

Response to notice requesting a call in of Cabinet Member Decision E2861

“Park & Ride East of Bath”

Reasons for call in	Response
<p>1. The resolutions approved by Cabinet, laid out in paragraphs 2.1 to 2.5 of the accompanying report, are not adequately, transparently or coherently justified by the rationales, evaluation criteria, evidence, risk assessment, policies and stakeholder concerns presented in the body of the report.</p>	<p>Cabinet were able to make an informed decision as both the Cabinet report and associated background documents provided a clear rationale for developing a park & ride (P&R) site to the east of Bath and addressed all the key issues raised during the consultation process, specifically in relation to how:</p> <ul style="list-style-type: none"> • provision of a park and ride site to the east of Bath is embedded in Council policy (paragraphs 4.6 to 4.21 of the Cabinet report and item 3 of the background information refer); • aspects raised by both scrutiny and the LDF Steering Group have been addressed (paragraphs 4.23 to 4.30 of the Cabinet report refers); • the evidential need for a park and ride has been identified (paragraphs 4.31 to 4.51 of the Cabinet report and item 4 of the background information document refers); • the sites have been evaluated against relevant planning policy, for this stage of the project and transport criteria (section 6 of the Cabinet report refers); and • a risk register has been prepared (section 10 of the Cabinet report refers). <p>The recommendations in paragraph 2.1 to 2.5 are therefore clearly linked to the conclusions of the comprehensive work highlighted above.</p>
<p>2. The stakeholder consultation process was inadequate and not robust. Meaningful engagement with residents was impossible given the short timescale and poor quality of information and evidence provided. The results of the consultation are misrepresented in the report.</p>	<p>The stakeholder consultation period lasted for at least 5 weeks between 8th September and 18th October 2015. The consultation was initially launched with the publication of Connect Magazine, delivered to every household across the Bath & North East Somerset area in the week of 8th September 2015.</p> <p>Three public exhibitions were held:</p> <ul style="list-style-type: none"> • Bathampton on 19/9/15; • Guildhall, Bath on 22/9/15; and • Batheaston on 29/9/15. <p>The recorded attendance at these exhibitions was 439 people.</p> <p>The consultation provided a sound platform to raise the profile of the project, distribute information and receive comments/suggestions. Residents will have the</p>

	<p>opportunity to take part in the more formal consultation process when a planning application for the development has been submitted.</p> <p>In addition to the period of consultation there has also been:</p> <ul style="list-style-type: none"> • ongoing correspondence between Members, officers and Bathampton Parish Council, the Bathampton Meadows Alliance, the Bath Alliance for Transport and the Public Realm, and the Bath Transport Commission; • a scrutiny day held on 22/3/16; • Local Development Framework (LDF) Steering Group Task and Finish Exercise (meetings were held on 7/12/15, 18/1/16, 9/2/16, 22/2/16 and 21/3/16); • consultation through the Joint Transport Study (12 week consultation period between 9/11/15 and 29/1/16); • consultation on the draft Placemaking Plan (7 weeks between 16/12/15 and 3/2/16) and the opportunity to present evidence at the Examination in Public held between 13/9/16 and 30/9/16; • consultation on the Placemaking Plan Modifications (6 weeks between 5/1/17 and 14/2/17); • consultation on the Bath Transport Strategy (30/6/14 to 25/7/14); • full responses to questions raised, set out in the background information (Q&A) document; and • the opportunity for members of the public to attend Cabinet meetings and make representations in person. <p>No evidence is provided regarding the claim that the results of the consultation are misrepresented in the report.</p>
<p>3. The consultation materials covered only 3 sites (A, B and F); residents have not been given the opportunity to comment on other sites which have been considered by the Local Development Framework steering group and by Cabinet as part of the pre-planning advice.</p>	<p>Sites A,B and F were three viable sites emerging from the Halcrow report (entitled Site Options: High Level Review, May 2013) which were consequently consulted upon. As a result of views expressed by both Councillors and the public it was recommended at the Council meeting on 12th November 2015 to investigate further site options and integrated transport solutions. The outcomes associated with this additional analysis undertaken by the LDF Steering Group and CTE scrutiny are detailed within the text of the Cabinet report paragraphs 4.23 to 4.30</p> <p>The selection of a preferred site for the East of Bath P&R has undergone a comprehensive 3 stage process:</p> <ol style="list-style-type: none"> 1) In May 2013, Halcrow issue a report that identified and assessed 8 potential sites. 2) In July 2015, Cabinet agreed to consult on 3 sites (A, B & F) that were considered to be viable options.

	<p>3) In November 2015, Council asked the LDF steering group and Communities, Transport and Environment Policy Development (CTEPD) & Scrutiny Panel to review the options for a P&R to the east of Bath. The resolution did not require wider public consultation in relation to the long list of sites being considered by the LDF steering group. However, ward councillors were invited to the LDF steering group and their input was welcomed. The meetings considered a review of possible sites for the P&R, including a number of additional sites suggested by both Members and the Community and how they might work in combination, and a shortlist of 21 sites was reviewed in line with the Council resolution. It is reasonable to accept the judgement of the cross party LDF steering group in relation to identifying a shortlist of sites to go forward to the Council's pre application planning process.</p>
<p>4. The conclusions of the PDS Scrutiny Inquiry, requested by full Council, were given insufficient weight in the Cabinet's decision-making.</p>	<p>The conclusions of the CTEPD & Scrutiny Inquiry have been given significant weight and the conclusions addressed within paragraph 4.29 of the report. It addresses each recommendation in turn and the associated response. All recommendations have been accepted although one, linked to work place charging, is to be considered on a wider West of England level.</p> <p>Cabinet Members are able to decide, individually and collectively, what weight they apportion to the evidence put before them.</p>
<p>5. Too much reliance has been placed on recommendations by the Local Development Framework [LDF] steering group. This body did not produce a formal report or written minutes; no votes were taken and individual Councillors' opinions were reported back on an informal and ad hoc basis. The LDF steering group has no formal role within the Council's decision-making structure and was not created for this purpose.</p>	<p>It was accepted as an approved recommendation from the Council meeting on 12/11/15 to use the cross party LDF Steering Group to look at specific issues. At the subsequent meeting of the LDF Steering Group, on 7/12/15, it was agreed to extend membership of the group to ward councillors (where a site was being considered within their ward boundary) so that they could represent local views. The Terms of Reference were amended to reflect this change.</p> <p>The Terms of Reference for the LDF steering group include:</p> <p>'2 The purpose of the Group is to advise the Council's Planning Committee, Cabinet and Full Council on the preparation of the Local Development Framework and its constituent documents. The Group will also give officers a steer on emerging policy proposals.'</p> <p>'3. The Group is not a decision making body, its recommendations will be reported back through the Cabinet and Council.'</p>

	<p>'5. A key role of the members on the Group is to act as a conduit, informing their groups of emerging policy and reporting views back to the LDF Steering group'</p> <p>'7. The Scope of the work considered by the Group will include : -</p> <p>(i) The assimilation and consideration of all background evidence and technical studies together with the various planning policy options required as background work to the preparation of the LDF.</p> <p>(ii) Scrutinising policy content and the detail of LDF documents</p> <p>(iii) Consideration of arrangements for consultation / engagement with local communities on LDF issues win accordance with the Council's Statement of Community Involvement.</p> <p>(iv) Receiving and discussing the studies commissioned by the Council as part of the evidence base.....'</p> <p>The full terms of reference and the Council resolution from 12th November 2015 are included as Appendix A. The role and the weight afforded to the work of the group is therefore appropriate.</p>
<p>6. Evidence of the costs, risks, environmental impact, need, and supposed benefits was incomplete, inaccurate in parts and inadequate for a decision of this importance and financial implication.</p>	<p>Initial analysis is that an East of Bath Park and Ride can be delivered within the budget identified. Now that a preferred site has been identified a detailed business case can now be produced. This business case will be subject to approval by the Section 151 officer.</p> <p>Environmental Impact has been assessed as part of an initial pre planning application appraisal process. A full EIA will be produced as part of the planning application process.</p> <p>As previously stated, need has been comprehensively identified within the main body of the report.</p> <p>A risk register has also been prepared.</p>
<p>7. Unclear advice was given by the Council's solicitor on the meaning and implications of s122 of the Local Government Act 1972. A commitment to supply that information at a later stage in writing means that Cabinet members approved the resolutions without understanding the relevance and meaning of the delegated authority they agreed in paragraph 4.</p>	<p>The Cabinet members understood the implications of s122 of the Local Government Act 1972, which was also explained in paragraph 8.2 of the main report.</p> <p>Furthermore, the Leader clarified that Cabinet was not considering a Compulsory Purchase Order (CPO) in relation to the proposed park and ride.</p> <p>The Cabinet resolution was under item 4 that the Strategic Director (Place) should have authority to implement the resolutions "including, as necessary, the appropriation of land under section 122 of the Local Government Act 1972."</p>

<p>8. Paragraph 3 (B) of the resolution refers to a “reasonable timescale”. No substantive definition was given for what would constitute “reasonable”, despite the request of a Cabinet member. Therefore this important aspect of the resolution was not adequately discussed or explained before the resolution was passed.</p>	<p>Paragraph 8.4 in the main report states that <i>‘it would be reasonable to allow a period of around 4 weeks to determine if this can be taken forward’</i> therefore a substantive definition is provided.</p>
<p>9. The report was:</p> <p>a. Misleading: for example, paragraph 8.1 states that the government planning Inspector has accepted the need for an East of Bath P&R at the recent Placemaking Plan Examination. The Inspector has now stated that "this is the Council's interpretation" only.</p> <p>b. Incomplete: for example, the B&NES World Heritage Site Setting SPD is not mentioned in the list of adopted Council policies and there no reference is made to the adopted UNESCO 2009 Mission Report, which stated that: “[w]ith regard to the protection of the property, the mission recommends that the State Party act on the reinforced protection of the surrounding landscape to prevent any future developments which could have adverse and cumulative impact on the Outstanding Universal Value of the property.”</p> <p>c. Inaccurate: for example, the map in Appendix 1 of the report shows sites B and F outside the red line described as the "boundary of the World Heritage Site Setting" when in fact the red line is the boundary of the World Heritage Site. Map 2 of the World Heritage Site Setting SPD shows the indicative extent of the setting;</p>	<p>a) Placemaking Plan Examination.</p> <ul style="list-style-type: none"> • At the PMP Examination hearing it was agreed by the inspector and Council witness that some wording revisions were required to Policy ST6 to ensure compliance with NPPF. The Inspector confirmed the revised wording and this is publicly available. • In accordance with the NPPF the Council is proposing to give Policy ST6 significant weight. • Cabinet has seen the Main Modifications as they relate to Policy ST6 and the officer comments relating to the process followed at and after the PMP Examination. The officer comments are included as Appendix B. • Bathampton Meadows Alliance can make representations on the Modifications to the Placemaking Plan. • Cllr Clarke made Cabinet aware of these points at the beginning of the Special Cabinet meeting. • Officers are aware that correspondence has taken place between the Programme Officer and a local resident in relation to paragraph 8.1 of the report. It would seem that there is a misunderstanding in that the Programme officer made reference to the Council’s interpretation of events rather than the Inspector. • The Inspector has confirmed that she is unable to intervene in matters connected with the site allocation plan as these are matters for the Council. <p>b) Completeness</p> <ul style="list-style-type: none"> • The Report sets out the relevant planning policy context for Park and Ride sites, the main planning constraints and the context. • A preferred site will need to be considered through remaining procedures which will include the planning process where full consideration of planning policy and material considerations will take place. • The level of advice is appropriate to the purpose and function of this report. • Cllr Clarke made Cabinet aware of these points at the

<p>site B and site F are both well within it.</p>	<p>beginning of the Special Cabinet meeting.</p> <p>The 2009 UNESCO Mission report is not the appropriate report to refer to as it is not a key policy document. The key policy documents are the NPPF and B&NES Development Plan Documents. This is not a report to the planning committee and the level of advice is appropriate to the purpose and function of this report. As part of the work associated with the greater analysis (requested following the May Cabinet decision) of sites was the potential impact on the WHS which was considered by senior Conservation Officers within the Council. The Cabinet member at the last Cabinet meeting referred to the letter received from Historic England dated 24th January 2017, and the need to ensure that the WHS is recognised as a heritage asset of the highest significance, which is derived from its setting as well as its physical presence and that the Outstanding Universal Value of the WHS will be protected as stated under the 1972 Convention. Consequently, robust and convincing justification is required for any harm to the WHS. Now that a preferred site has been identified a Heritage Impact Assessment will be prepared as part of the planning process.</p> <p>c) Accuracy</p> <p>It is accepted that there is an inaccuracy in relation to the map, but the report clearly states that the heritage aspects including the setting has been addressed.</p> <p>The Legend to the plan at Appendix 1 refers to the “boundary of the world heritage site setting” in error. A plan showing the WHS setting is attached at Appendix C and a hyperlink is provided Here.</p> <p>The Cabinet report at Paragraph 7.2 makes it clear “The Planning service considered the impact of B and F on the setting of the WHS, neither site is within the WHS itself, and gave a preference to site F, due to the potential mitigation that can be provided in this location”. The pre application planning advice included assessment of the WHS and its setting by a conservation officer and landscape architect.</p> <p>Cllr Clarke provided the following update to at the beginning of the Special Cabinet meeting:</p> <p>“A letter has been received from Historic England dated 24th January making representations regarding the World Heritage Site. I have considered these and taken advice from officers. I can advise Cabinet as follows:- Cabinet will be aware that members are not dealing with an application for planning permission and all the proper</p>
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statutory procedures for any such determination will be gone through.

Cabinet should note that:

- the World Heritage Site is a heritage asset of the highest significance and that its significance derives from its setting as well as its physical presence;
- as the UK government is a State Party to the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage there is an expectation that the Outstanding Universal Values of the World Heritage Site will be protected; and
- the setting of the World Heritage Site is protected by local and national policies. Robust and convincing justification is required for any harm to the World Heritage Site.

Cabinet will recall receiving reports from the LDF Steering Group and the CTE Scrutiny Panel in May 2016 and the World Heritage Site and its Setting were integral to their assessment of the various options.

Furthermore, following the May 2016 Cabinet, officers were asked to work up detailed drawings of the options for sites and to instruct planning agents and landscape architects to develop pre-application submissions on a number of options. This submission included reference to World Heritage Site and relevant guidance. These options were considered by the Council's Development Team, which included a Senior Conservation Officer and appropriate heritage advice was provided.

Historic England have suggested that a Heritage Impact Assessment be prepared to inform this stage of the process however officers consider that it would be more appropriate at the planning stage. However, heritage advice was obtained and is included in the report.

To clarify, a designated Area of Outstanding Natural Beauty (AONB) is of no greater importance in planning terms than a World Heritage Site. The importance of the World Heritage Site and its setting is fully recognised in the recommendations made".

**Local Development Framework Steering Group
Park and Ride to the East of Bath**

12th November Council Resolution

1. The Council on 12th November 2015 resolved in relation to the East of Bath Park and Ride proposal:

'To ask that the cross-party Local Development Framework Steering Group review all the options for the location of an East of Bath Park & Ride prior to Cabinet selecting a preferred site early next year, giving due consideration to the following:

- *responses received to the East of Bath Park& Ride consultation;*
- *feasibility and deliverability of each site option;*
- *costs associated with each site option;*
- *transport benefits of each site option;*
- *visual impact of each site option.'*

2. The LDF meets as required to provide a steer to the development of Planning and Transport strategies, policies and proposals. The location of the Park and Ride site to the East of Bath falls within this remit as it presently forms a key component of the transport policy context.

3. In order to enable consideration of the issues listed above, the LDF Steering Group will be provided with :

- an understanding of the work undertaken to date;
- a breakdown of the public responses received during the consultation;
- an analysis of the anticipated transport and environmental consequences linked to the proposal;
- an assessment of deliverability
- approximate construction costs; and
- the potential visual impact.

4. This will include information (including site specific information where needed) on the;

- engineering work required and overall feasibility;
- approximate operating costs as well as construction costs;

- transport benefits potential.
 - business case potential;
 - Site attributes;
 - Planning and environmental considerations.
 - potential mitigation options.
5. Additional work required as part of this process will be funded through the present budget allocation.
 6. Ward Councillors that have any of the three sites identified through the consultation process within their ward boundaries will be invited to LDF meetings. If a situation arises where a vote is required, this will be limited to the original LDF members.
 7. It is proposed that the findings of the LDF Group are presented to the Community, Transport and Environment Scrutiny Panel on 14th March, with the recommendations of both being presented to Cabinet outlining the findings and the preferred site option.
 8. Meetings of the LDF Steering Group have been arranged for December, then in January, February and March as needed. The December meeting will be used to set the parameters of the study and to determine how the Steering Group would like the information presented. It is anticipated that the remaining meetings will be two to three hours duration to ensure that sufficient time is allocated to the task.
 9. It is proposed that the outcomes of the meetings are presented in a report to Cabinet members and the CTE Scrutiny Panel for consideration.
 10. In light of the terms of reference of the LDF Steering Group (attached), the primary role of the LDF for this round of meetings will be to
 - a) consider the evidence and technical studies relating to the site options
 - b) consider the options in light of the evidence.
 - c) act as a conduit, informing their groups of emerging policy and reporting views back to the LDF Steering Group
 - d) advise the Cabinet of its findings and recommendations

LOCAL DEVELOPMENT FRAMEWORK STEERING GROUP

TERMS OF REFERENCE

updated 31st July 2015

1. Membership of the Local Development Framework Members Steering Group is comprised of Council Members with a proportionate representation of all groups.
 - (i) (Chair) Portfolio Cabinet Member
 - (ii) The Chair or Vice Chair of Development Control Committee
 - (iii) Other Members including Members of the Development Management Committee

2. The purpose of the Group is to advise the Council's Planning Committee, Cabinet and Full Council on the preparation of the Local Development Framework and its constituent documents. The Group will also give officers a steer on emerging policy proposals.

3. The Group is not a decision making body, its recommendations will be reported back through the Cabinet and Council.

4. The Group will meet on a monthly basis, or as required. There are times when the Group will need to meet more or less frequently.

5. A key role of the members on the Group is to act as a conduit, informing their groups of emerging policy and reporting views back to the LDF Steering Group

6. A number of the issues that will be discussed by the Group will be of a confidential nature.

7. The Scope of the work considered by the Group will include : -
 - (i) The assimilation and consideration of all background evidence and technical studies together with the various planning policy options required as background work to the preparation of the LDF.

 - (ii) Scrutinising policy content and the detail of LDF documents

- (iii) Consideration of arrangements for consultation / engagement with local communities on LDF issues in accordance with the Council's Statement of Community Involvement.
- (iv) Receiving and discussing the studies commissioned by the Council as part of the evidence base.
- (v) The content of all subsequent LDDs prepared including the broad locational development requirements, the specific designation of land for development and protection and the wording of policies / proposals
- (vi) Consideration of the LDF Authority Monitoring Report
- (vii) Advice on the acceptability of the range of options the Council has to put forward in all LDF documents.
- (vii) Through liaison with stakeholders assisting in putting forward sites that may need to be allocated in the Site Specific Proposals document
- (ix) Provide advice on the review of the scope and content of Local Development Scheme reviews.
- (x) Provide a steer on Local Development Document preparation procedures when needed.

The current proportionate representation for the LDF Steering Group is;

- 5 Conservative
- 2 Lib Dem
- 1 Labour
- 1 Independent

Appendix B

Policy ST6 Placemaking Plan: Reasons leading to proposed Main Modifications

“The reasons for the modification to Policy ST6 and the process of preparing it are set out below in response to the assertions set out in the BMA representations (4th paragraph under ‘Impact of New Information and Site Analysis on the Placemaking Plan’ heading)

- a. At the Examination hearing the purpose and meaning of Policy ST6 was clear. The Inspector raised concerns that the policy wording was ineffective in implementing/articulating its intended purpose and process of determining an application. It was therefore agreed verbally at the hearings between the Council witness and the Inspector that some wording revisions were necessary for effectiveness of the policy and that these revisions need to closely reflect and ensure compliance with national policy set out in the NPPF
- b. Subsequent to the Examination hearing the Council proposed changes to Policy ST6 and its supporting text to address the issues raised and agreed verbally with the Inspector (included in the Council’s Schedule of Rolling Changes)
- c. Following the issuing of her Interim Findings (document ID/17) relating to overarching issues (but not including the East P&R) the Inspector contacted the Council (initially by email) to confirm that the Council should consult on Main Modifications to the Plan and what those modifications should be. The Inspector reviewed the Council’s Schedule of Rolling Changes and confirmed that the wording proposed by the Council is appropriate and that she is not proposing further modifications to the Plan necessary for soundness. The email (or informal comment as referred to in para 4.15 of the Cabinet report) has now with the agreement of the Inspector been published as an Inspector’s note (ref ID/18).
- d. Given the process above the Council has made the reasonable interpretation that the Inspector considers the proposed modification to the wording of Policy ST6 address any issues of unsoundness in the Policy as submitted, including its consistency with the NPPF.

In accordance with para 216 of the NPPF the Council is proposing, in the context of the process outlined above, to give Policy ST6 as proposed to be modified significant weight.”

Appendix C

