

<b>MEETING:</b>	Cabinet
<b>DATE:</b>	Wednesday 5 October 2022
<b>TIME:</b>	10.00 am
<b>VENUE:</b>	Council Chamber, Barnsley Town Hall
<b>PUBLIC WEB LINK:</b>	<a href="https://barnsley.public-i.tv/core/portal/webcasts">https://barnsley.public-i.tv/core/portal/webcasts</a>

## AGENDA

1. Declaration of pecuniary and non-pecuniary interests
2. Leader - Call-in of Cabinet decisions

### Minutes

3. Minutes of the previous meeting held on 21 September 2022 (Cab.5.10.2022/3) (Pages 3 - 8)

### Items for Noting

4. Decisions of Cabinet Spokespersons (Cab.5.10.2022/4) (Pages 9 - 10)

### Petitions

5. Petitions received under Standing Order 44 (Cab.5.10.2022/5)

### Items for Decision/Recommendation to Council

#### Environment and Highways Spokesperson

6. Station Road and Woolley Colliery Road, Darton, Barnsley: Introduction of prohibition of motor vehicles and prohibition of waiting at any time (Cab.5.10.2022/6) (Pages 11 - 22)
7. Exclusion of Public and Press  
Appendix 1 to agenda item 8 is exempt. Therefore, if necessary when considering that item, the Chair will move the following resolution:-

That under Section 100(A) 4 of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12(A) of such Act indicated, as now amended by the Local Government (Access to Information) (Variation) Order 2006.

#### Place Health and Adult Social Care Spokesperson

8. Re-Commissioning of the Adult Community Support and Enablement Services (ACSES) Framework (Cab.5.10.2022/8) (Pages 23 - 36)

#### Reason restricted:

Paragraph (3) Information relating to the financial or business affairs of any particular person (including the authority holding that information)

9. Exclusion of Public and Press

It is likely that the public and press will be excluded from this meeting during consideration of the items so marked because of the likely disclosure of exempt information as defined by the specific paragraphs of Part I of Schedule 12A of the Local Government Act 1972 as amended, subject to the public interest test.

**Joint Place Health and Adult Social Care, Regeneration and Culture, and Public Health and Communities Spokespersons**

10. Barnsley's Health and Care Plan and Disposal of Council Asset  
(Cab.5.10.2022/10) (Pages 37 - 52)

Reason restricted:

Paragraph (3) Information relating to the financial or business affairs of any particular person (including the authority holding that information)

To: Chair and Members of Cabinet:-

Councillors Houghton CBE (Chair), T. Cave, Frost, Gardiner, Higginbottom, Howard, Lamb, Makinson and Platts

Cabinet Support Members:

Councillors Cain, Cherryholme, Eastwood, Franklin, Newing, Osborne and Risebury

Chair of Overview and Scrutiny Committee

Chair of Audit Committee

Sarah Norman, Chief Executive

Carly Speechley, Executive Director Children's Services

Wendy Lowder, Executive Director Place Health and Adult Social Care for Barnsley

Shokat Lal, Executive Director Core Services

Matt O'Neill, Executive Director Growth and Sustainability

Julia Burrows, Executive Director Public Health and Communities

Neil Copley, Service Director Financial Services (Section 151 Officer)

Sukdave Ghuman, Service Director Law and Governance (Monitoring Officer)

Michael Potter, Service Director Business Improvement, HR and Communications

Katie Rogers, Head of Communications and Marketing

Anna Marshall, Scrutiny Officer

Jason Field, Head of Legal Services (Deputy Monitoring Officer)

Corporate Communications and Marketing

Please contact Sukdave Ghuman by email [governance@barnsley.gov.uk](mailto:governance@barnsley.gov.uk)

Tuesday 27 September 2022



<b>MEETING:</b>	Cabinet
<b>DATE:</b>	Wednesday 21 September 2022
<b>TIME:</b>	10.00 am
<b>VENUE:</b>	Council Chamber, Barnsley Town Hall

## MINUTES

**Present** Councillors Houghton CBE (Chair), T. Cave, Gardiner, Higginbottom, Howard, Lamb, Makinson and Platts

**Members in Attendance:** Councillors Cain, Franklin, Newing and Osborne

### 76. Declaration of pecuniary and non-pecuniary interests

There were no declarations of pecuniary or non-pecuniary interests.

### 77. Leader - Call-in of Cabinet decisions

The Leader reported that no decisions from the previous meeting held on 7 September 2022 had been called in.

### 78. Minutes of the previous meeting held on 7 September 2022 (Cab.21.9.2022/3)

The minutes of the meeting held on 7 September 2022 were taken as read and signed by the Chair as a correct record.

### 79. Decisions of Cabinet Spokespersons (Cab.21.9.2022/4)

There were no Records of Decisions by Cabinet Spokespersons under delegated powers to report.

### 80. Petitions received under Standing Order 44 (Cab.21.9.2022/5)

It was reported that no petitions had been received under Standing Order 44.

### 81. Quarter 1 (2022/23) Corporate Performance Report (Cab.21.9.2022/6)

**RESOLVED** that Cabinet:-

1. Notes the contents of the Corporate Performance Report in relation to the delivery of the Corporate Plan priorities and outcomes; and
2. Agrees that the Performance Report is shared with the Overview and Scrutiny Committee to inform and support their ongoing work programme.

### 82. Corporate Finance Performance Quarter 1 2022/23 (Cab.21.9.2022/7)

**RESOLVED** that Cabinet:-

## CORPORATE FINANCE PERFORMANCE

1. Notes the £13.7M projected overspend on the Council's General Fund in 2022/23;
2. Notes that £10.9M of this relates to exceptional risks referenced as part of setting the 22/23 budget in February 2022 which have now materialised;
3. Notes that these cost pressures will be funded via the use of one-off reserves in this financial year pending the development of a mitigation / transformation plan to address anticipated financial pressures in 23/24 and beyond;
4. Notes that the remaining £2.8M relates to unanticipated cost pressures across several Council services;
5. Requests that action plans are drawn up to mitigate overspends as far as is possible and that those are submitted to Cabinet as part of the Q2 performance management update:
  - Children in Care [Children's Services]
  - Assessment & Care Management [Children's Services]
  - Estates – Commercial Rental Income [Growth & Sustainability]
  - Car Parking Income [Growth & Sustainability]
  - Home to School Transport [Growth & Sustainability]
  - Assisted Living Technologies [Public Health & Communities]
  - Legal Costs / Income Shortfall [Core]
6. Notes the current 22/23 forecast position on the Housing Revenue Account;
7. Approves the write off of historic bad debts totalling £0.9M as detailed in the report.

#### **CAPITAL PROGRAMME PERFORMANCE**

8. Notes the forecast position on the Capital Programme (paragraphs 2.11 to 2.17 of the report refers); and

#### **TREASURY MANAGEMENT**

9. Notes the key messages from the Council's Q1 Treasury Management activities (paragraphs 2.18 – 2.28 of the report refers).

#### **83. Barnsley: A Fostering Friendly Employer (Cab.21.9.2022/8)**

**RESOLVED** that Cabinet supports the proposal for the Council to become a National Fostering Network 'Fostering Friendly' employer.

#### **84. Outcomes of the Joint Targeted Local Area Inspection (JTAI) of Children's Social Care (Cab.21.9.2022/9)**

#### **RECOMMENDATION TO FULL COUNCIL ON 29 SEPTEMBER 2022**

**RESOLVED:-**

1. That the outcomes of the Joint Targeted Area Inspection, together with the next steps, be recommended for consideration by Full Council; and
2. That the draft 'Written Statement of Proposed Action' in response to these outcomes be presented for Cabinet's approval at the meeting on 19 October 2022, with this date subject to the Overview and Scrutiny Committee waiving its right to 'call-in' the Statement, if required (please see Paragraph 2.9 of this report).

**85. Proposed Conversion of the Elmhirst Youth Centre into an Education Facility for Pupils with Special Educational Needs (Cab.21.9.2022/10)**

**RESOLVED** that Cabinet approves:-

1. Arrangements leading to the refurbishment and expansion of the former Elmhirst Youth Centre into a satellite facility for providing education to pupils with special educational needs as summarised in the report, with effect from the 2022/2023 school year;
2. The commissioning of up to 40 places for pupils with SEND including complex needs at the Elmhirst Youth Centre, as detailed in the report;
3. The financial implications arising from the report, be included in the Capital Programme and released in accordance with the financial regulations Code of Practice C5.2(a);
4. That, as part of the report's proposals, the granting of a new lease to the NEXUS Multi Academy Trust for up to 25 years at the former Elmhirst Youth Centre at nil rent;
5. That the Head of Property Services be authorised to finalise Heads of Terms for the new lease to the NEXUS Multi Academy Trust; and
6. That the Service Director (Law and Governance) be authorised to complete the new lease to the NEXUS Multi Academy Trust.

**86. High Rise Water Ingress Remediation Works (Cab.21.9.2022/11)**

**RESOLVED** that Cabinet approves:-

1. The project to carry out required remedial works through a tendered planned programme of works to be complete predominately within the 2023-24 financial year; and
2. The required HRA funding for the project up to the total estimated cost of £1.150M.

**87. Levelling Up Fund Project Development (Cab.21.9.2022/12)**

**RESOLVED** that Cabinet:-

1. Approves the continued development of projects included within the Levelling Up Fund bid submissions for Barnsley inclusive of all relevant supporting procurement activity and appointment of providers to support; and
2. Agrees to resource the 'at risk' spend required to take schemes included within both bids up to RIBA Stage 3 from the feasibility fund allocations as provided by SYMCA to support projects in Barnsley.

**88. Transforming Cities Fund A61, A635 Active Travel Schemes, Station Access Schemes Approval to Spend (Cab.21.9.2022/13)**

**RESOLVED** that Cabinet:-

1. Notes the progress on the delivery of the A61 and A635 Active travel schemes;
2. Notes the tender returns show that the prices are within the indicative budget allocation, subject to the due diligence checks which are ongoing.
3. Subject to the approval of funding by SYMCA:-
  - a. Agrees to award the tender to the successful contractor to deliver the works;
  - b. Approves acceptance of grant funding from SYMCA for the construction of the works;
  - c. Approves acceptance of the grant funding from SYMCA for the delivery of the Station Access Improvement Scheme for the Council's Direct Labour Organisation (DLO) to deliver; and
  - d. The Service Director of Finance in consultation with the Executive Directors of Legal and Place be authorised to negotiate the terms and conditions of, and final approval of the SYMCA grant funding agreements, for the delivery of the A61 and A635 Active Travel Schemes.

**89. Exclusion of Public and Press**

**RESOLVED** that the public and press be excluded from the meeting during consideration of the following items, because of the likely disclosure of exempt information as described by the specific paragraphs of Part I of Schedule 12A of the Local Government Act 1972 as amended, as follows:-

<u>Item Number</u>	<u>Type of Information Likely to be Disclosed</u>
15	Paragraph 3

**90. Goldthorpe Market Housing Development - Financial Update (Cab.21.9.2022/15)**

**RESOLVED** that Cabinet:-

1. Approves the revised scheme costs. The scheme has previously been approved in principle and will be financed from a combination of HRA Reserves, 1-4-1 receipts, S106 funding and grant funding;
2. Approves in principle the acceptance of SYMCA Brownfield Funding and SOAHP grant funding (and associated legal sign offs); and
3. Approves the appointment of the preferred contractor following a competitive tender exercise.

.....  
Chair

This page is intentionally left blank



**BARNSELY METROPOLITAN BOROUGH COUNCIL**

**CABINET SPOKESPERSONS' DECISIONS**

**Schedule of Decisions taken for week ending 16 September 2022**

<b><u>Cabinet Spokesperson</u></b>	<b><u>Item</u></b>	<b><u>Decisions</u></b>
1. Children's	Proposed Conversion of the Athersley I Know I Can (IKIC) Centre into an Education Facility for Pupils with Special Educational Needs	<p>That the Cabinet Spokesperson:-</p> <ol style="list-style-type: none"><li>1. Approves arrangements leading to the refurbishment of the Athersley 'I Know I Can' centre into a satellite facility for pupils with special educational needs as summarised in this report, with effect from the 2022/2023 school year.</li><li>2. Approves the commissioning of up to 30 places for pupils with SEND including complex needs at the Athersley provision as detailed in this report.</li><li>3. The financial implications arising from this report, be included in the Capital Programme and released in accordance with the financial regulations code of practice C5.2(a).</li><li>4. That, as part of this report's proposals, approval be given for the granting of a new lease to the Waterton Academy Trust for up to 25 years at the Athersley IKIC Centre at nil rent.</li><li>5. That the Head of Property Services be authorised to finalise Heads of Terms for the new lease to the Waterton Academy Trust.</li><li>6. That the Service Director Law and Governance be authorised to complete the new lease to the Waterton Multi Academy Trust.</li></ol>

This page is intentionally left blank

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

**REPORT OF:** Executive Director, Growth and Sustainability.

**TITLE:** Station Road and Woolley Colliery Road: Introduction of prohibition of motor vehicles and prohibition of waiting at any time.

<b>REPORT TO:</b>	<b>CABINET</b>
<b>Date of Meeting</b>	<b>5 October 2022</b>
<b>Cabinet Member Portfolio</b>	<b>Environment and Highways</b>
<b>Key Decision</b>	<b>No</b>
<b>Public or Private</b>	<b>Public</b>

**Purpose of report**

To reject the objections submitted, approve the Objection Report, and seek Cabinet approval to authorise the Head of Highways and Engineering and the Legal Services Director and Solicitor to the Council to make and implement a Traffic Regulation Order (TRO) necessary to introduce restrictions on Station Road and Wolley Colliery Road, Darton, Barnsley.

**Council Plan priority**

This scheme meets the following priorities:

- Healthy Barnsley
- Sustainable Barnsley

**Recommendations**

That Cabinet:-

1. Overrule the objections received for the reasons set out in this report, and ensure objectors are informed accordingly; and
2. Authorise the head of Highways and Engineering and the Executive Director of Core Services and Solicitor to the council to make and implement the Traffic Regulation Order (TRO) as originally published.

## **1. INTRODUCTION**

- 1.1** As part of the ongoing Active Travel schemes around the borough, Darton Station was identified as requiring access improvement. It was proposed to close the underpass between Mill Lane and Station Road / Woolley Colliery Road to vehicles, allowing a new footway to be constructed, linking both platforms and providing a safer route for pedestrians travelling from Woolley to Darton.

The existing underpass is a single-track route, only passable by one vehicle at a time which operates on a voluntary 'give-and-take' for vehicles at either end. The tunnel is not suitable for large vehicles which has caused issues on Mill Lane when larger vehicles, relying on Satellite Navigation, have damaged property when attempting to turn around and exit Mill Lane. For passengers using the Railway Station, the tunnel is the fastest way to move between platforms as there is no track overbridge facility. The narrow width of the tunnel means passengers share the narrow road with live traffic.

Construction of the new footpath linking the platforms will reduce the width of the carriageway, reducing space for vehicles to manoeuvre around parked cars. As part of an active bus route (no. 93) it was essential that the area be kept clear of extraneous parking to maintain the free flow of traffic. The restrictions are shown at appendix 2.

A public consultation was held on the 16<sup>th</sup> of June which was attended by several local members from Darton East and Darton West. Some concerns were raised regarding the entry / exit from Mill Lane. Since the consultation, this junction has been significantly revised and is included at Appendix 2, along with images showing the proposed visibility improvements, see Appendix 3.

Consequently, further meetings were held on 14/07/22, in which the local members supported the proposals.

The proposals were published in June 2022 and 3 objections were received.

## **2. PROPOSAL**

- 2.1** It is proposed to implement the TRO as originally advertised as shown on the Plan at Appendix 1:-
- Introducing a 'prohibition of waiting at any time' restriction on Station Road / Woolley Colliery Road from a point 70 metres northwest of its junction with the Station Road cul-de-sac (leading to 17-27) to a point 15 metres north of Fountain Close. This will ensure the bus service is not delayed due to parked vehicles, and visibility for Fountain Close is protected.

- Introduce a 'prohibition of motor vehicles' to the underpass linking Mill Lane to Church Street. This will provide a safer route between platforms for pedestrians, cyclists and vulnerable users.

### **3. IMPLICATIONS OF THE DECISION**

#### **3.1 Financial and Risk**

The financial implications remain the same as previously reported.

#### **3.2 Legal**

The Road Traffic Regulation Act 1984 provides the appropriate powers for the Council to make the proposed TRO.

In determining the extents of the proposed restrictions, the Council has had due regard to the duty imposed on it to exercise the functions conferred on it by the Road Traffic Regulation Act 1984 so as to secure the expeditious convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway (section 122 Road Traffic Regulation Act 1984) and is satisfied the traffic restrictions proposed will achieve those objectives.

The new restrictions will improve the free flow of traffic, reducing emissions and delays to the local bus service. Other roadside parking is available at the limits of the scheme. The prohibition of motor vehicles will encourage active travel in the area and link into other routes, creating a viable active travel network in the area.

#### **3.3 Equality**

Full Equality Impact Assessment completed at the outline business case stage for the physical works. Scheme will conform to Equalities Act 2010.

#### **3.4 Sustainability**

Decision-making wheel not completed – not appropriate in this case, restrictions required as part of works. However, the restrictions will promote active travel (improved bus route, better connectivity for cyclists / pedestrians) and the main works will involve the planting of trees to offset loss of grass verge.

#### **3.5 Employee**

No employee implications.

#### **3.6 Communications**

The scheme has been advertised in local media and on street lighting columns in line with all TROs undertaken by the authority. Additional consultation has been undertaken in the form of a public consultation at

Darton Lift Centre on 16<sup>th</sup> June. The cabinet decision relating to these proposals will be published on the council website.

#### 4. CONSULTATION

No additional consultations are required, these having already been carried out at the publication stage. As a result of advertising the proposals there are 3 outstanding objections to consider. The main concerns raised are listed below along with the Head of Highways & Engineering's comments in response in **bold**.

- *(Location of objector: Woolley Colliery Road)* The Mill Lane junction is unsuitable for exiting onto Church Street, concerns over emergency situations, traffic approaching too fast from south to exit Mill Lane safely.
- *(Location of objector: Not stated)* The junction at Mill Lane is difficult to pull out of.
- *(Location of objector: Not stated)* The road closure will cause people to use Sackup Lane to access Darton Lane and onto Mill Lane. Opposed to restrictions on Station Road / Woolley Colliery Road as other bus routes have cars parked along them. Concerns regarding the Mill Lane exit.

***Response:*** *The proposals will include reducing the carriageway width to 7.3 metres, which should lower vehicle speeds. This will also improve visibility at the junction (see appendix 3). The closure will be affected using removable bollards and signs, which can be removed quickly in case of a bridge strike etc. Restrictions are necessary to ensure the reliability of the bus service. Opportunities to improve bus routes are taken whenever the opportunity arises, regardless of situations elsewhere. Vehicles will not be forced to use Sackup Lane – they will use the Station Road junction near the bridge. New signs will direct traffic from other directions.*

#### 5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Option 1 – Overrule the objections and proceed with the proposals as shown in Appendix 1. **This is the preferred option.**

Option 2 – Decline to introduce the proposals advertised, let the underpass remain accessible to vehicles and do not introduce waiting restrictions to Station Road / Woolley Colliery Road. This option is not recommended for the following reasons:

- It will not provide improvements to the station access, leading to the loss of the funding.
- The bus service will continue to negotiate around parked cars, leading to delays in service.
- It will not promote 'active travel', and will put car users first, in contravention of the council's stated 2030 priorities.

## 6. REASONS FOR RECOMMENDATIONS

- 6.1 These restrictions will allow the safe use of the tunnel by pedestrians, cyclists and other non-vehicular traffic, and passengers accessing train platforms.

The restrictions will also allow the tunnel to be better linked to the Railway Station via a new dedicated footway.

The restrictions will deter and prevent access by motor vehicles and prevent private property being damaged by large vehicles becoming stuck whilst using Satellite Navigation.

## 7. GLOSSARY

TRO - Traffic Regulation Order

## 8. LIST OF APPENDICES

Appendix 1 - Plan of proposed restrictions

Appendix 2 - Plan showing revised junction arrangement at Mill Lane / Church Street

Appendix 3 - Photographs showing visibility improvements at new junction arrangement.

## 9. BACKGROUND PAPERS

1. Traffic Team File

If you would like to inspect background papers for this report, please email [governance@barnsley.gov.uk](mailto:governance@barnsley.gov.uk) so that appropriate arrangements can be made

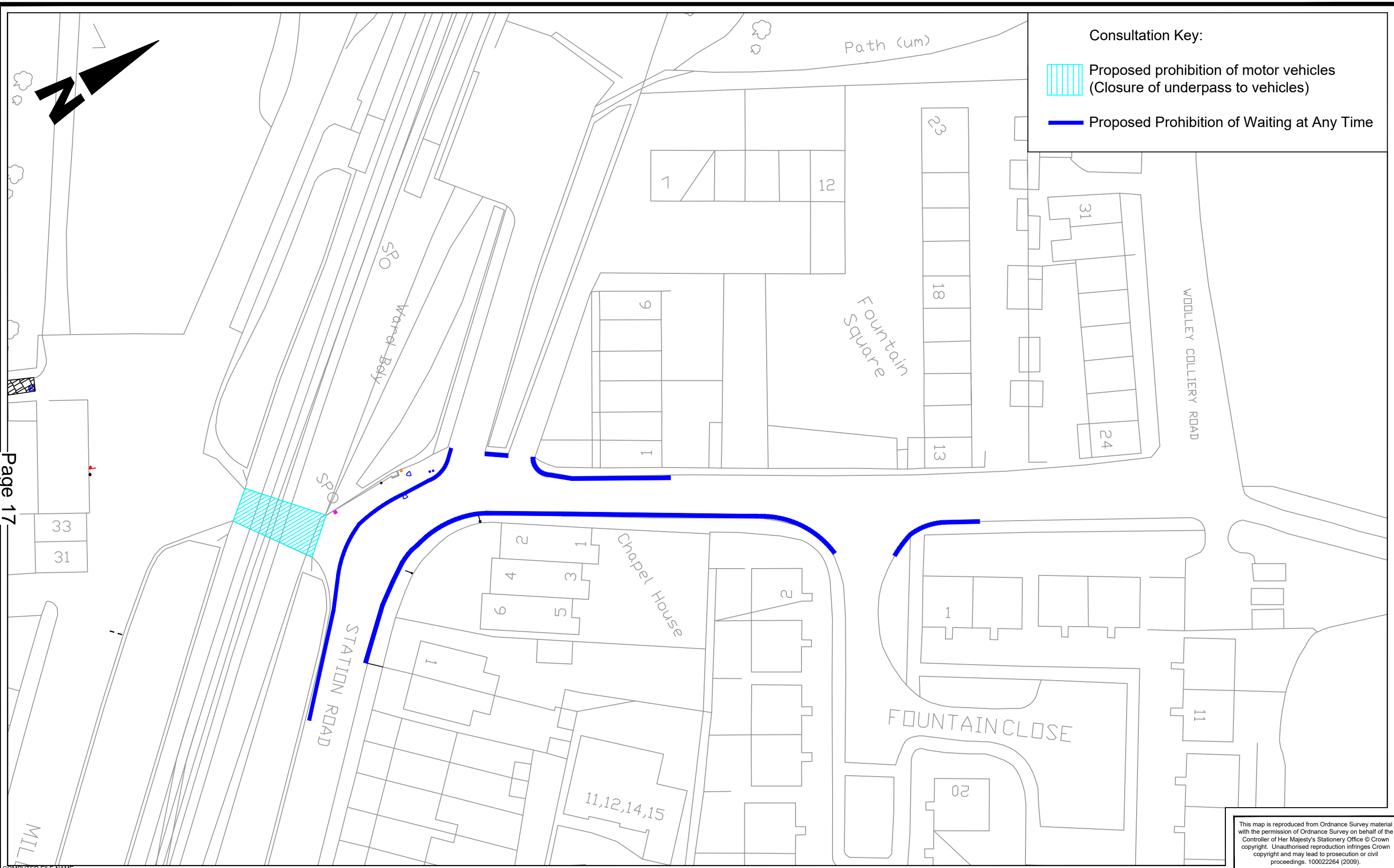
## 10. REPORT SIGN OFF

<b>Financial consultation &amp; sign off</b>	Maqbool Ahmed, Acting Strategic Finance Manager <i>04/04/22</i>
<b>Legal consultation &amp; sign off</b>	Cheryl Redford, Senior Legal Officer <i>28/05/22</i>

**Report Author:** Adam Davis  
**Post:** Engineer  
**Date:** 27/07/2022

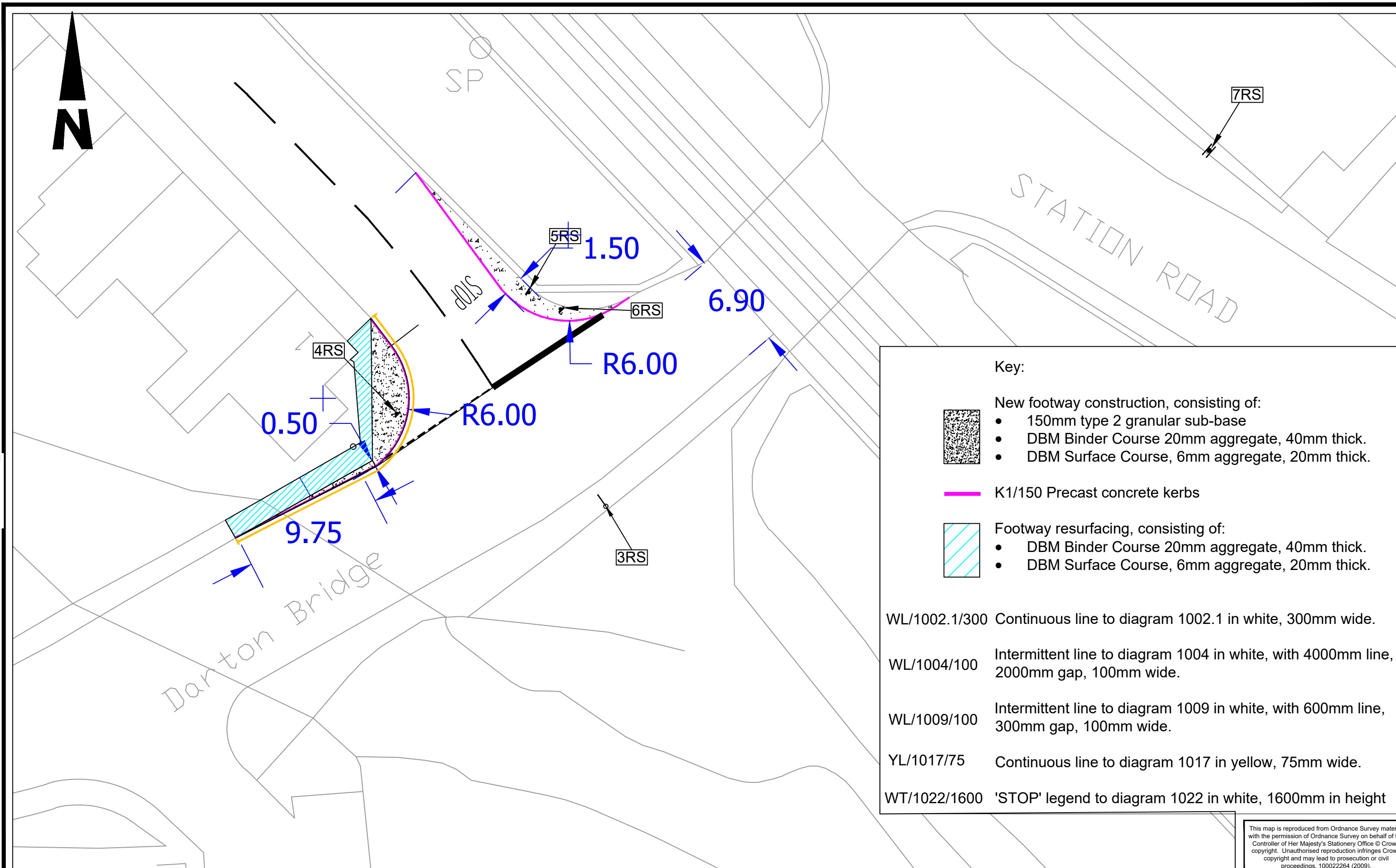
This page is intentionally left blank





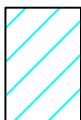


This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. 100022264 (2009).

This page is intentionally left blank



**Key:**

-  New footway construction, consisting of:
  - 150mm type 2 granular sub-base
  - DBM Binder Course 20mm aggregate, 40mm thick.
  - DBM Surface Course, 6mm aggregate, 20mm thick.
-  K1/150 Precast concrete kerbs
-  Footway resurfacing, consisting of:
  - DBM Binder Course 20mm aggregate, 40mm thick.
  - DBM Surface Course, 6mm aggregate, 20mm thick.

WL/1002.1/300 Continuous line to diagram 1002.1 in white, 300mm wide.

WL/1004/100 Intermittent line to diagram 1004 in white, with 4000mm line, 2000mm gap, 100mm wide.

WL/1009/100 Intermittent line to diagram 1009 in white, with 600mm line, 300mm gap, 100mm wide.

YL/1017/75 Continuous line to diagram 1017 in yellow, 75mm wide.

WT/1022/1600 'STOP' legend to diagram 1022 in white, 1600mm in height

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. 100022264 (2009).

This page is intentionally left blank



**Appendix 2**

**Proposed Junction Improvement (Visibility)**

**Existing**





**Proposed**



All photographs taken 2.4m back from either existing or proposed stop line, at chest height to replicate drivers eye view, in accordance with the Design Manual for Roads and Bridges (DMRB).

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

**REPORT OF:** Executive Director of Place Health and Adult Social Care

**TITLE:** Re-Commissioning of the Adult Community Support and Enablement Service (ACSES) Framework

<b>REPORT TO:</b>	<b>CABINET</b>
<b>Date of Meeting</b>	<b>5 October 2022</b>
<b>Cabinet Member Portfolio</b>	<b>Place Health and Adult Social Care</b>
<b>Key Decision</b>	<b>Yes</b>
<b>Public or Private</b>	<b>Part Exempt</b> Appendix 1 - Local Government Act 1972, Schedule 12A Part 1 Paragraph 3

**Purpose of report**

To seek approval to re-commission the Adult Community Support and Enablement Service (ACSES) framework contract and resolve the ongoing payment of the costs associated with TUPE (Transfer of Undertakings Protection of Employment) commitment following the out-sourcing of the councils in house provision in 2017.

The key decision required by Cabinet relates to the original 2017 TUPE transfer on costs.

The report sets out the details and commissioning options in light of work to clarify the TUPE details.

The report also sets out the financial savings that have been delivered over the course of the current approach.

**Council Plan priority**

Healthy Barnsley

**Recommendations**

That Cabinet:-

1. Approves plans to re-commission the ACSES Framework following consideration of the financial implications highlighted in section 3.1.

2. Approves the direct award of existing care packages to the incumbent providers if their tender is successful; therefore, these packages are not subject to competition. As advised by Legal Services, this is achievable based on the council's obligations under the Care Act to promote wellbeing when carrying out any care or support functions in respect of a person.
3. Notes the complexities of the original TUPE transfer and associated on-costs, the options and risks considered in section 2.6.
4. Approves option 2 to continue to pay an enhanced rate associated with services outsourced to the independent sector based on the vulnerability in the care market, including the financial pressures on this sector and risks associated with capacity and demand.

## 1. INTRODUCTION

- 1.1 In January 2016, cabinet members agreed to a new model of supported living proposed by commissioners. This model would out-source the council's in-house services, improve the support pathway for people in high-cost placements, and deliver improved outcomes for those we support.
- 1.2 The outcome of the ACSES procurement resulted in a two-tier framework for standard and complex support, with seven providers awarded a place in the framework.
- 1.3 On 1 July 2017, 66 staff transferred from Barnsley Council Supported Living services to two providers awarded a place on the framework under TUPE regulations. The TUPE transfer resulted in a commitment being given of an enhanced hourly rate of £20.76 compared with the average framework rate of £14.20. Usually, a relevant transfer would mean that the transferor would be liable for all employee-associated costs following that relevant transfer. However, the council gave a commitment to the providers due to market factors to pay the TUPE on-costs for three years. During that time, these costs were expected to be reduced through either internal restructuring of the services or natural staff turnover.
- 1.4 The overall aims of the ACSES services are to reduce the reliance on residential care and to provide progression-based support to help people to live independently with supported housing options and/or enablement support in people's homes. This includes accommodation which is privately owned/rented or rented from a Registered Social Landlord (RSL).
- 1.5 The ACSES service is for adults in Barnsley aged 18 years or over (although some preparation can commence to support young people transitioning into adult supported living). People will be assessed as having needs aligned to one or more of the following diagnoses/long-term conditions: -
  - Learning disability, including complex, cognitive and physical needs.
  - Acquired brain injury.
  - Physical disability or sensory impairment.
  - Autistic Spectrum Disorder.



- Enduring mental health difficulties.
  - Young person in transition with one or more of the above.
  - People with co-existing needs, for example, difficulty engaging with services, chaotic lifestyle, drug and/or alcohol misuse, forensic history.
- 1.6 The original framework had an end date of March 2020 but included a two-year extension clause utilised by commissioners due to the pandemic. This was further extended in compliance with the Public Contracts Regulations 2015 to February 2023 to allow reasonable time for a re-procurement to take place.
- 1.7 There are currently 203 people receiving support under the ACSES framework. The current commissioned hours include 4293 hours a week for 90 people supported in supported housing and 6031 hours a week for 113 service users supported in their tenancy.

### **TUPE**

- 1.8 The council agreed to fund costs associated with the transfer of council staff to the independent sector for a period of three years. It was expected that costs would reduce during this period due to natural staff turnover or as a result of the two providers carrying out a re-organisation because of internal growth. However, at a review held with both providers in 2020, it was acknowledged that this had not been delivered. Both providers reported minimal staff turnover due to the terms and conditions of their employment, which continue to be significantly better than those recruited in the independent sector. Neither organisation had taken on enough additional business to allow for the movement of staff and subsequent re-organisation. Both providers confirmed that should TUPE funding be withdrawn, they would serve notice on the contract and hand this back to the council. The council agreed to continue funding for a further two years.
- 1.9 In preparing for a re-procurement, commissioners were required to again review the position under TUPE, including seeking clarity around the current on going costs associated with this agreement. Although savings on the TUPE on-costs have been achieved over previous years, it has become clear that changes to payments made to both providers as part of the core contract should have had a greater direct impact on the overall costs. When exploring the detail, the authority's legal and human resources team have raised the fact that several costs that have been increased over the five years (including staff salaries and overtime) do not fall under the authority's liability as per the original staff transfer agreement. Commissioners have now concluded negotiations with both providers, including removing costs for which the council is not liable under the TUPE transfer agreement

## **2. PROPOSAL**

### **Procurement**

- 2.1 The outcomes for people who use our services are being achieved. 203 are being supported to become more independent, lead full and active lives within their community and exercise as much choice as possible over how they live their lives in keeping with their religious, cultural or family background.

The service model provides independent housing-based enablement support with the people having their own tenancy. The commissioned hours cover a wide range of support needs for everyday tasks, personal care, managing budgets, maintaining health and wellbeing, and being supported in the community regarding appointments and activities. The service providers on the framework can support a wide range of needs, reducing the requirement for residential care. Therefore it is proposed that the ACSES framework be re-commissioned to enable this well-established service to continue for five years.

- 2.2 There are currently two tiers in the ACSES framework based on the level of support required. It is proposed that a third tier is introduced for highly complex support under this framework. This was previously provided through the Yorkshire and Humber Transforming Care framework in relation to those with a learning disability and/or autism with behaviours that challenge, a forensic history, living with other mental health conditions. The new tier aims to prevent unnecessary hospital admission under the Mental Health Act or to support a step down for those currently detained in locked hospitals or secure unit placements.
- 2.3 It is evident from the number of referrals, current spot contracts and out-of-area placements that there is insufficient provision for mental health support in the existing framework. It is proposed that a market testing exercise is undertaken to determine if there are providers in the market that can and are interested in delivering this additional tier of support in Barnsley. If not, what level of market shaping is required with a view that if they are not already on the framework, they will tender once their service is developed.

#### **TUPE**

- 2.4 The current TUPE on-costs have continued to be paid separately to both service providers. A 'TUPE rate' was agreed upon, which covers the additional on-costs associated with the transferred staff. Over the years, this rate has decreased, so the cost to the council has reduced.
- 2.5 In considering the re-procurement, commissioners have considered the risks associated with the current packages delivered by the two providers currently funded at an enhanced rate to cover costs associated with TUPE. The total number of packages delivered by the two providers is 45. 58% of these care packages are funded at an enhanced rate.
- 2.6 The table below highlights the three options considered by the commissioner.

**Table 2.6a Options and risks with alternative payment of TUPE costs**

<b>Option 1</b>	<b>Benefits</b>	<b>Risks</b>
<p>Under the new contract, the council no longer pays the ongoing TUPE costs because these costs have been reduced significantly. Therefore it is reasonable that this liability is now passed on to the two current providers.</p>	<p>The council no longer carries the financial liability.</p> <p>Both providers could restructure their services, enabling staff flexibility across the range of services they currently provide.</p> <p>The service providers are no longer restricted by the conditions set out in the staff transfer agreement, for example, the same staffing role and hours.</p>	<p>Current service providers do not tender due to having to pay the TUPE on-costs. Risk - High</p> <p>Current providers are unable to restructure the service given the number of staff. Risk – High</p> <p>Current providers are not successful in securing a place on the framework, and other providers do not tender due to financial risk. Risk - High</p>
<b>Option 2 (Recommended)</b>	<b>Benefits</b>	<b>Risks</b>
<p>The Council continues to pay TUPE costs for the term of the new framework (Five-years).</p>	<p>The current financial liability for the TUPE costs remains with the council. This is at a significantly reduced rate following negotiations with providers.</p> <p>The financial pressure on the two providers reduces, and they will likely tender for the ACSES framework and be successful. So, no negative change for service users.</p> <p>Staff who transferred under the original agreement continue to benefit from enhanced terms and conditions.</p> <p>Commissioners can increase the monitoring to ensure costs claimed are in line with the agreement.</p>	<p>Current providers do not tender for the new framework. Risk - Low</p> <p>There is no incentive for current providers to find efficiencies whilst the council are paying the TUPE costs. Risk - Medium</p> <p>Further, TUPE savings are not achieved during the term of the new framework. Risk – Medium</p>
<b>Option 3</b>	<b>Benefits</b>	<b>Risks</b>
<p>Staff transferred under TUPE, and the support packages provided by the two providers are brought back in-house.</p>	<p>The council re-develops an in-house service to support people who need additional support.</p>	<p>Disruption to staff and people who use our services. Risk - High</p> <p>Increased costs associated with the in-house provision of services. Risk - High</p> <p>New service development is required, including management structure to deliver service in-house. Risk - High</p>

### 3. IMPLICATIONS OF THE DECISION

#### 3.1 Financial and Risk

3.1.1 The Council's S151 officer or representative has been consulted as part of drafting this report.

##### **Procurement contract**

3.1.2 The 2022/23 budgeted net spend on the Supported Living provision contract (net of health funding and service users charges) is £9.376M. The actual spend in 2021/22 is £9.521M. The budgeted cost to deliver the ACSES Framework includes agreed inflationary uplift for the year and the supplementary payment of £1 above the national living wage.

3.1.3 There has been a steady year-on-year increase in actual spend up to 2021/22, partly explained by increases in commissioned hours and a number of people supported under the ACSES contract framework. This reflects the development of strength-based assessments and the increased focus on supporting more people in the community. The above costs form part of the care provision budget and are included in the approved 22/23 net budget of £60.345M for adult social care.

##### **TUPE**

3.1.4 The TUPE costs associated with the above ACSES contract are budgeted and accounted for separately. The commissioning approach has resulted in a year-on-year cost reduction from £0.964M in 2017 to £0.693M in 2021/22. Following the conclusion of the recent negotiations with the two service providers, the TUPE costs for 2022/23 are expected to be £0.344M (a significant reduction compared to last year). The cost reduction has been put forward in 2023/24 as a budget efficiency savings. The table below shows the TUPE costs for the current and previous years.

**Table 3.1A Annual TUPE costs**

	2017/18	2021/22	2022/23 Negotiated cost	Variance to 2021/22
Provider 1	£465,970	£316,554	£150,655	£165,899
Provider 2	£498,420	£376,822	£193,444	£183,378
Total	<b>£964,390</b>	<b>£693,376</b>	<b>£344,099</b>	<b>£349,277</b>

#### 3.2 Legal

3.2.1 The new framework will be advertised on the open market in compliance with the Public Contracts Regulations 2015. The framework will be subject to the light touch regime, which gives the council certain flexibilities in its procurement approach. The council must also consider its statutory obligations under the Care Act in structuring its re-procurement of these services.

- 3.2.2 Taking the above into account, it is proposed that, subject to incumbent providers submitting a compliant tender and meeting the council's requirements to be awarded a place on the new framework, the council directly award all existing support packages for these services to the incumbent providers. This means that existing support packages for those services will not be subject to competition. The rationale for reserving all existing support packages to the incumbent providers is based upon the council's obligations under the Care Act to promote wellbeing when carrying out any care or support functions in respect of a person.
- 3.2.3 Wellbeing under the Care Act is a broad concept but covers (amongst other things) physical, mental health, emotional wellbeing and control over day-to-day life (including over care and support and the way it is provided) for those who use our services.
- 3.2.4 Although the wellbeing principle applies specifically when the council performs an activity or task or makes a decision about a person, the council should also consider it when it undertakes broader, strategic functions, such as planning, which are not about one person. In this case, a decision is being made regarding the re-procurement of services which affect those who need additional support. The council has a duty under the Care Act to promote their wellbeing in its decision-making.
- 3.2.5 The incumbent providers of the services which form part of the re-procurement have a proven specialism in meeting the needs of those using our services, having built up a history and trust with them. Moving those who use our services to a new provider creates a risk to their mental health and emotional well-being. It also undermines their control over their care and support and how it is provided.
- 3.2.6 The potential for procurement law challenge must, therefore be weighed against the risk of harm to the mental health and emotional wellbeing of those using our services and the council's wider obligations to promote well-being under the Care Act.
- 3.2.7 There is a risk that one or more of the incumbent providers of the services choose not bid for the new contract, for example, if the current TUPE on-costs are withdrawn from the new contract terms or that they do bid, but they do not meet the council's minimum criteria for the award and so are not appointed to the new framework. In which case, the council would have no choice in those circumstances but to offer the existing packages to alternative providers. o avoid those who use our services being unduly affected if the incumbent providers choose not to continue to provide the existing packages under the new framework or if they fail to meet the criteria for award, the council should ensure that their wishes and feelings are taken into account in the appointment of any replacement provider. There is a danger of the council failing to meet its Care Act obligations if that situation arises and is not managed appropriately. Also, new providers may have to TUPE the staff and may seek indemnities and on-costs from the council.

- 3.2.8 Consequently, new support packages commissioned under the new framework will be subject to mini competition amongst all providers that meet the requirements of the specific package, taking into account those who use the services choices and discharge the council's Care Act obligations. To ensure flexibility for people, the framework will also allow for occasions where a direct award of a package in specific (limited) circumstances is appropriate. The process and criteria for awarding support packages will be documented in the framework agreement for transparency.
- 3.2.9 If any incumbent providers do not submit a compliant tender or fail to meet the council's requirements to be awarded a place on the new framework, the intention is that existing support packages (by necessity) will be made available to other providers on the framework, usually by mini-competition or (by exception) by direct award.
- 3.2.10 It is intended that where any existing support packages are affected by the pre-existing TUPE on-costs described in this report (whether those existing packages are delivered by incumbent providers or by new providers), those packages shall be offered with the benefit of the TUPE on-costs until such time as those TUPE on-costs are eliminated. This is to ensure the council mitigates the risk of those support packages not being delivered.
- 3.2.11 In the event that incumbent providers do not submit a compliant tender or fail to be awarded a place on the new framework, the council will need a mobilisation/handover period to allow existing packages to be re-procured under the new framework and handed over to the new providers. This will necessitate a short extension of existing contracts with the incumbent provider(s) to make sure a safe and smooth transition to the new provider. This will be assessed and managed on a case-by-case basis.

### **3.3 Equality**

- 3.3.1 A full Equality Impact Assessment has been completed. The impact assessment summarises that there will be minimal change to the ACSES service when the framework is re-commissioned. The service model and the support provided will remain the same. This is not a review of the service but a requirement to re-commission the framework under procurement legislation. The service will continue to have a positive impact and support adults with learning disabilities, physical disabilities and/or sensory impairments, autistic spectrum disorders, mental health issues, acquired brain injury, and dementia.

### **3.4 Sustainability**



3.4.1 The Decision-making wheel has been completed. The main sustainability impacts are positive. The ACSES service aims to support people to remain independent. There isn't a particular focus on the environmental aspect of Barnsley through the ACSES framework. The ACSES services will, however, positively impact the social aspect for people and the community.

### 3.5 Employee

3.5.1 There will be no impact on current council employees. If the recommendation that the council continues to pay an enhanced rate is approved, then the risk of either provider not tendering is low. It is unlikely that either provider will not be successful in their tender, but should this happen, this will have an impact on the staff that transferred and the staff employed by the providers. Negotiations with the providers on the framework would then take place, discussing taking on the support packages as well as the staff being TUPE transferred to the provider.

### 3.6 Communications

3.6.1 Relevant stakeholders have been informed of the requirement to re-commission the ACSES framework.

The Corporate Communications team will promote cabinets decision, highlighting through PR the key areas of this report. They will support Adult Social Care to make sure that users of the service and their families are communicated with, and where necessary, the outcome of this paper is shared with them.

## **4. CONSULTATION**

- 4.1 A significant consultation was undertaken when the ACSES service was first commissioned to develop the service model. The opportunity to consult existing stakeholders about the current service, what works well and what does not work so well, is being undertaken, and the service specification is to be updated with any areas for improvement. It has been made clear to those who use our services and carers that the ACSES service will remain the same and is not subject to review.

## **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 Given the number of people being supported under the ACSES framework and the outcomes being achieved, it is not necessary to consider an alternative.

## **6. REASONS FOR RECOMMENDATIONS**

- 6.1 There are no further options to extend the current ACSES framework , and a new framework needs to be procured to ensure no provision gap.
- 6.2 The current TUPE costs have a significant financial impact on the council. However, we must consider the care sector's current vulnerability and the associated risks. Removing the enhanced rate could result in a number of people who needs additional support being left without a care package due to a lack of capacity.
- 6.3 The information in this report highlights the substantial TUPE on-cost savings that have been achieved, but the recommended decision is that the council continues to pay these TUPE on-costs at the new negotiated rate, given the current financial challenges. Both service providers' front-line staff are now being paid at a minimum £1 above National Living Wage (NLW) at £10.50 an hour. The TUPE staffing rate remains unchanged and the increase in NLW has created a significant savings for the council. However, there remains a risk that the two providers hand back the contracts due to the additional costs not being viable and the uncertainty around pensions deficits, staff shortages and current financial challenges. If the contract is handed back, this will lead to a change of provider.
- 6.4 The recommendation to directly award to incumbent providers is in the best interests of the current users of the service, given they have built trust and positive relationships with the service provider who are supporting them to remain independent, access the community and improve their health and wellbeing.

## **7. GLOSSARY**

ACSES	Adult Community Support and Enablement Service
TUPE	Transfer of Transfer of Undertakings Protection of Employment



**8. LIST OF APPENDICES**

Appendix 1: Exempt List of Current Service Providers

**9. BACKGROUND PAPERS**

There are no relevant background papers.

**10. REPORT SIGN OFF**

<b>Financial consultation &amp; sign off</b>	Senior Financial Services officer consulted and date <i>Joshua Amahwe (23/08/2022)</i>
<b>Legal consultation &amp; sign off</b>	<i>Joanne Haslam (25/08/2022) relating to contract and procurement law implications.</i>  <i>David Nuttall (25/08/2022) relating to Employment Law and Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")</i>

**Report Author: Clare Burton**  
**Post: Senior Commissioning Manager**  
**Date: 2<sup>nd</sup> August 2022**

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank