

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL
OVERVIEW AND SCRUTINY BOARD

Minutes of the Meeting held on 01 March 2021 at 2.00 pm

Present:-

Cllr S Bartlett – Chairman

Cllr T O'Neill – Vice-Chairman

Present: Cllr L Allison, Cllr D Borthwick, Cllr L Dedman, Cllr M Earl,
Cllr J Edwards, Cllr D Farr, Cllr L Fear, Cllr M Howell, Cllr D Kelsey,
Cllr C Rigby, Cllr V Slade, Cllr T Trent (In place of Cllr M Cox) and
Cllr A Filer (In place of Cllr B Dion)

Also in
attendance: Councillor M Greene, Portfolio Holder for Transport and Sustainability
Councillor P Broadhead, Portfolio Holder for Regeneration, Economy
and Strategic Planning
Councillor J Kelly, Lead Member for Engagement
Councillor L-J Evans (for clause 157)
Councillor Dr F Rice (for clause 157)
Councillor M Brooke (for clause 158)

152. Apologies

Apologies were received from Cllr M Cox and Cllr B Dion.

153. Substitute Members

Cllr T Trent substituted for Cllr M Cox, and Cllr A Filer substituted for Cllr B Dion, for this meeting of the Board.

154. Declarations of Interests

In relation to the agenda item on Community Infrastructure Levy Neighbourhood Portion, Cllr V Slade declared for transparency that she was a Trustee of Broadstone Neighbourhood Forum.

In relation to the agenda item on Community Infrastructure Levy Neighbourhood Portion, Cllr M Brooke (non-Committee Member) declared for transparency that he was Vice Chair and a Trustee of Broadstone Neighbourhood Forum.

In relation to the agenda item on Call in of decision of Whitecliff Road ETRO, Cllr T Trent declared that he was one of the councillors who had signed the call in.

155. Confirmation of Minutes

The Chairman reported on one outstanding item on the action sheet, around data relating to mandatory training for members of staff. At the request of Board Member he had followed this up with the Director of Organisational Development. It was noted that improvements in this area in the near future had been assured. The item was therefore now marked on the action sheet as completed.

RESOLVED that the minutes of the meetings held on 1 February 2021 be confirmed and signed as a correct record.

156. Public Speaking

The Board was advised that the following public statements had been received in relation to the Call in of the Decision on Whitecliff Road ETRO:

- Lucie Allen
- Iain Murray
- Mark Sanders
- Andrew Wickham, Managing Director, Go South Coast

These statements had been published on the Council's website and a link sent to Board Members, who confirmed that the statements had been received and read.

157. Call-in of Decision - Whitecliff Road ETRO

The Chairman outlined the remit of the Board and explained the procedure to be followed in determining the Call-in of the Portfolio Holder's decision to revoke the Experimental Traffic Regulation Order (ETRO) for Whitecliff Road. He referred to the national context, where some ETROs had proved controversial, as in this case. He asked members to respect each other's views and the role of the Chair in considering the Call-in.

The Monitoring Officer presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'A' to these Minutes in the Minute Book. She outlined the purpose of the Call-in provisions in respect of executive functions. She explained the role of Monitoring Officer in determining the validity of the Call-in, by assessing whether the reasons given for the Call-in met the criteria in Procedure Rule 10 (Call-in). In this case it was considered that there were reasonable grounds to suggest that a debate could be had around the criteria that 'the decision was not made in accordance with the principles of decision making set out in Article 12 of the Constitution'.

The principles of decision making in Article 12 were set out in the report. The Board was required to test the reasons given for the Call in against these principles. The reasons provided for the Call-in had been grouped against individual principles in the report for ease of reference. The Monitoring Officer provided further clarity on the Leader's scheme of delegation in respect of Portfolio Holder decisions, and the procedures in

place to publish the decision and make representations before the final decision was enacted.

In response to a question the Monitoring Officer explained that it was not a requirement to list the Call-in signatories in the report but there was no reason why this could not be included in future reports.

The Chairman invited the lead Call-in member, Cllr A Hadley, to present the reasons for the Call-in, as set out in paragraphs 9 to 43 of the report. Cllr Hadley highlighted some key points, as follows:

- The decision was contrary to the Nolan and Gunning principles.
- The consultation had been foreshortened without explanation.
- In response to the claim of skewed responses it was pointed out that there had also been a pro opening campaign.
- The outcome was prejudiced as the Council had reported on Facebook in October 2020 that road would reopen.
- The assertion that older and less mobile people cannot drive through the park was incorrect, as shown in the count of motorised access in and out of the park in February 2021.
- Both Parkstone and Poole Town wards were affected as the road was two way with the ward boundary along the middle.
- No independent evidence of conflict between cyclists and pedestrians.
- The claim that the ETRO had failed to promote permanent modal shift. A volunteer count in February 2021 between the hours of 3.30pm and 6.00pm showed a significant increase in cycling and pedestrian use.
- The data around increased traffic on Parkstone Road was incorrect and did not take into account relevant factors. Parkstone Road had capacity and other measures should be considered first.
- The decision had a negative impact on protected groups, young people, and people not online had been disenfranchised.
- Less weight had been given to the views of Poole Town councillors.
- Data from a 2016 study had been provided too late in the process.
- The consultation had not been properly carried out or considered.
- Meetings of the Transport Advisory Group should be reinstated.
- The Portfolio Holder had criticised, undermined and disregarded advice from professional officers.
- The decision was contrary to national and local policy and guidance on encouraging walking and cycling, and on the value of leisure space, including the Portfolio Holder's statements on Active Travel
- The decision was at odds with the Council's corporate objectives and the Transforming Travel initiative and was therefore not proportionate, particularly during the pandemic.
- The balance of public views was increasingly supportive of retaining the ETRO. This was in line with Government expectations of how these schemes would be received.

- Those in favour of retaining the ETRO, included NHS staff, people with disabilities, parents with small children, and drivers who recognised the benefits of the scheme.
- The Portfolio Holder should be looking to add facilities, not take them away, and should base his decision on the evidence.

The Chairman invited the Portfolio Holder for Transport and Sustainability, Cllr M Greene, to respond to the reasons presented for the call in.

- The Portfolio Holder had fulfilled his responsibilities in considering - and demonstrating that he had considered - every consultation response. The points about skewed responses and the campaigns for closing/opening the road were not relevant in this context.
- The consultation could not be called into question and then used to support a particular case.
- He had not stated that there had been no crashes since 2013, he had been clear that there had been no car to bicycle/pedestrian collisions.
- He had not stated that a much smaller cohort of older and less mobile people were unable to use the park, he had indicated that this group 'used to enjoy a drive through the park'.
- The consultation was closed because a significant number of responses had already been received and nothing new had come out of the responses during this time to further inform the decision.
- The method used to assess the economic impact of additional congestion had been provided by officers and was consistent with that used for Transforming Travel initiatives.
- The location of the ETRO was originally believed to be in the Parkstone ward. At that stage the preferred option was to reopen the road in line with the Parkstone ward councillors' views, hence the announcement in October 2020. This was consistent with decisions he had taken on other ETROs in response to feedback from ward councillors and reflected his intention as Portfolio Holder to take more account of ward councillors' views.
- Once it was known that part of Poole Town ward was also affected by the ETRO, the Portfolio Holder decided to consider further consultation responses. He was clear that he had treated all responses equally.
- The traffic evaporation model was not an approach supported by the current administration.
- The circumstances in which the counts were undertaken in August 2020 and February 2021 were not comparable. However he did not find the increase in use by cyclists and pedestrians surprising, as the ETRO provided an alternative route with an improved experience.
- He had met the requirements of the Constitution in considering – and showing that he had considered – all aspects of the Equality Impact Assessment (EQIA). In this case he did not consider the EQIA to be negative, but this was incidental to the fulfilment of his obligations.

- He had taken professional advice from officers, he had listened to this advice and for the most part been in agreement, but he was not under any obligation to follow it.
- He had been consistent in his approach to having due regard to national, strategic, local policy and guidance. The Secretary of State had indicated in October 2020 that some ETROs could be amended or withdrawn. The decision to revoke the Whitecliff Road ETRO was confirmed with the Department of Transport's regional contact.
- In his view the Portfolio Holder considered that he had complied with the decision-making principles in Article 12.

The Portfolio Holder responded to a series of questions and statements from Board members and other members of the Council:

- How many Poole Town and Parkstone ward residents used the Keyhole Bridge?

The Portfolio Holder had treated the scheme as if it were in both wards, had treated consultation responses and ward councillors' views equally, and therefore he did not consider the number of users to be relevant.

- Was there a publicly available record of ward councillors' views?

The Portfolio Holder deferred to the Chairman's suggestion that this was a wider issue which could be directed to the audit and governance committee.

- The Portfolio Holder had published the reasons for his decision in his January report, and while not questioning his legal right to make a decision, these reasons were subject to scrutiny, particularly in questioning if he had complied with the Nolan and Gunning principles.

The Portfolio Holder had provided detailed reasons in his January report in the interests of openness, transparency and good governance.

At the Chairman's request the Monitoring Officer provided advice on the three tests in considering the lawfulness of the decision making process: that it should relate to an executive function, that the Portfolio Holder had delegated authority to make the decision, and that the decision was reasonable in the 'Wednesbury' sense.

- The consultation had been foreshortened at a time when there was growing support to keep the road closed to traffic.

As explained, the consultation was ended prior to the original deadline because no new information had been forthcoming.

- There was no evidence that people with a disability wanted to drive through the park because of their disability. There was evidence

from people with a disability that they could only use the road when closed.

The Portfolio Holder referred to the EQIA and the need to read it in its entirety.

- There was no evidence provided on air quality on Parkstone Road

While there was no specific evidence in this case the detrimental impact of congestion on air quality was clear.

- The advice of professional officers had been undermined, and information appeared to fit a required outcome.

Disagreeing with an officer's recommendation did not constitute a criticism of the advice provided. The Portfolio Holder stated that he personally supported the road staying closed to traffic, but his decision had to be made on the evidence not the outcome, using a method consistent with other decisions.

- What was the number of recorded accidents?

There had been one recorded car on car accident between 2013 and the present. There were reports of near misses. The Portfolio Holder found the anecdotal evidence of cycling/pedestrian incidents credible, but not relevant to his decision as these could be easily mitigated.

- Was there an assessment of the economic impact of opening and closing, and had the 2016 study been taken into account?

The Highways Officer explained that the ETRO had been based on a general assessment of the network at that time with little consideration of the economic impact for a number of reasons, including the speed at which the ETROs had to be introduced in accordance with Government timescales. The Portfolio Holder acknowledged the reasons why a detailed assessment had not been possible. He reported on data prior to the last lockdown in December 2020 which showed that traffic had returned to pre Covid-19 levels.

- Had it been taken into account that one third of people were not able to access the consultation online?

The consultation had been undertaken in the same way as all consultations. That said, there had been some written and telephone feedback received.

- Was the decision predetermined from the outset, as it appeared?

No, as previously explained, the scheme was originally believed to only affect Parkstone ward and the Parkstone ward councillors were in favour of

lifting the ETRO. Once it was confirmed that Poole Town ward was also affected further consideration was undertaken.

- If everything was equal why had the views of the three ward councillors in Poole Town not outweighed the two ward councillors in Parkstone?

The size of a particular ward and the number of councillors it was allotted was not relevant in this respect.

- If air quality from traffic was a problem, motorists in Parkstone Road would be protected, whereas people outside in the park would not.

There was national evidence linking congestion with air quality. This not only affected the immediate site of congestion but also impacted on further away.

- Were factors such as the costs of motoring, accidents, enforcement, congestion, pollution and public health routinely considered in an economic appraisal?

The Highways Officer confirmed that these were all issues considered in a full business case, but difficult to calculate in the current situation. The Portfolio Holder explained that in his view the impact on air quality of increased traffic on Parkstone Road and beyond outweighed the improvement in the park.

- When did the Portfolio Holder consult with ward councillors, in light of the timing of the Facebook announcement in October?

The Portfolio Holder reiterated his previous response and confirmed he had not predetermined the decision.

- How relevant was the evidence in the 2016 study in 2021, in light of promoting active travel and safer routes, and climate emergency?

The 2016 study was the best evidence available at the current time. The positive impact of transforming travel initiatives and future systemic change would enable further consideration of traffic regulation measures.

- Was the EQIA robust enough, had it properly assessed the impact on young people (especially the under 10s)?

The Portfolio Holder's duty was to consider the EQIA. He had considered every single consultation response, including those relating to young families.

A member not on the Board offered a formal apology to the Portfolio Holder for asking a question which questioned his integrity. The Portfolio Holder thanked the member and accepted the apology.

The Chairman commented on the balance between views on the merits of the road closure and the process followed by the Portfolio Holder in considering those views and making his decision.

The following motion was proposed and seconded, but was not carried:

“To recommend a referral back to Cabinet for them to consider an extension as allowed under the legislation to 18 months, during which time the following items are considered - air pollution, congestion and journey times, consultation with schools, disability groups and community groups - and these are brought back to Cabinet for a final decision at the end of this period.”

Voting: For – 7, Against – 8, Abstain – 0

Note: Cllr C Rigby and Cllr V Slade asked to be recorded as voting for the motion.

The Monitoring Officer advised the Board that the decision of the Portfolio Holder could now be implemented with immediate effect.

A Board member raised a procedural issue in relation to debate and alternative recommendations. The Chairman reported that no member had requested to speak on the motion when invited or offered an alternative motion. The Monitoring Officer reported that a motion had been put forward with no alternatives presented at that time. The motion had been voted on and not carried, and the matter was therefore concluded.

158. Scrutiny of Community Infrastructure Levy Neighbourhood Portion Cabinet Report

The Portfolio Holder for Regeneration, Economy and Strategic Planning presented a report, a copy of which had been circulated to each Member and a copy of which appears as Appendix 'B' to these Minutes in the Minute Book.

The report outlined the proposed governance arrangements for both strategic and neighbourhood Community Infrastructure Levy (CIL) monies. These arrangements aimed to provide a unified approach to the allocation of BCP CIL receipts. The Portfolio Holder explained that following a review, which had included feedback from an all Member seminar in December 2020, it was proposed to revise the current arrangements for the allocation of the CIL neighbourhood portion to operate two schemes. He explained that the main purpose of the neighbourhood portion was to mitigate the impact of development particularly in respect of infrastructure. The proposed arrangements put in place a ward-based scheme and a scheme to enable those communities less directly impacted to access funding. Details of both schemes, including further information on the bidding and allocation procedures, were set out in the report.

The Portfolio Holder thanked the Lead Member for Engagement for her work in developing the proposals. The Lead Member referred to areas where there was a Neighbourhood Plan in place, these areas were entitled to a 25% ringfenced neighbourhood portion. She also highlighted that different wards were able to work together to submit joint bids.

A Board Member asked if there was any scope to increase the frequency of the bidding process from twice yearly, to help ward councillors who wanted to submit small bids for minor works. The Portfolio Holder explained that there was a delicate balance to be struck, but acknowledged that twice yearly bidding may be limiting. The Lead Member agreed that it may be possible to include an extra round for smaller bids.

A Board Member felt there was a lack of detail on the governance arrangements for the Strategic CIL. The Portfolio Holder explained that this report covered the neighbourhood portion and that details on the strategic portion would be brought forward later. The Head of Planning reported that the terms of reference were still in draft form and could be finalised by the CIL Allocations Panel.

A Board Member asked about the 5% administration costs. It was explained that CIL Regulations enabled 5% of all receipts to be spent on the administration aspects of collecting and spending CIL. This was accepted practice and was intended to fund the whole process, including three CIL officers for BCP Council. Any funds not spent went back into the CIL pot.

A Member not on the Board welcomed the provisions in Scheme 2 as a way of overcoming inequalities in those wards with little or no development. He asked if Paragraph 11 of the report could be amended to include reference to the Council working **with ward councillors in association** with Neighbourhood Forums, etc, as he was aware that arrangements varied for Neighbourhood Forums in the BCP Council area. The Portfolio Holder assured members that there was a presumption to involve ward councillors at all stages and he was happy to give this commitment regarding Paragraph 11.

A Board member had concerns around the fairness of the proposals. She asked how the impact of development in neighbouring wards was accommodated in the arrangements. She asked how the strategic portion would benefit these wards, and whether for bigger bids there would be cross-party involvement. The Portfolio Holder explained that the current proposals for the neighbourhood portion did take into account that some wards did not generate their own CIL. He reminded members that the remaining Strategic CIL (85%, or 75% in areas with Neighbourhood Plan) was spent on strategic infrastructure projects required to support the whole area, including those wards with little or no development. The Portfolio Holder considered it a matter of principle that wards with high levels of development were able to access funds to mitigate the direct impact of development in the immediate area. He assured members that the CIL Allocations Panel would assess each bid on its merits.

The Board agreed a unanimous recommendation that monies be allocated on a quarterly basis (not twice yearly) and any balances moved forward into the next quarter if not spent.

The Board discussed the recommendations in the report, with particular reference to the governance arrangements around Scheme 2 and the CIL Allocations Panel. Some members were concerned at a lack of detail covering these issues in the report. A cross party allocations panel for strategic CIL was suggested, as a way of ensuring decisions in relation to Scheme 2 were more member-based.

The Portfolio Holder and the Head of Planning explained that more work was required on how Strategic CIL was administered, to ensure that arrangements complied with financial regulations, and legal/governance requirements. A report on these issues could be brought before the Board at a later date. The report being considered at this meeting was about the neighbourhood portion.

The Chairman drew attention to the executive summary of the report which stated that the report covered proposed governance for both strategic and neighbourhood portion CIL monies.

RESOLVED that the report be referred back for further clarification on the governance for Scheme Two including the total amount of funding available and the panel to establish the schemes it will cover.

Voting: For – 8, Against – 6, Abstain – 0

The Chairman deferred the remaining two items on the agenda for consideration at the Board's evening session at 6.00pm on Monday 1 March 2021.

The meeting ended at 5.25 pm

CHAIRMAN