

For General Release – Part A

REPORT TO:	CABINET 26 July 2021
SUBJECT:	Novation of building works and professional services contracts from Brick by Brick for Fairfield Halls
LEAD OFFICER:	Interim Executive Director for Place, Sarah Hayward Director of Public Realm, Steve Iles
CABINET MEMBER:	Councillor Oliver Lewis, Cabinet Member for Culture and Regeneration
WARDS:	All

SUMMARY OF REPORT:

In accordance with the agreement in principle of Cabinet on 17th May 2021, Croydon have been in the process of novating the building works and professional services contracts from Brick by Brick. This will allow for the final accounts to be reviewed and completed, with responsibility transferring to the Council.

Brick by Brick have been undertaking the refurbishment of Fairfield Halls entertainment venue on behalf of the Council since 2016. Upon completion of the works the contracts were planned to be assigned to the Council for future management and liability.

Due to changes in the structure of the financial mechanism regarding the Fairfield Halls refurbishment, as agreed at May Cabinet, it is recommended that the contracts are novated ahead of the completion of the final accounts. This will give the Council the ability to assess the works completed, commission any further works needed, and take on all risks associated with the venue.

COUNCIL PRIORITIES:

This report arises from the May Cabinet decision that specified the refurbishment of Fairfield Halls should be categorised as a capital works programme, and agreed in principle to the novation of the contracts.

This report will ensure that the proposals for the Fairfield Halls refurbishment align with the Council's New Ways of Working:

- We will live within our means, balance the books and provide value for money for our residents.
- We will focus on tackling ingrained inequality and poverty in the borough. We will follow the evidence to tackle the underlying causes of inequality and hardship, like structural racism, environmental injustice and economic injustice.
- We will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe.

To ensure we get full benefit from every pound we spend, other services in these areas will only be provided where they can be shown to have a direct benefit in keeping people safe and reducing demand.

FINANCIAL IMPACT:

The Council will take on financial responsibility for any remaining projected payments to the relevant contractors, contract administrator, quantity surveying and other professional services as part of the final accounting processes for the Fairfield Halls Refurbishment Project.

KEY DECISION REFERENCE NO.: 3821CAB

The notice of the decision will specify that the decision may not be implemented until after 13.00 hours on the 6th working day following the day on which the decision was taken unless referred to the Scrutiny and Overview Committee.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out below:

1. RECOMMENDATIONS:

Following Cabinet decisions of 17th May 2021, Cabinet is recommended to:

- 1.1 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.
- 1.2 Note:
 - i. The recommendations above could not be made under delegated authority (as envisaged in the May Cabinet report) due to its potential overall value
 - ii. Brick By Brick will continue to pay relevant contractors on the Council's behalf whilst the recommended novations are completed, from 1st April and forecasted to August 2021 these payments are under £50,000 (managed under delegated authority)
 - iii. The progress of the non-intrusive survey works

2. EXECUTIVE SUMMARY

- 2.1 Brick by Brick have undertaken the refurbishment of Fairfield Halls on behalf of the Council and, following the May Cabinet decision, the costs have been

reclassified as capital expenditure and Cabinet agreed in principle to the novation of the refurbishment contracts.

- 2.2 Since May Cabinet, the Council has been working with Brick By Brick to undertake due diligence on the existing refurbishment contracts. The works are now approaching practical completion and final accounting activities are underway. As such, there are outstanding cost claims to work through.
- 2.3 It is prudent for the Council to novate the current live contracts and completed contracts with collateral warranties from Brick by Brick. This is to make the Council the client for novated contracts (snagging, defects, and warranty and guarantees) supporting the future management of the venue.
- 2.4 Novation will release and discharge Brick by Brick from its contracts and the Council will have transferred to it all the rights and obligations under those novated contracts.
- 2.5 The eventual costs associated with novation are anticipated to be significantly lower than the sum Cabinet is recommended to agree to in recommendation 1.1. The sum includes a contingency and a range of issues across a range of contracts that are still to be verified by the professional services providers also being novated as part of this report. The detail of these issues is set out in the part B report.

3. BACKGROUND

- 3.1 The Council commissioned plans for a refurbished Fairfield Halls in November 2013 following approval by Cabinet. This was further refined in September 2014 with plans presented to Cabinet for a Cultural Quarter, including a refurbished Fairfield Halls at the heart of the redevelopment.
- 3.2 Further details of the refurbishment financing and cultural vision for the venue were provided in two Cabinet updates in June 2016.
- 3.3 Brick by Brick commenced refurbishment of Fairfield Halls in August 2016.
- 3.4 As explained in the May Cabinet report, the refurbishment of Fairfield Halls was undertaken by Brick by Brick at what was intended to be at nil cost to the Council as the arrangement was structured in such a way that the costs would be covered by the development profit from the adjacent College Green site. Following the February Cabinet decision, this arrangement was no longer taking place, which meant that Brick by Brick no longer had the capacity to fund the expenditure on Fairfield Halls. Therefore, Cabinet decided in May to treat all the costs incurred by Brick by Brick on the refurbishment as Council capital expenditure.
- 3.5 It has always been the intention to assign the contracts to the Council upon completion of the refurbishment works. Due to the February Cabinet decision, however, it was considered to be prudent to undertake a novation

process ahead of the final accounts being settled. It was decided at May Cabinet to agree in principle to the novation of the existing Fairfield Halls refurbishment contracts with Brick By Brick to the Council (subject to review of the individual contracts, to be finalised and authorised by the Interim Executive Director of Place under their delegated authority). However, due to the overall potential costs under those existing contracts, which had been discovered as part of due diligence work with Brick By Brick, this decision is now above Executive Director delegation and, as such, is being recommended to Cabinet.

- 3.6 The novations will bring the financial and delivery risks back to the Council and ensure that the Council is able to, if necessary, enforce any warranties or guarantees.

4. NOVATION OF PRINCIPAL CONTRACT (VINCI) CONTRACT

4.1 Brick by Brick have an existing contract with Vinci for the refurbishment of Fairfield Halls.

4.2 The contract is now at final completion stage, with ongoing conversations between Brick by Brick and Vinci regarding the final account. These discussions are being supported by the contract administrator partner (MICA) and cost management and quantity surveying partner (Chronos).

- 4.3 It is recommended that the Vinci contract is novated to the Council to undertake these final account activities. This will:
- Place the risk liability on to the Council.
 - Establish the Council as the client for outstanding works, snagging and defects.
 - Establish the Council as the client for warranties and guarantees.

5. NOVATION OF CONTRACT ADMINISTRATOR (MICA) CONTRACT

- 5.1 Brick by Brick have an existing contract with MICA to:
- Liaise with Brick by Brick and the design team to issue necessary certification together with appropriate appendices and qualifications.
 - Assist Chronos and Brick by Brick in determining the final account and in-turn the remaining certificates.
 - Review potential Extension of Time claims from Vinci.
- 5.2 To ensure that works continue to determine the final account, Brick by Brick will continue to pay MICA until the novation of the contract. Croydon will bear the cost of these works.
- 5.3 It is recommended that the MICA contract is novated to the Council to undertake these final account activities.

6. NOVATION OF QUANTITY SURVEYING (CHRONOS) CONTRACT

- 6.1 Brick by Brick have an existing contract with Chronos to:
- Fulfil the role of quantity surveyor limited to the assessment and valuation of contract variations and loss and expense claims for the purposes of assisting and advising the Client in respect of interim valuations and final account certification.
 - Continue to monitor and advise the Client on all contract variations including:
 - Variations
 - Extension of Time matters
 - Loss and Expense claims
 - Advise the Client in regard to retention release and calculation of any liquidated and ascertained damages under the Building Contract.
 - Assess and agree the final account submitted by the Contractor at completion.
 - Issue certificate for release of final retention sum.
- 6.2 To ensure that works continue to determine the final account, Brick by Brick will continue to pay Chronos until the novation of the contract. Croydon will bear the cost of these works.
- 6.3 It is recommended that the Chronos contract is novated to the Council to undertake these final account activities.

7. NOVATION OF ALL OTHER PROFESSIONAL SERVICE CONTRACTS

- 7.1 Brick by Brick have other existing contracts for professional services that are directly engaged on the Fairfield Halls refurbishments. These professional services fulfil the roles of Principal Designer, Architects, other Designers/Engineering and Health & Safety advice. These other professional services contracts are:
- MICA Architects Ltd (principal designer and architect)
 - Max Fordham LLP (building services engineer)
 - Trenton Fire Ltd (fire safety engineer)
 - AKS Ward Ltd (structural engineer and civil engineer)
 - Interface Facade Engineering Ltd (façade engineering)
 - Goddard Consulting LLP (health and safety consultants and advisors)
- 7.2 It is recommended that the other professional service contracts above are novated to the Council to undertake these final account activities.

8. ASSIGNMENT OF COMPLETED CONTRACTS

- 8.1 In addition to the live contracts, above, there are also a number of completed contracts that need will be assigned to the Council so that the Council has the benefit of any warranties or guarantees (as was always the intention).

8.2 The other contracts to be assigned are:

- All Foundations UK Ltd
- GRP Safety
- Roofglaze Ltd
- Steelway Fensecure Ltd
- Southdown (Construction) Metalwork Ltd
- Centre Stage Engineering Ltd
- Stage Electrics Partnerships Ltd
- Camclad (Steelwork) Ltd
- SERS Energy Solutions Ltd
- Kirwin & Simpson Ltd
- Vitrine Systems Ltd
- Kingsley Roofing (London) Ltd
- Elevators Ltd
- Designer M&E Services UK Ltd

9. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

9.1 The long term commitments from the building works (warranties and guarantees) have always been envisioned to transfer from Brick by Brick to the Council upon practical completion of the refurbishment of Fairfield Halls.

9.2 Due to the changing financial position of the Council and the subsequent decision to halt the redevelopment of the College Green site, the legal and accounting position of the refurbishment shifted. Following the May Cabinet decision, the refurbishment has now be considered as a capital programme of the Council.

9.3 Novation of the live contracts from Brick by Brick to the Council will make the Council the client in regards to settling the final accounts, snagging, defects, warranties and guarantees. This will make any future repair and maintenance more straightforward to manage.

10. OPTIONS CONSIDERED AND REJECTED

10.1 From the outset of the project it was envisioned that the contracts would be assigned back to the Council after practical completion of the refurbishment. This follows good legal practice as the freeholder of the building. Therefore, other options have been considered and rejected. These options are:

- Terminate the contracts
- Keep the contracts with Brick by Brick until practical completion

11. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

11.1 Revenue and Capital consequences of report recommendations

There is no specific budget provision for the actual and potential costs arising from the novation of these contracts from Brick by Brick to the Council. Under the arrangements that existed prior to the novation these costs would have been met by Brick by Brick who would have sought loan funding from the Council. There remains an existing capital budget provision for loan funding which it is proposed to vire to meet the costs arising from the novation.

11.2 The effect of the decision

Financial responsibility for the final accounting of the contracts, will transfer to the Council.

11.3 Risks

The final account of the Principal Contractor (Vinci) contract will continue to be assessed throughout the remaining life of the contract with assistance from the Contract Administrator (MICA), Quantity Surveyors (Chronos) and other professional services. There are claims under the contract to be settled as part of the final accounting process which are currently unconfirmed, therefore, a contingency budget has been included.

These costs are limited to the existing scope of works under the contract and excludes any additional works that maybe advised under the VFM review.

11.4 Options

Recommended to approve the novation of the contracts, detailed above.

11.5 Future savings/efficiencies

There are no proposed savings or efficiencies through this novation.

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

12. LEGAL CONSIDERATIONS

12.1 The Interim Head of Commercial & Property Law comments on behalf of the Interim Director of Law and Governance that the novation of the 'live' contracts will transfer all the rights and obligations under those contracts to the Council and release Brick by Brick from its obligations.

12.2 The recommended course of action is a lawful means for placing the Council in the best overall position to enforce warranties and guarantees and to carry out any additional works required (in compliance with procurement law as may apply depending on the nature and value of works to be carried out).

12.3 Cabinet previously agreed to the novation of the Fairfield Halls refurbishment contracts in principle (subject to review of the individual contracts, to be finalised and authorised by the Interim Executive Director of Place under

their delegated authority) on 17th May 2021. As explained in this report, due diligence work has been undertaken and the potential overall value of the novated contracts is beyond the remit of the Interim Executive Director of Place under their delegated authority and, as such, is recommended to Cabinet. The Council may exercise its general power pursuant to Section 1 of the Localism Act 2011 to make the decisions recommended in this report.

Approved by: Nigel Channer, Interim Head of Commercial & Property Law on behalf of the Interim Director of Law and Governance & Deputy Monitoring Officer

13. HUMAN RESOURCES IMPACT

- 13.1 There are no immediate human resources implications from this decision. If any should arise these will be managed under the Council's policies and procedures.

Approved by: Jennifer Sankar, Head of Place & Housing Department for and on behalf of Sue Moorman, Director of Human Resources

14. EQUALITIES IMPACT

- 14.1 There is no equalities impact from this decision.

Approved by: Gavin Hanford, Director of Policy and Partnership

15. ENVIRONMENTAL IMPACT

- 15.1 There is no environmental impact from this decision.

16. CRIME AND DISORDER REDUCTION IMPACT

- 16.1 There is no crime and disorder impact from this decision.

17. DATA PROTECTION IMPLICATIONS

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

NO

Approved by: Sarah Hayward, Interim Executive Director of Place

CONTACT OFFICER: Robert Hunt, Interim Head of Assets & Involvement, ext 63309.

BACKGROUND DOCUMENTS: None