

From: Benjamin Watts – General Counsel

To: County Council – 20 October 2022

Subject: Review of Decision 22/00052 - KCC Supported Bus Funding Review

Classification: Unrestricted

Past Pathway: Cabinet – 6 September 2022
Scrutiny Committee – 18 August 2022

Electoral Division: All

Summary:

Full Council is required, in accordance with the call-in arrangements detailed in section 17.79 of the Constitution, to review or scrutinise Executive Decision 22/00052 (KCC Supported Bus Funding Review).

In considering the Executive decision, in response to the referral of the decision by the Scrutiny Committee on 18 August 2022, the Council may:

- (a) Agree that the decision be implemented
- (b) express comments but not require reconsideration of the decision, or
- (c) require implementation of the decision to be postponed pending reconsideration of the matter by the Cabinet, taking into account the Council's comments

A Introduction

- 1) Decision 22/00052 – KCC Supported Bus Funding Review was taken on 19 July 2022. The proposals were considered at various stages of development at the Environment & Transport Cabinet Committee on 18 February 2022 and 19 May 2022, culminating in the final proposed decision being debated at the 6 July 2022 Cabinet Committee meeting. At this final pre-decision meeting, the Committee debated the issue extensively, including consideration and voting on various specific recommendations to amend the final arrangements. Subject to a minor correction of listed routes proposed for withdrawal, the Committee ultimately resolved to endorse the decision.
- 2) A call in request was submitted by Mr Lehmann (Green and Independents Group) and Mr Sole (Liberal Democrats Group) prior to the call-in deadline. It is understood that the Labour Group had been involved in the call-in request scoping and development and it was noted at Scrutiny Committee on 18 August that the Labour Group fully supported the call-in.
- 3) The reasons for the call-in were duly assessed by Democratic Services, including an investigation into whether any issues raised in the call-in were adequately addressed by the decision paperwork, committee reports, responses to written questions or committee debate. The results of this review

were considered by the Democratic Services Manager and the call-in was determined to be valid under the arrangements set out in the Constitution. Call-in reasons must be clear, correct and align to one or more of the following criteria under s17.73 of the Constitution:

Members can call-in a decision for one or more of the following reasons:

- (a) The decision is not in line with the Council's Policy Framework,
 - (b) The decision is not in accordance with the Council's Budget,
 - (c) The decision was not taken in accordance with the principles of decision making set out in 8.5, and/or
 - (d) The decision was not taken in accordance with the arrangements set out in Section 12.
- 4) The reasons submitted for the call-in are set out in appendix 1, including a brief note indicating which reasons were assessed as valid. Where any reasons submitted as part of a call-in request are deemed valid, the full call-in process is triggered.
- 5) In determining the validity of any call-in, no judgment is made by Democratic Services as to whether the decision itself is flawed, inappropriate or invalid. Where some individual reasons submitted for an overall valid call-in are not assessed as valid, this does not mean they merit no consideration as part of any subsequent call-in meeting. Call-in is a procedural tool to safeguard against the implementation of decisions which meet the criteria in section 17.73 and where further discussion by Members to clarify the decision is required. The call-in reasons were assessed as valid on the basis that further information was required, pursuant to section 17.73, to evidence compliance.
- 6) In accordance with the requirements for progressing a valid call-in, a meeting of the Scrutiny Committee was convened to consider the matter within 10 working days of the confirmation of validity provided by Democratic Services.
- 7) The General Counsel would like to record his thanks to all of the cross-party Members who helped to ensure that the necessary Scrutiny and Cabinet meetings could be arranged within the necessary timeframes. Similarly, thanks are offered to the officers who supported those meetings and helped in the preparation of documents and this paper.

B Scrutiny Committee consideration of the call-in

- 8) On 18 August 2022, the Scrutiny Committee met to consider the call-in. The Scrutiny Committee was advised in the papers that they should consider the reasons set out by the Members calling-in the decision, the documentation already available (including the Strategic Statement and Community Strategy which are referenced in the call-in submission) and the response from the Executive given at the meeting, giving due regard to the information made available during questioning and discussion on this item.
- 9) Pursuant to the constitution, the options open to the Scrutiny Committee at their 18 August 2022 meeting were as follows:

- Make no comments
- Express comments but not require reconsideration of the decision
- Require implementation to be postponed pending reconsideration of the matter by the decision-maker in light of the Committee's comments
- Require implementation of the decision be postponed pending review or scrutiny of the matter by Full Council.

10) The Scrutiny Committee considered the call-in reasoning, with explanations provided by both Members responsible for the call-in. Members debated the issues, including wider considerations related to the commercial bus network. It was highlighted by the Executive that the commercial withdrawals which had caused significant concern to Members and residents, were outside of the scope of the Key Decision being scrutinised as part of the call-in. Following the debate, the Scrutiny Committee agreed the following motion:

- *That implementation of Decision 22/00052 be postponed pending review by the Full Council.*

Comments from the Scrutiny Committee:

11) Comments expressed during the debate and in the process of proposing and agreeing the recommendation are summarised below:

- It was put forward that the environmental impact had not been fully taken into account. Concerns were raised in relation to the impact of the decision on traffic congestion. Further information was sought as to the environmental impact countywide and how many additional car journeys there would be countywide as a result of the decision. There had been reference to the additional car journeys anticipated in relation to one school in the decision making but countywide data was sought.
- Members sought further clarification on the full funding options available to support services, such as those used to mitigate the retention of the Kent Karrier Service and a few specific bus routes.
- Concerns were raised about health outcomes for those affected by the decision - as well as environmental considerations, further information was sought regarding residents seeking to access hospitals by bus.
- Concerns were raised regarding the social impact of the decision and further information was sought on the impact on villages with no other public transport options. Members raised concerns regarding social isolation and loneliness for young people, people with disabilities and the elderly, with specific reference to the Social Isolation Select Committee.
- Points were made regarding the rapidly changing situation since KCC's Budget was agreed in February. Since then, there had been war in Ukraine, inflation, the energy crisis and the cost of living crisis. The view was put forward that the decision would need to be reconsidered in light of these pressures.

- It was suggested that the DfT were changing their views about how the BSIP could be used and that new funding streams could come forward with the new government in September.
 - It was queried whether there were legal repercussions to the decision being implemented when certain Members argued that there had been insufficient regard given to equality impact identified in the reports.
 - It was questioned whether an appropriate audit of school transport needs had been undertaken prior to the decision, in relation to the 1985 Transport Act.
 - In setting out the motion to refer the matter to Full Council, a Member stated that the Department for Transport (DfT) in a 16 August letter, outlined a softening of the government's position on use of Bus Service Improvement Plan (BSIP) funding. The Member added that DfT had also recognised that local baselines for bus services may have changed.
 - The motion was proposed with the explanation that the decision had a substantial impact on families, within a wider context of KCC's acceptance of BSIP funding and the decision of operators to close a significant number of commercial bus routes, many in rural areas. The Member stated that the issues were moving rapidly, with it clear that DfT were changing their view on how BSIP could be spent.
 - The Member highlighted that County Council was not due to meet until mid-September and noted that there would be a new government from the first week of September, which may impact government policy on funding. He asserted that officers needed to be given the opportunity to explore what additional options are available now that the impact of the decision was known, as expressed by the operators, in addition to their own commercial service withdrawals. He then added that the Decision had a significant impact on rural areas and deserved a fresh look since more was known of the consequences of that decision compared to when it was first taken.
- 12) After the debate, the Committee resolved through majority vote to refer the matter to Full Council for review.

C Review by Cabinet

- 12) As a consequence of the Scrutiny Committee's decision, section 17.79 of the Constitution applies:

"If the Scrutiny Committee refers a decision to the full Council, it shall be considered at the next meeting of the Council when the Council may either:

(a) agree the decision be implemented

(b) express comments but not require reconsideration of the decision, or

(c) require implementation of the decision to be postponed pending reconsideration of the matter by the Cabinet, taking into account the Council's comments."

- 13) Section 17.80 of the Constitution requires that before a decision is reviewed by Full Council, the Cabinet shall first reconsider it, in light of the comments made by the Scrutiny Committee.
- 14) An extraordinary meeting of the Cabinet was therefore held on 6 September where the decision was formally reconsidered on the basis of a report which set out the comments expressed by the Scrutiny Committee (as per paragraphs 11 above).
- 15) Cabinet resolved to confirm the decision pending the discussion at the County Council meeting on September 15th 2022.
- 16) Key points from the Cabinet discussion are summarised below:
 - The General Counsel set out the procedural position, the role of his service in assessing call-in requests and he summarised the background detailed earlier in this report. It was confirmed that Cabinet could rescind, amend or confirm the decision and that if not rescinded, the decision would be subject to review by Full Council on 15 September.
 - It was clarified that should the Full Council be required to review the decision, then the County Council has the constitutional authority to either agree:
 - implementation with no comments;
 - express comments but not require reconsideration of the decision; or
 - require implementation to be postponed pending review of the matter by Cabinet.
 - Members sought clarification regarding the BSIP funding and how this could be spent. Officers advised that whilst the DfT had recognised that recent communication could have given the impression of a change to the potential BSIP funding arrangements, the DfT had confirmed that it was not to be used for existing services or for those services being withdrawn. The BSIP could only be used for new initiatives and new services. It was also highlighted that acceptance and deployment of any BSIP funding made available to Kent would be subject to separate Executive decision-making and that prior to that decision-making, any reliance on BSIP funding to influence other decisions was problematic.
 - Points were raised around the importance of drawing a clear distinction between the Executive decision taken in relation to KCC subsidised bus services and the unrelated commercial service withdrawals being determined by the commercial bus operators. As had been clarified at the Scrutiny Committee meeting, Decision 22/00052 did not authorise the commercial bus service withdrawals.
 - It was put forward by the Cabinet Member for Highways and Transport that County Council agreed at its meeting in February that the supported bus

portfolio should yield a saving of £2.2m in order to achieve a balanced budget for the year 2022-2023. Following a public consultation carried out from 4 February to 20 April 2022, a modified proposal was then developed and presented to the Environment and Transport Cabinet Committee on 6 July 2022 where Members endorsed the decision to reduce the portfolio of supported buses by 37 and so deliver a budget saving of £2.2m.

- It was recognised that the withdrawal of support of 37 buses would have serious consequences for many Kent residents but there was a need to make associated savings of £2.2m. The Cabinet Member commented that the Executive would rather not have to make such decisions, recognising the impact the changes would have on some service users, but he emphasised that the decision was necessary from a financial and service sustainability perspective.
 - Concerns were raised regarding the budget position and ongoing concerns around inflationary pressures. It was highlighted that the impact of not making the proposed savings would have a detrimental impact on the Councils ability to balance the budget.
- 17) The Cabinet expressed a view that given the resolution by Scrutiny, further debate and discussion should be reserved for the County Council meeting. As such, at the conclusion of the discussion, Cabinet resolved to confirm the decision without amendment.

D County Council review or scrutiny

- 18) Full Council has been provided with the confirmed Executive decision via an updated Record of Decision – the only change is the addition of a note confirming the procedural step taken by Cabinet at its meeting on 6 September.
- 19) The associated decision documents, such as the Decision Report and Equality Impact Assessment, are provided as appendices to support due consideration of the matter.
- 20) The call-in request is provided in full as an appendix to ensure Members have clear sight of the formal reasons this matter was progressed to the Scrutiny Committee via the official call-in process.
- 21) Members are invited to debate the matter, giving due consideration to the specific issues raised in the call-in, the points raised by the Scrutiny Committee as part of their debate and the comments made by Cabinet as part of its reconsideration of the decision.

E Recommendation:

The Council may, having reviewed Executive Decision 22/00052, resolve one of the following:

- (a) Agree that the decision be implemented
- (b) express comments but not require reconsideration of the decision, or
- (c) require implementation of the decision to be postponed pending reconsideration of the matter by the Cabinet, taking into account the Council's comments

F Appendices

Decision 22/00052 – KCC Supported Bus Funding Review

- [22-00052 - Record of Decision – as confirmed by Cabinet on 6 September 2022](#)
- [22-00052 - Decision Report](#)
- [22-00052 - Appendix C - Service Summary](#)
- [22-00052 - Appendix D - EqlA](#)
- Call-in request

G Background Documents

Decision 22/00052 – KCC Supported Bus Funding Review:

- [22-00052 - Appendix B - Consultation Report](#)

Agenda, Scrutiny Committee, 18 August 2022: [Agenda for Scrutiny Committee on Thursday, 18th August, 2022, 10.00 am \(kent.gov.uk\)](#)

Agenda for Cabinet, 6 September 2022: [Cabinet - Tuesday, 6th September, 2022 10.00 am](#)