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# Scrutiny & Overview Committee Supplementary Agenda

**2.** **Minutes of the Previous Meeting** (Pages 3 - 18)

The Scrutiny & Overview Committee is asked to approve the minutes of its meetings held on the following dates as an accurate record:-

- 17 November 2020
- 8 December 2020
- 21 December 2020
- 7 January 2021
- 4 February 2021
- 9 February 2021 (Attached)
- 16 February 2021
- 23 March 2021
- 30 March 2021
- 20 May 2021

**5.** **Ongoing Review of Brick by Brick Croydon Ltd and the Future of the Company.** (Pages 19 - 36)

The Scrutiny and Overview Committee is provided with a report due to be considered by the Cabinet on 12 July 2021. The Committee is asked to review the information provided and consider whether its wishes to offer any feedback on the recommendations for the Cabinet to take account of when deliberating on the report.

**10.** **Ongoing Review of Brick by Brick Croydon Ltd and the Future of the Company.** (Pages 37 - 88)

This is the confidential section to accompany Item 5 on this agenda.

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**Scrutiny & Overview Committee**

Meeting held on Tuesday, 9 February 2021 at 6.30 pm
This meeting was held remotely and can be viewed on the Council's website

**MINUTES**

**Present:** Councillors Sean Fitzsimons (Chair), Robert Ward (Vice-Chair), Leila Ben-Hassel (Deputy-Chair), Jerry Fitzpatrick, Oni Oviri and Joy Prince

**Also Present:** Councillor Hamida Ali, Sue Bennett, Simon Brew, Sherwan Chowdhury, Jason Cummings, Stuart King and Callton Young

**PART A**

9/21 **Disclosure of Interests**

There were no disclosures of interest made at the meeting.

10/21 **Urgent Business (if any)**

There were no items of urgent business.

11/21 **Review of Brick by Brick Croydon Ltd**

The Scrutiny & Overview Committee considered a Cabinet report setting out the findings of a review conducted by PwC on possible options for the future of Brick by Brick. The Leader introduced the report, during which the following was highlighted:

- The options that were due to be put before Cabinet were set out as two sets of detailed analysis by PwC.
- Progress had been made since the first phase of the review was provided in November 2020, with the appointment of non-executive directors with significant financial experience. The directors had made significant progress since being appointed, with significant work underway to review the loan agreement.
- The second phase of the review, due to be brought to Cabinet, was designed to support the organisation on how best to move forward with Brick by Brick. This included a detailed options analysis, which was based upon the fundamental principle of minimising the potential loss to the public.
- The first phase of the review had set out seven options and following the second phase, an additional option had emerged which would allow the Council to conclude its relationship with Brick by Brick by October 2021. This involved completing work on most of the sites that were due to be completed by October 2021 and marketing the remaining sites for sale

- It was emphasised that Brick by Brick was a matter for public concern and while much of the discussion could be held in public, any discussion of commercially sensitive information had to be taken in private, hence why there are Part A and Part B elements of this meeting.

Following the introduction by the Leader, the Committee had the opportunity to ask questions on the report. The first question was a request for further clarification as to why there were part B elements to the meeting. Officers advised that this was due to the sale option, outlined in the report, which was commercially sensitive information. Had the information set out in the restricted papers been made public, it may allow a potential purchaser to make a lower bid, if they were aware of the figures reported in the paper. The decision to only make this information available in Part B had been reviewed and supported by legal, as it was important to protect the Council's interest and minimise any potential loss.

There was a concern about access to information rights and whether these were being interpreted in a liberal manner. It was questioned whether the Council could commit to releasing the information into the public domain, once the sale option was concluded. Officers confirmed that once considerations that led to the information to be considered as Part B ceased, further consideration would be given to whether it could be made publically available.

It was question whether the same recommendations set out in the report would be made at another local authority that did not have the same financial challenges as Croydon. Officers advised that in line with the Wednesday Principle, all local authorities had to ensure they acted in a reasonable manner in terms of their finances and the processes surrounding that. When borrowing funds, local authorities had to give careful though to what would happen in the event it could not afford to pay back its debt.

It was highlighted that there were a number of words used in report which could lead to misunderstanding about the main points of learning from the situation and as a result, clarification was sought on three areas that had not been included in the report.

It had not been said that there was inadequate consideration given to the transfer of land between Brick by Brick and the Council. Officers noted that in the report from PwC, published in November 2020, it made clear that in their view there had been no breach of the Council's statutory duty under the Local Government Act 1972 to obtain best consideration for its land.

It had not been said that the idea of an arm's length company, set up by a local authority, to deliver housing was a bad concept However, in this instance the management of Brick by Brick had not been adequate. Officers confirmed that the concept of an arm's length company was perfectly lawful and in this particular case it had not been best executed.

Contrary to what was occasionally said, there was no suggestion in any of the report that there had been any financial corruption involved. It was confirmed that PWC had found no evidence of corruption during its investigation.

It was clarified for the benefit of residents, that there was three areas of learning from the Council's experience with Brick by Brick. Firstly, the financial governance had been at best insufficient and at worst poor. Secondly, the narrative as presented by Brick by Brick lacked the necessary objectivity, with risks not being sufficiently highlighted as they should have been. Finally, the culture of decision making at the company had been unsatisfactory in terms of financial sustainability.

It was questioned whether the Council's experience with Brick by Brick had led to any further consideration of its risk appetite going forward or the need to allocate sufficient resources to manage the risk appetite framework, to ensure good governance going forward. It was confirmed that risk appetite was being reviewed as part of the wider governance improvement in the Croydon Renewal Plan. Risk had to be central to how an organisation delivered its services. It was important for an organisation not act without sufficient regard for its risk appetite.  Risk had to be a key part of the management culture and this was a big change, which was being reinforced through management dialogue and training. Risk had been flagged in Brick by Brick reports to Cabinet with mitigation identified, but they had not been acted upon.

The Leader added that there had been a lot of reflection by Cabinet on the Council's risk appetite. This included training on risk management to identify changes to be out in place, with consideration being given to how the Cabinet will manage risk going forward.

It was highlighted that although the Cabinet had received training and risk management would be a Council wide, year round consideration, it was essential that Scrutiny was given evidence to provide assurance that this was the case. It was advised that assurance would be provided through the annual governance statement. A request was made for the Cabinet to formally write up its yearly review of risk management, so that an assessment could be made on accountability. Officers said that the Annual Governance Statement was an important document that should describe the Council's internal controls, workforce issues, and performance management.  The Cabinet Member for Finance and Resources agreed that officers should explore a cycle of presenting the risk register on a regularly basis and that the quality of the register needed to improve and provide more clarity.

The Leader added that it was essential to evidence how the Council's risk management was improving and further consideration would be given to evidencing changes by addressing structural and behavioural changes that needed to be made. This would be the challenge at the Croydon Renewal Action Board and charted through the Improvement Plan.

Clarity was sought on how the valuations and costings in the report had been reached. It was confirmed that independent valuation advice had been sought from external sources such as local estate agents, as they were aware of the market in Croydon. Independent advice was also sought from quantity surveyors to review the costs on a number of schemes and in both cases officers were satisfied that the costings provided by Brick by Brick were reasonable estimates. For the shared ownership and affordable housing valuations, there was a view that at present some of the estimated for these elements were at the high end of what was achievable.

It was questioned what level of confidence could be given that the Council would achieve an adequate return on sites developed. It was confirmed that there was confidence in the cost figures and the estimates given were similar to PwC's prediction. However, it was impossible to predict the housing market over the next few months and the return provided would be dictated by the market.

Further information was sought to confirm how two scenarios as set out in paragraphs 3.4 to 3.9 of the report had been chosen. It was confirmed that the scenarios were chosen out of the original options presented, as detailed in Appendix three of the report, and three requisites had been used in narrowing the choice. Some scenarios were ruled out due to cost of delivery which would have meant the Council having to borrow a lot more money. Consideration had been given to the possibility of a management buyout, but as further evidence of the ability to do so had not been forthcoming, this was also ruled out. Consideration was then given to the possibility of building out site, which was how the Council ended up with its two options. Risks were involved in either option, with the main risk being the financial ability to enable delivery.

It was explained that at present, the build out proposal was for Brick by Brick to build out the 29 sites that were already under construction. All sites previously identified for developed, had not yet been transferred to Brick by Brick and as such it would remain a Council decision on what to do with these. Some may be suitable for sale, some for social housing in HRA and some not suitable for anything. The Council would need to take a view and report on this at the appropriate time.

It was highlighted that both proposals being put forward would still leave a substantial loss to the Council's finances, with a legacy of debt to manage and would have revenue implications for the Council for years to come. Reassurance was sought that the Council would not walk away with additional debt once Brick by Brick was closed down. It was confirmed that it was very unlikely that Brick by Brick would be in a position to pay back all its debt owed to the Council.

It was highlighted that one of the options was the sale of Brick by Brick as a single entity, with the Council having been approached by someone that may want to make an offer for the company. It was asked why the Council should entertain this approach, when going to the market was ruled out as an option. It was advised that PwC had ruled out this approach due the time it would have taken for marketing the company, comparing bids and completing the sale. This process would also have taken capital resource that the Council did not have, so there would have been issues with both timing and resources if the Council had gone to the market.

As a follow-up, it was questioned why length of time and resources ruled out selling Brick by Brick, but did not rule out testing some areas of the market. It was highlighted that selling individual sites was a task for Brick by Brick, while selling the company would be the responsibility of the Council to complete. The sale of both individual and groups of sites was easier than selling a whole organisation. In some of the other options ruled out, the Council would have needed to keep Brick by Brick going in some form for a number of years in order to be able to deal with ongoing issues that may apply. It was still too early in the process to ascertain which option would be decided upon.

In response to a question about the lack of documentation for the loan agreements with Brick by Brick, it was confirmed that under half of the loan agreements were in a state of incompleteness. In particular, those for smaller sites in the development phase, which was due to come back to the Council and in one instance for a significant site, Fairfield Halls, which had an incomplete/unsigned agreement.

An explanation was sought about the loan arrangements, as the Council had been saying for a number of years that Brick by Brick would run on 75% loan and 25% equity basis and this had not been the case. It was suggested that in doing this, it gave Brick by Brick the opportunity to spend a lot more money because the Council did not enforce the requirement, which as per the agreement was they should be part financing. In response, it was highlighted that from a legal point of view, if a local authority loans money to a private company or one that it owns, it cannot be done on beneficial terms and that applied to interest rates charged and percentage of loan to value or loan to costs.

The initial legal advice was for the local authority to lend up to 75% of the local to value amount, with the other 25% being taken as equity. This meant the Council putting its own cash in as additional shares. The Council had never followed this agreement and following further legal advice, because the Council was trying to protect its investment as the funder, it was reasonable for the Council to put in 100% funding and no equity. If Brick by Brick was still trying to expand, that would be unreasonable, but as the organisation was in a scenario where in the near future it would cease trading, restructuring the loan as 100% loan and no equity had been advised by lawyers as a reasonable course of action.

Concern was raised about the possibility of providing Brick by Brick additional funding, due to the company's history of being unable to manage it cash flow. It was agreed that these concerns were understandable and would be taken into consideration. There was confidence that the cost estimate and modelling was accurate in that the figures provided by Brick by Brick were very similar to PWC in terms of monthly costing for bills and overheads.

In response to a question about the potential options if selling the sites, it was advised that any sale of individual sites or of the company would necessitate sites having to be built out in line with planning permission approvals. There was concern that the percentage of the site allocated to social housing would change from what was originally granted, if the sites were sold.

A question was raised about the number of units that would be sold for outright sale and how many would be bought by either the Council or a housing association for affordable rent or shared ownership. It was confirmed that the split between the total number of units available for social rent could be as high as 187, the split between the three tenures was not available at present but would be made available to the Cabinet.

Reassurance was sought from the Leader that the structure of the business plan would be more robust than in previous years and that all necessary steps would be taken to prevent accounts being invalidated. The Leader welcomed feedback on what should be expected to be seen in the business plan, which would be communicated to the shareholders in her position as Chair of that Board.

Clarification was sought on the current position of College Green site and Fairfield Hall. It was confirmed that as per the information in the report, £59m had been lent to Brick by Brick for work on Fairfield Hall and College Green. There were no definitive figures on how much had been spent on the physical refurbishment at this time. The Council's external auditor, Grant Thornton, were currently conducting a value for money review of the Fairfield Halls refurbishment, which would provide greater clarity. It was confirmed the value of College Green would be insufficient to cover the £59million.

It was questioned whether there was capacity to use the Housing Revenue Account (HRA) to buy or build council housing on any of the sites and whether there was funding or expertise available to do this. It was advised that the HRA could buy what Brick by Brick was building if the rent covers the interest and managements and maintenance costs. Going forward, this should be the basic underlying principle when decided to build social housing within the HRA account. There was capacity to buy the units and there was a good development team, but it would take considerable time and resources for this to be brought to fruition. Consideration needed to be given to affordability of this option and currently the Council could not afford to place additional stress on its HRA to build houses when the rent did not cover the cost of building.

It was agreed that the rest of this item would take place under Part B to allow for discussion of the information provided in that part of the report.

Chris Buss was thanked for all his answer to questions and for the two additional informal meetings that took place where he provided detailed information to ensure understanding of all the intricate details of the situation.

**Conclusions**

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

1. The Committee commends the work of the consultant, Chris Buss, in preparing the report and was satisfied that an appropriate level of due diligence had been carried out to identify the preferred options outlined in the report

2. The Committee was satisfied that the approach proposed in the report represented the best way forward for the Council, in light of its reduced risk appetite, and would deliver the best value for the public purse.
3. Although the report identified that a loan of less than £10m to Brick by Brick was required to deliver the preferred option, the Committee recognised that there was still risks that may impact upon the amount of money required. Should a loan exceeding the identified £10m or a further loan be required, there needed to be a mechanism in place to allow additional scrutiny.
4. The Committee welcomed the reassurance that work was underway to embed risk management processes throughout the Council, but questioned how this could be evidenced going forwards.
5. The Committee recognised that there would be considerable public interest in the financial details set out in the confidential section of the Review of Brick by Brick report and felt that the releasing this information should be reviewed, once it was no longer considered to be commercially sensitive.
6. As a key learning point from the experience of the Council with Brick by Brick, the Committee felt that a process should be put in place to review any external companies owned by the Council at regular intervals, to ensure that they were achieving their intended outcomes and remained fit for purpose.
7. The Committee retained a concern about the past lending arrangements with Brick by Brick and felt that further investigation was required to understand the arrangements and to ensure that any such lending was legally compliant.

**Recommendations**

The Scrutiny and Overview Committee agreed to submit the following recommendations to the Leader of the Council at the next Cabinet meeting, for further consideration:-

1. That a mechanism be put in place to ensure additional scrutiny of any further lending to Brick by Brick, above and beyond that identified in the review of future options for the company.
2. That consideration is given to how the Executive team will track and evidence that risk management processes are being embedded across the Council.
3. That a mechanism is put in place to review the confidential information set out in the report, to allow it to be publically released once appropriate to do so.
4. That a regular review be undertaken of all Council companies, with the outcomes from this review reported to Scrutiny.
5. That a review be undertaken of past lending to Brick by Brick to provide greater clarity over the arrangements and to ensure that the arrangements were legally compliant.

12/21 **Interim Asset Disposal Strategy**

The Scrutiny and Overview Committee considered a Cabinet report which set out an Interim Asset Investment Strategy. The Committee was asked for its feedback on the report, which would be report to the Cabinet during its consideration of the item. The Deputy Leader & Cabinet Member for Croydon Renewal and the Interim Director of Homes and Social Investment introduced the item during which the following was noted:

- The paper reflects that the Council accepted the need to review all of its assets and undertake an assets disposal programme, in order to reduce its borrowing requirements and allow for a greater focus on its core business. Any asset disposal would be done with robust governance arrangements in place and in a controlled manner.
- The strategy would sit together with a new Asset Corporate Plan, which was being created, and to complement the Medium Term Financial Strategy.
- The Strategy would ensure that best consideration was given by balancing the economic climate against the timing of any disposals.
- This was an Interim Asset Disposal Strategy, which sought to set the scene and provide a framework for managing the initial proposals. It would lead to the creation of a stronger framework for future years.
- It was emphasised that retention of any assets past their reasonable life was not good asset management practice and the strategy sought to address this in order to reduce costs, which particularly needed given the Council's current financial circumstances.
- Delivery of a successful strategy would be contingent on the use of professional resources, that would need to be brought in to handle specific matters of around the sale and some sites would require public consultation.

Following introductions, the committee was provided the opportunity to ask questions on the content of the report. The first question concerned the Council assets that had been reviewed in the creation of the strategy as it did not appear to have taken account of all Council assets. It was confirmed that the strategy had only looked at property assets as this was the brief given.

As a follow-up, it was questioned why other assets had not been explored, as the ones listed in the report seemed to be those that were easier to review. It was advised that any assets not included would be part of the wider asset management plan, which would be worked on in the coming months. The interim Strategy placed an emphasis on assets that were either costly or difficult to maintain, were easily marketable, had a low value to the Council and had many reputational risks and holding costs. The Committee agreed that further clarification was needed in the report as this criteria could not be clearly identified.

A commitment was given that the wider Asset Management Plan, exploring future and broader assets not included in this interim plan, would be presented to Scrutiny and Overview Committee for feedback prior to any consideration by Cabinet.

It was highlighted that the list of assets under consideration for disposal was set in the restricted Part B of the report. It was understood that the valuations attached to the list could not be made public due to commercial sensitivity, but it was questioned why the list of assets could not be made public. It was advised that there was several reasons for this, including that some of the buildings being considered were still in use and staff had yet to be consulted.

The Deputy Leader added that he welcomed this challenge and shared the desire for the list of assets, without the estimated receipt value, to be placed in public domain. However, decisions about whether information should be restricted or not was rightly a judgement for officers.

The Interim Chief Executive added that if a developer was watching who had the list, regardless of whether valuation were included or not, they would be gaining valuable market insight to enable them to ensure that they tried to obtain a deal that was in their interest rather that the Council's interest. Some of the reasons why things were kept in private was to protect the Council's interest and it would be helpful for this to be considered more broadly by Members.

It was questioned which stakeholders would be involved in writing the business case and whether the report would include any qualitative aspects to justify the business case. In response, it was advised that the Asset Management estate team would be responsible for writing the business case which would be signed off by the Executive Director. The report would contain qualitative and quantitative aspects to justify each business case for disposal and Members would be sighted as early as possible in the process.

In response to a question about the criteria identified from an organisational point of view to assess the consideration it was advised that an independent valuation was sought which would set the true value of the asset. Other factors which would be taken into consideration, such as the state of the economy, would be included in the business case. In certain cases, assets may not be sold for the highest valuation, due to other considerations such as environmental or regeneration factors.

It was asked when the full asset strategy was put forward there would be further information on potential safeguards, which were thought to be lacking in the Interim Strategy. It was confirmed that detailed governance processes covering every element of asset disposal would be included. These processes would be subject to several stages of approval including the Capital Board before being signed off by the Executive Leadership Team (ELT).

There was a concern that when a property was identified for the first time a Cabinet Member would only be sighted in final stages of disposal when it was too late to affect the decision. It was confirmed that Cabinet Members would be consulted prior to sign off by ELT.

There was a concern that the whole process appeared to be very officer led until final decision stage. As such it was question what the framework for access to information on disposals would be for councillors. It was advised that officers would work within the current Access to Information Procedure Rules, which would include consultation with Ward Members.

It was questioned whether properties would be sold with planning permission attached, as this may increase their value. In response, it was advised that there would be a mixture of existing assets with existing planning permissions attached, along with smaller sites put forward unconditionally. In relation to whether the Croydon Park Hotel would be sold with planning permission, in order to achieve its best value, expert advice would be sought on best course of action on this asset.

It was highlighted that the current climate of the covid-19 pandemic may result in a decline in commercial property values. As such it was questioned whether this had been taken into consideration. It was confirmed that potential reduced demand for office or retail space had been taken into account. Any decision to sell an asset would explore the marketability, cost of retaining and the potential benefits of selling.

It was highlighted that it did not appear to be clear at which point in the process value could be added and it would be useful to have specific point address this. It was confirmed that any decision would look at options to bring best value in all instances.

The Chair made a statement, which was supported by the other members of the Committee, that he was not confident the information presented in the strategy would enable a judgement to be reached on whether the disposal of the Croydon Park Hotel was the right decision or not. The Committee would support recommendations where full evidence was provided, but information setting out other, less viable options, had not been provided.

The Deputy Leader acknowledged the Committee’s position and gave reassurance that upon discussing the matter in detail with officers, he was confident that due diligence had been taken on this matter and suggested that the section covering the viability of other options should be expanded prior to its inclusion on the Cabinet agenda.

A discussion of the restricted information supporting this item, can be found in the Part B section of the minutes.

The Chair thanked Cabinet Member and officers for their engagement with the Committee and the open responses to their questions.

**Conclusions**

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

1. Although the Committee was satisfied with the approach proposed in the Interim Asset Disposal Strategy, it was felt that there was not enough information included within the report to reach any conclusions on the identified options for the Croydon Park Hotel.
2. The Committee recognised that there would be considerable public interest in the list of assets identified for disposal, set out in the confidential appendix to the report, and felt that further consideration was needed over how this information could be brought into the public domain.
3. The Committee highlighted a concern that consultation with Ward Councillors about decisions on assets in their local areas had in the past been intermittent at best.

**Recommendations**

The Scrutiny and Overview Committee agreed to submit the following recommendations to the Cabinet Member for Croydon Renewal for consideration at the next meeting of the Cabinet:-

1. That further information be included within the report, for when it is considered by Cabinet, on the potential options for the Croydon Park Hotel to allow a more informed judgement to be made on the best way forward.
2. That the information set out in the in confidential section of the report be reviewed to establish whether it would be possible to make public the list of assets identified for disposal and if not, further clarity on the reasons should be added to the report.
3. That the process for consulting and informing Ward Councillors about decisions to be taken on assets in their local area be reviewed, to ensure it was fit for purpose.

13/21 **Feedback on the Equalities Strategy**

This item presented the feedback from an informal meeting of the Committee, which looked at a draft of the new Equalities Strategy. The Chair asked if any of the Members wanted to make comments prior to approval of the feedback notes.

Reference was made to a paragraph in the paper which stated that 'it was noted that the Children and Young People's Sub-Committee had discussed the potential of increasing the number of children in the borough with access to computers or the internet and would like to have this incorporated into the strategy. It was asked that that this be expanded to include the context that consideration be given to the disproportionate impact of covid-19 on some children in the Borough and in order to achieve equality of opportunity it would take a number of years of major educational catch-up.

**Resolved:** The Scrutiny and Overview Committee agreed that the notes, as amended, be agreed.

14/21 **Exclusion of the Press and Public**

The following motion was moved by Councillor Fitzsimons and seconded by Councillor Ben Hassel to exclude the press and public:

"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."

The motion was put and it was agreed by the Committee to exclude the press and public for the discussion of the restricted information on the 'Review of Brick by Brick Croydon Ltd' and 'Interim Asset Disposal Strategy' reports.

15/21 **Review of Brick by Brick Croydon Ltd**

The minute for this item is restricted and set out separately in a Part B version of the minutes.

16/21 **Interim Asset Disposal Strategy**

The minute for this item is restricted and set out separately in a Part B version of the minutes.

The meeting ended at 10.45 pm

**Signed:**

**Date:**

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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| **REPORT TO:** | Scrutiny & Overview Committee<br>6 July 2021 |
| **SUBJECT:** | Ongoing Review of Brick by Brick Croydon Ltd and the Future of the Company (Scrutiny Cover Report) |
| **LEAD OFFICER:** | **Katherine Kerswell – Interim Chief Executive**<br>**Chris Buss - Interim Director of Finance , Investment and Risk** |
| **CABINET MEMBER:** | **Councillor Hamida Ali - Leader of the Council** |

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| **ORIGIN OF ITEM:** | The Scrutiny and Overview Committee is provided with a report due to be considered by the Cabinet on 12 July 2021 for consultation on the recommendations set out in the report. |
| **BRIEF FOR THE COMMITTEE:** | The Scrutiny & Overview Committee is asked to review the information provided and consider whether its wishes to offer any feedback on the recommendations for the Cabinet to take account of when deliberating on the report. |

## 1. ONGOING REVIEW OF BRICK BY BRICK CROYDON LTD AND THE FUTURE OF THE COMPANY

1.1. The Scrutiny and Overview Committee is provided with a report due to be considered by the Cabinet on 12 July 2021. The Committee is asked for its feedback on the recommendations set out in the report. Any feedback from the Committee will be reported to the Cabinet during its consideration of the item on 12 July 2021.

1.2. The Cabinet report comes in two parts with a restricted section set out separately in the agenda at item 10.

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**CONTACT OFFICER:** Simon Trevaskis – Senior Democratic Services & Governance Officer - Scrutiny

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**APPENDICES TO THIS REPORT**

- Appendix A: Cabinet Report - Ongoing Review of Brick by Brick Croydon Ltd and the Future of the Company

Appendices set out in restricted Item 10

- Appendix B: Restricted Cabinet Report - Ongoing Review of Brick by Brick Croydon Ltd and the Future of the Company
- Appendix B1: *Offer*
- Appendix B2 – PwC report on offer and analysis with other scenarios
- Appendix B3- Savills report on Offer
- Appendix B4 – Legal Advice from Browne Jacobson LLP
- Appendix B5 – Lion Green Road analysis.

**For General Release**

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| **REPORT TO:** | **CABINET 12th July 2021**<br>**COUNCIL 11th October 2021** |
| **SUBJECT:** | **Ongoing Review of Brick by Brick Croydon Ltd and the future of the company.** |
| **LEAD OFFICER:** | **Katherine Kerswell – Interim Chief Executive**<br>**Chris Buss - Interim Director of Finance , Investment and Risk** |
| **CABINET MEMBER:** | **Councillor Hamida Ali - Leader of the Council** |

**CORPORATE PRIORITY/POLICY CONTEXT**

Delivery of the Croydon Renewal plan, to minimise the financial impact to the Council of Brick by Brick Croydon Ltd and to resolve the future of the company.

**FINANCIAL IMPACT**

This report considers the future of Brick by Brick Croydon Limited (Brick by Brick) and recommends that the offer from the bidder be rejected and that Brick By Brick builds out 23 of the 29 sites in its ownership and returns the other 6 sites back to the Council for sale.

The impact of the decision means that the Council may need to write off a portion of the outstanding loan to Brick by Brick estimated at between £25.6 million and £52.7 million depending upon the performance of the company during the period in which the build out (and consequent sales) are completed. These costs will be offset in part by capital receipts arising from sites which may be sold following initial design work undertaken by Brick by Brick.This debt write-off may increase revenue capital financing costs by up to £1.85 million p.a dependent upon the level of loan written off.

There will be one-off revenue costs estimated at £160,000 arising from this proposal.

**FORWARD PLAN KEY DECISION REFERENCE NO.: 3321CAB**

## 1. CABINET RECOMMENDATIONS

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below.

Cabinet is recommended (acting, where relevant, on behalf of the Council exercising its functions as sole shareholder of Brick by Brick Croydon Ltd) to:

1.1 Reject the offer for the purchase of Brick by Brick (Croydon) Ltd.

1.2 Agree that a modified build out scenario of 23 sites will be implemented and to note that in order to deliver that, Brick by Brick will require additional management and technical support, the costs of which are factored into the costs shown in this report and as further consequence of this decision that Brick by Brick will return 6 sites to the Council on the basis that they will be marketed for sale (and on the basis that site ownership will either remain with Brick by Brick or transfer to the Council, which ever is most efficient for maximizing value or the efficiency of the sale process).

1.3 Agree that the decisions made under this Report shall take effect as amendments to the current Business Plan of Brick by Brick (and as a shareholder decision under the Articles of the company). In addition, and also as shareholder, the Council will require Brick by Brick to issue monthly reports to the Council to update on its financial position, progress with development of sites, sales, any key contractual issues and any other relevant matter (as needed). Such reports are to be presented to the Cabinet on a quarterly basis.

1.4 Confirm that, in accordance with the February Cabinet report, sales receipts may continue to be recycled by Brick by Brick and agree that the S151 Officer, in consultation with the Chief Executive and Monitoring Officer be given authority to approve those ad-hoc sales receipt recycling requests from Brick by Brick, up to a total amount of £5m in any one transaction and following the terms of the consolidated loan agreement, reporting on a quarterly basis to Cabinet.

1.5 Delegate authority to the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer, to make any necessary formal shareholder resolutions in order to give effect to the above recommendations and to authorise the entering into any of the necessary formal legal documentation that arise as a consequence (including (i) to confirm the appointment of consultants to provide the necessary additional management and technical support, and (ii) in respect of the sale of the 6 sites, as are referred to in recommendation 1.2).

1.6 Delegate authority to the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer, to vary the loan agreement in respect of the sites returned to the Council sites (subject to SDLT and various other tax advice) and with any such modifications being reported in the quarterly report to Cabinet.

1.7 Otherwise note the progress made with regard to Brick by Brick.

1.8 To thank the Improvement and Assurance Panel for their advice and support in the production of this report.

**COUNCIL RECOMMENDATIONS**

1.9 Council is asked to note the recommendations set out above, which were considered by Cabinet on 12th July 2021 and that Council shall receive a verbal update in respect of the outcome.

## 2. EXECUTIVE SUMMARY

2.1 This purpose of this report is to receive and note the proposal for the future of Brick by Brick and considers the evaluation of the three options decided by Cabinet in February 2021 namely a partial build out, a full build out or possible sale of the company. The Council has continued to engage PwC to undertake financial work and engaged Savills to undertake additional technical and professional due diligence. In light of the now urgent need to make decisions and take forward the recommended course of action, none of the other options previously considered (e.g. seeking market offers for the company) remain valid and do not merit re-consideration.

2.2 The partial build out option was intended to be a build out of sites until October 2021 and then a novation of existing sites to a developer to complete. The fact that six sites are not yet under contract means that if these were started now, considerably more sites than originally envisaged would require novation.

2.3 Advice has been taken from Savills (as independent property consultants with relevant experience) and they advise that the assumptions made on cost recovery on novation are optimistic and that novation itself may be difficult to undertake. In the light of this professional advice, this partial build out option is not now recommended in that form.

2.4 The full build out option was originally envisaged to be all 29 sites. However, 6 sites are not at present under formal contract. As the value of the 6 sites is close to the estimated net revenue from those sites, it is proposed to return those sites to the Council for sale (either by way of a land transfer back to the Council or by other means which maximise value and enable an efficient sale process). This option is in effect now the partial build out option without novation. It is currently forecast that the remaining 23 sites will be completed by February 2023 but that unit sales will extend beyond that date. It is estimated that 22 of the sites will be completed in the current financial year. This will require Brick by Brick to engage additional management and technical support which has been costed into the financial impact. This option will involve the Council incurring additional direct costs estimated at £100,000 in 2021/22 and £60,000 in 2022/23. Based on the modelling undertaken, the net loan written off with this option will be between £26.6 million and £52.7 million excluding any land value which may accrue to the Council.

2.5 In the sale option the loan write offs would be between £54 million and £68.4 million. As will be explained further in the report, this option is not recommended.

2.6 Upon conclusion of the process recommended under this report, Brick by Brick will have delivered 774 residential units in the Borough.

## 3. UPDATE ON THE REVIEW

### Background

3.1 The Cabinet at its meeting on the 18th February 2021 received a report on the way forward on Brick by Brick and agreed a number of specific recommendations concerning Brick by Brick.

These were in summary to:

a. Agree to proceed with the option set out as scenario 2 of that report, which is a build out of sites by Brick by Brick combined with a sale of sites under construction whilst still considering the option of a sale of the business, with a further report to Cabinet in April / May 2021.

b. Agree that revised funding arrangements be entered into with Brick by Brick to reflect the current loan positions and proposals for the future, including, where relevant, moving to a 100% debt funding position (as opposed to 25% equity and 75% debt); extending relevant loans and repayment periods; allowing delays with repayments of existing loans; agreeing to further funding of no more than £9.99 million in relation to sites proposed for Brick by Brick to continue developing (and only where absolutely necessary within an appropriate repayment period),

c. Agree for the necessary steps to be taken, in accordance with the Council's Tenders and Contracts Regulations, to appoint marketing agents to consider the disposal options for the College Green site (note, this is the site adjacent to Fairfield Halls which was due to transfer to Brick by Brick, but is currently held by the Council);

d. Agree for the Council to review those sites Brick by Brick propose not to develop and to receive a future report to Cabinet on the potential use and future of each site

e. Approve that the Council's Housing Revenue Account (HRA) can acquire residential units from Brick by Brick as part of this review.

### Update on Options.

3.2 Following the Cabinet decision in February 2021, the Cabinet considered at its meeting on the 17th May 2021, actions concerning Fairfield Halls and the purchase of social rented units. It also noted the agreement of a revised loan agreement between the Council and the Company. It was also reported that a bid had been received from a single bidder for the company, and that a best and final offer was received from the bidder on April 19th.

Due diligence has subsequently been undertaken on that bid both with regards to the company making the offer but also on whether the bid reflects what might have been receivable if the Council had marketed the opportunity to acquire

Brick by Brick. Unless otherwise mentioned, all costs and values are based on cash flows produced by Brick by Brick as at March 2021.

**The Bid**

3.3 The February 2021 Cabinet report detailed the fact that the Council had received an unsolicited expression of interest for the purchase of Brick by Brick. Cabinet agreed to proceed with exploring this offer alongside the other options as explained in this report. The expression of interest has materialised into an offer. As part of the bid and offer process the Council granted the bidder a period of exclusivity to enable them to have a degree of comfort whilst they invested in the initial due diligence on Brick by Brick. The detail of the offer is contained in the restricted agenda.

3.4 The Council has undertaken both independent financial due diligence on the bidder and independent technical due diligence on their offer to assess it. As it is a sole bidder the Council has to satisfy itself that the offer is reasonable and in particular that it is comparable to a bid that it might have received in competition. The financial and technical reports from PwC and Savills are attached as appendices 2 and 3 to the restricted paper.

Savills have taken the same base information as the bidder and their approach was to "*undertake a series of development appraisals for each site utilising standard appraisal methodologies to understand the underlying potential value of the real estate within the Brick by Brick portfolio*." This is the same approach that any purchaser would undertake.

**Analysis of the bid and the company.**

3.5 Savills analysis of the bid can be summarised as follows: "*On the basis of the information we have reviewed, the principles of the offer are not unreasonable but further due diligence and negotiation is required*." In that regard, see the comment made at the end of paragraph 7.1 regarding further due diligence and negotiation of the sale, and therefore the risks that attach to any sale process of this kind.

3.6 PwC have undertaken financial due diligence on the bidder and this is included in Appendix 2 on the restricted agenda. The summary of their analysis is that "*Overall our view is that we have seen no evidence that the financial standing of the bidder should rule them out as a suitable acquirer of BBB.*"

**Part Build out option**

3.7 The February 2021 Cabinet agreed that Brick by Brick would be funded to build out 29 sites, the majority of which were expected at that time to be completed by October 2021. In the PwC analysis, this is described as Scenario 2. The intention then was to attempt to sell on the two larger sites that were in progress with anticipated sell dates post 2021 and to have a phased wind down of the activities of Brick by Brick. The position has moved on since then and the table below shows the position at the end of May 2021 on each of the 29 sites.

| Site | No of units | Revised date |
|---|---|---|
| Faithful | 9 | Dec-19 |
| Windmill Place | 24 | May-20 |
| Pump | 14 | Jul-20 |
| Drummond | 28 | Aug-20 |
| Chertsey | 7 | Nov-20 |
| Flora | 27 | Mar-21 |
| Longheath | 53 | Jun-21 |
| Marston | 12 | Jun-21 |
| Northbrook | 11 | Jun-21 |
| Ravensdale | 30 | Jun-21 |
| Auckland | 57 | Jul-21 |
| Montpelier | 34 | Jul-21 |
| Tollers | 40 | Jul-21 |
| Tollgate | 42 | Jul-21 |
| Warbank | 36 | Jul-21 |
| Heathfield | 20 | Aug-21 |
| Oxford | 9 | Aug-21 |
| Thorneloe | 10 | Aug-21 |
| Warminster | 6 | Sep-21 |
| Avenue | 12 | Oct-21 |
| Coldharbour | 8 | Oct-21 |
| Kindred | 128 | May-22 |
| Lion green road | 157 | Feb-23 |
| Academy | 9 | Not on site |
| Belgrave and Grosvenor | 102 | Not on site |
| Coombe road | 9 | Not on site |
| Eagle Hill | 8 | Not on site |
| Malton | 9 | Not on site |
| Regina road | 19 | Not on site |
| | 930 | |

3.8 The February report to Cabinet indicated that all of the above sites were either transferred to Brick by Brick or were required to be transferred to Brick by Brick.The latter was required to enable some of the requirements of the section 106 agreements relating to those sites to be fulfilled although this was not explicit in the February report. At that time it was assumed that works would commence on all sites. However, the table above shows that based on information provided by Brick by Brick in June 2021, 6 of the sites have not commenced. The Savills report indicates that there is limited viability in these sites and it is recommended that the Council instruct Brick by Brick not to commence development of those sites and that they be returned to the Council. The non development of these sites reduces the Council’s risk exposure.These sites will be marketed for sale by the Council together with any adjacent land acquired by Brick by Brick in anticipation of development. It had been the intention in the February report that sites that were uncompleted were marketed by Brick by Brick, and those sites would have all have involved the novation of a building contract as well. This does not apply to these sites not yet in development and it is considered that the Council would be better placed to maximise value. The return and sale of these sites will be undertaken to ensure best consideration is obtained and on a basis which is tax efficient (as reflected in recommendation 1.2).

With regard to the remaining 23 sites, 21 sites are expected to be completed by the end of the calendar year. The remaining two sites would both run beyond the end of the year. Of the two the Kindred site could be completed whilst Brick by Brick is being wound down if Scenario 2 was chosen as originally envisaged in the February Cabinet report.

3.9 The above leaves one significant site which would straddle into the new financial year which is Lion Green Road. The four main alternatives for that site are as follows:

- that the site is built out by Brick by Brick;
- the site is transferred to the Council along with novation of the building contract(s) and the build out is undertaken directly by the Council;
- the site is sold mid-build at the same time as the other sales (as envisaged in Scenario 2); OR
- the building contract is terminated and the site sold as is now.

The analysis of these options is contained in Appendix 5 on the restricted agenda. The appendix indicates that of the four options, the direct build is not practicable, the termination and sale of site option would lead to significant additional cost, the option of transferring to the Council and novation of building contract(s), although possible is practicable but difficult and unlikely to recover costs leaving the build out option as the most viable for the Council.

3.10 Discussions with the directors of Brick by Brick, have led to the conclusion that the company would need additional support in any build out option as the company is likely to lose staff. The Council has, after discussion, with Homes England, approached three organisations to enquire about providing that support and two of whom responded with written submissions which have been examined by the Council and passed to the Directors of Brick by Brick and the costs are factored into the cash flows for winding down and closure costs. The two firms have subsequently been interviewed by the Council & members of the Improvement and Support Panel to gain assurance that they can provide the level of management support necessary to enable Brick by Brick to continue to deliver the build out of the 23 sites and to maximise the net returns to the Company (enabling as much of the consolidated loan as possible to be repaid.) It is a matter for the directors of Brick by Brick to make the appointment, but either firm are in the view of Council officers capable of providing the level of support required by Brick by Brick, and subject to the agreement of terms one of them would be the preferred provider. The appointment will be decided by the directors and then confirmed by the Council. The costs of the appointment have been included in the estimates provided by PwC and Savills.

In the event that the recommendations are approved the Council will also incur costs of additional support above that incurred to date during the build out estimated at £100,000 in the current year and £60,000 in 2022/23 and a yet to be determined cost of providing an ongoing level of support to private house purchasers over a number of years after the completion on site either through a residual Brick by Brick or through other means. The nature of support to private house purchasers will be the subject of a further report in due course.

**Full build out option.**

3.11 The February 2021 Cabinet report contained the option of a full build out of the 29 sites (scenario 1). This is still a potential option to the Council, and the costs and benefits of that are included in Appendix 2. The costs do include the costs of additional management support to Brick by Brick and assume that contracts are completed in line with the programme. This would mean that for the six sites not yet under construction as detailed above, contracts would be let with eventual conclusion of the programme in 2024. These sites have marginal additional return over and above the assessed sale value of the land (£8 million ). Additionally, the Council would need to provide in house support to Brick by Brick, who would also require increasing levels of external support as projects completed. In addition arrangements would be required post completion to support private house purchasers over a number of years. In the light of the marginal potential gain from building out the last 6 sites, this option is not recommended for further evaluation.

**Analysis of options**

3.12 Two analyses of the options are contained in the PwC report in Appendix 2 and the Savills report in Appendix 3 both on the restricted agenda. Both reports analyse the build out options from slightly different but complementary perspectives.

3.13 The net loan written off of the build out option would be between £ 25.6 million and £52.7 million.

In the Sale option the loan write offs would be between £54 million and £68.4million.

In addition to the loans written off, the Council would incur additional costs arising from any of the options. These costs would be charges to the revenue budget. These are in addition to the costs incurred to date since the original report from PwC on Brick by Brick. These costs are detailed in paragraphs 6.1 and 6.2

There are also potential cash flow advantages to the Council in the build out option. Under the sale offer, no repayments of loans are expected until 2022. Whereas in the build out option model, repayments are forecasted to be made in 2021/22. These repayments in both options are of course dependent upon sales receipts arising and as such any advantage is dependent upon the timing of receipts from sales.

The Council would under the build out option continue to act as funder for Brick by Brick, because the revised loan agreement noted in the May report and as agreed in February allows Brick by Brick to recycle with the Council's permission proceeds from sales. However, neither report detailed how this would be authorised. Accordingly, it is requested that the Cabinet agree that sales receipts may continue to be recycled on the agreement of the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer with specific authority to approve ad-hoc sales receipt recycling requests from Brick By Brick, up to a total amount of £5m in any one transaction and following the terms of the consolidated loan agreement, reporting on a quarterly basis to Cabinet. It should be noted that there may be more than one such transaction a month.

3.14 The legal advice set out in below and in Appendix 4 (based on a set of initial queries regarding the initial offer of sale) of the restricted agenda gives the Council clear guidance as to what it can and must consider when making this decision which may include both financial and non-financial considerations. However, when taking decisions, the Council needs to be mindful of ensuring that it only considers relevant issues, and disregards irrelevant ones.

3.15 The Cabinet when considering the February 2021 report took the view that in constraining its involvement in Brick by Brick to the 29 sites the Council was minimising its liabilities and risk exposure. Neither of the two options are risk free. The sale of the company to the party making an offer does significantly negate risk however at the cost of lower receipts to the Council. The table below is a summary of the range of risks under the two options to be read in conjunction with the body of this report and its supporting material..

| **KEY FACTOR** | **OPTION 1 – SELL TO BIDDER** | **OPTION 2 – BUILD OUT** |
|---|---|---|
| Funding risk | Additional working capital to be funded by bidder | Additional working capital to be funded by the Council |
| Revenue / profit risk | Risk shared Partial incentivisation for bidder<br><br>Forward fund arrangements for affordable packages likely to transfer | No transfer of risk<br><br>Forward fund arrangements for affordable packages likely to transfer |

| | | |
|---|---|---|
| Construction risk | All transfers (subject to contract) | No transfer of risk |
| Development / planning / land risk | All transfers albeit requiring Council resource to resolve outstanding planning/land issues | No transfer of risk |
| Post development risk | All transfers (subject to contract) | No transfer of risk |
| Management risk | Substantial transfer of delivery risk (subject to contract) but the incentivized nature of the deal would require client side resource | Partial transfer to new Development Manager. Will still require significant client-side resource. |
| Reputational risk | Partial transfer (residual risk because of former ownership and status as public body) | No transfer of risk |
| Control risk | Very limited control for LBC (some controls possible through sale contract) | Full control for LBC |
| Land/portfolio transactional risk | Risk of exclusivity with one party; lack of competitive tension | Transactional risk associated with sale of the six sites where development not underway |
| Plot transactional risk (consumer or bulk) | All transfers (subject to contract) | No transfer of risk |

| | | |
|---|---|---|
| Counterparty risk | bidder covenant strength TBC<br>(PWC providing report)<br><br>Limited exposure to London development / sales market | Scope and form of contract with new DM team TBC. |

For each of the above, mitigations will need to be put into place to reflect the risk involved. The largest risk of build out is management failure and collapse of Brick by Brick. The cost of additional support to Brick by Brick to mitigate this risk has been priced into the both sets of figures.

Based on the modelling work by PwC the effective “price” or potential loss of value to the Council of that risk transfer is £19 million. Savills estimate of the price of the risk transfer is between £15.7 million and £28.4 million.

3.16 There is no disputing the fact that the build out option has higher levels of risk than the sale option and that the latter would enable the Council to concentrate resources which could otherwise be utilised on the delivery of other parts of the Croydon Renewal Improvement Plan. The Council has to decide on the balance of risk and reward and fully consider the reduced level of loan write offs from building out the 23 sites.

On the one hand there is the greater certainty offered by the sale option (as illustrated in the Savills’ report) but which comes with additional potential costs incurred in terms of loan write-off;  whether this is outweighed by the potential reward accompanying the risks in the build out option is a key consideration.

On balance, although the build out option has a higher element of risk, a number of those risks can be mitigated.  On that basis, together with the potential of a higher return, it is recommended that the sale option and offer from the bidder is rejected. Savills’ in their advice have suggested that the Council go back to the bidder and see if there is any improved offer available. This has been done and no improved offer has been received.  Accordingly he sale offer is not recommended for acceptance.

**Next Steps**

3.17 The Cabinet could chose to see if it is possible to obtain another purchaser for the company. PwC estimate that to do that to the stage of the current bidder’s offer would take in the region of 8 weeks. That would then need to be assessed by the Council. By the time that had been undertaken, based on the scheme completion dates shown in para 3.7, and the time required for further due diligence, most of the sites would be completed. In addition, on the basis of the Savills’ assessment that the bid is structured in line with how other purchasers might bid, it is very uncertain as to whether a marketing exercise would produce a substantially better financial outcome.

3.18 If the Cabinet accepts the recommendation to build out as described in paragraphs 3.7 to 3.10, Brick by Brick will need to release from its programme (and the build out) land that has been transferred to the Company together with any other adjacent sites that the Company has acquired which are now not being built out. This land will then be marketed by the Council. The 6 sites affected by this are shown in para 3.7 "as not on site". In addition, the company will need to engage additional management support to ensure that the build out occurs in a cost effective way and a risk reduced manner. This will need to be undertaken in a timely manner with full support from the Council.

3.19 Under the Articles of Association the company is required to operate in accordance with its Business Plan, as approved and updated by the Council as shareholder. The adoption of this proposed course of action will therefore take effect as a variation to the current Business Plan. In light of the level of investment the Council has made via loans to the Company, monthly reports will be required to be made updating the Council of the financial position, giving progress on sites, sales and any key contractual issues. This will form the basis of a proposed quarterly report to Cabinet.

## 4. CONSULTATION

4.1 No formal consultation has been made on this report, other than factual accuracy checks with external third parties including with the Directors of Brick by Brick.

4.2 Officers have worked closely with colleagues on the Improvement and Assurance Panel who have provided considerable advice on the options. They have also suggested follow up work with outside parties which has been undertaken. Thanks need to be placed on record for the advice that has been provided.

## 5. PRE-DECISION SCRUTINY

5.1 This report has been submitted to the Scrutiny and Overview Committee for comment prior to submission to the Cabinet.

## 6 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

6.1 Since the original report by PwC the Council has incurred direct external costs of £215,000.

6.2 In the event of the sale of the Company, additional revenue costs of £250,000 are likely to be incurred in terms of additional financial, technical and legal costs as part of the due diligence and sale process. In addition the Council will need to provide additional support from existing staff. In the build out option the costs of additional support are estimated at £160,000. In either case these costs can be met from an earmarked reserve.

6.3 The key financial exposure for the Council in relation to Brick by Brick is the £161 million of loans that it has provided to the company which includes accrued interest income. In both options the accrued interest will be repaid however in both options there will be unpaid debt interest-. As of 2021/2022 the Council has now started to provide for Minimum Revenue provision (MRP) within its General Fund revenue budget for the amount that the Council assess to be at risk of non-payback. The MTFS includes a provision for the revenue effects of writing off of £31 million of loans to Brick by Brick, after allowing for the provision of the capital costs of the redevelopment of Fairfield Halls. Additional unbudgeted MRP costs of between nil and £1.85 million p.a could be incurred depending upon the eventual level of debt unrecovered. These costs could be reduced by the sale of sites not transferred to Brick by Brick but which have been subject to planning applications . The transfer and sale of the six unbuilt sites will result in any consolidated debt on those sites within the loan agreement being reclassified under the Loan agreement with Brick by Brick as Category B debt, which will be lower priority and will no longer accrue further interest. This will require the existing loan agreement to be modified, and in line with previous delegations it is recommended that authority to modify the loan agreement be granted to the the Section 151 Officer, in consultation with the Chief Executive and Monitoring Officer and that any such modifications be reported in the quarterly report to Cabinet.

Approved by: (Chris Buss, Interim Director of Finance Investment and Risk).

## 7. LEGAL CONSIDERATIONS

7.1 External legal advice has been sought in relation to this report. Under the Council's general power pursuant to Section 1 of the Localism Act 2011, the Council may exercise its rights as sole shareholder of Brick by Brick Croydon Ltd to take the steps identified in this report. Under the Articles of the company, the matters addressed are within the scope of "reserved matters", i.e. matters for which the company needs shareholder approval and where the Council (as shareholder) may direct the company (and its directors).

In making decisions under this report, Members will need to be mindful of the Council's financial position, its fiduciary duties and the requirement to have regard to all relevant factors and to disregard irrelevant ones. The Council must act in accordance with the principles of Wednesbury reasonableness, meaning to make decisions that a rational person might make, having regard to all relevant considerations.

In particular, Members should (i) weigh up the risks and benefits under the main options presented (as well as taking into account the other options that may be available but which are ruled out), (ii) take note of the risks under the recommended approach and especially the financial exposure that may accrue by way of the writing off of a portion the consolidated loan made to the company.

Detailed Legal advice is included as Appendix 4. In that advice attention is drawn to paragraph 5 which reminded the Council of general principles that apply to decision-making (as also described above). The advice also touched on the fact that on any sale of a company the offer made will be subject to due diligence and agreement of commercial terms. Accordingly, the offer made for the purchase of the company carries the inherent risk that either it may not get to completion, or that the offer price might be reduced. Moreover, any sale would be subject to certain warranties (made by the Council as seller) and therefore which involve a residual risk post-sale; an example being as to whether the company has outstanding tax or other undisclosed financial liabilities.

Approved by Nigel Channer, Interim Head of Commercial & Property Law on behalf of Doutimi Aseh, the Interim Director of Law & Governance

**8. HUMAN RESOURCES IMPACT**

8.1 There are no immediate HR considerations in this report for Council employees or staff. If any should arise these will be managed under the Council's policies and procedures.

Approved by Gillian Bevan, Head of HR Resources, on behalf of the Director of Human Resources

**9. EQUALITIES IMPACT**

9.1 There are no equalities impacts arising from this report. However the implications of the issues raised and how they are addressed may have an effect on the medium-term financial plan. Any subsequent savings plans that have a staffing impact or impact on vulnerable and/or groups that share a protected characteristic will be subject to agreed HR procedures, formal consultation and equality analysis.

Approved by: Yvonne Okiyo, Equalities Manager, Resources Department

**10. ENVIRONMENTAL IMPACT**

10.1 There are no environmental impacts arising from this report

**11. CRIME AND DISORDER REDUCTION IMPACT**

11.1 There are no Crime and disorder reduction impacts arising from this report

**12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

12.1 The reasons for the decision are embedded within the report. As stated, there is a balance of risk and reward to be considered and on analysis, the additional potential costs incurred in terms of loan write off under the sale option outweigh the risks of the build out option.This assessment is based on the professional opinion of officers with the benefit of expert independent professional advice. The recommendations presented for consideration by Members are made in the context of the loans to Brick by Brick and the costs of the alternative options, and are considered therefore to be those that will achieve a best value outcome in the interests of the local taxpayer.

**13. OPTIONS CONSIDERED AND REJECTED**

13.1 The Council had considered earlier a range of options ranging from immediate closure to continued build out of the full portfolio. These were reduced to three options in February. The paper details the review of the remaining options available now to the Council of either building out or selling the company-, the option of remarketing is rejected due to time constraints-.

**14. DATA PROTECTION IMPLICATIONS**

14.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

**NO**

14.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

**NO**

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**CONTACT OFFICER: Chris Buss,**

**APPENDICES TO THIS REPORT: All on restricted agenda**

***Appendix 1 – Offer***

***Appendix 2 – PwC report on offer and analysis with other scenarios***

***Appendix 3- Savills report on Offer***

***Appendix 4 – Legal Advice from Browne Jacobson LLP***

***Appendix 5 – Lion Green Road analysis.***

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

# Agenda Item 10

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