

17 December, 2008

The Report of the Executive

The Executive met on Tuesday, 14 October 2008. Present:- County Councillor Carl Les in the Chair. County Councillors John Fort BEM, Caroline Patmore, Greg White and Clare Wood. No other County Councillors were in attendance.

The Executive met on Tuesday, 4 November 2008. Present:- County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Chris Metcalfe, Caroline Patmore, John Watson OBE, Greg White and Clare Wood.

Also in attendance: County Councillors William F Barton OBE, John Blackburn, Mrs M A de Courcey Bayley, Gareth Dadd, Richard Hall and Tony Hall

The Executive met on Tuesday, 18 November 2008. Present:- County Councillor John Weighell in the Chair. County Councillors Carl Les, Caroline Patmore, John Watson OBE, Greg White and Clare Wood.

Also in attendance: County Councillors Eric Broadbent, Mrs M A de Courcey Bayley, Heather Garnett, Ron Haigh, Michael Knaggs and Paul Richardson.

The Executive met on Tuesday, 2 December 2008. County Councillor John Weighell in the Chair. County Councillors John Fort BEM, Carl Les, Chris Metcalfe, Caroline Patmore, John Watson OBE, Greg White and Clare Wood.

Also in attendance: County Councillors Gareth Dadd, Heather Garnett, Tony Hall, Caroline Seymour and Melva Steckles.

1. Treasury Management Strategy: The County Council approved a list of organisations in which surplus cash can be invested. This includes the maximum sum that can be placed with each at any time. This Lending List is compiled with guidance from our Treasury Management Advisor, (Sector Treasury Services) and is based on credit ratings published by the credit rating agency Fitch.

As a result of market conditions connected to the “credit crunch” and liquidity problems experienced by Northern Rock, the County Council undertook a comprehensive review of the Lending List in February 2008. Changes made took into account more detailed credit criteria information and included reference to an institution’s overall creditworthiness, based on their long term and short term rating and financial strength. The changes made were to ensure that the County Council’s funds are managed in a way that balances risk with return, but with the overriding consideration being given to the security of the invested sum.

For some time now, particularly given the current turmoil and uncertainty in the financial markets, all the credit ratings have been reviewed on a daily basis, to ensure that funds are no longer placed with institutions whose credit ratings have fallen or are expected to fall in the future. In addition, institutions are also removed from the Lending List on a temporary basis because of press speculation, market intelligence and rumoured mergers and takeovers. Officers are also in daily contact with the Treasury Management Advisers in relation to credit rating changes and other relevant market intelligence. Although the updated Lending List approved in February 2008 did include three Icelandic banks, these were removed some time ago, given uncertainties about their Government’s ability to support its banking system in the event of difficulties.

One of the impacts of the current situation has been that the number of banks eligible for the County Council's Lending List is reducing, due to liquidations and mergers. One of the alternatives for placing surplus cash being considered by some authorities is the Debt Management Office (DMO) Deposit Account. This is a 100% safe house lending option, because it is an investment facility introduced by the Government specifically for public authorities several years ago. This facility is AAA rated as it is part of the HM Treasury Operations and can be regarded as lending to the Government. This investment option is included on the County Council's approved Lending List, with a current maximum of £20m which could, of course, be increased. The facility has not been used by the County Council, or most other local authorities to date, however, because of the inferior interest rates on offer which are approximately 1.5% below what could realistically be achieved elsewhere.

Given the steps taken by the Government to stabilise the position in the financial markets, it is not considered necessary to adopt the DMO option. In addition to the loss of interest, a large proportion of the County Council's loans are currently on "duration", and therefore could only be transferred to the DMO when they were repaid. A further review to the Lending List has therefore been undertaken with a view to increasing the sums that can be invested with the current highest standing UK and EU counterparties, at the expense of lesser names, and also provide some increased flexibility given the mergers that are potentially in the pipeline.

Given the current volatility in financial markets, the Executive agreed to consider this matter as an urgent additional item of business at its meeting on 14 October 2008. It agreed to recommend to Council the revised maximum sums set out in Appendix 1 and, until the new limits are formally adopted by the Council, recommended that the Chief Executive use his power in case of emergency to authorise any necessary and urgent increases to maximum sums that could be invested, not exceeding the limits now recommended.

The Executive RECOMMENDS:-

That the Schedule attached to the report as Appendix 1, that revises the maximum sums that can be invested in those banks that are still assessed as suitable at present, be approved and adopted as part of the Treasury Management Strategy.

2. Minerals and Waste Development Framework – Minerals and Waste Core Strategies: The Minerals and Waste Core Strategies (MCS and WCS) form part of a number of new planning policy documents which ultimately will form a new Minerals and Waste Development Framework for the County. They were submitted for Examination in Public (EIP) in January this year and hearings on the WCS, conducted by an Independent Planning Inspector, commenced in September. Hearings on the MCS were scheduled to start in Spring 2009.

Following the expression, by the Inspector, of a number of initial concerns about the potential soundness of the draft WCS at the hearings, an adjournment of the hearings was sought in order to allow time for the Council to give further consideration to the issues raised. An exploratory meeting with the Inspector had been arranged for 11 November. The purpose of the meeting would have been for the Council to set out how it proposed to address the concerns raised by the Inspector. The Inspector subsequently provided further details regarding his concerns with the potential soundness of the WCS and indicated that he would agree to a suspension of the hearings, in order to allow the Council to undertake further work to support its draft strategy, only where the nature of the additional work was

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clear and identified; where new evidence to be presented would directly address his concerns; where the suspension would be of short duration and where there would be no substantial resultant changes proposed to the wording of the WCS.

Detailed consideration has been given to the issues raised by the Inspector and the potential to resolve these in a way which would lead to a successful conclusion to the WCS examination process. Advice has been sought from Counsel representing the Council at the hearings and discussions have taken place with Government Office for Yorkshire and the Humber. The conclusion of this detailed consideration is that, taking into account the constraints imposed on the Council by legislation, planning guidance and the Inspector, the nature of further work required by the Council to address the Inspector's concerns would not meet the criteria he has set down. It is not possible to conclude at this stage, without carrying out any additional work, that any resultant changes are likely to be minor and could be brought forward through a relatively short suspension of the hearings. It could be that more fundamental changes are necessary. In these circumstances, Counsel is of the view that withdrawal of the WCS is the most appropriate option available to the Council. This would allow the Council to bring forward a more comprehensively reviewed WCS including, potentially, further supporting evidence and to address implications arising from changes to policy and recent case law.

The examination process for the MCS is following behind that of the WCS, but is being conducted by the same Inspector. The overall approach to the development of policy contained in the MCS is similar to that of the WCS. Although formal hearings have not commenced, initial feedback has recently been received from the Inspector, who has drawn to the Council's attention a number of areas of concern. These have been presented in the context of a recent court decision relating to the Hampshire Minerals and Waste Core Strategy, in which an Inspector's finding of soundness has been partially overturned. Specifically, the Inspector has indicated that there is a serious risk of the MCS being found unsound and that the Council should consider its position. In view of the similarities between the concerns expressed by the Inspector on the WCS and the MCS, and taking into account the legal advice received on the WCS, it is considered that withdrawal of the MCS is the most appropriate option in the circumstances. As with the WCS, this would allow the representation of a comprehensively reviewed MCS in due course.

The Council cannot unilaterally withdraw its MCS and WCS. The Planning and Compulsory Purchase Act 2004 allows for the Inspector to recommend that a document is withdrawn (and for that recommendation not to be overruled by a direction given by the Secretary of State), or for the Secretary of State to direct that a document must be withdrawn. Initial discussions took place with Government Office for Yorkshire and the Humber (GOYH) with regard to the potential process to be followed. The Inspector was informed of the Council's position and agreed that the exploratory meeting arranged for 11 November 2008 be cancelled. This allows the Council to consider submitting a formal request, to GOYH, to withdraw the MCS and WCS. Following ministerial approval, GOYH would then write to the Council authorising withdrawal, following which the Council must advertise the withdrawal in accordance with the relevant Regulations.

The Council has a statutory obligation to prepare a MCS and WCS and therefore it will be necessary for work to take place towards preparation of new draft strategies. Such work would take place under new Regulations, introduced in June 2008, which have put in place a revised and slightly simplified process for development plan preparation. Any new MCS and WCS would in due course be subject to a new Examination in Public. New national guidance, published in association with the new Regulations, allows the Council to consider bringing forward new strategies, together with the identification of strategically significant sites. Under the guidance, there was a requirement to bring forward a separate Site Allocations development plan document. Work towards preparation of Minerals and Waste Site allocations documents is well advanced and submission was due to take place

next year. Withdrawal of the MCS and WCS will directly impact on this, as it will not be possible for the Council to adopt a Site Allocations document in advance of a corresponding Core Strategy. It is expected that further work on site allocations will now be subsumed within the reworking of the WCS and MCS. Discussions will be needed with GOYH in relation to this and a revised timetable will be developed which will be reported to the Executive.

The policies in the WCS are intended to replace policies in the current Waste Local Plan, which is due to expire in May 2009. It will therefore be necessary to seek approval from GOYH to save existing policies in the Waste Local Plan for a further period in order to ensure appropriate local policy coverage. Notwithstanding this, there is also a clear waste planning policy framework at national and regional level (including the recently adopted Regional Spatial Strategy) to enable the Council, in its role as Waste Planning Authority, to continue to determine planning applications for new waste facilities and to provide a framework within which developers can bring forward proposals. The withdrawal of the WCS will not impact directly on this. Policies in the current Minerals Local Plan were saved for an extended period in 2007. It may be necessary to seek approval to save these for a further period in the event that the MCS is withdrawn. As with waste, a range of existing national and regional policies exist to provide a context for dealing with applications.

The Executive has asked for a report setting out an indicative timetable for the preparation of revised Minerals and Waste Development Plan documents and has asked the Environment and Heritage Overview and Scrutiny Committee to consider the process of preparing and submitting the strategies and provide feedback to the Executive.

The Executive RECOMMENDS:

That a direction be sought from the Secretary of State for the withdrawal of the Minerals Core Strategy and the Waste Core Strategy.

3. Waste Local Plan – Saving of Policies: Under the Planning and Compulsory Purchase Act 2004, the Council has responsibility to prepare and maintain up to date land use planning policies for minerals and waste development. Under the provisions of the 2004 Act, the policies in any existing plans adopted by the Council after commencement of the Act have automatically been saved for a period of 3 years from the date the plan was adopted. The Waste Local Plan was adopted in May 2006 and therefore the policies will expire in May 2009, unless special provision is made for their further extension. These provisions require the submission, to Government Office for Yorkshire and the Humber, of proposals to “save” policies for an additional three year period, or until they are superseded by new policies to be contained in the Council’s new Minerals and Waste Development Framework (MWDF). The need to save these policies has arisen as a result of the need to seek withdrawal of the draft Waste Core Strategy document.

A schedule of proposed Saved Policies, on a template provided by Government Office, is attached as Appendix 2 to this report. In putting forward proposals to save existing policies, the Council is obliged to follow guidance issued by Central Government. In particular, this guidance states that Authorities should adopt a rigorous approach and only save policies which meet certain criteria, including a requirement that saved policies should not duplicate or be inconsistent with current national and regional planning policies. The schedule therefore indicates those policies which it is proposed to save and those which it is proposed should lapse, with summary reasons, taking into account the criteria set down in Government advice. Following submission, GOYH may indicate that the Council should

revise its schedule prior to the May 2009 deadline. It is important to note that, where it is proposed that policies should lapse, this does not necessarily imply that the potential significance of the topic covered by the policy is reduced, but that more up to date or specific national and/or regional guidance exists.

The saving of policies is intended to ensure continuity in the plan-led system and a stable planning framework locally and, in particular, the continued supply of appropriate land for development. The existence of a continuing local policy framework will assist the Council in determining applications for waste development which may come forward prior to adoption of new policies within the MWDF.

The Executive RECOMMENDS:

That the draft Waste Local Plan Schedule of Saved Policies set out in Appendix 2 to the report be approved for submission to Government Office for Yorkshire and the Humber, subject to the Corporate Director, Business and Environmental Services being authorised to make minor amendments to the Schedule in response to any views received from Government Office for Yorkshire and the Humber.

4. Local Government and Public Involvement in Health Act 2007 – New Executive Arrangements: The Local Government and Public Involvement in Health Act 2007 has amended the Local Government Act 2000 to change the choices available to local authorities in relation to their executive arrangements. The choices available to authorities are now:

- (1) A Leader and Cabinet Executive; or
- (2) A Mayor and Cabinet Executive.

The Council formerly adopted a Leader and Cabinet Executive in 2002 under the provisions of the Local Government Act 2000, but must now change to one of the above, as the current Leader and Cabinet Executive is no longer an option. The new Leader and Cabinet Executive option involves:

- the Leader being elected by the Council and normally holding office for a four year term;
- Executive Members may only be appointed by the Leader of the Council.

The County Council received a report on 23 July with recommendations from the Executive advising that consultation be undertaken in accordance with the Act. The following timetable was determined in consultation with the Constitution Working Group to enable the County Council to comply with the legislative requirements:-

- Report to County Council 23 July 2008
- Consultation period 22 September 2008 – 17 October 2008. The suggested consultation was to be by means of the NY Times and the County Council's website.
- Report to Executive on outcome of consultation – 18 November

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- Report to County Council seeking resolution to amend the Constitution to give effect to the proposed changes – 17 December 2008.
- The new form of governance arrangements to operate on the third day after the local government elections in 2009.

Specifically in relation to the basis on which the consultation should be based, the County Council resolved “that the Council continues to operate the Leader and Cabinet Executive and that proposals to change to a new style Leader and Cabinet Executive arrangement be prepared as required by the Local Government and Public Involvement and Health Act 2007, for implementation after the May 2009 elections.”

Details of the public consultation were published in the NY Times for the period September/October 2008, which is distributed throughout the county, and the consultation was also posted on the Council’s website. Comment was invited via the Council’s e-Panel, or through contact with the Assistant Chief Executive (Legal and Democratic Services). The consultation generated minimal responses, with 16 received in total. Of those, eight considered that the Leader and Cabinet Executive was most suitable for North Yorkshire, and six considered that there should be an Elected Mayor and Cabinet Executive. Two respondents raised queries but did not give a conclusive view. A summary of the comments in the responses is attached at Appendix 3.

Following the consultation, the Council must now determine its proposals for its executive arrangements. The new Leader and Cabinet Executive model is very similar in practice to the Council’s current model. Under the new Leader and Cabinet Executive, a Leader will be elected by the members of the authority and will hold office for a four year term. The election takes place at the Annual Meeting of the Council after the election. Under this model the Leader will be responsible for appointing the Deputy Leader and other Executive Members. The Leader may remove the Deputy Leader and Executive Members from office and determines the portfolio of Executive Members. The previous discretion which allows the County Council to appoint Executive Members is removed. The Council may include provision for the Council to remove an Executive Leader by resolution during the four year term. If that power is adopted, and such a resolution was to be passed, a new Leader would have to be appointed at the same time or at a subsequent meeting. The Council will need to consider whether it is advisable to adopt a power to remove a Leader during the four year term, in case it transpires that any future appointment is subsequently considered to be inappropriate in the view of the majority of Councillors. Although the Executive took the view, at its meeting on 18 November, that no power to remove a Leader should be included in the Constitution, some Members of the Working Group on the Constitution expressed the view that there might be merit in having such a provision in the Constitution, to ensure the Council had the powers, should it prove necessary at any time in the future.

Under the Mayor and Cabinet Executive, the Mayor is directly elected, also for a four year term, and cannot be removed from office by the Council. A two-thirds majority is required to overturn a Mayor’s budget or major policy proposals. An elected Mayor also has power of appointment and removal of the Deputy Mayor and Executive Members.

In determining its proposals, an authority is legally required to consider the extent to which they would be likely to assist in securing continuous improvement in the way in which the authority’s functions are exercised, having regard to economy, efficiency and effectiveness. When the matter was considered by Executive and the County Council in July 2008, Members felt that the Leader and Cabinet Executive was better suited to the circumstances of North Yorkshire. They considered that it ensures the Council’s Leader has

the clear support of the full Council and the opportunity to ensure Executive roles are undertaken by those who will be most effective. It places strong leadership in the hands of a Leader, supported by an Executive s/he considers best able to fulfil their role. The new Leader and Cabinet Executive is one of the options considered by the Government to provide strong leadership in local authorities. The County Council under the current similar Leader and Cabinet Executive model has benefited from strong leadership, resulting in it consistently being a high performing authority in the delivery of services and community leadership, assessed as four star and improving well by its external assessors and consistently achieving a very high rating in national benchmarking against other comparator authorities.

The Executive has considered the outcome of the consultation and has referred the matter to the Constitution Working Group for consideration of the proposal, and any changes to the Constitution needed to give effect to any revisions to the Council's Executive Arrangements. Recommendations for amendments to the Constitution, to take effect when the new style Leader and Cabinet Executive come into force, are set out in Appendix 4.

The Local Authorities (Functions and Responsibilities) Regulations 2000 and subsequent amendments set out how the functions for which the Executive are responsible are determined. The current arrangements agreed by the Council regarding local choice functions (those which may or may not be the responsibility of the Executive) are attached at Appendix 5. The Council must, in deciding upon its proposals under the 2007 Act, state the extent to which those functions are to be the responsibility of the Executive under the new arrangements. It is recommended that the arrangements as currently agreed be confirmed.

The Executive RECOMMENDS:-

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| <p>(a) That the Council change to a new style Leader and Cabinet Executive, after the 2009 elections, in accordance with the 2007 Act, and that all necessary public notice be given.</p> <p>(b) That no power to remove a Leader, by Council resolution, during their term of office, be included in the Constitution.</p> <p>(c) That the revisions to the Constitution recommended to the County Council by the Constitutional Working Group, to take effect after the 2009 elections, set out in Appendix 4, be approved.</p> <p>(d) That the arrangements for local choice executive functions and responsibilities under the 2000 Regulations as set out in Appendix 5 be confirmed.</p> |
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5. Constitution - Employment Appeals Committee, Appointments to Outside Bodies and amendments: In accordance with the County Council's Disciplinary and Capability Policies and Procedures, an employee dismissed by the County Council for disciplinary or capability reasons can currently appeal against the decision to the Council's Appeals Committee. The Committee consists of four County Councillors and has existed in its present form since 1996. The Appeals Committee also deals with

- grants to students including home to school transport,
- the appointment of lay and independent members to the Admissions Appeals Panels,

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- making arrangements for appeals against school exclusions and admission appeals,
- group grievances or collective disputes,
- appeals against decisions of the Executive, appeals relating to school curriculum issues, and
- appeals against a decision to terminate the appointment of an LEA Governors by the Governors' Committee.

The current terms of reference of the Committee are set out in Appendix 6 to this report. In addition to the four members of the Committee there are ten substitute members. The main business for the Committee for the past three years has related to home to school transport appeals, and employment related appeals. The Committee has worked very well to deal with its diverse responsibilities, but it is considered that the terms of reference should now be reviewed to reflect changes in the nature and magnitude of work.

The business of the Committee which relates to appeals is very technical. Committee Members and substitutes must receive appropriate training before participating. Whilst there are common areas, the handling of home to school transport appeals and employment appeals are increasingly subject to differing considerations and very different timescales. Additionally, the workload involved in the handling of appeals is changing, as is their nature.

Members consider approximately 200 home to school transport appeals per annum. The figures have been gradually increasing. This requires knowledge of the Council's related policies, together with regulations and guidance concerning safe walking routes to school. There is obviously also a need to be aware of the requirements of natural justice and equalities. However, whilst numbers are high, the time usually required for dealing with each home to school transport appeal is between 20 and 45 minutes and the Appeals Committee can hear up to 12 appeals on this topic on one day.

In handling employment appeals, the knowledge required is different. Members must be familiar with the County Council's Disciplinary and Capability Policies and Procedures, and terms and conditions of employment, and also have a basic grasp of the legal frameworks relating to employment. Comparatively, the Committee deals with fewer employment appeals, on average four or five per annum. However, they demand significantly greater time in terms of preparation and the time actually spent in the Appeals Committee. An appeal will typically last at least a day, though sometimes more, with one appeal in the last year continuing over five days. The time commitment and impact on other diary commitments is therefore significant. There are also serious implications arising from the decision on the appeal. Members undertaking the employment appeal role in Committee must hear and evaluate often complex factual evidence relating to allegations of misconduct, capability, redundancy or discrimination. Whilst Members are supported in this process by officers, the implications for the Council in the event of onward appeal to an Employment Tribunal, if it should be successful, can be significant in financial and reputational terms. The Chairman of the Committee involved in the appeal decision may be required to give evidence to the Employment Tribunal in relation to the appeal decision and process and be subject to detailed questioning. The level of responsibility upon the Chairman of the Appeals Committee is increasingly onerous.

It is therefore recognised that employment cases demand very significant commitment on the part of the Members involved, as do home to school transport appeals because of their number. The current requirement for Appeals Committee members to gain

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expertise on such wide and varying aspects of appeals related issues are considered too onerous. For that reason it is recommended that a separate Employment Appeals Committee be established with effect from June 2009. It is suggested that the Committee should consist of four Members, who will be trained to enable them to specialise in dealing with employment appeals, and should be created with terms of reference as set out in Appendix 7. Substitutes will also need to be appointed and will similarly be trained. It is recommended that the current Appeals Committee be retained to continue to deal with all other appeals and other functions in its current terms of reference. Draft revisions to its terms of reference to reflect this are set out in Appendix 8.

A special responsibility allowance would be appropriate for the Chairman of the Employment Appeals Committee if it is agreed that the Committee be established. The Independent Remuneration Panel considered the proposal in their recent work in relation to the Council's Members' Allowance Scheme and are in agreement that the allowance should be paid, which is included in their report.

The list of outside bodies to which appointments are made, as set out in Schedule 5 of the County Council's Constitution, has been checked for accuracy. The checking process has identified the following situations:-

- Outside bodies to which appointments are being made which are not listed in Schedule 5.
- Outside bodies which have ceased to exist or to which the County Council no longer makes appointments.
- Outside bodies whose details, as set out in Schedule 5, require amendment.

To update Schedule 5, the amendments set out in Appendix 9 are recommended for approval.

The Members' Working Group on the Constitution has also considered amendments to the delegated powers of the Pension Fund Committee, which that Committee has requested, and a number of other amendments to the Constitution which, in the main, arise from a need to reflect the new locally based standards regime.

The Executive RECOMMENDS:

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- (a) That an Employment Appeals Committee be established with effect from June 2009.
- (b) That the terms of reference as set out in Appendix 7 be adopted for the Employment Appeals Committee and the Constitution be amended with effect from 4 June 2009.
- (c) That the terms of reference of the Appeals Committee be revised as set out in Appendix 8 with effect from 4 June 2009 and that the Constitution be amended in that respect from that date.
- (d) That the amendments to Schedule 5 of the Constitution set out in Appendix 9 to the report be approved.
- (e) That the terms of reference of the Pension Fund Committee be amended to those set out in Appendix 11.
- (f) That the amendments to the Constitution set out in Appendix 12 be approved.

6. Appointments: Nominations have been received for substitute Members on the Planning and Regulatory Functions Committee for the Conservative Group. Recommendations for those appointments are set out below, together with the usual recommendation that any proposals for allocations of seats or changes to memberships or substitute memberships of Committees, or other bodies to which the County Council makes appointments, put forward by the relevant political group, at or before the meeting of the Council, be approved.

The Executive RECOMMENDS:

- (a) That County Councillors David Jeffels, Geoffrey Cullern and David Ireton be appointed as second, third and fourth Conservative Group Substitute Members respectively of the Planning and Regulatory Functions Committee.
- (b) That any proposals for allocation of seats or changes to membership or substitute memberships of Committees or other bodies to which the County Council makes appointments put forward by the relevant political group, at or before the meeting of the Council, be approved.

CARL LES
Chairman – 14 October 2008

JOHN WEIGHELL
Chairman

County Hall,
NORTHALLERTON.
9 December, 2008