

PROFORMA

REFERRAL OF A KEY DECISION TO THE SCRUTINY AND OVERVIEW COMMITTEE

For the attention of: For the attention of: Victoria Lower and Anoushka Clayton-Walshe, Democratic Services & Scrutiny e-mail to Victoria.lower@croydon.gov.uk and Anoushka.clayton-walshe@croydon.gov.uk

Meeting: Cabinet
Meeting Date: 26th July 2021
Agenda Items No: 8 and 13

Key Decision: **NOVATION OF BUILDING WORKS AND PROFESSION SERVICES CONTRACTS FROM BRICK BY BRICK FOR FAIRFIELD HALLS No.: 3821CAB**

Reasons for referral:

- i) The decision is outside of the Policy Framework
- ii) The decision is inconsistent with the budget
- iii) The decision is inconsistent with another Council Policy
- iv) **Other: Yes see below:**

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.

•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.

•We require reassurance that this option is not a better option.

•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.

•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.

•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:

1. 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.
2. 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.
3. 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.
4. 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.

•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:

1. Loan agreement which funded the refurbishment was not signed by either party
2. 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.
3. Council authorised 75%/25% loan to equity funding ratio, was always 100% loan.

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

The outcome desired:

To gain reassurances as described above.

Information required to assist the Scrutiny and Overview Committee to consider the referral:

1. Original Vinci contract and variation orders as have been used by the Council in coming to this decision.
2. All the EU state aid law advice obtained by the Council in setting up and further public funding of Brick by Brick Limited obtained in June 2016 from Gowling WLG

Signed: Councillor Robert Ward

Date: 2nd August 2021

R. C. Ward.

Vice-Chair of Scrutiny and Overview Committee

Co-Signed via email by:

Councillors Leila ben Hassel (Deputy-Chair) and Sean Fitzsimons (Chair).