



Notice of a public meeting of

Corporate and Scrutiny Management Committee (Calling In)

- To:** Councillors Galvin (Chair), Burton, Fraser, Horton, Jeffries, King, Potter, Runciman (Vice-Chair) and Steward
- Date:** Wednesday, 27 August 2014
- Time:** 5.00 pm
- Venue:** The Thornton Room - Ground Floor, West Offices (G039)

AGENDA

1. **Declarations of Interest**

At this point, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. **Exclusion of Press and Public**

To consider excluding the public and press from the meeting during consideration of Appendix 1 to agenda item 5 on the grounds that it contains legally privileged advice relating to contemplated litigation. This information is classed as exempt under paragraph 5 of schedule 12A to the Local Government Act 1972 and Regulation 20 of the Local Authorities (Executive Arrangements)(Meetings and Access to Information) (England) Regulations 2012.

3. Public Participation

It is at this point in the meeting that members of the public who have registered to speak can do so. The deadline for registering is **5.00pm on Tuesday 26 August 2014**. Members of the public can speak on agenda items or matters within the remit of the committee.

To register to speak please contact the Democracy Officer for the meeting, on the details at the foot of the agenda.

Filming, Recording or Webcasting Meetings

Please note this meeting may be filmed and webcast or audio recorded and that includes any registered public speakers, who have given their permission. The broadcast can be viewed at <http://www.york.gov.uk/webcasts> or, if sound recorded, this will be uploaded onto the Council's website following the meeting.

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at http://www.york.gov.uk/downloads/download/3130/protocol_for_webcasting_filming_and_recording_of_council_meetings

4. Minutes

(Pages 1 - 4)

To approve and sign the minutes of the last meeting of the Committee held on 14 July 2014.

5. Called-in Item: Lendal Bridge and Coppergate Traffic Regulation Orders (Pages 5 - 20)

To consider the decisions made by the Cabinet at their meeting held on 5 August 2014 in relation to the above item, which has been called in by Cllrs Aspden, Cuthbertson and Reid and Cllrs Steward, Doughty and Wiseman in accordance with the Council's Constitution. A cover report is attached setting out the reasons for the call-in and the remit and powers of the Corporate and Scrutiny Management Committee (Calling-In) in relation to the call-in, together with the original report and the decisions of Cabinet.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name : Jill Pickering

Contact Details:

- Telephone : 01904 552061
- E-mail : jill.pickering@york.gov.uk

For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

**Ta informacja może być dostarczona w twoim (Polish)
własnym języku.**

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

City of York Council

Committee Minutes

Meeting	Corporate and Scrutiny Management Committee (Calling In)
Date	14 July 2014
Present	Councillors Galvin (Chair), Burton, Fraser, Horton, Jeffries, King, Potter, Steward and Ayre (Sub for Cllr Runciman)
In Attendance	Councillors Warters and Wiseman
Apologies	Councillor Runciman

1. **Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal interests not included on the register of interests, any prejudicial interests or any disclosable pecuniary interest which they might have in respect of the business on the agenda. No additional interests were declared.

2. **Public Participation**

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

3. **Minutes**

Resolved: That the minutes of meetings of the Committee held on 12 and 19 May 2014 be confirmed as correct records and be signed by the Chair.

4. **Called-In Item: Improving York's City Centre - Reinvigorate York Public Realm Improvement Projects: Exhibition Square/Theatre Interchange Project.**

Members received a report which asked them to consider the decisions made by the Cabinet on Tuesday 1 July 2014, in relation to the implementation of the Theatre Interchange project, as the first phase of a rolling programme of linked public realm improvement works at Exhibition Square.

Details of the Cabinet's decision were attached at Annex A to the report, with the original report to the Cabinet attached at Annex B. The decision had been called in by Councillors Watson, Warters and Wiseman on the following grounds:

- "The proposed funding is a waste of money on a scheme that is not compliant with the aims of Reinvigorating York.
- Concerns regarding the bus facilities included in the scheme."

Members were asked whether to confirm the decision (Option a) or to refer it back to Cabinet for re-consideration (Option b) as set out in the report.

Councillor Watson addressed the meeting as one of the Calling-In members, expanding on the reasons given for the call in, in particular that the refurbishment of the area did not appear to provide value for money or result in little gain for the public. He raised concerns regarding the removal of a tour bus stop and the natural shelter for bus users at the Theatre Royal. He also expressed concern that the reinvigorate schemes appeared to do little to improve the attractiveness of the city centre and that the investment would be better used in the Parliament Street area.

Councillor Warters also addressed the meeting as a Calling-In member, expressing his support for the earlier speaker's comments and the need for further scrutiny of this scheme. He reiterated his opposition to the proposals and questioned, if approved, would refurbishment schemes outside the city be undertaken using similar design and cost principles.

Councillor Wiseman as the final Calling-In member, raised issues regarding the siting of the bus shelters. She also highlighted the removal of a number of bus services wait time at Exhibition Square which would be transferred to Memorial Gardens and to the impact this would have on elderly and infirm passengers.

The Cabinet Member for Transport responded, by expressing his concern at the reasons provided for the call in of this decision. He highlighted the extensive consultation undertaken both with the bus companies and the public and to the proposed mitigation strategies. He acknowledged difficulties the area posed however the proposals were designed to improve the

quality of the space. Discussions would, he confirmed, continue with the bus companies and the Theatre Royal although he pointed out that the area in front of the Theatre, presently used as a shelter, was outside the control of the Council.

In answer to Members questions the Cabinet Member confirmed that details of attendance at the drop in sessions were available in the supplementary documents attached to the agenda item. Confirmation that the Equality Advisory Group had been consulted on the proposals and that the road safety team had been satisfied with the changes to cycle lanes in Exhibition Square.

Members confirmed the difficulties in the area with the space available however the scheme would provide improved facilities for the public. Other Members expressed sympathy with the call in Members regarding value for money and following further discussion Cllr Potter moved and Cllr Horton seconded, and it was

Resolved: That Option (a) identified in the report be approved and that the decision of the Cabinet be confirmed.

Reason: In accordance with the requirements of the Council's Constitution

Cllr J Galvin, Chair

[The meeting started at 5.00 pm and finished at 5.30 pm].

This page is intentionally left blank



**Corporate and Scrutiny Management Committee
(Calling – In)**

27 August 2014

Report of the Assistant Director, Governance and ICT

Called-in Item: Lendal Bridge and Coppergate Traffic Regulation Orders

Summary

1. This report sets out the reasons for the call-in of the decisions made by the Cabinet on 5 August 2014 in relation to the Council's pursuance of its application for a review of the decision to the Traffic Penalty Tribunal Adjudicator in respect of appeals against fines for breach of the Lendal Bridge Traffic Regulation Order.

This cover report sets out the powers and role of the Corporate and Scrutiny Management Committee in relation to dealing with the call-in.

Background

2. An extract from the Decision Sheet issued after the Cabinet meeting is attached as Annex A to this report. This sets out the decision taken by the Cabinet on the called-in item. The original report to the Cabinet meeting on the called-in item is attached as Annex B to this report.
3. Cabinet's decision has been called in by Cllrs Aspden, Cuthbertson and Reid for review by the Corporate and Scrutiny Management Committee (CSMC) (Calling-In), in accordance with the constitutional requirements for call-in. The following are the reasons given for the call-in:
 - The report and the recommendations put the onus on the motorist fined to contact the council and 'appeal' against their Penalty Charges Notices (PCN's) in order to claim a refund.
 - Instead, we believe that the onus should be on the council to contact each motorist who has been fined. Many of them will live outside York (or even the UK) so will not have heard that

they are entitled to their money back. So every one of them should automatically be contacted by the council and refunded in full without question.

- The fine income, which has been ring-fenced in reserves, should be used to repay the motorists. The repayment should also come with a formal apology from the council.
- If the fines are not repaid automatically, this risks doing further reputational damage to York through an unclear individual repayment process, where some get their money back but others don't. It will also create the impression that the council is trying to hang on to as much of the fine money as possible to spend elsewhere.

4. The decision has then subsequently also been called in by Cllrs Steward, Doughty and Wiseman for review by the Corporate and Scrutiny Management Committee (CSMC) (Calling-In), in accordance with the constitutional requirements for call-in. The following are the reasons given for the second call-in:

The council's decision to refund Lendal Bridge Penalty Charge Notice's only to motorists who make an application for a refund is flawed because not re-paying all of the fines now:

- will increase administration costs;
- will continue the uncertainty over CYC's ultimate financial outlay regarding PCN payments;
- compounds the reputational damage done to York's image as a welcoming tourist destination by selectively favouring local motorists over visitors from other parts of the country, who are not regular consumers of local media or readers of the council's website and who therefore will not be aware of the council's refund policy;
- is, despite the administration's creation of a 'Fairness Commission', neither honest, professional nor fair."

Consultation

5. In accordance with the requirements of the Constitution, the calling-in Members have been invited to attend and/or speak at the Call-In meeting, as appropriate.

Options

6. The following options are available to CSMC (Calling-In) Members in relation to dealing with this call-in, in accordance with the constitutional and legal requirements under the Local Government Act 2000:
 - a. To decide that there are no grounds to make specific recommendations to the Cabinet in respect of the report. If this option is chosen, the original decision taken on the item by the Cabinet on 5 August 2014 will be confirmed and will take effect from the date of the CSMC (Calling-In) meeting; or
 - b. To make specific recommendations to the Cabinet on the report, in light of the reasons given for the call-in. If this option is chosen, the matter will be reconsidered by Cabinet at a meeting of Cabinet (Calling-In) to be held on 9 September 2014.

Analysis

7. Members need to consider the reasons for call-in and the report to the Cabinet and form a view on whether there is a basis to make specific recommendations to the Cabinet in respect of the report.

Council Plan

8. There are no direct implications for this call-in in relation to the delivery of the Council Plan and its priorities for 2011-15.

Implications

9. There are no known Financial, HR, Legal, Property, Equalities, or Crime and Disorder implications in relation to the following in terms of dealing with the specific matter before Members; namely, to determine and handle the call-in.

Risk Management

- 10. There are no risk management implications associated with the call in of this matter.

Recommendations:

- 11. Members are asked to consider all the reasons for calling in this decision and decide whether they wish to confirm the decisions made by the Cabinet or refer the matter back for reconsideration and make specific recommendations on the report to Cabinet.

Reason: To enable the called-in matter to be dealt with efficiently and in accordance with the requirements of the Council's Constitution.

Contact details:

Author:

Dawn Steel
Head of Civic &
Democratic Services
01904 551030

Chief Officer Responsible for the report:

Andrew Docherty
Assistant Director, Governance and ICT

**Report
Approved**



Date 6 August 2014

Specialist Implications Officer(s) None

Wards Affected:

All



For further information please contact the author of the report

Annexes

Annex A – Extract from the Decision Sheet produced following the Cabinet meeting on the called-in item.

Annex B – Report of the Cabinet Member for Transport, 5 August 2014.

Background Papers

None

CABINET**TUESDAY, 5 AUGUST 2014*****Extract from DECISIONS Sheet***

Set out below is a summary of the decisions taken at the Cabinet meeting held on Tuesday, 5 August 2014. The wording used does not necessarily reflect the actual wording that will appear in the minutes.

Members are reminded that, should they wish to call in a decision, notice must be given to Democracy Support Group no later than **4.00pm on Thursday 7 August 2014**.

If you have any queries about any matters referred to in this decision sheet please contact Jill Pickering (01904) 552061.

5. Lendal Bridge and Coppergate Traffic Regulation Orders

Resolved: That Cabinet agree to:

- (i) Instruct Officers to confirm the withdrawal of the Lendal Bridge review being made public through the Council's normal communication channels;
- (ii) Ask Officers to make arrangements where members of the public contest their Penalty Charge Notice (PCN) for the settlement payments equivalent to PCN fines paid in respect of the Lendal Bridge trial to be made;
- (iii) Ensure that a robust mechanism is put in place to protect the public purse from fraud when applications are made. That this be done at the earliest opportunity to provide certainty to both the Council and individuals but is subject to internal audit review;
- (iv) Ask Officers to confirm to the Traffic Penalty Tribunal that the Council will be taking these

steps in relation to the Lendal Bridge trial only;

- (v) Confirm that the Council wishes the review into the Coppergate scheme decision to continue and will not be making any refunds in respect of Coppergate.

Reason: It is now the case that the Lendal Bridge trial finished over 3 months ago, will not require future enforcement and the fines income was not intended as a revenue income and remains in Council reserves. Notwithstanding these facts the Council and Motorists remain in a position of uncertainty due to the ongoing legal process associated with the enforcement of the PCN.

Therefore Cabinet can determine if it is in the Council's interest to sustain the uncertainty for the Council and individuals as to the validity of Penalty Charge Notices. That the ongoing diversion of Council resources from other transport congestion schemes is not value for money and that the Council needs to concentrate its limited resources and the results of the Lendal Bridge trial on working through the congestion commission to address the growing issue of congestion in the city.



Cabinet

5th August 2014

Report of the Cabinet Member for Transport

Lendal Bridge and Coppergate Traffic Regulation Orders

Summary

1. The Cabinet is asked to determine whether the Council should continue to pursue its application for a review of the decision to the Traffic Penalty Tribunal Adjudicator (the Adjudicator) in respect of appeals against fines for breach of the Lendal Bridge Traffic Regulation Order.
2. Subject to the decision not to pursue the review of the Lendal Bridge application, to determine if the Council would contest any new applications made for a refund of Lendal Bridge Penalty Charges Notices (PCN's) already paid.

Background

3. The Leader made a decision in April to bring the Lendal Bridge trial to a conclusion. At that time he acknowledged the benefits of the Lendal Bridge trial included the significant increase in bus reliability and patronage, improved air quality and the increase in recorded footfall and hotel bookings.
4. However it is now over 3 months since this decision was made and the Adjudicator has not completed the review of the Lendal Bridge or Coppergate decisions and no statutory deadlines exist that require this decision to be made in a timely manner.
5. Considering this significant passage of time and the uncertainty that this imposes on individuals the Cabinet is asked to consider whether to continue to pursue the outcome of the Adjudicator's ongoing review of the Lendal Bridge Trial.
6. In considering this issue the Cabinet is reminded that:

- It is the case that the fines imposed during the Lendal Bridge trial were a means of enforcing the restrictions at that time and not an exercise in raising revenue for the Council
- Having ended the Lendal Bridge trial it is no longer necessary for the Council to enforce the Lendal bridge Traffic Regulation Order
- The Coppergate scheme is, however, a longstanding restriction and is planned to be maintained. The validity of that restriction, and in particular of the order which underpins it, is therefore important to establish for the Council
- The Council has established its intent to form an independently chaired Congestion Commission to explore how the city addresses its transport challenges and full Cabinet is due to consider a report as to scope and membership of the commission at its November meeting.
- While there is uncertainty as to the outcome of the reviews of the Adjudicator's decision the Council continues to divert resources from other important Transport schemes, the significant passage of time and uncertainty also has an ongoing impact on the reputation of the Council, and well being of individuals, and that the ongoing pursuit of individuals for fine income from a trial that has now ended may not be in the public interest.

Consultation

7. The Council's solicitor has prepared legally privileged advice at Appendix 1.

Analysis

Option 1

8. Should Cabinet determine not to proceed with the Adjudicator's review of Lendal Bridge the Authority would need to refund as ordered by the Traffic Penalties Tribunal (TPT). This would only apply to those individuals who have successfully appealed their PCN but to date have not been refunded, as the Council was awaiting the appeals outcome this is expected to effect

approximately 20 motorists. It is proposed that these individuals would be contacted by the Council and a refund made.

9. Should Cabinet determine not to proceed with the review of the Lendal Bridge trial the question arises as to how the Council will deal with those motorists who have not contested their PCN and thereby may in light of a decision not to pursue the Adjudicator's review wish to appeal against their PCN on the grounds that the Council had unlawfully issued them with a PCN.
10. Whilst the Council disputes that it has acted unlawfully it faces an ongoing legal dispute with members of the public who believe rightly or wrongly that the PCN issued to them is unlawful. The Council, therefore, needs to consider the cost of complaints, appeals and potential litigation on an ongoing basis. The recommendations of this report therefore reflect an approach to mitigate this ongoing financial and reputational risk.
11. In order to manage the above risks it is proposed that where a motorist makes an application for refund on the basis that the PCN was issued unlawfully then the Council would make a settlement payment equivalent to a refund of the PCN paid without admitting liability.
12. Where a motorist does not make an application for refund and thereby is not disputing the Council's position the Council will not be proactively seeking them out as no dispute exists between the parties.
13. As the Coppergate Traffic Order is a longstanding traffic order and the Council has made no decision to change this position there is no proposal to withdraw the request for Adjudicator's review for Coppergate.

Option 2

14. Cabinet may determine that the review by the Adjudicator should proceed. As noted in the background there are a number of matters that arise from this course of action:
 - i. Uncertainty for all motorists affected by the Lendal Bridge Trial.

- ii. Uncertainty for the Council although a positive outcome for the Council would mean full retention of the PCN revenues received to date.
 - iii. No further benefits are being accrued from the trial as it has finished.
 - iv. Council Resources are being consumed which could otherwise be directed to other traffic schemes.
15. The uncertainty that exists is driven by the inability for the Council to determine what the outcome of the Adjudicator's review will be or to the extent that this was not favourable to the Council the outcome of any subsequent Judicial Review. A number of such schemes have nationally been found against Local Authority's for a variety of reasons often to do with process and as the legal process can / would take many months to complete a forensic analysis of the process taken for Lendal Bridge does pose a risk to the Council and extends the uncertainty for all parties around a trial that is now complete.

Coppergate

16. Should the Council not seek to review the Coppergate decision then we would be left with uncertainty as the approach of the Adjudicator to future appeals in respect of the continuing movement restrictions.

Council Plan

17. The Council uses traffic regulation orders to assist meeting the Council's aims to get York moving and protect the environment. The proposal to establish a congestion commission in the Autumn to assist in determining how the Council will meet it's aims will be facilitated by the removal of the uncertainty around the Lendal Bridge Trial.

Implications

18. **Financial:** Subject to the level of applications by the public, the implementation of the recommendation may require the repayment of all the PCN revenue received by the Council for the Lendal Bridge trial. As noted in the report, the trial was not intended to raise revenue for the authority and, therefore, all of the income received from fines has been set aside in a specific

reserve as part of the preparation of the Council's accounts for 13/14.

19. **Human Resources (HR):** Administration of the payment process will be met from existing resources.
20. **Equalities:** There are no equalities impacts associated with this report.
21. **Legal:** In light of the fact that there is an ongoing legal challenge and the Council is contemplating the possibility of future judicial review proceedings legal advice is contained in an exempt annex to this report
22. **Crime and Disorder:** Providing greater certainty to the public in respect of the Lendal Bridge PCN and continuing to pursue the Coppergate decision will provide greater clarity to the council's enforcement activity in the future.
23. **Information Technology (IT):** Officers in ICT will be engaged to automate the payment process as far as possible and provide easy access to motorists wishing to challenge their PCN.
24. **Property:** There are no property impacts associated with this report.

Risk Management

25. There is a reputational risk to the Council associated with either continuing with or withdrawing the request for a review. There is also a risk associated with any subsequent legal challenge by Judicial Review of being unsuccessful. Should Cabinet accept the recommendations of the report, there is a risk of potential fraudulent claims for a compensation payment and it is proposed that should a decision be taken not to contest any new claims against the Lendal Bridge Trial then a simple but robust system subject to internal audit review would be put in place to facilitate payments.
26. It is also possible that even if Cabinet agrees the recommendations of this report individuals and organisation will continue to dispute the processes undertaken by the Council. Whilst this risk cannot be eliminated the proposals in this report reduce the risk of challenge as any aggrieved motorist will be able

to make an application for a payment equivalent to their PCN charge.

Recommendations

27. Cabinet is asked to consider:

- 1) Instructing Officers to confirm the withdrawal of the Lendal Bridge review is made public through the Council's normal communication channels;
- 2) Asking Officers to make arrangements where members of the public contest their PCN for the settlement payments equivalent to PCN fines paid in respect of the Lendal Bridge trial to be made;
- 3) Ensuring that a robust mechanism is put in place to protect the public purse from fraud when applications are made. That this be done at the earliest opportunity to provide certainty to both the Council and individuals but is subject to internal audit review;
- 4) Asking Officers to confirm to the Traffic Penalty Tribunal that the Council will be taking these steps in relation to the Lendal Bridge trial only;
- 5) Confirming that the Council wishes the review into the Coppergate scheme decision to continue and will not be making any refunds in respect of Coppergate.

Reason: It is now the case that the Lendal Bridge trial finished over 3 months ago, will not require future enforcement and the fines income was not intended as a revenue income and remains in Council reserves. Notwithstanding these facts the Council and Motorists remain in a position of uncertainty due to the ongoing legal process associated with the enforcement of the PCN.

Therefore Cabinet can determine if it is in the Council's interest to sustain the uncertainty for the Council and individuals as to the validity of Penalty Charge Notices. That the ongoing diversion of Council resources from other transport congestion schemes is not value for money and that the Council needs to concentrate its limited resources and the results of the Lendal Bridge trial on working through the congestion commission to address the growing issue of congestion in the city.

Contact Details

Author:	Cabinet Member and Chief Officer responsible for the report:		
Neil Ferris Assistant Director – Transport, Highways and Waste Tel No 01904 551448	Cllr David Levene, Cabinet Member for Transport Sarah Tanburn, Director of City and Environmental Services		
	Report Approved	√	Date 28/07/2014
Specialist Implications Officer(s) None			
Wards Affected: Guildhall			√
For further information please contact the authors of the report			

Background Papers:

None

Annexes

Appendix 1 - Legally privileged advice

This page is intentionally left blank

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank