

Scrutiny & Overview Committee

Meeting held on Thursday, 27 May 2021 at 5.30 pm.

This meeting will be held remotely and can be viewed on the Council website

MINUTES

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

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

Apologies: Councillor Joy Prince

PART A

37/21 **Disclosure of Interests**

There were no disclosures of interest made at the meeting.

38/21 **Urgent Business (if any)**

There were no items of urgent business.

39/21 **CALL-IN: Ongoing Review of Brick by Brick Croydon Ltd and associated matters relating to the company**

The Scrutiny & Overview Committee considered a call-in request of the Cabinet key decisions set out in 'Ongoing Review of Brick by Brick Croydon Ltd and associated matters relating to the company' report. The decisions taken in this report were made by the Cabinet at its meeting held on 17 May 2021.

The Chair explained the process for considering a call-in, confirming that the Committee needed to agree whether to review the decision or not 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 hours and thirty minutes 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 back to the Cabinet for reconsideration, outlining the nature of the Committee's concerns

1. 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 an opportunity was given to the lead signatory of the request to provide an introduction, outlining the grounds for submitting the call-in. Councillor Robert Ward, as lead signatory, advised the Committee that it was important for the public to understand what had happened with Brick by Brick and who was responsible. Concerns about the company had first been raised in 2016 and since then many of the issues highlighted had come to pass. There had been repeated requests made for information throughout this time, which had not been granted. No adequate explanation had been given as to why this was the case. It was disappointing that the information requested had not been provided and it was up to the Committee to reach a conclusion on the call-in based on the information available in the Cabinet report.

Following this introduction, the Leader of the Council, Councillor Hamida Ali, was given the opportunity to explain the reasons for the Cabinet decision. It was advised that the key decisions taken were important in the context of the work over the previous seven months to improve the Council's governance processes. The need to improve the Council's governance had been raised as a criticism in the Report in the Public Interest (RIPI) issued by the Council's external auditor, Grant Thornton. The decision to treat what had originally been a loan to Brick by Brick for the refurbishment of Fairfield Halls, as a capital expenditure had been taken following advice from CIPFA and the Council's external auditor. The actual refurbishment of Fairfield Halls by Brick by Brick was a separate issue, which was the subject of an ongoing Value for Money review by the external auditors, Grant Thornton.

The Cabinet had originally reviewed the decision to use the Council's Housing Revenue Account (HRA) to purchase homes from Brick by Brick in July 2020, at which point the decision was deferred. The information provided in the report sets out the rationale for now proceeding with the acquisition of these properties and also addressed concerns raised in the RIPI about circular funding. It was highlighted that Cabinet had changed one of the original recommendations set out in the report, to ensure that any future decision to make purchases additional stock for the HRA requiring a decision by Cabinet rather than been made using delegated authority.

Sarah Ironmonger from the Council's external auditor, Grant Thornton, had been invited to the meeting by the Committee given the concerns raised about the accounting treatment of the Fairfield Halls refurbishment in the RIPI. It was confirmed that there had been a discussion between the external auditor and the Council on the accounting treatment of the cost of the Fairfield Halls refurbishment, to inform the decision making process. It was the view of the auditor that as the building remained under the Council's ownership, the debt should remain with the Council. The decision to treat the debt as capital expenditure needed to weigh up accounting judgements, including CIPFA standards.

It was confirmed that both CIPFA and the auditors had agreed that bringing the loan, made to Brick by Brick for the refurbishment of Fairfield Halls, back into the Council was the best course of action. The repayment of the loan had been based upon transferring the College Green site to Brick by Brick for redevelopment. As this transfer was no longer proceeding, the company no longer had the ability to repay the loan. It was confirmed that should the Cabinet decide to sell the College Green site, this would create a capital receipt that could be used to pay down the Council's debt or for other capital expenditure.

Concern was raised about the cost of refurbishing Fairfield Halls, which had increased from an original estimate of £30m to the current figure of £69.1m, and whether there could be any certainty that this would not increase further. It was confirmed that the figure would not get any higher in terms of cost and £69.1m was the final figure. It was noted that the Value for Money Review being undertaken by Grant Thornton was likely to cover the reasons for the increased cost of the project.

A question was asked about the cost of borrowing to cover the capitalisation of the refurbishment costs and how this would impact upon the Medium Term Financial Strategy (MTFS). It was confirmed that the cost of borrowing had already included in the Council's budget and an allowance for the non-payment of the loan had been included in the MTFS agreed by the Council in February 2021. The Council could borrow from the Public Works Loan Board for any period of time between 20 to 50 years. The borrowing rates shown in the report may look high, but this was because an amalgamated rate was shown. At present the cost of borrowing was below 2%.

It was questioned whether the public realm works outside Fairfield Halls had been completed and how any remedial work inside the venue would be paid for. In response it was advised that approximately £3m had been spent on the public realm for the site and this had still to be completed. The operator of Fairfield Halls had indicated there was a number of aspects of the refurbishment they were unhappy with. The Council had engaged a specialist to review the building and prepare a report on any work needed. If this work was part of the original specification to the contractor for the project, then there would be an expectation on the contractor to come back and complete the work. If any remedial work identified was not part of the original specification provided to the contractor, then it would need to be paid for by the Council, even if it had been specified in the Council's agreement with Brick by Brick.

It was viewed as reasonable for the Council to employ a specialist consultant to review the work undertaken at Fairfield Halls. Given the nature and age of the building, it was unlikely the Council would have the requisite skills in-house to conduct such a review. The consultant would also look at the contracts for the refurbishment of the building to establish where contractors could be asked to complete work that had not been delivered in line with the original specification to them.

Regarding the novation of the contracts for the refurbishment from Brick by Brick to the Council, it was questioned whether these contracts would give the Council the same level of assurance if latent defects were discovered in years to come. It was confirmed that the Council would have the same protection as the primary person who let the contract, which in this case was Brick by Brick.

It was advised that it would not be possible to give any indication of any possible additional costs until the survey of the building had been completed. It was likely that the outcome of the survey would be reported to a meeting of the Cabinet later in the year for a decision. The cost of any additional work at Fairfield Halls had not been included in the capital programme agreed by the Council. If further expenditure was needed, it would have to be found from within the existing capital budget.

Concern was raised about the timing of this decision, with it questioned whether it would be better to wait for the outcome of the Value for Money Review. It was advised that the key decision related to the accounting treatment of the refurbishment cost. As Brick by Brick were not in a position to repay the loan, the accounting treatment needed to be reviewed for the 2019-20 accounts. Without this decision the 2019-20 accounts could not be closed.

There was a concern that one reason for bringing the cost of the loan back from Brick by Brick to the Council was to make the company more saleable. Should the company be sold it would make it very difficult to find out how the company had reached its present position. Reassurance was given that whatever the future of the company, the novation of the contracts for the refurbishment of Fairfield Halls would mean they were held by the Council. Should the company be sold, then the Council would ensure it retained information about the internal governance arrangements of the company. The Committee was reminded that the forthcoming Value for Money Review from the external auditor would help to explain a lot of what had happened around the Fairfield Halls refurbishment.

In response to a question about alternative options considered instead of the capitalisation and novation outlined in the report, it was highlighted that the capital expenditure had already been funded in terms of the loan to Brick by Brick. If the Council did not novate the contracts for the refurbishment of Fairfield Halls, it would not have either the protection or ability to chase up any defects that may arise with the building.

Regarding the purchase of 104 properties by the Council's Housing Revenue Account (HRA) from Brick by Brick, reassurance was sought that the Council was not overpaying for these properties. It was confirmed that a competitive bidding process had been run by Brick by Brick for the sale of these properties. In total 190 properties were sold, with the other 86 not purchased by the Council, sold to a registered housing provider. The decision to proceed with the purchase was based on the principle agreed in February to only buy new properties if the income received covered the debt, management and maintenance costs.

In response to a question about the Council's ability to verify the quality of the build in the properties purchased, it was advised that some of the properties were still under construction. As they reached completion, they would be inspected to ensure the required standard was met. There would also be allowance made for any snagging that may arise further down the line, with the appropriate guarantees put in place. It was possible, should the Council decide to pursue the build out option, that contracts would be transferred to the Council. It was confirmed that the future of Brick by Brick was a high risk for the Council and rated as such on the corporate risk register.

It was confirmed that the relationship between the Council and the contractor responsible for building the properties to be purchased would be the same whether Brick by Brick was sold or not. As the Council already managed approximately 15,000 units through the HRA, there would not be an issue managing 104 additional properties.

As the original recommendations considered by the Cabinet had been amended to ensure any future purchases by the HRA was brought to Cabinet for agreement, the scale of other potential purchases was questioned. It was advised that no further purchases were in the pipeline in the near future and this recommendation had been added should a new opportunity arise.

The reasons for including the additional £10m loan agreement for Brick by Brick were questioned. It was confirmed that this part of the decision had been included to manage the potential risks to cash flow at Brick by Brick over the summer. At present, the indications were that private sector sales were proceeding as expected, which would mean the additional loan would not be needed. However, should there be any issues affecting sales, which would impact upon cash flow at the company, then it could be used.

In response to a concern about the ability of the Council to manage any defects that may arise in the properties purchased, it was agreed that this may be an issue for the Streets, Environment & Homes Sub-Committee to revisit at a later date. This review would look for reassurance that the Council was able to hold builders to account.

It was confirmed that analysis of the properties purchased in comparison to the requirements of housing waiting list could be provided. Any homes purchased would be allocated to people high up the housing waiting list. As the Council had bid for the properties on a block by block basis, it would be acquiring the freehold for the block as well as the units within the block.

At the conclusion of the item, the Chair thanked the Leader of the Council and the Section 151 Officer for their engagement with the questions of the Committee. The Scrutiny and Overview Committee discussed its response to the call-in request. Having weighed up the information received, it was concluded that no further action was necessary and the decision could proceed as originally intended. However, the Committee did reach a number of conclusions and recommendation it wished to report to the Cabinet, which are outlined below.

Conclusions

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

1. The Committee concluded that the evidence provided in the report, along with the responses provided by the Section 151 Officer to questions raised, had provided sufficient reassurance that the original Cabinet decision was the correct course of action. As such no further action was necessary and the decision could proceed as intended.
2. Given that the advice had been sought from both CIPFA and the Council's external auditor, the Committee was reassured that the decision to recognise the cost of the Fairfield Halls refurbishment as a capital expenditure rather than a capital loan was the correct course of action.
3. There was concern amongst the Committee about the potential additional expenditure required to carry out any remedial works required to address issues not picked up in the original refurbishment and a request was made for a report on this, once available.
4. The Committee felt there needed to a thorough explanation of how the cost for the refurbishment of Fairfield Halls rose from the original £30m estimate at the start of the project to £69m. It was accepted that the Council's external auditor was in the process of finalising a value for money review of the project and a request was made for the full report to be share with the Committee once available.
5. The Committee agreed that the decision for the Council's Housing Revenue Account to purchase 104 residential units from Brick by Brick should proceed as it would lead to a significant saving in the cost of temporary accommodation and provide new homes for those on the council's housing waiting list.
6. Although there was concerns about the decision to provide a further loan facility of £10m to Brick by Brick, given the public money already invested in the company, there was an acceptance that this was needed as a contingency in the event of sales being delayed.
7. There was significant concern about the lack of transparency on historic decision making on Brick by Brick and that the documents requested in the call-in had not been provided. The Committee agreed that the documents needed to be provided, in line with the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, as a matter of urgency or failing that a written statement be provided in justification of the refusal of each requested document.

Recommendations

The members of the Scrutiny & Overview Committee agreed to make the following recommendations to the Leader of the Council:-

1. That a report on any remedial work required on Fairfield Halls be provided to the Scrutiny and Overview Committee. This breakdown should include confirmation of:-
 - a) The work required and the estimate cost
 - b) Confirmation of whether the cost of work would need to be funded by the Council or would be under the existing contract novated to the Council.
 - c) If work is to be funded by the Council, how the cost would be met.
2. That the Scrutiny & Overview Committee is provided with the full Grant Thornton report on its Value for Money Review of Fairfield Halls, once it was available.
3. The Administration is asked to make a commitment to making historic information on decision making over Brick by Brick available to Members and the public. Where it is not possible to provide information, there needs to be a transparent process in place to confirm why it is not being shared.

40/21

CALL-IN: Libraries Public Consultation Phase Two

The Scrutiny & Overview Committee considered a call-in request of the Cabinet key decisions set out in 'Libraries Public Consultation – Phase One' report. The decisions taken in this report were made at the Cabinet meeting held on 17 May 2021.

The Chair explained the process for considering a call-in, confirming that the Committee needed to agree whether to review the decision or not 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 forty five minutes 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 back to the Cabinet for reconsideration, 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 an opportunity was given to the lead signatory of the request to provide an introduction, outlining the grounds for submitting the call-in. Councillor Gareth Streeter, as lead signatory, outlined to the Committee that the call-in request had been made for a number of reasons. The first was a lack of confidence in the consultation process, which was delivered within the restraints of the covid-19 pandemic. There was also confusion about the options being considered as it had originally been based upon the possible closure of five libraries, which had now been removed leading to conjecture about the reasons for its inclusion in the first place.

There was also concern about the viability of the remaining options to be considered in the next phase of the consultation, particularly the community option. It was felt the report did not provide enough assurance that there had been sufficient engagement with the community groups to evaluate their ability to take on the management of a library. It was also felt that the information provided did not give enough detail on what the outsourcing option would mean for the end service. There were other concerns noted about the business rates to be paid if the community option was chosen and the use of CIL money, which needed further clarification.

The Chair highlighted to the Committee that the use of CIL funding in the Library service was not relevant to the decision that was being reviewed, and as such did not need any exploration at the meeting.

Following this introduction, the Cabinet Member for Culture & Regeneration, Councillor Oliver Lewis, was given the opportunity to explain the reasons for the Cabinet decision. It was advised that it was important for the consultation process to identify how to deliver the savings required from the Library service to be open and transparent. The intention of the first phase of the consultation had been to gather ideas and over 2,000 responses had been received. The response given by residents in the first phase had been listened to and as a result the option to close five libraries had been discounted. The consultation was now moving to its second phase which asked for feedback on more specific options.

Following the introductions, the Committee was given the opportunity to question the Cabinet Member and the Asset Manager on the grounds for the decision. The first question noted that three options were being put forward for the next phase of consultation and asked how the final decision would be made. It was highlighted that although the process was a consultation, not a referendum, the view of the public would be listened to. Although it was likely the final outcome would be one of the three options set out in the consultation, a possible hybrid of these options had not been ruled out.

Reassurance was sought by the Committee that a full assessment had been made on the viability of the outsourcing and community options. In response it was highlighted that having to save £500,000 from the libraries budget was a difficult process and it was fully recognised it would cause anxiety in the local community. If outsourcing was the preferred option, then the Council would need to go through a procurement process with a set fee to ensure the required saving could be achieved. The community run option was the most

difficult to assess, but a significant number of groups had come forward during the first phase of the consultation, which was detailed in the report. The viability assessment of the options set out in the report had been based upon elements within the Council's control, such as staffing, book stock and IT costs. Elements such as increased income generation had not been included as it could not be guaranteed at this stage.

As a follow-up, it was questioned whether any assessment had been made of the potential for income generation within the service. It was acknowledged there were potential opportunities to raise income through pursuing options such as cafes and room rental. However, at present the Library service only generated income of a few thousand pounds per year, per site. If the £500,000 saving was to be achieved from income generation, it would require a complete change to the present operation of the service. It was difficult to make any assumptions on the potential for income generation as there was no track record of this in the service. Given the financial challenge facing the Council, it was safer to deliver the £500,000 budget reduction required through savings.

It was noted that the Open Plus system, which allowed the public to access libraries outside of normal hours, had been installed in both the Selsdon and Norbury libraries. As such it was questioned when this would be activated. It was advised that it was originally intended to pilot the system last year, but this had been delayed due to the covid-19 pandemic. The pilot was likely to commence in the near future before rolling out the system to other libraries that could support out of hours access.

There was a concern raised that it was difficult to understand the Council's vision for the Library service. If there was a clear vision, it should be evident in informing the consultation process. Disappointment was also expressed that an opportunity to engage the public in the co-design of the service had not been taken so far and it was asked whether co-design could be used in the second phase of the consultation. It was confirmed that because of the current situation with the pandemic it had not been possible to engage with the public in co-design. Going forward, regardless of the outcome of the consultation, there would be a greater role for residents in the delivery of the Library service. The Committee agree that it would make a recommendation to Cabinet to include a co-design approach wherever possible.

In response to a question about how the five libraries were chosen as options for the community run service, it was advised that these had been identified during the first phase of the consultation. It was confirmed that the Council would work closely with community groups to find the best level of service they could provide, and the Council would continue to purchase books and maintain the IT service.

Although it had not been considered to date, it was agreed that the possibility of other council services, such as Children Centres, collocating in libraries could be explored as a means of achieving savings.

At the conclusion of the item, the Chair thanked the Cabinet Member and the Asset Manager for their engagement with the questions of the Committee. The Scrutiny and Overview Committee discussed its response to the call-in request. Having weighed up the information received, it was concluded that no further action was necessary and the decision could proceed as originally intended. However, the Committee did reach a number of conclusions it wished to report to the Cabinet, which are outlined below.

Conclusions

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

1. The Committee concluded that the evidence provided in the report, along with the responses provided by the Cabinet Member for Culture and Regeneration to questions raised, had provided sufficient reassurance that the original Cabinet decision was the correct course of action. As such no further action was necessary and the decision could proceed as intended.
2. The Committee accepted that the key driver behind possible changes to the library service was the need to make a £500,000 saving from the Libraries budget, which had been agreed as part of the Budget approved by the Council in March 2021.
3. The Committee concluded that the savings outlined in the option appraisal had been based on known factors and as such were likely to be a good estimate of the potential saving that could be achieved by each option.
4. The Committee welcomed the commitment from the Cabinet Member to work with the public and local community groups in shaping future services.

41/21 Exclusion of the Press and Public

This motion was not required.

The meeting ended at 9.11 pm

Signed:

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Date:

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