

CABINET (SBDC)

Meeting - 25 January 2019

Present: N Naylor, J Read, B Gibbs, P Hogan, D Smith and L Sullivan

185. DECLARATIONS OF INTEREST

Councillors Gibbs and Sullivan declared a personal interest under the Code as Members of Buckinghamshire County Council.

186. 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 have already been laid in Parliament, an urgent decision was required by Cabinet to decide if the Council should participate in legal proceedings. As required by the Budget and Policy Framework Procedure Rules the Chairman of the Overview and Scrutiny 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.

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. 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 2019. 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 by Chiltern and Wycombe District Council. In view of counsel's advice a letter was sent to the Secretary of State on 18 January 2019 by these two Councils as a preliminary step before legal proceedings and the Council had been sent a copy as an interested party. The letter expressed concern 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.

It was noted that the sunset clause would take effect from the end of March if these Orders had not passed through the Parliamentary process. A sunset provision

or clause was a measure within a statute, regulation or other law that provided that the law should cease to have effect after a specific date.

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

There would be costs to participating in any legal proceedings and the recommendation was that this should be met from the General Reserve in accordance with the urgency provisions under the Budget and Policy Framework Procedure Rules. Members noted that if it was found that there were valid objections following the legal proceedings then the costs would not fall upon the Council.

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.

Portfolio Holders then commented on the report as follows:-

- The Modification Regulations should be laid with the Structural Changes Order as a package of legislation and this had not been done. Without the Structural Changes Order Parliament could not adequately scrutinise the Modification Regulations and these Regulations required scrutiny with the full understanding of the content of the reorganisation for the local government area.
- Within the content of the Structural Changes Order the conditions for adequate democratic scrutiny and accountability were absent as the shadow executive was dominated by the County Council and the shadow authority was dominated by the shadow executive. Therefore the shadow authority arrangements lacked sound and proper administration to the detriment of governance in the new Buckinghamshire Council area.
- There was support from Members for the creation of a new Unitary District Council. However, it was crucial during a local government reorganisation from a two-tier authority to a single-tier authority that each of the preceding councils had a fair say and influence over transitional arrangements in order to protect the interests of local residents.

- Reference was made to the shared service and the joint working between the two Councils where involvement led to best practice. The process should unite Buckinghamshire under a single authority and should not be undemocratic. The five councils working together would be able to build an excellent new authority built on partnership.

Cabinet concluded that there were not many democratic structures where Members were unable to elect or remove their own leader, not be able to provide any critical opposition or to have available any meaningful safeguard; therefore there were concerns that the Shadow Authority would be powerless. Successful implementation of the new Council relied on good partnership working so that local residents could be democratically represented in the building and structure of its services. Accordingly Cabinet were satisfied that it was expedient to promote and protect the interests of the inhabitants of South Bucks for the Council to participate in legal proceedings.

1.

RESOLVED that:

1. Cabinet note 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
2. the Council participates in 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 9.51 am

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