

MINUTES OF THE MEETING OF THE BABERGH OVERVIEW AND SCRUTINY
COMMITTEE HELD IN KING EDMUND CHAMBER, ENDEAVOUR HOUSE, 8 RUSSELL
ROAD, IPSWICH ON TUESDAY, 31 OCTOBER 2017

PRESENT: Barry Gasper - Chairman

Clive Arthey
Bryn Hurren
Alan Ferguson

Peter Burgoyne
Alastair McCraw
Simon Barrett

The following Members were unable to be present: Fenella Swan, Melanie Barrett

45 APOLOGIES AND SUBSTITUTES

Councillor Alan Ferguson (Substituting for Councillor Melanie Barrett)
Councillor Simon Barrett (Substituting for Councillor Fenella Swan)

46 DECLARATION OF INTERESTS

None declared.

47 CALL IN OF THE DECISION FROM THE MEETING OF THE BABERGH CABINET
HELD ON 13 OCTOBER 2017. REPORT BCA/17/22.

47.1 The Chairman read out the Decision notice of Report BCA/17/22 from the meeting held on 13 October 2017 and the valid point from the Call In notice as follows:-

1. The decision notice states that no alternative options have been considered and rejected.
2. The decision does not appear to be listed as a key decision.
3. There appears to be a decision to consult on merging with inadequate preparation and information release.
6. The financial appendix to the report is far from a full and unbiased picture of the current and projected situation.

47.2 On the **PROPOSAL** of Councillor Simon Barrett and **SECONDED** by Councillor Alan Ferguson the scope of the Call-In was **AGREED** as the four points above.

47.3 When **PUT** to the meeting the Motion was **CARRIED** unanimously.

It was RESOLVED

(i) **That the Scope of the Call – in be based on the following points:-**

1. **The decision notice states that no alternative options have been considered and rejected.**

- 2. The decision does not appear to be listed as a key decision.**
- 3. There appears to be a decision to consult on merging with inadequate preparation and information release.**
- 4. The financial appendix to the report is far from a full and unbiased picture of the current and projected situation.**

47.4 Councillor Tony Bavington, the lead signatory of the Call In, read out the following statement:

47.5 In your report to Council on 24th October, Mr Chairman, you said that you aim to undertake pre-scrutiny in order to improve the quality of the scrutiny process and to provide the opportunity to introduce a topic where there is a concern, in a timely fashion. I have attended three of five cabinet meetings so far and looked up the forthcoming decisions list for all of them, including the one online last Wednesday – that is a period from July 2017- February 2018 – and not one of them list formally dissolving the two District Council's and creating a new larger District Council as a decision, let alone a Key Decision. Several of them do, however, list the future use of the public toilets in Cordell Road, Long Melford, as a Key Decision. As you know, Scrutiny Committee agendas now routinely feature the Cabinet's Forthcoming Decisions list followed by a Scrutiny Committee Forward Plan. How can you formulate your forward plan or undertake pre-scrutiny of a decision which not only is not flagged as to its existential significance but not even listed as going to be taken?

Yet no one could credibly argue that the dissolution of Babergh itself is not a Key Decision in the meaning of its new Constitution. This is a decision that, under the Constitution, Part 1, para 12.7.1b, would have a significant effect on the communities living or working in an area made up of two or more wards. If this decision were pushed through to the merger of the two districts, then almost certainly Babergh District Council Tax would rise substantially, car parking charges would be imposed in our market towns, causing them to lose a major competitive advantage relative to the larger towns around them – like the one we now find ourselves in – and Babergh representatives would lose control over the Babergh Housing Revenue Account. These are significant effects on all of the communities in all the wards of the Babergh District.

I used the term merger but the Cabinet decision talks of provisionally endorsing the approach of formally dissolving the two district Council's and creating a new larger District Council. In his email dated 25th October, the Chief Executive said, "As you know, the Babergh and Mid Suffolk Cabinets took the decision to explore the option of formally dissolving the two district councils and creating a new, larger, district council for the area." This sounds terribly reasonable. Yet the question put in 2011 was At the moment, Babergh and Mid Suffolk are separate District Councils. Should these Councils be replaced by one District Council? The same question. No promise of a fresh referendum was given to the Babergh electorate in the 2015 local elections and consequently this instruction is still in full force. The Cabinet Decision is in direct defiance of this instruction. The summary and explanation of the Constitution says that Citizens have the right to have access to certain documents relating to matters on the Forthcoming Decisions plan, Para 6, page 8 of 208.

Based on the 2011 referendum result, we can assume that 61% of the Babergh Electorate may be interested in exercising this right. The Cabinet has denied our citizens this right by not publishing their plan as a Key Decision.

Where does the Cabinet derive the power to commence a process to dissolve the Council, the body that gives it authority? Part 1 of the Constitution, the articles of the Constitution, para 6.5.1 (Page 19) does not mention this power under functions of the Cabinet, though it does list first and foremost, the function to make Key Decisions as defined in Article 12.7 and published in the forthcoming decisions plan. Indeed, the whole Constitution is based on the idea that Babergh District Council continues to exist. Existence precedes essence. As J. P Satre might have put it, without existence, nothing follows.

Provisionally endorsing the approach of formally dissolving the two District Councils and creating a new larger District Council seems to suggest that size is everything. This is hardly an imaginative approach to envisioning a future for our local government in post austerity, post Brexit Britain, which is vibrant, innovative, agile and yet grounded, stable and able to stay in touch with the people we both serve and represent. The decision notice says that no alternative options have been considered and rejected and damningly this seems to be correct. For, although paper BCa/17/22 lists five options dismissing the status quo as not an option, in fact, these options are put up as straw men only to be knocked down in favour of the approach favoured all along. How do we know this? Well, if these other options really had been considered there would by now have been a paper trail. They would have got on to the Cabinet's Forthcoming Decisions list. They would have got into Scrutiny Committee's Forward Plan and they would have undergone pre-scrutiny.

47.6 Councillor Dave Busby added the following statement:

47.7 The key reason for doing this merger should be primarily financial, coming down to the money. We can see problems in our accounts in the years ahead therefore we are looking for a solution to them. In that case you should have confidence in the figures. How confident would you be in any case to be prepared. It says in here that the main savings are from efficiencies in staff and management, how have they been evaluated, as they could be seriously flawed. Supposedly 10% of savings in direct staff, in many of the larger functions they are going to be unaffected, planning, housing, waste and communities. I imagine it won't affect those as they will have to do the same amount of work. Its only in certain small departments such as finance where a merger could eliminate duplication. That will not generate 10% savings, and then you have an indication of the costs and savings, estimate of the cost of management, where is that, it is absent, it has been conveniently absent and has been absent in various projects that we have been doing such as constitutional reviews, committee changes, leader and cabinet, boundary reviews, devolution, office moves and now this. We never get told the cost of management in these projects despite asking. There will be a significant cost involved in creating a new Council and I don't believe that has been provided either.

The key point and the reasoning I think that there needs to be more time in evaluating and scrutinising the financial figures is that this is going to be presented to the public. It is going to be them, that can make the decision, but we are going to consult with them and we need to consult with them with accurate financial figures. Do you have the confidence that the questions can be answered to the public with accurate financial figures. At the moment I don't think that is the case. Just a thought that I had before I came in, we are creating a new council. What about all the contracts and agreements that are tied to both councils such as new homes bonus, will those run forward to a new council or will they stop, will we lose New Homes Bonus (NHB). Will the Government stop the funding and would lose NHB, have we checked this? There is a minefield on the finance side.

47.8 Councillor Tony Bavington concluded with the following statement:

47.9 In just 5 months we have had a rapid growth and a culture of secrecy, so far from being transparent and accountable to local people as the first sentence of the Constitution states. Decisions are being made behind closed doors and being handed down. This growth needs to be nipped up in the bud before it grows rampant and we need to make sure that the cabinet are acting within their powers. In 2010/2011 lead up to the referendum Babergh and mid Suffolk published 3 substantial papers, that was the high level business case, detailed case and updated business case from 29th July – 10 February. We should accept no lowering of standards this time, there should be a business case before there is a consultation.

47.10 The Lead Signatory and Councillor Busby responded to Members' questions on the Housing Revenue Account, Council Tax changes and Car Parking fees within Babergh and added that the first listed function of the Cabinet was to address the Key Decisions list and that there was no evidence that emergency provisions had been invoked.

47.11 Members of the Committee also raised questions regarding the Council acting outside of its own powers and how the decision was only to engage in the consultation process and not to decide on a merger unilaterally and the wording of the decision being for a provisional endorsement of Option B.

47.12 Councillor Jennie Jenkins, Leader of Babergh District Council, read out the following statement:

47.13 There is a strong history of working together over the last few years and since 2011 we have shared the same Chief Executive. In 2013, the Joint Strategic plan which was refreshed in 2015 because we had so many new members. The shared outcome based approach, the shared vision and the priorities. 2016 Joint Public Access Strategy. 2017, the Leader Cabinet Model, we have the shared future challenges and Suffolk Context. 2017, Joint HQ here at Endeavour House. 2018/19 which is moving forward is the Joint Local Plan. 2019 Electoral Equality and Council reduction to 66. Approximately saving £2 million per annum. If I could just remind you that over these past years Mid Suffolk and Babergh initially had £9 million coming in on the revenue support

grant which has dwindled, in a few years time it will be almost nothing. Actually over the years with the money disappearing we have done well on what we have done so far. But we cannot afford to be complacent. Both Councils face a number of key local challenges and opportunities. The need for investment in growth, in infrastructure projects, addressing increasing housing demand and cost, growing employment opportunities and wages, significant reductions in both the revenue support grant as mentioned and new homes bonus. The New Homes Bonus has gone from 6 to 4 years, next year it will be £1.2 million and the year after £600,000. Basically Babergh are not building enough houses. Devolution of greater powers from Central Government, potential to transfer functions and responsibilities from Suffolk County Council, further alignment and integration across the public sector improving education and skills, better use of technology and further welfare reform.

Both Councils are committed to ensuring that both districts are in the best possible position to respond to and take advantage of these emerging opportunities and challenges. Both I and Nick Gowrley asked the Chief Executive to investigate the various options available to further evolve the Councils partnership working and he will be presenting on how we decided. The Cabinet decision was only to provisionally endorse the option to dissolve the two District Councils and create a new Council, it has NOT made that decision. We need to enable stakeholder, public and staff engagements to begin and then subject to the outcome of those public engagements draft a DCLG compliant business case for the dissolution of both Babergh and Mid Suffolk and creation of a new single District Council for the area will be considered by each Council. We have to listen to what the people are saying and what the telephone poll says and what residents want in respect of services because don't doubt if we don't move forward in one way or another we will have to cut services. The money is not there.

The reason for the call in, the report carefully summarises 6 strategic options, each of which were considered by the Cabinet; continue the existing partnership, broader partnerships, form a new Council, unitary, combined authority and mutual company. Each option has benefits and disadvantages and deliverability had to be taken into account with each consideration. The option for a new Council is within our gift and would impact on any other Council. The partnership case, natural extension of the next last steps of working together. It is the easiest option to combine with any other option in future e.g devolution or unitary. It would provide a louder voice and parity of influence in Suffolk. Do we really want to be the meat in the sandwich? East and West are doing this, why can't we work together and do the same?

The financial case, greater resilience by combining the HRA and the general fund as already said there are plusses and minuses in both and we have been working with CIFCO – the investment and proved to work very well with the £50 million jointly between the two councils. There will be £1 million per annum in cashable and non-cashable savings. Control our own destiny, it is in our own gift. The different mandates from 2011, the local polls, in reaching this decision, we also continued the reasons not to do or to do including the

difference, sense of takeover with less BDC Councillors. I would suggest that it would be 32 and 34 if you went to a combined authority, it would not be Babergh or Mid Suffolk making a decision, you would all be in there equally with your own democratic rights to be listened to and discussed. Who would become leader and the makeup of cabinet and would be in the Memorandum of Understanding and in our first Conservative meeting that this came up and was discussed with Arthur and there was nothing in there that was a deal breaker.

Policy differences e.g. car parking charges in Mid Suffolk and Councillor locality grants, style differences – opposition members on MSDC Cabinet. BDC HRA headroom stretched wider, MSDC Transformation fund stretched wider. Impact of Council Tax equalisation, I take the point but the differential between the 2 is £8.11. We have yet to set our budget, we could easily be going to £5 again this year. The differential is not that huge, better to generate more income instead of parking, more homes could all feel a bit rushed. Further information if needed. We have been advised by the Secretary of State that in law the dissolving of 2 Councils and the creation of a single district Council could be completed without a referendum, however we are not at stage, this the first stage of going out and listening to the public. That's all the Cabinet have put forward at this time. the need for a second poll will be considered at a later date once we have completed the public engagement and have assessed the weight of the business case. We are at the stage of engaging with residents, businesses and other stakeholders to develop the detailed business case and until we have had the telephone poll and listen to what people expect and what services people expect we won't know. Members will have the opportunity to debate the full business case with all the feedback from the public engagement. It cannot be correct that the council can only ever conduct public engagement when a detailed business case has already been drafted especially in the context here of the 2011 local poll result. We are starting conversations in parish liaison meetings next week developing the factual information to be part of the business case. As above all Members will have the opportunity to debate the full business case following the public engagement. All Members will have the opportunity to scrutinise the engagement process as part of the debate of the business case. Any decisions about Council Tax equalisations would be for all Members to consider at a later date, it is part of the budget setting process that will come to full Council.

It is out of respect for the 2011 local poll result that such wide reaching public engagement has been proposed and is intended to form the production of any detailed business case. What is most important is that we cannot take the right decision for the future without going to the public first in our district and as part of the decision we must consider the views of our residents. They are why we have been elected to serve the public and give them the best possible services we can. This is only the first step, this is about public engagement, I cannot stress enough that we need to take the public with us and supply members with the right information. The Memorandum of Understanding will allay all your fears going forward as to how the new Councils will work.

- 47.14 The Leader responded to Members' questions regarding the savings from Option B on staffing costs and the sample size of the poll being 2000 people. Members also raised questions regarding whether the Cabinet Decision was a key Decision and that no plans had been put forward in any manifesto and that there were concerns that the decision being taken by the Cabinet was not proper procedure. Members' also raised the question of a possible referendum in the same way that East Suffolk and West Suffolk had undertaken a merger. Councillor Jenkins also clarified that the final decision would be on the agenda for the Scrutiny Committee.
- 47.15 Arthur Charvonia, Chief Executive, presented on the options from the Cabinet meeting noting that the option chosen was option B.
- 47.16 The Chief Executive and Section 151 Officer, Katherine Steel, responded to Members' questions that there would be ample time for pre-scrutiny, that any type of merger could not be completed before 2019 and that the decision needed the Cabinet's support on any option. He said that the option for dissolution was the most viable of the 5 and that this was the preferred option but not the final choice. The Chief Executive clarified that only the Secretary of State had the power to dissolve Councils and instigate the forming of any new authority.
- 47.17 The Section 151 Officer responded to further questions that the financial section of the report was based on objectively looking at duplications but that the figures had not yet been scrutinised by any Committee and that the technical consultation for the 2018/2019 budget had already begun but could be subject to change.
- 47.18 Members' enquired into the financial business case and it was commented that £400,000 of the £1 million savings was hypothetical.
- 47.19 Councillor Tony Bavington gave the following closing statement:
- 47.20 The first thing I would say is that the Leader of Babergh District Council made no real effort to rebut the idea that this is a Key Decision. The Chief Executive did make an attempt to do that and under questioning by the Committee, one member said that this was a decision to endorse a future decision. I would like to say that it is a very poor idea of what a decision is to think that it does not have ramifications and consequences. And it is quite clear that the ramifications and consequences of this decision, and it is a decision because it is on the decision list, are that this has consequences and ramifications for the communities in the Babergh district even if it is a provisional endorsement. The Committee rightly dwelt upon the word provisionally because if you take provisionally out of the first decision then it is a decision to merge or to dissolve one and form another. So his defence of it not being a key decision rests on the word provisionally. What I would say is that even that provisional decision will require a considerable amount of work and will cause a lot of disturbance to members of the public in our district and will actually cost a lot of money which is what decision 1.2 says to use the transformation funding to do this.

As I said in my answer to questions and will say again I don't think anyone in this room who was born yesterday, and I think we know that once this train is set in motion then it will lead to the heavy promotion of the dissolution of Babergh and the creation of a new council. Anyone who thinks this is not the case perhaps is younger than I am.

So in my view this is a key decision because it has key ramifications and consequences that flow from it, even from provisionally endorsing, that makes it a key decision. Nobody has argued that that this decision was trailed in advance, it clearly wasn't. Nobody has tried to invoke the parts of the Constitution which says that it could have been dealt with as a general exception under paragraph 17.1 part 3. Nobody has tried to invoke the special urgency provisions of 18.1 and you Mr Chairman have not responded to what I said about being taken aside and asked if we can do this urgently. I take that to mean that the urgency provisions were not invoked, it is a key decision for the reasons that I have given and it has not been dealt with in a procedural Constitutional manner.

47.21 Councillor David Busby added:

47.22 The whole process has been rushed, The boundary review would have been for the merger of the two Councils and we were told that this was not on the table, that is a rushed process. The options, how many would choose the unitary option? It is uncertain as we would still be open to such an option and assume that it would be strongly resisted.

47.23 Councillor Jennie Jenkins, Leader of the Council, gave the following closing statement.

47.24 What I am hearing is negative and I am understanding all of it, and I go back to Alastair McCraw's phrase of never say never, we will have to look at the options again if the poll etc comes back. Do not underestimate the pressure we are under at this moment in time. If you want to leave it 2 years that's your choice but how will you deliver the budget, how will you deliver services, I hope you can come up with something. We are here, we are here to make decisions as elected members for the people that elect us. This is the time to go out and ask them what they think, for me delivering the services in a timely and costly fashion is paramount so I would ask you to consider what you are doing today very carefully. Are you just saying that we've made the decision and don't need to bother about what the electorate think. When you go out in 2019 and ask to be re-elected will you be delivering services, maybe not. By then the cuts will be hitting and we will have to make very serious decisions. Going back to the boundary review, at that moment in time it was not on the cards, but looking at the figures since then we have had to re-jig it, the boundary review had nothing to do with the merger decision, it was because we had to view how many electorate we were representing and that was the reason, Mid Suffolk had to go out and we were going to be close behind and it was economies of scale to do them at the same time and that is the truth. So I ask you to consider what you are doing today very carefully.

47.25 Committee Members debated the decision examining the process of the decision and whether the principles of decision making had been breached and acknowledged that Councillor's had serious concerns over the decision not being published on the forward plan. Members' continued by debating whether the Cabinet's decision constituted a key decision with some Members' concluding that the decision did not constitute a Key Decision but that it should also have been listed on the Forthcoming Decisions list and that no attempt had been made to engage the emergency provisions under the Constitution.

By 6 votes to 1

RESOLVED

- (i) That the principles of decision making were breached and that the decision be referred back to Cabinet for reconsideration with additional information. The following additional information should be considered by the Cabinet:-**
 - a) The comments raised during the meeting of the Overview and Scrutiny Committee on 31 October 2017;**
 - b) A more detailed Financial Case;**
 - c) Further information about the consultation activities, particularly the telephone poll.**

- (ii) That Cabinet be requested to refer these decisions to a meeting of the full Council for debate, before Cabinet makes its final determination.**

The business of the meeting was concluded at 1.20 pm.

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Chairman