

Scrutiny & Overview Committee

Meeting held on Tuesday, 6 July 2021 at 6.30 pm.

This meeting was held remotely and a recording can be viewed on the Council's website

MINUTES

Present: Councillors Sean Fitzsimons (Chair), Robert Ward (Vice-Chair), Leila Ben-Hassel, Shafi Khan, Oni Oviri and Joy Prince

Also Present: Councillors Hamida Ali, Stuart King and Callton Young

PART A

50/21 Minutes of the Previous Meeting

The minutes of the meetings held on 17 November 2020, 8 December 2020, 21 December 2020 and 7 January 2021 were agreed as a correct record.

It was agreed that the minutes of the other meetings listed on the agenda would be considered at the next meeting of the Committee.

51/21 Disclosure of Interests

There were no disclosures of interest made at the meeting.

52/21 Urgent Business (if any)

There were no items of urgent business.

53/21 Ongoing Review of Brick by Brick Croydon Ltd and the Future of the Company.

The Committee considered a report on the ongoing review of Brick by Brick Croydon Ltd and the future of the company, which set out a number of recommendations due to be considered by the Cabinet at its next meeting on 12 July 2021. The report had been included on the agenda to give the Committee the opportunity to provide feedback on the recommendations before Cabinet made its decision.

The Leader of the Council, Councillor Hamida Ali and the Council's Interim Section 151 Officer, Chris Buss, were in attendance at the meeting to introduce the report and answer the Committee's questions.

During the introduction to the report by the Leader, it was noted that there was two guiding principles underpinning the Council's decision making. The first

was reducing the Council's risk appetite and the second was maximising the return on public investment. In this instance, the two principles came into conflict as there would be less risk in pursuing the sale option, but this would mean accepting a lower financial return. Due to their professional expertise, PwC and Savills had been commissioned to prepare reports on the two options, which were listed in the confidential Part B section of the agenda. This advice, along with a huge amount of work undertaken by council officers since the Strategic Review of the Council's Companies was completed in November 2021, had led to the conclusion that completing the build out on the 23 Brick by Brick sites already in development and selling the remaining six sites represented the best return for the Council.

Following the introduction, the Committee was given the opportunity to question the Leader of the Council and the Section 151 Officer on the content of the report and the rationale for the recommendations made. The Chair advised that the questions of the Committee would focus on three key areas, which were officer confidence in the valuations provided, an evaluation of the risks to the Council presented by the two options outlined and whether there were any alternate options that needed further exploration.

The first questions of the Committee focussed on areas where further clarification needed on information provided in the report. From these questions it was noted that the 'Client side' referred to in the report meant the Council. It was also noted that there was an earmarked reserve of £500,000 set aside in the Council budget for Brick by Brick.

It was noted that the Medium Term Financial Strategy (MTFS) had set aside £31m to write off loans made to Brick by Brick. As such the potential impact upon the General Fund from opting for the build out option was questioned. It was confirmed that the build out option was the least worst in terms of minimising the potential loss to the Council. In the best case scenario outlined in the report, the return delivered would actually mean the write-off would be less than £31m budgeted in the MTFS. The build out option was the only one which would allow the Council to keep in line with the budget and MTFS agreed in March 2021.

It was questioned whether Section 123 of the Local Government Act 1972 had been a consideration, as this placed a requirement on Council's to deliver value for council tax payers. It was confirmed that Section 123 only applied to land disposal and as such was not applicable to this decision. However, it was the view of both the professional advisors and the Section 151 officer that building out the 23 sites was the least worst option. It was emphasised that in reaching the recommendations set out in the report as much opinion as possible had been taken into account, to identify the best outcome for council tax payers.

As there were a range of other Council owned sites that had been due to be transferred to Brick by Brick for development, before it had been decided to pause further transfers pending a review of the company, it was questioned what was planned for these sites. It was advised that the Cabinet had already decided in February to review these sites for future use, with the College

Green site already being marketed. If the Council decided to sell these sites, then the capital receipt could be used to reduce the deficit.

It was highlighted that a Councillor had stated during the Council meeting on 5 July, that a town centre site had already been sold for £20m. It was questioned whether this sale had been completed as this statement suggested. It was confirmed that two town centre sites were being marketed, with £20m being the minimum value placed on them. At present neither site had been sold.

Given that the cash flow of Brick by Brick would have been taken into account to reach the valuations in the report, having had varying figures from the company in the past, it was questioned how robust these figures were. Reassurance was given that Brick by Brick had strengthened its financial management since the Strategic Review in November, with greater certainty and accuracy in the figures provided. The figures had also been externally validated by Savills, when preparing their valuations.

In response to a question about the uncertainty range on the property valuations in the report, it was advised that Savills had used recent comparable sales as a benchmark. 20% had been discounted from the comparable average to take into account the various risks and costs associated with development.

As there had been reports in the media about the cost of materials and a shortage of builders, it was questioned how these risks may impact upon the Council. It was advised that as design and build contracts had been used, there was a fixed price for the developments. The contracts also had a fixed term for delivery, so if completion slipped the Council would be able to claim damages for non-delivery.

There was concern raised based on the ongoing Grant Thornton value for money review of the Fairfield Halls refurbishment, particularly the possibility that the work delivered did not meet the expected standard, and whether there could be similar issues on other sites. It was confirmed that similar issues would not be expected as housing units were being delivered, which were fairly standard for contractors. Conversely, the Fairfield Halls was not a standard refurbishment.

Given the uncertainty in the property market, it was questioned whether any level of confidence could be taken from the valuations provided in the report. In response it was highlighted that a reasonable level of certainty could be taken on 21 of the 23 sites as these were due to be completed within the next six months. Unless there was a major, unforeseen change in the property market, these valuations should be achievable. The other two sites were due to take longer to deliver, so there was a greater degree of uncertainty on these valuations.

As a follow-up, it was challenged whether allowance should have been made for another company to provide a separate valuation report, to support the valuations provided. It was confirmed that another company had been

approached for this reason, but they were not able to provide figures in the timescales available to deliver the report. The Section 151 Officer advised that based on the methodology used and the reputation of the company involved, it was unlikely that another organisation would produce figures that were vastly different from those provided.

In response to a question about the role of the Improvement and Assurance Panel in the decision, it was advised that the recommendations had been drafted after the Savills and PwC reports had been received. The draft report was then submitted to the Panel, who broadly concurred with the recommendations.

As the report outlined that additional support would be acquired to assist Brick by Brick with the delivery of the remaining sites, it was questioned what this would cost the Council. It was confirmed that there would be no direct cost to the Council, although the figures provided in the report made allowance for Brick by Brick taking on additional technical and management support. The cost for additional support for Brick by Brick meant there would be less money returned to the Council upon completion, but this mitigation was needed to ensure the sites could be delivered.

It was questioned whether there were any other bids made for Brick by Brick in addition to the one outlined in the report, which it was recommended to turn down. It was confirmed that there had been a number of expressions of interest, but the Council had been unable to take these forward as the bidder had asked for a period of exclusivity, which was not unreasonable given the cost involved. In reaching the recommendation to turn down the bid for Brick by Brick, consideration had been given to the time it would take to evaluate any further bids for the company, which would not likely be completed until October by which point most of the sites would have been delivered. It was also confirmed that no bids had been received on individual sites.

As the majority of the units being developed were flats, it was questioned whether this was a risk given the preference for housing in the property market. It was acknowledged that this was a risk, but at present it was not one reflected in the housing market. The price for flats was not increasing as quickly as those for housing, but equally the prices was not going down.

In response to a question about the risk of Brick by Brick requiring further lending from the Council, it was highlighted that the £10m lending facility agreed by Cabinet in May 2021 had not been used to date. If sales did not proceed as anticipated then it was available to enable Brick by Brick to manage its cash flow, but it was hoped that by the end of the year the Council would start to receive money back from Brick by Brick. In total the Council had lent £161m to Brick by Brick, not including the additional £10m that was available.

As a follow-up, it was questioned what controls were in place to manage the cash flow at Brick by Brick. It was explained that ELT received regular reports on the cash flow of the company and the Council's finance officers met with their equivalents at Brick by Brick on a weekly basis to monitor the cash flow

on a more granular level. Any income generated through sales was placed in a holding account controlled by the Council and released to Brick by Brick as needed.

As the report outlined that should the build out option be chosen, the risk would remain with the Council, it was questioned whether these risks could be effectively managed. It was advised that it would not be possible to give a total guarantee, as there were always unforeseen risks that could go wrong. However, there was a clear recommendation in the report that Brick by Brick needed additional management and technical support to manage the risks involved with the build out option.

It was confirmed that progress on delivering the remaining sites would be reported to the Council on a monthly basis. However, if there were any specific issues affecting delivery, there was an expectation that Brick by Brick would notify the Council immediately.

To minimise the risk from the loss of corporate knowledge as staff left Brick by Brick, the Council was in close discussion to ensure that this knowledge was safeguarded as far as practicable. The question of whether any remaining staff at Brick by Brick would be transferred to the Council had still to be resolved, with a report due to come forward later in the year.

In response to a question about whether there was any possible way to mitigate the cost of external support, it was highlighted that if this support was not contracted it was likely the financial return to the Council would be lower than estimated. By appointing a third party with the right expertise, it would help to mitigate against the risks raised from running down the company.

It was questioned whether it was the right option for the Council to concentrate on the sites being targeted for completion. In response it was highlighted that there had been a report in February which presented a range of different options, including building out all the sites identified for development. In order to pursue this option it would mean the Council borrowing an extra £300m, which was not something that could be considered given the financial challenges the Council was facing.

In response to a number of questions about how the completed housing would be managed, it was confirmed that a further report to confirm the approach would be coming to the Cabinet later in the year.

It was questioned whether there had been any assessment of the cost to the General Fund for the provision of temporary accommodation and whether it would be of greater financial benefit in the longer term to retain some of the housing for use as temporary accommodation. In response it was highlighted that given the Council's challenging financial situation it was preferable to sell the housing when completed to generate a capital receipt. If the housing was retained for temporary accommodation it may be at least two to three years before any financial benefit was realised, which would not help the Council in its current financial predicament. It was also marginal whether the housing

would meet the Council's test of being cost neutral, when acquiring housing for the Housing Revenue Account.

It was confirmed that internal financial controls at Brick by Brick were now much more robust than prior to November 2021 and there was no significant cost expected that the Council was aware of at the time of the meeting. As there was concern about the legal compliance of Brick by Brick it was questioned whether this had been reviewed. It was confirmed that this may be covered in the value for money review being conducted by the Council's external auditor, Grant Thornton. It was acknowledged that in an ideal situation the Council would take the time to learn lessons from what had happen with Brick by Brick, but staff capacity to deliver any such review was limited.

Confirmation was requested that the Council, in pursuing this decision, could be said to have acted reasonably under the Wednesbury Rules. It was confirmed that based upon legal advice given, the Section 151 Officer was satisfied that the Council would meet the reasonableness test in making the decisions outlined in the report.

Although it was accepted by the Committee that five of the six sites identified for sale should be sold, it was agreed that the sale of the Belgrave and Grosvenor site should be placed on hold pending the completion of the stock survey being undertaken in adjoining council buildings, as this would keep options open for the sale of a wider redevelopment site.

It was confirmed that the Lion Green Road site had been given its own appendix as it was the largest site due to be completed. As the development would continue for another year, it was considered to be prudent to review all options for the site. The possibility of building out the site by bringing it back in house had been considered, but it was concluded this was not something the Council was in a position to do. This option would have also created legal issues for the Housing Revenue Account as the development included private housing. The possibility of selling the site to someone else to develop had also been discounted as it would result in the Council losing more money. Therefore allowing Brick by Brick to build out the site was the best option.

Regarding which option presented the greatest risk, it was confirmed that the build out option carried the greatest risk, but it was the only one that gave the Council the possibility of delivering a return. The other options would incur varying degrees of cost. It was advised that a significant seven figure sum had been built into the cost calculation for the build out option to take account of any potential cost escalation. It was confirmed by the Section 151 Officer that based on the professional advice received and the Council having the appropriate controls in place, it was worth the additional risk to pursue the build out option.

Following the opportunity to ask questions on the content of the report, the Committee moved on to considering their conclusions on the report and whether they wanted to submit any recommendations for the Cabinet's consideration.

At the conclusion of this item the Chair of the Committee thanked both the Leader of the Council and the Section 151 Officer for their attendance at the meeting, which had aided the Committee's consideration of the report.

Conclusions

Following consideration of the report, together with the information gathered from questioning during the meeting, the Scrutiny & Overview Committee reached the following conclusions:-

1. The Committee was broadly supportive of the recommendations set out in the report, which would be considered by the Cabinet on 12 July 2021.
2. The Committee agreed that the Cabinet report supporting the recommendations had been well written, informative and clearly presented the case for the decision under consideration.
3. It was noted that a quarterly report would be prepared for the Cabinet setting out the progress made on the build out of the remaining Brick by Brick sites. It was agreed that it would be useful for this information to be shared with the members of the Scrutiny & Overview Committee.
4. Although the Committee was supportive of the disposal of five of the six development sites highlighted in the report, it was agreed the Cabinet should give further consideration to pausing the disposal of the Belgrave and Cosgrove site until the completion of the stock survey on the adjoining council buildings.

54/21 Scrutiny & Overview Committee Work Programme 2021-22

The Committee considered a report setting out its work programme for the year ahead. It was noted that the content of the work programme was subject to change and at present there was two main items on the Committee's agenda for the next meeting on 7 September 2021. The two items were the annual report from the Head of Paid Service and an opportunity to scrutinise an early draft of the updated Community Safety Strategy.

Concern was raised that there was an ever increasing trend of reports being published late, which made it very difficult for Members to fully digest the content. The Chair agreed that this was not acceptable and he would report this concern to officers.

Resolved: That the Scrutiny & Overview Committee Work Programme is noted.

55/21 Scrutiny Recommendations: Cabinet Response

The Committee considered a report which provided the Cabinet's response to recommendations made by the Scrutiny and Overview Committee. The Committee was asked to review the responses and highlight any particular concerns.

It was noted that the Cabinet had rejected a recommendation from the Committee that a 'review be undertaken of past lending to Brick by Brick to provide greater clarity over the arrangements and to ensure that the arrangements were legally compliant'. This raised concern as there was a view that it was important to learn from what had happened with Brick by Brick, to ensure any mistakes made would not be repeated.

It was agreed that until the Value for Money Review of the Fairfield Halls refurbishment by the Council's external auditor, Grant Thornton, it was difficult to make a judgement on the rejection of this recommendation. As such it was agreed that any formal response would be deferred until after the review had been delivered.

Resolved: That the response given by the Cabinet to the recommendations of the Scrutiny & Overview Committee are noted.

56/21

Scrutiny Information Requests - Brick by Brick & Fairfield Halls

The Committee considered a report which provided a response to a formal request for information made by the Committee at its previous meeting held on 15 June 2021. The response was provided for the Committee to note the current availability of the information requested.

It was noted that the provision of the information was being hindered by a lack of a document management system, which meant that historic information was difficult to locate. It was agreed that the need for a robust document management process would be picked up with the Chief Digital Officer, when the Digital Strategy was reviewed by the Committee in the autumn.

Councillor Robert Ward, who had originally requested the information as part of a call-in request considered by the Committee on 27 May 2021, confirmed that he had received five of the 18 documents requested so far. There was concern about the availability of the Mott McDonald report that had been requested, as only a summary had been provided to date. It was confirmed that the full report had still to be located. It was requested that the Council should contact Mott McDonald to request a copy, rather than delay provision searching for it internally.

There was concern raised that the Scrutiny & Overview Committee may have been misled by the information it was provided when it considered a report on the Fairfield Halls refurbishment on 31 October 2017. It was agreed that until the information requested had been located and shared it was important to reserve judgement on any potential outcome. It would be a matter for the Scrutiny Chairs in consultation with the Monitoring Officer to decide how best to take any further consideration of this forward.

It was noted that the value for money review being undertaken Council's external auditor, Grant Thornton, was looking at decision making on the refurbishment of Fairfield Halls, and once the outcome had been delivered may answer many of the concerns about the refurbishment. It was confirmed that once the review had been completed it would be considered by the General Purposes and Audit Committee in the first instance.

Resolved: That the response given to the formal information request be noted.

57/21 **Exclusion of the Press and Public**

This motion was not required.

The meeting ended at 9.25 pm

Signed:

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Date:

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