

Agenda Item 3

LINCOLNSHIRE COUNTY COUNCIL

20 OCTOBER 2016

Extraordinary meeting

ORDER OF PROCEEDINGS

The agenda previously circulated and published will be followed

Councillor T M Trollope-Bellew in the Chair

(Please note: There is no fire drill or fire alarm test planned for today, in the event of the fire alarm sounding, please leave by the nearest fire exit and make your way to the car park in front of County Offices)

Councillors are reminded that the meeting is being recorded for live broadcast via the internet. Any Councillors wishing to tweet during the Council meeting are reminded to include #LCClive within their tweet.

AGENDA

1. APOLOGIES FOR ABSENCE

List of apologies for absence to be read by the Chief Executive.

2. DECLARATIONS OF MEMBERS' INTERESTS

Councillors to announce any interests

(NOTE - Councillors are reminded that there is no need to declare an interest if it has already been recorded on the register of disclosable pecuniary interests in accordance with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 or if the councillor has received a dispensation from the Monitoring Officer for the purpose of this meeting).

3. CHAIRMAN'S ANNOUNCEMENTS

It is with regret I have to report the death of former County Councillor Ian Croft, who represented the Bourne Castle electoral division on the Council from May 1985 until March 2006. A former Chairman of Highways and Planning, Mr Croft also served as Leader of the Council between 2002 and 2005. I ask that you pay your respects by standing in silence.

(Councillors are given an opportunity to speak)

4. DEVOLUTION – APPROVAL TO CREATION OF A GREATER LINCOLNSHIRE COMBINED AUTHORITY

The Chairman to state:

Members will note from paragraph 9 of the Report for this item that discussions have been ongoing with the government concerning the provisions to be included in an Order relating to highway funding and the exercise of transport functions. Members will see attached as Appendix 1 to the Order of Proceedings a Briefing Note on these issues prepared by the Chief Legal Officer.

I move that we suspend procedure rules to enable the following process to happen.

- (1) That Councillor M J Hill OBE, Leader of the Council, be allowed to make a statement to the meeting.
- (2) That any amendments are to be are moved and seconded at the beginning of the debate and discussed concurrently.
- (3) That no further substantial amendments be moved other than the original amendments.
- (4) Voting on any amendments will be taken in the order in which they are received.

Secunder for suspension of procedure rules.

Vote on the suspension of procedure rules.

Chairman to state:

So that all members are aware of the current position I now call on the Leader of the Council to make a statement to the meeting concerning the latest developments.

Councillor M J Hill OBE to make a statement.

Chairman to invite Councillor to move the following motion

That the Council:

1 notes the results of the public consultation set out in the consultation report at Appendix A and the comments of the Overview and Scrutiny Committee at Appendix D.

2 notes and has due regard to the contents of the Equalities Impact Analysis at Appendix B.

3 supports in principle the giving of consent, on behalf of Lincolnshire County Council as a constituent council of any future combined authority for the Greater Lincolnshire area, to the making by the Secretary of State of an order:-

- (a) for the establishment of a combined authority for the Greater Lincolnshire area pursuant to section 110 of the Local Democracy, Economic Development and Construction Act 2009 (LDEDCA)
- (b) for the making of constitutional provisions in relation to the combined authority pursuant to section 104 of LDEDCA
- (c) for the delegation to the combined authority of the transport functions of the Secretary of State and the other functions of public authorities pursuant to sections 104 and 105A of LDEDCA
- (d) (subject to paragraph 4) for functions of the Combined Authority specified in the Order to be exercisable only by a directly elected mayor subject to the conditions and limitations specified in the Order pursuant to S107D of LDEDCA
- (e) for Chapter 1 Part 1 of the Localism Act 2011 to have effect in relation to the combined authority as it has in effect to a local authority
- (f) for the combined authority to be treated as a levying body for the purposes of section 74 of the Local Government Finance Act 1988 in respect of expenses of the combined authority that are reasonably attributable to the exercise of any of its functions other than mayoral functions.
- (g) for the combined authority to be given power to borrow under section 1 of the Local Government Act 2003 for a purpose relevant to any of its functions.

4

calls on the Leader of the Council to

1. reflect to the Secretary of State the opposition of the people of Lincolnshire, who took part in the public consultation process, to the setting up of a mayoral combined authority and accordingly
2. to take up with the Secretary of State the necessity for a directly elected mayor as a condition of a devolution deal and
3. to seek the satisfactory resolution of outstanding issues concerning the functions and powers of such a mayor including
 - a. in relation to the allocation of highway funding and
 - b. the exercise of transport functions

before making a decision whether to give consent to the making of the necessary orders

Councillor to second

Any amendments to be moved and seconded.

Chairman to state:

There will be just one debate so if you wish to speak please make sure you are in the queue by pressing your button and may I remind you that once you have joined the queue you do not need to press your button when I invite you to speak, or when you sit down.

I would just like to remind Councillors that the Full Council cannot make a decision on whether to consent to the creation of a Greater Lincolnshire Combined Authority. That is a matter for the Leader of the Council in due course.

I will require any amendments to be in writing and handed to me before they are discussed.

Members are also reminded of the Rules of Debate which have not been suspended. These are set out below:

(i) Rule 13.5 (When a Councillor may speak again)

A Councillor who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- (a) In exercise of a right of reply;
- (b) on a point of order or information; and
- (c) by way of personal explanation.

(ii) Rule 13.9 (Right of reply)

- (a) The mover of a motion has a right to reply at the end of the debate on the motion, immediately before it is put to the vote;
- (b) if an amendment is moved, the mover of the original motion has the right of reply at the close of the debate on the amendment, but may not otherwise speak on it; and
- (c) the mover of the amendment has no right of reply to the debate on his or her amendment.

AT THE CONCLUSION OF THE MEETING

The Chairman to state:

Members are reminded to collect their post from their pigeon holes after the meeting.

(At the conclusion of the meeting will all Members please be upstanding in their places until the Chairman has left the Chamber)

DEVOLUTION

BRIEFING NOTE ON HIGHWAY FUNDING AND TRANSPORT FUNCTIONS

Discussion has been ongoing with HM Government (HMG) concerning two areas where HMG have indicated the proposed draft Order will not reflect the Scheme.

The Issues

Highway Funding

Under the Scheme highway funding is the responsibility of the Combined Authority, not of the Mayor. In every year where the government has allocated the funding to a highway authority (HA) it is passported by the CA to that HA. Where it is not allocated to a HA the CA must ensure it is allocated in such proportions as shall reflect the statutory duties and policy and contractual commitments of each highway authority. In other words the whole funding is allocated although the proportions may need determining. The approval of those spending plans by the CA is made a decision requiring unanimous approval within the CA – i.e any HA has a veto.

HMG's position is that the Order will

- Confer decisions on allocation of highway funding on the Mayor, not the CA
- Require the mayor to have regard in some way to the highway authorities' functions and previous allocations in deciding how to allocate highway funding but not to passport the funding to the HAs.
- Bring the decision of the mayor within the 2/3 veto requiring all 3 highway authorities. They are also prepared to consider strengthening the veto although the detail of this is not currently clear.

The requirement to have regard to the matters referred to in the second bullet point give rise to the potential for a judicial review by the HAs of the mayor's decision if that decision could be characterised as irrational by reference to the terms of the obligation.

Otherwise the only limit on the mayor's discretion would be the exercise of a veto within the CA itself

Transport Functions

HMG are insisting that the Order will confer on the CA, for exercise by the mayor, functions under Parts 4 and 5 of the Transport Act 1985 and Part 2 of the Transport Act 2000. These are essentially as follows

- Production of a Local Transport Plan
- Quality Partnership Schemes
- Quality Contracts Schemes
- Duty to provide local bus information
- Securing provision of passenger transport services
- Service subsidies
- Travel concession schemes
- Grants for facilities and services

These are local authority functions and so this proposal would see a significant conferring of local authority functions on the mayor. It has up to now been a principle for Greater Lincolnshire that devolution does not lead to functions flowing upwards from the local authorities.

The Scheme allocates the Integrated Transport Block to the Mayor and requires him or her to allocate it having regard to the statutory obligations and policy and contractual commitments of the Constituent Councils. It does not transfer local authority functions.

If local authority functions were to transfer they could be conferred in one of two main ways

- For the mayor to have the function instead of the local authorities (i.e complete transfer)
- Concurrent exercise – i.e the mayor could exercise the functions but so could the local authorities.

It is not clear how HMG intends the functions will transfer or what the arrangements will be between the local authorities and the CA after it happens. If the functions pass to the CA to exercise instead of the local authorities there will probably be TUPE transfers of staff as well as issues about IT systems and data.

The Scheme and the Order

The Secretary of State has never been required to follow the Scheme when drafting the Order. He can therefore propose an Order that does not reflect the Scheme or the Governance Review that preceded it. He is, though, subject to certain legal limitations as follows:-

- He has to consider that the making of the Order would be likely to improve the exercise of statutory functions in the area or areas to which it relates
- He must have regard to the Scheme
- He must have regard to the need to reflect the identities and interests of local communities and to secure effective and convenient local government.
- He must obtain the consent of the Constituent Councils to those elements of the Order that require consent.

There is nothing in the principle of passing the highway funding to the mayor or the transfer of transport functions which would prevent the Secretary of State complying with the first three bullet points.

Therefore if the Secretary of State determines that he will make an Order containing those provisions the only recourse of the constituent councils is to withhold their consent. If consent is withheld to any element of the Scheme that requires consent, the Secretary of State will not be able to make an Order containing the relevant element.