

North Yorkshire County Council

Executive

Minutes of the meeting held at County Hall, Northallerton on Tuesday, 24 April 2018 commencing at 11.00 am.

County Councillor Carl Les in the Chair. County Councillors David Chance, Gareth Dadd, Caroline Dickinson, Michael Harrison, Andrew Lee, Don Mackenzie, Patrick Mulligan, Janet Sanderson and Greg White.

Also in attendance: County Councillors David Blades and Mike Jordan.

Officers present: Stuart Carlton, David Bowe, Gary Fielding, Daniel Harry, Jane le Sage, Jon Holden, Barry Khan, Nicola Pearson, Cathy Summers and Elaine Williams.

Two members of the media were present.

Three members of the public were present.

Copies of all documents considered are in the Minute Book

147. Minutes

Resolved –

That the Minutes of the meeting held on 27 March 2018, having been printed and circulated, are taken as read and are confirmed and signed by the Chairman as a correct record.

148. Declarations of Interest

There were no declarations of interest to note.

149. Questions and Statements from members of the public

Three questions were received from members of the public, as below:

Tracey Hampton

How many youth, activity, parent groups and anywhere disabled young people can be found exist in North Yorkshire, how many did you consult with and what forms of adapted communication to suit individual communication needs were used.

Can this be evidenced/please provide evidence.

Andrea Ellwood

The Exec should note that the proposed charges equate to approximately 1.5months worth of mobility allowance for disabled young people, that is 1.5 months of access to

transport for APPOINTMENTS, FAMILY VISITS, SOCIAL ACTIVITIES and ACCESS TO THE COMMUNITY. (Given that the suggestion that students should fund transport from their Disabled Students Allowance, is a suggestion which ignores the true intended use of this money for those few who are able to access it) - This will be a stark choice for disabled young people between access and affordability of transport to education or transport for activities of importance to their long-term wellbeing – a deterrent from continuing in education or training for many young people. The government, under the Disabled Children and Families Act, AND the Care Act both include recognition of the significance of access to all of these in terms of both Preparation for Adulthood and in a Wellbeing principle.

These are young people who require EVERY support and opportunity to access community and social life, often needing provision to be treated “more favourably” in meeting needs and access to transport than non-disabled peers. Has the consultation considered AND, IMPORTANTLY, CLEARLY EXPLAINED THE POTENTIAL REALITY TO THE YOUNG PEOPLE they say they consulted of the impact and interruptions in life trajectories in terms of diminished access to these activities as a result of charging for transport to compulsory and necessary education and training, and the likely resulting reality of longer-term impact on Social Care budgets? If these have not been considered as part of this process, then WILL this be reviewed prior to committing to these proposals?

Kerry Fox, On behalf of Save Send Services North Yorks

Will the executive ask for the consultation to go out again given that young people with an EHCP, who the proposals will affect, were not consulted.

NYPACT were consulted and the council did not stop there they opened the consultation to all parent carers including face to face options so parent carers had a choice of how to respond. The council officers went to FLYING HIGH but did not open the consultation to ALL young people with EHCPs. i want to be clear here i am asking that the legal rights of young people are adhered to before any decision on the consultation is made.

County Councillor Carl Les welcomed members of the public to the meeting. He asked that the public questions be dealt with at the relevant point in the agenda (Item 6).

150. Feedback from Area Committees

Considered –

A report of the Assistant Chief Executive (Legal and Democratic Services) relating to meetings of the:-

- ◆ County Area Committee for the Harrogate District - 15 March 2018
- ◆ Yorkshire Coast and Moors County Area Committee - 21 March 2018
- ◆ Selby Area Committee - 26 March 2018
- ◆ Richmondshire Area Committee - 28 March 2018

The reports from the Area Committees were noted with no additional comment.

Resolved –

That the report be noted.

151. Proposals for Rationalisation of the County Council's Property Portfolio in Northallerton

Considered –

A report of the Corporate Director - Strategic Resources providing information about proposals for the rationalisation of property in Northallerton, outlining the requirements for maintenance and refurbishment works within the Brierley Building and seeking approval for investment of £5.619m in a programme of works.

County Councillor Gareth Dadd introduced the report. He stated that this was an example of investing to save and that maintenance would be performed on the site at the same time as the removal of East Block. County Councillor Gareth Dadd said that the removal of East Block would enable the existing staff car parking to be expanded relieving pressure on areas surrounding County Hall in Northallerton.

County Councillor David Blades highlighted that there have been lots of concern expressed by local people regarding parking by County Council staff in the streets surrounding County Hall. Local people had also expressed concerns about the possibility of the former football pitch adjacent to the existing car park being used as an overflow car park.

County Councillor David Blades said that the removal of East Block was necessary as the building has passed its sell by date. Also, that the removal of the temporary buildings in the Village would further release existing car parking spaces. In closing, County Councillor David Blades stated that he both welcomed and supported the report.

County Councillor Carl Les said that the removal of East Block was long overdue and that the staff that would move from that office space could be accommodated elsewhere on the County Hall site.

County Councillor Michael Harrison welcomed the report but emphasised the need to ensure that staff embraced new ways of working and flexible working, reducing the need to use a car at all.

Gary Fielding said that the disruption that had been caused by heavy snowfall at the end of February/beginning of March had shown that large numbers of staff based at County Hall were able to work flexibly from home or other County Council sites. He reassured Members that both flexible working and expansion of car parking spaces were being looked at the same time.

County Councillor Gareth Dadd proposed the motion and County Councillor David Chance seconded the motion.

County Councillor Carl Les asked that there be a formal vote as the proposal involved a cost of £5.619m.

The motion was carried unanimously.

Resolved –

That the proposals set out in the report be approved, the investment of £5.619m be approved and the Corporate Director - Strategic Resources be authorised to undertake a programme of work leading to the rationalisation of property in Northallerton.

152. Home to School Transport - Proposed Policy Changes

Considered –

A report of the Corporate Director - Children and Young People's Service providing an analysis of the feedback received from the 90 day consultation together with recommendations for changes to the Home to School Transport Policy from September 2018.

County Councillor Carl Les invited County Councillor Patrick Mulligan to introduce the report.

County Councillor Patrick Mulligan referred Members to the three proposals for policy change as stated on page 28 of the report. He noted that the consultation exercise had been extensive and wide ranging but that the number of responses had been low and turnout at consultation events low. Of those people who did respond to the consultation there was general agreement with proposals 2 and 3 and some dissent regarding proposal 1.

County Councillor Patrick Mulligan said that the proposed charges compared favourably to those imposed by other local authorities. He said that one of the key reasons for the policy change was to ensure the long term sustainability of home to school transport services.

At this point in the meeting County Councillor Carl Les invited the people who had submitted public question to present them to the meeting.

County Councillor Carl Les drew Members' attention to a letter that had been received on Friday 20 April 2018 from Irwin Mitchell Solicitors which outlined a number of legal issues that they had identified as arising from the consultation and which had been circulated to the Executive. In view of the suggestion that there may be grounds for a Judicial Review of the proposed policy change County Councillor Carl Les asked Barry Khan whether Executive was in a position to consider the matter at the meeting today.

Barry Khan outlined the legal issues that had been identified in the letter and provided his legal opinion about the issues raised as described below:

There were a number of issues raised and dealing with them in turn regarding the proposals:

Proposal 1-Removal of Free Transport Statement for SEND Post 16-18 Students with an ECHP to bring it in line with Mainstream Transport Arrangements

- The letter states that there was an alleged failure to provide clear and consistent consultation proposals. The letter criticises proposal 1 on the basis "it appears to relate to young people attending special schools as it is made 'to bring it in line with mainstream arrangements.'

The letter states "The proposal therefore starts from a flawed basis, appearing to consider that pupils with an EHCP will automatically be outside of mainstream education and therefore mainstream transport arrangements."

In response, Barry Khan said that this is a misinterpretation of the proposals and it is not asserted in any way that pupils with an EHCP will necessarily be outside of mainstream education. Mainstream education is not the same as mainstream transport arrangements. The consultation document itself, however, states "We are proposing that our policy is amended to bring young people with an EHCP in line with mainstream young people, who are currently paying the contribution of £490 per annum (with a reduced rate for lower income families)". The reference is to 'mainstream transport arrangements' and is not implying that all children/young people with SEND go to special schools.

- It allegedly fails to take into account proper information in setting the contribution rate at £490 (reduced to 50% for low income). The letter alleges that there has been a failure to address the discretion not to charge, whether the contribution is affordable and to consider that young people with SEND may be required to attend courses for longer (eg for 3 years instead of 2). In response it was stated that the Council does not charge at the moment and therefore clearly was understood as an option, that the rates are set in line with other parents across the County (including the provision for those on low income) and that the level of subsidy for children/young people is greater for those with SEND as a percentage term (as transport costs are generally higher).

Proposal 2 : recognise SEND Post 19 Students as adults in education, and identify unmet transport needs in line with the Council's Adult Social Care Assessment.

The letter criticises this proposal on the basis that:

- There was an alleged failure to identify the legal position in respect of adult transport under section 508F of the Education Act. In response, Barry Khan stated that paragraph 5.1 of the report notes that under certain circumstances the Council has to provide transport for adults with EHCPs from 19 to 25 free of charge. The legal advice is that, although there are circumstances that a post 19 student may receive free transport, this does not invalidate the consultation. However, as a result of the comments, it is proposed to make it clearer in the proposed policy about the law regarding free transport under the Education Act.

Proposal 3 : Increase Parental Transport Allowance

The letter criticises this proposal on the basis that:

- The proposal has come under one heading and not two as there are two separate proposals. In response, Barry Khan stated that it is a matter for the Council to determine how to head up the proposals as long as the public are not misled. The consultation document clearly sets out the two parts of these proposals and asks separate questions on these parts
- It is alleged that the summary of the consultation feedback on these proposals contains an error by trying to confuse the feedback for both proposals into one. In response Barry Khan referred members to page 8 of the report, where it is clear that the results for both the increase rate and the enhanced rate are correctly identified. The consultation documents state that the take up of the current offer has been minimal

and therefore the Council is proposing to increase the offer. The Consultation document does not state that families have to accept the offer of payment.

- The enhanced Parental Transport Allowance has not been set. In response, Barry Khan suggested that if this is to be taken forward, then a shorter consultation exercise should be undertaken in proposing and setting the enhanced rate. Again, this enhanced rate will be purely voluntary for parents and young people and they would not have to take it up if they did not want to.

General concerns raised by the letter:

- Referring to case law of Moseley, that the Council has not considered other options in making savings. In response, Barry Khan stated that this does not recognise the Council's budget setting process and previous Executive decisions with regard to how alternatives have been looked. In addition the current consultation sought to ask the public about other options available.
- That there was an alleged change in the consultation document after a meeting at Cedar Court on 21st February 2018. Barry Khan stated that he had been informed that there was not a change of the consultation document, but a frequently asked question webpage had been developed which looked to clarify points as they came up. This would be an appropriate thing to do during a consultation exercise.
- That there has been a failure to obtain the views of any young people. In response, Barry Khan said that the Council had attended the Youth Voice Conference and Move on events and that feedback from these is contained in Appendix 3. Namely where it stated:

"Youth Voice – 15 people spoken to – in a workshop and afterwards due to the delay in workshops starting. Feedback was generally that the transport provision we provide is good, children and young people don't think about how to get to school, and parents deal with that...."

Therefore some feedback has been included. Whilst it is fully acknowledged that feedback had not been great, the view was that the Council had carried out a reasonable consultation exercise.

In closing, Barry Khan said that as home to school transport is part of the Council's policy framework the final decision on the proposed changes would be made at the County Council at their meeting on 16 May 2018. The role of Executive is to consider the proposals and comments from Overview and Scrutiny, consultation responses, members of the public and advice from officers and then make recommendations to County Council.

County Councillor Gareth Dadd sought clarification as to whether the Executive could proceed to discuss the matter.

Barry Khan stated that Executive was free to consider the evidence before it and make recommendations to the County Council.

County Councillor Mike Jordan was invited to outline discussions that had taken place at the Transport, Economy and Environment Overview and Scrutiny Committee regarding the proposed policy change. County Councillor Mike Jordan said that the proposals had been discussed at length and fully debated by the Committee. The Committee had reluctantly supported the proposals subject to the following:

- The Executive is assured that the proposals will protect low income families
- The Executive gives serious consideration to increasing the mileage rate significantly above the proposed 45p per mile for the parental transport allowance for SEND sole-occupancy provision, in order to make it a more attractive option to parents and to provide further savings to North Yorkshire County Council
- The Children and Young People's Service Directorate be requested to re-examine its overall budget before removing the free transport statement for SEND post 16 to 18 students with an EHCP, to establish if alternative savings could be made that would have a less direct impact on frontline services
- That an update report be brought to the Transport, Economy and Environment Overview and Scrutiny Committee in April 2019 highlighting any issues arising from the implementation of the proposals, in particular the removal of the free transport statement for SEND post 16 to 18 students with an EHCP.

Stuart Carlton said that every effort will be made to protect families on low incomes. Also, that it is with a heavy heart that the proposals were developed. However, all of the easy budget cuts have been done and every option explored.

Jane Le Sage responding directly to the public question from Tracey Hampton said that there has been a significant increase in the number of local authorities charging for post 16 transport. The proposal is for an annual contribution of £490 or £245, for those people on low incomes and that this could be paid by nine direct debit instalments per year. It was anticipated that this would help spread the cost.

Jane Le Sage said that the 16-19 bursary fund that was referred to was a national government initiative. It can provide up to £1,200 per annum to support young people in further education. This can include contributions towards transport costs.

Jane Le Sage said that the County Council will continue to heavily subsidise SEND transport with over 90% of the cost covered. This compares to only 43% of cost covered for those in mainstream education. She said that the average cost of transport for a post 16 SEND student is approximately £8,000 per annum or £21.36 per journey. Parents/carers will be making a contribution of £1.28 per journey.

Jane Le Sage said that the travel costs for students in post 19 education would be assessed under the Care Act 2014. Part of that assessment would include a financial assessment. If young person did not have the means then the travel arrangements would be provided by the Local Authority, free of cost, under the Education Act 1996.

Jane Le Sage, responding directly to the public question from Andrea Ellwood, stated that the consultation had been extensive, widely publicised and had maximised opportunities for contact with the public, including the use of: social media; Local Offer; web sites; radio; NYPACT and associated parent/carer groups; and information to schools. The consultation involved high numbers of face to face meetings to ensure families could access further information as required. Events were held during the day and evening.

Jane Le Sage, responding directly to the public question from Kerry Fox, stated that 18 consultation events had been held across the county and that every effort had been made for an open and inclusive consultation. This included consultation sessions with Flying High, Voice Conference, Shout Out and Moving On.

Stuart Carlton said that Proposal 3 was a voluntary option. If parents chose not to take it up then they would revert to the statutory provision. The proposal was aimed at incentivising parents.

County Councillor David Chance asked what the projected costs for SEND travel over the next few years were.

Stuart Carlton referred to paragraph 2.5 of the report and said that the Council is looking at an 18% year on year growth in SEND travel costs. This meant that the projected cost in 2020 was £13.2m rising to £30m in 2025. He noted that the entire budget for school transport at present was £21m.

Jane Le Sage said that following the Children & Families Act 2014 which expanded the age range from 0 – 25 years, there had been a national increase in the number of young people in education and an increase in the number of children on EHCPs. She added that children in North Yorkshire often had to travel longer distances to access mainstream or specialist provision. All of this contributed to the rise in costs.

County Councillor Janet Sanderson said that this issue had been debated at length by Executive. In response to the request made by Kerry Fox in her public question to repeat the public consultation, she said that it would be anticipated that the results would be largely unchanged. County Councillor Janet Sanderson stated that the long term impact of austerity upon local authorities meant that there were no longer any easy savings to be made. There was no viable alternative to the proposal and that the long term sustainability of the provision needed to be protected. As such she stated her support to the proposals.

County Councillor Gareth Dadd queried whether other local authorities charged and if so how much.

Stuart Carlton stated that increasing home to school transport costs were predominantly an issue for County Councils. Of 27 County Councils, 19 currently charged for provision. The proposed charging by the Council would place it fourth lowest out of the 19. The highest cost charged is £1,400 and the lowest is £383 compared to the proposed £490 or £245 for low income families.

County Councillor Gareth Dadd reluctantly supported the proposal and said that no one wanted to be in this position. When demand is rising and local authority funding falling the proposed policy change was a way of saving existing future and future proofing.

County Councillor Patrick Mulligan moved the proposals as outlined in paragraph 12.

County Councillor Janet Sanderson seconded the proposal.

Barry Khan suggested some additional resolutions based on the discussions at the meeting as follows:

- That Proposal 2 in the report, to recognise SEND Post-19 students as adults in education, and identify unmet transport need in line with Health and Adult Services social care assessment, is more clearly explained in the Home to School Transport Policy (section 508F of the Education Act).
- That the Director of Children and Young People's Services and the Executive Member set a rate for the proposed enhanced Parental Transport Allowance, subject to consultation

- That the proposals be recommended to County Council at their meeting on 16 May 2018 for approval.

The proposed additional resolutions were accepted and there was unanimous support for the proposed policy change.

Resolved –

That the following proposals be approved from September 2018:-

Proposal 1: Removal of the FREE Transport statement for SEND Post-16 to 18 students with an EHCP from September 2018, to bring it in line with mainstream transport arrangements.

Proposal 2: Recognise SEND Post-19 students as adults in education, and identify unmet transport need in line with Health and Adult Services social care assessment.

Proposal 3: Promote Parental Transport Allowance to SEND sole-occupancy provision with a realistic enhancement to reflect the young person transport need (for those eligible for transport assistance under statutory duty).

That Proposal 2 in the report, to recognise SEND Post-19 students as adults in education, and identify unmet transport need in line with Health and Adult Services social care assessment, is more clearly explained in the Home to School Transport Policy (section 508F of the Education Act).

That the Director of Children and Young People's Services and the Executive Member set a rate for the proposed enhanced Parental Transport Allowance, subject to consultation

That the proposals be recommended to County Council at their meeting on 16 May 2018 for approval.

153. Policy on the Enforcement of the Secondary Ticketing Provisions of the Consumer Rights Act 2015

Considered –

A report of the Corporate Director - Business and Environmental Services seeking approval for the policy on the enforcement of the secondary ticketing provisions of the Consumer Rights Act 2015 as set out in Appendix 1 to the report.

County Councillor Andrew Lee introduced the report stating that the changes were necessary to enable enforcement on secondary ticketing in line with the Consumer Rights Act 2015. He stated that the intention was to protect people buying second-hand tickets over the internet from being defrauded. The full policy is set out in the Appendices to the report.

County Councillor Andrew Lee said that the maximum penalty for infringement had been set at £5,000. Every effort was made to ensure that only those people who deliberately misled or defrauded members of the public would be prosecuted.

County Councillor David Chance welcomed the policy and queried what action has been taken against those companies who purchase large numbers of tickets for events solely with the purpose of selling them on at a profit.

In response Nicola Pearson said that this was outside the scope of the policy but recognised the concerns.

County Councillor Andrew Lee moved the recommendations.

County Councillor David Chance seconded them.

The recommendations were formally approved.

Resolved –

That the policy on enforcement of the secondary ticketing provisions of the Consumer Rights Act 2015 be approved.

154. Appointments to Committees and Other Bodies

Considered –

A report of the Assistant Chief Executive (Legal and Democratic Services) enabling any appointments to Committees or major outside bodies to be recommended for approval by County Council on 16 May 2018.

The appointments to the Employment Appeals Committee and St Camillus Trust were supported and recommended to County Council for approval.

Resolved –

That the Executive recommends the appointments set out in paragraph 2 of the report to County Council on 16 May 2018.

155. Forward Work Programme

The Forward Plan for period 13 April 2018 to 30 April 2019 was presented.

Resolved –

The forward work programme is noted.

157. Urgent Business

Section 19 and Section 22 Consultation

County Councillor Don Mackenzie introduced an item of urgent business. He outlined a national consultation on the issuing of Section 19 and Section 22 permits for community transport. The consultation has been run by the Department for Transport and had been triggered by concerns that community transport was undercutting commercial transport.

County Councillor Don Mackenzie said that community transport would be excluded from the policy changes where they could demonstrate that it was provided free of charge or charges were less than cost or there were no competitors on the routes travelled. He

stated that in North Yorkshire there were seven community transport providers providing 22 contracts, all of which were unattractive to commercial providers. The risk to the Council relates to community transport in the rural areas of the county and also to school bus operators. These risks have been highlighted in a letter accompanying the Council's response to the consultation.

County Councillor Don Mackenzie said that the draft consultation response had been circulated to members of Executive and the closing date for the consultation is 4 May 2018. He asked for members to endorse the draft response.

County Councillor David Chance said he was supportive of the consultation response and very concerned that an issue that had arisen in London could have such a serious and long lasting impact upon North Yorkshire.

County Councillor Patrick Mulligan said that it was absurd that a model designed to fit London was being applied to North Yorkshire.

County Councillor Andrew Lee said that he supported the consultation response and letter and that one size does not fit all.

County Councillor Carl Les stated that there would be an ongoing dialogue with the North Yorkshire MPs on this issue.

The draft consultation response and letter was endorsed by the meeting for submission to the Department of Transport.

The meeting concluded at 12.30 pm

DH/JR

DRAFT