

CUMBRIA COUNTY COUNCIL

Minutes of a Meeting of the **Cabinet** held on **Thursday, 14 October 2021 at 10.00 am at Conference Room A Cumbria House, Botchergate Carlisle**

PRESENT:

Mr SF Young (Leader)
Mrs PA Bell
Mrs A Burns
Ms D Earl
Mr KA Little
Mrs S Sanderson
Mr DE Southward
Mr P Thornton
Mrs C Tibble
Mrs J Willis

Officers in attendance:

Chief Executive, Deputy Chief Executive and Executive Director - People, Executive Director - Corporate, Customer and Community Services, Chief Fire Officer, Chief Legal Officer (Monitoring Officer), Leadership Support Officer - Labour Group, Leadership Support Officer - Liberal Democrat Group, Professional Lead - Democratic Services and Communications Business Partner

The Chair informed members that this special meeting of Cabinet had been convened in accordance with the Local Government Act 1972 to discuss two urgent items of business:

- Referral back from Scrutiny Call in re Cabinet Decision on the potential claim for Judicial Review against the decision of the Secretary of State in respect of Local Government Review in Cumbria
- Response to the Referral back from Scrutiny re Cabinet Decision on the potential claim for Judicial Review against the decision of the Secretary of State in respect of Local Government Review in Cumbria

The reason for urgency, was that the claim for Judicial Review would need to be issued by the 20 October 2021 - and that deadline meant that that there was not sufficient time to allow for the publication of reports 5 clear days before the meeting.

PART 1 ITEMS CONSIDERED IN THE PRESENCE OF THE PUBLIC AND PRESS

141 APOLOGIES FOR ABSENCE

There were no apologies for absence.

142 DISCLOSURES OF INTEREST

There were no disclosures of interest made on this occasion.

143 EXCLUSION OF PRESS AND PUBLIC

RESOLVED, that the press and public be not excluded from any items on the agenda today.

144 REFERRAL BACK FROM SCRUTINY RE CABINET DECISION ON THE POTENTIAL CLAIM FOR JUDICIAL REVIEW AGAINST THE DECISION OF THE SECRETARY OF STATE IN RESPECT OF LOCAL GOVERNMENT REVIEW IN CUMBRIA

The Chair of Scrutiny Management Board presented a report which set out Scrutiny Management Board's (SMB) reasons to refer the decision on the potential claim for judicial review against the decision of the Secretary of State in respect of Local Government Reorganisation back to Cabinet.

On Monday 12 October 2021, SMB held a meeting to consider the call-in of Cabinet's decision to proceed with a potential claim of judicial review against the Secretary of State's decision in respect of Local Government Reorganisation taken on 23 September 2021.

In the original letter there had been six grounds for the call in, however, following a clarification meeting these were reduced to three grounds:-

- Grounds 1,3 and 5 had been amalgamated
- Grounds 2 and 4 had been amalgamated
- Ground 6 remained as was originally stated.

The grounds focussed on the transparency of the process, the cost and also whether the decision went against what had been agreed in Full Council.

After full consideration of the cases put by the Call-in Members and the Lead Member for Cabinet, SMB were satisfied that the decision met all the grounds except on costs and resolved to refer the decision back to Cabinet. The Board specifically resolved:

- that Scrutiny Management Board was concerned about the potential of spiralling costs.

The Chair of SMB ended by saying he hoped that in reconsidering their decision Cabinet would take these issues into consideration.

The Leader thanked the Chair for presenting the report, and he asked that his thanks be given to all the members at the call in meeting for the way the meeting was conducted and chaired. It was a good example of how scrutiny meetings should be run.

145 RESPONSE TO THE REFERRAL BACK FROM SCRUTINY RE CABINET DECISION ON THE POTENTIAL CLAIM FOR JUDICIAL REVIEW AGAINST THE DECISION OF THE SECRETARY OF STATE IN RESPECT OF LOCAL GOVERNMENT REVIEW IN CUMBRIA

The Leader presented a report which provided a response to the recommendations from Scrutiny Management Board (SMB) following the call in of the Cabinet decision on the 23 September 2021 on the grounds of the transparency of the process, the cost and also whether the decision went against what had been agreed in Full Council.

The original reasons for the Call In were discussed and the SMB recommendations reflected that wider discussion.

Following a discussion at SMB it was resolved that this matter be referred back to Cabinet on the grounds of cost, and that SMB was concerned about the potential of spiralling costs.

The original Cabinet paper provided an estimate of the costs of bringing a claim for judicial review including the risk of being required to pay the legal costs of Government if the claim was unsuccessful at £80,000. The costs would be met from the revenue contingency budget. The contingency budget was an annual budget included in the Medium Term Financial Plan to deal with one off in-year expenses when they arose. The budget was £1.5m. £0.215m had been committed to date with eligible spend of £1.285m remaining.

It was difficult to provide an accurate estimate of the costs at such an early stage of the claim especially as the Secretary of State failed to

provide the information that the Council had requested when it responded to the PAPL. The estimate was based on discussions with Counsel about his likely costs. It was assumed that the costs for the government would be at a similar level. The actual costs would depend on whether there was a separate oral permission hearing, the length of the substantive hearing and the issues raised by the Secretary of State in his response to the claim. There was, in addition, a risk that unforeseen costs would be incurred. For example the Council had instructed solicitors to support us in issuing the proceedings if Cabinet confirmed the decision to proceed with the claim.

However as discussed above the eligible spend remaining in the contingency budget is over £1.2m so even if the costs increased significantly, such as by 50% to a total of £120,000 this could be met from this budget.

SMB were particularly concerned about the risk of costs spiralling as a result of the matter going to appeal.

The report set out the stages at which the Council and the government could apply for permission to appeal. The Leader explained that a decision to appeal would be a further decision of Cabinet.

It was difficult to quantify the level of costs of a matter going to appeal and a detailed estimate would need to be provided at the time. However the costs were likely to be significantly lower than the costs of the original claim because usually no new evidence was allowed at this stage and the hearing was likely to be shorter.

If the matter was appealed (by either party) and the Council was unsuccessful at the appeal hearing there was a potential that the Council could be ordered to pay the costs of the Government. This could include the costs of both the original claim and the appeal. However, a cost order of this nature was not automatic and depending on the circumstances the parties could each bear their own costs or a costs order at appeal could only cover the costs of the appeal.

The Leader of the Council felt that, even if the costs of the appeals had to be included, the cost was minimal compared to the cost of moving to a two unitary structure. He moved that Cabinet restate its decision to issue proceedings for judicial review against the Secretary of State.

The Deputy Leader was unable to support this. He stated that his position was not based on the financial cost, but based on the effect it would have on the process, the timeframe of which was already extremely challenging.

Mr Southward commented that he supported the view of the Leader in that even if the costs of the appeals had to be included, the cost was minimal compared to the cost of moving to a two unitary structure, which would cost a great deal more, and would not realise anywhere near the savings of those if moving to a single unitary.

Upon conclusion of the discussion, this was put to a vote, and with 6 votes for, 0 against and 4 abstentions it was

RESOLVED, that Cabinet restate its decision to issue proceedings for judicial review against the Secretary of State.

The meeting ended at 10.25 am