
**IMPLEMENTATION OF LOCAL SUSTAINABLE
TRANSPORT FUND - EXTENSION OF BUS SERVICE 1**

Responsible Cabinet Member - Councillor David Lyonette, Transport Portfolio

Responsible Director - Richard Alty, Director of Place

SUMMARY REPORT

Purpose of the Report

1. To seek permission from Council to waive Contract Procedure Rules under Rule 18 to allow officers to use Arriva North East for the extension of Bus Service 1 as part of the implementation of the Local Sustainable Transport Fund project.

Summary

2. The Local Sustainable Transport Fund bid that was submitted and approved with an award of funding by the Department for Transport. Included in the bid was a proposal to extend the existing Bus Service 1 that operates from Tow Law/Crook via Bishop Auckland to Darlington. The extension would provide a through service from County Durham to Lingfield Point via Haughton Road, serving Darlington College and Teesside University.
3. The Council is unable to award the contract under the de minimis rules under the Transport Act, as it exceeds the financial limits in 3 of the 4 years of the contract period. Following procurement and legal advice and a market testing exercise, the most appropriate course of action is to award a contract to the existing commercial operator on the grounds of value for money, risk and achieving the outcomes of the Bid.

Recommendation

4. It is recommended that :-
 - (a) Council agree to waive the Contract procedure Rules under Rule 18 to allow for the procurement from Arriva North East of an extension to Bus Service 1.

Reasons

5. The recommendations are supported by the following reasons :-
 - (a) To enable the project to continue and achieve the outcomes as previously agreed by Cabinet;

- (b) To meet the grant conditions for the funding awarded by the Department for Transport;
and
- (c) To meet the duties set out in the Transport Act (1985).

Richard Alty
Director of Place

Background Papers

Cabinet 19 July 2011 - Local Sustainable Transport Fund
Cabinet 8 March 2011 – Implementing the Third Local Transport Plan

Sue Dobson : Extension 2277

S17 Crime and Disorder	There are no issues arising from this report.
Health and Well Being	Sustainable travel offers greater opportunities for active travel (walking to and from the bus stop) with associated benefits to health and wellbeing.
Carbon Impact	The vehicles to be used on the service initially meet the latest European emissions standards with Euro 5 engines making them cleaner and greener. It is proposed to migrate to Hybrid vehicles.
Diversity	The extension of the bus service will allow local people greater travel choices and improved access to education, training, employment, retail and leisure opportunities, in particular for those without access to a car.
Wards Affected	The route will directly serve residents living or working in Central, Lingfield and Haughton East wards. Those in other areas of the Borough may also benefit from the service through interchange between bus services in the town centre and other locations.
Groups Affected	Current users of Bus Service 1 and potential customers living along the route in County Durham and Darlington; employees based at Lingfield Point; students at Darlington College and Teesside University, Darlington Campus.
Budget and Policy Framework	This decision does not require a change to the budget or policy framework.
Key Decision	No applicable.
Urgent Decision	This is an urgent decision. The contract needs to be implemented from January 2012 in line with other bus service changes in Darlington and to ensure that maximum funding can be claimed from the Department for Transport.
One Darlington: Perfectly Placed	The report is consistent with the Greener Darlington and Prosperous Darlington themes – improving access to employment and education by sustainable transport.
Efficiency	The bid identified proposals to achieve efficiency savings where possible for instance joint procurement actions with Durham County Council.

MAIN REPORT

Information and Analysis

6. At its meeting on 18 March 2011 Cabinet agreed to make a bid for funding to the Local Sustainable Transport Fund to support the delivery of the Third Local Transport Plan which was approved by Council on 10 March 2011.
7. In April 2011 the Council submitted a bid to the Department for Transport for £4.076m. The bid focused on achieving outcomes related to the development of a sustainable economy, reducing carbon emissions and improving personal health through the continuation of “Local Motion” style activities. The bid was submitted in conjunction with a separate bid put forward by Durham County Council that covers south west Durham. This area has been identified as having the most significant relationship with Darlington in terms of employment, shopping and other services.
8. On 5th July, the Parliamentary Under Secretary of State for Transport (Norman Baker MP) announced that Darlington was one of 39 successful bids in Tranche 1 of the LSTF bidding process. At Cabinet on 19th July 2011 Members agreed to release the grant funding for the delivery of the Local Motion programme as set out in the Local Sustainable Transport Fund bid detailed in the Cabinet Report.
9. The Local Motion programme comprises 4 work packages:-
 - (a) Inter-urban trips between Darlington and south west area of County Durham, focusing on improving the quality of sustainable transport, in particular public transport, along the North Road/A167 and West Auckland Road/A68 corridors;
 - (b) Short trips within the Borough, promoting more active modes of travel, with a focus on schools, local communities and seeking to meet the needs of disabled people and those living in rural areas;
 - (c) Communications and marketing programme, improving access to travel information and implementing individualised travel marketing across the Borough; and
 - (d) Monitoring and evaluation, including travel behaviour research.
10. The work package to address inter-urban trips includes a proposal to provide a through service from County Durham to Lingfield Point via Darlington town centre.
11. Bus Service 1/1B currently operates between Darlington Town Centre to Tow Law/Crook via Shildon and Bishop Auckland. Arriva North East operates it as a commercial service utilising 6 double decker vehicles. The proposal is to extend the route of this Service along Haughton Road, Darlington Eastern Transport Corridor (DETC), McMullen Road, Lingfield Point, DETC (adjacent to Red Hall) and return to the town centre via Haughton Road.(A plan of the proposed route can be found in **Appendix 1**). This will provide the first bus service to operate through Lingfield Point, improving access to employment. It will also enhance the service to Darlington College and Teesside University, providing additional capacity over and above service 9 and 10 that already operate on this section of Haughton Road, but also provide direct access from the north west areas of the Borough (West

Auckland Road area, Heighington Village) and from locations in Durham, improving access to education.

12. This proposal was developed originally by Arriva North East for a funding application to the Department for Transport's Kickstart Fund in 2009. Darlington Borough Council, Darlington College and Marchday Plc supported the bid. Unfortunately the Kickstart Fund was withdrawn by DfT and no funding was allocated. The proposal, which already had support from the public and private sector was reviewed as part of the consultation for the development of the LSTF Local Motion Bid. Arriva suggested that this scheme went forward as part of the Bid and committed to significant financial investment as their contribution. It was considered to be an excellent fit to the objectives of the Bid, both in terms of the cross boundary travel to South Durham and short trips within the Borough. As *Arriva did contribute to the preparation of the bid on the understanding they would do the work if successful* then they are likely to have a legitimate expectation to carry out this work.
13. The provision of this service would be consistent with the approach to supporting daytime travel and journeys to work as agreed by Cabinet on 13 September 2011.
14. In order to provide this extension, an additional double decker vehicle is required, and, revenue support, on a reducing basis over the contract period to March 2015. It is anticipated that this service will become commercially viable with the projected housing and commercial growth at Lingfield Point and the anticipated growth at Darlington College, Teesside University and Central Park.
15. Under section 63 of the Transport Act local authorities have a duty to provide subsidised bus services where there are no commercial services and where they think it appropriate, and detailed tendering provisions are laid down in sections 88-92. Section 152 of the Transport Act 2000 amended the criteria set out in section 89 of the 1985 Act. This introduced a 'best value' test by requiring local authorities to have regard to wider criteria such as environmental issues, economy and effectiveness, not just the costs of the contracts. The constraint on 'inhibiting competition' was also removed. This was intended to make it easier for authorities to subsidise additional service frequency.
16. There are three options to consider for the procurement of this Service:
 - (a) Interim de minimis contract now and open process in January 2012 or thereafter
 - (b) Open procurement process now
 - (c) Council Report now and assuming approval go straight to full contract

Option A

17. An interim contract could be awarded using the de minimis rules (Transport Act 1985) as an exception to section 89. This is when a local authority negotiates with a bus operator to extend or divert a commercial service to meet an identified local need for a payment. (This is currently used to provide a service in Glebe Road as a de minimis contract on service 6A/6B). However under the rules set out in the Service Subsidy Agreements Regulations 2004 the cost of the de minimis contract would exceed Darlington's allowed subsidy of £30k p.a. in 3 of the 4 years of the contract period.

Options A and B

18. Under Section 89 of the Transport Act, Utilities Contracts Regulations 2006 and the Council's own Contract Procedure Rules we should invite tenders for this Service. However there are a number of issues that need to be considered:-

- (a) The current Bus Service 1 operates as a commercial service and is not procured by Darlington Borough Council. The proposal is to extend this route to Lingfield Point, with the aim of providing a 'through service'.
- (b) Section 152 of the Transport Act 2000 allows a Council to introduce a supported service using a 'best value' test, requiring local authorities to have regard to economy, efficiency and effectiveness and also to have regard to the relevant bus strategy and environmental issues. The proposal to extend service 1 does contribute to supporting the wider economy and lowering carbon emissions. However it would not be best value or a good use of public money to fund a service that currently operates commercially. The 2000 Transport Act also removed the constraint that in exercising powers to subsidise services local authorities must not act so as to 'inhibit competition'. This was intended to make it easier for authorities to subsidise additional service frequency. This does not apply to this situation as the frequency is to remain the same.
- (c) A discrete service operating from Darlington Town Centre to Lingfield Point which could be tendered for as a completely separate service, would not meet the objectives, outputs or outcomes in the Bid and therefore does not meet the terms and conditions of the grant from DfT.
- (d) Funding in the bid has been based on the estimated cost of extending the existing commercial service, based on the marginal costs of operating an additional bus to the existing frequency and hours of operation. There would be insufficient funding to fund the entire route. On this basis the successful bidder would need to operate a large proportion of the contract on a commercial basis.
- (e) The contract would require 7 double decker vehicles to operate the service. These would need to be Euro 5, easy access vehicles to meet the terms and conditions of Darlington supported bus contracts. This is likely to be prohibitive to new entrants into the market.
- (f) In addition, this would not achieve the local contribution detailed in the Bid (i.e. £136k from Arriva for the provision of a double decker vehicle to operate the service extension). Alternative match funding would need to be identified either from this contract or from another source within the inter-urban work package.
- (g) In the last tender round for bus services in May 2009 no other large commercial bus operator submitted a bid for any contracts. Three small operators submitted bids, two of which do not operate any commercial services and one which mainly operates tendered services with a small number of commercial contracts in North Yorkshire.
- (h) The current bus operator may challenge the Council if it is not successful in securing the contract. The extent and scale of this risk is unknown but could include claims for significant commercial losses and other losses associated with decommissioning of vehicles and redundancy payments to staff.

- (i) There is a particular risk of contractual challenge by Arriva if the work is awarded to another operator because Arriva have contributed to the preparation of 'Kick Start' funding bid which while unsuccessful was re-used in the application for funding from the DfT. The bid for funding from the DfT was prepared by the Council and Arriva in the spirit of partnership on the basis that Arriva would be the operator for the work should funding be awarded. There was no agreement between the parties that the funding if received would need to be spent following a competitive procurement exercise. It is likely that this arrangement gives rise to a legitimate contractual expectation that Arriva will be the operator for the extended additional service and this is likely to be a strong claim with damages assessed on the basis of the loss of expectation of the work, thus a tendering exercise would not be an option.
19. Although it is highly unlikely that a commercial operator would bid for one contract, as in reality it would have to operate a significant amount of the service on a commercial basis, which is a high risk strategy and not likely to generate sufficient economic return when there is an existing operator, a market testing exercise was undertaken. In order to assess whether any other operator would wish to tender for the service, a direct approach, was made to the commercial operators in the north east region, as well as a number of smaller operators that traditionally operate services under contract to local authorities.
20. The results of this exercise were that three operators stated that they would be interested in tendering (including Arriva). However two operators expressed the view that tendering such a service in direct competition to an existing commercial service would be open to challenge by the current operator and this was a significant financial risk.

Option C

21. The third option is to contract with Arriva North East immediately with Council approval and introduce the service in January 2012, in line with other programmed timetable changes. The contract would be for 3.5 years ending March 2015. It would be linked to the retention of the half hourly commercial service operating to an agreed timetable. The value of the contract would be £174k in total, starting with £66k in 2011/12 and reducing over the following 3 years to reflect the increase in passenger numbers and revenues. Arriva's 'local contribution' to the Service (and the Bid) would be the provision of an additional easy access double decker vehicle (£136k).
22. This offers a solution that is in line with de minimis rules (though outside the financial limits); provides value for money in terms of contract value, but also the local contribution that would be secured and which forms part of the Bid to DfT; and provides a platform for other improvements that were part of the both Darlington and Durham's LSTF bids such as Travel Rangers and hybrid vehicles. Any financial risk associated with a challenge from another operator would be limited to the contract value.

Outcome of Consultation

23. An extensive consultation and engagement process was carried out as part of the development of the LSTF Bid and this built on the similar process carried out as part of the Third Local Transport Plan. The key issues to address included the need to improve the experience of travelling by local bus and train; to provide travel choices for disabled people; and to ensure that traffic congestion does not hinder economic activity. The proposed

extension to Bus Service 1 seeks to address these issues.

24. As Durham County Council submitted a separate bid, but one which was developed in conjunction with Darlington, there was ongoing consultation on the most appropriate initiatives to include in both bids. Durham County Council therefore support the principle of extending Bus Service 1 as it also provides benefits to their local residents who need to travel into Darlington. Since the award of the funding by DfT, Officers at Durham County Council have also been consulted on an ongoing basis on the most appropriate options for procurement.
25. Arriva North East was consulted as part of the development of the Bid. They have provided costs to operate the service and the local contribution that they will make, both of which were used to develop the funding profiles for the Bid.
26. Marchday Group plc, owners of Lingfield Point, were consulted and supported the Bid recognising the value of this new service in supporting a bus service to current Lingfield Point employees as well as providing capacity to meet growth projections for Lingfield Point. Marchday plc will fund the bus stops within the area owned by Marchday plc.
27. Darlington Borough Council has accepted the grant offer made by The Department for Transport and its associated terms and conditions. The Department has confirmed that decisions about the most appropriate procurement process to follow for each element of the Bid must be taken at a local level.