

SCRUTINY COMMITTEE - ECONOMY

8 March 2012

Present:

Councillor Cole (Chair)

Councillors Prowse, Bialyk, Bull, Crow, Dawson, Morris, Payne, Robson, Mrs Thompson, Ruffle and Wardle

Also present:

Strategic Director, Assistant Director Economy, Assistant Director Public Realm, Projects and Business Manager, Litigation Solicitor, Parking Services Manager and Member Services Officer (SLS)

In attendance:

Councillor Rosie Denham - Portfolio Holder for Economy and Tourism
Councillor Rachel Sutton - Portfolio Holder for Sustainable Development and Transport

Apologies:

Councillor Choules

9 **Minutes**

The minutes of the meeting held on 19 January 2012 were taken as read, and signed by the Chair as correct.

10 **Declarations of Interest**

The following personal and *prejudicial interests were declared:-

COUNCILLOR	MINUTE
Councillor Payne	13 (Employee of Exeter College)
Councillor Wardle	14 (member of the Avocet Line Rail Users Group)
Councillor Prowse	18 (Member of Devon County Council)
Councillor Mrs. Thompson	*19 (due to business arrangements with Eagle One)

PERFORMANCE MONITORING

11 **Capital Programme Monitoring to December 2011**

The Strategic Director presented a report which advised on the current position with regard to the 2011/12 capital programme for the Economy and Development Directorate. The report also contained a summary of the position at the end of December 2011, including a list of capital projects. The Strategic Director highlighted a number of schemes.

A Member referred to the Central Station forecourt refurbishment and commented on the capital commitment by the City Council, in terms of the contributions to the cost,

and whether it represented value for money. The Strategic Director responded that both the County Council and Network Rail were contributing to the project. The Projects and Business Manager confirmed that both Devon County Council and Exeter City Council were to contribute £185,000, with Network Rail contributing £160,000. The project should be seen in the context of other improvements to the station costing around £750,000, being carried out by Network Rail and First Great Western as part of the National Stations Improvement Programme. These included restoration of the booking office to its original central position, improved waiting rooms and toilets. The scheme was being drawn up by the City and County Councils with Network Rail contributing. Current costings were provisional and more detailed proposals would now be costed to ensure value for money.

A Member enquired about the progress of the Cowick Street programme of works and an indication of when it would be completed. The Strategic Director advised that the capacity of the programme management had been redirected to the John Lewis and the King William Street car park projects, but he would ensure that this was brought to the attention of the engineers to bring forward and actively survey for street furniture. Members should see some tangible results of that work fairly soon. He would also send a reply with more information on the budget relating to the Historic Environment Improvements.

Scrutiny Committee – Economy noted the report.

(Report circulated)

12 **Economy Scrutiny Stewardship to December 2011**

The Strategic Director presented a report which detailed the forecast variations of the budget, based on the first nine months of the financial year 2011/12. The report highlighted any differences by management unit to the outturn forecast for the first nine months of the financial year up to 31 December 2011 compared with the annual approved budget. During this period the total of the variances for overall net expenditure for this Committee would increase by £31,650 after transfers to and from reserves and revenue contributions to capital outturn, and included supplementary budgets of £125,170. He highlighted a number of areas where the financial position was much improved, including car parking, planning and Markets and Halls. The expenditure as part of the closure of Exeter Archaeology was now less than anticipated, and the remaining staff members had completed a number of final projects, which had attracted a fee. He responded to a Member's comment on taking a cautious approach by paying immediately for smaller capital projects, thereby negating the need for incurring interest on loans. He added that such projects were dealt with through the revenue budget rather than the capital programme. A number of long established and residual budgets had been removed.

Scrutiny Committee – Economy noted the report.

(Report circulated)

MATTERS FOR CONSIDERATION BY SCRUTINY COMMITTEE - ECONOMY

13 **Support for Small Businesses**

Councillor Payne declared a personal interest as an employee of Exeter College.

The Assistant Director Economy presented a report which provided Members with an update on the performance of the small business support service funded by the City

Council. He also referred to the link with the activities of the Innovation Centre to provide different but complementary business solutions. A great deal of effort had been put into finding the best solution to ensure that both new and existing businesses survived and thrive in such a difficult economic climate. The Assistant Director Economy responded to a number of Members' questions and to a request for details of business start ups. He would provide brief summaries to Members of the assistance given to businesses, removing any commercially sensitive information. He added that there was no particular type of business that sought assistance, but an assessment was made of each business to see where they would be best referred to in terms of appropriate support. For example, the Innovation Centre offered more technical and specialist rather than generic business support.

A Member welcomed the City Council's involvement in this strategic work which had practical results and was a good use of public money, and other Members echoed those sentiments. The Strategic Director referred to Exeter's notable growth and job creation since the recession, ranking Exeter as 9th highest in the whole of the UK, which was a considerable achievement.

Scrutiny Committee – Economy: -

- (1) noted the City Council's positive stance in supporting local businesses to start up and commence trading;
- (2) noted the forthcoming release of £42,000 and £25,000 respectively for the provision of small business support and social enterprise support from the 2012/2013 Economic Partnership Initiatives budget be welcomed; and
- (3) supported the authorisation of Economic Development Service officers to negotiate service level agreements with Peninsula Innovations Limited and the Fruit Tree for Business for the delivery of services outlined in the report.

(Report circulated)

14 **Consultation on the New Great Western Rail Franchise**

Councillor Wardle declared a personal interest as a member of the Avocet Line Rail Users Group.

The Projects and Business Manager submitted a report to enable Members to comment on the Council's proposed response to the consultation on the new Great Western rail franchise. He indicated that he would be making amendments to take on board comments received from other stakeholders, although these were changes of emphasis rather than substance.

He explained that the franchise covered the intercity services between Penzance, Exeter and London, and services on Devon's local lines. The new franchise would commence in April 2013, for a period of 15 years, and during that time, a significant level of both residential and employment growth would be taking place in and around Exeter, with rail being a key element of the future transport strategy. At a recent meeting hosted by Hugo Swire, MP, the Projects and Business Manager had highlighted the need to improve Exeter's rail infrastructure and rolling stock, including progressive electrification to Exeter and beyond.

A number of significant issues were highlighted including working towards a clock face timetable with one fast and one slow train an hour. The franchise specification needed to be sufficiently detailed to guarantee an appropriate service on local branch

lines. An efficient railway with new stations would become increasingly important if the predicted housing and employment growth levels were achieved. Investment would be needed in rolling stock and passing loops to allow increased frequencies.

Members referred to the response and made the following comments:-

- the importance of a clock face timetable
- the lack of a late train on Saturday from London
- retaining the sleeper train was essential
- the reintroduction of a full breakfast service and reliable catering provision
- the need to progress the Devon Metro service with new stations, particularly at Marsh Barton, which would alleviate some of the likely levels of congestion from the predicted level of growth
- a passing loop on the Exmouth branch line to increase capacity
- integration with bus services

The Projects and Business Manager confirmed that he would include the above points in the response. In answer to a question, he said that additional infrastructure could be funded through the franchise but that if so it would be likely to be reflected in tender price. A Member highlighted the need to extend the platform at St James Park in connection with the Devon metro proposals. Members congratulated both the County Council and the City Council on their efforts to progress Devon Metro.

Scrutiny Committee - Economy noted the very comprehensive report and Members endorsed the proposed City Council response to the Great Western franchise consultation.

(Report circulated)

15 **Report of the Car Parks Task and Finish Group**

The Assistant Director Public Realm presented a report which informed the Scrutiny Committee - Economy of the deliberations, conclusions and recommendations of the Car Parks Task and Finish Group. The Group had been formally appointed by the Scrutiny Committee and the membership included Councillor Cole as Chair of Scrutiny Committee - Economy, Councillors Crow, Morris and Ruffle, and Councillor Sutton as the relevant Portfolio Holder. They had considered the significant contribution made by parking income to the overall budget strategy of the City Council, with a broad remit of looking at ways to optimise current income derived from the City Council's car parks. The Assistant Director thanked Members for their very constructive and positive contribution, particularly as they had taken the opportunity to explore a number of themes, which were normally lost due to the pressures of the day to day delivery of the service.

The Group acknowledged that maximising parking income would be difficult to achieve, particularly in these challenging financial times. However, they focused on a number of priority areas, including the Charging Regime and the policy relating to Blue Badge Holders; Off-Street Parking in Newtown; Parking Permits; the Pay by Phone Parking facility and Car Park Signage and Branding. The Group felt that in particular, tariffs, whilst very competitive compared with a number of other towns and cities, had become very complicated and inconsistent. A simplification of the car parking tariff structure would benefit the public and, coupled with the rebranding of a number of the city's car parks, could have a meaningful impact on future income. The Group also considered an issue regarding an area of off-street parking in Newtown which the Council were not deriving an income from and, whilst mindful of the need

for income generation felt that the current arrangements represented the best and most pragmatic solution for residents.

The Task and Finish Group put forward a number of conclusions in respect of each of the identified areas, and these were set out in the report. It was noted that Executive approval would have to be sought to pursue most of the areas explored, through a number of separate reports to Executive over future months. Members wished their appreciation of both the Task and Finish Group Members and also the support of the Assistant Director and his team to be recorded.

The Assistant Director responded to a Member request for more information on the County Council's dispensation parking scheme.

Scrutiny Committee – Economy supported the conclusions reached by the Car Parks Task and Finish Group and noted that future reports to the Executive would be required to progress the individual findings.

(Report circulated)

16 Local Government (Access to Information) Act 1985 - Exclusion of Press and Public

RESOLVED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the consideration of the following items on the grounds that they involved the likely disclosure of exempt information as defined in paragraphs 3 and 5 of Part I, Schedule 12A of the Act.

17 Questions from Members of the Council Under Standing Order 20

In accordance with Standing Order 20, a question from a Member was put to the Portfolio Holder for Sustainable Development and Transport in respect of the legal advice in relation to penalty charges notices. The Portfolio Holder replied. Copies of the question had previously been circulated to Members. The question and reply from the Portfolio Holder for Sustainable Development and Transport (in italics) are appended to the minutes.

18 Advice on Civil Parking Enforcement Matters

Councillor Prowse declared a personal interest as a Member of Devon County Council.

The Assistant Director Public Realm and the Corporate Manager Legal submitted a joint report, following the receipt of advice from Counsel, on matters previously raised at the Committee relating to the civil parking enforcement regime operating in Exeter. At the November meeting of the Scrutiny Committee – Economy, a Member raised a number of issues relating to the validity of the Council's Penalty Charge Notice process and another Member questioned the actions of the City Council and County Council regarding the enforcement of parking regulations in Pinn Lane. The Member who raised the second matter remained concerned that the most appropriate action had been taken and sought further information in respect of enforcement in Pinn Lane. The Assistant Director advised that the City Council had continued to follow an approach consistent with the initial advice that had been given to Committee in November. However, Counsel's advice had been sought given the complexity and contentious nature of a number of the issues being raised and to safeguard the City Council's interests in light of a potential litigation risk. This advice confirmed the initial

advice that had been given. He responded to Members' questions and comments in an effort to clarify the City Council's position in more detail.

Members noted the report.

(Report circulated to Members)

MATTERS FOR CONSIDERATION BY EXECUTIVE

19 Exeter and Heart of Devon Growth Board Minutes

Councillor Mrs Thompson declared a personal and prejudicial interest due to business arrangements with Eagle One, and took no part in the discussion.

The minutes of the Exeter and Heart of Devon Growth Point Board held on 30 January were circulated for Members' information. The minutes included a number of issues that the City Council will need to consider and take forward as appropriate.

Scrutiny Committee – Economy noted the content of the Exeter and Heart of Devon Growth Board Minutes.

(Report circulated to Members)

The meeting commenced at 5.30 pm and closed at 8.30 pm

Chair

SCRUTINY COMMITTEE - ECONOMY – 8 MARCH 2012

QUESTIONS FOR PORTFOLIO HOLDER UNDER STANDING ORDER NO.20

Questions from Cllr Mrs Thompson for the Portfolio Holder – Sustainable Development and Transport

In relation to the City Council obtaining specialist advice from Leading Counsel, regarding Civil Parking Enforcement matters please may I ask the Portfolio Holder to assist in my request to obtain the following:-

1. A copy of the instructions to Leading Counsel regarding the specialist legal advice sought?
2. A copy of Leading Counsel's report in response to the legal advice sought?
3. In relation to the total number of penalty tickets issued in the 'former Pinn Lane layby' please are you able to confirm the total number of refunds made to drivers following the successful appeal (and agreement by DCC to make the refunds) and how many remain outstanding.

Reply

Councillor Sutton replied to Questions 1 and 2 stating that following consultation with officers, the legal advice is that both the instructions and Counsel's report are legally privileged documents and as such the contents are not able to be disclosed. Neither she nor the Leader had sight of the documents.

Councillor Sutton replied to Question 3 and advised that Exeter City Council had received three requests for a refund in relation to Penalty Charge Notices issued in the Pinn Lane lay-by, and all three requests had been refunded. Two Penalty Charge Notices issued were also being processed at the time of the outcome of the adjudication relating to Mr Pascoe and they were automatically cancelled.

Councillor Mrs. Thompson commented on the reply, and asked a supplementary question. She remained concerned that she was unable to see a copy of Counsel's advice, and as a Member of the Scrutiny Committee, she should be seen as the client, and should be in a position to know what instructions and advice had been given. She was aware that a total of 38 Penalty Charge Notices had been issued, and that Devon County Council had agreed to refund all those individuals.

She requested an explanation as to why only three tickets had been refunded, particularly as following the agreement by Devon County Council to pay back those individuals, she had been advised that those individuals who had received a Penalty Charge Notice in Pinn Lane would be refunded.

Councillor Sutton asked the Litigation Solicitor, who was in attendance at the meeting to provide legal comment in respect of the legally privileged information contained in Counsel's advice. The Litigation Solicitor stated that Counsel's advice was sought for the client, who in this case was the Council as a corporate body, rather than the constituent parts of the Council, such as individual Members and officers. There was not an automatic assumption that such advice would be available to Members and officers generally. The Litigations Solicitor cited the

provisions of s.100F(1) and (2), and Schedule 12A Paragraph 5 of the Local Government Act 1972. Documents are not required to be open to inspection by any Member of the Council where the documents disclose exempt information. In this instance, Counsel's advice constituted exempt information as it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. Accordingly this was a limiting factor. Of course, it was important for officers to brief Members, which was why a report had been made available to Members to summarise the position in light of the advice from Counsel.

Councillor Sutton replied that the City Council had received no further request for a refund other than those three Penalty Charge Notices she had referred to in her earlier reply. The City Council act as agents for Devon County Council on matters of on-street enforcement and their instructions were that if an individual made themselves known, or the Council had their details, a refund would be issued. Those instructions have been followed and there are no outstanding requests for refunds in the system.