and Place following consultation with the Strategic Director of Corporate Resources and subject to acceptable grant conditions, to accept the grant monies on completion of project stages.
2. To approve the submission of the Business Case to the Environment Agency (EA) to secure the £389,850 of DEFRA Flood and Coastal Erosion Risk Management Grant in Aid funding and delegate approval to the Strategic Director of Communities and Place following consultation with the Strategic Director of Corporate Resources and subject to acceptable grant conditions, to accept the grant monies on completion of project stages.
3. To approve the commitment of £250,000 of the 2019 / 2020 DCC Flood Defence Capital Budget to underwrite a proportion of the £463,780 project risk budget.
4. To note that due to the timing of the report the Council was unable to take up £35,000 of FCERM GiA funding before the end March 2019 and therefore that contribution to the project had been lost.
5. To approve slippage of any grant monies not utilised in 2018 / 2019 financial year in to the new financial year, in order to allow for completion of the works

before the end of December 2019. (*) (Note £53,870 Revenue funding currently received will need to be capitalised).

Note: Unused DCC Capital monies committed to the risk budget allocation would be made available for other works should the risk budget allocation not be required as intended.

Reasons

1. The ERDF funding already secured needed to be spent by the end of 2019. In order to deliver the project by this deadline the Business Case would need to be submitted to the EA for approval, and the Local Levy bid to the Trent RFCC in January 2019.
2. The reason for applying for £35,000 of FCERM GiA funding in advance of the main scheme, was to enable the ground investigation to be undertaken early. This would help resolve the potential risk of contaminated ground impacting on the project. This would not commit the council to undertaking the full scheme.
3. It should be noted that the Derby City Capital funding was to largely cover the risk budget for the project. It was believed that all the risks identified were highly unlikely to materialise. If the full risk budget was not required the funding would be returned to the DCC budget holder and the Local Levy on 50:50 basis.
4. Urgent approval was required as there was a very short timescale for the business case to be reviewed by the Environment Agency prior to full submission to the Trent RFCC meeting on 9 April 2019.

228/18 Bold Lane Development

The Council Cabinet consider a report which stated that in September 2018, Council Cabinet approved the delivery of the Bold Lane Office Development project through a developer delivery model. The model for delivering Grade A offices at the Bold Lane site was being reported to Council Cabinet due to the recent Court of Appeal decision in the 'Faraday case' which had resulted in a broadening of the definition of "public works contracts" for the purposes of EU procurement regulations.

On 16 November 2018, the Court of Appeal issued its judgement in the case of *Faraday Development Ltd v. West Berkshire Council and St Modwen Developments Ltd* [2018] (Faraday). This judgement changed the settled position in respect of the interaction between development agreements and the Public Contract Regulations 2015 and had introduced uncertainty in respect of what had previously been considered acceptable structures for projects involving development agreements. The facts of the Faraday case were comparable with the proposed structure for the Bold Lane Project and therefore progress on the project had been paused to review the risks associated with continuing under the current delivery model. The report set out the impact of the Faraday case on the delivery of the Bold Lane project.

The Executive Scrutiny Board noted the report.

Options Considered

The only alternative to not continuing with the current delivery model was to proceed with it. This option was not viable as the delivery model was now unlawful, given the ruling in Faraday, and could therefore not be pursued by the Council.

A future Council Cabinet report would set out and assess the options available to the Council to deliver the Bold Lane Office Development to agree the preferred delivery model.

Decision

1. To cease the current process with Jensco Group.
2. To agree that officers should now explore delivery options for the Bold Lane project and bring an options report and updated business case back to Council Cabinet.

Reasons

1. The Faraday decision had rendered the current proposed delivery model for the Bold Lane project unlawful and the Council was therefore unable to proceed.
2. Officers would review and assess the delivery options for the Bold Lane Office Development to deliver Grade A offices within the city centre and update the business case.

229/18 A52 Wyvern Transport Improvements Project Update

The Council Cabinet considered a report which provided an update on the work that had been carried out since the A52 Wyvern Transport Improvement Project was agreed by Council Cabinet on 12 September 2018.

The report sought to obtain the necessary approvals to allow the project to proceed in accordance with the revised programme and on the basis of the proposed, revised project budget.

The Executive Scrutiny Board recommend to Council Cabinet that the item be deferred to an extraordinary meeting of Council Cabinet, to allow for it to be properly scrutinised beforehand, by the Executive Scrutiny Board.

Options Considered

1. Option to Abort the Project

Ending the current contract and aborting the Project was not considered an option for the following reasons:

- under the terms of the Construction Contract, termination by the Council would give rise to significant termination compensation being payable to Galliford Try (including having to cover the loss of anticipated profit and demobilisation costs);
- the outputs, required by our funding partners would not be achieved, and there would be an additional risk of claw back on the £6.72m Local Growth Fund and £2.6m 'Growth and Housing Fund' grants from Government;
- without the full Project in place, it was unlikely that the Derby Triangle development would come forward and the estimated 3,000 jobs generated by the development would not be secured;
- the £16.225m spent on the Project to date would be abortive costs; and
- the unfinished construction works would become a liability for the Council.

2. Delay instruction of the construction works until a revised target price was established

A decision to delay the instruction of construction works until a revised target price was established was not recommended because this would result in substantial cost increases and negatively impact on the programme as opportunity to work during the summer months would be lost.

Decision

1. To amend the Council's Capital Programme in 2019/20 and 2020/21 and approve a revised Project budget of £40.3m plus a £2.9m contingency risk budget ("Project Budget"). The Project Budget of £43.2m in total included an estimate of final construction costs including an additional £1m for enhanced road surfacing of the A52 Project over and above the original specification, projected staffing and consultancy costs, latest land acquisition and service diversion estimates.
2. To note the revised Project design and revised construction programme and specifically to approve the change from a signalled crossroads to a signalled roundabout at the Wyvern Way/Derwent Parade junction, as more fully described in paragraph 4.7 of the report.
3. To note the assumptions on which the Project Budget and revised construction programme were based.
4. To note the progress of negotiations with Network Rail, St Modwens and other key landowners.
5. To delegate authority to the Strategic Director of Corporate Resources following consultation with the Cabinet Member for Regeneration and Public Protection to take such executive decisions as were necessary to ensure that

the Project could continue to progress as effectively and efficiently as possible, within the Project Budget.

6. To approve the additional £10.2m of Project Budget since the Council Cabinet approval in September 2018 for the allocation of Project Budget of £33m, and this additional £10.2m be funded from sources as set out in section 7 of the report.
7. To delegate authority to the Strategic Director of Corporate Resources to issue Galliford Try with an instruction to proceed with the Project to completion within the constraints of the £40.3m budget plus £2.9m contingency risk budget.
8. To reject the recommendation from the Executive Scrutiny Board to defer the item to an extraordinary meeting of Council Cabinet to allow for it to be properly scrutinised beforehand by the Executive Scrutiny Board.

Reasons

1. To provide Council Cabinet with an update on the A52 Project, including the £40.3m budget plus £2.9m contingency risk budget as the final Project Budget for the scheme, including construction programme and Project design. The report updated Council Cabinet on Project progress since 12 September 2018 and sought approval for the total Project Budget.
2. To obtain the necessary approvals to allow the Project to progress to completion in line with the Project Budget and construction programme.
3. Delegated decision making, within the Project Budget, was proposed to ensure that works could be completed as efficiently and effectively as possible.

Contract and Financial Procedure Matters

230/18 Compliance with Contract and Financial procedure Rules

The Council Cabinet considered a report which dealt with the following items which required reporting to and approval by Council Cabinet under the Contract and Financial Procedure rules.

- i. To recommend Council to approve the amendments to Financial Procedure Rules to support the implementation of 'Pre-paid cards System' in Peoples services;
- ii. To delegate authority to the strategic Director of Corporate Resources to accept the second year funding grant from Ministry of Housing, Communities & Local Government (MHCLG) Rough Sleeper Fund for 2019/20 in the sum of £0.343m subject to agreeable terms and conditions;

- iii. To approve the transfer of the 2019/20 Rough Sleeper Fund grant from Derby City Council to Housing Options within Derby Homes subject to a Service Level Agreement;
- iv. To approve delegated authority to the Strategic Director for Communities and Place following consultation with the Strategic Director of Corporate Resources and Leader of the Council, to accept and enter into a variation to the Deed of Grant between East Midlands Business Limited and Derby City Council in regard to the D2N2 Growth and Innovation Programme;
- v. To approve the Council's match funding contribution to the D2N2 Growth and Innovation Programme 2 (GIP2);
- vi. To approve a waiver of the Contract and Procedure Rules in order to award a works contract directly to St James Securities in relation to the City Centre Becketwell Regeneration Scheme.

The Executive Scrutiny Board noted the report.

Decision

1. To recommend Council to approve the adoption of changes to Financial Procedure Rules to support the implementation of pre-paid cards in Peoples services, as detailed in section 4.1 of the report.
2. To delegate authority to the strategic Director of Corporate Resources following consultation with the Cabinet Members for Adults Health and Housing and Finance and Procurement to accept the second year funding grant from MHCLG Rough Sleeper Fund for 2019/20 for the sum of £0.343m subject to agreeable terms and conditions, as detailed in section 4.6 of the report.
3. To approve the transfer of the 2019/20 Rough Sleeper Fund grant from Derby City Council to Housing Options within Derby Homes subject to a Service Level Agreement, as detailed in section 4.6 of the report.
4. To approve delegated authority to the Strategic Director for Communities and Place following consultation with the Strategic Director of Corporate Resources and Leader of the Council, to accept and enter into a variation to the Deed of Grant between East Midlands Business Limited and Derby City Council in regard to the D2N2 Growth and Innovation Programme, as detailed in section 4.14 of the report.
5. To approve the Council's match funding contribution to the D2N2 Growth and Innovation Programme 2 (GIP2), as detailed in section 4.14 of the report.
6. To approve a waiver of the Contract and Procedure Rules in order to award a works contract directly to St James Securities (SJS) to progress public realm works as part of the Becketwell Regeneration scheme, as detailed in section 4.20 of the report.

231/18 Consideration of Existing Loan Made to Derby Quad Ltd

The Council Cabinet considered a report which provided historical and financial context regarding a loan made to Derby QUAD Ltd in 2008, and provided rationale for the recommendation to write off the outstanding balance of the loan.

The Executive Scrutiny Board noted the report.

Decision

1. To note the significant contribution QUAD had made to the cultural life of the city and the positive economic and social impacts that this had delivered.
2. To note the positive relationship with Arts Council England and the favourable context for investment in culture this creates, which in turn was supporting the delivery of shared objectives for Derby.
3. To approve the writing off of the outstanding £200,000 loan made to Derby QUAD Ltd in 2008.
4. To recognise that recommendation 2.3 supersedes Council Cabinet Decisions 3, 4 and 5 within minute number 100/10 made on 26 October 2010.

Other

232/18 Review of Support Services Provided by Derby Homes

The Council Cabinet considered a report which stated that on 6 November 2013 Council Cabinet agreed recommendations regarding the transfer of back office services into the Council from Derby Homes.

There had been a recent value for money review of the Accountancy Services and HR Services and this report highlighted the conclusion of that work.

The Executive Scrutiny Board noted the report.

Decision

1. To approve, subject to consultation, the transfer of four positions within the Accountancy Services team in the Council to Derby Homes
2. To note the revised arrangements for HR Support.

233/18 Exclusion of Press and Public

Resolved that under Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting during discussion of the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Key Decision

234/18 A52 Wyvern Transport Improvements Project Update

The Council Cabinet considered exempt information in relation to the A52 Wyvern Transport Improvements Project Update

The Executive Scrutiny Board noted the report.

Other

235/18 Review of Support Services Provided by Derby Homes

The Council Cabinet considered exempt information in relation to a review of support services provided by Derby Homes

The Executive Scrutiny Board noted the report.

MINUTES END