

Cabinet

4th October 2016



Report Title: Long Ashton Park & Ride site – Subsidy Payments

Ward: Various wards

Strategic Director: Barra Mac Ruairi / Strategic Director Place
Report Author: Peter Mann / Service Director Transport
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Purpose of the report:

To seek Cabinet approval to cease subsidy payments to the operator of the Long Ashton Park & Ride site

Recommendation for the Mayor's approval:

- 1. To agree that the Council will discontinue subsidy payments to the company that manages the Park and Ride site at Long Ashton.**
- 2. To authorise the Strategic Director: Place to take the steps necessary to put this into effect.**



The proposal:

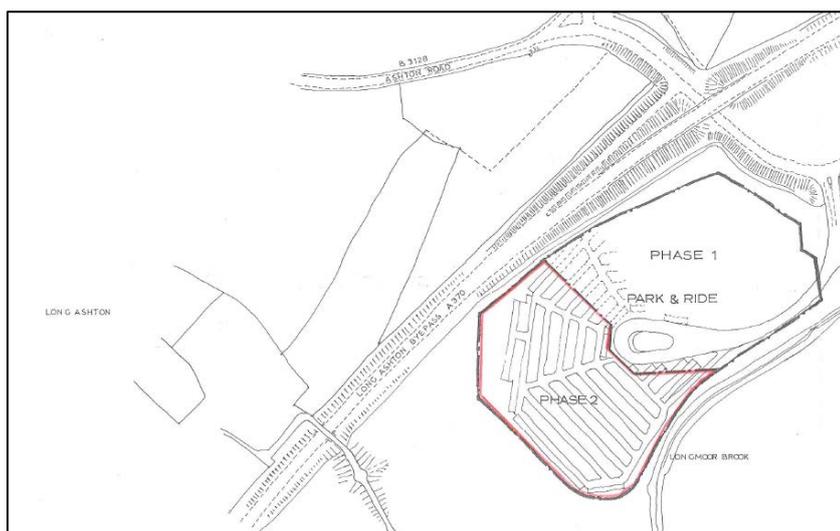
The operating model for Long Ashton Park & Ride has evolved over the years since it opened in 1997. The original approach as documented in the contracts relating to Long Ashton Park & Ride was that there would be growth in passenger numbers to a point where the fares revenue met all of the costs of the bus service and operating the park and ride site. The operator entered into that contract on the basis that they were exposed to risk in terms of delivering a viable operation but had the expectation of receiving profit once the service became established. Subsidy was payable for the early years only and thereafter BCC would benefit from a profit share.

The actual situation is that the bus service has never generated a surplus and the operator has not been able to comply with its contractual obligations. As a result over time the arrangements have moved away from the contractual terms to the extent that the Council commissions the bus service at its own expense, partly offsetting that cost with fares revenue. The Park & Ride site operator simply manages the site, and far from bearing the losses, has received a continuing subsidy payment from the Council. As part of that subsidy it receives a significant “administration fee”. The operator generates a profit from the subsidy received, whereas the Council is not only paying that subsidy, it is further carrying an operating loss on the bus service.

It is considered unacceptable for the Council to continue making subsidy payments that it is not contractually obliged to make, and meeting the bus service loss, whilst its commercial contractee is not only sheltered from loss but is making a profit on payments received. The Council considers that the current arrangements do not constitute value for money. Accordingly, it is proposed to cease paying the subsidy with immediate effect.

Background

1. Long Ashton Park & Ride is one of three park & ride sites for Bristol. They provide areas of parking outside the city itself to enable commuters, shoppers and visitors to access the city using a dedicated bus service. This helps reduce congestion and pollution in the city and reduces pressure for central car parking.
2. The site became a Park and Ride site in the 1990s. At this time the site was operated in the administrative areas of Avon County Council and Woodspring District Council. The site was developed in two phases and is part owned by David Lloyd Limited (DLL) (phase 1) and part owned by Bristol City Council (Phase 2). The entire site was leased to Park and Ride Limited (PRL) from 1997 until 2022 with an option to renew for a further 25 years. The planning consent only allows the site to be used as a Park and Ride to the centre of Bristol.



3. Alongside the lease, a 25 year Operating Agreement (OA) (with the option of a 25 year extension) was entered into between BCC and PRL in respect of the whole of the site (phases 1 and 2) and PRL procured the 903 bus service. Under this OA, PRL are to run the bus service for conveying people from the P & R site to and from Bristol city centre and run the car park for the provision of parking. In addition PRL is required to promote the use of the service to commuters, shoppers and other potential users.
4. The OA provides that a reducing subsidy was payable on the site for the first 6 years from 1997-2002 to cover the operating costs of providing the park & ride service, including the rent paid to DLL in respect of the Phase one land, and business rates. Thereafter the OA contains no further provision for subsidy and allowing for an income stream of 50% of net profits to be paid to BCC. Any losses were to be borne by PRL.
5. The contractual obligation on BCC to pay the subsidy ended on 31st March 2002. The reality of the operating position is that the overall park & ride service has never made a profit.
6. After 2002 BCC continued to make monthly payments to PRL based on invoices received from PRL representing the difference between its operating costs and income received from fares. By 2009 annual subsidy was running at about £400K, patronage was not increasing and service level was below that set out in the OA.
7. By 2010, the practical reality was that BCC was managing the bus service and PRL were simply providing the car parking, security and associated administrative functions.
8. As a result of this situation, following an exchange of emails with PRL, BCC then tendered for provision of the bus service associated with the park & ride taking that loss making burden off PRL and seeking to reduce overall costs. By 2012 the costs of provision of the bus service were fully met by BCC.
9. From 2010 PRL was providing just part of the service required under the OA, was not bearing any of the losses and continued to receive the extra contractual subsidy. Recent accounts show that PRL is making a profit from the subsidy payments. There is no right to a subsidy.
10. If PRL wishes to resume responsibility for the bus service then they can do so.
11. Officers now consider it necessary to reconsider whether the subsidy payments are justified and whether they should continue to be made.

Review of the Subsidy

12. There is no contractual or other entitlement to the subsidy and no promise or expectation that it will continue to be paid. It is appropriate to re-evaluate whether such payments are justified especially

given the pressure on the Council’s budget and our need to maximize the effectiveness of the reduced funds Council has for supporting public transport services. The procurement and delivery approach for the Long Aston Park & Ride was based on a third party entity (PRL) undertaking the park & ride service as a commercially based activity. The contractual documentation sets parameters for the parties. PRL are contractually responsible for the financial consequences of the overall operations.

13. The commercial venture entered in 1997 has not developed as anticipated and rather than making a profit, the P & R operates at a loss. Under the terms of the OA and the lease of Phase 2, PRL are required to provide the P & R service without subsidy even if that does not yield a profit as anticipated. There is no contractual requirement for BCC to bear the losses, nor for BCC to enable PRL to make a profit. Contractually, PRL is required to bear the losses not BCC. The continued payment of the subsidy is inconsistent with the terms of the OA.
14. An assessment has been undertaken of the current situation using figures provided by PRL invoices and available through the audited accounts of the Company. This shows an annual cost of £560,227, almost of all of which is covered by the subsidy. The starting point is that PRL is contractually obliged to continue to run the service even if it makes a loss. Even if PRL was unable to continue the P+R and BCC was forced to undertake the operation of the site, BCC would be able to run the site at a significantly lower cost by virtue of the “administrative Fee” as well as audit and accountancy costs. BCC would also seek to minimise other costs. Leading Counsel has advised that the rateable value appears to be based on historic and wrong assumptions and proposals would be made. This is borne out by comparison with other Park and Ride sites that BCC operate. PRL has no incentive to incur the expenditure on reducing the rates bill. The conclusion is that even if BCC had to step in it could save considerable sums.
15. In addition the following factors are also relevant
 - There is no incentive for PRL to keep costs down and to maximise revenue when its income is protected whatever the costs, useage and revenue of the service.
 - As a matter of fact and despite obligations contained in the OA PRL does not appear to undertake any marketing of the site.
16. The recommendation by officers, following review with advisors including Leading Counsel, is that the subsidy should be ended with immediate effect.

Consultation and scrutiny input:

a. Internal consultation:

As set out in the comments from officers below.

b. External consultation:

BCC officers have written to PRL to advise that they now consider it necessary to reconsider whether those subsidy payments are justified and should continue, setting out matters referred to in this report. By a letter from the Council on 1st September PRL were given two weeks to make representations and they have responded by a letter dated 22nd September. Their letter of response asserts that the contract between PRL and the Council has been changed in numerous ways but they do not point to any express variation to support their assertion that the subsidy payment should be maintained.

Therefore PRL have to rely on a course of conduct giving rise to a contractual obligation (or estoppel by convention) to continue the payment of the subsidy indefinitely and irrespective of whether or not this provides value for money.

Leading counsel advises that this is simply wrong and that there is no factual or legal basis for estoppel by convention. In their letter PRL do not explain why the existing arrangement provides value for money or suggest an alternative lower sum that would make it value for money.

PRL advise in their letter that in the event the Council withdraws the payment PRL will be forced to re-consider the commercial viability of continuing the Park and Ride operation in its entirety. Leading Counsel has advised on the means to protect the Council and the public in the event that PRL breaches its contractual obligations in this way.

Their response is included at Appendix 2

Other options considered:

No change to current arrangements. This is outside the contractual terms in place as between BCC and PRL and has all the other disadvantages as laid above

Pay a reduced subsidy to PRL. This would still be outside the terms of the Operating Agreement. Continue to pay the subsidy for a short period. This is considered outside the OA and would involve BCC in unjustified expenditure.

Risk Analysis:

Confidential set out in Appendix 1

Public sector equality duties:

The desired outcome is that the site continues to operate and therefore there is no net impact. However, if there is any impact on bus passengers as an unintended consequence of the recommended course of action then the 2016 survey figures show that 3% of passengers (n=1) have identified as disabled. This may be increased as 13% (n=4) “prefer not to say”. If there is going to be an impact a range of options can be considered including offering alternative parking and boarding options especially to passengers with disabilities and season ticket holders.

Eco impact assessment

The desired outcome is that the site continues to operate and therefore there is no net impact. However, if there is any impact on bus passengers as an unintended consequence of the recommended course of action then there is a potential for a significant impact on air quality and emissions if there is additional volume of transport and additional congestion within Bristol.

Resource and legal implications:

Finance

a. Financial (revenue) implications:

The proposal is to cease the ongoing payment of a subsidy which does not represent good value for money for the Council and potentially cheaper options could be put in place. There is neither legal contract that requires it to be paid nor any justification to continue paying it. As such there is a clear business case and benefit for the Council in doing this.

Advice given by Mike Allen Finance Business Partner
Date 9/9/2016

b. Financial (capital) implications:

The subsidy is paid for from revenue budgets so there is no capital implication from the proposed withdrawal of the operating subsidy for the Park and Ride services

Advice given by Mike Allen Finance Business Partner

Date 9/9/2016

Comments from the Corporate Capital Programme Board: This is a revenue proposal

c. Legal implications:

Confidential - set out in appendix 1

d. Land / property implications:

There are no land / property implications from the recommendation.

Advice given by Robert Orrett / Service Director - Property

Date 9 September 2016

e. Human resources implications:

There are no HR implications for the Council's workforce arising from the recommendation/s.

Advice given by Mark Williams, HR Business Partner

Date 9 September 2016

Appendices:

Appendix 1 Background document – Not for publication by virtue of paragraph(s) 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (Information relating to the legal, financial or business affairs of any particular person (including the authority holding that information)).

Appendix 2: 1 copy of correspondence received on behalf of PRL