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Scrutiny & Overview Committee Agenda

To: Councillors Sean Fitzsimons (Chair), Robert Ward (Vice-Chair), Leila Ben-Hassel (Deputy-Chair), Jade Appleton, Mike Bonello and Joy Prince

Reserve Members: Louis Carserides, Richard Chatterjee, Pat Clouder, Mary Croos, Clive Fraser and Oni Oviri

A meeting of the **Scrutiny & Overview Committee** which you are hereby summoned to attend, will be held on **Tuesday, 15 February 2022** at **6.30 pm**. **This meeting will be held remotely**.

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Monday, 7 February 2022

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AGENDA – PART A

1. **Apologies for Absence**

To receive any apologies for absence from any members of the Committee.

2. **Minutes of the Previous Meeting** (Pages 5 - 20)

To approve the minutes of the meetings held on 19 & 20 January 2022 as an accurate record.

3. **Disclosure of Interests**

Members and co-opted Members of the Council are reminded that, in accordance with the Council's Code of Conduct and the statutory provisions of the Localism Act, they are required to consider **in advance of each meeting** whether they have a disclosable pecuniary interest (DPI), an other registrable interest (ORI) or a non-registrable interest (NRI) in relation to any matter on the agenda. If advice is needed, Members should contact the Monitoring Officer **in good time before the meeting**.

If any Member or co-opted Member of the Council identifies a DPI or ORI which they have not already registered on the Council's register of interests or which requires updating, they should complete the disclosure form which can be obtained from Democratic Services at any time, copies of which will be available at the meeting for return to the Monitoring Officer.

Members and co-opted Members are required to disclose any DPIs and ORIs at the meeting.

- Where the matter relates to a DPI they may not participate in any discussion or vote on the matter and must not stay in the meeting unless granted a dispensation.

- Where the matter relates to an ORI they may not vote on the matter unless granted a dispensation.

- Where a Member or co-opted Member has an NRI which directly relates to their financial interest or wellbeing, or that of a relative or close associate, they must disclose the interest at the meeting, may not take part in any discussion or vote on the matter and must not stay in the meeting unless granted a dispensation. Where a matter affects the NRI of a Member or co-opted Member, section 9 of Appendix B of the Code of Conduct sets out the test which must be applied by the Member to decide whether disclosure is required.

The Chair will invite Members to make their disclosure orally at the commencement of Agenda item 3, to be recorded in the minutes.

4. Urgent Business (if any)

To receive notice of any business not on the agenda which in the opinion of the Chair, by reason of special circumstances, be considered as a matter of urgency.

5. Report in the Public Interest concerning the refurbishment of Fairfield Halls and related governance arrangements - Action Plan (Pages 21 - 100)

The Committee is recommended to:

1. Consider and review the Action Plan attached at Appendix 1B;

2. Consider any proposed amendments or feedback that it wishes to make on the action plan; and

3. Submit that feedback in a report to Cabinet at its meeting on 21 March 2022.

6. Budget Scrutiny 2022-23 (Pages 101 - 104)

The Scrutiny and Overview Committee is asked to:-

1. Note the update to be provided on the delivery of the 2021-22 budget and setting the 2022-23 Budget.

2. Consider the conclusions of the Committee on 2022-23 budget, to be submitted to the Budget Council meeting on 28 February 2022, including:-

   a. Reaching a conclusion on deliverability and sustainability of the 2022-23 budget.

   b. Reach a conclusion on whether sufficient evidence has been provided to conclude that there is understanding of the key risks and ownership of the proposals by the Council's political leadership.

   c. Consider whether there are any further conclusions on the 2022-23 budget the Committee would like to bring to the attention of Council.

7. Exclusion of the Press and Public

The following motion is to be moved and seconded where it is proposed to exclude the press and public from the remainder of a meeting:

“That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information falling within those paragraphs indicated in Part 1 of Schedule 12A of the Local Government Act 1972, as amended.”

Scrutiny & Overview Committee

Meeting held on Wednesday, 19 January 2022 at 6.30 pm

This meeting will be 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 (Deputy-Chair), Jade Appleton, Mike Bonello and Joy Prince

Also Present: Councillor Muhammad Ali

PART A

1/22 **Disclosure of Interests**

There were no disclosures of interest made at the meeting.

2/22 **Urgent Business (if any)**

There were no urgent items of business for consideration by the Scrutiny & Overview Committee at this meeting.

3/22 **Call-In: Key Decisions Relating To The Introduction Of Croydon Healthy Neighbourhoods**

The Committee considered a call-in request set out on pages 5 to 38 of the agenda. In introducing the item, the Chair explained the process for considering a call-in, confirming that the Committee needed to agree whether to review the decision and if it was decided to proceed, to confirm how much time it wished to allocate for the discussion of the item. The Committee agreed that it would review the decision and allocated one hour for its consideration.

The Chair went on to explain that there were three outcomes the Committee could reach as a result of its review. These were:-

1. That no further action was necessary and the decision could be implemented as originally intended.
2. To refer the decision to the Cabinet for its consideration, outlining the nature of the Committee's concerns
3. To refer the decision to Council, if the Committee considered that the decision taken was outside of the Budget and Policy Framework.

At the outset of the item the Chair gave Councillor Scott Roche, as the spokesperson for the call-in, the opportunity to outline his concerns on the original decision. Councillor Roche advised that there had been a number of reasons for submitting the call-in request, firstly there was no clear evidence that the type of traffic scheme to be installed would make a difference to local air quality. There was also a question about whether the Council was listening to the views of the public, as the results from a recent consultation indicated that 61% of responders were in favour of removing existing schemes. Given it had been estimated that £26m would be raised from penalty charge notices issued as a result of introducing the proposed schemes, there was also concern that it was being used to increase revenue.

Given these concerns, the outcomes sought from the call-in were confirmation on how the success of the schemes would be measured, confirmation on how the baseline evidence would be determined, confirmation on what quantative and qualitative data would be used and reassurance that the Council had sufficient resources in place to manage these schemes.

Following the introduction to the call-in, the Council's Head of Strategic Transport, Ian Plowright and the Head of Highways & Parking Services, Jane Rusbatch delivered a presentation to the Committee addressing the concerns raised. During the presentation the following points were noted:-

- Central Government had been calling on local authorities to take action to lower vehicle usage and as a result councils across the country were in the process of introducing similar traffic management schemes.

- In the guidance provided by the Secretary of State, it was made clear that local authorities needed to implement the schemes for at least a year to measure whether they worked or not. If schemes were removed early, it would be considered a misuse of the funding provided for implementation.

- It had also been made clear that the funding provided to introduce these schemes had been provided for this specific purpose and could not be used elsewhere.

- Monitoring of the schemes was based on statutory guidance provided by the Secretary of State and other guidance provided by Transport for London (TFL).

- There was a range of data being used to inform the schemes including figures from traffic surveys undertaken in 2017 as part of the proposal to introduce 20mph speed limits. Other data used included in-vehicle telematics to give an indication of traffic flow, TFL bus journey data, and data from Strava and Google.

- A series of Vivacity monitoring stations would be installed to record traffic data and there would be three separate types of air quality monitoring equipment installed as well.

- As part of the process the Council would be carrying out extensive consultation and engagement in line with the requirements of the Secretary of State to compile a wide range of feedback.
- The penalty charge notice (PCN) and appeals process was set out in statute and allowed the Council to install automatic number plate recognition (ANPR) equipment on the public highway.
- The ANPR technology allowed contraventions of the scheme to be detected. There was also a statutory process in place to allow the keeper of a vehicle to appeal a PCN.
- The appeals process was set out in writing to the keeper of the vehicle. The process was the same across the UK and if the appeal was upheld then the PCN would be cancelled.
- Having learnt from previous schemes, there will be advanced signage in addition to the statutorily required signage.
- The Committee had been provided with a set of FAQs used to explain the permitting process, exemption process and which permits are free of charge.

The Cabinet Member for Sustainable Croydon, Councillor Muhammad Ali, was also provided the opportunity to respond to the call-in, highlighting that although the Council had declared a climate emergency in 2019, work had already started before then on traffic related measures. As traffic emissions accounted for 25% of all emissions in the borough, it was important that action was taken, and at the same time care was taken to bring people along with the Council. There was a clear monitoring strategy in place for these schemes and by their experimental nature it would allow the determination of the potential benefits.

Following the introductions, the Committee proceeded to ask questions about the information provided. The first question concerned the use of the money raised through the scheme from issuing PCNs. It was confirmed that all income from parking enforcement was transferred onto the Council's balance sheet and used to fund the Freedom Pass for pensioners which equated to approximately £13-14m in 2021-22 (Note: a figure of £18m was provided at the meeting and subsequently corrected). Any excess raised above this figure was earmarked and could only be used for highways related schemes.

As an aim of the Healthy Neighbourhoods scheme was to improve health outcomes, it was questioned whether there had been any engagement with the local Clinical Commissioning Group (CCG). It was confirmed that there had been engagement with both the CCG and the Ambulance Service to draw on data around childhood obesity in the borough. The Ambulance Service was also supportive of the use of camera enforcement rather than physical barriers.

In response to a question about the monitoring of neighbouring streets, it was confirmed that this had been increased, although a significant issue was not expected.

Reassurance was sought that there was sufficient resource within the Council to manage the complexity of the schemes proposed. It was confirmed that having learnt from the experience of rolling out the earlier temporary schemes, these schemes would be rolled out using a phased approach. Additional resource would be provided by agency staff who would be employed to assist with the processing of exemption permits. The cost for using agency staff had been built into the project to ensure the level of resource could be flexed as needed on a short term basis.

As a follow-up, it was questioned whether the Council had the resource and experience to process the data produced by the monitoring equipment during the experiment. It was confirmed that the resource was not held within the Council, with external expertise being used, although the Vivacity monitoring equipment was able to analyses the data it collected and present it in an understandable format. It was suggested that the potential for working with a university to analyse the data may be a cost effective mechanism to pursue.

In response to concerns about the accuracy of the monitoring system it was confirmed that the Vivacity equipment had 97% accuracy. All monitoring systems recorded continuously and no images were stored within the system. There were no plans to independently test the accuracy of the monitoring equipment as it was already widely in use elsewhere.

Regarding the data being used it was questioned how the Council would be able to judge whether it had achieved net zero carbon emissions. It was advised that a report by the Mayor of London set out what London needed to do to reach net zero by 2030. One of the key aims was to reduce car usage by 27%, which it was hoped the Healthy Neighbourhoods schemes would help to achieve.

As in certain location temporary schemes had already been in place, it was questioned whether there was true baseline data from before the pandemic to use to judge the success of the scheme. Reassurance was given that there was baseline data available from shortly before the start of the pandemic lockdown, which would be supplemented by data from TFL.

Although it was accepted it was difficult to prioritise the objectives for the schemes as the purpose of the Healthy Neighbourhoods scheme was to take a holistic approach, it was highlighted that there was a risk that the public may think the success criteria was being changed if there was no clear indication of the intended outcomes.

It was advised that the Government was very clear about why local authorities should be introducing these schemes. There was also a clear presumption that they should remain in place unless there was evidence that the benefits were not being delivered. As such there was no clear cut answer on the success criteria, but in going ahead with the scheme it would allow the collection of data to determine the benefits. How the scheme and its findings are presented to the public would be key to its success. It was suggest that providing the data gather online for the public to view during the lifetime of the schemes would help the public gain reassurance about what the Council was trying to achieve.

It was questioned whether there had been learning from the previous, temporary schemes that could be used and whether a warning system could be used before issuing PCNs. It was advised that experience had indicated that it was important to use a level of signage over and above the regulated amount. It was also important to clearly differentiate to motorists when they were entering one of the new zones, which could be achieved by a variety of mechanisms such as different coloured road surface at the entrance. It was confirmed that the Council did provide one month's notice before issuing PCNs when introducing a new scheme. If a motorist received multiple PCNs before they received their first letter, they would be able to appeal and have the subsequent fines cancelled.

In response to concerns about temporary carers needing to access roads within the scheme to visit residents, it was confirmed that residents could apply through the exemption process online. If it was not a regular carer, then a retrospective application could be made.

Following its questioning, the Committee moved to determine the outcome for the call-in. It was agreed that a lot of additional information had been provided by the officers and Cabinet Member which had helped to provide reassurance on the concerns raised in the call-in, as such it was agreed that no further action was necessary.

The Committee Resolved: That no further action was necessary and the decision can be implemented as originally intended.

Conclusions

Having agreed that no further action was necessary on the call-in, the Committee reached the following additional conclusions:

1. The Cabinet Member and Officer were thanked for the significant amount of information that had been provided to the Committee, which had helped to provide reassurance on the concerns raised in the call-in.

2. The experimental nature of the Healthy Neighbourhood scheme fitted in to the Council's wider policy objective of taking action to improve health outcomes in the borough.

3. Although concern had been raised about the Council's capacity to resource the administration of the schemes effectively, sufficient reassurance was given that flexibility had built into the budget to increase resources as needed to meet temporary demand.

4. As it was recognised that the Healthy Neighbourhood scheme may have an impact on a wide range of health outcomes, it was agreed that potential benefits needed to be communicated to the public.

5. The call-in request indicated that there was mistrust of the monitoring that would take place as part of the scheme. Options such as making the data publically accessible online and inviting residents to participate in reviewing the outcomes, should be explored.

Recommendations

Following the consideration of the call-in request, it was agreed to make the following recommendations to the Cabinet Member for Sustainable Croydon

1. Ongoing communication was needed to promote to the public the potential benefits of Healthy Neighbourhood schemes.

2. That data gathered during the experiments should be made publically accessible on the Council's website.

Consideration should be given to inviting residents to participate in reviewing the outcomes from the experiment.

4/22 **Exclusion of the Press and Public**

This motion was not required.

The meeting ended at 8.20 pm

Signed: ....

Date: ....

Scrutiny & Overview Committee

Meeting held on Thursday, 20 January 2022 at 6.30 pm

This meeting will be 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 (Deputy-Chair), Jade Appleton and Joy Prince

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

Apologies: Councillor Mike Bonello

PART A

5/22 **Minutes of the Previous Meeting**

The minutes of the previous meeting held on 7 December 2021 were agreed as a correct record.

6/22 **Disclosure of Interests**

There were no disclosure of interest made at the meeting.

7/22 **Urgent Business (if any)**

There were no urgent items of business for consideration by the Scrutiny & Overview Committee at this meeting.

8/22 **Community Fund - Community Infrastructure Levy Local Meaningful Proportion Assignment 2022/23**

The Committee considered a report set out on pages 5 to 10 of the agenda, which following a request made at the previous Committee meeting held on 7 December 2021, provided further information on the use of funds from the local meaningful proportion (LMP) of the Community Infrastructure Levy (CIL) for the Community Fund.

An introduction to the report was provided by the Council's Head of Spatial Planning and Interim Head of Growth Zone & Regeneration, Steve Dennington and Community & Voluntary Sector Manager, Simon Bashford. During the introduction the following was noted:-

- The Council had been collecting CIL income since 2013. 15% of the income raised through CIL was allocated as the LMP, which could be used for anything that addressed the demand development places on an area.

- Government guidance advised that in an area where there were no parish or town councils, the borough needed to demonstrate that it had engaged with the community on the use of LMP.

- A bid was submitted by the Communities team to allocate £400,000 from the LMP for the Community Fund, which was considered as part of the budget setting process. Following consideration it was decided that this use of funds would reflected the demand new development places upon an area, and as such was considered an appropriate use.

- The Council was required to produce an annual statement on the use of CIL funding.

- The next commissioning cycle of the Community Fund would begin in the summer, with engagement starting in the spring. The outcome from the bidding process would be reported to Cabinet in November for final determination.

Following the introduction, the Chair commended the full response provided by officers to the questions raised by the Committee, noting that reassurance could be taken from the information given.

Further explanation was requested to explain how applications from community groups were submitted. It was confirmed that the Council created a prospectus to set out what it wanted to commission. This was then disseminated to local groups, with workshops held with the community and voluntary sector across the borough to spread the message. The four local community and voluntary sector coordination groups in the borough helped to raise awareness of the Community Fund.

It was agreed that sufficient assurance had been provided on the legality of using the LMP for the Community Fund. However it was questioned whether consideration had been given to the small grants fund. It was confirmed that the grants element for funding under £15,000 did not feature in the request for £400,000 as it was outside the timescale for this fund. It was highlighted that many small groups had still been able to access the larger sums, with groups encouraged to use the London Tender Portal as this would provide access to other funding sources.

Following discussion of this item, the Chair thanked the officers for the extensive information that had been provided to the Committee.

Conclusions

Following discussion of this item the Scrutiny & Overview Committee reached the following conclusions:-

1. From the information provided the Committee was reassured that the used of the local meaningful proportion of the Community Infrastructure Levy for the Community Fund was within the context of the regulations.

2. The commitment to promoting the availability of the Community Fund to local community groups was welcomed and it was requested that all Members be kept informed when the next round of commissioning was launched.

Recommendation

The Scrutiny & Overview Committee recommends that the Cabinet Member for Communities, Safety & Business Recovery ensures the dissemination of information about the Community Fund is circulated to all Members.

9/22 **2022-23 Budget**

The Committee considered a report set out on pages 11 to 12 of the agenda, together with three Cabinet reports provided in the supplemental agenda. The three report provided were:-

- Financial Performance Report – Month 8

- Medium Term Financial Strategy 2022/23 to 2024/25 – Update on Position

- Updated 2021/22 and

- Forecast General Fund Capital Programme 2022/23 to 2024/25

These reports were due to be considered by the Cabinet on 24 January 2022 and had been provided for the Committee to inform the budget scrutiny process.

An introduction to the information provided was given by the Council's Section 151 Officer, Richard Ennis, during which the following was noted:-

- The Council continued to deliver this year's budget. The Government had not yet provided confirmation on the £50m capitalisation direction, but feedback from the Improvement and Assurance Panel had been positive.

- The level of capital spend against the budget was still low, with an in-depth review planned to test the year end position.

- The Housing Revenue Account (HRA) continued to be overspent, which could mainly be attributed to pressures on maintenance.

- Good progress had been made on the 2022/23 budget to ensure it was robust, deliverable and sustainable.

- The grant settlement from Government had been better than expected, but it was important to continue with cross party lobbying for more support in light of the unique challenges Croydon faced.

- The cost of the concessionary fares scheme had reduced by £4m, which helped to reduce the budget gap.

- There was concern about the possible impact of inflation, with additional allowance added to the budget. The Council would take a robust position when dealing with contractors trying to pass the cost of inflation onto the Council.

- There was currently a gap of £11m in the 2022/23 budget, with work continuing to identify options for closing this gap. There was confidence that a balanced budget would be delivered.

The Leader of the Council, Councillor Hamida Ali, also provided an introduction to this item, during which the following was highlighted:-

- The Council was in a very different place to last year, which was the product of a lot of focussed work over the past 15 months on the Croydon Renewal Plan delivering improvements in the Council's governance and culture.

- Work continued on recruiting a new Corporate Management Team with Jane West being appointed as the new Corporate Director for Resources and Annette McPartland appointed as the permanent Corporate Director for Adult Social Care and Health.

- There had been difficult choices made in the budget, but this reflected the determination of the Administration to get to grips with the challenging nature of the financial environment for local government.

- Despite the scale of savings required, the Council still had approximately £300m in controllable spend. Choices made on this controllable spend had meant that the Council was able to maintain services for residents including fortnightly bin collections, keeping all libraries open, continuing community grants and maintaining the Domestic Abuse Centre.

Following the introduction to this item the Committee was given the opportunity to ask questions about the information provided in the three reports. The first question related to the overspend in the budget for temporary accommodation and whether there was a plan in place to contain the costs. It was confirmed that the Corporate Director for Housing had been reviewing the Council's processes and procedures for temporary accommodation, including looking at other authorities. A report was due to come to the Cabinet in February on the outcome from this review.

Given that it had been highlighted that the Housing Revenue Account was overspent, it was questioned how this was being addressed. It was confirmed that the majority of the overspend related to repairs and claims against the Council for not processing repairs within the required timescale. The Directorate was aware of the issues and was in the process of identifying improvements for the repairs service.

Further information was sought about the fees and charges review included in the section of the report detailing the Medium Term Financial Strategy (MTFS) savings risks. It was advised that due to the difficulties in the economy the demand for income services needed to be reassessed, which was why it was shown as a risk. Further detailed work was underway to prepare an updated schedule with improved forecasting.

As approximately 1,000 asylum seekers had been placed in hotels in the borough by the Home Office, it was questioned whether a needs assessment had been undertaken on the level of support that may be required from the Council and how this will impact upon the budget. It was confirmed that this was being worked through and more detail would be included in the Month 9 – Finance Performance Report.

The Council was constantly working on the broader question of the cost of supporting unaccompanied asylum seeking children (UASC) and liaised closely with the Home Office to make the point about the pressure it placed on the Council’s resources. It was confirmed that going forward the cost would be held as a corporate item, as it should not be the responsibility of the service to fund the support. Although the Government had provided a one off payment this year to support the Council with the cost of supporting UASC, lobbying would continue for more sustainable funding.

Although there was cross party support for the Government funding the cost of support for UASC, it was highlighted that there was a risk that the £2.9m shortfall may not be funded, which would leave a gap in the budget for 2022/23. It was suggested that the Government should be approached again before the budget was finalised to try to gain some certainty on this amount.

In response to a question about when the Council would receive the funds for the sale of the College Green site and the Croydon Park Hotel, it was confirmed that the sales had been completed at the end of 2021. The Council had achieved a value of £24.9m for the hotel and £22m for the College Green site, which was felt to be a good return in the current market conditions. The Administration had set out how it wanted to use any capital receipts, with the first part being to fund transformational work and the second being to reduce the Council’s debt and to fund capitalisation.

The Committee was supportive of the need to start the budget setting process for 2023/24 as early in the new financial year as possible, but it was acknowledged that there was a risk that this would be impacted by the election of a new Mayor in May 2022 whose priorities would need to be taken into consideration. The Administration wanted to move away from using a salami slicing approach to a more considered budget approach. As this required longer to prepare, work had already started on this budget.

As it was noted that an additional 2% had been added to the budget on top of the already budgeted 3% increase for inflation, it was questioned whether it was expected that this risk would be realised. It was advised that inflation was a big issue nationally and it was difficult to forecast the length of time it would have an impact. The additional sum had been added into the budget to ensure that inflationary costs had been realistically estimated. It was not a given that the Council could pick up inflationary pressures from contractors. The inflationary increase would be held corporately and only released to services once it had been demonstrated that they had done everything possible to keep costs down.

The Committee welcomed confirmation that a group had been set up to improve the capital programme. This group had started by creating the capital budget set out in the Cabinet report and would next be testing the forecasting on delivery. Having a capital programme with a focus on reducing ongoing revenue costs was also welcomed.

It was questioned whether there was a sufficient stock of places of association to accommodate the voluntary sector and whether this could be a principle that was embedded in the capital programme. It was advised that the asset disposal plan needed to consider the broad aspects before disposal. If the Council wanted to drive its debt down, one way of achieving this was through selling assets. However, there was also a need to take a balanced view and look across services to ensure that disposal did not lead to significant knock on problems elsewhere.

The recent disposal of Ashburton Lodge was highlighted as an example of the Council taking account of other factors beyond financial income. It was confirmed that all asset disposals were promoted to the voluntary and community sector in the borough, with a one smaller asset recently sold to an organisation in the sector.

At the end of this item, the Chair thanked the officers and the Cabinet Members for their contribution to the discussion, noting that the progress made with the budget was largely reassuring.

Conclusions

At the end of this item the Scrutiny & Overview Committee reached the following conclusions:-

1. It was recognised that although there were still challenges requiring a continued tight control on expenditure there was a reasonable expectation that the Council would come in on budget.

2. The Committee was supportive of the recommendations set out in the Cabinet reports.

3. The flexibility displayed on capital disposals where there was community interest in the asset was to be commended.

4. Given the Capital Programme was being reviewed, the Scrutiny & Overview Committee would like to be kept informed of the outcomes arising from this, with a view to scheduling further scrutiny of the programme in 2022/23.

10/22 **Scrutiny - Budget Challenge**

The Committee considered two separate reports set out between pages 13 to 40 of the agenda which provided a response to the two budget areas chosen by the Committee as a focus for a deep dive.

The first area was the Corporate, Resources and Assistant Chief Executive areas, from which the Committee was looking for reassurance that it was resourced at the right level to support the improvement journey of the Council. The second area looked at the preparations for the move to the mayoral model of governance and ongoing support for Members, to ensure that these areas were also appropriately resources.

Corporate, Resources and Assistant Chief Executive areas

In reviewing the information provided in the report on the budget for the Corporate, Resources and Assistant Chief Executive service areas, the Committee agreed that it would focus on how the budget would enable the services to support the organisation to deliver cultural change and system improvement.

The first question asked for more information on how the expectation of increasing digital revenue (as set out in the budget report) was estimated. It was confirmed that it had been anticipated that there would be an income from digital advertising once the new digital bus stops had been rolled out. As the full roll out would not be completed in the next year, the estimated income had been reduced.

As the need to change the culture of the Council had been highlighted in both the Report in the Public Interest and the Ark report on Regina Road, particularly the need to improve financial discipline and customer service, it was questioned how the budget would help to deliver this. It was advised that the Beyond Business School had been commissioned, following a procurement exercise, to deliver a key piece of work on cultural change. This work would take a Train the Trainer approach, upskilling Council staff to roll out the change across the organisation. This work would focus on embedding improved customer services skills and improving resident engagement. Once the results had been analysed, the recently completed staff survey would also help to inform the cultural change work. There was also work with the digital team to ensure that staff were aligned to the digital world.

It was questioned whether there was sufficient resource in the Human Resources team to be able to support the improvement of the Council, particularly as there were savings for the team in the budget. The Interim Chief People Officer, Dean Shoesmith, advised that when he join the Council in the autumn, he had undertaken a HR Maturity Index of the service, which had identified a number of opportunities for efficiencies and improvements through business process reengineering using the Lean process.

Along a similar vein, it was also questioned whether Croydon Digital Service was able to deliver the system improvement of the Council. The Interim Head of Corporate Technology, Paul Golland, advised that the work of the service had been reviewed to ensure that the projects being delivered aligned with the Council's priorities.

The Deputy-Chair and Vice-Chair of the Committee reported back on a meeting they had with officers from the Programme Management Office (PMO). It confirmed that the meeting had provided significant reassurance that good people were involved in the team. The only concern raised was whether the PMO was sufficiently resourced to deliver the Council's change programme. It was confirmed that additional external resource had recently be brought in to increase the capacity of the team and to expand expertise, as there was a need to move at pace with this work. A key element of changing the culture of an organisation was to develop an accountable culture. To help achieve this the performance framework had been strengthened to include more KPI's on satisfaction levels.

Concern was raised about the lack of pace in improving the telephony system, with an update on this work requested. It was advised that work on a new telephony system was well underway with the procurement of the new system due to end on Friday. Once the procurement process was completed, the project would move to the implementation phase with a three month roll out programme. The chosen supplier was well proven and key benefits of the new system included staff having access to soft phones and apps to take calls. The implementation team for the project included key services such as customer services. As a result of the new system, mobile phone usage could be reviewed, which should deliver a saving.

It was highlighted that apprenticeships were a good way to change the culture of an organisation and as such was there any plans to increase the number of apprenticeships offered by the Council. It was agreed that apprenticeships were important, not just to changing the culture of the workforce, but also boosting the local economy and community. The Government offered a levy for apprenticeships and it was important that it was fully spent by the Council.

It was agreed that the public also needed to have confidence that the culture of the Council was changing and it was questioned whether external communication had been considered. It confirmed that there was a need to communicate the behavioural changes in the Council, but how this was delivered would need careful consideration.

Move to the Mayoral Model of Governance and Support for Members

This report was introduced by the Council's Monitoring Officer, John Jones, and Governance Improvement Advisor, Heather Wills. During the introduction to the report the following was noted:-

- There was a lot of work being put in to prepare for the move to the new mayoral model of governance. This included the Local Government Association (LGA) carrying out a peer review looking at the progress made to date, the results of which should be available by the end of February.

- The LGA had also been asked to conduct a peer review on the Democratic Services function to give reassurance on what the team should look like and to ensure the structure was fit for purpose ahead of the move to the mayoral system. This was particularly crucial with the election likely to lead to a large cohort of new Members requiring induction and training.

- There was currently staffing challenges within the Democratic Services team, with four vacancies. One of the two senior officer vacancies had been recruited and an interview was scheduled, which if successful, would fill one of the officer vacancies. Democratic Services was a difficult area to recruit staff as the role was specialised, with certain skills needed.

- To cover the immediate resource gap, mutual aid had been sought from other local authorities, with support provided to clear the back log of minutes. Officer support was also being provided by the LGA and a graduate trainee was being seconded from another team in the Council.

- Although the current arrangement was not ideal, having the temporary support in place meant that the immediate situation was manageable with all Committee meetings covered up until the end of March. Tribute was also paid to the commitment of the team who had been working under significant pressure since the start of the pandemic in 2020.

Following the introduction, the Chair highlighted that the Report in the Public Interest and the Governance Review had emphasised that the Council needed to strengthen its governance processes. Areas such as access to information and the availability of the Forward Plan continued to remain a concern for Members.

Thanks was given to the officers in Democratic Services for their hard work, particularly since the start of the pandemic, with it questioned how robust the review would be. It was hoped that the review would show what good looked like and what a good Democratic Services team does, which should include providing support for all members of the Council. There was additional money in the budget to help implement the findings of the review, but the question was whether would be enough. It was likely that any implementation would need to carefully planned and delivered incrementally

At the conclusion of this item the Chair thanked all those involved in the preparation of both reports for the meeting and the participation and engagement of officers with the questions of the Committee.

Conclusions

Following the discussion of the Budget Challenge items, the Scrutiny and Overview Committee reached the following conclusions:-

1. The work commissioned on cultural change was welcomed and it was agreed that this maybe something the Committee would want to revisit later in the year.

2. It was agreed that the cultural change programme was vital to the Council going forward, including the need to ensure the organisational valued its staff. From the information provided, there was a good indication that change was being made in the right direction.

3. A request was made for a summary of the cultural change programme to be provided for the information of the Committee.

4. The Committee was reassured by the information provided in the report on the preparations for the move to the mayoral model of governance and the reassurance given on the commitment to continuing to improve the Council's governance. It was welcomed that significant progress had been made since the report was requested before the New Year and the outcome from the review was eagerly awaited.

11/22 **Exclusion of the Press and Public**

This motion was not required.

The meeting ended at 9.30 pm

Signed: ....

Date: ....

REPORT TO:	**SCRUTINY & OVERVIEW COMMITTEE** **8 December 2020**
SUBJECT:	**Report in the Public Interest concerning the refurbishment of Fairfield Halls and related governance arrangements – Action Plan**
LEAD OFFICER:	**Katherine Kerswell, Chief Executive** **Richard Ennis, Interim Corporate Director of Resources and Section 151 Officer** **John Jones, Interim Monitoring Officer**
WARDS:	**All**

1. RECOMMENDATIONS

The Committee is recommended to:

1. Consider and review the Action Plan attached at Appendix 1B;
2. Consider any proposed amendments or feedback that it wishes to make on the action plan; and
3. Submit that feedback in a report to Cabinet at its meeting on 21 March 2022.

2. EXECUTIVE SUMMARY

2.1 Following the extraordinary meeting of Council held on 3 February 2022, this report provides an opportunity for Members of the Scrutiny & Overview Committee to review the action plan developed in response to the recommendations made in the recent Report on the Public Interest. Any comments or feedback made by the Committee on the action plan will be reported to the Cabinet at its meeting on 21 March 2022.

2.2 Discussion of the findings from the Report in the Public interest is in law reserved to the extraordinary meeting of the Council held on 3 February. At that meeting the Council agreed to accept the recommendations set out in the report. It is not the role of other Council committees, such as Scrutiny and Overview Committee, General Purposes and Audit Committee or Cabinet to conduct its own review of the finding in the Report in the Public. Discussion of this item at the meeting should focus on the whether the action plan will deliver the recommendations accepted by Council on 3 February.

3. BACKGROUND

3.1 The extraordinary meeting of Council held on 3 February 2022 considered a Report in the Public Interest (attached at Appendix 1A) concerning the refurbishment of the Fairfield Halls and related governance issues by the Council's external auditors, Grant Thornton. A copy of the report to Council is attached at Appendix 1, including the appendices to that report, namely the Action Plan (labelled as Appendix 1B).

3.2 In considering the report, Council agreed the action plan to implement the recommendations made in the report in the public interest.

4. REPORT IN THE PUBLIC INTEREST ACTION PLAN

4.1 In agreeing the action plan, Council also agreed that the plan be presented to the next meetings of the General Purposes and Audit Committee and the Scrutiny and Overview Committee. This is to allow the respective committees to consider and review the action plan from their differing constitutional positions.

4.2 Following consideration of the action plan, any comments and feedback from the Committee will be reported to the Cabinet meeting scheduled for 21 March 2022. At that meeting, Cabinet will also consider any feedback from the General Purposes and Audit Committee as well as further detail on the recommendations, timelines and accountabilities, the delivery mechanism to support the improvement work and the costs, where possible, associated with implementing the recommendations.

4.3 In considering the action plan, Members of the Committee should note that Council agreed all of the recommendations listed in Appendix 1.

CONTACT OFFICER: Stephen Rowan, Head of Democratic Services and Scrutiny

APPENDICES TO THIS REPORT

Appendix 1 - Report to Extraordinary Council – 3 February 2022

Appendix 1A - Report in the Public Interest

Appendix 1B - RIPI Action Plan

REPORT TO:	**EXTRAORDINARY COUNCIL** **3 February 2022**
SUBJECT:	**Report in the Public Interest concerning the refurbishment of Fairfield Halls and related governance arrangements**
LEAD OFFICER:	**Katherine Kerswell, Chief Executive** **Richard Ennis, Interim Corporate Director of Resources and Section 151 Officer** **John Jones, Interim Monitoring Officer**
WARDS:	**All**

SUMMARY OF REPORT:

In late December 2020, the Council held discussions with its external auditor, Grant Thornton, regarding concerns over historical governance arrangements and spending in relation to the refurbishment of Fairfield Halls and related projects over the financial years 2016/17 – 2019/20.

The external auditor initially reviewed the concerns and decided to begin a formal value for money review of the refurbishment of Fairfield Halls and the associated governance arrangements between June 2016 and early 2020.

The external auditor commenced a formal Value for Money report in the late spring / early summer of 2021. However, the external auditor then paused work on that draft and determined that the issues uncovered required further consideration and investigation, the results of which are set out in the Report in the Public Interest.

Grant Thornton has now issued its 'Report in the Public Interest' **concerning the refurbishment of Fairfield Halls and related governance arrangements** on 26 January 2022, which was published by Croydon Council on Wednesday 26 January 2022. The report details significant concerns regarding the decision making, value for money, behaviour and governance arrangements that were associated with this major project during the financial years 2016/17 to 2019/20.

This report details the Council's statutory obligations in response to the publication of the report, which have to date been met in full. The report outlines the further statutory requirements that the Council is required to take following this Extraordinary Council Meeting.

The report further details the range of corrective actions that have been taken to date and proposes an action plan in response to the recommendations made by the external auditor. It is also proposed that this new action plan be included in the Croydon Renewal and Improvement Plan, currently being refreshed for 2022/23 and beyond.

This Report in the Public Interest is an entirely separate report from the previous Report in the Public Interest received by the Council on 23 October 2020.

Whilst it touches on some of the same subject matter as that first report, its production by the external auditor does not infer in any sense that the Council has failed to respond to the requirements and recommendations of the first report. In fact, the external auditor comments “the Council has made considerable improvements [since] and is continuing to respond to matters contained in that report [October 2020 RIPI]”.

As has been very recently reported and independently audited, delivery of the actions agreed by full Council for the November 2020 Report in the Public Interest stands at 62% and was most recently noted by Cabinet on 24 January 2022 as standing at 65%.

FINANCIAL IMPACT:
There will be costs associated with the implementation of the recommendations detailed within the report and for the production of the external auditor’s report.

The costs of this report are yet to be finalised and an update regarding the associated costs will be presented to a future meeting of Cabinet for consideration and approval.

The approved budget for the refurbishment project was £30m. The total expenditure in relation to this total project was £67.5m as set out in section 2 below and in the Report in the Public Interest.

In relation to the financial impact on the Council accounts, detailed by the RIPI report, the Council proactively corrected and provided for the associated costs within 2019/20 and 2020/21 accounts and therefore will not affect the general fund in this financial year nor going forward.

Section 2 of the report details the accounting corrections the Council has made in agreement with the external auditors.

1. RECOMMENDATIONS:

Council is recommended to:

1.1 Fully accept the findings of the Report in the Public Interest and the external auditor’s recommendations;

1.2 Note that recommendations 1, 2, 3, 4, 7, 9 and 11 have been identified by the external auditor as S24 statutory recommendations as detailed in appendix 1 to the report;

1.3 Note the range of corrective actions that have already been taken to date as detailed in paragraph 2 of the report;

1.4 Note that the financial issues detailed in the report have already been fully taken into account in the Council’s Medium Term Financial Strategy as agreed by Council in March 2021 and that the report does not create any significant additional financial pressures that have not already been dealt with by the Council.

1.5 Consider and agree with the opinion contained in the Council's Chief Finance Officer's (Section 151 Officer) report set out in paragraph 4 of this report;

1.6 Consider and agree with the opinion contained in the Council's Monitoring Officer's report set out in paragraph 5 of this report;

1.7 Consider and agree the action plan detailed at appendix 2 to this report, that includes a response to each of the external auditor's recommendations, and the indicative timeline for actions and accountabilities;

1.8 Agree that the action plan be presented to both the General Purposes & Audit Committee and the Scrutiny & Overview Committee at their next meetings to consider and review the plan from their differing constitutional positions and report any feedback to Cabinet.

1.9 Request that Cabinet receives a report that includes any feedback on the action plan from the Scrutiny & Overview Committee and the General Purposes & Audit Committee and provides further detail on the delivery of the Action Plan, including the anticipated costs of implementing the recommendations;

1.10 Agree that the action plan be incorporated into the Croydon Renewal and Improvement Plan as part of the refresh currently underway;

1.11 That progress on implementing the external auditor's recommendations be included in the existing Croydon Renewal Improvement Plan update reports that are presented to Cabinet, the Scrutiny & Overview Committee, General Purposes and Audit Committee and Council;

1.12 Note that a report detailing proposals to finalise any further refurbishment of the Fairfield Halls will be presented to Cabinet in March 2022.

1.13 Note that the Chief Executive has written to the Directors of Brick by Brick to request that they review and explain the charge made to the Council in relation to the project management of the refurbishment of the Fairfield Halls and the variations.

1.14 Note that the Council will continue to maintain an open dialogue with the external auditor, Independent Chair of the General Purposes and Audit Committee, Department for Levelling Up, Housing and Communities and the Improvement and Assurance Panel to keep them appraised of the progress in implementing the Action Plan.

1. BACKGROUND

1.1 As part of the Council's work following the original Report in the Public Interest received in October 2020, it formally raised concerns about historical arrangements, behaviour and spending regarding the refurbishment of Fairfield Halls with its external auditor, Grant Thornton. At that point, the Council and the external auditor jointly discussed whether consideration should be given to undertaking a formal Value for Money review of the major project. Following their own assessment, the external auditor decided to progress on this basis.

1.2 During this work however, the external auditor determined the issues uncovered required further consideration and so the Value for Money review approach was paused and their work focused on investigating those issues, the results of which are set out in the Report in the Public Interest.

1.3 Having completed that additional work, the external auditor has determined to issue a Report in the Public Interest (the report) concerning the refurbishment of the Fairfield Halls and the related governance arrangements. The full report is attached at Appendix 1.

1.4 The conclusions of the external auditor's review are detailed in full in Appendix 1. They include that the Council "failed to ensure the legality of the arrangements for the project", that the Council "failed to ensure it was acting lawfully", and "the lack of formal consideration of the external legal advice, the lack of completed legal land transfer documentation and the lack of properly executed written legal arrangements covering the provision of funding to Brick by Brick is in our view a very serious matter and demonstrates fundamental failings by the Council". These are significant findings.

1.5 For clarity, Members should note that *unlawful* expenditure should not be confused with *illegal* expenditure. The external auditor has not made any suggestion that any act has taken place that is prohibited by law.

1.6 In summary, the external auditor is of the opinion that the failures were:

i) to ensure that statutory duties were fulfilled;
ii) that legal advice was not followed;
iii) that the requirements of the constitution were not followed; and
iv) therefore the governance practices including the approach to decision making and financial control

likely led to significant expenditure being incurred without the legal authority to do so.

1.7 In considering what action to take as a result of the findings of its review, the external auditor has noted that the Council has fully accepted the concerns in regard to the governance and financial arrangements for the project, had already correctly rectified its treatment of the expenditure on the Fairfield Halls refurbishment project and as such, is of the view that seeking a declaration of unlawful expenditure from the court would not materially remedy the situation.

1.8 On that basis, the external auditor has issued a Report in the Public Interest fulfilling their statutory duty in accordance with Section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.

1.9 The report stated in its conclusions that the external auditor is of the opinion that:

i) The Fairfield Halls refurbishment was a complex project that was delivered later and at a higher cost than authorised by the original Cabinet approval in June 2016.

ii) That the Council failed to ensure the legality of the arrangements for the project;

iii) That gaps in the Council's governance at that time restricted wider scrutiny and challenge that may have allowed corrective action to be taken; and

iv) That throughout the project there have been examples of a failure to discharge duties from a small group of senior officers (the then Senior Statutory Officers and the then Executive Director of Place). These senior officers were responsible for reporting to the then Portfolio holders (the Portfolio Holder for Homes and Gateway Services, for Finance and Resources and the Leader) who were either not briefed by officers and failed to request briefings on the project or did not take effective action in response to concerns raised by the senior officers.

1.10 In reaching these conclusions, the external auditor highlighted 19 areas where it had concerns regarding the refurbishment project. These 19 areas are:

i) The legal arrangements for engaging Brick by Brick to refurbish the Halls

ii) The legal arrangements for funding Brick by Brick to refurbish the Halls

iii) Not fully considering or implementing legal advice received

iv) The statutory powers on which the council relied in order to lend money to Brick by Brick

v) Compliance with State Aid rules (now known as UK obligations on subsidy control)

vi) How challenge and concerns raised by another Local Authority, working as the accountable body for the Coast to Capital Local Enterprise Partnership, were considered

vii) How the loans to Brick by Brick were treated in the Council's Minimum Revenue Provision policy

viii) Signing of contracts and record keeping of formal documents

ix) Governance arrangements for Brick by Brick

x) Governance over the Fairfield Halls Refurbishment Project

xi) Reporting to the Scrutiny & Overview Committee

xii) The financial position of the project

xiii) The original budget setting process for the project

xiv) The final cost of the project

xv) The impact on the Council's overall financial position

xvi) The project management of the refurbishment and the co-ordination of contractors

xvii) The value for money achieved by the project

xviii) The inherent conflicts of interest

xix) Issues regarding delegated decision making

1.11 The report contains 12 recommendations, of which 7 are identified as statutory recommendations. Statutory recommendations are written recommendations to the Council made by the Auditor under section 24 (Schedule 7) of the Local Audit and Accountability Act 2014. A recommendation under Schedule 7 requires the Council to discuss and respond publicly to the report. This discussion and response is taking place at this Extraordinary Meeting, which is being held within one month of receiving the report and statutory recommendations as required by the Act. Council must decide (i) if the recommendations are accepted and (ii) what, if any actions will be taken in response to them. The Action Plan at appendix 2 sets out the actions that the Council proposes to take in response to all of the recommendations made in the report, including the 7 statutory recommendations.

1.12 The Council fully accepts the findings of the report and the concerns raised by the auditor.

1.13 Both the new administration, the current statutory officers and the chief officers share the serious and significant concerns at the findings in the report, and particularly that those responsible for the failures of the refurbishment project did not provide formal, regular information to members that would be expected in running a project of this scale.

1.14 In the time that has passed since the events described in the report, the Council's new political and chief officer leadership has been clear that the Council needs to learn from its past failings and put in place more rigorous governance and higher expectations on accountability and transparency for both officers and Members. The work to date on this has been positively commented upon by the external auditor in the report.

1.15 The events, decisions and actions described in the Report in the Public Interest are an important part of understanding what went wrong in the past so that the Council can ensure it never happens again. The recommendations made by the external auditor reinforce the importance of the work that is underway to strengthen not only the Council's governance processes, but also the culture and values of the Council.

2. ACTIONS ALREADY TAKEN SINCE THE EVENTS DESCRIBED IN THE REPORT

2.1 Members will be aware that this Report in the Public Interest reflects decisions and events relating to the four year period 2016 to early 2020. Over the past fifteen months, the Council has begun to deliver a wide-ranging transformation programme with new political and chief officer leadership and a strong focus on embedding a new culture of more rigorous governance, openness and accountability. The Improvement and Assurance Panel appointed by the Secretary of State for Department for Levelling Up, Communities and Housing has assessed the Council's progress over that period and provided routine updates to the Government. In her letter in response to the latest update from the Panel on 2 November 2021, the Minister of State for Equalities and Levelling Up Communities, Kemi Badenoch MP noted the "significant progress" made by the Council.

2.2 At its meeting on 6 December 2021, Cabinet received a report that provided a one year on update from lead members of the non-statutory rapid review team that was appointed by the then Secretary of State for Housing, Communities and Local Government in October 2020. The update report reviewed the Council's progress against the recommendations the review team had made in its original report, along with reviewing the Council's progress in improving its financial performance.

2.3 The report of the follow up review concludes "significant progress has been made against the Non-Statutory Review recommendations, and the recovery effort is well underway. Where the recommendations have not be completed in full, there is progress". The report can be read in full at https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2512&Ver=4.

2.4 At its meeting on 13 December 2021, Council also noted the latest update report on the progress made to implement the recommendations made in the previous Report in the Public Interest that was published in October 2020. This report detailed that 62% of recommendations had been implemented and can be read in full at https://democracy.croydon.gov.uk/mgAi.aspx?ID=13763#mgDocuments.

2.5 As a result of the progress in delivering the significant change programme across the council since September 2020, there are many areas identified in this Report in the Public Interest where the Council has already learned from its previous failings and has implemented improvement measures. A number of these steps that relate to the findings described in the external auditor's report are summarised below.

<u>Ensuring that expenditure on refurbishing Fairfield Halls has now been accounted for correctly</u>

2.6 The external auditor’s concerns regarding the expenditure on Fairfield Halls flowed out of the previous report in the public interest issued in October 2020. As part of the Council’s response to the issues contained in that report, and to issues that the Council had identified itself, concerns regarding the historical decision making and governance relating to the refurbishment project were raised with the external auditor in December 2020.

2.7 The Council previously reported to Cabinet in February 2021 progress being made on resolving legacy spend issues on Fairfield Halls and associated projects. The Council reported that the total spend on Fairfield Halls and associate projects was £69.16m. During 2021/22 Brick by Brick presented updated figures to the Council after a further detailed internal review within the Company. This has resulted in a revision downwards from the figures presented in February 2021 and the total spend on the Halls and associated projects is £67.5m. The main reasons for the change related to VAT and duplicate ledger entries and reduction in accrual following further detailed analysis.

As at the end of March 2020, a total of £67.5m had been spent on the Fairfield Halls. Brick by Brick had additionally incurred a total interest charge of £9.10m. Of the £67.5m spend the Council had loaned Brick by Brick £61.0m and the balance of £6.5m had been funded from the Local Enterprise Partnership “Coast 2 Capital” grant funding. In addition, the £0.3m of further works were expensed on the adjacent car park and public realm sites, which were all funded from using Council loans.

2.8 The Council’s accounting follows the accounting principle under International Financial Reporting Standards that require accountants to ensure transactions are accounted for based on the substance of the transaction rather than their legal form. Substance over form means that when accounting for financial transactions, the measurement and reporting is of the actual impact of the event and not its legal description.

2.9 In other words, if your actions are different to what is required by definition in law, to make something lawful, the substance (your actual actions and deeds) of what you have done takes precedence in determining the lawfulness of the actions and not what you have defined them or described them to be.

2.10 The Council accounted for the transactions in the manner they were designed to occur. This meant that the Council’s loan to Brick by Brick Croydon Limited was accounted for as such and the Council accrued the interest on that loan at a rate of 6.25%.

2.11 The Fairfield Halls building as well as the land it sits on were also accounted for within the Council’s balance sheet as no transfer had taken place and the Council continued to own the asset.

2.12 The review by the external auditor identified that the works done by Brick by Brick Croydon Limited were on a Council asset and therefore should have been classified as capital expenditure from the Council's perspective. As mentioned within 2.8, it is important that transactions are accounted for based on substance of the transaction rather than legal form. The Council and Brick by Brick, whilst not formally documented via a legal agreement, had always intended to transact in a way where the Council would lend monies to the company to develop the Halls and the College Green site. The Council and Brick by Brick both accounted for the monies loaned, in line with the June 2016 Cabinet report.

As indicated within 2.7 and 2.8 the total spend position has changed since figures previously reported to Cabinet in February 2021. As a result of this change the Council will need to work with Grant Thornton to ensure all accounting entries are correctly implemented. The Council had initially calculated an interest write off of £9.15m based on a total spend of £69.16m, however revision to the numbers will result in a positive interest adjustment by £0.050m, therefore reducing the amount initially written off.
Overall, the change in figures is not expected to impact the Council's financial position adversely.

2.13 The Council has agreed with the external auditor's assessment and subsequently made corrections to its 2019/20 and 202/21 accounts. The loan was corrected from the Council's balance sheet and the Council accounted for the costs incurred by Brick by Brick as capital expenditure which was capitalised to the asset. The accrued loan interest charge of £9.15m was written off to the Income & Expenditure statement as a prudent measure. Whilst the accounting entries and corrections have been agreed with Grant Thornton in principle, further review and tests are ongoing to ensure all key accounting requirements are fulfilled.

2.14 The approach to correcting the Council's accounts and the accounting treatment had been discussed and agreed with the external auditor prior to being implemented by the Council in the budget report of March 2021.

2.15 It needs to be explicitly understood that the financial issues identified in this Report in the Public Interest 2021 report have been already fully taken into account in the Council's MTFS as agreed by Council in March 2021. This report does <u>not</u> create any significant additional financial matters that need to be dealt with.

<u>The Future of Brick by Brick Croydon Limited</u>

2.16 At its meeting on 21 September 2020, Cabinet resolved to commission an independent review of all companies and entities that it owned to fully document their relationship with the Council, to ensure that they were fit for purpose and to ensure that the risk profile they presented for the Council was fully understood. The report and minute can be viewed here: https://democracy.croydon.gov.uk/mgAi.aspx?ID=9341.

2.17 The findings of that independent review were reported to Cabinet on 25 November 2020 and predominantly focused on Brick by Brick due to the high value of loans that the Council had made to the company and the higher public profile of that investment. The full report and minute can be viewed here: https://democracy.croydon.gov.uk/mgAi.aspx?ID=10047.

2.18 As an immediate consequence of that review, the Council:

i) Removed the existing Directors of Brick by Brick and appointed two new Non-Executive Directors with strong financial backgrounds (Council should note the appointment of 2 additional further Directors to ensure that the Board has strong industry experience to supplement the strong financial experience of the current directors);

ii) Passed a resolution to formally allow the Council to have sight of all minutes of Company Directors' meetings and records of all decisions made by the Company Directors.

iii) Passed a resolution to formally allow the Council to inspect all Company accounting or other records or documents at any time.

iv) Commissioned a further review to assess the different options identified in the independent review regarding the Council's interests in Brick by Brick.

2.19 Cabinet has considered a number of papers on the future of Brick by Brick during 2021.

At its meeting on 18 February 2021, Cabinet agreed to pursue an option that included Brick by Brick building out a number of sites in its portfolio, the sale of a number of other sites and keeping the option of a sale of the business under consideration.

On 17 May 2021, Cabinet received a further report that included details of a single bidder to purchase Brick by Brick and that a best and final offer had been received.

At its meeting on 12 July 2021, Cabinet resolved to reject the offer to purchase Brick by Brick, and instead to build out 23 sites and for six remaining sites to be returned to the Council and marketed for sale. This was because it considered that this provided the best means for the Council and local taxpayers to maximise the return on previous expenditure on Brick by Brick.

2.20 Having resolved to pursue this partial build out option, it is estimated that those sites being built out will be completed in the 2023/24 financial year and Cabinet will be presented with a report at that time to determine the next steps for Brick by Brick following the conclusion of the partial build out.

Governance Arrangements for Brick by Brick Croydon Limited

2.21 As the Report in the Public Interest makes clear, the Council has had a number of governance bodies for its growth activity and major projects, including Brick by Brick. Learning from these models, a new approach to governance is being introduced with clarity on Member and officer roles clearly established.

2.22 In January 2021, the Council established a Brick by Brick Shareholder and Investment Board which was designed to oversee performance and delivery matters within Brick by Brick. The Board monitored and reviewed the delivery of the revised business plan for Brick by Brick and replaced the previous "Shareholder Investment Board". That previous Board was comprised of a combination of Members and Officers.

2.23 Cabinet considered a further paper at its meeting in November 2021 that set out the future governance arrangements for Brick by Brick. This report established the Brick by Brick Shareholder Cabinet Advisory Board which replaced the Shareholder & Investment Board. The new Board is comprised exclusively of Cabinet Members with officers participating in an advisory capacity only.

2.24 Full details of the new Board can be found in the Cabinet paper here: https://democracy.croydon.gov.uk/documents/s33733/06%20Report%20-%20BBB%20Governance.pdf.

Governance Arrangements for Other Council Owned Companies

2.25 In addition to strengthening the governance arrangements for the Council's ownership of Brick by Brick, Cabinet also agreed new arrangements for all other Council owned companies at its meeting on 26 July 2021 where it was agreed to establish the Croydon Companies' Supervision and Monitoring Panel. This is an officer only panel that will formally report and, if appropriate, make recommendations to Cabinet on a biannual basis and brief relevant Cabinet Members frequently between formal reporting to Cabinet.

2.26 Full details of this Panel can be found at https://democracy.croydon.gov.uk/documents/s31451/Governance%20of%20Companies.pdf.

2.27 Both the Croydon Companies Supervision and Monitoring Panel and the Brick by Brick Shareholder Cabinet Advisory Board are operating to a set of principles of good governance, which are detailed in Section B of the appendix to the Cabinet report and can be seen here https://democracy.croydon.gov.uk/documents/s31453/Appendix%202%20-%20Terms%20of%20reference.pdf.

Other Actions to Strengthen the Council's internal governance

2.28 In addition to the specific measures mentioned above, the Council has undertaken a range of further activities to improve areas of governance that have been covered in this and the previous Report in the Public Interest.

2.29 This includes clarifying member roles and responsibilities through the production of a range of member role profiles which were noted by Ethics Committee at its meeting on 30 September 2021, copies of which can be seen here https://democracy.croydon.gov.uk/documents/s32629/MD%20Panel%20Member%20development%20update%20121021.pdf.

All corporate director and director role profiles have also been rewritten as part of the reorganisation of the council, incorporating the Nolan principles, and agreed by Full Council in July 2021. Together, this has helped to clarify the respective roles and responsibilities of members and chief officers.

2.30 This has been reinforced through the adoption of the new model code of conduct for members by Council at its meeting in October 2021. A new code of conduct for all officers has now been adopted and rolled out to all staff. These new governance arrangements will be supplemented by the production of a new Member and Officer working protocol which is due to be presented to Council in March 2022.

2.31 In July 2021, full Council agreed the Organisation Redesign report which introduced the new approach to internal control in terms of officer and member boards and activity. The actions outlined ranged from agreeing a new vocabulary, a set of new job descriptions and accountabilities as mentioned above and a set of new internal control officer boards and a reporting framework into Cabinet.

2.32 Officers already operate within a system of briefing Cabinet members and opposition leads and working with Scrutiny. However, the internal control system requires a more co-ordinated and coherent range of management activity across the Council that will then report into the relevant Cabinet and opposition lead Member briefing meetings, Cabinet Advisory Boards and Scrutiny Chairs.

2.33 As the July 2021 Council report mentions, the Council did have a set of internal controls and bodies that had fallen into abeyance and many documents are still available on the council's intranet for managers and staff.

2.34 There is a great deal in those resources online that is of value and is still of relevance today. For example, there is a corporate code of governance that incorporates the CIPFA "Delivering good governance" code and each directorate used to have their own scheme of management and internal controls and delegations defined and published.

2.35 A system of internal control inside a local authority consists of a range of processes and activities that must be complied with by managers and staff to ensure effective governance and that stewardship of public money can be assured. But it is not solely about the correct implementation of policies, processes and forms. For it to be truly effective it needs to be part of the day to day management behaviours and dialogue of the Council.

2.36 Another very important element of an internal control system is the need for it to be effectively organised so it can form part of the business of the Council in a smooth and efficient way. It also needs to involve managers and senior managers across the Council in order for it to be a truly lived culture.

2.37 As part of the proposed changes to the senior management structure, it was proposed to introduce a new series of internal control officer boards. These have been established or are in the process of being established, and will be captured in the updated Code of Governance and other associated codes, regulations and references in the Council's constitution.

2.38 The proposed new officer boards will be:

Equality, Diversity & Inclusion	Information Management & Transparency
Finance, Risk and Assurance	Performance, Transformation & Productivity
Health & Safety	Resident Voices
Capital Board	Digital Board

2.39 Each officer board has / will have its own terms of reference (following a corporate template), membership from each directorate management team and other officers and will also be allocated corporate strategies to own on behalf of the Council. The minutes of these meetings will be shared with the corporate management team and the 6 departmental management teams. Participation in these boards will also be open to staff across the council as part of a development opportunity.

2.40 The first of these new officer boards outlined in the July Council Report which are in operation are the Equality, Diversity and Inclusion Board and the refreshed Health and Safety Committee. The next two to be launched will be the Finance, Risk and Assurance Board and the Performance, Transformation and Productivity Board.

2.41 A new Capital Board has also been set up and is in operation.

2.42 As mentioned earlier in this report, in January 2021, the Council established a Brick by Brick Shareholder and Investment Board which was designed to oversee performance and delivery matters within Brick by Brick. This new Board is comprised exclusively of Members with officers participating in an advisory capacity only.

2.43 Cabinet also agreed new arrangements for all other Council owned companies at its meeting on 26 July 2021 and established the officer Croydon

Companies' Supervision and Monitoring Panel which reports into Cabinet via the normal Cabinet member briefing process.

2.44 All of these new bodies will be brought together in a new internal control system and mapped visually to aid understanding for members, managers and staff.

Improving the Council's Procurement Systems and Processes

2.45 Members may be aware that the Council has been implementing a procurement transformation plan since the summer of 2021. This plan has been developed by and is being implemented with support from an LGA Procurement Improvement Advisor.

2.46 In addition to actions to deliver contract savings, the plan also contains a range of actions to improve other aspects of procurement, including governance and strategy; people and skills; and systems and processes.

2.47 Initial improvement actions have included a reshaping of the commissioning and procurement function, with commissioning roles now embedded within service departments and a new Strategic Procurement and Governance team established.

2.48 Proposed revisions to the Council's Tender & Contract Regulations have been drafted and it is anticipated that initial revisions will be presented to Members for consideration in March 2022 with further revisions to be considered in the next municipal year. These proposals are designed to ensure that Member engagement in commissioning and procurement is routinely more strategic, meaningful, and much earlier in the cycle to ensure that Members have greater ability to influence the outcomes.

2.49 A new remit for the officer 'Strategic Commissioning and Contracts Board' has been implemented to provide senior management involvement in contracting and the drive for improvements across the function.

2.50 A review of all the Council's Procurement processes, documents and policies will commence shortly and the outcome will inform a new procurement strategy for the Council.

Holding those responsible to account

2.46 Given the nature of the failures described in this Report in the Public Interest, it is natural that Members, officers and residents will seek reassurance that measures have been taken to hold those persons responsible for the issues raised in the report to account.

2.47 As Members will be aware, the Council has to balance the giving of that assurance against its duty to comply with the formal processes in relation to any action against members or officers, including where those individuals have contractual or other rights for action being taken against them to be considered privately.

2.48 This situation is heightened by the fact that this report must be considered entirely in public and therefore cannot be supplemented by an accompanying confidential section.

2.49 However, the Council can confirm that following the publication of the previous Report in the Public Interest in October 2020, the two subsequent section 114 reports and other reports, formal council processes were initiated in order to establish any personal accountability of lead members and officers.

2.50 These formal processes were initiated to enable a full, fair and proper accountability process to be undertaken in line with the council's constitution and the terms and conditions of officers' employment.

2.51 These processes were overseen by the Ethics Committee, the Appointments Committee and the Investigating and Disciplinary Sub-Committee. There is one element of this process still underway. All others were halted due to the decision of the individual to exit their relationship with the council.

2.52 Council may wish to note that since January 2021, where officers exited their relationship with the council following the initiation of these formal processes, there have been no additional or supernumerary payments to any individual.

3. STATUTORY RESPONSE TO THE REPORT IN THE PUBLIC INTEREST

3.1 Reports in the Public Interest are issued under the provisions of the Local Audit and Accountability Act 2014. The Act sets out a number of statutory requirements that a Local Authority must comply with following the publication of the Report.

3.2 The Council is required under the Act to consider the recommendations of the Report and decide what action to take in response in public at a dedicated Council meeting held within one month from publication. It is also essential that all decisions made by the Council with regard to its governance and other improvements are taken in full cognisance of the report's findings and recommendations.

Publicising the Report

3.3 Following receipt of the Report, the Council is required to ensure that it is brought to the attention of public, elected members, its partner organisations and stakeholders.

3.4 At 2.00pm on 26 January 2022, a dedicated page was published on the Council's website that included the full Report, the formal public notice, further information about the Report and details on how to inspect a copy of the report at the Council's offices. The webpage can be found here - https://www.croydon.gov.uk/publicinterestfairfield. The report is also being publicised on the homepage of the Council's website, which provides a direct link to the detailed dedicated webpage. The Council will also include details of the report in the Your Croydon e-bulletin, which will be delivered to over 80,000 registered email addresses, on Friday 28 January 2022.

3.5 An update will be provided to Members at the Extraordinary Council Meeting on:

- How many persons have visited the webpage
- How many times the report has been downloaded from the Council web site
- Coverage of the report in the media

3.6 A formal public notice will also be published in the Croydon Guardian on 3 February 2022, which is the first available edition of the paper in which the notice could be included.

3.7 The Council has also proactively contacted partner organisations to share the report such as the Local Enterprise Partnership and the Council's regulators, such as Ofsted, the Regulator of Social Housing and the Improvement and Assurance Panel.

3.8 On 26 January 2022, full copies of the report were also sent to all elected Members, the Borough's three Members of Parliament and the GLA Assembly Member for Croydon and Sutton.

3.9 The report was also sent to all members of the Council's General Purposes and Audit Committee, including independent Members.

3.10 All Council staff were contacted via email with a link to the report and extensive staff briefings have been given.

3.11 The report has also been shared with all of the Council's subsidiary companies and Local Strategic Partnership.

3.12 The external auditor has issued the Secretary of State for Levelling Up, Housing and Communities and the members of the Improvement and Assurance Panel with a copy of the report.

Responding to the Report

3.13 Within a period of one month beginning with the day upon which the Council received the report, the Council is required to hold an Extraordinary Council Meeting (this meeting) to consider the report.

3.14 In considering this report, Members of the Council are asked to vote on the recommendations, response and action plan or amend these as they see fit.

3.15 The notice described in paragraphs 3.4 and 3.6 above includes all relevant details of this meeting to comply with the Local Audit and Accountability Act 2014 requirements. In addition, the agenda and supporting papers for this meeting have been published to comply with the Local Government Act 1972 requirements.

3.16 Following the Extraordinary Council Meeting, the Council is required to publish a public notice, approved by the external auditor, that summarises the outcome of the meeting. That notice will be published in both the local press and on the Council's dedicated webpage following this meeting.

Other Considerations

3.17 In considering the Report and the proposed action plan, Members may also wish to reflect upon their personal responsibilities and the Council's constitutional and legal responsibilities, under two further areas. These are the Seven Principles of Public Life, better known as the Nolan Principles, and the Council's "best value" duty under the Local Government Act 1999 – details of which can be read here https://www.gov.uk/government/publications/revised-best-value-statutory-guidance.

3.18 Croydon has fully adopted the Nolan Principles as part of its constitution. They establish the ethical standards and framework for conduct for all those working and governing in the public sector. These standards are mandatory and lay the foundations to the Council's constitution.

3.19 The Nolan Principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Croydon has expanded the honesty principle to also include truthfulness. These principles apply equally to elected Members as well as to officers.

The principles have been included in full in all the job description for the new Corporate Directors, Directors and Heads of Service following the council restructure. They frame the code of conduct that guides behaviour and governance practice in the Council's constitution for both Members and officers. They form the backbone of the new Member Code of Conduct agreed by Council at its meeting on 11 October 2021 which can be read in full here - https://democracy.croydon.gov.uk/documents/s33161/30%20Part%205I%20-%20Members%20Code%20of%20Conduct%20as%20amended%20Jan%202020%2015.10.21.pdf.

3.20 The Local Government Act 1999 introduced the duty of "best value" for all local authorities. This duty requires Councils to "make arrangements to secure continuous improvement in the way in which its functions are exercised having a regard to a combination of economy, efficiency and effectiveness”.

3.21 In fulfilling that duty, the Council needs to be a learning organisation that focuses on improvement and development; a Council that is open to challenge and which is fully accountable to the people of Croydon.

3.22 To that end, both of these duties and the lessons learned from the Report in the Public Interest will form part of the learning and induction programme for all councillors elected and re-elected at the forthcoming local elections in May 2022 and the corporate change programme for all officers.

3.23 The Council will also continue its focus on learning and seeking support, advice, guidance and challenge from partners across the sector to ensure that the improvements it delivers reflect best practice nationally.

4. REPORT OF THE CHIEF FINANCE OFFICER

4.1 Members of Croydon Council must consider this report from the Corporate Director of Resources, Section 151 Officer, (the Chief Financial Officer – CFO) under the Local Government Finance Act 1988.

4.2 The Local Government Finance Act 1988, places certain responsibilities on the CFO.

4.3 Section 114 (2a) requires that the chief finance officer (S151 officer) to “make a report under this section if it appears to him that the authority, a committee of the authority, a person holding any office or employment under the authority… :

(a) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,

(b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or

(c) is about to enter an item of account the entry of which is unlawful”.

4.4 Section 114 (2a) requires consultation with the Head of Paid Service and the Monitoring Officer (MO) which has been undertaken.

4.5 Section 114 (2a) also obliges the S151 officer to send a copy of the report to the council’s auditors and to every member of the authority.

4.6 The Monitoring Officer has received legal advice and has confirmed that containing the Section 114 (2a) report within this report meets that reporting requirement.

4.7 This report is in respect of S114 (2a) subsection (a) above as the RIPI report refers to a public procurement process that should have been carried out and entry into licence without a procurement process did not reflect the underlying reality and in their view is likely to have been found in breach of public procurement law had it been challenged in court.

4.8 It is important to note that this report is not in respect of the matters covered by the Report being under Section 114 (3), i.e. it is not in relation to the council being unable to meet its expenditure commitments.

4.9 The actions to be taken in response to this Section 114 (2a) report are those contained in this report (and the action Plan), and are considered by the Section 151 officer to be those that are necessary as a consequence.

5. REPORT OF THE MONITORING OFFICER

5.1 Section 5 of the Local Government and Housing Act 1989 provides that it is the responsibility of the Monitoring Officer to report formally to the Council on any proposal, decision or omission by the Council which has given rise to, or is likely to, or would, give rise to, the contravention of any enactment, rule of law or statutory code of practice.

5.2 In doing so the Monitoring Officer must consult with the Chief Executive, as Head of the Paid Service and the Section 151 Officer and must also advise all Members of the Council.

5.3 The report of the external auditor has referred to the fact that the Council failed to comply with its statutory duty to achieve best value and carried out other unlawful actions. On the basis that I concur with those findings, I am required under Section 5(2) of the Local Government and Housing Act 1989 to ensure by way of report that the Council is aware of this fact and what actions are or have been implemented since this fact has come to light. As Monitoring Officer I have received legal advice to confirm that containing the Section 5 report within this report meets that reporting requirement.

5.4 The report of the external auditor explains why she feels there has been a breach of the law and this report, now before Council, details the action taken and what is planned to be taken in response to the findings, which complies with the duty placed on me, as Monitoring Officer, under the above mentioned legislation.

5.5 The purpose of this Section 5 report is to inform Council of the following matters of likely unlawfulness:

i) The failure to properly follow procurement law as described on page 3 of the Report in the Public Interest;

ii) The failure to properly document lending to Brick by Brick, or structure arrangements in compliance with the lending powers relied on as described on page 3;

iii) The failure to be able to demonstrate that the Section 123 duty of best consideration of the Local Government Act 1972 had been met on the land disposal to Brick by Brick as described in section on page 20; and

iv) The general failings of corporate governance of a serious nature that indicate unlawfulness in public law terms as described on page 30.

5.6 The actions to be taken in response to this Section 5 report are those contained in this report (and the Action Plan), and are considered by me (as Monitoring Officer) to be those that are necessary as a consequence.

6. ACTION PLAN IN RESPONSE TO THE RECOMMENDATIONS

6.1 The recommendations in the Report will be responded to by way of a detailed Action Plan as outlined in Appendix 2 to this report. Members are asked to consider and agree the Action Plan which includes a response to each of the external auditor's recommendations, the Chief Finance Officer's recommendations and the Monitoring Officer's recommendations together with indicative timelines for actions and accountabilities.

6.2 The Action Plan has been developed with support from colleagues drawn from across the Council, ensuring that it has benefitted from a blend of knowledge and expertise.

6.3 Overall accountability for the delivery of the Action Plan will jointly rest with the Leader of the Council, Councillor Hamida Ali and the Chief Executive, Katherine Kerswell.

6.4 Accountability for individual actions in the Action Plan are clearly identified by chief officer.

6.5 Following this Extraordinary Council Meeting, the Action Plan will be submitted to both the Scrutiny and Overview Committee on 15 February 2022 and the General Purposes and Audit Committee on 3 March 2022 to consider and review it from their different constitutional positions.

6.6 Those Committees will submit their feedback in the form of a report to Cabinet at a subsequent meeting. The report to Cabinet will also provide further detail on the recommendations, timelines and accountabilities, the delivery mechanism to support the improvement work and if possible the costs associated with implementing the recommendations and the production of the report.

6.7 That meeting of Cabinet will also be asked to agree that the Action Plan be incorporated into the Council's overarching Croydon Renewal and

Improvement Plan. This will ensure that delivery of the action plan is overseen by the Council's project management office and that progress is routinely reported to Cabinet, Scrutiny and Overview Committee, General Purposes and Audit Committee and Council.

7. WHAT HAPPENS NEXT AT FAIRFIELD HALLS REFURBISHMENT PROJECT

7.1 At its meeting on 26 July 2021, Cabinet agreed to novate the Fairfield Halls refurbishment contracts and associated contracts from Brick by Brick to the Council.

Completing the refurbishment works

7.2 Not all contracts have yet been novated to the Council as specific warranties for work have not yet been put in place, however the Council has begun work to ensure that the refurbishment works are completed to a good standard and that best value for money can be achieved.

7.3 This has included non-intrusive survey works and an external quantity surveyor is due to be appointed to identify any aspects of the refurbishment contract that have not been adequately undertaken. This will take place in tandem with the normal snagging and defects process that is being undertaken while the primary contractor completes its works.

7.4 In addition to identifying any works not satisfactorily completed by the contractors, the quantity surveyor will also be tasked with identifying any other works that are required but were not included in the refurbishment contracts.

7.5 It is anticipated that the Council will have a full understanding of all works required to be undertaken by March 2022 following closure of the final Vinci contract. This work is being supplemented by the development of a cyclical planned maintenance programme for the Halls.

7.6 Once the Council has a full understanding of the remaining works required, a paper will be presented to Cabinet detailing options and recommendations for the completion of the refurbishment works.

Achieving Best Value for Money

7.7 The Council has undertaken an initial analysis of the expenditure by Brick by Brick on the refurbishment work. While it is important to stress that this analysis has not identified any suggestion of fraudulent activity, it has identified an issue that is being more thoroughly reviewed.

7.8 The issue relates to charges of £600k made by Brick by Brick to the Council in relation to project management fees and charges. This has been highlighted due to the significant issues regarding the project management of the works raised in the auditor’s report and that these fees are approximately double the normal market level of fees.

7.9 The Chief Executive has written to the Directors of Brick by Brick seeking an explanation and to understand further this expenditure.

7.10 The Council is continuing to review all of the refurbishment contracts that have been novated to it in order to identify any other areas where expenditure, costs or value for money need to be challenged.

8. CONSULTATION

8.1 In addition to the publicity and communications detailed in earlier paragraphs above, a briefing was held for all Members of the Council on the Report in the Public Interest on Wednesday 26 January 2022. This briefing was immediately followed by question and answer sessions with Members within their political groups.

8.2 Statutory consultation has been undertaken by both the Chief Finance Officer and the Monitoring Officer in relation to sections 4 and 5 above.

9. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

9.1 The Report in Public Interest highlights some key internal control breakdowns suffered by the Council and clearly details the financial and non-financial consequences as a result. Delivering the action plan as a result of the recommendations in this report will help to ensure that the Council operates to best practice standards with regard to its financial and decision making governance.

9.2 There will be costs associated with the implementation of the recommendations detailed within the report. These costs are currently unknown and should the implementation result in an increase in costs that cannot be contained within the budgets available, these will be updated to Cabinet via the monthly Financial Performance Reports and subsequent approvals sought before such costs are incurred.

9.3 Section 2 of this report provides for further financial adjustments the Council has made with consultation with the external auditors. The 2019/20 Statement of Accounts have yet to be finalised and therefore no final report on the 2019/20 Accounts has been issued by the Council or the external auditors. The Council’s Finance team will continue to work with the Auditors to ensure the financial impacts of this RIPI are robustly factored into the 2019/20 accounts.

Approved by: Richard Ennis, Interim Corporate Director of Resources (S151 Officer)

10. LEGAL CONSIDERATIONS

10.1 This report to Council sets out the statutory background to the auditors report and the obligations falling on the Council as a consequence. In particular, the Council is reminded that it has a duty to consider and respond to the report as detailed in section 3 of this report. In addition, the Council is to the consider both the Section 114 report of the Section 151 officer and the Section 5 report of the Monitoring Officer and decided whether they agree with the opinions expressed in those reports. The following paragraphs provide further detail.

10.1 The Report in the Public Interest ("the report") is issued under the provisions of the Local Audit and Accountability Act 2014 ("the Act"). The Council must comply with the requirements of the Act in responding to the report.

10.2 In particular Schedule 7 paragraph 4 on the Act provides that as soon as reasonable practicable after receiving the report the Council must:

- publish the report and a notice identifying the subject matter of the report on the Council's website;
- permit the public to inspect the report at all reasonable times without payment, make a copy of it, or any part of it, and be supplied with a copy of it, or any part of it, on payment of a reasonable sum;
- supply a copy of the report to each of its Members and its auditor panel (if it has one).

10.3 Paragraph 5 of Schedule 7 further requires the Council to consider the report or recommendation(s) at a meeting held before the end of the period of one month beginning with the day on which it was sent to the Council. At that meeting the Council must decide:

- whether the report requires the Council to take any action; or
- whether the recommendation(s) is/are to be accepted; and
- what if any action to take in response to the report or recommendation(s).

The recommendations and proposed actions by the Council are set out in the body of this report and accompanying Action Plan.

10.4 Paragraph 9 of Schedule 7 goes on to provide that information contained in the Report is not to be treated as exempt information under the Local Government Act 1972.

10.5 After considering the Report and its response to it, the Council must notify the external auditor of its decisions, and publish a notice containing a summary of those decisions which has been approved by the external auditor.

10.6 The powers set out in the Act are without prejudice to the duties and responsibilities contained in sections 114 – 116 of the Local Government

Finance Act 1988 and section 5 of the Local Government and Housing Act 1989 as regards reports which may be issued by the Council's Chief Finance Officer (CFO) or its Monitoring Officer (MO).

10.7 Section 114(2) of the Local Government Finance 1988 (LGFA) requires the Council's CFO to issue a report if it appears to him that the Council (a) has made or is about to make a decision which involves or would involve the Council incurring expenditure which is unlawful; (b) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority or (c) is about to enter an item of account the entry of which is unlawful.

10.8 The external auditor identifies in the report expenditure which is considered to be 'unlawful' as a result of a failure to comply with procurement law (the Public Contracts Regulations 2015) and a failure to properly document the lending to Brick by Brick or structure arrangements in compliance with the lending powers relied upon by the Council. This triggers a duty upon the CFO to issue a report under section 114(2) on the basis that the CO concurs. His report is set out in paragraph 4. There are also responsibilities upon the CFO to consult with the Head of Paid Service and the Monitoring Officer. Copies of his report shall also be sent to the Council's auditors and all Members. These obligations have been discharged. The Council is then required to consider the report and decide whether it agrees or disagrees with the views contained in the CFO's report and what action (if any) it proposes to take in consequence of it. The LGFA also imposes a prohibition period during which the unlawful conduct which led to the report being made by the CFO shall not be pursued. The prohibition period runs from the date copies of the CFO's report are sent to Members ending on the first business day to fall after the day the Council considers the report. In the context of the External Auditors report and its subject matter, no such prohibition is applicable (i.e. the subject matter involves historic activity).

10.9 Similarly section 5 of the Local Government and Housing Act 1989 places a duty upon the Council's MO to issue a report if at any time it appears to him that any proposal decision or omission by the Council has given rise to or is likely to or would give rise to (a) a contravention by the Council of any enactment or rule of law. The 'unlawfulness' set out in the report by the external auditor in relation to the breach of procurement law and the failure to properly document the lending to Brick by Brick or structure arrangements in compliance with the lending powers relied upon by the Council triggers a similar requirement upon the MO to issue a report under section 5. His report is embedded in this covering report in paragraph 5. The issue of such a report by the Monitoring Officer, as with a report by the CFO, places a duty on the Council to consider the MO's report at a meeting of the Council not more than twenty-one days after copies of the MO's report are first sent to Members. Similarly the MO is required to consult with the Head of Paid Service and also the CFO and likewise arrange for a copy to be sent to each Member of the Council. These obligations have been discharged.

10.11 The powers set out above are without prejudice to the duties and responsibilities set out in Part I of the Local Government Act 1999 regarding Secretary of State intervention in a local authority.

10.12 The recommendations seek to comply with statutory requirements following the issue of a report in the public interest by the Council's external auditors and reports both by the CFO and also the Council's Monitoring Officer. The actions recommended also seek to improve the governance of the Council in line with the Council's Constitution and promote the Council's statutory duty of best value and continuous improvement.

Doutimi Aseh, Interim Director of Legal Services & Interim Deputy Monitoring Officer

11. HUMAN RESOURCES IMPACT

11.1 The improvement plan is part of a range of measures relating to improving the Council's financial position and it is possible that this will ultimately impact on the Council's workforce, when the Council's agreed Human Resources policies and procedures will be followed.

11.2 The council's officer code of conduct has been reviewed, and strengthened to seek to ensure improved governance and conduct across the Council, implemented in January 2022. The revised code of conduct has been consulted upon and agreed with the trade unions. The revised code of conduct includes the Nolan Principles set out in paragraph 3.19 of this report.

11.3 The failure to adhere to the Council's code of conduct for officers and financial regulations is evident from the external auditor's report. The additional work underway in the Council to strengthen compliance with these has been referenced in the report and forms part of the whole council change programme, which has been initiated.

Dean Shoesmith, Interim Chief People Officer

12. EQUALITIES IMPACT

12.1 The matters raised within the report in the public interest have not highlighted any equality implications, or any suggestion that the actions of the Council have impacted on any group that share protected characteristics under the Equality Act 2010.

12.2 The actions proposed in response to the report in the public interest are intended to strengthen the council's governance and culture. A key element of this new culture is equality and inclusion, and creating a culture where staff can speak out and raise issues. This is incorporated in to the new internal control structures.

12.3 Approved by: Gavin Handford Director of Policy, Programmes & Performance

13. DATA PROTECTION IMPLICATIONS

13.1 The Head of Democratic Services and Scrutiny comments that the recommendations of this report do not involve the processing of personal data and as such, there are no data protection implications arising from this report.

CONTACT OFFICER: Stephen Rowan, Head of Democratic Services and Scrutiny

APPENDICES TO THIS REPORT
Appendix 1 - Report in the Public Interest

Appendix 2 - Action Plan

BACKGROUND DOCUMENTS: There are no previously unpublished documents on which this report is based.

OTHER SUPPORTING DOCUMENTS REFERENCED IN THIS REPORT:

2 November 2021 letter to the Improvement and Assurance Panel from the Minister of State for Equalities and Levelling Up Communities, Kemi Badenoch MP - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030160/Ministerial_response_to_Croydon_third_report.pdf.

Cabinet 6 December 2021: Independent Non-statutory Review: Follow Up Report - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2512&Ver=4.

Council 13 December 2021: Report in the Public Interest – Quarter 2 Update - https://democracy.croydon.gov.uk/mgAi.aspx?ID=13763#mgDocuments.

Cabinet 21 September 2020: Croydon Renewal Plan and amendments to the 2020/21 General Fund Budget - https://democracy.croydon.gov.uk/mgAi.aspx?ID=9341.

Cabinet 25 November 2020: Strategic Review of Companies and other investment arrangements – https://democracy.croydon.gov.uk/mgAi.aspx?ID=10047.

Cabinet 18 February 2021: Review of Croydon Brick by Brick Ltd - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2485.

Cabinet 17 May 2021: Ongoing Review of Brick by Brick Croydon Ltd and associated matters relating to the company - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2174

Cabinet 12 July 2021: Ongoing Review of Brick by Brick Croydon Ltd and the future of the company - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2508.

Cabinet 15 November 2021: Governance of Brick By Brick Croydon Ltd. - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2511.

Cabinet 26 July 2021: Governance of Croydon Council Companies - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=183&MId=2751.

Council 11 October 2021: Member Code of Conduct - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=134&MId=2535.

Ethics Committee 30 September 2021: Members Development Plan Update - https://democracy.croydon.gov.uk/ieListDocuments.aspx?CId=171&MId=2818&Ver=4

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London Borough of Croydon

Report in the Public Interest concerning the refurbishment of Fairfield Halls and related governance arrangements

London Borough of Croydon

Report in the Public Interest concerning the Council's refurbishment of the Fairfield Halls and related governance arrangements

Executive Summary

Background

Grant Thornton are the external auditors to the London Borough of Croydon (the Council). We are issuing this Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.

The Council owns Fairfield Halls, an arts, entertainment and conference centre in Croydon which originally opened in 1962. By 2010, the Council had identified a need to update and develop Fairfield Halls and place it on a more sustainable footing. By 2014 the Fairfield Halls became part of the development of a new Cultural Quarter. By 2016 the need to refurbish Fairfield Halls had become urgent and the venue closed in July 2016 for refurbishment, with a planned re-opening date of June 2018 and an initial Cabinet approved investment of £30 million for the refurbishment project (the project).

The project was delivered in September 2019 (over a year late) with a final cost of £67.5 million incurred up to that date (more than double the initial budget).

Our review leading to this report arose after we issued a report in the public interest on 23 October 2020 concerning the Council's financial position and related governance arrangements. The Council has reported considerable improvements since then and is continuing to respond to the matters in that report (as detailed below) and other areas of concern the Council has itself identified. One such matter related to the historical decision making and governance relating to the refurbishment of Fairfield Halls. The Council raised their concerns with us (Grant Thornton UK LLP), as the Council's external auditor, in late December 2020. We considered the concerns raised to represent a significant risk to the value for money conclusion and commenced an initial review in January 2021. Our initial findings required further investigation, the results of which are set out here.

Following the closure of Fairfield Halls during the pandemic in 2020, the Council sought to reopen Fairfield Halls [Although the refurbishment was awarded the RIBA London Award 2021, and the Highly Commended Civic Trust Award 2021] issues relating to the building were reported to the Council. Initial surveys commissioned by the Council indicate the need for additional expenditure to rectify the reported issues. The Council considers that the additional works should have been addressed during the refurbishment and this is disputed by Brick by Brick. The Council raised concerns on the historic governance of the project and, in discussion with current officers, we identified a significant risk to the value for money conclusion.

Our initial work in 2021 identified areas for further investigation, the results of which are set out here.

This report covers the Council's decision making and governance processes in the period from June 2016 - when the decision was made to bring forward a wider regeneration scheme - up to the reopening in September 2019, and references to the Council or to individuals in particular roles during that period should be read accordingly.

Legal arrangements

Engaging Brick by Brick to refurbish Fairfield Halls

In June 2016, the Cabinet approved a proposal to use Brick by Brick (Croydon) Limited (Brick by Brick), its wholly owned housing development company, to bring forward elements of the College Green scheme, which encompassed a house building scheme, public realm improvements and the regeneration of Fairfield Halls. The proposal involved the transfer of land interests (not including Fairfield Halls) to Brick by Brick in order for Brick by Brick to develop residential property on them and to carry out a refurbishment of Fairfield Halls "under licence", with the financing of the works to Fairfield Halls being an estimated £30 million. It was decided that Brick by Brick would be loaned money to fund part of the refurbishment by the Council, which Brick by Brick would need to repay but would be compensated for through the profits made from the sale of 2,000 houses (built by Brick Brick) on the College Green land transferred.

It is not uncommon to use a land transfer option for development of public land for residential housing: this route allows a public body to transfer land to a developer on terms which permit, but do not require, the developer to develop the land, with the public body instead being able to achieve its objectives by retaining a right to re-acquire the land should the development not occur. Such an arrangement may not, depending on how it is executed, engage rules around public procurement (broadly in place with a view to ensuring fair and equitable awarding of contracts, and securing value for money) because it may not involve the public body imposing enforceable obligations on the developer. This type of arrangement can be appropriate where houses are being built as there is less need for detailed specification and timing of delivery of housing, as compared to a public amenity which the public body requires to be built.

However, a decision to include the Fairfield Halls refurbishment in such a land transfer added complexity to the College Green scheme. The challenges and expertise needed to manage a complex refurbishment were very different to the challenges of managing a house building scheme and there was a lack of recognition in the Cabinet paper and minuted discussion of these differences, the risks and how these would be mitigated. While the June 2016 meeting did not explicitly use the land transfer option for Fairfield Halls, it has been suggested by the Council in contemporaneous submissions that this was the intention; this is supported by the fact that later the Council produced a draft conditional sale agreement which would (if properly executed) effect a land transfer in respect of Fairfield Halls.

Some months after the decision, in November 2016, the Council took legal advice which suggested that a land transfer arrangement as described above could work by selling the relevant land to Brick by Brick, with the Council providing lending to Brick by Brick secured with a charge over the land; prior to the land transfer, a licence would be required to enable Brick by Brick to carry out initial works, and such a licence was issued on 1 August 2016.

The legal advice showed that if the land transfer option was properly implemented, it was possible to avoid any public procurement process, although it highlighted risks. In our view these risks were significant. The key to avoiding a public procurement process, it was said was that there was no positive obligation on Brick by Brick to do the works (as the arrangement would rely on the Council's ability to take back the land if the refurbishment were not to occur), but conversely flagged that there was nonetheless a risk of challenge from other potential bidders if the Council set out a detailed specification of works which might amount to giving rise to enforceable legal obligations. It was explained that so doing might require a public procurement process; in the event, one was not carried out on the basis that there were no such enforceable obligations. The legal advice also flagged that Brick by Brick would need to act as an independent company on a commercial basis and avoid acting as if it were a department of the Council, in order for this land transfer option without a public procurement process to be workable and in line with public procurement and state aid law.

The licence issued by the Council to Brick by Brick on 1 August 2016 enabled, but did not require, Brick by Brick to carry out the refurbishment of Fairfield Halls in line with a detailed specification (the licence). The Council also made payments to Brick by Brick for the costs of the refurbishment and treated these payments as lending.

Neither the Council nor Brick by Brick have been able to provide a properly executed written conditional sale agreement (which would have been in place had Fairfield Halls been transferred to Brick by Brick in line with the land transfer option) or properly executed loan agreements covering the funds provided by the Council. Without properly executed written agreements key elements of the legal advice were not met. Further, it is our view that the Council's arrangement was at risk of challenge under procurement law as Brick by Brick was given a detailed specification of works (effectively amounting to a positive obligation to carry out the refurbishment) and the Council did not assess whether Brick by Brick was not acting as an independent company, in line with the legal advice.

In obtaining external legal advice and not fully considering or implementing that advice, it is our view that the Council failed to ensure it was acting lawfully. We have not been provided with evidence of senior statutory officers updating Cabinet formally on the legal risks emerging, considering how the emerging risks could be effectively mitigated or of the anticipated shortfall in funding (covered below) and the foreseeable implications.

In our view, it is likely that the licence did not reflect the underlying reality of the arrangements. Rather it is our view that the licence was (at least in part) intended to circumvent procurement law and competitive tendering, albeit in a way that was believed to be lawful; the licence provided that Brick by Brick was allowed, but not obliged, to carry out the works, but in our view the reality was Brick by Brick was committing itself to carrying out the refurbishment works which the Council wished to see carried out and was doing so in return for economic compensation which had been informally agreed albeit not recorded in binding properly executed contracts. As the Council was specifying the works it wished to see carried out, and the true objective of the licence was to oblige Brick by Brick to carry out those works, for the benefit of the Council, a public procurement process should have been carried out, and the entry into a licence without one did not reflect this underlying reality and in our view is therefore likely to have been found to have been a breach of public procurement law had it been challenged in court.

Regardless of whether the arrangements were a breach of procurement law, the arrangements clearly did not allow the Council to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the project. In our view the eventual outcome was that the Council could not properly exercise control or oversight of the refurbishment, because Brick by Brick was not obliged to carry out the refurbishment to any particular specification and did not have assurance that it had engaged the most appropriate developer for the complex refurbishment in terms of capacity, costs or other factors (as it would have done had it carried out a public procurement process).

Funding Brick by Brick to refurbish Fairfield Halls

While it is our understanding that the project was intended to be cost neutral, the Council intended to fund the project in the short term through a loan drawdown agreement with Brick by Brick. The legal powers the Council intended to rely on would have required Brick by Brick to own the land on which it was carrying out the work, and the loans either to be secured by mortgages or subject to an agreement to oblige Brick by Brick to construct residential units on the land. While draft conditional agreement of sale and draft loan agreements are available, neither the Council nor Brick by Brick can provide properly executed written versions of these documents.

There therefore appears to be no clear contractual basis at all for the project (and we note that while it is technically possible for unsigned written contracts to give rise to enforceable legal obligations, where the parties are acting in accordance with their terms, this will not always be the case, so even in a best case scenario, with absent properly executed written contracts the Council was subject to a material risk that in the event of an action to enforce the loans, a court could find that there was no enforceable contract).

We therefore do not consider that the Council properly exercised its powers to make payments to Brick by Brick. This is a serious concern as to the Council's financial and corporate management and also calls into question the lawfulness of the Fairfield Halls payments and suggests that the Council has not made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. Without properly executed written contracts, there was a material risk that the Council did not have any right (save perhaps under the law of restitution) to obtain reimbursement of the monies paid or to control its use (appreciating that, had the Council been able to control the expenditure, its approach to the application of the public procurement and state aid rules would have differed).

State aid

Without properly executed written contracts for the loan payments, and in light of the circumstances, the payments to Brick by Brick also give rise to a significant state aid risk (state aid being where the public sector gives aid which distorts cross border competition). The legal advice to the Council flagged the risk of unlawful state aid, and it is not clear that this risk was appropriately considered or managed as current officers responding on behalf of the Council have been unable to provide this consideration by their predecessors.

Challenge from another local authority

As part of the project the Council sought to apply for grant funding from the Local Enterprise Partnership, Coast to Capital, where the accountable body was another local authority. Correspondence seen indicates the other local authority raised serious concerns on how the arrangement complied with procurement rules with the Council's then senior statutory officers and the then Executive Director of Place. We do not consider that these officers properly reflected on the challenge presented by peers from another local authority and considered whether the Council's approach was reasonable.

Other legal considerations – record keeping

The absence of records documenting the rationale for decisions in relation to a significant project is a failure to keep the records required and creates legal uncertainty and risk. Throughout the project there are elements where record keeping has been insufficient:

- Documentation setting out the implementation of decisions delegated to officers was not systematically retained or stored to allow retrieval
- Financial analysis supporting decisions taken by the Cabinet is not available

The lack of formal consideration of the external legal advice, the lack of completed legal land transfer documentation and the lack of properly executed written legal arrangements covering the provision of funding to Brick by Brick is in our view a very serious matter and demonstrates fundamental failings by the Council.

Governance

We have already raised significant concerns over the governance culture and reporting mechanisms between the Council and Brick by Brick (in the Public Interest Report published on 23 October 2020) and the PwC review of companies dated 13 November 2020 also raised concerns. The issues in respect of the oversight of the Fairfield Halls Refurbishment reflect many of these concerns.

Governance arrangements for Brick by Brick

The Cabinet paper approving the establishment of Brick by Brick in March 2015, delegated governance arrangements to the then Executive Director of Place (with the holder of that post in March 2012 later becoming the Chief Executive in 2016) in consultation with the then Portfolio Holder for Homes and Gateway Services, the then Section 151 Officer and the then Monitoring Officer. The June 2016 Cabinet paper sets out the governance arrangements in place between the Council and Brick by Brick including presenting the Brick by Brick Business Plan to Cabinet and the appointment of Council nominated Board members and observers. The Brick by Brick Business Plan has been presented each February since 2017. However, there was no formal documented mechanism through which Council nominated Board members or observers reported back to the Council and therefore it is unclear how the Council sought to exercise governance over Brick by Brick through the nominated Board members or observers.

In October 2018 the then Section 151 Officer provided the then Chief Executive with proposed improved governance arrangements for Brick by Brick. A draft terms of reference for a Brick by Brick monitoring group was proposed at the first meeting in April 2019 with final terms of reference being agreed at the September 2019 meeting some four years after the original decision to establish Brick by Brick. This timeline demonstrates a lack of urgency to implement appropriate governance arrangements over Brick by Brick which was in our view ultimately the responsibility of the then Chief Executive as Head of Paid Service with responsibility for establishing proper arrangements.

Governance arrangements for the Fairfield Halls refurbishment project

Initially project oversight was through the Council's Growth Board from 2015 when this was a Council run project. After the project was transferred to Brick by Brick in June 2016 reporting continued to the Growth Board until May 2017. In May 2017, the Fairfield Programme Board (the Board) was set up to provide oversight of the project. In structure, the terms of reference should have been sufficient to manage the project with an escalation route to the Growth Board which itself had escalation to the Corporate Leadership Team or other Council process as it 'sees fit'.

From a wider Council perspective, the governance of the project was not in our view effective (as demonstrated by financial position of the project, set out below) as the only formal reporting to Members was through the Brick by Brick Business Plan which only included high level details on the project, there were no documented mechanism for Council appointees/observers to report back and the Member steering group was not set up until after the Fairfield Halls reopened.

The Scrutiny and Overview Committee (the Committee) was active in attempting to scrutinize the project, its progress and related costs. Reports presented to the Committee, in our view, did not highlight the known increase in costs.

Financial position of the project

The June 2016 Cabinet decision referred to a £30 million investment in the project; we have found that the final expenditure on the project was £67.5 million. Despite the June 2016 Cabinet report referring to a financial appraisal, the Council has been unable to provide any such financial appraisal without which we are unable to conclude whether the project additional spend in excess of the budget was caused by inadequacies in the original budget setting or in controlling costs or in changes in the scope of the work during the project. With no subsequent Cabinet decision recorded on the project budget we consider the original Cabinet-approved budget to be £30 million. During the project there were variations agreed (although not at Cabinet level), which is not unusual for a complex capital project. The variations and expected additional expenditure were reported through the Fairfield Programme Board and the project additional spend was reported to the Growth Board. We have not been able to identify explicit formal reporting to the Cabinet of the project additional spend. Allowing the project costs to more than double from the original budget without explicit formal reporting to the Cabinet represents a fundamental failing by the Council.

[The idea that variations to the project were agreed by the Council also adds to the likelihood that Brick by Brick was obliged to carry out the project, at odds with the Council's approach to the application of the public procurement rules.]

In the absence of the original financial appraisal our understanding is that the project was intended to be cost-neutral to the Council with Brick by Brick using expected profits from the College Green scheme to cover the costs of the project. Under section 123 of the Local Government Act 1972 the Council has a duty to achieve best value in land disposals. We have not been able to obtain the Council's assessment of whether £30 million for the land provided to the College Green projects represent best value and therefore we cannot conclude on whether the Council achieved this duty.

The Council funding (itself borrowed from the Public Works Loans Board) provided to Brick by Brick was intended to be loan funding, repayable to the Council. The Council did not charge Minimum Revenue Provision (MRP) on this borrowing as Brick by Brick was charged a higher interest rate than the Council was paying for the borrowing with the difference being intended to offset the statutory MRP charge. As there are no properly executed written loan agreements it is not definitive that the Council would have been able to enforce any right to recover the loan or its related interest and there is no off set for the MRP charge.

Regardless, the Council has written off the loans receivable of £61.3 million and the accrued interest of £9.1 million (noting that in the group accounts the entries would be subject to consolidated processes) and will need to charge MRP, which we estimate to be an average of £1.5 million per annum adding to the financial pressures already faced by the Council.

Council action since September 2019

Fairfield Halls reopened in September 2019 and was closed during the pandemic in 2020. As the Council sought to reopen Fairfield Halls issues relating to the building were reported. Initial surveys commissioned by the Council indicate there is a need to spend further public monies to rectify the issues identified. The Council considers that the additional works needed should have been addressed during the refurbishment and this is disputed by Brick by Brick. A properly executed written agreement obliging Brick by Brick to carry out the work would have clarified responsibilities in this dispute and the absence of such a properly executed written agreement (as noted above) makes a resolution more challenging. The Council is left with the need to spend further public monies on the Fairfield Halls.

The Council has responded to the previous reports (in the public interest published on 23 October 2020 and the PwC review of companies dated 13 November 2020) including reporting to Cabinet in November 2020, February, July and November 2021 on the actions taken to address governance concerns relating to Brick by Brick and other Council companies. The latest report to Full Council on 13 December 2021, the Council reported that it had implemented 62 of the 99 actions planned in response to the first report in the public interest. The actions taken by the Council includes addressing the governance arrangements in relation to Brick by Brick and the processes for loan agreements. The commentary in this report reflects the arrangements that were in place up to September 2019. There has however been significant turnover in the Council's senior officers and Portfolio Holders since the period this report covers.

In reaching our view on the legality of the arrangement we discussed with and challenged the current Senior Statutory Officers who reviewed the position.

The Council has, in light of the matters reported upon here and their views as set out in this report, decided to account for the expenditure on the project as if it had been direct capital expenditure and has proposed amendments to the draft 2019/20 financial statements which in their view correct the accounting for this arrangement. We understand that the Council is now also in the process of considering future options for Brick by Brick, while in the meantime making other changes to the related governance arrangements.

Conclusion

The Fairfield Halls refurbishment project was a complex project which was delivered late and with significant additional spend beyond the amount approved by Members; the entirety of the project spend has now been accounted for as capital expenditure. The Council's historical arrangements failed to ensure the legality of the arrangements for the project and allowed governance gaps which prevented monitoring of the project, oversight, and wider scrutiny and challenge that may have allowed corrective action to have been taken. Throughout the project there were individuals with both the knowledge of the many issues with the project and who had duties and responsibilities which we would expect to require action to address the known issues. The lack of appropriate action, in our view, represents a failure to discharge the duties expected from a small group of senior officers (the then three Senior Statutory Officers and the then Executive Director of Place). This group reported to the then Portfolio Holders (the then Portfolio Holders for Homes and Gateway Services, for Finance and Resources and the Leader) who were either not briefed by officers and should have requested briefings on the project given what they appeared to know or did not take effective action in response to concerns raised by the officers.

Recommendations

This report makes a number of recommendations for the Council to address, with the statutory recommendations highlighted in bold.

R1 The Chief Executive supported by the Monitoring Officer and the Section 151 Officer should ensure that Cabinet papers for major projects set out clearly

R1.1 the legal powers to enter into a particular arrangement and attendant risk

R1.2 how the Council can protect its interests and secure economy, efficiency and effectiveness.

R2 The Monitoring Officer should ensure that

R2.1 contracts are properly executed before entering into arrangements with third parties

R2.2 the properly executed documents are stored robustly to allow future scrutiny.

R2.3 key requirements underpinning the legal advice are in place before progressing with the arrangement

R3 The Monitoring Officer should ensure that where legal advice changes after a Cabinet decision that the consideration of the implications of the changes is documented and where the Monitoring Officer considers additional legal risks are identified that the Cabinet is updated on the impact on the original decision made.

R4 The Section 151 Officer should ensure that prior to making payments to third parties that appropriate legal documentation is in place such as a properly executed contract or a properly executed loan agreement

R5 The Monitoring Officer and Section 151 Officer should ensure that arrangements are in place to properly consider public procurement rules and UK obligations on subsidy control rules before entering into arrangements.

R6 The Chief Executive, Monitoring Officer and Section 151 Officer need to consider how to respond appropriately to challenge on decisions and be prepared to take corrective action where necessary.

R7 The Chief Executive should improve record keeping arrangements so that
R7.1 the records supporting key decisions including financial analysis are maintained

R7.2 a standard approach to record keeping with monitoring of which decisions have been implemented

R7.2 tolerances are established for reporting back changes to Cabinet

R8 The Chief Executive, as Head of Paid Service, should ensure appropriate governance arrangements are implemented in a timely manner particularly for strategic developments such as Brick by Brick including where appropriate that there is clear guidance for nominated representatives on the expectations of the role including reporting back to the Council

R9 The Chief Executive should work with the Leader to continue to embed

R9.1 a clearly understood distinction between the different roles and responsibilities of Members, officers and representatives of entities akin to Brick by Brick.

R9.2 clear responsibilities for officers and Portfolio Holders in challenging reports presented to Cabinet and other committees for balance, accuracy and consistency in terms of knowledge

R10 The Chief Executive should review the terms of reference for officer and member/officer boards that oversee significant projects and capital/revenue expenditure and clarify the escalation routes for significant additional expenditure in excess of the budget

R11 The Section 151 Officer should ensure financial reporting on significant capital projects is enhanced so that

R11.1 a clear agreed budget for the project is identified and the underlying financial analysis is maintained

R11.2 a clear agreed project expenditure amount can be reported through appropriate governance processes

R11.3 where there are changes in the original financial assumptions that there is an assessment on the project's financial viability with appropriate reporting

R11.4 the revenue impact of any changes in the capital project are addressed in future budget setting

R12 The Chief Executive should put in place arrangements to consider inherent conflicts of interest for executive officers.

Full Report

Introduction

Grant Thornton are the external auditors to the London Borough of Croydon (the Council). We are issuing this Report in the Public Interest under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014.

We issued a report in the public interest on 23 October 2020 concerning the Council's financial position and related governance arrangements. The Council has continued to respond to the matters in that report (and the PwC review of companies dated 13 November 2020). The Council has reported progress in implementing agreed actions to Cabinet in November 2020, February, July and November 2021. The December 2021 report to Full Council set out that the Council has implemented 62 of the 99 actions planned. The actions taken by the Council includes addressing the governance arrangements in relation to Brick by Brick and the processes for loan agreements.

Fairfield Halls closed in 2020 during the pandemic, when the Council sought to reopen Fairfield Halls issues related to the building were reported. Initial surveys commissioned by the Council indicate there is a need to spend further public monies to rectify the issues identified as well as matters related to the historical decision making and governance relating to the refurbishment of Fairfield Halls. The Council discussed their concerns with Grant Thornton, as the Council's external auditor, in late December 2020. We considered the matters raised represented a significant risk to the value for money conclusion and commenced an initial review in January 2021. Our initial findings required further investigation, the results of which are set out here.

Background and chronology

The Council owns Fairfield Halls, an arts, entertainment and conference centre in Croydon which originally opened in 1962. In March 2013 the Council adopted the Fair Field masterplan as interim planning guidance with the aim of creating a phased long term framework for delivering the transformation of the area to be:

> 'Croydon's cultural and learning centre; an innovative and inspiring area with a lively and sustainable mix of residential, cultural, educational, commercial uses and a well-connected and high quality public realm.'

The masterplan included improvements to the setting of the Fairfield Halls and its immediate environment and referred to a £27 million refurbishment to be done by 2016. Initial preparatory work on the design was undertaken by the Council including an asbestos survey. In September 2014, the Council's Cabinet approved the development of a Cultural Quarter, including the integrated College Green which encompassed a house building scheme, public realm improvements and the regeneration of Fairfield Hall which by then had a projected capital budget of £33.75 million.

In January 2015, the officer led Growth Board was set up to oversee the monitoring and delivery of capital projects linked to regeneration which at that time included the Fairfield Hall refurbishment. The Council ran a competitive process and appointed a contractor to undertake the Fairfield scheme development and design which included the development and design of, but not physical construction and completion of, the Fairfield Halls refurbishment.

The need to refurbish the Fairfield Halls became urgent and in June 2016, the Council approved a proposal for the Council's wholly owned company, Brick by Brick (Croydon) Limited, to bring forward elements of the integrated College Green scheme which included:

> 'a £30 million package of improvement works to Fairfield Halls, a c200,000sqft new college/university building and approximately 2,000 new residential units alongside new public realm, retail and leisure space'.

The proposals involved a transfer of land interests (not including Fairfield Halls) to Brick by Brick for development as residential property, with Brick by Brick to complete the £30 million package of improvement works to Fairfield Halls under a licence. In Brick by Brick's view, the exact costs were intended to be confirmed at a later stage however this was not documented in the Cabinet paper and there were no further documented Cabinet decisions on the approval of the budget for the refurbishment of Fairfield Halls. We therefore consider the Council's properly approved budget to have been set at £30 million.

In July 2016, the venue closed for refurbishment with an original completion date of June 2018. The decision to close and deliver the refurbishment quickly rather than a phased closure over a longer time period was subject to political debate. A licence was issued on 1 August 2016, enabling Brick by Brick to enter the property in order to carry out the works. This arrangement amounted to commissioning by the Council was not subject to a public procurement process. We do not consider that this structure, analysed below under ‘Legal arrangements’, was satisfactory.

By May 2017, issues had emerged that presented a risk to the successful delivery of the project for example the discovery of additional asbestos and Croydon College no longer being in a position to sell a portion of land to the Council. The reduction in land impacted the number of residential units Brick by Brick had planned which impacted the financial viability of the wider College Green scheme.

Brick by Brick commissioned the main works contractor for the refurbishment with works commencing in September 2017. This commissioning was also not subject to a public procurement process, as Brick by Brick was not deemed to be subject to the public procurement rules.

From 1993, a charity had operated the venue with a grant from the Council. In July 2016, the charity went into administration and the Council needed to secure a new operator. A separate exercise was undertaken by the Council, as a public procurement, and a new operator for the Fairfield Halls was appointed in June 2017. By November 2017 the new operator expressed concerns about the delays would impact on the operator’s ability to deliver its services and generate the necessary commercial revenues previously agreed with the Council. In addition, the operator had a number of requirements that needed to be factored into the refurbishment. The delays impacted the operator with the Council making a payment of £1.7 million to the operator in respect of the delays.

By the end of 2017 the project had run into a number of major problems that changed the risk profile of the project. The original engineering consultant appointed by the Council left the project and was in dispute with Brick by Brick, Croydon College were no longer part of the scheme with a significant impact on the housebuilding element of the wider College Green scheme (which had initially factored in a purchase of land from Croydon College which would be used to build residential property for sale, being one of the key sources of projected profit for Brick by Brick), costs were escalating due to additional changes in the work required and a new engineering consultant had to be procured. At this point delivery of the project was delayed to November 2018.

Letters between Brick by Brick and the Council in October 2018 outlined that the College Green expenditure projections exceeded income by £28.8 million with the Fairfield Halls expenditure figure being £51.6 million and a revised deadline of June 2019 was agreed. This deadline was again revised to September 2019 which was met after further additional costs were incurred to accelerate the works. We do not consider that these increases in costs were appropriately escalated or approved within the Council, and this is covered in the ‘Financial governance’ section below.

The venue re-opened in September 2019 and was closed during the pandemic in 2020. Although the refurbishment was awarded the RIBA London Award 2021, and the Highly Commended Civic Trust Award 2021,] as the Council sought to reopen Fairfield Halls later in 2020, issues relating to the building were reported. Initial surveys commissioned by the Council indicate there is a need to spend further public monies to rectify the issues identified. The Council considers that the additional works needed should have been addressed during the refurbishment and this is disputed by Brick by Brick,

Background context

The matters within this report in the public interest date back a number of years and key people are no longer in role at the Council and have therefore not been able to access their files from the time. We have relied on records the Council has retained but recognize the limitations in this.

During the project’s time frame there were a number of significant matters that the Council was responding to including the September 2017 report from Ofsted assessing children’s services as inadequate, other complex programmes and the wider financial pressures experienced by the Council (covered in the Public Interest Report published on 23 October 2020). The Chief Executive also had a lead operational role in relation to the response to the tram crash in November 2016. The Council had been under considerable pressure.

For full disclosure we set out Grant Thornton’s position. Grant Thornton was the external auditor of the Council over the period of the matters in this report and conducts the audit under the Local Audit and Accountability Act 2014. The matters of concern identified in this report developed over the years and the exact picture only became clear once the matter was identified as a significant risk to the value for money conclusion and work was undertaken to address that risk.

Where a local authority has a group structure the consideration of value for money would include the local authority's governance arrangements over its group structure. Grant Thornton was also the external auditor of Brick by Brick (part of the Council's group structure) until 31 March 2019 with the audit conducted entirely separately and by different personnel under the Companies Act regime. It is common practice that audit firms working in the public sector have commercial clients and for the parent and subsidiary auditors to be from the same audit firm. As the group auditor, the Grant Thornton team acting as auditor under the Local Audit and Accountability Act 2014 had access to the audit working papers of the Grant Thornton team acting as Companies Act Brick by Brick auditor for the limited purpose of the consolidation of the group accounts. Audits under the Companies Act are carried out to a different standard than audits under the Local Audit and Accountability Act 2014 in particular the value for money consideration is not a requirement of an audit under the Companies Act. That regime does not call for the same approach as for a public sector audit. [Brick by Brick's auditors would not be expected to pick up or give rise to the concerns raised in this report given the different approach of a Companies Act audit and the particular circumstances including that the parent was the company's sole funder and that the Council had given third party acknowledgement of the loans such that their auditors would not expect to call for the executed documentation.]

Finally, by way of introductory comment, we note that in this report, references to 'officers' are to the Council's staff, while members or Portfolio Holders refer to elected members (Councillors).

Legal arrangement

Legal arrangements – engaging Brick by Brick to refurbish Fairfield Halls

First, we consider the legal arrangements for the refurbishment of Fairfield Halls.

It is incumbent upon local authorities, including the Council, to have arrangements to secure value for money. They are in addition subject to the Public Contract Regulations 2015, which govern public sector procurement in England & Wales. Broadly, the effect of these regulations is that when awarding a relevant contract that is subject to the regulations (i.e. one which is over certain financial thresholds), the local authorities are required to advertise that contract (previously on the Official Journal of the European Union, and now on the UK's new Find a Tender Service) and then to follow certain, specific procedures for choosing to whom to award the contract, broadly with a view to ensuring fair and equitable awarding of contracts, and securing value for money. The nature and granularity of the specific procedures depends on the subject matter and value of the contract, with the default for relevant contracts being that a competitive tender process must be carried out, unless an exemption applies which enables an authority to use another route. We refer to a process that is subject to the regulations as a 'public procurement process'.

In June 2016, the Cabinet approved the proposal to use Brick by Brick to bring forward elements of the College Green scheme including the refurbishment of Fairfield Halls. The proposal involved the transfer of land interests (not including Fairfield Halls) to Brick by Brick in order for Brick by Brick to develop residential property on them, and to carry out a refurbishment of Fairfield Halls "under licence", with the financing of the works to Fairfield Halls being an estimated £30 million. The proposal intended that Brick by Brick would be loaned money to fund part of the refurbishment by the Council, which it would need to repay, but would be compensated for the refurbishment through the profits made from the sale of 2,000 houses (built by Brick by Brick) on the College Green land transferred.

The Council's records show that it was thought that this structure would allow the Council to dispose of the College Green land in return for housebuilding and to bring forward the refurbishment of Fairfield Halls, without a public procurement process. It is not unprecedented to use a land transfer arrangement such as this and in November 2016, four months after the original decision, the Council took legal advice which suggested that this type of land transfer arrangement could work (and be lawful) as follows:

- The Council would sell relevant land to Brick by Brick;
- The Council would be able to avoid *any* public procurement process by avoiding imposing enforceable obligations on Brick by Brick to develop the land into residential property or to refurbish Fairfield Halls(instead retaining control through an ability to take back the land if the work was not carried out). Further control could be exercised by securing lending from the Council to Brick by Brick with a charge over the land. The lack of an enforceable obligation was key to avoiding requirements to carry out a public procurement.
- There was a risk that other potential bidders or others might challenge the arrangement, arguing that there was in fact a legally enforceable obligation on Brick by Brick to carry out the development or the refurbishment, which would mean that a public procurement process should have been carried out. This was said to be a particular risk if the Council set out a detailed specification of works or otherwise exercised management control of the works.

- Further, Brick by Brick would need to avoid acting as if a department of the Council, and should act independently and on a commercial basis (because, referring implicitly to earlier legal advice given on the establishment of Brick by Brick, it followed if Brick by Brick were acting as if a department of the Council, it might *itself* need to carry out a public procurement process when engaging sub-contractors for work including the project).

We refer to this as the "land transfer option".

It is not uncommon to use a land transfer option for development of public land for residential housing: this route allows a public body to transfer land to a developer on terms which permit, but do not require, the developer to develop the land, with the public body instead being able to achieve its objectives by retaining a right to re-acquire the land should the development not occur. Such an arrangement may not, depending on how it is executed, engage rules around public procurement, because it may not involve the public body imposing enforceable obligations on the developer. This type of arrangement can be appropriate where houses are being built as there is less need for detailed specification and timing of delivery of the houses, as compared to a public amenity which the public body requires to be built. However, a decision to include the Fairfield Halls refurbishment would add complexity to the College Green scheme.

Although the June 2016 meeting did not in our view decide explicitly to use the land transfer option for Fairfield Halls, it has been suggested by the Council and then officers in contemporaneous submissions that this was the intention; this is supported by the fact that later, the Council produced a draft conditional sale agreement, which would (if properly executed) effect the land transfer, although neither the Council nor Brick by Brick have been able to provide a properly executed written copy of it, and the land was not transferred. If it was the Council's intention to use the land transfer option for Fairfield Halls, there was a lack of recognition that the challenges and expertise needed to manage the complex refurbishment were very different to the challenges of managing a house building scheme. The downside risks of adding a complex refurbishment to a housebuilding scheme were not appropriately assessed.

As set out in the legal advice taken by the Council, the land transfer option did not permit, if it was to avoid the need for public procurement, the Council to obligate the developer (Brick by Brick) to deliver a defined specification of works. Without a defined specification of works, the Council could not insist that the intended improvements and developments were completed or require them to be completed to a particular standard. In our view the restrictions of the land transfer option were unsuitable for a complex refurbishment of this nature.

Further, it is as noted above unclear whether the Council intended to use the land transfer option to enable Brick by Brick to carry out the development of Fairfield Halls, as well as the wider development. While the June 2016 Cabinet minutes refer to a wider land transfer for the College Green development, the Fairfield Halls venue was not included in that land transfer but was instead referred to as to be developed by Brick by Brick "under licence" in the Cabinet Report considered at that meeting (although as noted above the Council did later prepare sale documentation).

In line with this, the Council issued a Licence for Access to Carry out Works (the licence) for the project, dated 1 August 2016. While this licence does not reflect the land transfer option discussed in the legal advice, it does reflect a preliminary step outlined in the legal advice (to enable initial works ahead of a land transfer). This appears to be the licence referred to in the June 2016 Cabinet Report.

The licence permits Brick by Brick to enter Fairfield Halls to carry the works set out in a detailed specification in the accompanying schedules and includes a clause that allows the works to be extended beyond the schedule where this is agreed between both parties; the licence does expressly not oblige Brick by Brick to carry out the project and did not cover the funding arrangements for the project. We recognize therefore that there is again an argument that this approach does not engage the public procurement rules, because it does not impose enforceable obligations on Brick by Brick (which could trigger a public procurement process). Our view however is that taken in the round, this did not reflect the underlying reality, as set out below.

As a result of the use of the licence:

- The Council was not properly able to exercise control or oversight over the refurbishment as it would have been had this been under a service contract.
- The arrangement was at risk of challenge because Brick by Brick was given a detailed specification of works, which the legal advice had suggested might make the land transfer option subject to challenge (because it might be viewed in the round as giving rise to an enforceable obligation which would then have made the arrangement subject to a public procurement process).

- The Council did not have assurance that it had engaged the most appropriate developer in terms of capability, costs or other factors, which it would have had, had it conducted a public procurement process.

We refer to the licence arrangement that was pursued instead of the land transfer option as the "**development licence option".**

The November 2016 legal advice had also ruled out other methods of compliance with procurement law noting that:

- Brick by Brick was a commercial company that did not qualify for the ''Teckal' exemption, that may have allowed works to be legally awarded to a company which is essentially a Council entity without a public procurement process, where it is treated as equivalent to an internal arrangement.
- There were no unique technical characteristics that would prevent other developers doing the work (which would again mean that no public procurement process was required).

The November 2016 legal advice had also flagged, as above, that Brick by Brick would need to avoid acting as if a department of the Council, and should act on a commercial basis – that is, as an independent third party (because, if Brick by Brick were acting as a department of the Council, it might itself need to carry out a public procurement process when engaging sub-contractors for the refurbishment). In considering whether Brick by Brick was acting as an independent third party we consider that, appreciating that Brick by Brick has significant discretion as a commercial company, the following factors should have challenged the Council's view of Brick by Brick's independence in line with the legal advice obtained:

- An independent company would be very unlikely to enter into an arrangement to deliver a complex refurbishment project without the protection of properly executed written contract to ensure the company received payment for the work undertaken, and to manage the relationship between it and the commissioning body (for example in relation to disputes)
- The Council would be very unlikely to provide significant funding to an independent company without a legal arrangement being in place to safeguard public monies

Brick by Brick is of the view that there was contextual assurance that it would be paid based on the discussions, verbal assurances and intent of the Council through the draft agreements and the fact the Council processed and paid contractor and consultant invoices through the financial management arrangement with Brick by Brick. In addition Brick by Brick is of the view that as the Council is 'its one hundred percent shareholder… the ultimate implications of any detriment to Brick by Brick arising from there being no signed contract with the Council would fall upon the Council'. Brick by Brick's views show how it satisfied itself of its responsibilities. However the Council's legal advice was that for the proposed land transfer arrangement to be lawful the Council needed to ensure Brick by Brick acted as an independent company and we remain of the view that the independence of Brick by Brick is open to challenge from the Council's perspective, as there were no properly executed written contract or loan documents and therefore the Council has not ensured that its own legal advice was followed, or that it could secure value for money.

In obtaining external legal advice and not acting on that advice, it is our view that the Council failed to ensure it was acting lawfully. We can find no evidence of senior statutory officers updating Cabinet formally on the legal risks emerging, consideration of how the emerging risks could be effectively mitigated or of the anticipated shortfall in funding and the foreseeable implications.

In our view, it is likely that the licence did not reflect the underlying reality of the arrangements. Rather, it is our view that the arrangements were (at least in part) intended to circumvent procurement law and competitive tendering, albeit in a way that was believed to be lawful; the licence provided that Brick by Brick was allowed, but not obliged, to carry out the works, but in our view the reality was that Brick by Brick was committing itself to carrying out the refurbishment works which the Council wished to see carried out and was doing so in return for economic compensation which had been informally agreed albeit not recorded in binding contracts, so a licence which purported not to place enforceable obligations on Brick by Brick to carry out the refurbishment did not reflect this reality. As the Council was specifying the works it wished to see carried out, and the true objective of the licence was to oblige Brick by Brick to carry out those works, for the benefit of the Council, a public procurement process should have been carried out, and the entry into the licence without one would in our view be likely to have been found to have been a breach of public procurement law had it been challenged in court..

(While the land transfer option was not in the end pursued for Fairfield Halls, we note that the mere entry into the draft conditional sale agreement, which would have effected the land transfer option, would not necessarily have meant that there was no breach of public procurement law; the Council's legal advice in November 2016 highlighted (as set out above) that with the land transfer option there would be a risk that other potential bidders or others might challenge the arrangement, arguing that there was in fact a legally enforceable obligation on Brick by Brick to carry out the development, which would mean that a public procurement process should have been carried out.)

Further, regardless of whether the arrangements were a breach of procurement law, the arrangements clearly did not allow the Council to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the project: even if it had been clearly in compliance with public procurement law, the licence arrangement meant that the Council did not have control over the budget (see further below), specification or delivery of the project, as would have been appropriate for a project of this nature.

While Brick by Brick did itself carry out a competitive procurement process when appointing its own contractors, this was not one in compliance with the Public Contracts Regulations: the issue of whether Brick by Brick itself should have carried out a *public* procurement process when engaging contractors is outside the scope of this public interest report.

Legal arrangements – funding Brick by Brick to refurbish Fairfield Halls

We have also considered the basis on which the Council funded the project (which was not covered in the licence).

Power to lend

The Council intended to fund the project in the short term through a loan drawdown agreement with Brick by Brick. The Council has relied on two powers to make the payments to Brick by Brick: Section 3 of the Local Authorities (Land) Act 1963; and Section 24 of the Local Government Act 1988. We do not consider either to have been available to the Council in the circumstances.

For the Council to advance a loan to Brick by Brick in accordance with section 3 of the Local Authorities (Land) Act 1963 for Brick by Brick to develop land, Brick by Brick would need to own the land on which it was carrying out the work, and the loans would need to be secured by mortgages. Individuals involved at that time assert that there were legally executed documents. However, while drafts of each of a Conditional Agreement of Sale and loan agreement have been provided, and this power may have been relevant had these been properly executed, neither the Council nor Brick by Brick have been able to provide properly executed written contracts. We do not therefore consider that the Council properly exercised this power to make payments to Brick by Brick.

For the Council to advance a loan to Brick by Brick in accordance with section 24 of the Local Government Act 1988 the Council would need to have had agreements in place which legally obliged Brick by Brick to construct residential units as part of the arrangement. Whilst this intention is clear as part of the wider College Green scheme, again, without properly executed written legal documentation there is no evidence that monies lent for the Fairfield Halls refurbishment were lent for the purpose of constructing residential property, and so no evidence that this power was available to the Council in respect of Fairfield Halls. We do not therefore consider that the Council was able to rely on this power to make payments to Brick by Brick.

Setting aside the legal powers which could have been deployed to fund the project, there appears to be no definitive contractual basis at all for the payments, since no properly executed written relevant loan agreements have been found. While it is possible for unsigned contracts to give rise to enforceable legal obligations, where the parties act in accordance with their terms, this will not always be the case, meaning that at best the Council was subject to a material risk that in the event of an action to enforce the loans, a court would find that there were no enforceable obligations. It therefore appears that very substantial amounts of money have been expended by the Council without any formal written basis at all, and without the Council having any right to exercise control and oversight over the use of those monies or (save perhaps under the law of restitution) to obtain reimbursement of those monies, unless a court were to find that, notwithstanding the lack of proper execution, the draft loan agreements had given rise to enforceable obligations. Representations from the then section 151 officer state that the terms of lending and interest rates were agreed at the time. While the then Leader and then Portfolio Holder for Finance and Resources have contended that there were appropriate protections and financial controls in place at all times for the funds, without properly executed written loan agreements the Council's legal position is at best open to challenge.

Even if the Council had had the statutory powers to make the payments, there appear to be no formal documents in which the Council has clearly taken a decision to make the Fairfield Halls payments and recorded its reasons and legal basis for its decision. This is a serious concern as to the Council's financial and corporate management and also calls into question the lawfulness of the Fairfield Halls payments and suggests that the Council has not made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

State aid

The payments to Brick by Brick which should have been pursuant to loan agreements which were not completed also give rise to a significant state aid risk (state aid being where the public sector gives aid which distorts cross border competition, now replaced in UK law by the new subsidy control regime).

We note that the land transfer option also engaged a risk of being unlawful state aid, as flagged in the legal advice taken by the Council, and it is not clear that this risk was appropriately considered or managed.

It was reasonable to expect the senior statutory officers of the Council to have documented their consideration of how to fund a shortfall in funding for the Fairfield Halls project (flagged in the November 2016 advice as a particular state aid risk) and how to ensure compliance with state aid rules. Current officers have been unable to provide this consideration by their predecessors.

Challenge from another local authority

As part of the project the Council sought to apply for grant funding from the Local Enterprise Partnership, Coast to Capital, where the accountable body was another local authority. We have seen correspondence dated March 2018 between officers of that local authority and the Council's then Monitoring Officer, then Chief Executive and then Section 151 Officer where the legal basis of the arrangement was challenged. Despite assurances from the Council's then Monitoring Officer that they were confident in the Council's approach, the conclusion from the other local authority was:

> 'The Accountable Body is therefore unable at this time to provide Coast to Capital with the assurance in relation to the scheme. Passing monies to an arm's length third party in the absence of a written contract and/or a compliant procurement process is inconsistent with Coast to Capital's Assurance Framework and the national assurance framework.'

The correspondence references discussions with the Council's then Chief Executive before agreeing a meeting with the Accountable Body involving the Council's then Section 151 Officer, the then Executive Director of Place and a representative of the then Monitoring Officer.

The serious concerns expressed by another local authority reflect our concerns regarding the legal powers being used, how the arrangement was compliant with procurement regulations and the absence of a properly executed written contract. From the correspondence we have seen it is clear that the then senior statutory officers and the then Executive Director of Place were aware of the other local authority's concerns. The situation was resolved through providing the grant to the Council who then provided the grant to Brick by Brick and through the Council providing a letter from its external legal advisors. The letter highlights the lack of enforceable obligation on Brick by Brick to undertake the work and does not address the absence of a signed written contract. We consider it would be reasonable to have expected these officers to reflect further on the informed challenge presented by peers from another local authority and consider whether the Council's approach was reasonable. Representations received from the then section 151 officer express the view that on the basis that the grant monies were received the Council's approach was reasonable. Our view continues to be that the level of challenge and concerns raised were significant and the Council could have taken the opportunity to reflect further on their own arrangement at that stage. We have not seen any evidence that these officers reconsidered the Council's approach.

Other legal considerations

Minimum Revenue Provision

The Council is required by statute to make a prudent provision for the repayment of its debt and to have regard to Department for Levelling Up, Housing and Communities' guidance in calculating the Minimum Revenue Provision (MRP) and to publish its policy annually. (Statutory guidance issued under section 21 (1A) of the Local Government Act 2003 and the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003). As we reported in our 23 October 2020 Report in the Public Interest, the Council made changes to its 2019/20 MRP policy in respect of how much MRP is charged for borrowing related to loans to third parties. The policy means that no MRP has been set aside for the borrowing amounts related to the project.

To comply with state aid rules the draft loan agreements set out a commercial interest rate for Brick by Brick to pay. The Council's funding to Brick by Brick relied on the Council borrowing from the Public Works Loans Board (PWLB). PWLB charge the Council a lower interest rate than the commercial rate the Council charged to Brick by Brick. The Council's argument was that the difference in interest rates offsets the required MRP. The absence of properly executed written loan agreements means that the Council's right to receive interest on the funding provided to Brick by Brick is at best questionable and therefore the borrowing related to the project requires MRP to be set aside. As the Council was not providing MRP against the borrowing in respect of its own asset, it is our view that the Council was likely breaching the statutory guidance.

Following discussion with the Council on our findings, the Council is now recording the project expenditure as direct capital expenditure. As a result, the Council has agreed to charge MRP on the borrowing related to the project from 2020/21. This is the year after the refurbishment reopened which is in line with the Council's existing policy and would appear to meet the requirements of the statutory guidance.

Record keeping

The Information Commissioner's Office "Section 46 Code of Practice – records management" issued under Section 46 of the Freedom of Information Act 2000 states 'Authorities should ensure they keep records they will need for business, regulatory, legal and accountability purposes' and that 'Authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held'. The record keeping requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulation 2012 and the Openness of Local Government Bodies Regulations 2014 are also likely to have applied.

The absence of records documenting the rationale for decisions in relation to a significant project is a failure to keep the records required and creates legal uncertainty and risk. Throughout the project there are elements where the Council's record keeping has been insufficient:

- Delegated decision implementation documentation is not systematically retained or stored to allow retrieval
- Financial analysis supporting decisions taken by the Cabinet is not available

Recommendations

R1 The Chief Executive supported by the Monitoring Officer and the Section 151 Officer should ensure that Cabinet papers for major projects set out clearly

R1.1 the legal powers to enter into a particular arrangement and attendant risk

R1.2 how the Council can protect its interests and secure economy, efficiency and effectiveness.

R2 The Monitoring Officer should ensure that

R2.1 contracts are properly executed before entering into arrangements with third parties

R2.2 the properly executed documents are stored robustly to allow future scrutiny.

R2.3 key requirements underpinning the legal advice are in place before progressing with the arrangement

R3 The Monitoring Officer should ensure that where legal advice changes after a Cabinet decision that the consideration of the implications of the changes is documented and where the Monitoring Officer considers additional legal risks are identified that the Cabinet is updated on the impact on the original decision made.

R4 The Section 151 Officer should ensure that prior to making payments to third parties that appropriate legal documentation is in place such as a properly executed contract or a properly executed loan agreement

R5 The Monitoring Officer and Section 151 Officer should ensure that arrangements are in place to properly consider public procurement rules and UK obligations on subsidy control rules before entering into arrangements.

R6 The Chief Executive, Monitoring Officer and Section 151 Officer need to consider how to respond appropriately to challenge on decisions and be prepared to take corrective action where necessary.

R7 The Chief Executive should improve record keeping arrangements so that

R7.1 the records supporting key decisions including financial analysis are maintained

R7.2 a standard approach to record keeping with monitoring of which decisions have been implemented

R7.2 tolerances are established for reporting back changes to Cabinet

Governance

Significant concerns over the governance culture and reporting mechanisms between the Council and Brick by Brick have already been raised to the Council (in the Public Interest Report published on 23 October 2020 and the PwC review of companies dated 13 November 2020) and the issues with oversight of the Fairfield Halls Refurbishment reflect many of these concerns.

Governance arrangements for Brick by Brick

The Cabinet paper approving the establishment of Brick by Brick in March 2015, delegated authority to agree the board structure and membership, human resourcing arrangements and to agree the processes and governance for monitoring the performance of the company and approving future Business Plans to the then Executive Director of Place (who became the acting Chief Executive in April 2016 and permanent from July 2016) in consultation with the Cabinet Member for Homes and Gateway Services, the then Section 151 Officer and the then Monitoring Officer. The delegated decision paper was signed in February 2016.

The June 2016 Cabinet paper sets out the governance arrangements in place between the Council and Brick by Brick which requires a detailed business plan to be prepared annually and reviewed by the Council and for there to be Council nominated Board members on Brick by Brick together with Council observers. The Council nominated Board members changed during the period and included the then Section 151 Officer until January 2016, when the then Deputy Section 151 Officer (who became the then Section 151 Officer in February 2019) was appointed until January 2019, when the then Executive Director of Place was appointed until September 2020. In January 2016 the Brick by Brick Board minutes record that the then Section 151 Officer 'will continue to attend board meetings as a shareholder representative, with 'observer status' from January 2016 and subsequent minutes refer to their attendance as the 'observor representing the funder'.

The first Brick by Brick Business Plan was presented in February 2017 and in February of subsequent years. There was no formally documented mechanism through which Council nominated Board members or observers reported back to the Council and therefore it is unclear how the Council sought to provide governance over Brick by Brick through the nominated Board members or observers.

The focus and the effectiveness of actions taken by the Council through its internal monitoring arrangements for Brick by Brick between establishment and November 2018 is unclear. Records indicate that the Council's need to improve its governance arrangements was recognized, for example:

- In November 2018 the then Section 151 Officer sent the then Chief Executive (the former Executive Director of Place) a draft paper on improving governance arrangements in relation to Brick by Brick.
- Meeting notes from the then Executive Director of Gateway, Strategy and Engagement (who joined the Council in August 2018 and took on that role in January 2019) show 'clienting' arrangements for Brick by Brick were discussed and identified as priority to develop.
- In April 2019 the then Executive Director of Gateway, Strategy and Engagement presented a formal terms of reference for the Brick by Brick Monitoring Group at it first meeting. [The Executive Director of Gateway, Strategy and Engagement has contended that she had also offered to undertake a governance review of the arrangements for Brick by Brick, but that this offer was not taken up.]
- At the September 2019 an updated terms of reference were finalised led by the then section 151 officer when they took on the chair role. At the same time other core group terms of reference were agreed including land, legal and finance and quality assurance.

The proposed reporting and escalation arrangements were changed between April and September 2019 and in August 2019 the responsibility was transferred from the Executive Director of Gateway, Strategy and Engagement to the then Section 151 Officer. (The terms of reference in April 2019 show that this was an officer only governance meeting and in September 2019, the terms of reference show that the Portfolio Holder for Homes and Gateway Services was included in the distribution list for papers and attended some meetings as an observer.). In our view the changes weakened the reporting and escalation routes however the rationale for the changes in responsibilities or in the reporting and escalation routes is unclear. We have seen correspondence requesting the views of both the Managing Director of Brick by Brick and the Portfolio Holder for Homes and Gateway Services on the terms of reference and the correspondence indicates that the views offered in response were considered although there is no record of the relative weight given to their contributions. It is our view that an officer led internal monitoring arrangement should not involve Members, although we appreciate that this view is based on our view of best practice in these particular circumstances and not upon a legal or regulatory requirement. There should have been a clear distinction between the different roles and responsibilities of Members and officers The Shareholder Investment Board, established in October 2019, is the governance arrangement for Members to hold Brick by Brick to account together with the formal approval of the Brick by Brick Business Plan.

What is clear is that Cabinet delegated authority for establishing governance arrangements for Brick by Brick in March 2015 with a further decision in June 2016 and over two years later in Autumn 2018 officers continued to discuss the need for governance and monitoring arrangements with these being put in place in Autumn 2019. This timeline suggests a lack of urgency by the Council to establish appropriate effective governance arrangements over Brick by Brick.

The Council needed to clearly distinguish between the different roles and responsibilities of Members, officers and Brick by Brick representatives in the governance arrangements so that real and perceived conflicts of interests could be managed transparently.

Governance over the Fairfield Halls refurbishment project

Initially the Council's oversight of the project was through the Council's Growth Board from 2015 when this was a Council run project and then through the governance arrangements established for Brick by Brick. Early in 2015 a competitive tender was used to appoint a contractor for the scheme design and development. In June 2015, a Project Initiation Document for the College Green housing development and Fairfield Halls refurbishment was drafted and reviewed by the Growth Board. Based on the initial design there was a high-level plan and initial costings for the project. Updates on the College Green and Fairfield Halls refurbishment project were taken to the Council's Growth Board until May 2017 with the Brick by Brick Managing Director attending after the project was transferred to Brick by Brick in June 2016.

In May 2017, the Fairfield Programme Board was set up when it was recognised that the Growth Board did not have sufficient agenda time to provide oversight of the Fairfield Halls refurbishment which was a complex and challenging project in its own right. This decision was influenced by an Internal Audit review that indicated the need for a dedicated programme board to meet regularly (as envisaged in the Project Initiation Document).

The Fairfield Programme Board (the Board) terms of reference included responsibility to:

- Provide formal input into the Fairfield Halls refurbishment and works packages including public realm aspects.
- Oversee the procurement and mobilisation of the new operator.
- Manage the delivery relationship with Brick by Brick.
- Approve any project or scope changes to be requested by the Council.
- Agree any new allocation of resources from new or existing capital and revenue budgets.
- Escalate significant risks to the Growth Board.
- Ensure that all significant risks are recorded and managed in line with Council policy.
- Manage the Council's external and internal communications about Fairfield Halls.

The then Executive Director of Place, who was the project sponsor, chaired the monthly Board meetings as the senior responsible officer on the project. The then Executive Director of Place continued to chair the Growth Board.

The available notes show that the meetings did discuss key issues such as delays, financial spend in excess of the budget and risks such as impact of the delays on the operator. There are instances where the meeting records note actions taken for example the December 2018 meeting noted the financial spend in excess of the budget on the project covered in the letters exchanged between the then Section 151 Officer and the Managing Director of Brick by Brick.

In theory, the structure put in place including the terms of reference should have been sufficient to manage the project.

As the project was a significant strand of Brick by Brick's activities, the wider Council could have expected its governance arrangements over Brick by Brick to identify matters of concern over the project through the Brick by Brick Business Plan, the presence of Council appointed members of the Brick by Brick Board and observers together with a proposed member steering group. The governance arrangements were not effective however as:

- The Brick by Brick Business Plan only included high level details of the Fairfield Halls project
- There was no formal documented mechanism through which Council nominated Board members reported to the Council and

- The member steering group was not set up until October 2019, a month after the Fairfield Halls reopened.

By November 2017 the [Fairfield Halls Programme] Board minutes note emerging budget pressures relating to the identification of additional asbestos and the construction contractor indicating that the £30 million estimate may need to be more. The Fairfield Halls Board monitoring papers have a total budget of £34.5 million despite the June 2016 Cabinet decision being for a £30 million investment.

In December 2017 the Brick by Brick Board received a report setting out the financial appraisal of the College Green programme which included the project cost, related public realm works costs, payments to the operator (BH Live), interest on additional borrowing which were offset by the projected profit from the Fairfield Homes development and expected grant funding from Coast to Capital leaving an expected College Green (which included the project) loss of £10.5 million. The financial appraisal appears to have been reported to the Brick by Brick Board only. The notes of the meeting show that apologies were received from the then Executive Director of Place, the then Section 151 Officer and their deputy and we have been provided with the email where the related papers were sent to these officers at that time. The then Section 151 Officer disputes having received these papers.

At the end of 2017 key elements of the issues with the project were known in particular

- the main works contract had not been let
- Croydon College were no longer part of the scheme impacting the land available for house building which was an important strand in the financial case for the wider College Green scheme
- The original engineering consultant had left the scheme necessitating the procurement of a primary engineering consultant
- Additional costs were incurred dealing with asbestos and meeting the needs of the operator that the Council had agreed in a separate contract
- The wider College Green scheme which included the project had a projected loss of £10.5 million

In October 2017 the project was called in by the Scrutiny and Overview Committee (the Committee) and in February 2018 the Brick by Brick Business Plan was presented to Cabinet. The 2018/19 Brick by Brick Business plan had a cover report which detailed the then Executive Director of Place as the relevant Lead Officer, and the then Portfolio Holders for Homes and Gateway Services and for Finance and Resources as relevant Cabinet Members. On neither occasion (the Committee and the Cabinet) were the extent and depth of the known issues highlighted formally to Members instead the impression given was all was progressing well. We consider that the transparency expected in both documents was missing. In particular we consider that:

- The Brick by Brick Business Plan should have highlighted to the shareholder the projected loss of £10.5 million on the overall College Green scheme which included the project and notwithstanding that it did not, the then Executive Director of Place, the then Section 151 Officer and their deputy, were they aware of this (on the basis that the related papers would have been provided to them in December 2017, as set out above), should have flagged this in the cover report to the Cabinet together with any action;[we have seen no evidence that the Portfolio Holders were aware of the projected loss]. Instead, the Cabinet report makes reference to the risk for existing schemes from escalation of cost estimates and time delays with the conclusion that Brick by Brick is *'currently projecting to achieve a profit of £21 million on its existing development activity in addition to the £30 million investment into the refurbishment of Fairfield Halls'*.
- One of the original assumptions of the wider College Green scheme was for the Council to purchase land from Croydon College to be made available for house building. Early in 2018 Croydon College rejected the offer for the land and progressed with an alternative purchaser. We have not seen evidence of the financial impact of a change in a key assumption being reassessed by the Council or that the Cabinet was updated formally on this change.

Brick by Brick is of the view that the detailed financial models were provided to officers to support all funding requests. Neither the business plan nor the cover report presented to the Cabinet however provided the detailed financial modelling. Brick by Brick is of the view that the Council had the relevant information to challenge the business plan and that there was no request to provide greater clarity on the project within the business plan. In our view, the projected increased project cost at that time was known by the Brick by Brick Board and the then Executive Director of Place, as a member of Brick by Brick's Board, and the then Section 151 Officer, as the Council appointed observer of the Brick by Brick Board. All were aware of the increased project cost and the known increased costs should have been highlighted to both the Cabinet and the Scrutiny and Overview Committee either by requiring Brick by Brick to highlight the known increase or identifying the amount in the covering report to the Cabinet. The absence of reporting the known loss to a formal Member meeting did not enable scrutiny by the wider Council.

By June 2018 the project monitoring documents showed the expected project spend being £42.8 million. In September 2018, the Brick by Brick Managing Director sent a copy of the financial monitoring reports to the then Chief Executive highlighting the additional spend in excess of the budget. The main works contract was not let by Brick by Brick until October 2018, three months after the original project completion date, and the project cost was £42.7 million. Brick by Brick confirmed the contract amount to the then Executive Director of Place on 9 October 2018. At this point the project cost clearly significantly exceeded the amount approved by Cabinet in June 2016 of £30 million and it would be reasonable to expect officers to formally report back to the Cabinet. Brick by Brick informs us that the contract was let in line with the strategy agreed with the Council and the increased costs reflect the 'constantly changing brief' indicating that both the delay and the increased costs were known within the Council however we have not been able to identify any formal reporting to the Cabinet.

In October 2018 Brick by Brick wrote to the Council's Section 151 Officer setting out a shortfall of £28.8 million on the College Green scheme (which included net expenditure of £49.2 million on the refurbishment project) setting out the proposed strategy to cover the increased costs. The then Section 151 Officer replied in November 2018 noting the proposed actions which were:

Source	Amount	Description
Brick by Brick	£18.3 million	Full value profit from the scheme (£17 million) and ongoing revenue generation from the energy centre (£1.3 million)
Council*	£7.6 million	Unforeseen asbestos removal costs and additional costs for delivery of the operator requirements
Coast to Capital**	£3 million	Redirected grant funding from the Arnhem Gallery part of the project into the general project
	£28.8 million	

* The then Section 151 Officer agreed that the Council would contribute £1.6 million for the operator fit out costs and proposed to flex the overall repayment to manage the remaining gap of £6 million.

** The Local Enterprise Partnership, Coast to Capital, provided grant funding to the project including £3 million for the refurbishment of the Arnhem Gallery. As the project spend grew, the Council was granted permission from Coast to Capital to divert the grant funding into the wider scheme.

In our view, the solutions were problematic in that:

- Brick by Brick's proposal to 'attribute the full value of Brick by Brick profit' from the College Green scheme (estimated to be £17 million at that time) to meet the additional costs of the project is a significant decision for any company to make. We note Brick by Brick wrote to the Council, its shareholder, setting out the proposed action and received an acknowledgement from the then Section 151 Officer. Brick by Brick is of the view that its financial viability model was based on profits generated by the College Green scheme to fund the project and that its involvement in the project was important to Brick by Brick as it gave 'the opportunity to be involved in a high-profile project with enormous value potential'. We remain of the view that the decision to attribute the full value of profit at £17 million from one project to another is an unusual decision for an independent company to make and is a decision that opens the Council to the challenge of whether Brick by Brick was operating as an independent company which is a key requirement of whether the Council's arrangement is legal.
- In addition, the decision to attribute the full value of profits from one element of the College Green scheme to fund additional project expenditure is significant to the Council as it would impact the Council's receipt of future dividend from Brick by Brick and as such it would be reasonable to expect the then Section 151 Officer to report the decision formally to the Council. We have found no such evidence. The then Section 151 Officer is of the view that as the dividends were not included within the Medium-Term Financial Strategy (MTFS) there was 'a very minimal impact' and 'a lower estimated future profit would have no immediate impact'. We acknowledge at that time the MTFS did not

include future dividends from Brick by Brick. It is our view that a decision impacting £17 million is significant to both the Council, even where it is not included in the MTFS, and Brick by Brick and therefore Members should have been informed formally by both the then Section 151 Officer and by Brick by Brick in their next business plan. Brick by Brick is of the view that they met their responsibilities in informing their shareholder and Brick by Brick was not asked to provide more detail in their business plan. The then Section 151 Officer asserts that Cabinet members were briefed on the actions although we have not been able to obtain evidence to support this. The arrangement opens the Council to challenge of the soundness of its investment in Brick by Brick.

- The Council's proposal to transfer a car park associated with the project to Brick by Brick at its carrying value of £6 million was not supported by an assessment of the best value of that land as required by section 123 of the Local Government Act 1972. The proposal was not co-ordinated within the Council as another contract was issued to the operator with the associated income being included in the Council's budget and this income would not have been receivable by the Council if ownership of the car park was transferred. In addition the Council's legal transfer documents for the car park and heads of term for the lease were drafted but remain unsigned.

The Fairfield Halls Board terms of reference include 'all significant risks are recorded and managed in line with Council policy' and 'escalate significant risks to the Growth Board'. From the Council's perspective the view was that the financial risk would be managed in that any spend in excess of the budget would be the responsibility of Brick by Brick and would be covered by their profits. However as the licence (and the land transfer– although this was not followed through in full) gave Brick by Brick full control over the specification of the Fairfield Halls works, the response by Brick to Brick to the additional costs was to cover these through 'value engineering' adjustments. It is clear that the Council did not set out a clear understanding of the legal aspects of the intended land transfer approach with Brick by Brick as the Brick by Brick Managing Director has responded by saying that 'there was an obligation on Brick by Brick to work in partnership with the Council to define and agree the specification for the works. Had Brick by Brick had full control over the specification, we could have delivered £30m worth of improvements of our choosing to the building without any recourse to the needs or desires of the Council'.

The Growth Board exception report for October and November 2018 highlights the project as an area of concern with the spend in excess of the budget noted as £15.89 million, indicating that the significant risk on project spend was reported to the Growth Board. The Growth Board's terms of reference require escalation to the officer led Executive Leadership Team or via other Council processes 'as it sees fit' for breaches outside of specified tolerances. The tolerances included:

- overspends of the greater of £50,000 or 0.1% of the project overspend
- project delays past the financial year into another year

The approval decision in June 2016 was for a £30 million project to be completed by June 2018. In October 2018 the tolerance of a £50,000 / 0.1% of the project budget overspend (as reported to the Growth Board) and delayed project into a future financial year had been significantly breached. It is not clear whether the significant additional spend was escalated to an officer led leadership team or via another Council process. In our view, the then Executive Director of Place, as Chair of the Growth Board, had a responsibility to escalate a reported spend in excess of budget of £15.89 million to a formal Cabinet. We have been unable to identify any evidence of the escalating risks being reported to Cabinet formally.

The December 2018 Fairfield Halls Board minutes refer to the exchange of letters on the financial position. We consider that the letters and the minuted reference to the letters indicates that then Executive Director of Place, as chair of the Fairfield Halls Board, the then section 151 officer and Brick by Brick were all aware of the known additional spend and had a duty to escalate the increased spend formally. We have seen no record of the significant increased spend being escalated to the Cabinet formally.

The 11 December 2018 Scrutiny and Overview Committee included an item on Fairfield Halls which would have provided an opportunity for the known additional spend in excess of budget to be highlighted to Members for their consideration and challenge however the presentation focused on questions to the operator. (We have no evidence that the operator was aware of the additional spend in excess of the budget.) This was a missed opportunity to highlight to Members the scale of the known additional spend at that point.

The 16 January 2019 Growth Board notes record that

> 'Council as a shareholder and funder allowing BBB longer to pay back on equity so it won't emerge as a capital over spend. The financial impact on Council is that our company makes less profit over the medium term'

The then Executive Director of Place and the then Section 151 Officer are recorded as being present for the meeting and could be considered to have knowledge of the discussion. Based on the January 2019 Growth Board notes the rationale appears to be that 'the equity in Brick by Brick would be sufficient to cover the known overspend'. We consider the rationale to be fundamentally flawed as:

- the Council had not to date provided any equity funding to Brick by Brick
- Brick by Brick at that time had not made a profit and therefore it would not be in a position to cover the additional spend of £15.89 million

These facts should have been known by the then Executive Director of Place as a Brick by Brick Board member and the then Section 151 Officer as a Brick by Brick Board observer. The then Section 151 Officer has expressed the view that the intention was for equity to be provided at the end of the project which had not been reached at that point. We have not been provided with evidence of how the intended equity was included in the Council's forward financial plans.

The 2019/20 Brick by Brick Business Plan was presented to the February 2019 Cabinet meeting. The College Green scheme is identified in the Business Plan, one table shows that the projected profit for the College Green was £0 against a sales income of £177.5 million. The presentation, the Council covering report and the Business Plan did not provide a clear or transparent update on the College Green £28.8 million increased spend set out in the exchange of letters between Brick by Brick and the Council or the mitigating actions agreed. Respondents assert that the increased spend was included within the financial modelling that supported the Brick by Brick Business Plan which could be considered to have met Brick by Brick's responsibilities. The then Executive Director of Place and the then former Section 151 Officer (having passed the role onto their deputy on 1 February 2019) were aware of the significant increased spend and could reasonably have been expected to be aware that Brick by Brick's business plan did not provide clarity to the Cabinet on the potential financial risks associated with the College Green project. In not providing that clarity or challenging the lack of clarity these officers failed in their responsibilities to the Council.

We have received representations from officers that the lack of estimated profit for a significant scheme was included in the report and 'could have been open to question at the meeting'. We accept that the position of a £177.5 million scheme delivering £0 profit is included within the Business Plan; in our view, as acknowledged by respondents, this 'is clearly an unusual for a company'. In our view the significance of the lack of estimated profit on the College Green scheme should have been highlighted by officers to draw attention to the matter in the covering report to the Cabinet to provide greater clarity on the potential financial risks associated with the College Green project. The matter was known to the then previous Section 151 Officer (who ceased to be section 151 officer on 1 February and remained employed by the Council until March 2019) and their successor* and the then Executive Director of Place.

*The section 151 officer changed on 1 February 2019, the previous Section 151 Officer who signed the November 2018 letter to Brick by Brick remained in the Council's employ until March 2019 and continued to have a duty to ensure the significant additional spend was reported formally to Members. The Section 151 Officer from 1 February 2019 was a Director of Brick by Brick Board member from January 2016 until January 2019 and we therefore consider they could reasonably have been expected to be aware of the additional spend at that point, which they have acknowledged; however, they have asserted they were not aware that the known additional spend had not been formally agreed with the Cabinet.

At the June 2016 Cabinet, the original delivery date for the project was June 2018 and the actual reopening of Fairfield Halls was September 2019. The June 2016 Cabinet decision approved a £30 million investment for the project that has had a final expenditure of £67.5 million. Both the delays and the escalated costs were known by the then Executive Director of Place, the then Section 151 Officer and the then Chief Executive and there is no evidence of the emerging risks being reported to the Cabinet formally. All had the position and experience to understand their responsibilities to escalate the concerns and there is no formal record of any of this small group of officers doing so. The responsibilities are particularly clear for the senior statutory officers: the Chief Executive and Section 151 Officer as these are set out in statute* and the Council's Constitution. Representations received from this group of officers indicate that in their view concerns were raised to the relevant Portfolio Holders however we have not been able to obtain a written record of the concerns, who they were raised to or at which meeting. There is an onus on the relevant Portfolio Holders (for Homes and Gateway Services, for Finance and Resources and the Leader) to ask appropriate questions of senior officers and to require clear reporting to Cabinet on the progress of a complex project. Representations received from the relevant Portfolio Holders indicate that in their view concerns were not reported to them [and that there is in their view no evidence of a failure to ask appropriate questions]. Without evidence to support either viewpoint, [and in particular without detailed evidence of what questions were put to senior officers by the relevant Portfolio Holders in this regard], it is clear that there were known issues and effective action was not taken. In our view these officers and Portfolio Holders failed to exercise their functions and responsibilities adequately.

As chair of the Board and the senior responsible officer for the project, the then Executive Director of Place was responsible for ensuring the effective operation of the Board. The fact that the project was delivered late, overbudget with the current view from the Council that additional works are required indicates that the then Executive Director of Places was not effective in delivering the agreed terms of reference. There is evidence of the delays and additional costs being reported at the Growth Board, also chaired by the then Executive Director of Place. We would have expected the Growth Board to have considered the scale of the additional spend to require reporting to Cabinet.

The failure in governance appears to stem from the viewpoint that the project was for Brick by Brick to manage and any risks and cost overruns were for Brick by Brick to address. This viewpoint has been expressed by the then Chief Executive, the then Section 151 Officer, the then Leader, the then Cabinet Portfolio Holder for Finance and the Managing Director of Brick by Brick. In our view that viewpoint is flawed in that Brick by Brick was both:

- Wholly owned by the Council meaning any profits or losses would be consolidated into the Council's group accounts and ultimately impact the Council's financial position; and
- at that time the sole source of funding for Brick by Brick was from the Council.

** Statutory responsibility for the Chief Executive is Local Government and Housing Act 1989 section 4 and for Section 151 Officer is the Local Government Act 1972 section 151.*

Role of Scrutiny and Overview Committee

The Scrutiny and Overview Committee (the Committee) were active in considering the refurbishment of Fairfield Halls on at least six occasions between 2016 and 2020. Members of the Committee raised pertinent questions including on project management and the potential additional spend on the project. The magnitude of the financial additional spend on the project was not reported to the Committee and the lack of transparent reporting prevented adequate scrutiny as noted above.

At the 10 February 2020 Committee, the Brick by Brick representative confirmed that the current estimated cost for the project was £42.6 million. The then Executive Director of Place was also present at that meeting. Members on the Committee have a reasonable expectation that the figures reported are accurate. Both the Brick by Brick representative and the then Executive Director of Place were in a position where they could and should have known that the project cost exceeded £42.6 million in that:

- The mains work contract was let in 2018 for £42.7 million
- The October 2018 Brick by Brick Board minutes note the project spend was £50 million.
- The letter from Brick by Brick to the Council in October 2018 highlighted that the total project costs were £50 million (The £50 million was for Fairfield Halls alone with the letter including separate amounts for other elements of the College Green scheme including the car park and public realm).
- As at January 2020, the Council's records show that the Council had provided cash drawdowns to Brick by Brick in respect of Fairfield Halls project of £59.9 million.

Brick by Brick has expressed the view that 'it was not the role of Brick by Brick's representatives to offer contradictory advice to Members'. The reason for the gap between the known project expenditure and the amount reported to the Committee is unclear. In our view the gap was significant and as such the Committee was hampered in its role to scrutinize the project expenditure.

Between 2016 and 2020 the Committee also questioned the then Leader on the project on at least five occasions during the same period, although as above it is unclear whether concerns had or had not been raised to the Leader by the senior officers regarding the project, in light of representations received.

Financial position of the project

The monitoring of financial outcomes is intrinsically linked to the project progress and therefore financial governance is impacted by the weakness in governance over the project section.

Original project budget setting

The September 2014 Cabinet paper had the original project budget of £33.75 million. By October 2015 the Cabinet report indicates that the Council intended to provide Brick by Brick with loan finance to fund the costs of the project and to fund the costs of building the residential units. The June 2016 Cabinet report refers to a £30 million investment in Fairfield Halls and the confidential report states

> 'the financial appraisal and development assumptions for the land at College Green proposed to be transferred to Brick by Brick have been tested by the Council and found to be prudent for this stage of the development process.'

We have not been able to obtain the financial appraisal and development assumptions referred to in the confidential June 2016 Cabinet report and are therefore unable to comment on the robustness of that appraisal. We consider the financial appraisal supporting a decision to invest £30 million to be a key document that should have been maintained by the Council to enable subsequent scrutiny and the absence of such a document is a weakness in record keeping. Respondents have stated that £30 million was not the original budget. We have been unable to identify any Cabinet report after June 2016 which approved a budget for the project and we therefore consider £30 million to be the original budget. The February 2020 Scrutiny and Overview Committee meeting referred to a £30 million original budget.

Without the detailed financial appraisal, it remains unclear whether the additional expenditure over the original budget reflects issues in the original budget setting or issues in managing the project's expenditure or a mix of both. A detailed scope for the refurbishment of Fairfield Halls was provided by the original engineering contractor in September 2015 which was costed at £73 million. There is evidence that this detailed scope was discussed by officers at that time as would be expected. It is not clear from the evidence available to us how the September 2015 scope connects (or if it connects at all) to the project presented to the June 2016 Cabinet.

In the absence of the original financial appraisal our understanding is that the project was intended to be cost-neutral to the Council with Brick by Brick using expected profits from the College Green scheme to cover the costs of the project. This understanding is based on

- The November 2017 Fairfield Halls Board minutes which note that the budget gap identified at that time was 'Financial risk minimal for council it will be Brick by Brick issue'
- The December 2017 Brick by Brick Board report which sets out that 'the expectation for delivering the wider College Green projects was that the land value for the homes development would be £nil (acting as a barter transaction to fund the refurbishment of Fairfield Halls).'

Under section 123 of the Local Government Act 1972 the Council has a duty to achieve best value in land disposals. We have not been able to obtain the Council's assessment of whether £30 million for the land provided to the College Green projects represent best value and therefore we cannot conclude on whether the Council achieved this duty.

Final cost of the project

The Council provided funding to Brick by Brick through drawdowns and recorded those amounts in its financial statements. The Council has maintained records of the requests however as noted earlier there are no related properly executed written loan agreements providing a legal basis for making payments to Brick by Brick.

According to the underlying financial records:

Financial year	Council Funding provided to Brick by Brick for Fairfield Halls refurbishment	Expenditure incurred by Brick by Brick (from financial ledger)
2016/17	£1.2 million	£1.5 million
2017/18	£9.5 million	£7.5 million
2018/19	£19.9 million	£30.3 million
2019/20	£37.2 million	£27 million
2020/21	-	£1.2 million
Total	£67.8 million	£67.5 million
Adjustments – late VAT and invoices	(£0.3 million)	
Spend on Fairfield Halls refurbishment	£67.5 million	£67.5 million

* Funding provided includes Coast to Capital grant funding

It is a serious financial control and legal failing that payments in excess of £60 million were made to a third party without sufficient clarity as to the powers relied upon or any properly executed written contracts. Both the then Monitoring Officer and the then section 151 officer had a responsibility to ensure that the legal loan agreements were properly executed prior to making payments. In our view, officers treated Brick by Brick as an extended department of the Council in terms of the financial payments made, and did not ensure the level of rigour we would have expected. Had the legal agreements been entered into and monitored, it is likely that the Council could have monitored the position of the loans provided for the project and this would have enabled the Council to have ceased to make loans beyond the original budget or to have invoked loan covenants or to have escalated that the project's financial viability had been breached. In the absence of properly executed written contracts, the payments described as loans do not appear to have been subject to any such oversight.

The actual cost of the project has been difficult to establish which in itself is a serious failing that the Council's financial arrangements are not sufficiently robust to monitor the expenditure on a significant project. The Council was able to demonstrate the amounts the Council provided (recorded as loans) to Brick by Brick for the project. The actual spend by Brick by Brick has taken the Council's finance team longer to determine. The final cost of the project at £67.5 million is significantly greater than the £30 million originally approved at the June 2016 Cabinet. There are a number of factors to explain the spend in excess of the original budget including a lack of Council arrangements in the:

- robustness of the original budget setting
- clear financial monitoring
- monitoring the complexity of co-ordinating contractors on a complex project leading to a dispute with the original engineering contractor (note that although this is disputed by Brick by Brick the relationship ended and the Adjudicator's decision on the financial resolution was found in favour of the contractor with the Council having to pay the contractor's and Adjudicator's cost.)
- effective risk mitigation
- project oversight and scrutiny
- implementing the governance arrangements in the June 2016 Cabinet report

Brick by Brick expressed the view that 'the principal cause of cost increase relates to contract variations and specification delays by the Council and other essential unforeseen works (such as asbestos and structural issues)'. Brick by Brick's view implies that there was both a 'contract' and a 'specification'. We have not seen contractual variations supporting Brick by Brick's view. As noted above, we have not seen properly executed written contracts obliging Brick by Brick to carry out the work in accordance with any specification or enabling the Council to vary the specification; the idea that there was a 'specification' highlights the risk identified by the Council's legal advice that a specification would engage a risk of challenge in the licence / land transfer option route which it pursued.

The Council as the owner of Fairfield Halls would have had knowledge of both the structure of the building and the presence of asbestos and the costs related to these aspects should have been foreseeable by the Council in setting the original budget.

A number of respondents expressed the view that the financial impact was for Brick by Brick to manage. The Council as owner of Brick by Brick has always been required to account for any losses or profits made by Brick by Brick and this is shown through the group accounts. Therefore the Council had a responsibility to understand significant financial risks impacting Brick by Brick which we would argue the project represented. As ultimately the Council would need to account for any significant loss we remain of the view that the Council's arrangements to manage the risk of any increase in cost were not sufficient. The increase in costs was known, it was reported through the Fairfield Board and the Growth Board. The lack of transparency of the increased costs being reported to formal Member meetings has led to the position where it is unclear whether effective action at the time could have been taken to mitigate the financial risk to the Council.

In establishing the financial position of the project there were changes in financial record keeping during the project that contributed to the lack of clarity. The Council changed its financial system from 1 April 2019. Brick by Brick has provided representations that there was a period of five months in 2019 where Brick by Brick had to manage its finances without access to the system with a delay in migrated data being made available.

Taken together the Council missed opportunities to manage the causes of the increasing costs and has, as noted in our 23 October 2020 Report in the Public Interest, again imposed on council tax payers of Croydon an increased borrowing burden.

Impact on the Council's financial position

As noted earlier in the report given the uncertainties in the properly executed written contract and properly executed written loan agreements as a basis to make payments in relation to the project has led to the Council reconsidering its accounting treatment of the project expenditure. In the absence of a clear lawful basis for making payments to Brick by Brick for the refurbishment of Fairfield Halls, the Council is now recording the project expenditure as direct capital expenditure in the 2019/20 financial statements. The uncertainty on the lawfulness of the arrangement led to the Council's revised approach.

The majority of the adjustments to the 2019/20 financial statements impact the capital reserves position however there are some key revenue impacts on interest receivable and the minimum revenue provision which impact on the Council's General Fund position which is already under significant pressure. Key adjustments include:

- Loans receivable – without properly executed loan agreements the Council cannot account for the £61.3 million funding provided to Brick by Brick as receivable and the amounts have needed to be written off in the Council's accounts (noting that in the group accounts the entries would be subject to consolidation processes)
- Interest receivable – The Council has access to low interest rate borrowing from the Public Works Loans Board and part of the financial rationale for lending monies to Brick by Brick was that the Council would charge Brick by Brick a commercial interest rate. The Council has accrued interest of £9.1 million as at 31 March 2021 which will need to be written off as the amounts are no longer considered to be receivable without properly executed loan agreements, and as the Council's approach has now changed with the underlying loans being classified as capital expenditure.
- Minimum revenue provision (MRP) – as noted earlier the Council needs to account for MRP in future years' budgets and we estimate that the charge would be approximately £1.5 million per annum over the life of the refurbishment depending on the Council's assessment of how long the refurbishment will remain useful. The Council has included this in future budgets.

The view of the then Section 151 Officer was that the strategy of providing the last 25% funding of the project as equity would have included MRP. The unsigned loan agreement documents show that the intention was for funding to be split 75% debt and 25% equity funding. At the time of the then Section 151 Officer's departure no equity had been provided to Brick by Brick on the project or indeed on any other Brick by Brick project.

The Council's failure to establish and manage the project appropriately has led to further financial pressure on the Council's challenging financial position.

Recommendations

R8 The Chief Executive, as Head of Paid Service, should ensure appropriate governance arrangements are implemented in a timely manner particularly for strategic developments such as Brick by Brick including where appropriate that there is clear guidance for nominated representatives on the expectations of the role including reporting back to the Council

R9 The Chief Executive should work with the Leader to continue to embed

R9.1 a clearly understood distinction between the different roles and responsibilities of Members, officers and representatives of entities akin to Brick by Brick.

R9.2 clear responsibilities for officers and Portfolio Holders in challenging reports presented to Cabinet and other committees for balance, accuracy and consistency in terms of knowledge

R10 The Chief Executive should review the terms of reference for officer and member/officer boards that oversee significant projects and capital/revenue expenditure and clarify the escalation routes for significant additional spend in excess of the budget

R11 The Section 151 Officer should ensure financial reporting on significant capital projects is enhanced so that

R11.1 a clear agreed budget for the project is identified and the underlying financial analysis is maintained

R11.2 the clear agreed project expenditure amount can be reported through appropriate governance processes

R11.3 where there are changes in the original financial assumptions that there is an assessment on the project's financial viability with appropriate reporting

R11.4 the revenue impact of any changes in the capital project are addressed in future budget setting

Other auditor concerns

As part of our work, we have also identified further areas of concern which impact on the delivery of the project.

Project management - Co-ordination of contractors

The project involved a number of contractors and relied heavily on successful co-ordination of the design, build and operator elements, each of which lay with a separate contractor. An additional complexity was the subcontracting of project management responsibilities by Brick by Brick to a fourth contractor. There was a highly complicated series of interdependencies and the deficiencies in co-ordination between contractors (including the need to replace one contractor during the project) being a contributor to the delays, additional costs and quality of delivery issues.

Delays in the establishment of the dedicated Fairfield Board until May 2017, meant that the procurement of the Operator by the Council, and the main works provider by Brick by Brick lacked an effective mechanism to co-ordinate both contractor requirements at an early stage. The Council was limited in terms of what it could require of Brick by Brick due the Council's original decision to use the development licence option (although we note the outcomes would equally have been limited if the proposed land transfer option had been completed). Therefore, there was no effective mechanism to mitigate the co-ordination risk that became critical in the latter stages of the project, contributing to delays, additional cost and contractor disputes.

The relationship between Brick by Brick and the original engineering consultant broke down with the resolution of increased costs being decided by the Adjudicator. The need to assimilate a replacement engineering consultant mid-project and in a short period of time, was highly challenging and is likely to have contributed to the delays and cost implications.

As there was not a competitive tendering process by the Council to support the appointment of Brick by Brick to manage the project, there is no evidence that the credentials and suitability of Brick by Brick to manage a complex refurbishment project were assessed by the Council prior to selection. At the time the licence was granted, Brick by Brick was newly established without a track record of delivery. We acknowledge that Brick by Brick's articles of association allow commercial developments and not solely housing developments and that the Brick by Brick Board was in a position to assure itself of its ability to manage the project; however the Council did not have appropriate methods of oversight in place. There is also no evidence of how other factors such as value for money and risk were assessed by the Council. Representations received from Brick by Brick state that from Brick by Brick's perspective the financial viability of the project was linked to the wider College Green scheme which was in the best interests of Brick by Brick Their view is supported by Brick by Brick Board discussions of external advice received at that time.

In our view it was not appropriate for the Council to include the refurbishment of Fairfield Halls within a housing development scheme as the projects are very different and require different mechanisms for the Council to be able to secure value for money. The complex interdependencies were foreseeable for the Council and the Council's decision to use Brick by Brick with an arrangement that prevented a legally enforceable obligation to comply with detailed specification for the project should have been supported by a more detailed risk assessment and more robust governance arrangements that responded as risks emerged.

Value for money

In relation to how the Council was able to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the Project, the Council's overall approach was intended to be that the transfer of land to Brick by Brick for development with the value of the land being the same as the estimated cost of refurbishment. Based on representations received, the intention was for the Council to secure the refurbishment of Fairfield Halls and to receive future dividends from Brick by Brick generated from profit as part of the wider College Green scheme.

The Council's detailed financial analysis at that time (June 2016 Cabinet) cannot be found by current Council officers and we are unable to conclude on whether the underlying assumptions were reasonable or not. Brick by Brick did obtain advice on the financial viability of the wider College Green scheme however as would be expected this advice was from a Brick by Brick perspective.

Not withstanding, the failure to secure legality in the arrangement through a properly executed written contract, the intended arrangement involved a licence to access the building which would only require method statements to address how work would be carried out. The intended approach prevented the Council from issuing a detailed specification with which Brick by

Brick would be obliged to comply. It is difficult to see how the Council's intended approach would have secured economy, efficiency and effectiveness in relation to the project.

The Council did establish governance arrangements which required additional spend reported to the Fairfield Hall Board to be escalated to the Growth Board and where tolerances for additional spend are breached for further escalation to the Corporate Leadership Team or via other Council process as it sees fit. The additional costs exceeded the budget by £15.89 million, which breached the tolerances, and was reported to the Growth Board. The costs in excess of the budget was not reported in a clear and transparent manner to a formal Cabinet meeting. Representations received and meeting notes indicate the view at the time was that 'any overspend was for Brick by Brick to manage'.

In our view the governance arrangements did exist to identify and report the known additional spend however the governance did not operate as intended due to the Council's viewpoint at that time which was the financial risk remained with Brick by Brick. We consider this viewpoint misunderstands how any profits and losses of Brick by Brick impact the Council as the shareholder.

It is unclear whether informal mechanisms were used to raise concerns about the project. We have received representations from former officers stating that 'Lead Members' were briefed and that concerns were either not listened to or support was not provided and we have received representations from the three Members consulted that concerns were not raised. In the absence of documented discussions, it is difficult to reach a view on this point. It is however clear that senior officers (namely the then Executive Director of Place, the then Section 151 Officer and the then Chief Executive) should have been aware that the project's original approval of £30 million had been exceeded as this was reported in emails, Fairfield Hall Board papers and Growth Board papers.

Conflicts of interest

There were inherent conflicts of interest in managing a complex project through a wholly owned company. As noted in Internal Audit's review of Fairfield Halls in December 2020, there was a lack of an assessment of the real or perceived conflicts of interest. At one point the then Executive Director of Place was the project sponsor, chaired the Growth Board, chaired the Fairfield Board and was also the Council appointed Director on the Board of Brick by Brick. The inherent conflicts of interest of delivering each of those roles simultaneously should have been visible to both the then Executive Director of Place and the then Chief Executive who was their line manager, however these conflicts were neither addressed nor mitigated.

Delegated decision making

It is within the Council's Constitution to delegate decisions from Cabinet to named officers in consultation with Cabinet Portfolio Holders and in October 2015 the Cabinet delegated to officers, in consultation with relevant Cabinet Portfolio Holders, the authority to enter into relevant commercial agreements to progress the vision. In June 2016 a further paper was brought to Cabinet which approved the proposal to use Brick by Brick to bring forward elements of the College Green scheme including the refurbishment of Fairfield Halls.

There are a number of related issues

- Record keeping - There is a template to record the action taken in implementing delegated decisions which sets out the actions and is signed by the relevant Executive Director and relevant Portfolio Holder. During our work it has become evident that the retention of the formal documentation rests with individual Executive Directors and their local support arrangements. As personnel have changed, the retrieval of signed delegated decision sheets together with supporting documentation has become problematic and this gap in record keeping has led to gaps in demonstrating how delegated decisions were implemented. The lack of systematic and robust record keeping undermines the Council's governance arrangements, creates legal uncertainty and risk and fails to meet the good practice recommendations in the Information Commissioner's Office "Section 46 Code of Practice – records management" issued under section 46 of the Freedom of Information Act 2000.
- Reporting back to Cabinet – where decisions are delegated to officers in consultation with relevant Portfolio Holders there is an expectation that the decision will be implemented in line with the business case which Cabinet approved. With the Fairfield Hall refurbishment project there were fundamental changes that impacted the underlying assumptions for example the additional spend and the withdrawal of the Croydon College land. The decision was delegated to the then Section 151 Officer in consultation with the Portfolio Holder for Homes and Gateway Services and for Finance and Resources and we have not seen evidence that any of these individuals formally updated the Cabinet on the change in circumstances (although the Portfolio Holder for Finance and Resources has made

representations that in his view there was no need to formally update the Cabinet, as the additional spend was a matter for Brick By Brick, while the withdrawal of the Croydon College land was in the public domain and subject to questions by full Council). However, in our view, the lack of formal update to Cabinet did restrict wider scrutiny of the project by other members of the Cabinet or other members.

- Delays in implementing delegated decisions – It is important that where there are delays in implementing delegated decisions that updates are provided to Members to allow consideration of changes in circumstances. There is currently no guidance on what an appropriate time period is to implement a delegated decision or when a review of change in circumstances should be undertaken.

In our view, the Council should develop its governance arrangements to include clarity on record keeping standards (taking into account the statutory Code of Practice), time limits where there are delays in implementing delegated decisions and guidance on when changes in the known facts or risk profile require reporting back to the original decision maker.

Recommendations

R12 The Chief Executive should put in place arrangements to consider inherent conflicts of interest for executive officers.

The Council's position

The Council has acknowledged the difficulties arising from the arrangement, stating, in a letter from the then Section 151 Officer on behalf of the Council during the value for money review, as follows:

> "*The Council sought and obtained legal advice subsequent to the June 2016 Cabinet decision in relation to the public procurement regime and its application to the Fairfield Halls scheme. […] Although the advice assumed an actual land transfer under an option agreement (with buy back and security) the Council elected to grant licences to carry out demolition and other works to the Halls. This was consistent with legal advice, insofar as it meant that there was no enforceable obligation to carry out works. It is recognised however that the overall procurement law position was dependent on the company remaining truly independent and that, as you identify, this was not given sufficient weight. Equally, the Council has not been able to locate all documents entered into by way of licence to carry out works on Council land.*
>
> *In relation to how the Council was able to protect its interests and secure economy, efficiency and effectiveness in its use of resources in relation to the Project, the Council was reliant on the commercial incentive on the Company to control costs and maximise returns. As sole shareholder, as might be expected, the Council had an ability to monitor and control this. No contractual mechanism was applied however, given that no loan agreements were entered into and that the terms of any licence would only require method statements to address how work would be carried out. The external legal advice did make the point that although the Company was not subject to procurement law, it would still be expected to be interested in securing value for money through conducting a competitive tender process for works/services.*
>
> *In summary, whilst the Council did take advice it is recognised that the Council should have sought that advice earlier and in greater depth, and should have then acted on that advice.*"

The Council has, in light of the matters reported upon here and their views as set out above, proposed to account for the expenditure on the project as if it had been direct capital expenditure by the Council (as if the Council had initially merely spent the money on the refurbishment itself, rather than providing a loan the Brick by Brick to carry out its own refurbishment).

Conclusions

The Fairfield Halls refurbishment project was a complex project which was delivered later and at a higher cost than the original Cabinet approval in June 2016. and overspent. The Council failed to ensure the legality of the arrangements for the project combined with governance gaps which restricted wider scrutiny and challenge that may have allowed corrective action to have been taken. Whilst we have been provided with interview information and written assertions that the matters in this report were raised with by officers to the Portfolio Holders they reported to, we have not been able to obtain evidence to verify the content of informal briefings by officers or the questions Portfolio Holders asked of officers.

Representations received from the relevant Portfolio Holders assert that they did not receive any such briefings or updates. In these circumstances, what is notable is a lack of agreement on this point and the fact that there was a failing somewhere. The then Senior Statutory Officers together with the then Executive Director of Place had both the experience and the position to understand their duty to brief Members and in not recording or escalating formally their concerns they have been left open to challenge on their actions.

In summary, throughout the project there have been examples of a failure to discharge duties from a small group of senior officers (the then Senior Statutory Officers and the then Executive Director of Place). These senior officers were responsible for reporting to the then Portfolio holders (the Portfolio Holder for Homes and Gateway Services, for Finance and Resources and the Leader) who were either not briefed by officers and failed to request briefings on the project or did not take effective action in response to concerns raised by the senior officers.

In our view, key senior officers had the following responsibilities:

- The then Monitoring Officer (January 2016 to June 2021) had a responsibility to report on matters they believe to be illegal or amount to maladministration (Local Government and Housing Act 1989 section 5). In not ensuring that the external legal advice received in November 2016 was adhered to, the then Monitoring Officer's actions are open to challenge.
- The Section 151 Officer at that time (January 2015 to January 2019, at which point they moved into another role until March 2019) – under section 151 of the Local Government Act 1972, the Section 151 Officer is required to make arrangements for the proper administration of the Council's financial affairs and to have responsibility for those arrangements. Whether or not the then Section 151 Officer knew the loan documents were not properly executed, they had a duty to confirm appropriate documentation was in place before allowing the funding transactions to be authorized. The then Section 151 Officer also had a duty to escalate financial matters of concern to Cabinet which in our view included the project expenditure exceeding the budget approved by Cabinet. This duty also applied to the subsequent Section 151 Officer (February 2019 to February 2021) in respect of payments authorised from February 2019 although we accept the representations from the subsequent Section 151 Officer that as an ongoing project there was an assumption that appropriate arrangements were in place.
- The then Executive Director of Place was the project sponsor, chaired the Growth Board and the Fairfield Hall Board. Their objectives included
    - establishing 'new client side arrangements to hold Brick by Brick to account in the delivery of the business plan' and to 'oversee the opening of Fairfield Halls',
    - ensuring that their 'department understands and complies with corporate policy and accountability frameworks including those that relate to financial, people and procurement and commissioning processes and procedures'
    - being 'accountable for the robust management of the budget ensuring forecasting is accurate and take immediate action to deal with any unplanned pressures to deliver a balance budget'

  In not ensuring the known project additional spend was reported to Cabinet formally they did not meet their objectives.
- The then Chief Executive Officer (June 2016 to September 2020) as Head of Paid Service has a duty to, where they consider it appropriate, to prepare a report on: (a) the manner in which the discharge by the authority of its different functions is co-ordinated; (b) the number and grades of staff required by the authority for the discharge of its functions; (c) the organisation of the authority's staff; and (d) the appointment and proper management of the authority's staff. (Local Government and Housing Act 1989 section 4). The Chief Executive Officer also had a

responsibility as Chief Executive to effectively manage senior officers reporting directly to them and to do so in line with the Council's Constitution.

In addition, in our view the relevant Portfolio Holders for each of these areas should have been aware of the escalating risks in a complex project (and representations received from relevant senior officers indicate that in their view concerns were raised to the relevant Portfolio Holders, although as noted we have not seen evidence of this, and this is disputed by the relevant Portfolio Holders). In representations made during the drafting of this report some Portfolio Holders have suggested that that the project was Brick by Brick's responsibility and not the Council's; in our view, this demonstrates a misunderstanding of the relationship between the parent entity and its wholly owned company structure (which as some respondents have acknowledged is very different to that with an external company) and the development licence option for the refurbishment which was pursued. It was a political priority. We consider the relevant Portfolio Holders at the time to be the Finance and Resources, Homes and Gateway Services and the Leader

The Council's key failures in the project were:

- receiving external legal advice in November 2016 that raised concerns over the possibility of challenge to the legality of the Council's approach to the project and failing to properly pass these legal concerns on to Cabinet or act upon that advice
- failing to ensure that legal documents were properly executed and retained
- not escalating the known delivery delays and escalating costs
- allowing the lack of transparency of reporting the known issues with the project in the Brick by Brick 2018/19 Business Plan to remain unchallenged
- allowing significant amounts of public money to be incurred on a scheme where the formal written legal documents had not been finalized.
- allowing significant additional expenditure beyond the original budget to remain unreported to Cabinet
- allowing the 2019/20 Brick by Brick's Business Plan to remain unchallenged when it was clear that the public version did not accurately reflect the facts known to the officers
- not responding to direct Member questions with the known project spend at that time in February 2020

As a last resort any of these individuals named above could, and in our view should, have raised their concerns directly with the Scrutiny and Overview Committee (which had sought assurances over the project) or the General Purposes and Audit Committee or the Head of Internal Audit or External Audit. The individuals could, and in our view should, also have used whistleblowing if they did not feel management or Portfolio Holders were acting appropriately.

The Council has responded to the previous reports (in the public interest published on 23 October 2020 and the PwC review of companies dated 13 November 2020) including reporting to Cabinet in November 2020, February, July and November 2021 on the actions taken to address governance concerns relating to Brick by Brick and other Council companies. In a report delivered on 18 October 2021, the Council announced that it had implemented 62 of the 99 recommendations from the first report in the public interest, and we are told that further progress has been made since; there has been significant turnover in the Council's senior officers and Portfolio Holders since the period this report covers.

In reaching our view on the legality of the arrangement we discussed with and challenged the current Senior Statutory Officers who reviewed the position. . The Council has, in light of the matters reported upon here and their views as set out above, decided to account for the expenditure on the project as if it had been direct capital expenditure. The Council has proposed amendments to the draft 2019/20 financial statements that correct the accounting for this arrangement

We understand that the Council is now also in the process of considering alternative options with Brick by Brick, while in the meantime making other changes to the related governance arrangements.

Between 2016 and 2020 the Council spent nearly £67.5 million on the Fairfield Halls refurbishment scheme. In a drive to get the scheme implemented, the Council's then statutory and other chief officers did not ensure there was an appropriate legal basis for the engagement of Brick by Brick to carry out the works (by the licence and proposed land transfer) which would avoid legal challenge and enable proper scrutiny and oversight of the project and its costs; did not properly advise members about the independent expert legal advice received or act on that advice; did not secure adequate financial governance for the loans; did not formally and publicly advise members of the risks and changes to the project; and did not seek proper formal authority from members for the expenditure.

Appendix: Timeline

Date	Source	Fairfield Halls spend	Comment
Jun 2016	Cabinet paper	£30m	Initial Cabinet approval
Oct 2017	Scrutiny & Overview Committee		Minutes record: *Progress on the main contract had completed. Council is within original budget they set contractor*
Nov 2017	Fairfield Hall Board highlight report	£34.5m	Budget per monitoring reports with no explanation of variation from initial budget of £30m
Dec 2017	Brick by Brick Board report	£34.5m	Board report of forecast project spend including overall £10.5m loss on the wider College Green scheme
Feb 18	Cabinet paper – Brick by Brick Business Plan 2018/19 for shareholder approval	£30m	Officer report to Cabinet refers to Brick by Brick making profits and the £30m investment on Fairfield Halls Business Plan refers to c£30m refurbishment on Fairfield Halls and no reference to the £34.5m budget in the monitoring reports
Feb 18	Fairfield Halls project monitoring report	£38.95m	Forecast project spend increased to £38.95m per monitoring reports
Jun 18	Fairfield Halls Board report	£42.8m	Forecast project spend increased to £42.8m per monitoring reports Brick by Brick confirmed increase in spend in separate email to then Chief Executive who forwarded the email to the then Section 151 Officer
Sept 18	Fairfield Halls Board report and emails	£42.7m	Main works contract let in September 2018 at £42.7m
Oct 18	Letters between Brick by Brick and Council	£49.1m	Net spend on Fairfield Halls refurbishment identified as £49.1m Total College Green projected loss of £28.8m
Oct 18	Brick by Brick Board report	£50m	Forecast project spend on Fairfield Halls refurbishment increased to £50m
Nov 18	Growth Board report	£15.89 m overspend	Reported project spend in excess of the budget included in monitoring report and no detailed explanation i.e., project spend was now £50.39m based on Budget £34.5m + overspend £15.89m
Dec 18	Scrutiny and Overview Committee		No commentary on the known additional spend in excess of the budget Focus of presentation was progress of operator readiness for re-opening
Feb 19	Cabinet paper – Brick by Brick Business Plan 2019/20 for shareholder approval		Officer report to Cabinet has no commentary on Fairfield Halls project spend despite internal reports to the Growth Board showing a forecast spend of £50m which is in excess of the £30m investment approved by the June 2016 Cabinet. Brick by Brick Business Plan reports £0m profit on College Green project. This includes the impact of the financial position on the Fairfield Halls project.
Jan 20	Scrutiny and Overview Committee	£42.6m	First reporting to formal meeting with members on Fairfield Halls refurbishment spend since approval in June 2016. Amount reported to members for spend on project was £42.6m
Mar 20	Financial ledger	£59.9m	Council record of funding provided to Brick by Brick for Fairfield Halls. No additional funding provided by the Council to Brick by Brick in January or February 2020.
Mar 21	Financial ledger	£67.5m	Total spend on Fairfield Halls

ACTION PLAN IN RESPONSE TO THE REPORT IN THE PUBLIC INTEREST

1. The Council has fully accepted all recommendations made by the external auditor (R1-R12)
2. There are 7 statutory recommendations from the external auditor for the Council to urgently address:

R1 – Cabinet papers for major projects	R7 – Record keeping arrangements
R2 – Contract execution & storage	R9 – Roles and responsibilities
R3 – Updating legal advice	R11 – Financial reporting on significant capital projects
R4 – Payments to third parties	

Note: Statutory recommendations are written recommendations to the Council made by the Auditor under section 24 (Schedule 7) of the Local Audit and Accountability Act 2014. A recommendation under schedule 7 requires the Council to discuss and respond publicly to the report. Council must decide (i) if the recommendations are accepted and (ii) what, if any actions will be taken in response to them. This plan sets out the actions that the council proposes to take in response to all of the recommendations made in the report, including statutory recommendations.

Overall accountability for the action plan rests with Leader of the Council and the Chief Executive

Recommendation 1 The Chief Executive supported by the Monitoring Officer and the Section 151 Officer should ensure that Cabinet papers for major projects set out clearly: R1.1 the legal powers to enter into a particular arrangement and attendant risk R1.2 how the Council can protect its interests and secure economy, efficiency and effectiveness
Cabinet Member Accountability:
Improvement Work to Date Since the last Report in the Public Interest, the Council has taken action to improve the processes surrounding the submission of reports to Cabinet. This has included lengthening the lead in process for the production of Cabinet reports; the introduction of a twelve month forward plan; early consideration of all cabinet papers at the Corporate Management Team; and holding the

Cabinet briefing / Informal Cabinet meetings earlier in the cycle prior to Cabinet papers being published. This allows for much earlier consideration of papers and more opportunity for assurance of, and challenge to, advice being presented to the Cabinet. The Council's new interim Monitoring Officer has also introduced a new process to reduce the number of Cabinet and Committee reports being published late, which in turn allows Cabinet Members greater opportunity to fully consider recommendations and advice presented to them in Cabinet reports. The Council has also included a new KPI for late publication of reports in its new Finance, Performance and Risk reports which are presented to Cabinet bi-monthly.		
Action	**Deadline**	**Accountability**
1.1 A new report writers guide will be produced alongside a new report template for all Council reports to use regardless of which board or committee in will be presented in. This will explain the issues raised in the RIPI and why commentary is needed on the lawfulness of the council's arrangements	**To be determined**	**Monitoring Officer**
1.2 The template for reports will be amended to include a reference in the legal comments section to the need to ensure legal advice is recorded in the paper on the power to enter into a particular arrangement for a major project and the actions required to ensure it remains lawful,	**To be determined**	**Monitoring Officer**
1.3 The Capital Board will be asked to produce guidance on what constitutes a major project and this will be incorporated into the new report writers' guide. This section in the report will also draw out the need for officers and those delivering on the Council's behalf to ensure the council delivers value for money within all its major projects and secures economy, efficiency and effectiveness for the taxpayers and residents of Croydon in accordance with Section 3(1) of the Local Government Act 1999 and the duty of best value. The template will stress the importance of ensuring the report provides decision makers with full information and the requirement to update the decision making body when this information changes.	**To be determined**	**Director of Commercial Investment**

1.4	Progress reports on the delivery of major projects to Cabinet will also incorporate an assurance section that the requirements are to ensure the arrangements are lawful and have been met e.g. contracts signed, land correctly transferred etc prior to committing the Council contractually. This will also be included in the new guide.	**To be determined**	**Monitoring Officer** **Director of Commercial Investment**
1.5	Once the new guide and the new report template has been produced, it will be brought to GPAC and the Ethics Committee for member consultation and agreement. Training will then be developed to ensure understanding of the new requirements by report writers.	**To be determined**	**Monitoring Officer** **Director of Commercial Investment**
1.6	The Council will make full use of its decision management software (Mod.Gov) to automate production of reports. This will have the benefit of allowing report authors to draw in expert advice earlier in the process and prevent reports from being changed after they have received legal and financial commentary.	**To be determined**	**Monitoring Officer**

Recommendation 2 The Monitoring Officer should ensure that: R2.1 contracts are properly executed before entering into arrangements with third parties R2.2 the properly executed documents are stored robustly to allow future scrutiny R2.3 key requirements underpinning the legal advice are in place before progressing with the arrangement		
Cabinet Member Accountability:		
Action	**Deadline**	**Accountability**
2.1 The Monitoring Officer will undertake a review of existing council processes for the signing of contracts, storage of signed contracts, and assurance on underpinning legal requirements prior to arrangements being entered into.	**September 2022**	**Monitoring Officer** **Director of Commercial Investment**
2.2 The Capital Board will be given a formal role going forward in the assurance of the contracts having been signed, that they are stored securely and all legal requirements have been met prior to approval to proceed with a major project. The terms of reference to be updated to reflect this.		
2.3 This review will be reported to the Statutory Officers' Board in the first instance and will include any recommendations on required changes to processes, thresholds and delegations. This review will then be brought to the General Purposes and Audit Committee for Member oversight and comment.		

Recommendation 3 The Monitoring Officer should ensure that where legal advice changes after a Cabinet decision that the consideration of the implications of the changes is documented and where the Monitoring Officer considers additional legal risks are identified that the Cabinet is updated on the impact on the original decision made		
Cabinet Member Accountability:		
Action	**Deadline**	**Accountability**
3.1 The Monitoring Officer will review the Council's Constitution, particularly Part 5A, the Protocol on Decision Making. This review will have particular regard to setting out proportionate thresholds for decisions to be reported back to the relevant decision-making body when advice (legal or otherwise) upon which the decision was based significantly changes. The review will also consider introducing a time limitation on the delegated decisions that are made by Cabinet in order to ensure they remain relevant and are used appropriately. This will also be included in the new Report Writers Guide.	**May 2022**	**Monitoring Officer**
3.2 A standing item will be included on the Statutory Officers' meeting to identify if there have been any significant changes to advice underpinning Cabinet decisions.	**Immediate**	**Chief Executive**

Recommendation 4

The Section 151 Officer should ensure that prior to making payments to third parties that appropriate legal documentation is in place such as a properly executed contract or a properly executed loan agreement

Cabinet Member Accountability:

Action	Deadline	Accountability
4.1 The Section 151 officer will undertake a review of the Council’s existing processes for ensuring payments to third parties meet the required governance controls such as a signed and dated loan agreement or contract. This review will make any recommendations that are necessary to ensure that there are proportionate thresholds, checks and balances on payments to third parties.	**July 2022**	**Corporate Director of Resources**
4.2 The Capital Board will incorporate this assurance check as part of their formal programme board oversight on the progress of major projects and will amend their terms of reference to reflect this additional role.		
4.3 The findings of this review will be reported to the Statutory Officers’ meeting in the first instance, with any changes that are required to the Council’s Constitution being reported to the Council via GPAC or Ethics committee.		

Recommendation 5 The Monitoring Officer and Section 151 Officer should ensure that arrangements are in place to properly consider public procurement rules and UK obligations on subsidy control rules before entering into arrangements		
Cabinet Member Accountability:		
Action	**Deadline**	**Accountability**
5.1 The Council's Director of Commercial Investment will review the Council's existing arrangements for ensuring compliance with subsidy control legislation. This review will be reported to the Section 151 officer and Monitoring Officer and will highlight any risks in the Council's current arrangements. The review will also make recommendations and set out an action plan to mitigate and address any risks that are identified. The Capital Board may play a part in the assurance mechanism before entering into arrangements. If so, its terms of reference will be amended.	**September 2022**	**Director of Commercial Investment**

Recommendation 6 The Chief Executive, Monitoring Officer and Section 151 Officer need to consider how to respond appropriately to challenge on decisions and be prepared to take corrective action where necessary		
Cabinet Member Accountability:		
Improvement Work to Date As part of the Croydon Renewal and Improvement Plan, a range of actions have been undertaken to improve the culture of the organisation in relation to openness, transparency, accountability and challenge. The various actions are all designed to facilitate constructive challenge and open dialogue from Members, residents, officers and each other. To date, this work has included: - Introducing a 'guardians' programme for staff, providing a safe space for staff across the organisation to raise concerns - New customer complaints handling process - Developing a new access to information protocol for Councillors - Introducing new codes of conduct for Members, Co-opted Members and Officers		
Action	**Deadline**	**Accountability**
6.1 A new member enquiry / casework process and supporting software will be rolled out to allow more pro-active tracking, management and responses to member casework enquiries and also allow learning from the casework to be captured more effectively to improve services. This may result in policy decisions needing to be revisited.	**July 2022**	**Assistant Chief Executive**
6.2 A new system of internal control officer boards will be implemented following a review of core business meetings and forums. At the time of writing this report three have already been re/launched, namely the Health and Safety Committee; Equality, Diversity and Inclusion Board; and the Capital Board. The Corporate Resilience Board has been in operation throughout the pandemic.	**July 2022**	**Director of Policy, Programmes & Performance**

6.3 A new Member / Officer working protocol will be developed and submitted to Council for adoption into the Council's Constitution. *Please note that this action will also support 9.2*	**March 2022**	**Monitoring Officer**
6.4 A new assurance framework will be developed and reported on annually to the General Purposes and Audit Committee	**July 2022**	**Corporate Director of Resources**

Recommendation 7 The Chief Executive should improve record keeping arrangements so that: R7.1 the records supporting key decisions including financial analysis are maintained R7.2 a standard approach to record keeping with monitoring of which decisions have been implemented R7.2 tolerances are established for reporting back changes to Cabinet		
Cabinet Member Accountability:		
Action	**Deadline**	**Accountability**
7.1 A review will be undertaken by the Council's Information Management Team of record keeping across the Council for key decisions, delegated decisions and Cabinet decisions in general and record keeping of formal internal control boards. The review will make any necessary recommendations regarding proposed future systems of control, in particular to ensure required or agreed future reporting requirements are adhered to through the forward plan and these will be reported to GPAC and Cabinet.	**September 2022**	**Assistant Chief Executive**
7.2 This review to provide assurance that the Council is operating in accordance with the relevant legislation including the good practice recommendations in the Information Commissioner's Office "S46 Code of Practice – Records Management" issued under section 46 of the Freedom of Information Act 2000.	**December 2022**	**Assistant Chief Executive**

Recommendation 8		
The Chief Executive, as Head of Paid Service, should ensure appropriate governance arrangements are implemented in a timely manner particularly for strategic developments such as Brick by Brick including where appropriate that there is clear guidance for nominated representatives on the expectations of the role including reporting back to the Council		
Cabinet Member Accountability:		
Improvement Work to Date Actions already taken by the Council to strengthen the governance arrangements for strategic and major projects and programmes include: - Appointment of a new Commercial Investment Director; - Establishment of a Croydon Companies Supervision and Monitoring Panel (officer only) to have oversight of all Council owned companies - Establishment of a Brick by Brick Shareholder Cabinet Advisory Board (Member only); - Established a new programme office that includes a remit to work on the capital programme - Agreement of new terms of reference for the Capital Board with a focus on good planning, governance and delivery - Where warranted, non-executive and / or independent chairing and leadership has been sought, including independent chairs for the Council's General Purposes and Audit Committee, Housing Improvement Board, Children's Improvement Board and the Croydon Adult Safeguarding Board.		
Action	**Deadline**	**Accountability**
8.1 The Croydon Companies Supervision and Monitoring Panel be tasked with considering what additional measures, if necessary, need to be introduced to support and clarify the roles and responsibilities of any person appointed by the Council to be a director of a Council owned company. This review to incorporate an undertaking to abide by the code of conduct and standards of public life (commonly known as the Nolan principles). *Please note that this action will also support 9.4*	**May 2022**	**Director of Commercial Investment**

8.2 The Council has had guidance notes agreed on the role of a non-executive appointee on behalf of the Council but these will now be reviewed and brought back to Ethics Committee for approval.	**To be determined**	**Monitoring Officer**
8.3 Mandatory training will be provided on a regular and timely basis to all Council owned company directors. Attendance at this training is part of the requirements to remain a Council appointed Director.	**To be determined**	**Monitoring Officer**
8.4 The terms of reference for the Council's new internal control boards will be reviewed to ensure that there is clarity on how the work undertaken by these boards flows into member meetings and formal member briefings as appropriate.	**To be determined**	**Director of Policy, Programmes & Performance**

Recommendation 9		
The Chief Executive should work with the Leader to continue to embed R9.1 a clearly understood distinction between the different roles and responsibilities of Members, officers and representatives akin to Brick by Brick R9.2 clear responsibilities for officers and Portfolio Holders in challenging reports presented to Cabinet and other committees for balance, accuracy and consistency with their knowledge		
Cabinet Member Accountability:		
Improvement Work to Date The Council has agreed a new code of conduct and guidance for Members and a new code of conduct for officers. This is being supplemented by tailored learning and development activity as part of the May 2022 Member Induction Programme, in new officer induction programmes and the corporate culture change programme.		
Action	**Deadline**	**Accountability**
9.1 Review role descriptions for members and a revised member handbook is being developed. This work will be brought to the Ethics Committee for approval.	**May 2022**	**Monitoring Officer**
9.2 A new Member / Officer working protocol will be developed and submitted to Council for adoption into the Council's Constitution. This protocol will clarify responsibility for providing effective advice and challenge. *Please note that this action will also support 6.3*	**May 2002**	**Monitoring Officer**
9.3 The Croydon Companies Supervision and Monitoring Panel be tasked with considering what additional measures, if necessary, need to be introduced to support and clarify the roles and	**May 2022**	**Director of Commercial Investment**

responsibilities of any person appointed by the Council to be a director of a Council owned company.		
9.4 The Croydon Companies Supervision and Monitoring Panel be tasked with considering what additional measures, if necessary, need to be introduced to support and clarify the roles and responsibilities of any person appointed by the Council to be a director of a Council owned company. This review to incorporate an undertaking to abide by the code of conduct and standards of public life (commonly known as the Nolan principles). *Please note that this action will also support 8.1*	**May 2022**	**Director of Commercial Investment**

Recommendation 10		
The Chief Executive should review the terms of refence for officer and member/officer boards that oversee significant projects and capital/revenue expenditure and clarify the escalation routes for significant additional expenditure in excess of the budget		
Cabinet Member Accountability:		
Improvement Work to Date The July 2021 Council meeting noted the work underway to redesign the Council's internal control system. Two new officer Boards have been created and launched, with further Boards about to start operating, and also a new Cabinet Advisory Board to oversee the work on Brick by Brick and other large commercial shareholder interests the Council has. This redesign has clarified the purpose of existing meetings and forums and has produced a new template for the terms of reference to ensure clarity on accountability of that Board and reporting mechanisms into member meetings and formal member briefings. Since June 2021 the Cabinet has been receiving a monthly update on the council's general fund, housing revenue account and capital expenditure.		
Action	**Deadline**	**Accountability**
10.1 The Capital Board will review its terms of reference to develop an effective role in regard to its oversight of the delivery of major projects and clarify the escalation routes for significant overspends.	**May 2022**	**Director of Commercial Investment**
10.2 The format of the monthly cabinet update on general fund, HRA and capital expenditure will be reviewed in general to ensure it is incorporating the best practice of high performing councils in budget reporting to members. This review will also pay specific regard to the reporting on risks and opportunities, over and underspends on the delivery of significant projects either revenue or capital expenditure and either general fund, parking places reserve account or housing revenue account related.	**May 2022 P1 Report**	**Corporate Director of Resources**

10.3 The Internal Control Board terms of reference template will be reviewed for all boards to ensure clarity on responsibilities for risks in regard to its responsibilities, workload and escalation routes.	**July 2022**	**Director of Policy, Programmes & Performance**
10.4 The current monthly budget assurance meetings chaired by the Chief Executive and Corporate Director of Resources will be reviewed to assess effectiveness after its first year of operation.	**April 2022**	**Director of Policy, Programmes & Performance**

Recommendation 11		
The Section 151 Officer should ensure financial reporting on significant capital projects is enhanced so that R11.1 a clear agreed budget for the project is identified and the underlying financial analysis is maintained R11.2 a clear agreed project expenditure amount can be reported through appropriate governance processes R11.3 where there are changes in the original financial assumptions that there is an assessment on the project's financial viability with appropriate reporting R11.4 the revenue impact of any changes in the capital project are addressed in future budget setting		
Cabinet Member Accountability:		
Action	**Deadline**	**Accountability**
11.1 The Corporate Director of Resources will oversee the review work to be undertaken by the Director of Commercial Investment in regard to improving the role of the Capital Board in meeting a number of these recommendations. That review will incorporate the recommendations above.	**May / June 2022**	**Corporate Director of Resources**
11.2 The review of the monthly budget report format will also take into account these recommendations and report to GPAC, Scrutiny and finally Cabinet taking into account members' views.	**To be determined**	**Corporate Director of Resources**

Recommendation 12 The Chief Executive should put in place arrangements to consider inherent conflicts of interest for executive officers		
Cabinet Member Accountability:		
Action	**Deadline**	**Accountability**
12.1 A new code of conduct for all officers is currently in development which will incorporate best practice in regard to the declaration of interests and arrangements for managing any.	**May 2022**	**Monitoring Officer**
12.2 An annual review of declarations for all officers will be undertaken each May. This will update a formal register of all declarations to be published on the council website.	**May annually**	**Head of Internal Audit**
12.3 CMT, DMTs and all internal governance boards will have declarations of interest added as a standing item to their agendas.	**May 2022**	**Director of Policy, Programmes & Performance**
12.4 The Statutory Officers' Board will amend its terms of reference to include the formal review of any officer conflicts of interest and the agreement of arrangements for managing them.	**May 2022**	**Chief Executive**

REPORT TO:	**Scrutiny and Overview Committee** **15 February2022**
SUBJECT:	**Budget Scrutiny 2022-23**
LEAD OFFICER:	**Richard Ennis, Interim Director of Finance, Investment and Risk (S151 Officer)**
PUBLIC/EXEMPT:	Public

ORIGIN OF ITEM:	This report has been included on the agenda for the Scrutiny and Overview Committee to inform the budget scrutiny process, with the meeting on 15 February being the culmination of the process over the past three months
BRIEF FOR THE COMMITTEE:	The Scrutiny and Overview Committee is asked to:- 1. Note the update to be provided on the delivery of the 2021-22 budget and setting the 2022-23 Budget. 2. Consider the conclusions of the Committee on 2022-23 budget, to be submitted to the Budget Council meeting on 28 February 2022, including:- a. Reaching a conclusion on deliverability and sustainability of the 2022-23 budget. b. Reach a conclusion on whether sufficient evidence has been provided to conclude that there is understanding of the key risks and ownership of the proposals by the Council's political leadership. c. Consider whether there are any further conclusions on the 2022-23 budget the Committee would like to bring to the attention of Council.

3. **2022-23 BUDGET**

3.1. The Scrutiny and Overview Committee will be provided with a final update on the progress made with setting the 2022-23 budget. This will include the latest budget reports scheduled to be published as part of the Cabinet agenda for 21 February 2022, when published on 11 February. These reports will be published in an agenda supplement to this cover report for the consideration of the Committee once available.

3.2. The purpose of this update is to inform the budget scrutiny process, from which the Committee will be looking to reach a view on the deliverability and sustainability of the 2022-23 Budget. The Committee will also be looking to ensure that there is an understanding of the key risks and ownership of the proposals by the Council's political leadership.

3.3. To prepare for the budget scrutiny process, members of the Committee have received two training sessions delivered by the Centre for Governance and Scrutiny on best practice for budget scrutiny. On 23 November 2021, the Committee has also received a briefing from the Council's Section 151 Officer on the key budget principles and the approach to setting the budget.

3.4. At the Scrutiny & Overview Committee on 7 December the agenda included and update on the setting of the 2022-23 Budget and the Three Year Medium Term Financial Strategy. From the discussion a number of areas were identified for further investigation such as programme management capacity of the Council to manage the delivery of the budget and the financial monitoring systems. Since the meeting the Scrutiny Chairs have followed up these issue directly with officers and will report back to the meeting.

3.5. The three scrutiny sub-committees (Children & Young People, Health & Social Care and Streets, Environment & Homes) each had a briefing on the budget proposals for their areas of responsibility in the week of 29 December. At the meetings of the sub-Committees in January/February, each agenda will include a budget challenge item focusing on specific areas of the budget identified for further scrutiny. The outcome from these sessions will be fed back to this Scrutiny & Overview Committee meeting on 15 February 2021

3.6. As this meeting is the final opportunity for the Scrutiny and Overview Committee to consider the budget setting process, at the conclusion of this item the Committee should have finalise its conclusions on the 2022-23 Budget. These conclusions will be reported to the Budget Council meeting on 28 February.

4. **BUDGET DOCUMENTS REVIEWED BY SCRUTINY**

4.1. To aid the Committee in its final consideration of the budget, a series of links are provided below to agenda papers and minutes (where available at the time of publication) already consider over the past couple of months.

Scrutiny & Overview Committee – 7 December 2021

Items Considered:	1. Finance Performance Report – Month 7 2. 2022-23 Budget & Three Year Medium Term Financial Strategy Agreed Minutes

Children & Young People Sub-Committee – 18 January 2022

Items Considered:	1. Children, Young People & Health Budget Scrutiny Challenge 2. Education Estates Budget 2022-23

Scrutiny & Overview Committee – 20 January 2022

Items Considered:	1. Budget 2022-23 (Including the following Cabinet reports: Financial Performance Report – Month 8, MTFS 2022-23 to 2024-25 Update on position,

General Fund Capital Programme 2022-23 to 2024-25)

2. Scrutiny Budget Challenge

Draft Minutes

Health & Social Care Sub-Committee – 25 January 2022

Items Considered: Budget Scrutiny Challenge: Adult Social Care & Health Directorate

Draft Minutes

Streets, Environment & Homes Sub-Committee – 1 February 2022

Items Considered:

1. Budget Scrutiny Challenge
2. HRA Rent Setting and Draft Budget 2022-23

Sub-Committee Recommendations to 7 February Cabinet on HRA Rent Setting & Draft Budget

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REPORT AUTHOR: Simon Trevaskis – Senior Democratic Services & Governance Officer

APPENDICES:

Cabinet Finance Reports – To be confirmed.

BACKGROUND DOCUMENTS: None

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