

BATH AND NORTH EAST SOMERSET

MINUTES OF COMMUNITIES, TRANSPORT AND ENVIRONMENT POLICY DEVELOPMENT AND SCRUTINY PANEL MEETING

Thursday, 27th September, 2018

Present:- **Councillors** John Bull, Brian Simmons, Neil Butters, Alan Hale, Sally Davis (in place of Peter Turner), Ian Gilchrist, Michael Evans, Patrick Anketell-Jones and Dine Romero (in place of Richard Samuel)

Apologies for absence: Councillors:

36 WELCOME AND INTRODUCTIONS

The Chairman welcomed everyone to the meeting.

37 EMERGENCY EVACUATION PROCEDURE

The Senior Democratic Services Officer drew attention to the emergency evacuation procedure.

38 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Councillors Peter Turner and Richard Samuel had sent their apologies to the Panel. Councillors Sally Davis and Dine Romero were their substitutes respectively.

39 DECLARATIONS OF INTEREST

There were none.

40 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

There was none.

The Chairman read out the following statement:

‘The purpose of this meeting is for this panel to decide whether Cabinet should be requested to reconsider its decision of 5th September 2018 with regard to ‘Pilot Scheme to increase enforcement activity for environmental crime’ (E3088)

As such, today’s meeting will be limited to considering the Cabinet decision and the reasons for it; plus the issues set out in the Call in request. These are contained in appendices to the report. Speakers and participants must confine their remarks to those issues and I will not allow the introduction of new issues.

This panel has three options available to it:

- The first option is that we could dismiss the Call in. This would mean that Cabinet’s decision would take effect immediately.
- The second option is that we could uphold all or part of the Call in. This would mean that Cabinet would have to re-consider its decision in light of our comments.

- The third option is that we could decide that the Call in request should be considered by the full Council instead of by this panel, who would be fulfilling the role of the Scrutiny Panel in upholding or dismissing the Call in. If Council upheld all or part of the Call in, this would also mean that Cabinet would have to reconsider its decision in the light of this.

Whatever the outcome of today's meeting (or the Council undertaking this role), it is important to remember that the final decision will rest with the Council's Cabinet.

We are not here to decide upon the merits of the proposals. Our job is to decide if Cabinet should re-consider its decision. Therefore, I wish to make it clear that I am entirely open minded about the outcome of this Call in application and I will be basing my decision upon the evidence and representations before me.

If any member of the panel feels that they are unable to make a decision on the Call in with an open mind, please would they say so now.

(None declared)

Members of the panel should also be aware that, under the Council's constitution, members have a duty to declare that they are subject to a party whip and the nature of it. I can confirm that I am not subject to a party whip in this meeting. If any members of the panel are subject to a party whip, please would they declare it now.

(None declared)

Finally, can I make it clear that nobody can pass notes to members of the panel during the meeting.

Thank you.'

41 ITEMS FROM THE PUBLIC OR COUNCILLORS - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS RELATING TO THE BUSINESS OF THIS MEETING

John Chapman made a statement to the Panel expressing his concerns on the Pilot Scheme to increase enforcement activity for environmental crime.

(A copy of the statement is attached as Appendix to these minutes and available on the Minute Book.)

The Panel asked factual questions related to comments in the statement to which John Chapman responded.

42 PILOT SCHEME TO INCREASE ENFORCEMENT ACTIVITY FOR ENVIRONMENTAL CRIME

The Chairman informed the meeting that he would not allow officers to give a presentation to the Panel as it would be against the usual practice of the Call In arrangements; and because the Lead Call In Councillor (Councillor Richard Samuel) had felt that the presentation would introduce new evidence.

The Chairman invited Councillor Richard Samuel to present reasons for the Call In.

Councillor Samuel said that he and 9 other Councillors had signed the Call In of this decision for a number of reasons. Councillor Samuel went through the each reason with the following comments:

1. *The Cabinet decision report did not demonstrate how the environmental enforcement pilot scheme can be delivered at zero cost to the Council* – Councillor Samuel suggested that the Council would have to issue around 1,400 fines per year in order for the scheme to be delivered at zero cost. Councillor Samuel expressed his concerns that the Council would do anything to increase enforcement activity in order to justify this programme.
2. *The proposed “informal procurement process” is opaque and not in line with usual Council procurement procedures* – Councillor Samuel felt that informal procurement process was not in line with the Council’s usual procurement procedures.
3. *Contract management arrangements were not set out in the Cabinet decision report* – Councillor Samuel felt that contract arrangements should have more clarity in the Cabinet report.
4. *No operational details were included in the Cabinet decision report* – Councillor Samuel questioned how the Cabinet made its decision without information about operational details.
5. *There is probable equalities impact, which has not been considered, as increased enforcement action is likely to disproportionately affect certain groups. The decision report does not state whether an equalities impact assessment has been carried out* – Councillor Samuel pointed out that 98.3% of litter enforcement in Bristol pilot scheme was for cigarette butts. Therefore, Councillor Samuel felt that people from disadvantaged communities would be targeted with this pilot as majority of smokers come from those communities. Councillor Samuel also asked for the Equality Impact Assessment on this matter.
6. *There is a risk of reputational damage to the Council* – Councillor Samuel felt that tourists and visitors would be affected by this decision, which would be covered by media and damage the Council’s reputation.
7. *The proposed approach is not consistent with the Council’s “Public Protection and Health Improvement Service Enforcement Policy”* – Councillor Samuel felt that there was not consistency between the Council’s Policy and legal actions against those who litter.
8. *The Cabinet decision report does not demonstrate how the pilot scheme will improve cleanliness standards* – Councillor Samuel felt that the target was not set to show how cleanliness would be measured.
9. *No consultation has been carried out with Councillors, stakeholders or residents. This is not in line with the Local Code of Corporate Governance* – Councillor Samuel said that there was not a proper discussion with the public.

Councillor Samuel concluded his statement by saying that this decision was made in a rush and asked the Panel to uphold the Call In and refer the decision back to the Cabinet.

Questions for Councillor Samuel:

Councillor Romero asked if there should be signs informing the residents and visitors about litter fines.

Councillor Samuel responded that it would be reasonable to inform people about litter fines. Councillor Samuel also said that the UK residents should understand that littering was not acceptable and for that reason more targeted approach would be more practical. The visitors from outside the UK would need to know in advance what was not acceptable to do in terms of littering.

Councillor Romero asked if there was any indication in the Cabinet report that these issues were considered.

Councillor Samuel responded that there was a lack of information in the Cabinet report on any of the aspects above.

Councillor Gilchrist asked if the Cabinet should wait for an outcome of Bristol pilot scheme and then make the decision.

Councillor Samuel responded that it would be a good idea to wait for an end of Bristol's pilot scheme and then for the Cabinet to consider its next step.

Councillor Anketell-Jones asked if people should have had information about litter enforcement in advance.

Councillor Samuel responded that any information would be beneficial to raise awareness amongst residents and visitors.

The Chairman asked about dealing with people who accidentally, or with no intention drop the litter.

Councillor Samuel responded that there would need to be intent for the Fixed Penalty Notice (FPN) to be served, and casual dropping of litter would not be seen as intent.

The Chairman thanked Councillor Richard for his statement.

The Chairman invited Councillor Bob Goodman (Cabinet Member for Development and Neighbourhoods) to address the Panel.

Councillor Goodman started his statement by saying that one of the reasons why he became a Councillor was to keep the city clean and tidy.

Councillor Goodman highlighted the following issues for the Panel to consider when making their decision on the Call In:

- Keep Britain Tidy action has found out that cigarette butts were one of the biggest polluters.
- The Council have introduced dash cams on their vehicles to catch perpetrators when they drop litter out of their vehicles whilst driving.
- The pilot scheme would send a clear message to the residents and visitors that littering would not be acceptable.

- The scheme would apply to business and domestic waste, and also to fly-tipping. Many of the residents had welcomed the bi-weekly waste collection which had been introduced last year and they have made it clear that they wanted their city to be clean. None of the FPN had been issued so far for domestic waste.
- Councillor Goodman had had consultations with the BID and with Julian House on this matter, and both had welcomed the pilot scheme.
- The pilot scheme would not target disadvantaged communities only; it would be carried across the whole area.
- There were discussions with the Bristol City Council who have supported the scheme.
- The Equality Impact Assessment for the scheme has been completed; the Council's reputation would be damaged if we do nothing.

Questions for Councillor Goodman:

Councillor Gilchrist asked if it would be better to wait for an outcome of the Bristol trial.

Councillor Goodman responded that he had discussions with the Bristol City Council on their trial so far though he would not want to wait for their trial to end and then start with the scheme in Bath and North East Somerset.

Councillor Romero asked if the issue of FPN for dropping cigarette butts would be the main target.

Councillor Goodman responded that any litter dropping would be penalised; although the cigarette butts littering was the most common littering it was not the main target.

Councillor Romero asked if dog fouling would require extra resources from the scheme.

Councillor Goodman responded that dog fouling had been seen as littering and it was included in the scheme.

Councillor Evans asked if the fines would shift the culture towards less litter dropping.

Councillor Goodman responded that he would not be able to say exactly if the culture towards litter dropping would change. It would certainly provide education and change attitude towards litter dropping.

Councillor Anketell-Jones asked if the 'street community' would be informed about the scheme and if there would be a 6 months review as a measurable result.

Councillor Goodman responded that he had positive discussions with Julian House on this issue and that there would be a 6 months review.

On a query from the Chairman the officers explained that the Council would follow national standards on this matter, something that wasn't included in the Cabinet report.

Councillor Butters asked the following: would the chewing gum littering be included in the scheme; would the litter enforcement save on street cleaning; and, what other areas would be covered under litter enforcement apart from cigarette butts dropping.

Councillor Goodman responded that the chewing gum littering would be in the scheme; there were no savings on street cleaning; and, roadside fly-tipping would be also included.

Councillor Hale asked if any educational element about litter dropping would be provided to the community, in the same way as it applied to speeding.

Councillor Goodman responded that he welcomed that idea, which he would discuss with the officers. Councillor Goodman suggested that people would litter again if they don't get penalised by enforcement officers.

Councillor Romero felt that Councillor Goodman had provided different information in his statement and answers to the Panel and asked why all of this information was not included in the original report to the Cabinet, including who had been consulted.

Councillor Goodman responded that he had consulted with the BID, Julian House and residents. He also said that he has received a number of emails from the residents in support of the scheme. Despite the fact that the scheme would evolve, as it was in its pilot stage, all of the information have been included in the Cabinet report.

Councillor Anketell-Jones asked about appeals process.

The officers responded that the official appeal process was not set in the legislation, though people who wanted to challenge FPN could take it to the Court. The appeal process would be part of the informal procurement process and, subject to discussion with the enforcement company, it would be a part of the contract. The officers also informed the Panel that if person refuses to provide their details then the enforcement officer could exercise powers under Section 108 of Environment Act 1995.

On a query from the Panel on zero-cost issue and who would handle Court cases - the officers responded that zero-cost analysis were based on the revenue from FPNs, and it would be the Council who would handle Court cases.

The Chairman felt that the revenue would seem to depend on incentives from fines, and those enforcement officers might use draconian line when issuing fines.

Councillor Goodman commented that officers would penalise people who drop any kind of litter, and not just cigarette butts. The enforcement officers would have suitable approach when issuing fines.

Councillor Butters asked if there would be consultation with bus and rail companies on graffiti crime and whether that crime would be included in the scheme.

Councillor Goodman responded that he had huge concerns on graffiti at bust and rail station, and also on damaged bus shelters. The scheme would be discussed with bus and rail companies.

Councillor Romero asked about the areas not owned by the Council.

The officers responded that the Council had spoken to Curo who were keen on working together. The Council have also spoken to a number of other companies/organisations on this matter.

The Chairman thanked Councillor Goodman for his statement.

The Chairman informed the meeting that the Panel would debate the matter before closing statements from the Cabinet Member and Lead Call In Councillor.

The Panel agreed to go through each point of the Call In request.

1. *The Cabinet decision report did not demonstrate how the environmental enforcement pilot scheme can be delivered at zero cost to the Council –*
Councillor Evans felt that he could not see any justification in the Call In request. Councillor Evans felt that the Cabinet had the relevant information before them when they had made the decision.
Councillor Romero said that the decision and information about additional costs to the scheme were not implicit.
2. *The proposed “informal procurement process” is opaque and not in line with usual Council procurement procedures –*
Councillor Evans commented that this was a regular process so he could not see any issues with it.
Councillor Davis said that it was clear in the report what the Cabinet was asked to do.
3. *Contract management arrangements were not set out in the Cabinet decision report –*
Councillor Romero felt that the Cabinet report lacked information about contract management arrangements.
Councillor Evans felt that there was no substance in this Call In point.
4. *No operational details were included in the Cabinet decision report –*
Councillor Evans felt that operational details would be with officers who would execute the decision, and that details would not necessarily needed to be available in the report.
Councillor Romero felt that the Cabinet should had all information in front of them before making the decision.
5. *There is probable equalities impact, which has not been considered, as increased enforcement action is likely to disproportionately affect certain groups. The decision report does not state whether an equalities impact assessment has been carried out –*

Councillor Hale commented that if someone had broken the law then they would be penalised, no matter who those perpetrators were.

Councillor Evans commented that even tourists should be penalised as every country had their laws against littering.

Councillor Romero commented that recent planning decision had been successfully challenged due to a lack of the Equality Impact Assessment.

6. *There is a risk of reputational damage to the Council –*

Councillor Evans felt that reputation of the Council would be in danger if nothing is done against litter dropping.

Councillor Romero expressed her concerns how the Council would look in the media and news if someone had been treated unfairly.

Councillor Anketell-Jones commented that this is a pilot scheme which would be reviewed after 6 months.

Councillor Hale commented that this pilot should be treated like any other pilot scheme (i.e 20mph enforcement) and that there would be no reputation damage to the Council.

Councillor Butters commented that all Councillors would support this scheme in principle though he would want for decision to delay once the Bristol City Council reveals outcome of their trial.

7. *The proposed approach is not consistent with the Council's "Public Protection and Health Improvement Service Enforcement Policy" –*

Councillor Romero commented that Councillor Goodman did not answer how the scheme would be consistent with above policy and how this scheme would achieve its goals.

Councillor Evans commented that fines were used as standard process to influence people's behaviour.

8. *The Cabinet decision report does not demonstrate how the pilot scheme will improve cleanliness standards –*

Councillor Hale commented that more people get penalised for dropping the litter, less litter would be found.

Councillor Romero commented that there was no conclusion in the paper how this would improve cleanliness standards.

9. *No consultation has been carried out with Councillors, stakeholders or residents. This is not in line with the Local Code of Corporate Governance –*

Councillor Evans commented that consultation was not required for pilot scheme. Councillor Romero commented that consultation had been carried out for some other pilot schemes.

Councillor Hale commented that it would be unlikely for people to say that they would prefer to see the streets full of litter.

The Chairman invited Councillor Goodman to give his closing statement.

Councillor Goodman said that he wanted to see area clean of litter. Councillor Goodman also said that he was privileged to be elected Member and that he would be committed to keep the city clean. The education and raising awareness of the consequences of environmental crime would be prioritised; the appeal procedure would be set with the providers in accordance with the legislation; and, the scheme would be reviewed after 6 months.

If successful, proposals for a more permanent arrangement would be developed towards the end of the trial.

The Chairman invited Councillor Samuel to give his closing statement.

Councillor Samuel said that additional information had been presented at this meeting. Councillor Samuel also said that he had confidence in Council officers to carry out FPNs, but not with private companies. Councillor Samuel asked the Panel to uphold the Call in and send the decision back to the Cabinet for reconsideration.

The Chairman concluded that the Panel have heard pros and cons of the decision and invited the Panel to make their decision.

Councillor Gilchrist moved that the Panel refer the decision back to the Cabinet for reconsideration and wait for the outcome of the trial from Bristol City Council.

Councillor Butters seconded the motion by saying that everyone wanted to have clean street but the decision had to be right.

Councillor Evans commented that this was a pilot scheme with a review after 6 months. The report presented to the Cabinet had information that was sufficient when the decision was made. Councillor Evans felt that the decision made by the Cabinet to enter into a 12 month pilot scheme was the right decision and that he would see no reason why this decision should be referred back to the Cabinet.

Councillor Romero supported the motion by saying that the Cabinet had not considered some elements of the scheme before making this decision. Councillor Romero also said that she would welcome any measures to make the city cleaner, though they would have to be done in the right way.

Councillor Davis opposed the motion by saying that aspects such as education, flexibility of the scheme and zero-cost had been considered.

Voting: 3 in favour and 5 against with 1 abstention.

Motion lost.

Councillor Evans moved for Call In to be dismissed.

Councillor Davis seconded the motion.

Voting: 5 in favour and 3 against with 1 abstention.

Decision:

It was **RESOLVED** to dismiss the Call In of decision E3088 Pilot Scheme to increase enforcement activity for environmental crime.

The meeting ended at 12.50 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

Scrutiny

The big problem with this scheme is the contract, the contractor receives nothing up front, but receives a rather generous portion of the fines issued.

The obvious problems are that –

Discretion goes against innocent until proven guilty, if in doubt, hand a ticket out. Targets. Profits.

The focus will be on maximising revenues, by focussing on easy prey, smokers, with over 90% of fines being issued for smoking litter, or as an FOI to Bristol revealed, 98.37%. Think we can tell that the focus is on profit rather than effective and balanced enforcement.

It could be argued that as Councils get to keep a portion of the fine money, they might also be quite happy with this general ineffectiveness. A profitable perpetuation of pointlessness.

The worst part is that, presumably blinded by cash, nobody seems to identify the big flaw that means it can never work. If incidences of littering falls, the contractors income shrinks so that they either pull out, or the staff stretch the laws and definitions to the limits to keep the fines flowing. If littering increases, the contractor makes more profit, so unless the goal is revenue maximisation, success = failure and failure = success.

A few other points of note –

Section 87 of the EPA 1990 is the only law these companies need to know, the market leader Kingdom Securities mis-quotes the law, fundamentally changing the offence. Would you employ an electrician who can't quite grasp the concept of electricity???

When an FPN is issued, the litter generally stays on the ground, the enforcement officers don't pick it up, and generally the offender doesn't, so the number of fines issued bears no resemblance to litter reduction.

In many Councils now, we are starting to see Mission Creep, a company brought into tackle litter suddenly increases it's scope, PSPO's, parking, anything where the public can be fined. Dog PSPO's are increasing, enforced with great over-zealousness. Cllr Warren hinted at other duties, perhaps he could elaborate on exactly what the public that he serves, can expect.

To quote DEFRA - Where external contractors are used, private firms should not be able to receive greater revenue or profits just from increasing the volume of penalties, since this runs contrary to the overall aim of reducing the number of offences committed.

I have been asked what am I trying to achieve? Simple.

Litter enforcement that is balances, also focuses on major offences, is effective, is proportionate and fair, has public support, and above all, is LAWFUL

I have been researching this for about a year, flawed contracts, targets, profit driven, leading to over-zealous and utterly ineffective enforcement . Plus plenty of evidence of unlawful enforcement.

The key being over-zealous – as evidenced elsewhere, we all have plenty to fear.

This page is intentionally left blank