

SCRUTINY COMMISSION

MINUTES OF THE MEETING HELD ON THURSDAY, 18 JANUARY 2024

Councillors Present: Carlyne Culver (Chairman), Antony Amirtharaj, Paul Dick, Ross Mackinnon, Justin Pemberton, Christopher Read, Jeremy Cottam (Substitute) (In place of Geoff Mayes), Billy Drummond (Substitute) (In place of Erik Pattenden), and Howard Woollaston (Substitute) (In place of Dominic Boeck)

Councillors Attending Remotely: Councillor Richard Somner and Councillor Joanne Stewart

Also Present: Councillor Denise Gaines (Executive Portfolio Holder: Highways, Housing and Sustainable Travel), Councillor David Marsh, Nigel Lynn (Chief Executive), Jon Winstanley (Service Director (Environment)), Neil Stacey (Network Manager (Highways)), Beth Varcoe (Solicitor), Nicola Thomas (Service Lead - Legal & Democratic Services), Gordon Oliver (Principal Policy Officer - Scrutiny and Democratic Services) and Thomas Radbourne (Apprentice Democratic Services Officer)

Apologies for inability to attend the meeting: Councillor Dominic Boeck, Councillor Geoff Mayes, Councillor Erik Pattenden and Councillor Lee Dillon

PART I

45. Declarations of Interest

There were no declarations of interest received.

46. Items called-in following the meeting of the Executive on 14 December 2023

The Commission considered the call-in of the Executive Decision (EX4416) on 14 December 2023 regarding Newbury Town Centre Pedestrianisation Extension Trial (Agenda Item 3).

Councillor Denise Gaines (Executive Portfolio Holder for Highways, Housing and Sustainable Travel) presented the background to the proposed pedestrianisation extension trial and the reasons for the decision. Key points from the presentation were as follows:

- The Executive wished to implement an experimental traffic regulation order (ETRO) instead of a permanent traffic regulation order (TRO) to ensure that the final decision was based on the actual impact of the scheme rather than perceptions of what the impacts might be.
- Councillor Gaines was confident that:
 - due regard had been given to duties under S149 of the Equality Act 2010 (the Act);
 - there had been no breach of Council duties defined in the Act;
 - the Highways Department's Equalities Impact Assessment (EIA) was robust enough to deal with the requirements of ETROs, but it was acknowledged that further information could have been provided to evidence their reasoning and give greater confidence in the assessment;

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- it was considered that another EIA was not required;
- a consultation process was not required at this stage, but a 6 month consultation would take place from the day the ETRO came into effect.
- The Council had a duty to consider how its policies and decisions affected people with characteristics protected by the Act and the purpose of the Public Sector Equalities Duty (PSED) was to ensure that the Council undertook its public functions while consistently considering how it could promote equality. The Council had to keep reviewing how it promoted equality.
- The Council had to have due regard to advance equality of opportunity between persons who shared protected characteristics and others.
- Duties under the Act did not require the Council to eliminate every negative impact – the requirement was for the Council to have due regard to removing / reducing negative impacts. ‘Due regard’ varied according to circumstances, including the period that the scheme would be in place, and the nature / scale of consequences. The level of assessment for ‘due regard’ was likely to be less demanding than for a permanent scheme, especially where the scheme was experimental and included a more robust assessment of equality impacts later in the process. A consultation with all stakeholders was planned as part of the ETRO.
- In preparing the report and the EIA, Highways had given due regard to the Council’s duties under the Act, with consideration given to who may be affected by the ETRO, including those with protected characteristics.

Councillor Ross Mackinnon presented the reasons why the decision had been called in and the alternative course of action proposed. Key points from the presentation were as follows:

- It was suggested that the Council had breached the PSED. Attention was drawn to Section 2 of the EIA, which asked about: the groups that might be affected by the decision, the nature of those impacts, and the information used to determine those impacts. The EIA indicated that there would be a potential impact on disabled people due to restricted access for parking between 5pm -11pm. The EIA indicated that no survey had been undertaken to understand the extent of the potential impact, but it stated that the ETRO would provide an opportunity for consultation.
- Section 3 of the EIA indicated that there were no aspects of the decision that could contribute to inequality. This answer was inconsistent with the answer provided in Section 2 of the EIA, which acknowledged the potential impact on disabled people.
- The EIA was flawed because there had been no pre-consultation to understand the effects of the scheme on disabled residents’ lives.
- It was acknowledged that the scheme was experimental, but it would be in place for 6 months before consultation feedback was taken into account. This was considered unacceptable.
- It was suggested that the EIA was flawed and should be corrected.
- The assertion that due regard had been given to the Council’s duties under the Act was an unsound conclusion.
- It would not be onerous or costly to consult with disabled residents before the scheme was implemented. There would be nothing to lose and everything to gain by doing so.

Councillor Gaines responded to the points raised as follows:

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- Although the ETRO would be in place for 6-18 months, the scheme could be removed earlier if it did not work as planned.
- If significant inequality was observed, then the ETRO allowed the trial to be stopped immediately. That would not be permitted if a TRO was used, where consultation was carried out prior to implementation.
- The aim of the ETRO was to avoid pre-conceived ideas about how the scheme might work.
- It was acknowledged that there was insufficient information in the Executive report to give confidence that the EIA had been carried out correctly.

Officers confirmed they were not aware of any residents living within the pedestrian zone whose access to their properties would be affected by the trial.

During the course of the debate, the following points were discussed:

- Pre-consultation with blue badge holders had not been carried out, but as part of the ETRO process, the Council would go out to stakeholders, to inform them of the scheme and to highlight any issues around access. There was just one blue badge holder known to be living within the pedestrian zone, but they had 24 hour access to their vehicle.
- It was noted that data protection legislation may preclude blue badge holders being contacted for other purposes.
- Members were reminded that the proposal was to extend rather than introduce a pedestrianisation scheme.
- In 2020, a temporary pedestrianisation scheme had been introduced to support social distancing and there had been no calls for the impact on disabled people to be assessed at that time.
- This was a second trial scheme, and any impacts could be assessed as part of the trial.
- It was suggested that the call-in was politically motivated and the decision should not have been called in.
- The TRO approach was likened to the Waterfall project management approach where all requirements were identified and consultation carried out at the start, with the expectation that this would provide all the required knowledge at the outset. However, this approach did not work (e.g., the Fujitsu Horizon IT system). The ETRO approach, was similar to the newer Agile methodology, which involved releasing a product early and using feedback to inform development. This allowed for products to fail early. In the same way, the ETRO could be stopped before 6 months. It would allow for an experience-led response from the public.
- The assertion that the call-in was politically motivated was refuted - the primary consideration of the Members who called-in the decision was residents' welfare.
- Members asked if it would be easy to stop the trial, with no need to apply for Secretary of State approval.
- It was suggested that the scheme would have had a significant impact if recent, major roadworks had still been in place.
- Members indicated that residents, businesses, bus and taxi operators would need to be clear about the implications of the restrictions.

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- The previous pedestrianisation extension trial during the Covid pandemic was considered irrelevant since circumstances had been different.
- When consultation had been carried out previously, responses had been evenly split between those supporting and opposing the scheme, which reinforced the need for pre-consultation.
- It was confirmed that the Council had the power to stop the trial or amend the order. The Secretary of State had only been involved to determine whether the scheme should be a TRO or ETRO.
- Reservations had been expressed prior to the pedestrianisation being introduced in 1999. However, there had been no objections once the scheme was in place.
- It was highlighted that there was convenient parking at Northbrook Multi-Storey Car Park, which also had the Shopmobility service to facilitate access for disabled visitors. As a result, it was rare to see blue badge holders parking in Northbrook Street.
- Members could not recall objections to the 2020 pedestrianisation trial. However, officers highlighted that there had been some representations from blue badge holders about the lack of access to shops before 10am.
- It was noted that a proposal for one-way traffic had been dismissed. This would have permitted al fresco dining in Market Place, and would have allowed disabled access / drop-off at either end of Market Place, as well as reducing congestion and facilitating business deliveries in Northbrook Street and Bartholomew Street. However, it was noted that this would cause issues for people with visual impairments since there were no kerbs and complete pedestrianisation was considered to be a better option.
- Members asked if the scheme was considered to be 'shared space'. Officers explained that while there was no difference in levels, pedestrians and vehicles did not mingle freely, and vehicle movements predominated. It was noted that with vehicle flows of >110 vehicles per hour, pedestrians did not feel comfortable mingling. Also, visually impaired people did not feel comfortable in trafficked areas where they could not detect the edge of the footway. Furthermore, older people felt intimidated in shared space.
- It was considered that the ETRO would give a genuine response rather than a hypothesis.
- It was highlighted that the call-in had been made on the basis of what had been said in the EIA. The EIA had indicated that there were no aspects of the decision, including how it would be delivered, that could contribute to inequality. Although it was conceded that it could contribute to inequality, there was no evidence to suggest that it would.
- Councillor Gaines confirmed that the answer given in Section 3 of the EIA was correct. This was challenged on the basis of the response given in Section 2. While it was conceded that the scheme could have an impact, the impact was unknown.
- While it was recognised that there was insufficient information provided about the EIA in the report to the Executive, assurance was provided that the assessment had been properly completed.
- It was suggested that pre-consultation could be carried out without causing a delay to the scheme.
- Members stated that EIAs should be appended to Executive reports, since they provided evidence that due regard had been made to the needs of people with

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protected characteristics. If the EIA was not appended, then the Executive should not have made the decision, particularly since the EIA appeared to be flawed.

- It was reiterated that due regard had been given to the Council's PSED and the Highways Department's EIA process had been sufficiently robust to deal with the requirements of an ETRO. However, it was recognised that more information could have been provided to evidence this. Information was not incorrect and had not been missed out deliberately. A further EIA was not required. Also, pre-consultation was not required, but a six month consultation would be carried out when the ETRO came into force.
- It was confirmed that the Highways EIA was not different to the one submitted in the report.
- It was suggested that any concerns about the EIA could have been resolved via off-line clarification rather than through a call-in, which would have avoided delay to the implementation of the scheme. It was suggested that the call-in was "political posturing".
- It was stressed that the trial would be supported by a consultation, and the Scrutiny Commission could review the data from the trial and the consultation responses and provide constructive feedback. It was suggested that the scheme could deliver positive benefits for disabled people.
- It was noted that while local schools had an excellent environment for disabled children, Newbury town centre was seen as a 'no-go area' by their families because they could not access the facilities and it was suggested that the proposed scheme would exacerbate the problem. Visitors would be affected as well as local residents. The lack of up-front consultation was challenged as being undemocratic and insensitive to the needs of disabled residents.
- Members noted that scientific hypotheses were based on experimentation, with the results being used to refine these hypotheses so they better modelled reality.
- It was highlighted that pre-consultation and a TRO would result in a delay to the implementation of the scheme, causing it to slip from May to December.
- It was noted that there was a broad spectrum of disability, so it was difficult to give 'yes' or 'no' answers about potential impacts, and pre-consultation would not provide the right answers. It would be better to get real-life feedback from May onwards when footfall would be highest.
- A question was asked about the circumstances under which the ETRO would be reviewed. It was confirmed that the consultation would start when the ETRO was implemented. If significant numbers of people expressed concerns, then the scheme could be stopped or amended. ETROs could last for up to 18 months.
- The Commission was assured that feedback mechanisms would be clear. Previous consultations had utilised QR codes, with information in the Residents' Bulletin, libraries, social media, etc. The Council would seek to reach as many people as possible.

Councillor David Marsh was permitted to address the Commission – key points from his address were as follows:

- He felt that the call-in was a "political smokescreen".

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- After years of promoting active travel, the government had performed a U-turn and were opposing traffic reduction measures to win votes from motorists. This view had been echoed by local election candidates.
- Experts and campaign groups advocated accessible, safe and attractive town centres.
- Disabled pedestrians made 30% fewer walking trips to town centres, and accessibility improvements were needed to address this.
- The call-in argument was technical and hinged on one response in the EIA.
- None of the above aims were incompatible with removing traffic from the town centre in the evening.
- The consultation should consider wider issues, not just where and when people were permitted to drive.
- The pedestrianisation extension trial had been proposed in the Newbury Town Centre Masterplan, adopted by the previous administration. The Masterplan had been the subject of two extensive consultations, one of which had attracted more than 4,000 responses. However, the pedestrianisation extension had not been implemented.
- Young people attending the Good Vibes Academy at 5pm were exposed to air pollution from queuing traffic.
- It was difficult for pedestrians to cross Mansion House Street after 5pm.
- As well as consulting disabled people, it was important to hear from other groups such as older people and people with asthma who were affected by traffic and emissions.
- Removing traffic from town centres had been shown to be good for business.
- The Rt Hon Grant Shapps MP had previously said that the UK had a “once in a lifetime opportunity to reduce reliance on the car”.
- Councillor Marsh urged the Executive to implement the scheme and not give in to those who wanted to keep Northbrook Street as a rat-run.
- Extending the pedestrianisation would be cleaner, safer, quieter, healthier and more pleasant for all, and would bring more people to the town.
- The scheme would be popular with residents and visitors and would be good for business.

In concluding the debate, Members made the following points:

- Councillor Marsh’s comments were considered to be political and were not related to the call-in which was focused on the adequacy of the EIA.
- It was suggested that Members should be pedantic about potential impacts identified in the EIA.
- Officers were challenged about the response given in Section 3 of the EIA, but it was confirmed that the question had been answered correctly, since there was no evidence that the scheme would contribute to inequality and the scheme would restrict access for all users of the town centre. This would be kept under review as part of the ETRO process.
- Officers were challenged that an absence of evidence was not proof that there would be no impact.

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- Members who called in the decision confirmed that they were happy with the ETRO approach, but asked that disabled residents be consulted first.
- It was noted that the proposed trial was for an extension of the existing pedestrianisation and traffic was already prohibited from the town centre between 10am and 5pm, and the current scheme had been in place since 2011. A full and robust consultation had been completed at the time. This contradicted the assertion that the impact of the new scheme was completely unknown.
- The EIA stated that there was no evidence of disabled people being dropped off / picked up within the pedestrianised area. It was suggested that this be taken at face value unless anyone had evidence to the contrary.
- Members highlighted that there were parallel streets that allowed disabled people to get close to shops / services in the town centre.
- It was noted that the response to the ETRO consultation could be positive, since it would create a nice space for people to enjoy in the evening.
- Again, the Executive Portfolio for Highways, Housing and Sustainable Travel was asked to actively consult with disabled residents prior to the ETRO coming into force or at the point at which the ETRO commenced.
- It was confirmed that consultation would start on the date that the ETRO commenced, that all relevant parties would be informed and that all possible communications channels would be used to get the message out. The consultation would run for the lifetime of the ETRO.

RESOLVED that the Executive Decision (EX4416) of 14 December 2023 should stand and be implemented with immediate effect.

(The meeting commenced at 6.01 pm and closed at 7.41 pm)

CHAIRMAN

Date of Signature