

REPORT TO:	SCRUTINY AND OVERVIEW COMMITTEE 17 August 2021
SUBJECT:	CALL-IN: Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls
LEAD OFFICERS:	Sarah Hayward – Interim Executive Director for Place Steve Iles – Director of Public Realm
CABINET MEMBER:	Councillor Oliver Lewis – Cabinet Member for Culture & Regeneration

ORIGIN OF ITEM:	This item has been triggered by the call-in of the key decisions (3721CAB) taken by the Cabinet on 26 July 2021 as set out in the 'Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls' report.
BRIEF FOR THE COMMITTEE:	To consider and respond to the Call-In in accordance with the procedure set out in the Council's constitution (set out in paragraph 2.3 below).

1. EXECUTIVE SUMMARY

1.1 The decision taken on the 'Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls' by the Cabinet on 26 July 2021 has been called-in by Chair, Vice-Chair & Deputy-Chair of the Scrutiny & Overview Committee.

1.2 Attached to this report are:

- **Appendix A** is the completed call in form that was received by the Monitoring Officer
- **Appendix B** is the Key Decision Notice
- **Appendix C** is the Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls - Cabinet Report
- **Appendix D** is the associated confidential part B Cabinet report for this item.

2. CALL-IN: NOVATION OF BUILDING WORKS AND PROFESSION SERVICES CONTRACTS FROM BRICK BY BRICK FOR FAIRFIELD HALLS

2.1 The decision taken by the Cabinet that is the subject of this call-in, was as follows:

*Having carefully read and considered the Part A report, the associated confidential part B report, and the requirements of the Council's public sector duty in relation to the issues detailed in the body of the reports, the Cabinet **resolved** to:-*

1. *Agree to proceed with the novation of the Fairfield Halls refurbishment contracts and associated contracts, with outstanding costs to borne by the Council, once certified by the Quantity Surveyors (Chronos Ltd) (not including any potential additional remedial works).*

- i. *Novation of the Principal Contractor (Vinci) building works contract from Brick by Brick to the Council, and financial commitment for outstanding retentions.*
- ii. *Novation of the Contract Administrator (MICA Architects) contract from Brick by Brick to the Council.*
- iii. *Novation of the Quantity Surveying (Chronos Ltd) contract from Brick by Brick to the Council.*
- iv. *Novation of other professional services contracts from Brick by Brick to the Council.*
- v. *Assignment of completed contracts warranties and guarantees.*

2.2 The call-in pro-forma is attached at Appendix A. The decision form was received on 2 August 2021 from the Vice Chair of the Scrutiny and Overview Committee, Councillor Robert Ward, with the call-in supported by the Committee Chair, Councillor Sean Fitzsimons and Deputy Chair, Councillor Leila Ben Hassel. This complies with the requirements for call-in as set out in paragraph 11.5 (i) in section 4E – Scrutiny & Overview Procedure Rules in the Council’s Constitution.

2.3 The a number of reasons stated in the request as to why the the Call-In has been made. These are:

Cost escalation

At the 17th May 2021 Cabinet it was agreed that "the Council recognises the costs of the Fairfield Halls refurbishment, being a total of £69.261 million". At the Scrutiny call-in of that decision the Section 151 Officer stated that "It won't get any worse in terms of cost transfer from Brick by Brick. The figure is the figure. The £69.261 million is the figure." It now appears the figure is not the figure.

1. **We require reassurance that the costs are properly understood and under control.**

Rejected options

Option to keep the contracts with Brick by Brick, until practical completion, was rejected.

2. **We require reassurance that this option is not a better option.**
3. **We require reassurance that the risks are properly understood and under control. It is now recommended that contracts are novated ahead of the completion of final accounts due to changes in the structure of the financial mechanism regarding the Fairfield Halls refurbishment.**
4. **We require understanding of these changes and reassurance that this is the better option.**

Risks

Brick by Brick’s contractual arrangements are highly unusual. Work promised has not been delivered. For example, according to the Outline Brief and Scope for Licence replacement double glazing in existing frames predominantly to the west elevation using high-performance solar-treated laminated glass would be provided. A Councillor question shows this was not provided.

5. **We require an understanding of the implications of the licence agreement and what this means for delivery of the Vinci and other contracts, risks and future costs to the Council.**

A value for money audit has been charged with determining the extent of potential risks:

- i. The articles of association for Brick by Brick Croydon Ltd outline that it is for housing development, so in undertaking the refurbishment of Fairfield Halls, there is a potential risk that it may have been operating outside of its permitted scope of activity.
- ii. It is alleged that the work delivered was of poor quality and in some instances not fit for purpose. There is a potential risk that work undertaken was not at the standards of competency and experience that would be expected for a large-scale public procurement of this kind.
- iii. It is alleged that the council does not have a contract with Brick by Brick Croydon Ltd relating specifically to the Fairfield Halls project but a license and there is a potential risk that procurement regulations may not have been fully met.
- iv. It is alleged that the costs incurred during the delivery of the scheme increased over the estimated budget and there is a potential risk that the Council has not implemented effective governance arrangements over the lifetime of the project to control costs.

6. We require reassurance that these risks of potentially unlawful behaviour have been quantified and are available to Scrutiny to verify that they do not impact this decision.

Other risks have been identified:

- i. Loan agreement which funded the refurbishment was not signed by either party.
- ii. Brick by Brick were notified as being in breach of the Facility Agreement, actions were required, none were forthcoming, yet the Council continued to lend Brick by Brick money.
- iii. Council authorised 75%/25% loan to equity funding ratio, was always 100% loan.

7. We require reassurance that these shortcomings do not impact this decision or increase risk.

2.4 The outcomes desired from the Call-In is to gain reassurance on the areas outlined above.

3. CALL-IN PROCEDURE

3.1 The Council's Constitution, Part 4E Scrutiny & Overview Procedure Rule, states:

"11.08 The referral shall be considered at the next scheduled meeting of the Scrutiny and Overview Committee unless, in the view of the Borough Solicitor, this would cause undue delay. In such cases the Borough Solicitor, will consult with the decision-taker and the Chair of Scrutiny and Overview to agree a date for an additional meeting. The Scrutiny and Overview Committee may only consider a maximum of three referrals at any one meeting.

11.09 At the meeting, the referral will be considered by the Committee which shall determine how much time it will give to the call-in and how the item will be

dealt with including whether or not it wishes to review the decision. If having considered the decision there are still concerns about the decision then the Committee may refer it back to the Cabinet for reconsideration, setting out in writing the nature of the concerns. The Cabinet shall then reconsider the decision, amending the decision or not, before making a final decision.

- 11.10 *The Scrutiny and Overview Committee may refer the decision to the Council if it considers that the decision taken by the Leader or Cabinet is outside the Budget and Policy Framework of the Council. The Council may decide to take no further action in which case the decision may be implemented. If the Council objects to Cabinet's decision it can nullify the decision if it is outside the Policy Framework and/or inconsistent with the Budget.*
- 11.11 *If the Scrutiny and Overview Committee decides that no further action is necessary then the decision may be implemented.*
- 11.12 *If the Council determines that the decision was within the Policy Framework and consistent with the Budget, it will refer any decision to which it objects, together with its views on the decision, to the Cabinet. The Cabinet shall choose whether to either, amend, withdraw or implement the original decision within 10 working days or at the next meeting of the Cabinet after the referral from the Council.*
- 11.13 *The responses of the decision-taker and the Council shall be notified to all Members of the Scrutiny and Overview Committee once the Cabinet or Council has considered the matter and made a determination.*
- 11.14 *If either the Council or the Scrutiny and Overview Committee fails to meet in accordance with the Council calendar or in accordance with paragraph 11.08 above, then the decision may be implemented on the next working day after the meeting was scheduled or arranged to take place."*

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APPENDIX A is the completed call in form that was received by the Monitoring Officer

APPENDIX B is the Key Decision Notice

APPENDIX C is the Novation of building works and profession services contracts from Brick by Brick for Fairfield Halls - Cabinet Report

APPENDIX D is the associated confidential part B Cabinet report for this item.