



## Cabinet

**Tuesday, 5 February 2019 at 4.30 pm**

**Council Chamber, King George V House, King George V Road, Amersham**

### **S U P P L E M E N T A R Y   A G E N D A   1**

Item

3      Minutes (*Pages 3 - 12*)

To approve the minutes of the Extraordinary Cabinet held on 9 January 2019 and 24 January 2019.

**Note:** All reports will be updated orally at the meeting if appropriate and may be supplemented by additional reports at the Chairman's discretion.

**Membership: Cabinet**

Councillors: I Darby (Leader)  
M Stannard (Deputy Leader)  
P Martin  
M Smith  
E Walsh  
F Wilson

**Date of next meeting – Tuesday, 19 March 2019**

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The supplementary report detailed the effect of the proposed Modification Regulations and noted the two options the Secretary of State had under the 2016 Act. He must either have the consent of all Councils under subsection 4.

*(4) Regulations under this section may be made only with the consent of the local authorities to whom the regulations apply (subject to subsection (5))*

Or he could make regulations under subsection 5 in relation to structural or boundary provision which would require the consent of only one Council.

*(5) Regulations under this section, so far as including structural or boundary provision in relation to a non-unitary district council area, may be made if at least one relevant local authority consents.*

Cabinet was advised that the latter provision was time limited and would expire at the end of March 2019. This meant that if for any reason there was insufficient Parliamentary time to make the Order then it would not be possible to do so without the consent of all five Councils. Therefore Subsection (4) required the consent of all local authorities, whereas subsection (5) required the consent of just one. Subsection (5) expired at the end of March 2019 whilst Subsection (4) did not expire. Further detailed information could be seen in the supplementary report.

In addition to the decisions noted, Cabinet was advised that the draft order allowed for substitute Members to be nominated for each permanent member of the Shadow Executive. It was further understood that the Shadow Executive would be responsible for the appointment of Interim Officers after consultation with the Shadow Council; however the power to make the final decision was held by the Executive.

The Leader invited Cabinet to comment on the Secretary of State's proposals. The key points raised by Cabinet were as below:

- The proposals were not in the best interests of the residents and businesses of the Chiltern District. Following the Modernising Local Government announcement on 1 November 2018, the Council had agreed to work in partnership with the other Buckinghamshire Councils on the agreement that all would be treated fairly and equally, which the draft Order did not reflect.

- The predominance of County Council Members over District Council Members (9:8) on the Shadow Executive along with the Leader being specified, rather than elected was described as disproportionate and undemocratic.
- Cabinet agreed that the Shadow Authority must be able to act democratically and select its own Leader.
- Concern was raised that the Shadow Executive was only required to consult the Shadow Authority on the appointment of Interim Officers, which would allow for the Executive to make the final decision regardless of the Shadow Authority's recommendations. It was said that this could lead to the current County Council model being reconstructed and the initial County Council unitary business case being implemented which would not result in the establishment of an entirely new Unitary District Council as was the Secretary of State's intention.
- There were concerns that thousands of residents had made representations that they were not in support of the single unitary business case submitted by the County Council.
- There was a concern that District Council reserves would financially support the Unitary Authority for a short period but ultimately the Unitary Authority would find itself in financial difficulties within a relatively short period.
- Cabinet questioned how this important decision could be made with limited information provided from the Secretary of State. It was queried how the Government believed it was reasonable to make this substantial change without a referendum when the majority of residents did not support this change.
- A concern was raised that following the period of time it had taken the Secretary of State to make his decision on Modernising Local Government in Buckinghamshire, it was unacceptable to place the Council under duress by giving such a short deadline to make a decision on the Regulations and draft Order.
- Councillor F Wilson spoke of his experience in assessing business cases and provided his professional opinion that the County Council's business case was not viable and had little chance of achieving its goals and the estimated savings as noted in the business case. He believed that the new authority would operate at a loss and expressed concern that the draft Order could lead to this business case being implemented.

- The Council had expertise in mergers and ran an entirely shared service with South Bucks District Council, a process that had been carried out well and which staff had reacted positively to. The waste service was further shared with Wycombe District Council. As a result the input of District Council Members and Officers would be invaluable to the process of establishing a new Authority.
- The current Local Area Forum arrangements the County Council arranged were said to be of little benefit to residents, did not promote local Government and the 19 hubs proposed would not be good use of taxpayers' money.

At the invitation of the Leader contributions were welcomed from non-Cabinet Members in attendance. Comments included:

- The proposals were undemocratic; all Members of the Shadow Authority should elect a Leader. The Leader of the Shadow Authority needed the support of the wider membership of the Council to make crucial decisions. Decisions made by the Shadow Executive would be hard to change regardless of the Leader elected in 2020.
- The make-up of the Shadow Executive would give the County Council representatives the right to force through plans and potentially form a Council similar to that of the existing County Council structure. Two Council Members from each of the Districts on a Shadow Executive of 17 was unacceptable when there would be 9 County Council Members, including the Leader.
- District Councillors would be disenfranchised by the proposals in the draft Order.
- The majority of residents were against the business case for a single unitary authority. Concern was raised that in addition to residents, it appeared that Councillors, Union Representatives and Staff views had not been accurately reflected.
- Following the MLG announcement in November 2018, the Council had been determined to work in partnership with the other Councils in Buckinghamshire to make the single unitary authority work on the basis that all would have a fair and equal say. These proposals were not seen as 'fair and 'equal'.
- Unacceptable deadlines had been set, a decision as important as this which impacted so many residents should not be restricted to tight timescales.

- Lack of detail in the orders would not allow Members to make an informed decision.
- Concern was raised around the County Council's management of finances and was a similar Council structure to be implemented there could be serious financial implications which would affect all residents in Buckinghamshire. The figures in the single unitary case were deemed unattainable.
- Struggling County Council services, such as Children's Services were highlighted and concern raised around the potential outcomes should a predominantly County Council led Shadow Executive make decisions which involved the authority's inherited reserves from the Districts. There was additional concern that the County Council had limited expertise in Planning and Waste Collection.
- The local MP's involvement was questioned and Members were advised that the MP for Chesham and Amersham was fully informed, wished to look after the best interests of residents and had held conversations with the Secretary of State.
- The District Council had reserves and should use them if they have to pursue legal advice, in order to protect its residents' best interests and prevent these proposals going through.
- Councillor A Bacon spoke in support of the proposals commenting that disagreements between the District Councils and County Council had been longstanding and the single Unitary Authority was the best outcome for residents of Buckinghamshire. Councillor Bacon did not believe that public money should be spent to challenge specific details of the draft Order. Further, he added that the Shadow Authority would be in existence for a maximum period of a year and the Leader and make-up of the Executive would likely change once the first elections to the new Authority had taken place. He believed that fewer than 147 Councillors would have been more appropriate, however welcomed the Boundary Commission review that would commence during Members first term of office.

All Members were thanked for their input and Cabinet was in agreement that it would be neglecting the Council's responsibility to residents were it to consent to the Modification Regulations and allow the proposals in the draft Order to pass unchallenged. In addition, there was unanimous agreement that the Council seek legal advice on the draft Structural Changes Order, as necessary.

**RESOLVED:**

- 1. Cabinet notes the current position in respect of the proposals for creation of a new single tier Unitary District Council in Buckinghamshire.**
- 2. Cabinet do not consider the Structural Changes Order as currently drafted is in the best interests of the residents and businesses of Chiltern District and therefore do not consent to the Modification Regulations under section 15 of the Cities and Local Government Devolution Act 2016.**
- 3. The Chief Executive in consultation with the Leader be authorised to finalise the Council's formal response to the Ministry of Housing, Communities and Local Government.**
- 4. The Council takes legal advice on the draft Structural Changes Order and the Chief Executive in consultation with the Leader and Head of Legal & Democratic Services be authorised to deal with any consequential documents or correspondence arising from that advice.**

**The meeting ended at 5.52 pm**



## **CHILTERN DISTRICT COUNCIL**

### **MINUTES of the CABINET held on 24 JANUARY 2019**

**PRESENT** Councillors I Darby - Leader  
M Stannard - Deputy Leader  
P Martin  
M Smith  
E Walsh  
F Wilson

**ALSO IN ATTENDANCE:** Councillors D Bray, C Ford, G Harris, P Jones, M Harker and D Phillips

#### **162 CURRENT ISSUES**

There were no current issues.

#### **163 DECLARATIONS OF INTEREST**

Councillors I Darby and P Martin declared a personal interest under the Code being members of Buckinghamshire County Council.

#### **164 IMPLEMENTATION OF A NEW UNITARY DISTRICT COUNCIL**

Due to the requirement for any legal proceedings to be issued as a matter of urgency because the Regulations in question had already been laid in Parliament, an urgent decision was required by Cabinet to decide if the Council should institute legal proceedings. As required by the Council's Budget and Policy Framework Procedure Rules and Overview and Scrutiny Procedure Rules the Chairman of the Resources Overview Committee agreed that the decision to be taken by Cabinet was urgent and it was not practical to convene a quorate meeting of full Council, or for call in to apply, and it was impractical to provide 5 clear days' notice in advance of the Cabinet decision and the required 28 day notice of the decision, as required under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

The report provided an update on the proposed creation of a new Unitary District Council, following Cabinet's decision on 9 January 2019 not to consent to the Secretary of State's proposed Modification Regulations under section 15 of the Cities and Local Government Devolution Act 2016 and to seek legal advice. A letter confirming the Council did not consent to the making of the Modification Regulations was sent to the Secretary of State on 10 January. It was noted that all four District Councils had decided not to consent, and the County Council had agreed conditional consent.

Legal advice on the Structural Changes Order had been obtained from leading counsel jointly with Wycombe District Council. In view of counsel's advice a letter was sent to the Secretary of State on 18 January as a preliminary step before legal proceedings. The letter expressed concerns about the legality of the decision to lay the Modification Regulations in Parliament based on the conditional consent given by the County Council and without also laying the draft Structural Changes Order, as well as concerns about the recent changes to the proposed governance arrangement for the shadow authority and the lack of reasons for making these changes. As the Regulations had already been laid in Parliament and the Secretary of State intended to make them before 31 March 2019, any legal proceedings, associated documents and legal steps would need to be issued/undertaken with the utmost urgency.

Cabinet were therefore asked to consider whether it was expedient for the promotion or protection of the interests of the inhabitants of Chiltern District to institute legal proceedings for judicial review of the Secretary of State's decisions in respect of the Modification Regulations and the Structural Changes Order, either alone or jointly with other District Councils which could be undertaken under section 222 of the Local Government Act 1972.

The Cabinet resolved that under section 100 (A) (4) of the Local Government Act 1972 (as amended) the public be excluded from the meeting to enable Members to receive legal advice on the potential grounds for instituting proceedings (Paragraph 5) as defined in Part 1 of Schedule 12A of the Act.

After receiving legal advice from the Head of Legal and Democratic Services in private session, the Cabinet expressed thanks to the Head of Legal and Democratic Services for the comprehensive report.

The Cabinet, after acknowledging that the draft Structural Changes Order had yet to be laid in Parliament, and was therefore subject to change, expressed

disappointment with the proposals in the draft Order relating to the Shadow Council's constitutional arrangements which were considered to be unbalanced and undemocratic. The proposed constitutional arrangements lacked checks and balances and handed too much power to the Shadow Executive, at the expense of the Shadow Council, thereby depriving all Members of a say on important decisions. There had also been procedural flaws in how the Secretary of State had dealt with the Modification Regulations and the Order. It was highlighted that the cost of legal proceedings was small in comparison to the cost of making changes at a later date.

Cabinet supported the implementation of a new Unitary District Council that worked for residents, but felt it was left with no option but to instigate legal proceedings to protect the interests of the inhabitants of the District. A comparison was made with HS2 where the Council had demonstrated it was willing to challenge decisions that were not in residents' interests, and as a result had helped to bring about key mitigation measures in the area.

At the invitation of the Leader a number of non-Cabinet Members then spoke, and during which the following key points were made:

Councillor P Jones felt legal proceedings should not be instigated and in doing so referred to the costs involved; the fact that the new Unitary District Council would comprise of 147 Councillors, as requested by the Districts, and that the Shadow Council would comprise of all 202 Members from the existing Councils. Councillor P Jones also felt that public perception placed more importance upon political balance rather than the balanced representation between the County and Districts. It was suggested that the latter aim could equally be achieved by securing District Member appointments on key Committees.

A number of Members then spoke in favour of instigating legal proceedings. There were concerns regarding the decisions made by the Secretary of State relating to the constitutional arrangements of the Shadow Council. There was support from Members for the creation of a new Unitary District Council, but those Members were also concerned that the constitutional arrangements of the Shadow Council meant that this created dominance in favour of the County Council. The importance of ensuring that the legal status of the new Unitary District Council was robust, and could command respect was also emphasised.

The District Councils had experience of delivering quality and accessible shared services. The importance of ensuring successful implementation was emphasised in order to avoid costly mistakes. It was therefore important to ensure that access and localness of services were maintained when decisions on implementation were made.

**RESOLVED that:**

- 1. the current position in respect of The Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 and The Buckinghamshire (Structural Changes) Order 2019 be noted.**
- 2. the Council institutes proceedings for judicial review of decisions taken by the Secretary of State for Housing, Communities and Local Government in respect of the Regulations and Order referred to in 1 above, under section 222 of the Local Government Act 1972.**
- 3. the costs of any legal proceedings should be met from the General reserve in accordance with urgency provisions under the Budget and Policy Framework Procedure Rules.**
- 4. the Head of Legal and Democratic Services in consultation with Leader and Chief Executive be authorised to agree any necessary legal documentation required in the course of legal proceedings and to deal with any settlement, compromise or withdrawal of proceedings.**

**The meeting ended at 5.40 pm**