

KENT COUNTY COUNCIL

SCRUTINY COMMITTEE

MINUTES of a meeting of the Scrutiny Committee held in the Darent Room - Sessions House on Friday, 6 July 2018.

PRESENT: Mr P W A Lake (Chairman), Mr A M Ridgers (Vice-Chairman), Mr M A C Balfour, Mr R H Bird, Mr A Booth, Mr G Cooke, Mrs T Dean, MBE, Mr D Farrell, Mr R C Love, Mr J P McInroy, Dr L Sullivan and Mr J Wright

ALSO PRESENT: Mr M Whiting, Mrs M E Crabtree and Mr M E Whybrow

IN ATTENDANCE: Mr A Loosemore (Head of Highway Operations), Mr L Manser (Insurance Manager), Mr S Jones (Director of highways, Transportation and Waste) and Mr J Cook (Scrutiny Research Officer)

UNRESTRICTED ITEMS

23. Minutes of the meeting held on 17 April 2018

(Item A4)

RESOLVED that the minutes of the meeting held on 17 April 2018 were a correct record and that they be signed by the Chairman.

24. Minutes of the meeting held on 10 May 2018

(Item A5)

1. Responding to a question from a Member, Joel Cook advised the Committee that the Social Isolation Select Committee was due to hold its inaugural meeting later in July, at which the chairman would be elected and the terms of reference agreed. He explained that hearing sessions for the Select Committee would be undertaken from early September 2018.

RESOLVED that the minutes of the meeting held on 10 May 2018 were a correct record and that they be signed by the Chairman.

25. Proposed re-convening of the Kent Utilities Engagement Sub-Committee

(Item A6)

1. Members discussed the proposal, those with previous involvement in the Sub-Committee commenting that it was important to acknowledge that the attendance and contribution of the utility companies and regulators was entirely voluntary as KCC had no authority to formally scrutinise their activities. It was also noted that the previously adopted approach of constructive dialogue and engagement had been effective and beneficial in making progress without assigning blame for perceived failures or problems.
2. Members agreed that the Sub-Committee would be looking at issues that were important to residents and that the collaborative approach should be adopted,

with consideration to be given to long term energy implications in Kent. A Member also commented that the Sub-Committee should consider involving the motor industry, including manufacturers, in the discussions to allow consideration of the potential impact of electric cars in relation to energy demand.

3. It was noted that the proposed Membership of the Sub-Committee would be 7 Conservatives, 1 Liberal Democrat and 1 Labour, with Membership drawn from the whole council to be arranged by the relevant Groups. In addition, it was recognised that an invitation would be extended to the Independent Group for 1 Member to attend the meetings as a guest.

RESOLVED that the Kent Utilities Engagement Sub-Committee be re-convened as per the terms of reference and arrangements set out within the report.

26. Managing Highway Infrastructure in Kent *(Item C1)*

1. The Leader of the Opposition sought to clarify the meeting arrangements regarding the involvement of external witness. The Chairman confirmed his decision that the witness requested by the opposition groups would not be permitted to participate in the meeting.
2. Mr Whiting, Cabinet Member for Planning, Highways, Transport and Waste, introduced Simon Jones as the new Director of Highways, who was attending the meeting to observe the Scrutiny consideration.
3. Andrew Loosemore, Deputy Director of Highways, provided an overview of the Highways Maintenance process and policies as detailed in the report. He explained that the funding for highway maintenance came from the Department for Transport (DfT) and clarified that the grant was no longer given in its entirety as a matter of course as there were now additional processes all highway authorities had to undertake to qualify for the relevant funding as part of an incentivisation programme. KCC had been a Band 1 authority and had since worked up to a band 3 authority. This meant that a significant amount of additional work had been done just to avoid losing funding from the DfT. Mr Loosemore advised that this process had involved a risk to KCC of losing £12.9m in funding from DfT. He highlighted the good work of the Member Task and Finish Group in achieving the Band 3 status and securing continued receipt of the funds.
4. Mr Loosemore also explained that the Highway was the largest and most expensive asset, requiring considerable work on an annual basis; in excess of 7000 schemes annually. To maintain the highway effectively, KCC ensured that statutory inspections were carried out in line with the schedule detailed in the report and that where defects were identified (based on the industry norms which cover necessary intervention) appropriate action was taken within a time period based on the type, location and seriousness of the defect. Mr Loosemore advised that District Highways teams were involved in this process via responding to customer enquiries which covered a range of issues relating to the highways assets, not just 'potholes'. Responding to a question, Mr Loosemore advised that the estimated cost for returning the highway to a pristine standard over a long period of time would £600m.

5. Responding to questions, Mr Loosemore explained the process for prioritising defect reports and actions taken to address road safety concerns. This focused on clarifying that the specific details of any defect dictated the appropriate response and that while the age or life expectancy of the road could impact on how often defects occur, the crucial point was always the nature of the defect and what risk it posed. Mr Loosemore advised the Committee that KCC held records of all inspection frequencies across all roads in the network. He explained that the hierarchy of prioritisation meant that different roads were inspected on different frequencies based on their level of priority. Mr Loosemore reassured the Committee that the Highways Asset Management Contract had key performance indicators and requirements regarding repair timescales and that this was managed closely as part of the contract management system, with a current level of at least 95% compliance which was a good level.
6. A Member read a statement from a stakeholder group representing motorcyclists which highlighted the particular concerns of motorcyclists using the highway, recognising the heightened risks they experienced as road users compared with other drivers with specific reference to potholes and other road defects. A Member, supporting the statement, commented that the current and proposed guidance regarding highway maintenance required Highways Authorities to give consideration to the need to protect vulnerable road users. Responding to the comments and questions, Mr Whiting confirmed that KCC adhered to the existing guidance; giving consideration to all road users.
7. Responding to Member questions, Mr Loosemore explained that temporary repairs to the Highway were only made to make the road safe for use where there was an identified safety risk. Where this was not the case, long-term repairs were scheduled as appropriate. He acknowledged comments from Members regarding the impact of Heavy Goods Vehicles (HGVs), noting that they did cause more damage to the highway than other vehicles. He commented that whether HGV use and their impact should be reflected in financial contributions was an ongoing discussion. Responding to questions regarding utilities, Mr Loosemore explained that KCC had certain obligations in relation to highway management when utility works were required but advised that utility companies could manage more of the work. He advised that Kent Highways inspected 30% overall of the utility work, spread across three phases of any works.
8. Responding to questions, Mr Whiting agreed with Members that more preventative work was important and advised that he wanted to focus more on prevention models for the highways maintenance. He explained that KCC was lobbying Government for additional funding to support this work, supported by the County Council Network, led by Paul Carter. Mr Whiting highlighted the challenges of balancing the current funding available in terms of maintaining a safe highway, as in repairing faults when they are identified, and of developing a better long-term approach. Members commented that the funding was a key issue as while all recognised that maintaining the highway was a critical function of KCC, there were many other service and spending pressures on the Council.
9. Responding to questions, Mr Loosemore explained that there was no specific definition of failure regarding highway maintenance within the Highways Act but

KCC adhered to the relevant codes of practice. In terms of safety, he advised that performance data showed that KCC had received the lowest number of pothole reports from the public for the last five years. He noted that 2018 had seen a significant increase following the severe weather but that the historic low levels indicated generally good performance of the maintenance contract. Mr Loosemore commented that the work of the Task and Finish Group had helped KCC keep additional money, some of which had already been used to manage some of the issues being considered by the Scrutiny Committee, including supporting works on important if not heavily used roads. Mr Whiting commented that the Committee had correctly identified that HGVs did have a significant impact on the road quality, doing a lot more damage than other vehicles. However, he advised while responding to further questions, that speed restrictions and air quality management zones were not put in place with road maintenance in mind as they had their own appropriate criteria.

10. Mrs Dean proposed, seconded by Mr Bird, the following points for inclusion within the Committee's resolution:
- That more basic facts and figures be made more accessible for residents, including condition surveys and also simple summary information sheets which take a more nuanced approach to language regarding the 'safety' of the highway.
 - That the Cabinet Member consider enhancing the priority of footway repairs, recognising that 36% of footways were reported to be in a poor condition.
 - That the Highways team be requested to provide an annual report which would include reference to how KCC was considering the needs of vulnerable road users.

The Committee voted - Motion failed. The Chairman noted that many of the key points of the proposed recommendation had been discussed during the debate and that he expected them to be noted by the Cabinet Member and Officers, amongst other issues raised by Committee members.

RESOLVED that;

- the information provided by the Cabinet Member and Officers and the answers to the Committee's questions be noted;
- that the Cabinet Member and Highways team be asked to note the all the points made by the Committee during the debate.

27. Highway Claims

(Item C2)

1. Mrs Crabtree, Deputy Cabinet Member for Finance, and Lee Manser, Insurance Manager, introduced the report which outlined the current situation in terms of claims and the legal processes relating to managing Highways Insurance claims. Key points included that KCC had seen the lowest number of claims recorded in 2017 for five years at 649. Since January, 1282 had already been recorded in 2018 and this was believed to be due to the severe weather and the associated increased deterioration of the highway. However, it was highlighted that the number of claims being submitted was beginning to slow.

2. Mr Manser further explained the processes and legal position in relation to Highways Insurance Claims. He advised that s41 and s58 were the two key sections of the Highways Act and that they meant that a claimant must show that the highway was dangerous and that this was the result of a failure to maintain. Mr Manser explained that there were always a number of factors involved in each claim and that they were all assessed on their own merits. However, he advised that even if a breach of s41 could be proved, that did not automatically mean that a claim would be paid. KCC was able to provide a defence that demonstrated that the Council had a reasonable maintenance policy and that this was being reasonably carried out. This meant that the existence of a defect in the road did not automatically constitute liability for KCC. Mr Manser highlighted the impact of the severe weather in terms of the significant increase in claims it had precipitated. He advised that this correlation was supported by information from the South East Insurance Group indicating that all south eastern local authorities were in a similar position in terms of increased claim numbers. Mr Manser also clarified the statistics in the report, advising that the settlement rate for claims was 14%. Of the claims made in 2018, 799 had been rejected and 299 were still subject to assessment but he advised that figures were changing daily as more cases were resolved and other claims were submitted – to date £16k had been paid out in 2018 in settled claims.
3. A Member asked questions about the independence of the claim assessment process, reading out a statement from the same stakeholder group as earlier, which set out criticisms of the KCC Highways Insurance team and their processes.
4. Mr Manser reassured the Committee that KCC had sympathy for those road users who had suffered due to defects in the road network but that the claim management process was undertaken in line with the Highways Act and relevant guidance, which meant that liability was not always present in these cases.
5. Responding to comments and questions, Mr Manser noted concerns regarding the wording on the claims pages of KCC website, recognising the Committee's view that it was not inviting or supportive and appeared designed to dissuade people from making claims.
6. Responding to further questions, Mr Manser clarified s41 of the Highways Act which required that KCC maintain the highway. In making assessments of any defects relevant to claims, the inspection records were reviewed and taken into account. This linked to the s58 defence of evidencing that an appropriate maintenance policy was in place and that it had been applied correctly; so inspection records demonstrating that due care had been given in seeking to maintain the highway were key in the consideration and management of claims. Members noted the reasonableness test within this process.

RESOLVED that;

- the information provided by the Deputy Cabinet Member and Officers and the answers to the Committee's questions be noted; and
- that the Deputy Cabinet Member and Insurance team consider the points made by the Committee, in particular the need to review the Highway

Insurance claim webpage in terms of language and tone and generally improve communication about the processes involved.

28. Update on EHPS - Commissioned Youth Services Deep Dive
(Item C3)

Not discussed – Removed from agenda prior to meeting.

29. MOTION TO EXCLUDE THE PRESS AND PUBLIC FOR EXEMPT BUSINESS
(Item C4)

RESOLVED That, under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

30. Exempt minute of the meeting held on 17 April 2018
(Item C5)

RESOLVED that the exempt minutes of the meeting held on 17 April were a correct record and that they be signed by the Chairman.