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:	Councillor Sean Fitzsimons (Chair), Councillor Robert Ward (Vice-Chair) and Councillor Leila Ben-Hassel (Vice-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 Wednesbury 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: