

# Agenda Item 4

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## OVERVIEW AND SCRUTINY COMMISSION

14 AUGUST 2019

(7.15 pm - 9.50 pm)

PRESENT: Councillors Peter Southgate (in the Chair), Peter McCabe, John Dehaney, Sally Kenny, Paul Kohler, Owen Pritchard, Nick McLean, Edward Gretton, Natasha Irons and David Chung

ALSO PRESENT: Councillors Tobin Byers (Cabinet Member for Adult Social Care, Health and the Environment), Martin Whelton (Cabinet Member for Regeneration, Housing and Transport), Anthony Fairclough (Leader of the Liberal Democrat Group), Daniel Holden, Nigel Benbow and David Dean

Chris Lee (Director of Environment and Regeneration), Cathryn James (Interim Assistant Director, Public Protection), Ben Stephens (Head of Parking Services), Jason Andrews (Environmental Health Pollution Manager), Mike Robinson (Consultant in Public Health) and Julia Regan (Head of Democracy Services)

### 1 APOLOGIES FOR ABSENCE (Agenda Item 1)

Apologies were received from Councillor Joan Henry (substituted by Councillor David Chung) and from the three co-opted members - Helen Forbes, Emma Lemon and Colin Powell.

### 2 DECLARATIONS OF PECUNIARY INTEREST (Agenda Item 2)

There were no declarations of pecuniary interest.

### 3 CALL-IN OF "PUBLIC HEALTH, AIR QUALITY AND SUSTAINABLE TRANSPORT - A STRATEGIC APPROACH TO PARKING CHARGES" (Agenda Item 3)

The Chair reminded all present that the purpose of the call-in was to determine whether Cabinet's decision on 15 July was flawed in relation to the council's principles of decision making and, if so, to demonstrate where it fell short. The Chair also said that as this decision had been the subject of extensive pre-decision scrutiny by the Sustainable Communities Overview and Scrutiny Panel, the Commission should focus its attention on new information. He explained that the Commission would take each of the two call-in requests in turn, starting with the one that had been received first.

#### **Liberal Democrat Call-In Request**

The Chair invited Councillor Anthony Fairclough to speak as a signatory to the call-in request. Councillor Fairclough said that he believed that Cabinet's decision had been flawed in relation to two of the principles of decision making - respect for human rights and equalities ; and clarity of aims and desired outcomes.

In relation to human rights and equalities, Councillor Fairclough said that the council had failed to actively engage with organisations representing the affected groups that had been identified on the equality impact assessment, in particular in relation to measures to mitigate any potential negative impact. He said that this was clearly a requirement of the equality analysis process as set out in stage 8 of the equality analysis flowchart.

In relation to clarity of aims and desired outcomes, Councillor Fairclough said that the claim that increased parking charges will lead to an improvement in air quality can't be assessed, that the Sustainable Communities Overview and Scrutiny Panel had asked for further evidence and although some has been provided, it does not support the contention increased charges will result in a reduction in car ownership. He said that the proposals lacked information on how such an impact would be assessed and, without this, the proposal looked like a revenue raising measure.

In response to questions from members, Councillor Fairclough made some additional points:

- the Canadian Parking Association study cited in the Cabinet report found that in Amsterdam, residents were prepared to pay a considerable premium for housing with a parking space, implying that a large increase in parking charges would be required in order to have the desired impact
- the council should look at a range of alternative measures suggested in the responses to the consultation
- the council's equality assessment process requires officers to consult on proposals, assess potential negative impact, identify mitigation and to review in consultation with stakeholders. Three versions of the equality impact assessment were produced and revisions were made in the absence of input from affected groups. Failure to follow that process is a breach of the decision making principle on human rights and equalities

#### Cabinet Member response

The Chair asked the Cabinet Members and Director to respond to the points made by Councillor Fairclough.

The Director of Environment and Regeneration, Chris Lee, assured the Commission that the public sector equality duty to pay due regard to the impact that policy changes might have on people with protected characteristics had been met and that the council's Equalities and Community Cohesion Officer had been closely involved and was entirely satisfied that the council had complied with this statutory duty and with the council's guidance. He said that the affected organisations had been written to and had also been invited to attend this meeting but had not responded.

Chris Lee said that a positive impact had been identified for all groups and that mitigation had been identified for potential negative impact, including the blue badge scheme and carers parking permits. He said that this would be kept under review, that impact would be monitored and further mitigation taken if required.

Chris Lee then addressed the points on the policy approach. He said that as Merton was at the forefront in developing this approach and that although there were no current direct comparative examples, the impact of car parking pricing and congestion charging zones shows that such measures are successful. The intention was to act in the public interest with the limited levers that were at the council's disposal. He believed this was a reasonable measure to try to nudge behaviour to reduce car ownership over time and thereby improve air quality.

The Cabinet Member for Adult Social Care, Health and the Environment, added that the purpose was not just to improve air quality but also to promote a more active lifestyle and create healthier places. The air quality action plan contains a range of complementary measures including the introduction of a clean air zone in the borough. He said that these were complex issues and it was difficult to disentangle the impact of multiple policy measures which is why the council is proposing to measure the impact of the parking charges approach through the number of permits issued.

In response to questions about the equality analysis process, the Cabinet Members and Director said that the council had gone above and beyond the public sector equality duty. The proposed changes had been the subject of public debate for some time and there has been no response from organisations representing affected groups. The response to the equality impact assessment was proportionate as there is minimal impact on affected groups and the cost increase is marginal in comparison to the cost of owning a car. The Director confirmed that blue badge owners can park in CPZ resident bays and on street parking free of charge.

In response to questions about whether the proposals would impact on the level of car ownership, the Director said that he thought there would be a small change over time. In respect of the level of charges proposed, the Director said that a number of factors had been taken into account including inflation and a consideration of what would be a reasonable level to nudge behaviour.

#### Discussion by the Commission

Commission members discussed the evidence received in relation to whether the principles of decision making had been followed. Members accepted that it had been difficult to evidence this innovative policy approach and agreed that the core of this call-in request was whether the equality impact assessment process had been properly followed. Some members expressed concern that there hadn't been more proactive follow up with organisations representing affected groups.

Councillor Paul Kohler proposed that the Commission should refer the decision back to Cabinet for reconsideration on the grounds that the published equality impact assessment process had not been followed. Members discussed this proposal and a

further proposal to ask Cabinet to actively consult with the affected groups in relation to the mitigation before reconsidering the decision.

The Commission then voted on a motion proposed by Councillor Owen Pritchard and seconded by Councillor Sally Kenny, that was carried by 9 members voting in favour. It was RESOLVED:

“that the Commission should refer the decision on the strategic approach to parking charges back to Cabinet for reconsideration in relation to the principle of decision making on respect for human rights and equalities. Specifically the Commission requests that Cabinet complete the process of consultation with affected groups prior to reconsideration of its decision.”

### **Conservative Call In Request**

The Chair invited Councillor Daniel Holden to speak as a signatory to the call-in request. Councillor Holden said that the consultation was flawed as the decision that would be taken had been clear since last November; that the proposals were discriminatory in relation to elderly and disabled people and those with young children; that the PTAL construct was flawed, showing similar levels for Wimbledon, Mitcham and Morden but with higher charges proposed for Wimbledon; and that information was lacking on how much income would be generated and how it would be spent. He said that the decision should be rescinded in favour of more focus on progressive solutions.

Councillor Holden and Councillor David Dean made additional points in response to questions:

- the proposals will result in counter-productive measures such as an increase in the number of people paving over their front gardens to provide parking spaces
- the council seems to be more focussed on income generation rather than improving air quality
- the proposed charges will be higher for people who live in non-Labour voting areas and are therefore discriminatory
- the decision is being challenged in relation to the decision making principles of clarity of aims and desired outcomes; and a presumption in favour of openness

The Chair invited the registered speakers to address the Commission:

#### Chris Larkman, Chair, Apostles Residents Association

Chris Larkman said that the proposed increase in resident parking permits represented a small proportion of the cost of running a car and was therefore unlikely to have an impact on the level of car ownership. He added that he accepted the need for a change in behaviour but that the proposed charges were unfair in that they would only apply to car owners who live in controlled parking zones and those who don't have a driveway on which to park. He said that the consultation prior to setting

up the controlled parking zone had stated that the charge was an administrative one but this has now changed to something on which residents haven't been consulted.

Chris Larkman said that he was also speaking as Secretary of the Raynes Park Residents' Association and, in that capacity, he would like to point out the negative impact that increased parking charges would have on local shops.

Lynne Gordon, Chair, Wimbledon East Hillside Residents Association

Lynne Gordon said that she accepted the need to improve air quality but that this should be through effective measures that are not politically biased and do not discriminate against particular groups. She said that charges raised from residents' permits should be solely for the purpose of covering CPZ costs but that the proposed increases would raise three times the cost and would impact more in non-Labour areas. She said that resident parking was a minor pollutant compared to planes, buses and heavy goods vehicles and asked what the council was doing to tackle those and thereby improve air quality.

Helen Clark Bell, Chief Executive, Love Wimbledon Business Improvement District

Helen Clark Bell directed the Commission's attention to her written submission on page 231 of the agenda pack. She highlighted the submission's points regarding air quality being impacted primarily by traffic and public transport and the risk of the proposed changes having unintended negative consequences for independent businesses in Wimbledon town centre. She added that the desired outcomes had not been clearly stated and urged Cabinet to consider the economic and environmental impact of the proposals.

In response to a question from members, Helen Clark Bell said that there was not sufficient clarity on what the council is doing to reduce emissions in Wimbledon, particularly in relation to the proposed expansion of the low emissions area that would result in buses with higher level of emissions being used outside the ULEZ zone, including in Merton.

Bill Petch, Chairman, South Ridgway Residents Association

Bill Petch said that he was speaking on behalf of the Association's 420 members, many of whom were elderly, disabled or infirm non-blue badge owners who live on their own and feared that the proposals would increase their isolation. They were also concerned about the impact that parking charges would have on local high streets. He said that he viewed the proposals as "a tax grab hidden under a green umbrella" and that they were politically biased with greater financial impact in the west of the borough.

Eve Cohen, local resident

Eve Cohen said that she thought the council was misguided in trying to achieve diverse aims for the proposals; that the cost of parking would be a small percentage of overall car ownership costs and may result in people driving more not less; that the findings of the Canadian Parking Association study had been misinterpreted; and that there were mixed messages, for example in relation to the night time economy. She added that the council should charge differentially according to the level of pollution caused by cars and that air quality was unlikely to improve, especially in the east of

the borough, as a result of these proposals. She urged the council to increase the anti idling engines campaign and to withdraw free parking at Christmas.

Alison Carr, resident

Alison Carr said that she recalled correspondence relating to the introduction of the CPZ stating that monies raised would be used just to cover costs. The proposal to use additional monies raised to improve air quality therefore has no mandate and was not included in the Labour manifesto. She urged the council to withdraw this anti-democratic and potentially illegal proposal.

Director's response

The Chair invited Chris Lee, Director of Environment and Regeneration, to respond to the points made by Councillor Holden and each of the witnesses.

Chris Lee said that the genesis of the approach to use parking charges as a means to improve air quality was clearly set out in the Air Quality Action Plan (recommendation 32) and it is legal to do so. This was approached democratically through the recent consultation which set out the proposed shift in relation to CPZ charging and the reasons for this. The Director of Corporate Services had advised that it would be prudent to make some allowance in the Business Plan for the level of income that may arise and that it was expected that this level would change and would therefore be adjusted.

Chris Lee said that the NO2 monitoring results, set out on pages 207-212 of the agenda, demonstrate that air quality is poor throughout the borough and that three of the points exceeding the legal limit are in SW19. The council has a duty to address this and is also seeking to take access to public transport into account, through the PTAL rating, which is poorer in the east of the borough.

Chris Lee said that the council is working tirelessly with Transport for London (TfL) to press the case for cleaner buses in the borough (letter written by the Leader is on page 215 of the agenda). TfL have undertaken to do so by 2037 and the council has said that is too long.

Chris Lee said that the council is using the levers within its control to nudge behaviour on car use, parking and engine idling and that it has no control over TFL or Heathrow and limited control over HGVs driving through the borough. He said that the proposals were seeking to balance competing interests of residents, retailers and town centres.

Discussion by the Commission

Commission members discussed the evidence received and various views were expressed about the complex relationship between air quality, car use, the local economy and health. A member commented that it was illogical to criticise the proposed charges for being too small and at the same time too large.

Members asked for further information on what was being done to improve cycling infrastructure in the borough. Chris Lee said that although Merton's Mini Holland funding application had been unsuccessful, the Kingston application was agreed and

has resulted in a joint scheme in New Malden and Raynes Park. In addition the council has introduced improvements on Mitcham Common. Chris Lee said that the council has an incremental approach to improving cycling infrastructure with limited funding through an annual programme.

In relation to the question of whether the proposals were proportionate to the desired outcome, the Cabinet Member for Regeneration, Housing and Transport advised that he anticipated that a nudge on parking charging would have an impact in much the same way as congestion charging had on car use in central London. The Cabinet Member for Adult Social Care, Health and the Environment added that the policy was not intended to bridge the gap between the east and the west of the borough but rather to improve air quality across the borough.

In relation to whether any other principles of decision making had been breached, members asked whether a small cost increase would achieve the desired result. Chris Lee advised that the impact and level of charges would be kept under review.

Members expressed differing views on whether the increase is proportionate to the level of air quality and whether it will be effective. In response to a question about PTAL, Chris Lee said that it is the accepted model, is robust and is used by Planning Officers across London.

The Commission then voted on a motion proposed by Councillor Nick Mclean and seconded by Councillor Edward Gretton to reject Cabinet's decision in relation to the decision making principles on lack of proportionality and consideration and evaluation of alternatives:

“the proposals offer insufficient modelling or evidence to show how either of the Cabinet's two primary objectives will be met, in terms of either implementing air quality for the borough as a whole, or in terms of improving health outcomes in Mitcham and the east of the borough. As such, the Commission advises Cabinet to place the proposals on hold, consider alternative measures and set out a clear evidence based proposal that would actually deliver on the Cabinet's stated objectives. “

Three members voted in favour of the motion and six voted against. The motion fell.

The Commission then RESOLVED to include the following requests in its reference to Cabinet:

- that there should be a review, 12 months after implementation of the new charges, of the impact on air quality and on the number of parking permits issued
- that the results of the diesel levy should be reported to scrutiny as soon as practicable
- that, as the approach to parking charges is one of a suite of measures, the Commission looks forward to seeing the introduction of other measures to tackle air quality

