

MENDIP DISTRICT COUNCIL

Minutes of the meeting of Cabinet held on Monday, 12 February 2018 in the Council Chamber, Council Offices, Shepton Mallet commencing at 6.30 pm.

COUNCILLORS PRESENT:

Philip Ham	Portfolio Holder for Transformation
Tom Killen	Vice Chair of Cabinet and Deputy Leader of the Council
John Parham	Portfolio Holder for Finance, Governance and Corporate Services
Harvey Siggs	Chair of Cabinet and Leader of the Council
Nigel Taylor	Portfolio Holder for Neighbourhood and Community Health Services
Nigel Woollcombe-Adams	Portfolio Holder for Planning, Growth and Housing Services

ASSISTANT PORTFOLIO HOLDERS PRESENT:

Councillors Simon Davies, Tim Rice, Mike Pullin and Danny Unwin

OTHER COUNCILLORS PRESENT:

Councillors Peter Bradshaw, Bente Height, Damon Hooton, Jeannette Marsh
Dick Skidmore, Ros Wyke

OFFICERS PRESENT:

Stuart Brown	Chief Executive
Paul Deal	Section 151 Officer
Claire Dicken	Committee Officer
Lesley Dolan	Legal Advisor
Ian Glover	Enforcement Officer
Steven Lake	Elections Manager
Donna Nolan	Deputy Chief Executive

Agenda Item	Subject	Actioned by
1	Chair's Announcements The Chair explained the procedures in the case of an emergency and asked that all mobile devices be switched to silent.	
2	Apologies for Absence Councillors Joanna Beale and Alan Townsend	

3	<p>Declarations of Interest</p> <p>None</p>	
4	<p>Public Participation</p> <p>a. Items on the agenda: –</p> <p>Mr James Ryan had requested to speak on the topic of Item 10 Proposed Public Spaces Protection Order No 2 for Berkley Marsh. He said his position had not changed since the last time he spoke about this issue at Cabinet. He said his clients objected to the closure of Berkley Marsh. He said the road closure had resulted in the displacement of fly-tipping rather than resolving the issue.</p> <p>With regard to the former Temporary Traffic Regulation Order (TTRO) he said that, however worthy the motive for the closure, the TTRO had been unlawful. He said the TTRO made two specific exceptions to the closure. It preserved the right of highway for both (i) the conveyance of persons, goods or merchandise to or from any lands or premises situate on or adjacent to the length of road, and also for (ii) the purpose of agriculture in connection with the land adjoining or lying near to the length of the said road. His clients fell within both of those exceptions.</p> <p>He further believed that the subsequent PSPO was also unlawful. He said that the Anti-social Behaviour, Crime and Policing Act 2014, Section 64(4) said a PSPO may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.</p> <p>He went on to set out the history of the road closure in detail.</p> <p>He said he and his clients had met with Officers and Councillors of the Council on 24 January 2018.</p> <p>He said the legal advice that the Council had received from Counsel was not unequivocal. He said that if the Cabinet chose to make a a further Order then his clients would be compelled to protect their position by issuing a further legal challenge.</p> <p>He confirmed on behalf of his clients that they remained willing to engage in further discussion in an effort to find a lawful solution to the fly-tipping problem.</p> <p>The Chairman thanked him for his speech.</p>	

	b. Items not on the agenda: – none	
5	<p>Previous Minutes</p> <p>The minutes for the Cabinet meeting held on 8 January 2018 were agreed.</p>	Claire Dicken
	The Chairman altered the order of the items as follows	
9	<p>Requests for Community Governance Reviews from Street Parish Council and Cranmore Parish Council</p> <p>The Portfolio Holder for Finance, Governance and Corporate Services presented a report which asked Cabinet to consider requests from Street and Cranmore Parish Councils to undertake community governance reviews to increase the number of Councillors by three and one respectively.</p> <p>The report set out the timetable for the two reviews.</p> <p>Councillor Bryan Beha was invited to speak. He explained that Street Parish Council had numerous Working Groups. There was a strain on numbers as most Councillors were required to sit on several Working Groups. Additional Councillors would mean that Street Parish Council could continue to be effective with its increased workload.</p> <p>In response to queries the Elections Manager said there was no direct relationship between population numbers and the setting of the number of Parish Councillors.</p> <p>During the discussion which followed Members said they would require specific reasons as to why Parish Councils felt they required increased numbers. The District Council would not be able to agree to reviews without good reason.</p> <p>Members agreed that the requests for reviews before them be approved.</p> <p>RESOLVED</p> <p>(1) Accede to the request of the Street Parish Council to undertake a community governance review of the electoral arrangements of the Parish</p> <p>(2) Accede to the request of the Cranmore Parish Council to undertake a community governance review of the electoral arrangements of the Parish</p>	Steven Lake

	<p>(3) Agree the terms of reference set out in the report as the terms of reference to be identified by the District Council as principal council for the conduct of the community governance reviews of the parishes of Street and Cranmore pursuant to Section 81 of the Local Government and Public Involvement in Health Act 2007</p> <p>(4) Approve the means of consultation as identified in this report.</p> <p>REASON FOR THE RESOLUTION</p> <p>The parishes were both of the view that the level of work that they were undertaking necessitated additional parish councillors, and the requests fell within the representation levels recommended by the National Association of Local Councils.</p>	
10	<p>Proposed Public Spaces Protection Order No.2 (PSPO) for Berkley Marsh</p> <p>The Chairman noted that Mr James Ryan had been given an opportunity to speak about this item during public participation.</p> <p>The Portfolio Holder for Community Health and Neighbourhood Services presented a report which stated that Cabinet had considered a report on 13 November 2017 in regard to a proposed Public Spaces Protection Order (“PSPO”) for Berkley Lane, Berkley Marsh, Frome and resolved amongst other things:-</p> <ol style="list-style-type: none"> 1. The making of a PSPO for Gypsy Lane and Berkley Lane, Berkley Marsh, the PSPO applying to the public highway known as Berkley Lane leading from Gypsy Lane to its junction with Dark Lane, and comprising the entire length of the aforementioned highway depicted by a thick black line on the plan attached to the Report. The PSPO was to remain place for a period of 3 months as set out in the Report using a concrete barrier solution, subject to a safety audit by the Highway Authority. 2. To agree that a further report be brought back to Cabinet no later than February 2018 relating to the making of a PSPO for Gypsy Lane and Berkley Lane, Berkley Marsh, using an electronic bollard solution (option 4 in the report). 	Ian Glover

3. That continued dialogue in regard to the electronic bollard option be maintained with the main objector to the PSPO.

The report explained, the cost of clearing fly-tipping in the Mendip area, especially at Berkley Marsh reached totally unsustainable and unacceptable levels. In the autumn of 2015 a multi-agency initiative resulted in the decision to try a new initiative of restricting relevant roads to vehicular traffic in the Berkley Marsh area under a Temporary Traffic Regulation Order (TTRO).

The TTRO which expired in October 2017 had in effect been replaced by a PSPO. However it had been decided to reopen Dark Lane, and leave Berkley Lane subject to a three month PSPO using a concrete barrier solution, while additional options were explored. The current PSPO for Berkley Lane expired on the 13 February 2018.

The report went on to state that without a PSPO it was anticipated that incidents of fly-tipping and the resultant costs of clearance would rise to levels that were evident before the TTRO was put in place and more.

The Portfolio Holder said he took exception to the accusation that the Council had acted unlawfully. He said that the Council had taken proper advice. The Council's barrister had provided one interpretation of the legislation whereas Mr Ryan's barrister has provided a different interpretation. The Courts would be the ultimate arbiter.

OPTIONS CONSIDERED

1. **Electric Bollards** - Replace the concrete barriers with electric bollards fitted into the road, allowing only a vehicle with an access pass to enable the bollard to recess into the road thus enabling the thoroughfare of the vehicle in question (2 x key locations).
2. **Industrial/military strength barriers** - Replace the concrete barriers with industrial/military strength barriers (2 x key locations)
3. **Retention of the existing concrete blocks** - Retention of the existing concrete blocks to minimise further fly tipping (2 X key locations)
4. **Not to implement a further PSPO** – Removal of the concrete barriers from Berkley Lane

The Portfolio Holder said option 1 was prohibitively expensive.

The report stated that Option 3 appeared to be the most cost effective option for the Council. However, even though the key objector could still access his land via a detour, it still restricted access to the highway and therefore could be open to challenge through the Court.

Option 2, although not the most cost effective option, would provide improved access to the highway by the landowners.

The Council's Legal Advisor was asked to clarify the legislation. She said that Mr Ryan had been absolutely correct in his exposition of Section 64(4) of the Anti-social Behaviour, Crime and Policing Act 2014 in that a public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway. However she said that Section 64(7) of the 2014 Act stated that a PSPO that restricted the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction. In addition Section 64(8) stated a local authority may install, operate and maintain barriers authorised under subsection (7).

She updated the Cabinet with the progress of the legal challenge which had been lodged as a result of the first PSPO. At the end of last week the Council had lodged its Acknowledgment of Service with the Court indicating that it wished to defend the claim against it. It also advised the Court that by agreement with Mr Ryan, the Council's formal response to the claim would be lodged within fourteen days.

In response to queries the Legal Advisor said that in the event that the Council was found to be unlawful in making a PSPO the Council would be required to remove the restriction immediately which would open up the lane again. Also it was highly likely in the event of a judicial finding against the Council Mr Ryan would seek an order for his costs to be paid by the Council.

During the discussion that followed Members noted the cost of clearing the fly-tipping in Berkley Marsh in the past. They said it had been right to try and do something to alleviate this cost for the sake of all of the residents across the Mendip district.

	<p>Members noted the results of the resident's survey which had been circulated to Members in updating sheets. The survey showed that the vast majority of residents were in favour of the closure of Berkley Lane and the re-closure of Dark Lane</p> <p>Members agreed that the Council had a duty to all of the residents of Mendip. In which case it was necessary to look at the options.</p> <p>Councillor Tom Killen said that he would favour Option 2, industrial/military strength barriers because it offered a solution which was proportional to the problem.</p> <p>During a consideration of Option 1, electric bollards Members noted they were prohibitively expensive and also the equipment would be vulnerable to theft and damage. Also, electrical equipment may fail and need to be maintained.</p> <p>Members noted that road closures by PSPO had not been tested in court. They were minded that if their decision was challenged then so be it.</p> <p>There was a query about Section 64(5) of the legislation which states a PSPO may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling. Members reasoned that in this case there were no dwellings that required access, only fields.</p> <p>Councillor John Parham said he would be happy to propose Option 3, the retention of the existing concrete blocks.</p> <p>Members noted that every field had a gate and that industrial/military strength barriers as set out at Option 2 would not be any more restrictive than this.</p> <p>It was noted that the problem of fly-tippers was still prevalent in the area. Members wondered whether the Council should install a CCTV system.</p> <p>The Chairman summarised the discussion. He said that the Council had seen the result of re-opening Dark Lane. He said Members needed to act practicably and reasonably. He summarised the pros and cons of the options before Members.</p> <p>He said that ongoing joint working to find an agreeable solution between the objector and the Council would be advantageous.</p>	
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In the meantime, he said the best solution would be the making of a further PSPO for Berkley Lane, Berkley Marsh for a period of 3 years as set out in Appendix A of the report using industrial/military strength barriers without electric controls, subject to a safety audit by the Highways Authority.

In addition to this he proposed that delegated authority be given to the Interim Group Manager, Neighbourhood Services in consultation with the Portfolio Holder for Neighbourhood and Community Health Services, to undertake a survey regarding the re-closure of Dark Lane

The proposal was carried unanimously.

RESOLVED

The making of a further PSPO for Berkley Lane, Berkley Marsh for a period of 3 years as set out in Appendix A of the report using a gated solution requiring no electricity, subject to a safety audit by the Highways Authority.

1. That a licence to do works is entered into with Somerset County Council (the Highway Authority) to permit minor works on or adjacent to the highway.
2. To delegate to the Interim Group Manager, Neighbourhood Services in consultation with the Portfolio Holder for Neighbourhood and Community Health Services, authority to take any action necessary to implement the PSPO.
3. To delegate to the Interim Group Manager, Neighbourhood Services in consultation with the Portfolio Holder for Neighbourhood and Community Health Services, authority to take steps necessary to implement the safety audit recommendations.
4. To delegate to the Interim Group Manager, Neighbourhood Services in consultation with the Portfolio Holder for Neighbourhood and Community Health Services and the Section 151 Officer, authority to identify an appropriate budget to implement the PSPO, which will include costs associated with compliance with the safety audit recommendations.
5. To delegate to the Solicitor to the Council and Monitoring Officer authority to enter into legal or transaction work required to implement the further PSPO.

	<p>6. To delegate authority to the Interim Group Manager, Neighbourhood Services in consultation with the Portfolio Holder for Neighbourhood and Community Health Services, to undertake a further survey regarding the re-closure of Dark Lane.</p> <p>REASON FOR THE RESOLUTION</p> <p>To enable the Council to implement the PSPO in Berkley Marsh to try to maintain the quality of life of visitors and residents.</p>	
<p>6</p>	<p>2018/19 to 20/23 Medium Term Resource Strategy and 2018/19 Detailed Financial Plan</p> <p>The Chairman outlined the current financial position. He said that meetings had been held with the other Councils in the 5 Council Partnership and he had been encouraged by the financial situation.</p> <p>The Portfolio Holder for Finance, Governance and Corporate Services presented a report the purpose of which was to make recommendations on the level of the Council's Revenue and Capital Budgets, the Band D Council Tax and Special Expenses Rate for 2018/19.</p> <p>The report included the following appendices:</p> <p>Appendices: Appendix A – 2018/19 Provisional Local Government Finance Settlement Appendix B – Summary Capital Investment Programme; Appendix C – Detailed Capital Investment Bid Proposals; Appendix D – The Prudential Code Indicators; Appendix E(i) – Revenue Control Totals by Service; Appendix E(ii) – Revenue Control Totals by Subjective; Appendix F – Summary of Reserves and Balances Appendix G – Special Expenses Rate Appendix H – Fees and Charges</p> <p>The Portfolio Holder gave a PowerPoint Presentation which set out the current financial position of the Council. He was pleased to present Cabinet with a balanced budget.</p> <p>The 2018/19 Financial Plan outlined the detailed budget and the 2018/19 – 2022/23 Medium Term Resource Strategy the options for a sustainable five-year strategy. The detailed financial implications were dealt with within the body of the report.</p>	<p>Paul Deal</p>

The Council had recognised there were potential risks arising as a result of unforeseen circumstances and had produced a budget for 2018/19 that both maintained general balances above the minimum level specified by the Section 151 Officer and provides an in-year Revenue Contingency Budget.

Members of the Scrutiny Board had reviewed the proposals included within the draft budget at their meeting on 22 January 2018.

Members noted that no alternative budget had been put forward.

Councillor Ros Wyke was invited to speak. She said she was concerned about the lack of enforcement which the Council was currently able to deliver. She said enforcement was a key service and should be resourced adequately.

The Chairman said there were personnel issues in the enforcement team which needed to be resolved. However, the Council was committed to its enforcement service.

He noted that from the Cabinet's point of view the budget which had been presented would be adequate to resource the services.

The Portfolio Holder for Community Health and Neighbourhood Services reminded Members that the enforcement service was not a statutory one. He outlined the staffing issues that were being experienced in the enforcement team. He said he was totally committed to having a good enforcement service.

During the discussion about the budget Members congratulated the Officers and the Portfolio Holder on being able to present a balanced budget. It was noted that the budget was a prudent one. Members noted that government funding was reducing, but that plans had been put in place to make sure the Council would continue to be sustainable in the future.

There were further discussions about the following topics:

- Parish Special Expenses Rate - this would be reported on in more detail in the future.
- Fees and charges - it was noted that some fees were set by statute
- Parish Precepts
- The Spinal Increments for staff wages

The Portfolio Holder announced that following a detailed review it was no longer viable to freeze the cap on the Special Expenses Rate for play areas and closed churchyards. However, to be fair to those parishes, notification would be given that the operation of the cap would be reviewed and amended from 2019/20 financial year.

RESOLVED

(i) Provisional Local Government Finance Settlement

The Leader and Cabinet noted and recommended that Full Council note:

- (i) The outcome of the Provisional Local Government Finance Settlement.

(ii) Capital Investment Programme

The Leader and Cabinet agreed and recommended to Full Council:

- (ii) The overall Capital Investment Programme for 2018/19 of **£3,817,600** and note the indicative programmes for 2019/20 to 2022/23 as summarised in the report.
- (iii) Set an overall Capital Envelope at **£80m** for 2018/19 to provide sufficient flexibility to enable to Council to respond to investment opportunities if they arise in-year.
- (iv) That the Chief Executive and relevant Group Manager(s) be given delegation to decide on the specific individual service capital projects to be delivered within generic approvals for their area of control, following any consultation as necessary;
- (v) The Prudential Code Indicators as shown in the report, subject to any changes made;
- (vi) That the following statement on the Minimum Revenue Provision be endorsed for 2018/19:

“The Council will continue to make Minimum Revenue Provision at least equal to an annual 4% reducing balance method on all capital

expenditure covered by government supported borrowing approvals.

Minimum Revenue Provision for the capital expenditure within the proposed Annual Service Capital Programme will be based on the nominal life of the asset delivered.

For the capital expenditure within the proposed Commercial Investment Capital Programme, Provision will be based upon one the following options:

- a. Where the asset is to be retained, Minimum Revenue Provision will be set aside based on the nominal life of the asset delivered (the default position);
- b. Where the asset is to be sold to repay the debt, a separate provision will be created for any reduction in the valuation of the asset (assessed annually) being recovered over the remaining life of associated debt financing the investment.

If in subsequent years the value increases, the Provision could be revised to ensure the amount set aside is appropriate. Any excess provision set aside could then be released enabling the council to invest further or reduce the overall capital financing costs thereby assisting the Revenue Budget”

3. Revenue Budget Proposal

The Leader and Cabinet agreed and recommended to Full Council:

- (i) The overall Revenue Budget for 2018/19 of **£16,100,130** after taking into consideration all proposals and supporting documentation within the report.

4. Council Tax Setting

The Leader and Cabinet agreed and recommended to Full Council:

- (i) In accordance with the Local Authorities (Calculation of Tax Base) Regulation 1992, as

	<p>amended, the amount calculated by the Council as its Council Tax Base for the year 2018/19 shall be 39,599.15. This figure includes the adjustments made as a result of the Council tax support scheme.</p> <p>(ii) A Council Tax Requirement of £6,003,600 representing a Council Tax of £151.61 for a Band D property, an increase of £5 or 3.41% from 2017/18 (excluding the Special Expenses Rate).</p> <p>(iii) The continuation of the additional Council Tax Precept equivalent to 1.25% of Mendip's 2015/16 Council Tax Charge for the Shadow Somerset Rivers Authority only. This equates to a Band D value of £1.84 resulting in a Council Tax Requirement of £72,800 for 2018/19.</p> <p>5. Special Expenses Rate</p> <p>The Leader and Cabinet agreed and recommended to Full Council:</p> <p>(i) A Special Expenses Rate of £237,800 capping the rate to previous levels.</p>	
7	<p>Quarter 3 Budget Monitoring Report</p> <p>The Portfolio Holder for Finance, Governance and Corporate Services presented a report which summarised the forecast outturn position of the Council's Medium Term Resource Strategy for the 2017/18 financial year, based on Quarter 3 projections. The report provided the following information:</p> <ul style="list-style-type: none"> a) The projected <u>Revenue</u> outturn position for 2017/18 b) In-Year Virement Summary c) The projected <u>Capital</u> outturn position for 2017/18 d) The Aged Debt Analysis e) The Council Tax and National Non-Domestic Rate Collection Summary f) Summary Treasury Management position <p>Any variance against the agreed budget would impact on the Council's general balances. The Council's financial position would be constantly reviewed to ensure its continued financial health and delivery of excellent Value for Money.</p>	Paul Deal

	<p>The report indicated a projected Revenue budget variance of £7k under spend and that the Capital Investment Programme was significantly underspent due to the investment in extending the civic site being delayed.</p> <p>OPTIONS CONSIDERED</p> <p>No formal options appraisal was applicable to this report.</p> <p>RESOLVED</p> <p>To note the contents of this report and approve the Carry Forward Requests and the additional contributions to Capital Financing.</p> <p>REASON FOR THE RESOLUTION</p> <p>To maintain effective financial stewardship and budgetary control and to comply with the agreed strategy of regularly informing members of the forecast outturn position relating to the 2017/18 financial year as part of the annual budget monitoring process.</p>	
<p>8</p>	<p>Treasury Management Strategy Statement and Annual Investment Strategy</p> <p>The Portfolio Holder for Finance, Governance and Corporate Services presented a report which sought approval for the Treasury Management and Annual Investment Strategy for the forthcoming financial year 2018/19.</p> <p>The Council was currently maintaining an under-borrowed position. This meant that the capital borrowing need (the Capital Financing Requirement), had not been fully funded with loan debt as cash supporting the council's reserves, balances and cash flow had been used as a temporary measure.</p> <p>The Corporate Financial Advisor reported that the Council complied with this prudential indicator in the current year and did not envisage difficulties for the future. This view had taken into account current commitments, existing plans, and the proposals in this budget report.</p> <p>RESOLVED</p> <p>To agree and recommend to Full Council:</p> <p>1. The strategy as laid out in the report;</p>	<p>Paul Deal</p>

	<p>2. The prudential guidelines as laid out in the report;</p> <p>3. To approve MRP policy included in the report.</p>	
11	<p>Portfolio Holder Decisions</p> <p>There had been no recent Portfolio Holder decisions to report.</p>	
12	<p>Forward Plan</p> <p>The Council's Forward Plan was noted.</p>	
13	<p>Minutes for Information</p> <p>There were no minutes for information on this occasion.</p>	
14	<p>Urgent Business</p> <p>None</p>	

The meeting closed at approximately 8:40 pm.