

Legal Comments

The decision concerns the acceptance of additional funding of £899,044, known as “BSIP+” to support the delivery of the Greater Nottingham Bus Service Improvement Plan in 2023/24 & 2024/25, from the Department for Transport (DfT) and is therefore an executive key decision, due to its financial value.

The funding compliments funding of circa £11.3 m accepted under a Memorandum of Understanding (MOU) entered into with the DfT following authorisation by the Executive Board on 18 October 2022.

The initial MOU terms will apply to the additional funding as amended by the DfT letter of 24.07.2023. The funding will be issued to the Authority as non-ring-fenced grant payments under Section 31 of the Local Government Act. The BSIP + funding must be utilised to maintain existing service levels or on measures that are consistent with Departmental guidance on Bus Service Improvement Plans (BSIPs), bearing in mind that the DfT has changed the BSIP rules, enabling BSIP and BSIP+ allocations to be used for supporting existing services, as set out in the 17 DfT announcement. Funding decisions should be based on local circumstances and need. Precisely how the Council intends to utilise the BSIP+ funding must be submitted to the DfT in a Project Assessment Request (PAR) for DfT approval.

Once approved the DfT will then issue grant letters and grant determinations for signature by the Council. Release of the funding will be subject to return of the signed documents to the DfT.

Any future amendments to the proposed use of the funding must be dealt with through the PAR process set out in the original MOU.

As was the case with the initial £11.3 m of funding, use of the money should be in accordance with any grant conditions provided by DfT upon receipt of the funding, the conditions of which should be cascaded down with respect to onwards use of the funding with third parties.

The Council must ensure that in offering any support under the de-minimis provisions of the Transport Act, it must do so in line with the statutory requirements as well as the procurement thresholds.

The provision of support under these provisions should only be made only to the extent required and compliantly permitted. Guidance on best practice for tendering bus contracts and use of de minimis limits is available on the Bus Centre of Excellence here:

<https://www.buscentreofexcellence.org.uk/resources-collection/value-for-money-of-tendered-bus-services>

Provision of the funding otherwise should be in accordance with the Council’s Contract Procedure Rules and Public Contracts Regulations 2015.

The Council should also ensure compliance with the Subsidy Control Regimes rules in provision of any grants, including where applicable, undertaking an assessment as to whether any financial assistance comprises as subsidy within the Subsidy Control Act 2022, whether the amount being awarded to an economic entity benefits from an exemption and application and satisfaction of the 7 principles where applicable to ensure the award if a compliant subsidy.

Appropriate grant agreements or contractual arrangements should be put in place to reflect the use of the funding, at all times ensuring compliance with the DfT's grant conditions and associated monitoring and reporting requirements.

For reasons of transparency and openness the public must be able to view and monitor how taxpayer funding is being spent. In addition to publishing 6-monthly data showing progress against the BSIP targets, the DfT is also likely to expect the Council to publish a list of BSIP +-funded schemes and progress against them, updated on a 6-monthly basis.

Although the initial DfT deadline to submit the PAR to confirm the BSIP+ funding has passed, it has been extended by the DfT but only until the 15th September 2023. There is an urgency to accept the grant and utilise the money to support bus service procurement deadlines that must be met by this Autumn. In these exceptional circumstances the Leader is empowered to take this Key Decision in accordance with Article 10.21 of the Constitution, subject to the Notice requirements of Article 13 of the Constitution being satisfied and in this situation compliance with article 13.31 may be necessary if this becomes a case of special urgency.

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