

~~head - Alessandro Georgian~~

### CALL-IN OF DECISION

(please ensure you complete all sections fully)

Please return the completed original signed copy to:  
Claire Johnson, Scrutiny Team, 1<sup>st</sup> Floor, Civic Centre

TITLE OF DECISION: APPROVAL OF CYCLE ENFIELD PROPOSALS

DECISION OF: CABINET MEMBER FOR THE AIO'S.  
FOR ENVIRONMENT.

DATE OF DECISION LIST PUBLICATION: 18<sup>th</sup> AUGUST 2016

LIST NO: 4/20/16~~8~~-17 Key Decision 4342

(\* N.B. Remember you must call-in a decision and notify Scrutiny Team within 5 working days of its publication).

A decision can be called in if it is a corporate or portfolio decision made by either Cabinet or one of its sub-committees, or a key decision made by an officer with delegated authority from the Executive.

(a) COUNCILLORS CALLING-IN (The Council's constitution requires seven signatures or more from Councillors to call a decision in).

- (1) Signature:  Print Name: MIKE DUFF
- (2) Signature:  Print Name: ANNE MARIE PEARCE
- (3) Signature:  Print Name: ERIN CELEBI
- (4) Signature:  Print Name: ANDY MILNE
- (5) Signature:  Print Name: Alessandro Georgian
- (6) Signature:  Print Name: MIKE CHARRAMANSOU
- (7) Signature:  Print Name: Terence Neville
- (8) Signature: ..... Print Name: .....

(b) SCRUTINY PANEL RESOLUTION (copy of minute detailing formal resolution to request call-in to be attached).

NAME OF PANEL: Overview & Scrutiny Panel

DATE OF PANEL: 8 September 2016

**(1) Reason why decision is being called in:**

1) This statutory consultation followed an earlier consultation online and a “referendum” conducted by the Enfield Southgate MP, David Burrowes. The earlier consultation failed to elicit a clear majority in favour of the proposals and the referendum produced an overwhelming majority against them. The statutory consultation elicited over 1600 objections (see paragraph 5.8 of report). That number of objections to a statutory consultation is almost unprecedented and plainly requires careful consideration. The consultation ran between the 6 July and the 29 July this year. The decision by the Cabinet Member to approve the scheme, with only minor modifications, was signed by him and published on 17 August 2016, a mere 13 working days after the expiry of the consultation period. Given that the officers needed to consider the representations received, all 1600+ of them, and produce a report it is utterly inconceivable that the Cabinet Member could have given proper consideration to the objections that were lodged. Even if one accepts that within the total number of objections, there will be a lot of duplication in terms of the reasons for objections, the schedule in the report itself shows no fewer than 84 different reasons for objecting. It is in our view physically impossible for the Cabinet Member who is the “decision maker” to have properly considered these objections. In this connection the committee’s attention is drawn to the judgements in the now leading case of local authority consultation – R-v-Moseley (London Borough of Haringey) where it was clearly stated that one of the factors to be taken into account by the courts was the adequacy of the consideration of the responses to the consultation. We say that on any analysis this would fail that test.

2) The 84 categories of objections listed in the schedule are in themselves individually, all matters worthy of proper consideration but in particular there is an objection from Arriva Bus Company to the proposals as a whole, specifically with the withdrawal of the bus lane going south from the Triangle, Palmers Green towards the North Circular Road. That objection is, on any analysis, a serious one and one which the law, in the form of the Local Authorities’ Traffic Orders (Procedure) England & Wales Regulations 1996, records special status to them. In essence the law requires that where such an objection is made by a bus company to something which in effect would restrict the movement of buses along a particular route, the local authority is required to hold a Public Local Inquiry before making the order. It is our contention that, taken as a whole, the objection from the bus company set out in paragraphs 5.17 to 5.21 inclusive, amounts to an objection which requires a public local inquiry to be held.

This is because the essence of the objection is that the removal of a bus lane affects the predictability of the bus service that Arriva are seeking to run. They rely upon a bus lane to improve or assist that predictability and by taking it away that is a restriction in the way in which the bus route will, in future, be able to run. There is also within Arriva’s objection letter, quoted in paragraph 5.17 of the report, a concern about the narrowness of the carriageway width of parts of the A105 as a result of the introduction of the cycle lanes. They say quite emphatically that the reduction in carriageway width “will delay buses”. As such that clearly is a restriction of the bus service and again we contend that a public inquiry should be held before this order can be made.

The report shows that a meeting was held with Arriva following receipt of their objection in order to discuss the concerns of paragraph 5.18 of the report, acknowledging there will be additional junction delay along the corridor tends to be

somewhat dismissive of Arriva's objections. Be that as it may, it is not for the local authority to be dismissive but to argue its case at a public local inquiry. That has not happened and as such this report should not have been approved. Likewise the removal of the bus lane dealt with at paragraph 5.20 of the report. This paragraph tends once again to be somewhat dismissive of Arriva's concerns by referring to queue linked surveys which apparently demonstrate average peak hour maximum queues not extending beyond the length of the retained bus lane, so that the loss of the bus lane is not anticipated to have a significant impact. The point again is that whilst the local authority is entitled to hold that view, it is not in our view under the law, entitled to make that order before having tested that view in front of a public local inquiry.

On the 24 August, I received from the Commercial Director of Arriva an email in which he informed me that the meeting held with officers did not, in any way, allay Arriva's concerns and that their objections still stood.

3) There are also a number of objections to the proposal not to allow any vehicle (other than those that are specifically excepted - not applicable here) to enter the cycle lane. This prohibition effectively disallows cars, lorries or any other vehicle going into a cycle lane and it therefore follows, that those that wish to effect deliveries in waiting and loading bays cannot lawfully do so. As such, this is the second specific type of objection for which the law prescribes that a public local inquiry has to be held. This is not discretionary, it is a mandatory requirement and once again we say that the Cabinet Member should not have approved this report without having first held a public local inquiry to determine these particular objections.

4) There are many other aspects of the objections that are reported in Section 5 of the report but once again do not appear to have been given adequate consideration and, as I have indicated, given the timescale, almost certainly could not have been properly considered.

The London Ambulance Service (LAS) continues to have what I regard quite serious reservations about the proposal. These are set out in paragraphs 5.14 to 5.16 of the report and although the officers state that the LAS has not "objected" to the proposals, when one reads the quoted passages from their letter it is abundantly clear that they have serious concerns and nowhere does it say, as far as I can see (unlike the London Fire Brigade's response), that the LAS are not objecting. It is, as I see it, as plain as a pikestaff that they are in fact objecting and with good reason, but their objections or indeed representations have been once again dismissed. One has to ask how much time the Cabinet Member spent on considering this report, and in particular the 84 generic objections and the responses of the officers. He cannot escape the responsibility as the decision maker, it is not an officers decision it is the Member's decision and the Member as a decision maker needs to be able to demonstrate that he has properly considered each and every one of the objections (or at least the category of objections – 84 in this case) that have been raised, it is our submission that he could not possibly have achieved this in the timescale involved.

**(2) Outline of proposed alternative action:**

- 1) This matter should be referred back to the Cabinet Member with a request that he considers the requirements for holding a Public Local Inquiry into the objections concerning both the bus lanes and those concerning waiting and loading restrictions.
- 2) The matter is also referred back to the Cabinet Member for a thorough reconsideration of the objections that have been raised.

**(3) Do you believe the decision is outside the policy framework?**

**(4) If Yes, give reasons:** n/a

**FOR DST USE ONLY:**

Checked by Proper Officer for validation –

Name of Proper Officer:

*J. B. Middleton Albooye*

Date:

*26/08/16.*