

Council

Meeting held on Thursday, 3 February 2022 at 6.30 pm in Council Chamber, Town Hall,
Katharine Street, Croydon CR0 1NX

MINUTES

- Present:** ;
Councillor Felicity Flynn (Vice-Chair);
Councillors Kola Agboola, Hamida Ali, Muhammad Ali, Jade Appleton,
Jeet Bains, Leila Ben-Hassel, Sue Bennett, Margaret Bird, Mike Bonello,
Alison Butler, Robert Canning, Richard Chatterjee, Chris Clark, Pat Clouder,
Stuart Collins, Mary Croos, Jason Cummings, Patsy Cummings,
Mario Creatura, Nina Degrad, Jerry Fitzpatrick, Sean Fitzsimons,
Clive Fraser, Maria Gatland, Lynne Hale, Patricia Hay-Justice,
Maddie Henson, Simon Hoar, Yvette Hopley, Karen Jewitt, Humayun Kabir,
Stuart King, Ola Kolade, Toni Letts, Oliver Lewis, Stuart Millson, Oni Oviri,
Ian Parker, Joy Prince, Helen Redfern, Scott Roche, Paul Scott, Manju Shahul-
Hameed, Caragh Skipper, Andy Stranack, Gareth Streeter, Robert Ward,
David Wood, Louisa Woodley and Callton Young
- Apologies:** Councillor Sherwan Chowdhury, Jamie Audsley, Simon Brew, Janet Campbell,
Louis Carserides, Alisa Flemming, Steve Hollands, Jason Perry, Helen Pollard,
Tim Pollard and Badsha Quadir

PART A

52/21 Disclosure of Interests

There were none.

53/21 Report in the Public Interest

Madam Deputy Mayor invited Paul Dossett, Head of Local Government at Grant Thornton to remind Members of the context of the report.

Sarah Ironmonger, Director, Grant Thornton, introduced the report and explained the main issues.

Questions to Grant Thornton

In his question, Councillor Collins stated that it was not unusual for capital projects to overspend and asked what mechanisms could be put in place with the council, working with council officers at the outset of major projects so that auditors could advise and flag up issues throughout the process, to avoid future overspending.

In reply, Sarah Ironmonger explained the usual process and agreed that it was not unusual for capital projects to overspend. However, overspends would normally be reported quarterly so that mitigations could be put in place and any large overspends should have been reported upwards to the Growth Board, which did not happen in this case.

Paul Dossett explained that the role of the external auditor was to remain independent at all times.

In his supplementary question, Councillor Collins asked if there was a role for senior officers in terms of training around issues as complex as these and a role for councillors to be working with those senior officers better.

In reply, Sarah Ironmonger agreed that there was always a role for training and that was why paid specialist officers were in place. The legal side of this issue was particularly complex and Grant Thornton employed specialist legal advice to ensure that they got to the bottom of it. The role of the council's Monitoring Officer was to ensure that the council was acting lawfully.

In her question, Councillor Hale stated that the final costs shown in the report of £67.5 million was considerably above the sum of £30 million approved by Cabinet. Brick by Brick claimed that this was due to contract variations in specification delays by the council and Councillor Hale asked how accurate that claim was.

In reply, Sarah Ironmonger stated that some of that went back to the original legal place where the council was unable to set a clear specification. However, it was clear that there were elements of additional spend such as around an issue with asbestos. There were also choices around items that the council requested, and getting to the bottom of the spend was a significant piece of work.

In her supplementary question, Councillor Hale asked whether the auditors believed that the council missed vital opportunities to manage the increasing costs which have now been imposed on Croydon residents as an additional borrowing burden.

In reply, Sarah Ironmonger stated that as there was no reporting back the council did not have the opportunity to challenge in real time decisions that were being made. There were conversations that were happening through the Fairfield Halls Board. The issue of asbestos should have been expected as the council would have carried surveys in the past.

In his question, Councillor Clark asked whether delays and cost increases were unusual in complex construction projects?

In reply, Sarah Ironmonger stated that they were not unusual, but it was what was done about the issues that was important.

In his question, Councillor Ward stated that the business plan approved by Cabinet always said funding by the council would be 25% equity and 75% loan and asked whether, given the risk of the project, Brick by Brick was in breach of its statutory duty by accepting 100% loan funding.

In reply, Sarah Ironmonger stated that she had had conversations with the directors of Brick by Brick and that it was their duty to answer that specific question. However, what she had been able to identify through conversations with them and officers involved at the time was, that in their view the equity was coming at the end of the project and as the project had not ended it had not gone through. Where the auditors were concerned was that the equity did not appear on the council's financial plan.

In his supplementary question, Councillor Ward asked whether it was unusual to put the risk capital at the end and whether Grant Thornton had found any plan at all for equity funding for any of the Brick by Brick projects.

In reply, Sarah Ironmonger confirmed that she had found no evidence of equity funding being provided.

In his question, Councillor Scott asked that of the £67.5 million cost, what was the actually costed value of the works carried out to refurbish and extend Fairfield Hall and what construction professionals had advised an understanding those costs.

In reply, Sarah Ironmonger stated that what had been reported was the amount that Brick by Brick and the council had agreed had been spent on the project and the auditors had not been analysing the construction elements.

In his supplementary question, Councillor Scott asked what consideration had been given to the added value of clearance of the former car park which now benefitted the planning consent given to Brick by Brick.

In reply, Sarah Ironmonger confirmed that the £67.5 million excluded any spend on the car park and this was where some of the complexity in reaching the final figure came from as there were three or four projects that made up the College Green scheme.

In his question, Councillor Jason Cummings asked about a couple of specific points in the report.

Firstly at the bottom of page 5, *"We have not been able to identify explicit formal reporting to the Cabinet of the project additional spend."*

And secondly towards the bottom of page 6, *"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."*

Councillor Cummings stated that the wording seemed to suggest that the auditors were not sure whether the leadership of the council was informed about what was going on and asked that, given the investigation whether the auditors told by anybody that they were told.

In reply, Sarah Ironmonger confirmed that as part of the report they had consulted with various people, had representations from officers saying that they did brief Members and had representation from Members who said that they were not briefed. However, they had been unable to find any evidence of a briefing so had been unable to reach a conclusion as two district groups had a different view of the situation. Members should have been briefed. Grant Thornton stated clearly that there was no formal reporting through public Cabinet meetings where the decisions could have been scrutinised.

In his supplementary question, Councillor Cummings asked whether the lack of minutes was the reason for there being no evidence of the decisions and scrutiny. He also asked whether the auditors had encountered any reason why the political leadership would not have been informed of what was taking place.

In reply, Sarah Ironmonger answered the second point first and stated that she had come across no reason not to inform the political leadership. With regards to the first point her understanding was that at that time informal Cabinet briefings were not minuted or recorded.

In his question, Councillor Fraser asked about the concerns that had been raised by the accountable body for the Coast to Capital Local Enterprise Partnership on page 4 of the report asked whether there was any evidence that officers had thought again at that point.

In reply, Sarah Ironmonger confirmed that she had seen emails from other local authorities to Croydon officers where that discussion had happened, referencing meetings. There was also a letter from the council's solicitors to the accountable body written in legal language. So it was clear that there was communication answering the other local authorities' questions and a reluctance to give the money directly to Brick by Brick which was what was originally intended, and to overcome this the money was given directly to the council with the risk around procurement sitting with Croydon Council; not with them as the accountable body as far as can be understood from the email chain that she had seen.

In his supplementary question, Councillor Fraser asked whether the concerns raised by the accountable body had been shared with Grant Thornton in their capacity as the council's auditors or as Brick by Brick's auditors at the time it was raised in March 2018. If so what was the auditor's response, and if not, what would the response have been?

In reply, Sarah Ironmonger confirmed that this had been shared with Grant Thornton as the council's auditor and only last year as part of the

investigation. If those concerns had been raised in 2018, the value for money risk assessment would have looked at the arrangements that the council had in place and if issues had been flagged up the auditors would have carried out further work on them. This may have changed the view when the risk assessment was carried out had the emails been known about. Concerns around the governance of Brick by Brick had already been picked up in the audit plan 2019/20 which was presented to the General Purposes and Audit Committee in March 2020.

In her question, Councillor Appleton noted that it had been stated a number of times that the auditors had struggled to find evidence and page 8 of the report stated that repairs had become urgent and asked whether evidence for that had been found.

In reply, Sarah Ironmonger said that the evidence for urgency had come from the public papers.

In her supplementary question, Councillor Appleton asked how far back those conversations went, and were the auditors able to establish when the urgency around Fairfield Halls had begun.

In reply, Sarah Ironmonger stated that they had gone back as far as 2010 with developing the Cultural Quarter; then by 2014 it had become part of the wider College Green scheme. It had been a developing piece over a number of years.

In his question, Councillor Fitzpatrick, referred to recommendation 9 of the report as follows:

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.

Councillor Fitzpatrick stated that the report did not help him in any way to get purchase on what the reporters considered to be the role of non-executive Members of Council in governance issues of this kind and asked what that role was and how non-executive councillors could fulfil that role.

In reply, Sarah Ironmonger stated that this goes back to when problems were becoming clear and what should have happened was that information escalated through the governance routes should have continued to be escalated up to Cabinet because the thresholds set out had been breached and it was not clear what had actually taken place. What the auditors would expect is that the Leader and the Chief Executive would work together to be really clear with officers and the Members involved at the executive level around what was happening, when thresholds were breached and when it should be reported. At that point non-executive Members should have visibility

of that as it would be in reports and have the opportunity to take the issue through scrutiny.

Sarah Ironmonger continued by stating that there was another element here of the role of an entity like Brick by Brick because at one point in the report the auditors talked about them commentating on the Terms of Reference of the arrangements the council had put in place to monitor them and questioned whether the organisation the council was monitoring should tell the council what it should be monitoring.

Paul Dossett stated that the Chartered Institute of Public Finance was about to issue a comprehensive report on how local authorities with companies should manage projects in terms of business cases, regular monitoring, governance and oversight and strongly recommended that the guidance was distributed to Members once it was published as it gave a very comprehensive overview about how projects and relationships should be managed.

In his supplementary question, Councillor Fitzpatrick asked if the auditors agreed that in order to fulfil the recommendation the Chief Executive and the Leader were going to make it clear how non-executive Members could play an effective and valuable role in governance in respect to issues of this kind.

In reply, Sarah Ironmonger stated that she would expect that in response to this recommendation there would be some sort of briefing where the officer side and the executive member side thought that line sat. Every council struggled to fully understand where that line did sit but it should be expected that discussions would take place with non-executive members.

In his question, Councillor Chatterjee asked whether Grant Thornton had at any time, either in the course of this work or previous audits, found that Brick by Brick was in breach of its Articles of Association.

In reply, Paul Dossett stated that the report was not about Brick by Brick but about the council so it was not a question he could answer.

Councillor Chatterjee then asked whether he had understood correctly that if Grant Thornton had come across a breach of the Articles of Association then it could not be reported at this meeting.

In reply, Sarah Ironmonger reiterated that this report was solely looking at the council's arrangements to manage Brick by Brick and manage the Fairfield Halls project and all the auditors looked at within the Articles of Association was whether they had included the ability to carry out the Fairfield Halls refurbishment. To look at the full Articles of Association would need to be a completely different piece of work.

In his supplementary question, Councillor Chatterjee asked what evidence the auditors found of a commercial evaluation of the College Green development by the council or by Brick by Brick.

In reply, Sarah Ironmonger stated that Brick by Brick had provided its financial viability assessment before it took on the College Green project. What the auditors did not have was the council's assessment of where the £30 million estimate for works on Fairfield Halls originated and what it covered.

In her question, Councillor Prince stated that the report referred to the different audit regimes of companies and local authorities and asked the auditors to explain further the reasons why no alarm bells were rung during the audits of the consolidated accounts that covered both the council and Brick by Brick.

In reply, Paul Dossett stated that companies were audited under the Companies Act regime which was about giving a fair reflection on the company's accounts. The function of the auditor of the council had wider responsibility which related to the function of the council and its operations, and they did not relate to the component companies of the council's group. Therefore, it was only possible to comment on the activities of the council and not the activities of Brick by Brick or any other companies. Auditors could only operate within the statutory framework.

In her supplementary question, Councillor Prince stated that the response had not really answered her question and asked that if this was a widespread problem with councils which had companies, and whether there was a systemic flaw and the learning that Croydon was experiencing could potentially be used to help similar problems elsewhere in the country.

In reply, Sarah Ironmonger stated that as part of the audit Grant Thornton would be checking through the numbers not re-auditing those numbers. The only reason that this depth was reached was through the value for money responsibilities on the council's audit, which was not something that the auditor of a company had the power to do. Additionally, it was only the council's governance of the company that was within their remit.

Sarah Ironmonger continued by agreeing that in term of lessons learnt it was important that learning was shared and referred to the paper that Chartered Institute of Public Finance and Accountancy (CIPFA) was in the process of producing, as there were a number of councils that had got into some difficulties in the management of companies they set up by not fully understanding where the governance sat, where the risk and responsibilities lay. The CIPFA paper should help to avoid these issues in the future.

In his question, Councillor Parker asked what evidence had been found to support the £30 million estimated spend that was approved by Cabinet in June 2016.

In reply, Sarah Ironmonger stated that the auditors had been able to find a paper, but they were not costed and they did not have them broken down as there was no financial analysis behind them which would have been expected

when the Cabinet report was first written, which could have been looked at in future if needed. It was not possible for the auditors to answer whether this should have been a £30 million or a £67 million project as that information was not available.

In his supplementary question, Councillor Parker asked what conclusion should have been drawn from the lack of evidence.

In reply, Sarah Ironmonger stated that the conclusion was that the council needed that original analysis to know whether the project was on track or not.

In his question, Councillor Canning stated that the report mentioned the payments made by the council to Brick by Brick raised a significant state aid risk and asked what the likelihood was of there being an investigation into this possible breach of state aid rules, who would undertake such an investigation and how would it be triggered.

In reply, Sarah Ironmonger stated that she was not sure how it would be triggered. The council had been trying to address it by including the expenditure to remedy the situation which was the route officers had decided to take, for which the council would have been required to carry out a public procurement. She believed that the council had been considering and trying to mitigate that risk.

In his supplementary question, Councillor Canning asked whether the report had overplayed the state aid risk.

In reply, Sarah Ironmonger stated that the legal advice the council received in November 2016 said it was a significant state aid risk and that was why the auditors had used that phrase. It had not been tested by the auditors but they believed the council should have put in mitigations at the time to address it.

In her question, Councillor Oviri stated that the report mentioned value for money more than fifteen times including the auditors own concerns on page 26 and quoted below:

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.

Councillor Oviri stated that according to the Chief Executive the auditors had asked for the value for money report to be paused and asked why the auditors had come to that conclusion.

In reply, Sarah Ironmonger stated that the value for money report looked at the council's arrangements and the reason that the auditors asked for the pause was because it had done a certain amount of work but there were two elements that had not reached an end, one of which was the legality piece. It was paused as the auditor's legal advisors stated that it could be unlawful which turned the report from a value for money report to a Report in the Public

Interest as the council could not identify the legal powers to spend the money in the way that it did, and the fact that the council did not have the ability to understand what the spend was at the time that they could have taken action against it.

In her supplementary question, Councillor Oviri asked whether there would be any circumstances where the value for money report would not be made public as the assessment of risk needed to be understood.

In reply, Sarah Ironmonger stated that the auditors did not believe that anything of significance in the paused value for money report was not covered in the Report in the Public Interest but would look to see if an executive summary could be shared publicly.

In his question, Councillor Pelling asked what evidence was found of questioning by the Cabinet on the performance of the Fairfield Halls project.

In reply, Sarah Ironmonger confirmed that after the June 2016 Cabinet meeting the auditors could not find any record and therefore were not able to see what questions had been asked by Cabinet.

In his supplementary question, Councillor Pelling stated that officers had advised that this was an area worthy of further investigation and asked whether the auditors thought that this would be for the council or for the auditors to carry out.

In reply, Sarah Ironmonger confirmed that how the council chose to respond to the report would be for the council to decide.

In her question, Councillor Redfern stated that according to the Coast to Capital Local Growth Fund business case, of March 2017, there was an undertaking that the council would invest the £40 million Coast to Capital grant as part of its equity funding to Brick by Brick. This had not happened and it was covered by loans. Councillor Redfern asked whether the legality of using the grant in this way been investigated.

In reply, Sarah Ironmonger confirmed that the auditors had seen that one part of the grant monies was originally allocated to the Arnhem Gallery and correspondence was sent to Coast to Capital asking for permission to redirect that into the wider scheme. The legality of using grants instead of equity was not an area that the auditors had looked into.

In her supplementary question, Councillor Redfern asked that whether the legality over the use of the funds should be investigated further and, if so, by whom.

In reply, Sarah Ironmonger suggested that should be discussed by the council with Coast to Capital as they were the ones who provided the funding.

In her question, Councillor Bird spoke about the role of the then Monitoring Officer on page 14 of the report and asked what the possible illegal actions referred to in not adhering to the November 2016 legal advice were.

In reply, Sarah Ironmonger stated that the role of Monitoring Officer was set out in Statute to ensure that the council operated within a lawful framework and what the auditors were saying was that in that example legal advice was obtained which highlighted very significant risks of not remaining within the law and it was therefore the auditor's view that the officer whose role it was to ensure the council remained within the law took that forward.

In her supplementary question, Councillor Bird stated that the word used was illegal rather than unlawful and asked what were the potentially illegal actions?

In reply, Sarah Ironmonger clarified that the report was quoting the Local Government and Housing Act 1989, section 5 regarding the general powers of the Monitoring Officer and that was why the council had a specialist legal team to give advice on such matters.

In his question, Councillor Roche stated that at the meeting of the Coast to Capital Investment Committee in March 2019 it was stated that Croydon Council had been unsuccessful in its purchase of a redundant building from Croydon College; therefore, the building had been sold to a third party developer and it was confirmed that this meant a slight change in scope which would have no significant impact on the output of the entire scheme and asked whether the auditors agreed with this as it was a fundamental part of the College Green site.

In reply, Sarah Ironmonger stated that when a site was lost then the project should have been re-evaluated to check the viability of the project and in this case it reduced the number of houses that could be built which would link into the financial viability. As stated earlier the auditors had been unable to find any evidence of the re-evaluation which would have been expected.

Madam Deputy Mayor thanked Sarah Ironmonger and Paul Dossett for their report and for answering Members' questions.

The Monitoring Officer, John Jones, made a formal reminder to Members of the Monitoring Officer's responsibility under Section 5 of the Local Government and Housing Act 1989 to report formally to the Council on any proposal, decision or omission by the Council which had given rise to, or was likely to, or would, give rise to, the contravention of any enactment, rule of law or statutory code of practice.

In addition to his report, the Monitoring Officer reminded Members that he had asked that the contents of the external auditor's report be reviewed to identify any concerns or areas that needed further consideration from a fraud perspective in accordance with the Fraud Act.

Madam Deputy Mayor invited the Leader to give her response to the report.

In her response, the Leader Councillor Hamida Ali, thanked Sarah Ironmonger and Paul Dossett for the report, for answering Members' questions and for their ongoing advice. Councillor Ali continued by stating that these were clearly serious matters and the need to agree the action plan to address these issues was clear. Councillor Ali reminded Members that it was herself and the Chief Executive who had asked the auditors to look into concerns around governance which showed a shift in culture and practice.

Councillor Ali continued by once again apologising to the public for the fact that public money had not be safeguarded as it should have been but stated that improvements had been made over the past fifteen months and listed those improvements.

In conclusion, Councillor Ali stated that this report highlighted some really serious issues but described the council as it was previously and not how it was now and that this situation could not happen again and that the Action Plan would help to continue the recovery work.

Madam Deputy Mayor invited Councillor Hale as Deputy Leader of the Opposition to give her response to the report.

In her response, Councillor Hale stated that to have two Reports in the Public Interest (RIPIs) within fifteen months was unprecedented and the language used in the report was stark. The report raised very serious questions about the whole project and Councillor Hale listed a number of more serious issues in the report, including failure to ensure that the project was legal.

Councillor Hale continued by stating that scrutiny and challenge had been completely blocked and the report had found fundamental failings by the council in governance, and that Conservative Members who questioned this project had been shut down and their questions were un-answered and some Cabinet Members from the time were still in the current Cabinet. Councillor Hale called for those Cabinet Members to resign.

Councillor Hale concluded by stating that she was proposing to move a motion to add a recommendation to the other recommendations that this report be sent to the police.

Madam Deputy Mayor invited the Independent Chair of the General Purposes and Audit Committee, Dr Olu Olasode, to give his response.

In his response, Dr Olu Olasode reminded Members that his appointment as the Independent Chair of the General Purposes and Audit Committee had been a result of recommendations made in the first RIPI and he had taken up that role in October 2021.

Dr Olasode continued by picking out the points in the report that were most relevant to the General Purposes and Audit Committee and what steps the Committee will take in future to have greater oversight.

In conclusion, Dr Olasode confirmed that at the March meeting the General Purposes and Audit Committee would be updating its Terms of Reference to ensure that it was best placed to meet its requirements.

Questions to the Leader, Cabinet Members, the Chair of the Scrutiny & Overview Committee and the Independent Chair of the General Purposes and Audit Committee

In her question, Councillor Hale asked whether the Leader agreed that failing to act on the legal advice could not have been a worse indictment of the authority.

In her response, the Leader Councillor Hamida Ali stated that the report showed that this project had been extremely badly run and that it was a serious issue for everyone in the chamber. Councillor Ali continued by reiterating her early comments regarding the changes that had been made over the last fifteen months and concluded by stating that those poor decisions would no longer happen.

In her supplementary question, Councillor Hale stated that the Leader had been in the cabinet when this behaviour had been allowed and asked whether the Leader and other Cabinet members should resign.

In her response, the Leader reminded Members that in December 2020 she raised concerns regarding this project following a report from the internal auditors and asked external auditors to investigate. In the external auditor's report a number of references were made to the fact that Cabinet was not able to fully scrutinise the project as set out on page 28 of the report as follows:

".....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."

In his question, Councillor Fitzpatrick stated that the changes to the way Cabinet functioned were good to hear and asked about the role of the council in achieving its best value duty and whether the Leader agreed with him that it was difficult for non-executive members to fulfil that duty unless they had access to a great deal more information than at present and that information from Brick by Brick would probably never be available.

In her response, the Leader listed the work that had already been carried out within Cabinet and senior officers to increase the transparency of the decision-making process to assist non-executive members to undertake their duty. Cabinet had also formed a Cabinet Advisory Board to specifically look at

Brick by Brick, which had agreed that a regular report on Brick by Brick would come to Cabinet, demonstrating a desire to improve reporting to all Members.

In his supplementary, Councillor Fitzpatrick asked about the internal control boards and to what extent those internal control boards would be in any way public and their papers accessible to the public including non-executive members.

In her response, Councillor Ali agreed that there was now several officer boards or officer and member boards looking at a range of issues. This would relate to the recommendation for the Leader and the Chief Executive to work together to ensure that the divide between officers and councillors was clear. The Chief Executive would have a view on how she wished officer boards to work but reassured members that this would be discussed.

In his question, Councillor Bains asked whether, considering the serious issues raised in the report, Councillor Lewis would resign.

In his response, Councillor Lewis agreed that the report raised serious issues but that these related to the council as it was in the past; not how it was now. He also stated that it was important that the reasons for what happened were fully understood. That was why the Administration had commissioned this report in which the responsibility for the shortcomings was clearly set out.

In his supplementary question, Councillor Bains asked Councillor Lewis to apologise to the people of Croydon for the contents of the RIPI.

In his response, Councillor Lewis stated that it was important to remember what the Fairfield Halls refurbishment had delivered and listed the varied improvements that had been made which supported the cultural sector locally.

In his question, Councillor Bonello asked whether the Cabinet member agreed that after half a century of under investment this much needed and important investment had left one of Croydon's greatest assets greatly enhanced and whether he agreed that the refurbishment was necessary.

In his response, Councillor Young stated that when the decision of Cabinet in 2016 to invest £30 million to refurbish Fairfield Halls was made, there was no doubt that it was necessary. Whether value for money was obtained was not yet known due to the report having been paused.

In his question **Councillor Jason Cummings** stated that the report clearly showed that legal advice to the council flagged the risk of unlawful state aid and asked whether the Leader had at any time seen legal advice or was she told by any officer that such legal advice existed.

In her response, the Leader reminded Members that there were at least three references in the report that stated that Cabinet was not aware of the legal advice and that the Cabinet decision had been made five months before the legal advice regarding unlawful use of state aid. The legal advice should have

come back to Cabinet at that time and clearly the statutory officers at that time did not discharge their duties.

In his supplementary question, Councillor Cummings asked again whether the Leader was aware of the existence of the legal advice.

In her response, the Leader confirmed again that she had not been made aware of the legal advice until the RIPI was published.

In her question, Councillor Clouder asked what lessons from the Report in the Public Interest were there for Chairs of the Scrutiny Committees and what needed to be done in future to ensure that costs on major projects were not hidden from councillors and the public.

In his response, Councillor Fitzsimons Chair of the Scrutiny & Overview Committee, stated that scrutiny needed support and openness from the statutory officers to work properly. Councillor Fitzsimons continued by stating that this was not the first time that he felt the support from officers had been lacking and, in this case, he had been told by those officers that it was not a key decision so it could not be scrutinised.

Councillor Fitzsimons continued by stating that the issue of officers withholding information from councillors was endemic and long term and he felt personally let down on his own behalf and that of the committee on both sides that they were not given the full facts. In conclusion, Councillor Fitzsimons said that the lessons learned resulted in a more transparent council, better record keeping, better support from statutory officers and better support from both political parties to the role of scrutiny and its function in holding the council to account.

In his question, Councillor Creatura stated that in the report the auditors had expected Cabinet to ask for briefings on a project of this type and that Councillor Lewis had stated earlier that this report reflected on the council as it was. However, Councillor Lewis had been Cabinet member responsible for Fairfield Halls since 2018 so asked whether he had inadvertently or deliberately misled the council.

In his response, Councillor Lewis reminded Members that he was the Cabinet Member for Fairfield Halls but his portfolio did not cover Brick by Brick and his focus was on the future operation of Fairfield Halls; not on the refurbishment work being carried out by Brick by Brick.

In his supplementary question, Councillor Creatura asked whether Councillor Lewis had ever asked for a briefing on the progress of the Fairfield Halls refurbishment in the four years that he had held the culture portfolio.

In his response, Councillor Lewis stated that he had been clear in his previous response that his role concentrated on the cultural output of Fairfield Halls and building a relationship with the operator.

In his question, Councillor Fraser asked whether the complexities of the Delivery Framework mitigated against good governance and whether a simpler system allowed for better governance.

In her response, the Leader agreed that governance was clearly poor and the additional expenditure of £37.5 million not coming back to Cabinet should not have happened and listed the specific issues highlighted in the report and the progress made over the last fifteen months.

In his supplementary question, Councillor Fraser asked whether the Leader agreed that it was better to keep project management and governance simple when it came to projects of this nature in future.

In her response, the Leader agreed that the ambition was to regain the higher standards of project management that had been seen in the past.

In his question, Councillor Streeter asked whether the Leader was now confident that she was on top of what went wrong, any future ramifications, and that there would be no more nasty surprises for the people of Croydon.

In her response, the Leader reiterated her previous comments that she had spent the last fifteen months working with Cabinet colleagues and officers to make the improvements required which had been a continual process and Cabinet would continue to ask questions of officers.

In his supplementary question, Councillor Streeter asked the Leader to give her word that she believed no criminal activity had taken place.

The Monitoring Officer reminded Members that it was for the police to decide if anything illegal or unlawful had taken place.

In her response, the Leader confirmed that the discussion focussed on the report from the auditors which showed that there were aspects which were outside the delegated powers and referred to section 1.5 of the covering report which went into more detail. In addition, the Leader confirmed that the police had seen the report so it was now with them to decide on appropriate action.

In her question, Councillor Patsy Cummings asked the Leader to expand on any issues that the staff raised at the meeting held with them regarding the Report in the Public Interest which were of particular concern to them.

In her response, the Leader stated that she and the Chief Executive had held two virtual meetings with staff and another with partners. The staff had asked similar questions to residents particularly around redundancies and cuts to services. The meetings had highlighted the need for regular communication with both staff and residents.

In her question, Councillor Gatland asked that considering the narrow scope of the report, what the Cabinet Member thought should happen and what consequences should those responsible for the unlawful practices face.

In his response, Councillor Lewis stated that post-pandemic it was important to continue to support the cultural community and raise confidence in the sector.

In response to Councillor Gatland's second point, Councillor Lewis stated that it was only to be expected that those responsible for wrongdoing were held accountable for their actions and that he was sure that the appropriate authorities would act if they decided it was necessary.

In his question, Councillor Canning asked what governance arrangements were now in place to manage large capital projects to ensure that they remained within budget and how they had been strengthened since Councillor Young had become the Cabinet Member.

Councillor King stated that this issue fell within his portfolio and confirmed that a review of internal governance for capital projects had already taken place. In addition, an interim Director for Capital and Commercial Investment had been appointed, and the successful candidate had a wealth of experience. Councillor King then listed other areas where work had been carried out.

In his supplementary question, Councillor Canning asked what additional measures were being taken.

In his response, Councillor King confirmed that he and Councillor Young now had monthly meetings with officers who had written reports to challenge decisions in a transparent manner and that there were further measures proposed which were set out in the recommendations.

In his question, Councillor Millson quoted from the report "*Rather it is our view that the licence was (at least in part) intended to circumvent procurement law*" and asked what action the Leader had taken to corroborate this finding.

In her response, the Leader reminded Members that this report was the view of the auditors, and it was not for her to corroborate their findings. The auditors had had to employ their own legal experts due to the complexities. The Leader continued by reminding members that it was the role of statutory officers to ensure that the council operated legally and that the officers involved had either left the council or were suspended and the previous Leader and Cabinet Member were no longer councillors.

In his supplementary question, Councillor Millson stated that he believed that other officers not mentioned in the report would have had knowledge of what was happening and asked the Leader whether the culture had been an issue here.

In her response, the Leader stated that it was the role of the Chief Executive to deal with workforce issues but confirmed that the culture had been a major part of the review that had been going on for the past fifteen months. The Leader acknowledged that more work was required so that staff felt able to speak out.

In her question, Councillor Prince asked about the new assurance framework (6.4 on the Action Plan) and what the Independent Chairman would want to see in that framework.

In his response, Dr Olasode stated that officers were working on it, but that it would be down to the committee to decide on the exact details of the framework.

Before the recommendations were debated the Conservative Group asked that an additional recommendation was added.

Councillor Fitzsimons raised a point of order as he was concerned that the proposed amendment to involve the police would then remove this issue from the public domain.

The Monitoring Officer confirmed that the proposed amendment was in order as the Action Plan which was being debated at the meeting was within the public domain.

Madam Deputy Mayor asked that a member of the Opposition propose the additional recommendation.

Councillor Hale proposed the amendment.

“That the Report in the Public Interest be sent to the Police.”

Councillor Jason Cummings seconded the proposed amendment.

Councillor King stated that the covering report stated that “The external auditor has not made any suggestion that any act has taken place that is prohibited by law.” Therefore, the most senior officers of the council had not seen anything within the external auditor’s report that would warrant involving the police.

Councillor Hale stated that it was very rare for two Reports in the Public Interest to cover the same issues around governance and financial accountability. The report being debated at this meeting did not cover all the issues which was why the Opposition felt that the report should be sent to the police.

Councillor Fitzsimons clarified Members’ responsibilities regarding fraud and the council’s constitution that requirement for suspicions needed to be raised with the Head of Internal Audit.

Councillor Young stated that the Opposition were suggesting that something illegal had gone on when the external auditors report had used the term unlawful which was an important distinction. The Leader had already confirmed that a copy of the report had been sent to the borough commander and therefore it was up to them to decide if the law was broken.

Councillor Canning stated that if Councillor Hale had evidence then she should go to the police directly rather than putting forward this additional recommendation.

The Leader stated that the evidence that supported a police referral should be put in front of councillors. The Leader reiterated her earlier statement that she had sent a copy on the day of publication to the borough commander.

Councillor Jason Cummings stated that the additional recommendation was to send the report to the police and that it would then be down to them to decide whether anything illegal had taken place. Councillor Cummings continued by stating that the public wanted more than a debate between councillors.

A recorded vote was requested and supported by ten councillors. The recorded vote is attached to the signed minutes. The motion was lost.

Councillor King moved the motion on the recommendations and spoke about the work that had been done over the past fifteen months to put things right and the report and recommendations reflected that. However, Councillor King acknowledged that there was still much work to do to rebuild trust in the council with residents but that the acceptance of the recommendations would be a step towards that.

Councillor Young seconded the motion and reserved his right to speak.

Councillor Ward stated that as far back as April 2017 he could see that the project had problems and he had asked questions at the time, before he became a councillor, and he outlined the responses that he had received, including Freedom of Information requests.

Councillor Bains stated that the Report in the Public Interest showed that the council had behaved unlawfully and that the public rightfully needed answers to their questions.

Councillor Young thanked the Leader and the Chief Executive for their tenacity in trying to get to the bottom of this and he reminded Members that the first Report in the Public Interest published in October 2020 stated that councillors had a collective responsibility. Councillor Young continued by stating the importance of Fairfield Halls and listed the activities that take place.

Councillor Young concluded by listing the areas of failure that the report had highlighted and that the second report acknowledged the improvements that had already been made as a result of the first report.

The recommendations were put to the vote and were unanimously carried.

RESOLVED: Council **AGREED** the recommendations in the report:

- 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 apprised of the progress in implementing the Action Plan.

The meeting ended at 10.10 pm

Signed:

Date:

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