

Progress Report

Meeting: Environment and Sustainability Scrutiny Committee

Meeting date: 18th November 2022

Report by: The Statutory Scrutiny Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose:

This report provides a brief summary update on issues previously considered by the Environment and Sustainability Scrutiny Committee, including responses to information requests made by the committee, updates on resolutions made by the committee, including reports and recommendations to the executive and the Executive Repose and executive decision made in respect of scrutiny reports and recommendations.

Recommendation(s)

That the progress report on scrutiny information requests, scrutiny reports and recommendations and other matters raised by the Committee be noted.

Alternative options

1. The alternative is for the Committee not to receive a Progress Report to update on matters since the last meeting, which would provide less clarity and transparency on the progress of issues since the last meeting.

Key considerations

2. Scrutiny committees have statutory powers to make recommendations to the Executive, as appropriate, and the Cabinet has a statutory duty to respond to scrutiny recommendations. They may also make reports and recommendations to external decision making bodies.
3. In tracking scrutiny recommendations, it is important that it is clear that the recommendations are addressed to the Cabinet, as the Executive decision making body of the council (or,

where appropriate, external agency), and to track the decision of the Cabinet and thereafter the implementation status of the Executive Response and Cabinet decisions.

4. Scrutiny committees also have the power to request information from council departments and certain other external organisations, from who they should expect a response. Scrutiny committees should be clear why they are requesting information and when they need the response by. Scrutiny committees may therefore wish to keep track of information requested at the previous meeting and for this to be received at the next ordinary meeting of the committee.

Scrutiny Committees at Herefordshire

5. The council has five scrutiny committees, established by full Council on 20 May 2022;
 - i). Scrutiny Management Board
 - ii). Environment & Sustainability Scrutiny Committee
 - iii). Connected Communities Scrutiny Committee
 - iv). Children & Young People Scrutiny Committee
 - v). Health, Care & Wellbeing Scrutiny Committee.
6. The general role of the scrutiny committees is set out in Article 6 – Scrutiny of the Herefordshire Council Constitution (the Constitution), in accordance with the Local Government Act 2000. Part 3, Section 4 of the Constitution sets out the specific remits for each of the scrutiny committees. This includes a strategic management and coordination functions for the Scrutiny Management Board, as well as the thematic remits of the four other scrutiny committees. The Scrutiny Management Board is also responsible for the scrutiny of corporate cross cutting functions of the council.
7. Although scrutiny committees do not have any executive decision making powers, they do have statutory powers to make recommendations to Cabinet, as appropriate, and Cabinet has a statutory duty to respond to scrutiny recommendations. They may also make reports and recommendations to external decision making bodies.

Progress from the Previous Meeting

On 21 September 2022 the Environment and Sustainability Scrutiny Committee (Committee) considered the development of the new Herefordshire Local Plan. The committee considered the extent to which the preparation of the Local Plan aims linked with the objectives for Environment and Sustainability, as outlined in the County Plan 2020-2024, Herefordshire Climate Change Emergency resolutions and Executive Response, and other relevant council strategies and policies, including the Success Measures provided in the council's County Plan 2020-2024. The Committee sought assurance that the Local Plan will help to deliver these, rather than cut across them.

In addition, the Committee considered the initial results which were emerging from the Local Plan Options consultations undertaken during 2022 and details of the scope and methods used during the consultation process.

The Committee has questioned Cabinet Members and planning officers during its inquiry, as follows;-

- Councillor David Hitchiner - Leader of the Council.
- Councillor John Harrington - Cabinet Member Infrastructure and Transport.
- Councillor Ellie Chowns - Cabinet Member for Economy and Environment.
- Samantha Banks - Neighbourhood Planning Service Manager.

The scrutiny inquiry considered the Herefordshire Local Plan and its overall timeline, the key council priorities for Environment and Sustainability, and the Success Measures provided in the council's County Plan 2020-2024:

- i). Increase flood resilience and reduce levels of phosphate pollution in the county's river*
- ii). Reduce the council's carbon emissions*
- iii). Work in partnership with others to reduce county carbon emissions*
- iv). Improve the air quality within Herefordshire*
- v). Improve residents' access to green space in Herefordshire*
- vi). Improve energy efficiency of homes and build standards for new housing.*

The Committee considered the extent to which the development of the Local Plan appeared to deliver these, in conjunction with the process for development and consultation on the options for the plan. The committee also considered the consultation on the Local Plan and the summary results from the analysis of the consultation on the Local Plan, which are relevant to Environment and Sustainability, may help to inform the development of the new Local Plan, the rationale for the consultation, the main mechanism and methods for the consultation and how representative are, the wider consultation stages and timelines, and how the results of the consultation are being used to inform policy and service development.

The minutes of the meeting is available [here](https://councillors.herefordshire.gov.uk/documents/g8828/Public%20minutes%20Wednesday%202021-Sep-2022%2010.30%20Environment%20and%20Sustainability%20Scrutiny%20Committee.pdf?T=11):

<https://councillors.herefordshire.gov.uk/documents/g8828/Public%20minutes%20Wednesday%202021-Sep-2022%2010.30%20Environment%20and%20Sustainability%20Scrutiny%20Committee.pdf?T=11>

At the end of this meeting, the Committee drew together some key points that it would like the Cabinet and the planning team to take into consideration in the ongoing development of the Local Plan proposals. The Committee decided to document its findings and any recommendations in a summary report to be drafted following the meeting, for approval by the committee.

The main evidence considered by the Committee will be summarised in this report, along with commentary on the Committee's own findings, suggestions and contribution to the development of the new Local Plan, the consultation and wider community objectives for planning and delivering sustainable development and wellbeing of Herefordshire.

Restoration of the River Wye

8. On 26 July 2022 the committee considered Restoration of the River Wye - Options for Public Inquiry and Policy Review, when the Committee gave initial consideration to the options available for public inquiry and policy review in relation to restoration of the River Wye and provided its observations, suggestions and recommendations to the Cabinet on the way in which the project will be taken forward.

It was resolved that:

- (i) The Committee is assured, subject to the clarifications sought on the Commission's terms of reference and on involving the wider membership of the council, that Restoration of the River Wye public inquiry and review is being considered effectively through the Cabinet's Phosphates Commission - Restoring the River Wye;
- (ii) The Executive Response and Cabinet decisions in response to the scrutiny recommendations on the Restoration of the River Wye – Options for Public Inquiry and Policy Review made at the Committee on 26 July 2022 be noted.

The Committee also made the following information requests:

- a. Clarification of the Commission's Terms of Reference with regards to the relationship between the Phosphates Commission and the Nutrient Management Board, so as to be clear as to what directives may be given to the Nutrient Management Board by the Commission, including any legal implications arising from the proposed rewriting of the Nutrient Management Board's strategy;
- b. Clarity on how the Executive will find ways to involve expertise from across the membership of the council in the work of the Commission.

The responses to these request from the Economy and Environment Directorate are provided below.

The Commission's Terms of Reference

Clarification was sought on of the Commission's Terms of Reference with regards to the relationship between the Phosphates Commission and the Nutrient Management Board, so as to be clear as to what directives may be given to the Nutrient Management Board by the Commission, including any legal implications arising from the proposed rewriting of the Nutrient Management Board's strategy;

Response:

As stated at the last meeting, the Commission cannot compel but can make recommendations about a voluntary partnership with a voluntary plan which will be well founded and we would hope our partners will listen too. The present NMB and its plan was evidence the Planning Inspector accepted that a plan existed overseen by the NMB. It goes without saying that Commission will want to see stronger governance, a greater focus on delivery and won't be proposing anything of lower evidential value to the Planning Inspector than is presently in place.

Membership of the Commission

Clarity was sought on how the Executive will find ways to involve expertise from across the membership of the Council in the work of the Commission.

Response:

The Commission is encouraged in that it now has Executive Members joining us from Powys, Monmouthshire and Forest of Dean. To move at pace we will not be expanding membership beyond this, we accept that will be disappointing to some.

The Commission is drawing on expertise within NGOs, statutory partners and leading local and national industry representatives through the working groups now in place to support it. It is well placed for expertise in most specialisms;- science, NGOs, farming, farming supply chain and project management, solution design etc. Statutory partners have appointed principle advisers to assist the Commission. Furthermore, a commissioning budget is in place to cover the gaps if needed. Discussions are taking place with the Local Government Association on commissioning a piece research and other national bodies including leading academic institutions who have in the past helped design Farming Rules for Water and RB209 on approaches which could be prototyped in the Wye for national roll out which they will commission and fund. The Commission will say more about this when the time is right as at present discussions are at an early stage.

The most pressing need is for partnership building expertise with the Welsh farming community and Powys Council are considering whether a Natural Resources Wales funding stream could potentially assist with a rapid capacity building project.

A regular meeting will be put in place between the Chair of the Commission, the Chair of NMB and Herefordshire Council's Chief Executive to ensure informal liaison.

Links have been established with local MPs, DLUCH and DEFRA Directors, the LGA, the Planning Advisory Service, the Association of Directors in Planning, Environment and Transport and key national supply chain industry bodies including the major national supermarket retailers to ensure we prepare for a joint national policy push when the Commission begins to provide reports.

The Commission is now providing a closed protected space for the working groups to confidentially explore and develop potential solutions and proposals for partners to consider. All overseen by Members of the Commission. We have been particularly pleased to see the farming and farming supply sector engage with the process albeit these are very early days and there is a lot of detail to progress and nothing can be agreed until everything is agreed and will bring forward substantive proposals and recommendations when these are ready.

The Commission remains hopeful of providing a more substantial update to the January ESSC meeting, however, this is dependent on the progress the working groups are able to make in a very short space of time. At this stage, ESSC can be reassured that systems and structures are in place. The Commission requests that scrutiny provides space for the Commission to work quietly, systematically and with firm and steady intent to bring key players together to begin to build lasting solutions.

Reports to the Scrutiny Committee

In addition, the Committee requested further update reports be brought to the Committee at key intervals, to provide updates on the progress of the Commission, including a progress report on 10 March 2023. This has therefore now been amended to the Committee's Annual Work Plan.

Environment and Sustainability Scrutiny Committee Annual Work Plan 2022-2023

9. The Committee agreed its work plan for the year on 26 July 2022. The Committee's work plan was brought together with the work plans of the other scrutiny committees to make the Annual Scrutiny Work Programme 2022-2023, which was agreed by the Scrutiny Management Board on 5 September 2022.
10. To accommodate participation in the meetings by the Cabinet Member Environment and Economy, it should be noted that the meeting dates have been moved from Wednesday to Fridays in November 2022 and March 2023:
 - Wednesday 16 November 2022 is **now meeting on Friday 18 November 2022.**
 - Wednesday 8 March 2023 is **now meeting on Friday 10 March 2023.**

In addition, an item on Phosphates Commission - Restoring the River Wye has also been added to the Committee's Work Plan to consider the progress of the council's Phosphates Commission - Restoring the River Wye, to consider ways to improve the environmental

impact of phosphates pollution and the restoration of the River Wye, following the request made under this item at the meeting on 21 September 2022.

Scrutiny Recommendations and Executive Response

11. In accordance with Part 4 Section 5 of the Constitution, the council's scrutiny committees may make recommendations to Full Council or the Cabinet with respect to any functions which are the responsibility of the executive or of any functions which are not the responsibility of the executive, or on matters which affect the county or its inhabitants. The Health, Care and Wellbeing Scrutiny Committee may also make recommendations to the relevant NHS bodies or relevant health service providers or full Council.
12. Scrutiny committees may not make executive decisions and scrutiny recommendations therefore require consideration and decision by the appropriate decision maker; usually the Cabinet, but also full Council for policy and budgetary decisions and the NHS where it is the decision maker.
13. The Scrutiny Recommendation Tracker table attached at Appendix 1 provides a summary of scrutiny recommendations made during the municipal year, so that the Committee can track the progress of the recommendations made.
14. The Scrutiny Recommendation Tracker table includes each scrutiny recommendation made and the date it was made, (which will be as is recorded in the committee minutes), identification of the decision maker (e.g. Cabinet), the Executive Response (the actual Cabinet decision), which may be different from the scrutiny recommendation and which will be minuted in the Cabinet minutes, the date the Executive Response/decision was made and an implementation review date.
15. The Scrutiny Recommendation Tracker enables the scrutiny committee to track whether their recommendations have been agreed, what actually was agreed (if different) and ask about any outcomes arising from the scrutiny recommendations, for example, service improvements, value for money savings and outcomes for residents.
16. If the relevant respective executive decisions and actions have been implemented, they will not be referred over to the scrutiny recommendation tracker report for the next municipal year, but that any that have not been implemented may be referred to the scrutiny recommendation tracker for the next Committee cycle.

Procedure for Recommendations from Scrutiny Committees

17. Where scrutiny committees make reports or recommendations to the Cabinet, as soon as this has been confirmed, these will be referred to the Cabinet requesting an Executive Response and the issue will be published on the council's Forward Plan. This will instigate the preparation of a report to Cabinet and the necessary consideration of the response, the technical feasibility, financial implications, legal implications and equalities implications etc.
18. Where scrutiny committees make reports or recommendations to full Council (e.g. in the case of policy and budgetary decisions), the same process will be followed, with a report to Cabinet to agree its Executive Response, and thereafter, a report will be prepared for council for consideration of the scrutiny report and recommendations along with the Cabinet's Response.
19. Where scrutiny committees have powers under their terms of reference to make reports or recommendations external decision makers (e.g. NHS bodies), where they do this, the

relevant external decision maker shall be notified in writing, providing them with a copy of the committee's report and recommendations, and requesting a response.

20. Once the Executive Response has been agreed, the scrutiny committee shall receive a report to receive the response and the committee may review implementation of the executive's decisions after such a period as these may reasonably be implemented (review date).

Community Impact

21. In accordance with the adopted code of corporate governance, the council is committed to promoting a positive working culture that accepts, and encourages constructive challenge, and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development and review. Topics selected for scrutiny should have regard to what matters to residents.

Environmental Impact

22. Whilst this is an update on the work of the scrutiny committees and will in itself have minimal environmental impacts, consideration has been made in the consideration of Executive decisions and the Executive Responses provided by the Cabinet.

Equality Duty

23. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
24. A public authority must, in the exercise of its functions, have due regard to the need to –
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
25. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Whilst this is an update on the work of the scrutiny committees and will in itself have minimal equalities impacts, consideration has been made in the consideration of Executive decisions and the Executive Responses provided by the Cabinet.

Resource Implications

26. The costs of the work of the Committee will have to be met from existing resources. It should be noted the costs of running scrutiny can be subject to an assessment to support appropriate processes.
27. The councillors' allowance scheme contains provision for co-opted and other non-elected members to claim travel, subsistence and dependant carer's allowances on the same basis as members of the council. If the committee agrees that co-optees should be included in an inquiry they will be entitled to claim allowances.

28. It is suggested that a scrutiny committee should only have one in-depth scrutiny task group inquiry running at a time.
29. Whilst this is an update on the work of the scrutiny committees and will in itself have minimal resource implications, consideration has been made in the consideration of Executive decisions and the Executive Responses provided by the Cabinet.

Legal Implications

30. The council is required to deliver a scrutiny function. The development of a work programme which is focused and reflects those priorities facing Herefordshire will assist the committee and the council to deliver a scrutiny function.
31. The Scrutiny Rules in Part 4 Section 5 of the council’s constitution provide for the setting of a work programme, the reporting of recommendations to Cabinet and the establishment of task and finish groups within the committee’s agreed work programme.
32. There are no specific legal implications arising from this report which provides a progress update on recommendations made to Cabinet and subsequent Cabinet decision. Any legal implications arising from Cabinet Decisions will be detailed in the relevant Cabinet report.

Risk management

Risk / opportunity	Mitigation
There is a reputational risk to the council if the scrutiny function does not operate effectively.	The arrangements for the development of the work programme should help mitigate this risk.

Consultees

The Chair of the Environment and Sustainability Scrutiny Committee.

Appendices

Appendix 1: The Scrutiny Recommendation Tracker.

Background papers

None identified.