

Date of issue: Thursday, 13 October 2022

MEETING:	APPEALS SUB-COMMITTEE Councillor R. Davis Councillor Grewal Councillor S. Malik Councillor Smith
DATE AND TIME:	FRIDAY, 21ST OCTOBER, 2022 AT 10.00 AM
VENUE:	COUNCIL CHAMBER, OBSERVATORY HOUSE, 25 WINDSOR ROAD, SL1 2EL
DEMOCRATIC SERVICES OFFICER: (for all enquiries)	NADIA WILLIAMS, DEMOCRATIC SERVICES OFFICER 07749 709 961

NOTICE OF MEETING

You are requested to attend the above Meeting at the time and date indicated to deal with the business set out in the following agenda.



GAVIN JONES
Chief Executive

AGENDA

PART I

<u>AGENDA ITEM</u>	<u>REPORT TITLE</u>	<u>PAGE</u>	<u>WARD</u>
1.	Election of Chair		
2.	Declarations of Interest		

All Members who believe they have a Disclosable Pecuniary or other Interest in any matter to be considered at the meeting must declare that interest and, having regard to the circumstances described in Section 9 and Appendix B of the Councillors' Code of Conduct, leave the meeting while the matter is discussed.



<u>AGENDA ITEM</u>	<u>REPORT TITLE</u>	<u>PAGE</u>	<u>WARD</u>
3.	Guidance on Predetermination / Predisposition - To Note	1 - 2	-
4.	Minutes of the Meeting held on 14 September 2022	3 - 4	-
5.	Appeals Sub-Committee Procedure for hearing a Transport Appeal	5 - 6	-
6.	Home to School Transport Policy	7 - 14	-
7.	Exclusion of Press and Public		

It is recommended that the Press and Public be excluded from the meeting during consideration of the item in Part 2 of the Agenda, as it involves the likely disclosure of exempt information relating to individuals as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 (amended).

PART II

8.	Home to School Transport Appeals		
9.	TA02-2223	15 - 58	-

10. TA04-2223

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-

Press and Public

Attendance and accessibility: You are welcome to attend this meeting which is open to the press and public, as an observer. You will however be asked to leave before any items in the Part II agenda are considered. For those hard of hearing an Induction Loop System is available in the Council Chamber.

Webcasting and recording: The public part of the meeting will be filmed by the Council for live and/or subsequent broadcast on the Council's website. The footage will remain on our website for 12 months. A copy of the recording will also be retained in accordance with the Council's data retention policy. By entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings.

In addition, the law allows members of the public to take photographs, film, audio-record or tweet the proceedings at public meetings. Anyone proposing to do so is requested to advise the Democratic Services Officer before the start of the meeting. Filming or recording must be overt and persons filming should not move around the meeting room whilst filming nor should they obstruct proceedings or the public from viewing the meeting. The use of flash photography, additional lighting or any non-hand held devices, including tripods, will not be allowed unless this has been discussed with the Democratic Services Officer.

Emergency procedures: The fire alarm is a continuous siren. If the alarm sounds Immediately vacate the premises by the nearest available exit at either the front or rear of the Chamber and proceed to the assembly point: The pavement of the service road outside of Westminster House, 31 Windsor Road.

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PREDETERMINATION/PREDISPOSITION - GUIDANCE

The Council often has to make controversial decisions that affect people adversely and this can place individual members in a difficult position. They are expected to represent the interests of their constituents and political party and have strong views but it is also a well established legal principle that members who make these decisions must not be biased nor must they have pre-determined the outcome of the decision. This is especially so in “quasi judicial” decisions in planning and licensing committees. This Note seeks to provide guidance on what is legally permissible and when members may participate in decisions. It should be read alongside the Code of Conduct.

Predisposition

Predisposition is lawful. Members may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. This will include political views and manifesto commitments. The key issue is that the member ensures that their predisposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors. In other words, the member retains an “open mind”.

Section 25 of the Localism Act 2011 confirms this position by providing that a decision will not be unlawful because of an allegation of bias or pre-determination “just because” a member has done anything that would indicate what view they may take in relation to a matter relevant to a decision. However, if a member has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that advice is sought where this may be the case.

Pre-determination / Bias

Pre-determination and bias are unlawful and can make a decision unlawful. Predetermination means having a “closed mind”. In other words, a member has made his/her mind up on a decision before considering or hearing all the relevant evidence. Bias can also arise from a member’s relationships or interests, as well as their state of mind. The Code of Conduct’s requirement to declare interests and withdraw from meetings prevents most obvious forms of bias, e.g. not deciding your own planning application. However, members may also consider that a “non-pecuniary interest” under the Code also gives rise to a risk of what is called apparent bias. The legal test is: “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased’. A fair minded observer takes an objective and balanced view of the situation but Members who think that they have a relationship or interest that may raise a possibility of bias, should seek advice.

This is a complex area and this note should be read as general guidance only. Members who need advice on individual decisions, should contact the Monitoring Officer.

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Appeals Sub-Committee – Meeting held on Wednesday, 14th September, 2022.

Present:- Councillors S. Parmar (Chair), S. Malik and Smith

Apologies for Absence:- Councillor

PART I

68. Election of Chair

Resolved – That Councillor S Parmar be appointed Chair for the duration of the meeting.

69. Declarations of Interest

None were declared.

70. Guidance on Predetermination / Predisposition - To Note

Resolved - That the Members confirmed that they had read and understood the guidance on predetermination and predisposition.

71. Minutes of the Meeting held on held on 3 May 2022

Resolved – That the minutes of the meeting held on 3 May 2022 be approved as a correct record.

72. Appeals Sub-Committee Procedure for hearing a Transport Appeal

Resolved – That the Members confirmed that the Appeals Sub-Committee Procedure for hearing Home to School Transport Appeals had been read and understood.

73. Home to School Transport Policy

Resolved – That the Members confirmed that the Home to School Transport policy had been read and understood.

74. Exclusion of Press and Public

Resolved – That the Press and Public be excluded from the meeting during consideration of the items in Part 2 of the Agenda, as they involve the likely disclosure of exempt information relating to individuals as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 (amended).

Appeals Sub-Committee - 14.09.22

75. Home to School Transport Appeals

The Sub-Committee considered a number of appeals against the refusal by officers of applications for home to school transport. The circumstances of each case did not fulfil the necessary criteria for assistance. For each appeal, details were presented by the local authority representative of the reasons for refusal, together with the grounds of appeal submitted by the parents of the pupils in question. The Appeals Sub-Committee also considered verbal representation made by the Appellants at the hearings. The Appeals were considered under the general home to school transport policy.

Resolved - That the following decisions be taken in respect of the appeals for home to school transport as set out below: -

Appellant	Decision
TA11 - 2122	Allowed
TA10 - 2122	Allowed

Chair

(Note: The Meeting opened at 10.00 am and closed at 12.45 pm)

APPEALS SUB-COMMITTEE

PROCEDURE FOR THE HEARING OF A TRANSPORT APPEAL

1. The Chair will formally open the hearing by introducing those present in the room and their status in terms of the proceedings.
2. The Chair will ask the Officer to introduce his/her Report.
3. The Chair will ask any questions that arise from the Report and will invite other Members and the Appellant to ask questions that might arise from the Report.
4. The Chair will invite the Appellant to present his/her case.
5. The Chair will ask any questions that might arise from the Appellant's presentation and will invite other Members and the Officer to ask questions that might arise from the Appellant's presentation.
6. The Chair will ask either the Officer, or the Appellant, or both, any questions for clarification of any issues in contention and invite other Members to ask such questions.
7. The Chair will invite the Officer to make a closing address. New issues and new evidence must not be introduced or presented at this stage.
8. The Chair will invite the Appellant to make a closing address. New issues and new evidence must not be introduced or presented at this stage.
9. The Officer, the Appellant, and any other persons not authorised to stay will be asked by the Chair to leave the Meeting so that the Members can deliberate and make a decision. The persons authorised to stay are the Members of the Sub-Committee, the Democratic Services Officer and the Legal Adviser.
10. The decision of the Sub-Committee will be communicated to the Appellant by letter sent within 5 working days of the Meeting.

Notes:

The Chair can at any time take advice or ask for information from the Democratic Services Officer or the Legal Adviser.

The Appellant can be represented by a Member (but not a Member sitting on the Sub-Committee), a lawyer or any other person whom s/he chooses.

If appropriate, the Chair might vary the procedure with the agreement of both parties.

If appropriate, the Chair might place time limits.

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Home to School Transport Policy 2021-2022

Admissions and Transport

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1. Introduction

The purpose of this document is to set out the council's policy regarding home to school travel assistance for children and young people attending school and colleges.

In the vast majority of cases, children and young people are able to get to and from school by walking, cycling, or accessing public transport, accompanied by a parent or carer where this is necessary. However, there are a small number of children for whom the above is not suitable.

All local authorities are required to make suitable travel arrangements to help children and young people who are eligible for assistance to attend school.

This document explains the support available for eligible pupils in Slough travelling to and from school.

2. Legal framework and statutory duties

Under the Education Act 1996 and the Education and Inspections Act 2006, local authorities have a duty to provide free assistance with travel to and from qualifying schools and colleges for eligible children and young people aged 5-16 in certain circumstances.

There is no mandatory entitlement to travel assistance for children under 5 years. For young people over the age of 18, please see the council's separate policy on post 16 transport.

Under S508B of the Education Act 1996, local authorities must provide such travel arrangements as they consider necessary to get an eligible child to their 'relevant educational establishment' (qualifying school). Travel arrangements for an eligible child must be free of charge and not require service users to incur extra costs.

The provision of assistance with travel by the council will be based on individual needs and circumstances and with due regard to the efficient use of the council's resources.

3. Eligibility

Eligibility for travel assistance is only based on the child's needs and family circumstances are not taken into account for the purpose of determining eligibility for travel assistance.

An eligible child is defined by one or more of the following criteria:

- i. A child with a special education need, disability or mobility issues who cannot be expected to walk to school;**

Some children and young people have a special education need or disability which makes walking to school unreasonable even if the child lives within a short distance of the school. For these children and young people, assistance with travel will be offered based on an assessment of need. The distance between the home and school, and the transport routes available, may influence what kind of assistance is offered. The council will also consider whether it is reasonable to expect a parent or carer to accompany the child to enable them to travel to school.

All children with an EHC Plan have an annual review in order to check and monitor the progress towards their outcomes and longer term aspirations. Part of the review process will be to consider home to school transport arrangements. This review will include consideration of whether the child is eligible for free home to school transport in the light of any changing circumstances and the child's ongoing development. This ensures that free home to school transport is delivered as cost-effectively as possible, whilst also helping children and young people to develop independent travel skills as they get older.

ii. A child who needs to travel beyond the statutory walking distance to attend their nearest qualifying school;

Children who live beyond the statutory walking distance to their nearest suitable school will receive assistance with travel from the council. The statutory walking distance is defined by the Education Act 1996 as:

- 2 miles if the child is under 8 years old
- 3 miles if the child is 8 years old or older

The distance will be calculated by the local authority (LA) using the shortest route along which a child, accompanied as necessary, may walk safely.

Assistance will usually be in the form of a free travel pass.

The council will only offer assistance if the child is attending their nearest qualifying school. The 'nearest qualifying school' means the nearest school with places available that provides education appropriate to the age and ability of the pupil, and any special educational needs that the child may have.

Parents may be asked to provide evidence if they have been unsuccessful in obtaining a place at the nearest qualifying school.

If parents choose to send their child to a school which is not the nearest qualifying school, when the nearest qualifying school had places available, free transport will not be provided, even if the school is beyond statutory walking distance.

Qualifying schools fall within one of the categories set out below:

- community, controlled, foundation or voluntary aided schools;
- academies or free schools
- community or foundation special schools;
- non-maintained special schools;
- independent schools if this is named on a child's EHCP;

- pupil referral units;
- maintained nursery schools;
- City Technology Colleges (CTC), City Colleges for the technology of the arts (CCTA) and University Technical Colleges (UTC).

For children with SEN, an independent school can also be a qualifying school where this is named on the child's Education, Health and Care Plan (EHC Plan) or statement, or it is the nearest of two or more schools named.

iii. Safe walking route

If there is no safe walking route for a child to their nearest appropriate school then free home to school transport will be provided. The safety of the routes are considered taking into account the traffic and highways conditions and assessed in accordance with Road Safety GB guidelines. The council will also consider whether it is reasonable for a parent to accompany the child if this would enable them to travel safely.

iv. A child from a low-income family

A child from a low-income family is defined as either a family where pupils are entitled to free school meals or where the parents are in receipt of maximum working tax credits.

If this is the case there are a number of 'extended rights;' which mean that a child is eligible for assistance with travel if:

- a) The nearest suitable school is beyond 2 miles (for children aged 8-11);
- b) The school is between 2 and 6 miles (if aged 11-16 and there are not three or more suitable nearer schools);
- c) The school is between 2 and 15 miles and is the nearest school preferred on the grounds of religion or belief (for children aged 11-16).

4. Discretionary arrangements

Slough residents may also be provided with transport assistance where there are exceptional circumstances. Each application will be considered on its own merits and might include circumstances such as (non exhaustive):

- temporary medical need;
- circumstances where a child is provided with an "exceptional placement" at a special school on a temporary basis;
- pre-school pupils with an EHCP attending the nearest qualifying special school;
- children needing transport to and from respite at the beginning and end of the school day

For some applications for discretionary arrangements, the council may require evidence from independent professional agencies and evidence that the child's needs are not able to be met through public transport or short term transport in a parent or carer's vehicle.

All applications made under the exceptional circumstances will be considered by a panel of officers. The panel will consider each case individually taking into account all the information available at the time of consideration. If the applications are approved then appropriate transport will be provided for a limited period based on the need of the pupil. The applications will be reviewed annually with a view to promoting and increasing the pupils' independence.

5. How to apply and types of travel assistance

All applications for transport, other than for children with an EHC Plan, will be considered by the Transport Team (School Services) following receipt of the appropriate application form.

For children with an EHC Plan, the decision will be considered by a panel involving the SEND Team. Transport will be arranged in all cases by the Transport Team in conjunction with transport contractors.

The council will consider whether transport is necessary using the criteria above and allocate transport from the categories below, using the highest appropriate category on the list, taking into account the needs of the pupil, and how the council can enable them to develop skills for independent travel:

1. provision of independent travel training;
2. provision of a travel pass for the pupil;
3. payment of car mileage for the pupil's parent(s);
4. provision of a travel pass for pupil and parent;
5. provision of a shared vehicle without escort;
6. provision of a shared vehicle with escort;
7. provision of an individual vehicle without escort;
8. provision of an individual vehicle with escort.

All transport provision will be reviewed as part of the annual review of needs and if appropriate as part of an early review. Transport provision may be withdrawn or amended if circumstances have changed or the Special Educational Needs and Disabilities (SEND) Panel considers the withdrawal appropriate as an encouragement to independence.

Parents with a child eligible for transport will be required to re-apply for transport if they choose to move house or change school.

In some cases, where children are eligible for free transport, parents may wish to provide transport to and from school themselves. The council will reimburse mileage at a rate to be considered annually for the home to school journeys only i.e. when the pupil is receiving transport. If there is a change of circumstances and parents wish to request to change the arrangement, they must give two weeks notice to allow time for the council to arrange appropriate transport. The current mileage rate is 45 pence per mile.

If parents request free transport to a preferred school at any time, on the grounds that the nearest school or catchment area school is full, the council will not consider the request unless parents had applied for the nearest school or catchment school during the normal admission round.

Where a pupil is receiving free transport and parents change address, so that their school is no longer the catchment school, nearest school or 'qualifying school', under the definitions set out within this policy, transport will cease and responsibility for the child's transport arrangements will become the responsibility of the parents(s) or carer(s).

The council may decide to withdraw transport, either for a temporary period, or permanently for serious or repeated cases of misbehaviour on the transport provided.

6. Appeals

There is a two stage process for parents who wish to challenge a decision about:

- the transport arrangements offered;
- their child's eligibility;
- the distance measurement in relation to statutory walking distances; and
- the safety of the route.

Stage one: Review by a senior officer

- A parent has 20 working days from receipt of the local authority's home to school transport decision to make a written request asking for a review of the decision.
- The written request should detail why the parent believes the decision should be reviewed and give details of any personal and/or family circumstances the parent believes should be considered when the decision is reviewed.
- Where this is possible, within 20 working days of receipt of the parent's written request a senior officer reviews the original decision and sends the parent a detailed written notification of the outcome of their review

Stage two: Review by an independent appeal panel

A parent has 20 working days from receipt of the local authority's stage one written decision notification to make a written request to escalate the matter to stage two.

Within 40 working days of receipt of the parents request an independent appeal panel considers written and verbal representations from both the parent and officers involved in the case and gives a detailed written notification of the outcome (within 5 working days).



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

AGENDA ITEM 9

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