

## **Councillors' questions at Cabinet – 28 February 2019**

### **Question 1**

**Councillor EPJ Harvey, Ledbury North Ward**

**To: cabinet member, finance and corporate services**

Is this cabinet content that it is legally and constitutionally justifiable for an officer to be allowed to move £1,000,000 of public money, designated specifically for other purposes, at this point in the financial year and under a year-old delegation which only provides for “final budgetary adjustments”, without the decision being treated as both ‘key’ and open to call-in; and if so, will cabinet now authorise the immediate and detailed scrutiny of the project management of all the council’s transport projects to demonstrate unequivocally to councillors and to the public that they are being delivered in accordance with the assurances given by the Chief Executive in July 2018 following the failures in project management uncovered by the Blueschool House project investigation?

### **Response**

The constitution sets out clearly who is authorised to take decisions and the limits on any authority, and I would expect officers and members alike to ensure that they comply with the provisions of the constitution and any other relevant legislative requirements. Cabinet is not responsible for the council’s constitution – that is a function of full Council having regard to recommendations made by the Audit & Governance Committee.

An operational decision to move money would be appropriate if the key decision authorising use of that money has already been taken at member level. Whilst operational decisions are not subject to the statutory call in process, it is always open to the relevant scrutiny committee to hold an individual senior officer or elected member to account for their actions; that is a matter for scrutiny.

Your request that cabinet authorise immediate and detailed scrutiny of project management of the council’s transport projects should be directed to the relevant scrutiny chair to consider building into their work programme. The cabinet may not determine that programme. However I understand that the Audit and Governance Committee, of which you are currently a member, has already asked the Head of Internal Audit to make provision in the internal audit plan for 2019/20 for focussed work on the project management of major transport projects to inform continued improvement; again, the internal audit plan is not a matter that cabinet may determine but you may be assured that any recommendations made by the internal auditor will be acted upon.

### **Supplementary Question**

The response does not answer the question asked and makes every effort to kick the scrutiny part of the question down the road beyond the May elections. Cabinet is not responsible for the constitution but cabinet is obliged to operate within the constitution of this council. The cabinet member decision of 12 November 2018 cited in the revised decision notice as authority for officers to make this decision does not give officers this authority, it relates specifically to compulsory purchase orders affecting only two wards and authorises merely an increase of £200k in the land acquisition budget. There is nothing in the decision which provides cover for this £1m movement by officers. If the cabinet member for finance genuinely argues now that the decision of 12 November 2018 gives constitutional and legal cover for this movement why was it necessary for the Monitoring Officer and S151 Officer of

this council to state in writing the unlawfulness of officers' attempts to transfer £1.7m of growth deal money to cover the unauthorised expenditure already incurred on the SWTP as recently as the 22 January?

## **Response**

In respect of the note of 22 January, I prefer to let the S151 officer comment on that if he wishes as he has been named. Otherwise the specific allegations require a written reply.

S151 Officer response –There are a number of points and a number of financial issues that have been raised. Referring to the question asked about the £1m transfer, I refer back to the decision of Council in December 2016 where the capital programme was agreed for the SWTP at a total cost of £35m, £27m coming from government grant and £8m coming from the LTP. The decision to move the £1m in question is aligned with that. We are being open and transparent around that movement between budget headings to be very clear that we are following that process. A written response will be provided regarding the £1.7m referenced.

## Further response

The s151 Officer has confirmed the following:

I wrote to the Marches LEP in January 2019 to advise LEP officers that the Council would not support the proposition from LEP officers that Growth Deal funding was used to fund part of the SWTP project in 2018/19 with the assumption that this Growth Deal funding was repaid to the LEP in a future year, with the repayment being funded from the DFT funding due in future periods.

As you will recall the SWTP project is a scheme funded by DfT, the overall project is a thirty five million pound scheme, with twenty seven million pounds coming from DFT and eight million pounds from council resources.

My view is that the proposed use of the growth fund is not allowable. This was on the basis of legal advice I received from the Councils monitoring officer. I have been clear with LEP officers that if they have differing legal advice that we would consider this, I have not been made aware to date of any differing legal advice.

I believe that this is consistent with the funding position in project governance decisions which sets out £27m external grant funding and £8m council capital budgets. This is not linked to the recent officer decision to allocate the councils contribution of LTP to fund current year spend on SWTP.

## Question 2

### **Councillor AJW Powers, Greyfriars Ward**

**To: cabinet member, finance and corporate services**

The Corporate Budget Performance Report, Appendix B Table A, shows that this administration is behind in its proposed investments in:

Hillside

Peterchurch, Brookfield and Marlbrook schools

Fastershire Broadband

Hereford City Centre Transport Package

Enterprise Zone

HEZ Shellstore  
Solar PV panels  
South Wye Transport Package  
Development Partnership activities  
Highways asset management  
Ross Enterprise Park (Model Farm)

The budget for 2018-19 investment has been dropped by more than 50% (£76m), yet the forecast underspend (Table B) of the remaining £68m is still 30% (£21m). Why is the administration failing to meet its own investment targets?

## **Response**

This administration is far from failing; it is continuing to deliver on the council's corporate plan priorities. Over the past four years our investment has delivered, amongst other things, a new primary school at Colwall, £4.01m improvement works to school buildings, the new city link road, £48.6m roads improvement, £5.08m investment in LED lighting and solar panels, a new energy from waste plant delivered with our Worcestershire partners, £10.8m investment in economic development projects, £6.8m support for housing delivery and disabled facilities grants, £5.6m investment in improvements to leisure facilities operated by Halo, £.83m investment in libraries and museums in the county; and £13.4m delivering broadband improvements across the county. This is an extraordinary track record of delivering investment to realise the council's vision of 'People, organisations and businesses working together to bring sustainable prosperity and well-being for all, in the outstanding natural environment of Herefordshire' at a time when many other councils have struggled to adapt to the changing public sector financial environment, yet we have maintained an external audit opinion that the council remains financially sustainable for the foreseeable future.

Capital programme provisions approved by Council historically have been rolled forward to the following financial year, if not fully expended. At the July 2018 Council meeting officers were asked to re-profile the capital programme to indicate when it was anticipated projects would seek approval from cabinet to draw down the provision. This re-profiling exercise led to an adjustment of £74.2m which was profiled over future years. There has been a further net reduction of £2.4m in relation to an estimation of grants that would be received due to the £3.045m reduction on Highways Asset Management grant.

Of the re-profiled capital programme the only projects that are forecasting to spend significantly less than the re-profiled budget, as identified in the variance column in appendix b table are, Fastershire Broadband, Hereford Enterprise Zone (HEZ), HEZ Shell Store, South Wye Transport Package, Development Partnership activities and Ross Enterprise Park.

With reference to Fastershire, spend is behind profile due to holding back payment until work is completed by the supplier for the broadband fibre rollout. The supplier needs to evidence deliverables and outcomes with due diligence on any spend before payment is made. There has been a change since the reporting period in relation to Development and Regeneration Programme activities and this provision is now likely to spend before the end of the financial year. The re-profiling of the South Wye Transport Package reflects the current delivery programme for the Southern Link Road which has regard to the additional time required as a result of the public inquiry held in the autumn 2018 following a small number of objections received to the compulsory purchase order. The Hereford Enterprise Zone, Shell Store, and Ross Enterprise Park projects have, since the reporting period, received approval to spend within the approved capital provision; those budgets will now be re-profiled and project managed appropriately.

Budget re-profiling of major capital schemes is not an indication of failure to deliver but a matter of good practice in capital programme management and transparency.

### **Supplementary Question**

The emphasis on reprofiling does not address the substance of my point about projects evidently falling behind the administration's targets and schedule. Would he please clarify the statement in the penultimate paragraph about the change in the development regeneration programme to explain these changes and confirm that this programme is a new descriptor for what hitherto, and indeed in the papers for this meeting, has been entitled development partnership activities - has the partnership ended?

### **Response**

The partnership has not ended but there has been a change in terms of a potential spend in relation to the next reporting period to end March 2019. This provision is likely to expend a degree of capital. I believe that group leaders have been advised of the potential spend.