

MINUTE EXTRACT ENVIRONMENT OVERVIEW AND SCRUTINY COMMITTEE 7 FEBRUARY 2019

- 47 The Chair introduced the item of business “Wirral Local Plan – Update Report’ considered by the Cabinet at Minute 47 of the meeting held on 17 December 2018, the decision relating thereto having been called-in in accordance with Council Procedure Rule / Standing Order 35. The Chair advised that he had received a request for additional witnesses to be called but had determined, following receipt of advice, that the calling of the Chief Executive and a former employee was not relevant to the call-in.

The Chair referred to the procedure for the consideration of called-in business that had been circulated with the agenda. The Committee further received -

- the details of the call-in and reasons submitted;
- Minute 47 of the meeting of the Cabinet held on 17 December 2018; and
- the related submitted report considered by the Cabinet

The resolution of the Cabinet at Minute 47 of the meeting of the Cabinet held on 17 December 2018 had been called in by Councillors Tom Anderson, Bruce Berry, Chris Blakeley, David Burgess – Joyce, Wendy Clements, Tony Cox, David Elderton, Gerry Ellis, Andrew Gardner, Jeff Green, Paul Hayes, Andrew Hodson, Kathy Hodson, Mary Jordan, Ian Lewis, Cherry Povall, Lesley Rennie, Les Rowlands, Adam Sykes, Steve Williams on the following grounds:-

“We note the decision

(2) approval be given to amend the Scheme of Delegation of Executive Functions to Officers to delegate to the Corporate Director of Economic and Housing Growth, in consultation with the Cabinet Member for Housing and Planning, decisions relating to the approval and publication of the evidence base, and associated technical reports, relevant to the preparation of the Local Plan;

1. As the Council does not have a Corporate Director of Economic and Housing Growth in post, Elected Members need to be informed who Cabinet will be delegating this matter to.
2. Regardless of call in reason 1, we have concerns that this decision will give Council Officers far too much control over the Local Plan, removing responsibility and taking away control from Wirral’s 56 back bench Councillors, and could result in Council Officers allocating swathes of our precious Green Belt for housing. The Local Plan will be published in the name of all 66 Elected Members, and it is they who will be held to account at the ballot box, while Council Officers will not and therefore, we believe that Elected Members must have total control over the production and decision making of Wirral’s Local Plan.

We also note in the report it states at 7.4 *External consultants will be appointed to undertake the sustainability appraisal and strategic environmental assessment and Habitats Regulations Assessment and any other specialist technical studies.* The appointment of consultants does not appear under financial implications, does not appear as a recommendation in the minutes, or give any indication as to the total costs of employing further consultants, as elected members we have a responsibility

to ensure Council Taxpayers money is spent wisely and in line with good corporate governance”.

Councillor Chris Blakeley, as lead signatory to the call-in, explained the background to the call-in. He queried which officer was in charge given the recent departure of an interim Director. He was losing faith in the Council and Officers to get things right, and considered that Officers were seeking to railroad the Plan through. The calling-in Members wanted elected Members to keep a close eye on progress and make decisions, including at additional scrutiny and Council meetings if necessary: elected Members’ names would be on the final Plan which would have impacts for years to come. The use of consultants was buried in the Cabinet report, not referenced in the recommendations or financial implications, and he further noted the Council was also paying a Barrister £600 per hour to work on the Plan. The Council had delayed for 14 years and was now catching up by delegating to Officers at any cost. Members had a responsibility to protect the Green Belt, open spaces etc, and that protection could only be assured by Members being in control.

In response to a Member’s query, Councillor Blakely stated that Cabinet was wanting to delegate to Officers the right to make more decisions without reference to Councillors or the Council.

Councillor George Davies, Cabinet Member – Housing and Planning gave an overview and explanation of the decision. The Local Plan will be developed with full political oversight and extensive community involvement, and it was for full Council to agree the Plan. The Conservative Group were aware of this and he was disappointed that simple delegations were being called-in, hoping the delay was not intended to heighten the risk of government intervention which would see Members lose control. All are aware of the seriousness of the situation and he hoped all would work together. As Cabinet Member he had worked to accelerate the Local Plan to avoid intervention, for which the Council was under great pressure from the government; would like to think that all Members were inclined to work together for the good of the Borough and wished to see as much of the Green Belt protected with a robust Local Plan delivered meeting local housing need; and confirmed there would be full political oversight.

There was no reducing of Member oversight or asking Officers to approve the Local Plan. The Assistant Director – Major Growth Projects and Housing Delivery had attended scrutiny meetings, provided information and had done what the Committee had asked of him. A cross party working group to be established to look into the technical documents; the Cabinet decision was about delivering these with speed and efficiency. Technical studies formed the evidence base, covering issues such as flooding and infrastructure and are completed by experts; these would be subject to review and incorporated into the Plan. Members would be able to see and review all studies. He was sure that Members did not want to risk government intervention which if the Council did not move quickly would happen and result in government officials less sympathetic to Wirral’s issues taking decisions.

Councillor Davies received and responded to questions from members of the committee

- The cross party group would be established as quickly as possible. Officers were looking at the public consultation results and an update to Members would be given as soon as anything was available.

- He had not been satisfied with progress, but was confident with what now the Council now had in terms of planning staff to guide the process through. With regard to meetings with Officers, he had met with the former Director monthly on the Plan, and every two weeks on housing matters specifically.
- Further to a query referencing the difference between sharing information and the approval of policy and publication, the Cabinet Member noted that the Council had not yet reached this position.
- The 'speed and efficiency' had been thrust on the Council and it was noted that Labour had not been in control for all the 14 years. The Council had relied on the UDP, but was now looking for a new direction for growth, new homes and development. He did not want to build on the Green Belt, but government figures were telling otherwise.
- Regarding brownfield sites, the Cabinet Member advised that letters had been sent to owners of brownfield sites regarding house building and Officers were reviewing responses; the outcomes of this would be reported.
- Points that the Council might be in a better position had it been more concise with Peel Holdings with a contractually agreed number homes for development and government might therefore have been willing to accept the lower figure were noted. The Cabinet Member advised that he had recently met with and received a better response from Peel Holdings, and would report on this in due course.
- The Cabinet Member supported a comment that up to date figures were needed to prove to the government that the Green Belt was not needed for housing provision.
- The Cabinet Member advised that issues related to Brackenwood Golf Course were different and separate to those of the Local Plan;
- In response to a query as to 'political oversight', the Cabinet Member commented that this was not a political issue but a major thing needing all to work together. The delegated decisions were to deliver speed and efficiency. Members were invited to join with the Cabinet Member to keep fully informed, and involvement of all Councillors was assured.
- With regard to figures for house building, the Cabinet Member confirmed there was a figure from Government that was being disputed. Wirral was unique and had particular issues that needed to be looked at and understood to identify housing and other needs over 15-20 years.
- With regard to the proposed working group and highlighted issues where Members had difficulty obtaining information, the Cabinet Member confirmed that he had asked for the Group to be established.
- The Cabinet Member confirmed that decisions on the Local Plan would be taken by Members. At the current time, there was a need to test and analyse the consultation; when this information came back all Members would get the information.
- The Cabinet Member confirmed an open and transparent process with inputs from Members. While definitive answer could not be given on timelines for technical studies, the first part of consultation responses on which any political decisions should be taken by Members would be available by the end of February.
- It was confirmed that the decision on the Green Belt would be taken by the whole Council.

No witnesses were called by the lead signatory to the call-in.

The Cabinet Member's witnesses - Paul Satoor, Corporate Director for Business Development and David Ball, Assistant Director – Major Growth Projects and Housing Delivery - were introduced. The Director advised that the delegation to Officers was not taking away powers from Members, but the referenced reports were technical studies critical as part of the Local Plan. There was a real and imminent risk of government intervention. The delegation would accelerate development with this potential government intervention in mind. The Local Plan would be owned by Members, and the Director would take away the concerns of Members expressed at the meeting and ensure Members had sight of all necessary information. The decision on content and the final version of the Local Plan would lie with Members. With regard to financial implications, the costs were not known at this stage but would be included in future update reports to Council and this Committee. The Assistant Director was in attendance to respond to any technical questions that Members may have.

The Director and the Assistant Director responded to questions from members of the Committee –

- The release of land from the Green Belt needed to follow the statutory Local Plan process. Any change to the Green Belt boundary would only occur should it be within the final Local Plan adopted by the Council. If Council land then lay outside the new Green Belt boundary, it would be for the Council to decide what to do with that land.
- Detail of Sites of Special Scientific Interest and Grade A agricultural land within the Green Belt was information to be provided within the technical studies and assessments.
- The Council was under real pressure from the Secretary of State to meet a January 2020 deadline, and the Director was unable to comment on previous activity going back several years. The lack of a detailed project plan that would have provided assurances had been identified as an issue and was now being addressed. Discussions were being held with the Planning Advisory Service to provide assurance that the Council was now on track.
- The Local Plan had to follow a statutory process and a set route. Consultation had been held and a report would be produced later in the current month. The technical studies referenced were needed to build the evidence base on which Members would base their decisions. The process for the development of a Local Plan was advised as consultation on a draft Plan, modification of the draft following consultation on to an Examination in Public by a Planning Inspector at which the Inspector would receive all submitted representations and receive any personal representations, before the Inspector's report and proposed final Plan was out to the Council.
- With regard to the Working Group, the Director was looking to establish through the Cabinet Member a working group to share information, seek ratification for decisions etc before reporting to this Committee also.
- The Director confirmed that lead responsibilities for the Local Plan project, as requested by the Secretary of State were held by the Cabinet Member for Housing and Planning (as elected member) and by himself (as Officer).
- The Assistant Director gave assurance that all working papers, technical studies etc with regard to the Local Plan would be published and consulted upon prior to Members having to make a decision.

- The Director confirmed that he would be responsible for appointment of consultant for the technical studies. When the technical studies were complete, the modified draft Local Plan would be subject to consultation and be submitted to Council.
- Should the draft Local Plan be rejected by the public or by Council, there was still a statutory requirement to produce a Plan and a related process. With the process being followed and all involved, it was hoped the Council could reach that position. The Council at all times had to follow National Planning Policy Framework prescribed guidelines and the government had an expressed expectation for the Plan to be completed in a reasonable time for which the Council was now in process.
- Following observations as to work to be undertaken to achieve submission of a draft plan to Council in July, work was being to assess delivery of that date. Any change to this would need agreement of government.
- It was advised that, in addition to the consideration of agricultural land, the technical studies would consider issues including sustainability, infrastructure, ecology, environmental issues to form the evidence base.
- Discussions were being held with Adult Care and Children's Services as to what the Local Plan might mean for demographics in the Borough and to look to build in related detail accordingly. Issues such as community services, schools, highways, drainage etc were all part of the sustainability appraisal, and this might direct development to certain areas.
- With regard to Councillor input and public involvement, the Council had agreed a Statement of Community Involvement that specified a six week consultation process. The technical evidence being gathered would be available and open for all Members to see, with final decisions being taken on full information from the evidence base and factual findings that can be reviewed.
- Reference to the presumption in favour of sustainable development in the context of the National Planning Policy Framework, there was an assumption of approval of any planning application that met all policies.
- The Council had 3.6 years of land available for housing development against the government requirement of five years and had also under achieved against housing delivery targets in recent years. Housing need was derived through a formula, including Office of National Statistics (ONS) figures, which varied depending on use of either the 2016 ONS figures as required by the government or the more recent 2018 ONS figures which indicated a lesser housing need figure. It was advised that the Government's methodology produced a minimum figure, not a target.
- It was confirmed that concern over Brackenwood Golf Course had been reflected in consultation responses.
- A lack of a corporate programme for the Local Plan process had been identified and this would be brought before the Committee. Work on the project plan was being undertaken and meetings held with the Planning Advisory Service around the deadline which could need further discussion with the Government's planning service.
- Regarding assessment of housing need, Officers were not aware of any alternate approaches being adopted elsewhere. There were a number of datasets to be considered and the current debate was around the use of ONS figures.

Councillor Chris Blakeley, as lead call-in signatory, summed up as follows. Noting reference the remarks of the Cabinet Member as to the Conservative Group causing delay, he noted the Cabinet minutes had taken four weeks for publication. If elected Members were not being cut out of the process, why did Officers need more powers; Members were the only people Officers could take power from. If Officers had delegated powers they would come with recommendations and only then would Members get a vote. If this was not the case they would not need these powers. The call-in covered delegated powers and the cost of consultants, but Officers had not mentioned consultants and there was no knowledge as to costs. This left Members open to approving something without being involved. At this stage of the process should trust be put in Officers or involve all elected Members in the Local Plan.

Councillor George Davies, as representative of the decision maker, summed up as follows. He considered that much of the debate had missed the point. The Local Plan was not being delegated to Officers; Members were not being kept out of the decision making process; Officers were being asked to review the technical, factual documents; the Council was following best practice for developing a Local Plan; the Planning Advisory Service was in agreement with what the Council was proposing; the Government was in agreement with what was being proposed; and Leading QC agreed with what was being proposed. Every Member should have a say, he had offered access to the Plan, and the Working Group would bring this through so all would have the opportunity.

The Chair invited comment and debate from Members of the Committee. Councillor Sharon Jones noted that Officers had not responded to the cost of consultants as they had not been asked. With regard to delegations, Cabinet had not deleted power but had delegated responsibility for overseeing the process.

Councillor Muspratt considered the Committee had received an answer about the responsible Officer, and that the Cabinet Member had agreed regarding Member involvement through the proposed working group. While the Committee had not asked about consultants, external consultants were needed with regard to the specialist inputs. Movement on the Plan could now be seen, but on the current timescale it might have been left too late.

Councillor Sykes considered that it had needed the call-in to find out information, including that there had been no project plan or milestones, was concerned that there was no detail as to the proposed working group and that matters had been left too late, and considered that Members needed proper oversight of the process. There were concerns about the process being followed, that Officers were being delegated to compile the evidence base, and the sharing of information was not considered to be the same as Member involvement in decision making.

Councillor Lewis considered that the delegation resolution of the Cabinet did not give powers to all 66 Members. There was an offer of a working group, but all 66 Councillors needed to be involved. There had been insufficient oversight to date and Members would be held accountable.

Councillor Bird considered that while progress had been made, actions spoke louder than words. If progress was made in providing information etc then there might not be a need for a Council referral.

Councillor Mitchell considered that the Cabinet resolution needed amendment otherwise Councillors would be left out, and that pre-scrutiny should be considered.

A Motion was moved by Councillor Kenny such that “This Environment Overview and Scrutiny Committee having heard the evidence and debate and assurances given by the Cabinet Member, agrees to uphold the Cabinet decision taken on Monday 17 December 2018”. Having failed to be seconded, the Motion was declared to have fallen.

It was moved by Councillor Adam Sykes and seconded by Councillor Adrian Hodson that -

“This matter be referred to Council because the Committee has the following concerns:

- 1) Cabinet has delegated important decision making to a council position, due to speed and efficiency rather than what is in the best interests of Wirral residents.
- 2) Cabinet has delayed plans of a local plan, for which council has had 14 years to prepare, and this committee is concerned that the local plan is being rushed through to achieve government guidelines without regard to the input of the 56 back bench councillors or their constituents.
- 3) Cabinet has agreed to employ consultants without consideration for use of Council Taxpayers money that is there to provide services for Wirral residents.

The Director of Governance and Assurance advised that referral to Council was permitted only on consideration of a breach of the Council’s Budget and Policy Framework and Members should have regard to statutory guidance and would have to show that the decision was contrary to the adopted policies or budget of the Council. In response to comment that the Cabinet decision allowed employment of consultants without considering costing, the Director advised that the Committee needed to reflect on whether they had sought or been given advice on which to make reach a decision and whether there was any expectation of the delivery of the Local Plan being against the published budget of the Council.

At the invitation of the Chair, the Assistant Director advised that within the budget for the Local Plan there were sufficient financial resources to meet the costs of the technical studies it was intended to undertake.

Upon being out to the vote the Motion was declared to be lost (6 for; 8 against: 1 abstention).

Councillor David Mitchell moved and Councillor Ian Lewis seconded that.

“The Cabinet Member to set out a timetable and programme for publication of all studies;

To set out costs of consultants proposed to be employed and identify all budget headings;

Report to Cabinet on a structure for Member led consultation after discussions with all Parties to ensure details of all studies are available;”

Councillor Liz Grey moved and Councillor Sharon Jones seconded an amendment such that the Motion be agreed subject to the addition of the following words to the end of the Motion -

“To refer the decision back to the Cabinet for Cabinet to reconsider its decision to ensure information on any decision is fully published and that there is as full an involvement as is practicable of a cross party working group”

Upon being put to the vote, the amendment was declared to be lost (2 for:12 against) Councillor Jo Bird moved and Councillor Kate Cannon seconded an amendment such that the Motion be approved subject to the addition of the following words at the end of the Motion -

“The Cabinet Member takes further action towards a cross party working group on the Local Plan and provides continued further information to answer questions from all back bench elected Members”.

Upon being put to the vote the amendment was declared to be carried (15 for, none against).

Upon being put to the vote, the substantive Motion was declared to be carried (15 for, none against)

It was therefore

RESOLVED: That

The Cabinet Member to set out a timetable and programme for publication of all studies;

To set out costs of consultants proposed to be employed and identify all budget headings;

Report to Cabinet on a structure for Member led consultation after discussions with all Parties to ensure details of all studies are available;

The Cabinet Member takes further action towards a cross party working group on the Local Plan and provides continued further information to answer questions from all back bench elected Members.